

HOLCOMB ON RAILROADS

Continued from first page.

of the constitution of the United States.

"While rates for the transportation of persons and property within the limits of a state are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the constitution requires, and, therefore, without the process of law, cannot be so conclusively determined by the legislature of the state or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry.

"In the discussion of this question the plaintiff (the railroads) contended that a railroad company is entitled to exact such charges for transportation as will enable it at all times, not only to meet the interest regularly accruing upon all its outstanding obligations, and justify a dividend upon all its stock; and that to prohibit it from maintaining adequate charges for transportation adequate to all these ends will deprive it of its property without due process of law, and deny to it the equal protection of the laws. This contention was the subject of elaborate discussion, and, as it bears upon each case in its important aspects, it should not be passed without examination. In our opinion the broad proposition advanced by counsel involves some misconception of the relation between the public and a railroad corporation. It is unsound in that it practically excludes from consideration the fair value of the property used, omits altogether any consideration of the right of the public to be exempt from unreasonable exaction, and makes the interests of the corporation maintaining a public highway the sole test in determining whether the rates established by or for it are such as may be rightfully prescribed as between it and the public.

"A railroad is a public highway and none the less so because constructed and maintained through the agency of a corporation deriving its existence and power from the state. Such a corporation is created for public purposes. It performs a function of the state. Its authority to exercise the right of eminent domain and charge toll was given primarily for the benefit of the public. It is, therefore, under government control, subject, of course, to the constitutional guarantee for the protection of its property. It cannot, therefore, be admitted that a railroad corporation, maintaining a highway under the authority of the state, may fix its rates with a view solely to its own interests and ignore the rights of the public. But the rights of the public would be ignored if rates for the transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public or the fair value of the services rendered, but in order simply that the corporation may meet operating expenses, pay the interest on its obligations and declare a dividend to stockholders. If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization and the apparent value of the property and franchises used by the corporation, as represented by its stocks, bonds and obligations is not alone to be considered when determining the rates that may be reasonably charged.

"The utmost that any corporation operating a public highway can rightfully demand at the hands of the legislature, when exerting its general powers is that it receives what, under all the circumstances, in such compensation for the use of its property as will be just both to it and the public. We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction, must be the fair value of the property being used by it for the convenience of the public, and in order to ascertain that value, the original cost of construction, the amount expended in permanent improvement, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

From the foregoing it is quite clear that the legislature has the power, by direct legislation or under legislative enactment, to give authority for the reasonable regulation of a railway and other corporations of a public character in the matter of charges for services rendered the people under the franchise granted them to conduct the business for which the corporation was created. The constitution provides that railroads in this state are public highways and shall be free to all persons for the transportation of their persons and property thereon under such regulations as may be prescribed by law, and that the legislature may from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this state. It is also provided that the legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in all charges of express, telegraph and railroad companies in this state. That the public may rightfully demand such protection from their legislature, none will question. As to how best to exercise this authority and discharge the duty thus imposed

upon the legislature there may be and doubtless is a difference of opinion. It appears to me that the legislature may very properly take action upon this subject, and I respectfully suggest the wisdom and justice of modifying and re-enacting the present maximum freight rate law, to the end that the objections now existing to its enforcement may be obviated and that within the limits of the decision of the supreme court, the people may be afforded the relief from unjust exactions in the charges of freight rates to which they are reasonably entitled. It is true that it may be years before such a law could be enforced, because of litigation which may follow its enactment, and yet we can hope to accomplish nothing in this respect unless we persevere, and, inspired by a laudable desire of dealing justly with both the people and the corporations, we ought not to hesitate or halt until equal and exact justice shall be established and discrimination and unjust charges be made more obnoxious, if not impossible, under the law.

In this connection I beg to request your attention to the annual report of the board of secretaries of the state board of transportation, which is replete with much instructive and valuable information regarding the subject in many particulars.

The laws of this state regulating charges by railroads and other corporations are found in the maximum freight rate act which has been declared invalid, and the act providing for the creation of a state board of transportation and defining its duties, powers, authority, etc. With the maximum freight rate act inoperative, whatever protection and relief which the people may have from unjust charges and discrimination must come through the board of transportation. I am aware that the operation of this law through that board or its secretaries, has not been entirely satisfactory to the public at large. I am and have been of the opinion that an elective railroad commission is much to be preferred. This, however, is unattainable until the supreme law of the state is amended, and this, perhaps, cannot be done for several years. In the meantime the people are entitled to the best protection the legislature may lawfully extend to them. To repeal all laws and leave the people wholly at the mercy of corporate greed and subject to unjust discriminations would not, in my judgment, best subserv the interests of the people.

