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THE RAILWAY PROBLEM

WITH MANY ILLUSTRATIVE DIAGRAMS

BY

A. B. STICKNEY

ST. PAUL, MINN.
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PREFACE.

In the report to Congress, the Senate select committee which reported the act commonly known as the Interstate Commerce Law says that the testimony taken, the statements received, and the interest everywhere manifested in its investigations have "convinced the committee that no general question of governmental policy occupies at this time so prominent a place in the thoughts of the people as that of controlling the steady growth and extending influence of corporate power, and of regulating its relations to the public; and as no corporations are more conspicuously before the public eye, and as there are none whose operations so directly affect every citizen in the daily pursuits of his business or avocation as the corporations engaged in transportation, they naturally receive the most consideration in this connection."

Recognizing the truthfulness of the committee's statement, the author has ventured to prepare this volume as his contribution towards the solution of the problem. The arguments and opinions are pre-

sented, without pretensions, for what they are worth. Let the public read, judge, and criticise them. No claim is made for this book on account of literary excellence.

THE AUTHOR.

February, 1891.

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THE RAILWAY PROBLEM.

CHAPTER I.

INTRODUCTORY STATEMENTS.

MUCH has been written about that class of legislation which seeks in a measure to control the traffic of railways, commonly known as the "Granger laws."

As to the utility of these laws, or the correctness of the principles upon which they are based, there seems to be a wide divergence of opinion, apparently occasioned by the two widely differing points of view of the writers, — one class considering such laws as little less than confiscation of property, while the other regards them as just and necessary measures of self-protection. In the heat of the discussion, the advocates seem to think their opponents are so selfish as to be unable to see the rights of others; while those who oppose the laws regard the advocates of the new legislation as little less than freebooters, and the legislators who enact them as demagogues.

At times the discussion has waxed so hot that both parties may fairly be accused of having allowed their passions to gain the ascendency over that quality, well-nigh universal among men, which is termed "fair-mindedness." Much of this acrimony, no doubt, is

due to an imperfect understanding of the facts. Most of the men who denounce legislators enacting such laws as demagogues and scoundrels are undoubtedly convinced that they are; and this probably would be a just verdict if the laws were, in fact, as wrong in principle or in substance as they think them, or if such legislators were actuated by the motives they assign to them. On the other hand, the "Granger," who denounces the "Monopolists" in such unmeasured terms, is also usually honest in his convictions; and if the men he terms "Monopolists" were as guilty of selfishness and greed as he believes them to be, they would justly deserve all his anathemas.

In order to understand the laws, it is not sufficient to study their text alone, but the evils which they were intended to remedy must be studied, and as far as possible comprehended. This at once opens up a wide range of inquiry. The conditions, legislative and other, under which the railways have been constructed, the personnel of the builders and subsequent managements, the character of the services performed by the railways and their methods, as well as the business pursuits of the communities served by the railways and the methods of doing such business, must be considered. To cover so wide a range, and at the same time keep within a readable space, will necessitate avoiding, as far as may be, the details. In developing the subject, it will be impossible for the writer always to speak with approval, either of the methods of construction and operation of the railways, or of the business or legislative methods of the people; but as far as he has ability it is the intention to treat everybody fairly, and while criticising what he regards as bad methods or wrong

acts, at the same time to present the conditions which at the time seemed to justify such methods and acts. Admitting in advance his own errors in respect to matters which he may criticise on the part of railway constructors and operators, he will feel at liberty to speak of such acts with more frankness than would otherwise seem courteous.

In the preface to his "History of the Dutch Republic," Mr. Motley says: "When an unknown writer asks the attention of the public upon an important theme, he is not only authorized, but *required*, to show that by industry and earnestness he has entitled himself to a hearing."

In obedience to this requirement, the writer is led to make the following somewhat personal statements: In 1861 he commenced his business career, when quite a young man, as an attorney at law, in Minnesota, one of the so-called "Granger States," where he has ever since resided. At that date there was not a mile of railway in the State, the nearest railway station being La Crosse, Wisconsin.

In 1871 he first became interested in the construction and operation of railways, with which he has been chiefly occupied since that date. His experience has been in the legal, the construction, the operating, and the financial departments. He participated in the discussions and events which culminated in the first Granger legislative enactments of Minnesota and Wisconsin, and in all the subsequent enactments of Minnesota, and latterly of Iowa. He has been an interested student of the judicial inquiries which have grown out of this class of legislation. At the time of writing, his principal business is the management of a railway, and about one half of his moderate for-

tune is invested in railways. On the other hand, while for twenty years his chief occupation has been in connection with railways, yet there has been no time during these years that he has not been financially interested in the ordinary business of the locality in which he has lived, and devoted to it more or less attention. Thus he has been interested in farming on a somewhat large scale, in manufacturing, in banking, and in real estate, about the same proportion of his fortune being so invested as in railways.

Recognizing the fact that men's judgments, in spite of their best efforts to the contrary, are usually biased by their interests, the writer makes these personal statements with great diffidence, in order that those who read what he is about to say upon the subject under consideration may have the means at hand to judge for themselves the probable bias of his mind. He would also comply with the duty laid down by Mr. Motley, and show the grounds which should entitle him to a hearing. He can further state that he is unconscious of any existing bias, or of any other desire than to present fully and fairly, as he understands them, all the material facts bearing upon the controversy, and to draw such conclusions as these facts may justify.

During the twenty years since the passage of the first Granger law in Minnesota, his sense of justice has often been outraged by what appeared to him at the time, and still appears, as the arbitrary and selfish actions of railway constructors and managers, and, on the other hand, by the time-serving policy of legislatures and both State and National Commissioners; and yet at no time, after the heat of debate has subsided, has it been hard, if not to excuse, at least

to find much in the inherent difficulties of the surrounding conditions to palliate these actions.

During these years he has not been in full accord with the prevailing opinions in railway circles, in regard either to the scope and effect of the laws, or to the intentions or motives on the part of the people which induced the laws. The railways have demanded more from the people than they ought; on the other hand, the people have expected more from the railways than, under the circumstances, they should have done, and more than, in the nature of things, it was possible for them to accomplish. That a few essentially corrupt men have secured election to the halls of legislation cannot be denied, but that the people of the Western States, or any appreciable part of them, are thus corrupt, or would desire, if they could, to confiscate the property invested in railways, is denied. It must be admitted, however, that they belong to a sturdy race, descendants from a long line of sturdy ancestors who have dared to defend their rights. These rights, among which is that to own individual property and receive its proper income, must not be ignored by railway companies.

It will not be difficult, when the conditions existing at the beginning of these Granger agitations come to be examined, to see that railway traffic was then being conducted in such a manner as to destroy a portion of the value of the property of large numbers of individuals, and the whole value of the property of certain other classes. Startling as the bald statement must naturally be, these conditions were then admitted to exist, and continue now, to a more limited extent. By the people who suffer from dis-

criminations they are regarded as the wanton acts of railway officials; by the railway managers they are regarded as unavoidable, under the present circumstances.

In other words, rates between points which are usually termed competitive are so low that the railway managers fully realize that to reduce all rates to the same level would result in speedy bankruptcy for the railways; while, on the other hand, the sufferers from unequal rates point to these low competitive rates, and cannot understand why, if the railways can afford to carry that traffic at the low rates, they cannot carry non-competitive traffic at correspondingly low rates. This discrimination in the matter of rates between different localities and individuals is the point of greatest friction. While it is confessedly building up certain localities and making certain rich men richer, it is slowly and surely sapping the foundations of the prosperity of both the great masses of the people and the railway companies. The object of all Granger laws has been to prevent discriminations by making all rates equal or proportionate, rather than to reduce the amounts to be collected by the railways. As soon as they came to realize by sad experience the enormous power which discrimination in the matter of rates conferred upon the managers of railways (who after all are but human), in respect to the private business of individuals, it could not be expected that a free people would tamely submit to it. This unrestricted power to discriminate in the matter of rates, lodged in the hands of one man, the manager of say five thousand miles of railway; the power, through malice, ignorance, or stupidity, to decree which out of say a thousand cities and

villages located on his lines should prosper, and which should not; which individuals out of say ten thousand merchants doing business in those cities and villages should make a profit or a loss, — and if it suited the autocrat's whim, the same man might be in favor one year and under ban the next, — such enormous power over the fortunes of so many should never be lodged in the hands of any human being; and yet, strange to say, at the beginning of the agitation many of the best men engaged in railway management insisted that to deprive them of this autocratic power was tantamount to confiscation of the property which they were managing.

At the proper place in the development of the subject, the arguments put forth in support of this theory will be presented, and they will be found, while not conclusive, to be at least plausible. At the proper time, it will be interesting and germane to the subject to inquire into the significance of the rates commonly called competitive, and see if the word descriptive of such rates is not a misnomer, and whether such rates, instead of being conducive to, are not destructive of, all fair competition. The subject also presents many other questions of interest, which will be brought out in their natural sequence in considering the history of the railway business, its relations to the communities, and the conflicts of opinion and interests resulting in the Granger laws.

CHAPTER II.

ERA OF CONSTRUCTION.

THE history of railway construction in one Western State is substantially its history in all the others; hence it will suffice to trace this history in Minnesota only. It is coeval with the settlement of the State, although there was no railway actually completed till 1862 (and then only about twenty miles), while there was a population in 1850 of 6,077, which had increased in 1860 to 172,123. The first step of construction is always legislative.

Minnesota was created a Territory in 1849, and among the acts of its first legislative assembly was the granting of charters to railway companies, which was followed at subsequent sessions by laws intended to induce the building of railways.

In 1856 Congress granted to the Territory large tracts of land to aid in building railways, which were immediately parceled out by the legislature to four or five companies. It should be borne in mind that the population of the Territory at this time (1856) had increased to probably 150,000. It was composed largely of young men, from twenty-one to twenty-five years of age, whose principal occupation was starting "wildcat" banks, dealing in lands and town lots. The future looked bright to men of a speculative turn of mind and in the vigor of youth. The construction of railways, in their imaginations at least, meant al-

most untold wealth, by reason of the increased value of their "city lots."

Is it wonderful that they were impatient of delays, or that no price seemed too dear to pay for immediate results? These were the first railway builders of Minnesota. They had charters. They had thousands of acres of land donated for the purpose by the nation. They had youth, health, and hopefulness. With these assets, but with no money and little experience, they commenced negotiations for the necessary capital. The other parties to the negotiation were men of more mature years and commercial experience. To them the situation was not so assuring.

At that time, whether or not the soil and climate of Minnesota were such as would return sufficient rewards for husbandry was a problem. It had not been proven. Her forests were known to contain valuable pine timber, but the Mississippi River could transport that to the limited markets cheaper than railways. The prospects of traffic, from a population of only a few thousand young men engaged for the most part in purely speculative occupations, were not promising. Under these circumstances, the offer of six sections of land, of unknown value, to each mile of railway was not sufficient to tempt capital. The cool-headed men of experience, in addition to the charters and the land, demanded the loan of $5,000,000 of bonds to be issued by the State. These terms being acceded to, work was commenced. A few miles of road were graded, but, owing to a financial panic which intervened, none were completed. Before the crash the State had turned over about $3,000,000 of its bonds, and these were gone beyond recall. The

grants of lands by Congress had been made conditional on completed road, so it was beyond the power of the youthful State to give an absolute title; otherwise it is quite probable the lands would have gone with the bonds.

This brings us down to the year 1858–59. During the next two years the State, by legal proceeding, recovered possession of the portions of partially graded roadbeds and the lands, and again farmed them out for construction purposes, in most cases to the same men as before. In the mean time great financial distress had come upon the State. In 1857 the bubble of town-lot speculation burst. Many of the inhabitants who could command sufficient means left the State, and the necessities of those remaining compelled them to go into legitimate business. Some went to the country, opened farms, and cultivated them with success, thus demonstrating, what had before been only a theory, that the soil of Minnesota was productive, and therefore valuable.

But the people were poor. Wheat was worth forty cents a bushel. What little currency they had was derisively termed "shin plasters," being paper issues, utterly worthless outside the State. Between their necessities, on the one side, and their sanguine expectations from the railways, on the other, it is not surprising that the people were ready to agree to everything required to hasten construction.

Notwithstanding the value of the land grant had now been demonstrated, and by law (1857) exempted from taxation, capital still demanded more. Finally (1866) Congress granted four additional sections of land to the mile. But yet more was demanded. The Constitution must be amended so as to secure the im-

munity of these lands from taxation. The concession was made (1871).

Congress granted free right of way through the public lands. Then said Capital, "Congress has granted millions of acres of swamp lands to the State for internal improvements. What internal improvements are more useful than railways? Give us these swamp lands." They were given. "Individuals must donate the right of way through their private lands; we must have station grounds in the towns, and grounds for shops, etc., free," continued Capital. If the citizens demurred, they were threatened with change of location to such a distance from the existing towns as to destroy them, and build up rivals on the prairie; and in case of refusal this threat was ruthlessly carried into execution. It is needless to say that few had the temerity to refuse.

By this time the power of the railway constructor had become almost autocratic. He demanded that towns and counties should vote bonds, and, under the pressure of the same kind of threats as have been mentioned, the bonds were authorized by the legislature and voted by the people. But it should be stated that other means than threats were employed to produce these results. A paid "lobby" attended every session of the legislature. Judges of all grades, from the supreme to justices of the peace, the executive officers of the State, the members of the legislature, the county, city, and town officials, the "striker" at caucuses, and the "pot-house" politicians had free passes. Caucuses were "packed," and laborers in construction gangs were compelled to vote as their "bosses" directed, at least once, at each election. The answer of the French half-breed member of an

early legislature, who shook his head at the tempting offer of $100,000 in railway stock, but at the same time said, "Give me instead ten dollars in cash," has become memorable. Thus early was the corrupting influence of money used to sap the foundations of public morality.

There was another tremendous power at the command of the railways, perhaps more influential because more occult than any that has been mentioned. It reached a class that could not be influenced by open threat or secret bribe. It was in their power to discriminate in respect to rates. Who can say how many business men, knowing the power of these companies in this respect, and realizing their own helplessness in such an issue, preferred to make a virtue of their necessities by admitting, coward-like, in advance that every proposition was just, and met the approval of their judgments? There is, perhaps, no power so influential to control the minds of men as a secret terror.

It is a pleasure to turn from this side of the hideous picture to seek for a brighter. It may be said that the railway managers of those days were men of personal integrity. In their personal affairs they were whole-souled and generous. They were men of fine physique, large brain, and tremendous force and energy. Had they lived two hundred years before, they would have become kings and dukes. At the head of their clans, with the battle-axe or broadsword, they would have led to victory or death. No sentimental nonsense about the rights of others, the value of human life, or the sorrows of widows and orphans would have blocked their way. They were cast in that imperious mould which brooked no opposition.

It may be truthfully said that, in the early part of this period, it was a matter of grave doubt whether railways in this section would be profitable, and prudent men might well demand ample security before venturing upon such doubtful enterprises. In this view, it would seem that no particular fault should be found with the railway managements, until the period when the people ceased to accede to their demands from a sense of fairness, and it became necessary for the former to resort to paid lobbyists and other forms of pressure which have been mentioned.

In regard to the later exactions, such as immunity from taxation of land, bonuses, bonds, donations of right of way, station, and other grounds, it may be said that of necessity construction work was commenced without enough capital to complete it. The results of the first years of operation of uncompleted lines were not such in respect to profits as to induce the investment of additional capital. As a matter of fact, they were unprofitable. These conditions presented to the builders the alternative of indefinitely suspending construction, or securing additional advantages and immunities which should, in part at least, make up for their losses of operation.

To have suspended work would have been tantamount to bankruptcy for the railway companies, and to little less for the community. Looking at the whole subject from the standpoint of to-day, and considering the splendid results which have followed, it is beyond doubt that the people, although paying more than they expected at the outset, did not give more than they could afford for the railways. Why, then, was it necessary to resort to the methods which have been described, to secure the consent of the people to

these additional considerations? Was it necessary? Who can say but other and better methods would have been equally successful?

At the close of the year 1867 there were four hundred and eighty-two miles of completed railway in the State. The four original land-grant companies were well under way, and, to use a homely phrase, they had "gone through" the State, and had secured and appropriated every resource it possessed which could be made available for railway construction. They had, as has been stated, secured from the legislature a contract forever exempting their lands from taxation, which was soon to be confirmed by the people by an amendment to the Constitution. They had invented, or at any rate introduced, the pernicious principle of allowing cities, towns, and counties to issue bonus bonds to aid the construction of railways. They had discovered that the power they possessed of varying the location of their lines, their stations, and their workshops was sufficient to extort money, right of way, and lands from individuals, and to bring "to their senses," as they termed it, any disgruntled board of supervisors or legislative members who might have the temerity to oppose any pet scheme, and there was no hesitation in using this power. They had learned how to pack caucuses and control local elections. They had established a lobby termed the "Third House," under their pay and control, and which, for the time being, appeared to be all-powerful in legislation.

Both of the great political parties recognized their strength and courted their support. Their own employees were then loyal. They considered the interest of their employers their interest, and they

followed their foremen wherever they chose to lead. The managing officers were now potentates, — "railroad magnates," "railroad kings." They traveled in state, surrounded by their personal staff, the heads of the different departments, who were almost as important personages as their chiefs. When they visited a town on their lines, the principal business men rushed to greet them. The fat of the land was at their disposal. Merchants sent baskets of champagne to the heads of the traffic departments and sealskin jackets to their wives, while on the other hand special rates were liberally bestowed upon favorites. Special clerks were required to be wholly employed in issuing free passes. Judges and juries seemed to have a perceptible bias in their favor, the brightest attorneys were retained, and minor officials were glad to grant them favors. The country press was subsidized with passes for editors, their families and their friends.

A distinguished Englishman, the author of "The American Commonwealth," describing the palmy days of the dynasties, says: "These railway kings are among the greatest men, perhaps I may say are the greatest men, in America. They have wealth, else they could not hold the position. They have fame, for every one has heard of their achievements; every newspaper chronicles their movements. They have power, more power — that is, more opportunity of making their personal will prevail — than perhaps any one in political life, except the President and the Speaker, who after all hold theirs only for four years and two years, while the railroad monarch may keep his for life. When the master of one of the greatest Western lines travels towards the Pacific on his palace car, his journey is like a royal progress.

Governors of States and Territories bow before him; legislatures receive him in solemn session; cities and towns seek to propitiate him, for has he not the means of making or marring a city's fortunes?"

Such was the beginning of the dynasties of absolutism in the management of Western railways (under the conditions of modern civilization the public highways of the land), which have since afflicted the business of the country, and are now, by both a reflex and direct influence, crushing the business of the railway companies as well, and gradually reducing these noble properties to the verge of bankruptcy. Conceived in the womb of usurpation, nurtured by the power of might, these dynasties take no note of the progress of the world of thought or of changed conditions, but, like their Bourbon prototypes, they neither move forward nor backward, they neither learn nor forget. Almost a generation ago, the best thought of the country was convinced that the railway companies were quasi-public corporations, owing certain duties and amenable to the laws. The highest courts of the country have sustained this view, and still, with an obstinacy worthy of Philip the Second, they bid defiance to the laws and public opinion, and, as a consequence, the properties they control are being ground to powder between the upper millstone of the laws and the nether millstone of their fatuity and duplicity.

These dynasties possess now but a shadow of their former grandeur. When they travel through their own domain, what merchants so poor as to do them homage as in days of yore? Their freight agents, instead of being petted by the principals, and their princely favors propitiated by presents of wines, are

now happy if they may be permitted to enter the counting-room for the purpose of humbly soliciting traffic, and are quite willing to come in at the back door to negotiate with the shipping clerks. The sealskin jacket business has been reversed, and these garments are now supplied from the treasuries of the railway companies to the wives of clerks in mercantile houses, whose husbands happen to be in the possession of the opportunity, surreptitiously or otherwise, of routing freight.

In politics they have fallen from their former dictatorial estate to a cipher, if not to a minus quantity. The chiefs long ago forfeited the confidence of their employees, which was the bulwark of their political power. To such an extent has this gone that if they appear to favor any particular men or measures, these are at once regarded with suspicion by the employees; so that now the dynasties, instead of being courted, are shunned by political parties and their candidates. Indeed, to the politician's ken, there seems to be written over the entrance to the palaces of these former magnates the terrible words inscribed over the entrance to Dante's Inferno, "Who enters here, leaves hope behind."

Thus in twenty years have the mighty fallen from a position of power and influence never achieved by any other class in America to an estate so low, though still clutching the semblance of their former greatness. The humiliating knowledge is ever with them that the only vestige of former power they still possess, either for good or evil, is the ability to "cut rates," and thereby deplete the treasuries of their companies.

CHAPTER III.

METHOD OF RAILWAY MANAGEMENT.

By the close of the year 1867 the great companies west of Chicago had progressed so far in their construction that the completion of the lines they had then marked out was assured. Two of these companies substantially controlled the lines of transportation in a portion of Illinois, all of Wisconsin and Minnesota, and the northern part of Iowa; three others, the remainder of Iowa, Missouri, and also a portion of Illinois. Each company was ostensibly managed by a board of directors, but, so far as their operation and the various and intimate relations to the business of the sections they served were concerned, they were really controlled by one man, called in most cases a general manager, who had in respect to these matters autocratic authority. It was about this time that there commenced among the people a discussion of the principles which should govern the management and operations of railways and their relations to the people, which a few years later culminated in the passage of the first of the so-called "Granger laws." In order to ascertain the essence of these laws, it will be necessary fully to comprehend the issues between the two parties, namely, the companies on the one side, and the people on the other.

In this controversy, it was the contention of the companies that they were private corporations, own-

ing their railways in the same sense that a private trading corporation might own a stock of merchandise, and "that the right of a company owning a road to fix its rate of charges was an attribute of ownership;" that transportation by a railway was essentially an article of merchandise, owned by the company owning the railway, and therefore the company could sell it at any price it might see fit or could obtain, or it could give it away, or refuse to sell it.

Many, and perhaps most, of the charters under which the roads were built provided that "the board of directors should have the right to regulate their tolls," and that the company should have the right "to demand and receive such sum or sums of money, for freight of persons or property, as they should from time to time think reasonable."

Construing these charter provisions as a contract with the State, the companies at first denied that they were common carriers, or subject to the duties and restrictions imposed upon such carriers by the common law. Acting upon these premises, and, as they supposed, in the interests of their companies, the managers claimed the right to charge such rates for transporting both persons and property as they deemed for the best interests of their respective companies, regardless of their reasonableness or equality. They claimed and exercised the right to grant monopolies in business to favored individuals and firms, — for example, one man or firm would be granted the exclusive privilege of buying all the wheat or corn, or selling all the fuel, wood and coal; and by the exercise of their power to discriminate in regard to rates and accommodations, they were enabled to enforce these grants of exclusive privileges with a certainty never before pertaining to such grants.

They assumed the right to dictate to the communities in what market town they should sell their produce and buy their supplies. Thus, a community located forty miles distant from St. Paul, and four hundred miles distant from Chicago, was compelled to trade in Chicago, so as to give the railway the "long haul;" and in order to enforce this dictation they did not hesitate to make the rates for forty miles as much as, or more than, for four hundred.

They believed they had the right so to make their schedule of rates as to determine which of the villages on their line should become centres of trade beyond their local territory.

They also varied their schedules in such a way that they discriminated in regard to rates between individual merchants, manufacturers, miners, and other business men so as practically to determine which should become prosperous and wealthy, and which should not. This class of discrimination was all the more pernicious because done in secret.

If the premises laid down by the companies as to their ownership and their charter contracts with the State were correct, it would be difficult to controvert these claims of their managers, provided always they were exercised in good faith for the best interest of the companies. It must be admitted that in most of the cases the managers acted in good faith, although with better faith than judgment; for, generally speaking, they thought they were serving not only their companies, but the people as well.

Take, for example, the monopoly to buy wheat. It must be remembered that when these railways were constructed the country was sparsely settled. The farmers, being recent immigrants and poor, were

without the means to build granaries to store their wheat on the farms. Hence it was necessary either that the companies should have cars and power enough to move the whole crop practically as fast as it was threshed, — an impossibility, — or that storage elevators should be built at each station, and buyers should always be there to purchase wheat as fast as it was brought in; so that the wheat, thus bought, might be stored in these elevators, till it could be carried to market in a reasonable way, with such motive power and cars as the companies had at their command.

To build these elevators required a large amount of capital, and the companies were then as poor as the people. Having no money to invest, they were compelled to seek individuals with capital to build the elevators.

So far, this action seemed to be clearly in the interest of both parties. But before individuals would put their money into such elevators, naturally enough they required some guarantee that they should be able to make a profit out of their investments. There were two principal points of possible loss against which these investors demanded indemnity: —

First. Probably in a very short time the farmers would be able to build granaries on the farms, and thus require no storage at the stations; hence a buyer at any given station, with only a few hundred dollars' investment in a small warehouse, would be as well equipped for the business as the owner of an elevator which cost several thousand dollars.

Second. The market price is continually fluctuating a few cents per bushel, so that a buyer storing wheat until the time came that the railway could

move it to market might be a loser, owing to the decrease of the market price during the lapse of time between purchase and sale.

To secure the erection of these elevators, which at the time seemed so important for the interests of both the companies and the people, but which in a very short time proved otherwise, the companies agreed to assume both of these risks: sometimes by agreeing to collect for the owner of the elevator a certain toll upon every bushel of wheat shipped at that station, even though it did not go through the elevator at all; and sometimes by agreeing to pay a rebate on all his shipments, which would be sufficient to protect him against all fluctuations in the market, and also would prevent any other buyer doing business at his station except at a loss. In order to pay such rebates and still get a fair price for hauling, it is evident that the companies had to make the open rates, which were free to all, unreasonably high.

The managers probably made two mistakes in relation to these contracts, — they overestimated the importance of expensive elevators, and they paid too big a price for them, had they proved as important as they supposed. And yet, had these contracts, before being executed, been submitted to the judgment of the farmers interested, it cannot be doubted that they would have fully approved of them. These contracts, having been executed, were obligatory upon the companies; but, notwithstanding that the first contracts have expired by their own limitations, it must be admitted that substantially the same arrangements have been continued, in spite of all laws which have been passed forbidding them, for no other purpose than to furnish a means of "cutting" the

published tariff rates to secure business as against rival lines.

The monopoly for the purchase of farm products necessarily affected the farmers most directly, and at times has had a tendency to lessen the prices of the products of the farm, and has therefore excited the farmer's hostility against railways. The monopoly in the sale of fuel has been felt most by the citizens of the larger towns and cities, as at times it has had the effect to increase the cost of this article of universal consumption. The discrimination as between localities has borne heavily upon all classes in the towns and villages discriminated against; and so, when these matters became a subject of general discussion, all classes, from their personal interests, were found arrayed against the companies. And yet, if time and space permitted, it could be shown that, at the time these different principles were adopted, they appeared equally beneficial to the people and the companies, but in their working out they have proved disastrous to both. The grantees of these monopolies became rich, and gradually so powerful that instead of acting, as at first, as the quasi-employees of the companies, receiving rebates as a favor, they are now the masters of the railways, and by playing one against the other are enabled practically to dictate the rates they pay.

The most conspicuous illustration is the present position of the four great Chicago firms engaged in slaughtering and marketing beef. Their present business was built up by rebates paid by the trunk lines, and each began as a sort of protégé of one of the railways. Now, with their immense business, by combining and throwing the bulk of it to one line,

they have become dictators of rates to all the great railway corporations. These firms care but little what rates they pay, provided they are less than are granted to other shippers, so that they may continue to maintain their present practical monopoly.

The uprising of the people of the Western States, which is now being considered, was not against the aggregate amount of the rates which were being collected by the railways, but against the discriminations they were practicing in collecting their revenues. This fact should be thoroughly mastered by every mind which desires to comprehend the meaning of the so-called Granger legislation.

That it is a fact will be sufficiently proved by reference to the laws which have been passed establishing rates. The average legal rate has not, with possibly one exception, been as low as the average rate made by the companies themselves at the time such law was enacted. This must have been well understood by the legislature, and therefore was not accidental, but may be accepted as evidence of a desire to do substantial justice to the companies.

The people at first had no well-defined ideas as to their legal rights, and indeed their first attempt at counteracting the methods of the companies was not by direct legislation, but by building, or by encouraging others to build, competing lines. They had noticed that the very low rates were between competitive points like St. Paul and Chicago; and the extremely high rates were between points like Pumpkinville and Chicago, when there was no competitive line reaching from Pumpkinville to Chicago. They had also noticed that as soon as another and competitive line had been built to Pumpkinville the rates

there immediately dropped one half, or down to the level of the St. Paul rates. They had noticed that the manager of each of the different companies seemed most delighted when, no matter at what cost, his company could secure some traffic which, if left to its natural course, would have gone to the rival line.

Taking advantage of these conditions, every ambitious town located on one line began to offer inducements, by the way of "local aid bonds" and otherwise, to the rival company to build a branch line to that town, and thus, at great expense to the town and to both of the companies, secure the benefits pertaining to a "competitive point."

The building of such a branch line did not, as a rule, materially increase the traffic at the point of competition. The new line "divided the business," —that is, took about half the traffic from the original line at such point, while the rates per ton were reduced by both companies one half or more. This was one of the curious phenomena of the times.

The manager of the original line at Pumpkinville, so long as his was the only road there and commanded the entire traffic, assured its citizens that by no possible means could his company afford to reduce the rates at that town to the level of the St. Paul rates; but as soon as the branch line was completed he seemed only too happy to get half the traffic at half his former rates, besides greatly improving his service, and thereby largely increasing the cost. But this method of relief was so expensive to the people that only a few of the more important towns were able to succeed, and the general situation continued as bad or even worse than before. The discriminations of which the people justly complained, instead

of being ameliorated by this process, seemed to be increased and made more noticeable by multiplication of competitive points.

Gradually the public mind began to turn for relief towards legislation, and now, although about twenty years have elapsed since the first Granger law was enacted, it seems to be regarded as the most available and the most effective remedy.

Public opinion did not at once concentrate upon this subject. The property rights of the companies and "the right of a company owning a road to fix its rates of charges being an attribute of ownership," were a stumbling-block to many minds. Had the managers at that time shown even a slight disposition to conciliate, and to correct some of the more glaring discriminations, it is probable that this legislation would have been delayed. But they manifested no such disposition. The discontent of the people increased, and finally it broke forth with all the fury of a cyclone. Nothing could stand before it. Those politicians who, on account of free passes and other considerations, had always stood by the companies blanched before the storm, and so great was the excitement that the governor of a State, as a bid for votes, in a public speech from the stump, felt compelled to declare that his party, if successful, would "shake the railways over hell."

When the chief official of a State felt justified in using such extreme language, it is not easy to imagine the intense feeling of the populace.

CHAPTER IV.

EFFECTS OF DISCRIMINATION.

Lest those who are not fully informed should come to the conclusion that too much importance has been given to the power of railway magnates, and too much stress has been put upon the mischievous effects of discrimination in the matter of railway rates upon the business of a country, upon the prosperity of its citizens, and upon the values of its property, and in order more fully to present the issues which are being considered, it is necessary to elaborate, somewhat in detail, the facts bearing thereon, and to point out, at least in part, the method of operation.

Discriminations in rates may be defined as demanding and collecting from the residents of one locality materially higher rates than at the same time are charged the residents of another locality for substantially the same service, or from one individual or firm more than from another individual or firm in the same locality.

For example, if a railway company should demand for hauling any given quantity of freight one hundred miles the same price as for hauling a like quantity and kind one hundred and five miles, the difference is so small that it would not be material; but if it should charge as much, or more, for hauling such quantity one hundred miles as, at the same time and under similar conditions, it charged for hauling the

same quantity twice the distance over the same line, the difference would become material,—especially if the charge for the shorter haul were twice as much as for the longer haul, as has frequently been the case. This would be termed discrimination as between localities. And if it should charge more for hauling say ten carloads of iron from Chicago to St. Paul for one merchant than it charged at the same time for hauling the same quantity between the same points for another merchant, it would be termed discrimination between individuals.

"Competition in trade" is a phrase which has a peculiar charm in the ears of a commercial people. It implies freedom of thought and action, and a fair chance. For generations the children at school have been taught that "competition is the life of trade," and so it is as between individuals on approximately even footing. It sharpens the wits, awakens inventive genius, and stimulates good manners. But that competition which is "the life of trade" can exist only between parties occupying substantially the same plane. It cannot exist between "big fish" and "little fish" in the same pool. The "little fish" must keep close to shore and be contented with what the "big fish" do not want, or be swallowed.

The practice by railway companies of making unreasonably low rates from important junction points, while maintaining high rates elsewhere, has been improperly named "competition," and the name has given it a certain amount of popularity. But in fact it has not been "competition," but "discrimination." Discrimination, instead of being "the life of trade," is the death of that fair competition as between individuals and localities which so long and so justly has been called "the life of trade."

The city in whose favor discrimination is practiced becomes the "big fish," and at once begins the process of "swallowing" the trade and population of its unfortunate neighboring cities; and the individual tradesman who receives rebates quickly devours those who do not. It is the same as though the government should make rebates from its tariffs to some importing houses which it refused to make to others. It would be absurd to suppose that between such favored houses and houses not so favored there could be any competition. If houses which paid the full tariff continued to exist, it would be by permission of the favorites; their existence would be by grace, not by good works.

To judge correctly of the effect of discrimination requires the possession of certain commercial information. For example, it should be known that when corn is worth twenty-five cents per bushel in the Chicago market, at the railway station west of the Missouri River it would be worth from twelve to fifteen cents; the difference between its value in the far West and in Chicago being made up of cost of transportation, the expenses of buying and selling, and a profit for the middleman. A clean profit over all expenses of one half of a cent per bushel is a satisfactory profit to the middleman, and a guaranteed rate of transportation of even so small a sum as one quarter of a cent per bushel less than any other middleman can get will give the man possessing it a monopoly of the business of handling the corn in the district covered by the guarantee. That is to say, if it were possible to give one middleman the permanent advantage, in respect to rates, over all others in this business, to the extent of one quarter of a cent per

bushel, it would be a weapon of warfare sufficiently powerful, under present commercial conditions, to drive every other middleman out of the field, and to secure to the fortunate individual the whole corn traffic. Why? Because a clean profit of one quarter of a cent per bushel would be sufficient to pay an enormous interest on the necessary capital of the middleman; and it is evident that if he contented himself with that profit, no other man could get any profit at all. Such are the facilities of trade by means of bills of lading, drafts, telegraphs, banks, etc., that to do an enormous corn trade the middleman requires only a comparatively small capital to use as a margin. A capital of $50,000 is ample thus to handle 15,000,000 bushels, and with activity double that amount, per annum. One quarter of a cent per bushel profit on 15,000,000 bushels would amount to $37,500, which is equal to seventy-five per cent per annum of the capital employed. As a matter of fact, such an arrangement to the extent of one thirty-second of a cent per bushel in the hands of a Rockefeller would accumulate in a short time the wealth of a Vanderbilt, because it would create a monopoly. And if all competition were out of the field, he might not be contented with one thirty-second; he would then have the power to exact more.

So in the coal trade: fifteen cents per ton is a satisfactory miner's profit, and a permanently guaranteed discrimination in his favor in rates of five cents per ton would be sufficient, in the hands of a competent man, to create a monopoly, and drive all other miners out of the business.

A like profit, from the same source, of five cents per barrel on flour would pay the shareholders in

one of the great milling corporations at Minneapolis satisfactory dividends, and give it a monopoly if it cared to increase its plant sufficiently.

With these facts fresh in mind, who is willing to say that the power to discriminate in freight rates ought to be lodged in the control of one man or a few men? Under such conditions what business is safe? The average business man feels strong enough and acute enough to cope with his competitors on equal terms, but here is a power he cannot compete with and he cannot avoid.

This power, like a government, has authority to make tariffs and enforce their collection. It claims a right which no civilized government claims, and no sovereign has dared to exercise for centuries, of rebating a portion of its tariff, and thus discriminating between its subjects in the collection of its revenues. It is safe to say that if the Congress of the United States should enact a law which established on any commodity one impost duty for the city of New York and a different duty for other cities, or one duty for one firm and another duty for another firm, no matter how slight the difference, the people would resort to arms, if need be, rather than submit.

Railway transportation, under present conditions, is to the industrial world what the atmosphere is to the physical world: it pervades and is essential to all industries. As in the physical world no man or beast, no plant or shrub, can refuse to breathe the air without death ensuing, so in the industrial world no industry and no human being can refuse railway transportation except under similar penalties. It pervades every article of commerce. When one buys food, clothing, or fuel, he buys railway transporta-

tion. When he builds houses, or stores, or manufacturing establishments, churches or school-houses, he buys railway transportation. When he buys horses and carriages, jewels or statuary, paintings or books, theatre tickets or lecture tickets, or indulges in the luxury of doctors or lawyers, he pays for railway transportation.

Who would consent that a few men should have the power to dictate upon what terms the air should be breathed? It is idle to talk about railway transportation being a mere article of commerce, owned by the company, "who, as such owner, may sell it or not, as it may see fit, or, if it elects to sell, may demand such price as it chooses or can obtain." It is nonsense to call that merchandise which no one can refuse to purchase.

Looking at the subject from the point of view of the owner of railway property, this absolute power in the hands of managers, who after all are but human, with limited knowledge and capacity, seems quite as dangerous to that interest as to the interests of the people.

It is evident that, in order to keep railways running, sufficient revenue must be collected to pay operating expenses, and fairness requires an additional amount as compensation for the use of the capital invested. So large is the tonnage that a slight change in the average rate per ton per mile makes a difference between a profit and a loss, and the whole revenue is made up of an almost infinite number of comparatively trifling collections. An average difference of one tenth of a cent per ton per mile on the tonnage of the Chicago & Northwestern Railway in 1888 would have made a difference

of $1,939,044.10 in its aggregate revenue. This sum would have been more than sufficient to pay six per cent dividend on its common stock. A mill a ton per mile is about equal to two cents per hundred-weight between St. Paul and Chicago. These figures show how delicately a tariff must be adjusted to produce a proper revenue, and how slight a variation may result in wiping out the dividends of a year. And yet upon each road one man with autocratic power, with many subordinates acting separately and without consultation, is making rates varying in amounts from day to day, and as between different men and localities, without rule or principle as a basis, simply guessing in each case, with the expectation that the average guesses for a year will come within the fraction of a mill per ton per mile of the proper amount. This appears to be the present basis of the value of railway property. If the people need a fixed rule or law for establishing the basis of rates, the companies need it even more. But such a law, to be just or beneficially effective, should consider the rights of both parties.

To return to the story of discriminations in the period of 1867–71. The rates then were much higher than they are now. Then the average rate per ton per mile was slightly over three cents; now it is less than one cent. The higher rates permitted much greater range of discrimination than would be possible now. Then it was by no means uncommon that the "local rate" on wheat, the great staple of Minnesota, to the Chicago market was ten cents per bushel higher than the through or "competitive" rate; although the local station might be nearer Chicago on the same line, so that the "through wheat" passed

the local point on its way to market. Other rates were adjusted on a similar basis. What was the result?

(1.) As regards the value of farms. The value of a farm, like that of other property, depends upon the income it will yield. But if each of two farms produces twenty bushels of wheat per acre, and, owing to discrimination in freight rates, wheat at the competitive station is worth ten cents a bushel more than at the local station, then the farm at the competitive station would produce $2 per acre per annum more than at the local station. This being capitalized on the basis of ten per cent would make a difference in the value of land of $20 per acre, or, if on the basis of six per cent, $33.33 per acre. The difference in the farmer's income is apparent.

(2.) As regards villages. When a village has a few stores, a blacksmith, shoemaker, and carpenter, the wants of the adjacent territory are supplied. To increase beyond this point requires the introduction of manufactories and the larger class of tradesmen or jobbers. Every village in a new country has expectations. On these are based the value of its town lots, and the wealth, or expected wealth, of the villagers. It is true that, with the fairest and most equitable railway tariff a majority of these expectations would come to naught; but with a discrimination of ten to fifteen cents per hundredweight against them, there is no hope. At the time under consideration, the villagers had begun to realize the hopelessness of their situation. All their brightest business men were moving to the cities, and the few manufacturing establishments that had started in a small way had either moved, or foresaw that, unless a speedy change came, they must move.

