THE RAMSEY BILL

A "Stone" Given in Place of the "Bread" Asked for by the Farmers

It is probable that the Ramsey bill, as amended by the railroad lobby, will have become a law before the next issue of The Independent is printed. It had passed the house, but was amended by the senate and passed in the following form:

"Section 1. Section 1 of article V., chapter 72 of the compiled statutes of Nebraska, is amended to read as follows: Section 1. Every railroad corporation shall give to all persons and associations reasonable and equal terms for the transportation of any merchandise or other property of every kind and description, upon any railroad owned or operated by such corporation within this state; and for terminal handling the use of the depot and other buildings and grounds of such corporation, and at any point where its railroad shall connect with any other railroad, reasonable and equal terms and facilities of interchange and shall promptly forward merchandise consigned or directed to be sent over another road connecting with its road, according to the directions therein or accompanying the same; and every railroad company or corporation operating a railroad in the state of Nebraska shall afford equal facilities to all persons or associations who desire to erect or operate, or who are engaged in operating grain elevators, or in handling or shipping grain at or contiguous to any station of its road, and shall supply side tracks and switch connections, and shall supply cars and all facilities for erecting elevators and for handling and shipping grain to all persons or associations so erecting or operating such elevators, or handling and shipping grain, without favoritism or discrimination in any respect whatever, provided, however, that any elevator hereafter constructed, the construction of which shall cost not less than $3,000.

Section 2. Section 4 of article V., chapter 72 of the compiled statutes of Nebraska, is amended to read as follows: Section 4. Any railroad company, officer or agent thereof who wilfully violates or evades any of the provisions of this act, shall be liable to the party injured for all damages sustained by reason of such violation, and in addition thereto, shall be liable for each offense to a penalty of one thousand dollars, which may be recovered in any county by an action in the district court where such railroad company or corporation is doing business.

"Section 3. Said sections 1 and 4 of article V., chapter 72, of the compiled statutes of Nebraska, be and the same are hereby repealed."

Article V. of chapter 72, as it appears in the compiled statutes of 1901, is a return to chapter 68 of the session laws of 1881. It was supposed that this chapter was repealed by chapter 60 of the laws of 1887 (the board of transportation act); but, in the case of State vs. B. & M. R. Co., 60 Neb., 741, the act of 1887 was held unconstitutional. Then chapter 50 of the laws of 1901 sought to repeal the act of 1887, together with the act of 1885, which created a board of railroad commissioners. The Ramsey bill seemingly amends the act of 1881—but the difficulty is to know the status of the act of 1881.

Aside from mere technical objections, however, The Independent believes that the farmers' co-operative associations will, after tedious lawsuits, discover that the Ramsey bill is simply a "stone" given them when they asked for "bread." And why? Simply because the principle involved—that of securing elevator sites on the anti-discrimination theory—is not good. It was thoroughly discredited in the Elmwood elevator case.

In this case (Mo. P. R. Co. vs. Nebraska, 164 U. S., 415) the United States supreme court said:

"A railroad corporation doubtless holds its station, grounds, tracks, and right of way as its PRIVATE property, but for the public use for which it was incorporated; and may, in ITS discretion, permit them to be occupied by other parties with structures convenient for the receipt and delivery of freight upon ITS railroad, so long as a free and safe passage is left for the carriage of freight and passengers. (Grand Trunk R. Co. vs. Richardson, 91 U. S., 454; 23 U. S. Sup. Ct. Rep., 356.) But how FAR the railroad company can be COMPELLED to do so against its will, is wholly a different question."

It is doubtless true that under proper legislation a railroad company could be compelled to erect grain elevators of its own, just as it may be compelled to erect station houses, freight ware houses, etc., where a reasonable necessity therefor exists. But the Ramsey bill contemplates nothing of the kind. It contemplates compelling the railroad company to "afford equal facilities"—a glittering generality which it would be difficult to prove in court that is being violated anywhere in Nebraska today.

What are "equal facilities?" Does it mean that in a town where 500 farmers bring their grain to market there may or shall be 500 grain elevators? Assuredly not. Would one elevator be enough? Probably; and yet it might not. Under the Ramsey bill who is to determine this question? Apparently no one; probably the court before whom is tried the damage suit contemplated in the provisions of the second section. But that would be a case of locking the stable after the horse had been stolen.

Who determines how many miles of railroad shall be built in Nebraska? The courts? No. The owners of private capital? Yes. Would it require a Ramsey bill to permit private capitalists to parallel the B. & M. from Plattsmouth to Kearney? Hardly. There is a general law regarding railroads, arming them with the right to have eminent domain exercised in their favor, and they are built where in the judgment of the private capitalists it will finally prove profitable to build them.