The law, in my judgment, is wise. It is contemplated by the constitution and has been the means of saving much to the people which would otherwise have been lost to them. There may be room for criticism as to the operation or administration of the law, but I fail to perceive wherein the law itself can be condemned as unjust or unwise in any of its provisions. Without this law or some other law to take its place, the people would be entirely without that legislative control which the constitution has wisely provided and which it especially enjoined upon the legislature as a duty to supply.

It is true, doubtless, that there exists in many localities of the state those who are opposed to regulation of corporations of all character, and that the corporations themselves would offer no objection to the repeal of all laws providing for their control. But people generally, who, by actual experience have felt the injustice of wrongful exactions and discriminations by corporations possessing unlimited power, except as controlled by statute, feel the necessity of some such provision of law, recognize its justice and beneficence to all and rightly demand that this protection be not taken from them.

STOCK YARDS REGULATIONS. The last legislature passed an act to regulate certain stock yards by declaring them public markets and defining the duties of the person or persons operating the same and regulating all charges thereof and providing penalties for the violation thereof.

The Union stock yards of South Omaha, a corporation subject to the provisions of this act, had itself, or, perhaps, more accurately speaking, its managing officials, who were creatures of its own making, enjoined from putting in force the rates of charges as therein provided, and the case came to be traveling the same road as the maximum freight rate case, except moving by slower stages, if that were possible. A humorous, if not ludicrous, incident transpiring in the proceedings of this case is worthy of note. If I am correctly informed, after the stockholders had applied for an injunction restraining the managing officers from putting in force the rates of charges provided by statute and from lowering the rates then prevailing, and the court had granted the injunction, the Kansas City stock yards company reduced their rates to conform to the requirements of an act passed by the Kansas legislature and upheld by the courts of that state. The injunction was doubtless applied for and granted upon the theory that business with profit at the rates provided by statute, but the law of competition proved more effective than the statute and compelled the lowering of rates at the South Omaha stock yards. This necessitated another application to the court to be permitted to reduce the rates which they themselves had declared would bring ruin and bankruptcy. Relief was graciously extended by the court and the rates were reduced so that the average charges are no higher than allowed by the act in controversy. However, what the company does voluntarily it is unwilling that the legislature shall by statute require it to do, and the case is still pending.

The same general principles seem to be involved as in the maximum freight rate cases. The people have a right to have the case speedily tried. If the act in question is not valid we ought to ascertain a reasonable time wherein it is defective, so that the legislature may remedy the defect and by suitable legislation give to the people such protection from unjust exactions as they may rightfully demand. What I have said regarding the delay in the final adjudication of the maximum freight rate case applies with equal force to the litigation over the stock yards regulation act.

I suggest the propriety of some action on the part of the legislature urging the advancement and speedy determination of cases of this character. If laws of the state are to be annulled

and their operation suspended by the extraordinary writ of injunction, a proceeding in itself of doubtful propriety, certainly the state may rightfully insist that the litigation shall be expedited and involve no unnecessary delay.

GREAT MONEY POWER.

(Continued From Fifth Page.)

Walker, the above named defendant. (Signed) W. W. Paxton, Jr., \$8.65, 7-1-92."

Commissioner Dundy says says the reason the bail was returned was because the grand jury found no indictment.

The final chapter in this history is given in the following Associated Press dispatch from Cheyenne, Wyoming, dated January 21, 1895:

"The case against the twenty-three stockmen from Cheyenne, Wyoming, last spring and killed the ranchmen, Champion and Ray, was dismissed last evening, it being impossible to secure a jury. One thousand and sixty-nine talesmen were examined and no jury secured. The sheriff made return last evening that he was unable to secure more talesmen. Prosecuting Attorney Bennett then asked the court to enter a nolle proes in the case, which was done. There is great rejoicing among the stock men and their families over the result."

The honorable president of the association in a recent number of his erudite and caustic family journal inquired with fine irony what kind of animal the money power was—whether quadruped, saurian or reptile and declared that in a residence of some sixty years on this planet he had never seen the creature or even its tracks on the sandstone. I do not know but our honored president may hold the same opinion respecting the slave power—another animal which (whether myth or not) holds some place in the history and literature of our native land. There is difference of eyesight I freely grant. Some of us can only see the behemoth when he eats the grass on the family lawn, white to some, like John on the Island of Patmos, or the other John in the Bedford jail, England, it is given to see the passions, the hates, the jealousies, the ambitions, and the evils that throng about our lives from the birth bed to the pillow of prairie sod that marks the end—in the form of beasts and living creatures.

