PUBLIC OWNERSHIP

Nebraska in the Lead—First State to Own Railroads—When Shall Possessions be Taken?

Last week on page 13 of The Independent appeared a communication from George B. Galbraith of Fairbury, Neb., commenting upon our supreme court's decision in the case of McLucas vs. St. J. & G. I. R. R. Owing to limited space then, The Independent's repiy to Mr. Galbraith was omitted, but is given this week. The law as laid down by the court is as follows:

"1. Under the provisions of section 4, article 11, of the constitution of Nebraska, a railroad constructed and operated in this state is a public highway.

"2. The general public has the same interest in the preservation and maintenance of railroads as it has in the maintenance of other highways, and the title to a part of a railroad's right of way, while such road is being operated as a common carrier, cannot be divested by adverse possession."

What was then written in reply to Mr. Galbraith's letter follows:

The opinion itself is rather too long for publication here at this time, and is indeed not necessary except to show the reasoning by which the court arrived at the conclusions stated in the syllabus.

The supreme courts of the various states are hopelessly divided upon the question raised in this case: Whether title to a railroad right of way can be divested by adverse possession. This decision has placed Nebraska along with Ohio, Iowa, Kansas, Tennessee and California. But Michigan, Minnesota, Indiana, Illinois, Massachusetts and New York hold to the contrary view.

While The Independent believes with Mr. Galbraith that the decision is erroneous, being based upon a faulty definition of the term "public" as used in the constitutional section quoted, yet it cannot agree with him in his suspicions that the court has succumbed to railroad influence. The private ownership of what should never have been anything but a public highway, in the truest sense of that word, has done more to increase the complexities of modern jurisprudence than probably any other one thing, and it is small wonder that courts have been perplexed. The whole matter started off on the wrong foot and every effort to "catch step" has simply added to the difficulties. There should be no such thing as private ownership of a highway of any sort.

Section 4 of article XI. of the constitution provides that "Railways . . . are hereby declared public highways, and shall be FREE to all persons for the transportation of their persons and property thereon." Yet no person ever dreamed that ALL persons could use these "public" highways without payment for the service, even if some members of the legislature and some judges and court commissioners do ride "free" in every sense of that word. The term "public" in this section must be defined in harmony with the word "free" in the same section. Railways are "public" highways just as the Lindell hotel is a "public" hostelry; both are private property, but neither can lawfully deny any person transportation or lodging and board, as the case may be, provided he complies with the reasonable rules and regulations laid down or permitted by law.

There is not the slightest doubt that a railroad right of way is PRIVATE property, just as truly as the Lindell hotel is the private property of Hoover & Son. The general public has the same interest in the preservation and maintenance of hotels as it has of railroads, the only difference being one of degree. In neither case has the public any ownership in the thing it is "interested" in. And the question of adverse possession goes to property rights, to the right of ownership.

In an editorial note in the Harvard Law Review for June, 1901, (15 H. L. R., 146), commenting on property exempt from the operation of the statute of limitations, the editor said:

"A novel extension of this rule (that the statute does not run against the sovoreign) has recently been made by the California court. . . . The court held that as the land belonging to the railroad had been set apart for public purposes, it was exempt from the running of the statute. . . . If the fee is vested in the government the decision is clearly right. . . . If on the other hand, the land has been granted away, the decision may well be doubted. . . . On principle, there seems to be no reason for exempting the railroad. Although it has many public duties to perform, yet it is strictly a PRIVATE corporation, formed by voluntary agreement, and operated for private gain. In no regard is it a PUBLIC corporation. (Mt. Hope Cemetery Co. vs. Boston, 15 Mass., 509, 521.) But more than that, the policy underlying the exemption does not apply. Government lands are so scattered that, with the best of officials, it is hard to keep track of them and to act promptly against adverse holders. But the land of a railroad is always within easy reach and control of its officers, and the policy of the statute of limitations—that of quieting and securing titles—applies as strongly in their case as any."

The fact is that our court, in the case of Meyers vs. McGavock, 39 Neb., 843, held that a railroad company might acquire title to real estate for railroad purposes, where the road had been in open, notorious, exclusive, and adverse possession for ten years, and it is certainly a queer rule that will permit the road to gain but not lose by adverse possession.—Associate Editor.)

Subsequent investigation leads the associate editor to believe that this decision may prove of greater benefit to the people than would appear at first glance. There is no doubt that the general rule is that railroad property, although subject to public regulations to some extent (where they can be enforced), is nevertheless PRIVATE property and fully protected by the 14th amendment of the federal constitution. And if that is the true rule in Nebraska, the McLucas decision is not only erroneous, but it works an injustice and hardship to many more than the McLucas Bros.

But it will be remembered that in the Rock Island-Zernecke case which went to the United States supreme court from this state, the court held the company as an insurer for the passenger's safety, because the statute of 1867 so required, and this statute became a part of the contract between the state and the company, a part of its charter to do business in the state. Now, suppose the constitutional provision declaring railroads "public highways" should be construed in accordance with the rule which prevails as to all other "public highways"—what then? Then every foot of railroad in Nebraska is public property. To hold this, would not be taking private property without due process of law, because every railroad company doing business in the state built its road (or bought one already built) with full knowledge that it was building a "public highway." Because the state has not seen fit to take possession of its own, is no argument against the validity of its ownership. Besides, the statute of limitations does not run against it. The rolling stock, of course, still belongs to the railroad corporations; but the roadbed, right of way, and road itself undoubtedly belong to the public or state.

