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RAILWAY COMMISSIONS

RAILWAY RATE GRIEVANCES

AND

REGULATIVE LEGISLATION

BY

Professor S. J. McLEAN, Ph.D., M.A.

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OTTAWA, ONT., February 10, 1899.

Honourable A. G. BLAIR,
Ottawa, Canada.

SIR,—In accordance with your instructions I beg to submit a Report upon Railway Commissions as applicable to Canada, and showing the regulative policy of other countries.

I have the honour to be, sir,
Your obedient servant,

S. J. McLEAN.

THE GENERAL ARGUMENT FOR RAILWAY COMMISSIONS.

In the earlier days of railway construction, the importance of rapid development was such that the question of regulation and control was given scant attention. When attention was devoted to such matters it was tacitly, and in many cases explicitly, assumed that whatever difficulties might arise would be settled by competitive forces. The prices of commodities in general were settled by the operation of the law of supply and demand. The price of railway service would be determined in similar manner. The competition existing prevented prices of commodities in general being exorbitant, the same force it was assumed would exercise a corrective power in regard to the charges for railroad service.

There were few, it is true, who saw at an early time, that transportation problems differed from trade problems, and that the forces which controlled ordinary trade were not present in full force in railroad transportation. Such were, for example, Hon. Mr. Morrison, member in the Imperial Parliament for Inverness, and Mr. Stevenson, the engineer who, in uttering his famous statement 'where combination is possible competition is impossible,' drew attention to some of the limitations attending the application of competitive principles to the transportation question. But to the majority this meant nothing; to the majority there was no transportation problem.

The earlier point of view was that the railroad was under the domination of competitive forces. It was thought that there would be effective competition of different individuals on the roadbed of the railway company, thereby guaranteeing the public interests. The absolute necessity of unified control was not appreciated. The general point of view was that competition would exist on the railway as it did on the canal system. Even when it was seen that this method of control was not effective, the belief in competition was by no means given up. It was hoped that by means of competing lines the regulation of rates would be obtained.

The crucial point in all discussions concerning railway regulations is the rate question. The extreme individualist point of view is that railway rates should be allowed to adjust themselves through the exercise of competitive forces in the same way as the prices of commodities in general. The parallelism between the merchant and the railroad company is inexact. Between merchants there is more effective competition than between railroads. The large amount of capital demanded by railroad construction, added to the question of situation, makes the railroad an economic monopoly. The prices charged under such conditions will be on a monopoly, not on a competitive basis. The presence of different roads to some extent offsets this; but even here the competition is less effective than in ordinary business. There cannot be the same free play of supply and demand. The opportunities for choice between carriers by the shipper are much more limited than are the opportunities for choice by the buyer in ordinary business. The demand is relatively more urgent; the supply in proportion to the demand is less.

It may be urged that the effective way to control rates is through the establishing of competing lines. To a certain extent this is effective. But the limitations must be borne in mind. The competition is not of the same nature as in ordinary business. In railroading it is often the weaker road which forces upon the stronger road ruinous competition. The weaker road, when in a bankrupt condition, has nothing to lose and everything to gain by slashing rates. The restraining influence of solvency is not present. In fairness to railroads which are solvent, regulation of rates through such competition should not be relied upon. Such competition is not for the best interests of the public; through the fluctuations in rates it renders business fluctuating. Again, such competition cannot be relied upon as a constant regulator. The stronger road may be forced, in self-defence, to obtain control of the weaker and bankrupt competitor. Such was the case in regard to the relation between the New York Central and the West Shore. Even were the competing lines equally solvent the dependence upon continuing effective competition is futile. Each road occupies a quasi-monopolistic position. Although competition may exist for a time, yet in the long run the roads will find it more convenient to enter into agreements, formal or informal. The rate wars are not permanent. Recent experience in Canada in connection with the relations between the Grand Trunk and the Canadian Pacific are in point in this connection. The evidence presented to the English Select Committee on railways in 1882 showed that there was no effective competition between roads. They had found it in their interest to enter into agreements (Rept. Evidence Qns. 2,964 & 3,896.)

The argument is often made that the railroad's interests are the interests of the people it serves and therefore the road may always be looked to to adopt the policy which is best for all. Theoretically this essential identity of interest does exist; in practice some limitation must be made. A railway may consider it advantageous to build up one community or one individual at the expense of another. What the railway wants is traffic. If it can obtain this in bulk amount from one community or from one individual instead of from a number of scattered communities or individuals, then its interests are better advanced because it obtains the traffic and at the same time the cost of management and handling is lessened; the net profit is under such conditions greater.

The argument as to unity of interests as a preventive of evils has to face the existence of preferences, discriminations, rebates, and the evil effects of uncontrolled competitive rates. The preferences, discriminations, and rebates are the means whereby the road is enabled to centralize its business and enable it to be more easily handled. As business is organized to-day through rates must be lower proportionately than local rates.

Otherwise the business would have to be local. The through rate cannot bear the rate the local business can, without substantial harm being done. This, however, is no argument in favour of the position that the local traffic should be unduly discriminated against on the ground that one rate is competitive, while the other is not. Such a rate is required as will best suit the interests of both. The interests of one species of traffic cannot be regarded as the dominant factor. This is a matter not indifferent to the public. The assumed essential unity fails here as in other respects.

If the uncontrolled operation of competitive principles based on self interest cannot settle the question, cannot indeed operate in their entirety, some other method must apply. The matter of regulation has been forced to the front in recent years. 'No general question of government policy occupies at this time so prominent a place in the thoughts of the people as that of controlling the steady growth of and extending influence of, corporate power and of regulating its relations to the public.' (Rpt. of Cullom Committee of 1885–86, p. 3.)

The opposition to the exercise of government regulation over railroad transportation proceeds on the assumption that railroads are private business organizations, and that such regulation is a violation of private rights. This position is fallacious. It must be remembered that the railway occupies a dual position; it is not only a body organized for gain, but also a corporation occupying a quasi-public position and performing public functions. The distinction was asserted in the control of the government over common carriers. The provisions of the common law do not adequately meet the problems presented by the newer transportation system; it is necessary to supplement them and provide a more effective means of enforcement. The transportation problem is part of the life of the nation. Its management in harmony with the needs of the people is urgent. What the railroad wants is the greatest profit; what the country wants is the greatest good for the country and the most uniform development of its resources. For a further example bearing on the point that these interests are not always in essential harmony the following may be cited. The entire net increase of population, in the period 1870–1890, in Illinois, Wisconsin, Iowa and Minnesota, except in the new section, was in cities and towns possessing competitive rates; all those having non-competitive rates decreased in population. (Stickney, The Railway Problem, p. 62.)

The regulative legislation which has been passed in various countries, shows that the unqualified belief in uncontrolled competition as a regulative principle has passed away. Regulation of some sort must exist. In some countries it is exercised through the State owning the railways. In other countries it has been applied through special organizations. The question of regulative control can be met in one of two ways, State ownership or Commission regulation. There is no middle course.

The attempt to regulate such matter through politically organized bodies has not succeeded. The regulation is essentially an administrative function; an intermingling of this with political duties leads to lack of harmony and efficiency. The regulation of the railroad question, in the public interest, demands technical training. It demands all the time of those engaged in such matters. They should be concerned, not only with the settlement of grievances when they arise, but also with an attempt to prevent grievances. The duties of political officials prevent the exercise of such functions. Under a system of private ownership and management of railways, the only efficient method of controlling them in the public interest is through entrusting such matter to an efficiently organized Railway Commission.

REGULATIVE POLICY OF VARIOUS COUNTRIES.

All the civilized countries of the world recognize the necessity of some form of regulative control. On the continent of Europe the question is divided between government ownership and private ownership. Where the former exists the whole matter is manifestly subject to regulation. Where private ownership exists there is also control, in France the initiative in rates comes from the company; the government has a veto upon these rates. 'All tariffs are submitted to the ministry of public works and their acceptance or rejection is determined by a committee, composed of

public and railway officials sitting under the presidency of the minister.' No tariff can be established or changed without such consent. Changes in the tariff must be published for one month before they go into effect. The minister may also conditionally assent to a tariff and may also withdraw such conditional assent at any time he sees fit. Through rates to meet international competition may be established on twenty-four hours' notice both to the minister and to the public. The minister has the right to forbid the introduction of such rates. Established international rates may be lowered, if five days' notice has been given to the minister and no objection has been made by him within that time. An increase in such rate requires three months' notice.

In Italy, changes from the rates in existence at the time the roads were leased to private companies are subject to adoption or rejection by Parliament. Powers of reduction of tariff rates are given to the government provided such reduction does not effect more than one-half of one per cent of the net income.

In Austria the private roads are under rigorous government control. The same holds true in Holland.

In other countries of the continent government ownership is favoured. Their experience is not germane to the discussion.

In Australia the policy of government ownership has been given a thorough-going application. Over £120,000,000 have been expended in the construction of about 12,000 miles of railway. There are only about 500 miles of privately owned railway in Australia.

In Asia, Africa and South America, political exigencies have led to the construction of railroads by the State, or under close relations between the railroad and the State. In Brazil, there has been an attempt for the last two years to dispose of the State railways to private companies.

The precedents which bear most on the problem of regulation in Canada are to be found in the experience of England and of the United States. The extent to which railway development has been carried in both of these countries, the commercial vigour of these nations render their experience most valuable. The policy favoured has been one of private construction and management. Both of these countries have recognized the necessity of regulation. Both have recognized the quasi-public nature of railroads and of their services, and both have placed the regulative control in the hands of tribunals specially organized for this purpose.

ENGLISH POLICY AND EXPERIENCE.

Earlier methods of regulation. In one of the earliest railroad charters granted in England, that of the Liverpool and Manchester railway, (7 Geo. IV., cap. 49), maxima were indicated and it was further provided that when the dividend fell below 10 per cent the rates might be raised; when the dividend exceeded 10 per cent the rates were to be lowered one-twentieth. As time went on a more detailed policy appeared. In 1844 the House of Commons resolved that there should be inserted in all railway bills thereafter a clause stating that the railway was subject to any general law which might be passed. In 1845 preferences were forbidden (7 and 8 Vict., cap. 20, sect. 90).

From 1845 onward people commenced to appreciate the existence of a railway problem. In 1840 a parliamentary committee had reported that competition of carriers on individual lines, these carriers furnishing their own cars and locomotives and paying a toll for the use of the road, which had been relied upon as a regulator of rates, was ineffectual. This committee, of which Sir Robert Peel was a member, contented itself with expressing the belief 'that an enlightened view of their own interests would always compel managers of railroads to have due regard to the general advantage of the public.' In 1844 a committee of which Mr. Gladstone was chairman, reported in favour of ultimate acquisition of the railways by the government. It was considered that this was the only effective means of regulation.

As early as 1840, feeling in favour of some form of a Railway Commission had presented itself. In this year powers, similar to those now possessed by the Massachusetts Railway Commission, were conferred upon the Board of Trade. These were further de-

fined in 1842. There was not sufficient power given and so this organization was ineffective. In 1844 another commission which was to make reports to parliament on applications for railroad charters was appointed. The board, thus established, was abolished in a year. 'It died of too much work and too little pay.' In 1846 another commission was appointed. In 1851 its powers and duties were transferred to the Board of Trade.

The rule against unreasonable preferences, which had been set forth in the Railway Clauses Consolidation Act of 1845, was reiterated in the Act of July 10, 1854, 'an Act for the better regulation of the tariff on railways and canals.' 'And it was further provided that in the case of connecting lines traffic should be handled and forwarded without unreasonable delay, and that no obstructions were to be placed in the way of continuous lines of communication. It was provided that individuals aggrieved through any violation of the provisions of the Act by a railroad might bring suit' in England to a Court of Common Pleas, in Ireland to a Superior Court, and in Scotland to the Court of Session or to any judge of such court. If the Board of Trade issued a certificate to the Attorney-General in Ireland or England, or to the Lord Advocate in Scotland, alleging a violation of the provisions of the Act it should be lawful for either of these officials to apply to the courts already mentioned to try and determine the matter. If the court found that the provisions of the Act had been contravened, then a writ of injunction might be issued; a penalty of 200 pounds per day was attached to a failure to obey the injunction. This Act established two leading principles of railroad regulation; (1) every company should be compelled to afford the public the full advantages of the convenient interchange of traffic from one line to another; (2) companies were under obligations to, and should, make equal rates to all under the same circumstances.

In terms of the recommendation of 1844 which provided for the acquisition by the State, of the railways, on defined terms, at the end of twenty-one years, 1865 should have been the year for such purchase. A royal commission which was appointed in that year reported against the advisability of exercising the reserved rights of the Government, in this respect; it made no recommendations of importance in connection with the matter of regulation.

The movement for a commission with sufficient powers to handle railway matters had meanwhile been gaining ground. When the Act of 1854, Cardwell's Act, had been drafted it was intended that the questions which arose under it should be decided by the Board of Trade—the powers of the former Commission having been transferred to it. As has been seen the jurisdiction was in reality conferred upon the court of Common Pleas and upon the courts of similar rank in Ireland and Scotland. This threw on the courts the adjudication of many questions of a technical railroad nature; and the courts showed themselves unwilling to grapple with any except the more distinctly legal questions that arose under Cardwell's Act. A committee appointed by Parliament, and which investigated railway conditions during 1865-67, saw this difficulty but made no conclusive recommendation. A committee appointed in 1872 reported that the only way to meet the existing difficulties was by appointing a railway commission with adequate powers.

The more important findings of this committee bearing on the question of regulation are as follows:—

(1) That a system of equal mileage rates or charges in proportion to distance was inexpedient—(*a*) it would prevent railway companies lowering their fares and rates, so as to compete with traffic by sea or by canal or by a shorter or otherwise cheaper railway, and would thus deprive the public of the benefit of competition, and the company of a legitimate source of profit. (*b*) It would prevent railway companies making perfectly fair arrangements for carrying at a lower rate than usual goods brought in larger or constant quantities, or for carrying for long distances at a lower rate than for a short distance. (*c*) It would compel a company to carry for the same rate over a line which has been very expensive in construction, or which, from gradients or otherwise, is very expensive in working, at the same rate at which it carries over less expensive lines.

(2) That the fixing of legal rates based upon the actual cost of the railways and calculated to yield a fair return upon such cost was impracticable.

(3) That the plan of maximum charges had been a failure and that such rates afforded no real protection to the public, since they were always fixed so high that sooner or later it became the interest of the companies to carry at lower rates.

(4) That there should be publicity of rates and tolls.

(5) That a new tribunal was needed to take supervision of the transportation interests of the Kingdom, and with authority to enforce the laws relating to railways and canals, to hear complaints and adjust differences, and to advise Parliament upon questions of railway legislation.

THE RAILWAY COMMISSION.

COMMISSION LEGISLATION.

The Regulation of Railways Act, 1873, provided for the appointment of a railway commission. The provisions of this Act are so important that the following summary of the provisions bearing directly on the question is given. Provision was made for the appointment of three commissioners and not more than two assistant commissioners. The commissioners were to receive a salary of £3,000 per annum. One of the commissioners was to be experienced in the railway business. The commissioners were not to be in any way interested in any railway or canal company, financially or otherwise. If they held investments in such companies at the time of their appointment they were to dispose of them within three months; and if during their tenure of office any such securities came to them by bequest or otherwise, they were to dispose of them within three months. The commissioners were to devote all their time to the duties of the office.

Complaints arising under the Act of 1854 and subsequent Acts, with reference to matters of rates and equal facilities, might come before the Commission either upon the initiative of the party aggrieved or upon a certificate of the Board of Trade alleging that there had been a violation of the Acts in question, or upon complaint of some person authorized to institute proceedings by the Board of Trade. In hearing complaints and in enforcing decisions the Commission was to have the power conferred upon the courts and judges, in regard to such matters, under the Act of 1854, and of issuing similar writs and orders. Except, in so far as the courts were called upon to enforce the decisions of the Commission, they were to cease to exercise the jurisdiction conferred upon them by the Act of 1854.

When a complaint was instituted against a railway or canal company the Commission might before instituting formal proceedings, communicate with such company so that it might make a rejoinder.

Where under any general or special Act provision was made for the reference to arbitration of disputes between railway companies or between canal companies, or between a railway and a canal company, the matter at the instance of one of the parties to the complaint, and with the consent of the commissioners was to be brought before the Commission for determination. In the case of differences between such companies and other parties, the application of the parties as well as the consent of the commissioners was essential.

Power was given to hear and determine matters arising in connection with terminal charges, and to decide what constituted a reasonable terminal charge. Decisions under this head were to be binding on all courts and in all legal proceedings.

The powers in respect to approval of working agreements between railway companies, and of the exercise by railway companies of their powers in relation to steam vessels, which had been conferred upon the Board of Trade by the Railway Clauses Act of 1863 were now transferred to the Commission.

Each railway and each canal company was required to keep, in a book accessible to the public, at each of its stations, all rates charged from that station, including any special rates. The commissioners on the application of any interested party were empowered to direct such company to itemize the charges making up such rates. Violations of this provision are subject to a fine of £5 per day.

Decisions or orders of the commissioners might be made an order or a rule of any Superior Court and enforced, either by injunction as provided for under the Act of 1854 or in the same manner as any rule or order of such court.

Complaints might be heard by the Commission either in public or in private; on application of a party to the complaint the matter was to be heard in public. On questions of fact their decisions were to be final; on questions of law it was subject to appeal. The Commissioners were to determine which were questions of law and which were questions of fact.

A yearly report was to be made to Parliament. It was to be laid before both Houses of Parliament within fourteen days after the report was made, if Parliament was then in session, if not then within fourteen days after the next meeting of Parliament.

Changes in the Commission.—The Commission so appointed was in the nature of an experiment. It was appointed for five years. At the expiration of its term in 1878, it was continued from year to year. It was found that the Commission was not working as satisfactorily as had been anticipated, and so its working, as well as the rates charged by railways and canals, was investigated in 1882 by a special committee of the House of Commons.

This committee found after a careful investigation that the Commission had been hindered in its work by its temporary character. The Commission notwithstanding this had been of public advantage in that it not only caused justice to be done more speedily in those cases which came before it, but also prevented differences from arising between railway companies and the public. An influence had thus been exerted much greater than that which pertained to its 'hearing and determining' function.

Recommendations of the committee.—That the Commission be made a court of record.

That the powers and jurisdiction of the Commission be extended to cover:—

(*a*) All questions arising under the special acts or the public statutes, for regulating railway or canal traffic, affecting passengers or goods.

(*b*) The making of orders which may necessitate the co-operation of two or more railway or canal companies within the statutory obligations of the companies.

(*c*) Power to order through rates on the application of traders, but no such order is to impose on a railway company a rate lower than the lowest rate of such railway company for similar articles under similar circumstances.

(*d*) The revision of traffic agreements, both of railways and canals, in as a large measure as the powers formerly exercised by the Board of Trade.

(*e*) The granting of damages and redress for illegal charges and undue preference.

(*f*) The commissioners to have power on the joint application of parties to act as referees in rating appeals.

(*g*) That the railway commissioners should deliver separate judgments when not unanimous.

(*h*) One appeal to be granted as of right from the decisions of the Commission, and 'prohibition' and the use of 'certiorari' to be forbidden.

Supplementary Legislation.—It was not until 1888 that the Railway Commission was put on a more permanent footing, in that year the 'Act for the better regulation of Railway and Canal Traffic and for other purposes' was passed. (51 & 52 Vict., cap. 25).

The constitution of the Commission was rearranged. It was constituted as a court of record, it was to have an official seal which was to be judicially noticed. In future the Commission was to be composed of two appointed commissioners, who should each receive a salary of £3,000 per annum, and three ex-officio commissioners. The appointed commissioners were to be appointed by Her Majesty on the recommendation of the Board of Trade, and one of them was to be experienced in railway business. They might be removed by the Lord Chancellor for inability or misbehaviour. The provisions of the Act of 1873 requiring that commissioners should not be pecuniarily interested in railway enterprise, were made applicable to the appointed commissioners.

One ex-officio commissioner was to be designated from a superior court in England by the Lord Chancellor, one in Ireland by the Lord Chancellor of Ireland, and one in Scotland by the Lord President of the Court of Session. The term for which they were to be designated was five years. An ex-officio commissioner was not to be required to attend meetings of the Commission outside of the section of the United Kingdom from which he was appointed. In the hearing of any case the ex-officio commissioner presides and his opinion upon any question which in the opinion of the commissioners is a matter of law prevails. When an ex-officio commissioner is unable to attend, the official who in the first place designated such commissioner may designate a judge of a superior court to take his place temporarily. When it appears that owing to the congested state of the court business it is impossible to have one of the judges set aside for this work, then an address may be presented to Her Majesty from both Houses to have an extra judge appointed. When an appointed commissioner is unable to attend, and the case demands speedy decision, the President of the Board of Trade may appoint a temporary commissioner. The central office of the Commission is in London, sittings may be held by the commissioners in any part of the United Kingdom they deem convenient.

Under the Act, the Board of Trade was given a regulative control in so far as determining what corporate bodies may bring complaints. A long list of municipal and corporate organizations is given, and it is stated that if any one of these obtains from the Board of Trade a certificate that it is a proper body to make a complaint before the Commission, it shall be empowered to do so without any proof that it is personally aggrieved.

The province of the Commission's jurisdiction is more carefully delimited. All powers vested in or capable of being exercised by the railway commissioners, either under the Act of 1873 or any other Act, were declared to pertain to the Commission. Provisions in special Acts with reference to traffic facilities, undue preferences, providing of stations, or imposing any obligation in favour of the public, and of the enforcement of these were to be placed under the jurisdiction of the Commission. Where disputes as to the legality of tolls and rates arise the commissioners are to hear and determine the same, and to enforce the payment of such toll, rate or charge, or so much thereof as they deem to be legal. The making and enforcing of orders with reference to reasonable facilities for traffic is in the hands of the Commission. In cases within the jurisdiction of the Commission there may, in addition to or in substitution for any other relief be awarded to any complaining party, who is found to be aggrieved, such damages as the commissioners find him to have sustained. Such damages are not to be awarded unless the complaint has been made to the Commission within a year from the discovery, by the complainant, of the matter complained of. In complaints arising from undue preferences, no action shall be taken by the Commission, where such rates have been published in a rate book as provided for under the Act of 1873, until after the party aggrieved shall have brought the matter before the railway and the railway shall have failed, within a reasonable time, to afford redress in a reasonable manner. The power of arbitration conferred under the Act of 1873 is continued.

There is no *appeal* on a question of fact or upon any question regarding the *locus standi* of a complainant. An appeal on a question of law lies to a Superior Court of Appeal. This appeal is to be treated as if it were an appeal from a judgment of a superior court. The Court of Appeal has power to make any order the commissioners could have made.

The Commission has full jurisdiction to determine all matters both of law and fact, and has such power of compelling attendance of witnesses, inspection of papers, and such other powers, rights and privileges pertaining to the exercise of such powers as are vested in a superior court; but in punishment for contempt the assent of an ex-officio commissioner is necessary. In any proceedings under the Act a person may appear before the Commission either in person or by counsel. The commissioners have power to review, rescind or vary any decision passed by them. The costs of every proceeding are in the discretion of the commissioners. From time to time with the approval of the Lord Chancellor and of the President of the Board of Trade rules of procedure and practice may be made by the commissioners; such rules are to be submitted to Parliament,

if it is then sitting, within three weeks after they are made; if Parliament is not sitting then they are to be submitted within three weeks after the beginning of the next session.

The auxiliary officers necessary to the carrying out of the process of the Commission are appointed by the Lord Chancellor, the Treasury consenting to the number. The salaries of such officers are determined by the Treasury. All the expenses of the Commission are to be met out of money provided by Parliament.

The matter of classification and maximum rates is in the hands of the Board of Trade. Every railway company is required to submit to the Board of Trade within six months after the passage of the Act—although a longer time may be allowed by the Board—a revised classification of merchandise and a revised schedule of maximum rates, clearly indicating in the latter the terminal charge. Such terminal charge is to be reasonable. An attempt is to be made to obtain an agreement if possible. If an agreement cannot be arrived at, the Board itself may act in the matter. If the railway does submit a satisfactory arrangement this is to be put in the form of legislation applicable to the particular railway. A similar method is pursued where the arrangement is effected by the Board itself, with this exception, that any petition against such arrangement presented to Parliament, while such bill is pending, may be referred to a select committee or to a joint committee. Any person, by giving not less than 21 days' notice to the railway company, may apply to the Board of Trade to have such classification or schedule amended by the addition to it of any articles, matters or things. Every determination of the Board of Trade in this regard is to be published in the London Gazette and take effect from publication. The Board may from time to time make and rescind rules with reference to the form of classification and schedule. The provisions as to submitting these to Parliament are identical with those regarding the submitting of the rules of the Commission.

Through Rates and Routes.—In case of dispute about through rates and routes the railway company or person desiring to obtain such through rate or route, shall first indicate to the forwarding company the route and rate proposed; if within ten days an agreement has not been arrived at between the company or person and the forwarding company, then the matter shall come before the Commission for decision. The commissioners are to consider whether the proposed route and rate are reasonable. When the railway companies do not agree as to the apportionment of the through rate it is to be apportioned by the Commission. In apportioning through rates the commissioners are to consider all circumstances of the case including special expenses of construction, or maintenance, or working of route, or any special charges to which the company may have been put. It shall not be lawful for the commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit; or any other line of communication between the same points, being the points of departure and arrival of the through route. When part of the transportation is effected by steam vessels operating in connection with the railway (or canal) then the power conferred covers such case also. If a company refuses, or neglects to accept the decision of the Commission as to rates, routes or apportionment, and there is no reason for such refusal or neglect, the Commission may award such costs to the applicants as they see fit. The Commission may decide that a proposed through rate is just and reasonable, although the portion of the through rate allotted to the forwarding company may be less than the maximum rate it is entitled to charge.

When *preferences* are charged the burden of proving that such preferences are not unreasonable is on the railway company. In deciding whether the preference is undue the Commission shall consider whether it is requisite in the public interest, in order to obtain the traffic in respect of which it is made; but no difference in rates or treatment of home or foreign merchandise is to be sanctioned.

The 'long and short haul' clause of the Interstate Commerce Act appears. It is not absolute as in the American Act. The commissioners have power to direct that no higher rate shall be charged for similar services in respect of like descriptions of and like quantities of traffic for a shorter than for a greater distance on the same line of railway. It differs from the American Act in that it does not state that the lesser distance

is to be included in the greater. In this respect it resembles the 'long and short haul' clause of the Massachusetts legislation.

The railways may charge group rates. The determination whether the rates as so arranged constitute an undue preference is in the hands of the commissioners.

Each railway is required to keep its general classification of merchandise and schedule of rates open to public inspection at every station where goods are received for conveyance. Each railway is required within one week after application made in writing by a person who has shipped, or intends to ship, goods over the railway in question to make an itemized statement of the charges made, in which the terminal charges and the dock charges, if such are charged, shall be differentiated from the charge for conveyance.

Any company intending to make any increase in rates shall give at least fourteen days public notice of the intended change by publication in such manner as shall be prescribed by the Board of Trade. No charge shall be effective unless this notice has been given. Any company failing to comply with the provision in this respect is liable, on summary conviction, for each offence, and for each day such offence continues, to a penalty not exceeding £5.

PRESENT CONDITION IN ENGLAND.

OPERATION OF THE COMMISSION LAW.

It may be premised at the outset that immediate rectification of all the evils existing is not to be expected from the operation of any Commission law. The evils that have sprung into existence as a result of freedom from regulation are too deep seated to be settled at once. The reasons for falling below the standard of expectations, if such failure is shown, are attributable both to the magnitude of the concrete problem to be dealt with, and the nature of the law which attempts to deal with the problem. Weakness in the law may vitiate the expected results.

The questions of differential rates, exorbitant rates and of discrimination in favour of foreign trade against home trade have occupied an important place. During the period between 1873–1882 the question of differential rates occupied a prominent place in the public attention. This included both the matter of local discriminations and of a lesser charge for long distance traffic than for short distance traffic under the same circumstances. The matter of preferential rates occupied a considerable part of the time of the Commission in 1880. The select committee of 1881–2 which was appointed to investigate this matter did not arrive at any very definite conclusion. Difficulties arose as between the larger and the smaller shippers, the former claiming that as a result of their larger shipments they were entitled to better rates than the smaller shippers. As regards the matter of the 'long and short haul' it will be seen from the summary already given that the power in the hands of the Commission is discretionary. In the exercise of this discretion the commissioners have proceeded on the principle that it is not so much the damage of the particular individual as the damage, or otherwise, to the general public that has to be considered. And proceeding from such standpoint they have not uniformly negatived such arrangements of rates.

The question of exorbitant rates has also occupied considerable attention within recent years. The agitation against preferences, which was prominent in 1880, soon took on another phase. An agitation for a reduction of exorbitant rates was begun, there being a desire for a general reduction of rates.