I do not think that I belong to the class of inspired visionists such as these, but if ever my mind doubted the existence of a real, living, organized money power in America, the memory of the scenes here recorded, the interview with the trappers in the Chadron jail—of their simple, significant story—the burning ranch and the murdered ranchmen on Powder river—the march of the military to the murderers' rescue, the breaking of the Douglas pill—the special trains—the array of legal talent and United States marshals—and finally the photograph indelibly printed on my brain of two innocent men (known to every one to be such) marched in chains through the streets of my own town and born away to defeat the ends of justice by the highest power of that government framed by our fathers to secure liberty and equality among men—that would silence the doubt.

When wealth can command not only all the triumphs of modern learning and invention, the railroads, the telegraphs, the telephone, and the legal fraternity, but beyond that—when it can move the army of the United States and the very machinery of the United States courts—not to punish crime, but to steal witnesses that murder may go unpunished—when it does these things openly in the fact of the American people—it will require more even than the singularly gifted pen of our president to convince some of us that the money power is nothing more than a political Mrs. Harris, the goblin of some garrulous Sairy Gamp.

In Herndon's Life of Lincoln (vol. 1, p. 67) is told the story of the flatboatman's visit to New Orleans in 1831. For the first time in his life he saw men and women chained together and sold from the auction block. Bringing together his facts he said to John Hanks, "If ever I get a chance I'll hit that thing (the slave power) and I'll hit it hard." There are some Nebraskans who expressed the same sentiment to each other as they witnessed the chained procession hurried down the street of the metropolis of northwestern Nebraska that May morning of 1892.

Hardy's Column.

Pay as You Agree—Beer Garden and the Midway—Next Republican Candidate—Gritty Holo—Standing Army—Railroad Charges—Our New Legislature.

It is all right to pay the sugar beet bounty, but let the republicans who offered the bounty make the levy to pay it. The injustice consisted in obligating the state to pay. The new states are against taxing one industry to keep another. I would pay the wolf's bounty, too, though the prairies wolf does less harm than the fox.

All the beer sippers, gamblers and scoundrel women of Omaha are bound to have another exposition and perhaps three or four more. The midway to vice and immorality will be widened and lengthened and blacker. It does not seem possible that they can get an appropriation from the state or government.

It looks today as if Governor Roosevelt of New York would be the republican candidate for president in 1900. He has the love of the common people more than McKinley. Then it looks as though McKinley is going to get his fingers burned with expansion. A war with the natives on any of the islands would knock him and his party off the track. It looks very much as though the Cubans and the Philippines were bound to have liberty if they have to fight Samuel for it. No reason has been given yet why the Philippines should not have the same treatment

the Cubans get. If liberty is good one place, it is equally good in the other.

We rather admire the grit of the natives of Holo island. They have driven the Spaniards off the island without any help from us and set up a government of their own, a little republic similar to that of several of the other Philippine islands and now refuse to bow to the mandate of McKinley. Our war ships are in their harbor threatening to bombard their city if they do not surrender. In turn they threaten to drench their city with kerosene, fire it and flee to the mountains before they will surrender. They have several thousand soldiers well armed with Spanish guns taken from Spanish soldiers. Expansion by force gives the lie to American profession. This administration will die a four-year-old if expansion is attempted by force.

What do we want with a standing army of one hundred thousand? It is not to defend ourselves against a foreign foe. After this that has got to be done entirely with the navy. Are we going to conquer other nations and place our soldiers over them to keep them under? Have we got to keep the Cubans and Philippines under with an American army? Shame and a disgrace to our flag to hint such a thing. And yet that is the purport of McKinley's southern speeches. Every American soldier should be withdrawn, within a year, excepting enough to protect our railroads and stations which we should hold as a war indemnity. No, it is not that we need such an army to defend ourselves against the foreign foe but it is to protect the millionaires, corporations and trusts at home. It is the common people that this unhallowed gang are afraid of. We read about the "powers" of Europe. We have powers more potent. They twist the policy of Europe while trusts, corporations and the liquor traffic twist this government around their fingers as easily as a boy winds a blade of grass around his finger. The blood suckers are always together, solid, in the big party, they are today, while the industrious common people are divided. We have got to get together or perish. What can we do when a soldier is stationed at every door, not to protect you or your home but to enforce unjust laws made by the few and for the few.

