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Thomas Hayes -
ARGUMENT

BEFORE THE

COMMITTEE OF COMMERCE

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

ON THE

REAGAN BILL,

FOR THE

REGULATION OF INTERSTATE COMMERCE.

BY

ALBERT FINK.



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MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE :

It would be impossible to treat in a brief space of time, exhaustively and in a deserving manner, a subject so complicated and of so much importance as that under your consideration, viz. : the enactment of a law "*to regulate Interstate Commerce and to prohibit unjust discrimination by common carriers.*" I do not propose, therefore, to weary you by the consideration of all the details of this subject, which embraces nothing less than the solution of the so-called "Railroad Problem," but shall briefly refer to the general principles involved, and point out the difficulties which are encountered in its practical solution, and show how it can and how it ought to be solved, and prove that the proposed measure is entirely inadequate to accomplish the desired end.

It may be proper here to remark, that the railroad companies are not hostile to the intended object of the bill ; on the contrary, they are exceedingly anxious that it may be attained. They are only opposed to the proposed measure because it does not and cannot reach the evils which it intends to remedy, and because its enactment into a law will complicate, rather than aid in the solution of the railroad problem. The railroad companies are now themselves earnestly engaged in solving this problem without the aid of Congress ; and during the past year great progress has been made in that direction, an account of which I propose to give hereafter.

To form an intelligent and just opinion of the effect and merits of the proposed measures, it is first necessary to clearly understand what are the evils to be remedied by this bill.

It will be found that the complaints of the public are directed against the commercial management of the railroads—the charges

made for transportation service, or the adjustment of the railroad tariffs. We hear of no public complaint against the technical management of the roads; and it may be said with some pride, that as regards the accommodations and facilities furnished to the American people, the safe and prompt and economical transaction of the passenger and freight traffic, the management of the railroad in this country is superior, or, to say the least, not surpassed in any other country. A passenger may traverse the continent, from the Atlantic to the Pacific Ocean, while almost enjoying the comforts of a home. Freight is being shipped from and to the remotest parts of the continent with great expedition, and without subjecting the shipper to the many annoyances and inconveniences which are experienced in other countries. These results have been secured partly through the consolidation of a number of roads into long lines, or large systems under one control, or through the co-operation of the many yet existing separate railroad companies, by which unity of management, so necessary for the proper transaction of business, has been practically secured.

The solution of the railroad problem in this country is, therefore, confined to the satisfactory settlement of the tariff question, and may be stated in a few words, to consist in the attainment of the following objects:

1. *To establish a reasonable and equitable railroad transportation tariff for the whole country.*
2. *To maintain this tariff with the greatest possible degree of permanency.*

I purposely state the problem under these two separate heads, as it will simplify its consideration.

The solution of the first part of the problem involves the consideration of these questions: "*What is a reasonable, equitable and justly discriminating railroad tariff?*" It is held by some that a tariff, in order to be reasonable, must be made in exact proportion of the cost of the service performed; but then the question arises, "*What is the cost?*" and this is a very difficult question to answer. In some instances the cost of transporting one ton of freight one mile may only be one-tenth (1-10) cents, and at the same time, on the same road under different conditions, it may be as much as

ten (10) cents or more. To make even an approximate estimate of the cost in any given case is a work of great difficulty and complexity, and strictly to comply with the condition that a railroad tariff, in order to be reasonable, must be based upon actual cost, and must be made in exact proportion to cost, is an impossibility.

It is equally as difficult to answer the question, "*What constitutes just and unjust discrimination?*" It is conceded that discrimination in transportation charges must be made; but when are such discriminations just and when unjust? In order to ascertain this we may apply this test: A tariff is just when under its operation one shipper is not injured at the expense of another, and when like charges are made for like services. It would, however, be in vain to search for *one* general principle applicable to *all cases* that occur in daily practice, according to which we could, *a priori*, decide whether a railroad tariff complies with these conditions or not.

For example, the principle that transportation charges should be made in exact proportion to the distances over which goods are carried, generally known as the *pro rata* principle, is recognized, in the abstract, as correct, and in a great many cases can be and is being acted upon; but it is not of universal application, because it comes in conflict with the principle already mentioned, which is also recognized as a correct one, viz., that a tariff should be based upon the cost of transportation. Now, as the cost of transportation per unit of measure and distance is greater for shorter distances than for longer, also greater for smaller quantities of goods than for larger, the *pro rata* principle must be modified or abandoned, at least to the extent that the cost of transportation may require it. And so in regard to the equality of charges for like service. A railroad company may charge twice as much to one shipper, per 100 lbs., as to another for the same kind of goods shipped from the same point to the same destination, and yet this, in itself, is not proof of unjust discrimination, as the quantity shipped by one may be comparatively small as compared with that shipped by the other; and the actual cost of carrying the smaller quantity may be twice as much per 100 lbs. as to carry the larger quantity. It is, therefore, necessary to take the cost of the service into consideration to determine what consti-

tutes like service; and here, again, we meet the difficulty of determining what is the actual cost in each case.

But in a great many cases the *pro rata* principle, or the principle that tariffs should be made in the exact proportion to the cost of service, must give way to other and more important considerations. The value of the articles to be transported, and their prices in the different markets in which such articles are to be exchanged, determine most frequently the transportation charges, regardless of the cost to the carrier or distance to which the articles are to be carried. So long as there is any profit at all to a railroad company in moving certain articles of commerce, no matter how small that profit may be—either to meet competition of markets or of other transportation lines—railroad companies should not be obliged to refuse to carry such low priced freight, because they cannot afford to do the *whole* of their business at so small a profit. They must be allowed to make greater charges on articles which can bear higher rates of transportation, and disregard the principle that charges should be in exact proportion to cost. They must either do this or the articles which do not stand the higher charges of transportation cannot be moved at all, and the profit which could have been derived from their carriage would most likely be replaced by a further increase in the charges on those articles which can stand higher rates. In all the business transactions of a common carrier, as well as in all other commercial transactions, the laws of trade, and commerce, of demand and supply, ought to be allowed to have their full influence; and hence they must have a most important bearing upon the construction of railroad tariffs.

If these laws were disregarded, it would soon be discovered that railroads could not be operated at all, or that their usefulness to the public and to their owners would be immensely curtailed. Now, as railroads were not built for the mere purpose of carrying out abstract principles, but for the purpose of making them subservient to the wants of the people, for the purpose of facilitating trade and commerce and of developing the resources of the country, it follows that the *great commercial principles*—those that give existence and life to the roads—become paramount, and that the "*pro rata principle*" or the "*cost principle*" can be applied, if at all, only in so far as they do not come in conflict with the recognized laws of trade and commerce.

From these considerations, it will appear that transportation tariffs cannot be established by simple arithmetical or mathematical rules ; they require the application of quite a number of principles, all correct in themselves, and this to a great variety of ever changing facts. This is necessarily the work of experts, and not the work of legislative departments of a government. All attempts to lay down specific rules for the regulation of tariffs have heretofore failed. Nothing else could be expected, considering the nature of the case ; and, as some of the provisions of the bill under consideration are only repetitions of former attempts, they must either meet with the same fate, or, if enforced, must result to the injury of public interests.

Mr. Blanchard, in his argument made before the committee, yesterday, has ably discussed a great many of the practical questions that have to be considered in making railroad tariffs, and no doubt convinced you of the intricacy of this subject.

Upon a more careful consideration, I am sure your committee will be led to the conclusion that, in order to protect the people against extortion or unjust discrimination of common carriers, you cannot devise or formulate a more precise and definite law than the common law, which embodies the experience and wisdom of past ages, and which, I am convinced, cannot be improved.

It guarantees to the people reasonable and just rates of transportation, and necessarily leaves to the courts to decide what constitutes reasonable and just transportation charges. These are questions that can only be decided after a full consideration of all the facts controlling each case. It may be possible to pass an act by which the enforcement of the common law can be facilitated, and this, I understand, is one of the objects of this bill ; and in some cases, especially as far as the local traffic of railroads is concerned, I have no doubt that some abuses may be corrected by a stricter enforcement of this law ; but as far as the interstate traffic is concerned, with which alone you have to do, and under interstate traffic may be comprehended the competitive traffic of the railroad companies—even the *strictest enforcement of the common law*, if such were practicable and just, which it will be shown it is not, would and could not accomplish the object of your bill, viz. : to prevent unjust discriminations.

Owing to the commercial nature of the transportation business, the laws of trade and commerce, which should govern the management of that business, come, under certain circumstances, in direct conflict with the duties of the *common carriers as public servants*. The spirit embodied in the common law can only be put into practical execution by restricting or regulating to a certain degree, the operation of the commercial laws—the law of competition, as applied to the business of the common carriers themselves. It cannot be expected that a number of public servants, when engaged in competitive struggles with each other—in other words, when engaged in a free fight—could perform their public duty as common carriers, and guarantee equal and indiscriminating rates of transportation to all shippers.

Such guarantee can only be given when these public servants are made to act in concert in all matters relating to their public duty—the establishment and maintenance of reasonable and just transportation tariffs. But if the public prefers that the laws of competition should remain in full force as between these public servants, it must dispense with the enforcement of the law regulating common carriers, and be satisfied with enduring the evils which result from the violation of the latter, viz., unjust discrimination, and constant fluctuations in the transportation charges.

The correctness of this statement will be proven when we come to consider the true causes of the evils which you seek to remove. Upon close investigation it will be found these evils do not arise from defective tariffs. Notwithstanding the difficulties encountered, the railroad companies have succeeded in establishing tariffs, by agreement between themselves, covering the whole of the interstate traffic, which are considered satisfactory by the public, or are as nearly so as it may be possible to make them. Perfection must not be looked for in this, as in other complicated transactions in which human agencies play a part, nor must it be expected that the difference of opinion which naturally exists between parties having for sale and those wishing to purchase an article, as regards its value, could be removed by legislation—congressional or otherwise. This difference will exist as long as there are sellers and buyers. The pressure

of the public and the general clamor for lower rates of transportation, must not be looked upon as positive proof that something is wrong, and should not lead your committee to the conclusion that something or the other must be done by Congress to satisfy the demands. This is a subject capable of investigation and positive proof; and I venture to assert, that if your committee would undertake to make a critical examination of the existing transportation tariffs as established by the railroad companies, and made known to the public; or if your committee would cause such examination to be made, it would be fully demonstrated that the published tariffs for the interstate commerce are, upon the whole, satisfactory to the public, or ought to satisfy all reasonable demands.

