

THE FARMER AND RAILWAY LEGISLATION.



THE interests of the farmer in just and conservative management of railways are not at all different in kind from the interests of every other well-meaning citizen; and the laws required by him to render those interests secure are of the same sort as are required by any class of men who rely for a livelihood upon the production of articles for distant markets. In some respects, however, agriculture is a peculiar business, and there are some reasons why the demand of the farmer for fair treatment in the transportation of his produce comes with special force and directness. For it must be noted that agriculture is of all industries the least flexible. The merchant is able to shift from place to place and so to adjust himself to changing conditions; the manufacturer, although his business is less mobile than that of the merchant, is, nevertheless, able to control in large measure the conditions under which he carries it on; but the farmer, on account of the absolute fixedness of his plant, enjoys no such advantages. With free money in hand it is possible for him to settle wherever commercial conditions invite; but his capital having once taken the form of reclaimed land, fences, drains, buildings, and the like, he is tied to the soil. His produce is assured as freight to the railway, or association of railways, that commands the territory in which his investment lies, and on this account he is at the mercy of those who provide him an outlet to the market. He has no recourse in case of unfair treatment except an appeal to Government.

For another reason, also, the industry of agriculture is at a relative disadvantage, when considered in its relation to the question of transportation. The merchant and the manufacturer are constantly receiving and shipping goods, and are on this account in a condition to take advantage of fluctuating rates. The rates which they actually pay will likely be less than the average of general charges; but the farmer, who has a single harvest during the year, cannot cut and trim to get the better of fluctuating rates. He it is who, in the presence of fluctuating charges for transportation of freight, is likely to carry the heavy end of the beam. It is, therefore, the occasion of no surprise, because inherent in the nature of agriculture as an industry, that farmers should be more directly interested in railway legislation

than any other class of business men. Their appeal to Government is one of the natural outcomes of the situation in which they find themselves.

But what is the nature of the enactments which have resulted from the appeal of farmers to the makers of law? We shall be assisted in answering this question if we call to mind the peculiar character of the business of transportation by rail, for the only purpose of railway legislation has been to check the evils which flow from unregulated railway administration.

From 1848 to 1870 railways were regarded by managers, by legislatures, and by the courts, as subject to the satisfactory control of commercial competition. It was thought that the public had nothing to fear, provided only there were a sufficient number of railways to insure competition. Of course, under such circumstances it was impossible for a railway problem to make its appearance, since all parties interested were agreed as to the theory of railway management; but as the development of the country provided a continually increased traffic, experience showed that competition between railways was not of that conservative and steady sort which commends itself to the judgment of reasonable and fair-minded men. Certain clearly defined abuses forced themselves upon public attention, and among the questions which statesmen were obliged to consider, the question of the administration of railways assumed a prominent place.

The reason why competition cannot control in railway affairs may be easily stated. The railway business is a business subject to what economists call "the law of increasing returns"; that is to say, the larger the traffic the less will be the cost of carrying any portion of that traffic. This being the case, the criterion of success in the business of transportation comes to be the volume of traffic that can be controlled, and a practical railway manager considers only the means of securing for his line the largest possible volume of traffic. Under the impulse of such a purpose certain evils are sure to arise, prominent among which may be mentioned the evil of unstable charges for traffic. The truth is, rate-sheets have never been adjusted in a scientific or rational manner, but have evolved themselves out of a prolonged strife for traffic; and as in times of war a plan of campaign must be continuously modified to meet temporary exigencies, so rate-sheets of railways are subject to constant modification, either to in-

crease traffic at the expense of a rival, or to save traffic which a rival seeks to secure. All businesses which have to do with railways are, on account of uncertainty in freight-charges, rendered speculative in character, and this, when properly understood, is an evil which cannot be too seriously regarded.

But the burden of fluctuating rates rests upon the farmer in a peculiar manner, because they render it difficult for him to reach the central market. It is sometimes asked why farmers do not themselves send their produce to the market, and consign it to commission merchants who shall place the proceeds of its sale to their credit. In this manner the number of middlemen who live from handling produce would be greatly decreased, and there would result a much better organization of national industry than the one which now exists. The farmer would indirectly as a member of the community, as well as directly in his capacity of a producer, be decidedly benefited by the change. One cannot say that such a step would be taken by the farmers should freight-rates be rendered more stable, but it is certain that without stable rates such a step must forever be impossible. From every point of view fluctuating charges for transportation of freight are to be deprecated.

Much more serious, however, is another class of evils resulting from unregulated competition between railways. Not only do rates fluctuate in an arbitrary manner, but all persons doing business with railway corporations are not charged the same rates. Unfair discrimination between customers is, like fluctuating rates, a result of the struggle for traffic. Large shippers secure better rates than small ones, and cities command more advantageous terms than towns. One who appreciates the social functions of railways cannot express too strongly the evils consequent upon such an abuse of power. They are second only to those which would follow should courts discriminate between citizens in the dispensation of justice. Equality before the law is a canon of political liberty; equality before the railways should become a canon of industrial liberty. Since, however, the evils of discriminating charges, special contracts, rebates, and the like are familiar topics in every discussion of the railway problem, nothing further need be added here respecting them.