The peculiar position occupied by the English railways, which are at about three-fifths of their stations exposed to water competition, brought up another important problem. There has been, and is, in England much complaint because the foreign producer is enabled to place his commodity in the English market at a more advantageous rate than the home producer. The American producer of grain, whose grain is sent into England at through rates has obtained at times relatively better terms than the English producer. In the south of England there has been a special complaint. For example

the hops of France are brought into competition with the hops of Kent. French hops have been placed in the English market at one-half the rate charged for similar quantities of English hops which were carried from intermediate points. The reason for this lies in the fact that the French product may be brought to London by water, while the English commodity must be brought by rail. If the English road is to obtain any share of this trade, under these conditions, it must meet the water rate. The rail and water rate will be equal to, or possibly less, than the water rate. Under such conditions the rail portion of the rate will be less than the rail rate in the case of the English goods, although the latter may be carried a shorter distance by rail.

The important question the Commission has to face, has been that of rates. The Commission has not solved the rate question. Discriminations yet exist although personal discriminations have practically ceased. The local discriminations are of importance.

The rate question connects itself with the question of classification and revision of maxima. The Board of Trade grappled with the matter and the changes were made effective in the beginning of 1893. The classification of the railroads was reduced and made uniform. At present there are eight general classes (A, B, C, 1, 2, 3, 4, 5). In the revision of the maxima the commissioners, appointed for the work, proceeded from no general principle but simply empirically. The question of revision has not gone beyond the revision of the maxima, although there is in some quarters a desire for a revision of actual rates.

'The Commission has on the whole fulfilled its function.' To indicate what it has done it will be best to take up first the defects, later laying stress upon the good features.

It must be remembered in the first place that, although the total railway system of England represents only some 20,000 miles, that it represents a compact and powerful interest. The large investment of capital, the steadiness of the English business system, the permanency of the traffic agreements—some having remained in operation for fourteen years unchanged, the delimitation of railroad 'spheres of influence'—there being a division of territory between the different lines—all co-operate to give the English railway system a peculiar strength. There has not been the same readiness of acquiescence in the dictates of regulative law as in America. And there has been a tendency to contest the decisions of the Commission, if not to ignore them. To the conservative trend of English opinion, which, though powerful when aroused, is normally acquiescent, and to the fact that the roads had for a long time been free from any effective regulative control, this attitude must undoubtedly be attributed. This attitude has been helped on by the fact that under the earlier theory of the railway law which still has force in England—the railways occupy a position analogous to that occupied by canals. Under the earlier theory they might engage in the transportation business themselves, or they might allow others to make use of their tracks on the payment of certain tolls. The consequence of this is that if the Commission finds a rate unreasonable and declares what rate shall be reasonable, the company may fall back upon this power and say that it is not engaged in the transportation business and that it is simply allowing its tracks be used in return for certain payments; in this way it has the individual shipper at its mercy because, although the shipper has the option of using his own cars and engines in the transport of his goods, few shippers are in a position to take advantage of this; under such circumstances the payment of the obnoxious rate without further protest is the lesser evil. This is helped on by a technical defect in the phrasing of the Act of 1888. Section 24, which makes provision for the submitting of a revised schedule of rates and charges by the railway, makes no mention of tolls. The Board of Trade has taken the position that under the Act it has no jurisdiction in regard to tolls. This has rendered the work of the Commission more difficult. Of recent years, however, the railways have occupied a less antagonistic position.

A further difficulty has arisen as a result of the attitude of the courts. The Commission has to look to the courts to enforce its decisions. The Act of 1873, whose provisions in this regard are not superseded by the later Act, states 'any decision or order made by the Commission . . . . . may be made a rule or order of a Superior Court . . . . . .

and shall be enforced. . . . .' Under this section whether or not the decision should be enforced by the court was discretionary. An example of the attitude of the courts is in point. Under the Act of 1854, a refusal by a railway to comply with the decisions of the Court of Common Pleas subjected the refractory railway to a fine of £200 per day for every day's delay. The jurisdiction conferred on the Court of Common Pleas by the Act of 1854 (section 3) was transferred to the Railway Commission by the Act of 1873 (section 6). Notwithstanding this the plea of the London, Chatham and Dover railway that it was not subject to such exercise of jurisdiction was upheld by the Exchequer Court. It was not until 1878 that a decision of the Court of Queen's Bench declared judicially that the Commission had the power which in terms of the enabling act had been expressly conferred upon it. Another difficulty turns on a point of jurisdiction. As has been stated the Commission has power to make final decision on matters of fact; and it has also power to decide what constitutes a question of fact and what a question of law. However this power is invalidated by the fact that on *writ of mandamus* from a court of appeal the Commission may be compelled 'to state a case' which may be made the subject of action in a higher court.

Another difficulty has been in the matter of expense. When the Commission was created it was manifestly the intention to do away with the expense and delay connected with prosecuting matters pertaining to the violation of the railway law before the courts. The process is somewhat less expensive than it was, but it is unduly expensive yet. The difficulty arises because owing to the defects in the legislation there is a constant opportunity for appeal to higher courts. The powers intended to be given by the legislation have not really been given. The sphere of judicial intervention has not been properly delimited. The legislation has not been symmetrically arranged. Coupled with this is the fact, already referred to, that much of the theory of English railway law is archaic. I do not regard the defect in the question of expense as intrinsic in the Commission.

Another defect in the working of the Commission is connected with its membership. Provision is made that one of the appointed commissioners should be experienced in the railway business. No provision is made for the appointment of a business man on the Commission. This has militated against the usefulness of the body. This was recognized by the Select Committee of the House of Commons appointed in 1893.

Such being the main defects, what has been accomplished by the Commission? The Committee of 1882 indicated that the services of the Commission were not confined merely to the determination of those cases which came formally before that body, but that much had also been accomplished in preventing differences. That the work accomplished had been satisfactory to the trading class is evident in the evidence presented to the committee. This preventive work which is, in many respects, even more important than the formal work of decision is often under-estimated because it does not appear in formal statement. Then again the mediatorial position which the Commission has been able to occupy has engendered a better feeling in regard to the mutual responsibilities of shipper and carrier. The slow growth of this *rapprochement*, in the earlier period, is owing to the fact that the railways then regarded themselves as firmly entrenched in an individualistic position.

The decisions that the Commission has given have been carefully considered. The value of the decisions is to be measured not only by the direct benefit received by the individual, but also by the benefit received by the public. A public feeling has been created which has had an influence in preventing arbitrary action on the part of the railways.

The railways have recognized the value of the Commission by referring to it for arbitration disputes which have arisen among themselves. For example in 1886, 11 cases out of 12 before the Commission were concerned with railway quarrels; in 1887, 6 out of 12; in 1889, 3 out of 11; in 1890, 1 out of 28; in 1891, 1 out of 19.

The shippers although not uniformly satisfied are of the opinion that the Commission has done much to check the evils that formerly existed.

To sum up the question the Commission has:—(1) been fairly successful in grappling with the questions presented before it. (2) It has exercised an influence in the prevention of arbitrary exactions. (3) It has been recognized as an unbiassed arbiter

in railroad disputes. (4) It has bettered the condition of the shippers. The defects in the operation of the Commission are in part attributable to defects in the legislation itself; in part to lack of co-operation on the part of the judiciary. And above all must be remembered the difficulty of the task.

Illustrative material bearing on these matters will be found in extenso in the statutes and committee reports referred to. The reports of the Interstate Commerce Commission contain some valuable information with reference to the English Commission. The report of the Cullom Committee is also valuable in this connection. A special report to the United States Government on the railway systems of Western Europe by Mr. Simon Sterne is also valuable. Hadleys' Railroad Transportation, and an article on 'The English Railway Rate Question' by Prof Mavor, (published in the Quarterly Journal of Economics) are of especial value.

THE EXPERIENCE OF THE UNITED STATES.

EARLIER REGULATIVE POLICY.

The earlier attitude of the United States towards railway development was on the whole one of belief in the efficacy of competition as a regulator. The evils that would flow from such a *laissez-faire* policy were not foreseen. The various provisions bearing on the question of regulation which do appear in the earlier Acts are inspired, not by a fear that the powers granted would work inequitably as between individuals and between localities, but by a fear that possibly too high a rate of profits would be ensured. Where the matter of profits is mentioned it appears that the legislators believed that the companies had a right to a comparatively high rate.

In the earlier charters the legislatures were content for the most part with indicating maxima. (The charter of the Baltimore and Ohio, Laws of Md., Feb. 28, 1827, is an example.) The next step was a provision that the legislature might at the end of a defined period legislate on the question of rates. (Charter of the Elkhorn and Wilmington, Laws of Md., cap. 187, Act passed March 14, 1828.) The legislation of New York was content with a simple declaration that rates which produced an excess of a defined dividend, varying from 12 per cent to 14 per cent were prohibited. No method of providing for revision of rates was provided. The most systematic policy is that of Massachusetts, where provision for a decennial revision of the rates, with the intent that these should not produce a dividend of more that ten per cent was made. The 'state purchase' clause, namely, that at the termination of a defined period the state should have a right, on defined time, to purchase the railroad—a provision which appears in the legislation of Massachusetts as well as in that of New York—is a recognition of the assumed great profits the railroad would make, and of the advantage of securing these profits to the state at some later period when the experiment had proved successful.

When the importance of the railroad as a means of connection with the West began to be recognized, all the questions of regulations were left in the background. What people were thinking of was not the regulation of possible evils arising from railroad transportation, but the rapid obtaining of an expanding railroad system. This is manifest in the feverish interest taken in transportation schemes in the period 1830–50. Pennsylvania, Ohio, Illinois and Michigan became interested in state-aided transportation schemes. The western states were enabled through the action of Congress to set aside grants of land in aid of these enterprises. Undue optimism prevailed as to immediate returns from these enterprises. When the time of failure came about 1850, it marked the definitive retirement of the states from active participation in railroad construction. The agitation over internal improvements had culminated in 1830 with the withdrawal of the Federal Government from the field; the disastrous outcome of the experiments of the period 1830–1850, resulted in the state governments also retiring. The matter of railway construction might, it was thought, be left advantageously to private enterprise. A corollary from this was an individualistic attitude towards railroad problems.

The period 1860–70 may be classed on the whole as a 'hands off' period. The possibility of the corporation obtaining a power menacing to state interests was not con-

ceived of. It was assumed that given a sufficient number of railways there would be no difficulty in regard to treatment of individuals and localities. Where an inequality existed the way to remove it was by inducing the construction of another railroad. Railroad construction not railroad regulation was what occupied the public mind.

The problem took on another phase in the period beginning about 1870. The railways, exhausted by the rate wars which were an outcome of excessive construction, had made pooling arrangements with the intention of obviating ruinous competition. This indicated to the people that the railways, instead of being separate completely competitive bodies formed an integrated system. The evils that had come into existence during a period of unbridled and vicious competition had also helped to change the public attitude towards the railway situation.

The conditions in the West were especially characteristic, and a rapid summary will serve to give the historical setting of the Commission movement in the West.

A policy of lavish subsidizing had brought about a rapid extension of the railroad system in the middle west, and more especially in the upper Mississippi Valley. Settlement was rapidly pushed forward and the fertile wheat lands of the North-west commenced to be cultivated. Then there came a change in the industrial conditions. Wheat fell in price. A demand for a reduction in rates was made. This demand was rendered all the stronger by the short-sighted policy of the railway managers. During the rate wars many illicit devices had been used in the struggle for traffic. Rebates, secret rates, discriminations, personal and local, had been lavishly employed. The stress of wasteful competition had driven down competitive rates to hard pan. If the railways were to equalize matters an increased rate upon the non-competitive traffic seemed to be necessary. The farmers who saw commodities carried long distances for rates which were only a fraction of those charged on their commodity which was carried a much shorter distance, assumed that there must be an exorbitant profit in the rates charged them. Their complaints were met with scant courtesy by the railways. A keen feeling of injustice was engendered. A feeling that they were paying exorbitant profits to absentee railroad stockholders, most of the capital invested was eastern capital, further embittered the farmers. The old feeling of confidence in the unregulated operation of competition passed away. The new attitude was one of belief in the necessity of state regulation.

THE COMMISSION MOVEMENT.

The State Railway Commissions may be broadly distinguished as eastern and western. To the commissions of the western type are to be added the commissions of the southern states. The western type represents the type that was called into existence by the necessity of regulating transportation in the public interest. In the eastern states railways are subject, in some degree, to water competition, and the regulative power of public opinion is greater.

A third type of commission may be mentioned for the sake of exactness. This type is simply a body organized for the assessing of railways within the state and collecting of the taxes due by them.

The first attempt in the west connected itself with the Granger legislation. In 1871 Illinois passed a law establishing a system of maxima. The precedent set was followed in the legislation of Wisconsin and Iowa. In Wisconsin the 'Potter law,' which was passed in 1874 and which is usually taken as the type of this legislation, provided that railroads were to be divided into three classes according to their earning power. Freights were to be divided into four general and seven special classes, and for each of these classes rates were to be fixed In the same year an Act of similar import was passed in Iowa. The constitutionality of the general principle involved in this legislation was affirmed by the federal supreme court. The laws, however, proved too hard and fast to meet the changing conditions of railway transportation. The railway commission was accepted as the solution of the difficulty.

The commission of the eastern type, the so-called advisory commission 'commission without power,' came first in point of time. As early as 1844 New Hampshire appointed a

commission to inspect railroads and report on their condition to the legislature. Connecticut in 1853, Maine in 1858, and Ohio in 1867, followed this precedent. The intent was rather a consideration for the safety of travellers than a consideration for their economic interests.

The Massachusetts commission, which was modelled upon the New Hampshire commission, is usually taken as the type of the advisory commission. The consideration of the law creating this commission, as well as of the New York commission law which is based upon the Massachusetts law, will give the legal setting. This portion of the subject matter also connects itself with the western conditions. From the repeal of the maximum rate law in Iowa in 1878 until 1888 the control of railway matters in that state was in the hands of an advisory commission of the Massachusetts type.

THE LAW OF THE ADVISORY COMMISSION

In Massachusetts the commission is composed of three commissioners appointed by the governor, with the advice of the council, for a term of three years. They may be removed by the governor with the consent of the council. The only provision as to the qualifications of the commissioners is that they shall be 'competent persons.' In New York three commissioners, one of whom is to be experienced in railway business, are appointed by the governor, with the advice and consent of the senate, for a term of five years.

In Massachusetts the additional officers of the Board are a clerk, an assistant clerk, who in the absence or disability of the clerk performs his work, an accountant and railroad inspectors. In New York the officers are a secretary and a marshal, an inspector of steam railroads, who must be a civil engineer skilled in railroad affairs, an inspector who is also an expert in electric railroad affairs, such additional clerical force as is found requisite, and engineers, accountants and other experts whose services may be needed because of some temporary exigency.

In both laws the commissioners are prohibited from holding stock or securities in or being employed by any railway company. They are also prohibited from seeking any indirect reward, consideration or favour from any railway.

The chairman of the Massachusetts board receives $4,000 per year, the other commissioners $3,500. The secretary receives $2,500, the assistant clerk $1,200, the accountant $2,500, the inspectors who are appointed, one for each 1,000 miles of track, receive $1,500. In New York each commissioner receives $8,000, the secretary $6,000, the marshal $1,500, the accountant and the inspectors receive $3,000 each. The salaries of the clerical force are fixed by the commissioners.

In both cases the expenses of the commissions are assessed upon the railway systems of the respective states ; the assessment is made on the gross receipts. When on official business the commissioners, and such experts as they deem requisite, receive free transportation. In New York the total expenses of the commission, exclusive of the cost of printing and binding the annual reports, is limited to $60,000 a year.

In Massachusetts an annual report is submitted to the legislature, indicating the relation of the transportation system to the condition of the state, and making such recommendations as to changes in general railroad policy as may seem requisite. The commission exercises a general supervision in regard to all matters pertaining to the public safety and convenience. It is required to see to the way in which the railroads comply with the provisions of their charters and the general railway laws of the state.

Whenever the Board is satisfied that a railway is acting in violation of law it gives notice in writing to the offending railway ; if the violation continues it places the matter in the hands of the Attorney General, who takes such action as he sees fit. In New York there is a similar provision. In New York the supreme court, at a special term, may enforce by mandamus such decisions by the commission as it deems just and reasonable. From this there is an appeal to the general term of the supreme court and the court of appeals, and here the question may be reviewed and reversed both on the facts as well as upon the law.

The Massachusetts Board has a power of recommending to the railway companies such repairs or additions to rolling stock, changes in or additions to railway stations, or changes in rates and fares as it deems expedient in the public interest.

On complaint of the civic officials of a town or city, investigation of grievances shall be made. The investigation may also be made on petition of twenty or more votes of such town or city provided that application has been made to the civic officials and they have refused to bring the matter before the commissioners

The Massachusetts Board is required to investigate all accidents resulting in loss of life. It has discretionary power where loss of life does not take place.

Every railroad corporation is required, under the Massachusetts law, on request of the commission to furnish any information required concerning its condition, management, operation, copies of leases, contracts and agreements, with express companies, and also its rates of freight and its passenger transportation on its own road and on the roads with which its business is connected.

The Massachusetts Board, from time to time, examines the books and accounts of railways (and street railways) to see that they are kept according to the uniform system prescribed by the board. The railways are required to prepare and publish financial statements at such times as the board deems expedient.

On the application of a director, or of any person holding one-fiftieth part of the paid in capital the commission (Mass.) is required to investigate the financial condition of any company operating a railway (or street railway), from whose shareholder or director such request is made, and to cause the result of such examination to be published in one or more of the daily papers of Boston. The board is at all times to have access to the list of shareholders of railway (or street railway) corporations. It may at any time cause these to be published in whole or in part for the information of the board or for that of persons holding stock in such enterprises. Refusals on the part of railway corporations to submit their books to the investigation of the Board, or to keep their accounts in the way indicated by the commission, through the forms of its accountant, are subject to a fine not exceeding $5,000.

The commission (Mass.), in all cases investigated by the Board, may summon witnesses on behalf of the state, and administer oaths and take testimony. These witnesses receive the same fees as are paid to witnesses appearing before a superior court. A justice of the superior court may, in his discretion, upon the application of the Board, compel the attendance of such witnesses and the giving of testimony, in the same way as would be done in process in such court.

The regulation of the crossing of one railway by another or by a street railway or of the crossing of a highway or street railway is in the hands of the Massachusetts Commission. It may grant the right to make such crossing and in doing so may attach to it such conditions, limitations, regulations and restrictions as it sees fit. The enforcing of the decisions of the commission in this matter proceeds by an information filed by the Attorney General in the Supreme Court which has equity jurisdiction in such matter.

The provisions contained in the commission laws of either of these states confer no regulative power over rates upon the commission. The regulative power is retained in the legislature. The general railway law of Massachusetts affirms the right to confer such regulative power upon such body as it may create for that purpose.

The Massachusetts general railway law prohibits undue or unreasonable preferences; the local or joint charge for a shorter haul is not to exceed that for a longer haul under the same circumstances. A violation of these provisions renders the railway liable to the party aggrieved, not only in the damages actually sustained, but in a further sum of $200. This is to be recovered by him in an action in tort for his own use. The Attorney General or the district attorney of the district in which the offence is committed, may bring suit in the matter, provide the private individual has not brought suit, and in such case the penalty accrues to the state. The action must be brought within one year from the date of such violation.

The powers of the commission in respect to railroad construction, and in respect to control of railway financing, are especially important.

Section 34 of the railway law of the state provides that twenty-five or more persons, the majority of whom are inhabitants of the state, may on complying with certain general formalities be constituted a corporation for the construction of a railroad. As soon as the articles of association have been filed and the preliminary requirements of the Act have been met, the directors are required, within thirty days from the publication of such articles, to apply to the commission for a certificate of 'public exigency,' that public convenience and necessity require the construction of the proposed road. If the certificate is refused nothing can be done until a year from the date of such refusal has elapsed. The commission is also required to see that all the requirements of the law preliminary to incorporation have been complied with. In New York the commission has power to refuse the certificate; but the directors of the proposed enterprise may apply to the Supreme Court and the court may order the certificate to be issued.

In Massachusetts railroad (or street railroad), companies whether organized under general law or special charter, require to obtain the consent of the commission before issuing stocks and bonds. Within thirty days after the application to the commission it shall specify the respective amounts of stocks and bonds authorized to be issued, and the respective purposes to which the proceeds are to be applied. A certificate of this decision is filed by the commission with the Secretary of State within three days after the decision is made. The decision is binding on the railways covered by it. Violation of this through unauthorized issue, or other use of the proceeds than is indicated in the decision, or conniving at any such evasion is punishable by a fine of $1,000, or imprisonment for one year or both. The bond issuing power of the corporation is further limited by the provision that it shall not have outstanding, unless express power is given, evidences of indebtedness in excess of the amount of the capital stock at the time actually paid in. This does not prevent the issue of refunding bonds.

When a railroad desires to increase its capital stock the consent of the commission is necessary. The new shares are first to be offered to the shareholders in proportion to their holdings, at not less than the market value at the time of the increase, as shall be determined by the commission. A period of fifteen days is to be indicated by the directors within which such subscription for the new stock may be made. If after this any shares are left unsold they may be disposed of to the highest bidder. But such shares are not to be sold for a less sum, to be actually paid in cash, than the par value thereof.

The New York Commission does not possess a regulative power over stocks and bonds.

THE LAW OF THE COMMISSION 'WITH POWER.'

In current discussion the Iowa Commission is taken as the type. However, it dates only from 1888, while the Illinois Commission dates from 1873. The various commissions 'with power' which have come into existence have been based on the Illinois law. As, however, the Iowa law embraces all the essential points and is also more detailed than the Illinois law, an analysis of the former with some additional references to the latter will give the requisite legal setting.

The Illinois Commission, which is known as the Railroad and Warehouse Commission, is composed of three commissioners appointed by the governor, with the consent of the Senate, for a term of two years. The Iowa Commission is composed of three commissioners elected by the people for a term of three years. Under both laws the commissioners are debarred from being in any way interested in any railroad company. In both cases bonds are required.

The commissioners in Illinois receive $3,500 each per annum, in Iowa $3,000. The secretary of the commission in each case receives $1,500 per year.

The expenses of the commission are in each case a charge on the general revenues of the state. In Illinois the commissioners, when in discharge of official duties, have free transportation on the railways of the state. In Iowa a similar right is possessed by the commissioners, their secretary and such agents and experts as they may engage.

In the latter state a sum not exceeding $10,000 annually is set aside to meet the costs incurred by the commissioners in making investigations and in prosecuting suits.

In Illinois the commissioners are required to examine into the condition and management, and all other matters concerning the business of the railroads and warehouses in so far as these are concerned with the public interest. In both states the commissions exercise a general supervisory power to see that all the laws of the state, under which the corporations operate, are obeyed.

In Iowa the provisions of the law are applicable to all railroad corporations, express companies, car companies, sleeping car companies, and freight or freight-line companies doing business within the state. It covers the transportation of passengers and of freight within the state, and the receiving, delivering, storage and handling of property by such companies within the state.

Under both commissions the railway systems respectively subject to them are required to make annual statistical returns to the commission. These are analogous to those required in Canada. An annual report embracing an account of the proceedings of the commission during the year preceding, as well as a statement of the statistical data received from the railroads, is made each year to the governor of the state.

Extortion and unjust discrimination are forbidden under the law of Illinois. Under unjust discrimination are included both personal discriminations and discriminations in regard to distance, such as are commonly included under the prohibition of a 'long and short haul' clause. Railroad corporations guilty of extortion or of unjust discrimination in regard to rates and fares are, on conviction, punishable by a fine of not less than $1,000 nor more than $5,000 for the first offence; not less than $5,000 nor more than $10,000 for the second offence; not less than $10,000 nor more than $20,000 for the third offence, and for each subsequent offence $25,000. These fines are recoverable in an action of debt in the name of the people of Illinois. The commissioners have the responsibility of seeing whether the provisions of the Act in this respect are violated. When they are satisfied that there has been a violation of the Act they are empowered to cause suits to be entered against the parties offending. They may employ counsel to assist the Attorney General in prosecuting such suits on behalf of the state. In the Ohio law it is stated that all charges are to be reasonable, and that unjust and unreasonable charges are prohibited. Discrimination is prohibited. Equality of treatment is the rule; there may be, however, a lower rate per C. L. than on L. C. L. All preferences are forbidden. The 'long and short haul' rule is explicitly stated. The penalty for the violation of the provisions summarized above is not less than $1,000 nor more than $5,000 for the first offence; and for each subsequent offence not less than $5,000 nor more than $10,000. This may be recovered either by criminal prosecution or by civil action in the name of the state.

General supervisory control in regard to safety appliances, switches, crossings and accidents is possessed by each commission.

Under the Illinois law the commission is required to make for each railroad corporation doing business within the state a schedule of maximum rates; these may be revised from time to time. In all complaints arising in the state courts with reference to rates, these schedules are to be regarded as evidence that the rates therein provided for are reasonable maximum rates. The provisions in the Iowa law are much more detailed and may be summarized as follows: The initial provisions are identical with those referred to above. A provision is contained conferring power to regulate classification—a similar power is possessed by the Illinois Commission. When a schedule is made or revised it has to be published for two weeks successively in some paper of the capital city, and in this publication the date when the schedule goes into operation is indicated. If a complaint arises either with reference to a rate charged by a railroad, or a maximum rate fixed by the commission, the commission shall investigate the complaint. If it appears well grounded, then the commission, after hearing statements on both sides, shall give its decision as to what shall be a reasonable maximum rate in future. The commission may decide not only on the rates under review, but also as regards all such rates between points in the state and whatever part of the line of railway of such company within the state as may fairly have come within the scope of such investigation.

The Iowa law requires that each railway shall keep posted for public inspection, in each of its stations, schedules of its rates and fares. No advance of rates shall be made until after ten days' public notice ; reduction in rates may be made without previous notice. All such changes shall be posted. Each railway is required to file with the commission copies of its schedules of rates, and copies of agreements with other companies in respect to traffic agreements. Where joint tariffs have been arranged these also shall be filed. Conformity with these regulations may be enforced through the issue of a *mandamus* from any district court of the state. By supplementary legislation of 1890, the commission has been given power to establish reasonable joint through rates where such have not been established by the railroads themselves. This power is in its exercise, subject to the general provisions of the Act of 1888.

Under the Iowa law persons considering themselves aggrieved by any common carrier may elect to make complaint before the commission, or before a court of competent jurisdiction. When a complaint is entered before the commission, a statement of such complaint, with the damages alleged, if any, is forwarded to the railway company. The latter may submit a statement in rebuttal. If no such statement is made, or if it appears that there is reasonable cause for investigation, then it shall be the duty of the commission to institute an investigation. Whenever the commission has sufficient reason to believe that the law is being violated by any railway, it may commence such investigation of its own initiative. When such investigation has been made, a report shall be made. If the commission finds that the law has been violated, it shall communicate its findings to the railway company, and shall direct it to make reparation. If the company does not obey, then the commission applies, in a summary way, by petition to any district or superior court in any county in which the railway has its principal office, or through which its line passes, or in which the violation of the law took place. The case shall be prosecuted before the court by the Attorney General, with the assistance of the county attorney of the county in which any such proceedings are instituted. The court in hearing the matter is to proceed as a court of equity, but without the formal pleadings of ordinary suits in equity. In this suit the report of the commission is to be regarded as *prima facie* evidence. If it appears that the order of the commission has been disobeyed, it shall be lawful for the court to restrain further disobedience and enforce obedience through a writ of injunction ; if the writ of injunction is not obeyed *writs of attachment* may be issued, and in addition a penalty of $1,000 per day be affixed for each day that the railway, or person in default, fails to obey such injunction. There may be an appeal to the Supreme Court by the commissioners, or by any other person interested ; but no such appeal shall operate to stay or supersede the order of the court, or the execution of any writ or process thereon.

The general rule as to proceedings before the commission is that it adopts such method as is in harmony with the dispatch of business and the ends of justice. A majority of the commissioners constitute a quorum. No commissioner is allowed to participate in a case in which he is financially interested. General rules of procedure, which conform as nearly as possible to those of the state courts, are drawn up by the commission, and are amended from time to time. Any person may appear before the commission in person or by an attorney. The votes and official proceedings of the commission are entered on record ; these may be made public on the request of either party or of any person interested. The commissioners have an official seal ; they have the right to administer oaths and affirmations in any proceedings before the Board. In performing the supervisory duties conferred upon it, the commission has the right to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, schedules, contracts, agreements and documents material to the investigation. The aid of any court within the state, within the jurisdiction of which the investigation is carried on, may be invoked to enforce this provision.

In all violations of the Act, except as regards those provisions concerned with extortion and discrimination, the railroad, or agent, or officer of the railroad violating such provision shall be guilty of a misdemeanour, and shall, on conviction in any district court of the state of competent jurisdiction, be subject to a fine of not less than $500 nor more than $5,000 for each offence. A violation of the provisions of the Act also gives

the individual, or individuals, damaged thereby a right to three times the damage sustained, together with the costs and a reasonable counsel fee. This is to be determined by the court before whom the case comes up. The common carrier is liable to the individuals aggrieved. This is subject to the proviso, that before suit for recovery is made that demand for the money damages should have been made on the common carrier, and 15 days allowed to elapse after the presenting of this demand, before the suit is instituted.