The difficulties which you propose to remedy do not arise from the fact that there are not properly and well considered and satisfactory tariffs of transportation for the interstate traffic of the country, but from the fact that these tariffs are, in most cases, utterly useless, because they are not carried into practical execution. They are often disregarded almost as soon as they are made. Each company may change or abolish them at pleasure; and it is from this state of affairs from which result all the evils of the transportation business which you seek to remedy—the general confusion in the transportation rates, unequal charges to shippers at the same locality, discriminating rates between different localities, uncertainty and constant fluctuations in the transportation rates. If you, therefore, desire to remove these evils, it becomes necessary to consider, first, the causes which prevent the adherence to the proper and just tariffs; and the question has to be answered, *Why are the proper tariffs not enforced?*

Simply because there is no authority in this country—no power to enforce them. Each railroad company is at liberty and permitted to deviate from the established tariff whenever it pleases, although it may have given voluntarily its consent to it, and agreed to maintain it; yet, in the hope that it may secure some advantage over its competitors, any one of the companies may, and frequently does, enter into secret arrangements with shippers, and reduces the rates, in the hope of procuring a larger amount of business than it otherwise could obtain. No sooner

is it discovered that one company engages in this practice, than the others must and do follow. No sooner has the tariff in any one city been disturbed, than the tariff in other places must necessarily also be disregarded. Owing to the mutual dependence of tariffs one upon the other—a feature of the transportation business to which I shall more particularly refer hereafter—a change at one important point must be followed by a general readjustment throughout the whole country, or through a large section of the country.

Under the process of underbidding, heretofore so generally practiced by competing railroad companies, a practice which is always encouraged by the shippers, and is generally called *competition*—although not a correct name—no just and equitable tariff can be maintained. I say competition is not a correct name, because legitimate competition can always be carried on openly and above board; the process here described, when competitors are under an agreement to maintain the same tariff, is simply a process of cheating and deceiving, and ought not to be dignified by the name of competition.

I venture to say, that every complaint which may have been made to any member of this committee—every complaint which has been brought to light in the various investigations—and I refer particularly to the investigations lately made by the Committee of the Legislature of the State of New York—can be traced, directly or indirectly, to the cause which I have just assigned, namely, the strife between the railroad and other transportation companies to secure business for themselves and to take it away from their competitors.

Take, for example, the frequent complaints made by local shippers, who have to pay higher rates of transportation than shippers over longer distances from points of competition. Rates from Chicago, Cincinnati and other great trade centres in the West, to New York, Philadelphia and Baltimore, have been made as low as ten or fifteen cents per hundred pounds over a distance of a thousand miles, while local shippers, situated only fifty or one hundred miles from New York, Philadelphia or Baltimore, may have to pay as much or more.

There is no justification for such great discrimination, but no one company is responsible for it. It arises from the fact that

the agreed and proper tariffs, at points where a number of railroads can perform the same service, are not maintained, the rates being reduced unreasonably low, often below the actual cost of transportation, while from local points they are maintained upon the properly established basis.

The rates at local points are under the control of a single railroad company, while at competitive points they are not controlled or controllable by any one company. They can only be controlled by the railroad companies collectively, acting as one road.

In the absence of this necessary co-operation between all the companies which are in a position to influence, change, or altogether annul such tariffs, the abandonment of the best regulated tariffs is unavoidable, and without their strict maintenance, chaos and unjust discrimination must reign supreme.

With a knowledge of these facts, you can now test the merits of the bill under your consideration; and ascertain whether, if it becomes a law, it will have the effect of preventing unjust discrimination. I propose to show that it will not accomplish this result. And why not? Because the proposed remedies do not strike at the root of the evil.

The bill is only operative upon each individual railroad company. It says to each company, you must not discriminate unjustly between your patrons; your charges must be the same for like service performed. This is well enough, as far as it goes, but it does not go far enough. It simply reiterates and attempts to enforce the law that is already in existence, and under the operation of which, any shipper that has suffered from unreasonable and unjustly discriminating tariffs, can find redress. If the mere enforcement of the common law were sufficient to prevent unjust discrimination, why has it not been enforced, and why has not unjust discrimination been prevented? The fact is, the strictest enforcement of the common law, or of the Reagan Bill, should it become the law, cannot prevent unjust discrimination. Each railroad company for itself, may strictly obey these laws and carry out faithfully all their provisions, and yet the worst sort of unjust discrimination may and will still exist.

To illustrate and prove the truth of this statement :

Suppose that the Baltimore & Ohio Railroad Co. charges to a shipper A, 40 cents per 100 pounds on grain from Chicago to New York, and the same rate to all its patrons for contemporaneous and like service. It will have strictly complied with the Reagan Bill. Suppose, also, that the Pennsylvania Railroad charges on the same day 25 cents to another shipper B, from Chicago to New York, and the same to all its patrons for like and contemporaneous service. Both companies will have strictly complied with the Reagan Bill, and yet the shipper A, who may be a next door neighbor of B, and compete with him in the same article of trade, pays 15 cents more per 100 pounds than B. The effect of the independent action of these two companies is precisely the same as if one and the same company had made this unjust discrimination.

It certainly can make no difference how discrimination is produced, or by whom it is practiced, as long as it exists.

To prevent this sort of unjust discrimination, it is necessary that the two roads in the case I have mentioned for illustration, and also the other Chicago roads and their connections which can carry this freight to New York, should agree together upon a like charge to be made for contemporaneous and like services to all shippers at Chicago. These several roads should co-operate first in agreeing upon a joint tariff, and then strictly adhere to it. It is only in this way, *and in no other*, that the shippers in Chicago, or in any one locality where a number of roads compete for the same traffic, can be put upon the same footing, and that the spirit and intention of the common law and the Reagan Bill can be practically enforced.

To illustrate this subject still further, suppose the rate from Chicago to New York on grain per hundred pounds is to-day 40 cents, while from St. Louis, upon a strict mileage basis, the rate is 4½ cents. These are the rates actually observed to-day; they are reasonable and just, and do not discriminate between Chicago and St. Louis, and therefore ought to be, and are satisfactory to all parties. But suppose the New York Central Company charges in Chicago 25 cents to-day, while the St. Louis roads charge 45 cents in St. Louis. The St. Louis shipper would at once complain against this unjust discrimination; but the Reagan Bill would afford him no relief and grant him no protection.

In order to secure to the St. Louis people a non-discriminating tariff—a tariff that will enable them to compete on equal terms with Chicago—there must be an understanding or an agreement, there must be co-operation between the several lines centring in Chicago with the lines centring in St. Louis in determining the just and proper difference in the tariff from the two cities to the same point of shipment, as justified and made necessary by their relative location from the markets and by other commercial considerations; and after the relative tariff is established upon the correct and satisfactory basis, there must be joint and co-operative action in maintaining the same.

Each of the terminal roads in Chicago has a number of connecting roads which reach to the seaboard. Counting the various and distinct combinations of connecting roads with the main roads, there are upward of twenty distinct organizations, working over some 50 different routes to the East, each having separate interests, soliciting business on its own account, and at liberty to make such tariffs as it pleases. A similar state of affairs exists at St. Louis, from which place freight is shipped over 107 different routes to the seaboard, controlled by more than twenty different organizations, so that there must be an agreement between upward of forty different interests, all of which must be satisfied as regards the tariff and the amount of business each receives under it, in order to secure the intended object of the Reagan Bill: to prevent unjust discrimination. I have only mentioned Chicago and St. Louis; but you must now also consider that the rates made from these cities influence and control the rates from almost every section of the country, from Indianapolis, Louisville, Cincinnati, Toledo, Detroit, in fact, from the lakes down to the Gulf of Mexico, and from the Atlantic to the Pacific Ocean; and further consider, that the co-operation of all the roads interested in the carrying business of this large country is required to regulate and maintain just and proper tariffs; and you may be able to form some idea of the complications and difficulties of the problem, to satisfy the demands of the people for indiscriminating railroad transportation tariffs.

Under these conditions, is it to be wondered, then, that there has been complaint of unjust discrimination? Is it to be won-

dered that there has been the greatest confusion, demoralization and chaos in the transportation tariffs of the country? The wonder is, considering the number of independent railroads, each at perfect liberty to make whatever tariff it pleases, each company having different interests at variance with the other, each striving to secure for itself by fair or unfair means all the business it can grasp, each managed by men of different skill, capacity, and of peculiar characteristics; and also, considering that the closest co-operation of all these various and conflicting elements is absolutely necessary to reach the grand result—the establishment and maintenance of a uniform, just and equitable railroad tariff, for 85,000 miles of railroads, in a country dotted all over with lakes and intersected with a great number of navigable streams and canals—additional elements of complication—the wonder is, Mr. Chairman, that the men who have managed this complicated business for you heretofore, have done it so well, and have confined within such narrow limits, the evils and mischief which necessarily must follow the rapid and unprecedented growth of this new system of transportation, which has worked so great a change in the development and commerce of this country, one unprecedented in the history of the world.

Allow me, Mr. Chairman, to say, that the abuse which is heaped upon railway companies and managers, because they do not at once control that which, in the very nature of things, is uncontrollable by their single efforts, appears to me unjust and undeserved.

If I felt sure that I had succeeded in explaining to you the magnitude and complexity of the problem that you are attempting to solve by this proposed law, and the real causes of the evil which grew up necessarily with the multiplicity of competing railroads, it would not be necessary for me to again refer to the defects of this measure, and repeat the assertion that it utterly fails to cope with the difficulties of the situation.

You will find that no provision is made in this bill looking to co-operation between railroad companies, as a necessary condition toward the attainment of its object. It not only does not authorize such co-operation, but strange to say, it actually forbids all combinations between railroads, by which they have heretofore been enabled to maintain, at least, some degree of

system and order in the conduct of the transportation business. Moreover, this bill is to do away with the good that has already been accomplished, and to send us back into the chaos from which we are just now emerging. It professes to undertake the prevention of unjust discrimination, and yet it says to the railroad companies, you are forbidden by authority of law to take the proper and necessary steps to obviate and remove this unjust discrimination.

All legislation for the last forty years, on the subject of railroad tariffs, has been futile, because legislators have failed to comprehend and to recognize the true nature of the subject with which they attempted to deal. They have directed their laws toward the suppression of the outward symptoms of the disease instead of its cause. The true cause of the evils to be remedied lies in the separate action of a great number of independent competing roads, no one of which, by its single efforts, can remove the evils. Any legislation, to be effective and successful, must deal with the system of railroads as a whole; in other words, it must look to the combination of all the roads, so as to make them, in effect, act as one road, so far as their duty as public servants requires them to maintain just and equitable rates of transportation, and prevent unjust discrimination.

The real question before your committee, if you desire to solve the railroad problem, is, How shall this unity of action be secured?

Before I present my own views regarding the method by which the railroad problem may be solved in this country, and the legislation necessary for that purpose, I will briefly refer to the actual or attempted solution of the problem in other countries.

