REPORT

OF THE

ROYAL COMMISSION ON RAILWAYS

WITH

APPENDICES.

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REPORT

OF THE

ROYAL COMMISSION ON RAILWAYS.

To His Excellency the Most Honorable Sir Henry Charles Keith Petty-Fitzmaurice, Marquess of Lansdowne, &c., &c., &c., Governor General of Canada and Vice-Admiral of the same.

MAY IT PLEASE YOUR EXCELLENCY:—

The Commissioners appointed under Royal Commission, of date the fourteenth day of August, in the year of our Lord one thousand eight hundred and eighty-six, to consider the advisability of creating a Commission with power to determine matters in dispute between Railway Corporations, and generally to regulate the system of railway management in its relations to the commerce of the country; and further, as to the expediency of having a general Railway Law for the construction of railways, instead of special Charters, beg leave to report:—

That the Commission met for organization at Ottawa on the fourth day of September, eighteen hundred and eighty-six. The procedure of the Commission was then settled, as regards Canada, by deciding that meetings should be held in all the principal centres of commerce, of which notices should be given by advertisement in the public journals and by letters to the Boards of Trade and Managers of the railway companies. All parties to be invited to attend and give evidence—all evidence to be taken under oath—to be forthwith printed and communicated to the Boards of Trade of the Dominion and to the several railway companies.

It was also decided to apply, through the High Commissioner, for all reports and documents in relation to the Railway Legislation of Great Britain.

Circular letters were directed to be addressed, by the chairman, to the Secretaries of States of the several United States, requesting communication of all reports and documents relating to the course adopted in their respective States with regard to the subjects to be enquired into by the Commission.

The Commission desire to record their acknowledgments for the extremely prompt and courteous manner in which their applications to the authorities of the several States were uniformly responded to, and also to the High Commissioner for similar attention on his part.

ENQUIRY IN CANADA.

The Commission have held meetings for evidence in the following cities, in the order named:—Toronto, Halifax, St. John, Ottawa, Quebec, Montreal, Kingston, Hamilton and London.

By the courtesy of the Boards of Trade, the meetings were held in the Board of Trade rooms. They were open to the public, and all parties who appeared were examined; in many cases persons were summoned, whose testimony was considered valuable, and in no case were the meetings adjourned until the list of witnesses was exhausted.

The number examined was very large, and from their standing, intelligence and acquaintance with the commerce of the country, it is believed that the testimony will be found to contain a fair and full expression of the views of the community at large.

Divergence of opinion necessarily existed upon the subjects under consideration, but this is the more valuable as affording the Commission the opportunity of carefully weighing the adverse views expressed.

In taking evidence the Commission soon discovered that their investigations would be indefinitely prolonged—if they examined the railway officials on each point under immediate discussion. The managers of the railways were therefore informed that their testimony would be taken last, and would then apply to the whole subjects dealt with.

Without inviting any personal complaint, the Commission could not avoid receiving evidence of alleged grievances, illustrative of the system objected to. They did not consider themselves authorized to pronounce any opinion on such cases, but only invited the railway managers to offer in their closing examination such explanations as they might deem proper.

The course thus adopted has, it is believed, been promotive of much economy of time, and has given satisfaction. The evidence of the railway managers and officials will be found to contain a lucid and well considered statement of their views, obtained after a full review of all the previous testimony.

ENQUIRY IN UNITED STATES.

The Commission obtained in reply to their applications the fullest published information in regard to the condition of railway legislation in all the States where Railway Commissions exist.

Careful consideration of these documents and also of the books of writers of acknowledged ability on the subject, including Messrs. Hadley, Hudson and

Grierson (of England), and others, convinced the Commission that their labors and ultimate recommendations could not be confined to information obtained from purely Canadian sources. It became evident that the conditions of commerce in relation to railway transportation were in most cases identical with those of the United States, and that in considering the advisability of placing the railway system more directly under the control of the State, prudence required that the experience of other countries where such control existed should be thoroughly availed of.

The Commission, therefore, on the sixth of September last (1887), appointed Messrs. Burpee and Moberly as a committee to proceed to certain States and obtain from State officials, railway managers and other parties, the fullest information on all points included in the enquiry.

The Report of this Committee is attached as an appendix to this report, and will be found a great interest and value.

Subsequently, the Commission found it necessary to obtain further information in elucidation of the subject referred to, and on the twenty-first day of December last (1887) the same Commissioners were again requested to visit the United States. Reference is made to their supplementary report also in the appendix.

It will be observed that in additlon to the cordial assistance granted by the State authorities in all cases, the Committee were able to obtain most valuable information from gentlemen of the highest standing in railway management, of whom may be named Mr. Commissioner Fink, Messrs. Blanchard, Midgely, C. F. Adams, and many others, for whose uniform courtesy and frankness the Commission desire publicly to express their deep sense of obligation.

The Committee also obtained many additional valuable reports, especially those containing the proceedings before the special Railway Committee of New York (1879), and the evidence taken before the Committee of the Senate (1885) respecting the interstate Commerce Bill and the proceedings before the House of Representatives.

ENQUIRY IN GREAT BRITAIN.

The Commission obtained, through the High Commissionner, many valuable reports and documents relating to the progress of railway legislation in Great Britain, and the operation of the Railway Commission, including the draft of a Bill introduced during last Session of the Imperial Parliament extending and perpetuating the Railway Commission.