THE WORKING OF THE STATE COMMISSIONS.

Both types of commissions are alike in possessing statistical functions and powers of control over track conditions and safety appliances. In the case of Massachusetts the overshadowing influence of Boston brings in a great deal of attention to the transportation industry as centering in that city. Much of the statistical information contained in the report is such as normally would be found in a report of a civic board of trade. In the matter of statistical returns the various Commissions are attending to uniformity; the report form of the Interstate Commerce Commission, with such changes as are adapted to state needs, is being adopted.

The most important functions of the advisory commissions may be summed up under the words supervision and advice. The regulative influence over railroad construction exercised through the right to grant or withhold a certificate of 'public exigency' places an obstacle in the way of excessive construction; it supervises in the public interests the railroad projects and excludes purely speculative enterprises; it prevents the wasteful expenditure of capital consequent on useless paralleling; its object is to have a system developed which is in harmony with the needs of the people. The general attitude for the need of supervision in railroad construction is a marked characteristic of the railway legislation of the eastern states. In the west, on the other hand, the attitude towards railway construction is essentially different, and there has been as a consequence much wasteful investment of capital.

The power of regulation over the issue of stocks and bonds possessed by the Massachusetts commission is very important. The result of this can be seen by turning to the statistical tables of the Interstate Commerce Commission. The various states are grouped, and in the New England group, in which the mileage of Massachusetts is the important factor, the capitalization is much less excessive than in the other groups. It has been a cardinal tenet of the American railway financing that the stock issued represents no necessary part of the cost of construction. Probably 90 per cent of the railroad construction of the United States has been done on the bonds. Under the Massachusetts system the stocks have been more than a mere perquisite. The last report of the New York Commission urges on the state of New York the necessity of conferring, in the public interest, similar regulative powers in this respect upon the New York Commission.

In the commissions 'with power' the attitude towards the matter of regulation of stock and bond issues has, except in the case of the Texas law, been on the whole one of indifference. Where it has been considered it is in connection with the matter of rates. Under the Texas law the commissioners have made revised valuations of the railroad properties within the state, in an endeavour to squeeze the water out. The intent has been to obtain a working basis for rate making on the cost of service principle. It will be seen that this differs essentially from the Massachusetts method.

The matter of prime importance in connection with the western commissions is the rate question; coupled with this are the questions of local and personal discriminations. The legislature has delegated to the commission the rate making power, and the legality of such delegation has been judicially upheld (Reagan vs. Farmer's Loan and Trust Co). In the eastern type, on the other hand, the rate making power is not possessed by the commission. In the case of Massachusetts there is a power to fix milk rates. The commission has no other power in regard to fixation of rates, and it has explicitly declared that it has no desire to have the power to fix rates (15th Rpt. Mass. Com.,

1884, p. 151). In New York there is no danger of the declared power of the legislature to regulate rates being exercised, since this power cannot be exercised until the rates produce a dividend in excess of 10 per cent.

The exercise of the rate making function by the 'strong' commission demands careful attention. Competition, in so far as it does exert a regulative force, is more important in inter-state than in intra-state traffic. The various commissions evidence, in their reports, their appreciation of the fact that the regulation of rates is a delicate matter, and that arbitrary interference is dangerous. It has, on the whole, been appreciated that the rate making must, at best, be a compromise. Even Kansas, whose name is usually regarded as a synonym for drastic regulation, appreciates this in its reports.

The earlier laws and regulation looked to the adoption of equal mileage rates. As early as 1884 a condemnation of this principle is to be found in the report of the Kansas Commission. The objection was based on the position that it would deprive those living at common points of the advantage of competition.

In the matter of rate making the commission 'with power' has also used a system of classification of roads. In Illinois there are two general classes of roads arranged according to the degree of prosperity of the systems. The difference in rates between these groups is about 6 per cent. In Iowa the roads are divided into three classes. The first class takes the standard rate, the second 15 per cent higher, and the third class 30 per cent higher. In Georgia the matter of classification is carried much further. The roads are arranged as regards freight transportation in seven classes. Class one takes the standard rate, and on the others there is a complicated arrangement of additional percentages on some of the commodity classifications.

The policy used is based on the use of maxima. In Iowa the rates are fixed on a mileage basis, the unit being five miles. Tables are prepared for all distances between five miles and five hundred. In general the policy of these distance tables, both in Iowa and the other western states, is that there is a fractional increase of rate per mile, the fractional additional increase per mile decreasing as the distance increases.

The base of rate-making must be, on the whole, empirical. Normally the standard of rate-making must be what the traffic will bear ; and on this account the most careful consideration to effect what is at best a compromise is requisite. In Texas an attempt has been made by the commission to base rates on cost of service. It is impossible to make a thorough-going application of this principle. The attempt to do so in Texas has brought up endless disagreements and has resulted in the process of the commission being tied up by injunctions from the Federal courts.

At the outset there was a disposition on the part of the railways to contest the exercise of regulative power, in regard to rates, by the commissions. This power has been judicially established and is generally recognized by railway authorities to-day. For example both in Iowa and Illinois the railways are manifesting a feeling that the Commission occupies a position, in regulating rates, as arbiter between the people and the railroads. In both of these states the rate regulation has proceeded with extreme care. The part the railway is playing in industrial development is appreciated. It must be admitted at the same time that there have been dismal failures in connection with the exercise of rate making powers by the commissions. As has been said the Texas Commission has been involved in continual janglings—the reason for this has already been indicated. There has also been an inordinate belief in the efficacy of regulative power. In Kansas the law has not worked well. One great difficulty has been the lack of trained men to enforce the law. Political conditions, especially of recent years, have marred the efficiency of the system. Then again the people of Kansas are prone to look for quick results from their legislation ; and if these are not obtained they are equally prone to pass to other legislation from which they expect equally rapid results. California is another case often pointed to as an example of the inefficient working of the rate-making power. The trouble there was that the commission attempted, instead of proceeding by gradual steps, to revolutionize conditions ; the result was that at the outset it was discredited and its power was weakened. The more careful policy of Illinois, and more especially of Iowa, has precluded such conditions.

One important general question, which has already been touched on, is how are the recommendations of the commissions obeyed. As early as 1872 the Massachusetts commission stated its view, that the power it possessed of influencing public opinion was much more potent than any more formal power. In 1893 this position was reiterated by it. The commission has undoubtedly worked well. It has had no vexatious interferences placed in its way when matters came up before the courts. Then again it is concerned with a thoroughly organized system of railway in a very compact territory. It must also be remembered that, while in the United States in general the relative proportions between freight and between passenger traffic are 70 per cent and 30 per cent respectively, in the case of the New England group the proportions are 49 per cent and 51 per cent. In Massachusetts they are evenly divided. When the passenger traffic is so important the regulative power of public opinion is, so to speak, readily coerced into action if any grievance exists. In New York conditions have been somewhat different. At first the courts, when matters came before them from the Commission, were inclined to proceed *de novo*. A recent decision of the State Supreme Court has decided that the court is limited to inquiring whether the remedy applied by the Commission is just and reasonable. The Illinois Commission report for 1897 states 'that in the most of the cases which came before it with reference to discriminations, reductions in freight rates, &c., it was only necessary to call the attention of the railroad to the violation of the law to have it corrected immediately.' The conditions in Iowa are similar. A more ready obedience is shown in recent years. A further example may be taken from another source. The Georgia Commission in its current report states, 'during the past year the regulations of the Commission relative to traffic have been observed and enforced with reasonable promptness. The relations between the railroads and the public seem to be more harmonious than heretofore. Gradually a better feeling between the roads and their patrons is becoming manifest. This we believe is largely due to the enforcement of reasonable rates and uniform rules throughout the state, by which arbitrary acts and unjust discriminations, and the consequent strife and discord are prevented.'

THE DEFECTS OF THE COMMISSIONS MAY BE INDICATED IN SUMMARY.

(1.) Political considerations play too great a part in the choice of commissioners. This is especially true when they are elected.

(2.) The term is usually too short. In Iowa this has been gotten around by the re-election of competent men. But where the political conditions are more evenly balanced this is practically impossible.

(3.) The salaries are too low. This applies especially in the western commissions. Railroad supervision requires specialized knowledge, and to obtain the service of men who possess such knowledge good salaries must be paid.

(4.) Lack of requirements as to technical fitness for office. In most cases there is no statement whatever made with reference to the qualifications for the position.

(5.) Lack of general regulative power in the matter of railroad construction, and in the issue of stocks and bonds.

THE RESULTS OF THE WORK OF THE COMMISSIONS OF BOTH FORMS.

The Advisory Commission—

(1.) The Massachusetts Commission has prevented useless paralleling.

(2.) They have adjudicated upon a large number of complaints.

Both types—

(3.) They have served to bring about a more harmonious relationship between the railroads and the people.

(4.) Through informal action and correspondence they have settled a large number of disputes before it became necessary to adjudicate.

The Commission with power—

(5.) They have rendered rates more stable.

(6.) They have redressed inequalities of rates through lessening discriminations and extortions.

(7.) They have harmonized the differences which existed between intra-state and inter-state rates, thereby helping the interests of the local manufacturer.

(8.) They have exercised a control over station accommodation.

(9.) They have exercised an advantageous control in regard to crossings and safety appliances. (This holds true of both types).

(10.) They have ensured a more adequate service on branch lines.

THE INTER-STATE COMMERCE COMMISSION.

PRELIMINARY STEPS.

The limitations of the State Commissions must be borne in mind. The intra-state traffic does not constitute more than from 10 per cent to 20 per cent of the total traffic. The sphere of state activity being thus circumscribed, the place occupied by federal regulation is suggested.

The majority of the railroads of the United States have been chartered by the state legislatures. During the period from 1830 to 1850 the aid in developing the railway system came from the state not from the federal organization. The earlier court decisions favoured the exercise of regulative powers over traffic by the States.

Under the constitution the power to regulate commerce between the States is placed in the hands of the Federal Government. The question of the advisability of the regulation of the transportation system by the central government was brought to the front in 1868. In that year a Senate Committee was appointed to examine into the 'expediency of regulating the various railroads in the United States that extend into two or more States, as to rates of fare, freight, &c.' A report was presented declaring the power of the Federal Government to control such matters, but in the absence of detailed information nothing was done.

The matter was kept before Congress by the conditions of 1873 and the movements associated with the Granger legislation ; petitions for the exercise of the federal regulative power over railway transportation poured in. Various suggestions as to the necessity of publicity of rates, the prohibition of stock watering, and the maintenance of efficient competition through the opening up of several lines of waterway under government control were made by the Committee of 1872, which was appointed to consider the question of cheap transportation to the sea-board. In 1878 Mr. Reagan, of Texas, now chairman of the Texas Commission, forced the matter to the front. The bill proposed by him and adopted by the House of Representatives was drastic.

A judicial decision (Wabash Railway *vs.* Illinois Railway Commission) affirmed the lack of control, by the Illinois Commission, over traffic originating outside of the State. Prior to this, although it had been explicitly stated in the constitution that the exercise of such power pertained to the Federal Government, the exercise of such power by the state had been connived at.

The definitive attempt of the Federal Government to deal with this matter dates from March, 1885, when a select committee of the Senate was appointed 'to investigate and report upon the subject of the regulation of the transportation by railroad and water routes in connection or in competition with said railroads of freights and passengers between the several states.' After careful investigation and the obtaining of evidence from all shades of representative opinion, a report was presented in January, 1886. The findings of this committee, which was presided over by Senator Cullom, present a searching condemnation of the evils which had arisen from lack of control. These findings were returned under eighteen counts which may be summarized as follows :—

(1.) Local rates were unjustifiably high as compared with through rates. Rates at non-competitive points were unreasonably high as compared with those at competitive points.

(2.) That there was an extensive system of personal and local discriminations.

(3.) The existing policy of secret special rates, rebates, drawbacks, concessions, and rate fluctuations favoured the larger at the expense of the smaller shipper.

(4.) The shipping public was suffering from the lack of a uniform system of classification.

(5.) Capitalization and bonded indebtedness were not based, in many cases, on real assets.

(6.) There was no adequate remedy under the existing common law for the redress of the grievances existing.

The bill introduced by the committee was subject to various modifications before it became law. The House favoured more radical action, and the bill in its finished form was the result of a series of compromises.

THE LAW OF THE INTER-STATE COMMERCE COMMISSION.

The commission is composed of six commissioners appointed by the President, by and with the consent of the Senate, for a term of six years each. Not more than three of the commissioners are to be appointed from the same political party. They are prohibited from holding any pecuniary or official relation to any common carrier subject to the provisions of the Act; during their term of office they are not to engage in any other business.

Each of the commissioners receives an annual salary of $7,500, the secretary of the commission receives $3,500. The commission has power to fix the compensation of such other employees as it may find necessary to the proper performance of its duties. (Under this provision there have been appointed an assistant-secretary who receives $2,500 per year, a statistician and an auditor, each of whom receive a salary of $2,500 per year, three law clerks, one of whom receives $2,500, the others $2,000 each, a special agent who receives $2,000, and a clerical force, as indicated in the report for 1897, of 113.)

The expense of the commission, including travelling expenses, is borne by the United States.

The provisions of the Act are made applicable to any common carrier or carriers engaged in transportation of passengers or freight by railroad, or by railroad and by water, under a common control for a continuous carriage or shipment from one state or territory or the District of Columbia to another state or territory or the District of Columbia, or from such point to a point in an adjacent foreign country, or the shipment from a point in the United States to another point in the United States through a foreign country, or from a foreign country to the United States, and carried to such place from the port of entry. The term 'railroad' covers the road in use by any corporation operating a railroad whether owned or operated under a contract, agreement or lease.

The commission is required to examine into the management of all common carriers subject to the provisions of the Act; it has the power to obtain from such carriers such information as it may consider necessary in order to enable it to perform its duties; it sees to the enforcement and execution of the Act. Upon the request of the commission any district attorney of the United States is to institute, in the proper court and prosecute under the direction of the Attorney General, all proceedings necessary for the enforcements of the Act and the enforcements of the penalties attached to violations of the Act. The cost of this is to be paid out of the court appropriations of the United States.

In enforcing the provisions of the Act the commission is empowered to require, by subpœna, the attendance and testimony of witnesses, and the production of all books, papers, tariffs, contracts or agreements and documents bearing on the matter. Application may be made to a court to enforce this.

A commission may order the taking of evidence by deposition before certain judicial officials, subject to the requirements that they are not to be interested in the case.

Any person, firm, corporation, association, society, organization, railway commission or railway commissioner of a state or territory complaining of any omission or commission

in contravention of the provisions of the Act may apply to the commission, by petition, briefly setting forth the facts of the case. A statement of the complaint is forwarded to the railway complained of ; an opportunity for rebuttal is given, or for rectification of the matter complained of. If the complaint is not rectified or if there seems to be reasonable ground for investigation the commission shall investigate it. The commission may also institute an inquiry of its own initiative. No complaint is to be dismissed because of absence of direct damage to the complainant.

The findings and recommendations of the commission are to be regarded as *prima facie* evidence in judicial proceedings as to each and every fact found.

When a common carrier refuses to obey or perform a lawful order or requirement not founded on a controversy requiring a trial by jury, the commission, or any company or person interested in such order, may apply in a summary manner for its enforcement to a circuit court of the United States sitting in equity. The provisions of this section and the question of enforcement of the order or requirement by injunction or other process are practically identical with those of the similar clause already considered in the Iowa law. The main differences are that failure to obey the injunction or other process involves a fine of $500 per day instead of $1,000. When the subject in dispute involves $2,000 or more there is an appeal to the Supreme Court. The cost of the proceedings are met from the appropriations made for the United States courts.

The features of difference from the foregoing procedure when the matter in dispute is founded on a controversy involving a trial by jury are, the application for enforcement is to be made to a circuit court sitting as a court of law ; the court is required to fix a time for trial, which shall not be less than twenty nor more than forty days from the date of issue of the order for the trial. The defendants are required to file their answer within ten days after the service of a copy of the petition and the order on them. The findings of fact of the commission are to be *prima facie* evidence. An appeal within twenty days, if the matter in dispute is in excess of $2,000, lies to the Supreme Court.

Persons claiming to be damaged by any common carrier shall elect between bringing a complaint before the commission and entering suit in the courts.

The commission has an official seal which is judicially noticed. It may make and amend, from time to time, general rules of procedure, including forms of notices and the service thereof. These are as far as possible to conform to those in use in the United States courts.

The commission is empowered to require detailed statistical reports annually from all common carriers subject to the provisions of the law. These are to be made according to the forms prescribed by the commission, and are to give detailed answers upon all questions concerning which the commission may desire information.

By an Act of 1893 the supervision of the use of automatic couplers and automatic brakes is lodged in the commission. It is required to see to the enforcement of the law.

Rates.—All charges must be reasonable and just.

Publicity of Rates.—Every common carrier is required to keep open for public inspection the rates, fares and charges between the various places on its line. It shall also state separately whatever terminal charges or other charges may affect the aggregate of the rates, fares and charges. Such schedules are to be posted in two conspicuous places in all stations and offices where freight and passengers are received for transportation. This applies also in the case of traffic sent from one point in the United States through foreign territory to another point in the United States.

The *published rates* are not to be deviated from.

Advance and Reduction.—When rates are advanced ten days' public notice is required ; in case of reduction, three days' public notice. The proposed changes are to be shown by printing new schedules, or are to be otherwise clearly indicated.

Joint Rates.—No joint rate, fare or charge can be advanced until after ten days' notice has been given to the Commission ; in case of reduction, three days' notice to the Commission is required. The notification to the Commission must indicate the changes proposed and the time when they are to go into effect. The Commission may provide for the publication of such advances or reductions. Published joint rates are not be deviated from.

Filing of Schedules.—Each common carrier is required to file with the Commission copies of its schedules of rates, fares and charges which have been established and published in accordance with the foregoing requirements; there must also be filed with it copies of agreements, contracts and arrangements with other common carriers in regard to traffic affected by provisions of the Act; schedules of joint rates must also be filed. The Commission may provide for the publication of so much of these matters as it deems necessary in the public interest.

Neglect or refusal to act in harmony with the foregoing provisions in regard to filing are punishable by the provisions prescribed in the Act. In addition, obedience to the provisions is enforceable through the issue of a *writ of mandamus* by a Circuit Court. If such writ is not recognized, then a *writ of injunction* may be issued restraining such offending company from engaging in transportation or the receiving of property.

Discriminations and Preferences.—Unjust preferences, by collecting from any person through any special rate, rebate, drawback or device of a greater or less compensation for the transportation of persons or property than is charged for a like and contemporaneous service is forbidden. The 'long and short haul' clause, which prohibits the receiving of a greater charge for the transportation of passengers or like kind of property for a shorter than a longer distance over the same line, under substantially similar circumstances, the shorter distance being included in the greater, is only a peculiar form of unreasonable preference. In this case, however, it is provided that the Commission may, on investigation, relieve a carrier from the operation of the clause. All pooling of freights and divisions of earnings is forbidden. The influence of this legislation is seen in the similar clause in the Iowa law. Common carriers are to furnish facilities for interchange of traffic, through and local. Unjust discriminations through false billing, false classification, false weighing, or false report of weight, or by any other device, by a common carrier or its agent whereby the person so favoured obtains transportation for property at less than regular rates, or any similar action on the part of any person, or agent, or officer of any company or corporation shipping goods, or any attempt to obtain any such discrimination is classed as a misdemeanour.

Punishments Under the Act.—Violations of the provisions of the Act are punishable, on conviction in any district court within whose district the offence complained of took place or within which the offending railway has a representative, where the road is a foreign corporation, by a fine not exceeding $5,000 for each offence. In unjust discrimination the punishment is two years' imprisonment, or a fine not exceeding $5,000, or both in the discretion of the court.

The individual or individuals aggrieved by the violation of the Act are to receive, in case the offence is proved, the full amount of the damages sustained, together with a reasonable counsel fee to be fixed by the court in every case of recovery.

General Provisions.—The provisions of the Act do not prevent the free carriage, or the carriage at reduced rates, of property for the United States, or for state or municipal purposes, or for charitable purposes, or to or from fairs, or issuance of mileage or commutation tickets, or the giving of free carriage by railroads to their officials or to the officials of another railroad.

The Act does not abridge the remedies existing at common law or by statute, but is in addition to the remedies so provided.

THE WORKING OF THE INTER-STATE COMMERCE COMMISSION.

The attitude of general opposition on the part of railway officials to regulation has ceased. A glance through the columns of the *Railway Age*, which mirrors railway sentiment, will readily substantiate this statement. A further position is taken that it would be advantageous if it were possible to have that control centralized. (State Regulation of Railways, by H. P. Robinson, editor of the *Railway Age*, *North American Review*, April, 1898.)

The value of the statistical work accomplished by the Commission is uniformly admitted. From the outset this work has had the advantage of the trained oversight of

Prof. H. C. Adams, of the Department of Political Economy in the University of Michigan. A wealth of information with reference to the financial condition of the country has been accumulated.

The routine of the commission is concerned with correspondence, preparation and distribution of the reports, including the statistical report, forms, opinions, orders and circulars, and the receiving, examination and filing of railway reports, tariffs, contracts and other documents.

The Commission has, since its inception until the end of 1897, conducted 185 formal investigations, in which 932 points bearing on railway economy have been decided. It does not follow that the formal investigation and the decisions therein rendered exhaust the scope of the Commission's activity. The mediatorial position occupied by the Commission is very important. From the outset it has taken the position that the principal part of its work should consist in bringing the parties together with a view to settling the disputes without proceeding to more formal proceedings (4 I.C.C.R., p. 3). Through the instrumentality of correspondence the Commission has been able to settle a large number of minor difficulties that might have grown to greater proportions, The Commission has also, owing to the fact that it receives schedules, reports, &c., from the railways, an opportunity of supplying to the shippers and carriers such general information in this regard as they may require. This function has been of great value to shippers, carriers and investors (10 I.C.C.R., p. 55).

When the Act was passed there were in existence a large number of classifications, general and local. The Commission urged on the railways the necessity of harmony. As a result of many meetings, the co-operation of the roads having been enlisted, the classification has been so far simplified that there are now three leading classifications. An attempt is being made to obtain a uniform classification. The stress laid upon this is owing to the fact that classification is at the base of rate making. To change a commodity from one class to another is to change the rate.

The Commission has laid stress upon the advisability of having steady rates (2 I.C.C.R., p. 22). It believes that it is advantageous for the country that the rates should be reasonably remunerative (2 I.C.C.R., p. 23). From the outset the dual responsibility of the commission to the carrier and to the shipper has been in mind. The question of extortionate rates has engaged the attention of the Commission. In one-third of the cases brought before it, a reduction of rates has been directed (11 I.C.C.R., p. 22).

The difficulties in reference to rates have come up in great degree in connection with the railway system of the South. The 'basing point' system which has been used there has worked a great deal of harm on the non-competitive points. In grappling with the rate question, a matter of jurisdiction, which is material to the whole of the rate-regulating power, has come up. Under the Act all charges are required to be just and reasonable. The enforcement of this provision is in the hands of the Commission. The Commission had to determine what constituted a reasonable rate. In their first report they virtually said that the only rule to adopt was what 'the traffic will bear" (1 I.C.C.R., p. 36). They said that in such determination they would take into consideration all such matters relating to business and condition of the road as were material (Ib., p. 96). The right of the Commission to regulate rates was asserted in the seventh report (7 I.C.C.R., p. 10-11). The claim that the Commission had power to ascertain what was a reasonable rate and enforce it was stated in the sixth report. This position is reiterated in succeeding reports, it being stated, for example, that the right to condemn a certain rate implies the power to indicate what rate is reasonable. The right claimed has not been to fix initial but amendatory rates. An amendment to this effect was suggested, but nothing has been done.

It would indeed appear that this was a legitimate and necessary inference from the powers conferred upon the Commission. Without the power to declare what constituted a reasonable rate, the proceedings under the Act would amount to but little. The absence of expressed power in this regard is a weakness in the Act. In a series of decisions the right claimed by the Commission was asserted and exercised. In Coxe Bros. *vs.* Lehigh Valley Ry., and in the 'Orange' case this power has been exercised in regard to freight. The right has also been asserted in regard to passenger traffic (Case

re Eureka Springs Ry., 11 I.C.C.R., p. 112). The Commission has taken the ground in this connection that the determination of just and reasonable rates is an administrative function. The State Commissions have claimed that power in this regard was absolutely essential to the Federal Commission (Rpt. Ga. Ry. Comm. 26th, p. 13).

The decision of the Federal Supreme Court, in the 'Social Circle' case, which was decided March, 1896, controverts the position which has been outlined. In this case, which came up under the 'long and short haul' clause, it was decided that there was no necessary or implied power in the enabling Act which conferred the rate-making power (10 I.C.C.R., p. 22). In another decision of the same court in the same month it was stated that the Commission had no power to fix a rate for the future (I.C.C. *vs.* Cincinnati, New Orleans and Texas Ry., see 11 I.C.C.R., p. 14),

Preferences have been prominent in recent years in connection with the western grain traffic. As regards discriminations, the Commission took the ground in its first report that they were not justified by the fact that they were given to build up industry. (1 I.C.C.R., p. 85.) It has been the policy of the Commission to allow preferences and rebates if they were not unjust. (6 I.C.C.R., pp. 13, 14.) The most common way in which the provisions of the Act in this regard may have been violated is by the granting of rebates. Here it is exceedingly difficult to obtain evidence that will lead to conviction.

The interpretation placed upon the preference clause has been limited by judicial construction. In the 'import rate' case, which was decided by the Supreme Court in March, 1896, the general question at issue was whether in the carriage of goods from American seaports carriers, subject to the Act, could lawfully charge less for the carriage of import than of domestic traffic of like kind to the same destination. The Commission had decided that the import rates had enabled the foreign goods to be placed at interior points at lower rates than home goods which had a shorter distance to go. This was classed as undue preference. The Supreme Court decided that the conditions attendant upon the foreign traffic, in respect to competition, were sufficient to justify the rates complained of. The comment of the Commission on this decision is that it defeats the general rule of like charges for like service in transportation between the same points of both home and foreign goods of similar description ; that it takes from the Act the prohibitive force against discriminations of this character, and that it makes the Act provide merely for hearing and investigation of such complaints relating to specific rates on import and domestic traffic as may from time to time be presented to the Commission. (10 I.C.C.R., pp. 6-16.)

The 'long and short haul' clause permits the commission when it sees fit to suspend its operation. It was held as early as 1885, by a federal judge in Oregon, that water competition was a sufficient reason for a departure from this rule. This came up in connection with the clause in the 'Houlk' bill, an Oregon measure modelled upon the Reagan bill.

Complaints arising from the violation of this clause have been most common in the South. During the first year of its operation, the Commission decided that railroads might depart from this rule, on their own initiative, when the competition to which they were subjected was 'rare and peculiar.' The Commission has since overruled this position, and stated that in all departures from the provision the consent of the commission was a primary requisite. The operation of this clause has exerted a steadying effect on rates. It has been helpful to the small shipper.

The Commission has taken the position that railway competition within the United States, the railway asking for an exemption from the operation of the clause being a party to the creation of such competition, is no cause in itself for exemption. This came up in the case of the I.C.C. *vs.* Alabama Midland Ry. The Supreme Court in November, 1897, decided this adversely to the Commission's contention. It decided that existing railway competition, between carriers subject to the Act, created a dissimilarity of circumstances which would take the case out of the exercise of the Commission's discretion. (11 I.C.C.R., p. 37 et seq.)

One clause, from which much was expected, is the 'anti-pooling' clause. It has not worked as well as was expected. Some form of agreement between railways is necessary.

The Commission has recognized that the various railway associations and traffic agreements have been useful in establishing and obtaining publicity of joint rates and in obtaining joint running arrangements. But it is considered that dangerous features are connected with them. (10 I.C.C.R., p. 86, et seq.) At an early date the commission expressed the opinion that traffic associations exert little influence in the maintenance and uniformity of rates. (4 I.C.C.R., p. 5.) On this point the New York Commission holds the opposite opinion. (15 N.Y. Rpt., p. 8.)

The question of a changed attitude towards pooling has been forced to the front in connection with the various traffic agreements. The agreement of the Western Trunk lines in 1895, also known as the Union League Club agreement, was essentially a pool. It provided for a percentage division of competitive traffic. The constant claim is made, by the railways, that the only way to obviate the necessity of giving rebates is to allow pooling. (Blanchard Railway Pools, p. 6.) In the appendix to the sixth report of the Commission a large amount of testimony, which on the whole favoured pooling under government supervision, is given. A qualified approval of this position is contained in the eighth report. In the eleventh report it is stated that a majority of the Commission favour pools under government supervision; a fear is expressed, however, that the steadying of rates would be obtained at the expense of competition.