Is there any law requiring a railroad company to expend any given amount of money in constructing its line? Search the statutes. The fact is, that if this legislature had enacted a law similar to the Minnesota elevator law, the farmers' associations would have won a decided victory, because that law recognizes a grain elevator as a public necessity in the transportation of grain—a connecting link in the chain—and the state exercises eminent domain in favor of any person who desires to build an elevator upon the railroad right of way and is willing and able to pay a reasonable compensation for the site to its private owner, the railroad company.

This is the correct theory. No high-handed "order" requiring the railroad company to "give" or "afford" "equal facilities" amounts to a pinch of snuff if enforcement of that order means the taking of the private property of the railroad company without rendering due compensation.

However, let not the Farmers' Co-operative Grain and Live Stock association (and company) despair. There may be a way out—although it will take a number of years in litigation to determine it.

Our supreme court, in the case of McLucas vs. St. J. & G. I. R. Co., holds that "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," and that the "general public has the same interest in the preservation and maintenance of railroads as it has in the maintenance of other highways," and that, therefore, "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."

Interpreting this in harmony with the rules of governing highways generally, and with the rules governing the ownership of property, this seems to indicate that the OWNERSHIP of railroad rights of way in Nebraska is vested in the public. Of course, the United States supreme court holds otherwise in the Elmwood case above cited—but this point has never been urged: That the constitutional provisions in section 4 of article 11, are a part of every railroad charter in Nebraska, and that the roads were built with full knowledge that the ownership is in the public, and not in the corporation.

The statute of limitations does not run against the sovereign; hence, no person could acquire public property by adverse possession, however long and peaceable. Our court has applied this to railroad rights of way, and the conclusion is irresistible that these rights of way must be PUBLIC PROPERTY. There is only one possible loop-hole: Like Louis of France, the railroad corporations might insist that "I am the state"—and there are many things in the actions of this legislature to warrant such a statement.

What shall be done? The Independent advises this: Apply to the county commissioners for permission to erect an elevator upon a specified portion of the "public highway," to-wit: Upon the right of way of the Blank & Blank Railway, and, with such permission granted, go ahead with the building. You will probably be stopped by a writ of injunction, or you may find it necessary to apply for one yourselves to prevent section men from tearing down at night as much as you put up in the day time; but in any event, with proper legal advice you can get into court in such a manner as to raise the question of ownership squarely. In short, if the Ramsey bill is enforceable at all, the procedure must begin before the county board upon the theory that the railroad right of way, being a "public highway," is subject to the supervision of the board, and public property.

The leading articles in Wilshire's Magazine for April are Prehistoric Remains at Harlyn Bay, by Prof. Davies, of Yale; Ingersoll, the Orator, by Louville H. Dyer; Forest Protection by Theophil Stanger; an Interview with John A. Hobson, the famous English economist, now lecturing in this country; Spartans and Helots, by Prof. T. E. Will, and a further instalment of Jack London's powerful story of the People of the Abyss. The editorials on the Approaching Nuptials of the Trust and the Earth, the Mysterious Mr. Hearst, and Senator Hoar's Broad Creed exhibit Editor Editor Wilshire's comprehensive grasp of present-day affairs and his faculty of putting somewhat abstruse ideas in popular and easily intelligible form.

LEGISLATURE ALMOST THROUGH

BY FAR THE ABLEST ASSEMBLY OF NEBRASKA LAW-MAKERS EVER GATHERED AT THE CAPITOL.

IS NOW COMPLETING ITS WORK

Unfairly Criticised and Badgered by Partisans It Has Attended Strictly to Business.

No session of the legislature in many years has been confronted with more delicate conditions. No assembly of law-makers in the history of the state has acquitted itself with more credit. No disreputables have disgraced the body and no scandal has been developed.

THE BANKERS RESERVE LIFE appreciates the high character of this body. It refused to be bulldozed by would-be leaders. It declined to be driven by would-be bosses. Nothing could move the membership from the honorable, straightforward conservatism, of which the body was composite. Indifferent alike to cajolery and carping criticism, individually and collectively,

THE LEGISLATURE ATTENDED TO BUSINESS.

The first great test applied by the law-makers to every proposition was its righteousness or want thereof. Next the question of expediency was discussed. Once convinced that any proposed law or resolution was right and expedient no amount of pressure could swerve them. Individuals differed in opinion honestly, of course, but they were all actuated by good motives and rare intelligence.

B. H. ROBISON, PRESIDENT of the Bankers Reserve Life Association, has been familiarly acquainted with every legislature assembled in Nebraska in the last twenty-five years. He says this body is superior to any other in point of uprightness of individual character, general individual intelligence and industry. Many of the leaders are policy holders in the Bankers Reserve Life Association and many more will be patrons of the aggressive, progressive home company before the year closes.