A CHAPTER ON RAILWAY RATE LEGISLATION

The Commoner presents this week another article from the pen of the gentleman who has contributed many interesting articles with respect to railroad rate legislation. This gentleman says:

The widespread demand for more effective legislation to regulate and control interstate carriers springs from the impotence of the present law, which was passed in 1887. Briefly stated this law provides that all rates and charges shall be reasonable and just and declares unlawful every unreasonable and unjust charge; that the schedule of charges shall be published and adhered to and that they shall not give undue preference or advantage to any person or locality; that the charge shall not be greater for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance; it creates the interstate commerce commission and authorizes and requires the commission to execute and enforce the provisions of the act.

The law reads good and would prove satisfactory if the commission had the power it was thought the law conferred upon it. To simply declare that all charges shall be reasonable and just without giving the commission the power to fix a reasonable maximum rate and substitute it in place of an unreasonable and unjust rate, will not and can not afford substantial relief. For some six or seven years the commission assumed that it had this power, and as the carriers thought so, too, the commission's orders were complied with. Finally, the right of the commission to wield this power was contested and the supreme court decided that the law conferred no such power upon the commission. This adverse decision deprived the commission of its most potent and powerful weapon. Since that date the railroads have had nothing to fear. The validity of almost every order of the commission has been attacked and usually with success.

Having definitely located the weakness of the present law, it ought not be a difficult matter to intelligently proceed in making the law effective, but here we are met with numerous suggestions put forth and ably championed by those who oppose real, effective railroad regulation. President Roosevent proposes to correct the defects of the present law by conferring upon the interstate commerce commission, or some other administrative body, the power to decide whether a given rate prescribed by a railroad is reasonable and just, and if found to be unreasonable and unjust, to prescribe a reasonable maximum rate beyond which it shall be unlawful to go, this decision to go into effect within a reasonable time and to remain in effect unless and until it is declared confiscatory and destructive of property rights by a court of competent jurisdiction. In short, the president favors the enlargement of the duties and powers of the interstate commerce commission, the very policy advocated and demanded by the democratic party in its national platforms of 1896, 1900 and 1904.

The constitutional provision that no person shall be deprived of his property except by due process of law affords an ample remedy against unreasonably low rates, whether fixed directly by congress or by an administrative body created for the purpose of regulating rates, and simply because a carrier can invoke the aid of the courts, if it feels that a given rate will unlawfully deprive it of its property, those who oppose giving the interstate commerce commission this power insist that the short cut to justice and effective regulation is to make the commission purely an inquisitorial body and impose upon the courts the duty of determining whether a given rate is unjust and unreasonable. That is the plan they propose. In fact, the plan they propose would afford no remedy against extortion which we do not now have. In the Reagan vs Farmers' Loan & Trust Co. case, the supreme court used this language in rendering its decision:

> Yet it has always been recognized that if a carrier attempted to charge a shipper an unreasonable rate, the courts had jurisdiction to inquire into that matter, and to award the shipper any amount exacted from him in excess of a reasonable rate.

President Roosevelt, in his message to congress, said:

> I regard this power to establish a maximum rate as being essential to any scheme of real reform in the matter of railway regulation. The first necessity is to secure it; and unless it is granted to the commission there is little use in touching the subject at all.

Judge Grosscup of the United States circuit court strongly opposes President Roosevelt's policy. In explaining the method of procedure under the present law he attempts to show how effectively the courts can deal with the question, as follows:

> Upon a complaint being made to the circuit court that a rate is unreasonable the court, if it finds that the rate is unreasonable, may enter an order finding such rate unreasonable, and thereafter the railroad is not at liberty to charge the rate because "by defying a rate already judicially determined, the railroads would expose themselves to civil suits upon the part of every shipper aggrieved."

To say that a carrier is not at liberty to charge a rate that has been judicially determined to be unreasonable, is misleading. It implies that the carrier would be compelled to observe the rate judicially determined to be reasonable and just. In other words, to make it the tariff rate for all future business of a similar character and class. That is not true. A carrier could disregard the rate judicially determined to be reasonable without incurring any responsibility other than the liability of another law suit, and that could hardly be considered a deterrent because the carrier would appeal the case to a higher court nine times out of ten, and just as often would the higher court reverse the lower court, and the rate judicially determined to be reasonable and just in the first instance would subsequently be held unreasonable and unjust.

That the courts can not fix future maximum rates is and must be conceded by all, because that is a legislative and not a judicial function. Former Attorney General Olney, in an article in the North American Review for October, 1905, says:

> Yet in either or any event the courts are limited to action upon rates already established or attempted to be, and are without power to decree what shall be the rates for the future.