The Foraker bill, which was introduced to deal with this matter, requires that all pooling contracts should be filed with the commission; they are not to go into effect until approved. They may be annulled at any time. It also gives power to change any and all rates maintained under pooling contracts. Although it is hardly probable that such a drastic change will, for some time at least, be accepted, the railroads, in view of the unsettled conditions introduced by the Joint Traffic Association decision, will probably be willing to accept a considerable control of maximum rates in return for the acceptance of pooling. Although a majority of the Commission have pronounced themselves as not opposed to pooling, under restrictions, yet it is a *dernier resort*. The manifest preference of the Commission is that the amendments, elsewhere referred to, should be tried.

The defects in the Act.—(1.) Lack of definite statement. The powers of the Commission, as will be seen in the foregoing paragraphs, are not clearly enough indicated. This is due in considerable degree to the fact that the legislation was a compromise.

(2.) Lack of power. If the defendant will not obey the recommendation of the Commission the courts have to be looked to. The recommendations and decisions of the Commission are to be taken as *prima facie* evidence in such proceedings. The Commission has complained that it has no final power. In many cases the courts have proceeded *de novo*. (5 I.C.C.R., pp. 19-22). The consequence of this has been a limitation of power. 'If a carrier can simply ignore the findings of the Commission and wait for a new trial in the courts and upon different testimony, in a proceeding to be instituted and carried on by the Commission, there can be no certainty upon any administrative question until the judgment of the court of last resort is pronounced and the delay alone substantially defeats the remedy.' (4 I.C.C.R., p. 10.)

As a result of this condition cases have dragged on. Coxe Bros. *vs.* Lehigh Valley, the 'Social Circle' case, the 'import' rate case are examples of cases which have dragged on from three to five years before being finally settled. The average duration of cases which have been prosecuted before the courts for the enforcement of the Act has been about four years. (11 I.C.C.R., p. 32.)

Some decisions, already quoted, have indicated what essential changes in the law have been made by the courts. Further examples may be cited. Clause four provides 'a greater compensation is not to be received for transportation of like property under similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the greater distance.' In construing this provision, the Commission has assumed that by the word 'line' a physical line is meant. The courts took the view that there are as many lines as there are carriers, and that each is wholly independent of any other as regards the legality of rates under the fourth section (see 6 I.C.C.R., pp. 31-7 and 7 I.C.C.R., pp. 32 et seq.) It will be seen that this opens up an easy way for evading the provision. In the con-

struction of section 22, which relates to the cases in which free or reduced transportation may be granted, the Commission held that there could be no such free or reduced transportation in cases not covered by this section. The context of the section would seem to substantiate this position. The courts, however, took the position that the details mentioned were illustrative not exceptive. (6 I.C.C.R., p. 26.)

The Commission claims that, subject to such review, as the courts consider proper, the orders of the Commission should be not merely *prima facie* evidence, but conclusive on all the parties concerned. (11 I.C.C.R., p. 84.) The Commission complains bitterly of the attitude of the courts. Many examples might be cited from recent reports. The extreme of statement is to be found in the report for 1897, which says that judicial decisions have so shorn the Commission of power that it has ceased to be a body for the regulation of interstate carriers. (11 I.C.C.R., p. 51.) The same complaints appear in the advance sheets of the twelfth report. The commission also complains that, as a result of this condition, the railways are not obeying the law as loyally as at the outset, because 'the proceedings and orders of the Commission go for nothing. Such is the theory of the present Act as interpreted by the courts.' (11 I.C.C.R., p. 34.) As a pendant to this statement may be cited an extract from the dissenting opinion of Mr. Justice Harland in a 'long and short haul case,' I.C.C. *vs.* Alabama Midland Ry. Co. and others, also known as the 'Troy' case, which was decided by the Supreme Court in November, 1897. 'Taken in connection with other decisions defining the powers of the Interstate Commerce Commission, the present decision it seems to me goes far to make the Commission a useless body for all practical purposes, and to defeat many of the important objects desired to be accomplished by the various enactments of Congress relating to interstate commerce. It has been shorn, by judicial interpretation, of authority to do anything of an effective character.' (Quoted in 11 I.C.C.R., pp. 50-1.)

(3.) A necessary corollary from the foregoing is that the expense to the individual complainant has been much greater than was anticipated.

(4.) I consider the lack of a requirement as to technical qualifications on the part of the Commissioners as a defect. The term is also too short. The obtaining of the requisite intimacy with the conditions of the problems, even when the Commissioners are technically qualified, is a work of time. A much longer term—if not a life term—is required. This would have the added advantage that the permanency of the position coupled with an adequate salary would enable a wider choice to be made than is at present possible.

SUGGESTED AMENDMENTS TO THE ACT.

The reports of the Commission contain a number of suggested amendments which may be summarized as follows:—

(1.) Changes in rates, either reduction or increase, should require filling of notice with the Commission at least sixty days before the change is to take effect. The Commission may allow the change on less than sixty days' notice.

(2.) If the commission considers the rates, fares or charges so filed unreasonable or in violation of the law they may determine what are reasonable rates, &c.

(3.) When it is determined that a carrier has violated the Act, the Commission shall order such carrier to pay to the complainant the sum to which he is entitled before a certain day. In addition to the power to order the carrier to desist from such violation, the Commission shall be empowered (*a*) to fix a maximum rate, (*b*) to fix a minimum rate, (*c*) to determine divisions between joint carriers of a joint rate and the conditions of interchange, (*d*) to make changes in classification.

(4.) An order, other than for payment of money, is to be known as an administrative order. When such order is directed to a common carrier who has been violating the provisions of the Act, unless the carrier brings suit on it within thirty days from the issue of the order, it shall be final in its operation. If it is not obeyed, the Commission may bring suit for its enforcement, and if it appears that the carrier disobeyed an order duly made and served, the court shall either restrain the disobedience or enforce obedience.

(5.) Through rates and through routes—the Commission asks for substantially the powers, in this respect, possessed by the English Commission.

(6.) That the 'long and short haul' clause be no longer obligatory, but that the commission have a discretionary power of enforcement as under the English law. This is in view of the judicial decisions already referred to.

RESULTS OF THE COMMISSION'S WORK.

It might seem from the résumé given that the work of the Commission means little. But this is far from being the case. The difficulties that have been met may be frankly faced. The weaknesses in the Act and the difficulty of the problem it has had to encounter must be remembered. Those who anticipated that the Commission would solve the problem in a short time little knew the difficulty of the problem. Those who drafted the Act did not anticipate that all would be settled in a short time. The words of the Cullom Committee may be quoted: 'That a problem of such magnitude, importance and intricacy can be summarily solved by any master stroke of legislative wisdom is beyond the bounds of reasonable belief. That a satisfactory solution of the problem can ever be secured without the aid of wise legislation the committee does not believe.' (Rept., p. 180.) At the same time it was suggested that changes in the law might from time to time be necessary. (Ib. p. 215.)

All has not been accomplished that was desired. Any candid observer, acquainted with the conditions, will state that conditions are incomparably better than they were in 1887.

In summarizing the results accomplished by the Commission, the first seven points I give are taken from a pamphlet by Mr. Geo. R. Blanchard, who was one of the officials of the Joint Traffic Association. This pamphlet, entitled Railway Pools, is pro-railway in tone.

(1.) It has secured more publicity of rates.
(2.) It has lessened open rate wars.
(3.) It has equalized long and short haul rates.
(4.) It has exercised beneficial warning or police powers.
(5.) It has silenced much unjust clamour against the railways.
(6.) It has been mutually educational.
(7.) It has been judiciously administered.
(8.) It has benefited the smaller shipper.
(9.) By obtaining a more uniform classification it has afforded a more uniform basis for rate making.
(10.) Its statistical work has been of great value.
(11.) It has exercised important supervisory functions in regard to the application of automatic couplers and safety appliances.

Illustrative material bearing upon the question of regulation in the United States will be found in the laws and committee reports referred to, the reports of the various Commissions, the report of the Cullom Committee, and in the following works: Hadley's Railroad Transportation, Dixon's State Railroad Control, Adams' Railroads, their Origin and Problems, Blanchard Railway Pools, their Equity and Value, Compendium of Transportation Theories, edited by C. C. McCain, ex-auditor of the Inter-State Commission, the files of the *Railway Age*, and a series of articles by leading men, which have appeared in the last two years in the *Forum*, *North American Review*, *Atlantic Monthly* and various economic journals.

CANADA.

Earlier Legislative Attitude Towards Control.—To the Canadian provinces the question presented by transportation was not how to deal with the evils of the system, but how to obtain rapid development.

The legislation was, in the main, influenced by the legislative precedents both of England and of the United States. There prevailed the same general belief in the regulative effects of competition.

At an early time, however, some provisions bearing on some phase of regulation are to be found. The earlier policy differed in the provinces.

In Lower Canada the charter of the St. Lawrence and Champlain Railway contained maxima. There was also a maximum dividend indicated, and it was provided that when the rates allowed produced more than 12 per cent, the rates, i.e. maxima, should be reduced one-fourth. This is moulded on the similar clause in the charter of the Liverpool and Manchester Railway.

In Upper Canada the legislature, in the charter of the Cobourg Railway, gave the directors of the corporation power to fix and regulate rates. It was assumed in the legislation that there would be effective competition on the roadbed, each individual being allowed to use it on payment of defined way tolls.

In New Brunswick the attitude shown was much more *laissez faire*. The charter of the New Brunswick and Quebec Railway in 1836 provided that the company was to charge such rates as it considered reasonable. This was subject to the limitation that after ten years from the completion of the road the legislature might, if the tolls were declared excessive, reduce them so that they should not produce a greater rate of profit than 25 per cent.

A reserved right of purchase which appears in some of these earlier Acts is also to be regarded as one phase of asserted control. This clause was derived from United States' experience.

In the legislation of the period 1845-47, a changing attitude shows. The attempt to regulate the rates automatically through the operation of the dividend was given up, in the charter of the Atlantic and St. Lawrence Railway in 1845, and it was provided that on all net income in excess of 12 per cent a tax of one-half was to be paid. This was a departure from English precedent.

In 1846 an attempt was made in Canada to systematize the railway policy by drafting general laws. In the same year Mr. Gladstone, then Colonial Secretary, recommended to the various colonies that whenever the railway profits exceeded 15 per cent there should be a revision of rates. A general recommendation in favour of a state purchase clause was also made.

The divergent policy on the matter of rates commenced to be harmonized, the practice of Upper Canada being on the whole in the predominance. There was the added provision in the charter of the Canada New Brunswick and Nova Scotia Railway in 1847 that the regulation of tolls by the directors should be exercised subject to the approbation of these tolls by the Governor-in-Council. In 1846 it was provided in the charter of the St. Lawrence and Atlantic that 'tolls were to be charged equally to all persons under the same circumstances.' This is based on the Imperial legislation of 1845. A provision for posting up rates in a public place appears in various charters of 1847. The state purchase clause was retained in amended form. In the charters granted in 1847 and subsequent years, it is stated that railroads were not exempt by their special charters from the operation of any general railroad law that might subsequently be passed.

In the period intervening between this and the confederation time, the policy in regard to regulation is somewhat fluctuating. In regard to rate regulation the policy of a tax on dividends in excess of a certain figure was favoured as late as 1850. The matter was set at rest by the 'Railway Clauses Consolidation Act' in 1851, which provided that 'tolls were to be fixed by the directors subject to the approval of the Governor-in-Council, and that there were to be no preferences.'

In the Nova Scotian legislation of this period it is stated explicitly that there are to be no preferences. In New Brunswick an explicit statement to this effect is also found in 1864. In 1853 Nova Scotia declared the right of the Governor-in-Council to require that the tolls should be approved by him before they became operative.

The summary given will indicate the evolution of the principle set forth in this matter in the Railway Act of 1868.

The Present Condition.—The integration of the provinces in the Dominion brought to the front some of the questions connected with the railway problem. The earliest project for a more effective control is contained in a bill introduced in 1873 by Hon.

Mr. Oliver 'for the better regulation of the traffic on railways.' This bill provided for equal mileage rates. No machinery for a commission was provided under this Act. The matter of improved methods of regulation was referred in 1875 to the Committee on Railways, Telegraphs and Canals; but nothing was done. It is not necessary to go into a detailed consideration of the Commission projects at this point which was later presented. There has been an increasing body of public opinion in favour of commission regulation.

The movement in Canada has proceeded part of the way towards a Commission. In other countries it has been shown that general regulative control over rates and other features of railway transportation has gradually passed to bodies smaller than the legislatures which at first were entrusted with such regulative power, and this with the consent of such bodies. The larger political organizations have been considered unfitted for dealing with such matters. Matters of railway regulation require the most careful consideration at the hands of those especially qualified to deal with the subject. This consideration is best obtained from a smaller body whose functions are not political. In Canada the declaration of a right of control over rates by Parliament still exists. But in view of the fact that this can not be exercised until a dividend of 15 per cent is obtained, such declaration of power amounts to nothing. It is to a smaller organization that we must look for the regulative function. As it is organized now it is in the hands of the Railway Committee, and in some degree ultimately in the hands of the Cabinet. Canada has only gone part of the way, followed by England and the United States. It has committed the regulative function to a smaller body; but that body is political in its functions.

An initial objection to placing such power in the hands of the present organization is that it mingles essentially administrative functions with political functions. The transportation problem is the most important problem that Canada faces to-day. The greatest care in its regulation, in the interests of the people, is essential. The political duties of the members of the Cabinet, the wide sweep of duties with which the Ministers are concerned, do not permit of their devoting themselves to all the intricate questions connected with the matter of regulation. They are not able to devote all their time to the work; it is at the same time a problem which demands entire attention. Then again the shifting conditions of political life preclude that continuity which is essential if the results of experience and the advantage of fixed policy are to be obtained. A further consideration of the general problems facing Canada and of the way in which the Committee has met them will strengthen the argument.

The rate question is the central fact in the discussion of the transportation problem. It is through the changes in rates and their equitable or inequitable pressure that people are brought in contact with the problem. The generally accepted base of rate-making is *what the traffic will bear;* care has to be taken that the railway does not charge what the *traffic will not bear.* There should be stability of rates and there should be as between individuals and localities, similar rates for similar services under similar circumstances.

The geographical position of Canada, and its lateral extent of territory make the rate question take on a peculiar significance. Dependence on railroad transportation is essential. With the exception of that portion of the railway system which is situated in the provinces of Ontario and Quebec there is no such regulative water competition as exists in the Central Western States. The necessity for regulation presents itself all the more strongly. Stability, reasonableness and uniformity of rates are, under such circumstances, primarily essential.

The consideration of the rate question brings up that phase which most concerns Canada, the preference question. The grievances complained of under preference may be found operative owing to a system of rebates or secret rates, or they may affect localities through the operation of competitive and non-competitive rates. The extent to which the evils connected with rebates are present in Canada is somewhat difficult to determine. Those who are affected adversely by such rates, are in the absence of any efficient means of investigating their complaint apt to abstain from complaint through fear of obtaining a harsher treatment. It is manifest that local discriminations have

been wrought through the operation of rates as at present established. Complaints are prevalent that one industrial portion of the country is favoured in rates over another. A glance through the reports of the Board of Trade of Toronto, will indicate that this is complained of by Toronto. What is needed is a policy that will endeavour to equalize the advantages of rates.

Competitive through rates have introduced such anomalies in the North-west as are prohibited under the 'long and short haul' clause. Communities which have non-competitive rates have found it advantageous to transport their produce by wagon to some point where competitive rates prevailed. This was the only means whereby a profit might be obtained. In the development of the traffic the distant manufacturer has been given an advantage over the home manufacturer. The rates to intermediate points have been fixed at the same figure as, or even higher than, rates to the coast. The rate system has been favourable to some sections and unfavourable to others. The development of the North-west is bound up with a satisfactory solution of the rate question. There is no doubt that the population and business of this section have not been allowed to move and develop in accordance with natural principles. The arbitrary constraint of competitive rates has influenced the development. What is needed, not only in the interest of this section but of all portions of the country, is a satisfactory solution of the rate problem.

The position of Canada, contiguous to the United States, has made Canadian roads competitors for American traffic. The first railway enterprises in Upper Canada looked to obtaining some share in the American east-bound traffic. It is admittedly for the advantage of the Canadian road to obtain some share in this traffic. The question that concerns Canada is what effect this exerts on her interests. In order to obtain the American traffic the American rate has to be met or even gone below. Under such conditions the phenomenon presents itself of American traffic being carried the longer distance, in the same direction, than traffic originating in Canada, for a lower rate. It may be urged that since the American traffic is export traffic the matter is of minor importance. The value of this traffic to the Canadian road may be recognized without binding us to the anomalous features connected with it. For example it discriminates against export trade through Canadian ports in favour of export trade through American ports. A rate of 58·5c. first class from Detroit to New York appears at the same time as a rate of 98·5c. first class from Detroit to Halifax. When the commodities so carried are placed in Canada, there is a double disadvantage, the Canadian producer has the higher rate and increased competition. Reason for complaint is manifestly present. For example, a rate of 58·5 first class, the same rate as to New York, has been quoted from Detroit to Montreal, while the rate from Windsor to Montreal has been 70c. In west-bound trade the Montreal-Chicago rate is the same as the Portland-Chicago rate. Without contending that the Canadian roads should be shut out from the advantages of a share in the American traffic, regulation in the interests of Canada is manifestly necessary. The policy in regard to this matter has been 'hands off'. What is wanted is a policy of regulation which will work more symmetrically.

To the manipulation of rates by the railway company is to be attributed, in great degree, the tendency to build up the larger community at the expense of the smaller. The movements of population in Ontario for example, from the country to the city is undoubtedly influenced by the competitive rates which favour the larger places. In a country whose wealth is in great degree agricultural, such a fact is too important to be permitted to escape unnoticed. If a proper system of regulation is adopted this tendency can be redressed.

The rate question stands in close relation to the tariff question. In France the railways are prohibited from so reducing their rates as to interfere with protection afforded by the tariff. In Canada any advantage obtained by the consumer, through reduction of the tariff, can be offset through a corresponding increase of rates.

The matter of through rates is of importance. Where connecting lines are concerned in the carriage of goods it is essential that no obstacle to forwarding them, through the inability to obtain a through rate should be presented. The through rate should be less than the sum of the rates. If the only way to obtain the transmission of the goods is through adding the rates a grievance is presented.

In the handling of goods there should be equal treatment. Preferences in the matter of handling constitute a preference.

The rate question being of such importance, it follows that the greatest care should be taken to ensure equitable rates. When grievances arise an opportunity for settling them, if possible, through the exercise of mediatorial functions should be present. Such process should not entail a great burden of expense. Reduction or increase of rate should be kept under very careful supervision. No railway companies should be able to reduce their rates and then, by mutual agreement, raise them again without such action being subject to regulative control.

The question of traffic agreements is important. Such agreements are necessary in order to provide for common regulation and handling of traffic. The examples quoted from the experience of the United States will have shown how such arrangements shade off into pooling organizations. The most rigid supervision in the public interest is necessary. The tendency of railroad systems is toward amalgamations. Mere legislative prohibition, without some form of control will never settle the matter. The most constant care for the public interests is necessary.

The exercise of supervision over the roadbed, the condition of the rolling stock, the introduction of adequate safety appliances, the supervision of crossings are all functions which without contest will be admitted to demand some regulative control in the public interest.

What has the Railway Committee accomplished? In the period January, 1899, to December, 1896, 408 cases came before the committee. Of these seven dealt with rates. In 1893 there was a complaint with reference to passenger rates between Hamilton and Suspension Bridge. In 1895 several cases came up; a complaint with reference to overcharge on grain shipped by the Canadian Pacific from the North-west was dismissed because the committee had no jurisdiction. Complaints were also brought up with reference to discriminating rates on the Temiscouata Railway, and in regard to discriminations by both the Grand Trunk and the Canadian Pacific with reference to rates on export cheese. In 1896 there was one case. This slender list of cases would on the face of it, indicate that the rate question on which so much stress has been laid occupies a minor position in Canada. It is difficult to accept this conclusion, however, in the face of the complaints about rates which have been prevalent in recent years. The fact that two of the parties in these cases did not enter an appearance would seem to further substantiate the position which minimizes the importance of the rate question. But on the other hand it must be remembered that process before the committee is expensive. It is necessary for the complainant to come to Ottawa, if the value of the articles concerned is small, the party aggrieved will not, although the damage is very material to him, feel like undergoing the expense of a long journey and a contest with strong railway corporations. Then again parties may, even after lodging the complaint, be afraid to pursue the matter because of the rate power possessed by the railway. Many legitimate complaints do not come before the existing tribunal.

The committee has been unable owing to its organization to grapple effectively with the problem presented. It has been impossible, owing to its stationary character, to deal effectively with questions pertaining to rates and preferences. A more migratory body could deal more effectively with these matters; it could also deal more effectively with the question of crossings. This question has been dealt with by the committee and the urban communities have had their interests fairly well looked after. The country communities which have not been able to stand the expense of presenting their cases before the committee have not had their interests adequately protected.

In so far as has been possible the committee has dealt with the matters presented to it. Its work has not been an unmitigated record of failure. I consider, however, that in the most material matters it has not been effective, and that for the reasons already indicated.

The defects in the Railway Committee as a regulator of railway transportation I would place under the following heads :—

(1.) It has a dual function—political and administrative.

(2.) The lack of migratory organization renders it impossible to deal effectively with complaints.

(3.) The distance to be travelled by the complainants renders the expense too great.
(4.) There is a lack of technical training for the work.
(5.) The existing organization is not sufficiently permanent.

In my opinion, the only way to put the matter of railway regulation on a more satisfactory footing in Canada is by entrusting it to a railway commission composed of men of technical training, who shall receive salaries adequate to attract the most efficient, and who shall have a long tenure of office.

The transportation problem presents in every country especial features. I do not regard the policy adopted either in England or in the United States as applicable in its entirety to Canada.

The main points of the legislation I suggest I present here in summarized form ; the detailed statement will be given in the draft legislation.

There should be a commission composed of three members, one of whom should be a railway man, one a business man, and one a lawyer. They should have control over all matters of regulation now possessed by the Railway Committee. It will also be advisable to give them, in the public interest, a regulative control over the issue of stocks and bonds. This would tend to prevent the floating of purely speculative enterprises that would tend to affect adversely the credit of the country. An investigating power as regards the *bona fide* nature of proposed railway projects seeking incorporation, and of their necessity for the districts through which they are to pass, should, subject to the final action of Parliament, be possessed by the Commission. The Commission should be empowered to arbitrate, on the application of either party, in disputes between railways and their employees. Any dispute of this nature which, unchecked, leads to disarrangement of the transportation system is of the greatest importance to the people. The Commission will also answer such questions regarding pending railway bills as are directed to it by Parliament, and would make such investigation as Parliament may from time to time direct. The Minister of Railways and Canals may also ask for its opinion on matters of railway policy.

The Commission should not only have power of passing upon cases originating by petition, but also have power of initiatory investigation. When such investigation is made by the Commission or its officers, and it appears from its findings that there is *prima facie* evidence of a violation of the law by a common carrier, it shall submit the matter to the adjudication of the courts. The findings of the Commission in such matter are not conclusive. It would be obviously unfair to the railroads to permit the Commission to determine the matter after having made the investigation.

In the matter of rate regulation, I do not believe that the policy of the Commissions 'with power' in affixing maxima should be followed. The conditions in a compact territory like Iowa or Illinois differ essentially from those in a long scattered strip of country such as Canada has to deal with. The power of the Commission should be to prescribe amendatory rates when grievances arise, the *onus probandi* that the initial rates are reasonable, being on the railway. This should be the policy at least at the outset—personally I regard it as the best form for a more permanent policy. The attempt of any commission, no matter how well equipped, to prescribe at the outset of its career maximum rates applicable to all sections of the railroad system of the Dominion would doom it to failure. The commission must proceed by degrees and accumulate experience.

A question which comes up in this connection is the assumed impossibility of regulating the rates of the Canadian Pacific. While the general rates can not be regulated until a dividend of 10 per cent is obtained—in other words never—there is no power conferred to charge unreasonable rates or to make preferences ; in this respect this company would be subject to regulation.

The experience already cited indicates the necessity of carefully delimiting the functions of the commission from those of the courts. The matters with which the commission will be concerned are administrative. All evidence bearing on the matter should be submitted to the Commission. It should have final power to determine in all cases of fact. If its order is not obeyed by the carrier recourse will have to be had to the courts ; here no new evidence should be admitted ; the court should simply concern

itself with whether the order of the Commission is reasonable ; if it finds it reasonable it should enforce it by appropriate process. The time for bringing the matter before a court should also be limited. If no action is brought by the carrier within the time limited then the court should simply satisfy itself that the order had been issued and served, and enforce its observance.

A large part of the work of the Commission will be mediatorial. Many complaints will be settled by correspondence without the necessity of recourse to more formal procedure. The experience of other countries warrants this conclusion.

A question which comes up in connection with the matter of expenses has reference to the location of the Commission. The head office should be in Ottawa ; but provision for holding sessions in other parts should also be made. The question of expense is very important. The whole attempt should have in mind the furnishing of an inexpensive process. It may happen, however, that in the case of the small shipper, the initial expense may be more than he can bear. I suggest that in such case when it appears to the Commission that there is a grievance but that the shipper or person aggrieved cannot bear the expense of prosecuting the matter, the Commission shall submit the matter to the Minister of Railways and Canals and to the Minister of Justice and if they so decide a public prosecutor to present the case before the Commission shall be indicated by the Minister of Justice.

The general expenses of the Commission should be apportioned on the railroads in proportion to their gross receipts ; but when a public prosecutor is appointed, as above provided, or when the Commission prosecutes before the courts any matter which has originated from its initial investigation the expense should be a charge on the funds laid aside for the administration of justice. When in discharge of their official duties the commissioners and the officers of the commission should have free transportation.

Under the powers conferred by the British North America Act, as well as under the powers conferred by section 306 of the Railway Act, a general power over the railways of Canada is possessed by the Dominion. These railways would be under the regulative control of the Commission. The government roads would not be subject to its control. If complaints with reference to rates or other matters in connection with the Government roads arose, the Minister of Railways and Canals might, in his discretion, refer such complaints to the Commission for investigation.

SUMMARY OF DUTIES OF THE COMMISSION.

(1.) To have transferred to it all regulative powers in regard to rates, preferences, discriminations, rebates and secret rates possessed by the railway committee.

(2.) That power of supervision in regard to through rates and through routes should be possessed by the Commission.

(3.) That the Commission should be empowered to see that equal facilities of shipments are obtained by all, subject to differences in regard to perishable freight.

(4.) To have general regulative control in regard to traffic agreements.

(5.) To possess supervising and regulating powers in regard to crossings.

(6.) To have power to investigate serious accidents.

(7.) To have general supervision of safety appliances and of all matters requisite for the maintenance of the public convenience and safety.

(8.) Advisory power, subject to the final action of parliament, on all bills relating to railway projects.

(9.) To have general control of stock and bond issue.

(10.) To have power, on application of either party, to act as an arbitrator in case of disputes between railways and their employees.

(11.) To answer such questions *re* railway bills pending as may be directed to it by parliament. This will cover simply such features as may have come up in the preliminary investigation of the Commission.

(12.) To make such general investigations as parliament may direct.

(13.) To answer such questions in regard to railway policy as may be submitted to it by the Minister of Railways and Canals.

(14.) To see that the various railways obey the provisions of the Acts, general and special, under which they operate.

SUMMARY OF LEGISLATION.

(1.) Creation of a railway commission composed of three members, one experienced in law, one in railway business, and one in business.

(2.) Commission to be organized as a tribunal giving decisions, and as a body making independent investigations.

(3.) When it makes independent investigations and initiates a case it shall bring suit in an appropriate court.

(4.) The Commission shall have final decision as regards a matter of fact, it shall also have power to determine what constitutes a matter of fact and what a matter of law.

(5.) Where there is reason a public prosecutor may be indicated by the Minister of Justice.

(6.) The general expenses of the Commission to be a charge on the gross receipts of the railways. Where a public prosecutor is appointed or where the Commission initiates suit before a court as a result of its own investigation the charge shall be on the funds provided for the administration of justice.

(7.) The powers of the Commission shall extend to such portion of the railway system of Canada, excluding the government railways, as is under Dominion control.

RATE GRIEVANCES ON CANADIAN RAILWAYS

Ottawa, Ont., January 17, 1902.

Hon. A. G. Blair,
Minister of Railways and Canals,
Ottawa.

Sir,—I have the honour to submit herewith a further report upon the subject of Railway Commission, and concerning my investigation under your instructions into the question of rate grievances on Canadian railways.

I have the honour to be, sir,
Your obedient servant,

S. J. McLEAN.

The Honourable A. G. Blair,
Minister of Railways and Canals.