Believing the discussions upon this Bill would prove of much value, the Commission directed their chairman, on visiting London in the early part of the year eighteen hundred and eighty-seven (1887), to watch the passage of the measure and report to them.

Unfortunately the pressure of other public business upon the British Parliament prevented the Government from proceeding with the Bill, and deprived the Commission of the opportunity of judging of the value of the important modifications proposed in respect to the British Railway Commission.

The Commission herewith submit to entire evidence taken before them, together with all reports, publications and other documents furnished to them, with the following report:—

RAILWAY PROGRESS.

The Minister of Railways, in his statistical report for 1886, shows the progress of railway construction in Canada, commencing with 1837, when sixteen miles were opened for traffic, increased in 1847 to fifty-nine miles, and in 1852 to two hundred and twelve miles. From this time, which marks the initiation of the Grand Trunk system, the progress of construction was more rapid, rising to two thousand and eighty-seven miles in 1860, and in

				Tons.
1875	4,826	miles, carrying one mile		5,670,836
1876	5,157	do	do	6,331,757
1877	5,574	do	do	6,859,796
1878	6,143	do	do	7,883,472
1879	6,484	do	do	8,348,810
1880	6,891	do	do	9,938,858
1881	7,260	do	do	12,065,323
1882	7,530	do	do	13,575,787
1883	8,726	do	do	13,266,255
1884	9,653	do	do	13,712,269
1885	10,149	do	do	14,659,271
1886	10,697	do	do	15,670,460

These figures illustrate the extent and rapidity with which the commerce of the country has become identified with and dependent upon the railway system of transportation.

It will be interesting to observe the comparative cost at which the movement of goods is made in various countries. The following tables have been compiled from the most reliable authorities, and are believed to be substantially accurate:—

	Class.	Rate.	Class.	Rate	Class	Rate	Class.	Rate	Class.	Rate	Class.	Rate.	Remarks.
		cts.		cts.		cts.	Special	cts.	Special	cts.	Special	cts.	
Germany...	A 1	3·60	B	2·4	A 2	1 93	I	1·74	II	1·35	III	1·08	Special is given on coal in Ruhr district 0·85.
France up to 125 mls.	1	4·70	2	4·03	3	3·52	4	2·80	5	2·20	6	1·08	
	A	2·5	B	2·0	C	1·40	D	1·32	E	0·80	F	0·62	
Up to 450 mls	1	3 75	2	3·12	3	2·50	4	1·90	5	1·20	6	0·78	
	A	1·56	B	1·03	C	1·02	D	1·02	E	0 78	F	0·62	
Holland....	1st	4·3	2	3·4	A	2 57	B	2·11	C	1 72	D	1·28	Special on coal some cases 0·84.
Belgium, 50 mls	1st	3·12	2	2·50	3	1 88	4	1·24					

There is added to each of these rates from 20 cents to 30 cents a ton for terminal charges, billing, weighing, &c.

Germany.—Class A 1 is for general merchandise in half-car loads. Class B for the same in full car loads. Class A 2 for grain and lumber in half-car loads. Special I is for grain of all kinds and similar goods. Special II for lumber, &c. Special III for coal, stone, &c., all in ten-ton lots. An exceptional tariff of 85 cents per ton per mile is made on coal from the Ruhr district.

France.—A, B, C, D, E and F refer respectively to the same goods by the full car load as 1, 2, 3, 4, 5 and 6, in less than car loads. Plated goods, quicksilver, laces, statues, bronzes, painting and such goods are charged the highest class, plus 50 per cent.

For France the rates are taken from the modified tariff of the Paris, Lyons and Mediterranean Railway, being the longest road and having the lowest rates.

Holland.—1st and 2nd class are used for quantities of less than five tons. A, B and C for quantities of not less than five tons, and D for quantities of not less than ten tons.

Belgium.—1st class applies to general merchandise in less quantities than five tons, 2nd and 3rd class to quantities of not less than five tons, and 4th class to quantities of not less than ten tons.

The above is extracted from Grierson Railway Rates, English and foreign, appendix, pages 12 to 62.

It is extremely difficult to get a detailed statement of rates charged on English railways. "The Great Western Railway Companies Act" allowed on coal, sand, iron, salt, etc., $\frac{3}{4}$ of a penny or $1\frac{1}{2}$ cents, and on sugar, grain, flour, etc., 2d. or 4 cents per ton per mile.

"London Engineering," August 20th, 1886, page 187, states the average rate on heavy freight in England is as near as may be, 1d. or 2 cents per ton per mile. I. S. Jean, in his Annual Statistical Report for 1884, to the British Trade Association, makes the same statement.

For the purpose of comparison, take for England the rate for such heavy articles; for the principal countries of Europe, figures given by Jean's Railway Problems published in 1887, page 277; for the United States, Poor's Manual for 1887; and for Canada, the evidence of the Grand Trunk and Canadian Pacific, the following results:—

AVERAGE charge per ton per mile on freight traffic in cents.

England	2·00
Germany	1·70
Belgium	1·57
France	2·14
Italy	2·40
Holland	1·50
Russia	2·32
United States	1·04
Canada	0·93

A table is also submitted showing the comparative cost of railways in different countries and the population to each mile of railway.