In France, we find that the difficulties which you propose to remedy have never existed, at least not to any great extent, for the reason that the causes do not exist. There is not the multiplicity of competing railroad lines which are in a position to render like service to the people. The country has practically been divided among a few systems of railroads which are not interfering with each other, and the tariff of each can therefore be made, in a measure, independent of the other, and is not subject to be disturbed by the diversity of interests of competing

roads. Moreover, the government exercises direct control over these tariffs; and when they are once established, it sees that they are strictly observed. It must be remembered, that the government is practically in partnership with the railroad companies, having guaranteed a fixed interest on the capital investment, and therefore, the right to exercise such control over railroad tariffs cannot be questioned. And it must not be overlooked, that competition between railroad companies is necessarily eliminated by governmental control.

In Belgium, the experiment has been tried of controlling the private railroad companies by the railroads owned by the State. These two systems have been in active competition, and even the State railroads have been obliged to resort to the usual means of carrying on that competition not always in consonance with the laws that should govern common carriers. The final result of the Belgian experiment is, that the government of Belgium is now about to purchase the last important private railroad in that State, and thus control, virtually, the whole railroad system of the country; in which case, it will secure that co-operation and unity of management which I have pointed out as necessary to prevent unjust discrimination. Competition between separate companies ceases with State ownership.

In England the condition of the railroad management resembles more that of this country. The railroads are not under the direct control of the government. Competitive struggles have had the same result in England as here—dissatisfaction of the public, and ruin to the railroads, and finally consolidation of the roads into a few large systems, by which the tariff question has become more manageable. In addition to this, the government has aided the English railroad companies greatly in securing unity of management, by chartering an institution called the "*Clearing House*," through which the railroad companies transact all their business, establish their tariffs, and have the means in their hands of maintaining the same, thus practically uniting the management of the separate roads into one, and preventing strife between railroad companies; so that Mr. Pease, Member of Parliament, could say, before a committee, in 1872, "I do not think that at this moment there is a competitive rate existing in the kingdom."

In Germany the railroad system and its management resembles that of this country, in so far as the railroad companies are the creatures of the several States. The consequent want of unity of management has, therefore, been felt in that country to a greater degree than elsewhere in Europe, and perhaps as much so or more than in this country. After the most thorough consideration which the ablest minds of Germany have for years given to the solution of the railroad problem the conclusion has been reached that the necessary unity of management can only be properly and rightfully secured through the complete ownership of the railroads by the government. In pursuance of that policy the government of Prussia has already purchased all the important roads of that State. This also eliminates the competition between separate companies from the railroad problem.

It would be rather unfortunate for this country if this plan of State ownership was the only one under which the proper management of the railroads could be accomplished. It may be remarked, however, that the idea that the federal government should take complete control of the railroads has often found expression in this country. A few years ago the lower house of Congress passed a bill, according to which the President of the United States should appoint nine persons authorized to establish the railroad tariffs of the country, even without first acquiring proprietary rights to do so. The impracticability and injustice of such a measure requires no comment.

The various and varied experience of other countries in the solution of this modern transportation problem proves the fact, beyond a doubt, that the competing common carriers of the railroads of a country cannot fulfil their duties as public servants without unity and concentration of management—a fact which I have endeavored to demonstrate, from a consideration of the dual character of the transportation business—its commercial and public nature.

The question before this Committee, if it desires to deal effectively with the railroad problem, is, therefore: How shall this unity of management be attained in this country, consistent with the public interests, and in accordance with the peculiar institutions and the practical working of this government? That it cannot be obtained through governmental ownership of the railroads is a self evident proposition.

Before considering this question further, it may be of interest to your Committee to know the work that has already been accomplished without the aid of Government, by the railroad companies themselves, toward the solution of the railroad problem.

The railroad companies have endeavored to secure unity of action in all matters in which it is absolutely necessary for the proper management of the roads, in the interests of the public, as well as in the interests of the proprietors of the roads, by voluntary co-operation. But this co-operation has been most inefficient in all matters relating to the uniformity, equality and permanency of railroad tariffs, although in other respects, as already mentioned, it has been very successful.

It is on account of the great complexity of the tariff problem that this voluntary co-operation has not met with better success, and not for want of effort or desire on the part of the railroad companies to control it, although the public, ignorant of all the difficulties to be overcome, presume to hold each separate road responsible for the working of the whole system. The difficulty, however, has not been so much in agreeing upon the proper tariffs, but in carrying them into practical effect. The necessary means and machinery for that purpose have not been adopted, and there is no authority to enforce such agreements.

The managers of roads meet in convention, and make agreements which are broken before they disperse. Every one who has paid the least attention to this subject is familiar with these unsuccessful efforts. The press of the country chronicles almost daily some conference held by officers of railroad companies, or some agreement made, and on the following day it chronicles its violation or discontinuance.

During the last few years, however, some progress has been made toward a closer and more effective co-operation. Associations of railroad companies have been formed, with a proper organization, through which it was made *at least possible* to control the important tariff question. The first complete organization of this kind, and to which I shall refer hereafter more particularly, and explain fully its object and its methods, was the Southern Railway and Steamship Association, formed in October, 1875, and which is still in effective operation.

In 1877 the four Trunk Lines—the New York Central, Erie, Pennsylvania, and Baltimore and Ohio Railroads—entered into a similar compact, by which all the West bound traffic from the seaboard was managed under one organization. In April, 1878, the Grand Trunk and Vermont Central companies commenced to co-operate with the four other Trunk roads. Through this compact it has been practicable to control the tariffs on the whole of the West bound traffic from the seaboard to all points West of the termini of the Trunk Lines. Like charges have been made to the public for like service. The tariff has been permanently maintained for a period of two and a half years, with only one change during that time—something that has never been accomplished before; thus securing practically to the people the object of the proposed measure before your committee—reasonable, just and permanent rates of transportation. I do not mean to say that perfection has been reached in this respect, because much remains to be done; but cases of violation of the tariff rates, as far as the Trunk Lines can exercise their influence, are now the exception, and not, as heretofore, the rule.

Similar efforts at closer and more effective co-operation have been made by the railroads west of Chicago and St. Louis, which have been in a great measure successful.

During the last year the principal roads embraced in the territory east of the Mississippi and the Atlantic seaboard, including the Trunk roads, and the Grand Trunk, have formed an organization known under the name of the Joint Executive Committee, for the purpose of securing uniform and equitable rates on the whole of their East bound traffic. This organization is of the same character as that of the Southern Railway and Steamship Association, the operation of which will be more fully explained hereafter. Acting as chairman of that committee, I beg leave to read an extract of the report which I was able to make at its first annual meeting in Chicago, in December last.

“It may not be out of place here to refer briefly to the past operations of this committee, which has now been established one year this day, although its organization was not fully perfected and put into working order until June last. Since then the committee has accomplished, in a great measure, the object

for which it was created, namely, to establish reasonable and just tariffs for the competitive traffic, and to permanently maintain such tariffs, securing thereby reasonable compensation to the companies, and remedying the great evils that have resulted from want of co-operation between the railroad companies, to the serious injury of their own and the interests of the public."

"You have now for the first time established a practical method by which the competitive traffic of your roads can be properly managed and controlled. Heretofore this was impossible; the mere holding of conventions of railroad managers, passing resolutions, and then dispersing and letting things take care of themselves, each party acting as it sees fit, will not accomplish the purpose of intelligent joint management of the large property under your charge. You have now added to the legislative department—your conventions—also a permanent executive department, the duty of which is to see that the resolutions passed and agreements made are faithfully carried out. In addition to this you have also established a judiciary department, consisting of a board of arbitration, whose duty it is to settle peaceably any question of difference, without resort to wasteful warfare, with all its injurious consequences. You have thus formed a complete government over this large competitive traffic over which it has heretofore been found impracticable to exercise intelligent control."

"It must be remarked, however, that the only bond which holds this government together is the intelligence and good faith of the parties composing it. To give greater stability and permanency to the operations of this committee, it would be desirable to make its operations legally binding upon all parties by legislative action, provided it can be shown, as I believe it can, that its operation is beneficial to the public interests. I consider that no other legislative action would be necessary to remedy the evils which it has been attempted unsuccessfully to remedy by State legislation, and which may be attempted by congressional legislation, I fear, with like results."

"The companies composing this association have already, by their voluntary action, abolished the pernicious system of special contracts, and all shippers are now put upon an equal footing. Rates for the last few months have been everywhere (in the terri-

tory in which these roads are located) maintained, and the great disparity between the local rates and the competitive through rates, which has heretofore been so great a source of trouble and complaint, has ceased to exist. Had such a result been sooner reached, we would have heard nothing of legislative control of railroads."

"I express it as my opinion, the result of the most careful consideration, that the only legislation required to accomplish the object which the most zealous advocate of the public interests can desire to accomplish, is to legalize, and even to enforce, the co-operative system of the railroad companies, so far as it is necessary to establish and maintain reasonable rates of transportation upon a uniform and equitable basis, treating alike all parties situated alike—in other words, to carry out the plan adopted by the committee, and which has been so successfully practiced during the last few months. I know that objection will be made by parties not conversant with all the conditions of limitation and restriction which are enforced upon railroad companies in establishing their tariffs, that such co-operation or combination, as it is generally called to make it appear odious, would lead to extortion on the part of the combined railroad companies. The past action of this committee is the best proof that such fears are unfounded. The committee, during its existence, has established rates lower than they have ever existed before, and even the highest rates charged have not exceeded those of the last few years, but have been considerably lower, although the conditions for high rates have been more favorable this year than they have been for years past."

"The only thing which the co-operative system has accomplished, is the maintenance of the established tariffs and the abolishment of the contract and rebate system. It is only when agreed rates are maintained, no matter by what means, either by the voluntary action of the railroads or by direct legislative enforcement, that the evils of the transportation business complained of by the public can be remedied."

"If, therefore, our work is to be judged by its fruit, it should recommend itself to public favor."

From this, it will appear that, in my judgment, the only measure

now wanted in order to give permanency to the operations of these associations, is to recognize the same as necessary and beneficial, to give legal force to the voluntary agreements that may be made between its members, with the view of carrying out the objects of the association, namely, the establishment and maintenance of reasonable and non-discriminating transportation tariffs; in fact, the object of your proposed legislation. If Congress would pass a law to this effect, I would consider the whole railroad problem in this country settled, and settled upon truly American principles. It would allow the proprietors of the railroads to manage their own affairs, which they are much better able to do than it could be done under a centralized government, and at the same time it would restrict the operation of each individual road under the legalized co-operative system, to the extent that it is necessary, in order to carry out the intent and spirit of the law which regulates the conduct of common carriers in their capacity as public servants.

