

Why Railroads Demand Federal Incorporation

[By Laurence B. Finn, Chairman Kentucky Railroad Commission, President National Association Railway Commissioners (1914)].

Railroads generally speaking are the creatures of the states. Their charters declare that they are public highways and they exercise governmental functions, being endowed with the right of eminent domain.

Railroads, like other public highways, can be operated in two ways.

First. By general taxation; providing a fund to acquire the highway and collecting tolls or taxes for proper maintenance and operation.

Second. By granting to individuals charters which privilege them to collect sufficient tolls from those who use the public highway to maintain and operate the road and to pay a fair return on the private capital invested in the construction of the highway. This is commonly known as the toll-gate system which is analogous to the present plan of operating railroad companies.

Under a joint resolution of congress a general investigation is being conducted on the subject of railroads by a special committee of the senate and house. Before this committee the plans of common carriers have been disclosed. Their paramount desire is a federal incorporation act—supposedly a general federal statute under which all railroad corporations shall be recreated—thus surrendering their state charters and thereby being relieved of whatever duties or restrictions contained in the constitutions and laws of the several states that are not acceptable to the carriers.

The real object of the carriers in making this demand is seldom mentioned and not generally known. This article proposes to disclose the motive.

The representatives of carriers claim that the purpose of the plan is to be relieved of conflicting state laws as well as the conflict which they allege exists between the state and federal governments; the catch phrase coined for the occasion being, "We live under 48 different masters, we need only one."

ARGUMENTS OF RAILROADS

In an article of reasonable length it will be impossible to expose all the fallacies of railroad representatives advanced in support of their plan. Naturally our attention should be directed largely to the arguments advanced by Col. Alfred P. Thom, the eminent lawyer representing the railway executives' advisory committee, which in turn represents the railroads constituting 84 per cent of all railroad mileage in the nation. To this affable and persuasive gentleman, personally known to practically all of the representatives and senators and departments of the federal government, the railroads assigned the task of presenting their plans and pleas to the senate and house committee.

Stenographic reports of the hearings before the joint committee on interstate and foreign commerce have been printed by the department at Washington; and a synopsis of all the testimony given before this committee has been issued in bulletins compiled by the railway executives' advisory committee. From these printed documents the plans of the carriers are accurately obtained and form the basis for this discussion.

To justify the demands of common carriers for a federal incorporation act many imaginary ills are alleged from which the carriers claim they should be relieved. The public also are told that car shortage, inadequate service and facilities and lack of railroad construction are all due to "the dual system of regulation"; and like the patent medicine vendor, who guarantees his drug as a panacea for all ills, railroad representatives offer "Federal Incorporation" as a remedy for all complaints registered by the general public, and a guarantee to railroad capitalists for increased revenues and lower taxes.

From the wide spread nature of the business conducted by railroads, together with their en-

tangling alliances with banks, insurance companies and great industrial corporations, assisted by a well organized press, it is within the power of those who control railroad policies to create conditions affecting the welfare of the nation and then use the resulting effect as a basis for demanding coveted concessions from the public. Professor Elliott says that those whom the carriers' business affects, counting employees, stockholders, policy holders in companies whose assets consist of railroad securities, etc., together with other allied interests, comprise about sixty million people. Mr. County, vice-president of the Pennsylvania railway system estimates the number at fifty millions. In fact 100 millions of people are vitally affected by the conduct and business of the railroads of this country.

The truth is the necessity of railroads to the happiness, convenience and commerce of the country has not yet been fully realized and their relationship to the public is frequently misstated. "The prosperity of the railroads and the prosperity of the country," said President Wilson, "are inseparably connected." Properly interpreted this statement is true; but, when misconstrued, it ascribes to railroads the originators of prosperity. Prosperity does not begin or end with the prosperity of common carriers. They are simply the thermometers registering the activity of business. High freight rates, which create a great surplus for railroads, do not create prosperity for the nation. The exchange of commodities creates business. As this exchange is performed through the service of railroads, the railroads' business measures the prosperity of the country.

FOUNDATIONS OF PROSPERITY

The source and origin of prosperity should always be kept in mind. Like all things constructed it must have a foundation and no structure is complete without a superstructure. The toiling masses are the foundation of prosperity. Capital assembled or concentrated in the development of enterprises is the superstructure. Capital and labor both have their proper services to perform, and if properly applied work together for the good of all mankind; but a wise builder considers first the foundation. Labor, the foundation of prosperity, produces the commodities. By the exchange of these commodities labor receives its reward. Any unnecessary burden placed upon the exchange deprives labor of its just reward and destroys the foundation of prosperity.