Sir,—I have the honour to submit the following report concerning the investigation conducted by me, under instruction from you, into the question of railway and passenger rate grievances. The plan adopted in the investigation was to deal primarily with Boards of Trade, Agricultural Associations and other responsible representative trade bodies rather than with individuals direct. At the same time, however, opportunities were given to individuals to present details dealing with the subject matter of the investigation. Wherever possible those making complaints were required to make them in writing. These statements, together with the supplementary papers and the evidence submitted will be found in the appendix to this report.

In a number of instances those who submitted complaints were unwilling to do so in public since they feared the results to themselves of antagonizing the railways. In such cases opportunities were afforded to make statements in private. In view of this condition I would respectfully recommend that if it is deemed expedient to print this report, that the evidence be not printed.

In addition to the hearing of information from the complainants, the officers of the railways concerned were met at various points and information was obtained from them with regard to the railway position on the general questions at issue. When the evidence was all in, a detailed list of questions covering the matters in dispute was prepared and submitted to the Grand Trunk and to the Canadian Pacific with a view to obtaining such specific statements in rebuttal as the railways might care to submit. Where questions of specific rates charged were at issue the railways were asked to check the rates, and to furnish tariffs covering the rates. The rates contained in the statements have also been checked by me.

Investigations were conducted at Toronto, Woodstock, Chatham, St. Thomas, Windsor, London, Stratford, Seaforth, Walkerton, Guelph, Winnipeg, Saltcoats, Yorkton, Portage la Prairie, Brandon, Regina, Prince Albert, Calgary, Edmonton, Revelstoke, Kamloops, Vancouver, Victoria, Rossland, Nelson and Montreal.

Communications were sent to the following agricultural associations requesting the representatives of these organizations to present either through representatives or through written statements at designated places such complaints as they might have to submit bearing upon the subject matter of the investigation: Ontario, the Farmers' Institutes of—South Perth, North Perth, East and West Kent, East and West Elgin North and South Oxford, East and West Middlesex, South, East and West Huron

South and North Essex. Northwest Territories, the agricultural associations of Lacombe, Duck Lake, Red Deer, Fish Creek, Broadview, Sterling, Olds, Qu'Appelle, Wolsely, Pincher Creek, Macleod, Grenfell, Whitewood, Indian Head, Yorkton, Medicine Hat, Moosejaw, Rosthern, Moosomin.

The findings of the investigation are placed under their respective headings in the body of the report.

I.—CLASSIFICATION.

There is constant friction between shippers and railways with reference to the question of classification. In some instances the complaints are based on the statement that the classification is too high as compared with the value of the goods. In other instances it is asserted that the classification is too high as compared with the classification on similar articles in the United States.

The following examples cited from statements and testimony submitted indicate the scope of the complaints. Cocoa and chocolate, which are at present classed second and fourth, should, it is contended, be put in the same class as coffees which are third and fourth. The cocoa and chocolate are raw material. Piano and organ reeds and keys are classed too high. Drugs which are at present placed in first class should be in third class. Complaint is made that while Welland is given fourth and fifth on wire goods Windsor is classed third and fifth. Putty which is classed third and fifth should be reduced to fourth and fifth. Library tables and parlour cabinets should be shipped at $1\frac{1}{2}$ instead of D. 1, in order to be in fair proportion to other goods shipped. While it may be all right to have a first class rate on some lines of dry goods, e. g. silks, on other lines of dry goods, e. g. denims and shirtings, third class would be high enough. Cased whiskey is classed fourth while whiskey in bulk is fifth. The following arguments are advanced for placing these in the same class: cased whiskey is the safer of the two to carry. Rough shunting and collision while it might cause barrels to leak, or might shatter them entirely, would be much less damaging to whiskey in cases. Cased whiskey is a much more desirable freight because a barrel of whiskey converted into cases represents a little more than twice the weight of the bulk package, to say nothing of the inward freight on the bottles, corks, capsules, &c. The general supposition that cased whiskey is of greater value than bulk whiskey is incorrect, as the bottled whiskey nets just the same price per gallon as the bulk whiskey. The question of classification comes up also in connection with the question of the relation between C. L. and L. C. L. rates. Wagons in car lots are carried at fourth or sixth class, according to the maximum, while in less than car lots they are placed in first class. The disparity is complained of.

In addition to the complaints concerning classification, as it stands at present it is claimed that there have been certain arbitrary changes in rates caused by raising the classification of the article. For instance, beer has been raised from fourth to third, while the rate on pianos has been raised from fourth to second.

It has to be recognized that the question of classification, like the question of rate making, proceeds upon no hard and fast principles. There is a rough correspondence between the value of the article and the class in which it is placed. The element of bulk has also to be considered. The railways claim that in the case of wagons the high rate of first class in less than car-lot shipments, as compared with sixth or car-lot shipments, is attributable to the bulky nature, light weight and risk of damage. The wagons will not admit of the freight being loaded on top, and this freight is generally of such a nature as to be objectionable except at first class rates.

It has to be recognized that the element of bulk does play a part in determining the class with which the goods should fall. At the same time it must be noticed that the classification places an obstacle in the attempt of any shipper to economize space by shipping finished vehicles without wheels. The rule governing this is that, when finished vehicles are shipped without the wheels, running gear, &c., they will be charged fifty per cent over the rates applied to complete vehicles (note on page 80, Canadian Joint Freight Classification).

While difficulties arise with reference to classification, advantage is sometimes taken of the railways by misdescribing goods. This applies especially to interior points where there is no adequate system of inspection. The most flagrant example brought before my notice was in one case where a special rate had been granted to permit of the shipment of a car lot of potatoes; it was found later, on investigation, that in reality a car lot of dry goods had been shipped. The complaints concerning this condition of affairs came not only from the railway officials but also from merchants. Where a shipper misdescribes his goods and is successful in having the goods carried through, he has an advantage over his more honest competitor who has shipped on the established rate. At the same time if the one who has misdescribed his goods is detected, then he has simply to pay the established rate. Some of the merchants complaining were of opinion that in such a case a penalty should attach. A similar position has been considered by the Interstate Commerce Commission.

The question of classification is of especial importance because it is the basis of rate making. A change of a class means a change in a rate. A change of rate by changing the classification attracts much less public attention than when the rate itself is changed. As it stands to-day when any complaint arises with reference to classification, it may be taken before the classification committee. It is shown in evidence that concessions are made sometimes. At the same time it appears that changes in classification have been made in an arbitrary manner, and that the classification of certain articles does not proceed on any well-defined principle.

When a complaint is taken to the classification committee it goes before a body which stands for railway interests—a body representative of one of the parties to the dispute. And it is this body which determines the dispute. In the public interest there should be a supervision of all matters pertaining to classification.

III.—DISTRIBUTIVE RATES.

The matter of distributive rates is attracting a great part of the discussion of the rate question west of Winnipeg. The merchants of Regina complain that Regina is put at a disadvantage since it cannot obtain distributive rates. A similar contention is advanced by the merchants of Edmonton. They state that Calgary can ship along the Calgary and Edmonton branch into Edmonton territory, while Edmonton, owing to lack of distributive rates, cannot meet this competition in its own territory. The question of distributive rates resolves itself into the question of competition between localities The merchants of Kamloops complain because Vancouver merchants can place goods in Kamloops territory more advantageously than Kamloops can. Vancouver can ship into points in Kamloops territory on a through rate from the coast, while Kamloops would have to pay the rate from the coast to Kamloops plus the local one to the point of destination. The same position is met at the coast. Vancouver complains that it has to meet the competition of Winnipeg in the Kootenay. It asserts that the eastern limit of the distributive territory of Vancouver should be further east. It is stated that in fairness to Vancouver this limit should be as far east as Calgary. Complaint is made that while the fifth class rate from Winnipeg to Calgary, a distance of eight hundred and forty-two miles, is 77 cents, the rate of fifth class from Vancouver to Calgary, a distance of six hundred and forty-two miles is $1.01. A similar situation is met in the case of Nelson. Nelson claims 'that the railways do not recognize the geographical advantage of Nelson. There should be central points from which goods can be distributed. There is no question that Nelson is a point for this purpose. What Nelson is standing for is to be able to compete on equal terms with the shippers from the east and from the west. No other town in the Kootenay has a better claim than Nelson.'

To turn now to the railway side of the question, it is stated that as regards the distributive business from the Pacific coast into the Kootenay that the rates charged cannot be considered excessive. It has to be remembered that in the journey down from Revelstoke to the Kootenay the mixed rail and water rate involves a number of tran-

shipments, which greatly increase the cost of handling. The contention of Vancouver, that the eastern limit of its distributive territory should include Calgary, is considered unreasonable because it leaves out of consideration the fact that the goods on their way to the coast pass through Calgary and go through the mountains, and would have to stand the return haul to Calgary. It must also be remembered that some of the goods come by water around the Horn to Vancouver, and the railway under this condition does not receive revenue for such movement, while on the run west from Winnipeg there is a long rail haul over the Canadian Pacific. In regard to Nelson the railway position is that the existing rate situation puts Winnipeg, Vancouver and Nelson on an equal footing as regards business. The railway does not see any reason why in the present state of business in the Kootenay any town should be given an advantage in point of distributive rates. The argument advanced for not granting Edmonton a distributive rate is that since it is situated at the end of the line there is no balance of the rate for goods to be shipped out on.

The question of distributive rates is an exceedingly difficult one to handle. The general position of the railway is that distributive centres are necessary. It also holds that distributive rates will be granted when the volume of business warrants it. It will at the same time appear, however, that withholding these rates will assist in checking the development of business, while the point which has distributive rates is increasing. The railway has also to face local difficulties. This is illustrated in the case of the Kootenay. The Kootenay has connections with the railway system of the United States, and in any readjustment of rates the question has to be considered, will the American lines acquiesce in the readjustment.

In addition to this it has to be recognized that there is much local objection to granting distributive rates to Nelson. At present there is a blanket rate covering common points in the Kootenay. The merchants at other points complain that it would be unfair to them to give advantages to Nelson. This complaint is made by various firms located at Rossland, Sandon, Kaslo and in the 'boundary' country, who are doing a jobbing business in connection with their retail business. These complain that any readjustment of rates in the case of Nelson would be unfair since it would simply increase the competition they have already to face. I have gone through a file of correspondence which shows the generality of this feeling in the Kootenay. I include in the appendix some correspondence which reiterates the position which has just been outlined.

While there are the difficulties which have been sketched, it has to be recognized that in the application of distributive rates there has been some arbitrary operation. The argument advanced against the granting of distributive rates to Edmonton was that there was no balance of a through rate. Since the holding of the investigation the Canadian Pacific has departed from this position and granted distributive rates as far as Red Deer, a distance of ninety-seven miles south of Edmonton. In the case of Brandon distributive rates were obtained only after a continued struggle and as a result of the exertion of political pressure. It is well known that Winnipeg obtained its distributive rates only after a struggle.

It is not in the interest of the development of trade that places should have to fight for distributive rates. It is essential that there should be effective regulation.

III.—CAR LOT AND LESS THAN CAR LOT RATES.

In some instances less than car lot rates are out of proportion to car lot rates. Along the northern lines of the Canadian Pacific as far as Rat Portage the L. C. L. rate on beer is about 50 per cent higher than the C. L. rate. In the shipment out of small consignments of machinery from Walkerville the L. C. L. rates interfere seriously with business. Owing to the fact that the Canadian trade is a gradually developing one many orders are received for small consignments. These must be forwarded at once, and so there is not the opportunity to take advantage of the C. L. rate. It is complained, in the case of hog shipments from Stratford to Toronto, that the C. L. and L. C. L. rates

are respectively 13c. and 25c. The complaint based on this, however, neglects the fact that other kinds of freight could not well be loaded into the same car with hogs. The car lot rate on flour from Edmonton to Olds is 20c., while the less than car lot rates is 38c. A marked discrepancy in the relation between the car lots and less than car lot rates exists in the tariffs governing the wholesale business out from Winnipeg. In the shipments out of dry goods, for example, the discrepancy in rate is indicated in the following table :—

RELATION OF C. L. TO L. C. L. RATES.

The calculations are based on the rates contained in Special Proportional Tariff No. 579.

Article, Dry Goods.		L. C. L. per cent higher than C. L.
Winnipeg—	Brandon	45 per cent.
"	Virden	69 "
"	Medicine Hat	76 "
"	Calgary	78 "
"	Yorkton	84 "
"	Prince Albert	74 "
"	Edmonton	76 "

In the case of tea the following conditions will be found to exist :—

Article, Tea.		L. C. L. per cent higher than C. L.
Winnipeg—	Brandon	35 per cent.
"	Virden	47 "
"	Medicine Hat	44 "
"	Calgary	37 "
"	Yorkton	44 "
"	Prince Albert	51 "
"	Edmonton	50 "

On shipments of sugar in western Ontario the L. C. L. rate is from 30 per cent to 65 per cent higher than the C. L. rate.

Wherever there is a great variation between the L. C. L. rates and the C. L. rates the variation is in favour of the larger dealer at the point of destination. The larger dealer, because of his ability to purchase in car lots, has naturally an advantage. But if a very wide divergence exists between car lot and less than car lot rates he has an unfair advantage over his weaker rival. It is necessary to have supervision with reference to the relation between C. L. and L. C. L. rates.

IV.—EXCESSIVE RATES AND DISCRIMINATIONS.

A minor case of complaint in Ontario which affects the retailers especially is concerned with cartage charges. In respect of traffic from certain sections designated in the tariffs as stations at which cartage services are performed, the cartage agents of the railway companies charge from one cent to two cents per 100 pounds for cartage, subject to a minimum of ten cents for any one cartage. The position of the railway companies in regard to this charge is as follows : *C. P. R.*—'The cartage charge of ten cents on small shipments has been in effect for many years and in large cities is considered a convenience and benefit to both the shippers and the railways. The charge is made only when the goods are handled by the cartage companies who perform the service for the railway companies. If shippers elect to handle their own goods the charge is not made.' The *G. T. R.* states : 'At large centres railway companies maintain a cartage system in order to expedite the receiving and delivery of freight between patrons and depots. This charge of ten cents is a minimum charge made for any one consignment, which is considered fair and equitable. It is often less expensive to the patron than if he

performed cartage himself or hired others to do it for him (in fact we understand ordinary charge by express wagon is twenty-five cents per package). Further, the charge of ten cents does not accrue to railway companies but to cartage companies who perform the work. The additional charge for cartage at cartage stations is not made unless a cartage service is performed.'

The specific complaints under this heading are that the policy of the companies, as indicated in the extracts from their statements, is departed from. In the case of shipments of dry goods from Montreal and Toronto to Stratford the cartage charges at Toronto and Montreal have been included in the freight bill and charged against the Stratford merchant. In the case of a shipment of goods from Bothwell to Brussels some three years ago, the purchaser of the goods had them taken at his own expense to the station at Bothwell. When the freight bill was presented to him it contained a cartage charge for moving the goods to the Bothwell station. No objection is taken, in general, to the amount of the charge collected under this heading. One witness stated that when he shipped a carload of goods from Guelph to Stratford he found that the Grand Trunk cartage charges were one-half what they would have been had he himself undertaken the cartage.

A disparity exists between rates eastbound and westbound in respect of certain commodities. For example, beer from London to Ottawa is twenty-one cents, while the rate on the returned empty casks from Ottawa to London is twenty-eight cents.

A complaint was lodged that on the shipment out of nails Brantford was discriminated against in favour of Hamilton. The Grand Trunk states in rebuttal that 'it is not the intention to have the rates higher from Brantford, where the distance is shorter than from Hamilton, a longer distance.' Under the rates charged, however, the C. L. rate on nails from Brantford to Elmira, a distance of thirty-four miles, is twelve cents, while the C. L. rate from Hamilton to Elmira, a distance of sixty-three miles, is ten cents.

The L. C. L. rates on wire goods discriminate in favour of Welland and against Windsor. The Grand Trunk admits this and states that it is considering the advisability of a readjustment of these rates.

The local rates for short distance traffic are on so high a basis that they interfere with the movement of commodities by the railways. For example, the C. L. rate on salt from Wingham to Fordwich, a distance of seventeen miles, is 5 cents, while the L. C. L. rate is 9 cents. The merchants of Fordwich can have the salt hauled by team for 5 cents, thus saving cartage charges. Other examples from the same section of country may be cited. Cheese box hooping costs by rail from Teeswater to Fordwich, a distance of twenty-one miles, 10 cents in L. C. L. quantities. This material was handled by teams for 7 cents. A car lot of hoops from Harriston to Fordwich, a distance of eight miles, which would have cost $12 by rail, was hauled by team for $7.50. It is complained that 'the rate upon cattle for distances of from thirty to thirty-five miles is 8 cents per 100 pounds for a car of 22,500 pounds, or $18 per car, which is altogether too high, and as a consequence farmers travel their cattle.' The railways state in rebuttal that they do not find that any shipments of live stock, in carloads, are handled to points other than the regular established markets, except in the case of pedigreed cattle, on which half the regular rates are accepted, or on live stock for feeding and re-shipping on which a reduction of one-third the regular rate is made. In regard to a complaint made that the local rates on apples are so exorbitant that they are not moved by rail, it is rejoined that where there are small quantities shipped from place to place it is preferable to have these moved by road, since it would otherwise keep a considerable portion of the rolling stock of the company idle, when their rolling stock might more profitably be used in forwarding the through traffic of the farmer.

An especial complaint is made of local rates in the North-west. It is claimed that the local rates are excessive on grain. It is impossible to bring a carload of oats on local rates from Portage la Prairie to Winnipeg. It is claimed that rates should be reduced down to a reasonable figure so as to allow grain passing backward and forward as the trade wants it.

The following comparison is instituted in the North-west between the rates in that section and the rates in contiguous territory in the United States, as well as the rates in eastern Canada :—

—	Class.	Mileage.	Rate.
Chicago-St. Paul	1st	410	60 cents.
Winnipeg-Moosejaw	"	398	$1.20 (traders), $1.26 (local).
Chicago-St. Paul	5th		20 cents.
Winnipeg-Moosejaw	"		49 cents (traders), 58 cents (local).
Montreal-Halifax	1st	756	56 cents.
Winnipeg-Calgary	"	840	$1.82 (traders), $2.08 (local).
Montreal-Halifax	5th		28 cents.
Winnipeg-Calgary	"		77 cents (traders), 94 cents (local).

It is, however, unfair to the railway to take the rates charged between Chicago and St. Paul or in eastern Canada, as the criteria by which the rates at the North-west are to be judged. These sections have a much more dense settlement. Traffic is heavier and there is not sufficient similarity of conditions to warrant a comparison.

The following table, in which comparisons are made between the rates charged by the Canadian Pacific and the rates charged by the Great Northern and the Northern Pacific in contiguous United States territory, is filed by the Canadian Pacific. The table covers the rates on distances up to 840 miles. A reference to these rates will show that the Canadian Pacific rates are on a lower basis.

COMPARISON OF FREIGHT RATES ON MERCHANDISE.

Via Canadian Pacific Railway from Winnipeg.

Tariffs: No. 579, May 19, 1900; No. 580, May 26, 1900; No. 608, December 24, 1900, and No. 609, December 24, 1900.

Via Great Northern Railway from St. Paul and Duluth.

Tariffs: No. G.F.O. 5850, February 1, 1900, and No. G.F.O. 6060, April 5, 1900; No. G.F.O. 5750, February 1, 1900.

Via Northern Pacific Railway from St. Paul and Duluth.

Tariffs: No. 5724, January 24, 1900; No. 7800, February 15, 1901, and No. 7900, February 25, 1901.

From	To	Miles.	Via.		Classes in Cents per 100 Lbs.									
					1	2	3	4	5	6 or A	7 or B	C	D	10 or E
Winnipeg	Rosser	15	C. P.	Merchandise and Groups A, B and C.	18	16	13	11	9	3½	2			2
Duluth	Howell	16	N. P.		19	16	13	11	5½	7	5½	4½	3½	3
Winnipeg	Reaburn	35	C. P.	Merchandise and Groups A, B and C.	18	16	13	12	9	4	3			3
Duluth	Mahtowas	33	N. P.		28	25	22	17	8	9	8	7	6	5
Winnipeg	Portage la Prairie	55	C. P.	Merchandise	20	18	16	14	9	5½	4			3½
				Groups A, B and C	20	18	16	14	9	5½	3½			3
Duluth	Willow River	54	N. P.		35	30	23	17	8½	11½	10½	8½	7	5½
Winnipeg	MacGregor	77	C. P.	Merchandise	27	24	21	17	12	8½	5			5
				Groups A, B and C	27	24	21	17	12	8½	4½			4½
St. Paul	Sartell Spur	78	N. P.		38	32	26	20	17	17	15	12	10	8
Duluth	Kimberley	79	"		42	36	27	21	17	17	15	13	11	8
Winnipeg	Carberry	105	C. P.	Merchandise	32	28	24	19	13	10	7			6½
				Groups A, B and C	32	28	24	19	13	10	6½			5½
St. Paul	Little Falls	106	N. P.		46	39	30	23	18	18	16	14	12	9
Duluth	Deerwood	101	"		48	41	32	25	20	20	17	15	12	10
Winnipeg	Brandon	133	C. P.	Merchandise	37	32	27	22	16	12	8			7½
				Group A	37	32	27	22	16	12	7½			6½
				" B	37	32	27	22	16					
				" C	37	32	27	22	16					
St. Paul	Round Prairie	132	G. N.		50	43	33	25	20	20	18	15	12	10
Duluth	Pillager	132	N. P.		51	43	33	26	20	20	18	15	13	10
Winnipeg	Griswold	157	C. P.	Merchandise	47	40	33	26	20	14	9			8½
				Group A	47	40	33	26	20	14	8			7½
				" B	47	40	33	26	20					
				" C	43½	37	30½	23	17½					

St. Paul	Eagle Bend	155	G. N.		54	46	35	27	22	22	19	16	14	11
Duluth	Verndale	159	N. P.		55	47	36	28	22	22	19	17	14	11
Winnipeg	Virden	180	C. P.	Merchandise	62	52	42	32	25	17	10	...	...	9½
				Group A	60½	51½	41½	30½	23½	16	9	...	...	8½
				" B	54½	46½	37½	28	21½	...	...	...	...	...
				" C	46½	40	32½	24½	18½	...	...	...	...	...
Duluth	Bemidji	181	G. N.		64½	56	43	36	32	28	25	21	18	14
St. Paul	Perham	181	N. P.		63	54	41	32	25	25	22	19	16	13
Winnipeg	Moosomin	219	C. P.	Merchandise	71	59	49	36	29	19½	12	...	...	11
				Group A	65	54	45	33	26½	17½	11	...	...	10
				" B	58½	49	41	30	24	...	...	...	...	...
				" C	50½	42	35	26½	20½	...	...	...	...	...
Duluth	Ebro	213	G. N.		73	63	49	40	32	32	28	24	20	16
St. Paul	Hillsdale	226	N. P.		72	62	48	37	30	30	26	22	18	14
Winnipeg	Burrows	243	C. P.	Merchandise	81	68	58	40	35	24	13	...	...	13
				Group A	74	62	52½	36½	31½	21½	12	...	...	12
				" B	66½	56	48	33½	29	...	...	...	...	...
				" C	56½	48	41	29	24½	...	...	...	...	...
Duluth	Mentor	246	G. N.		80	68	52	40	32	32	28	24	20	16
St. Paul	Watts	242	N. P.		79	67	51	40	32	32	28	24	20	16
Winnipeg	Broadview	264	C. P.	Merchandise	90	77	63	42	38	26	14	...	...	14
				Group A	82	70	57½	38½	34½	23½	12½	...	...	12½
				" B	73½	63½	52	35	31½	...	...	...	...	...
				" C	62½	54	44½	30½	26½	...	...	...	...	...
Duluth	Burwell	264	G. N.		80	68	52	40	32	32	28	24	20	16
St. Paul	Davenport	268	N. P.		80	68	52	40	32	32	28	24	20	16
Winnipeg	Wolseley	295	C. P.	Merchandise	100	83	66	45	41	28	15	...	...	15
				Group A	91	75½	60	41	37	25½	13½	...	...	13½
				" B	81½	68	54½	37½	33½	...	...	...	...	...
				" C	69½	58	46½	32½	28½	...	...	...	...	...
Duluth	Grand Forks	297	G. N.		80	68	52	40	32	32	28	24	20	16
St. Paul	Oriska	297	N. P.		87	74	57	44	35	35	30	26	22	17
Winnipeg	Qu'Appelle	324	C. P.	Merchandise	108	90	72	49	44	31	18	...	...	18
				Group A	98	82	65½	45	40	28	16½	...	...	16
				" B	88	74	59	40½	36	...	...	...	...	...
				" C	74½	63	50½	35	30½	...	...	...	...	...
Duluth	Donaldson	329	G. N.		99	84	68	58	46	40	35	29	23	18
St. Paul	Eckelson	323	N. P.		92	78	60	46	37	37	32	28	23	18
Winnipeg	Balgonie	341	C. P.	Merchandise	108	90	72	49	44	31	18	...	...	18
				Group A	98	82	65½	45	40	28	16½	...	...	16
				" B	88	74	59	40½	36	...	...	...	...	...
				" C	74½	63	50½	35	30½	...	...	...	...	...
Duluth	Petersburg	344	G. N.		97	83	65	52	42	40	35	30	23	18
St. Paul	Eldridge	349	N. P.		97	82	63	50	41	39	34	30	25	20
Winnipeg	Regina	357	C. P.	Merchandise	112	93	74	51	46	32½	19	...	...	19
				Group A	102	84½	67½	46½	41½	29½	17	...	...	17
				" B	91	76	61	42	37½	...	...	...	...	...
				" C	77½	65	52	36½	32	...	...	...	...	...

1904

NOTE.—Rates via Canadian Pacific Railway are subject to Canadian joint freight classification, and via Great Northern Railway and Northern Pacific Railway are subject to western classification.