After examining various authorities which do not differ materially, the following figures are taken from Jean's Railway Problems, pp. 541, 542, for the year 1884:—

Country.	Cost per Mile.	Pop. per Mile.
Great Britain	$206,500	1,930
Germany	103,000	2,065
France	134,000	2,110
Italy	94,700	5,000
Belgium	123,400	2,102
Holland	95,200	3,100
Russia	97,200	5,965
United States	61,000	417
Canada	61,000	491

A review of the foregoing tables will show that the cost of railway construction in Canada is at a minimum compared with other countries. It also appears that the charges for moving merchandise by Canadian railways are absolutely the lowest, and compared with the great nations of Europe, very greatly less.

Two natural causes exist whereby the very important advantage of low cost for transportation is ensured to Canada. No doubt the cost of our railways enables their managers to work at smaller charges for capital account; but the main reasons are to be found, 1st. In competition by water; and 2nd. In competition by American railways at all points accessible by our navigable waters.

The competition by water is created by the natural geographical position of Canada and its possession of means of internal communication and export by the great lakes, the River St Lawrence, and in the Maritime Provinces, the Gulf of St. Lawrence and the ocean. There is in fact no business centre of any importance in the older Provinces which is not directly situated upon the channel of water communication with the outside world. Canadian railways have to consider this in the establishment of their tariffs, and avoid by too high rates all inducement to merchants and others to hold over their imports and exports till the season of open navigation.

The American system of railways, also connecting the great lakes with the ocean, is able during the season of navigation to take very low rates from points in Ontario to the Maritime Provinces, and having also possession of one important railway in Ontario, the Canada Southern, can practically compete with the Canadian lines during the entire year; the whole trade of Canada undoubtedly benefiting by the water and rail competition of rival routes. By possessing the control of the St. Lawrence, Canada offers the shortest and cheapest route to the seaboard from the Western States bordering upon the great lakes. Her railways are thus enabled to draw largely upon the commerce of these States, making them contributory to the maintenance of her internal system of transportation, and cheapening the cost of performing it.

Other recent causes are also now operating to develop and extend these advantages. The Canadian Pacific Railway in completing its line to the Pacific Ocean points to an early revolution in the future carrying trade of Eastern Asia and Australia. While the connection of the same railway at Sault St. Marie with the new lines leading from St. Paul and Minneapolis seem to ensure the diversion through Canada of a large part of the traffic of the North-Western States with New England and New York. A point of the greater importance, as it is proved that the wheat growing zone in America is, from some unknown climatic influence, steadily moving northward, promising shortly to be in a great measure confined to the North-Western States, Manitoba and our own North-West Territories.

In proof of the direct advantage of this through American trade to Canada, the evidence of Mr. Hickson, the able manager of the Grand Trunk Railway, may be cited, he says :—"The payments by the Grand Trunk Railway in Canada in working the through traffic have not been less than four millions of dollars annually for the last four years. The effect of such an expenditure in employment and in the consumption of supplies must have been very beneficial, while as a necessary consequence, the railway service of the entire Grand Trunk system must have been largely extended, to the manifest advantage of local districts."

The importance of maintaining and developing the foreign traffic passing through Canada can scarcely be exaggerated, and the natural advantages we pos-

sess, when, supported and increased through a wise system of railway construction and management, cannot fail to promote in the highest degree the prosperity of the country.

The Commission consider it unnecessary to examine the theoretical relation of railways, as common carriers, to the State. This subject has been exhaustively treated by many very able writers and in debate in Parliament and in Congress, to which reference can be had. Whatever judgment may be pronounced on this vexed question, the practical conclusion has been arrived at both in Great Britain and in the United States, that the public interest requires the great powers and privileges granted to railway corporations to be exercised under proper control by the State, and wise, efficient and economical service absolutely obtained. The great benefits derived through the adoption of the system of the transportation by railway must not be permitted to be sacrificed or even endangered through selfish, grasping, or inefficient administration, on the part of the railways.

The Commission in thus strongly stating the principle which they have decided must govern the conclusions of their present report, desire to be understood as distinctly disavowing any intention to reflection on the management of the Canadian railways. The evidence taken before them shows a number of cases of complaint, but the Commission have great pleasure in expressing the opinion that the explanations given on each case by the railway officials, if not absolutely conclusive in every case, are sufficient to exonerate them from the charge of wilful favoritism; the blame attaches to defect in the system and existing railway law rather than to its administrators. And it is to the removal of these defects that the attention of the Commission has been given.

HISTORY OF RAILWAY LEGISLATION.

Before entering upon the consideration of the remedial measures necessary, the Commission believe it will be useful and instructive to trace briefly the course of legislation in Great Britain and in the United States. The conditions of the latter country especially, are those of Canada, and the evils complained of in the evidence given before your Commission will be found to be absolutely identical with those which have led to remedial legislation in the countries named.

The history of railway legislation in Great Britain and the United States has been so fully and ably given by Professor Hadley, whose views have been also recited by the Senate Committee on Interstate Commerce in their report, that it is thought desirable to embody it in the appendix. The Commission have also availed themselves of the late Mr. Grierson's work on railways, important extracts from which will be found appended.

In brief, it may be stated that the principle of controlling railway corporations by commissioners appointed by the State has been in practice in England since 1873, and in the United States since 1863.

The powers and methods of control have been of the most varied character, but, in their results, it is admitted that the public and the railways have both benefited. Indeed, this opportunity may be taken for stating that in many cases the railways are more sinned against than sinning, and require protection from exactions and demands by the public, frequently as unreasonable as the alleged offences of the railways themselves.

