

ments are frequently of little use. How can such agreements be made effective? The history of American railway practice affords a ready answer. To give effectiveness to such arrangements has been the aim of nearly every practical railway manager since, at least, the year 1870, but no scheme ever devised has been even moderately successful unless it has provided for the distribution of traffic between points connected by two or more routes in shares fixed in the agreement or determined in accordance with its terms. Popular will has attached to such arrangements the name 'pool,' and though it is in many respects inaccurate and misleading, not much can be gained by quarreling with an accepted designation. We shall not be terrified by the name, for we have discovered that the thing to which it refers is nothing more than a device for giving effect to agreements which are in themselves wise and beneficial, which tend to secure justice in the distribution of the cost of transportation, and also to reduce its aggregate.

Those who are only superficially acquainted with the history of railway administration in the United States will inquire how it happened that so beneficent a practice was prohibited by congressional enactment. The interstate-commerce law was intended to prevent unjust discrimination in railway charges, yet it was weighted down and some of its most salutary features rendered nugatory by the anti pooling clause, which is in irreconcilable conflict with every other substantial provision that it contains. The *'power to compete,'* in the words of the statesmanlike chairman of the Interstate-Commerce Commission, who is an honored member of this conference, *'is the power to discriminate.'* Why, then, did congress attempt to perpetuate competition while endeavoring to prevent its natural results? One might answer, not incorrectly, that this action was in obedience to a 'Texas idea' not unlike that which refuses here to consider the nature and consequence of industrial combinations while vehemently demanding their statutory condemnation and prohibition, for the anti pooling clause was actually forced into the interstate-commerce law by a faction led by a member of the house of representatives from the state of Texas, and against the judgment of the most enlightened members of both houses of congress, the alternative presented being the defeat of the measure under consideration and the indefinite postponement of all regulative legislation.

When the committee on interstate-commerce of the United States senate conducted the exhaustive investigation which preceded the passage of the act to regulate commerce pooling had been an important feature of American railway practice for at least fifteen years.

Yet objections to the system are infrequently found among the large number of opinions gathered in the public hearings, and explicit expressions of approval are numerous. Students of transportation and public officers charged with the duty of studying railway methods had previously declared in favor of agreements for the division of traffic. A member of this conference, Dr. Joseph Nimmo, Jr., who was for many years at the head of the Bureau of Statistics of the United States Treasury Department, declared in the case of an official report published in 1879 that railway pooling was then favored by the general public because it had proved to be the means of 'arresting discriminations,' and the Iowa Railroad Commission in its report for 1878 expressed the same opinion by declaring that it considered 'the pool as the only agency that can compel the through traffic to bear, as it should, its proportion of the interest on the cost and expenses of maintaining and operating the roads.'

Whatever public condemnation the pooling system received aside from that inspired by the irresponsible utterances of demagogues, who found attacks upon railway corporations, just as their prototypes a few decades earlier had found the enthusiasm for railway construction, an easy and convenient means of attaining office, was due to the fact that those arrangements were never permanent, and in consequence never wholly eradicated the evils they were intended to correct.

Indeed at almost the same time that the officials referred to gave their approval of the pooling system, Mr. Albert Fink, the originator, organizer and official head of the most complete pooling association ever established, was complaining of their lack of permanence and stability and urging the necessity of legislation that would give them legal sanction and effect.

In fact, all railway pools in the United States were extra-legal arrangements, dependent for their execution upon the good faith of the parties, upon the violation of which none of them would venture to appeal to the courts for redress. So lacking were these arrangements in the necessary cohesive qualities that each railway considered their abrogation an inevitable incident, pending which constant vigilance was necessary in order that the day of dissolution should not find it an unready or tardy contestant in the struggle for traffic. The period during which a pooling contract was in force was consequently one of armed neutrality, and, as in many cases between nations, that relation was regularly disturbed by the depredations of irresponsible members of the rival forces. As the apportionment of business in any pool which should follow a period of warfare would probably be based upon the proportion

offered (if a tonnage pool) or carried (if a money pool) prior to the disruption of such an agreement, there was a strong incentive to take advantage of every opportunity to gain traffic by its violation which promised immunity from detection.

Thus there was never an entire abandonment of the baneful practices of competition, there were always discriminations in favor of competitive traffic, and there were frequent periods during which all the evils of unjust discrimination operated to their fullest extent. Nevertheless, as indicated in the quotation from the Iowa Railroad Commission, the evils of excessive competition were in some degree mitigated, and the pooling arrangements, unstable and unsatisfactory as they too frequently were, indicated a means of securing, in a large measure, that substantial identity among the interests of the carrying corporations which is a prerequisite to the lowest and most equitably adjusted rates.

When the interstate-commerce law became effective all pooling contracts were discontinued, and there is evidence that the railways generally sought in good faith to observe its provisions.

Railway associations were formed which announced as their objects the maintenance of reasonable rates and the enforcement of the regulative provisions of the law. The coöperation of the weaker lines was in many instances purchased by permission to charge slightly lower rates than those collected by their stronger rivals. Subsequently other efforts were made to effect the satisfactory division of traffic without its actual transfer from one line to the other after consignment and without resorting to the methods technically characteristic of tonnage pools. The practical failure of these measures is generally recognized, and most railway patrons now agree with railway owners and managers in urging a modification of the interstate-commerce law that will permit agreements for the apportionment of traffic; operations thereunder to be conducted under the supervision of the federal authorities.

This change has been recommended by several annual conventions of national and state railway commissioners, by the national board of trade, by a conference of representatives of boards of trade and other commercial organizations of the principal cities of this country; it has been approved by members of the Interstate-Commerce Commission and by the author of the anti-pooling section of the present law. A bill embodying it and including also several very desirable amendments to the interstate-commerce law which had been strongly urged by the commission passed the house of representatives during the last session of the Fifty-third Congress, and would unquestionably