Instead of attempting to tax franchises, what is the matter of the legislature declaring the necessity for the state to take possession of its own property? There need be no change in management at present, but let the operating companies pay the state an annual rental in lieu of taxes.

ADVERTISING THAT PAYS

When Inserted in The Independent It Reaches Three or Four Times as Many as in Other Papers of Like Circulation

The difficulties that reform papers constantly meet can only be known to those that have to contend with them. The rate per line per thousand copies of circulation has a fixed valuation with advertising agencies and it applies to all papers except to papers that fight plutocracy and the trusts. The methods used in arriving at the true circulation are the same in all cases. Postoffice receipts and an open inspection of the books tell the tale, yet there is such a prejudice worked up by those who accumulate millions from special privileges that business men everywhere, and especially in the east will pay double the amount for advertising space in a paper that is in harmony with high protection, trust combinations and imperialism, that they will for the same space in reform papers with like circulation. Yet an advertisement in a reform paper is read by three or four times as many people as in a plutocratic paper of the same circulation. The man who subscribes and pays for The Independent does so for the purpose of reading it and he generally reads all of it. Thousands wait anxiously for each edition to appear as is shown by the letters that come to this office if any of them fail to get their papers on time. That an advertisement is three or four times more valuable to the advertiser when it appears in The Independent than in other papers of like circulation is shown by the following letter:

Ohio Paint & Varnish Co.,
Findlay, Ohio.
Nebraska Independent.

Gentlemen: In answer to your favor advising us of the expiration of our ad. in your valued paper, we are glad to say that we ran the ad. in four papers in different sections of the country with the same ad. at the same time and we received double the amount of replies to our ad. in your paper that we did to the three others combined. We received answers from all over the country wherein they said that they saw our ad. in The Independent. We will certainly recommend your paper to any one wanting an ad. in a paper that reaches the people. Yours truly,

J. H. MOYER.

Certificate of Publication

State of Nebraska
Office of
Auditor of Public Accounts

Lincoln, February 1st, 1903.

It is hereby certified, That the Mutual Life Insurance Company of New York, in the State of New York, has complied with the Insurance Law of this State, applicable to such companies and is therefore authorized to continue the business of Life Insurance in this State for the current year ending January 31st, 1904.

Summary of Report Filed for the Year Ending December 31, 1902.

INCOME		
Premiums	$ 56,874,062.15	
All other sources	16,430,960.59	
Total		$ 73,305,022.74
DISBURSEMENTS		
Paid policy holders	$ 29,071,358.02	
All other payments	15,078,949.56	
Total		44,150,307.58
Admitted assets		$382,432,681.30
LIABILITIES		
Net reserve	$311,303,247.00	
Net policy claims	1,688,186.20	
All other liabilities	69,441,248.10	382,432,681.30
Total		$382,432,681.30

Witness my hand and the seal of the Auditor of Public Accounts the day and year first above written.

CHARLES WESTON,
Auditor of Public Accounts,
J. L. PIERCE,
Deputy.

Doyle & Berge Attorneys at Law

NOTICE OF PARTITION SALE

Notice is hereby given that the undersigned, as referees, duly appointed by the District Court of Lancaster County, Nebraska, in an action pending in said court, wherein Mary J. Canfield Taylor and Cleora Wilkinson are plaintiffs, and Henry M. Sanford, Rebecca Sanford, Alonzo D. Wilkinson and William G. Taylor are defendants, to partition the lands of the parties to said action, and on the 4th day of March, 1903, the report of said referees to the effect that said real estate could not be partitioned without great prejudice to the owners thereof, was approved, and said referees were ordered by said court to sell said lands at public sale, as upon execution, at the front door of the court house in Lincoln, Lancaster County, Nebraska, for cash. The said referees, pursuant to said order of said court, and their powers as such referees, having given the bond prescribed by law, and taken the oath of their office, will on the 7th day of April, A. D. 1903, at the east front door of the court house in Lincoln, Lancaster County, Nebraska, at the hour of 2 o'clock p. m. of said day, sell for cash, to the highest bidder, at public auction, the following lands, to-wit:

Lot twenty (20) in Fairbrothers' Subdivision of part of the northeast quarter (N. E. ¼) of section twenty-four (24) township ten (10) range six (6) east of the 6th P. M., and lot four (4) in Harley's and McFarland's Subdivision of Block thirty-six (36) and part of lot thirty-five (35) in Fairview, as described in the recorded plat thereof. Said Fairview being on a part of the southeast quarter (S. E. ¼) of section thirteen (13) township ten (10) range 6 (6) east of the 6th P. M; also lot seven (7) in block five (5) in Mechanics' Addition to the City of Lincoln, all Lancaster County, Nebraska; also the southeast quarter (S. E. ¼) of section twenty-seven (27) in township six (6) north of range twenty-five (25) west in Frontier County, Nebraska, containing 160 acres; also lot twelve (12) and the east one-half (E. ½) of lot eleven (11) all in block one hundred-eighty-three (183) in the City of Lincoln, Lancaster County, Nebraska; also lot six (6) in block two hundred forty-three (243) in the City of Lincoln, Lancaster County, Nebraska; lot "B" of Brock's Subdivision of lots thirteen (13) and fourteen (14) in block fifty-six (56) in the City of Lincoln, Lancaster County, Nebraska.

O. S. WARD,
NICHOLAS RESS,
CARLETON E. LOOMIS,
Referees.

Dated this 4th day of March 1903.