The Commission regret to state that they lost the valuable aid of their colleague, Mr. Thomas E. Kenny, at an early stage of their enquiry, through his election to the Federal Parliament.

AMENDMENTS TO RAILWAY LAW.

The Commission now proceed to consider the amendments, which in their judgment are required to meet admitted evils in the present system of railway management, and to provide such control over railway corporations as, while not unduly interfering with their freedom of action, will secure to the country and its commerce all those benefits which a widely administered use of the modern system of transportation cannot fail to confer.

INTER-RAILWAY DISPUTES.

In the order in which the consideration of the subject has been submitted to them, the Commission have first to deal with what may be termed Inter-Railway disputes. Their very nature appears to preclude their satisfactory decision by ordinary legal process, as in a majority of cases, if not in all, they require proceedings in the character of arbitration. The Commission believe that their settlement calls for the creation of a tribunal especially qualified to deal with such questions, and it will be their duty, at the conclusion of this report, to express their opinion fully as to the character and scope of the railway tribunal which they regard as necessary.

Attention has been particularly given to the special case of the right of one railway company to expropriate the property of another company. It appears to the Commission that the circumstances attending each case must necessarily be special and peculiar; and in principle it may be admitted that if the interests of the several companies are alone concerned, no expropriation should be permitted. But in almost every case it will probably appear that the public interest and convenience are involved, and the right of expropriation should then rest upon precisely the same considerations of public utility as originally permitted the the railway company to obtain possession of the property of an individual.

The Commission suggest:—

"*That special legislation in each particular case of expropriation is not desirable, but recommend that such questions should be decided by some properly constituted tribunal.*"

In cases of dispute between railway companies as to traffic arrangements t adjustment of rates for passengers and freight, the crossing of tracks and compe sation therefor, including the cost of maintenance, the alignment, arrangemen disposition and location of tracks; rights of way over or through lands, owned occupied by railway companies; running powers; haulage; use of tracks; use stations and station grounds; adjustment of tables; transhipment and interchan of freight; and other matters relating to "powers," "highways" and "bridges and "traffic arrangements," in the Act of the Parliament of Canada known "The Consolidated Railway Act, 1879, and its Amendments."

The Commission decided:—

"*That legislation was required to empower an independent tribunal to deal wi all such questions, whose decision should be final.*"

The Commission now respectfully offer their suggestions and recommendation upon the general subject of the relations of the railways to the public.

CLASSIFICATION OF FREIGHT.

The convenience to the public and also to the several railway companies of a uniform classification is so obvious that the Commission consider it unnecessar to offer any extended remarks upon it, so far as it applies solely to railways i Canada. But as regards the through traffic from and to the United States, or suc traffic as is carried on in connection with United States railways, it does n appear desirable to insist upon the Canadian classification being made applicab to such transportation.

They therefore recommend:—

"*That a uniform classification of freight be established and maintained by all ra way companies, subject to the adoption, if desired by them, of the American classific tion for through traffic to and from the United States.*"

TARIFFS.

The Commission have carefully considered all the information before them o this important subject, and believe the interests of commerce will be best serv by leaving the arrangement of tariff rates for passengers and goods in the contr of the several railway companies respectively, subject only to approval a revision of the maxima rates by an authorized tribunal.

They therefore recommend:—

"*That the railway companies may make and establish tariffs, subject to the a proval and revision of the maxima rates by such tribunal as may be constituted,*"

LONG AND SHORT HAUL.

Uniform Mileage Rates.

This question has probably given rise to more discussion than almost an other point connected with railway management. It forms the subject of much

the evidence given before the Commission, and the greatest diversity of opinion exists upon it.

It has been the subject of repeated legislation in the United States, and in the celebrated "Granger" agitation in the West, uniformity of mileage rates was imposed upon the railways by State legislation. Experience, however, tended to prove that the effect of such laws was injurious, leading to their early repeal or modification.

The subject has also received the greatest attention in connection with the Inter-State Commerce Bill, and the principle of uniformity of mileage rates was finally sanctioned by the Act, reserving, however, to the Railway Commission power to suspend its operation on sufficient reason being shown. This power has since been exercised by the Commission in certain cases, and it is not now imperative on all railways to establish uniform mileage rates under like conditions and in the same direction for long and short distances.

The reasons given for the suspension of this section of the Inter-State Commerce Act have received the greatest attention by the Commission. They cannot lose sight of the fact, that where conveyance by water comes into competition with railways, it is not in the public interest to compel railways to transport freight at uniform mileage rates, as it involves the establishment either of such low rates as render the local traffic unremunerative, or such high rates as leave the through traffic between the competitive points wholly at the mercy of the carriers by water. The public interest will be best served by permitting rates between such competitive points to be determined by the respective carriers.

It is, moreover, manifest that the through traffic of Canada by railway, which the Commission regards as of the utmost importance, cannot possibly be carried on except at such rates, in combination sometimes with navigation, but more generally with American railways, as would be utterly inadequate if applied to ordinary local traffic.

While stating their opinion that the competition by water and rail from almost every important business centre in Canada forbids the adoption of uniform mileage rates, the Commission have not lost sight of the alleged unfair treatment of certain localities in Canada itself by railways. They believe, however, that such cases can be considered and relief obtained under the powers which they hereafter recommend should be granted.

They therefore recommend:—

"*That it is inexpedient to adopt a rule of equal mileage rates, irrespective of distance and cost of service.*"

Unit of Transportation.