I regret that I have not sufficient time to point out at length the great merits and advantages of this American plan of governing the railroads, as compared with the European plans, to which I have referred. It accomplishes fully the object contemplated by the centralized government of the railroads in Germany. It brings unity in the management of the roads, as far as that is desirable or necessary; and, at the same time, it preserves the individuality of each road, and reserves to it the management of all its local affairs, in which it and the country through which it passes is alone concerned. Co-operation of the roads is only required in so far as the interest of the whole system of roads and the public interest requires it—no farther. In this respect, the government of the railroads would be based on the same principle that underlies the government of the United States—the general government taking cognizance only of matters in which the several States are *jointly* interested, leaving to each individual State—and, in this case, each road—to manage its own local affairs as it thinks best, in accordance with the laws of the State which created it.

Is it necessary to point out the great advantage of such a government as compared with that of a centralized government? Considering the extent of this country and the extent of its rail-

road system, a government of the railroads, such as is contemplated in Germany, would be utterly impracticable here. Government ownership accomplishes only one purpose—the same as the co-operative plan, it secures unity of management—in other respects the difficulties of the tariff question arise and would have to be dealt with, whether the roads are the property of the State or of private individuals; and State ownership would necessarily bring with it many new difficulties not experienced or even thought of under the management by private owners.

The plan which I propose, prevents that very centralization and absorption of the roads under the absolute control of one or few persons. It makes the separate, individual existence of these roads *possible*, and puts a check upon the consolidation of roads, which is regarded with so much alarm by the people in this country, but which is the natural result of the struggles of the railroad companies: the stronger must at last absorb the weaker. The proposed government of the roads secures all the advantages of consolidation, without its disadvantages. Instead of conferring upon and concentrating great power in the hands of a few, it has the contrary effect—it will leave that power distributed among a great many separate corporations.

It is, of course, not proposed that the separate railroads shall be compelled to co-operate with each other if they do not desire to do so, for it is presumed that self interest will induce them to adopt this voluntary co-operative plan; nor is it asked that the government should sanction the plan of co-operation without adopting such measures as may be thought necessary to properly supervise the operations of these associations, and to prevent all abuses of the privileges that may be conferred upon the roads. Such supervision may be accomplished by a commission, specially appointed for that purpose, upon a plan similar to that which is now working so satisfactorily in Great Britain.

One of the great difficulties of the railroad problem in this country arises from the fact that the general government cannot extend its jurisdiction to State roads, nor to the roads in foreign countries. Legislation, to be effective, must *necessarily embrace all the competing roads in this country, including the foreign competing roads, as well as the competing water lines.*

The tariffs of *all* competing carriers affect each other to such a

degree, that if you restrict the action of one, and do not put the same restrictions upon all the others, you would not only do an act of gross injustice, but you could not accomplish the purpose at all for which you undertake to legislate. Instead of preventing unjust discrimination, you would legalize and increase it.

The competing carriers, by railroad or water, in foreign countries, in one State or in several States, all must be permitted either *to enter the field of competition on a like footing*, or they must be *restricted alike*. If the bill under consideration would be otherwise unobjectionable, the fact that it does not reach State roads, such as the New York Central, while it applies to the Erie, a road competing for the same business, although located in different States, would not only prevent all the objects of the bill from being realized, but it would, in addition, have the tendency to destroy the value of the roads which are under restriction, and give undue advantages to the roads or the water ways to which the law does not apply.

The same holds good in regard to the Canadian roads, which are allowed, under the Reagan Bill, to continue all the abuses which the bill is intended to prevent, while it restricts the American roads in competing upon a footing of equality with their foreign rivals. And the same is the case with the rival transportation routes by canal, lake or river. They may continue to act as heretofore, pay rebates, make unjust discriminations at pleasure, and take the business away from the competing railroads, while the usual means of defence are taken out of the hands of the latter.

As the State governments cannot extend their jurisdiction beyond the boundaries of the States, and as the general government cannot extend its jurisdiction over the State roads nor to the foreign roads, it is clear that, under our present constitution, and with the present geographical boundaries of the country, neither the Federal government nor the State government, nor even through their concurrent action, could they justly and effectively legislate upon the subject of railroad tariffs, without interfering with the free laws of competition, and doing great injustice to American interests, in favor of foreign roads, or to the interests of the railroads which are so unfortunate as to pass through more than one State, and in favor of the roads

located only in one State, or to the interests of all the railroads in the country, and in favor of the water transportation lines, which latter are not to come under the restrictions of this bill.

All these difficulties are overcome by the adoption of the co-operative plan, under which the roads—foreign and State roads included—by their voluntary action, undertake to carry out the intention and spirit of the common law, as regards the duties of common carriers in their capacity as public servants, induced to do so by consideration of their own and of public interests. State lines, and even national boundary lines, are thereby at once overcome and obliterated, as has been practically demonstrated by the experience of the association known as the Joint Executive Committee during last year, which organization has practically carried out the object of the Reagan Bill in the *only way in which it can possibly* be done.

All that is required is to guarantee the permanency of this plan, which is now subject to be broken or discontinued at will by the disaffection of one or the other parties, and to recognize it as a legal method of railroad management. It is not proposed to use any compulsory means, other than to require the adherence of the members of the association to an agreement voluntarily made by them, in the same way and for the same reasons that other legal contracts, between private individuals or corporations, are enforced by authority of law.

I am aware that objections will be raised to the proposed plan, on the ground that it will restrict competition. It will, of course, be impossible to adopt any remedy that would do away with unjust discriminations and fluctuating rates, without restricting at the same time, to a certain degree, the strife—*but not the competition*—between railroad companies. It is just as impossible that the unrestricted strife between railroads, improperly called competition, could be continued, and at the same time equitable, permanent and non-discriminating rates of railroad transportation could be secured to the public, as it would be impossible to mingle fire and water into a homogeneous mass. The existence of one excludes the existence of the other. The choice is between this strife of these common carriers—or public servants—and all its attendant evils, such as unjust discriminations and fluctuating rates, or co-operation and

unity of action in all matters relating to the competitive tariffs with permanent, just and equitable rates. The people will have to choose between the two. Each of these plans have their advantages and disadvantages. In this, as in all other human affairs, perfection is not possible, and the question simply is, which is the lesser of the two evils?

It cannot be denied, that the past strife between the railroads has been productive of some good. Notwithstanding the great evils which have also been developed by it, it has no doubt aided in furnishing the people of this country with unequalled transportation facilities, and this at lower cost than the same facilities can be obtained in any other country. But the question may now be asked, whether, in this respect, these battles between railroad companies have not done all the good they can do, and whether the disadvantages arising therefrom have not become greater than their advantages. I am myself convinced that the latter is the case, and I am supported in this conclusion by the public sentiment. People do not call now for lower rates of transportation, because transportation charges have become as low as can reasonably be expected, but they ask for equal and indiscriminating rates.

Nor would I recommend the plan of these co-operative associations of railroad companies, and ask the sanction of the government for them, if thereby the real and legitimate competition between the associated roads would be prevented. The object of the association is simply to regulate intelligently, the competition between these roads and prevent its excesses, which result necessarily only in waste of property and in discriminating rates of transportation.

By guaranteeing the separate existence of a great number of competing roads, and preventing their consolidation under a single management, the spirit of competition is necessarily kept alive, but it is not to be exercised hereafter, by paying rebates to shippers, and by trying to take underhanded advantage of each other, but by *endeavoring to improve and increase the facilities of transportation*, and thereby retain or increase the claims of each road upon public patronage. Neither is it intended, nor would it be possible to restrict, by means of the proposed organized action of the railroad companies, the legitimate forces of compe-

tition in the open markets of the world, or of the powerful and controlling waterways. These forces remain unimpaired, and will continue to exert their full influence upon the railroad transportation tariffs of the country to such a degree, that it will be utterly impossible for railroad companies to practice extortion, and thus afford a much stronger guarantee to the public than any possible legislative device could do.

Although believing that the only action Congress could take to accomplish the object of the bill under your consideration, is to legalize the co-operative plan, yet I would not wish to ask Congress to pass any law at this time that would even have the appearance of restricting competition. We do not think that the people and Congress are now sufficiently well informed upon this subject to enact a law that will *effectually* reach the evils that it seeks to cure. It would require the whole time of the committee for months to enable it to legislate intelligently upon this subject. The appointment of a commission to investigate this question thoroughly, and to collect all the facts bearing upon it, and to report to the next session of Congress, would seem to be the first step to be taken to secure intelligent legislation. I submit, whether in the present state of the railroad problem, it would not be better to let the railroads endeavor to work out this problem in their own way, for the present, at least, and, in the meantime, to watch their operation, and collect information through a commission. All we now ask is, that our efforts be not obstructed by inefficient legislation, such as is contemplated by this bill.

Great progress has been already made in solving the railroad problem *without* the aid of Congress. The agitation of the question by the public has had the beneficial effect of directing the attention of the railroad managers more earnestly toward its solution, and much good has been done in this direction. The question does not now stand where it stood when it was first brought before Congress. Results have already been reached in its settlement which, two years ago, were considered impossible to attain, by the mere voluntary association of the railroad companies;—and there is now some hope that the evils of the transportation business may be remedied in this country, even without the aid of Congress. But if legislation shall be required, it can only be successful when the laws are framed in

accordance with the principles which I have endeavored to explain, and the correctness of which have already been practically demonstrated—principles which are not only not embodied, but are directly violated by the Reagan Bill, as they have been by all former legislation on railroad tariff questions.

(At this point Mr. Fink gave way to Mr. Chauncey M. Depew, counsellor and representative of the New York Central Railroad, who occupied the time of the committee until its adjournment.)

Continuation of argument of Albert Fink, in session of committee, January 15, 1880 :

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE :

In continuance of my argument of yesterday, I propose now to call your special attention to-day to a peculiar and very important feature of the transportation business, which is little understood by the public and has been utterly ignored by legislators in dealing with the railroad problem. You cannot devise any proper legislation for the regulation of tariffs and the prevention of unjust discrimination, without thoroughly understanding it and allowing it to have its full influence upon any measure that you may adopt. I refer to the interdependence of competitive tariffs of the separate railroad companies, or of the competing common carriers by water or land throughout the whole country.

It would be a comparatively easy matter to establish proper transportation tariffs, if each separate carrier could make its own without regard to any other—a condition of things which is generally supposed to exist, by the public. The fact, however, is that only upon a very small portion of its traffic can a railroad company exercise its own judgment as regards the tariff. It can only control the purely local traffic, or traffic which cannot be carried by any other rail or water route; and even upon this, competitive tariffs have great influence. This interdependence of transportation tariffs makes the tariff question one of great complication and far reaching consequences. You cannot change or alter the tariff on any one of the competing roads without affecting thereby, the tariffs of all others throughout a large section

of the country, or throughout the whole country. The railroad tariffs must, therefore, be considered and treated as a whole, for the whole country. You cannot change one part of the structure without destroying the equilibrium of the whole, and without making a thorough readjustment or reconstruction necessary, which requires the co-operation of all the roads whose action can affect or influence such tariffs.