Coming, then, directly to the question asked, it may be said that the aim of railway legislation in this country has been to correct abuses necessarily incident to the unregulated competition for traffic between railways. Experience has shown that commercial competition does not work in the business of transportation as it works in the case of other businesses, and the

aim of laws to regulate railways has always been to bring the competitive principle under the control of the political principle in all matters affecting the public. It is true that much confusion exists in the laws that have been passed, but all harmonize in this—that they set before themselves the same problem.

The first step actually taken toward control of railways in this country was to place beyond question the right of Government to a voice in the management of railway affairs, and this is a step for which the farmers of Illinois, Iowa, and Wisconsin are directly responsible. The "Granger Laws" of about 1870, which were contested by the railways, but upheld by the courts, placed beyond controversy the fact that railways are common carriers in the extreme interpretation of that phrase, and, as such, are amenable to direct legislative control. This was an important point gained, since it rendered unnecessary further discussion as to the right of public control. It did not, however, touch directly the railway problem which pertains to the most practical and effective methods of exercising public control over carriers among a democratic people.

If we consider the laws themselves that have been passed for the purpose of regulating the relations of railways to the public, two principles may be observed running through them all. On the one hand there are many enactments whose aim it is to compel competition, or, what means the same thing, to prevent combination; for it must be noted that, side by side with fierce competition to which reference has been made, and which results in fluctuating rates and special favors to large shippers and large places, there is always present in the minds of those who direct railway affairs the hope of consolidated management. The cutting of rates is regarded in the light of a battle that is to lead to an advantageous treaty of peace. Besides the law of Congress which forbids pooling, a number of States have passed laws having for their purpose the maintenance of competitive conditions between railways. These States are Alabama, Arkansas, California, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Texas, and Wisconsin. It is not necessary, however, to say much respecting this class of legislation, for its advocates are coming to admit that it has not met their expectations. Indeed, the futility of law to prevent consolidation seems to cast suspicion on the theory on which such laws are based.

The other principle upon which reliance has been placed for the solution of the problem of transportation is found in those laws which aim to secure and maintain fair rates. Such laws

embrace three separate counts: first, that rates themselves should be just, the nature of the service being taken into consideration; second, that rates should be the same for all, with no invidious discrimination; and third, that rates should not be subject to frequent or arbitrary changes. The doctrine that Government should enforce a just price is not new. It has the sanction of Roman law, of medieval custom, and of common law. "In countries where the common law prevails," said the late Chief Justice Waite, "it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation." It may, perhaps, be surprising to learn how far this principle of a "just price" has permeated American law. Confining the statement to railway legislation, it may be found in some of its phases in Federal law, and in the laws of the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, West Virginia, and Wisconsin. There can be no question but that the purpose of legislation in American commonwealths is to enforce just dealings on the part of the railways.

Our present interest, however, centers rather in the machinery regarded as necessary to render these laws effective than in the laws themselves. The execution of a law which touches the rights and duties of citizens is usually left to the courts, but in the case of railway legislation special tribunals, called commissions, have been created. The United States at the present time seems committed to the policy of railroad commissions, and whatever Government is doing for farmers so far as railways are concerned, or, indeed, for any other class of business men, it is doing through the medium of commissions. On this account it may be well to analyze them with some care.

A commission may be roughly defined as a body of men appointed to represent Government in its dealings with railways, and to care for the public interests in all matters of controversy that may arise. There are at present thirty State railroad commissions besides the Interstate Commerce Commission, which rests for its authority upon Federal law. The jurisdiction of each of these independent bodies is strictly defined. Each State commission has to do with traffic within its own borders, while the Federal Commission exercises jurisdiction over interstate traffic. The necessity for the Interstate Commerce Commission became ap-

parent when it was judicially decided that the powers of State commissions were limited to local traffic. Federal and State commissions, therefore, must be regarded as parts of the same system of control. The form which this system has assumed may not theoretically be the most perfect, but it is the only one possible in this country, on account of the peculiar structure of the American Federal State.