By the adoption of an uniform unit for transportation it is not proposed to disturb or interfere with the right of the railways to establish a classification of freight nor to require them to depart from their practice of making their rates per 100 lbs. But the Commission, in view of the general character of the business of Canada, and to avoid complaints by small shippers that large shippers are treated on more favorable terms, desire to establish such an unit of transportation as may govern all transactions that do not absolutely belong to the export trade of the country. It has been given in evidence that the railway companies, in order promptly to furnish cargo for ocean steamships, induce wholesale dealers, by special low rates, to furnish large quantities of grain or flour, and it has been alleged as a grievance that such rates are not granted to shippers of small quantities.

The Commission are of opinion that the grain and flour trade of Canada cannot be advantageously carried on unless the railway and the merchant can arrange together, as to the cost by rail and ocean vessel, of delivery in the foreign port.

The same necessity does not exist in regard to the ordinary trade in other articles, and while prepared to admit the necessity, in certain cases, of making the rate of transport depend upon the quantity carried, the Commission consider that this privilege should be confined to not less than car loads, and be subject to the regulations proposed to be established in regard to discriminations.

They therefore recommend:

"*That one car load of not less than ten tons shall be the unit of railway transportation, in respect of any special rates granted; all quantities under a car load being treated alike, but the railway company to be at liberty to make special rates for larger shipments.*"

DISCRIMINATION.

Individuals.

Undoubtedly one of the most frequent causes of complaint against all railways, not only in Canada but also in Great Britain and the United States, is that of discrimination of an unjust or partial character between individuals under like conditions. It interferes most improperly with legitimate trade, and should certainly be prohibited by law. It cannot be the desire of the principal railway officers or managers to permit such favoritism, but it is generally the act of local agents—especially such as are paid by commissions, and influenced either by personal favoritism or desire of gain. The practice should be peremptorily ended and such penalties imposed as will secure the attention of the railway managers to the strict observance of the law by their servants and employees.

The Commission recommend:—

"That discrimination of unjust or partial character between individuals under like conditions be effectively prohibited, and any infraction of such law punished by severe penalties."

Localities.

Much complaint has also been made of discriminations in favor of one locality over another. These cases differ widely from the preceding, and are found generally to arise from the presence of competition, either by water or by rail. They seem to be inseparable from any railway system and each case requires special investigation. Where like conditions exist, such discriminations should be prohibited and under the pressure of being exposed to penalty the railway managers must exercise the power of determining the respective rates of transport.

The Commission believe that these cases will generally be amicably arranged if the following recommendation be adopted, and the difficulty will be met which has been referred to under the head of Long and Short Haul—Uniform Mileage Rates:—

"That discrimination of an unjust or partial character between different localities under like conditions be effectively prohibited, and any infraction of such law punished by penalties, after due cognizance having been taken of the effect of water and rail competition."

SPECIAL RATES.

The objection to secret special rates, rebates, drawbacks, and all concessions to shippers of a discriminative character are fully set forth, not only in the testimony given in Canada, but also in the great body of evidence furnished from the United States. The practice is not only unfair to traders engaged in the same business, but has been shown to be opposed to the best interests of the railways themselves, and should certainly be prohibited under penalties for infraction of the law.

The Commission do not, however, desire to object to such special rates or concessions where made to all parties alike, and their existence made public. It is in the interests of commerce, as shown in treating of discriminations, that railway managers should be permitted to grant special relaxation of their tariff rates in certain cases; but such concessions should be alike available to all.

It is believed the case will be met by the adoption of the following recommendations:—

"That all secret special rates, rebates, drawbacks or concessions to shippers be declared illegal and made subject to penalties, and that every special rate be made public on demand of any enquirer."

EXTORTION OR UNJUST CHARGES.

The evidence given before the Commission and the information derived from the United States and Great Britain disclose the existence of many complaints by individuals of overcharge under the railway tariff, or of exactions imposed unfairly in various forms. Such abuses have their remedy under the common law of all countries, but the process is slow and expensive and presses hardly upon the complainant, who frequently will rather submit to what he considers unjust treatment than enter into litigation with a powerful corporation. In many cases, moreover, the amount at issue is small, though equally vexatious in its supposed extortion.

It appears to the Commission desirable, in the interests both of the public and of the railway companies themselves, to provide an easy and prompt mode of settlement of all such complaints, reserving, however, to the party aggrieved, the option of proceeding through the ordinary law courts, if he prefers.

In the United States generally, the Railway Commissions have power to hear such cases, and in some instances to decide them, while in others the ultimate decision is left to the ordinary tribunals.

The Commission are of opinion, that where the complainants elect to go before the special tribunal to be created in Canada, the proceedings should be final, subject only to the regulations proposed hereafter in this respect.

In dealing with such cases in other countries, the amount to be recovered in Great Britain is limited to the overcharge, while in the United States it varies; in most cases, being followed by a penalty to be recovered by the complainant of three times the amount of the damage actually sustained.

The Commission, in proposing to apply this remedial system to Canada, consider that the damage claimed should be distinctly limited to the actual overcharge, and that if indirect damage is alleged or claimed, the complainant should proceed by an ordinary action at law. It appears, also, that in many instances, it may be shown that the overcharge has not been willful or intentionally unjust; therefore, it is thought that the amount of penalty should be in the discretion of the tribunal, but not to exceed three times the amount awarded as overcharge.