While this interdependence requires unity of action and co-operation, or combination, as it is generally, but incorrectly called, of the common carriers, in order to establish and maintain permanently, indiscriminating, uniform and equitable transportation rates for the whole country, it also assures the people, at the same time, against the abuse of the so called power of combination—the exacting of extortionate transportation charges—because it is through this peculiar feature—the interdependence of tariffs—that the railroad tariffs of this country are controlled completely by the tariffs established by the competing carriers on the cheaper water routes, to whom nature supplies the roadways free of charge, and for whom the government keeps them in repair at the expense of the people.

The competitive railroad tariffs for the interstate commerce are not, as is so generally supposed, under the absolute control of railroad managers; but the carriers by the water routes really establish these tariffs, and the railroad managers have nothing to do but to conform to them. The water routes not only control the tariffs of their immediate rail competitors, with which they can render like service in the same localities to the same people, but their influence reaches, directly and indirectly, to the remotest parts of the country. Compared with this natural powerful regulator of railroad transportation tariffs, the efforts of State or congressional legislation to prevent extortionate charges appear to those who are fully conversant with the subject as perfectly useless; and the declamations against the baneful effect of the so called railroad combinations appear simply as idle talk. While many of the charters of railroad companies fix the maximum charge at eight cents per ton per mile, the water competition reduces the earnings of roads frequently to one quarter cent per ton per mile; and the maximum charge on grain from Chicago to New York will hardly ever again exceed $\frac{8}{10}$ cents per ton per mile.

To explain the effect of water competition more fully, I have to enter somewhat more into details, which I would like, for your sake, not to be required to do; but if this important feature of the railroad problem—the interdependence of tariffs—is not understood, you will continue to grope in the dark, looking for remedies for the existing evils, without being able to find any.

Commencing at the most northern boundary of the United States, the carriers on the lakes and the Erie Canal limit the railroad tariffs between Chicago and New York. The railroads can only charge so much more than the water lines as may be justified by the superior service rendered by them.

After the rates from Chicago to New York have thus been determined, the rates from Chicago to Boston, and to Philadelphia and Baltimore, are established by an agreement between the interested railroad companies. Fixed differences, which are considered justified by the geographical position of these several cities and other considerations, are permanently maintained in the rates from Chicago to these various cities. At present the rates from Chicago to Boston, and interior New England cities, are five cents per hundred pounds higher than from Chicago to New York; and from Chicago to Philadelphia two cents; from Chicago to Baltimore, three cents lower per hundred pounds, than from Chicago to New York. This relative adjustment of rates may be varied from time to time, by mutual consent of the interested railroad companies, each of which takes care of the commercial interest of the cities with which its own interests are identified, and does the best for itself and these cities that may be possible to do under the given conditions. Whether the present agreed differences mentioned above are satisfactory to the several railroad companies, or to the interested communities, is not now a question for consideration. It is sufficient to call your attention to the fact, that this vexatious and difficult problem of satisfying at once all the rival commercial and railroad interests of the seaboard cities has been settled in this way, after millions of dollars' worth of property have been wasted, and after the commercial relation of the whole country, as far as affected by railroad tariffs, have been disturbed and kept in a turmoil for years, in the endeavor to come to some understanding upon this question.

These differences being now agreed upon, when it becomes

necessary to meet the cheap, competitive rates of the canal and lake carriers between Chicago and New York, the rates to Boston and interior New England points, to Philadelphia and Baltimore, are determined by adding or deducting the agreed difference to the reduced rates. Thus, the cities having no direct water communication with Chicago enjoy the benefit of the canal, as far as low railroad transportation rates are concerned, the same as if the canal ran to those cities.

Another very important rule of action has been adopted by the railroad companies, located in the territory east of the Mississippi River, north of the Ohio and the northern Atlantic seaboard, by which the influence of the low rates on the Erie Canal and the lakes is felt in determining the rail rates from all other points in this great section of the country.

When the rates of transportation between New York and Chicago have been regulated by the competition of the water routes, all the tariffs in this section of country are adjusted upon the basis of the relative distance of the various points from New York, using the distance from Chicago to New York as the basis. The agreed differences are again allowed from the same places to Boston, New York, Philadelphia and Baltimore. In this case, the popular *pro rata* principle can be, and is, permanently adopted in establishing the tariffs: The distance of St. Louis, for example, from New York, is 16 per cent. greater than the distance from Chicago to New York, and the rate from St. Louis to New York is 16 per cent. higher. Can anything be fairer? The low rates established on the Erie Canal and lakes are thus extended to St. Louis, and that city enjoys the full benefit of cheap railroad transportation, the same as Chicago.

Nor is this a mere arbitrary arrangement of the railroad companies, which could be discontinued at their pleasure. It is based upon the surest foundation—the interests of the railroad companies themselves centring in St. Louis. As long as they are in a position to exert any influence upon the transportation rates, they will be sure to take care of the interests of St. Louis. It don't require any congressional or other legislation to protect St. Louis as against Chicago. Were the rates from St. Louis to the East made too high, as compared with the rates from Chicago, or were the Chicago rates lowered

to meet the competition of the water routes, while the St. Louis rates were not lowered in the same proportion, the business would be diverted to Chicago, to the injury of the St. Louis railroads, and of the St. Louis merchants.

The same reasoning holds good in regard to the rates from all other cities in the territory named—from Cairo, Peoria, Indianapolis, Evansville, Terre Haute, Vincennes, Lafayette, Louisville, Cincinnati, Columbus, Cleveland, Toledo, Detroit, Pittsburg, Buffalo, Wheeling. The transportation rates to and from these cities are regulated by the Erie Canal. But the influence of the lakes and Erie Canal does not stop there. The tariffs west of the Mississippi River are based upon the rates east of Chicago and St. Louis, and the tariffs south of the Ohio are based upon the rates prevailing north of the Ohio, and therefore it may be truly stated that the most northern line of water transportation influences the rates of railroad transportation almost throughout the whole country.

But the lakes and Erie Canal are not the only regulators of railroad transportation tariffs. The Mississippi River and the coastwise ocean navigation play another important part. Should the railroad companies desire to take advantage of the suspension of navigation on the Erie Canal and lakes during the winter season, if otherwise the transportation rates were not limited by commercial considerations, the Mississippi River would furnish an outlet from St. Louis, *via* New Orleans, to New York or direct to Europe. The rates from St. Louis, *via* rail to New York, would then have to be so adjusted as to meet this water competition, and from all other interior points east of St. Louis they would have to be adjusted upon the *pro rata* principle, for the same reasons already fully explained.

I have shown how the rates from St. Louis, and the whole section of the country depending upon St. Louis, are affected by the Erie Canal and the lakes, on the one hand, and the ocean and Mississippi River, on the other hand. There are still other lines competing for the St. Louis East and West bound traffic, by which the St. Louis rates are affected. One of these is the line from St. Louis, *via* the Mississippi River to Cairo, from Cairo up the Ohio River to Huntington, W. Va., from thence to Richmond by the Chesapeake & Ohio Railroad (the only railroad link

in the route, 421 miles long), and from Richmond, *via* James River and ocean, to New York and other Northern ports.

Another route is from St. Louis, either by rail or water, to Columbus, Ky., or to Evansville; thence to Nashville, Chattanooga, Knoxville and Norfolk; from Norfolk by ocean to New York; or from St. Louis, *via* the same routes, as far as Chattanooga; then *via* Atlanta, Augusta and Port Royal, to New York; or from Atlanta to Savannah, or *via* any of the other South Atlantic ports, to the North Atlantic ports. All these Southern routes, competing with the Northern routes, contain the cheap elements of water transportation, and each of these lines can affect and influence the establishment of the tariffs, not only from St. Louis, but from the whole territory depending upon St. Louis. While thus the Erie Canal and the lakes influence the rail rates of transportation from the extreme Northern boundary of the country toward the South, the ocean and Mississippi River navigation influence the rail rates from the South toward the North.

I have already referred to the coast line steamers from New York to New Orleans, and *via* Mississippi River to St. Louis, as forming one of the competing water lines between St. Louis and New York. By this same route freight is also shipped to Memphis, and the rate to Memphis from the East, *via* the Northern all rail routes, through Louisville, has to conform to these low water rates. Although Memphis is nearly four hundred miles southwest of Louisville, the rates to Memphis from New York are as low on a great many articles, *via* the coast line steamers and the Mississippi River boats, as the all rail rate from New York to Louisville, which latter rate is based upon the Chicago rate, and is determined by the Erie Canal and the lakes. The Memphis rates having been determined by the Southern water routes, the rates to Nashville have to be adjusted upon the basis of the Memphis rate. Nashville must have a lower rate than Memphis, otherwise the Nashville merchant could not compete with the Memphis merchants, and the railroads interested in Nashville would lose their business.

As an illustration of the interdependence of railroad tariffs, it appears from the above, that the rate from New York to Nashville is controlled by the following competing lines:

1. The Erie Canal and lakes influence the rates to Louisville, and through Louisville the Nashville rate.

2. The ocean and Mississippi River determine the rate to Memphis, and through Memphis the Nashville rate.

3. The routes from New York, *via* ocean to Norfolk, Charleston and Savannah, and from there *via* rail to Memphis and Nashville, influence the rates to these points.

It appears, therefore, that the rates from New York to Nashville, one of the interior cities, are controlled and influenced by the most northern and most southerly water routes, and can be influenced by the action of almost every single competing railroad in the country, south and north and east of the Mississippi River.

The same may be said in regard to the rates to Atlanta, a city removed from any water course.

The Erie Canal and lakes determine the rates from Chicago to Atlanta, *via* New York, Philadelphia or Baltimore, and thence *via* Charleston or other South Atlantic ports, and from any of these ports by short rail routes to Atlanta. The all rail rates from Chicago, *via* Louisville or Cincinnati and Chattanooga, to Atlanta, have to conform to the rates determined by the Erie Canal on one side, and upon the other side, they have to conform to the rates established by the water route from New York to Charleston, Savannah, New Orleans or Mobile.

In a report which I furnished to the Chief of the Bureau of Statistics, and which is printed in Part 2 of the Annual Report of that office in 1876, I have shown that there are thirty-seven different rail and water routes, or both combined, each consisting of a number of separate transportation companies, all of which can, directly or indirectly, influence the transportation tariffs from the Western cities to Atlanta, and the rates to Atlanta determine and influence the rates throughout the whole Southern States.

