Aldrich on the Sanborn Decision

Governor of Nebraska Sharply Criticises Federal Courts for Interfering in Behalf of Railroads With Efforts of States to Regulate and Control the Rates Chapged and Service Rendered in Handling Intrastate Commerce

At the conference of governors held at Spring Lake, N. J., last week, Governor Aldrich of Nebraska delivered an address on "The Right of the States to Fix Intra-State Traffic Rates." This address was in most part devoted to the analysis of the recent decision of Judge Sanborn in the Minnesota rate case, and during its course Governor Aldrich rather sharply criticised the court for its attitude. He said: "It is now becoming quite the thing for federal courts of inferior jurisdiction to the supreme court of the United States, to invade the province and rights of these sovereign states by subterfuge, cunning device, and falacious reasoning and thus nullify state laws and tie up generally the government of the states, depriving them of their right to control their own internal commerce."

With this postulate, the governor went over the ground of the relations between the sovereign states and the federal government, outlining the constitutional rights of each, and especial the right of the states to control intra-state traffic. The principles of law involved he showed to have come down for many years through courts holding in unison in support of the right of the state to regulate charges made for public service by public or quasi-public agents, and established in many sustained decisions as unquestioned. But these principles, he declared, are overlooked by the federal courts that are now invading the domain of the states, and seeking to legislate for them through the power of the court. He went on:

"If federal courts are permitted to go on as they have been recently in annulling freight rate and passenger rate statutes and wiping every vestige of state regulation off the statute books, I again ask wherein does lodge the right to control those corporations to the end that only just and equitable charges shall be paid by the public? If, for instance, a shipment of wheat was made from Hastings, Neb., from the west central part of the state over to a flour mill at Omaha, Neb., and this wheat being ground into flour and again shipped from Omaha up to Long Pine, Neb., to a jobber there, and supposing the rates charged were exorbitant, unjust, and discriminatory, wherein, I say, is the power to control and regulate this situation?

"If such state control is wiped off the map and the aggrieved parties should appeal to the Interstate Commerce commission, could they go into a federal court, and would they not be met with the common carrier with the claim that they have no cause of action over which a federal court or the Interstate Commerce commission had jurisdiction, because on the face of the pleadings, there would not be a federal question in the transaction? At most, it would be incidental and indirect. The common carrier would successfully hold to the proposition that this was not commerce among the states, but that it was a commerce originating in the state; therefore, it was not one of the powers delegated by the states to the federal government and consequently no relief could be had. Then, in that and in all similar cases, the railroads would be without any regulation whatever in intrastate business. The states, so far as they are concerned, find too much sympathy and tolerance on the part of the federal courts in this county on behalf of the railroads.

"It will hardly be presumed that the legislature and prominent citizens of any state would lend a helping hand or even desire such a situation as that a common carrier should be crippled or forced into the hands of a receiver. As a rule, men upon the various railway commissions of the several states are persons of the highest character and patriotism, conscientious and scrupulous in all that they do and undertake. They know the importance of having the railroads thrifty and prosperous and making legitimate dividends upon actual investments.

"The trouble is that the managers of these common carriers overlook an all-important proposition and that is that the shippers, the producers, and the common carriers have a common cause and should be common friends; that they are mutually interdependent; that if, by any process, the one is crippled and checked in development, it correspondingly affects the other; that each, in the last analysis, must so adjust their business with each other that it is placed on a basis of live and let live; that freight rates and passenger rates can be placed so high as absolutely, in effect, to destroy the entire business.

"On the other hand, freight rates and passenger rates can be placed so low that companies may be forced into the hands of a receiver. The one is just as lamentable as the other and no other should be tolerated, and if left to the public such a situation will not exist. I am here to say that the legislation of today, as carried on and regulated by the several states of this union is, in the main, just and equitable and fair, and that railroad companies doing business today under these regulations are prosperous.