As regards the costs attendant upon the investigation of complaints, the tribunal should be empowered to exercise its discretion in awarding them.

The experience of the United States has shown that the existence of such a tribunal leads to the amicable settlement of complaints, and it is believed that a similar result would follow in Canada, removing a fruitful source of irritation against railways.

It is therefore recommended:—

"*That complaints of extortionate rates, or unjust discrimination, may be referred to an authorized tribunal for settlement, whose decision shall be final. That the damages be limited to the amount proved as overcharged, with any further amount not exceeding three times the sum awarded, as a penalty to be recovered by the complainant, with costs in the discretion of the tribunal. No indirect damage to be considered or awarded. That the right be reserved to the complainant of proceeding at common law. That the right be reserved to complainant of proceeding at common law, if he so elect.*"

EXPRESS BUSINESS.

The express business is primarily a commission business, the expressman undertaking to serve whomsoever may employ him on doing various errands at some other place than where such employer lives, taking care and charge of such commission personally or by deputy. The transportation of merchandise is an incidental matter and dependent upon the commissions given the expressman to execute. The express companies neither own the lines nor railways upon which they do business, nor have they (as a rule) any exclusive privileges; anyone possessing the necessary security being able to do an express business for themselves. They must employ special teams, drivers, agents, &c., at their offices, and messengers, transfer men, &c, *en route*, and it would be extremely difficult to bring express charges under any ordinary classification or tariff.

It is therefore suggested:—

"*That railway companies be not compelled to undertake express business, but must afford equal facilities to all express companies alike in the transaction of the same.*"

FREE PASSES.

The practice of granting free passes is shown, by the evidence obtained from the United States, to be in many respects equivalent to "discrimination," and therefore objectionable. Its abolition is clearly in the interests of the railway companies, and it certainly cannot be claimed that the public, under any circumstances, are entitled to free transportation.

Under the Interstate Commerce Law free passes have been abolished, and it is understood the change has given much satisfaction and been beneficial to the railways. It is true that the law in question reserves the right of railway companies to exchange "passes," which is clearly unobjectionable as simply as an exchange of service. In Canada, where the Government as representing the public are the owners of one important railway, it seems proper that they should at all times be entitled to pass over and examine their railway, but the Commission consider that the privilege of obtaining "passes" from other railways should be strictly confined to the actual officials of the Dominion railway.

They therefore recommend:—

"That the grant of free passes by railway companies be abolished, saving the reservations contained in the United States Interstate Commerce Act, and excepting members of the Federal or Provincial Government on Federal or Provincial railways respectively."

UNIFORM RAILWAY REPORTS.

It is evidently desirable, in the public interest, that the several railway companies should render their reports to the Government in the same form and for the same periods.

It is recommended:—

"That the railway companies be enjoined to furnish their several reports to the Government as required by law, in a uniform shape and for the same periods."

PENALTIES ON RAILWAYS.

It appears important to provide by law for the due observance, by the several railway companies, of all duties and obligations imposed upon them under existing and future Statutes. This is done both in Great Britain and the United States, and it is believed to have been beneficial in its operation.

It is suggested:—

"That the illegal infraction of any statutory obligation should be left to the proposed tribunal, who, after hearing the case, may impose for any proved violation or neglect to comply with the regulations established by law, such penalty as may be deemed proper, being not less than one hundred dollars nor more than five thousand dollars."

COST OF TRIBUNAL.

The Commission have considered the practice pursued in Great Britain and in the United States in regard to defraying the expense attendant upon the proposed railway tribunal. In most cases it is met by an assessment upon the railways, based upon various methods. A fair consideration of the whole subject leads to the conclusion that the regulation and control of railways by the State is entirely based upon grounds of public interest, and for the immediate and direct benefit of commerce, involving changes which may in some cases be thought to press somewhat hardly upon the railway companies. It is therefore considered more equitable that the charges connected with the proposed tribunal should as in the case of other courts be borne by the community at large.

It is therefore recommended:—

"That the expenses connected with the formation and operation of the proposed Railway tribunal be borne by the public exchequer, excepting so far as may be caused through investigation of complaints, in which case costs may be included in the award, at the discretion of the tribunal."

GENERAL REMARKS.

In recommending the foregoing amendments to the existing railway laws, the Commission desire to be understood as in no respect proposing to alter or diminish the existing statutory obligations for prevention of accident and general oversight. They would, however, suggest that special provision should be made into the investigation of serious accidents, as is now provided under the English law. Such enquiries might, probably, in the case of Canada, be fittingly entrusted to the proposed railway tribunal.

FORMATION OF TRIBUNAL.

In considering the important question of the character and composition of a tribunal to give effect to the various recommendations made in their report, the Commission have felt themselves limited to the selection of one of two courses :—

First.—The creation of a Commission, independent of Government control, with practically irresponsible authority.

Second.—The maintenance of the Railway Committee of the Privy Council with such extension of its powers and requisite departmental machinery, to secure the proper execution of the law.

In considering the subject the Commission have the advantage of knowing the scope and operation of independent Railway Commissions in Great Britain and the United States. But in the former case they are met by the difficulty that the present law requires important amendments which have not yet been considered, and which are known to excite much opposition and criticism. In the several States of the American Union very great diversity exists in the powers and character of these tribunals, for each of which methods peculiar advantages are claimed. It may be unhesitatingly stated that the Commission are unable to accept any of these commissions as the model upon which the Canadian tribunal should be framed. Apart, moreover, from the intrinsic defects that are found in them all, it is evident that they are unsuited to the condition under which the commerce of Canada is carried on, through their scope being restricted within too limited an area, and unfitted to deal with the foreign through traffic upon which the prosperity of Canada is so largely dependent.