Illustrations to the same effect might be multiplied *ad infinitum*, but I do not propose to weary you with unnecessary repetition. I hope enough has been said to prove the *interdependence of railroad tariffs throughout the whole country*, the complete control that the water routes exercise over the railroad transportation tariffs, even to the remotest parts of the country, the impossibility of

railroad companies making unreasonable and extortionate charges on interstate or competitive traffic; and I also hope that no further argument will be required to convince your committee that this interdependence of railroad tariffs, the great number of independent railroad companies, which can directly or indirectly influence, change, or abolish all tariffs, requires the *co-operation and unity of action* of all, in order to establish and maintain uniform and indiscriminating railroad tariffs.

How this unity of action is to be secured is, therefore, the first and most important question to be considered in the practical solution of the railroad problem.

I do not like to bore your committee with the practical details of railroad management, but I do not see how I can avoid referring, at least in a general manner, to the great difficulties that railroad managers encounter in the administration of this transportation business, and I cannot do better than to read an article, which I wrote some four years ago, and which is published in the report of the Chief of the Bureau of Statistics for 1876, Part II., in answer to a question propounded by Mr. Nimmo.

In this article I gave an account of the state of the railroad problem and railroad administration four years ago, and, after reading it, I will explain the plans that were then proposed for the remedy of the described evils, and which have since been put in practical and successful execution to a very considerable extent.

The question was asked :

State the principle upon which competitive rates should be established by transportation lines, the principal method by which they are established, the means employed to maintain the same, the reason why they are so frequently broken; also state the cause of railroad wars and their effect upon the public interests.

Answer. "I have referred to the mutual dependence of railroad companies upon each other regarding the establishment of competitive tariffs."

"The right of each company to regulate and change its own

tariffs without regard to the interests of another road, cannot be denied; but this right is not only possessed by one, but by all. Let us suppose that in its exercise one road changes its tariff to-day and another to-morrow, another the next day, and so on—the action of one affecting the interests of all the others—the injurious effects of this separate and independent action would be felt by all.”

“It becomes, therefore, a matter of mutual interest, almost an absolute necessity, in order to adjust properly the railroad tariffs of the country, that the various lines of transportation competing for the same traffic, or whose tariffs are influenced by each other, should act in concert.”

“They should give each other timely notice of the changes proposed to be made, so that all may be able to conform thereto. This is the correct theory upon which competing transportation lines should and generally propose to act. This co-operation is not in conflict with the laws of the country or with public interest, as is generally supposed. On the contrary, it is beneficial to both the public and railroad interest.”

“The work of establishing the competitive tariffs of railroad companies, and of transacting other business in which they are mutually interested, is usually performed in meetings or conventions of the representatives of the interested companies.”

“The conventions are called from time to time, as the necessity for changes or readjustment of tariffs may arise.”

“The difficulties of bringing together from all parts of the country, at one time and at one point, the representatives of a great number of transportation companies are not a few. These officers are generally fully occupied at home, or they may have previous engagements. The officer competent to represent a certain road may sometimes be required (if the business relations of his company are complicated) at two or three different conventions at the same time, or so near together that he cannot attend at all. It may and does frequently happen that the representative of a road whose presence was absolutely necessary to transact any business at all does not appear. When this is the case, the convention adjourns and agrees upon some other place and time of meeting, perhaps with no better result.”

“It often happens that officers of transportation lines are chas-

ing each other over the country, endeavoring to meet and transact important business, but practically accomplishing nothing. After many repeated trials, the conviction settles itself upon the minds of many that it is useless to repeat these abortive attempts, and that time and expenses involved might as well be saved."

"The important questions, upon the settlement of which the proper conduct of the transportation business depends, are not attended to, and matters are allowed to take care of themselves."

"But in case the interested parties come at last together, a day or two only generally is set aside to transact business that is often of a very complicated nature, arising from the direct conflict of so many interests. For want of more time the work is often imperfectly done, if done at all. In case of disagreement, there is no one to decide between the parties. The majority cannot and ought not to dictate to the minority. The result in many cases is, that the questions at issue remain unsettled and no agreement can be made. But assuming that an agreement is at last consummated, the most difficult part of the work remains yet to be done. How is the agreement to be carried into effect?"

"There is no authority to compel adherence to it, no court in which the violator of it can be held responsible or punished."

"The agreements hastily formed are often understood differently by the different parties and executed in the various ways which they are understood."

"There is no central office from which the proper interpretations could be enforced alike. One party may consider that the other is violating the agreement and absolve itself from adherence. The result is the same as if no agreement had been made."

"Supposing, however, that an agreement relative to the establishment of competitive rates is made and understood alike by all parties, should it then appear to one or the other party, after a short experience, that it does not receive as much business as it expected or wanted (and such conclusions are generally arrived at), it either openly repudiates the agreement or more frequently violates it secretly by paying commissions or rebates, or by the use of other means of deception."

"The other parties very soon suspect that they are not fairly dealt with. This mere suspicion is often considered sufficient

for adopting means of self protection, generally corresponding in character with those the other party employed, or is supposed to have employed."

"The result is that, either openly, more often secretly, by means which are considered dishonorable in the ordinary transaction of life, one competitor is underbidding the other. The rates of transportation fluctuate; they become lower and lower; influential shippers are secretly favored by low rates, enabling them to secure advantages over their competitors and to monopolize certain branches of business altogether. All this is done in direct violation of the laws that should govern common carriers."

"The shippers cunningly encourage dissension among the agents of competing lines, ingeniously working upon their credulity and suspicion by hints or direct misrepresentations, and hardly ever fail to obtain a reduction in the established rates of transportation which had been agreed upon and were considered reasonable and proper by all the competing transportation lines."

"After a period of low rates caused by this process of underbidding, during which the railroad companies usually work for less than cost, it is found necessary by them to make another effort to secure remunerative rates, and, if possible, by higher rates to make up for past losses."

"New conventions are called and held, new agreements formed, and they are violated again as before, and so on. This history of the management of the transportation business is thus constantly repeating itself, to the great injury of the people and the proprietors of the roads."

"The general managers or heads of the departments attend generally to the establishment of rates and make agreements with each other; and to this extent, but no further, this important business may be said to be under their control; but no sooner is it believed that one or the other competing lines has violated the agreement and tries to deceive, whether this be a fact or not, the management is of necessity surrendered into the hands of subordinates, the soliciting or commission agents, to whom the general instructions are given to do as others are doing, or supposed to be doing, or to make any rate they please, no matter

how low. From that time on the general managers and the owners of property have lost all control over it."

"The result is, fluctuations in rates, unjust discrimination between shippers in the same locality, or between shippers in different localities."

"Rebates are generally paid and special contracts are secretly made, all in direct violation of the law that should govern common carriers."

"There are other causes which lead to the same result."

"If a controversy arises between any two or more railroad companies upon any subject whatsoever, and they cannot arrive at a satisfactory adjustment, one or the other party commences a system of warfare upon its opponent by establishing unusually low rates of transportation over its own line, and thus compels the other to conform to the same in the hope of inflicting losses upon it to a greater extent, perhaps, than the amount of money involved in the controversy. Or this warfare may be undertaken as a preliminary step to negotiations, or for the purpose of establishing again the fact, of which each party is already well aware, that it cannot ignore the existence or the rights of the other."

That this mode of settling controversies between intelligent people is yet practised in this civilized age, can only be accounted for by the fact that the property which is thus being unnecessarily sacrificed, is not the property of the parties who manage it.

"If it were, it is reasonable to assume that ere this means would have been devised by which controversies between railroad companies would be settled in a manner less wasteful and more in accordance with the spirit of the present civilization. In the absence of such means, the practice now so frequently resorted to is, however, unavoidable."

"Were the injurious consequences of these wars confined only to the combatants, it would be less objectionable, but innocent parties become involved. Railroad companies, which are not concerned in the controversy, are necessarily drawn into it, and often sustain great losses, and the people generally suffer from these contests. This, however, is not generally understood, on account of the immediate temporary advantages which are gained by *some* parties by the low rates; the subsequent and permanent

disadvantages under which all, more or less, suffer, are not considered."

"A proper distinction should be drawn between healthy competition, regulated by natural laws upon correct principles, and competition which is merely the result of mismanagement."

"Healthy competition is continuous in its operation. The effect of railroad wars, or railroad mismanagement, in reducing rates is spasmodic. The natural laws of competition do not regulate changes in the tariffs. They depend often upon the mere will of a single railroad manager, or may result from an obstinate and unreasonable quarrel between a number of them. Personal pride and prejudices not unfrequently have something to do with it. The people cannot, therefore, foresee and provide against changes which affect so seriously their commercial relations and interests. The market value of articles of commerce becomes unsettled, the risks of all commercial transactions (depending upon transportation charges) are greatly increased, the proper adjustment of tariffs between commercial communities is disturbed, and trade diverted from its accustomed channels. The transportation taxes are borne unequally by different localities, giving undue advantages to some, and unjustly discriminating against others."

"Low competitive rates make higher local rates necessary. Unreasonably low rates are used as a standard of comparison, by which the higher rates, although they may be reasonable in themselves, appear extortionate."

"Rates of transportation should be reasonable; they should be uniform and permanent, as nearly as the conditions of cost and the natural laws of competition permit; they should be alike to all parties situated alike, and should be properly adjusted, so as not to discriminate unjustly between different individuals or communities."

"To attain these objects under the present management of the competitive transportation business is simply impossible."

"Intelligent co-operation between all the transportation lines which can influence the tariff, under a proper organization and regulations, becomes absolutely necessary."

"Whether this co-operation can be secured by the voluntary action of the transportation companies, is doubtful. Govern-

mental supervision and authority may be required to some extent to accomplish the end in view."

To overcome the difficulties and remedy the evils just described, an association was formed of about twenty-five Southern roads, in October, 1875, with the object of securing the necessary co-operation. I will not detain you with reading the articles of association, but the following explanation of the same, written by me in April, 1876, sets forth the methods adopted and the reason therefor. The plan here described is substantially the same as that adopted by the Joint Executive Committee, previously referred to.

DESCRIPTION OF THE ORGANIZATION OF THE SOUTHERN
RAILWAY AND STEAMSHIP ASSOCIATION.

"In articles 1 to 3 of the constitution, the object of the association is stated. It will be seen that the members agree merely upon a specific mode or system in which they propose to transact that portion of their business in which they may be concerned together, and in the proper conduct of which, negotiations and co-operation become necessary."

"Articles 4 to 13 provide for the manner in which the regulations and rules for the conduct of the business are to be established, or changed from time to time as occasion may require; also for the appointment of an officer who is to be called the commissioner, and whose duties are prescribed in articles 14 to 27."

"These duties are of a threefold nature:"

"1st. The general commissioner is the head of a bureau through which the members transact all their business of the character named above."

"This bureau becomes the central office of the members. Instead of each company attempting to transact directly its business with every other—almost an impossible undertaking, when many companies are concerned (there are 25 members of the association)—they correspond directly with this central office

and carry on their intercourse and negotiations through it. This avoids to a great degree the necessity of transacting business through conventions—an expensive, time consuming, and at best a very unsatisfactory mode, especially as these conventions can only be held periodically, while business can be transacted with great promptness through the bureau at all times.”