(3.) As regards cities and "competitive points." There can be no doubt that discrimination has been the chief factor in causing the rapid increase of business, population, and wealth in Western cities during the last two decades. At an early day this agency was beginning its work, and the future was clearly foreseen. But, notwithstanding their personal interests were being conserved, the discriminations were so manifestly unjust that the people of the cities condemned them. Besides, the urban population had a grievance of their own in reference to the fuel monopoly, which had been created by the discrimination in rates upon this necessary commodity. The people believed, and apparently not without reason, that they were unduly taxed by reason of short weights and exorbitant prices.

So, in one way and another, every class of people, the farmer, the mechanic, the villager, and the city resident, including the common laborer who consumed fuel, was in arms against discrimination and its consequent monopolies.

CHAPTER V.

COMPETITION.

THERE were other circumstances in connection with discrimination in rates which had direct bearing in forming the so-called Granger legislation, which should receive consideration as tending to elucidate the meaning of the laws. It is the writer's opinion that through all these laws runs a clearly defined thread of evidence that the intention of the legislatures was not to rob the owners of railways of a fair return upon their investment, as is so often charged by writers who live in the vicinity of Wall Street; but, on the contrary, it was to protect their rights, while at the same time protecting the people against unjust discrimination. It is probably true that most of the rates fixed by these statutes were higher than the rates then being collected by the companies. If, however, it shall be found that some of these statutes reduce the aggregate revenues of the companies, it becomes important, in order to sustain the writer's theory as to the intention of the law-makers, to inquire if there were any facts tending to show that the rates thus established were fair and reasonable, and if such facts were sufficiently important to justify the conclusion that these rates were proper, thus making the law consistent with the theory of intended fairness on the part of the legislature. Legislators, selected from the body of the people of a State, could

hardly be expected to have any definite knowledge of the cost of transportation by railways; and indeed the cost is such a varying quantity, depending upon so many ever-changing circumstances, that managers were unable to give much definite information upon the subject.

Lacking certain information, the legislators should be justified in assuming that the companies were looking after their own interests to such an extent that the rates which they had themselves voluntarily made were at least remunerative. Rates thus made would certainly seem to be a fair criterion, but unfortunately for the companies they were not. The demon of competition had been let loose at the most important points, and a rate war raged between the companies year after year, which carried rates between these important competitive points to such a low range that, had the companies been unable to recoup the loss at local stations, most serious financial difficulties would have followed.

But why should legislators be expected to know this important fact? The autocrats of the companies did not claim to be able to state definitely the cost; and when this subject was broached, they and their lieutenants usually assumed an air of mystery with a shrugging of the shoulders indicative of something so occult about the making of rates that none who had not been admitted to the circle of autocracy could possibly understand it. Without deigning to go into the whys or wherefores, these priests of the mysteries of the spirit of discrimination told the legislators, in a general way, that the competitive rates were too low, and yet they were profitable, but that the much higher local rates were *unprofitable*, a paradox which

the law-makers were unable to understand and unwilling to accept. In the absence of definite information they could only reason from analogy. If the flour merchants should sell to the residents of the principal streets of a city at $2.50 the flour for which they charged the residents of all the other streets $5, and should continue this for a succession of years, and employ agents to canvass and solicit orders at the low rate, it would seem to be a fair assumption that they could afford to sell all their flour at that price, and that the $5 price was extortionate. At this time the companies claimed that their transportation was essentially an article of commerce and subject to the laws of commerce; why, then, were not legislators justified in judging of its cost by the analogies of commerce? Under the circumstances, it would seem that they would have been justified in coming to the conclusion that the usual scale of competitive rates (not the lowest of such rates) were sufficiently remunerative for the railways to apply to their whole traffic. But this view was never insisted upon until the Iowa Act of 1887, the earlier legislatures seeming to have adopted the conclusion that the competitive rates were rather too low, the non-competitive rates too high, and that, to do justice to the people, the legislature should reduce the rates which were too high, and leave the companies free to advance the rates which were too low; thus securing a proper adjustment, and at the same time not materially affecting the aggregate revenues of the companies.

Had the companies accepted these methods it would seem that it should have resulted in a very happy adjustment. But the companies did nothing of the

kind. They were so wedded to their idol of discrimination, and in fact had so befogged their own minds with their pretended mysteries, that, like the children of Israel, they refused to recognize the true God, but continued to worship the calf of their own creation. So, immediately after the adjournment of the legislatures, instead of raising the rates which were admittedly too low, or even steadily holding the old rates, in many cases the companies reduced them in about the same proportion as the higher rates had been lowered by the law, and the rate to favored shippers at local stations was likewise lowered; so that the old monopolies and the old discriminations were perpetuated, the laws were made futile, and the revenues of the companies were depleted. In the natural course of events, such a policy should have brought on a crisis in the affairs of the companies, and so it would but for the extraordinary increase and growth of the country and the discovery of processes of economy in operation. It was about this time that the Western States received their greatest increase of business, as will be seen by referring to the census tables of population, which are a fair index of the growth of the business. In 1860, the population of Minnesota was, in round numbers, 172,000; in 1870, 440,000; in 1880, 780,000: of Wisconsin, in 1860, 775,881; in 1870, 1,054,000; in 1880, 1,315,000: of Iowa, in 1860, 674,000; in 1870, 1,194,000; in 1880, 1,624,000. It was about this time, too, that the Bessemer process of making steel rails, and the practicability of using larger cars and locomotives with the result of economy in operation, were discovered.

The action of the companies in maintaining the

relative difference between competitive and non-competitive rates was a practical defiance of the authority of the laws, and tended to increase the bitter feeling among the people. Why the managers should have assumed such an attitude it is difficult to understand. The usual reason assigned by each manager is that "the other did it first," and therefore he was compelled to; but why "the other did it" is not easily explained. It is hard to resist the conclusion that it was an arbitrary act of autocratic power, born of the imperious desire to demonstrate the ability of the autocrat of one company to secure more than his fair share of trade at the expense of a rival autocrat.

Just after the passage of the first Granger law (about 1872) an incident occurred which seems to support this view of the case, and at the same time serves to illustrate the short-sighted policy and the mischievous effects of the exercise of power regardless of the dictates of justice or reason. It also materially affected subsequent legislation.

It was about 1872 that the Lake Superior and Mississippi Railway (now the St. Paul and Duluth) was completed from St. Paul and Minneapolis to Duluth, at the west end of Lake Superior, a distance of one hundred and fifty-six miles. Duluth being as near the seaboard by the way of the Great Lakes as Chicago is, the projectors of this line thought that, during the season of navigation on the lakes, it would be able to command the carrying trade of the district of country which was nearer (in miles) to Duluth than Chicago. This district embraced a portion of Wisconsin, all of Minnesota, a portion of Iowa and the Territories to the westward, and the cultivated and inhabited area lying to the south and west of St. Paul and Minne-

apolis. The latter area was served in the matter of transportation by the Mississippi River, which was a free highway, by certain lines belonging to Chicago companies, and by two independent lines: one running from St. Paul southwest to Sioux City, Iowa, about two hundred and seventy-five miles; the other extending westward with two branches, in all about three hundred or four hundred miles. The east-bound traffic of these independent lines, when it reached St. Paul, was free to seek its way to market in the East by rail to Duluth, one hundred and fifty-six miles, or by rail to Chicago, four hundred miles. This was the situation of affairs when the man of iron nerve who then controlled the Chicago line, which had heretofore enjoyed the whole carrying trade of the district, issued his royal decree that not a pound of this traffic should pass over the short line to Duluth. His first move was so to adjust the rates on his own line that it would cost as much or more to send freight between all stations on his line to or from St. Paul or Minneapolis as to or from said stations and Chicago, although the distance might be only twenty miles from St. Paul or Minneapolis, and over four hundred miles from Chicago. This tariff was contrary to law and in defiance of it, but it effectually locked out the territory adjacent to his line from all benefits expected from the building of the short line, and also from trading with the two Minnesota cities, their natural market towns. On his own lines he was absolute, but when he came to deal with the Mississippi River and the independent lines the task was more difficult. The autocrats of these lines had no sympathy except for a good consideration in lawful money. Nothing daunted him. He would

buy their traffic. So he made between all stations on these independent lines and Chicago such rates as were necessary to get the business, out of which he would pay the local rates to the independent companies, and accept for his haul of four hundred miles what was left. This residue was sometimes a trifle, sometimes nothing, and at the latter end of the strife a minus quantity. Wheat being the great staple of the country, he placed buyers for his company at every station, with instructions to take it all, regardless of the price. On the wheat purchased, it was currently understood at the time, his company sustained an absolute loss, besides hauling it over four hundred miles for nothing. But the short line had an autocrat, too, who proved a "foeman worthy of his steel." He met the rates of his enemy at every point and did better. His wheat buyers were at every station, bidding against the buyers of the rival line. The war raged furiously for two seasons. At the end of the second season the financial resources of the short line were exhausted, and the company submitted to the inevitable, and went into liquidation.

During the two years' war the short line hauled over its road several million bushels of wheat, on which it did not collect a penny of revenue, but actually paid out a larger sum of money, besides the loss of revenue, stated at the time to be about $1,000,000. Of course its losses on other business were correspondingly great, and the losses of the older company, which secured the bulk of the business, were in an even greater ratio. It cannot be doubted that the cost to both companies of this two years' war was sufficient to buy the whole property of the Lake

Superior and Mississippi Railway Company. The indirect loss to the railways of this section continues to this time in the absurdly low rate of three and one half mills per ton per mile on wheat and flour between the Minnesota cities and Chicago, — a rate so low that every barrel is carried at a loss. What was there gained by the Chicago line to offset this tremendous cost? When the smoke of the battle cleared away, the Lake Superior and Mississippi Company was *hors de combat;* but there stood Duluth, there were the Great Lakes, there were the rails, the cars, and the locomotives of that short line, and there they are to-day. When the war commenced, the short line was burdened with certain interest charges which it was its duty to earn if it could, which tended to make it conservative and to cause it to strive to get a fair price for its services. When the war ended, it was in the hands of a receiver who felt no special pressure on that account, and when it emerged from the receivership it was free from mandatory interest charges. By this process the weaker became the stronger company, and now it is able to dictate rates to its old enemy on several thousand miles of railway. The history of this war and its results is a commentary upon the boasted value of the one-man power in the management of railways. It does not seem possible, had this question been submitted to a board of directors who were anything more than a nominal board, but some of them would have been able to foresee the result, and thereby to avert the mischief.

But what bearing had this war on the general situation and subsequent legislation? In the first place, it unsettled values for two years, creating an abnor-

mally high price for the products of the district, and a correspondingly low price for the goods purchased for consumption. When the end came and values returned to their normal conditions, the people who could not see below the surface and comprehend the underlying condition felt aggrieved, believing they were then being robbed by the companies enforcing extortionate rates. In the second place, it continued for two seasons over one section of the country rates materially lower than over other sections enjoying equal if not superior natural locations, which created discontent in the latter sections. In the third place, it impressed upon the public mind, to an extent never before realized, the tremendous power possessed by the autocrats of the railway companies whenever they might choose to use it, and the merciless manner in which they were capable of enforcing their tyrannical decrees.

In this connection it should be mentioned, as part of the history of the war, that the people of the cities of St. Paul and Minneapolis, and of such towns as Faribault, Owatonna, Northfield, etc., all within fifty miles of each other, petitioned the railway magnate over and over again to be allowed to trade with each other, but it was of no avail. The war closed with the season of navigation of 1873.

When the legislatures of the different States convened, at the beginning of the year 1874, the full effects of this war upon the minds of the people began to be realized by the companies. It was in this year that a most severe measure, commonly known as the "Potter Law," was passed by the legislature of Wisconsin, and similar, though less stringent, laws were passed in Minnesota, Iowa, and Illinois.

CHAPTER VI.

HOW TARIFFS GREW.

HAVING devoted so much space to pointing out the injustice and evil effects of discrimination, and having so often laid blame upon the managers, fairness demands that the other side of the case should be stated.

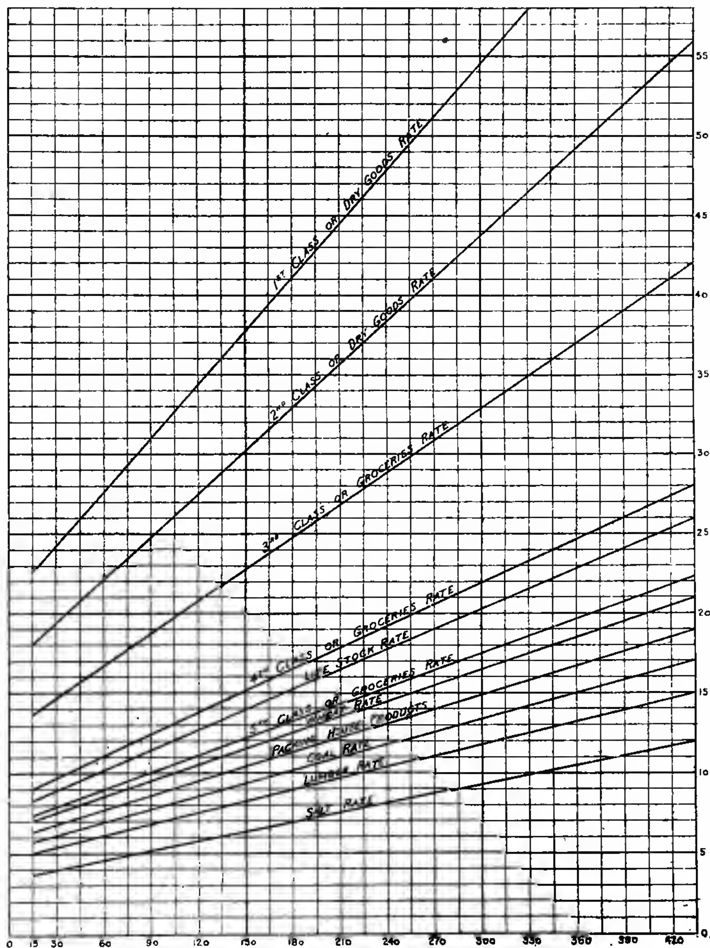
The chaotic condition of present railway tariffs is the result of years of growth. They have been evolved by a multitude of circumstances and conditions. The first schedule of rates upon a new road in a non-competitive territory is based upon sound principles. There are two principal divisions of the expenses of railway transportation. (1.) The cost of terminal or station work. (2.) The cost of handling.

As every shipment requires station work, at both the forwarding and the receiving station, and as these station expenses are the same whether the haul is ten miles or five hundred miles, it follows that the rate per mile must be materially greater for a short haul than for a long haul. For example: suppose it is assumed that three cents per hundredweight, or sixty cents per ton, is the proper charge to cover the station expenses at each end of any given shipment, and one half cent per ton per mile is the right amount to charge for hauling, the mathematical calculation to ascertain the proper rate per ton per mile for ten and for five hundred miles would be as follows: To the

two station expenses, sixty cents each, and for the ten miles haul one half cent per mile; and the total, $1.25, the proper charge for ten miles, would be equal to an average of twelve and one half cents per mile. The same calculation would give $3.70 as the rate per ton for five hundred miles, or an average per mile of only seventy-four one hundredths of a cent. Now, if a manager or his freight agent were called upon to make a tariff for a new road in a non-competitive district, whether he copied an old tariff which had been in effect at some former time on a road similarly situated, as he probably would without thinking of the underlying principles, or was compelled to rely upon his own resources, the schedule which he would produce would be substantially on the basis of this mathematical calculation. There is equally substantial basis, agreeing with sound reason, for distinctions in rates between different classes and commodities, which it is not necessary for present purposes to specify. A tariff thus constructed and impartially adhered to would be equitable as between all customers, and would admit of the freest competition in trade between individuals and localities. The long haul rate would always be the sum of the two local rates less two station expenses, which would be as it should be; that is to say, if a shipment were made from New York to Chicago, and then reshipped to St. Paul, there would be the expense at both the receiving and the forwarding stations at Chicago, which would not be incurred if the shipment were made directly from New York to St. Paul. The companies are entitled to this additional expense, and no more. As here used, the word "expense" includes a reasonable profit for the services performed.

DIAGRAM NO. 1. REPRESENTS THE PRIMAL MATHEMATICAL TARIFF.

The figures at the bottom represent miles, the figures at the side, cents per cwt., the diagonal lines the rates. To illustrate its use: To find the rate on third-class goods for 180 miles let the eye follow up the 180 mile line, which is perpendicular, till it reaches the third-class rate line; then see on the side margin the number of cents; the horizontal line at that point indicates which is the rate—(25 cents).



Starting with this primal form of tariff, it is proposed to trace it through its various stages of evolution to the chaos of the present; noting from time to time the most important changes and the causes of them, from the manager's point of view. To comprehend these changes, different tariffs must be examined in detail and compared with one another. But as schedules of rates are of necessity a mass of figures, readers could hardly be expected to spend the time and labor necessary to make examinations and comparisons from pages of columns of figures. Hence there has been prepared a series of diagrams which will show the facts at a glance.

DIAGRAM NO. 1 represents the primal, impartial, mathematical schedule, built upon the basis which has been stated.

This schedule is uniformly systematic. A class which bears a higher rate than another at one station maintains that relation at every station; for if there is reason for charging more for transporting dry goods than for transporting coal for the distance of ten miles, the same reason applies for similar differences for every other distance. Why should the principles of this tariff ever be changed? In answering this question, space will permit the mention of only a few of the almost countless arguments which are continually being presented to managers as reasons why changes, or at least exceptions, should be made.

(1.) The first is in relation to the wheat traffic, to which reference has already been made. About half the line is newly built, and for the reasons stated in a previous chapter, the manager thinks it for the interest of both the road and the people to

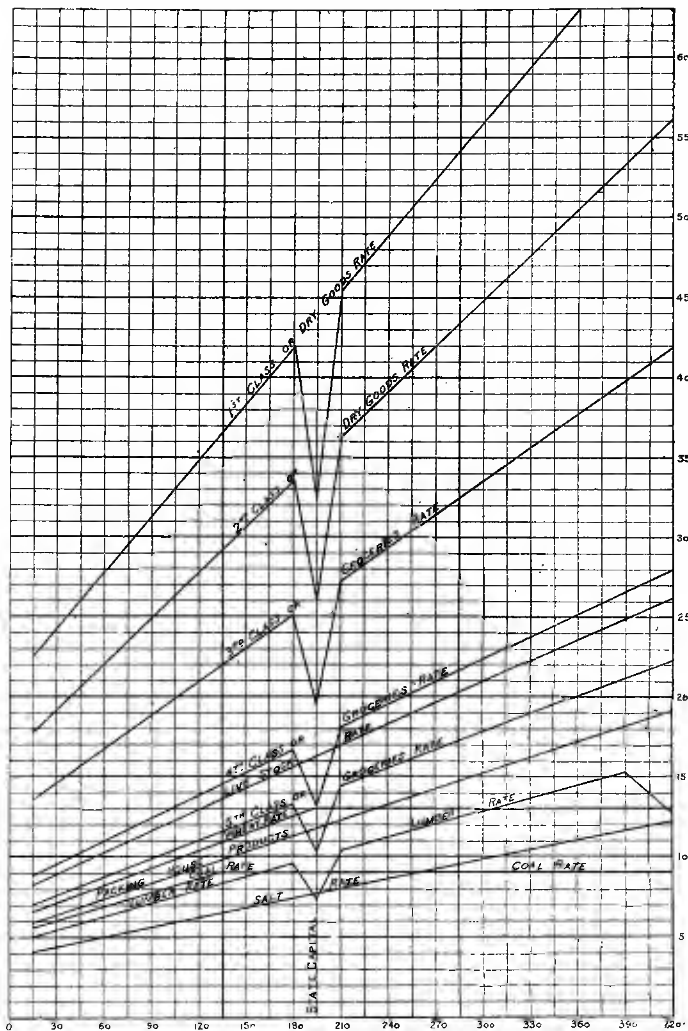
induce some man with sufficient capital to engage in building elevators and buying wheat. As an inducement, he agrees to lower the rate on wheat to his man from a certain point, say two hundred miles out, to the end of the line; but while doing this he sees no reason why he should lower the rate proportionately on the first two hundred miles, where the business is already established. Who can say that, from the manager's point of view, there does not seem to be reason in this? So the wheat line in the diagram is broken at the two hundred mile point, or bent downward.

(2.) At about the same two hundred mile point the State has established its capital, and quite a young city has sprung up. A bright, active young man walks into the manager's office, and represents that he has capital and experience, and desires, if the railway company will make concessions in the matter of rates, to start a wholesale grocery house at the state capital. He promises great things, — a jobbing centre, manufacturing population, etc. The manager listens, is convinced, and reaches up to the grocery line on the diagram and pulls it down at the two hundred mile point to encourage the jobbing in groceries, leaving it where it was at all other points. The dry goods jobber asks the same concession, and having made it for one, the manager makes it for the other.

(3.) The coal miner comes in. He says: "Mr. Manager, the people on the west end of your line burn but little coal; wood is too cheap to admit of it unless you can reduce your rate. The rate for one hundred and fifty miles is $2 per ton. The coal costs $1 at the mines; plus the freight, it costs $3 one hundred and fifty miles away. At this price I

DIAGRAM NO. 2.

Represents the primal mathematical distorted by a few special rates.



can sell some coal in competition with wood; if you could continue that rate to the end of your line, I could increase my trade to include all your territory, while with your present rate I can do but little." The manager is in doubt, but the road is new, business is light, stockholders are clamoring for more earnings, and, in the hope that it will amount to something, he consents, and flattens the coal rate from the one hundred and fifty mile point.

(4.) Then comes the lumberman. He says: "Mr. Manager, I don't know anything about railroading, and I think your lumber rate is low enough; but if you could make a little concession at the state capital and at the extreme end of your line, I think I could sell a good many more cars of lumber at these two points. You know the capital is growing, and a good many settlers are going out beyond the end of the track, and that town at the end is growing. I think it would be a good thing for both of us." The manager still has some doubts, but, for the same reasons that governed him before, he comes to the same conclusion as he did in the case of the miner. He now makes a downward kink in the lumber line at the two hundred mile point, and another at the extreme end.

These are but specimens of the almost countless applications for special rates for special reasons which seem to have force in them.

DIAGRAM NO. 2 represents the condition of the manager's schedule after he has made special arrangements with the wheat buyer, the grocery and dry goods merchants, the coal miner, and the lumberman. It would be difficult to show, on so small a scale, its appearance after the "butcher, the baker," and "the

candlestick maker" have been dealt with. It has lost its symmetry, weakened the hold on the principles of its construction, and is adrift on the sea of discrimination, dealing with a prodigious number of isolated transactions without any fixed rule.

The transition from a government of law, founded upon reason and fixed principle, to a government by chance or by the will of the manager is complete; and this has been brought about without the complications arising from competitive railways. Understanding the facts, no one would be inclined to impute any but the purest motive to the managers, the desire best to conserve the interests of their companies. But it must be evident that, having deserted the fixed rule for determining rates, the most important function of railway management, the manager is thereafter compelled to deal separately with an enormous number of disorganized and separate rates, having no cohesive ties, but each based upon orders direct from headquarters. As a matter of fact, although the companies from time to time issued printed schedules of rates, up to the going into effect of the Interstate Commerce Law in 1887, no considerable shipper regarded them, but secured a special rate on each shipment.

It will be seen at once how discrimination tends to build up important towns at certain points, such as the supposed state capital and the end of the line, in the illustrations. Lowering the rates at these points had a tendency to draw population and business to these localities as naturally as water flows downhill. The "long haul" theory has always been potential in causing managers to favor the localities at the western end of their lines. It is evident that, as

long as the tariff is constructed on the mathematical principle which gives a uniform profit upon each mile of haul, a ton of freight which is hauled four hundred miles will give double the profit that will accrue from a ton of freight hauled two hundred miles. Hence, under these circumstances, a manager who was interested in making profits for his company would naturally look with more favor upon building up a large city at the end of his line, where, generally speaking, he would get a four hundred mile haul, than at the middle of his line, where he would get only a two hundred mile haul. Therefore it is easy to see how the long haul *at proportionately long rates* might become popular from the manager's point of view. This was undoubtedly the original long haul theory, the words "long haul" being supplemented with the important addendum, "at proportionately long rates." The propensity of Americans to abbreviate language robbed the phrase of its addendum, so that "long haul," pure and simple, became the catch-word of the traffic departments, and, from the common habit of substituting words for ideas, the "long haul," regardless of rates, became a controlling maxim. Thus, for many years before the advent of the Interstate Commerce Law, the rate between Chicago and the Missouri River towns and St. Paul and Minneapolis (four hundred to five hundred miles), then the termini of the Western roads, was but little more than the rate from Chicago to the Mississippi River towns of Burlington, Rock Island, Clinton, and Dubuque (two hundred miles), the intermediate country being charged much higher rates except at competitive points. This has worked a great injustice to the latter cities. Thirty years ago they were nearly

as important in respect to trade and population as they are at present, and relatively to the surrounding country more important; while St. Paul, Minneapolis, Omaha, and Kansas City, then mere trading posts, have now, largely by reason of such discrimination, become important cities of national repute.

It seems impossible that any set of men could become so befogged by a form of words as to suppose that it was profitable for a railway to haul a ton of freight five hundred miles at substantially the same price as for hauling it two hundred miles, yet a reference to the tariffs of these railways would tend to show that such is the fact.

This long haul policy has done, and is now doing, great mischief to the corporations as well as to the people. The towns which have profited by it during the last thirty years have become, instead of terminal stations, but midway stations on transcontinental lines; and if the long haul craze continues, they will probably suffer for the next thirty years in the same way that the Mississippi River towns have for the past thirty years.

The management of railways may find some excuse for the error of breaking loose from the rule (the writer believes that it was an error) in the fact of the newness of the business. All the other great departments of business have a history; they have had their childhood, their youth, and their maturity. Their history has created certain traditions or unwritten codes of law which experience has proved must not be disregarded. Thus, mercantile pursuits, insurance, banking, etc., have traditions founded upon sound principles, and yet thousands of men who have never thought about, and perhaps would be in-

capable of comprehending, the underlying principles, simply by following the traditions of the craft are successful merchants, bankers, etc. So the principles of trade and finance in a more comprehensive sense have been studied by some of the ablest minds, and the result of some centuries of thought, through a process of imperceptible dissemination and absorption, has pervaded the minds of successive generations with certain broad principles of recognized importance which have become a common heritage. But the business of railway transportation has no history, no traditions, no peculiar heritage. Little thought has been given to its theory or to its underlying principles. Now just past fifty years of age, its life has been one of action instead of philosophical inquiry into the underlying laws which control its peculiar operations. It is the contention of the writer that such laws exist, and must of necessity control. In nature, many phenomena, as those of electricity, apparently the most irregular and capricious, by patient thought and investigation have been found to be governed by fixed and uniform laws, and by understanding these laws men have been able to utilize many of the most subtle powers. Buckle, in discussing the apparent incongruities of history, says: "Whoever is at all acquainted with what has been done during the last two centuries must be aware that every generation demonstrates some events to be regular and predictable which the preceding generation has declared to be irregular and unpredictable: so that the marked tendency of advancing civilization is to strengthen our belief in the universality of order, of method, and of law. The expectation of discovering regularity in the midst of confusion is so

familiar to scientific men that among the most eminent of them it becomes a matter of faith."

The writer believes that every effect in the matter of railway traffic has its cause; that the relation between that cause and its effect is governed by fixed and definite laws, which, unlike statute laws, may not be disregarded with impunity; and that these laws have their foundations in the principles of justice and equity. Believing this, he can have little confidence, in the present crisis of railway affairs, that the proposed remedies of consolidations, pools, etc., will be efficacious, if the plain principles of equity in the constructions of tariffs are ignored. It is the opinion of most men in the traffic departments of railways that the business is of such a nature that it cannot be laid out with practically mathematical precision. They think that the business of rate-making is of such a kaleidoscopic character that rates which are well enough to-day must be changed to-morrow, — not, however, in their entirety, but as to particular rates, individuals, and localities; and that these changes should be left to the judgment of the agent on the spot, subject to no fixed rule or instruction except "to get the business, — never mind the rate." As long as any company persists in keeping mobs of soliciting agents in the field, under such instructions, it must be conceded that it is necessary for other lines to counteract these illegitimate methods.

But in the more comprehensive sense the writer is compelled to take issue, for many reasons. First and foremost among these reasons he would place the plain duty of the companies to deal justly and impartially with all their patrons, — leaving individuals

free to compete with individuals, and localities with localities, without interference from the companies. If, however, railway transportation is to be regarded simply as an article of commerce, and the soliciting of traffic as the equivalent of the ordinary drumming for sales of merchandise, such practices are clearly illegitimate, and will prove destructive.

The principles of commerce require that the selling price must bear a relation to cost. The vender of merchandise, in order to act with intelligence, must know the cost of each article, — not the average cost of the different articles, — and this is quite possible. On the other hand, it is quite impossible for the vender of railway transportation to tell even approximately the cost of each shipment. For example, when a ticket agent sells a ticket from St. Paul to Chicago, who can estimate approximately what it will cost his company to carry that particular passenger? The average cost of running a passenger train between St. Paul and Chicago may be closely estimated; but the train on which this passenger travels may carry a large number of passengers or it may carry but few, and in the former case the cost would be much less than in the latter. It can be positively stated that there is no means of ascertaining the cost of transporting any particular shipment of property or persons. Our knowledge upon this question of cost has to do with aggregations rather than with units, and with averages rather than with particulars, and herein lies an essential distinction between merchandise and transportation. Each article of merchandise having a known cost, the itinerant vender knows whether each sale terminated in a profit

or a loss, and the employer knows it, too. If it is sold at less than cost, with a few well-understood exceptions, it is a loss, which no sophistry of reasoning can disguise. This is not true of transportation. There is an apparently logical although dangerous line of reasoning which seems to prove that a railway company can carry indefinite quantities of merchandise for nothing without appreciable loss.

The most familiar illustration is the passenger train which "is running any way," and consequently such persons as would not travel and pay their fare can be passed free without cost. This specious argument is applicable to a certain extent to the freight traffic. In this argument lie the mischief and danger of making rates in detail, uncontrolled by fixed rules. It is admitted that special or "cut rates," as they are called, may be of temporary advantage to a company, but the end is loss.

The most effective answer to this argument is the fact that although tariffs have been managed in this way, the railways have done fairly well. Why not let well enough alone? It is admitted that the arguments stated above would have force as applied to ordinary men, but railway managers have been of such superior ability that they have so far been able to set aside these apparently sound principles, and have successfully managed their properties upon their personal judgment from day to day. But is this true? Have the managers made the railways prosper, or have the railways made the managers? Have not the growth and prosperity of the business of the country contributed to their success? The writer ventures to doubt the superior business sagacity of the men who

are engaged in managing the traffic departments of railways, and would attribute the financial success of the railways in the past to the inherent value of the property and to the growth of the country, rather than to the superior sagacity displayed in their management.

CHAPTER VII.

COMPETITIVE TARIFFS.

THE development of tariffs upon competitive lines is based upon principles different from those upon non-competitive lines. In order to understand this, the relations existing between the managers of the different companies must be considered. In their personal affairs and in their relations to their own companies, their conduct has been, as a rule, above reproach. But it is probably not putting it too strongly to say that, as managers, they have always been intensely jealous of each other's power, and no manager has ever been known to scruple at any means to cripple a rival in his autocratic position. Among themselves their word has been worthless. Their agreements as to territorial boundaries and as to methods of conducting traffic have no sooner been made than broken. As long as the country contiguous to any line was poor and possessed no important towns or developed industries, there was nothing to excite the greed of a rival, and the territory was unmolested. But as soon as an important industrial centre sprang up, the rival company would build a branch line to it, and then the chieftains would at once put on their war paint and make ready for the fray. To the writer's mind, there is a striking similarity between the railway managers of twenty years ago and the Scottish chiefs of say four hundred years

ago. One historian described the latter as follows: "The ferocious Highland chiefs were always at hand. Anything which bore even the resemblance of wealth was an irresistible excitement to their cupidity. They could not know that a man had property without longing to steal it, and, next to stealing, their greatest pleasure was to destroy."

In predatory incursions upon one another's territory, the stockholders of the railways followed their managers as readily as did the Scottish clansmen their chiefs. But the important difference between the two lies in the machinery of the stock exchange, by means of which there is as great a chance of profit to the camp followers from destruction as from stealing. At the present day, a railway raid promises one of two profits,—either a division of the booty, or a profit from destruction, secured by selling stocks "short,"—while the poor Highlander's alternative profit was a broken head.

During the era of raids and reprisals a great many competitive points were established. The history of one is the history of all. Before there was competition, the manager would claim that his rates were as low as was consistent with justice to his company. But as soon as another road was built, or even before it was completed, he would reduce his rates, sometimes fully one half. Then the new road would reduce them still lower. After this, a system of buying business by private bargain with individual shippers would follow. So, by rapid strides, the rates would be reduced to nearly nothing, at which point they would remain for months together. Then would follow a truce and a partial restoration of rates; then a relapse, to be succeeded by another truce. But

until the enactment of the Interstate Commerce Law these low rates at competitive points did not affect those of intermediate localities.

The making of rates at competitive points became a question not so much of what was fair and reasonable as of what could be obtained against the watchfulness of the other company. Low rates were made, not to encourage new trade, as was the case with non-competitive roads, but in order to secure the largest share of the business, and, failing in that, to prevent the other company making a profit. The principle of these methods seems to have been the essence of the Highland instinct of four hundred years ago. In the early years each company was ambitious to claim the merit of having caused the last reduction; but of late, since the matter has gone beyond control, and disaster seems imminent, each charges the responsibility of the first cut upon the other, and claims that it has accepted the rates only from compulsion. If we turn to Diagram No. 1, and imagine each line of rates pulled down to any haphazard level at each competitive point, without being changed at intermediate stations, it would represent a tariff as thus far developed. It would represent the tariffs about as they existed when the Granger agitation first commenced, with very low rates at all competitive points, thus discriminating between localities; and with different rates to different individuals, thus discriminating between persons.

It is believed that the causes which first developed these characteristics in competitive tariffs have been fairly stated.

At the outset they were undoubtedly induced more by ill temper and a disposition to measure strength

than by any settled convictions of true business policy. Later on, it is true, after the attack was made, the companies attempted to justify them on business principles. But it must be conceded that these specious arguments were an afterthought.

These tariffs once established, year by year the rate at competitive points gradually sank lower and lower. These reacted to a certain extent upon non-competitive rates; for, as the difference increased, the logic of figures began to assert its influence. By sophistry men might appear to justify a difference; but when the rate for hauling a ton of freight four hundred miles was only say one third of the rate for hauling a ton two hundred miles over the same road, it seemed too absurd, and it was usually remedied by lowering the higher rate.

If it be found impossible, in the light of the present day, to justify these methods, either on business principles or on the selfish plea of advantage to the companies, it must be admitted that they were strictly in accordance with precedents which had been established by older companies in older communities, and therefore it ought to be conceded that the managers, in establishing them, might have been unconscious of acting against the best interests of their companies.

Indeed, it was not immediately apparent that they were prejudicial to the companies. At that time the amount of business at competitive points, compared with the business at non-competitive points, was relatively much less than it is now; therefore, since the non-competitive rates were held up, the cutting of competitive rates only slightly affected the aggregate revenues. But when the discriminating tariff was

continued in force, it was found that, year by year, more and more business centred at the points of competition. Every new manufacturing establishment, new business ventures of every kind, and consequently population, sought such localities as a matter of course. Statistics show that the entire net increase of population from 1870 to 1890, twenty years, in Illinois, Wisconsin, Iowa, and Minnesota (except the new section, which has not yet felt the effects of discrimination), was in cities and towns possessing competitive rates; and further, that all the non-competitive towns and villages decreased in population. Thus it happened, as time passed, that the depleting effect of these methods upon the railway treasuries became more apparent as the population and business of competitive points increased, and the relative population and business of the non-competitive territory decreased.

This is a fine illustration of the rule hereafter to be considered, that by a natural law of trade the lowest rate will in the long run drive out of use the higher rates, and finally become the basis of all tariffs.

In later years, various influences have had a share in the development of these competitive tariffs. The larger part of the every-day actions of mankind is controlled by habit or custom rather than by thought; by imitation, as parrots' talk, rather than by the laborious methods of reasoning out conclusions from fundamental principles. Hence, by far the greater number of minds possess that quality which, for want of a better name, may be called conservatism; that is, the habit of thinking everything good that is old, and everything right that is established. Methods

which had once become established, in process of time came to be regarded as correct. After they had continued for a long time, there was apparently a very strong argument in their favor, because, relying upon them, various manufacturing and important business investments had been made, which would become less valuable, and in some instances valueless, if the rule were changed; and hence to return to an impartial tariff would, in a sense, do injustice. This argument has had, and possibly ought to have, great weight.

Returning to the influence which custom has, even upon the minds of practical men, it may be noted that, after an extremely low rate has been in effect a sufficiently long time for it to become familiar, it gradually comes to be regarded, if not as standard, at least as a level which it is safe to reach in order to meet an emergency. For example: the rate of seven and one half cents per hundredweight on flour from Minneapolis to Chicago, four hundred and ten miles by the shortest line, which gives an average of only about three mills per ton per mile, less than half the average cost of transportation, in the minds of the people, and even in the minds of the traffic officials, is beginning to be regarded as a fair rate. The soliciting freight agent, in his mad chase after tonnage, has this precedent always in mind. The shippers of other commodities reason that if the railways can afford to carry flour and wheat at that rate, they can surely carry other things at comparatively low rates. Indeed, it is difficult to explain why corn, oats, coal, etc., all being of less value, and able to be handled with equal facility, should be charged a higher rate than wheat and flour. Here again is seen the strong

tendency of the lowest rate to drive out the higher, and to become the standard rate.

In every other business, and in every department of the railway business except the traffic department, mathematics plays a conspicuous part. The merchant and manufacturer calculate their profits by percentages on the cost price. The engineer, in constructing a railway, recognizes the fact that all curves are composed of tangents, which bear fixed mathematical relations to each other, which must be observed, and that his gradients must be carefully and mathematically worked out and measured. The superintendent, in making out a time card for running his trains, recognizes the necessity of mathematical accuracy, for the question as to where and when two trains shall meet cannot be guessed at or left to chance. But in the traffic department it is different. The average traffic officials may truthfully be said to detest mathematics as the "devil does holy water." They boldly say that it is impossible to make a tariff of rates based on strict mathematical principles, like a time card for running trains. This prevailing idea is probably based upon the fact that, with their limited mathematical knowledge, they are aware of no method of reaching similar results without such infinite labor as staggers the human mind to contemplate, or possibly upon the further fact that, as the business is now conducted, such schedules would evidently be useless. An inspection of the present tariff will therefore show no relative values between the rates or between the classes of freight. A class or commodity which is rated higher than some other class or commodity at one station, at the next station may have changed positions, and be rated lower.

It would seem that, in naming rates, traffic officials regard each rate as isolated, holding no fixed relations to others; hence, in preparing schedules, it is thought that any arbitrary figures which may be agreed upon can be enforced, provided the companies keep faith with each other. Reasoning from these premises, they have organized associations for the purpose of agreeing upon rates. The fact that these associations have accomplished so little towards maintaining the rates thus agreed upon would seem to indicate that the premises are false.

Reflection upon the workings of these associations has convinced the writer that the premises are false, and that the failure of such agreements to produce the results expected should be attributed not so much to the want of good faith as to the overpowering force of the law controlling them, which is as yet undiscovered, or at least is not fully understood. The writer's conclusion is that fiat rates rest upon the same basis as fiat money.

It is now understood that there is a well-defined law controlling the value of fiat money which is more powerful than legislative enactments. If its basis of security is only fifty cents as compared with a gold dollar, it will find its level of relative value; and being worth but fifty cents, it will pass in commerce for no more. It is true, the sovereign power may compel it to be called a dollar, and to pass nominally as such, but in that case the gold dollar passes out of use as money. So if, by agreement of all the companies, or otherwise, it is attempted to make two rates of different intrinsic values pass for the same value, the attempt must surely fail. As all values are relative, so all rates have relative values,

which must be ascertained and recognized in making schedules before the schedules can be maintained in their integrity. And whenever efforts have been made to fix one rate too low, expecting to recoup the loss by fixing some other rate too high, the cheap rate has in the long run displaced the higher rate, just as the cheap dollar displaces the dear dollar, and finally the lowest rate becomes the standard of all rates.