The impression has generally prevailed that government railroads carry freight and passengers cheaper than corporation roads. This is a mistake. It is a fact, however, that rates have been reduced by government taking control, but after the reduction, rates are still higher than in this country. We take the reports made to congress by the interstate commerce commission as reliable. England does not own her roads but exercises government control. Germany and France own and operate about 90 per cent of their roads. The average passenger rate per mile in England is 3 1/2 mills, in Germany it is 23 1/5 mills, while in the United States it is only 21 1/5 mills. There is about the same difference in freight rates. The average rate per ton, per mile, in England is 28 mills, in Germany it is 16 4/10 mills, in France it is 22 mills, while in the United States it is a little less than 10 mills. There is this advantage gained from government roads, all the profits go to all the people, while in this country we make millionaires with it. It is said and doubtless is true that the cheapest railroad rates in the world is charged between New York and Chicago.

The purchasing power of money has increased so that a thousand dollar salary will buy as good a living today as fifteen hundred would ten years ago. We will see how many useless waiters are hung on to the legislature for pay.

Another Strange Thing.

It is strange that papers and politicians who pretend to believe that our government is not competent to successfully own and operate railroads at home deem it competent to construct and operate the Nicaragua canal. The only reason for this is the fact that the moneyed interests of this country are more directly concerned in operating the railroads and robbing the people; hence influence the politicians and the press in their interest. The money required in constructing the Nicaragua canal would construct and equip a double track railroad from the Pacific to the Atlantic, which, if run by the government in the interest of the people, would be many times over more advantageous to the people than would the canal if it could be constructed for the sum contended and would be all its promoters claim for it, which is very doubtful.—Tulare (Cal.) News.

The Last Trust.

We are organizing the Colorado Sunshine and Fresh Air trust (limited). We want the people to buy the stock. We guarantee the stock will be worth par just as soon as we can purchase the incoming legislature to pass a bill giving our company the exclusive use of sunshine and fresh air, as legislatures in the past have granted like honors to people who wished to fence in the whole earth and own all the water. When our company is on its feet and everybody is wearing a meter, all that we will have to do will be to go around and put our hands in everybody's pockets and take out our toll according to meter records. There is money in it. First come, first served.—George's Weekly.

Supported by Labor.

According to the French Review of Reviews the standing armies of the whole world, permanently under arms, number 5,250,000. In wartime these can be mustered 44,250,000. The per capita tax for military purposes is 5 francs in Russia, 9 in Italy, 10 in Austria, 13 in Germany and 15 in France. Every fifth male adult is a soldier in Europe. And these parasites, representing wasted labor power, are maintained by the working class for the benefit of capitalism.—Cleveland Citizen.

STATE LEGISLATURE.

(Continued From Seventh Page.)

Tuesday, January 10.

The house was called to order this morning shortly after 10 o'clock.

Benjamin of Hitchcock arose after journal reading, and stated he had been incorrectly reported as having voted nay on the Olmstead resolution when he voted aye. The journal was found to be correct.

Taylor of Custer wanted a committee of five to investigate and report on the advisability of dispensing with the office of oil inspector and railroad commissioners. Tabled on motion of Earl of Cass, who said bills covering these measures would find consideration with proper committees.

Thompson of Merrick introduced a resolution that 500 copies of rules be printed for use of members. Referred to committee on printing.

Eastman of Custer wanted to have defined the duties of the committee on other institutions. He served as chairman two years ago, but declared all matters pertaining to management of eleemosynary institutions are referred to committee on insane hospitals and the committee on other asylums finds itself with no duties to perform.

Among bills introduced and read first time are: H. R. 95, by Meminger—To call a convention to revise constitution. H. R. 96, by Eastman—To provide for submission of constitutional amendments to vote of the people. H. R. 97, by Evans—To create and maintain a reserve and guarantee fund for protection of depositors in banks.

H. R. 98, by Lane—Correcting and amending Compiled Statutes. H. R. 99, by Weaver—Providing punishment for persons making loud and undue noises at night. H. R. 100, by Chittenden of Gage, by request—Providing for a decree of divorce on grounds of insanity.

H. R. 101, by Flynn—For the branding of penitentiary made goods and providing penalties for violation thereof. H. R. 102, by Flynn—For boards of arbitration and defining duties and powers of same.

In the afternoon after second reading of bills, the speaker called for the special order of the day. Lane of Lancaster, moved that in the report of the committee on rules the added portion of rule 54, over which a disagreement occurred Monday, be stricken out of the report. This was done.

Representatives House, Fisher and Moran were appointed to consult with a like committee from the senate on rules of joint sessions.

Wednesday, January 11.

The house convened at 10 o'clock. Roll call showed Easterling, Tanner and Woodford absent on account of sickness. Reading of journal was dispensed with.