"As a notable instance of this, I call your attention to my own state in its regulation of the common carriers therein. I here make the assertion that under the regulation through the freight rate law, the passenger rate law and the railway commission, the railroads of the state of Nebraska are on a better business basis and on better terms with the people of the state and do business with them more satisfactorily than they have ever done before in the history of their existence. Under the 2-cent fare law the figures will show that the business of Nebraska in passenger traffic has greatly increased.

"I say here, without fear of successful contradiction, that the following, which is a copy of the Nebraska freight rate law, is fair and just and equitable. It will be noticed that this law is not a hard and fast rule, but possesses the element of elasticity and will adapt itself to the changing conditions of trade and business, which prevents the charging of rates which are unjust and non-remunerative.

"Section 1. It shall be unlawful for any railway company or common carrier, operating or doing business in the state of Nebraska, to charge, collect or receive for the transportation of live stock, potatoes, grain and grain products, fruits, coal, lumber or building material in carload lots, within the state of Nebraska, more than eighty-five per cent (85 per cent) of the amount fixed in the classification and schedules of such railway companies or common carriers for the transportation of such property in force and effect on their various lines of railway on January 1, 1907, until after the State Railway commission shall have provided a greater rate upon any article or property in such schedules from the rate herein fixed.

"Section 2. The State Railway commission shall have the power to hear and determine whether or not the freight rate upon any article or articles in such schedule or classification of rates is either so high as to be unjust to shippers, or so low as to be unremunerative or unjust to any common carrier effected thereby, and upon complaint, in writing of any person or corporation affected thereby, particularly specifying the article or articles upon which such rates are either too high or too low and the facts in connection therewith, said railway commission shall set such cause for hearing and upon a trial thereon and a full hearing after notice thereof, shall either raise or lower the rate herein fixed upon such article or articles, to the end that the same shall be just and reasonable to all parties concerned.

"It will be noted by the provisions of this measure that has been in force and effect in my state for four years last past that there is not a single arbitrary and unjust provision in it, and that it is the experience of any common carrier doing business in that state if the rate therein provided is unjust and nonremunerative, all that he has to do, is to make a complaint to the railway commission showing all the facts and that commission will be forced to change the rate therein provided and fixed and establish a rate that is just and equitable to all parties coucerned.

"It so happens that your speaker is the author of this measure, and in framing it and making investigations I became convinced that it would be impossible to fix a hard and fast rule, an absolute statute, lowering freight rates generally, as it would be sure to do, because volumes of business change, commercial conditions and commercial relations change and what would be a just and equitable rate today or this year, one year or two years from now, under changing business conditions and short crops and by reason of expenditures, would be a rate which at that time would be unjust and non-compensatory. And so I said that if a law could be framed that had the element of elasticity; a law that could adjust itself and become adaptable to all of these changing conditions and relations as aforesaid, that would be a law that at all times would be just to the shipper and just to the common carrier.

"When such a law is upon the statute books can it be said that the legislature which passed it was radical, wild-eyed and had a desire to hurt business? Suffice it to say that so well has this law worked in my state that not a single complaint has been filed by the common carrier or the shipper before the railway commission. It is true that there is an action now pending in the United States circuit court of appeals wherein it is sought to nullify this law absolutely. In the beginning this action was commenced in a formal way to preserve their rights to litigation in case it should ever be necessary, and there was not any intention in the beginning to push the matter. But of late the common carriers are pushing this case for a hearing. They have been greatly encouraged by the wholesale annulment of state statutes by the recent decisions in Minnesota and other states.

"Notwithstanding the fair treatment, and notwithstanding that the old bitterness that once existed between the public and the common carrier has been abated and satisfactory business relations are maintained today, yet it seems that the directors and stockholders of the east are insistant that their western managers push this case to a conclusion. They seem to have an unalterable and insatiable thirst to do business without regard to law. In other words, the policy of these common carriers in general is that they should not be regulated or in any way controlled in making classifications, schedules and charges for transportation of property any more than the merchant who sells groceries, clothing, and dry goods should be controlled in the prices at which he sells.