The functions of railroads are of such public necessity and prime importance that business adversity, labor disputes, strikes, wars and famines should no more retard the wheels of transportation than should such calamities retard the wheels of the government.

A very subtle argument was made by Col. Alfred P. Thom before the senate and house committees:

"The first consideration of the public," said he, "is to obtain transportation facilities. What the cost is, is in reality a secondary consideration. This is illustrated by the sentiment of the country last summer when it was menaced by the prospect of an entire suspension of transportation when business men would have been willing to pay almost anything to get their goods to market."

Thus the railroad representatives would have the public consider the cost paid for transportation from the same standpoint that a drowning man would estimate the price of a floating log. Upon such an occasion the value of the log could not be estimated; but the circumstance should neither fix the customary price for logs, nor necessitate the conclusion that the cost of lumber was of no consequence to the public.

But if the carriers can once impress the public that transportation charges are of no consequence to the public they have won their case.

In fact a few large shippers declare that the freight rate is of no consequence to them so long as they are placed upon an equality with

their competitors; but they fail to catch the vision from the broader standpoint of the interested public. A large majority of the public neither own railroad securities nor contract directly for transportation; yet their interest in freight rates is the all important feature connected with this great question.

The public buys from some one who pays the freight. The public sells to some one who pays the freight. When the public buys from the man who pays the freight, the freight is added; when the public sells to the man who pays the freight, the freight is deducted. While the freight rate is small when itemized into individual contributions, it must be remembered that 100 million people are contributing their mite to the success of various industries and public undertakings and unless these mites are justly distributed the stream of wealth will be diverted from its natural flow. The coffers of some industries will overflow while others will be empty. As drops of water make the ocean so do these mites contributed by millions of people create a sea of wealth and the inequitable distribution of profits is the source of all our economic ills. Just prior to the European war railroad securities had absorbed almost one-sixth of the accumulated wealth of the nation.

CONFLICTING LAWS

Characteristic of the inaccurate information upon which the public is asked to make up its mind on transportation problems, I quote an extract from an article in the *Reviews of Reviews*, of September, 1914, written by Mr. Harrington Emerson. The editor of the *Review of Reviews* qualifies Mr. Emerson as authority on the subject, by stating that "his convictions concerning the possibility of efficient organization of railroad operations have been given the widest publicity by Mr. Brandeis, (Now Justice Brandeis of the supreme court of the United States).

"The question as to the necessity or desirability of all the flood of restrictive measures that have become laws is not involved. The burden remains. It adds to the expenses when locomotives can not cross a state line or when the equipment of a passenger car differs in every state through which the car runs. These multitudinous restrictions have the same general effect upon railroad finances that the hookworm parasite has on human beings. One hookworm would not count, a hundred thousand are depleting."

As chairman of the committee on state and federal legislation of the national association of railway commissioners I have concluded a thorough investigation of all the state laws relating to transportation companies, and such a condition as is assumed by the statement of Mr. Emerson does not exist. In fact the supreme court of the United States in the case of the South Covington Street and Cincinnati Street Railway Company, plaintiffs in error, against the city of Covington, decided January 5th, 1915, expressly enunciates principles positively prohibiting such a condition as is described by Mr. Emerson. Note this extract from the opinion in speaking of a city ordinance attempting to regulate the equipment of a street car company which served both Cincinnati, Ohio, and Covington, Kentucky.

"If Covington can regulate these matters Cincinnati certainly can and interstate business might be impeded by conflicting and varying regulations in this respect with which it might be impossible to comply. On one side of the river one set of regulations might be enforced and on the other side quite a different set and both seeking to control a practically continuous movement of cars." As was said in *Hall vs. Decuir*, 95 U. S., 485: "Commerce can not flourish in the midst of such embarrassments."

As the supreme court has held that state laws can not interfere with interstate commerce by unreasonable rules relating to the physical equipment of transportation companies; so the phantom, "that locomotives can not cross state lines" and that "passenger coaches differ in every state through which the car runs," vanishes.

We will next investigate to what extent state regulation of rates affects the revenues of carriers.

STATE REGULATION OF INTRASTATE RATES

It must be borne in mind that the rates, subject to the unrestricted regulation of the several