

have received the support of a large majority of the senate had not the rules of that body and the early approach of the end of the session, combined with the obstructive tactics of a numerically insignificant minority, made it impossible to secure a vote upon its passage.

It should be observed that whatever pooling measure may finally be adopted by congress, operations under it will certainly be free from objections such as those growing out of the instability which characterized pooling arrangements prior to 1887. The contracts permitted will have the express sanction of a federal statute, and any railway corporation that may be injured by the failure of another to observe the terms of a pooling agreement to which both parties may invoke judicial aid in securing the particular redress that is found to be adequate and suitable. Such agreements will naturally provide for a definite period of operation, with possibly continuance thereafter subject to notice of the intention of any party to withdraw. The possibility of unjust personal discriminations will, it may reasonably be hoped, be minimized by the discontinuance of separate soliciting for traffic, and the substitution of joint for independent ticket and freight agencies.

Mr. President, I believe it only reasonable to assert that the facts to which I have directed your attention establish the existence of a natural tendency toward combination in the railway industry, that they demonstrate the futility and the fatuity of legislation intended to prevent such combinations, and establish beyond controversy the advisability of restoring the pooling privilege, with federal supervision and legal effect and sanction added. It would be almost superfluous to introduce evidence, as would be easily practicable, that the prohibition of pooling—itsself a restriction upon freedom of contract—artificially stimulates the tendency toward other forms of combination. All are familiar with the facts which amply prove this to have been the case since 1887.

It remains to consider the relation between railway combinations and combinations in other lines of industry. Nearly every one who has addressed this conference has alluded to discriminations in railway rates as one of the causes of industrial combinations, and perhaps the most important public contribution made by this body will, when in the lapse of time its results can adequately be summarized, be found to be the classification of combinations with regard to whether they are the result of superior efficiency in production, whether of machinery or organization, or of special privileges at the hands of government or the agents of government.

Whatever may be held as to the consequences of the first class there can be

no doubt that those combinations that are dependent upon special favors of any kind are harmful in the extreme.

Railway corporations are agents of government in the sense that they are empowered thereby to exercise functions usually and properly regarded as governmental. If these agencies unjustly discriminate among their patrons, those receiving unfair advantage may be able to dominate markets and destroy competition. In the words of the present chairman of the Interstate-Commerce Commission, whose clear and vigorous English is always quotable:

"The ultimate effect of preferential rates is to concentrate the commerce of the country in a few hands. The favored shipper, who is usually the large shipper, is furnished with a weapon against which skill, energy and experience are alike unavailing. When the natural advantages of capital are augmented by exemptions from charges commonly imposed, it becomes powerful enough to force all rivals from the field."

We have found, therefore, in unjustly discriminating rates a primary cause of a dangerous and harmful industrial growth. Wise statecraft will seek to remove the cause. But how? Can this be accomplished by making it a felony to grant special rates, as suggested by the great orator from New York,—Hon. Bourke Cockran,—who has preceded me in indicating this cause of industrial combination? Apparently not, for it is now nearly a decade since the interstate-commerce law was so amended as to provide the penalty of imprisonment, not only for the railway official who makes but for the shipper who accepts any concession from the open published rates. Nothing could be more drastic, yet discriminations so accomplished have been a conspicuous feature of the railway situation during nearly the entire subsequent period, the existence of the evil has attained public notoriety, and its magnitude has alarmed and amazed the nation, yet no prison door has ever opened to receive an individual convicted of violating the statute.

These practices are not contrary to the ethics of modern business, selling or buying at lower than the usual prices or giving or accepting special rates are not recognized evidences of depravity, the methods of making concessions are easily hidden, and those interested in their detection are, as compared with their beneficiaries, too frequently inexperienced and powerless.

A little while ago I endeavored to show that discrimination is the natural result of competition among railways seeking the same traffic. These concessions are not voluntarily granted by railway officials, but are wrung from them through fear of losing important traffic; they are grudgingly and reluctantly given to those who control traffic

that is vitally important. To quote Chairman Knapp once more:

" * * * it is simply out of the question to have at once the absence of discrimination and the presence of competition." And:

" * * * the choice lies between competition on the one hand, with the inevitable outcome of discriminations which favor the few at the expense of the many, or like charges for like service, which can be realized only by permitting and encouraging coöperative action by rival railroads."

Mr. President, I can add nothing to this extract from one who has been for years charged with the duty of attempting to enforce a statute that in its present shape is unenforceable. To prevent railway discrimination, to destroy many of that evil class of combinations which is based upon illegitimate advantages, it is necessary to restore to railway corporations under federal supervision the power to divide competitive business. Then the possibility of unjust personal discrimination will, it may reasonably be hoped, be minimized by the discontinuance of separate soliciting for traffic, and the substitution of joint for independent ticket agencies. The temporarily divergent interests of separate bodies of stock and bondholders will be subordinated to the general interest of all the carriers in the satisfactory adjustment of the railway system to the ends for which it exists, and the latter will constitute a powerful agency for the elimination of unjust discriminations, including those among competing localities and communities. Whenever the exact proportion of competitive traffic which will fall to each particular route is as certain as that it will receive all of the non-competitive traffic, both will be treated with equity, for there will be no reason for favoring cities served by more than one railway. The selfish interests of carriers will then make powerfully for justice, while such regulative instrumentalities as may be established by the public will have the advantage of dealing with a railway system that has become practically unified. Until then the existence of unjust discriminations must not be charged against railway corporations or railway officials, but against the public agents, legislative or otherwise, which have insisted upon the continuance of the uneconomic, wasteful and socially detrimental form of railway competition.

MUTUAL DECEIT. The mutual fire insurance companies of Nebraska are doing a tremendous business and House Rent Holcomb is president of one of them. When disastrous and extensive losses come to the policy-holders in these companies will it transpire that, unconsciously and with no evil or fraudulent intent, they have been mutually deceived?