The Insterstate Commerce Act and the Commission established to give it effect are much more analogous to the circumstances of Canada, and the Commission would have felt their labors greatly lightened if the operation of this law could be regarded as final and settled. It deals with questions precisely similar to our own, and its working has already proved of the greatest value in the present enquiry. But the Interstate Railway Commission has, in its initiatory judgments, found it necessary to partially suspend the operation of the most important section (4th section) of the Act, and has already indicated other important particulars in which

it desires amendments to the law. It has, however, confessedly been already productive of great good to the public and also to the railways themselves, whose apprehensions of injury from it have been in a great measure dispelled.

With respect to the machinery through which the Interstate Commerce Act is expected to work, your Commission have grave doubts whether it will be found applicable to the vast extent of territory over which it has jurisdiction. They are inclined to believe, that in requiring the presence of even one Commissioner at all enquêtes, it will be found impossible to meet the demands upon the Commission, and the necessity of making all original applications to the central authority at Washington will, they fear, lead to serious delay, and in the case of such individual complaints as it is proposed to refer to the Canadian tribunal, amount practically to a denial of justice.

Whether these opinions be justified by experience is, however, immaterial, as the Commission cannot recommend the adoption of any system which is now on its trial, and which it is conceded requires substantial amendment, none of the existing Commissions having sufficiently extensive powers to deal effectively with the various matters which would come under their jurisdiction. It is undoubtedly the wiser policy to benefit by the experience of others rather than by our own.

The Commission desire to provide by immediate legislation for admitted evils, with the least possible disturbance to existing methods, only accepting such conclusions as have been tested and proved to be beneficial. They wish to avoid the hasty creation of any system of which experience in the United States, England and Canada may soon require serious modification. They think it better to test the working of the proposed law by temporary provision for its execution, and after full experience of the results of the Interstate Railway Commission and of our own legislation to consider whether such system should be made permanent.

Other considerations also weigh with your Commission in their conclusions. The political constitution of Canada recognizes direct ministerial responsibility to Parliament, much more than in the United States, and, therefore, as a Railway Tribunal is necessarily tentative, it seems to them undesirable to remove its operation, in its inception, beyond the direct criticism and control of Parliament.

At the same time the Commission admit that serious objection may be taken to the selection of the Railway Committee of Privy Council as the General Railway Tribunal. The members cannot leave their duties at Ottawa, and must, therefore, delegate to subordinates much very important work, though the Interstate Commission is open to the same objection.

They hold their office by a political tenure and are liable to sudden change, whereby the value of their experience is lost. They can scarcely be regarded by

the public as so absolutely removed from personal or political bias as independent members of a permanent tribunal. They cannot possibly give their exclusive attention to their railway duties, and in taking upon themselves the duties which would necessarily devolve upon them they would be in fact performing judicial functions. These and other reasons occur against the selection of the Railway Committee of the Privy Council as the Railway Tribunal; but it is believed they are outweighed by the considerations of general and ultimate advantage, through proceeding with extreme caution in dealing with subjects affecting the entire commerce and progress of the country; while a material practical advantage is secured by the fact that any required changes in the law or in its application are secured through identifying the Government with its execution.

After the fullest discussion and most deliberate consideration the Commission desire to report as their final recommendation :—

"*That the powers of the Railway Committee of the Privy Council be enlarged so far as to enable them to administer the proposed law, providing—*

"1*st. That the Committee shall itself hear and determine all disputes arising between railway companies, with power to appoint proper officers to take evidence locally.*

"2*nd. That the Committee shall itself decide all questions of classification of freight, tariff and uniform railway returns.*

"3*rd. That the Committee shall have power to appoint officers in each Province, to hear and determine all complaints against railway companies, subject to power of reference by such officer of any point to the Committee, and also subject to the right of appeal to the Committee itself.*"

GENERAL RAILWAY LAW.

The Commission consider the decision of this question to be rendered more difficult from the existence of co-ordinate powers in the constitutions of the several Provinces reserving the right of chartering local railways. But as regards the Dominion at large, they are of opinion that a general railway law would be more beneficial than special charters, provided such general law contained provisions for securing the public from undertakings either uncalled for by the community, or projected without adequate security for their *bond fide* prosecution.

Such provisions should comprise :—

"1*st. The submission of plans and profiles of location of proposed lines, and estimates of cost to be filed for a certain time with the Railway Tribunal.*

"2*nd. Adequate proof of ability to complete the undertaking, either by subscription of share capital, or by deposit with the Government, subject to release as the works progress.*

"3*rd. No bonds to be issued until a certain specified proportion of the cost has been actually expended upon the work.*

"4th. *The operation of such general law to be excluded from any part of the Dominion, wherein Parliament has forbidden the construction of railways, during such period as the prohibition may exist.*"

All respectfully submitted.

(Signed) A. T. GALT, *Chairman*,
COLLINGWOOD SCHREIBER,
GEORGE MOBERLY,
E. R. BURPEE.

MONTREAL, 14th January, 1888.

THE ROYAL COMMISSION ON RAILWAYS.