A feature common to all commissions is that of periodical reports from railway corporations covering all important financial and business operations. The consideration usually urged in favor of such reports is that commissioners need the information thus secured in order to perform in an acceptable manner the functions of their office; but an equally important argument is that publicity in itself tends to conservative management on the part of railways. It would be difficult for a person who believes in a democratic form of government to overestimate the importance of publicity in the management of corporate enterprises. Many an abuse which would otherwise linger long to vex the public dissipates itself when brought into the strong light of public opinion. Great advance has been made during the last few years in the matter of railway reports. A common form of report has been adopted by the commissioners of twenty-two States, and by the Interstate Commerce Commission, thus insuring a certain degree of uniformity in the matter of keeping accounts. There now exists in this country, for the first time, a basis for sound railway statistics, for which the State and Federal railroad commissions should have full credit. There is nothing striking or brilliant about this policy of publicity, but it has within it a potential efficiency which few recognize. It should, however, in order to secure the best results, embrace, in addition to the accounts of railways, the accounts of construction companies, without which "cost of way" can never be known; of express companies, whose business is in reality that of quick-delivery freight; and of all companies and individuals owning rolling-stock or terminal facilities used by railways. The great danger is that the quietness with which the principle of publicity works will deprive it of the confidence it deserves.

Aside from the principle of publicity, which is common to them all, railroad commissions may be divided into two classes, according as they conform to the Massachusetts or to the Illinois type. The former of these may be characterized as supervisory, the latter as supervisory and regulative. Commissions of the Massachusetts type have direct and final jurisdiction over certain minor questions that arise, and are also intrusted with the control of all

technical matters which concern the safety and convenience of the public. Outside of this their duties are limited to such inspection as is necessary to determine whether the laws established by the legislature are properly observed. They are at liberty to exercise no discretion whatever respecting general questions of transportation. The reports of commissions of this class are made either to the attorney-general or to the legislature, and having rendered this report their responsibility ceases; for it lies within the discretion of the attorney-general, acting upon the information contained in the report, to proceed against any derelict corporation, and within the discretion of the legislature to enact new laws which shall provide more perfectly for the protection of the public. Arizona, Colorado, Connecticut, Kentucky, Maine, Michigan, New York, Ohio, Rhode Island, Vermont, Virginia, and Wisconsin have commissions of this type.

The Illinois Commission, on the other hand, has had conferred upon it, in addition to such general functions as are assigned to commissions in Massachusetts, certain powers that are partly administrative and partly judicial. For example, commissions of this type are empowered to revise or alter rates, or indeed to impose schedules of rates on the railway companies. They may also regulate connections between roads, and fix terms for exchange of traffic. Besides these powers, commissions of the Illinois type are competent to hear complaints under oath, to compel the attendance of either party to a complaint, to subpoena witnesses, and in the name of the State to institute proceedings against the roads. Powers of this sort seem to be, in part at least, of a judicial character. The commissions which exercise them are somewhat new to the established principles of law, and there are a number of legal questions to be settled before their rights and powers can be strictly defined. Especially is this true of the Interstate Commerce Commission, which is patterned after the Illinois rather than the Massachusetts type. But no one can doubt that the unusual powers conferred are rendered necessary by the unusual state of affairs which the development of railways has produced, or that these commissions are asserting for themselves a permanent place in the administrative machinery of Government. The States whose commissions are adjusted, in the main, to the Illinois type are Alabama, California, Georgia, Iowa, Kansas, Minnesota, Missouri, Mississippi, Nebraska, New Hampshire, North Carolina, North Dakota, Oregon, South Dakota, South Carolina, and Texas.

Besides the States already named, Indiana, Arkansas, New Jersey, and Pennsylvania have commissions especially established for the assessment of railway taxes, and the State of Pennsylvania has made as ample provision for the collection of railway statistics as any State having a commission.

It seems proper, in showing what Government is doing to secure justice from railways to their patrons, to emphasize the importance of commissions, since this is the part of the subject usually overlooked. The truth is, there has been created in this country during the past twenty years a vast governmental organization which, if permitted to develop as experience points the way, and if supported by the enlightened sentiment of the public, will surely solve the railway problem without endangering the stability of our democratic institutions. To speak in detail of the work already accomplished by commissions would carry us beyond the limit of a magazine article. Many contested questions have been decided, a fact of importance, not only to the parties directly interested, but to the public at large, since through such decisions there is being crystallized a body of opinion touching the rights and duties of railway corporations. In the matter of charges, for example, the power of fixing, revising, or altering rates has been exercised by the Interstate Commerce Commission and by the commissions of the States of Alabama, California, Florida, Georgia, Iowa, Illinois, Kansas, Maine, Minnesota, Missouri, Mississippi, Nebraska, New Hampshire, North Carolina, North Dakota, and South Carolina. The power to regulate connections and terms of exchange of traffic between railways has been exercised by the Interstate Commerce Commission and by the commissions of the States of Alabama, Connecticut, Georgia, Iowa, Illinois, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, North Dakota, South Carolina, South Dakota, and Wisconsin. As legal principles are evolved by the decisions of the courts, so the reciprocal rights and duties of those interested in the question of transportation may be evolved through the aggregation of opinions rendered by commissions. It is not more schemes or plans for the solution of the railway problem that are desired, but a more careful study and a more conscientious application of the plan to which the country has committed itself. It should not be forgotten that any great social or industrial question ceases to be a question when the people of the country come to think clearly respecting it.

Henry C. Adams.