

STREET RAILWAY TRACKS

Public Ownership and Control Advocated in Massachusetts.

CONCLUSIONS OF A SPECIAL COMMISSION

Relations of Street Railways to Cities and Towns Thoroughly Discussed—Private Ownership of Cars Favored.

Street railways and their relations to cities and towns are pretty thoroughly discussed in the report of a special commission appointed by the legislature of Massachusetts last year to look into the subject. The substance of the report, printed by the Boston Transcript, points out the difference in the character and development of the street railway as contrasted with the steam railroad, showing that the problems of the latter are those of the private right of way, while those of street railways are altogether those of the public thoroughfare in use by vehicles of diverse private owners. Two bills are submitted, one providing that cities and towns shall construct and keep in repair the street car tracks like any other part of the public streets or highways, with provisions that the care of all companies may run upon the tracks after the companies have obtained permits from the proper authorities. No authority is given for cities and towns to own or operate cars, but they are authorized to provide for a tax on the street railways.

One section provides that the returns of street railway companies to the tax commission shall be audited and kept in record by the treasurer of the company giving the length of the tracks operated by the company in each city and town in the state on the 30th of October of each year. All tracks, sidings and turnouts, whether owned or leased, or over which the company has franchise rights, must be measured and the measurements reported to the treasurer of the company. The amount of dividends paid thereon during the year ending on the 31st of September 30, and for each year from the organization of the company.

Another section provides that when the company's stock has aggregated an excess of 8 per cent of its capital stock the company shall pay to the state, for each such year a tax equal to the amount of such excess, but no company is to be obliged to pay this excess tax if it has not since the date of its organization, paid dividends to its stockholders in excess of 5 per cent per annum on its capital stock.

Section 4 provides that before November 1 of each year the tax commission shall apportion the tax for each street railway company in the state under chapter 13 of the Public Statutes and under the preceding sections of this act and towns and cities may have street railways in their public ways in proportion to the length of track operated in those cities and towns. The tax commission shall determine the apportionment of every such city and town of the share of the tax so apportioned, and he shall also certify to the state treasurer the shares thus apportioned as finally determined, in case of appeal.

THE MATTER OF TAXATION.

It is provided that on or before the first day of November of each year the commission of every city and town in which any street railways are operated shall assess on each company operating such railways therein a tax of an amount equal to the sum of the following percentages of the gross receipts of such company as the length of tracks operated by it in such city or town bears to the total length of tracks operated by it, to-wit:

In case of companies whose annual gross receipts per mile of track operated are \$7,000 or less, 2 1/2 per cent of the gross receipts; in case of companies whose annual gross receipts per mile of track operated are more than \$7,000 and less than \$14,000, 2 1/2 per cent of the gross receipts; in case of companies whose annual gross receipts per mile of track operated are more than \$14,000 and less than \$21,000, 2 1/2 per cent of the gross receipts; in case of companies whose annual gross receipts per mile of track operated are more than \$21,000 and less than \$28,000, 2 1/2 per cent of the gross receipts; and in case of companies whose annual gross receipts per mile of track operated are \$28,000 or more, 3 per cent of the total annual gross receipts.

As to taxation, mentioning their suggestion that street railway companies share in the cost of paving or removing sidewalks, the commission says: "The commission is of the opinion that the present method of assessing the tax on the gross receipts of the companies is a distinct question, and so far as the street railways are concerned, has already been decided. It is a well recognized principle that the treatment of street railway and other public service corporations in Europe, as well as elsewhere, is to provide that, after the owners and operators have received and investment, any excess of profits over and above a fixed amount should be paid to the government in the nature of a franchise tax. This principle commends itself to the commission. It is not subject to the criticism, which appears to be sound, that a limitation of dividends hampers enterprise and improvement."