COMPARISON OF FREIGHT RATES ON MERCHANDISE—*Continued.*

From	To	Miles.	Via		Classes in Cents per 100 lbs.									
					1	2	3	4	5	6 or A	7 or B	C	D	10 or E
Duluth	Lakota	358	G. N.		102	87	71	58	48	42	36	30	24	19
St. Paul	Windsor	358	N. P.		99	82	63	50	41	39	34	30	25	20
Winnipeg	Belle Plaine	381	C. P.	Merchandise	116	97	77	52	47	34	20			20
				Group A	105½	88	70	47½	44½	30½	18			18
				" B	94½	79½	63	43	38½					
				" C	80	67½	54	37	32½					
Duluth	Devil's Lake	385	G. N.		108	92	75	64	54	43	37	30	24	19
St. Paul	Farquer's Spur	381	N. P.		105	89	71	56	49	43	36	30	24	19
Winnipeg	Moosejaw	398	C. P.	Merchandise	120	100	80	54	49	36	22			21
				Group A	109	91	73	49½	42½	32½	20			19
				" B	97½	82	65½	44½	40					
				" C	82½	69½	56	38½	34					
Duluth	Penn	398	G. N.		110	94	77	66	55	44	38	31	24	19
St. Paul	Steele	400	N. P.		110	93	74	63	50	45	39	34	27	22½
Winnipeg	Secretan	443	C. P.	Merchandise	124	103	83	56	51	37½	23			22½
				Group A	112½	93½	75½	51	46	34	21			19½
				" B	100½	84	68	46	41½					
				" C	85½	71½	58	40	35					
Duluth	Knox	428	G. N.		114	97	80	68	57	46	40	34	27	22
St. Paul	Burleigh	430	N. P.		117	99	81	70	58	47	41	35	30	24
Winnipeg	Ernfold	461	C. P.	Merchandise	128	107	85	58	53	39	24			23
				Group A	116	97	77½	53	48	35	21½			20½
				" B	104	87½	69½	48	43½					
				" C	88	74	59	41	36½					
Duluth	Berwick	454	G. N.		115	99	81	70	58	46	41	35	28	22
St. Paul	Sunnyside	452	N. P.		124	106	87	75	63	51	45	39	34	27
Winnipeg	Rush Lake	489	C. P.	Merchandise	132	110	88	60	54	41	25			24
				Group A	120	100	80	54½	49	37	22½			21½
				" B	107	90	72	49½	44					
				" C	90½	76	61	42½	37					
Duluth	Norwich	488	G. N.		115	99	81	70	58	46	41	35	28	22
St. Paul	Alvmont	489	N. P.		131	109	91	78	65	55	49	42	36	28
Winnipeg	Swift Current	511	C. P.	Merchandise	136	113	90	62	56	43	27			25
				Group A	123½	102½	82	56½	50½	39	24½			22½
				" B	110½	92	73½	51	45½					
				" C	93½	78	62½	44	38½					
Duluth	Des Lacs	514	G. N.		127	107	89	76	65	52	45	40	32	25

St. Paul	Eagle's Nest	512	N. P.		135	111	93	80	69	57	51	44	38	32
Winnipeg	Sidewood	565	C. P.	Merchandise	143	119	95	66	59	46	29			26½
				Group A	129½	108	86½	60	53½	41½	26			23½
				" B	116	97	77½	54	48					
				" C	98	82	66	46½	40½					
Duluth	Palermo	549	G. N.		134	111	93	81	69	58	50	44	38	30
St. Paul	Gladstone	547	N. P.		140	114	95	84	73	61	53	47	41	34
Winnipeg	Cummings	621	C. P.	Merchandise	151	125	99	70	63	49½	32			28
				Group A	137	113½	90	63½	57	44½	29			25
				" B	122½	102	81	57½	51½					
				" C	103½	86	68½	49	43					
Duluth	Williston	624	G. N.		150	120	100	90	80	70	60	55	50	40
St. Paul	Beach	623	N. P.		149	119	100	90	80	69	60	55	49	40
Winnipeg	Medicine Hat	660	C. P.	Merchandise	157	130	104	73	67	53	34			15
				Group A	142½	118	94½	66½	60½	48	30½			13½
				" B	127	106	85	60	54½					
				" C	107½	89½	72	51	46					
Duluth	Kiloa	662	G. N.		152	122	102	92	81	71	61	56	51	41
St. Paul	Glendive	666	N. P.		155	126	106	94	83	73	63	57	52	42
Winnipeg	Langevin	695	C. P.	Merchandise	161	134	107	75	68	55	35			31½
				Group A	146	121½	97	68	61½	49½	31½			28
				" B	130½	109	87	61½	55½					
				" C	110	92	74	52½	46½					
Duluth	Calais	691	G. N.		155	126	106	94	83	73	63	57	52	42
St. Paul	Fallon	695	N. P.		161	133	113	99	87	77	67	60	54	44
Winnipeg	Southeske	741	C. P.	Merchandise	169	142	113	79	71	58	38			33½
				Group A	153	128½	102½	72	64	52½	34½			30
				" B	136½	115½	92	64½	57½					
				" C	115½	97½	78	55	48½					
Duluth	Wolf Point	731	G. N.		159	130	110	97	86	76	66	59	53	43
St. Paul	Miles City	743	N. P.		170	144	124	107	94	84	74	65	57	47
Winnipeg	Gleichen	785	C. P.	Merchandise	175	146	116	81	73	61½	40			36
				Group A	158½	132½	105	73½	66	55½	36			32½
				" B	141½	118½	94½	66	59½					
				" C	119½	100	80	56½	50					
Duluth	Paisley	785	G. N.		165	137	117	102	90	80	70	62	55	45
St. Paul	Forsythe	788	N. P.		192	166	139	122	103	90	78	69	61	50
Winnipeg	Langdon	819	C. P.	Merchandise	178	148	118	83	75	63	42			37
				Group A	161	134	107	75½	67½	57	38			33
				" B	144	120	96	68	61					
				" C	121½	101½	81	57½	51					
Duluth	Saco	819	G. N.		170	141	121	105	92	82	72	64	56	46
St. Paul	Myers	816	N. P.		208	182	150	128	109	94	82	73	64	53
Winnipeg	Calgary	840	C. P.	Merchandise	182	152	121	85	77	64½	43			38
				Group A	165	137½	109½	77	69½	58	39			34
				" B	147	123½	98½	69½	62½					
				" C	124	104	83	59	52½					
Duluth	Bowdin	837	G. N.		172	144	123	106	93	83	73	65	57	47
St. Paul	Custer	837	N. P.		210	185	150	130	110	96	85	75	65	55

20a—4½

From.	To	Miles.	Via.		Classes in Cents per 100 lbs.								
					1	2	3	4	5	6 or A	7 or B	C	D	10 or E
Winnipeg	Morris	42	C. P.	Merchandise	16	14	12	10	9½	4	3			3
				Group A	16	14	12	10	9½	3½	3			3
				" B	16	14	12	10	9½					
				" C	16	14	12	10	9½					
Duluth	Moose Lake	43	N. P.		34	28	23	17	8	11	10	8	6½	5½
Winnipeg	Gretna	69	C. P.	Merchandise	21½	17½	14½	12	11	4	3			3
				Group A	21½	17½	14½	12	11	3½	3			3
				" B	20	17½	14½	12	9½					
				" C	18	17	14½	12	8½					
Duluth	McGregor	70	N. P.		38	32	25	19	15	15	13	11	10	8
St. Paul	St. Cloud	74	"		36	31	24	19	16	16	14	12	9	7
Winnipeg	Morden	80	C. P.	Merchandise	23	21	18	15	11	6	3			3
				Group A	23	21	18	15	11	5½	3			3
				" B	23	21	18	15	11					
				" C	23	21	18	15	11					
Duluth	Kimberley	79	N. P.		42	36	27	21	17	17	15	13	11	8
Winnipeg	Manitou	102	C. P.	Merchandise	32	28	24	19	13	10	6			5½
				Group A	32	28	24	19	13	9	5½			5
				" B	32	28	24	19	13					
				" C	31½	27½	24	19	13					
Duluth	Deerwood	101	N. P.		48	41	32	25	20	20	17	15	12	10
Winnipeg	Clearwater	133	C. P.	Merchandise	37	32	27	22	16	12	8			7½
				Group A	37	32	27	22	16	12	7½			6½
				" B	37	32	27	22	16					
				" C	37	32	27	22	16					
Duluth	Hobart	133	G. N.		51	44	34	27	22	22	19	16	14	11
"	Pillager	132	N. P.		51	43	33	26	20	20	18	15	13	10
Winnipeg	Boissevain	182	C. P.	Merchandise	37	32	27	22	16	12	8			7½
				Group A	37	32	27	22	16	12	7½			6½
				" B	37	32	27	22	16					
				" C	37	32	27	22	16					
Duluth	New London	183	G. N.		61	52	40	30	24	24	21	18	15	12
St. Paul	Perham	181	N. P.		63	54	41	32	25	25	22	19	16	13
Winnipeg	Napinka	220	C. P.	Merchandise	47	40	35	26	20	16	10			9½
				Group A	47	40	35	26	20	16	9			8½
				" B	47	40	35	26	20					
				" C	46½	40	32½	24½	18½					

Duluth	Lengby	219	G. N.		75	64	50	40	32	32	28	24	20	16
St. Paul	Hillsdale	220	N. P.		72	62	48	37	30	30	26	22	18	14
Winnipeg	Pamystelle	34	C. P.	Merchandise	18	16	13	12	9	4	3			3
				Group A	18	16	13	12	9	4	3			3
				" B	18	16	13	12	9					
				" C	18	16	13	12	9					
Duluth	Sawyer	37	N. P.		26	22	18	14	10	10	9	8	6	5
Winnipeg	Carman	57	C. P.	Merchandise	20	18	16	14	9	5½	4			3½
				Group A	20	18	16	14	9	5½	3½			3
				" B	20	18	16	14	9					
				" C	20	18	16	14	9					
Duluth	Willow River	54	N. P.		35	30	23	17	8½	11½	10½	8½	7	5½
Winnipeg	Holland	85	C. P.	Merchandise	27	24	21	17	12	8½	5			5
				Group A	27	24	21	17	12	8½	4½			4½
				" B	27	24	21	17	12					
				" C	27	24	21	17	12					
Duluth	Rossburg	85	N. P.		43	37	29	23	18	18	16	14	11	9
Winnipeg	Stockton	112	C. P.	Merchandise	32	28	24	19	13	10	7			6½
				Group A	32	28	24	19	13	10	6½			5½
				" B	32	28	24	19	13					
				" C	32	28	24	19	13					
Duluth	Bridgman	112	G. N.		49	42	32	25	20	20	17	15	12	10
"	Brainerd	118	N. P.		49	42	32	25	20	20	17	15	12	10
Winnipeg	Souris	150	C. P.	Merchandise	37	32	27	22	16	12	8			7½
				Group A	37	32	27	22	16	12	7½			6½
				" B	37	32	27	22	16					
				" C	37	32	27	22	16					
Duluth	Rockville	150	G. N.		55	48	38	29	23	23	20	17	15	12
"	Staples	148	N. P.		52	44	35	27	22	22	19	16	14	11
Winnipeg	Hartney	166	C. P.	Merchandise	37	32	27	22	16	12	8			7½
				Group A	37	32	27	22	16	12	7½			6½
				" B	37	32	27	22	16					
				" C	37	32	27	22	16					
Duluth	Roscoe	166	G. N.		60	51	39	30	24	24	21	18	15	12
St. Paul	Deer Creek	168	N. P.		55	47	36	28	22	22	19	17	14	11
Winnipeg	Pierson	207	C. P.	Merchandise	61	52	44	32	26	19½	12			12
				Group A	61	52	44	32	26	17½	11			11
				" B	58⅓	49	41	30	24					
				" C	50	42	35	26⅓	20½					
Duluth	Bagley	205	G. N.		71	61	48	40	32	32	28	24	20	16
St. Paul	Anderben	210	N. P.		69	59	46	36	28	28	25	21	17	14
Winnipeg	Gladstone	91	C. P.	Merchandise	27	24	21	17	12	8½	5			5
				Group A	27	24	21	17	12	8½	4½			4½
				" B	27	24	21	17	12					
				" C	27	24	21	17	12					
Duluth	Aitkin	91	N. P.		45	38	30	24	19	19	17	14	12	10
Winnipeg	Minnedosa	134	C. P.	Merchandise	37	32	27	22	16	12	8			7½
				Group A	37	32	27	22	16	12	7½			6½
				" B	37	32	27	22	16					
				" C	37	32	27	22	16					

COMPARISON OF FREIGHT RATES ON MERCHANDISE—*Continued.*

From.	To.	Miles.	Via.		Classes in Cents per 100 lbs.									
					1	2	3	4	5	6 or A	7 or B	C	D	10 or E
Duluth	Wheelock	137	N. P.		52	44	34	26	21	21	18	16	13	10
Winnipeg	Shoal Lake	171	C. P.	Merchandise	57	48	39	30	24	16	9	....	....	8½
				Group A	56	47	38½	28½	22½	14	8	....	....	7½
				" B	50½	42½	35	26	21	....	....	....	....	....
				" C	43½	37	30½	23	18	....	....	....	....	....
Duluth	Rosby	175	G. N.		63	54	42	36	32	27	24	20	17	14
St. Paul	New York Mills	171	N. P.		61	52	40	31	24	24	21	18	15	12
Winnipeg	Binscarth	210	C. P.	Merchandise	71	59	49	36	29	19½	12	....	....	11
				Group A	65	54	45	33	26½	17½	11	....	....	10
				" B	58½	49	41	30	24	....	....	....	....	....
				" C	50	42	35	26½	20½	....	....	....	....	....
Duluth	Ebro	213	G. N.		73	63	49	40	32	32	28	24	20	16
St. Paul	Anderben	210	N. P.		69	59	46	36	28	28	25	21	17	14
Winnipeg	Churchbridge	245	C. P.	Merchandise	81	68	58	40	35	24	13	....	....	13
				Group A	74	62	53	36½	31½	21½	12	....	....	12
				" B	66½	56	48	33½	29	....	....	....	....	....
				" C	56½	48	41	29	24½	....	....	....	....	....
Duluth	Mentor	246	G. N.		80	68	52	40	32	32	28	24	20	16
St. Paul	Dilworth	245	N. P.		79	67	51	40	32	32	28	24	20	16
Winnipeg	Yorkton	279	C. P.	Merchandise	96	83	66	45	41	28	15	....	....	15
				Group A	87½	75½	60	41	37	25½	13½	....	....	13½
				" B	78½	68	54½	37½	33½	....	....	....	....	....
				" C	66½	58	46½	32½	28½	....	....	....	....	....
Duluth	Shirley	278	G. N.		80	68	52	40	32	32	28	24	20	16
St. Paul	Magnolia	279	N. P.		85	72	55	43	34	34	30	26	21	17

However, it must be remembered that the tariffs, effective in the Canadian Northwest, from which the Canadian Pacific quotes in this table are the special proportionate tariffs out from Winnipeg under which the distributing business of Winnipeg is done. These tariffs are limited in their effect to Winnipeg wholesale houses doing business with traders at the points designated. If freight tariff No. 578, effective June 22, 1900, which covers the shipments other than those indicated in the special proportionate tariffs, is consulted—a copy of this tariff is included in the appendix to this report—it will be found that the rates of the Canadian Pacific are regularly higher than those charged on the two American lines.

There also exist disproportions in rates in the country further west. On a C. L. shipment of agricultural implements from Regina to Macleod, a distance of 441 miles, the rate was quoted at 87 cents while a similar shipment from Winnipeg to Macleod, a distance of 798 miles, the rate was quoted at 67 cents.

In the grain rates from the branch lines disproportions exist. From Prince Albert to Fort William, a distance of 1,038 miles, a rate of 29 cents is quoted on grain, while from Edmonton to Fort William, a distance of 1,483 miles, a rate of 30 cents is quoted. In regard to the Edmonton rate the point was brought out that while Edmonton looked to the Pacific coast for the dispersing of the grain, the rate to the coast, a distance of 834 miles, was 35c. as against 30c. to Fort William, a distance of 1,483 miles.

In the case of salt, a commodity of common consumption, the freight charges from Fort William to various points in the North-west are such as to amount to more than twice the original cost of the article. For instance, the rate on salt from Fort William to Saltcoats is 41c. In the complaint it is stated that salt costs $1 a barrel at Fort William and it costs $1.20 to lay it down at Saltcoats. In connection with this point the railway draws attention to the fact that the distance from Fort William to Saltcoats is 668 miles. It also states that the rate for a relative distance from Duluth to a point on the Great Northern Railway is 56c. per 100 pounds. The same point may be mentioned in connection with the shipments to Edmonton. The rate on salt from Fort William to Edmonton is 79c. Salt costs at Fort William 65c. per 200-pound bag and the freight on this amounts to $1.58 per bag.

In one instance a bookseller found it more economical in connection with the shipment of books from Toronto to have them shipped by mail than by freight.

Both at Victoria and Vancouver complaint was made of the rates charged into the Yukon Territory over the White Pass Railway. According to the classification in use on this railway, goods are classed in four classes, A, B, C, D. The rate sheets, copies of which are filed with this report, show that the rates are based on the net ton of 2,000 pounds. The following extract from tariff G. F. O., No. 29 of 1901, indicates the arrangement followed :—

RATE PER TON OF 2,000 LBS.

On shipments of	Group A.	Group B.	Group C.	Group D.
	$ cts	$ cts.	$ cts.	$ cts.
Under 5 tons	135 00	145 00	160 00	230 00
5 tons and under 10 tons	125 00	135 00	150 00	270 00
10 " " 25 "	115 00	125 00	140 00	250 00
25 " " 100 "	110 00	120 00	131 00	240 00
100 " " 200 "	105 00	115 00	125 00	230 00
200 " " 500 "	100 00	110 00	120 00	220 00
500 " over	95 00	105 00	115 00	215 00

It is alleged that shipments have gone in by water for the Trading Co. at $40 per ton, while this water rate is not available to the shippers from British Columbia. In a communication from the solicitors of the company following statements are submitted on behalf of the company :—

(*a*) The rates charged cover steamship freight from Pacific coast ports to Skagway, Alaska, wharf dues to the wharf company at Skagway; railway freight from Skagway,

Alaska to White Horse, Yukon Territory; and river steam freight from White Horse to Dawson.

(*b*) All these services are performed under conditions of high prices for everything including labour, traffic only moving one way and a heavy loss made during the winter months in keeping communication open, and which has to be made good out of the short season of profitable traffic.

(*c*) Railway portion of the service is over a heavy up grade and the cost of construction and equipment of the line was very great. High insurance rates are charged on the sea-going vessels, while it is impossible to obtain insurance on the river boats.

(*d*) On staple commodities the rates via St. Michael's and the Yukon are arranged on a basis of about 10 per cent less than the White Pass rate. The same classification is used by both.

(*e*) The traffic is small in amount and must obviously be compensated for by a higher rate.

(*f*) It is alleged that whatever difficulty the coast merchants may experience in obtaining a share in Yukon trade is attributable to the fact that the Dawson merchants are purchasing direct from the manufacturers in Eastern Canada.

A considerable number of shipments have been made by way of St. Michael's and the Yukon. A sailing vessel can make about two trips to the mouth of the Yukon, and a steamer can make about three during the season. Vessels can make about ten round trips from St. Michael's to Dawson. A rate of $54 a ton has been quoted by this route from Seattle to Dawson. It is found in general, however, that the movement of freight up the Yukon is subject to the control of the Trading company.

To sum up the matter which arises under this heading: Local rates in Ontario are in some instances so excessive as to lead to the movement of commodities by team. There also exist discriminations between localities. In the North-west there is a high basis of local rates. The ease of movement in the transportation across the prairie, coupled with the fact that this section is rapidly filling up would, in my opinion, justify some readjustment of local rates. The existing grain rates from branch lines in the North-west are on an anomalous footing.

V.—COMPETITIVE VERSUS NON-COMPETITIVE TRAFFIC.

It is an established position that there is little of efficient competition as regards rates. What competition exists is a competition of service rather than of rates. The competition does not normally lead to one railway underbidding another; it leads to an agreement upon rates. Through traffic, or traffic which has a long haul, is carried on a lower rate per ton per mile than local traffic. This difference is attributable in the main to the fact that the traffic which has to stand the long haul will not bear a very high ton mile rate. Short distance traffic, on the other hand, can stand a higher ton mile rate because this rate will not be such a large per cent of the value. In addition to this the difference in rate at which the two classes of traffic are carried is affected by the presence or absence of alternative methods of transportation.

On various commodities the local rates are heavy as compared with the through rates. In the shipment out of wire from Windsor this appears. While all those engaged in the wire business have to pay the high local rate it makes the commodity much more expensive when delivered at a non-competitive point.

Local rates are disproportioned to through rates. For example, the local rate on cordage from Stratford to Toronto is 22 cents, while the rate from Stratford to New York is 21 cents. A shipment of goods from Tottenham to Stratford, a distance of 89 miles, cost 26 cents per 100 lbs.; shipments of similar goods were made from Detroit to Stratford, a distance of 141 miles, for 24 cents per 100 lbs.; and from Chicago, a distance of 419 miles, for 30 cents. All these shipments were in less than car lots.

Disproportions exist also between the short distance rates themselves. On a less than car lot shipment from Chatham to Seaforth, a distance of 121 miles, a rate of 26 cents per 100 lbs. was charged; while from Glencoe to Seaforth on the same class of

goods, also in less than car lot, a rate of 30 cents was charged. The latter distance is 87 miles. It will be noticed that in this instance the shorter distance was included in the longer. A shipment of goods from Stratford to Seaforth, a distance of 24 miles, cost 12 cents per 100 lbs., while goods in the same class from Sebringville to Seaforth, a distance shorter by five miles, cost 16 cents per 100 lbs. Both of these shipments were in less than car lots.

In the case of cattle shipment from Hensall the cattle were travelled by road from Hensall to Lucan. Hensall, which is on a branch line, has a rate of 32 cents on export cattle. Lucan, which is on the main line, has a rate of 25 cents. The distance from Hensall to Lucan is 18 miles. By shipping from Lucan instead of from Hensall a saving in freight of 814 per car was effected. While such conditions exist in regard to the relation between rates on branch lines and on the main line the shipper is prevented from taking advantage of the difference in distance in the case of branch lines. From Walkerton to Owen Sound via Harriston is 87 miles. It is only a comparatively short drive across the country from Walkerton to Hanover. Hanover is 45 miles from Owen Sound. However, the rate from Walkerton to Owen Sound via Harriston, and from Honover to Owen Sound on lumber are fixed at the same figure, viz., 28 cents.

Complaint is also made that the lumber rates on non-competitive business in the North-west are excessive as compared with competitive rates. For example, the rate from Rat Portage to Saltcoats, a distance of 394 miles, is 22 cents per cwt. From Birtle to Saltcoats, a distance of 68 miles, a rate of 94 cents is charged. Spruce lumber is cut at Birtle. The statement in rebuttal of this by the C.P.R. is: The rates on lumber from Rat Portage are on a distributing basis, as that is a heavy shipping point with several large mills, while little or no lumber is shipped from Birtle to Saltcoats, the local mileage, therefore, applying. If the same amount of business was offering from Birtle as from Rat Portage, a corresponding tariff would be adopted. There is a small saw-mill at Birtle, but it is a purely local business.

The following tables will serve to indicate on certain commodities the relation between competitive and non-competitive traffic:—

Article.	From—To.	Mileage.	C.L. Rate.	L.C.L. Rate.	
			Cts.	Cts.	
Iron (G. T. R. Commodity Tariff, 1900—G. B. Y. 3).	Toronto-Barrie..	64	12	15	Non-competitive.
	" Windsor.	230	17	21	Competitive.
	London-Seaforth.	57	11	14	Non-competitive.
	" Windsor	110	13	16	Competitive.
	" St. Thomas	59	6	8	"
	Brantford-St. Thomas	58	11	14	Non-competitive.
	Guelph-Fergus.	15	7	9	"
	Toronto-Fergus.	63	11	14	"
	London-Berlin	58	10	13	"
	Guelph "	14	6	8	"
	Brantford-Berlin.	48	9	11	"
	" Drumbo.	16	7	9	"
	Toronto-Drumbo.	83	12	15	Competitive.

Article.	From—To.	Mileage.	C.L. Rate.	L.C.L. Rate.
			Cts.	Cts.
Sugar (Special Freight Tariff, G. T. R., G. B. 6-2 and Supplements).	Toronto-Barrie	64	12	18
	" Windsor	230	12	20
	London-Seaforth	57	12	18
	" Windsor	110	10	14
	" St. Thomas	59	8	10
	Brantford-St. Thomas	58	9	13
	" Fergus	48	11	14
	Toronto "	63	12	15
	London-Berlin	58	11	15
	Toronto "	62	10	13
	Brantford-Berlin	48	10	14
	" Drumbo	16	8	10
	Toronto "	83	12	15

The following tables indicate the relation of through to local rates in some sections of Western Ontario:

Freight tariff on general merchandise from Hamilton and Dundas (G. T. R. G. B. L.-3).

From—To.	Distance.	Class.	Rate.
	Miles.		Cts.
Hamilton-Harrisburg	18	1st	16
" London	76	"	30
" Windsor	186	"	38

Local freight tariff between Owen Sound and stations in western and central districts (G. T. R. No. W. T. 1).

From—To.	Distance.	Class.	Rate.
	Miles.		Cts.
Owen Sound-Toronto	196	1st	34
" Berlin	134	"	32
" Harrison	65	"	24
" Hanover	45	"	20
" Allanford	16	"	14

It is true that shorter distance traffic cannot justifiably expect the same rate per ton per mile as longer distance traffic. It has to be recognized that the terminal charges are a constant in both classes of traffic, while the cost of movement tends to vary inversely as the distance. At the same time in a number of instances the discrepancy between the rates on the two classes of traffic is too great. There is not sufficient correspondence between the distance travelled and the rate, and regulative supervision is necessary.

VI.—AMERICAN RATES AND CANADIAN RATES.

The fact that the shortest rail journey between the north-western and northern central states and the eastern states lies across Canadian territory creates many inter-relationships between the railway systems of Canada and of the United States. From an early date the Canadian railways looked to replenishing their leaner traffic by a share in the carrying trade of the developing west. The bonding system as it exists to-day is one of great convenience to the north-western states. So much is the convenience recognized that an effort to limit the Canadian Pacific from participation in this traffic elicited the marked disapproval of the people of the north-western states.

If the Canadian carriers can in the open field, taking advantage of the geographical position of Canada, divert through American traffic to the Canadian lines, such action is the outcome of free operation of trade and should not rashly be hampered.

But in the moving of the American produce across the peninsula of Ontario there is to be considered not only the movement for export, but also the movement of American goods to points in Canada whereby competition is created for the Canadian producer. If the rates are so arranged as to give an advantage to the American over the Canadian producer, then there is matter for regulation.

The complaints which arise in Ontario as a consequence of the inter-relationships of the railway systems of the two countries fall under the following general headings :—

(*a*) Through rates on American products passing through Canada as compared with through rates on Canadian goods of the same description passing over the same line. This complaint is especially concerned with grain and live stock.

(*b*) Rates on American commodities brought into Canada as compared with rates on Canadian commodities of a like nature.

The complaint with reference to the relation which through rates on American goods bear to those on Canadian goods brings up the question which in one form or another has been intended to be dealt with by the 'long and short haul' clauses of various regulative acts. Where the condition exists that lower rates are charged for the same commodity carried for a longer distance over the same line in the same direction there is a *prima facie* cause for complaint. Where a higher rate is charged for the longer than for the shorter haul, the rate for the shorter distance is at the same time manifestly out of proportion to that charged for the longer haul, there is *prima facie* an injustice. Where the lower rate, whether absolutely or proportionally, is given to the American produce by a Canadian road there appears to be a manifest discrimination against Canadian interests.

Before entering upon the examination of the conditions underlying this condition it has to be recognized that many examples might be cited to show that a seeming discrepancy does exist. A few examples from the testimony and tariffs submitted will serve for the purpose of illustration.

Detroit rates and Chicago rates are throughout on a lower basis than rates in south-western Ontario. Detroit has obtained a rate of 11½c. per 100 pounds on grain, flour and mill products to the seaboard, whereas Canadian millers had to pay 13½c. The latter rate is also the rate which was charged from Chicago, for export, during the summer of 1901. (Michigan Central I.C.C., No. 1,240, effective June 1, 1901.) The export rate on cattle from Chicago to St. John is 28c. (See Grand Trunk Lines West, G.F.D., No. 705, effective August 15, 1901.) The Canadian live stock rates for export may be obtained from Grand Trunk tariff, G.M. 7, effective January 22, 1900. Under this tariff the export rate from group A., which includes Sarnia to St. John, is 25c. In the case of the rates from the territory intermediate between Chicago and Detroit the rates are graded. In the case of the Canadian shipments the groups from which the rates are charged may be divided into two classes, A. to F., concerned with the rates on the main line, and G. to P., concerned with rates on the branch lines, the latter being on a higher basis. From A. to F., or from Sarnia to Dorval, a distance of 496 miles, a uniform rate of 25c. prevails, no gradation whatever being recognized.

As a result of the American rate base being lower, the complaint arising under the several headings has to be faced. Complaint is made that American goods are brought

into Canada at lower rates than are given for the movement of similar Canadian goods.

Examples bearing upon this may be obtained from different sections of Ontario.

The following table gives a comparative statement of the rates from Walkerville and Detroit of the rates on iron valves and hydrants.

Comparative rates quoted on iron valves and hydrants to Canadian points from Detroit, Michigan and Walkerville :

Rates from Detroit, Mich., C.L., L.C.L.			Rates from Walkerville, C.L., L.C.L.		
	Cts.			Cts.	
To London, Ont.....	11	16	To London, Ont.....	18	23
" Toronto "	13	18	" Toronto "	20	30
" Montreal, Que....	23½	31	" Montreal, Que....	25	38
" St. John, N.B....	35½	44	" St. John, N.B....	45	59
" Hamilton, Ont....	13	18	" Hamilton, Ont....	19	29

While the Detroit winter rate on drugs to Montreal is 58½c., the Walkerville winter rate is 70c. The Detroit winter rate on drugs to Toronto is 36c., while the Walkerville winter rate is 40c.

In the shipment of materials used in the manufacture of organs, the materials can be obtained as advantageously from the longer distance American points as from the shorter distance Canadian points. The rate on small turnings from Southampton to Woodstock is 35c., while the same rate is charged from Chicago. Veneer costs from Toronto to Stratford 23c.: the same rate can be obtained from Cincinnati.

A complaint was lodged that the rate on wagon skeins from South Bend, Indiana, to Chatham cost 21 cents per 100 pounds L.C.L. : while from London to Chatham the same skeins cost 22½ cents per 100 pounds L.C.L. The railways state in rebuttal that the actual rate, South Bend to Chatham, after deducting cartage at Chatham, 2½ cents, is 18½ cents. From London to Chatham, after deducting cartage at both shipping point and destination, is 17½ cents. This leaves the net rates 18¼ and 17½ respectively, or a difference of ¾ of a cent per 100 pounds.

The railway position in rebuttal will now be considered. The position of the Grand Trunk with reference to the lower rate base, from Detroit and other points west thereof, is as follows :—'Rates from Detroit and other United States points west thereof are, to points in Canada west of the Niagara frontier, made on the basis of rates to Buffalo by the routes all within the United States territory, and in conformity with the requirements of the interstate commerce law, Buffalo rates are made as a maximum to Hamilton and other points in the direct line to the Niagara frontier. Toronto is conceded the same basis as Hamilton, and that governs the intermediate points to Toronto. Similarly Boston rates are the maximum to Canadian points east of Toronto. The United States territory east of Chicago is much more thickly populated, large towns or cities nearer together than in Canada, a much larger traffic available and carried by the United States railways, and they can therefore afford to haul freight for lower rates than Canadian railways, with a smaller tonnage, can afford to do. The climatic conditions in the winter months are not so severe in the United States as in Canada, and hence the expenses of operating not so great, so that the Canadian railways must of necessity have a higher scale of rates. Canadian shippers want, and are given, as good and often better service than prevails in the United States, and good and efficient service means an expenditure of money.'