The writer believes this law is universal in its application, to non-competitive as well as to competitive lines, and that the present ever-decreasing scale of rates is the direct action of the law, forcing the whole schedule down towards the level of the last "cut rate."

In a limited sense the law has long been recognized, as where one company makes a low rate, all competitive companies hasten to meet that rate; and, latterly, traffic men have been forced to recognize the intimate relations which exist between widely separated rates, such as the rates between Chicago and St. Paul and those between Chicago and Kansas City.

To the writer's mind, the proofs of the existence of such a law are very convincing. The effects of an unreasonably low rate, and of the tendency of all movable business to concentrate at competitive points in order to make available the lowest rates, have already been noticed. Whoever has occupied the responsible and difficult position of dictator of rates realizes the tremendous power in the logic of a low rate. "Why should you charge me a higher rate on corn, which is worth only thirty cents per bushel, than on wheat, which is worth one dollar per bushel?"

is the simple question so frequently asked and so impossible to answer. "Why should you charge me twelve cents per bushel for hauling wheat from Kansas City to Chicago [480 miles], when you charge only four cents and a half for hauling the same from St. Paul to Chicago [410 miles]?" and "Why do you charge me as much, or more, for hauling a bushel of corn to Chicago from a point two hundred miles distant as from a point five hundred miles distant?" There are other sample questions which the poor freight agent is continually required to parry, because he can make no logical answer. And these questions, propounded hour after hour, day after day, by all classes of people, have a tremendous effect. But, under present conditions, the agent is powerless to raise the lower rate; he can only reduce the higher. These questions also suggest the point of view that the general public, courts, juries, and legislatures are bound to take, and the strong tendency to crowd the higher rates down to the level of the lowest. So when railway companies, as is frequently the case, make secret rates with large shippers of cereals, coal, lumber, or any other commodities, no matter how jealously the secret is guarded, the fact soon becomes apparent that the lower rates have displaced the higher rates, from the fact that these favored shippers do all the business.

The same result is noticeable in the so-called "wholesale principle" of making large differences in favor of shipments of carloads as against less quantities. Under this rule shippers never use the higher rate except in rare cases where it cannot be avoided.

Another powerful influence in the development of competitive tariffs is the large number of persons

who have been entrusted with autocratic power to make rates. The treatment of rates separately, and as bearing no mathematical relation to each other, necessarily makes the detail labor of the traffic department so prodigious that it is altogether beyond the physical ability of any one man. In working out the printed rates alone, the mass of figures is so voluminous that no human intellect can grasp them. To illustrate this point, it may be stated that the number of separate printed tariffs in legal effect on a large system at any given time may be approximately estimated at three thousand, some of them containing thirty or forty large-size pages of solid columns of closely printed figures. It goes without saying that under such circumstances this work must be left to subordinates and clerks; and while they are all issued under the signature of the chief, as a matter of fact he has examined but few of them, and such examination as he is able to make is of a most cursory character. Taking these facts into consideration, and remembering the further practice which has come into vogue of meeting "not only the cut rates that have been made, but also those that it is thought probable or possible will be made by rival companies," and of doing this quickly on the spot, it will not be difficult to understand how large a number of persons must be entrusted with the high prerogative of making rates, as well as how the chaotic condition of the tariffs comes about.

In a work of this kind it is hardly possible to enumerate all the influences which have been effective in the development of these tariffs, but it is desirable to mention at least two more. The power of large shippers to combine and offer their business for

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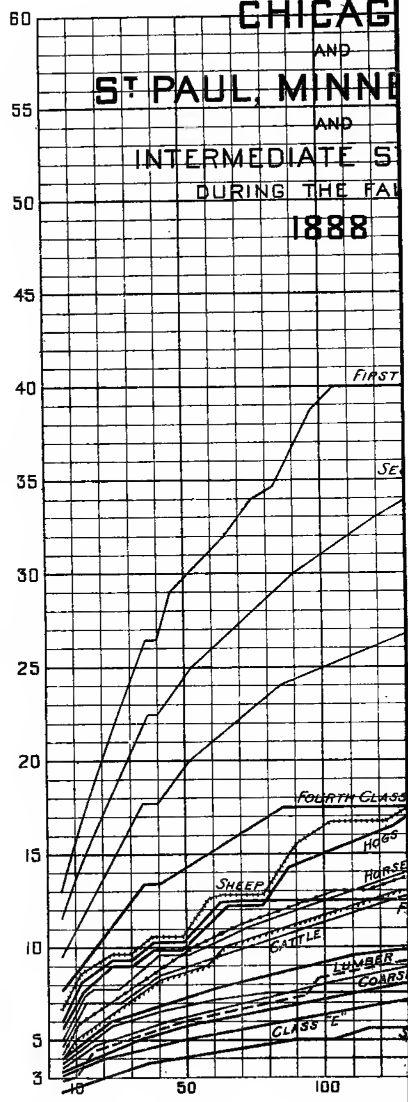


DIAGRAM OF
BETWEEN
AND
ST PAUL,
AND
INTERMEDIATE
DURING THE
1888
RATES IN CENTS PER 100 LBS.
60
55
50
45
40
35
30
25
20
15
10
5
3
10
50
100
FIRST
FOURTH CLASS
HOGS
SHEEP
CATTLE
LUMBER
CLASS "E"

sale as a whole, in order to secure lower rates, or to give it to one out of several competing lines as a sort of offset to any attempt of managers by combination to increase hitherto unprofitable rates, has had a most important influence of late years. The enactment of the so-called Interstate Commerce Law is the only other influence that can be brought into comparison. The immediate and marked effect of the law was the leveling of certain intermediate and non-competitive rates to the standard of the low competitive rates, which is another illustration of the tendency of all rates to seek the low rates as the standard.

Having set forth some of the more important influences which have been actively at work for more than twenty years in evolving a schedule of competitive rates, it seems proper that this chapter should end with a presentation of the tariff which has been evolved. For this purpose Diagram No. 3 has been prepared, which accurately represents the published legal tariff which existed on one of the lines (and practically on all) between Chicago and Minneapolis (420 miles), in the autumn of 1888, after the Interstate Commerce Law had gone into effect. It is freely charged in railway circles, and presumably it is true, that since that date the custom of paying rebates to individual shippers, to which the terrors of the Interstate Law at first seemed to put an end, has again come into vogue, so that even many of the rates shown on the diagram, low as they appear, are not in use, having been driven out by the lower rates.

For those who will take the trouble to study the diagram critically, and reflect upon its significance, it will prove an interesting light upon the question

under consideration. The first thing that will strike the mind is, that the schedule must have been the result of chance, for no ingenuity could have planned such a snarl. It will also be noticed that most of the rates are the same for a haul of 250 miles as for one of 420 miles. This level line of rates between the 250 and 420 mile points is due to the operation of the "long and short haul clause" of the Interstate Commerce Law. Previous to the enactment of the law these intermediate rates were higher than at the two points mentioned.

The rate on flour and wheat is the same for 80 miles as for 420 miles, the line being level between these two points; on coal it is the same for 200 miles as for 420 miles; on cement, the same for 120 miles as for 420 miles; on coarse grains, which include corn, oats, barley, etc., from the 180th mile to the 420th mile it is almost twice as much as that on flour and wheat. The rate on soft coal for a haul of from 10 to 180 miles is lower than that on flour; from that point on to 420 miles, it is higher. The rate on class E, 70 miles' haul, is less than six cents, while on packing-house products for the same distance it is more than twice as much, or twelve and a half cents; but for the 420 miles' haul class E rate becomes the highest. For 140 miles' haul class E rate is lower than the wheat and flour rate, the cement rate, the packing-house produce rate, and the lumber rate; but before it reaches the 420 miles' haul it has gone above all of them.

Compare class B with fifth class, and for 110 miles class B is lower; for the next 50 miles it is higher; for the next 10 miles lower; then for 30 miles higher; then for 50 miles considerably lower; then for 160

miles the same. But why enumerate what the diagram shows at a glance?

If any one wishes fully to understand the chaos of rates, let him imagine at each important town numerous merchants and manufacturers having special secret rates, each believing he has the lowest, and all but one probably being fooled in that respect, and then the diagram, in connection with his imagination, will partially illustrate the facts in existence. Could anything be more unreasonable and inconsistent, and is it any wonder that the managers, by agreement or otherwise, are unable to maintain and enforce such a tariff?

CHAPTER VIII.

RAILWAY PASSES.

A HISTORY of the causes leading to the enactment of the so-called Granger laws which should make no mention of the free-pass system would indeed be incomplete. While from the commercial and industrial points of view, the carrying of a large number of passengers free produced comparatively unimportant results, yet it was one of the greatest, perhaps it may be called the greatest, of irritants to the public mind. In the nature of things, this practice cannot be carried on secretly, like the paying of rebates on shipments of freight; therefore this class of discrimination is every day flaunted before the eyes of envious and jealous neighbors as well as the whole traveling public.

The origin of the free pass is not definitely known, but it is not improbable that it was first used as a means of paying for certain kinds of valuable and legitimate services, alike advantageous to the company and satisfactory to the persons rendering the services. Had its use been confined strictly and on business principles to such purposes, it would perhaps have been unobjectionable. But that was impossible. That which costs nothing is worth nothing. As the trains were running, and it would not add materially to the cost to carry a few more passengers, the managers have always regarded a pass as costing the company nothing, and hence they seemed

to be justified in buying anything, no matter how worthless, if it could be thus paid for. And why, if passes cost nothing, may they not be given away? The recipients of these favors took the same view relative to the cost of transportation; therefore many who would have been too proud to accept the gift of a few dollars in money did not hesitate to accept free passes. To individuals free passes were of value; to many, of great value. At first they were given sparingly to the more important personages in the communities, who had little occasion to travel, and as a compliment, something like Christmas cards; then to a larger circle in payment of trifling services; then to legislators, the executive officers of government, the judicial officers, and to all the clerks and employees of the several departments of state; then to county boards, and the various county officials, clerks, and employees; then to city and town boards, their various officers, etc.; then to that very numerous class known as "political workers;" and finally to every person supposed to be able to do something to aid a railway company in case of political or judicial emergency, or, if not so propitiated, to do harm.

In the beginning passes were recognized as favors, for which the recipients were bound to make a suitable return. But it was not long before the recipients came to regard the passes they were accustomed to receive as a right, and then began to ask as a favor that the members of their families and their friends might also ride free. This favor being granted, the natural sequence was that it soon came to be regarded as something to which the petitioners were entitled, and the free privileges would then be asked as a favor for some new class. As those who had passes trav-

eled often, and those who paid their fares traveled but seldom, it soon happened that, while the number of persons who rode free were but a fraction of the whole population, nearly half the mileage of local passengers was free. This became a source of great irritation to the public mind. A citizen who paid his fare was bound to sit in close proximity to a neighbor who paid no fare. The wife and daughters of a village family who could go to the city only occasionally, on account of the cost, naturally became envious of their neighbors who could go as often as they desired, without cost. They, at least, regarded the pass system as an unjust discrimination. There can be no doubt that the system had a demoralizing effect.

The small suitor who had an action pending against a company for the value of a calf, before a justice of the peace, regarded his case as likely to be prejudiced by reason of the justice carrying a free pass. In the nature of things, constables, and even sheriffs, were supposed to be more or less subservient on account of such favors. Even the higher judicial and executive officers could not be held to be entirely impartial, while the influence of free passes upon the legislative mind was marked. In those days railway fares were five cents per mile, which the farmer, mechanic, laborer, and the great body of the poor were compelled to pay, while the more important and richer people were permitted to ride for nothing. Thus the masses reasoned that charging five cents per mile to one half the travel, and carrying the other half free, was equivalent to carrying all for two and one half cents, and therefore they were paying the expenses of carriage of their more prosperous neighbors, and were being charged twice as much as they ought to pay.

All these influences had a distinct effect upon the public mind. "To charge one person two prices for the sake of carrying another free, who was better able to pay," which was the usual form of expression, seemed outrageous, and of course excited animosity in the minds of many against the companies; but the feeling of greatest bitterness was in the minds of those who had once been favored with passes, but who, by reason of having gone out of office or because of other changed conditions, could no longer get them. To be deprived of a privilege once enjoyed is always a hardship, and, if the privilege has been long continued, an injustice. So a pass, when granted, seems a compliment, and for the moment excites emotions of friendship; but its withdrawal seems an insult, and excites bitter and lasting enmity.

As a rule, the men who had once been members of the legislature, aldermen, county commissioners, sheriffs, constables, etc., and, as such, enjoyed for a year or more the privilege of riding free on all the railways, having passed out of office and being again compelled to pay fares, became, on this account, most uncompromising enemies. And as these men were numerous, and distributed as to residence over whole States, and were sometimes active in public affairs, they did much to point out the inconsistency of "charging one man five cents in order to be able to carry another free."

Thus, during the Granger agitations, the pass system, because containing the sting of personal pique, has been, possibly, a more active influence than the more important matters pertaining to the evil effects of discrimination.

CHAPTER IX.

FAIRNESS OF LEGAL RATES.

THE principal causes which induced the so-called Granger legislation have been stated in the previous chapters.

Nearly all the complaints which were made against railway management were based upon the practice of discrimination in one form or another. As a rule, it was not that the rates were too high, but that there was too much difference between the competitive and non-competitive rates for both to be just and reasonable; consequently, either one was too low, or the other too high. But reasoning from the universal principle of trade, that a vender, in fixing a price for his goods, asks as much as they are worth, the conclusion was that the lower rate was high enough, and therefore the higher rate must be extortionate.

The latter conclusion, it seems to the writer, would have been legitimate, and such as in ordinary business transactions would have been conclusive; yet, notwithstanding the intense excitement growing out of the profound feeling that they were suffering injustice at the hands of the companies, it is to the credit of the moderation and fairness of the much-abused Grangers, that they listened to the statements of the companies, as to the true condition of affairs. The explanation which the companies were compelled to make amounted to an humble confes-

sion on the part of the managers that, in their contests with each other to secure the lion's share of the tonnage, they had made rates so low at competitive points that, if compelled to carry all business at proportionately low rates, it would ruin their respective companies. They could produce no particular evidence of the facts embraced in their explanation, but the legislature accepted their simple statement because it looked plausible; and, instead of making the basis of its schedule of rates the lowest rates of the railway companies, it took a fair average of all the rates, so that, as near as could be calculated, the aggregate revenues of the companies should not be affected. It lowered the higher rates slightly, and left the companies free to raise the lower rates to the same level, which the legislature expected and desired that they would do.

Had the companies pursued this course, the purpose of the legislature to destroy unjust discrimination would have been accomplished, and the revenues of the railways would not have been depleted. But the companies chose a different line of policy, which will be pointed out later.

Right here is the evidence of the truth of the constant assertion on the part of the majority of the people, as represented by their legislatures and railway commissioners, that the object of so-called Granger legislation is not to destroy the value of railway property, but to protect other property from being destroyed by the methods of railway management; or, in a word, to prevent discrimination. Here is also the evidence of the fair-mindedness with which the people have dealt with this question.

By the ordinary rules of evidence and the usages

of business, the legislatures would have been justified in holding the fact that the companies made the lower rates voluntarily as conclusive admission against themselves that these were sufficiently remunerative. But the legislatures, although acting in such times of intense public excitement as are usually conducive to "retaliatory injustice," and having power to exact the lowest rate, nevertheless fixed upon the average rates. This has been the course of subsequent legislation.

In view of the feeling of distrust of legislatures and of legislative commissions which exists in the minds of uninformed owners of railway securities, this fact is of sufficient importance to be repeated by way of emphasis. Consequently, it is again stated that, during the whole course of so-called Granger legislation, no legislature has established by law, nor has any railway commission promulgated, a schedule of rates so low as materially to reduce the revenues of the companies, had the companies adopted the schedules and enforced them as a whole. On the other hand, have the representatives of the companies treated the legislatures and commissions with equal fairness and consideration? It would seem that they have not. From the beginning, the laws and the commissions have been made the scapegoat of every misfortune which has befallen the companies in the matter of reduced rates and revenues. For the purpose of illustration the following quotation is made from the moderate accusations of a railroad president, who is certainly the peer of any both in intelligence and in candor of statement. It is from a recently published pamphlet on "The Stock Market and the Railway Problem," by O. D. Ashley, Esq.,

president of the Wabash Railway Company. Mr. Ashley says: —

No business can thrive under such adverse conditions. Railway property is threatened with destruction, and until the threat is removed the alarm will not only continue, but increase. The money invested in railway securities was supposed to be in property having equal protection under the laws of the land with other property. As common carriers, railways were, of course, known to be subject to certain regulations, but their rights to a fair compensation for the services performed had never been questioned before the persecution commenced by Congress and followed up by state legislatures. But a new doctrine, as dangerous as it is new, has been introduced, which claims not only to regulate the compensation which carriers shall receive, but to decide arbitrarily whether such compensation is reasonable or not. In other words, shippers, who are interested in obtaining the lowest rates possible, may unite in complaints to the interstate or state commissions; and if the commissioners, upon such investigation as they may choose to direct, conclude that a reduction should be made, it is thus ordered. It is true the railway companies may appeal to the courts, as in many cases they have done, but the intent of the law, as interpreted by the commissioners, is to assume and maintain this power over the earning capacity and profits of property which is as much entitled to equitable consideration as property in real estate, manufactures, or trade. The laws applicable to common carriers, it is well understood and admitted, are intended to protect the public from exorbitant demands, and certain privileges are granted to the carriers, in exchange for which the right of just and proper regulation is claimed and exercised. In the days of stages and baggage wagons, it would have been within the purview of the law to fix the rates of transportation and of fare as a condition of license, just as carriage rates are regulated by municipal law; but such powers were

seldom, if ever, exercised, and would never have been submitted to for a day if the rates had been less than a fair compensation for the service performed, for the remedy was in the hands of the owner of the stage or wagon. He would simply refuse to perform the service; and if the charges were unreasonably low, that is, unremunerative on the capital and labor required to do the work, no one else would undertake it. This remedy is not available to railway carriers. The work of transportation must go on, and necessarily will go on, so long as operating expenses can be earned, including the cost of repair and maintenance. The stoppage of railway operation would paralyze the business of the whole country. It could not and would not be permitted.

As compared with the common carriers in existence before the age of steam, those of the present day are perfectly helpless against oppressive legislation except by tedious and expensive processes through the courts. This assistance has been invoked to some extent and with good results, but railway companies have not yet pressed the constitutional questions involved with earnestness and vigor. The struggle is bound to come, unless public sentiment forces legislation to respect vested rights; but belief in the strong sense of justice which is a fundamental idea of our republican form of government, and which has hitherto been a ruling principle with its people, inclines railway managers to wait for its influence as investigation and experience prove the error and wrong perpetrated.

Meanwhile the railway trouble continues, productiveness diminishes, and the stock market stagnates.

After reading this extract, one would come to the conclusion that in Mr. Ashley's opinion the legislatures of the country, for the moment at least, had ignored "the strong sense of justice which is a fundamental idea of our republican form of government,

and which has hitherto been a ruling principle with its people," and had enacted laws which prescribed rates so unreasonably low that they were "unremunerative on the capital and labor required."

That the rates now collected by railway companies in the West are, as a matter of fact, thus low, there can be no question; but to claim that these rates are prescribed by law is so misleading that it becomes a matter of surprise that a man of Mr. Ashley's standing should have made such a statement.

In proof of this the writer would call attention to the last annual report of the Wabash Company, of which, as has been said, Mr. Ashley is president. It shows the average rate per ton per mile collected on that system during the year to be only about six mills.

The lowest schedule of rates which has yet been made by any commission in the Western States is that now in force in Iowa. The lowest rate in this lowest schedule is the soft-coal rate, and the lowest rate for the longest haul on soft coal is five mills per ton per mile; and it is certain that if the Wabash Company had applied the Iowa schedule as a whole to its entire business, its average rate, instead of being only six mills, would have been about ten mills. That there were conditions, growing out of competition between the companies themselves, which prevented the Wabash Company from collecting more than six mills is assuredly not the fault of the law, the legislature, the commissions, nor the public.

As a further example of the disposition of railway management to make scapegoats of these laws, the following quotation is made from the annual report of the Chicago and Alton Railroad Company: —

The position of a railroad commissioner in the West is not such as permits him to act independently, as his judgment may dictate. He must reduce rates when the public demand reduction, and he is often reminded that such is his duty. We believe that without exception the commissioners have been disposed to deal as fairly with railroad interests as they have been permitted to do by the people whose servants they are.

No railroad has been constructed except under authority conferred by the people, and it must be assumed that the people have never permitted a railroad to be constructed by their authority, without intending to permit its managers to collect such charges for transportation over it as might be found necessary to pay operating expenses and at least a small annual revenue on capital actually invested.

Has this been permitted since rates have been limited by the people, acting by their agents, the railroad commissioners, and can rates be reasonable which are too low to produce that result on the great majority of the railroads?

Perhaps the best answer may be found in the results of railway traffic under commissioners' supervision and direction as to rates in Illinois.

To avoid extending our inquiry further than is necessary for the purpose of answering the question stated, we will limit it to the first twelve years under commissioners' rule and to such railroads as were to be found during that period in connection with, or crossing your lines in Illinois within two hundred miles of East St. Louis — including yours, twenty-four in number.

During that period of twelve years, twenty of the twenty-four railroads referred to were forced into bankruptcy, as follows: five of them within one year, three within two years, four within three years, one within four years, three within five years, one within eight years, two within nine years, and one at the end of twelve years.

The territory we refer to, we believe, is unequaled in fertility of soil, coal deposits, and other resources, by any other

of equal extent in the United States. Other railroads have been constructed in the State during that period and later, which have met the same fate. Can it be possible that rates which produce such results are reasonable?

Rates fixed by the commissioners in all the Western States are now lower than the rates were under which many roads were forced into bankruptcy as already stated. We may well fear that like causes will produce like results.

Western railroads are compelled to sell their services at such prices as may be fixed by the people they serve. Slaves in the South served their masters on similar terms. But the law dealt more kindly with the slave. His master was required to support him.

. . . .

Western legislatures and railroad commissioners have step by step reduced the maximum rates which railroads are permitted to charge, until such rates are now lower than are charged on railroads in any other part of the world on which no larger amount of traffic is found, and this has been done where prices for labor and supplies required to maintain and operate railroads are higher than in any other country.

Assuming that the statement of the number of railway companies which have gone into bankruptcy in the district mentioned is correct, the assumption that these disasters resulted from the low rates fixed by the commission of Illinois is manifestly incorrect. The facts are that the more prosperous (because better located) railways in Illinois voluntarily make rates materially lower than the commissioners' schedules, and the rates so made fix the rates that the less prosperous lines can obtain; it is therefore evident that if these roads were forced into bankruptcy by reason of low rates, it was the rates made by so-called "competition" which bankrupted them, not those

made by the commissioners. It is more probable that rates had little to do with their misfortunes, but that they were due to bad location and improvident construction. The truth of the conclusion in regard to rates will appear by comparing the average rate of the principal Illinois lines with the commissioners' tariff. The average rate per ton per mile for the past year on the Chicago and Alton was nine and two tenths mills; on the Illinois Central, ten and three tenths mills; on the Chicago, Rock Island and Pacific, nine and seven tenths mills. The lowest rate on the lowest class (coal) in the Illinois commissioners' tariff for the longest haul is six and one half mills, and if this tariff had been applied to all the business of these three companies, it is probable that it would have increased their earnings from thirty to forty per cent.

In view of such facts as these, the following statement of the vice-president of the Chicago and Northwestern Railway, in a published interview in 1888, seems incomprehensible. Mr. Sykes said: —

Our equipment is fully employed, but we are working at low rates, and find it hard work, in common with other roads in the Northwest, to earn as much as last year, although doing a much greater business. This is owing to the concessions in prices for transportation, and more particularly the effect of the operation of the Interstate Law, and of the reductions in rates by the local State authorities and powers that claim to regulate the business of the railroads, more especially in Minnesota and Iowa. Railroad men throughout the Northwest, and all over the country, look with grave concern upon the last named phase, and hope the tide of popular feeling, which at present finds expression in the arbitrary and oppressive, if not actually

destructive, course toward the railroads, will abate before the properties are rendered valueless alike to the public and to the owners of capital invested.

General G. M. Dodge, president of the Denver City and Fort Worth Railway, and a director of the Union Pacific Company, who takes the other view of the case, replied to these statements of Mr. Sykes as follows: —

I claim that no reduction has ever been made by legislation that has not first been made by the railroad companies, lasting from three to nine months. Their example has led the people of the States to believe that, if they can carry freight and passengers at the cut rates and special rates that they make in their fights, they could do it under a law, and so far as I know, no answer has ever been made to that. During the session of the legislature of Iowa, when it had in consideration these rates, there were for six months in Iowa rates upon everything that were far below the rates made by the Iowa commission. Of course the rates made by the roads and the rates by the commission were ruinous. The whole trouble comes from the disposition of every traffic manager in the country to obtain something he is not justly entitled to.

. . . .

Mr. Sykes makes a great ado about what the legislators do and about the harm they have done to the companies, but if he will go back two years and take up the rates that his own road has made in Illinois and Iowa to meet other rates, and compare them with the lowest rate that has ever been placed upon him by legislation, he will find that the rates of the railroad commission have been generous compared to his own. I think the owners of property should understand fully that all these low rates in the West have been made from the examples set by the managers of their own roads, and that they should put the fault right where it

lays. I have no sympathy with the rates that have been made in Iowa by the railroad commission, but I think that they were made, not only with the view of enforcing them, but with the view of having the comparison made by the owners of the property; and I think if you compare the rates made by the commissioners with the rates of the railroads through Iowa upon which they are based, it will be very hard for the railroads to attack the commission's rates. I only speak of Iowa by reason of having a personal knowledge of it. So far as my knowledge goes, it is the same in Kansas, in Missouri, and in Nebraska.

To my certain knowledge, the Union Pacific Road, of which I am a director, is doing a large amount of its business now as competitive business at a loss, and they have not the nerve to stand up and refuse it, because they are fearful that some other road will get it; and I know to-day that there is a large demand upon their road for every car they have got, to do a paying business.

The truth is, — and it is time the investing public should be told the truth, — it is not the so-called "Granger laws," nor the Interstate Law, nor the acts of commissions, which have reduced the rates of transportation to the present unprofitable level, but the mismanagement of the companies. For more than twenty years the managements of Western railways have been engaged in the prosecution of rate wars, in which it was impossible to decide which was acting on the offensive and which on the defensive. Each manager has surrounded himself with a standing army of freight and passenger agents, contracting agents, soliciting agents, advertising agents, traveling agents, clerks, typewriters, and runners. In every important city, and in many of the unimportant towns, detachments of each of the companies have been permanently quartered, occupying the most

expensive offices at the most conspicuous corners of the most important streets. Hardly a day has passed during twenty years without active engagements in each city, in which all the forces have been under fire. No expense has been spared to equip them with the latest and most expensive arms. The arts of the printer, the lithographer, and the engravers on wood and steel have been exhausted. Theatre tickets, credits at livery stables, and "et ceteras," have been supplied without stint and "no questions asked." The expenses of the standing armies have been enormous; but, like all standing armies, they are consumers and not producers. Their mission is to destroy. All of them together have not in twenty years produced a single ton of freight. Their whole duty is to get the freight which others have produced routed over their line, "honestly if they can, but get it." After two nations have been at war until the resources of both are exhausted, and a treaty of peace has been concluded, the first step towards making it permanent is to disband their armies, or at any rate withdraw them to the interior. As long as they are on the frontier, face to face and under arms, no continuous peace is expected.

From time to time during the twenty years' war, the chiefs have made solemn compacts of peace. These treaties have been signed, sealed, and delivered with all the necessary solemnities, but not once have they withdrawn or disbanded their forces. For a few days at a time have they slept with their guns loaded, only to renew the contest on the first pretext, with renewed vigor and destructiveness. This has been the true cause of the destruction of revenues, instead of "Granger laws" or "State Commissions."

The managers know it, but they have been too cowardly to avow it. "Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat?" was demanded many years ago. "And the man said, The woman, whom thou gavest to be with me, she gave me of the tree, and I did eat."

This sneaking, pusillanimous trait of the first man has descended through more than two hundred generations of men to the railway management of the nineteenth century. And the managements said, "The laws and the commissions, they gave me of the tree, and I did eat."

CHAPTER X.

A LEGISLATIVE DIALOGUE.

THE first so-called "Granger law" in Minnesota was enacted at the legislative session of 1871. The act contained only ten sections. It fixed maximum rates for both freight and passengers, and prohibited all kinds of discriminations. The provisions of the law were not much regarded by the railway authorities of the time; but the principle, for the first time announced in Minnesota, namely, the authority of the State to fix rates, was regarded as of the gravest importance.

The companies denied that the State had such authority, and it was to this point that the principal discussion, which on either side was not always of the most temperate character, was directed. It is needless to say that the companies regarded such an authority with suspicion and alarm.

As has been said, and for the reasons stated, an intense interest in the proposed law was manifested by the people, who felt that they had been injured; and perhaps it is not putting it too strongly to say they believed that they had been cheated and defrauded by the methods of discrimination which had been practiced by the companies. The discussions occupied the most of the legislative session, to the exclusion of other business. Among the senators who championed the cause of the railway, one of the

ablest and best equipped for argumentation was the president of a railway company whose securities were principally owned by residents of the State. The friends and paid lobbyists of the railway companies filled the lobby of the Capitol by day and the corridors of the hotels by night, and the railways' side of the question was presented before the committee by able lawyers as well as by practical and expert railway officials. After about sixty days' consideration, the bill was passed almost unanimously, only two senators voting in the negative.

Omitting the technical, legal, and constitutional arguments, an outline of the opinions then current may be best presented in the form of a dialogue between the railways and the people.

Railways. The bill that has been introduced in the legislature assumes that the State has authority to fix the rates at which freight and passengers must be carried by the railways. This is the assertion of a new principle in legislation, and the mere introduction of the bill has been the cause of great alarm to the owners of our railways. To them it seems to threaten possible confiscation of their property. In the building of these railways a large amount of capital has been invested. The individuals who furnished this capital are the owners of the railways. The railways are property precisely as a building or a farm is property. The owner of a building or a farm has the undisputed right to say upon what terms he will allow another person to occupy or use it. He may determine both the extent of the use and the price to be paid for it. If the legislature may establish the tolls on a railway, why, on the same principle, may it not establish the rent for a farm? In a sense,

a railway company is a merchant, having for sale transportation, which it owns. By virtue of ownership, it may fix the price at which to sell transportation. If the legislature may interfere, and establish the price at which we must sell our transportation, why may it not fix the price at which wheat, tea, coffee, and other articles of merchandise shall be sold? Is not this a dangerous precedent to establish?

Such legislation is very different from a usury law, which fixes the maximum rate of interest on money, because money is transportable. If the rate of interest is not satisfactory to the owner, he can take his money elsewhere. But our property is fixed. In the nature of things, it cannot be moved to another State or country. For this reason, if the State has the power claimed, it would be unfair to exercise it. If, before the roads were built, the power had been asserted, individuals would not have risked their money in them, and you can be assured that if this bill becomes a law no more railways will be built.

People. What you say about the ownership of the railways, the right incident to ownership, and the fixed character of the property, are matters of grave consideration. We are strongly impressed by the fact that the capital invested in railways cannot be moved beyond the jurisdiction of the law, as money can be, in case the rates as fixed by the legislature are too low to suit the owners' idea as to the value of its use. We wish to do the railways no injustice; but, while respecting their rights, we feel bound to protect our own.

Your statement, that the legislative regulation of rates is new, is incorrect. Before railways were known, laws were enacted regulating the rights and

duties of common carriers; this was so long ago that these statutes are now called common law. By the common law, you, as common carriers, could not refuse to do business for any one. You could not set a higher price for your services than they were reasonably worth; if you were voluntarily paid more, and afterwards the payer chose to demand back the excess, he could recover it at law. In these important particulars, the law has always regarded the railways differently from farms or buildings. The owner of a farm can rent it or not as he chooses, and he may demand a price much above what it is reasonably worth; if the price is accepted and paid, that is the end of it, for no suit would lie to recover the excess. Your claim, that railways are venders of transportation, equally fails in view of your common-law obligations; for the ordinary relation of buyer and seller cannot exist where the seller is compelled by law to sell at a reasonable price.

You must admit that the proposition for the legislature to regulate your rates of toll is no new legislative principle, but is as old as the common law. We desire the legislature to fix reasonable rates only; or in other words, we seek to have the legislature supplement the common law by definitely naming the rates which the common law had fixed before you commenced to build your roads, and which every individual investor knew before he invested his money in your securities.

Railways. It is very well to say that you want only reasonable rates named; but how can a legislative body composed of farmers, lawyers, and country merchants determine what are reasonable rates? What do such men know about the cost of transpor-

tation by railways? And what do they know about our business in any of its details?

People. They know very little, of course; but you will be invited to tell them all you know about it, and especially what constitutes a reasonable rate. Lest we may do you injustice, we shall ask only that the rates fixed shall be based on the rates you are now charging; and if an error is made let it be in your favor, by fixing the rates a little higher than your present rates rather than lower. What we wish to accomplish is to equalize rates, by lowering the higher non-competitive rates and leaving you free to raise the competitive rates to the same standard, so as not to reduce your revenues, but to protect us against the losses incident to your present policy of discrimination. We want the State to decide between us, and do justice to you as well as to ourselves.

Railways. How absurd! Here is a controversy between the railways on one side and the people on the other, and you talk about doing justice by referring it to the decision of the legislature, a tribunal chosen entirely by the people. Such a one-sided reference is not justice, but a travesty upon justice.

People. We cannot deny that the tribunal is imperfect; but it is the best, and indeed the only one we have. There are two alternatives: the managers, or the legislature. We have tried the managers; we cannot think the legislature will do worse. Besides, it cannot be said the railways have no voice in the election of legislators. An inspection of the statute books would almost lead a stranger to think that heretofore the lawmakers had been elected entirely by the companies. Up to this time you have asked

for no law which has not been enacted. Up to this time your managers have been left at liberty to make and collect such rates as pleased them, although, as we claim, it is not only the right but the duty of the legislature to fix your tolls. Your managers have exercised their high prerogative in such a manner that it threatens to destroy a large portion of our property. We now ask protection from their unjust discriminations.

Railways. We claim that instead of destroying values we have created about all the values there are in the West. What would your farms, your town and city real estate, your wheat, oats, corn, cattle, hogs, etc., be worth without railways?

People. We admit that property in this State would be of little value without railways. On the other hand, what would railways be worth without the people?

We think one question as pertinent as the other, and both must be answered alike.

You came to the country first, and we followed. You invited us to come and buy your then worthless lands and cultivate them, so as to make business for your then worthless roads. Your coming into the country was no favor to most of us, for if you had not come first we never should have come. If we had continued to reside in Europe and the Eastern States, it would have been a matter of little importance to us what the value of land, or grain, or live stock in Minnesota might be. On your invitation we came. We bought your lands. By our labor we have improved them and made them produce freight for your railways, and by this means have made the lands you still own salable at advanced

prices. The railways and the people have pioneered together, each being mutually beneficial to the other. Farms in Minnesota are almost worthless without railways ; railways are alike worthless without farms.

As we have commenced, so must we continue. The people, not individuals, are the customers of the railways. The great merchants and large shippers are the men you deal with directly, but it is the people who ultimately pay the bills. We are mutually dependent upon each other, and therefore ought to deal fairly with each other. It is not fair for you to treat one better than another. Impartiality on your part is what we ask and what we will have.

Railways. But still we feel distrust. It seems like letting the shipper, who is always anxious to get low rates, have the entire say as to what rates he will pay. That would be unfair; and we fear it would soon lead to practical confiscation.

People. As it appears to us, the fault of your reasoning is that you do not distinguish between the people, in their individual capacity, and the State, represented by the legislature. The individuals are your customers, not the State. If the relation between the railways and their customers were the same as between vendor and vendee, both parties being at liberty, if they did not agree upon the price, to decline the trade, then the matter of rates might be left to individual judgment. But there is no such relation. By common law you are bound to sell, while by the law of his necessities, which is more pressing and more effectively executed, the individual is compelled to buy. Under such circumstances we hold it would be equally unfair for either party to have the power of making the rates. You might very well fear that

the individuals, if the matter were left entirely to them, might make your rates too low; on the other hand, the individuals have the same distrust of you. One distrust has the same natural basis as the other, and both are entitled to the same consideration. If the absolute power to make rates should be left to the will of each shipper from day to day, you may very well fear, although you have had no experience of it, that your property would soon be practically confiscated. So, on the other hand, after entrusting this tremendous power to your managers for several years, our experience is that the property of many citizens has been practically confiscated. Not only has their property been deprived of a large part of its value, but many of them have been driven out of their chosen business and have been compelled to seek other avocations for a livelihood.

Now, we do not ask you to let your customers fix the rates, neither will we consent that your managers shall fix them. We offer you the principle of arbitration; that is, that the most disinterested party whose services can be obtained shall say what the rates shall be. The arbitrator which we offer is the sovereign State. The most important function of the State is to decide between the subjects when just such differences as these arise. The most important business affairs, as well as more important matters relating to life and liberty, are necessarily referred to the State for arbitration. Why should not the relation between railways and their customers be so referred?

Railways. The function you have mentioned is judicial, not legislative. It should therefore be referred to the courts, not to the legislature.

People. There are both judicial and legislative questions involved. It is clearly competent for legislatures to prescribe rules of evidence and of procedure. Clearly, the legislature may and in the interest of justice should change the burden of proof from the plaintiff to the defendant, in cases where the evidence is voluminous and difficult to extract from a huge mass of accounts; where all the evidence is in the possession of the defendant, and he is familiar with it and knows where to look in order to find it. By fixing definite maximum rates and making them *prima facie* evidence of reasonable rates the legislature thus changes the burden of proof.

If the legislature should make these rates too low, it would present a judicial question in which the courts would protect you.

This was the tenor of the discussion, which was repeated in every conceivable form of expression during the session of the legislature. The companies did not attempt to deny the charge of discrimination. They did attempt to justify it on the grounds of necessity arising from competition, and of aid required by new business enterprises, as has been stated in previous chapters. The bill became a law on the 6th of March, 1871, and the legislature adjourned. The railway companies never put the law in force, or in the slightest degree paid any attention to its provisions. The only use they made of it was as a scapegoat for the extravagant estimates of earnings, which they had made in the East, in order to bolster up the price of their securities and to get money to extend their lines.

CHAPTER XI.

STRUGGLE OF THE MANAGERS.

SINCE the companies ignored the existence of the law of 1871, as a matter of course it did not alleviate any of the evils of which the people complained.

But there was no further important legislation until the session of 1873–74. The vendetta, which has been mentioned, between the Chicago line and the Lake Superior & Mississippi Railway Company had then been going on for more than two years. It was during this time that the Chicago company first announced its great geographical transformation policy of "making every station on its road as near Chicago on Lake Michigan as Duluth on Lake Superior." In many cases, the difference in distance was fully two hundred and fifty miles; for example, one shipping point was four hundred and ten miles from Chicago and one hundred and fifty-six miles from Duluth. This difference it solemnly decreed should be ignored for all time, and thus it laid the foundation for the present rate per mile between Minneapolis, St. Paul, and Chicago, of three and one half mills per ton, made on an annual shipment of about 40,000,000 bushels of wheat and its product, flour. Correspondingly low rates are fixed on coal and similar important commodities.

To accomplish this purpose without depleting its own treasury, and without increasing the difference,

too great already, between local and competitive rates, or without unfairly affecting values, was as impracticable as actually to move Lake Michigan two hundred and fifty miles westward, or Lake Superior a like distance toward the east. During the summer, while Lake Superior was open to navigation, rates were made so low to Minneapolis and St. Paul that the price of wheat and other farm products, as well as of general merchandise, was materially affected. The increased value of wheat made farms which were accessible to these markets materially more valuable than farms two hundred miles nearer Chicago, on the same line of railway. To prevent local people from taking advantage of the St. Paul and Minneapolis rates, rates between local stations and these points were made sufficiently high. By this contrivance, so far as rates were concerned, it made St. Paul and Minneapolis only one hundred and fifty-six miles from Chicago, when in fact they are over four hundred miles distant; while local towns which are only one hundred and fifty miles from Chicago were made over four hundred miles distant, in regard to rates. The result was that farms and town property located within about two hundred miles of Chicago, which had before been more valuable, now became less valuable than farms and village property which were within reach of St. Paul and Minneapolis by independent lines, although four hundred or even five hundred miles away from Chicago.