The most potent and effective weapon employed by the courts is the restraining order, or injunction, yet they can not use nor attempt to use it against a carrier to fix a future maximum rate. It is true the courts can enjoin a carrier from departing from a published tariff rate to favored shippers if the rate is fixed by the carrier itself and published as the public rate, but the carrier is at perfect liberty to raise or lower the public tariff rate at any time regardless of injunctions.

The courts do not and can not afford a remedy against future extortionate charges, yet that is the only remedy the opponents of rate legislation have to offer. They propose nothing we do not have and, as President Roosevelt says, there is little need of touching the subject at all.

Simply because the constitution prohibits the taking of private property without due process of law (and the fixing of a transportation rate is a property right if the rate is confiscatory—a fact that must be determined by the courts), Judge Grosscup contends, in effect, that neither congress nor a commission created for that purpose should fix future maximum rates for the reason that the railroad company, if they feel aggrieved, can question the constitutionality of the rate upon the grounds that that it would confiscate its property. Congress, not being able to determine in advance which of its acts will be attacked as unconstitutional, would necessarily become a useless body, if Judge Grosscup's argument be followed to its logical conclusion, because it could enact no law with any assurance that its constituionality would not be attacked. But, if the railroads will attack rates fixed directly by congress, or by a commission, they would also attack and resist rates judicially determined to be reasonable and just. The railroads violate injunctions with impunity, and that is the court's strongest and most reliable weapon.

The best indication of how the courts would handle this question is admirably illustrated by what they have done. The present law provides that rates shall be reasonable and just and declares every unreasonable and unjust rate unlawful; that all rates shall be published and strictly adhered to. An Iowa shipper thought he was being charged extortionate rates on shipments of grain to Chicago. He brought suit and prayed the court to award him judgment in any amount found to have been exacted from him by the carrier in excess of a reasonable rate. Upon investigation the fact was established that the carrier had only exacted from the shipper the published tariff rate. The court decided that, as the law required the carrier to publish its rates and to adhere to them as long as they remain in effect, the carrier could not legally charge any other than the published rate, hence the shipper had paid the legal rate and had no case. In commenting upon this wise (?) decision the interstate commerce commission, in its twelfth report said: "The court apparently took the position that the publication of a given rate under the sixth section by the carrier fixed the rate; that when the rate was so published it became unlawful to receive any other or different rate, and that it could not be an unlawful act to demand and collect the published rate," and added that "if this opinion should finally prevail it would result that the public has absolutely no protection against an unreasonable rate." Further comment is unnecessary.

The laws proposed by the opponents of President Roosevelt's policy would greatly aid in securing a closer observance of tariff rates by the railroads, but they afford no remedy for those who are injured by unreasonably high or extortionate charges, or by rates that are inequitably adjusted. To permit a carrier to prescribe an unjust or unreasonable rate and then compel the carrier to observe that rate and the shipper to pay it, is nothing more nor less than compulsory extortion. Those who object to giving the commission power to fix a future maximum rate take it for granted that competition between carriers will insure reasonable rates, but they overlook the fact that but about one place in ten is served by two or more railroads, the other nine stations having but one road and no competition whatever in fixing rates. The public must not be without protection. It will not do to rely upon a corporation's standard of just and reasonable rates, as is well illustrated by their infamous policy of charging higher rates for a shorter than for a longer haul on the same line and in the same direction, the shorter being included in the longer distance, previous to the passage of the act to regulate commerce in 1887. They insisted that competition forced the charging of low rates to competing points and contended that they were justified in charging intermediate points higher rates for the simple reason that a certain amount of revenue must be collected to pay operating and other expenses and leave something for dividends. That is the corporation idea of justice and fair-dealing. The railroads also strenuously contended that they could not adjust their charges in accordance with the law without bankrupting every road in the country, but they finally did so and the anticipated disasters did not come.

Then again the opponents of rate legislation prate long and loudly about the very, very complicated and delicate problem of adjusting freight rates, which can only be accomplished by experts in rate making. The interstate commerce commission was called upon to investigate a general advance in rates in the southwest, and the traffic manager of an important system testified that the advance was made because the financial manager of the company in New York instructed him to do so. The commission, in commenting upon this said: "Here was no delicate adjustment of rates to conditions."

When the supreme court decided that competition between railway carriers might create the dissimilar circumstances and conditions, which the fourth section of the interstate commerce law says might make an exception to the general rule of the long and short haul clause, the railroads filed schedules with the commission raising the rates to intermediate points over more than 100,000 square miles of territory within five days from the reading of the opinion. This fact is reported by the commission in its eleventh annual report. Here is more evidence of the delicate adjustment of rates to conditions.

The necessity of fixing a minimum as well as a maximum rate is not often recognized, but the power to do this must be granted to correct certain forms of discrimination. This fact is illustrated by a case that came under the observation of the interstate commerce commission. The lumber interests of Eau Claire, Wis., complained that the rate on lumber to a common market was excessive as compared with

(Continued on Page 9)