Some further points in the rebuttal statements of the railways are essential to the proper understanding of their position. In the case already referred to where a rate proportionally lower, when reduced to a mileage basis, was given on wagon skeins from South Bend to Chatham as compared with a shipment from a nearer Canadian point, attention is drawn to the fact that in the case of this particular commodity the official classification is lower than the Canadian joint freight classification. The Canadian Pacific states in rebuttal of the charge, that higher rates are charged from Canadian manufacturing and shipping points than from competing United States points. 'We

claim that in making a comparison of the rates charged by the American and Canadian railways, due consideration must be given to the fact of the very much larger local traffic carried by the United States railways and to their cheaper cost of operation owing to the lower cost of fuel, material, equipment and supplies in the United States as compared with Canada. The low temperature and heavy falls of snow during the winter, in many parts of Canada, make the cost of transportation during that period of the year very high. The comparison on the part of the Canadian Manufacturers' Association is with railways operating in the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois. Each of the States of New York and Pennsylvania has a population more than equal to that of the entire Dominion of Canada. The present railway rates in the States mentioned have been gradually reduced, as the population increased, and the manufacturing industries multiplied. We submit, therefore, that it is neither fair nor equitable that the present rates charged by the railways in those States should be made a basis of comparison with the rates prevailing in Canada. The conditions in every respect are totally different and to the disadvantage of the Canadian railways as compared with the American lines. The tendency of Canadian rates to-day is steadily downward, while the service and facilities afforded by the railways are as steadily improving. It is neither to the interest of the shipper nor the railway that rates should be on an unremunerative basis. The railway companies ask only a fair return for the capital invested and the service rendered. It is to their interest to foster trade and increase commerce, and as the tonnage enlarges they are enabled to make reductions in the cost of transportation, from which the public derives the benefit.'

Dealing with the specific case of the lower rates given Detroit as compared with Windsor, the following positions are advanced by the railways :

(1) Dealing with the higher grain rate from Ontario points it is stated that the rates from Detroit to the seaboard are based on the rates from Chicago to the seaboard, and when, through the cutting of rates on the part of United States railways, the basis from Detroit is forced below 13½ cents, the Canadian railways adopt 13½ cents as their minimun on both United States and Canadian business as a measure of self protection.

(2) East-bound rates from Detroit under the ruling of the American railways are based on 78 per cent of the Chicago-New York rates which are on a low basis owing to the very large tonnage moved between these cities. The rates, from Detroit to Canadian points, while as high as can be consistently charged by the Canadian railways, are, owing to the difference in the rate basis and classification, in some instances lower than the rates from Windsor.

The low rate between Chicago and New York is undoubtedly attributable to the competing force of water competition. The railways position is, in substance, that this competition is such as to cause them to make rates which would not pay if applied to all of their business. Attention is devoted by the railways to the fact that this business is of advantage in that it adds to the prosperity of the railway, thereby enabling it to lower its rates in regard to local traffic.

The position that the Canadian railways must observe the present condition because of the compelling force of the Interstate Commerce Commission Law, is not final. The evidence shows that in a few instances at least this condition has not been recognized by the American railways. The Père Marquette Railway has quoted Detroit rate to Walkerville Junction and Fargo but would not quote this rate to Windsor. For a short time the Wabash gave Canadian points the advantage of an 11½ cent export rate on grain. The Wabash cut the established rates to get business. This rate was a special rate for export. No tariff was published. An 11 cent rate has been also given for export from Canadian points over the Lake Erie and Detroit and Michigan Central. The tariff will be found in the appendix.

The Lake Erie and Detroit River Railway tariff known as L. E. & D. Ry. I. C. C. No. 131, was issued December 5th, 1899, effective December 12th, 1899. This was a tariff on general merchandise and commodities from stations on the Lake Erie and Detroit River. Supplement No. 1 to this tariff, issued March 16, 1900, effective March 22, 1900, gave a rate of 11½ cents on car lot shipments of grain and flour from stations on the Lake Erie and Detroit River Railway to New York for export. One day later,

on March 23, 1900, supplement No. 2, effective April 2nd, 1900, was issued. This placed the export rate to New York at 13½ cents.

Evidence which it was impossible to corroborate and which I do not therefore regard as conclusive, states that the rate was raised at the instance of the Canadian roads. It is to be noted that no action either formal or informal was taken before the Interstate Commerce Commission or by the Commission as a result of which the increase was made.

In regard to traffic from American points into Canada the position taken by the railways minimizes the importance of such competition. It is considered that the complaint of Windsor with reference to lower rates being granted to Detroit is sentimental, since there is no active competition between Detroit and Windsor. The Canadian Pacific states in its statement in rebuttal, 'Our information goes to show that there is very little competition between Detroit and Windsor as far as actual shipments to Canadian points are concerned. If Detroit and Windsor were in active competition in the manufacture or shipment of any commodity it would be to the interest of Canadian railways to protect Windsor and this would be done.'

The Grand Trunk says, 'The Canadian shipper or manufacturer at Windsor simply locates there in order to avoid the customs tariff he would be subject to if shipments were made from Detroit, and the Canadian railways do not consider the rates Detroit to Windsor can be compared on a mileage basis.'

The claim of the railways that there is no effective competition between American merchants and Canadian merchants in Ontario is too sweeping. The evidence establishes that there is effective competition. Effective competition in hardware has been shown to exist as far east as London. This is attributable not so much to the classification as to the rate basis. General hardware is classed lower under the American Official than under the Canadian Joint Freight classification. At the same time on certain articles the two classifications are on the same footing. The following table will also indicate that on certain articles of general demand the classification is substantially the same :—

Canadian Joint Freight Classification.			American Official Classification.		
Article.	L.C.L.	C.L.		L.C.L.	C.L.
Putty	3	5	.....	4	5
White lead	3	5	.....	3	5
Shot	3	5	.....	3 less 20%	5
Lead pipe	3	5	.....	3	4
Lead	3	5	.....	4	6

On these articles the lower rate basis enables them to displace the goods of Canadian merchants.

On the longer hauls coming in from the United States, the ton mile rates will be lower than in the case of the shorter hauls from Canadian points. But where the Canadian shorter haul is treated entirely as a local haul the ton mile rate will be so high as to offset, when competition arises, the advantage that is given by proximity to the market. In an example given in an earlier connection it is shown that the rate from South Bend to Chatham on wagon skeins is on so low a basis as to practically offset the advantage London possesses from its proximity.

Public policy demands that when a low rate basis is given to American goods which come into competition with Canadian goods there should be regulation to see that the expansion of Canadian trade is not hampered. It should be seen to that Canadian goods are not given such a rate as to offset their geographical advantage.

With reference to the through export rates on American products as compared with those given to Canadian shippers it is manifest that the circumstances, both in regard to volume of traffic and water competition, under which the rates on the former are determined are not identical with those entering into the determination of the rates on the latter. The difference in point of condition will tend to give the American product a lower rate basis ; and the rate charged by the Canadian carrier on American goods carried through Canada for export is the rate determined in the United States. At the

same time it is obviously not in the public interest to allow the railway to determine unchecked what relation the Canadian export rate should have to the American export rates. Under existing conditions of trade the rate basis on American traffic is lower. But the determination of just how much higher the Canadian rates shall be than the American rates should be subject to regulative process.

VII.—MINIMUM WEIGHTS.

In determining the basis of rates on car lots the question of minimum weights is of importance.

The classification provides that in respect of the shipment of certain commodities certain minima shall obtain in connection with the car lot shipments.

A number of complaints to the effect that it was impossible to load up to the established minima were presented. The general live stock minimum is 20,000 pounds. Single deck shipments of hogs are carried on this minimum. Double deck shipments have a minimum of from 25,000 to 30,800, according to the length of the car.

In the United States, in the territory covered by the official classification there is a minimum of 18,000 pounds on single deck shipments of hogs and a minimum of 28,000 on double deck shipments. The average weight of Canadian hogs is much less than that of American hogs. Consequently there is greater difficulty in loading up to the minimum. It was shown that when eighty-nine hogs, weighing 15,815 pounds, were loaded into a car, they were so crowded that within an hour one of them died. On an average about 15,000 pounds can be loaded in summer time while about 16,000 can be loaded in winter time.

In the shipment of cattle there is not so great a disparity between the actual weight of the shipments and the minimum weight. It was shown in one particular case that 19,100 pounds were loaded in. However, on account of shrinkage, the net weight when the port of export was reached was 17,400.

At present trunks, when shipped in common cars thirty-five feet long or under are carried in third class on a minimum of 14,000 pounds. This is especially complained of in the North-west since at the outside about 10,000 pounds can be loaded. In the case of carriage shipments the weight actually loaded is at least one-eighth less than the minimum. Furniture is shipped on a minimum of 16,000 pounds in the case of cars thirty-five feet long, while in furniture or hay cars there is a minimum of 20,000 pounds. Furniture dealers in the North-west find that in order to take advantage of the 16,000 pound minimum they have to ship 'knocked down' the goods being put together at their destination. It is impossible to load in more than 14,000 pounds.

Anomalous conditions exist in regard to the relation between the minimum weights in different classes. For example, the sixth class rate from Chatham to Goderich is 14c. or $28 for a 20,000 pound car; the fourth class rate is 21c. or $29.40 for a 14,000 pound car, *i.e.*, the 14,000 pound car costs $1.40 more than the 20,000 pound car. The explanations given of this condition by the railways are as follows:—

Grand Trunk.—'This comes about by making a special minimum weight on fanning mills, 14,000 pounds, to conform nearly to the actual weight loaded in a car instead of applying the usual machinery minimum of 20,000 pounds. On short distances, it does work out as stated, but on longer distances it works out in the reverse way. However, this is a matter which the classification committee can regulate, and it shall be referred to that body.'

Canadian Pacific.—'A few instances only can be found where this complaint is justifiable. It is only true in the case of short distances where the difference between fourth and sixth class rates is slight. The reverse is the rule on longer distances. The minimum weight on this class of freight is 24,000 pounds. An exception is made in the case of agricultural implements and vehicles, but the classification provides that in case the minimum weight at sixth class shall be lower than the minimum weight at fourth class, the former shall govern. (See pages 13 and 79 in the Canadian Classification).'

The railway position with reference to the question of minimum weights is that the bulky nature of the shipment must also be considered. It will be noticed that the articles to which reference has been made are such as are in proportion to the weight comparatively bulky. It is also stated that the question of minimum weights is not decided by the weight that can be loaded on a car, but what may be considered as fair minimum compared with the capacity of the car, which at the rate indicated in the tariff will give a fair revenue. It is further stated that while a 35 foot car will carry 60,000 pounds weight, when it is loaded with pianos and organs the charge is based on a minimum of 12,000 pounds weight, or a reduction of 80 p. c. in the capacity of the car.

The testimony indicates that there are certain arbitrary features in connection with the question of minimum weights. It also indicates that in various cases the weight actually falls short of the minimum by a considerable margin. The statement quoted from the Grand Trunk's position shows that on one line of shipments the actual weight was at least 6,000 pounds short of the established minimum. The ability to determine the minimum means the power to determine the rate. Where the actual weight falls short of the minimum it means that the rate charged per 100 pounds is in reality higher than the rate contained in the tariff. While no deduction is made where the weight actually loaded falls below the minimum, where there is a surplus over the minimum it is charged.

While recognizing the pertinency of a considerable portion of the arguments advanced by the railways, it does not invalidate the conclusion that the regulation of minima is essential to the proper regulation of rates.

VIII.—REBATES.

Trustworthy information in connection with the question of rebates, is always difficult to obtain. It is natural that the individual, who is obtaining the advantage of the secret rate, should be unwilling to divulge any information concerning it. It is only when there is a dispute between the railway and the favoured shipper, that exact information may be obtained. It has also to be recognized that some of the charges with reference to rebates are the outcome of the fact that an individual when underbid in some enterprise attributes the advantage obtained by his competitor to more advantageous freight rates rather than to a finer shading of profit. Complaints were presented affecting a number of lines of shipments, the principal ones being coal and cattle. The contention was made that American shippers of cattle passing through Canada are given rebates. There was not sufficient evidence of a conclusive nature presented, to uphold this contention. It is alleged by some of the smaller cattle shippers that rebates are granted to many of the larger cattle shippers. These statements rest simply on surmises and inferences. It was shown, however, by the testimony of individuals who had been favoured by rebates, that rebates had been granted. The bills of lading of the individuals so favoured, showed on their faces the same rates as were charged to other shippers. The rebates were paid over in money.

It is shown in evidence that three years ago—no testimony is submitted to show that this condition still continues—Canadian consumers of American corn could have the corn laid down for 810 less per car for freight charges, when orders were placed through large dealers in Canada instead of being made direct by the consumers themselves.

In regard to business on other lines it is asserted, that certain favoured dealers in groceries and in hardware on the Pacific Coast have the advantage of rebates of from 10 p. c. to 15 p. c. It must be stated in this connection that this information comes from representatives of American competing railways.

It has to be recognized that in some cases at least a rebate where granted is granted as a result of the urgency of the shipper. This renders the work of regulation in this regard exceedingly difficult. The provisions of the Railway Act, as it stands at present, with reference to rebates are sufficiently explicit. There is needed, however, a more efficient supervisory control.

IX.—SETTLEMENT OF CLAIMS.

A point of considerable importance to shippers is concerned with the readiness of the railway companies to make good claims attributable to the action of the companies' agents. The conditions under which such claims may arise are too numerous to itemize. To cite but one case, a shipment of whiskey from Walkerville, Ontario, to Kamloops, British Columbia, was charged the intermediate rate, although it happened that the rate to the coast plus the local back was less. Under the rules governing the movement of trans-continental traffic Kamloops was entitled to this lower rate. A claim was put in for a refund of the difference. The claim had to be passed upon in Montreal with the result that some four months elapsed before the refund was made. Complaints with reference to the dilatoriness of the railway companies in the settlement of claims were met in all sections of the country and in all lines of industry. In some cases a period of two years elapsed before the claims were settled by the railways. It will readily appear that the shippers are, under such conditions, subjected to very great inconvenience. In addition there is a loss for pending the refund, the shippers are deprived of the use of a portion of their capital.

X.—CHANGES IN RATES.

The policy of the Railway Act with reference to the regulation of rates proceeds from the fixing of maxima. These maxima are fixed so high that the traffic will not bear them. The class rates enforced by the companies are within these maxima. The fact that the class rates so imposed by the companies are within the limits of the maxima approved by the Governor in Council is considered by the railway companies as an argument in favour of their reasonableness. In many cases the traffic will not stand the established class rates, and concessions have been made by adopting commodity tariffs which take specified commodities out of the official classification. The granting of these commodity rates has not proceeded upon any definite principle. Sometimes they have been granted to meet American competition. In other cases they have been granted because of urgent representations that the traffic will not bear the established class rates. But where such concessions have been made it has required a considerable amount of pressure on the part of the shippers. And the ultimate determination as to whether the rates should or should not be granted has rested with the railway—one of the parties to the rate contract.

Another disadvantage in connection with the existing rate system is that there is no obligation to give notice of change. When notice is given it is given simply as a matter of courtesy. Owing to the lack of notice, changes in rates have in some cases entailed losses upon shippers. The same condition exists in regard to commodity tariffs; the commodity tariff may be rescinded at the discretion of the railway, and the class rate hitherto existing may again be enforced without any notification to the shipper of the intention to make such change. It has also sometimes occurred that through lack of notification, a shipper has shipped his goods at the established class rate, although these goods had been taken out of the class rates and placed in a commodity tariff.

A particular example of the effect of changes in rates is furnished in connection with the question of the difference between summer and winter rates; the latter being on a high basis. The shippers complain that the winter rates are from 20 per cent to 25 per cent higher than the summer rates. There is no rule as to notification of the time when the winter rate goes into force. There is no fixed rule in regard to the time when summer rates are to be replaced by winter rates. Special representation to the railways resulted, in 1899, in the summer rates being kept in force until December 1st of that year. The railway position may be briefly summarized. The winter rates normally go into force about the 15th November and cease about April 1st. While November 15th is taken as the date of the beginning of these rates the actual date depends upon the condition of navigation. The representative of one of the railways states that the agents of his company are instructed to give as much notice as possible with reference to the time when the winter tariff becomes effective. He endeavours to

give the same notice as required under interstate commerce regulations. But sometimes on account of delays in printing a notice, a period of no longer than six or seven days is given.

Another phase of the controversy with reference to the enforcement of the winter rate is concerned with the reasons advanced for the higher rate basis in the winter time. The shippers consider that the difference between summer and winter rates should be done away with. In earlier days when there were no appliances for disposing of snow there was a reason for a difference in rates. Sometimes after the winter rates are enforced there is no snow for a couple of months. It is considered that if winter rates have to be enforced because of the increased cost of operation during the winter months, then the railways would be sufficiently recompensed if the higher rates were charged during the period from January to March. The answer of the railways to this position shows that the increased cost of movement during the winter time is regarded as having a very slight influence on rates. The gist of their position is the reason for the higher basis of rates in winter is the absence of competition. It is true that it is more expensive to handle traffic in winter, but the great point is water competition.

The railway position is that the summer rates are based on St. Lawrence River, Lake Ontario and Lake Erie water competition, the direct boat line rates regulating the maximum which all rail lines can charge during the summer months. The rates so forced upon the railways are frequently not remunerative, but they have to accept them for the time being, or go out of business, which they cannot afford to do. The basis of summer rates is extended to many interior manufacturing points, thus giving them also the benefit of water competition.

The general argument concerning the regulative policy advisable in connection with the question of changes in rates may be developed from this particular case. If the reason for the advance in winter is based on water competition, it is a question of fact, whether all of the goods affected were, during the summer, moved to any appreciable extent by water. The railway may, as to certain traffic, so lower its rates during the summer time, as to prevent the water carrier being an effective competitor. A question of fact would, under such conditions, have to be determined before the general increase on all lines would be justified. If the matter depends upon the increased cost of movement in winter this puts the matter on a different basis. As soon as the proportionate difference in cost of movement was established to the satisfaction of the regulative body, a proportionate increase of rate would be justified.

It is in the interest of the public that all changes in rates should be made subject to a definite requirement as to notice. When the power to change rates is left in the untrammeled and arbitrary discretion of the railway it opens the door for abuses.

XI.—THROUGH RATES.

Difficulties have arisen with reference to through rates from a point on one line of railway to a point on another line of railway. In shipments out of machinery and furniture from Stratford to certain local points on the Canadian Pacific east of Toronto the shipments have had to pay the sum of the locals. A complaint was presented stating that the rates on lumber from Winnipegosis, on the Canadian Northern, to points on the Canadian Pacific west of Gladstone and Portage la Prairie had been increased as follows:—

Portage la Prairie to Sidney	Advance of	6c.	per 100 lbs.
" Carberry	"	6c.	"
Gladstone to Ogden	"	4c.	"
" Shoal Lake	"	7½c.	"

When this matter was brought to the attention of the Canadian Northern and an explanation asked for, it was stated that the advance of rates complained of had taken place; but that this was attributable to the cancellation by the Canadian Pacific of the through rate arrangements hitherto existing. Joint circular C. P. R. No. 1100, issued

January 23, 1901, a copy of which will be found in the appendix, provided that freight traffic interchanged between the Canadian Pacific Railway Company and the Canadian Northern Railway (except from and to points provided with through traffic) would be through-billed between stations named at the through-mileage rates for the distance carried, as shown in tariffs of the Canadian Pacific Railway Company. On July 25, 1901, the C. P. R. cancelled this arrangement. This was done without consultation with the Canadian Northern and without its consent. The producer of spruce lumber at Winnipegosis found that this increase of rate interfered very seriously with his disposing of his lumber in his former markets. He had been carrying on the manufacture at a close margin, which was seriously trenched upon by the increased freight rates.

There should be regulation and effective control of all matters relating to interchange of traffic between railways, as well as with regard to a rate charged from a point on one railway to a point on another railway.

XII.—RATES TO THE NORTH-WEST.

Complaint is made by the fruit shippers of western Ontario that rates on fruit to the North-west are excessive. Especial complaint is made concerning the fact that if fruits taking different classes are included in the same car, the car has to take the rate of the highest class. It is shown in evidence that the fruit shipments from western Ontario to the North-west are in the development stage. If shipments are made at all, they have to be made in car lot shipments since the less than car lot shipments in addition to having a higher rate, are too slow. One difficulty with the arrangement, which charges on the mixed car the rate of the highest classed article in the car, is that it limits the direct trade between western Ontario and North-western points to the distributive centres. Such larger points as Winnipeg and Brandon can take single car lots of one line of fruit, and dispose of them to advantage. It happens, however, at points further west, that while there may be a demand for a car lot of mixed fruits, there is not sufficient demand for a car lot of a single line of fruit. The result is that great difficulty is experienced in making fruit shipments west of Brandon.

The practice followed by the railway is in accordance with the provisions contained in the official classification. It must at the same time be recognized, that the existing arrangement enures to the advantage of the larger and to the disadvantage of the smaller point.

In the interest of developing the trade some concession should be made. If it were allowed to carry a car-lot of mixed fruits, the car-lot rate on each commodity being charged instead of, as at present, charging the rate of the highest classed commodity on all, then the expansion into the western country of the fruit trade of Ontario would be facilitated. It has to be recognized that in the country around Regina, north and west, that the fruit of the state of Washington is obtaining a foothold. The concession outlined would tend to secure a greater share of the business to the Canadian fruit producer.

The concession urged would not be so contrary to the accepted practice of the railway as to be classed as arbitrary. Westbound Special Freight Tariff C. P. No. 563, effective February 15th, 1900, contains the following provision : --

'Groceries classed 5th class and dried fruit classed 4th class in Canadian Joint Freight Classification, where shipped in mixed carloads will take C. L. rate on each commodity at actual weight, subject to minimum weight of 24,000 pounds. If total weight be less than 24,000 pounds, dried fruit will be charged on the basis of 4th class actual weight, groceries 5th class for remainder of weight necessary to make up full minimum weight.'

The lighter traffic to the North-west precludes the acceptance of the same rate base as in the more settled portions of Canada. The long rail haul necessary to place goods in the west makes the freight charge play a very important part in the determination of the price. On shipments of furniture to the North-west the freight charges amount on the average to one-third of the original cost of the goods. In the case of the construc-

tion of flour mills in the west, one-third of the cost of the completed mill is represented by freight charges. The freight charge on soap from Toronto to Edmonton—4th class at $2.07—is $1.65 for an 80-pound-box. The selling price is $3.65 per box. The freight therefore amounts to 44 per cent of the value of the goods. In the case of soap shipments from Toronto to Kamloops the rate is $2.01, this gives a freight charge of $1.61 or nearly 50 per cent of the value of the goods.

As has been stated it cannot be expected that the rates in the West will, for some time, be on identically the same basis as those in the East. But some comparisons of rates throw light on the nature of the charges. For example the 4th class rate from Toronto to Kamloops, a distance of 2,770 miles, is $2.01, from Toronto to Halifax, a distance of 1,170 miles, the rate is 54c. That is while the distance to Kamloops is a little less than 2½ times as great, the rate is 3½ times as great. In view of the fact that the railway has the advantage of the long haul throughout, the disproportion would appear to be too great. The rates into the North-west as they at present exist, interfere with the expansion of the trade of Eastern Canada in the North-west.

A complaint which is contained in the statement of the Winnipeg Board of Trade viz., that the Canadian Pacific discriminates at Fort William against independent lake carriers, is one of long standing. The following extract from the complaint indicates the nature of the grievance complained of :—

'The Government of the Dominion of Canada has made the enlargement of our canals and the deepening of the main water ways a settled policy, this policy having for its object the cheapening of transportation, with a view to the benefit of the whole people. But the Canadian Pacific Railway for some years in defiance of Canadian public policy has enforced and is at present enforcing a system of discrimination by exacting an increased charge for freight on goods consigned to Winnipeg and other points in Manitoba when delivered to it at Fort William by other than certain favored lines of boats. This discrimination, as practised, tends to restrict the amount of vessel tonnage coming to Fort William from Eastern Canada, and besides preventing competition in rates on the Great Lakes in westbound freight, restricts the amount of vessel tonnage eastbound avilable for grain and other produce, and thereby effects the value of the same in the farmers' hands. This Board has on several occasions protested against such discrimination. The following rates actually in force are given to illustrate this injustice :—

RATE—FORT WILLIAM TO WINNIPEG.

Freight from favored lines.

Class.				
1st.	2nd.	3rd.	4th.	5th.
93 cents.	79 cents.	65 cents.	56 cents.	47 cents.

Freight from outside lines.

Class.				
1st.	2nd.	3rd.	4th.	5th.
$1.16	98 cents.	80 cents.	68 cents.	57 cents.'

The history of this condition goes back to 1896. It was in the spring of this year that this policy which amounts to putting on the local rates from Fort William to Winnipeg on all shipments received from independent lines, was enforced. Up to and including the season of 1895 no such distinction was made.

In a letter written on May 4, 1896, by Sir William Van Horne to Mr. E. B. Osler, President of the Board of Trade, Toronto, the text of this letter will be found in the annual report of the Winnipeg Board of Trade for 1897, pp. 44—45, the following explanation of this condition is given : 'I find that taking advantage of the special rates which prevailed from Fort William and Duluth to Winnipeg for lake business,

outide and tramp boats have for the past few years so badly cut into the business that the regular lines have not sufficient business left to support them, and it has become a question of protecting the regular lines running in connection with the Canadian Pacific and Grand Trunk or allowing the regular lines to drop out, leaving the business to the tramp boats and to chance. It should be remembered that the regular boats have to start at the beginning of the season, and make regular trips throughout the season without regard to the ups and downs of the traffic. Consequently, for a considerable part of each season the boats are run at a loss, and if the tramp boats are allowed to come at times when business is good and make such rates as they please, and take the business away from the regular lines, any business man should readily see what the effect must be. The railways interested have found it necessary to take the action complained of by the Winnipeg Board of Trade, in order to keep the regular lines going, and we believe this to be in the public interest, as well as in the interest of the railways.'

The position taken by the Canadian Pacific in rebuttal of the complaint against it, during the recent investigation, is in substance as follows:—

1. The charge that there is discrimination is erroneous. The Canadian Pacific and the Grand Trunk Railways publish certain through rates from Eastern Canada to points in Manitoba and the North-west, which allow the steamship lines up to Fort William, who charge the established rates, a fair basis of divisions. These steamship lines are maintained at large expense for the purpose of giving Manitoba and the North-west a prompt and satisfactory rate service, which is certainly to the interest of the western merchant.

2. Complaint that the action of the company restricts the amount of vessel tonnage eastbound available for grain and other produce is incorrect. The vessels that go to Fort William require grain cargo, and what little westbound merchandise they might bring would not in any way affect the situation. The large cargo carriers going to Fort William will not carry merchandise, as the delay in handling that class of freight would more than offset the revenue received. These vessels are grain carriers only, many of them American bottoms, which cannot carry freight from Eastern Canada to Fort William, and would not desire or care for what little merchandise might be available.

3. Statement that this arrangement prevents competition in rates on westbound goods is incorrect. The arrangement as to rates via Fort William, while it insures stability of rates and prompt and efficient service, does not cost the Manitoba merchant once cent extra and does not debar a single vessel from going to Fort William. As a matter of fact, the rates on the basis of $1.16 first class, which are mentioned, have not been charged on a single pound of freight from Fort William for several years.

The practice complained of is also made use of by the Grand Trunk on shipments via Owen Sound to Sault Ste. Marie. Shipments from local points via Owen Sound are not given a through rate when they are to be carried by independent lines. They are charged the local rate to Owen Sound.

The lowest rate, as established in evidence, quoted by independent lake carriers to Fort William is 15 cents. This does not, however, establish a grievance. On shipments from Fort William to Winnipeg the local rate of $1.16 first-class is charged, when these are brought to Fort William by independent carriers. When the rate of 15 cents is charged to Fort William it would be available to points in Western Ontario which are touched by water competition. On this basis their goods could be placed in Winnipeg at $1.31 first-class. The lake and rail rate first-class to Winnipeg is $1.43. As long then as the established through lake and rail rate is maintained, and the local rates from Fort William are retained unchanged, then any cut in lake rates which would bring the joint rate below $1.43 would be open to the Winnipeg merchants. It cannot be argued that the lake and rail rates should be changed to meet every change in the lake rate. This would be justifiable if the lake rates themselves, as distinct from the lake and rail rates, were subject to the regulation of Parliament. But as the law stands, this is not the case. If the lake and rail rate had to adapt itself to every change in the lake rate, it would upset the regulative process and interfere with stability of rates. At the same time it must be remembered that while a cut on lake rates, which might be of short duration, would not serve as a reason for the immediate reduction of the lake and rail

rates, yet a continued low basis of lake rates would be one reason, which, under the powers given by the Railway Act to regulate freight shipments carried on a through rate partly by rail and partly by water, would lead to a revision of the through rate. In doing this all the circumstances of the case would have to be considered.