Naturally enough, this transformation of values had a tendency to cause migration of population and business from the less to the more favored districts; and hence, as might be expected, the census of 1880 showed a large decrease of population in the local

territory of the Chicago line and a large increase in the more favored localities.

Having made such extremely low rates during the season of navigation, it attempted to recoup its losses by high rates in winter. This had a disastrous effect upon the general business of the region. In anticipation of the change, the merchants thought it cheaper to pay interest than increased rates; so they would buy a six months' stock to last them through the winter and have it shipped in before the close of navigation. For the same reason, the wheat buyers and millers would store their shipments, as far as possible, during the winter months, so as to get the low rates after navigation opened in the spring.

For carrying purposes large amounts of money had to be borrowed; an operation always difficult, and sometimes made disastrous by a change in the market. As far as the company was concerned it caused a congestion of business in the autumn, and a stagnation in the winter, instead of that steady stream which is most profitable.

While these events were taking place the mutterings of the approaching storm, not only in Minnesota but in other States, were distinctly audible to all but the deaf. In the fall elections of 1873 it broke forth. In spite of all the efforts of the managements, in spite of a lavish expenditure of free passes and "other good and valuable considerations," the people elected legislatures in Wisconsin, Minnesota, Iowa, and Illinois which were unfriendly to the companies.

When the legislatures assembled many intemperate and unjust measures were proposed. The most intense excitement on the subject prevailed, both in and out of the legislatures; and for a time it seemed

as though the people were prepared to confiscate the railways. But better counsels prevailed. Each legislature enacted laws fixing maximum rates, or appointing commissioners clothed with authority to establish rates, and prohibiting discrimination. In details, although differing in principle, they were not materially different from the Minnesota law of 1871. The law of Wisconsin commonly known as the "Potter Law" was the most stringent, and fixed the lowest scale of rates.

The agitation had become too widespread and the opposition to the methods of the companies too intense to admit of these laws being ignored with the silent contempt shown towards the previous law. The Wisconsin law, having been approved March 11, 1874, became effective by publication April 28. Under the latter date, the president of one of the most important railway systems in that State addressed a letter to the governor, notifying him that the board of directors, having "sought the advice of able counsel, and after mature consideration, believed it their duty to disregard so much of said law as attempts arbitrarily to fix rates of compensation for freight and passengers."

As this letter was evidently prepared by the counsel of the company, and was regarded, at the time it was made public, as an able summing up of the railway side of the case, both upon the law and the facts, and as the legal argument has not before been introduced, it is thought best to insert the letter in full. It should be stated that about the same time there was published a letter of similar tenor from the president of the other leading road, as well as opinions of two eminent jurists, the Hon. B. R. Curtis and the

Hon. Wm. M. Evarts. The letter of Mr. Mitchell must be regarded as the joint production of these able men, edited by the no less able counsel of the Chicago, Milwaukee and St. Paul Railway Company, and may therefore be considered an exhaustive presentation of the case from the companies' point of view.

MILWAUKEE, *April* 28, 1874.

His Excellency, WILLIAM R. TAYLOR, *Governor of Wisconsin.*

DEAR SIR, — At the last session of the legislature, an act was passed, entitled "An Act Relating to Railroads, Express and Telegraph Companies in the State of Wisconsin," which assumes, among other things, to fix the tariff for freight and passengers, which the railroads of the State may hereafter charge. This act arbitrarily divides the railroads of the State into different classes, and then declares that one class shall charge one rate, another a different rate, and a third still another rate of compensation for performing the same or similar services, and affixes severe penalties for a violation of its provisions. You are aware that this species of legislation is entirely new in this State, and in the broad and sweeping terms of this act is practically unknown to any of the States of the Union. The right of a company owning a road to fix its rate of charges was recently held in the Supreme Court of the United States, to be "an attribute of ownership." Yet this law wholly ignores that right, and not only deprives the owner of the right to fix the compensation to be paid for its use, but arbitrarily fixes one price for one, and a different one for another, without any inquiry as to whether the price fixed "is a reasonable one or will afford a fair and adequate remuneration and return upon the amount of capital invested." The obligation and promise which Chief Justice Dixon says "springs from the act of incorporation and invitation by the State to persons to invest their money in the stock" of rail-

road companies, that "they shall receive a fair and reasonable compensation for the money expended," is wholly disregarded. The roads now owned and operated by the Chicago, Milwaukee and St. Paul Railway Company were all built under charters which provided that "the Board of Directors shall have the right and power to regulate their tolls," and that the company should have the right "to demand and receive such sum or sums of money for freight of persons and property as they should from time to time think reasonable." On this solemn faith and pledge these roads were built, and their right to a fair and reasonable return for the capital invested became settled and fixed beyond the power of the legislature to abrogate or destroy. These roads are property created under the sanction of law, and are owned by the company. To arbitrarily deprive the company of them or their beneficial use, by act of the legislature, is depriving the company of its property, without due process of law. It is confiscation. If it is claimed that the public interests demand this action on the part of the State, then, I submit, it is taking the property for public use, and that just compensation must be made. The present company has succeeded to all the rights granted to the original companies by operation of law, and is entitled to exercise them. The sad spectacle is now presented of this great State attempting to violate its plighted faith and repudiate its solemn agreement, after the roads have been built and the money of the stockholders expended, after the improvement has been made, and the State has received all the benefits expected. I cannot believe that the people of this State desire to be placed in any such position, and am satisfied that the action of the legislature in enacting this law will be repudiated by them as soon as its real character is understood. That it has effectually destroyed all future railroad enterprises, no one who is acquainted with its effect in money centres will for a moment doubt. That, however, I do not care to discuss at this time, as the State has an undoubted right to prevent a further extension of its

railroad system if it chooses, although as a citizen I deeply regret such short-sighted policy. But, as the representative of the Chicago, Milwaukee and St. Paul Railway Company, a part of whose system of road is in this State, and who have expended over $25,000,000 in permanent improvements therein, on the faith and credit of the charters granted, all of which is directly and seriously affected by the law in question, and must be ultimately ruined and destroyed if this policy is persisted in and successfully enforced, I am compelled not only to protest against such unjust legislation and violation of plighted faith, but also to inform you, and through you, the people of the State, what its effect, if submitted to, will be, not only upon the company that I represent, but upon the whole railroad system of the State, and the business interests of the whole community. The entire road of the Chicago, Milwaukee and St. Paul Railway Company, as now constructed and equipped, has cost about $36,000 per mile. The portion in Wisconsin, including all our valuable grounds and improvements at Milwaukee and other points, cost about $38,000 per mile. It is capitalized at those sums respectively in bonds and stock. The stock has never been watered, and it is believed that the road could not be produced in its present condition for a sum less than its cost or present capitalization at this time. All agree that the company is entitled to a fair remuneration on the capital invested. The railroads already constructed have added many millions to the wealth of the State, and perhaps no other class has derived so great a benefit as the farmer. Many of the farmers and much of the farming land of Wisconsin, now worth from $50 to $100 per acre, without the railroads would not be worth to exceed $10 or $20. Other branches of business and other industries of the State have experienced a similar benefit from the construction and operation of these roads; yet, every one familiar with railroading in Wisconsin is aware that no dividends were paid for the first twelve or fifteen years that the roads were in operation, and that they were unable to

pay the interest on their bonds, and nearly all passed through the process of foreclosure. It is only within the last ten years that any dividends have been paid on the stock of any of the roads. The bonded debt of the companies, generally, bears only seven per cent interest, and amounts to but little more than half the actual cost of the roads with their equipments. During the last ten years this interest has been paid, and represents an income of seven per cent on a trifle over one half of the cost of the property. Since the organization of the Chicago, Milwaukee and St. Paul Railway Company, in May, 1863, there has been paid in cash dividends on its stock, which represents nearly one half of the actual cost of the property, $3,813,257.72, which amounts to twenty-four per cent only for the whole time, ten and a half years, and is equivalent to a dividend of only two and twenty-eight hundredths per cent per annum on the stock of the company. All the balance of the earnings over and above these dividends and payment of the interest on the bonded debt, has been consumed in operating expenses and improvements of the road and rolling stock and bringing the property to its present state and condition, and was necessary for that purpose. We have, then, as the result of the last ten and a half years' existence of the Chicago, Milwaukee and St. Paul Railway Company, one half the cost of the road capitalized in bonds, which has received seven per cent per annum; the other half capitalized in stock, preferred and common, which has received two and twenty-eight hundredths per cent per annum in cash; and taking stock and bonds together, the actual return to the investors has been four and sixty-four hundredths per cent per annum on the actual cost of the property from May, 1863, to January 1874. In addition to this amount, a small amount in stock has been distributed in dividends to represent that portion of the net earnings used in completing the construction of and improving the property. These stock dividends amount to two and eight tenths per cent per annum. With these stock dividends

added to the cash dividends above named, at their nominal value, the whole amount received on the investment, for interest and cash and stock dividends, amounts to only six per cent per annum of the actual cost of the property. I submit to your Excellency, and through you to the people of the State, whether this is more than a fair and reasonable return for the capital invested in these improvements. Is it not far below such reasonable amount? The best and most careful economists admit that not less than ten per cent per annum should be allowed on such investments. Yet less than one half that amount has been received in cash by this company, and the legislature now attempts to assume the regulation of our income, and reduce it to a point barely above operating expenses. The company is now engaged in relaying its road with steel rails, and, when that and other improvements shall have been completed, it is hoped that moderate and reasonable dividends may be made on the actual cost of the road, and that our increased facilities may enable us to reduce the rates charged for passengers and freight. The directors of this company have at all times had a due regard to the interests of the public, and a desire to furnish transportation at the lowest possible figures, and although not receiving a fair and reasonable return on their investments, they have for the last four years prior to 1873 steadily reduced their rates of freight and passengers from year to year, as will be seen from the following tables, showing the charge for freight per mile, and average per mile for passengers for each year from 1868 to 1873 inclusive: —

	Charges per ton per mile.	Average rate per mile.
1864		.04
1868	.03 40–100	.03 86–100
1869	.03 10–100	.03 92–100
1870	.02 82–100	.03 85–100
1871	.02 54–100	.03 75–100
1872	.02 43–100	.03 54–100
1873	.02 50–100	.03 42–100

The law in question proposes to reduce our passenger rates twenty-five per cent and our freight rates about the same, thus deducting from our present tariff about twenty-five per cent of our gross earnings. The same legislature also imposed upon us an additional tax of one per cent of our gross earnings, which is equivalent to taking three per cent of our net earnings.

It is not pretended that we are now running too many trains or at too great a rate of speed to accommodate the public, or that any less attention and expense can be bestowed upon our road-bed and track and rolling stock, consistent with the safe operation of our road. Hence it is impossible for us to decrease the expense of operation and repair, and those expenses must remain as before the passage of the law, provided we continue to operate the road as a first-class road and so as to accommodate the public. The entire reduction in our rates made by this act is therefore a reduction from our net earnings. The average expenses of operation are not less than two thirds of our entire gross earnings, leaving as net about one third.

This act, as we have seen, proposes to take from us twenty-five per cent of our passenger and freight earnings, and the additional tax of one per cent of our gross earnings, all of which is equivalent to taking from us twenty-six per cent of our gross earnings. Therefore, deducting this amount, equal to twenty-six per cent of our entire gross earnings, from thirty-three per cent, our average net earnings on business, would leave us only seven per cent of our gross earnings as the entire net earnings of the road, out of which must be paid the interest on our bonds and the dividends to our stockholders. It is therefore manifest that this law will take from us over three fourths of the net income received under our present tariff, and yet the total net income of last year was not sufficient to pay six per cent on the actual loss of the property. Comment is unnecessary upon a law which proposes thus to deprive capital permanently invested under the sacred promise and pledge of a great State of a suitable and reasonable return.

Can it be that such a law, and passed under such circumstances, is constitutional and binding? Can the sacred obligation of the State to us be thus impaired? And can our property, invested on the faith and credit of the State, pledged in our charter, be thus confiscated? I do not believe it, and shall not until compelled to do so by the decision of the highest court authorized to pass upon it.

The board of directors have caused this act to be carefully examined and considered by our own counsel, and by some of the most eminent jurists in the land, and after such examination they are unanimous in their opinion that it is unconstitutional and void.

The board of directors are trustees of this property and are bound faithfully to discharge their trust, and to the best of their ability to protect it from spoliation and ruin. They have sought the advice of able counsel, and after mature consideration believe it their duty to disregard so much of said law as attempts arbitrarily to fix rates of compensation for freight and passengers.

I regret the necessity that compels the company to take this course, but it is the only one left to preserve the property and properly test the question raised by the act. An unconstitutional act is void. A law that contravenes the constitution is of no effect. It is no law. The decision of the court only ascertains and declares that it is void. It is none the less unconstitutional and void before it is so declared than it is afterwards. Hence such a law has no more binding force before than after the decision of the court. It is no justification for any act done or omitted at any time. The only difference is, that parties obeying or disregarding it before the court decides upon it are, in either case, acting at their peril. Should we obey this law, and by so doing allow the property committed to our trust to suffer waste, the law would be no legal justification of our conduct should it afterwards be adjudged unconstitutional, and so, if we disobey it our act will be justified or not, according as the court may finally determine. Being placed, therefore, in a

position where we are compelled to act, we are determined to act in accordance with the advice of our counsel, as we are fully satisfied that it is only by so doing that we can protect and guard the important interests committed to our charge. It is from no disrespect to Your Excellency, or the constituted authorities of the State, that the board of directors have determined upon this course. They are fully aware that they are not able to contend with the State, or defy its laws, and were it not for the fact that they are fully convinced of the unconstitutionality of this act, would not adopt a course of action which would seem even to contravene a law of the State.

But, being fully conscious that the enforcement of this law will ruin the property of the company, and feeling assured of the correctness of the opinions of the eminent counsel who have examined the question, the directors feel compelled to disregard the provisions of the law so far as it fixes a tariff of rates for the company, until the courts have finally passed upon the question of its validity.

Respectfully yours, etc.

ALEXANDER MITCHELL, President.

It will be noticed that Mr. Mitchell's strong point is that the statutory rates, if enforced, would deprive his company of net earnings, which would be equivalent to confiscation of the property. Judge Curtis premised his opinion by saying: —

Certain material facts are stated as proper to be taken into consideration.

The first is, that the railway corporation was formed by consolidation, etc. The next material *fact stated* is, that if the corporation transacted its business for the rates of compensation provided in the law in question, its entire receipts will be exhausted by its necessary expenditures, leaving nothing to be divided among its stockholders or appropriated to the payment of the interest and principal of its outstanding bonds.

The other view of the law was that the last mentioned "material fact stated" was not proven. Indeed, there seems to be in the statement contained in Mr. Mitchell's letter, when taken in connection with other well known facts, strong evidence that the statements of fact, as made to Judge Curtis, were not in all respects correct.

For example, Mr. Mitchell states the average rate per mile in 1873 for passengers at 3 42-100 cents. It was well understood that this was an average rate received from those passengers who paid anything, and that had the average rate been obtained by using as a divisor the total number of paying passengers plus the number of those who rode free, the average would have been much below three cents, the price fixed by the law; and consequently, if the company would collect the legal rate from all alike, and abolish the free list, its revenues from the passenger business would be increased rather than decreased.

If the same test is applied to the freight rates, it becomes equally evident that this statute did not reduce the rates in Wisconsin below the average rate of 2 50-100 cents per ton per mile, which according to Mr. Mitchell's statement was the average for the year 1873. For proof, it may be stated that the law classified freight into four general classes to be designated as first, second, third, and fourth classes, and into seven special classes to be designated as classes D, E, F, G, H, I, and J. The rates on the four general classes were made the same as were "charged for carrying freights in said four general classes on said railroads on the first day of June, 1873," and the rate per ton per mile of the seven special classes was fixed at certain rates for the first twenty-five miles,

a less for the second twenty-five miles, and a fixed rate per mile after, as follows:

	1st 25 miles.	2d 25 miles.	All over 50 miles.
D . .	$4\frac{4}{5}$ cts. .	. $3\frac{1}{5}$ cts. .	. $1\frac{8}{5}$ cts.
E . .	Same as class above.		
F . .	4 .	. 2 .	. 1
G . .	$3\frac{1}{5}$.	. 2 .	. 1
H . .	4 .	. $2\frac{4}{5}$.	. $1\frac{8}{5}$
I . .	$4\frac{2}{5}$.	. $2\frac{2}{5}$.	. $1\frac{1}{5}$
J . .	$3\frac{1}{5}$.	. $2\frac{2}{5}$.	. 1

When it is considered, in connection with these figures, that the four general classes were left by the legislature under the same tariffs as had been in force by the companies, and that as a rule first class is three times the rate of class D, and second class about two and one half times class D, and third and fourth class materially higher, the evidence seems conclusive that the rates fixed by law would produce an average materially higher than the average of the whole line, stated by Mr. Mitchell at two and one half cents. It seems also probable that had the rates fixed by this law been applied to the whole business of the line, the interstate as well as the State traffic, it would still have produced a larger average. The latter of course is the proper test. There are little inaccuracies in the material facts as stated by Mr. Mitchell, which were pointed out at once. For example: in his tabulated statement of passenger earnings per mile, averaging the gross earnings from transportation of passengers who paid any fare, and omitting the large number who went free, the rate is stated at 3 42-100 cents per mile; then he says: "The law in question proposes to reduce our passenger rate twenty-five per cent," which would have reduced the rate to 2 57-

100 cents per mile, while the rate fixed by the law complained of was three cents per mile. Then Mr. Mitchell proceeds: "And our freight rates about the same; thus deducting from our present tariff about twenty-five per cent of our gross earnings." It was immediately pointed out that the law only applied to strictly State business, that is, to traffic that originated and ended in the State of Wisconsin. All other traffic was interstate commerce, and not controllable by State legislation. The volume of business which would be affected by the law would therefore be comparatively small, — estimated at not over ten per cent of the total traffic of the line. Hence, if the rates fixed by the law were twenty-five per cent less than the rates the company had been in the habit of collecting (which was denied), it could not possibly have "deducted from its present tariff" more than two and one half per cent, instead of twenty-five per cent as stated by Mr. Mitchell.

It was claimed that the facts were that the Chicago, Milwaukee, and St. Paul Company, in its efforts to bankrupt the Lake Superior and Mississippi Company, had many of its interstate rates so low that it had resulted in loss, and that its other rates had been made unreasonably high in order to recoup this loss, and that the State of Wisconsin was compelled to pay a part of the expense of the transportation of favored sections of the State of Minnesota.

All through the Granger contests, the railways have weakened the force of their arguments by their misrepresentation of facts and by their extravagant predictions of ruin.

The companies were continually proclaiming, "If this or that is done, it will ruin us; it will ruin the

State." In the light of subsequent events, how absurd appear the following extracts from Mr. Mitchell's letter already quoted: "That it (the law) has effectually destroyed all future railroad enterprises, no one who is acquainted with its effect in money centres will for a moment doubt. That, however, I do not care to discuss at this time, as the State has an undoubted right to prevent a further extension of its railroad system if it chooses, although, as a citizen of the State, I deeply regret such short-sighted policy."

CHAPTER XII.

FUNDAMENTAL PRINCIPLES.

It is perhaps natural, at any rate it is common, for those possessing superior education or superior wealth to regard with a feeling akin to contempt the opinions of the majority of the people upon social and especially upon economic questions. But history proves that in the long run the opinions of the majority are more apt to be correct than the opinions of the few. The great majority have less self-interest, and are therefore in a better position to exercise an unbiased judgment. They perhaps know little of precedents, but the principles of justice and fairness as between man and man are implanted in their natures, and when a new question is presented they are more apt to weigh it in the scales of the broad principles of equity than in those of precedent or existing formulas. So when the questions under discussion arose, the lawyer resorted to the books for precedents, the scholar to his formula of words, the capitalist to his self-interest; but the great majority of the people simply inquired what was right and fair. They reasoned thus: the railway companies have a monopoly of the transportation business, and all of the people are of necessity compelled to purchase transportation in one way and another. Therefore it is not fair or just that the companies should have the exclusive right to fix the rates; and, on the other hand, it is not fair

that each individual should have the right to command transportation at his own price. Consequently, justice and fairness require that these rates shall be made by a disinterested party, and the most disinterested party is the State. By this process of reasoning the people arrived at their conclusion as to the justice and fairness of the principles which the common law had established in relation to common carriers. For, under the common law, an agreement made between the carrier and the shipper which gave the carrier more than a reasonable rate was not binding. Even after the shipper had paid the consideration under such an agreement, he could demand to have the question as to whether he had paid more than a reasonable rate referred to the State (the courts) as an arbiter, and in case the arbiter found that he had paid too much, an execution would be issued in his favor to recover the excess.

But if the common-law remedy was so perfect, why enact new laws? In principle it was admitted that the common law was complete, but its enforcement under modern conditions was impracticable. The courts deal only with the past. The shipper must first pay his money, and then resort to an expensive suit to recover it; and as the majority of shipments were inconsiderable in amount, the remedy was too expensive to be made available. So public opinion said, "Let the State, through the legislature, establish in advance fair rates; but let them be fair, and if they are claimed to be too low to be reasonably compensatory, let the State, through its courts, on application of the companies, investigate, and if the claim is well founded the courts will disregard them. In justice such rates ought to be set aside."

Thus at an early stage the people came to the conclusion that the rule of law should be, that the legislature has power to fix, not arbitrary rates regardless of equity, but only reasonable rates; and if they erred in this respect, the courts could set them right.

The vacillating position of the companies upon this point is sufficiently apparent from the uncertain tone of Mr. Mitchell's letter. They seemed to claim that under the provisions of their charters they could make any rates that pleased their board of directors, whether reasonable or unreasonable; and at the same time seemed to admit that they were doubtful on that point by making a strong statement to show that the law was invalid, because the rates fixed by law were unreasonably low.

Much to the surprise of the people as well as the companies, when the question came before the Supreme Court of the United States in October, 1876, the majority of the court, Justices Field and Strong dissenting, took the extreme view that the legislature had authority to arbitrarily fix rates which were valid and binding, even though they were so low as to deprive the companies of all net revenue. In the decision, referring to the power of the legislature to make rates, the chief justice, speaking for the majority of the judges, used the following startling language: —

> We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by legislatures, the people must resort to the polls, not to the courts.

At the October term, 1890, just fourteen years after the first decision, the question was again brought

before the court in cases from Minnesota. The court reaffirmed the right of the legislatures to establish rates, limited, however, to such rates being reasonable in the sense that they should be fairly remunerative to the companies. This opinion seemed to be regarded as highly satisfactory to the companies, and to that element which may be called the Wall Street contingent. To the majority of the people in the Western States it was also satisfactory, as it was the conclusion at which they had arrived nearly twenty years in advance of the court.

Three of the justices dissented from this opinion, Mr. Justice Bradley writing the dissenting opinion, in which Mr. Justice Gray and Mr. Justice Lamar agreed. This opinion was a very logical argument in support of the former ruling of the court. Mr. Justice Miller concurred with the majority, and in so doing made a concise statement of the law as it now stands. He said: —

> I concur with some hesitation in the judgment of the court, but wish to make a few suggestions of the principles which I think should govern this class of questions in the courts. Not desiring to make a dissent, nor a prolonged argument in favor of any views I may have, I will state them in the form of propositions.
>
> 1. In regard to the business of common carriers limited to points within a single State, that State has the legislative power to establish the rates of compensation for such carriage.
>
> 2. The power which the legislature has to do this can be exercised through a commission, which it may authorize to act in the matter, such as the one appointed by the legislature of Minnesota by the act now under consideration.
>
> 3. Neither the legislature, nor such commission acting under the authority of the legislature, can establish arbitra-

rily and without regard to justice and right a tariff of rates for such transportation, which is so unreasonable as to practically destroy the value of the property of persons engaged in the carrying business on the one hand, nor so exorbitant and extravagant as to be in utter disregard of the rights of the public for the use of such transportation on the other.

4. In either of these classes of cases there is an ultimate remedy for the parties aggrieved, in the courts, for relief against such oppressive legislation, and especially in the courts of the United States, where the tariff of rates established either by the legislature or by the commission is such as to deprive a party of his property without due process of law.

5. But until the judiciary has been appealed to, to declare the regulations made, whether by the legislature or by the commission, voidable for the reasons mentioned, the tariff of rates so fixed is the law of the land, and must be submitted to both by the carrier and the parties with whom he deals.

6. That the proper, if not the only, mode of judicial relief against the tariff of rates established by the legislature or by its commission, is by a bill in chancery asserting its unreasonable character and its conflict with the constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fare as excessive or establishing its right to collect the rates as being within the limits of a just compensation for the service rendered.

7. That until this is done it is not competent for each individual having dealings with the carrying corporation, or for the corporation with regard to each individual who demands its services, to raise a contest in the courts over the questions which ought to be settled in this general and conclusive method.

8. But in the present case, where an application is made to the Supreme Court of the State to compel the common carriers, namely, the railroad companies, to perform the services which their duty requires them to do for the general

public, which is equivalent to establishing by judicial proceeding the reasonableness of the charges fixed by the commission, I think the court has the same right and duty to enquire into the reasonableness of the tariff of rates established by the commission before granting such relief, that it would have if called upon so to do by a bill in chancery.

9. I do not agree that it was necessary to the validity of the action of the commission that previous notice should have been given to all common carriers interested in the rates to be established, or to any particular one of them, any more than it would have been necessery, which I think it is not, for the legislature to have given such notice if it had established such rates by legislative enactment.

10. But when the question becomes a judicial one, and the validity and justice of these rates are to be established or rejected by the judgment of the court, it is necessary that the railroad corporations interested in the fare to be considered should have notice, and have a right to be heard on the question relating to such fare, which I have pointed out as judicial questions. For the refusal of the Supreme Court of Minnesota to receive evidence on this subject, I think the case ought to be reversed, on the ground that this denial of due process of law is a proceeding which takes the property of the company, and if this be a just construction of the statute of Minnesota it is for that reason void.

The question of legislative regulation of railway rates has now been under discussion for almost a quarter of a century. During this time it has been submitted for adjudication to the Supreme Courts of nearly all the States, and to the Supreme Court of the United States. In the trials before the courts, the ablest counsel has been employed on behalf of the companies, and their resources of argument and precedents and analogies have been exhausted. While the courts have not always been unanimous in the

decisions which have been rendered, or in the methods of reasoning by which their conclusions have been reached, or as to the nature and extent of legislative authority, yet upon the question as to whether the legislature has authority to fix rates there has been no disagreement.

In the first cases before the Supreme Court of the United States, in 1876, the majority of the court held that rates thus fixed were conclusive, and not subject to review by any court. In the last cases, in 1890, Mr. Justice Bradley wrote a very strong opinion maintaining the principles of the previous decision, which was concurred in by two other justices (Gray and Lamar). But the majority of the court overruled this view of the law, to the extent only that the courts might inquire as to whether legislative rates were so unreasonably low as to amount to confiscation of property.

Under these circumstances it is submitted that it is about time that railway management should begin to recognize, in making tariffs, the principle of these laws. They should submit to the authority of law; they should construct and administer their schedules of rates according to the spirit and the letter of the laws. And instead of attributing to these laws all the misfortunes which befall their management, they should become more frank and honest in their statements to their stockholders and the public.

Whenever a political issue supposed to have been settled by the civil war is made use of in modern politics, it is styled in derision the "bloody shirt." Since the close of the war, whenever the party generally dominant has blundered, or whenever measures have been inaugurated which were liable to

bring that party into disrepute, the "bloody shirt" has been brought out to claim the attention of the public and conceal the errors of the party. The "Granger laws" have served the purpose of a "bloody shirt" to conceal incompetence in railway management for twenty years at least.

CHAPTER XIII.

THE SENATE COMMITTEE.

THE State laws which have been considered affected only State traffic, which is understood to mean traffic that begins and ends in the same State. Much the larger part of the shipments by railways, both of persons and property, passes from one State into or through one or more other States, and is therefore termed interstate traffic or commerce, the regulation of which, under the Constitution of the United States, is the exclusive prerogative of Congress. The subject of regulating the management of railways in respect to interstate commerce had been more or less discussed in Congress, when in March, 1885, a resolution was adopted by the Senate reading as follows:

Resolved, That a select committee of five Senators be appointed, to investigate and report upon the subject of the regulation of the transportation, by railroads and water routes in connection or in competition with said railroads, of freights and passengers between the several States, with authority to sit during the recess of Congress, and with power to summon witnesses and to do whatever is necessary for a full examination of the subject, and report to the Senate on or before the second Monday of December next. Said committee shall have power to appoint a clerk and stenographer, and the expense of such investigation shall be paid from the appropriation for expenses of inquiries and investigations ordered by the Senate.

The committee was appointed March 21, 1885, consisting of Senators Cullom of Illinois, chairman, Miller of New York, Platt of Connecticut, Gorman of Maryland, and Harris of Tennessee.

The committee submitted their report January 18, 1886, the intervening time being principally occupied in collecting facts and opinions bearing upon the subject from all classes of people and all sections of the country. They commenced taking testimony in New York in May, 1885; and in their endeavor to ascertain what causes of complaint existed against the railways, and the opinions of the people as to what remedies could be applied by Congress, they visited most of the leading commercial centres and took testimony. Public notice was given of these hearings, and efforts were made to secure the attendance of those most competent to speak as the representatives of every interest and every shade of opinion.

The testimony taken, as well as the statements received in response to correspondence, was printed in a volume of more than 1,450 pages, and may fairly be claimed to represent the best thought of the American people, at that time, upon the questions involved in the regulation of commerce among the States. Upon this point their report says: —

> These statements are a very valuable contribution to the literature of this subject, and give the strongest evidence of its position in the public mind as one of the most important and controlling questions now before the country. The interest everywhere manifested in its investigations has convinced the committee that no general question of governmental policy occupies at this time so prominent a place in the thoughts of the people as that of controlling the steady

growth and extending influence of corporate power, and of regulating its relations to the public; and as no corporations are more conspicuously before the public eye, and as there are none whose operations so directly affect every citizen in the daily pursuit of his business or avocation as the corporations engaged in transportation, they naturally receive the most consideration in this connection.

This testimony contains the most convincing evidence of the truth of the writer's often repeated assertion that the cause of complaint against the railways has been, not the exorbitant rates, but the practice of discriminations, and that the prime object of the laws which have been enacted has been to prevent discriminations without doing injustice to the companies by fixing too low rates.

This view of the drift of the evidence evidently made a profound impression upon the minds of the committee, as the following extracts from their very exhaustive report prove. Speaking of the policy which had been pursued of allowing the companies to build and operate railways unrestricted by law, on page 7 of their report they say: —

The policy which has been pursued has given us the most efficient railway service and the lowest rates known in the world; but its recognized benefits have been attained at the cost of the most unwarranted discriminations, and its effect has been to build up the strong at the expense of the weak, to give the large dealer an advantage over the small trader, to make capital count for more than individual credit and enterprise, to concentrate business at great commercial centres, to necessitate combinations and aggregations of capital, to foster monopoly, to encourage the growth and extend the influence of corporate power, and to throw the control of the commerce of the country more and more into the hands of the few.

These results are so familiar as everyday facts that they scarcely attract our attention. The wonderful transformation in all economical conditions to be attributed to the use of the railroad is not yet at an end, and the questions presented as the result of these changes demand the most earnest investigation and the most thoughtful consideration.

On page 40: —

Unjust discrimination is the chief cause of complaint against the management of railroads in the conduct of business, and gives rise to much of the pressure upon Congress for regulative legislation. The railroad companies do not recognize as they should the fact that they sustain a different relation to the public from persons engaged in ordinary business enterprises. Railroad companies are not disposed to regard themselves "as holding a public office and bound to the public," as expressed in the ancient law. They do not deal with all citizens alike. They discriminate between persons and between places, and the States and Congress are consequently called on to in some way enforce the plain principles of the common law for the protection of the people against the unlawful conduct of common carriers in carrying on the commerce of the country.

In summing up the testimony, on pages 180–182, the committee say: —

The complaints against the railroad systems of the United States expressed to the committee are based upon the following charges: —

1. That local rates are unreasonably high, compared with through rates.

2. That both local and through rates are unreasonably high at non-competing points, either from absence of competition or in consequence of pooling agreements that restrict its operation.

3. That rates are established without apparent regard to

the actual cost of the service performed, and are based largely on what the traffic will bear.

4. That unjustifiable discriminations are constantly made between individuals in the rates charged for like service under similar circumstances.

5. That improper discriminations are made between articles of freight and branches of business of a like character, and between different quantities of the same class of freight.

6. That unreasonable discriminations are made between localities similarly situated.

7. That the effect of the prevailing policy of railroad management is, by an elaborate system of secret special rates, rebates, drawbacks, and concessions, to foster monopoly, to enrich favored shippers, and to prevent free competition in many lines of trade in which the item of transportation is an important factor.

8. That such favoritism and secrecy introduce an element of uncertainty into legitimate business that greatly retards the developments of our industries and commerce.

9. That the secret cutting of rates and the sudden fluctuations that constantly take place are demoralizing to all business except that of a purely speculative character, and frequently occasion great injustice and heavy losses.

10. That in the absence of national and uniform legislation, the railroads are able by various devices to avoid their responsibility as carriers, especially on shipments over more than one road, or from one State to another, and that shippers find great difficulty in recovering damages for the loss of property or for injury thereto.

11. That railroads refuse to be bound by their own contracts, and arbitrarily collect large sums in the shape of overcharges in addition to the rates agreed upon at the time of shipment.

12. That railroads often refuse to recognize or be responsible for the acts of dishonest agents acting under their authority.

13. That the common law fails to afford a remedy for

such grievances, and that in case of dispute the shipper is compelled to submit to the decision of the railroad manager or pool commissioner, or run the risk of incurring further losses by greater discriminations.

14. That the differences in the classifications in use in various parts of the country, and sometimes for shipments over the same roads in different directions, are a fruitful source of misunderstandings, and are often made a means of extortion.

15. That a privileged class is created by the granting of passes, and that the cost of the passenger service is largely increased by the extent of this abuse.

16. That the capitalization and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued.

17. That railroad corporations have improperly engaged in lines of business entirely distinct from that of transportation, and that undue advantages have been afforded to business enterprises in which railroad officials are interested.

18. That the management of the railroad business is extravagant and wasteful, and that a needless tax is imposed upon the shipping and traveling public by the unnecessary expenditure of large sums in the maintenance of a costly force of agents engaged in a reckless strife for competitive business.

It will be observed that the most important, and in fact nearly all, of the foregoing complaints are based upon the practice of discrimination in one form or another. This is the principal cause of complaint against the management and operation of the transportation system of the United States, and gives rise to the questions of greatest difficulty in the regulation of interstate commerce.

It is substantially agreed by all parties in interest that the great desideratum is to secure equality, so far as practicable, in the facilities for transportation afforded and the

rates charged by the instrumentalities of commerce. The burden of complaint is against unfair differences in these particulars as between different places, persons, and commodities, and its essence is that these differences are unjust in comparison with the rates allowed or facilities afforded to other persons and places for a like service under similar circumstances.

On page 188, the following example is given: —

One reference to the testimony must suffice to illustrate the universality of individual favoritism, the reasons which influence the railroads in favoring one shipper to the ruin of another, and the injustice of the system. Mr. C. M. Wicker of Chicago, a former railroad official of many years' experience, was asked if he knew anything of discrimination upon the part of transportation companies as between individuals or localities, and testified as follows: —

Mr. Wicker. Yes; I do. And this discrimination, by reason of rebates, is a part of the present railroad system. I do not believe the present railway system could be conducted without it. Roads coming into this field to-day and undertaking to do business on a legitimate basis of billing the property at the agreed rates would simply result in getting no business in a short time.

Senator Harris. Then, regardless of the popularly understood schedule rates, practically it is a matter of underbidding for business by way of rebates.

Mr. Wicker. Yes, sir; worse than that. It is individual favoritism, the building up of one party to the detriment of the other. I will illustrate. I have been doing it myself for years and had to do it.

Senator Harris. Doing it for yourself in your position?

Mr. Wicker. I am speaking now of when I was a railroad man. Here is quite a grain point in Iowa, where there are five or six elevators. As a railroad man, I would try and hold all these dealers on a "level keel" and give

them all the same tariff rate. But suppose there was a road five, or six, or eight miles across the country, and these dealers should begin to drop in on me every day or two and tell me that that road across the country was reaching within a mile or two of our station and drawing to itself all the grain. You might say that it would be the just and right thing to do to give all the five or six dealers at this station a special rate to meet that competition through the country. But, as a railroad man, I can accomplish the purpose better by picking out one good smart, live man, and, giving him a concession of three or four cents a hundred, let him go there and scoop the business. I would get the tonnage, and that is what I want. But if I give it to the five, it is known in a very short time.

. . . .

When you take in these people at the station on a private rebate you might as well make it public and lose what you intend to accomplish. You can take hold of one man and build him up at the expense of the others, and the railroad will get the tonnage.

Senator Harris. The effect is to build the one man up and destroy the others.

Mr. Wicker. Yes, sir; but it accomplishes the purposes of the road better than to build up the six.

Senator Harris. And the road, in seeking its own self-preservation, has resorted to that method of concentrating the business into the hands of one or a few, to the destruction of the many.

Mr. Wicker. Yes, sir; and that is a part and parcel of the system.

Senator Harris. Is that system continued up to this time?

Mr. Wicker. Yes, sir.

Senator Harris. That is the method by which transportation is being conducted at this time by the railroads?

Mr. Wicker. Very largely. Where they form a pool and maintain that pool they do away with that method.

So, I say, the pool is to the advantage of the public; it puts everybody on an even keel.

The Chairman. Provided it is lived up to by the railroad companies.

Mr. Wicker. Yes, sir. Then put a commission over that pool to see that the rate is just and right, and I think you have approached nearer to justice than by any other way.

On page 189 the committee say: —

The practice prevails so generally that it has come to be understood among business men that the published tariffs are made for the smaller shippers and those unsophisticated enough to pay the established rates; that those who can control the largest amounts of business will be allowed the lowest rates; that those who, even without this advantage, can get on "the inside," through the friendship of the officials or by any other means, can at least secure valuable concessions; and that the most advantageous rates are to be obtained only through personal influence or favoritism, or by persistent "bulldozing."

It is in evidence that this state of affairs is far from satisfactory, even to those specially favored, who can never be certain that their competitors do not, or at any time may not, receive even better terms than themselves. Not a few large shippers who admitted that they were receiving favorable concessions testified that they would gladly surrender the special advantages they enjoyed if only the rates could be public and alike to all.

Again on page 191: —

Universal complaint has been made to the committee as to the discriminations commonly practiced against places, and as to the conspicuous discrepancies between what are usually termed "local" rates and what are known as "through" rates.

CHAPTER XIV.

THE INTERSTATE COMMERCE ACT.

BASED upon the report of Senator Cullom's committee, the law commonly known as the Interstate Commerce Act was passed by Congress, and became effective in April, 1887.

An examination of the provisions of this law conclusively proves that it is a law against unjust discriminations. The committee which prepared it, on presenting it to Congress, said: —

> The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and method of management of the carriers.

The first section specifies the carriers which shall be subject to its provisions, and in general terms reenacts the common-law provisions in regard to reasonable rates, but the essential provisions of the law are contained in the second and third sections, and are as follows: —

> SEC. 2. That if any common carrier subject to the pro-

visions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business.

It does not attempt to fix specific rates. At common law, the common carrier could not lawfully charge more than a reasonable rate, but he could accept less; and he could discriminate by charging one

less than another, and could change his rates at will, provided only that no rate was too high to be reasonable. The law now prohibits this discrimination in respect to rates, and also prescribes that rates shall not be increased, except upon notice.