"The railway commission of Nebraska has been in force and effect for four years. More than 1,000 orders and judgments have been entered during that time by this commission affecting the common carriers and the public. Of the 850 judgments and orders that have been entered by the commission of my state, only two of them have been appealed from. They have forced a better service; have forced the railway companies to build new depots, to re-ballast their tracks, to make various connections, have forced them to change schedules, have made them put on trains and have done innumerable things for the general betterment of the service of the company and the public.

"In the beginning, the railway companies of my state went into the federal court and tried to enjoin state officers from the enforcement of this law. The case was tried out on its merits, and on final hearing in the United States circuit court of appeals, Sanborn presiding and associated with him were Adams, a circuit judge, and Carland, a district judge. The two justices, Adams and Carland, upheld the law and Justice Sanborn dissented.

"The issue presented in that case was that the Nebraska Railway commission had made some classifications and schedules affecting grain rate shipments. It notified the railway company of its intention to fix and establish these rates, but, mind you, no rates had been fixed or established and none in any way agreed upon. The common carriers succeeded in getting a temporary injunction. It was heard on its merits in the district court and the final hearing was had before the United States circuit court of appeals. The issue tendered by the common carriers was simply this: that an injunction could issue to control in advance the exercise of the legislative power of a commission.

"This was an unwarranted position; a position against all authority, because there is no better legal principle established in this country than that a legislative body cannot be enjoined in advance from proceeding to make laws within the scope of its jurisdiction. And again it is clear that the weight of authority is against Justice Sanborn, but he is of the opinion that the Nebraska railway commission should be enjoined from exercising its legislative and governmental functions provided for it both by the legislature and the constitution, and they are both well within the clear provision of the law of this country. Notwithstanding all this, Justice Sanborn dissented. And I mention it in this connection for the reason that he seems to be the presiding genius over this court of appeals, whose particular function is to annul every vestige of state control in regulating rates and charges for intrastate commerce. The position that this justice takes is not only autocratic, but he has not given one single authority in the whole realm of jurisprudence upon which to base such a dissenting opinion. It would have been interesting, had the learned justice written an opinion on this proposition, but he was content to simply dissent without giving reasons.

"This Nebraska Railway commission is a legislative body and was acting well within the scope of its authority. He, by dissenting, presumes that this commission would fix an unjust and inequitable rate if it fixed any at all, a position that no court has a right to assume. If the learned justice had had the same experience with railway commissions that the people have had with certain courts in nullifying state government he might have been warranted in assuming the position that he did. History, fact and precedent are all against his position. There is no case anywhere to be found that upholds his dissent. Such a position as he took in that case may well be regarded as the source and origin of the clamor for the recall of judges.

"If it be said that a provision for the recall of judges is too drastic (which I concede to be the case), I answer that a radical and heroic treatment is often necessary to cure a radical wrong. When court decisions disturb and even override our entire scheme of government it is time to call a halt and cast about ourselves for a remedy to check a usurpation that may, in the near future, develop into a galling tyranny if allowed to go on unchallenged.

"If this indefensible position of Justice Sanborn, in the Nebraska case, were the only one he had taken in this class of litigation, we might pass it by with all charity and say it was simply a mistake—simply an inexplicable error of judgment. But when this gentleman renders a decision along the same line in each and every case we are justified in saying that he believes in nullifying, by court decisions, the sovereign powers of each of these states.

"This imperial federation of union and liberty under which we live is the most complete, the most satisfactory, yet devised by man. These sovereign states in having delegated to a great central government certain rights, and having reserved unto themselves all of the powers not granted, have more than a century of successful experience in representative government; have, during all of this time, controlled, finally, with justice and equity their completely internal affairs, as provided for by the fundamental law of the land, as expressed by the entire body of people of the entire country.

"And if any change is desirable or is sought by a majority or more of the people of this country, there are certain well marked and well defined lines of procedure to accomplish it; but suffice it to say that it never has been nor was it ever intended to place so momentous a responsibility on any one man or set of men.