XIII—COMPLAINTS IN CONNECTION WITH TRANSCONTINENTAL TRAFFIC.

In the movement of traffic from eastern Canada or from Europe to British Columbia the influence of ocean transportation as well as of the alternative service offered by the American railway enters. Both of these factors are urged as reasons for some apparently anomalous conditions which exist in connection with this traffic.

The complaints which were presented under this heading are of two classes, (*a.*) the question of the rates charged to interior points as compared with the rates to the Pacific Coast, (*b.*) higher charges on goods to British Columbia coast points than to adjacent United States points.

RATES TO BRITISH COLUMBIA INTERIOR POINTS.

The substance of the complaint made by the interior towns in British Columbia is that on the shipments of goods they receive from the east the rate to the interior point is made up of the rate to the coast plus the local rate back to the interior point. The complaint with reference to the existing rate arrangement on transcontinental traffic is strongly urged by the town of Kamloops. The position occupied by Kamloops is also that of other interior towns.

A quotation from the explanatory statement submitted in rebuttal by the Canadian Pacific will serve to indicate the railway position with reference to the basis of the existing rate arrangement. 'The basis of rates from the east to the coast is lower than the basis to Kamloops, from the fact that coast rates are based on water competition via the Isthmus or Cape Horn from the eastern seaboard. If the Canadian Pacific were to withdraw from the coast trade Kamloops would, in no way, be benefitted, but in fact suffer a distinct loss by the reason of the impossibility of maintaining as satisfactory and efficient service if bebarred from the haulage of though traffic.'

The tariff of the Transcontinental Freight Bureau, arrived at by agreement of the railways concerned in the movement of transcontinental traffic contains the general regulations with reference to this species of traffic. It distinguishes between 'terminal' and 'intermediate' points. The latter are defined as points located on roads mentioned in the tariff, and on the direct line over which traffic passes in reaching any of the 'terminal' points indicated in the tariff. The following extract from the tariff indicates the arrangement whereby the rate basis to the intermediate points is obtained—'When the "terminal" class or "terminal" commodity rates..... plus the local rates from the nearest "Pacific Coast Terminal" are less than the "intermediate" class or "intermediate" commodity rates..... the sum of the "terminal" class or "terminal" commodity rates and the local rates from the nearest "Pacific Coast Terminal" will govern as the through rate.' (See I. C. C., No. 142, No. 1—D., effective January 18, 1900, p. 1.)

The position of the merchants of Kamloops is in substance that it is unjust to charge a higher rate to this shorter distance point than to Vancouver, as was stated in evidence, Kamloops does not want to pay more than Vancouver. It would be perfectly willing to pay as much but not more. The complaint was put on the ground that it was a simple demand for justice in a business like way.

It will be noticed, under the ruling quoted from the tariff, that as regards part of the rate the 'intermediate' point obtains the advantage of the coast rate to meet ocean competition. Ocean competition is effective on many lines of shipments to the coast and

if the railway is to obtain traffic the rates fixed by ocean carriers will have to be met. The railway will have to accept on these goods rates so low that they would not yield a sufficient profit if applied on all the business of the railway. It is physically impossible to regulate the rates of the ocean carriers. To require the railways to maintain rates proportioned to distance on coast shipments, where these have to be taken in competition with ocean carriers, would mean that the railway would be cut out of the traffic entirely.

The contention of Kamloops that it should in general obtain the same level of rates as is granted to coast points is not sustained. Where there is an entire dissimilarity of circumstances the difference in rates cannot be construed as a discrimination.

But while in general the rates to the coast are affected by water competition, it does not follow that it applies on all lines of shipments. The tariffs on transcontinental shipments are based on the assumed operation of ocean competition in regard to all lines of shipments. It is admitted by the Canadian Pacific that there are no doubt many cases where shippers would not send by water no matter what the water rates were. It is contended, however, that in making up the tariff these conditions cannot be taken into consideration. There has to be a public tariff made up on the basis of water competition. It is admitted that in many cases on account of time, shippers do not move the goods by water.

In the case of the shipments by water, there is the question of the time taken up in the transportation, and the interest on the capital locked up in the shipments, as well as the cost of insurance. All these tend on certain lines to give the railways an advantage in competition. I should at the same time mention that I am informed by the railways that at times the ocean freights are on so low a level as to warrant the shipper sending the goods earlier, so as to take advantage of the ocean rate. The Canadian Pacific has to face this in connection with the question of certain shipments from the Eastern States to China. While it takes a longer time to ship by way of the Suez Canal, the lower ocean freights attract goods that way. While I recognize the value of this contention I am of opinion that it is mainly on the larger shipments that time is a more negligible quantity.

To quote the decision of the Interstate Commerce Commission in the Spokane Falls case :—The Merchants' Union of Spokane Falls *vs.* Northern Pacific Railroad Company and the Union Pacific Railway Company, there should be, in order to justify the railway in disregarding the element of distance in fixing its rate to the seaboard, 'competition of controlling force, and in respect to traffic important in amount, of water-carriers reaching the same terminals.' Consideration should also be devoted to the question whether the railway has by its own act cut off the efficiency of water competition.

Where the water competition is not of 'controlling force and in respect to traffic important in amount,' or where the railway by its own act or by its superior facilities has precluded the effective competition of the water carrier, there is no justification for disregarding the element of distance in determining the rate.

There yet remains the question of the charging of the local rate back to the 'intermediate' point. It is stated in evidence by the Canadian Pacific that the extent of territory eastward, to which the systems of charging the rate to the coast plus the local back extends, terminates about Kamloops. Mr. Bosworth in his testimony stated that he had never known the practice to apply east of Kamloops. The extent of the territory depends on how low the rate is from the seaboard to the interior points. If the rate was very low to the interior it would work back further east.

The application of the full local back to Kamloops makes a very heavy pressure on the goods. In one instance on a shipment of earthenware the charges from England to Vancouver were $25.62, while from Vancouver to Kamloops they were $16.86.

I am of opinion that there should, in the rate to Kamloops, be some reduction from the full local rate.

While it is contrary to the regulations in regard to the movement of transcontinental traffic to charge a rate higher than the coast rate plus the local, Kamloops has in some instances been charged rates higher than the rates to the coast plus the rate back. I inclose in the appendix to the report, bills of lading containing the particulars.

HIGHER CHARGES TO BRITISH COLUMBIA POINTS THAN TO ADJACENT UNITED STATES POINTS.

Under the regulations of the Transcontinental Freight Tariff (p. 3) it is stated that 'Traffic destined to the following points in British Columbia, viz., Ladner's Landing, Nanaimo, New Westminster, Vancouver and Victoria, will be subject to the rates applicable to Seattle, Washington, as provided in this tariff plus an arbitrary of 5 cents per hundred pounds.' Objection is made to this arrangement on the ground that it entails an extra freight charge of $15 on a 30,000 pound-car. It is stated by the Canadian Pacific in rebuttal: 'We submit the fact that the volume of traffic to the United States Pacific coast points is very much greater than to British Columbia coast points, and the cost of transportation is considerably less owing to the fact that the American lines have easier grades and a lower cost of operating. The net revenue to the Canadian Pacific on the slightly higher rates to British Columbia points is considerably less than the American roads receive on the lower rates.' It is also stated that it costs more to haul to Vancouver than to Seattle.

The Canadian Pacific has, as to a number of articles removed this arbitrary. The following table submitted by the Canadian Pacific, compares the rates on certain articles to Vancouver and to Seattle :—

MEMO. COMMODITY RATES, CARLOADS.

	From Eastern Canada to			From Chicago to	
	Vancouver.	Seattle.		Vancouver.	Seattle.
	$	$		$	$
Beans in bags	0 70	0 70	Beer	1 00	1 00
Canned Goods	1 00	1 00	P. H. Products	1 70	1 70
Stoves	1 15	1 25	Butter, eggs, cheese	2 00	2 00
Butter, eggs, cheese, poultry, pork, mutton	2 00	2 15	Apples and cider	1 30	1 30
Ale, beer and cider	1 10	1 10	Fresh Fruits	1 55	1 55
Evaporated apples	1 03	1 13	Mineral water	0 55	0 55
Whiskey, in wood	0 95	1 05	H. H. Goods	1 12½	1 12½
Iron, steel, nails, horse shoes, pipe	0 70	0 70	Furniture	1 25	1 25
Biscuits, confectionery	1 89	1 99	Cereals	0 80	0 80
			Oils	0 78½	0 78½

It is further stated by the Canadian Pacific that the only business in which there is competition between the Canadian and the American merchants, is in the Yukon trade, and the rates charged by the Canadian Pacific railway to Vancouver and Victoria on this particular traffic are exactly the same as charged by the American lines to Seattle, so that the merchants in these cities are on an exact parity.

It is argued that the merchants in the British Columbia Coast points do not come into competition with the Seattle merchant, because the duty is sufficient to protect the former, and that therefore the 5c. arbitrary does not hurt them.

I am of opinion that the evidence submitted does not justify the British Columbia coast rates being placed on a higher level, by the 5c arbitrary, than the Seattle rates. If the determining element in the tarfff to the Coast is water competition then, in view of the fact that the distance by water between Seattle and Victoria is so slight, there would appear to be, in virtue of the position advanced by the railway, no justification for putting the British Columbia rate on a higher level.

The following complaint was submitted by the New Westminster Board of Trade 'The particular grievance that the New Westminster Board of Trade desires to call

your attention to, will be found upon p. 99 of the Transcontinental Freight Association Tariff, dated January 18, 1900. There you will find :—

'*Division A.*

CLASS.						
1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
20 cts.	18 cts.	15 cts.	13 cts.	10 cts.	8 cts.	8 cts.

Division B.

CLASS.						
1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
30 cts.	26 cts.	20 cts.	18 cts.	15 cts.	13 cts	13 cts.

These you will notice are arbitraries charged upon Canadian freight.'

Division A, includes Montreal ; Division B, includes Halifax.

Under the arrangement of this tariff these arbitraries are to be added, on shipments from points in eastern Canada to North Pacific Coast terminals, to the rates from Chicago and common points, in order to obtain the through rate. This covers British Columbia points since they take the Seattle rates plus the 5 cent arbitrary.

The Canadian Pacific statement in rebuttal says, 'The arbitraries it should be explained are added to the rates from Chicago to the coast, and actually represent the difference in distance between Chicago and the Pacific coast, as compared in Division A with Montreal an additional distance of 700 miles and Halifax in the case of Division B, an additional distance of 1,500 miles. It cannot be considered that the arbitraries as stated represent a high cost of transportation for the mileage given.'

The justification for the arbitraries is based by the railway on the difference in mileage.

In the tariff (North Pacific coast lines), territory No. 5 covers Pittsburg, Buffalo and common points. Territory No. 6 covers New York and common points, these rates applying to Boston and New England. (For details see pp, 7—8 of Tariff of Transcontinental Bureau). These two 'territories' cover the same general section of territory in the United States as is included in the adjacent territory in Canada covered by divisions A and B.

In the case of these territories there is no difference made in the rate on account of the added distance from Chicago. With only a few exceptions the commodity rates in the territory from Chicago and eastward on shipments to the Pacific Coast terminals are covered by a blanket rate. The class rate in the territory from Chicago and eastward on shipments to Pacific Coast terminals are also covered by a blanket rate.

The difference in rates as between the shipments from points in eastern Canada to British Columbia, and the shipments from the Eastern States to Pacific Coast terminals, is attributable not to a difference in the length of the haul but to the enforcing, with the consent of the Transcontinental Freight Bureau, of a higher rate basis.

XIV.—REGULATION OF RATES.

In the regulation of rates an attempt should be made to obtain stability and certainty. With this end in view, all changes in rate, either increases or decreases, should be made subject to the assent of the body organized to supervise the regulation of railways. The policy pursued by the state railway commissions of the 'strong' type in the United States has been, to draw up tables of maximum rates, which may be revised from time to time. In England, in recent years, the railways have been required to submit revised schedules of maximum rates. The system of revision through maximum rates has a number of difficulties attached to it. While the compact territory of such a State as Iowa or Illinois presents a similarity of transportation problems,

which lends itself with fair facility to a policy of regulation through maximum rates; in Canada the conditions are different. Any attempt on the part of any regulative body to draw up tables of maximum rates applicable to the diverse conditions of a country occupying such a geographical extent would be doomed to failure. The policy adopted in Canada has been a policy of regulation through maxima, these maxima being submitted in the first instance by the railways. A difficulty in connection with such a system has been that the maxima have been fixed sufficiently high to allow a wide margin. The maxima have been fixed so high that the traffic will not bear them, and in consequence the rates actually charged have been within these maxima. The fact that the maxima have been approved by the Governor in Council, although the approval has been, in the necessity of the case, in most cases *pro forma*, and that the rates actually charged have been within these maxima, has been advanced by the companies as an argument in favour of the reasonableness of the rates charged. But the reasonableness of a rate depends upon the circumstances under which it is charged, and will vary as the conditions vary. It is well nigh impossible, therefore, for any body in drawing up or accepting a general table of maximum rates to say before complaint has arisen, whether these maxima are reasonable or not, and any argument in favor of the reasonableness of the rates charged within these limits is also subject to the same criticism. Under the system which has existed the railway companies have claimed the right to change the rates with or without notice. This is clearly not in the interest of the people. In general the body interested with the regulative power should give up reliance upon maxima, and should desire the company to file with it the rate actually to be charged in respect of the traffic denominated. The same formalities in respect of publication might attach as at present, and if any preliminary objections should be presented to any phase of the tariff, these might be considered. But in the great majority of cases these rates would be subject to revision only when it appeared in the cause of a complaint, that rectification of some grievance was required. By this procedure the regulative body would be enabled to focus its attention upon a special case.

The objection to this arrangement of rate regulation, namely, that it would not be sufficiently elastic to permit the railways to obtain competitive traffic, where the conditions change rapidly, has to be considered. As has already been stated stability and security of rates is essential. All changes should be made subject to the approval of the regulative body. The requirement that the railway should file the rate actually to be charged and not deviate from this unless authorized or required by the regulative body so to do, would work no hardship in regard to non-competitive traffic. In regard to competitive traffic there would be an opportunity for this to work a hardship. But this would be avoided by requiring in such a case, that the tariff should be filed and provided that it would thereafter be immediately effective, and that the rate so fixed might be changed as often as was desired by filing new rate sheets, each of which would be effective as soon as filed. The regulative body would have reserved to it a supervisory power in regard to all rates charged under such rate sheets. Every such rate charged would be subject to the revision of the commission. In this way the elasticity of procedure necessary, would be obtained, while at the same time the supervisory power of the Commission would be maintained.

XV.—THE RAILWAY COMMITTEE.

The culmination of the movement which led to the handing over of all the regulative features of the Railway Act to the control of the Railway Committee was attributable to the fact that it had been recognized that a large body, whose duties were political, was unfitted to deal with matters which were essentially administrative. Now, the body to which the exercise of this control has been handed over, is also political in organization and thus again the question of duality of function is brought up. The political duties of the Cabinet Ministers are too engrossing to permit of devoting themselves to all the intricate details of the transportation problem. When the Royal Commission recom-

mended the placing of the regulative powers in the hands of the Railway Committee, it recognized that there were grave difficulties in the way. To quote the words of the report—'At the same time the Commission admits that serious objection may be taken to the selection of the Railway Committee of the Privy Council as the general railway tribuna . The members cannot leave their duties at Ottawa, and must therefore delegate to subordinates much very important work. * * * They hold their office on a political tenure, and are liable to sudden change, whereby the value of their experience is lost. They can scarcely be regarded by the public as absolutely removed from personal or political bias as independent members of a permanent tribunal. They cannot possibly give their exclusive attention to their railway duties, and in taking upon themselves the duties which would necessarily devolve upon them, they would in fact be performing judicial functions * * * .' The argument contained in this quotation is as pertinent to-day.

As the Railway Committee is organized to-day, there is a lack of technical qualifications of fitness. While the Railway Act associates with the Minister of Railways and Canals certain members of the Cabinet, it will of necessity happen, that on matters of technical detail the Minister will be the only one fitted to pronounce. In strictness the Minister of Railways and Canals is the Railway Committee and the regulative policy pursued will vary as his interest in the matter of railway regulation varies. When a Minister of Railways and Canals is chosen, he does not necessarily come to the Cabinet as a man technically qualified on railway matters. In the administration of the affairs of this department, the duties are so multifarious that even when technical knowledge is acquired there is but little time to devote to the details of regulation. Coupled with this is the fact that, the exigencies of politics do not always permit of those who have acquired technical knowledge of railway affairs, in the administration of the department, continuing in such a position. In the matter of railway regulation there is a tradition, as well as a continuity of policy which is essential. While the Royal Commission did not provide the machinery to enforce its view, it was of the opinion that a body concerned with matters of regulation should be so organized as to permit of the sessions being held at different points. As the committee is organized to-day it is necessary for all complaints to be dealt with in Ottawa, and the expense and delay contingent on this method of procedure tend to defeat the remedy. Where an organization is concerned with the enforcement of a regulative policy in a stretch of country extending from the Atlantic to the Pacific it is necessary that provision should be made for sessions being held in the different provinces. But the political organization of the committee prevents such an arrangement.

The defects in the committee as regards the question of railway regulation may be summed up as follows :—

(1.) It has a dual function—political and administrative.

(2.) There is not continuity of tenure.

(3.) There is a lack of technical training for the work.

(4.) The lack of migratory organization renders it impossible to deal effectively with smaller complaints.

(5.) The distance to be travelled by the complainants makes the expense great.

The fact that it was deemed expedient to take the work of regulation out of the hands of parliament and place it in the hands of a smaller body showed an appreciation of the necessity of a unified and coherent policy. The review just given indicates the difficulties in the way of this being obtained in the work of the railway committee. All experience points to the advantage of the work of regulation being in the hands of a body sufficiently large to insure a deliberative procedure ; sufficiently small to insure rapidity of action. And experience further points to the conclusion that it is unwise to confuse political and administrative duties.

XVI.—RAILWAY COMMISSION IN CANADA.

The work of railway regulation is concerned with administrative not political problems, and should be placed in the hands of a body specially organized for the purpose, and independent of political conditions.

In committing the work of regulation to a body especially organized for this purpose, Canada has the advantage of having the experience of England and the United States to draw upon. When the Canadian Royal Commission made the recommendations which resulted in the regulative machinery of the Railway Act, as it now stands, the railway rate regulation policy both in England and the United States was in a transitory condition. The commission regulation provided for by the English Act was amended by the act of 1888. The legislation, under which the Interstate Commerce Commission operates, had just become effective. While the Royal Commission thought that both of these ventures were too much in the experiment stage to warrant the provisions in either case being applied to the conditions existing in Canada, a sufficient period has since elapsed, to bring out in clear relief, not only the results but also the defects in connection with commission legislation. It has been made clear, and no sane advocate of commission regulation ever held otherwise, that the commissions have not been able to bring about absolutely satisfactory conditions between the railways and the shippers. A rate which will be absolutely satisfactory to both shipper and railway exists nowhere short of Utopia. Railway rates are based on compromises. There have also been various matters which the commissions have been unable to settle. But what has been gained is, that there is an effective regulation which does not permit the determination of the rate and of matters pertaining to it, to be wholly in the hands of one party to the rate contract. Conditions are undoubtedly better in England and in the United States than they were before the commission regulation was adopted.

In applying the principle of commission regulation in Canada, cognizance must also be taken of the defects manifested in the operation of the legislation both in England and in the United States. The consideration of these defects will show a number of pit-falls which the Canadian legislation should avoid.

The especial difficulties which the Commission have met, in so far as these are the outcome of defects, in the legislation, are, (*a*) lack of clear-cut statement, (*b*) question of relation to the courts, (*c*) qualifications for office, (*d*) tenure of office. Dealing with these matters in their order the essential points may be summarized. The details have been indicated in an earlier report presented by me to the department.

Lack of Clear-cut Statement.—In both England and the United States legislation, sufficient care was not taken in granting powers to define them with exactness. For example, in the Act to Regulate Commerce provision is made that rates were to be reasonable. When the commission came to the actual enforcement of this provision it found that the position taken by the courts was that the only amendatory power possessed by the Commission related to past rates not to future rates. The consequence of this is, that the decision of the Commission in regard to a particular rate does not establish any rule of action binding in future upon the carrier against whom the decision is given. It will readily appear that this tends to defeat the remedy intended to be given under the provisions of the act. In England the difficulty has been that archaic provisions of the English railway law are in conflict with the provisions in regard to rates contained in the laws conferring regulative powers upon the Commission. For example, under the earlier theory of the railway law, which still has force, the railways occupied a position analogous to that of canals. They might engage in the transportation business themselves, or they might allow others to use the tracks on due payment of certain tolls. This opened a wide way of evasion. If the rectification of a grievance was desired, the railway, by claiming that it was not transporting goods but simply rendering the services of its tracks in return for the payment of tolls, might bring such pressure to bear on the individual desiring to have goods transported, since the majority of individuals desiring transportation do not possess cars and engines, that he would find the payment of the obnoxious rate the lesser evil. This was helped on by a technical defect in the phrasing of the act of 1888. Section 24, which makes provision for the submitting by the rail-

way of a revised schedule of its rates to the Board of Trade, makes no mention of the word 'tolls.' The Board of Trade took the position that it had no control over tolls; and so the railways in taking the attitude, above outlined, were strictly within their legal rights.

Question of Relation to the Courts.—The example cited in the preceding section with reference to the powers of the Interstate Commerce Commission in regard to 'reasonable rates' indicates that the powers of the commission in this regard have been subject to judicial construction. Many other examples might be cited to illustrate the fact, that the powers conferred upon the commission have been lessened by decisions of the federal courts. To cite but one point which goes to the bottom of the jurisdiction of the Commission, the Commission, if its decisions are not acted upon, has to institute proceedings in the federal courts to have its decisions enforced. The enabling act provides that in such proceedings the findings of the Commission are to be *prima facie* evidence. In many cases the courts have proceeded *de novo*. As a result of this the defendants have often shown but scant courtesy to the process of the Commission; instead of submitting all their evidence before the Commission, they have waited until the matter has come up before the courts. When the offending carrier introduces some evidence before the Commission, it is often the custom to introduce much additional evidence before the courts. Under such a condition the efficiency of the remedy provided by the Commerce Act is practically abolished. If the Commission gave a decision, the responsibility of instituting suit before the courts to inforce it will, under existing circumstances, fall upon the Commission. There is no finality until the court of last resort is reached. Under such conditions when a case is taken to the courts, a period of from three to four years will elapse between the initial decision of the Commission and the final decision by the courts. In one case a period of seven years elapsed before the decision was given by the supreme court. In the case of the English railway commission the process has not been so dilatory. The same difficulty has, however, existed. While the Commission has final power in regard to questions of fact it may be required to 'state a case' which will be taken up on appeal to the higher courts. While it is essential that arbitrary action should be provided against, it is at the same time manifest, that long delays consequent upon judicial interposition defeats the remedy.

Whenever the courts have taken up the question of railway rate regulations on appeal from the Commission, they have dealt with the matter from the standpoint of technical legal interpretation. In matters of railway regulation questions of policy are involved, but of these the courts have for the most part been oblivious. In Canada, however, this difficulty will not exist. At present the decisions of the Railway Committee are subject, on appeal, to the final action of the Governor in Council. This gives sufficient appeal and at the same time prevents the matter being looked at from a purely legal standpoint.

Qualifications for Office.—The legislation under which the Interstate Commerce Commission is organized, does not specify any requirements in respect of technical qualifications. The result has been that the personel of the Commission has been predominatingly legal. This is an essential defect in the organization of the Commission. While questions of legal interpretation arise, the matters to be determined require technical knowledge of railway administration. The courts under the common law have power to deal with matters pertaining to common carriers. But it is just because the courts fail in practical knowledge of railway administration, and at the same time attempts to deal with the problem on technical lines of legal procedure, that the remedy is not sufficient. The record of the way in which the federal courts in the United States have dealt with the matters which have come up on appeal from the Interstate Commerce Commission, indicates the inability of the courts to deal with the matter of railway regulation. The same objection attaches to any tribunal whose personnel does not include technical knowledge of railway administration. The work of the Interstate Commerce Commission has undoubtedly suffered from this defect. The English legislation dealing with railway regulation has provided against such a defect. The legislation of 1873 provides that of the three assistant commissioners one should 'be of experience in the law and one of experience in railway business.' The Act of 1888

provides that of the two appointed commissioners one should be of experience in railway business.

Tenure of Office.—The provisions in regard to the tenure of office in the United States legislation are very defective. The obtaining of the knowledge requisite to deal with the thousand and one problems presented, is, even with previous qualifications, a work of time. The Commission must, of necessity, have a tradition of its own. And to obtain this a much longer term than six years is requisite. It is true that a member may be reappointed; but, owing to the fact that the organization of the Commission is to be partisan, it being required that no more than three members shall belong to the same political party, there is manifestly, under the changing conditions of politics, an obstacle in the way of reappointment. The argument for the lengthening of the term is further strengthened by the fact, that the shorter the term, the larger the salary that must be paid to attract a sufficiently high type of ability. In 1899 one of the members of the Interstate Commerce Commission resigned because the salary received, $7,500 per annum, was much less than he could make in the private practice of law. It is reported that at present negotiations are under way as a result of which the present chairman of the Interstate Commerce Commission will be offered a railway position paying twice the salary he at present receives. In the case of the English legislation the appointed commissioners hold 'during pleasure.' The experience of both England and the United States points to the conclusion, that the most efficient work would be obtained from the Commission if the members were appointed on the same tenure as the judges. A life tenure would mean a continuity of regulative tradition. It would also mean that the dignity and security attaching to the life tenure would permit the commission to obtain a high order of ability, which could be obtained only in the case of the shorter tenure by the payment of a salary much higher than Canada could afford to give.

Summarizing the foregoing discussion the following conclusions applicable to conditions in Canada would appear:

(1.) There must be great care in the definition of the powers conferred upon the Commission.

(2.) The matters to be dealt with are concerned with administration and policy, rather than formal judicial procedure.

(3.) Subject to an appeal to the Governor in Council the decision of the Commission should be final.

(4.) There should be requirements in regard to technical qualifications for office, one commissioner should be skilled in law and one in railway business.

(5.) The commissioners should hold office on the same tenure as the judges.

One part of the argument made by the Royal Commission in favour of putting the regulative provisions of the Railway Act under the control of the railway committee was concerned with the question of responsibility to Parliament. To quote the words of the reports, 'the political constitution of Canada recognizes direct ministerial responsibility to Parliament much more than in the United States, and therefore as a railway tribunal is necessarily tentative it seems.....undesirable to remove its operation to its inception beyond the direct criticism and control of Parliament.' The caution here expressed is essential. Ministerial responsibility to Parliament must be recognized. In the Commission legislation of England, this is provided for by giving the Board of Trade a supervisory control in regard to the Commission. If in Canada the decisions of the Commission may be reviewed by the Governor in Council either on appeal or of his own motion, ample provision will be made to safeguard the principle of responsibility.

While the provisions of the legislation organizing the Commission would necessarily give it compelling power, yet the experience of England and of the United States leads to the conclusion that in the solution of its details it will increasingly occupy the position of either a mediator or of an arbitrator. Many matters somewhat trivial in themselves may in default of rectification become serious grievances. Troubles may arise from misapprehension. In the working of the Illinois Commission it has been found in recent years that the commission has in many cases been able to enforce the power of its

enabling act, without having recourse to formal procedure. During the year 1900, while the Interstate Commerce Commission dealt with formal proceedings in twenty cases, it dealt with informal complaints in 619 cases.

With the progress of settlement in Canada the problem of transportation will become of continually increasing importance, and there must be a consecutive policy; Canada is today in the early stage of its transportation development. It has an opportunity to lay down broad lines of policy. To the Commission could be entrusted the regulative features of the Railway Act as well as the duty of seeing that the provisions of the legislation, general and special, under which the railways operate are obeyed. In the performance of these duties, and because of its continuity of office and policy, the Commission would be able to form wider views in regard to railway policy. The experience and knowledge of the Commission would continually be available to the Minister of Railways and Canals and to Parliament. The Commission would be a permanent advisory body.

While the argument for a commission has been made on the ground that it will make for bettered conditions, it must at the same time be borne in mind that no species of regulation can remove all the complaints that have arisen. Some of them are the outcome of economic forces which are superior to legislative enactment. But it should not be argued on this account, that there exists a general reason for exemption from regulation. The grounds upon which governmental regulation of railways is based, are too well established to require argument. The Commission regulation will create a process more readily responsive to the difficulties which arise, and at the same time will insure a more efficient and supervisory control. The regulation will be in the interest not only of the shipper, but also of the railway. Equipped with an efficient and commanding personnel, the Commission will stand as an arbiter. It will have responsibilities to both parties. A policy which obtains low rates at the expense of depreciated securities and passed dividends, is as detrimental to a country as a policy which permits high rates to be charged with a view to earning dividends on an inflated capitalization.

I have the honour to be, sir,
Your obedient servant,

S. J. McLEAN.

January 17, 1902.