The system of taxation of corporate franchises in use in Massachusetts is well defined and, in general, works satisfactorily. All corporations, including street railway corporations, pay to the state their proportionate share of the general tax, according to the market value of their capital stock, which is ascertained by the state's ability to distribute. The distribution of this tax is a distinct question, and so far as the street railways are concerned, has already been decided. It is a well recognized principle that the treatment of street railway and other public service corporations in Europe, as well as elsewhere, is to provide that, after the owners and operators have received and investment, any excess of profits over and above a fixed amount should be paid to the government in the nature of a franchise tax. This principle commends itself to the commission. It is not subject to the criticism, which appears to be sound, that a limitation of dividends hampers enterprise and improvement."

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WAIVERS BEFORE THE COURT

Papers Signed by Bondsmen at Instance of Principal in Dispute.

IMPORTANT FEATURE OF THE BARTLEY CASE

State Undertaking to Show Consent of Sureties in Alleged Irregularities in Regard to the Treasurer's Bond.

The suit against the bondsmen of ex-State Treasurer Bartley, which was postponed last Wednesday on account of the absence of General Cowin of the counsel for the defense, was resumed yesterday morning before Judge Powell.

The fight is now being fought over the waivers of the bondsmen, which are assuming great importance in the prosecution of the attorney general. Three witnesses were called in connection with the matter—Thomas F. Darnell, the attorney for Bartley; J. S. Kirkpatrick, his partner and one of the attorneys for Governor Holcomb, and Governor Holcomb. The latter was on the stand but a short time before the noon recess and was recalled this afternoon. The waivers are two in number, one of them being signed by C. C. McNish and the other by the remainder of the original bondsmen. The latter is as follows:

"We, N. S. Harwood, F. M. Cook, A. B. C. Smith and J. S. Kirkpatrick, of the county of Platte, State of Nebraska, each of us having signed the bond of Joseph S. Kirkpatrick, as attorney for the defendant, do hereby consent and agree that any and all additional names that may hereafter be added to the bond shall not affect my liability on said bond and that each of us are held liable the same as if his name had been added January 7, 1895, 1895.

The waiver signed by McNish is similar with the one except that it is dated 1895, is inserted. These two waivers are to be a two-fold purpose for the state. By them the state hopes to throw down the gauntlet to the defense, but the bondsmen are invalidated by the fact that Governor Holcomb did not approve the bond on the date signed by law, it being held that the waivers should be dated January 7, 1895, but that he failed to do so. The waivers are also to controvert another defense made by the bondsmen, to-wit, that the addition of names to the bond, in connection with the latter defense the bondsmen were striving to show that the waivers were not secured until after the trial, and were secured and that therefore they have no legal worth.

DARNELL'S TESTIMONY.

The state recalled Thomas F. Darnell, who testified Wednesday that he was acting as attorney for the defendant, and that he had secured the bond in the governor's office on Monday, January 7, after more signatures had been secured than were required by the bond. He did not know whether the bond had ever been in Governor Holcomb's possession until after the trial. He had not been positive on this point before, but he brought out that he and Bartley had talked of bringing mandamus proceedings to compel the governor to return the bond on Monday morning, January 7, but no papers were ever drawn up.

C. C. McNish, one of the bondsmen, was called to the stand by Attorney General Smith. He testified that he was acting as attorney for the defendant, and that at that time was acquainted with Joseph S. Kirkpatrick. After these preliminaries he was asked if he had seen the bond. He answered in the affirmative and said further in answer to a question that he had sent it by mail to Governor Holcomb on Monday, January 7.

When did you receive that paper, Mr. McNish?" was asked by General Cowin on cross-examination.

"I received it on January 7," answered General Cowin then endeavored to introduce through the witness a letter which accompanied the waiver. The state objected to this and McNish, who was acting as attorney for the defendant, said that notice had been served on McNish to produce in court the very identical letter—the one that had been sent to Governor Holcomb. McNish said that the letter had been in his possession for some time, but he had not been able to produce it until he had been subpoenaed to do so. He then asked the attorney for the defense, "On the afternoon of January 7, 1895," was the letter in your possession?"

THE IMPORTANCE OF THE WAIVER.