"Therefore, I say that when any court, whether it be the United States supreme court or a court of inferior jurisdiction, continually makes effort by a judicial decision to do that which the people and the people alone have a right to do, then I say that such a court is seeking to establish judicial tyranny. And if allowed to proceed unchallenged along the line of this unwarranted assumption of power, representative government will simply be that in name only.

"In this connection, I invite your attention to an examination of an elaborate opinion recently written by Judge Sanborn heretofore referred to in the Minnesota freight and passenger rate cases.

"An examination of this opinion discloses the fact that it is based upon the general propositions: First, that the rate law reducing rates on freight traffic is a reduction of from 30 to 25 per cent and that the rate so provided in nonremunerative, as is also the 2-cent fare law. He finds that the Minnesota maximum rate law would net annually to the Northern Pacific Railway company 2.9 per cent, to the Great Northern 3.55 per cent, and to the Chicago, St. Paul, Minneapolis & Omaha 2.47 per cent.

"It is interesting to note again, in connection with the discussion of Judge Sanborn's judicial opinion, that this sweeping and all-important decision is based on a valuation of the railroads, fixed by three real estate agents and the employes of railroads, and apparently disregards the physical valuation of the roads placed by the state. The state of Minnesota, at enormous expense and with much pains in detail had carefully appraised the railway properties of the state by having them gone over by men of the greatest competency and efficiency; men who were impartial and skilled experts along this line of work. Yet their testimony was apparently discredited and thrown to the winds, and the weak, prejudiced, incompetent statements of these three real estate agents and railway employes is given all force and consideration.

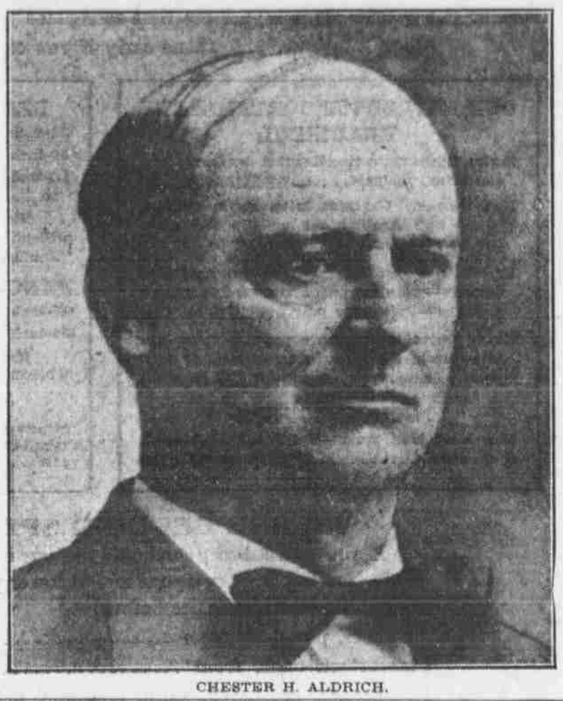
"The second proposition is that, admitting the rate law would met the railroads remunerative rates, he holds that the same are void by reason of the fact that they directly regulate and substantially burden interstate commerce. In coming to this conclusion the learned judge bases all of his reasoning and argument upon the effect that these rates have upon certain towns in the border line between Minnesota and North Dakota.

"The position that the court takes in this regard has never been passed upon by the United States supreme court. It is true that the supreme court has handed down many decisions and applied the rule that state laws must not regulate interstate trafic, but it has never decided whether or not a substantial reduction in freight and passenger rates that affected certain cities only across the border of a state that was reducing its freight and passenger rates was such an interference of interstate commerce as to nullify the law. In all previous cases which the United States supreme court has passed upon it has always taken into consideration the general volume of traffic and as to how this was affected over an entire state by the regulation in another state.

"Another important matter in this Minnesota case, worthy of note, is that Judge Sanborn, in determining that this statute was void because it was a regulation of interstate traffic, is that he did not consider how and in what way this Minnesota rate affected the volume of traffic

(Continued on Page Five.)

Criticizes Federal Judge



CHESTER H. ALDRICH.