In all other respects the companies are as free as before to fix their rates on interstate traffic. All the other sections and provisions of the law are devoted to reënacting existing and well understood principles of law, or to prescribing rules of evidence, or to providing new remedies to prevent discrimination, or machinery for enforcing its provisions.

The writer contends that the fourth section, which contains the famous and much discussed "long and short haul" clause, is not a distinct or essential provision. Since charging more for a short than for a long haul, within the meaning of that section, would be an unjust discrimination, which is prohibited by the two essential sections, the writer is of the opinion that if the fourth section had been omitted, the meaning of the law would have been the same as now.

Therefore the fourth section is superfluous, except to the extent that it specifies one important rule of evidence in determining certain unjust discriminations. It has been an unfortunate provision, and has probably done more than anything else to defeat the beneficial purposes of the statute; because, while it was evidently intended to specify only one out of many unjust discriminations, the prominence due to special mention has magnified the charging of more for a short haul than for a long haul into the chief, and apparently the only, evil which the law was intended to rectify; and while the section provides that "it shall not be construed as authorizing any

common carrier within the terms of the act to charge and receive as great compensation for a short as for a long distance," yet it has uniformly been construed in practice both by the companies and tacitly by the Commission to justify as great a charge for the short as for the long distance.

The fifth section, which prohibits "pooling," makes the contracts which it prohibits no more illegal than they were before; but it does impose penalties for entering into such illegal contracts, which did not exist before.

The machinery for enforcing the law consists principally of a commission, which the act created and endowed with great powers. It also conferred increased jurisdiction upon certain courts. The remedies consist largely of fines and penalties, but there was a special remedy provided by the sixth section which it was expected would be more efficacious than any other. It was publicity. The section is very long, but the gist of it is that all rates shall be published, and that no more nor less than the published and public rate shall be charged or collected.

The language of the section on this point is: —

> And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

The Senate committee which reported the law expected this provision of itself would be a remedy, and

render impossible many of the evils of discrimination. Upon this point its report, page 198, says:—

In the judgment of the committee, one of the chief purposes of any legislation for the regulation of interstate commerce should be to secure the fullest publicity, both as to the charges made by common carriers and as to the manner in which their business is conducted.

It is agreed by all who have given the subject of railroad regulation attention, that the maintenance of stable and reasonably uniform rates is of the first importance and greatly to be desired. Neither result, it is also agreed, can be secured without publicity, which is the surest and most effective preventive of unjust discrimination.

Also on page 199:—

The desirability of publicity as a safeguard against unjust discrimination is generally conceded, but the committee cannot refrain from illustrating its necessity by alluding to an instance which has recently attracted its attention.

It is well understood in commercial circles that the Standard Oil Company brooks no competition; that its settled policy and firm determination is to crush out all who may be rash enough to enter the field against it; that it hesitates at nothing in the accomplishment of this purpose, in which it has been remarkably successful, and that it fitly represents the acme and perfection of corporate greed in its fullest development. A recent public exposition of its methods comes from Ohio, where the corporation operates the Macksburg Pipe Line, which carries oil to the Cleveland and Marietta Railroad. This road is in the hands of a receiver appointed by the United States circuit court. Complaint having been made to Judge Baxter of that court, he investigated the rates charged for the transportation of oil by the receiver, which resulted in his prompt removal by the court. It was found that, while the receiver was charging all independent shippers thirty-five cents per barrel, the

rate to the pipe line in question was but ten cents per barrel. It appeared that the Standard Oil Company owned the pipes through which oil is conveyed to the road from wells owned by individuals, with the exception of certain pipes owned and used by George Rice, and carrying oil from his wells. To get rid of this competition the assistance of the receiver was sought and obtained. The company offered to give the railroad $3000 worth of business each month, while Rice could give but $300 worth. If its demands were not complied with, it threatened to extend its pipe line from Macksburg to the river at Marietta. What those demands were was stated as follows in a letter filed by the receiver as part of his defense: —

"The Standard Oil Company threatens to store and afterward pipe all oils under its control unless you make the following arrangements, viz.: you shall make a uniform rate of thirty-five cents per barrel for all persons excepting the Standard Oil Company; you shall charge them ten cents per barrel for their oil, and also pay them twenty-five cents per barrel out of the thirty-five cents collected of other shippers."

No comment is needed, says the committee, upon this most impudent and outrageous proposition. If matters have reached such a pass that this enormously wealthy corporation, not content with the advantage of paying less than thirty per cent of the rates charged its occasional competitors, is in a position to demand of a railroad which may desire the privilege of carrying oil for others seventy per cent of the revenue received in that way, the least that Congress can do is to insist upon publicity of rates, and make effective provision for letting in the full light of day upon arrangements of this character.

Also on page 200: —

The posting or publication of railroad rates would be of no advantage to the public unless the law contemplates and requires that the schedules established and posted are to be

strictly adhered to. If variations from the published rates are to be permitted, it would be useless to have them posted. So far as that is concerned, information as to the established or ostensible rates is now sufficiently accessible to the public, and posting them would only impose a needless annoyance and useless expense upon the corporations.

The posting or publication of rates, to be a preventive of unjust discrimination, must mean that the railroads shall be operated under a system of fixed rates, established by themselves, but just as inflexible as if the rate upon each article of shipment, for given distances or between places named, should be prescribed by statute (not the maximum or the minimum, but the exact rate to be charged), and any deviation therefrom should be declared unlawful, except when the schedule is changed in such a manner as may be provided. A compliance with such a requirement, it is plain, would occasion a complete revolution in existing methods of business and of railroad management. A change as great as this would be, one making necessary almost a complete readjustment of the commercial relations of the railroad to the community, cannot be effected easily or without friction and opposition. The latter must be expected whenever it is undertaken, but the revolution to be accomplished would be of incalculable advantage to the public, and cannot be brought about any too soon. Publicity of rates is insisted upon and practically secured in other countries, and there can be no doubt that it should obtain in the United States.

The beneficial effects which were expected from publicity have not been realized. The law provides that all changes in a tariff once published "shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection."

If this were done, it would be possible for a person of ordinary understanding to ascertain the legal

rate, by inspection of the printed schedule. But instead of following the law in this respect, the companies, when the law went into effect, printed their schedule then in force. From time to time, as changes were made, instead of printing entirely new schedules or noting the changes on the old schedules as the law requires, they have printed amendments to the original schedule, then amendments to the amendments, etc. And as these amendments were printed at the rate of several hundred per month, it is easy to see that, in a very few months, to ascertain the legal rates would involve examining several hundred, and in many cases thousands, of separate amendments and tracing them back until their relations to the original schedule and to each other were ascertained. This is a hopeless task. The traffic managers themselves are unable to do it. And while the companies print these amendments and send a copy to the Commission as required by law, it is a perfunctory performance, of no value for any purpose, and especially of no value for the purposes of publicity. Thus a most excellent provision of law is rendered valueless for want of execution. In fact, that may be said of the whole law. The machinery which the law provided for its enforcement is wholly inadequate and insignificant compared to the herculean task which was assigned to it. It consisted of a Commission, to be known as the Interstate Commerce Commission, composed of five Commissioners, having its principal office in Washington; and the small sum of one hundred thousand dollars for the fiscal year was appropriated for all the purposes of the act, including salaries of the Commissioners and their secretary and employees.

Such are the physically insignificant means provided to set a law in force which by its provisions was intended to revolutionize, against the active opposition of the managers, the methods of conducting transportation on more than 125,000 miles of railway, valued at over $7,000,000,000, earning annually over $823,000,000, carrying over 334,000,000 passengers and over 400,000,000 tons of freight annually, — figures so large that they are hardly comprehensible.

CHAPTER XV.

FIXING THE RATES.

THE Interstate Law was designed to prevent unjust discriminations. The committee which reported it said that the underlying purpose and aim of the measure is the prevention of unjust discrimination "between persons, places, and commodities." In respect to these purposes it has proved a conspicuous failure. Whoever will examine critically the law and the existing conditions will see that it was doomed from the beginning, because it attempted the impossible. It attempted to destroy discrimination, while preserving the cause of discrimination, namely, competition, so-called. The Senate committee, in considering the question, used the following language: —

"Competition has been looked upon as a safeguard against extortion, and in this respect it has proved effective where it has existed and when its operation has not been unduly restricted. But experience has shown that it is no safeguard against discrimination. It cannot accomplish both purposes; but on the contrary, where it prevents extortion *it produces discrimination*." Again, "Competition does not prevent discrimination, for the evil is most conspicuous where and when competition is most active." In discussing the probable effect of another provision of the law, the same committee said: "There is reason

to fear that the result of rigidly enforcing the proposed regulation would be to *stifle competition* in numberless cases where it now exists, and is to the general public interest." That is to say, competition produces discrimination. Discrimination is the great evil which we must prevent by law, but we fear that if we prevent discrimination we shall stifle competition; and therefore we must try so to frame our law as to destroy discrimination and at the same time preserve the competition which produces the discrimination which we want to destroy.

The conditions remind one of the boy who crooked his gun barrel, so that he might "hit it, if a deer, and miss it, if a sheep."

That epigrammatic philosopher, Horace Greeley, used to say, "The way to resume specie payment is to resume." Following the example, it may be said, the way to regulate commerce is to regulate; and to prevent unjust discrimination is to prevent it.

The admitted evils of discriminating and ever fluctuating rates are growths which have afflicted the railway problem from its earliest years. Their roots now spread through the whole system, and to pluck them out requires the courage to attack the seat of the disease and apply the specific, or the knife, as may be required. It is evident that the actual rates constitute the heart of this disease; therefore whoever has the courage to make schedules of specific rates (not maximum or minimum rates) which are free from extortion or unjust discrimination and are just alike to the shipper and to the railway, and at the same time has *the power to enforce them*, and does enforce them, will completely remedy the disease. It is also evident that there is no other remedy.

There can be no doubt that Congress has the power, or that it can create a commission or commissions endowed with the requisite power. The Interstate Law recognizes the necessities of the case, but instead of making schedules, or appointing commissions to make them, it contented itself with impotently enacting, in general and somewhat ambiguous terms, that somebody else should make them, namely, the railway officials, who, unfortunately, know no more about it, and wholly lack the necessary power to enforce the schedules when made.

Cowardice has been the bane of this class of legislation from its inception. Legislatures have been cowardly, commissioners have been cowardly, and the companies have been cowardly.

Everybody is aware that the essential point of the whole controversy has been the rates. Some legislatures have fixed maximum rates. Congress, or at any rate the committee, discussed the advisability of fixing both maximum and minimum rates; but as a rule they have confined themselves, as well as their commissions, to the utterance of general platitudes, or to squabbling over some petty detail of little importance.

In the matter of a commission to make the rates the companies have always been particularly cowardly. Instead of boldly demanding their rights at the hands of the government, to whose justice they trust every other interest, and by whose justice every individual right is protected, they have assumed in advance that in the matter of rates the government would be unjust. From the beginning they have directed their heaviest guns against all propositions of the government to fix the rates. They have op-

posed maximum rates, but not with the determination that has been directed against fixing the rates. They have succeeded in surrounding rate-making with so many apparent difficulties and mysteries that they have completely overwhelmed the judgments of the ablest men. An examination of the report of the Senate committee on the subject of "the principles upon which railway rates should be established, and the limitations within which discrimination may be justifiable," shows that the difficulties and mysteries of the business kept them always on the outer edges, and never allowed them to penetrate to the vital core. This subject takes up seventeen pages of their report, and is treated systematically in all its parts: 1. General principles. 2. Classification of freight. 3. Uniformity of classification. 4. Discrimination between persons. 5. Concessions to large shippers. 6. Discrimination between places. 7. *Fixing of rates by legislation impracticable.*

The study of the laws as explained by the courts and by elementary writers, and the consideration of the conditions surrounding the problem, are convincing that the principle of arbitration must sooner or later be engrafted into the plan of making rates. The State is the most disinterested party to act as arbitrator; and as making rates is a legislative function, a commission appointed by the legislature and endowed with full authority to fix and enforce the rates seems practicable and inevitable.

The arguments of the Senate committee upon the principles of establishing rates are able, and display accurate knowledge upon the matters connected therewith. These facts and arguments repeatedly brought them to the inevitable commission, but each time

the apparent magnitude of the business seemed to overwhelm them. Beginning with the truism that "neither experience nor investigation has satisfactorily settled the many perplexing questions that are encountered in attempting to determine the principle upon which a schedule of charges should be arranged, either for a single railroad or for the entire system," the committee admit that absolute uniformity is impossible, and state fairly and ably the distinction between just and unjust discrimination. They then state in substance that whether a discrimination is justifiable or unwarranted is often a question of great difficulty, and one on which the managers and the shippers might honestly disagree; at the same time it is a question in which both are equally interested, and which of right both should have an equal voice in determining.

Looking at the subject from this point of view, how is it possible to resist the conclusion that this question should be left to the decision of the disinterested arbitrator which has been called the "inevitable commission"?

The committee next discussed, with unusual candor, the unpopular rule of "charging what the traffic will bear." They pointed out that such a commodity as coal could not bear so high a rate as, say, cloth, and hence the necessity of discriminating to the extent of charging a higher rate for transporting cloth than for transporting the same weight of coal, although the distance and other circumstances attending the shipment might be practically the same. But they could not state, because they do not exist, any definite and certain rules for determining the difference which should be made in the charges

between varying classes of property, such as would necessitate, or even be likely to lead, different managements or different people, however honestly they might seek it, to the same conclusion. It is apparent that without such rules one management might come to the conclusion that to charge coal twelve and one half per cent of the cloth rate would be a proper ratio, while another might conclude that the proper percentage was, say, sixteen and two thirds per cent. Then, if the rate on cloth between two points was agreed upon at $16 per ton, the rate on coal would be, according to one manager, $2; according to another, $2.66. How can such a difference be adjusted except by arbitration? The freight agent will say there is no relation between the rates, and that both should be fixed arbitrarily; but this is not the conclusion of the committee or of Congress.

Again, after discussing the principles which should govern in classifying, the committee state: "Marked differences have been found in the classifications in use in different parts of the country, for *which no satisfactory reasons* have been given by the railway officials, and which are accounted for only by the fact that the different classifications are arranged independently, *and that the judgments of men differ upon these matters as widely as upon any others*. . . .

"Uniformity in this respect has been asked for almost unanimously by shippers. It is certainly much to be desired, and the committee believes that it is entirely practicable, . . . but the difficulty encountered has been, how to provide for or to require uniformity without specifically prescribing the classification that shall be adopted, or *without giving a commission authority to establish a classification*,

which would be equivalent to authorize such commission to fix rates.

"Under existing methods," says this report, "the railroad officials are the sole judges of the weight that should properly be given to the almost endless variety of conditions and circumstances which influence variation in rates. Upon such questions disinterested persons will honestly disagree, and there is ample room for difference of opinion. . . .

"The committee has at considerable length pointed out the great diversity of elements that enforce variations in rates, not to justify or excuse the inequalities which exist, but to call attention to the almost unlimited opportunities for arbitrary and unreasonable discriminations which are afforded the railroads by the fact that differences are necessary, and that it is difficult, if not impossible, to determine when the differences they establish at their own discretion are purely arbitrary, and when they are justifiable, without fuller knowledge of the circumstances than the shipper is able to obtain."

The whole discussion by the committee tended towards one conclusion, — that the traffic on railways should be regulated by law, in the interest of the carrier as well as of the people, since every evil which was pointed out by the committee grew out of the schedule of rates. With a properly arranged and enforced schedule, none of these evils would be possible. The "bull's eye" of the target they wanted to hit was the rate schedule, and yet when ready to discharge their conclusions their courage failed, and they shot at the horns and tail of their bull rather than at the eye. At the last minute they seemed to have lost the courage of their convictions, and re-

ported that to attempt to adjust existing inequalities by any system of rates established by legislation would be impracticable, because difficult. "It is obviously impracticable," say the committee, "for Congress to resolve itself into a railroad freight office, and undertake to establish schedules for the hundreds of interstate lines in the United States. Those who have asked the adoption of this plan of regulation have suggested the establishing of rates by a commission, but it is questionable whether a commission, or any similar body of men, could successfully perform a work of such magnitude, involving as it would infinite labor and investigation, exact knowledge as to thousands of details, and the adjustment of a vast variety of conflicting interests.

"These are the rocks which have wrecked every legislative committee which has had aspirations towards regulating railways in respect to their charges: 1. The infinite labor and investigation required. 2. Want of exact knowledge. 3. The adjustment of conflicting interests."

As a matter of fact, the committee have taken too much for granted upon these three heads. They have seen the large force of employees in the general traffic offices of each company, consisting of general traffic manager, assistants and clerks; general freight agent, his assistants and clerks; general passenger agent, and his assistants and clerks, — and have too readily concluded that all these able chiefs and their staffs have performed "the infinite labor and investigation," and therefore possess the "exact knowledge," etc., and are now devoting their time to making rates and "adjusting conflicting interests."

If this conclusion were correct, and the business

of all the companies in the United States were considered in the aggregate, the magnitude of the labor of establishing schedules of rates might well be appalling for any commission, or moderate number of commissions, to contemplate. Unfortunately, this is not the case. A large part of the army of chief and subordinate employees about the general traffic offices are not engaged in making schedules of reasonable public rates, but, on the contrary, in devising means secretly to avoid such rates, so as to "scoop the business" as against competitive lines; and the conflicting interests which they are adjusting grow out of the unjust discrimination they are practicing. Destroy their power to discriminate, and there would be few conflicting interests to adjust, and little other occupation for the traffic department as now organized.

Who possesses the exact knowledge of such details as would be pertinent to the construction of a schedule of rates in conformity to the principles of the law? No schedule of that kind has ever been constructed or attempted, and it is probable that exact knowledge of the details usually current in the general traffic offices of a railway company would not materially aid in the first attempt at making such a schedule.

It must be conceded that, before railway transportation can be conducted on the equitable principles of the Interstate Law, a schedule of rates consistent with the spirit of that law must be constructed, for the reason that when shipments are made definite prices must be named and collected. Payments of rates to the railways, and payments by the companies of wages to the employees and of other expenses,

including interest and dividend, cannot be made in the indefinite and general terms of the statute, such as "just and reasonable," "special rates," "drawbacks," or "other devices."

The attempt to produce such a schedule is an experiment. With all the light which can be shed upon the subject by experience or investigation, there will be many points upon which different minds will honestly arrive at different conclusions. Dissimilar methods of procedure in the mechanical construction will also produce unlike results. Hence it is inevitable that the schedules made by different managements will materially vary. And therefore, owing to the network of railways, these variations produce discriminations between localities, although each schedule considered by itself might be, according to the best judgment of the makers, in conformity to law.

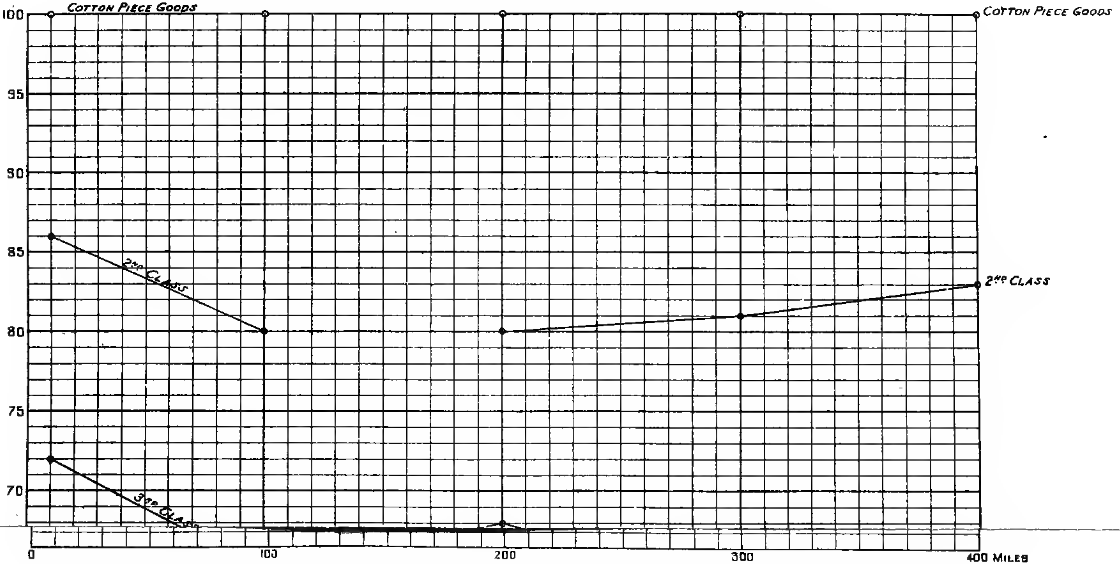
This not only produces unjust discrimination, but confusion. The evil effects of discrimination between places, resulting from unequal proportionate rates on one line of railway, like charging more for a short than a long haul, was fully considered by the Senate committee, but there is no evidence that it was brought to their notice that the same effects may result from lower rates being maintained on one line than on another occupying substantially the same territory. This important matter will be elaborated in a subsequent chapter. The assertion that confusion and inconsistencies will creep into schedules made by separate managements, acting independently, does not rest upon theory. The States of Illinois and Iowa, by their respective commissions, acting separately, have made schedules of maximum rates for

their respective States; the railways, acting together in their associations, have also made a schedule of rates applying between Chicago and the Missouri River, and therefore covering parts of both States; and the result proves the theory. Diagrams have been prepared showing the different relations in respect to rates which exist between the several classes and commodities in these schedules, and follow this chapter. Under penalty of fine and imprisonment, the law requires that these relations shall be "without undue or unreasonable preference or advantage," which the Interstate Commission very properly explains to mean that a railroad company can have no right to carry one kind of property at an unreasonably low rate compared with the rates that are charged upon other kinds. "The question," says the commission, "whether the larger rate is reasonable in and of itself is not the question which such a case presents. The true question is one of unjust discrimination. The law cannot justify dealing with one species of traffic by itself, and waging a war of rates in respect to it, while at the same time keeping up rates on others."

When these requirements are borne in mind, and the further fact is considered that the law also imposes the responsibility upon each separate management of making these rates consistent with each other, it becomes interesting to see the differences which arise from the exercise of only three independent judgments, as shown by this set of five diagrams.

The first diagram is made from the schedule of the Illinois commissioners, the second from that of the Iowa commissioners, and the third combines the

DIAGRAM No. 1—ILLINOIS COMMISSIONERS SCHEDULE.



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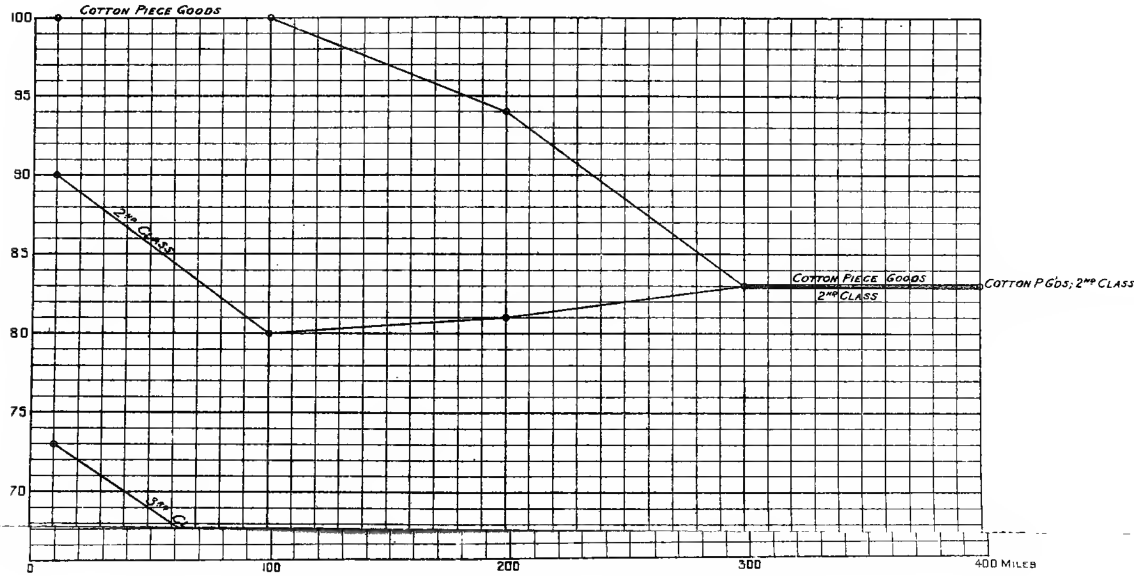
two, the Illinois schedule being in blue and the Iowa schedule in red. The key to these diagrams is as follows: Considering the first-class rate as one hundred in each case, the other rates are represented as percentages of the first-class rate, thus: on the Illinois schedule the second-class rate starts at eighty-six per cent of the first class; for one hundred miles' haul it is eighty per cent, for two hundred miles the same, for three hundred miles eighty-one per cent, and for four hundred miles eighty-three per cent. While in the Iowa schedule the second-class rate starts at eighty-four per cent of the first class, for one hundred miles it is eighty-one per cent, for two hundred miles seventy-five and one half per cent, for three hundred miles seventy per cent, and for four hundred miles seventy-four per cent. In the lower classes the variations become much more erratic, and when the two schedules are combined upon one sheet, as in the third diagram, the confusion arising from the two becomes apparent. It is submitted that neither is in compliance with the Interstate Law, for it must be apparent that, granting that the proper relations between the two rates for say one hundred miles' haul in the Iowa schedule is as one hundred to eighty-one, it must continue the same for every other distance; and hence when the relation for three hundred miles is made as one hundred to seventy, it must be wrong in the eyes of the Interstate Law. The inconsistencies and confusion in the two State schedules arise from faulty mechanical construction. Both are founded upon the same principles, intending to prevent discriminations, but unfortunately the commissioners ignored mathematics in their construction, and relied upon guessing. Both are mileage sched-

ules, fixing rates for each five miles of distance, starting with rates which bore a certain ratio to each other; the whole line of rates for each class was built up separately by adding certain fixed increments for each five miles of haul. The increment added each time to build the first-class rate was larger than that used in constructing the second-class rate, but instead of calculating the ratio exactly, the commissioners were content to guess that "it was about right." The results as revealed by the diagrams show that the Illinois commissioners were the better guessers. The fourth diagram is made from the freight agents' schedule, which is founded on the principle of meeting one another's competition at important points; and the fifth schedule shows the three schedules combined, the Illinois commissioners' in blue, the Iowa commissioners' in red, and the freight agents' in black, all three to be enforced in the same territory at the same time. It also shows the net result of only three independent minds acting separately towards that uniformity which the law requires and which is so universally demanded.

It may be said that the law takes no notice of inconsequential errors. The errors disclosed by these schedules are not inconsequential. The extreme difference in some classes is twenty-five per cent of the first-class rate. The coarse grain rate in the freight agents' schedule ranges from twenty-seven to twenty per cent, the difference being seven per cent of the first-class rate; equal to an absolute difference, between the Missouri River and Chicago, of four and two tenths cents per hundredweight, or two and fifty-two one hundredths cents per bushel, which, on all the corn, oats, and other grains raised west of the river,

DIAGRAM No. 4 — ASSOCIATED FREIGHT AGENTS SCHEDULE.



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would amount to an enormous sum. It is equivalent to a profit, for a middleman who simply buys and ships, of $25,200 on each million bushels, or one thousand per cent on his necessary capital, and for the railway company it is equal to a respectable dividend. As between two towns located ten or twelve miles apart on the same or different lines, such a difference in favor of either would give it a large portion of the trade which legitimately belongs to the other; and as between dealers, a discrimination of that amount in favor of one, or a few, would drive all others out of the trade.

The railway companies and the public both suffer from the confusion in rates; since, where the rates in the various schedules conflict, the lowest prevails, which results in loss of revenue to the companies and in unjust discrimination to the public. How can uniformity be obtained except by referring the differences to a legal commission acting as a court, and possessing similar authority to enforce its conclusions?

CHAPTER XVI.

DISCRIMINATION BY PARALLEL RAILWAYS.

There is one phase of the question of unjust discrimination as between localities which the Senate committee in their report to Congress did not mention. It seems to have been concealed from them in a pile of rubbish which they evidently copied, without analysis, from the traditions of the last twenty-five years. The following extract the writer regards as the rubbish pile of a very able report: —

The simple fact that differences exist which to the local shipper seem unreasonable does not necessarily establish the charge of unjust discrimination against him. If it were possible to establish rates upon all the railroads of the United States, based strictly upon the cost of the service in every case, it is not improbable that many lines in the West and the South would be obliged to make as great an aggregate charge for carrying grain a hundred miles as the great trunk lines, with their superior facilities and immense volume of business, would make for carrying the same commodity a thousand miles.

Each railroad is entitled to reasonable rates, and all that can be required of it is that they shall be reasonable. What is a reasonable rate on one does not necessarily determine what is reasonable upon another less favorably situated and of lesser earning capacity. Equality in the charges made upon the same commodity for equal distances by different lines in the East, in the West, and in the South cannot equitably be required, nor is it the province of legislation

to attempt to place those remote from a market and poorly supplied with transportation facilities upon an equality with those within easy reach of a market and enjoying every facility in the matter of transportation. It is not practical to secure uniformity of rates as between places differently situated upon the hundreds of railroads within the United States, nor has it been possible to secure such equality even within the limits of a single State.

Like all scrap heaps, this extract may contain something of value, but, as usual, it is mixed with the worthless in such a manner that it can be obtained only by sorting it out. But when it is read critically it is more remarkable for what it does not say, but seems to say, than for what it really does say. That "equality in the charges made upon the same commodity for equal distances by different lines in the East, in the West, and in the South cannot equitably be required" is undoubtedly true, if by this general statement it is only meant that lines in certain sections of the country, owing to the volume of business in that section, can afford to carry traffic at a less average rate per mile than in other sections where the available tonnage is less. If, on the other hand, it means that it would be inequitable to exact "equality in the charges made upon the same commodity for equal distances by different lines," serving the same district and essentially though not mathematically parallel, it would seem to be untrue.

It is apparent from the context that the latter construction was intended by the committee. That is also the general opinion. With this theory as a basis, the Iowa commissioners were authorized by the law to make this distinction in fixing maximum rates, and accordingly the railways of Iowa were divided

into three classes, A, B, and C. Those that were oldest, or whose better location had developed the largest volume of trade, were put in the A class, the next in respect to developed earning capacity were put in the B class, and the remainder in the C class. The class B railways were allowed to charge fifteen per cent more, and the C class thirty per cent more, than the A class; all of which at first thought appears very equitable. Now it happened that the Chicago & Northwestern Company's line across the State, being one of the first lines built, had developed sufficient business to entitle it to go into the A class, while the line of the Chicago, Milwaukee & St. Paul Company, also extending across the State, practically parallel and not many miles distant, being newer, had not developed sufficient business to go into the A class, and was therefore put in class B. As the rates made by the commission were simply maximum rates, meaning that each company might voluntarily adopt the lower rate, this arrangement did not amount to much. But had the commission fixed the rates, and had the law said that no more and no less than the rate so fixed should be charged or collected, it is easy to show what an injustice would have been done by such "equity" to the Chicago, Milwaukee & St. Paul Company, and to every village, town, city, and farm, and every industry located on its line.

Had such rates been made to apply to interstate business as well, both the lines being continuous from the city of Omaha through Iowa and Illinois to Chicago, the injustice would have been more apparent and the damage much greater. As a matter of course, nobody would ship by the high rate line and pay the fifteen per cent higher rates, except

such as could not use the cheaper line without costing as much or more to get to it than the saving in rates would amount to. Hence the high-rate line would be deprived of the through business between Chicago and Omaha.

Generally speaking, the rates being the same on two nearly parallel railroads, the products of farming and other industries of the country will seek the nearest line, and hence the halfway line between the two railways is the dividing line of the business; but as soon as the rates on one line are raised fifteen per cent above those on the other, this dividing business line moves as much nearer the higher rate line as the difference in rail rates will pay for hauling by team. Hence, the road with higher rates, instead of getting one half the products of the intermediate country, would get only say one quarter, or one eighth, or perhaps in some cases even less. One half or three quarters of the farmers who, when the rates were the same, have come to the stations, villages, and towns of one road, for the sale of their produce and the purchase of their supplies, on being compelled to go to the other road, leave the produce buyers, the country merchant, the mechanics, and the professional men that much short of their former trade and business. As they had none too much before for the number employed, development stops and the process of depopulation begins. If there should be any wholesale merchants or manufacturers who depended on trade at any distance from that immediate line, with fifteen per cent against them in the matter of rates they would be compelled to move to the other line.

All this would react upon the interests of the rail-

way company and curtail its business. It is unnecessary to pursue the matter further, in order to show that it is not inequitable in most cases to require railways serving the same district to charge the same rates that are charged by the more prosperous lines; or, in other words, there is but one reasonable rate between any two points, and it is applicable to all roads alike which serve the same district of country. The other opinion which has been so universally adopted in argument, but not in practice, is based upon the unsound theory that the measure by which to judge of the reasonableness of rates is solely the question of the "cost of the service." The "cost of the service" may be one of the items of evidence to prove the reasonableness of rates, but if it were the sole criterion it is evident that many of the old roads which have been injudiciously located, and all new roads when first opened for business, in order to charge a "reasonable rate" would be compelled to make their rates so high as to deprive them of business. Surely a rate which prohibits cannot be reasonable, and rates are prohibitory if but a fraction higher than those of the other line.

The example of one road charging higher rates than a parallel line, which has been under consideration, is a fine illustration of the class of unjust discrimination casually mentioned in the last chapter, arising from different lines in the same district charging different rates for substantially the same service. The Senate committee evidently overlooked this class of cases, but in general language they seemed to imply that it might be just and proper so to discriminate. This class of discrimination is really more disastrous, because covering a larger area, than the

discrimination between places upon the same line of railway, — an evil which filled pages of the committee's report, and to prevent which the famous "long and short haul clause" was invented.

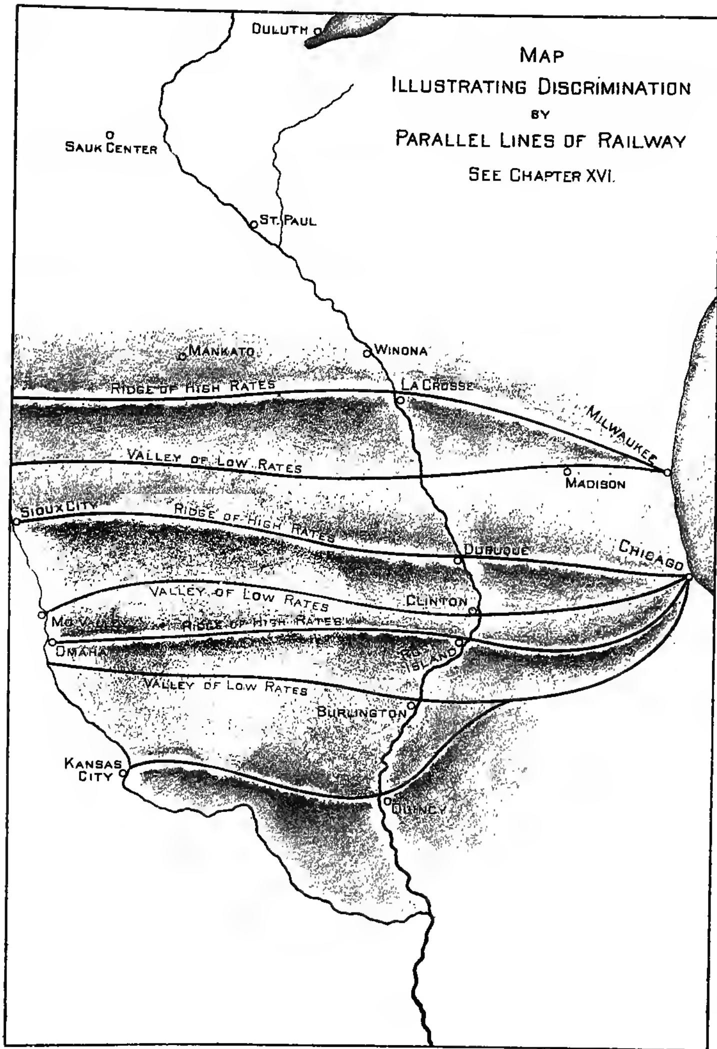
To explain it satisfactorily, resort should be had to the outline map following this chapter, which shows the relative positions of six leading lines west of Lake Michigan. If the rate at Des Moines, which is on one of these lines, is lower than at other points in Iowa, it would be such an unjust discrimination as the law prohibits; though it is evident that it would injuriously affect only the limited territory lying within a certain radius of that city. But the result of the other method of discrimination would affect much more extended areas.

For the sake of illustration, let it be supposed that "rates have been established upon all these lines based strictly on the cost of the service in every case," and that it so happened that on this account each alternate line charged higher rates than the intermediate lines. This evidently would produce alternate parallel lines of low and high rates the whole length of the State of Iowa. Under such conditions, a cross-section profile of the rates, running across the State from north to south, would show low and high points succeeding each other. Places located on the ridges of high rates would be discriminated against, and would see their business slide away from them down into the contiguous valleys of low rates on other lines of railway, just as much to their damage as though it slid into the "pothole" of low rates caused by discrimination as between stations on the same line, which the Senate committee so justly condemned, and which the law prohibits.

To consider this kind of discrimination in a broader range, it is easy to see how places located so far from each other as Omaha and Kansas City, about two hundred miles, may be injuriously affected by rates which are relatively lower at one point than at the other. Both these points are now important "packing points." As against the other, it must be admitted that each is entitled by natural laws to slaughter all the hogs produced in the adjacent territory, which, by reason of proximity or otherwise, would naturally go to each town to market without interference by the railways. But when the railways, by making materially lower proportionate rates at one town than at the other, be it by one road which serves both cities, or by two lines, one serving one city and the other the other city, this natural law is overcome, and the hogs raised on farms nearer to the city of higher rates will go to enrich the city of the lower rates. This would appear to be an unjust discrimination of which the law takes no cognizance, and therefore does not prohibit.

All these discriminations are a matter of rates. If the rates were made on a just and equitable scale they would all disappear, and each city and each railway would get the business it is naturally entitled to. But as long as rate-making is left to the railway managements, it is probable that their greed will prevent such a just distribution of rates.

It is difficult, if not impossible, by general provisions of a law to meet all the cases which this problem presents without dealing entirely in generalities. The only specific provision of the Interstate Law is the "long and short haul clause," of which much was expected in preventing what has been termed in this



MAP
ILLUSTRATING DISCRIMINATION
BY
PARALLEL LINES OF RAILWAY
SEE CHAPTER XVI.
DULUTH
SAUK CENTER
ST. PAUL
MANKATO
WINONA
LA CROSSE
RIDGE OF HIGH RATES
MILWAUKEE
VALLEY OF LOW RATES
MADISON
SIOUX CITY
RIDGE OF HIGH RATES
DUBUQUE
CHICAGO
VALLEY OF LOW RATES
CLINTON
RIDGE OF HIGH RATES
OMAHA
VALLEY OF LOW RATES
BURLINGTON
KANSAS CITY
QUINCY

chapter "pothole discrimination." Its tendency has been to lessen these low spots in rates on a single line, but in doing this it has frequently produced a continuous valley of relatively low rates on one line in unjust discrimination against a long ridge of relatively high rates on neighboring lines, and thus instead of lessening has increased the evils of unjust discrimination.

CHAPTER XVII.

RAILWAYS ARE AGENTS OF THE STATE.

THE underlying principles of the Interstate Law must be conceded to be just and equitable, but the writer contends that the law falls short of the full performance of the duty which the government owes in the matter of regulating the rates of railway corporations, inasmuch as it does not definitely fix them, nor provide a legal commission endowed with the power and the duty to enforce definite schedules. Although starting with a different theory, he has been forced to this conclusion by his investigations of the fundamental principles of government and of the laws. By the same process he also concludes that the revenues collected by railway companies are not in the nature of payments for services rendered, but in the nature of a tax levied and collected by exercise of the sovereignty of the State by and under its permission and license.

In this country it is the theory that all the powers of the State are derived from the people.