The testimony goes to the root of the contention of the waivers. One of the defenses is that the bondsmen did not agree to permit the addition of the waivers to the bond. The state is seeking to overthrow this defense by means of the waivers. According to the evidence of other witnesses, however, Bartley came to his city on January 7, 1895, to get the additional signatures. According to McNish's testimony he did not sign and mail the waiver until the afternoon of January 7, and that he did not do so until he had come to Omaha.

J. S. Kirkpatrick, the attorney of Lincoln, who has hopped up in the case, has been called to the stand in connection with Governor Holcomb as a relative, was next called by the state. He was used to show that the signatures to the bond had been secured before January 7, 1895, the day Bartley came to Omaha.

The witness said that Attorney Darnell, his partner, was engaged on January 5 and 6 in getting signatures to the waivers and he believed to the best of his recollection that these signatures were secured on January 6. Witness Kirkpatrick also stated that on Friday, January 6, he was in the governor's office with Bartley, Darnell and General Holcomb. The substance of the governor's conversation was that he had made up his mind to sign the waivers and that he intended the signatures to be secured by the original bondsmen before additional signatures were secured. Bartley agreed to do this and the waivers were secured.

SUSPENDS THE LETTER.

"What is the court expected to do in the matter?" asked Judge Powell finally. He decided that he could not compel the attorney to produce the letter, but that he would not allow him to introduce any secondary evidence to show the contents of the letter. He also ruled, however, that he would not allow him to introduce any secondary evidence to show the contents of the letter. He also ruled, however, that he would not allow him to introduce any secondary evidence to show the contents of the letter.

DEFENSE MEETS A SNAG.

"To the best of my recollection it was," the defense sought to get the witness to answer, but he was unable to do so. The same questions were put to the witness in connection with every other name on the waiver and the same answers were given. The witness refused to testify to anything except according to his best recollection.

THE LAST SOKOL'S BAIL.

At the last annual ball of the Tol Jed Sokol over 100 persons appeared in different characters typical of the old country and many handsome costumes were in evidence. The first prize for the best costume was awarded to Miss Barbara Kaufman. It consisted of a silver dress. The second prize was given to Mrs. S. S. Smith. The third prize for men was captured by Anton Novak. The fourth prize was given to Frank J. Flata. Fifth prize, silver shawl, went to Joe Siska. The committee having charge of the affair consisted of J. V. Masick, Joseph Kalkic, Frank Jelen, B. Sama, John Wertzman and John Mik.

St. Valentine's Mail.

The amount of mail received at the post-office yesterday shows that the custom of sending valentines is being adhered to. No residence carries can make full deliveries today. All three-trip carriers have abandoned one trip and five-trip carriers had to give up one morning trip, making two full afternoon deliveries. Mr. Lacey, manager of the carrier, says there is no way of telling the exact number of letters, but that at a rough guess he would say they had had a ton of them.

HOLCOMB TELLS THE STORY.

At the afternoon session Governor Holcomb testified that he had secured the bond in the governor's office on Monday, January 7, after more signatures had been secured than were required by the bond. He did not know whether the bond had ever been in Governor Holcomb's possession until after the trial. He had not been positive on this point before, but he brought out that he and Bartley had talked of bringing mandamus proceedings to compel the governor to return the bond on Monday morning, January 7, but no papers were ever drawn up.

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The report takes up the complaint, on one hand, in behalf of the public, that too great privileges with too few restraints will be granted to the management, only a fair average return, and just about what it averages to be in the United States. They continue as follows: "While in the business of operating street railways, as in every other business, there are—first, reasonable limits, there should be—exceptional cases of large profit, offsetting cases of failure or even reasonable profits, yet the idea sometimes entertained that the electric railway is likely to prove a source of extraordinary or abnormal profit must be abandoned. It is a close business, yielding, with skillful and prudent management, only a fair average return, quite within the limit allowed by statute and conservative opinion as adequate and proper for investments of this character."

ARRANGING THE POSSIBLE.

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