Burns of Lancaster offered a resolution placing officers and employees of house under direction of chief clerk, explaining his reason for so doing, saying many did not know what their duties were and that they ought to be placed under some one who could tell them.

Allen G. Fisher introduced the following resolution in regard to Colonel Stotsenburg's removal: Whereas, There is common report coming from the sons of Nebraska parents serving their country in Manila, Philippines, of unjust and unsoldierly treatment of the men in the First Nebraska regiment by Colonel Stotsenburg, and

Whereas, These charges have been officially filed with the secretary of war and

Whereas, The humble private volunteer soldier whether at home or ten thousand miles away is entitled to the full protection of every right; therefore

Resolved, That our senators and representatives in congress be requested to urge the honorable secretary of war to detach Colonel Stotsenburg from the First Nebraska United States volunteers, and return him to duty in the regular army.

Resolved, That upon the return of the First Nebraska regiment to America where testimony can be heard that these charges so universally believed by the friends of the men of this regiment should be fully investigated and such punishment inflicted as the case, if proven, deserves.

Resolved further, that the secretary of war be also requested to hear and determine all charges now on file in the office of the adjutant general of the army against officers for violation of army regulations towards volunteer soldiers from the state of Nebraska.

Resolved, That a copy of these resolutions shall be transmitted to the secretary of war at once.

The resolutions were made a special order for Thursday at 11 o'clock.

Among the bills introduced were: H. R. 126 to 129, by Harrison—Amending section of Compiled Statutes. H. R. 130, by Fries—Prohibiting killing of wild turkey and quail for five years. H. R. 131 to 134, by Lane—Amending Compiled Statutes. H. R. 135, by Pollard—To provide a system of revenue.

H. R. 136, by Olmstead—For the use of the label of the allied printing trades council of international typographical union on state printing. H. R. 137, by Wyman—To constitute omission to vote at general election a misdemeanor and providing penalty for failure to do so.

Hills to the number of 173 have been introduced, many of them purposing changes in compiled statutes, repealing obsolete, unconstitutional, and useless sections.

insure fidelity members holding places of trust in state, county or city offices, or in any company or corporation. S. F. 10, by Prout by request—To permit a divorce on account of insanity after five years confinement in an insane asylum, provided that such insanity has not been brought on by the fault or misconduct of the party seeking a divorce. S. F. 25, by Talbot—Relating to school text book for use in the public schools of the state of Nebraska; providing for state uniformity and maximum charges for said books creating a commission to select the same, and making an appropriation for carrying out the provisions thereof. Adjourned.

Wednesday, January 11.

The senate was called to order at 10 o'clock.

Prout of Gage moved that reading of the journal be dispensed with, but withdrew motion to allow Fowler to introduce this resolution: "That the journal be so corrected that all bills read yesterday be shown as read for the first time and that the reference of bills from No. 1 to 9 inclusive be stricken from the record."

This carried by a viva voce vote and a little later Prout renewed his motion and the reading of the journal was discontinued.

Currie of Custer asked unanimous consent to substitute a bill for one he had introduced. Talbot of Lancaster moved that substitute be reported by committee instead of the original bill. It was decided to introduce the substitute as an original bill, being a bill to provide for free attendance at the high schools of non-resident pupils.

Senator Crow of Douglas, by unanimous consent, offered the resolution asking for Colonel Stotsenburg's removal as colonel of the First Nebraska at Manila. The summary of the resolution will be found in the house proceedings. The rules were suspended and the resolutions were adopted by viva voce vote, Hall of Madison voting no.

The resolution referring the question of the legality of Treasurer Meserve's bond to the judiciary committee was adopted.

Files to the number 47 were introduced, nearly all of them aiming to correct the Compiled Statutes of 1897. The afternoon session of the senate lasted but half an hour. Legislative manuals of 1899 were ordered, five bills were introduced and the senate adjourned.

Municipal Grants.

At a recent session of the National Municipal league at Indianapolis Mr. Charles Richardson read a paper on "Municipal Franchises" that attracted attention. He said in part:

"I feel constrained to announce myself as being unalterably opposed to any grant of municipal franchises for any purpose whatever, and I take this position as a matter of principle. I maintain that the idea of granting franchises to private individuals or corporations to minister to a city in social necessities is as wrong in scientific theory as it is mischievous and destructive of what is best in municipal life in practice. The whole idea of granting special privileges to a few people to make profit off all the rest of the people is undemocratic, and consequently is opposed to and stands in the way of progress toward the realization of our loftiest and best ideal, the equality of all men before the law."

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