The State has been defined as a body politic, created by a "social compact by which the whole people covenant with each citizen, and each citizen covenants with the whole people, that all shall be governed by certain laws for the common good." In such a compact, necessarily each member parts with some rights or privileges which as an individual,

when not affected by relations to others, he undoubtedly possessed, and the State acquires rights, privileges, and duties from each individual, the sum of which constitutes the sovereignty of the State.

Protection of the rights of the citizens is undoubtedly the most important function of the State, but it is clear that in a civilized nation it becomes necessary for the State to do more than hold the mantle of protection over its subjects. The business of the merchant and the manufacturer, and the various trades and professions which can be prosecuted by individual enterprise, may require protection alone. But there are many matters which affect the value of property and tend materially to augment the happiness of the citizen with which it is beyond the power of the individual to cope. They require the intervention and assistance of the sovereign power of the State; hence the prosecution of such enterprises must be carried on by the State, or under its license.

The functions pertaining to sovereignty may be performed by the State directly, or indirectly through individuals or corporations acting as its agents, to whom the State has delegated the necessary sovereign power and prerogative. Thus in times of war the State may issue letters of marque, conferring upon individuals the sovereign prerogative of sailing the seas and plundering for their own profit. The building of ordinary highways is of the highest importance to the property and happiness of the citizen. Individual ownership of the land would be intolerable without highways. They cannot be opened without the exercise of the sovereign power. In America the State seldom builds highways. It creates municipal corporations, usually called towns or cities, to

which it delegates the power and duty to provide all necessary and convenient highways. At the same time it confers, as a necessary concomitant, the sovereign prerogative of levying and collecting a tax for the purpose of paying their cost, and the subsequent expenses of keeping them in repair; or, if their construction is paid for with borrowed money, for the purpose of paying interest on the capital borrowed, as well as operating expenses.

The building of forts for the national defense and the care of harbors for the accommodation of commerce are functions of the government. The United States has usually pursued the policy of exercising these functions directly. To raise the necessary means, it has both issued its bonds and levied and collected taxes.

In pursuance of this policy it has expended in and about the port of New York millions of money. Now, suppose it had pursued a different policy. Instead of selling its own bonds and levying and collecting its taxes directly, suppose it had created a corporation composed of private citizens, and conferred upon such corporation the sovereign power and prerogative to do these things. In order to obtain the necessary capital, suppose it had authorized the corporation to sell its stock and bonds; and as an inducement had authorized it to collect for its own use duties upon the imports arriving at that port. Would the fact that such corporation was composed of private citizens, and that its bonds and stocks were owned by citizens, make the business it was prosecuting the private business of its stockholders? Or would it make the duties it collected and retained any the less a tax? Or would such an arrangement

with the government, permitted to such corporation by virtue of its ownership of the taxes when collected, carry with it the right to discriminate as to the amount of the tax it would collect from different individuals, and thereby make a few favored importers rich, while others became poor or were compelled to quit the business?

On the contrary, it seems clear, and it will readily be admitted, that such a corporation would be "engaged in a public employment" in effect, "holding a public office." Practically it would be a department of the government itself, and of right subject to its control as to the manner of levying and collecting duties, and as to the reasonableness of the amount to be collected. It would be the imperative duty of the State to see that they were collected honestly and impartially, and in such a manner that no injustice should be done to the humblest citizen.

To allow discriminations in the collecting of any taxes, but more especially duties on imports, or the taxes which when paid enter into and become part of the cost of merchandise, would be subversive of the principles of government. Says a distinguished writer upon the subject of the law: —

One of the great ends of government is the protection of private property, which in a state of nature was held by precarious tenure and liable to constant invasions by superior force. It would not, therefore, be reasonable to suppose that the citizen, in entering into a governmental compact, for the purpose of appealing to the strong arm of constitutional law when his rights of property were invaded, intended to confer an arbitrary power of taxation upon the government, in the exercise of which his property would be rendered equally insecure as in the natural state. He would gain

nothing by such a compact; true, he would have a security against the force and fraud of his neighbor, but would thereby become subject to the continual plunder incident to the wants of the government and the rapacity of the public agents.

It now becomes pertinent to inquire in what essential the supposed corporation would differ from the present railway corporations? It is true that railway corporations are incorporated by the State for the purpose of exercising a function of sovereignty, and that, as in the case supposed, they are authorized to obtain just compensation for their services and for the use of their capital by exercising the sovereign prerogative of levying and collecting a tax?

I. DO RAILWAY COMPANIES EXERCISE A FUNCTION OF THE STATE?

The citizen, when he became a party to that social compact constituting the State, surrendered whatever natural rights he may have had of strolling at pleasure over the surrounding land, regardless of the possessory rights of others; and in return the State undertook to provide all necessary and convenient highways, to be used in common by all its subjects. To conserve this and other important interests, the people, in their original compact, granted to the State the right of eminent domain; that is, the right, whenever necessary, to take private property for a public use. None but the State possesses this sovereign power; therefore none but the State possesses the ability to open and build highways. Hence time out of mind the opening and building of highways has been regarded as the exclusive function and pre-

rogative of sovereignty. If, therefore, railways may be considered highways, the construction of them must be considered the function and prerogative of the State. The question as to whether railways are highways, and whether it is the duty of the State to provide such as are necessary and convenient, has often been before the courts. There are three distinct classes of cases in which it has been considered. First, in cases where municipal corporations have been sued on bonds which they have voted in aid of the construction of railways; second, in cases where railway companies have attempted to exercise the right of eminent domain; and third, in the so-called Granger suits to establish the right of the legislature to fix rates.

In all these cases the courts have consistently held to the doctrine that railways are simply improved highways, or to quote the language of one: "Railways are but an improved highway, — one which it is the duty and interest of the government to construct, where public interests and convenience demand it."

It is upon this principle only that bonds can be held to be valid obligations against the municipalities voting them, or that railway companies can exercise the right of eminent domain to secure the right of way upon which their roads are built. For the sovereign has not authority to levy taxes for a private purpose, or to take private property for a private use.

The best opinions and the soundest reasoning regard the construction of modern railways as a sovereign function, and where they are built by corporations the companies are exercising, under a license, a function and prerogative which belong exclusively

to the State. So far all are agreed. But some writers, who are extremely technical, and who never seem to be able to look beyond the precedents relating to common carriers known to the common law (who, however, had little in common with the present railway), have expressed a doubt as to whether the operation of railways came within the same category. It would seem that the road and the operation of it are so inseparable and so essentially one that there can be no distinction between them. This appears to be the consensus of opinion. An eminent judge has said: "Railway companies must be considered as trustees or agents of the State, entrusted with certain of its powers for the purpose of effecting particular objects coming within the legitimate ends of government. Upon no other theory is it possible to justify the imposition of taxes to forward the enterprises in which they are engaged, or the exercise by them of the right of eminent domain."

Another has said: "The right to establish a railroad and charge tolls being a sovereign right, the legislature cannot alienate them. The extent that the legislature can go is to entrust the exercise of such franchises to an individual corporation as the *trustee or agent* of the State, and subject to its control."

There seems to be no doubt that it is the duty, the function, and the prerogative of the State to build all the highways of the country, including the railways. As has been said, in this country the State does not build even the ordinary highways directly, but delegates its power and duty in this respect to municipal corporations. So as regards railways the State has thought it wiser to farm out this department of its

governmental functions to corporations composed of private individuals, which it has incorporated for that purpose. In order to provide means to build and equip them, the State, instead of issuing and selling its own stocks and bonds, has authorized these corporations to issue and sell their stocks and bonds. As compensation for their services, and for the use of their capital, the State has granted them the right to levy and collect certain revenues, which as regards passengers are levied on the persons using the roads, but as regards freight are levied upon the commodities transported.

II. ARE THESE REVENUES IN THE NATURE OF PAYMENTS FOR SPECIFIC SERVICES, OR ARE THEY IN THE NATURE OF A PUBLIC TAX, SIMILAR TO THE DUTIES WHICH ARE COLLECTED THROUGH THE CUSTOM HOUSES?

"Inasmuch," says Vattel, "as it is the duty of the government, with respect to the welfare of the public in general and of trade in particular, to provide safe and commodious ways of communication, whence flows the right of the State to oblige those who make use of the ways it provides to contribute to the expense of making and maintaining them, — that is, *the right to levy tolls*, — it follows that the right to make roads and levy toll is a prerogative of sovereignty, and in the hands of a subject is a franchise, a privilege of immunity of a public nature, which cannot be exercised without legislative authority."

It has been said, and seems to be the settled law, "that if a consignor ships goods by an ordinary carrier, who uses the common highways in common with

all the king's subjects, having no superior rights, without expressly agreeing to pay any specified sum for such services, the carrier may nevertheless collect what his services are reasonably worth, because there is an implied promise to pay a *quantum meruit* therefor, *but that there is no such implied promise between the shipper by railway and the railway company;* that the right of the company to recover for such services rests not upon the law of contract, express or implied, but upon the license of the State to collect tolls."

There is a long line of decisions in the highest courts, by the most eminent judges, who hold (quoting the language of one) that "the title of a railway company to its rights to demand compensation for this service is not derived to it upon common law principles, and is not to be measured by the rules of the common law; and whether it may lawfully demand compensation from a person who uses its highway for the carriage of goods, in the only way in which it can be used, depends upon the language of its charter, and not upon the rules of the common law; and if its charter conferred the right to collect tolls it could collect them. Otherwise," said the learned judge, "it is impossible to see upon what principle it could be contended that it was not compellable to permit the *public to use it without paying toll.*"

It seems to be the settled doctrine of the law that the revenues collected by railway companies are taxes called tolls, just as the revenues collected at the custom houses are taxes called duties. But some reader will be sure to make the point that most of the railways are engaged in interstate commerce, and most

of them are State corporations, deriving their power to collect tolls from the State; that collecting toll on interstate traffic under such authority would be equivalent to levying a tax on interstate commerce by a State, which is prohibited. How, then, it will be asked, under the tax theory, can railway companies collect tolls on interstate business? This question is not new. An act of Congress provides that railways of one State may connect with railways of another State so as to form through lines and transport traffic from one State into another, and "receive compensation therefor."

If it has been satisfactorily proved that railway companies are performing functions which belong exclusively to the sovereignty of the State, under its license, or as its trustees or agents, and are collecting revenues by exercising the sovereign prerogative of collecting taxes, it will probably be conceded that it is not only the right but the duty of the State to fix the rates of taxation, as well as to regulate the methods of collection. The State itself in collecting taxes is bound to have regard to certain principles of equity. The Constitution empowers Congress to levy and collect taxes, duties, imposts, and excises, to pay public debts and provide for the common defense and general welfare; "but all duties, imposts, and excises shall be uniform through the United States."

In the matter of levying and collecting all kinds of taxes, it is a fundamental principle that the sovereign shall act with impartiality between citizens and between localities.

The matter of taxation is so important, and the right to levy and collect taxes is so jealously guarded in the laws and in the sentiment of the people, that

it is hard to understand how it happens that the laws which handed over the prerogative to collect tolls on railways should have been so loosely drawn as to give the companies an opportunity, for many years, to collect their revenues in such utter disregard of the principles of impartial justice. When the State concluded that it was wise to turn over to corporations the power to levy and collect this enormous tax, it would seem that the foresight which has usually characterized American law-makers would have caused them scrupulously to guard and limit the authority.

History is not lacking, however, in instances where such power has been granted without well-defined limitations. In the dark ages of history despotic rulers were accustomed to send their representatives into provinces, armed with the sovereign power to collect their expenses (much in the same manner that railway companies now claim the right to collect revenues), collecting of one man one rate, of another a different rate, granting to favorites "rebates," which soon made them rich and powerful, while they plundered both the State and the masses. These representatives of despotic rulers have been known to discriminate in favor of certain cities, which by reason of such discrimination soon became populous and magnificent, while the remainder of the province became poor and squalid.

It is now not uncommon to hear the shipper say: "I buy my transportation the same as I buy my wheat. What I pay for either is my private affair." It is not difficult to imagine that in those dark ages the court favorite might have said: "I buy my sovereign's protection the same as I buy my wine. What I pay for either is my own concern."

CHAPTER XVIII.

RAILWAYS AS COMMON CARRIERS.

THE other view, namely, that the revenues of railway companies are in the nature of a specific payment for specific services, has probably become the most common conclusion, and has undoubtedly been induced by considering railway companies as common carriers only. The modern railway company is unquestionably a common carrier, but the common carrier known to the common law was not a modern railway company. The common-law carrier by land used the common highways of the country in common with all the rest of the people. The most advanced carriers of persons used the stagecoach, drawn by horses; and the corresponding carrier of property employed a rude wagon, also propelled by horse power. To be a common carrier required no sovereign grant or franchise. Anybody could become a carrier by simply holding himself out as such. He could continue in the business as long as he desired, and could quit it at his pleasure. He possessed no exclusive privileges either under the laws or by reason of his superior facilities. The humblest farmer could fairly compete with him, it being only a question of which possessed the best horse or donkey. Under the common law, the right of the carrier to collect a reasonable compensation for his services rested entirely upon the principle that where one man performed services for another at his re-

quest, in the absence of an express agreement, there was an implied promise to pay what the services were reasonably worth. This rule applied equally to all kinds of servants. The carrier possessed no royal franchise to collect tolls, but simply the common right to collect compensation. The services he performed were simple and easily understood, and their reasonable value could be readily ascertained. Long distance transportation with its numerous complications was unknown, and as the highways were built and repaired by the State, the questions of interest on cost of construction and of maintenance were eliminated from the problem. The volume of his business was small. No special vehicle or motive power was required. The horse and cart suited to the uses of the carrier were equally suited and valuable for other purposes.

It is not so with the railway company. Each company has a monopoly of the use of certain roads. Its road, machinery, and vehicles are especially adapted to a certain use, and valueless for any other. The volume of the business is such, and the conditions are so variable, that to determine the cost or value of any specific service may be said to be impossible.

The modern railway company can exist only by special license from the government. It has the exclusive use of its highway, and both on this account and by reason of its superior facilities possesses a monopoly. It is true that the courts have held that railway rates must be reasonable, and have apparently based this conclusion, in part at least, upon the common-law rule in regard to common carriers; but it would seem that it should be based as well upon the principle that all taxation must be reasonable.

In connection with this theory it is interesting to compare the "duties" upon property collected through the custom houses with the "tolls" collected through the station houses of the railway companies.

DUTIES.

For the purpose of obtaining money to be used in paying interest on debts which have been contracted on account of expenditures, principally by the War Department, and for paying operating expenses of several but not all the departments, the government, through the agents of its Treasury Department at the custom houses, collects taxes called duties, which are levied upon certain imports.

The aggregate amount of the duties collected annually at the custom houses is about $200,000,000.

The duties are usually paid in the first instance by the importer, who adds the amount so paid to the original cost of his goods. The duties thereafter become part of the cost, and are ultimately paid by the consumer.

CONSEQUENTLY:

1. If any importer should be permitted to pay less duty on any article imported than any other importer was at the same time required to pay, he would have an undue advantage, and

TOLLS.

For the purpose of obtaining money to be used in paying interest on the money which has been expended in the construction of railways, and for paying their operating expenses, the government, through the agents of its trustees, the railway companies, at their station houses, collects taxes called tolls, which are levied on all merchandise transported on its railways.

The aggregate amount of freight tolls collected annually at the station houses is about $700,000,000.

The tolls are usually paid in the first instance by the consignee, who adds the amount so paid to the original cost of his goods. The tolls thereafter become part of the cost, and are ultimately paid by the consumer.

CONSEQUENTLY:

1. If any consignee should be permitted to pay less toll on any articles transported than other consignees were at the same time required to pay, he would have an undue ad-

would be enabled to monopolize the trade in that line.

2. Every time the schedule of rates of duties is changed it necessarily changes the values of all articles imported.

The duties are usually a material percentage of the original cost, sometimes two hundred per cent, so that changes in the schedule materially affect values.

The schedules of duties are *not frequently* changed, the same schedule remaining in force sometimes as much as *twenty years;* hence values are not frequently disturbed by changes of duties.

The schedule of rates of duties is fixed *by Congress*, with great deliberation and *in public*, often consuming months in investigation and discussion.

When the schedule of duties is once fixed it is published, so that every citizen who desires may inform himself as to the rates.

It is unlawful to collect more or less than the published tariff of duties.

The government takes *great care* to enforce the law in regard to duties, and for this purpose employs a large force of men to supervise and enforce their collection, taking *special*

vantage, and would be enabled to monopolize the trade in that line.

2. Every time the schedule of rates of tolls is changed it necessarily changes the value of all articles transported.

The tolls are usually a material percentage of the original cost, sometimes, as when coal is transported long distances, two hundred or more per cent, so the changes in the schedule materially affect values.

The schedules of tolls *are frequently* changed, the same schedule seldom remaining in force for *thirty days* in succession; hence values are frequently disturbed by changes of tolls.

The schedule of rates of toll is fixed *in secret*, usually by the *will of one man*, without deliberation, without public investigation or discussion.

When the schedule of tolls is fixed the law requires it to be published, so that every citizen who desires may inform himself as to the rates.

It is unlawful to collect more or less than the published tariff of rates.

The government takes *no care* to enforce the law in regard to tolls, and for this purpose employs no force of men to supervise and enforce their collections. It takes *no precau-*

precaution to see that no partiality is shown, and to punish offenders who, by collusion, misrepresentation, or otherwise, get imports through the custom houses without paying the full rate.

tion to see that no partiality is shown, nor to punish offenders who, by collusion, misrepresentation, or otherwise, get shipments through the station houses without paying the full rate.

To enforce the laws in reference to its taxes called duties and imposts, amounting to scarcely $400,000,000 per annum, is the principal duty of one of the great departments of state, the chief of which is a Cabinet officer, the employees of the department being numbered by thousands.

To enforce the laws in reference to the taxes called tolls, amounting to over $1,000,000,000 per annum, is the duty of a commission composed of five men, with one secretary, two clerks, and a type-writer.

The result is, that secret "drawbacks" and "rebates" *are not paid* back to the importers from the duties collected.

The result is, that secret "drawbacks" and "rebates" *are paid* back to the consignees from the tolls collected to such an extent that a few persons have become *enormously rich* from this source, out of taxes which have heen collected from the people, and through this chicanery transferred to the pockets of individuals, without consideration, and to the great scandal of the whole country.

CHAPTER XIX.

MAKING STANDARD AVERAGE RATES.

It is evident that if the revenues which railway companies collect are taxes, the proper construction of a schedule of rates will be much simpler, and may be based upon entirely different lines, than if regarded as a compensation for specific services in the nature of a *quantum meruit.*

Based on the principle of *quantum meruit*, it is extremely difficult reasonably to explain the usual practice of railway companies, which has been followed by State commissioners and seems to be approved by the Interstate Law, of charging say six times as much for hauling a ton of "first-class" freight any given distance as for hauling a ton say of coal the same distance. The cost would necessarily be practically the same. It is true, the railway company being an insurer as well as a carrier, the greater value of the ton of first-class freight might reasonably subject it to a higher charge on account of the risk, yet it is absurd to pretend that the risk is worth the usual difference in the rates.

But there is a well-known principle in taxation by which this difference is easily explainable. It is called public policy.

The Constitution provides that all duties shall be uniform throughout the United States. But this has never been construed to mean that a uniform tax

shall be levied upon all articles imported into the country. On the contrary, many are allowed to come in free, while others are taxed heavily. Then, among the articles which are taxed, some bear ten per cent, while others bear two hundred per cent or more. The relative rates are determined upon two different bases. When the prime object of the government is to raise all the money possible from duties, the first consideration is what rate upon each article will be likely to produce the largest aggregate revenues, or, in familiar parlance, "How much will it bear?" But when the government is in easier circumstances, the different rates are determined more largely upon the principle of public policy. This principle is the basis of duties made for the purpose of "protecting home industries," which has entered more or less into the construction of all tariff laws in this country. The constitutional requirement of uniformity seems to be sufficiently regarded when the rate of duty on each article is made the same to each and every citizen.

All the principles of the construction of a schedule of duties apply equally in the construction of a schedule of tolls. The departments of the government which depend upon the income derived from the duties, as well as the department (the railways) which relies upon the income from tolls, have certain fixed interest charges, which can be definitely ascertained, and certain operating expenses, the amount of which can only be approximated in advance.

The important question in each department is how to arrange the rates so as to produce the aggregate income necessary to meet these fixed interest charges and operating expenses, and at the same time

observe the required uniformity and have due regard to matters of public policy. This cannot be said to be an easy problem. However, if all rates are made by one authority, like Congress or a commission, to arrive at the best possible result, which at most is only an approximation, is not so difficult as at first it appears. But it is manifestly impossible to maintain uniformity in the rates through schedules made by different authorities, like State commissions or railway managements, acting separately, for reasons that have been stated and discussed in preceding chapters.

The first step in the construction of a schedule of tolls has usually been to classify the commodities transported. The purpose of the classification is to simplify the difficulties of rate-making by grouping together the different articles which it is thought should rightfully make the same contributions towards the payment of fixed charges and operating expenses. In making a schedule of duties, Congress has not thought it necessary to classify imports, but has named specific rates for each specific article. It is evident that the same method could be pursued in constructing a schedule of tolls. Hence the classification may be considered a measure of convenience only, not of necessity.

The second step should be, although this has not been the usual custom, to determine the relative rates upon different classes; that is to say, what ratio the rates of one class shall bear to the rates of other classes. In order to preserve that uniformity which the law and every principle of equity and justice so imperatively demand, this becomes a measure of necessity.

The third and last step is to determine the actual rates.

The solution of all the problems presented in the different stages of schedule-making rests upon the rule of uniformity, which is imperative, and upon the principles of "what the traffic will bear" and of public policy. The necessity of raising sufficient aggregate revenue to meet operating expenses and interest charges requires the question of "what the traffic will bear" to be an ever-present consideration in the making of a schedule of railway tolls, the same as in making a tariff of duties. It does not necessarily follow that the extreme limit will always be adopted, for where there is a superabundance of tonnage the rate may, for reasons of public policy, be made either higher or lower than the extreme limit of what the traffic will bear. In either case it will tend to lessen the aggregate revenue. In the same manner, Congress, when the requirements are small and the imports large, can afford to impose duties on certain articles, for the purpose of "protecting home industries," which are larger than the "traffic will bear," and by so doing prevent, to a large extent, their importation, and of course lessen the amount of revenue derived therefrom.

As the true theory of the common expression of "what the traffic will bear" is but imperfectly understood, it seems worth while to illustrate it. For example, let the importation of steel rails be considered. Say the cost of making rails in England and transporting them to this country is $20 per ton, and the cost of making them here is $32 per ton, and the annual consumption is 1,000,000 tons: the problem is, what rate of duty will the traffic in steel rails

bear? — meaning, what rate of duty imposed upon importation of steel rails will produce the largest annual revenue? The difference in cost is $12 per ton. It is evident that a rate materially higher than that would prevent all importation, and thus deprive the government of revenue from that source. On the other hand, a duty materially less than $12 per ton would stop manufacturing in this country, and cause the whole 1,000,000 tons of annual consumption to be imported and to pay the government duty. In this simple form, the problem would not seem difficult of solution. But when the question of importing rails is stated in a little more complicated form, its solution is by no means so apparent. Suppose, as before, the cost of making rails in England and transporting them to the port of New York is $20. Suppose that the cost of making rails in Pittsburg is $32, in Chicago $32.50, and at a cost of $20 the country would consume more rails than at a cost of $32, but just how many tons it would consume at either price was an unknown quantity; and further, that it was unknown how great the consumption would be within a radius of Pittsburg and Chicago, in which the cost of transportation from those cities would be less than from the port of New York, and it makes a problem which presents many difficulties. It may be said that, like most of the rate questions, it is insolvable. The best that can be done is to exercise a sound judgment and to experiment. But at the same time it would be safe to say that the proper rate, — meaning the rate that would produce the greatest revenue, — would lie somewhere between $5 and $10 per ton, probably nearer the former than the latter sum. It is also clear that if the constitutional requirement of

uniformity could be ignored, and the duty on rails to be consumed at or near New York could be made at one rate, and on rails to be consumed near Pittsburg at a less rate, and on rails to be consumed at or near and west of Chicago still less, the rate of greatest revenue, although the question would apparently be simplified, would still be a matter of speculation.

This illustration shows some of the difficulties surrounding the problem of rate-making, and also illustrates the fact that the principle of "charging what the traffic will bear," when correctly understood, does not mean charging extortionate rates; for it is easy to see that a low rate will often produce greater revenues than a higher rate.

In preparing the classification, the principle last referred to, as well as public policy, would prevent placing silk fabric in the same class as coal, because coal would not bear as high a rate as silk, and because it is a settled principle of public policy that in indirect taxation articles of luxury shall bear a higher tax than those of prime necessity.

So it seems evident that the problems presented in the first two steps in the construction of a schedule of tolls must be settled upon these two principles as best they may by the judgment of the sovereign who is the sole judge of questions of public policy, and his action in the premises can be limited only by the contract obligation to allow his trustee to obtain, if the volume of business is large enough, an aggregate revenue sufficient to meet his expenses and to pay for the use of his invested capital; and the further obligation which the law imposes of uniformity as to the ratio existing between the several classes for all citizens and for all localities.

When the third step in constructing a schedule of tolls, namely, the fixing of definite rates, is reached, it must be concluded that, subject only to the two obligations mentioned, the sovereign authority has the undoubted right to fix them as it may deem for the best interest of the greatest number. In fixing such tolls the sovereign is not bound to have regard to the specific cost of specific shipments, unless public policy requires it; but on the contrary, if by such methods a sufficient revenue can be obtained, and the best interests of the public demand it, he has the undoubted right to reduce all rates to the uniformity which is common in the postal service, and thereby annihilate distance, by requiring any quantity of freight to be hauled one hundred, one thousand, or three thousand miles at the same price as for one mile, or even less. As an abstract question this conclusion cannot successfully be controverted, but as a matter of fact it would demand the rates to be made so high for short distances that such a schedule would not be likely to be regarded in the line of public policy, and therefore could not be sanctioned. On the other hand, the greatest good to the greatest number would not require the sovereign authority to undertake the impossible task of ascertaining the exact cost of each shipment, but in making rates only to have general reference to cost and distances. And probably after full consideration, the process of fixing rates, which has been described as the natural method in Chapter VI., would be held by the best judgment to be most in line with public policy; that is, most likely to result in the greatest good to the greatest number.

Although schedules have not, as a rule, been con-

structed on these lines, yet it is probable that sufficient data could be derived from the statistics of operation to make a close approximation in the first attempts at correct rates. But it is possible that further experiments would have to be made, which might require changes from time to time, for a few years. After that, there is no apparent reason why a schedule of railroad tolls might not become as permanent as a schedule of duties, subject to change only in process of years, rather than as now, in cycles of months. Is it possible to estimate properly what a boon such permanent schedules would be to the general business of this country?

Schedule-making, when taken up in the systematic manner here proposed, becomes a matter of independent thought and judgment on not more than four distinct propositions, instead of a labor of almost infinite detail, the mere contemplation of which so appalled the Senate select committee, and led them to say: "It is obviously impracticable for Congress to resolve itself into a railroad freight office, and undertake to establish schedules for the hundreds of interstate lines in the United States."

Logically, as has been said, this labor divides itself into three sections, one of which, later on, will be seen to subdivide into two parts.

First. Classification.

Second. The determination as to the ratio to be observed between the rates applied to the different classes through the whole country.

Third. The determination of the mathematical principle upon which the actual rates should be worked out.

It is agreed that the classification and the ratio

should be uniform throughout the whole country, and this would not be a work of great magnitude to accomplish. These being determined, it would be necessary to establish only one line of actual rates, which might appropriately be termed "standard rates," for it is evident that the rates for all the other classes would be a fixed percentage of the line of rates so established.

For the purpose of working intelligently in their construction, the standard rates should be the average rates, meaning a line of rates which, if the classification were abandoned and the whole tonnage carried at uniform rates, would produce the proper and necessary revenue. This line of rates being established, the rates for all the classes would be fixed percentages of it. The next step to consider is how to determine this line of rates, which will hereafter be called the "standard average rates."

As has been stated in a previous chapter, there are two principal divisions of the cost of transportation:

1. Terminal expenses, which include the use of terminal grounds, tracks, and buildings; the use of cars while standing at stations to be loaded and unloaded; the switching of cars; the labor, stationery, etc., consumed; proportion of general expenses; and a fair profit.

2. The haul, which includes use and repairs of roadway, use of engines and cars, fuel, a proper proportion of general expenses, a fair profit, etc.

It is useless to attempt (because impossible to accomplish) to ascertain even approximately the actual amount which should be charged for either, but in a general way it is apparent that on all shipments there are two terminal expenses, whether the haul is ten

miles or one thousand, more or less, and that this terminal expense is practically the same on all shipments; and it may also be definitely stated that there is no possible way of determining the precise cost of hauling freight after it is in the train and started on its journey. The number of cars in a train, the grades, the curves, and the cost of the road and of maintenance, all ever-varying and unknown quantities, enter into the problem in such a way that no mathematical or scientific skill can eliminate, elucidate, or ascertain them. Nothing in regard to the cost of either the terminal expense or the hauling is known or can be ascertained, except the aggregate and the average; and these are such varying quantities, and so run into each other, that to separate them requires divisions more or less arbitrary. So the only thing that can be done is to approximate an average of the past, and then experiment as to the future. While this plan is evidently not perfect, yet it is the nearest possible approximation to accuracy, and whatever it lacks in that regard is compensated for in the uniformity of its results and the simplicity of its construction.

In treating this subject matters of minor importance must be ignored; but there are two conditions attending the problem, of such moment that they should receive attention before proceeding further with the construction of a schedule of standard average rates.

First. The railways have not been built on straight lines, nor upon such a plan that each line has its own distinctive territory to serve. Many important centres are connected by two, three, and sometimes eight or even more lines, running in such a manner

as to serve different intervening localities, but all running such reasonably direct courses between their respective termini as to be able fairly to compete with one another in through traffic. Necessarily their mileage from one centre to the other varies, there being always one which, though not by any means a straight line, is shorter than any of the others. As these lines exist, and as they have been built under the express license of the sovereign, the State cannot fairly ignore their existence, or arrange a schedule so as to deprive any one of its fair proportion of the business. Hence, as there can be only one rate between any two points, in making a schedule on a mileage basis there can be recognized but one distance, which for convenience should be the absolutely straight line, which is always the shortest distance. The advantage of this rule will appear hereafter.

Second. The different sections of the country served by the railroads vary materially in point of natural resources and population, and consequently in respect to the volume of traffic which they furnish railways. These conditions in their details, as where one town or county is less populous than the adjoining town or county, cannot be regarded without doing injustice to the railways and resulting in unjust discrimination between localities; but in respect to certain grand divisions of territory they have always been regarded as proper grounds for varying the basis of rates. For example: the territory bounded on the west by a line drawn north and south through Chicago, on the south by the Ohio River, on the east by the Atlantic seaboard, and on the north by Canada, on account of its large population and tonnage should have a lower line of standard

average rates than the territory west of Chicago and east of the Missouri, which, in turn, for the same reason should have a lower standard than the territory west of that.

The conditions mentioned under these two heads seem to complicate somewhat the construction of a schedule of standard average rates; but when it is remembered that the whole question is capable of only approximations, and that under the tax theory there no longer exists the necessity of ascertaining the *quantum meruit* of each, or for that matter of any shipment, the difficulties arising therefrom do not appear very important. But if the difference in population and business in the various large sections of the country is to be regarded, as it is evident it should be, the next step in building up the schedule of standard average rates would be to agree upon the boundaries of the divisions. The writer is not sufficiently familiar with the problem in the Southern States to venture an opinion, but he thinks that the territory north of Mason and Dixon's line might fairly be divided into three grand divisions, the country east of the east line of Illinois (Chicago) being one, between the east line of Illinois (Chicago) and the Missouri River another, and west of the Missouri River the other. Possibly there should be two or more divisions west of the Missouri. But to keep the illustration within grasp of the comprehension it will be confined to the two more eastern of these supposed divisions. Judging from the statistics of the past, the roads between the seaboard and Chicago should earn an average of about seven and one half mills per ton per mile, and the roads between Chicago and the Missouri River

about ten mills per ton per mile. The problem, therefore, is how to construct a line of standard average rates in each district on the basis of a fixed charge for terminal service and of a fixed rate per mile, the latter reckoned on the constructive mileage equal to straight lines. This standard average rate must be such that, if the whole present tonnage were carried at that rate, it would produce the required average rate per ton per mile, or the necessary aggregate revenue.

Like every other problem connected with rate-making it is incapable of accurate solution. There are too many unknown factors. How many tons there will be offered for transportation, or the exact distances, must always be a matter of uncertainty. And yet, it is little if any more difficult than the problem which Congress grapples with whenever it attempts to produce a schedule of duties on imports. The quantity which will be imported at one rate, compared with the quantity which would be imported at a higher or lower rate, is equally as unknown as the tonnage which will be transported by rail at a certain rate, compared with the tonnage which would be offered at a higher or a lower rate, or the distances it would be hauled. In both instances the experience of the past is the best, although an imperfect, criterion for the future.

This experience seems to prove that the terminal expenses come nearer being a fixed quantity under all circumstances and in all districts than the cost of hauling, for the reason that experience shows that a large quantity can be hauled cheaper proportionately than a small quantity, — at any rate, until the maximum economical capacity of the road is reached ; but

there does not seem to be the same difference in proportionate expense at stations. Hence investigation would probably show that, in regard to the questions of public policy, it would be found proper to make the same charge for terminal expenses in all the grand divisions, and the variation in rates which is recognized as just between the different grand divisions should be produced by varying the rate per ton per mile in hauling.

From a somewhat exhaustive examination of statistics, the writer concludes that a fair charge for each terminal expense in the standard average rate would be about sixty cents per ton; and as every shipment is subject to two terminal charges, one at the forwarding and one at the receiving station, in making such a schedule, $1.20 per ton, to cover these expenses, should be the least charge, to which should be added for hauling in the district between Chicago and the Missouri River about five mills per ton per mile, and in the district east of Chicago about three mills per ton per mile. This it is believed would make a schedule which would result in a close approximation to the requisite average rate per ton per mile of seven and one half mills east, and ten mills west, of Chicago.

West of Chicago these figures would produce a rate for fifty miles of $1.20 per ton for terminals, and five mills per ton per mile haul, amounting to twenty-five cents, which added to the $1.20 terminal expenses would make a total rate of $1.45 per ton, equal to an average of two and nine tenths mills per ton per mile. For a distance of four hundred and fifty miles, which would be approximately the longest haul, they would give a total rate of $3.45 per ton, equal to an

average of seven and six tenths mills per ton per mile, and for a distance of two hundred miles an average rate of eleven mills per ton per mile.

It is evident that if a standard average rate were adopted it would be necessary to arrange the ratio between the classes so that, as near as might be, there would be a tonnage bearing a proportionately higher rate equal to the tonnage carried at lower rates, so that the gain on the higher should offset the loss on the lower rates. But whether or not the exact figures suggested should, after investigation, be deemed worthy of adoption does not affect the principles of this method of building up a schedule of tolls.

The method, it is believed, will commend itself for its simplicity and its close approximation to accuracy as well as for its uniformity, and for the entire absence of the elements of unjust discrimination between localities. By it each locality would retain its proper geographical relation to the surrounding territory for the purposes of trade, in respect to the natural resources of the country and the markets of the world.

To recapitulate: Under this method to produce a complete schedule of tolls, the sovereign mind and judgment, whether exercised by the legislature or by a commission, would need to exercise itself upon four points only, for it is evident, these data being determined, the remainder of the work is clerical, and can be done with mathematical precision. These points are: 1. Classification. 2. Ratio between rates. 3. Proper terminal charge. 4. Rate per ton per mile for haul, — the first three being uniform throughout the entire country, the last varying as to certain grand divisions of territory.

There remains to be considered but one important matter as to methods. It is how to accomplish the task of so publishing the rates that they can be easily comprehended, and in such a manner that a person of ordinary capacity can ascertain by inspection the exact legal rate between any two stations.

As there are over thirty thousand railway stations in the United States, and as the agent at each station may at any time receive shipments for any other station, and to work out all these different rates and present them would require the printing of at least four hundred and fifty million rates, the task might well be considered too enormous to contemplate. Under the existing methods, the rates of the different classes bear no fixed relations to each other, and there are in use in some sections ten classes and as many commodity rates; hence the accomplishment of the task in this case would require the working out and printing of say twenty times four hundred and fifty million separate rates every time the rates are changed, — a labor which it is needless to say has never been attempted.

Up to this time it has been customary for each company to print complete schedules for its own local business; and for long distances where traffic passes over several lines, it has been the custom to group all the stations in certain large areas under one rate, which results in most extraordinary and unexpected differences at certain points.

For the purpose of illustration and for convenience of description, although not strictly correct, let it be assumed that these groups are confined to State lines, and that for the purpose of making rates between them and the eastern seaboard all the stations in

Illinois are in one group bearing the same rate, and all the stations in Iowa are in another group bearing the same rate. The rate between the seaboard and the Illinois group is based upon average distance, that is the distance from the seaboard to the centre line of Illinois, and of the Iowa group upon the distance from the seaboard to the centre line of that State. The difference in distance between these two centre lines being about two hundred and fifty miles, the difference in the rates between the two groups is presumably not less than the cost of hauling two hundred and fifty miles, the average being say five mills per ton per mile, or $1.25 per ton. It is evident that under these conditions the whole difference will appear in the rates between the seaboard, the most western town in Illinois, and the most eastern town in Iowa; that is to say, the average rate from the seaboard to the most western town in Illinois would be $1.25 per ton less than the rate to the most eastern town in Iowa, say only one mile distant. It is also evident that if this difference is maintained it will completely paralyze the trade of the Iowa towns, while it unduly augments the trade of the town in Illinois, and is a most unjust discrimination and the source of a great deal of complaint. This grouping process affords also the opportunity for much of that kind of chicanery between railway companies which in freight agents' parlance is styled "manipulation of" or "monkeying with" rates.

By adopting the proposed method of constructing schedules such results would not occur, and by basing the rates of haul on the constructive mileage of the straight line between all stations the labor of ascertaining the correct rate would be much simplified, and

the necessity for printing tariffs for the information of the public (or for the use of the companies' station agents, except for their convenience) would be avoided. With a good map of the whole country drawn to a scale, and a graduated rule, like an engineer's or an architect's scale, made to the same scale as the map, and graduated to miles, with the standard average rate marked for each mile, or each five or ten miles, it would be only a matter of applying the rule to the map and measuring the distance between the two points to see at a glance the legal standard average rate, of which all others would be fixed percentages. Of course different scales would be provided for the different grand divisions of territory. With these scales and a map with the boundaries of the grand division clearly defined by simple measurements, the correct rate might easily be ascertained by any person of ordinary intelligence.

It must be conceded that rates thus established would fit together all over the United States with mathematical precision, and that, when thus made by the exercise of the sovereign power, there could no longer be any reason for continuing the "long and short haul clause" of the act to regulate commerce, because under such conditions there would be no reason why all companies whose lines were sufficiently direct for them to desire it might not be allowed to participate in the traffic.

In concluding this chapter, it is proper to point out that, when it is conceded that the revenues of railways are the result of collecting taxes, the much-talked-of "wholesale and retail principles" must be abandoned, for there can be no "wholesale principle" in taxation.

CHAPTER XX.

WATERED STOCKS.

In the discussion of the last chapter, it was assumed that there was no difficulty in determining the aggregate amount of revenue which each railway company was entitled to collect over its operating expenses, for the purpose of paying interest on its debts and dividends on its stocks. But in truth it must be admitted that there is perhaps no part of the vexed problem on which the public mind is so uninformed. Well-defined ideas upon this part of the subject seem to be lacking. There are certain classes of writers and orators who spend a great deal of energy in denouncing what they are pleased to term "watered stocks" and "over capitalization," but to what purpose or why they do so is not particularly clear, while the officials of railway companies themselves are about as unsettled as to the true rule as is the community at large. To a great many companies the question is interesting only as a matter of speculative investigation, as their business and revenues are as yet too small to approach the point of difference between the two sides to the controversy. All disputants appear to agree, and it is probably the settled conviction of the public, that this aggregate net revenue should be some percentage of the cost of the property, but there seems to be no settled conviction as to how the cost shall be ascertained, or, in other words, what shall be considered the cost.