“In this respect, even without any further measures, the establishment of a bureau, by transportation companies having intimate business relations, would be a great improvement in facilitating their intercourse, and lead to a more intelligent and satisfactory management of their business.”

“The information collected by the bureau, upon all subjects that can bear upon the negotiations and subjects of co-operation, enables the commissioner to take a more general view of the whole field of operations, and to form a more intelligent, impartial and correct judgment of the course which it would be best for each company to pursue, with due regards to the rights of others. Acting as an adviser and mediator between the members, many complications, which in intricate and complicated business transactions (especially between parties living far apart) arise from a want of a proper understanding, can be thus avoided.”

“2d. If the necessary agreements cannot be reached in the manner proposed, the general commissioner is to decide as an umpire all questions of conflict between the members, and thus avoid the expensive warfare now generally resorted to in such cases.”

“His decisions are subject to be revised by a court of appeal or board of arbitration.”

“3d. It is the duty of the general commissioner to see that all the agreements which have been made, or his decision, or the decisions of the court of appeal, are carried out.”

“Agreements between railroad companies are generally made in conventions of the officers. For want of time, they are hardly ever thoroughly considered, and are generally understood differently by different parties, and executed as they are understood; hence they are generally broken as soon as made. The impossibility of carrying out agreements between railroad companies is not always the result of bad faith or dishonesty on the part of the contracting parties, but is frequently due to the want

of a proper organization and the failure to employ proper means to accomplish the end in view. It should not be expected that an agreement made between a great many parties in regard to complicated business transactions can be carried out without some executive head, whose duty it is to see that each party adheres to it, or to fix the responsibility in case of violation."

"It is with a view to correct this defect in the present mode of transacting business between railroad companies, that the general commissioner is made the executive officer, charged with the duty and empowered to enforce the agreement made between the members of the association."

"While this does not prevent intentional violation, yet it removes many of the causes which lead to disagreement and disruption. In the course of time it may be expected that by these means confidence between the members will be established, the want of which in each other is really one of the greatest causes of dissension and trouble."

"The three specific duties of the general commissioner which I have just named are to be performed by an officer of experience, accustomed to deal with all questions arising in the practical management of the transportation business. This officer should at least be the equal in intelligence and capacity to the chief managing officers of the railroad companies members of the association."

"It will be observed, from a careful reading of the articles of the association, that the association, as a body, does not prescribe any particular policy or line of conduct regarding the management of the business of the members, but merely determines the mode, rules and regulations, according to which the members are to transact business with each other. The particular measures to be adopted upon any subject of action are to be determined by the interested parties themselves in each particular case as it may arise. The majority of the association, however, does not dictate terms to the minority regarding questions of management or the conduct of business. In case of disagreement and conflict between the members, the question at issue is not to be decided by a majority of the contracting parties, but is to be submitted to the decision of a disinterested umpire, or to a board of arbitrators."

“The full legislative and directing power—if I may use these terms—remains, therefore, in the parties at interest. This power is only restricted in case of conflict; but this restriction is imposed by judicial proceedings, and not by the numerical strength of the contending parties.”

“It will appear from this that the association is formed upon the plan of a representative government, with a legislative, judicial and executive department. The legislative department is constituted by the members of the association. As long as they can agree with each other, the general commissioner exercises only his advisory and executive powers. In case of disagreement between the members, his duties become of a judicial character. He does not control, prescribe or direct, but merely advises, adjudicates and executes.”

“Uniting these offices in one person, he can act promptly in all matters that come before him, without interruption in the regular course of conducting business.”

“In the absence of any one of the members, he is empowered to act for it, upon all subjects upon which his decision as umpire would be binding on said member.”

“The delays frequently occurring, on account of the impossibility of bringing all the interested parties together for the purpose of negotiating agreements, are thus avoided.”

“I have called attention to the above essential features of this organization in which it differs from other organizations formerly proposed, and which had a similar object in view.”

“Their failure was, no doubt, due to the fact that the business of the members was to be arbitrarily directed by a majority of the members, or by commissioners who were not in a position to understand or guard the rights and interests of all and every member. It could, of course, not be expected that railroad companies would submit to the dictation of others who might have no direct interest in their affairs, or whose interests might be adverse.”

“In the organization which I have described, full control is given to each member over its own affairs; only in case of conflict with others it submits voluntarily to the adjudication of a court of justice, in the election of which it participates.

“There is another important feature of the organization to which I will call attention.”

“I have referred to the fact that the organization as a body does not prescribe any particular course of action in regard to the conduct of the business of the members. Disagreements, therefore, between the members in regard to any particular transaction or disobedience to the rulings of the arbitrators do not affect, in any way, the organization itself, but merely that particular transaction, and the parties that may be directly or indirectly interested in it.”

“Nor does the withdrawal of any one or more of the member's dissolve the association. As long as two members remain, they can continue to transact their business with each other under the rules of the association, and derive some advantage therefrom.”

“The plan of organization is not restricted to any particular number of members ; from two upward it may embrace all the railroads in the United States. The association contains, therefore, the elements of self preservation and growth. It can adapt itself to the conditions and circumstances which are likely to occur, and under which it has to operate.”

“If agreements are not adhered to by the members, or submission to arbitration is refused, the usual mode of settling difficulties between railroad companies has to be resorted to. The members of the association, acting as a unit under its rules, may be able to prevent warfare, or at least restrict it within narrower limits. Organized resistance or offence must be more successful than if each member acted upon his own account and fought indiscriminately foes and friends, as is now generally the case. The strength of the association consists, therefore, in the power and facility to combine all members who desire to carry out their agreements against those who do not.”

“It will appear from these explanations that the mere establishment of the association cannot be expected to remove at once all the evils and defects in the present management of railroads which it is intended to overcome.”

“Its object is merely to prescribe a method in which the complicated business between railroad companies can be systematically and efficiently transacted, and to substitute intelligent consideration of all subjects of mutual interest, and fair and just adjudication of all conflicting claims, in place of the ruder

method of settling controversies between the railroads by warfare, so destructive to the best interests of the people and of the proprietors of the roads."

"The operation of the association must, therefore, not be considered automatic, but its success depends in a great measure still upon the degree of intelligence of the managers of the roads, and more especially upon their good faith to each other, because their compliance with the rules of the association and with the agreements made under it, is entirely voluntary and cannot be legally enforced."

"To secure the permanency of such associations, it would be desirable to constitute the members a legal body by act of incorporation, making the articles of association legally binding upon its members. This is the plan pursued in the organization under which the business of single railroad companies is conducted."

"If the stockholders of such companies were allowed to exercise a direct control upon the management, each in his own private interest, the result would be disastrous to the best interests of the companies. The stockholders, therefore, elect representatives, whose acts, in accordance with the articles of association, become legally binding upon each. These representatives, it may be said, act as umpire between the individual owners; they look to the interest of the whole as a whole and disregard the interest of the individual when in conflict with the general interest."

"This is the only mode in which the business of a great many parties having separate private interests, but all united for the attainment of the one common object, can be managed."

"The same principle should be applied to the management or government of the whole railroad system of the country. The several railroads constituting this system have interests adverse to each other, yet they have one object in common, and this is the proper management of the transportation business of the country, so as to secure the best possible results to the people, with due regard to the rights of the proprietors of these roads."

"This object can only be attained by the co-operation of the railroad companies under some sort of government, with sufficient power to regulate and restrain the action of individual companies

so far as necessary for the welfare of the whole and the attainment of the final object."

"As an important step toward the establishment of such a government, I propose that the federal government legalize (incorporate) organizations formed by the railroad companies upon the plan which I have described and for the purpose mentioned (of course, under proper restrictions), and to make the action of the judicial and executive officers of the organization legally binding upon its members."

"Railroad companies would soon find it to their interest to form themselves into such associations and transact their business with each other upon more correct principles than is now the case."

"When a number of such associations are formed, they could be united again under a central organization, and thus a complete representative government of the whole railroad system of the country could be established, by which the intelligent management of this great property in the interest of the people, as well as the interest of its proprietors, may finally be secured."

"A representative government or self government established under the authority of the United States over the railroad system, upon the theory and general plan here proposed, seems to me the proper solution of the railroad problem in this country."

"Direct governmental control, without governmental ownership, such as has been attempted in some of the Western States, or as was proposed by the House of Representatives in its last session, does not remove, but rather increases all the difficulties and evils of the transportation business which it sought to remove, and is, moreover, a direct violation of the property rights of the owners of the road."

"The ownership of all the railroads of the country by the government is the only just plan by which the government could exercise a direct and complete control over this property."

"This plan, however, which is now to be put into execution in the German Empire, is not adapted to the institutions of this country. Even if it were, it possesses many disadvantages as compared with a representative and self government."

"The representative government gives full liberty of action in the management of the affairs of each separate road, as far as

not in conflict with the general interest, and hence more regard can be paid to the development of local interests."

"Under a representative government each separate company can exercise its full influence upon the management of the whole system. The great variety of interests, frequently in conflict with each other, being able to exert themselves in their full power in this government, would make combinations looking toward monopoly or extortion impossible."

"The principles of competition would still remain in force, but this competition would be regulated intelligently and in accordance with natural laws. Under a representative government the property rights of the owners of the roads are fully respected; the federal government does not assume to control the property itself (as was contemplated by the appointment of nine commissioners, who were to determine what compensation the railroad companies should receive), but it merely prescribes regulations and the method in which the owners of the property shall control it in a legal manner, without interfering with the just right of others."

"This is a proper function of the government, which it not only may, but should exercise."

"Under the representative government all of the advantages of a consolidated management may thus be secured and its disadvantages avoided."

This is an explanation of the theory and of the general plan upon which the present management of the tariff question, over a large section of the country, is being successfully conducted, and, I think, satisfactorily to the community. It is the only practicable and possible plan by which the railroad problem can be solved in this country, and, to make it permanently successful, it requires but the sanction and the support of the United States Government, under such restrictions and conditions as may be thought necessary in order to protect fully the public interests involved.

It is the only plan by which the object of your bill to secure indiscriminating and permanent rates of transportation can be secured. Although differing in some essential features

from the Clearing House plan, chartered by the government in England, practically the same results are attained by it. To show that the British government did not hesitate to assist the railroads in conducting their business so as to secure unity of management, I will read the Act of the British Parliament, passed June 25, 1850, which authorized the combinations of a number of the railroads for the purpose of conducting their business as one road.

CLEARING ACT.

AN ACT for regulating legal proceedings by or against the Committee of Railway Companies, associated under the Railway Clearing System, and for other purposes, 13 and 14 Vic., cap. xxxiii., 25th June, 1850.

