

**IS POOLING ES-
SENTIALLY UN-
LAWFUL?**

It now looks as if the present war will so engross the attention of congress that some other matters, in themselves of much importance, will not receive the attention which would otherwise be given to them.

Among these matters is that of the pending amendment to the act to regulate commerce. If it could be supposed that the absence of interest in this amendment was the result of non-activity of the part of the railroads, there would be little cause for concern, but such apparently is not the case. The railroads have for so long been in the habit of appearing prominently in legislation in everything affecting their interests, that it would seem like an abandonment of their principles to leave such matters to the ordinary course of legislation, relying upon the justice of their case for success, and it is therefore not to be supposed that the present quiescent state of the bill is due to the lack of such influences. It is rather chargeable, as already indicated, to the overwhelming interest in the Cuban war and which is likely to sidetrack it for some time to come.

In view of this condition, it may be wise to raise the question if any improvement in the present situation can be accomplished by the railroads pending the enactment of the much desired and very necessary amendment to the act to regulate commerce. Ten years have now elapsed since that law went into effect, and while some much needed reforms in the operations of railroads have been accomplished under it, it is doubtful if commerce as a whole has been greatly benefited. Stability of conditions is the prime requisite for successful commercial operations, and it is an open question if the law has not been more operative to unsettle these conditions than was the practice of the railroads just prior to its enactment. At that time railroads had learned that the mutual interests of themselves and the people were best served by a concert of action and through the medium of associations this result was being worked out. But just then the law stepped in, and by prohibiting pools in specific terms, as well as by the later construction of the courts declaring illegal any agreement for controlling rates, the ordinary state of strife and uncertainty was re-established. In fact, it is doubtful if at any time during the history of our railroads commercial conditions were more unstable than at present.

The Railway and Engineering Review is not an advocate of lawlessness; it rather goes to the other extreme and upholds law as it exists, believing that in the end the defective laws will be corrected. For that reason, it has for years argued in support of the Inter-State Commerce Law and it still be-

lieves that in the main that legislation was wisely conceived and has been judiciously administered. That the law is defective in some particulars is freely admitted by all who know anything in the matter, and that it will in the course of time be reorganized is probably certain. But it is a question if any one, particularly the railroads, would not now be justified in seeking to restore commercial stability by doing that which the law (unconstitutionally, as it is believed) prohibits, to-wit: The practice of pooling—not for the purpose of maintaining rates and certainly not for the purpose of advancing rates, but with the idea of promoting equality of service and charges, putting the commercial interests upon common footing. It is believed that an arrangement which should provide for pooling of earnings on the basis of the lawfully established rates for the purpose above mentioned, would be sustained by the United States Supreme Court. There is no doubt but that, with the exception of pooling, the matters treated of in the act to regulate commerce are properly the subject of governmental regulation, but it is difficult to understand upon what hypothesis an elective disposition of earnings can be prohibited. Railroad pooling in its most simple form, would dispose of money that has been earned in the lawful performance of a given service after such money has been converted into the treasury of the party performing the service. The law of this country provides that in certain cases a man cannot work but eight hours a day, but it does not attempt to say that having worked in a lawful manner during the prescribed time what the man shall do with the money he has lawfully earned.

No more is it believed that, when a railroad, in compliance with law, has performed a given service and has received therefor stipulated lawful compensation, the law can say what disposition it may make of the money it has lawfully earned. If it should elect to use money from its treasury to pay for the road of a competitor no one would think of objecting, but when it takes any portion of the same money, and pays it to the same competitors for the purpose of making up to it an amount to which it is admittedly entitled, but for any reason did not get out of the traffic, the cry of fraud is at once raised.

Just what method of procedure would be best under the circumstances which are herein set forth is not so easy of delineation. It is possible that, as in many other cases, the direct course would be productive of the best results and that it would be well for some roads to form a pool on certain traffic, setting forth the purposes as herein outlined, and send a copy of the agreement to the Inter-State Commerce Commission for such action as it thought proper. If it

should eventuate that the Supreme Court upheld a contract of this kind as not unlawful, it would relieve much of the pressure that is likely to be urged against the proposed amendment to the act to regulate commerce.

Hitherto we have, as a matter of policy, advocated compliance with the law as it stands, with the expectation that congress would have ere this taken the anti-pooling feature from it. It may be that such would still be the wiser course, but it is at least worth considering if the more radical measure above suggested would not inure to the benefit of all concerned.

The London Economist, without professing particular concern for our future, or assuming to advise us, points out what we involve ourselves in if we undertake to acquire remote territories. Commenting on the annexation of Hawaii, it remarks that it is, for good or for evil, a revolution in American history. The annexation of alien peoples over-sea and unfit for self government is not in harmony with the spirit or letter of our institutions. That is a plain matter of fact. "Either unfit and semi-savage people must be endowed with the same rights as those held by American citizens, or they must be helots; they must be a *ruda indigestaque moles*, governed against their will by officials whom they will probably hate, and so forming a new class outside the true life of the republic." Add to this that if the United States interferes in European and Asiatic affairs, "Europe must and will interfere in American affairs, North and South." But no nation can sit down at table with the great powers of Europe without being heavily armed. After the civil war was over, our immense armies were disbanded at once; but if we seize possessions over-sea we cannot disarm. "At any moment a dangerous revolt might arise in regions far away, or an indiscreet official might involve the American government with the powers of Europe." Hence we must increase taxation to maintain these forces, and the powers of the central government must be enlarged. Against all this is to be offset a possible increase of trade with China. It is for the American people to decide if the possible gain is worth a revolution in their system of government.—The Nation, July 28, 1898.

We are in receipt of No. 1, Vol. 1, of THE CONSERVATIVE of Nebraska City. This paper is edited and owned by the Hon. J. Sterling Morton. This, the initial number, is full of good things and shows that Mr. Morton has an earnest desire to better the condition of his fellow men, to improve local laws and reform political abuses. In this Mr. Morton will receive no assistance from the average politician for with the carrying out of his ideas their occupation would be gone.—Syracuse Journal.