When used in this connection, shall the "cost" be considered the amount for which any given railway and its appurtenances could have been built under the most favorable circumstances, with all the necessary cash in hand before construction was commenced? Or shall it be defined to mean the amount which, under the circumstances existing at the time the road was built, it actually did cost the company which constructed it, including all the discounts it was obliged to make on the sales of its securities, and the commission it had to pay on the sales; also the loss of interest during construction and after the line was completed, while it was developing its business up to the point of earning its interest, together with all the additions which have been made from time to time, not paid for out of earnings?

Beyond question, the latter definition indicates what each road has actually cost the company which constructed it. No one will undertake to deny that some companies may have been improvident and sold their securities too cheaply, or paid larger commissions than they ought, or that, starting in with too little means, they have been compelled to submit to practical robbery on account of their necessities, and that therefore some railways have cost more than they otherwise would. On the other hand, no railway was ever built without paying something for commissions for selling its securities, without loss of interest both before and after completion of its line, and without selling more or less of its securities at less than their par value. The outcry against watered stocks and over capitalization is based largely upon the Utopian theory that roads may and should be built without any such expenses or discounts.

But the point now under consideration is, which definition of the word "cost" shall be adopted as the basis of reasonable aggregate revenues?

There is one test which seems to the writer conclusive. It is foreshadowed in the question, What meaning would have been attached to the word "cost" in this connection had the State built the roads instead of delegating its powers and prerogatives to the corporations? It must be admitted that had the State undertaken the construction of the railways, without the intervention of the corporations, in order to raise the necessary money it would have been obliged to issue its bonds and to go to the expense of negotiating them, and the net proceeds in cash would have been the amount available for direct construction. The discount on the sale of the bonds, if any, the commissions paid for selling them, the loss of interest during construction and after, while the business was developing, the additions to the property made from time to time, would all have entered into the cost. Consequently, it seems beyond question that if the State had built the roads, the latter definition of "cost" would have been the correct one, and on that cost the State would have been compelled to pay interest. In order to pay that interest the State would have been obliged to levy and collect sufficient taxes, either in rates upon the traffic of the roads or otherwise.

Therefore the writer concludes that the same definition of "cost" must apply to the roads which have been built by the companies as the agents or trustees of the State; and in the absence of actual fraud, the companies are entitled, if there is traffic enough, to collect aggregate net revenues sufficient to

pay the interest on their debts and a reasonable dividend on their stocks.

It is no answer to this conclusion to say that the State could have sold its bonds at a less discount, and thereby made the cost less. For, whether this be true or not, the State had the first right to undertake the construction, but voluntarily contracted with the corporations to do it, thinking all the time that this was the better course. It may be pointed out that it is by no means certain that the State could have sold its bonds in the same quantity and at the same times at a smaller discount. It should be remembered that at or about the time the first Pacific road was building, the bonds of the United States, bearing seven and three tenths per cent interest, sold in the markets of the world for a little over thirty-five per cent of their par value.

It is no answer to say that many roads have been built which were not required, and are practically useless; for not one of these roads were or could have been built, without the express authority of the State; and if any roads have been constructed which were not required for the public good, it is because the State has been remiss in its duty, and the State must therefore be estopped from making such claim.

Nor is it a proper answer to say that some of the companies have been improvident, having sold their securities too cheaply, or paid too high commissions for services in selling, or agreed upon too high a rate of interest; for in all these matters the companies have been the *quasi*-agents of the State, have acted under and in pursuance of its authority. Therefore the State cannot in equity repudiate these securities, except where actual fraud may be proved, any more

than it could repudiate its own direct obligations, had they been sold at a price which now seems too cheap, in order to build the roads without the intervention of the companies.

There can be little doubt that the States have been grossly improvident in their legislation upon this point. Their general incorporation laws have been an open power of attorney, for any who might choose to become their agents or trustees, to perform this important function and prerogative of sovereignty. The looseness with which these legislative enactments have been drawn has often been a subject of remark.

In an address before the American Bar Association in 1887, Mr. Hitchcock said: —

> It is an extraordinary fact that the power of eminent domain, which the State itself confessedly ought never to use save on grounds of public necessity, should be at the command of irresponsible individuals for purposes of private gain, not only without any guarantee that the public interest will be promoted thereby, but when it is perfectly well known that it may be and has been deliberately availed of for speculative purposes. In Missouri there is nothing to prevent any five men, whose combined capital would not enable them to build five miles of track on a level prairie, from forming a railroad corporation, with power to construct a road of five hundred miles long, and to condemn private property for that purpose, for a line whose construction no public interest demands, and from which no experienced man could expect dividends to accrue.

If in this manner the State has allowed unnecessary duplication of railways, which now claim the right to exist at the expense of the public, it should hasten to repeal its statutes, or so change them as to

prevent an extension of the evil. But it cannot in honor repudiate the obligations which have been put out in pursuance of its authority by the corporations which already exist.

It is not claimed that the State has guaranteed the bonds and stocks of railway companies, but it is claimed that, these stocks and bonds having been issued by the direct authority of the State, up to the limits of "what the traffic will bear" if necessary, within the proper meaning of this phrase, the State is bound to allow the existing railway companies to collect revenues sufficient to pay the stipulated interests on their bonds until maturity, and a fair rate of dividends on their stocks. For the State to make lower rates is repudiation.

Upon this basis, rates in America would be lower than in any other country in the would. The difference in dispute between those who cry "watered stocks" and those who maintain the principle here enunciated would not probably amount to more than one tenth of one mill per ton per mile upon the tonnage of the railroads of the United States.

This amount is so infinitesimal in comparison with the value of good faith that right-thinking men cannot object to it.

CHAPTER XXI.

THE STOCK EXCHANGE.

THERE is yet another view of this problem, which appeals more strongly, if possible, for State control of rates than any which have been presented. It is the existing relations between the railway companies and the stock exchanges.

Putting the case briefly, it may be premised that railway companies and stock exchanges possess certain legitimate functions, and when legitimately performed these are of great value; but when illegitimately used, *they constitute the most perfect machinery for the purpose of legalized robbery that the human intellect is capable of devising.* They present the opportunity and the temptation to plunder the unwary and to "fleece the lambs" largely through the ability to make rates.

The legitimate function of a stock exchange is to afford opportunity and facilities for dealing in securities; that is, for actual sales and purchases between investors and owners. The illegitimate use consists in conducting purely gambling transactions under the color of sales and purchases. Through its machinery a man can sell what he has not as easily as what he has. Its transactions are secret so far as the identity of buyer or seller is concerned. This fact, together with the practice of dealing on a margin, facilitates the purely gambling features. With

this machinery at hand, the man who wields the unseen power, behind the ostensible manager, may secretly sell the stock of his own or of any competing line "short," and by ordering a cut in rates on the line he controls depreciate the value of all stocks, then secretly buy in his "short sales," and reap an enormous profit. What is this but robbery? And what power can prevent it but the government, by taking the power of making or "cutting" rates out of the hands of men who are subject to such temptations?

The different phases of "working them up" and then "working them down" by means of the rate-making power are too familiar to require elaboration. Let the *bona fide* investors in railway securities, as well as the people who are only patrons of these corporations, demand that the government shall fix the rates, and then employ all the machinery of the government to enforce the rates, and thus end forever this disgraceful and wicked phase of the business, compared with which the Louisiana Lottery scheme and the business conducted in the Casino at Monte Carlo are honorable and honest.

CHAPTER XXII.

ENFORCING THE RATES.

WHEN the one authority to determine the rates, which is so essential to uniformity, is sought for, the dual character of the sovereign power in this country seems an insurmountable difficulty. The various States are sovereigns in respect to some matters, while the United States is a sovereign as to others. In the matter of traffic of railways each State is a sovereign within its borders, while as to traffic which passes between the States, known as "interstate commerce," the United States is the sovereign.

The fixing of rates of tolls is the prerogative of the legislative branch of government; hence it follows that Congress is the one tribunal which has the authority to establish a schedule of uniform tolls on interstate traffic, which is much the larger part of the railway traffic of the country.

It does not follow, however, that Congress must perform this duty directly, for the courts have held that the power may be delegated to a commission; and the question whether it is policy for Congress to fix railway tolls directly, as it does duties on imports, or indirectly through a commission, is worthy of consideration, and much may be said in favor of each side. Congress would undoubtedly act with greater deliberation, and perhaps with more publicity, which is important; on the other hand, a commission could

investigate and experiment to better advantage, which under the present conditions is essential.

If the duty should be delegated to a commission, it seems clear that the commission, under proper general regulations, should possess but the one function of making and changing schedules of tolls as experience might show to be best. The great fault of commissions heretofore created by Congress and by State legislatures is, that they have usually been endowed with the legislative function of determining rates, with certain semi-judicial power, and also with executive duties. The combining of legislative, judicial, and executive functions in one body is contrary to the genius of American institutions. In the Constitution of the United States, and in those of the various States, these powers have been carefully separated. Such separation has been considered essential, and the encroachment of one branch of the government upon the functions of the other has been jealously guarded against.

Human nature has not yet reached that point where it may be considered safe or proper for a commission to act as a court to construe the laws which it has enacted, or to pass judgment in cases where it is also the prosecuting officer. The mere statement of the proposition seems conclusive, and therefore needs no argument.

Of course it is useless to make laws without providing some instrumentality to enforce them. And it is clear that the duty of executing them should be placed under the direct control of the executive department of government. It would seem that the execution of laws regulating over a hundred and sixty thousand miles of railway, representing invested

capital to the amount of over ten thousand millions of dollars, and collecting annually out of a business which concerns every citizen tolls to the amount of over a thousand millions of dollars, equal to two and one half times the total revenue of the government, is of sufficient importance to command the services of a distinct department, whose chief should be a cabinet minister. There is no nation which has so many miles of railway, or whose internal commerce conducted by railways is comparable in point of magnitude with that of the United States, and there is no other government which has not raised the chief executive of this department to the dignity of a cabinet officer.

This enormous business is now in the control of several hundred petty chieftains, who are practically independent sovereigns, exercising functions and prerogatives in defiance of the laws, and practically denying their amenability to the laws of the country. If the government would seek to bring them to terms and compel them to recognize and obey the laws, it must use the means necessary to accomplish the end. It must have executive officers sufficient in number as well as armed with adequate power and dignity to command their respect. The present Interstate Commerce Act is in this respect entirely inadequate. The commission which it creates consists of five persons. It has authority to employ a secretary at a salary of $3,500 per annum, and "to employ and fix the compensation of such other employees as it may find necessary," subject to the approval of the Secretary of the Interior; but the whole appropriation for a year, from which to pay their own salaries and expenses, the salaries of their secretary and "other em-

ployees," is only $100,000. Its duties as prescribed by law seem to be to a certain extent legislative, judicial, and executive, and when considered in connection with the business with which they have to do are entirely beyond the physical or intellectual powers of any five men. The power conferred upon them to enforce their judicial orders is the power "to scold." The penalties of the law which the courts are empowered to impose are certainly severe, but the law has been operative for about four years without any convictions, and yet no well-informed person is ignorant of the fact that the law has not been obeyed. The president of a large system is said to have remarked "that if all who had offended against the law were convicted, there would not be jails enough in the United States to hold them." It is evident that the government has not provided adequate machinery for enforcing the law.

Whether laws of this nature can be enforced by means of fines and penalties and the ordinary common law remedies may be considered a question of grave doubt. In considering this question, a very learned judge, the late Chief Justice Ryan, of Wisconsin, used the following language: —

In our day the common law has encountered in England, as in this country, a new power, unknown to its founders, practically too strong for its ordinary private remedies. The growth of great corporations, centres of vast wealth and power, new and potent elements of social influence, overrunning the country with their works and their traffic throughout all England, has been marvelous during the last half century. It is very certain that the country has gained largely by them in commerce and development. But such aggregations of capital and power, outside of public control,

are dangerous to public and private right, and are practically above many public restraints of the common law, and all ordinary remedies of the common law for private wrongs. Their influence is so large, their capacity of resistance so formidable, their powers of oppression so various, that few private persons could litigate with them, still fewer private persons would litigate with them, for the little rights or the little wrongs which go so far to make up the measure of average prosperity of life. It would have been a mockery of justice to have left corporations, counting their capital by millions, their lines of railroads by hundreds and even sometimes by thousands of miles, their servants by multitudes, their customers by the active members of society, subject only to the common-law liabilities and remedies which were adequate protection against turnpike and bridge and ferry companies, in one view of their relations to the public; and, in another view, to the same liabilities and remedies which were found sufficient for common carriers, who carried passengers by a daily line of stages and goods by a weekly wagon, or both by a few coasting or inland craft, with a capital and influence often less than those of a prosperous village shopkeeper. The common-law remedies, sufficient against these, were, in a great degree, impotent against the great railway companies, — always too powerful for private right, often too powerful for their own good. It was in these circumstances that the English courts of equity applied their restraining jurisdiction at public or private suit, and laid on these great companies the strong hand of equitable control. And all England had occasion to bless the courage and integrity of her great judges, who used so ably and so freely and so beneficially the equity writ, and held great corporations to strict regard to public and private right.

There can be no doubt that in this railway problem the law has encountered a new power, practically too strong for its ordinary processes and remedies. The

transactions of one of the large railway companies are so numerous and rapid, covering such a large area, and are so intricate, that to pursue all their offenses with the slow processes of the law would soon overwhelm every court in the land with suits of this character to the exclusion of all others. Probably it would be no exaggeration to say that, if the cases were taken up and prosecuted to conviction in their chronological order, the man who was cautious enough to abstain from law-breaking for say two weeks could go on from that time defying the law with impunity, as the docket would after that be so crowded that his case would not be reached during the remainder of his life.

Such new conditions would seem to require new remedies. Courts of equity sometimes deal with such matters in a very effective manner. They administer that "ounce of prevention which is better than a pound of cure." Equity courts not unfrequently go in advance of legislation in this direction. Lord Cottenham, under similar circumstances, once said: "I have before taken occasion to observe that I thought it the duty of this court to adapt its practice and course of proceedings, as far as possible, to the existing state of society, and to apply its jurisdiction to all those new cases which, from the progress daily making in the affairs of men, must continually arise; and not, from too strict adherence to forms and rules established under very different circumstances, decline to administer justice and enforce rights for which there is no other remedy."

The act to regulate commerce between the States is a law against unjust discrimination. But the methods of discrimination may be so secret and so

numerous, since the machinery for collecting revenues is so vast, consisting of so many independent parts, covering such immense areas of country, and the accounts, when finally collected and recorded in the general auditor's office, are so voluminous, that to discover the legal evidence of violations of the law is a work of prodigious proportions; while to discover all the discriminations which may possibly be practiced may be said to be an impossible task for any public officer, no matter how great his individual capacity, or how full and ample his legal authority for investigation may be. Unjust discriminations may be carried on to an indefinite extent by means of underbilling in weights, by false classification, and by various other methods and subterfuges known to the craft, of which both the general auditor, who has full control of all the accounts, and the treasurer, who receives all the money collected for revenues, may be entirely ignorant. Consequently, the evidence of such breaches of the law would not appear in any of their accounts, or indeed in the records of any of the departments of the company, and the facts, not being a matter of record, would be known only to a few agents and the shipper who was *particeps criminis.* It must be evident that a system of fines and penalties and other remedies known to the common law is entirely inadequate to cope with such conditions. It seems to present a case for Congress to follow the enlightened course of the equity courts, and, in the language of Lord Cottenham, already quoted, to apply legislation to "all those new cases which, from the progress daily making in the affairs of men, must continually arise; and not, from too strict adherence to forms and rules established under

very different circumstances, decline to administer justice and enforce rights for which there is no other remedy."

What is the new remedy which these conditions require? Clearly, if the government would enforce its laws against the railway companies, its chief executive officer who has charge of this department, whenever he becomes satisfied that any management is persistently disobeying the laws, should have power to take possession of the property and manage it through the intervention of a receiver or otherwise, until he can have satisfactory assurances that the law will thereafter be obeyed. The enactment of a law giving this power would probably be effective to prevent discriminations and other violations of law without being actually set in motion. Such a law, if enforced, would reach the real culprit, where fines and penalties reach only their representatives and employees. During the four years that the Interstate Law has been in existence, who has been fined? Just one poor freight agent, who was undoubtedly following his instructions. It should be remembered that the sovereign power of a corporation is in the stockholders, but in this country it is not the habit of stockholders to attend to their duty in this regard in person, but to entrust it to an agent or agents. Therefore the real management of an American railway is not in the hands of its board of directors, its president, or its general manager, but usually of so-called bankers who hold the proxies of the stockholders. Consequently, if the law would control these corporations, and so protect the rights of the general public, the investors who hold the bonds issued by the companies, and are therefore the owners,

but have no voice in their management, as well as the stockholders, its remedies must reach the seat of power; that is, the cabal who manage to hold the proxies, and whose only source of profit in connection with railways is derived from trading in their securities, and whose direct interest in the shares of the corporation they control is just as liable to be a "short" as a "long" interest.

Such a remedy as suggested, if adopted by an act of Congress, would not be a new feature in congressional legislation. Indeed, it is not clear but, under the laws as they now exist, courts of equity, upon an application by the Attorney-General, would be justified in adopting the remedy. But be that as it may, Congress has a precedent for such legislation in the National Banking Act. Under that law the comptroller of the currency is the head of the bureau of the Treasury Department, having direct supervision of national banks. Section 5234 of the Revised Statutes of the United States provides: "*On becoming satisfied*, as specified in Sections 5226 and 5227, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the comptroller of the currency may appoint a receiver," etc. "Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association," etc. By an amendment in 1879 this extraordinary remedy was extended to almost every violation of the act.

The law regulating the business of distilling spirits is a stronger example of the right of Congress to adopt new remedies especially fitted to reach the necessities of new conditions. The distilling business is regulated to the minutest detail, and from the

time the distillery commences business until it ceases, be it one year or twenty, it is continuously under the immediate control of an officer of the Internal Revenue Department of the government.

It should be pointed out that the action of the government in taking possession of a railroad by a receiver or otherwise, for the purpose of enforcing government regulations, would not affect the ownership of the property. It would be a measure affecting only the management; and it would seem that the right to regulate carries with it the power to regulate, and if it is necessary, in order to enforce the government regulation, to take possession of the property, Congress would have the power, and as to the necessity Congress would be the judge.

CHAPTER XXIII.

STATE OR NATION.

WHEN the conflicting provisions of the statutes of the various States and the action of the State commissioners on the subject under consideration are reviewed, one may well despair of ever being able to reduce the separate action of the States relating to State traffic to a system of uniformity. It is not impossible, however, if Congress and the general government should adopt adequate measures of regulation, that the various States might regard such action as a precedent worthy to be followed in the interest of uniformity, which is so much desired. There are many reasons besides those in the interest of uniformity which make it desirable to transfer the entire control of this important matter to the regulation of the nation.

First, because of its constitution and more extended sessions, Congress is able to consider the subject with greater deliberation, and therefore with more intelligence, than can a legislature composed of members who, as a rule, hold their office for but one short session of about sixty days' duration. There would also be removed from local legislation a fruitful source of corruption, which is gradually sapping the foundations of public morality. It is admitted with shame, but so palpable a truth cannot be denied, that in these latter days a class of unscrupulous local politi-

cians have come into notoriety who, by means well understood, are enabled to secure election to State legislatures, which they desire for no other purpose than to "make a stake," by blackmailing railway companies, through the introduction of plausible-looking bills, which would do great injustice if they became laws. In an evil day railway companies were induced to buy their peace from the attacks of these unprincipled men. This sowed the seeds for an annually returning crop at each session of the legislatures, and, as is usual in such cases, the crop and the price increase year by year. This feature of local legislation has become so pronounced that it cannot be overlooked, even by strangers. Professor Bryce, than whom no foreigner ever spoke more fairly and discriminatingly of American institutions, in writing of the legislature of the State of New York, says: "New York and Pennsylvania have so bad a name that people profess to be surprised when a good act passes, and a strong governor is kept constantly at work vetoing bills corruptly obtained, or mischievous in themselves." The legislature of New York "has to deal with immensely powerful corporations, such as the great railroads which traverse it on their way west. These corporations are the bane of State politics, for their management is secret, being usually in the hands of one or two capitalists, and their wealth is so great that they can offer bribes at which ordinary virtue grows pale. There are many honest men in the assembly, and a few rich men who do not need a *douceur*, but the proportion of tainted men is large enough to pollute the whole lump. Of what the bribe-taker gets, he keeps a part for himself, using the rest to buy the doubtful votes of purchasable

people; to others he promises his assistance when they need it; and when by such log-rolling he has secured a considerable backing, he goes to honest men, among whom, of course, he has a considerable acquaintance, puts the matter to them in a plausible way, — they are probably plain farmers from the rural districts, — and so gains his majority. Each great corporation keeps an agent at Albany, the capital of the State, *who has authority to buy off the promoters of hostile bills*, and to employ the requisite professional lobbyists. . . . This sort of thing goes on, or has lately gone on, in several other States, though nowhere on so grand a scale."

The withdrawal of this "bane," as Professor Bryce so aptly terms it, from State and local legislation, is a matter of importance.

In the second place, the problem of regulating railway tolls and of managing railways is essentially and practically indivisible, by State lines or otherwise, and therefore it is not clear but that, whenever the question may come before the courts, it may be held that the authority of Congress to deal with interstate traffic carries with it, as a necessary and inseparable part of the subject, the right to regulate the traffic which is now assumed to be controlled by the several States. The courts have held that the States have authority to regulate strictly State traffic in the absence of congressional action, but their decisions do not preclude the doctrine that Congress may have exclusive jurisdiction whenever it may choose to exercise the authority. There is a line of reasoning which would lead to that conclusion. It may be that many will not care to follow the lead of the writer as to the measure of aggregate net revenue which railway com-

panies are entitled to collect in tolls, but it is evident that before the tolls can be intelligently determined some measure of such aggregate revenue must be ascertained. The question would then arise, What proportion must be levied upon State and interstate traffic respectively? If the State should refuse to levy its share (and how could such share be ascertained?), then more than its share would have to be levied on interstate traffic; and thus the States, by indirection, would be able to do what the Constitution prohibits. Of course, when the Constitution was adopted, railways and railway traffic were unknown. But it was a similar question which brought the thirteen original States together into one nation, under the present Constitution. At least the first movement towards amending the original Articles of Confederation was to give Congress enlarged power over the subject of commerce. Referring to this, Mr. Webster said:—

"In the history of the times, it was found that the great topic urged on all occasions, as showing the necessity of a new and different government, was the state of trade and commerce. . . . The New Jersey resolutions complain that the regulation of trade was in the power of the several States, within their special jurisdiction, in such a degree as to involve many difficulties and embarrassments; and they express the earnest opinion that the sole and exclusive power of regulating trade with foreign States ought to be in Congress. . . . The *entire purpose* for which the delegates assembled at Annapolis was *to devise means for the uniform regulation of trade.* They found no means but in a general government, and they recommended a convention to accomplish that purpose. Over whatever other interests of the country this

government may diffuse its benefits and its blessings, it will always be true, as a matter of historical fact, that *it had its origin in the necessities of commerce,* and for its immediate object the relief of those necessities by removing their causes and by establishing a uniform and steady system."

In considering the same matter, a judge of the State of New York used the following expressive language: —

"A leading object of the Constitution was to get rid of all conflicting commercial interests, and as to commerce to effect a union of all the people of all the States, great and small, and make them one people, one nation, without divided interests, and without the power, as States, to produce divided interests or conflicts. This was a leading idea in favor of the Constitution, and to me it has always seemed the most valuable one."

The power to "regulate commerce among the several States," which was granted to Congress under the Constitution, must, it is thought, ultimately be construed to mean that "whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress," and that it will be found that the whole traffic of railways is of that nature.

But if it should be found that the Constitution at present does not justify such a construction as would bring the whole subject of railway traffic within the authority of Congress, the writer ventures the prediction that the logic of future events will surely require and produce such amendments as will bring it within the national control.

CHAPTER XXIV.

CONCLUDING REFLECTIONS.

THE right of the government to prescribe rates is now so well established by judicial decisions that it is no longer a question for argument. The duty of the government to fix and maintain the rates is still open. Having discussed the general principles whence it is claimed this duty arises, it is proper to close this volume with a general consideration of the effect which such measures, if adopted, would have in respect to both the owners of railways and the people.

Governmental control of rates ought to be regarded by owners with favor. At first thought many of the more timid, who have been educated by untruthful representations to believe that the prime purpose of legislation has been to reduce rates, instead of to make them uniform, and thereby prevent unjust discriminations, may fear the result of such measures. But a careful study of these laws and an examination of the actions of the State commissioners will dispel such fears. The more extended their knowledge concerning the present system of making rates by traffic managers, based on the sole idea of meeting one another's ever-varying rates, the greater will be the desire of owners to exchange the present for a system of rates made by law, founded upon recognized principles, constructed by rule, and supported

by the strong arm of the government. This opinion is so opposed to the prevailing notions that it seems to require support even at the expense of repeating or paraphrasing much that has already been said.

The position of the traffic manager, who is charged with the responsibility of rates in competitive territory, is one of great difficulty. The functions of his office are exercised under varying conditions. Those conditions may be termed normal under which the manager is free to use his best judgment for the sole good of the company. Those conditions may be called abnormal under which the manager is hampered by influences more or less imperative from Wall Street, which are based on the effect which the controlling power in his company may wish to produce for the time being upon the market value of its securities.

Under normal conditions the manager conceives it to be the duty of the office to secure the largest immediate income without reference to the future. In pursuance of this conception of duty, the highest obtainable rate is charged, at non-competitive points and upon small and chance shipments, while at competitive stations and upon large shipments lower rates and important concessions are readily granted. It may be said that rates for large shipments are made by auction, wherein the shipper is the auctioneer and the traffic officials of the different companies are the bidders. The auctioneer is usually a merchant well skilled in the art of making bargains. He is personally interested in the results, and has a decided advantage inasmuch as he has knowledge of all the bids, while the poor traffic agent knows nothing of what his competitor has bid, or even who his com-

petitor for the time may be. Indeed, it is not impossible that he may be called upon to make a bid against the offer of another agent of his own company. The auctioneer, if asked, is not obliged to tell from whom he has already received bids, or the amount of such bids, and if he does answer he is not compelled to be truthful. It is not usually considered good policy to ask such questions, for having once committed himself to certain statements, the auctioneer is bound to give the shipment to another line, unless a better offer is made, or confess himself a liar. Under these circumstances, with ever-varying detail, the traffic agents bargain from day to day with their customers. To name the tariff rates to a large shipper is equivalent to saying his shipments are not desired, but just what rates to quote is a question of the greatest difficulty. The practical result of these unequal contests is that such shippers are allowed to make their own rate. The rates thus obtained, although supposed to be secret, soon become known to other customers and to competitive lines, and henceforth are the standard, until in a short time they are slightly shaded by some rival company, under the pretext of "meeting the rates made by its competitors." And it is by this process of attrition between the agents of the various companies that the average rates have been reduced to the present unprofitable level.

But says the intelligent merchant, "Most of these conditions are common to all transactions of bargain and sale." To a certain extent this proposition must be admitted to be true, except as to the essential difference which has been pointed out in a previous chapter, namely, that for all merchandise there is a

known cost, while for railway transportation the cost is unknown.

Generally speaking, if less than cost is accepted for merchandise it incurs a definite certain loss; while to accept a bid for transportation very much below the supposed but unknown cost, provided it is above the mere cost of hauling, would contribute something, although less than it ought, towards the fixed expenses. It is upon this principle that the traffic manager feels justified in taking "what he can get;" and as an isolated transaction, without considering its influence upon the action of others or its effect upon the business of the country or the future, it would seem to be justified. As long as this system is in vogue, since traffic managers are human, owners must expect that they will make mistakes, and sometimes agree to rates lower than were really necessary to secure the shipments.

When the subject is looked at from all points, it will have to be admitted that the fault is not with the traffic agents, but in the system. By this process of gradually wearing away the rates, as by friction, they have reached such an unprofitable level that owners now stand on the brink where it is easy to see ruin if these methods are continued. But the companies seem powerless. For a quarter of a century they have been attempting, by agreements between themselves, to make and maintain uniform and stable rates. But as such contracts are not recognized as binding by the law, they have rested entirely on the good faith of each company, and to a great extent upon the capacity as well as good faith of each of the traffic officials and employees. In the past they have not been efficacious, and, judging from experience

and from our knowledge of the foibles of human nature, it is too much to hope for any sufficient protection to the rights of owners growing out of such agreements in the future.

Their alternative protection is the strong arm of the law. Let the law name the rates, and let the law maintain and protect their integrity.

Having examined the proposition in reference to the interests of the owners of railways, it should now be considered from the point of view of that more numerous section of the general public who are not owners, but customers and rate-payers.

If the opinion of the people may be judged by the general trend of legislation, by the views set forth by the public press, and by the expressions of one's limited circle of acquaintance, the general proposition would receive the assent of a very large majority. But when it came to be carefully analyzed, and the people realized that government control of rates would apparently work destruction to that competition which for a generation has been held up to them as the defense against extortion on the part of the railway companies and the active cause of reductions in rates, it may be assumed that some at least would hesitate. This apparent objection opens up a wide field of thought which the limits of this chapter will not admit of considering in detail.

There have been legitimate and illegitimate reductions in rates. Those reductions which may be called legitimate have resulted from causes which have reduced the cost of transportation, inventions such as the Bessemer process of making steel rails, increased capital invested in improving the permanent way and the rolling stock, as well as the increased volume of

business. All such reductions should inure to the equal or proportionate benefit of all, and would do so but for the illegitimate reductions growing out of competition, which have compelled the companies to give the larger proportion to the big shipper, while holding the rates as high as possible for the small shipper. Reductions in rates which result from taking from the many and giving to the few, although in the process more is given than taken, resulting in an actual reduction of the average rate, cannot be called legitimate.

Almost all the marvelous reductions in the average rates during the last ten or fifteen years have been legitimate, arising from lessened cost. The fact is, that the margin of profit in railway transportation, notwithstanding the general opinion to the contrary, is so very narrow that a slight illegitimate reduction, if continued, soon results in financial disaster. Neither the general public nor the ordinary investors, who are accustomed to see some rates fluctuate from week to week to the extent of ten, fifteen, or even fifty per cent, can realize the narrowness of this margin. For example, a decrease of an average of only one mill per ton per mile on any of the large Western systems is equivalent to a dividend on its stock. Hence it must be evident that, after all the reduction owing to lessened cost has been made which can be, there is little chance left for so-called competition to effect still further reductions, except by raising one rate while dropping another, which results in discrimination. Competition cannot reduce cost.

Competition may for a short period illegitimately reduce rates, but its great province is to produce un-

just discrimination, taking by stealth what rightfully belongs to one and giving it to another. It takes from the poor and gives to the rich; from the many and gives to the few. It does not permit men in the ordinary walks of life fairly to compete with one another. At the command of the favorite it drives multitudes of men from their chosen vocations and independent business pursuits, thereafter to occupy positions as clerks and employees; while the favorite becomes rich, they become poor. It affects the value of real estate, making that of farms and village property in non-competitive districts less, and increasing that of competitive districts. It affects the value of personal property, making it greater in the hands of large shippers, who are granted cut rates, than in the hands of small shippers, who are not thus favored. It forces population along with manufactories and commerce to the large cities. Instead of allowing the artisan to live in the smaller town, where it might be possible for him to own his home, and with moderate expenses rear his family in the quiet and amid the virtues of the country, it compels him to live in the vicious tenement house of the crowded city. His children have reeking pavements instead of green fields for a playground, and their ears are greeted with coarse profanity and vulgar language instead of the songs of birds. The air is laden with the disgusting odors of the gin shop instead of the perfume of clover blossoms, and instead of the peaceful scenes of nature they are made familiar with vulgarity, brutality, and crime. By congesting population it indirectly promotes disease, ignorance, and crime. It destroys independent occupations and forces the whole people into classes: employers and

employees, masters and servants, autocrats and menials akin to slaves. Why should the people longer worship the monstrosity of discrimination, because perchance it has been miscalled competition, or mourn over its destruction?

But there is another phase to this question. As long as men are selfish, it may be expected that some, regarding only their own supposed interests and remembering their former real and fancied wrongs, will say, "If this competition is ruining the railway companies, let it! What care we whether the owners get an income from their investments? They are rich. They have able men to watch and manage their interests. They have never shown mercy. It is a fight between themselves. What they lose the people gain. Why should we desire the government to interfere?" The answer is that justice requires that the owners of railways should have a fair return for the use of their invested capital, if there is sufficient traffic to produce the necessary revenue through the collection of reasonable tolls.

But, regardless of the principles of equity, selfishness demands that the people should protect these interests. If it is a law that in the long run the consumer must pay the cost of all he consumes, then it is clear that the theory that "what the owners of railways lose the people gain" is not entirely true. The warfare now being carried on between the companies, from which the people are apparently profiting by reason of too low rates, will not always last. It will come to an end, if not by government control, perhaps by consolidations. Then the consolidated company without government control will be in condition to recoup all present losses. Then the men

who deny governmental protection to the companies will seek it for themselves. Consolidation is being much thought of and discussed. It seems to be in the air, and probably many combinations will be consummated in the near future. The laws now forbid the consolidation of competitive lines, and no doubt it will be a long time before there will be a change in this respect, although thereby many economies in operating could be effected to the advantage of the public. But they do not and cannot forbid a common individual ownership which, for the purpose of advancing rates so as to recoup present losses and insure future dividends, would be as effectual as technical and legal consolidation. Without governmental control of rates, either one or the other method of common ownership is inevitable. With governmental control, the people have little to fear from legal consolidation, but much from the absorption of the holdings of railway securities into a few hands. Now they are scattered. The stocks and bonds of American railways are owned by hundreds of thousands of persons. Widows, orphans, trustees for estates, savings banks, men and women too old to work, and all classes and conditions have their savings invested in them, and look to them for an income on which to live. As the stocks control, and as the matter under consideration is the control of these properties, the value of the bonds may be eliminated. The market value of stocks depends upon the income they produce. If it is six per cent per annum, their market value is par or more. As the income decreases their value decreases, and finally, should the income cease, their value would be reduced to an expectation merely.

Now when danger approaches, the professionals,

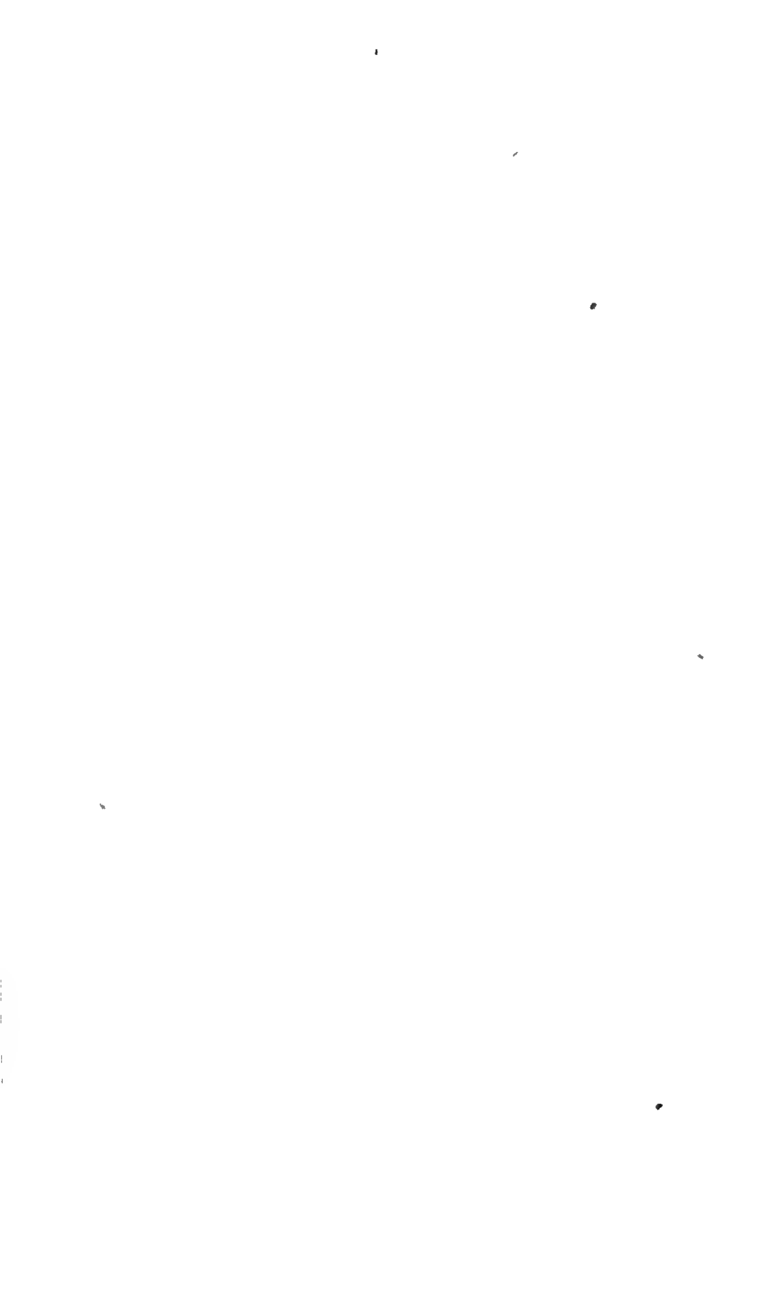
who have avenues of advance information, sell early while the price is high, and not only sell, but usually sell "short." But it is notorious that the multitude of small investors are always "Bulls" when they should be "Bears," and *vice versa*. As the price goes down, they hold on till they can hold no longer, and generally at the lowest price they sell. Who buys? The only men who can, the wise ones who sniffed the danger from afar, sold early, and now have money to buy at bottom prices.

In a general collapse, what an opportunity! In the wreck of prices, a comparatively small amount of money will buy the control of half a dozen of the largest systems. A few men can do it, and on the ruins of the fortunes of hundreds of thousands of small investors lay the sure foundations of the enormous wealth of the future American billionaires. Fifty years ago the American millionaires were as yet unknown, and only dreamed of. It was then the pride of America that her citizens were possessed of independent livelihoods; that it was a land of homes and of substantial equality; that there were no privileged classes, — none very rich and few very poor. Now it has been estimated that, with a population of over sixty-five million people, one half of all the wealth of the nation is concentrated in the hands of forty thousand families, and that three fourths of it "is in the possession of fewer than two hundred and fifty thousand families," while there are seventy-five estates valued at an average of $35,000,000 each. One individual is reputed to be worth more than $200,000,000, and the income of another is estimated at $1,500,000 per month. Such statements appearing in public prints over respectable signatures,

although they may not be strictly accurate in detail, necessarily challenge thoughtful consideration. Whence and how could a single man, in one lifetime, accumulate $200,000,000, or another, poor when a boy, at the age of fifty have acquired an income of $18,000,000 per annum?

It is understood that the first $150,000,000 fortune was founded upon the ruins of a line of insignificant railways, which were bought for a bagatelle, and, being put together and managed with consummate genius, became a great trunk line; and that the largest mercantile fortunes have resulted from monopolies in trade, born and nurtured by discriminations on the part of railways in respect to rates.

From these examples, let the sixty-five millions of American citizens who together own one quarter of the wealth of the nation, while the remaining three quarters are owned by less than one million of their fellow-citizens, be assured that with the destruction of the small investments in railway securities there will appear the billionaire. Will an army of paupers follow in his train?



APPENDIX.

EARNINGS AND RATES OF REPRESENTATIVE ROADS, ILLUSTRATED BY DIAGRAMS AND LEGAL DECISIONS.

What does "a mill a ton per mile" mean?

It means to the	Per annum
Chicago & Northwestern Railway Co. . . .	$1,804,701
Chicago, Milwaukee & St. Paul Co.	1,620,923
Illinois Central Co.	963,929
Chicago & Alton Co.	537,301
New York Central & Hudson Railway Co. . .	2,775,582
Lake Shore & Michigan Southern Co. . . .	1,859,009
Pennsylvania Railway (Penn. Div. alone) . .	4,383,008
Pittsburgh, Fort Wayne & Chicago Co. . . .	1,087,100

To pay six per cent dividends on the Chicago & Northwestern common stock requires $1,881,894; on the Chicago, Milwaukee & St. Paul preferred stock, $1,296,654; on the Illinois Central stock, $2,400,000; and on Chicago & Alton common stock, $846,900.