Whereas, For some time past arrangements have subsisted between several railway companies for the transmission, without interruption, of the through traffic in passengers, animals, minerals and goods, passing over different lines of railway, for the purpose of affording, in respect to such passengers, animals, minerals and goods, *the same or the like facilities, as if such lines had belonged to one company*, which arrangements are commonly known as, and in this act are designated as, "The Clearing System," and which arrangements are conducted under the superintendence of a Committee appointed by the Boards of Directors of such several railway companies, which Committee is in this act designated, "The Committee," * * * *

And whereas, the Clearing System has been productive of great convenience to the public, and of a considerable saving of expense in the transmission of passengers, animals, minerals and goods over the lines of the several railway companies, parties to such association; but considerable difficulty has been experienced in carrying into effect the objects of the association, in consequence of the Committee not possessing the power of prosecuting or defending actions or suits, or taking other legal proceedings: And whereas, * * *

May it therefore please Your Majesty that it may be enacted, and be it enacted by the Queen's Most Excellent Majesty, by and with advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament, assembled, and

by the authority of the same; that the several companies which at the time of the passing of this Act are parties to the clearing system, and every other company which shall in manner hereinafter mentioned, become party to the same, shall be subject to the provisions of this act.

I wish to call particular attention to the parts which are printed in *italics*.

A similar act, almost in the same words as applied to the organization of the Joint Executive Committee or the Southern Railway and Steamship Association, would fully cover all the legislative action required by Congress to aid in the solution of the railroad problem in this country.

Having now explained the difficulties of the transportation business, and shown the manner in which they may and should be overcome, I would be glad if the gentlemen of this committee would ask me questions, so that I could see whether I have made myself understood, and if not, could give further explanations.

Mr. O'NEIL—Do I understand you that complaints from the people reach this committee?

Mr. FINK—Yes, sir; the people can appear before this committee and make their complaints or requests, and this is one of the good features of this organization. If a shipper has a complaint, or desires changes in rates and classification, he communicates with me. I bring the matter before the committee, and if there is any real ground for complaint, the evil is rectified. I can show you from our published proceedings that we have parties from Boston, New York, Cleveland, Toledo and other points, come before us and state their complaints. We listen to them; consider them carefully, and remedy them if we can. Heretofore it has been utterly impossible, almost, for any person making a complaint to secure a remedy, because there was no concerted action; there was no responsible party to whom to apply for redress.

Mr. O'NEIL—I did not know but this commission was simply organized to prevent trouble and disputes between the roads themselves, but from what you now say I understand that the individual shipper can reach the committee.

Mr. FINK—Yes, sir; that is one of its functions, and an important one.

Mr. O'NEIL—Is that fact generally known to shippers?

Mr. FINK—Yes, sir; I think it is. We have letters almost every day from persons who want to have changes made in rates or classification.

Mr. O'NEIL—How do they take the decision of the commission?

Mr. FINK—Some of them have their requests complied with, and they are satisfied; others do not, and they are, of course, not satisfied, though they certainly must be satisfied of one thing—that we give their complaints the fullest and fairest consideration.

Mr. O'NEIL—Do I understand you that any complaint of any magnitude from any individual would reach the commission?

Mr. FINK—Most certainly.

Mr. WAIT--Is that the commission on which Mr. Wells and Mr. Adams are?

Mr. FINK—Messrs. Wells and Adams are members of the Board of Arbitration.

Mr. WAIT—They are not a part of this commission, of which you are a member?

Mr. FINK—They are a part of the organization. My title is "Commissioner." I have just read an explanation of the duties of the office of Commissioner or Chairman. The Board of Arbitration is the judicial department of this organization, the duties of which I have also explained.

The CHAIRMAN—Who constitute the Board of Arbitration?

Mr. FINK—Mr. Charles Francis Adams, Jr., Mr. D. A. Wells and Mr. J. A. Wright.

The CHAIRMAN—Do I understand you that by a voluntary arrangement between the officers representing different railroads you form a body which you call a legislative body?

Mr. FINK—We do not exactly call it so, but it is so in fact. The body is called the "Executive Committee;" each railroad company has a representative upon said committee, and they determine all questions in which they are jointly interested, and which must be determined in some proper way in order to

secure the proper management of the railroads represented on the committee.

The CHAIRMAN—And you have provided a Board of Arbitration, which you call a judicial department?

Mr. FINK—Yes, sir; in my explanation to you it is called the Board of Arbitration.

The CHAIRMAN—And then a Commissioner, who acts as executive?

Mr. FINK—Yes, sir; that is the organization.

The CHAIRMAN—And you propose, as the best remedy for the evils now existing, against the oppressions to which the people are subjected by the railroads, to establish this “pooling” system, to prevent the inequalities which grow out of a reduction of rates by one railroad and not by another, and to give it the sanction of the law?

Mr. FINK—I have not said a word about “pooling;” that is merely a means of maintaining rates. This organization could and would exist just the same without any “pooling.” I propose to explain the pooling question more fully hereafter.

The CHAIRMAN—Would not that pooling question come before your legislative body? Would it not be brought in by the people who come before the Committee with their complaints?

Mr. FINK—This association simply provides a method in which the joint business of the various roads is to be transacted, and by which unity of action is to be secured, and, I believe, the only method in which large but separate interests of this nature, having such intimate relations to each other, can be controlled. The pooling question has nothing to do with this organization, as a whole. The individual members may or may not resort to pooling, if it be thought that thereby all motives for cutting rates, and for strife between the railroads, can be removed. I have endeavored to show that such strife is inconsistent with maintaining indiscriminating tariff rates, and inconsistent with the object of your proposed legislation.

The CHAIRMAN—If I understand you, however, the plan which you suggest there for the adjustment of difficulties arising in relation to shipments, should be sanctioned by the government, and its enforcement left to the organization which you have described.

Mr. FINK—I consider that this is the only practical way in which the government could aid the railroads, and through which the evils of the transportation business could be permanently remedied. The railroads may be able to do without this aid, but it will take them longer to accomplish the result, and they may not be able to accomplish it at all. I do not ask now that Congress should pass such a law, because I do not believe it is in a position to pass any law understandingly upon the subject. If your Committee had the time to consider the matter, or would employ experts to examine into it, and report to you, then you might draw up a law understandingly; but this you cannot do in a few hours, or in a week, or a month, or in the short space of time that your Committee can possibly devote to it. But we do not ask any legislation at present, except such that looks to the collection of information, on which hereafter legislation may be intelligently based.

The CHAIRMAN—I can see the wisdom of your plan, so far as concerns the reconciling of difficulties between different railroads; but is the shipper, who has been wronged, to have no appeal except to the very railroads who have wronged him?

Mr. FINK—Through the proposed organization and methods of management, the wrong which is now being done to the shippers, by discriminating railroad rates, is to be avoided, and there is to be hereafter no more cause for complaints. The wrong has its origin in the want of unity of action of the several railroad companies. When you legalize this association, with the view of assuring this necessary co-operation of the railroads, you remove at once the causes of complaint. In order that you may be sure of this, a tribunal should be established by the government to supervise the operation of such associations, and to see that they are used only for the purpose for which they were organized, and to see that they accomplished that purpose. And such tribunal could, at the same time, also serve the purpose of adjusting any difficulties that may arise between the railroads and the public.

The CHAIRMAN—We have recognized and carefully avoided the difficulty and impropriety, and, in fact, the impossibility, of members of Congress, charged with so many other duties, attempting to fix rates of freight. We have, therefore, attempted

to frame the bill so as to declare four great principles that do not involve the regulation of freight at all, but simply the very idea you have just been reading—that of abridging the monopoly powers of railroads.

First.—Demanding that there shall be no discrimination in regard to freights. It does not take an expert, but only an honest man, to see that that is right.

Secondly.—That there shall be no rebates or drawbacks. It needs no expert to see that this is but right and proper.

Thirdly.—That there shall be no pooling of rates, because that denies to the people all the advantages that would otherwise accrue to them from competition between the roads.

Fourthly.—Prohibiting the charging of more, in proportion, for a short distance than for a long distance on the same haul.

We have endeavored to frame a bill which would avoid the difficulties to which you have referred; which would secure incalculable benefits to the people of the country, and involve no injury to any company, nor embarrass the railroad companies in any manner in which they ought not rightfully to be restrained. We do not even undertake to say whether they shall charge high rates or low rates. We propose only to establish a few general rules for the guidance and control of railroads—not to enter into a detailed investigation of the subject of the regulation of freights. That question had probably better be left to the railroads themselves—possibly under the supervision of a commission which it may be found necessary to establish. I mention these points, because they seem to me to be exactly in aid and furtherance of the plan you have suggested.

Mr. FINK—I have been earnestly at work to carry out the object of this bill—to prevent unjust discrimination—and if I had the least hope that your bill would aid in accomplishing that purpose, it would find in me a most earnest supporter; but I am sure that you cannot remove the evils of the transportation business in the way you propose. The trouble arises from a complication of facts for which you have not provided. It is one thing to recognize what is right and to say that the right *shall* be done, but it is another to carry a principle into practical execution, in the complicated affairs of life. You may tell a sick person “you must get well,” but

that don't cure him. You must apply the proper remedies that will remove the causes of the disease, in order to make him well. This proposed measure does not do that, and this is the reason that I object to it, and have endeavored to show why it does not reach the evil, and what is the proper and necessary measure that will reach it. I think I can prove to you the impracticability of the measure by applying it to a special case.

Take for example, the condition of affairs at Chicago. The terminal roads at that point have now agreed upon uniform rates of freight from Chicago to the East. They are working in harmony with each other and deal fairly by the public.

Under the operation of your bill, the Grand Trunk and other Canada railroads can make any rates they please through Canada to Montreal, Halifax, Portland, Boston and New York. You have no jurisdiction over that portion of the road which lies in Canada.

The Canadian roads can pay rebates, pay drawbacks, make special and secret contracts, and secure all the business which they may desire, and take it away from the American roads.

You cannot justly restrict the free competition between a number of competing roads, unless you apply the restriction to all alike. In this case, you must first annex Canada, or build a Chinese wall upon the boundary lines, before you can restrict the American roads in competing with the Canada roads, in the usual way in which such competition is carried on. If you cannot bring the Canada roads within the operation of your bill, correct as may be the principle embodied in it, you cannot accomplish its purpose, and you must do great injustice to the American roads. This is one of the difficulties of the situation which your bill does not overcome.

If you will show me how you can carry out the provisions of this bill, without ruining the American railroads and building up their Canadian rivals, I shall be a convert to the measure, as it would otherwise greatly aid me in my work.

NOTE.—Mr. Fink's argument of the third day is not yet printed, nor the concluding portion of the second day's argument.



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