A mill a ton a mile is a dividend to the two first, and two mills a dividend to the two next mentioned companies. A loss of another mill in the average rates is a loss of dividends to the two first mentioned, and of two mills a like loss to the two next mentioned companies.

A mill a ton per mile is equal to one fourth of a cent per hundredweight for fifty miles haul, one half a cent per hundredweight for one hundred miles, two cents for four hundred miles, and two and a half cents per hundredweight for five hundred miles.

How many traffic officials, when cutting rates, realize the meaning of "a mill a ton per mile?"

Having ascertained the meaning of "a mill a ton per mile," it will be interesting to examine the record of the rates upon four important Eastern and a like number of Western lines. Following this is a diagram which presents this record to the eye at a glance. The record of one of the Eastern lines extends back to 1855, and of one of the Western to 1865. The astonishing and apparently eccentric movements of the average rates on the Eastern lines, from 1855 to 1879, need explanation. From 1855 to 1861, the beginning of the war, their course was downward; from 1861 to 1865, the close of the war, they shot upward like a rocket. From 1865 they fell rapidly. In 1870 they had reached the level of 1861. This movement may be ascribed to conditions incident to the war, among which may be mentioned increased volume of business, and a currency which first depreciated and then appreciated. From 1870 to 1879 their course was uniformly downward, at the rate of about "a mill a ton per mile" per annum; ten mills in ten years. It is evident that if "a mill means a dividend," there must have been causes at work reducing cost of operating proportionately, or bankruptcy would have ensued.

What were these causes? (1.) Increased tonnages. The N. Y. C. & H. R. Railway's ton-miles increased from 769,087,777 in 1870 to 2,295,827,387 in 1879. (2.) Substitution of steel for iron rails, and constantly decreasing price of rails, etc. (3.) Increased load of trains, owing to larger cars and locomotives. On the Lake Shore Road, in 1870, one hundred and thirty-seven tons was an average train load; in 1879 the load had increased to two hundred and thirteen tons per train.

In 1879 these Eastern lines seem to have reached their minimum cost of operation, and the minimum rates of safety. In the ten years since that date which are covered by the record, the extreme range of rates has been one mill

above to one mill below the rate of 1879. In 1883 it went one mill above, and the roads earned practically two dividends; in 1885 it dropped one mill below, and they earned substantially no dividends. So it is evident that "a mill a ton per mile" means a dividend on these roads, and the causes which steadily reduced operating expenses from 1870 to 1879 have ceased to be effective during the last ten years.

Turning to charts Nos. 3, 4, and 5 (following), it will be seen that the causes which reduced operating expenses of the Eastern roads between 1870 and 1879 continued effective on the Western lines until 1886, seven years later than on the Eastern lines. In 1886 the expenses took an upward turn, but the rates continued downward two years longer till 1888. Tonnage fell off in 1889, while the rate slightly increased; and there was a marked increase in tonnage in 1890, while the rate fell off. Evidently the Western roads reached the danger line of rates in 1887, and disaster followed the reduction of the next year. And another "mill a ton per mile" reduction means ruin to all dividends to even the best roads, until there is a material increase of tonnage.

Will traffic men and the public make a note of this?

It has been customary to blame legislation for the rapid fall in rates. Do these records present any proof that legislation has reduced rates? The first so-called Granger legislation was in 1872. The previous rapid decline in rates seemed to have been checked in that year, and the rates in 1873 were higher. Following the advent of the Interstate Commerce Law, and the much abused Iowa law of 1888,[1] the decline in rates was checked, and a raise followed in 1889.

[1] The year 1888 of the record covers the time from July 1, 1887, to June 30, 1888. The Interstate Commerce Law went into effect in April, 1887, and of course its effect upon rates, if any, would show in the fiscal year 1888.

Diagram No. 2 shows the record of passenger rates on the same lines east and west of Chicago.

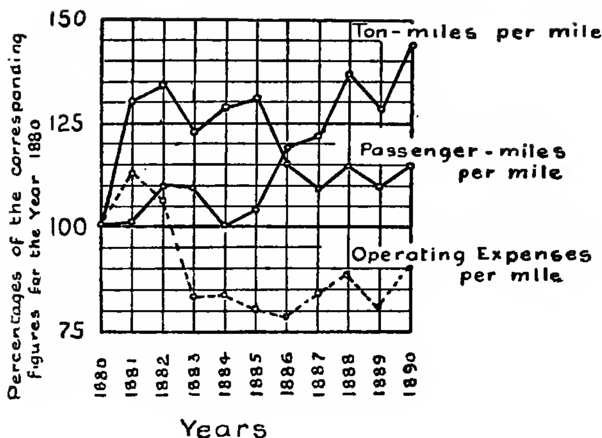
By referring to diagrams numbers 3, 4, and 5, the general uniformity as to the different lines will be recognized. These records only go back to 1880, the statistics of that year being used as a basis for comparison. The data (1880) being one hundred per cent, the statistics of subsequent years are represented by a percentage above and below. All factors are reduced to the unit of a mile.

Gross earnings are affected by increase of tonnage, and by decrease in rates, the increase in volume tending to make them higher, the decrease in rates tending to make them lower.

Under such circumstances, whether gross earnings increase or decrease depends upon the relative rate of increase and decrease of these two opposing forces. It is not so with the expenses. If tonnage increases or decreases, expenses will increase or decrease (not necessarily in the same ratio) regardless of the rates, that is, under given conditions it costs as much to haul a ton a mile if the rate is one cent as though it were two cents, and under the same conditions it costs more to haul two hundred than one hundred tons. These propositions would seem self-evident, and in respect to earnings the records, as shown on the diagrams, are in accordance therewith.

As to operating expenses, the above proposition seems to hold good since 1886. But prior to that time the line of expenses is eccentric, seeming to be controlled by unseen influences.

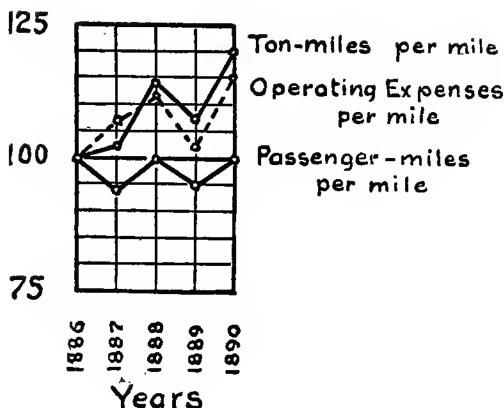
It will be observed that in some cases the tonnage and passengers, per mile of road, have increased since 1880, while the operating expenses have decreased. The decrease in expenses was continuous from 1880 to 1886; since that date, as has been said, the expenses have increased as the volume of business increased. This is illustrated by the following extract from one of the diagrams: —



It would appear that from 1880 to 1886, by reason of the economy due to substitution of steel for iron rails, and the introduction of larger cars and locomotives, and possibly by the aid of the auditor in book-keeping, the operating departments were able to reduce expenses nearly as fast as the traffic departments reduced rates.

But the operating department seems to have exhausted its ability in this direction in 1886. This is apparent if the several diagrams in respect to volume of business and expenses be recast on the basis of 1886 as an initial point. It will then be seen that, since that date, as business has increased expenses have increased. (See diagram, p. 236.)

Will expenses relatively increase or decrease in the future? They will probably increase. The substitution of steel for iron rails, and the introduction of improved cars and locomotives, began in the "seventies." The wear and tear has been going on, but as yet have only appeared to a limited extent in the accounts of expenses. These items will soon become factors, and the expense accounts of the next few years will have to bear not only the current wear but the accumulations of several years past.



These data indicate that the proper rates for the Western roads, with the present volume of business, were reached in 1886, and that subsequent reductions are illegitimate except to the limited extent that they may have been justified by increased tonnage.

IT IS THE DUTY OF THE SOVEREIGN TO PROVIDE HIGHWAYS.

In Vattel's "Law of Nations," book i., chapter ix., this is announced as a sound principle of government: —

"SEC. 100. The utility of highways, bridges, canals, and in a word of all safe and commodious ways of communication, cannot be doubted. They facilitate the trade between one place and another, and render the conveyance of merchandise less expensive, as well as more certain and easy. The merchants are enabled to sell at a better price and obtain preference; an attraction is held out to foreigners,

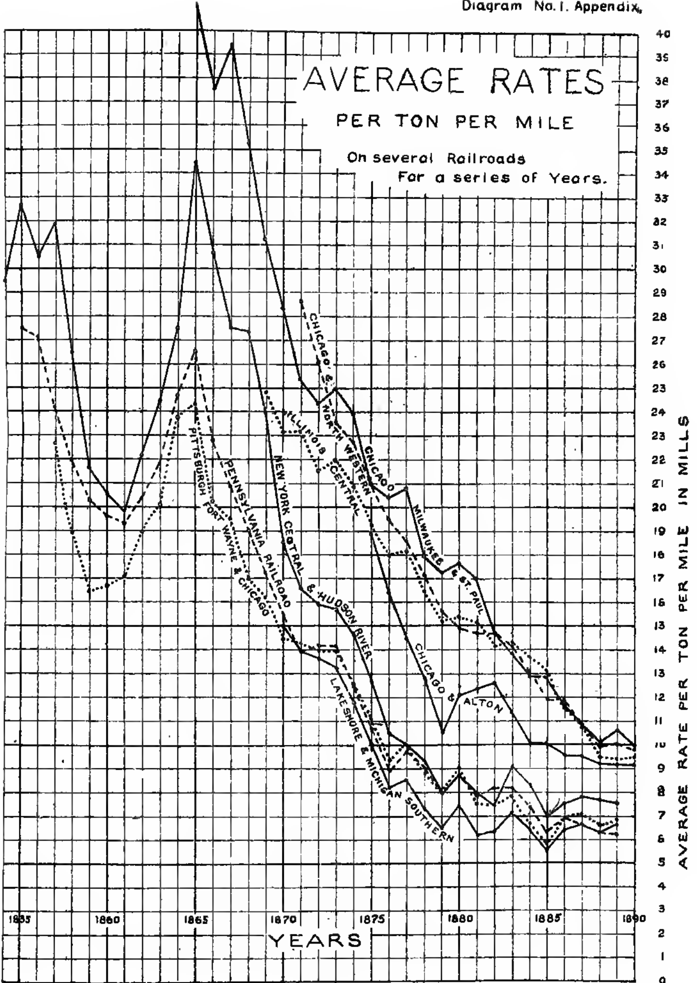
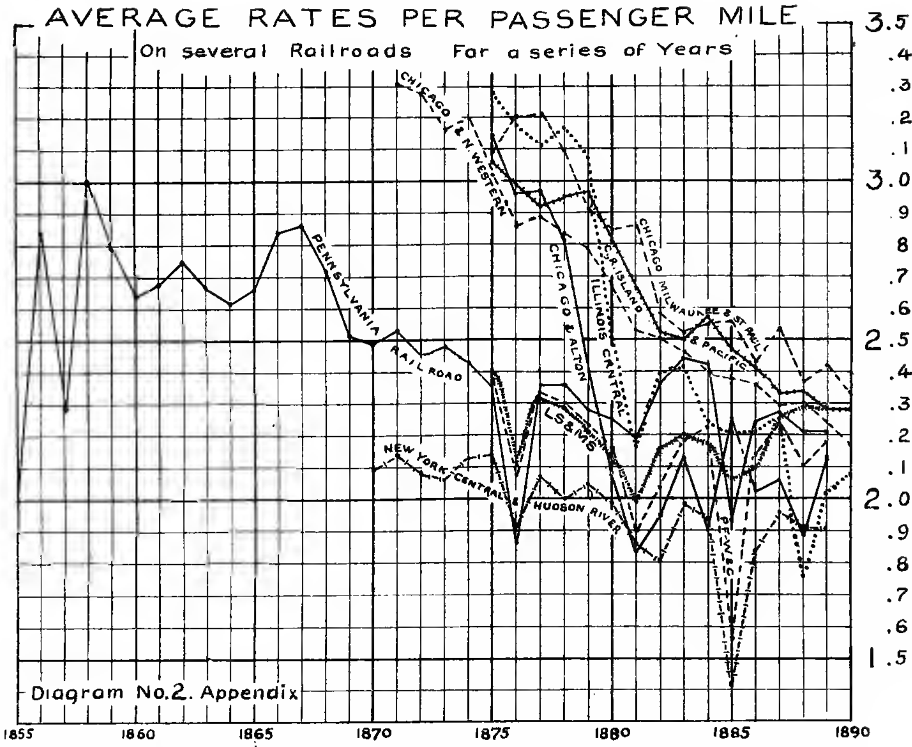


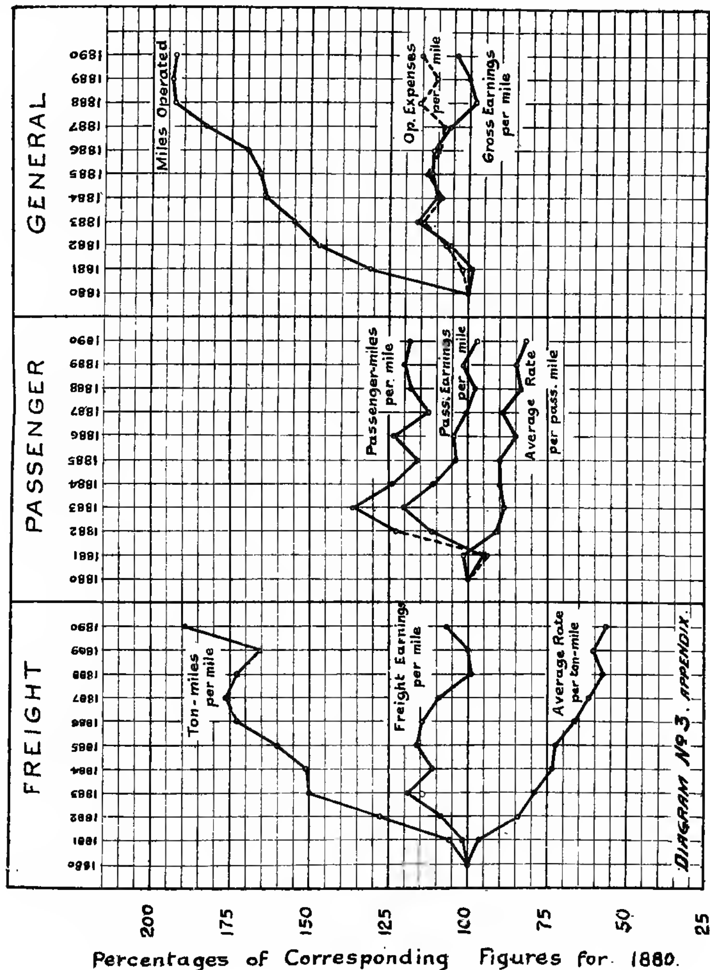
Diagram No. I. Appendix.
AVERAGE RATES
PER TON PER MILE
On several Railroads
For a series of Years.
CHICAGO & NORTH WESTERN
ILLINOIS CENTRAL
CHICAGO MILWAUKEE & ST. PAUL
PITTSBURGH FORT WAYNE & CHICAGO
PENNSYLVANIA RAILROAD
NEW YORK CENTRAL & HUDSON RIVER
CHICAGO & ALTON
LAKE SHORE & MICHIGAN SOUTHERN
1855
1860
1865
1870
1875
1880
1885
1890
YEARS
AVERAGE RATE PER TON PER MILE IN MILLS


AVERAGE RATES PER PASSENGER MILE
On several Railroads For a series of Years
RATE PER PASSENGER MILE IN CENTS AND MILLS.
3.5
.4
.3
.2
.1
3.0
.9
.8
.7
.6
2.5
.4
.3
.2
.1
2.0
.9
.8
.7
.6
1.5
1855
1860
1865
1870
1875
1880
1885
1890
PENNSYLVANIA RAIL ROAD
CHICAGO & N. WESTERN
CHICAGO & ALTON
ILLINOIS CENTRAL
C. R. ISLAND & PACIFIC
CHICAGO MILWAUKEE & ST PAUL
LS & MS
NEW YORK CENTRAL & HUDSON RIVER
PF W & C
Diagram No. 2. Appendix

CHICAGO MILWAUKEE & ST PAUL RAILWAY

Statistics per Mile of Road in comparison with the Year 1880.

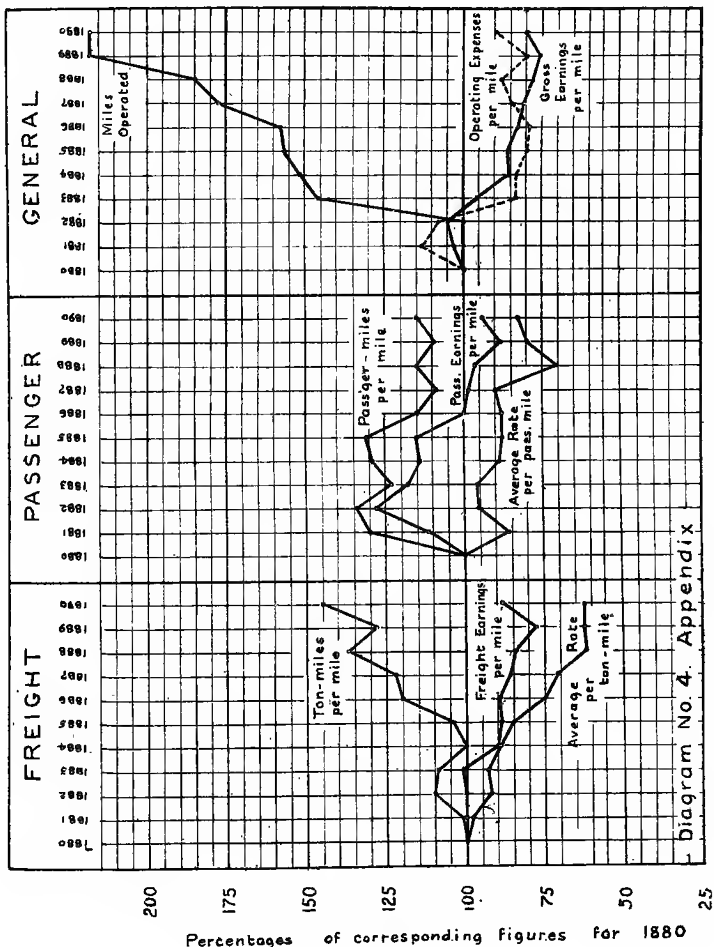
From 1880 to 1890 (inclusive.)



ILLINOIS CENTRAL RAILROAD

Statistics per Mile of Rood in comparison with the Year 1880

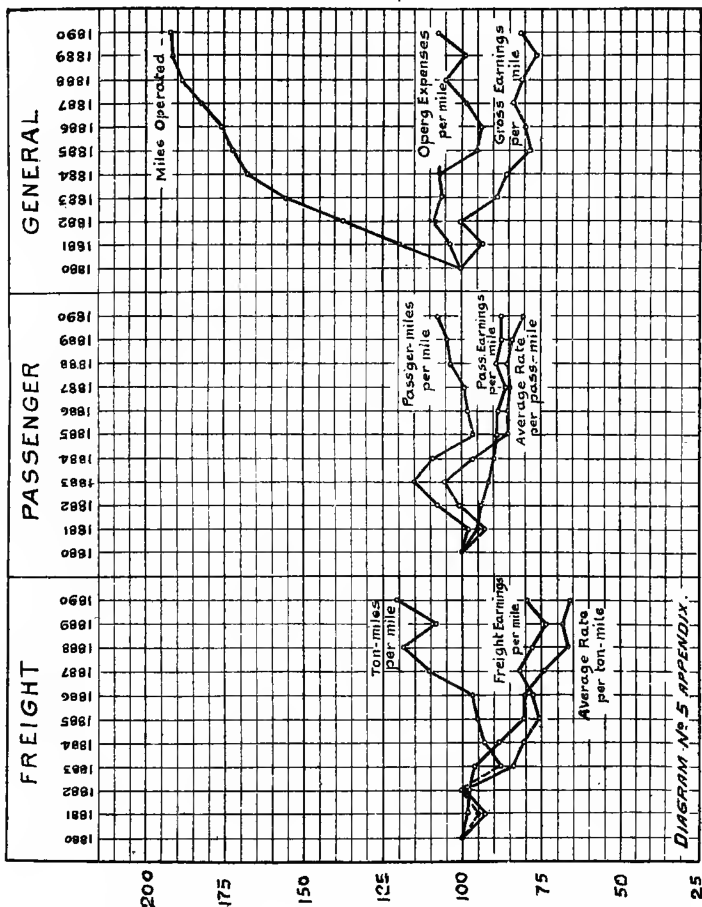
From 1880 to 1890 (inclusive.)



CHICAGO & NORTH-WESTERN RAILWAY.

Statistics per Mile of Road in comparison with the Year 1880

From 1880, to 1890 (inclusive)



Percentages of corresponding Figures for 1880.

whose merchandise is carried through the country, and who diffuse wealth in all places through which they pass.

"SEC. 101. One of the principal things that ought to employ the attention of the government, with respect to the welfare of the republic in general and of trade in particular, must relate to the highways, canals, etc., in which nothing ought to be neglected to render them safe and commodious.

"SEC. 102. The whole nation ought, doubtless, to contribute to such useful undertakings.

"SEC. 103. The construction and preservation of all these works being attended with great expense, the nation may very justly oblige all those to contribute to them who receive advantage from their use. This is the legitimate origin of the right of toll."

In case of Bloodgood *v.* Mohawk & Hudson R. R. Company, 18 Wendell's New York Reports, page 46, the court quotes approvingly the above sections from Vattel and says: —

"These propositions have the ready assent of every enlightened individual in every country, and under any and every kind of government. In the days of Vattel there were no railroads, and in all probability the obligation of government to construct railroads in no measure entered into his consideration when inditing those general propositions; they nevertheless come within the spirit of national obligation in the most emphatic manner, as the government are thereby most effectually enabled to fulfill the just expectations and serve the most substantial interests of the community. The government have not only the power, but that it is most emphatically their duty and interest to construct railroads, where the public interest and convenience demand them, cannot admit of a doubt; for such purpose they are . . . justified in exacting toll from those who travel on them as a means to reimburse the state for the expense of their construction and reparation."

Following, adopting, and extending the principle laid down in Vattel above cited, the Supreme Court of Minne-

sota, in case of Blake *v.* Winona & St. Peter R. R. Company, 19th Minnesota Reports, page 369, in an opinion by Ripley, Chief Justice, says: —

"Inasmuch as it is the duty of the government, with respect to the welfare of the public in general and of trade in particular, to provide safe and commodious ways of communication, whence flows the right of the state to oblige those, who make use of the ways it provides, to contribute to the expense of making and maintaining them, *i. e.*, the right to levy tolls."

Also, in case of Davidson *v.* County of Ramsey, 18 Minnesota Reports, page 436, Justice Berry, who delivered the opinion of the court, on page 439 says: —

"To provide the public with necessary and convenient ways of travel and transportation is an essentially public function, which may be performed by the state itself, or may, in the discretion of the government, be devolved upon a private corporation or an individual, and that in either case the function retains its public character."

In Pennsylvania, a like principle is announced in case of Sharpless *v.* The Mayor of Philadelphia, in 21 Pennsylvania State Reports, page 169. Chief Justice Black, in his opinion, uses this language: —

"It is a grave error to suppose that the duty of the state stops with the establishment of those institutions which are necessary to the existence of government. . . . Canals, bridges, roads, and other artificial means of passage and transportation from one part of the country to the other, have been made by the sovereign power, and at public expense, in every civilized state of ancient and modern times."

In "Redfield on the Law of Railways," sixth edition, chapter v., it is laid down as an undisputed principle, that "the furnishing of means of communication between different parts of the state is a prerogative right vested in the sovereign, and one which no subject, without special leave of the state, can exercise."

RAILROADS ARE PUBLIC HIGHWAYS.

The case of Sharpless *v.* The Mayor of Philadelphia, 21 Pennsylvania State Reports, page 169, was a bill in chancery filed to enjoin subscription by city of Philadelphia to stock of the Philadelphia, Easton & Water Gap Railroad Company. In the opinion of the court, Chief Justice Black says: —

"A railroad is a public highway for the public benefit, and right of the corporation to exact a uniform, reasonable, stipulated toll from those who pass over it, does not make its main use a private one. The public have an interest in such a road when it belongs to a corporation as clearly as they would if it were free, or as if the tolls were payable to the state."

This language of the Pennsylvania court is quoted and approved in case of Davidson *v.* The County of Ramsey, 18 Minnesota Reports, page 436. The same case cites and approves the language of Justice Clifford in case of Rogers *v.* Burlington, 70 U. S. Supreme Court Reports (3 Wallace), page 654: —

"Railroads, as a matter of usage founded on experience, are considered by the courts in the nature of improved highways."

In Davidson *v.* County of Ramsey, Justice Berry, in delivering the opinion of the court, says: —

"In the eye of the law, railways are modern public highways; and while railway corporations are private corporations, they are created to serve distinct public uses."

Rorer on Railroads, vol. i., chapter i., section 1, states the law in the following language: —

"Although railroads, owned and operated by private corporations under charters from the state, or under articles of incorporation gotten up under general incorporation laws providing therefor, . . . are not public highways within the ordinary meaning of the term, yet in a legal sense they are public highways of an improved kind; . . . they are to

be regarded as public works, intended to promote public accommodation, and are alike entitled to legislative consideration and respect with turnpikes, highways, and other public works."

The Supreme Court of Massachusetts, in case of Worcester *v.* Western Railroad Company, 4 Metcalf, 564, Chief Justice Shaw, in delivering the opinion of the court, asserts this doctrine: —

"It is manifest that the establishment of that great thoroughfare is regarded as a public work, established by public authority, intended for the public use and benefit, the use of which is secured to the whole community, and constitutes, therefore, like a canal, turnpike or highway, a public easement. The real and personal property necessary to the establishment and management of the railroad is vested in the corporation, yet it is in trust for the public." "The company have not the general power of disposal incident to the absolute right of property; they are obliged to use it in a particular manner, and for the accomplishment of a well-defined public object."

The United States Supreme Court, in Alcott *v.* Supervisors, U. S. Supreme Court Reports (16 Wallace), page 678, through Justice Strong, who delivered the opinion, says: —

"That railroads, though constructed by private corporations and owned by them, are public highways, has been the doctrine of nearly all the courts since such conveniences for passage and transportation have had any existence."

The United States Circuit Court, in Bonaparte *v.* Camden & Amboy Railroad Company, 1 Baldwin (U. S. Circuit Ct. Reports), page 223, Justice Baldwin presiding, says: —

"A road or canal, constructed by the public or a corporation, is a public highway for the public benefit, if the public have a right of passage thereon by paying a reasonable, stipulated, uniform toll." "If the public can pass and repass and enjoy its benefits by right, it matters not whether the toll is due to the public or a private corporation."

Railroads are recognized as public highways in case of Boyle *v.* Philadelphia & Reading Railroad, 54 Pennsylvania State Reports, page 312.

WHOEVER BUILDS OR OPERATES A RAILROAD PERFORMS THE FUNCTIONS OF THE GOVERNMENT UNDER A LICENSE OR AUTHORITY FROM THE GOVERNMENT.

This doctrine was stated in the following language by the Supreme Court of Minnesota in case of Blake *v.* Winona & St. Peter Railroad Company, 19 Minnesota Reports, page 369: —

"Inasmuch as it is the duty of the government, with respect to the welfare of the public in general and of trade in particular, to provide safe and commodious ways of communication, . . . it follows that the right to make roads and levy toll is a prerogative of sovereignty, and, in the hands of a subject, is a franchise, — a privilege or immunity of a public nature, which cannot be legally exercised without legislative authority. Nor is there now any question, at least in this court, that the right to make and maintain a railway, and take tolls or fares, is such a privilege or immunity, for the same reason that the right to build an ordinary road, and levy tolls thereon, is, namely, that a railroad is but an improved modern highway, one which it is the duty and interest of the government to construct, where the public interest and convenience demand it."

In the same case, page 370, the court declares: "This franchise of the defendant, then, is a privilege of the sovereign in the hands of the subject;" that the principle is the same whether the subject be an artificial being or a natural person; that "this defendant is as entirely subject to legislative control as such natural person would have been."

This doctrine was announced and settled in Vermont in case of State *v.* Boston, Concord & Montreal Railroad, where a writ of *quo warranto* was asked against the rail-

road company to show by what authority it, a New Hampshire corporation, exercised franchises in Vermont. Chief Justice Redfield in the opinion, page 442, says: —

"The right to build and run a railroad, and take tolls or fares, is a franchise of the prerogative character, which no person can legally exercise without some special grant of the legislature." And on page 444: "They could not compel the land-owners to yield them the right of way, or even space to sustain the western abutment of their bridge, without a grant from the legislature of the prerogative power to exercise the right of eminent domain over lands in this State."

THE REVENUES COLLECTED BY RAILROADS ARE TOLLS, AND TOLLS ARE TAXES.

That the revenues they collect are tolls, seems established by the uniform holdings of the following authorities: —

Bouvier (Law Dictionary) defines "toll" as "a sum of money for the use of something; generally applied to the consideration which is paid for the use of a road, bridge, or the like of a public nature."

Abbott (Law Dictionary) says: "Toll is now properly applied to the charges which canal and railroad companies require for the transportation of goods."

In Webster's Dictionary "toll" is defined as "a tax paid for some liberty or privilege, particularly for the privilege of passing over a bridge or on a highway."

In Minnesota this seems well settled in case of Blake *v.* Winona & St. Peter Railroad Company, 19 Minnesota Reports, page 368, which was a suit brought under act of legislature of 1871 establishing maximum rates. There, Chief Justice Ripley, in delivering the opinion of the court, speaking of the acts of the legislature incorporating the defendant, says: "By none of them is any authority to charge any *toll*, for freight or passengers carried over its road, expressly granted to defendant;" and, speaking of the act under which suit was brought: "The act in ques-

tion fixes a maximum *toll* for the transportation of such goods . . . over defendants' road." And: "The right to demand and receive some *toll* is, we assume, one of its essential franchises." And again: "The right to make roads and levy *toll* is a prerogative of sovereignty, and in the hands of a subject is a franchise, a privilege or immunity of a public nature, which cannot be legally exercised without legislative authority. Nor is there now any question, at least in this court, that the right to make and maintain a railway, and take *tolls* or *fares*, is such a privilege or immunity, for the same reason that the right to build an ordinary road and levy tolls thereon is, namely, that a railroad is but an improved modern highway, one which it is the duty and interest of the government to construct." And again: "The contract here, we assume, is that the defendant may take some tolls." "Not any specified rates of *toll*, nor to take tolls within any designated limits, nor to take reasonable *tolls*." Substantially the same language as to tolls is used through the entire opinion.

In New York this doctrine is stated in the early case of Beekman *v.* Saratoga & Schenectady Railroad Company, 3 Paige's Chancery Reports, page 74, which was a case to determine whether the railroad could exercise the right of eminent domain. There Walworth, Chancellor, in stating his opinion, says: "The privilege of making a road and taking *tolls* thereon is a franchise, as much as the establishment of a ferry or a public wharf, and taking *tolls* for the use of the same. The public have an interest in the use of the railroad, and the owners may be prosecuted for the damages sustained if they should refuse to transport an individual or his property, without any reasonable excuse, upon being paid the usual rate of fare. The legislature may also, from time to time, regulate the use of the franchise, and limit the amount of *toll* which it shall be lawful to take, in the same manner as they may regulate the amount of *tolls* to be taken at a ferry."

In the case of People *v.* City of Brooklyn, 4 New York

Reports, page 431, the legality of a special assessment for street paving was in question. Ruggles, Justice, in delivering the opinion of the court sustaining the assessment, says: "The same principle of apportionment has been applied to bridges and turnpike roads. The money paid for their construction and maintenance is reimbursed by means of *tolls.*"

In Hilliard on Taxation, section 18, the principle is laid down, that revenues collected by railroads for their use are recognized as tolls.

In Wisconsin this doctrine seems to be recognized in case of Whiting *v.* Sheboygan, etc. Railroad Company, 25 Wisconsin Reports, page 182, which was a suit involving the right of the defendant to exercise the right of eminent domain. Chief Justice Dixon, in his opinion, says: "As to the use of the land for the purpose of a highway, and the right of the public to pass and repass over it, and enjoy the advantages afforded by it for the transportation of the merchandise and productions of the country from one place to another upon the payment of reasonable fare or charges, the corporation may be said to be public, but in all other respects it is private. The public having the power for itself to condemn the land on payment of just compensation, and to build, equip, and operate the road, and to charge fare or toll for its use, or for the carriage and transportation of passengers and merchandise, that power, subject to the continued enjoyment by the public, as a matter of right and not by permission of the corporation only, of the same benefits of carriage and transportation upon the same conditions as to payment of fare and charges, may be exercised in behalf of a private corporation, and so far changes its character."

The case of Manchester & Lawrence Railroad *v.* Fisk, 33 New Hampshire Reports, page 305, was a suit to recover for "freighting, carrying, and transportation of divers goods, wares, etc."

Bell, Justice, in delivering the opinion of the court, says:

"In the charter of the railroad, and in the statute of 1852, the charges of the railroad for the conveyance of both freight and passengers are denominated tolls, and, in our view, with entire propriety."

CONTRA.

In Boyle *v.* Philadelphia & Reading Railroad Company, 54 Pennsylvania State Reports, page 310, a bill in chancery was filed, charging that the company received greater rates and tolls than was allowed by law, and asked an injunction.

The charter of the company provided that the toll on any species of property should not exceed an average of four cents per ton per mile, nor upon each passenger an average of two cents per mile.

The answer denied excess charges of toll, and claimed that the word "toll" applied only to the use of the road for operating motive power and vehicles furnished by the persons paying the toll, but admit they have charged extra for supplying motive power, cars, depots, etc.

In sustaining defendant's position, the judge says: "The legal meaning of the word toll is, and always has been, well defined. It is 'a tribute or custom paid for passage,' not for carriage, — always something taken for a liberty or privilege, not for a service; and such is the common understanding of the word. Nobody supposes that tolls taken by a turnpike or canal company include charges for transportation, or that they are anything more than an excise demanded and paid for the privilege of using the way."

Cumberland Railroad Company's Appeal, 62 Pennsylvania State Reports, page 228, was a bill filed to enjoin the company from taking excessive tolls.

The charter of the company authorized it to take four cents per ton per mile for toll, and three cents for transportation. The distinction between *tolls* and *transportation* was recognized by the court, and the two subjects of charge held valid.

In the case of Comblos *v.* Philadelphia & Reading Railroad Company, 4 Brewster (Pennsylvania) Reports, page 563, an injunction was asked against the railroad company, restraining it from taking tolls and charges in excess of amount allowed by its charter. The court recognized the distinction between a charge for *tolls* for the use of the track and charges for *transportation* for use of motive power and cars.

In Pierce on Railroads, page 498, the author uses the following language: —

"The power to take tolls must be expressly given, and when so given is, in case of doubt or ambiguity, to be construed favorably to the public. Tolls are to be distinguished from rates of transportation, being a tribute for a privilege, as a right of passage, and not, like freight or fares, a payment for a service."

In Rorer on Railroads, page 1346, the author says: —

"Freights, fares, and tolls, are terms which have each their distinctive meaning, not only in common acceptation, but also in legal parlance. The term 'freight,' in its more general sense, is used as well in reference to property carried as to the price or compensation to be paid for its carriage. In the latter and more limited sense of our text, it is our purpose to speak of it here. It is that which is paid, or to be paid, for the service of transporting merchandise and other property. It is contradistinguished from *toll* in this, that it is not a price paid for the use of the road on which to transport one's own property, but is paid for the service of the company, and carriage of the property by it; whereas, on the other hand, . . . toll is a tribute or custom paid for passage, not for carriage, — always something taken for a liberty or privilege, not for a service; and such is the common understanding of the word."

TOLLS ARE TAXES.

This seems to be supported by the following authorities:

Webster defines the word "toll" as "a tax paid for some liberty or privilege, particularly for the privilege of passing over a bridge or on a highway."

Judge Cooley, in his work on taxation, page 4, says: "The term 'toll,' in its application to the law of taxation, is nearly obsolete. It was formerly applied to duties on imports and exports, but 'tolls,' as now understood, are confined almost exclusively to charges for permission to pass over a road, bridge, or ferry, owned by the party imposing them."

In Desty on Taxation, vol. i., page 284, the author in defining "tolls" says: "Tolls are delegated taxation, charged and apportioned only on those who derive a benefit from the original expenditure, and in proportion to that benefit."

In support of this, the last above named author cites the case of The People *v.* City of Brooklyn, 4 New York Reports, page 431, where Ruggles, Justice, in his opinion holding a special assessment for street paving valid, says: "Tolls are delegated taxation; and this taxation is charged and apportioned upon those only who derive a benefit from the original expenditure, and in proportion to that benefit. General taxation upon a town or county for the building of a bridge is valid and lawful, but obviously unjust, because it compels one to pay for the benefit of another. Tolls are more equitable, because they equalize the burden with the benefit. But this theory of apportioning taxation is not confined in practice to street assessments, and tolls on bridges and turnpike roads. The main revenues of the state, the canal tolls, are regulated upon the same principle; and as far as the objection to street assessments applies to the principle of selecting those only who are benefited, and laying the burden on them in proportion to their respective advantages, it applies with equal force to tolls on bridges and

turnpikes and on the public canals. The difference is only in the mode in which each taxpayer's share of the burden is ascertained."

CONTRA.

In case of State *v.* Haight, 30 New Jersey Reports, page 448, Van Dyke, Justice, in his opinion says: "It [the railroad company] is not a turnpike company in any sense; nor is it a railroad company, which collects its tolls in different townships and wards. It cannot be fairly said to collect tolls at all. Tolls are collected from persons who pass or travel by their own conveyances over the roads or bridges of another. None do this over the road of the prosecutors. The prosecutors furnish their own conveyances and carry passengers or persons, and charge them a certain price for being carried, known as fare."

Manistee River Improvement Company *v.* Louis Sands, 53 Michigan Reports, page 593, was a suit to collect tolls fixed by the State Board of Control for floating logs through improved portions of Manistee River.

Justice Campbell, in the opinion, says: "The controversy, therefore, is narrowed down to the inquiry whether the State has a right to provide for improving waters that need improvement, and for allowing tolls to be charged for using the improvements. The idea that tolls for the actual use of passage over land or water highways can be treated as taxes . . . does not appear to us tenable. They are not levied on property or on persons, as their share of any public burden laid on the people, but they are a fixed compensation in lieu of a *quantum valet*, for the use of that which has value and which is actually used to advantage. They are collected on the same principle as turnpike tolls or railway or wharfage charges, which no one has ever supposed were public taxes or taxes at all."

Carondelet Canal and Navigation Company *v.* Parker, 29 Louisiana Annual Reports, page 430, also reported in 29 American Reports, page 339, was a suit to recover for toll for schooner passing Bayou St. John.

Defendant claimed the State of Louisiana had no right to authorize the collection of toll, on account of prohibition contained in Sec. 10, Article 1, U. S. Constitution, which provides: "No State shall, without the consent of Congress, lay any duty on tonnage;" and also under the ordinances admitting the State of Louisiana to the Union, which provide that the river Mississippi, and navigable rivers and waters leading into the same or into the Gulf of Mexico, shall be common highways, free to the use of all, without any tax, duty, impost, or toll therefor, imposed by the said State.

De Blanc, Justice, in the opinion of the court, says: "The congressional enactments, we are told, stipulate not merely for the freedom of navigation, but also for an exemption from any impost, tax, or duty. As remarked by Mr. Justice Martin in 11 Martin's (Louisiana) Reports, page 309, 'Tax, impost, and duty must be confined to the idea which they commonly present to the mind, — exactions to fill the public coffers for the payment of the public debt and the promotion of the general welfare of the country, not a contribution to pay the expenses of building bridges, erecting causeways, or removing obstructions in a watercourse, which are to be paid by the individuals who enjoy the advantages resulting from such labor.'"