Appendices to Report.

1st. REPORT OF COMMITTEE VISITING UNITED STATES.]

2nd. SUPPLEMENTARY REPORT OF SAME.

3rd. EXTRACTS, HADLEY, &c.

APPENDIX No. 1.

THE REPORT OF THE SUB-COMMITTEE OF THE COMMISSION APPOINTED TO ENQUIRE INTO THE RAILWAY LAWS AND RAILWAY COMMISSIONS IN THE UNITED STATES.

To the Chairman and Members of the Royal Commission on Railways for Canada :

Your Committee beg to report that, in accordance with the instructions of the Commission, they proceeded to the United States, in order to obtain as full and perfect a knowledge of the working, not only of the Interstate Commerce Law, but of the separate State Railway Laws and Commissions, as it would be possible to get in the limited time at their command.

In furtherance of the object, your Committee visited the following States and cities :—

States.	Cities.
1. Minnesota	St. Paul, Minneapolis.
2. Wisconsin	Madison, Milwaukee.
3. Illinois	Chicago.
4. Michigan	Detroit, Lansing.
5. New York	Albany, New York.
6. Massachusetts	Boston.
7. Connecticut	New Haven.

During our visit to Minneapolis the Interstate Commerce Commissioners were holding a session of their Board, investigating several causes of complaint, and we had an opportunity of observing the manner in which business was conducted by them, which seemed to give satisfaction to all parties interested.

We also met at same time the State Commissioners of Iowa, Missouri, Wisconsin, Illinois, Nebraska and Minnesota, who had gathered there to meet the Interstate Commission, and also to discuss with a number of delegates—representing the mercantile interests of those States—matters of joint interest to be presented to that Commission. From all these gentlemen we were able to gather information regarding the laws governing the railways in their respective States,—and wherever it was possible your Committee endeavored by interviews with the leading business men, railroad managers and public officials, as well as State Commissioners, to get the best and most diversified information as to the working of the separate State and the Interstate laws and Commissions.

The result of our enquiries in the separate States as to their local laws and Commissioners have for convenience been placed under the head of each State.

WISCONSIN.

The law in this State provides for one Commissioner appointed by the Governor, whose power is only advisory. All unjust discrimination or unjust charges are prohibited. A maximum tariff is made, and any person sustaining damage from a violation of these provisions of the law may recover from the railroad three times the amount of such damage. It is the duty of the Commissioner to investigate all

grievances brought under his notice, and if well founded to report the facts to the Attorney General who shall prosecute at the expense of the State. The Commissioner has also to examine into the condition and management of all the railways in the State and report thereon to the Legislature, giving also the financial condition and a list of the stockholders of each road. Railroads are chartered under a general incorporative Act and not by special legislation. From enquiries at Madison, the State Capital, and Milwaukee, it appears there is perfect harmony between the railways and the State Commissioners, and that the Interstate law was not working injuriously to anyone.

MINNESOTA.

This State has had a varied experience in railway legislation, having tried nearly all kinds. In the general anxiety to open the wild lands of the State for settlement, in 1868, laws were passed granting charters to any persons filing articles of association with Secretary of State, giving them power to raise their capital and build railways when or where they chose. The State also gave State bonds to the extent of ten millions of dollars and large grants of lands towards building certain lines of road. In 1872, the opposite course was pursued and legislation was passed restricting the operation of the railways and regulating their charges and appointing one Commissioner.

The railroads chartered previous to the passage of these laws, questioned the right of the Legislature to interfere with their rates, but on appeal it was finally decided by the Supreme Court of the United States, that the State had the right to regulate the rates on all railroads within its borders. When the general collapse took place following the failure of Jay Cooke and with him of the Northern Pacific Railroad, in order to induce capital to return to the State and open up its resources by the construction of more railroads, this law was repealed and the duties of the Railroad Commissioner were confined to examining into the physical condition of the railways as bearing upon safety of the travelling public.

In 1885 the present law was passed which provides for three Commissioners to be appointed by the Governor and paid by the State. The law prohibits unjust discrimination of any kind and unjust or extortionate charges, and gives the Commissioners power to adjust rates, locate stations and sidetracks, and also to compel railways to build sidings to warehouses, where in their judgment such are required. It is their duty to investigate all complaints or grievances against the railways or their management for violation of the law, and when their findings are not obeyed, to report to the Attorney General of the State, whose duty it is to enforce obedience to the laws. They are also to examine into the condition and management of all railroads in the State and report to the Legislature. One of the three Commissioners must visit every town in the State, where there is a railroad station, at least once every three months, giving the public twenty days' notice of the time of such visit. The railroads, in lieu of exemption from all local or other taxes on their property or lands, pay into the State Treasury three per cent. of their gross earnings.

We had long interviews with the Governor and Secretary of State, ex-Governor Austin, now Chairman of Railroad Commission, and many leading business men, from whom we learned that the railroads almost universally complied with the requirements of the Commissioners under the law.

At St. Paul, Mr. Clough, lately Solicitor for the Northern Pacific but now assistant to Manager of St. Paul, Minneapolis and Manitoba Railroad, informed us that he regarded the clauses in the Interstate law relating to long and short hauls if literally interpreted as injurious to trade, if not absolutely impracticable, and that the clause prohibiting pooling if continued must lead to the consolidation of railroads into large systems. He thought for the State an advisory and investigating Commission useful, but would not give them power in making tariff rates. In most cases the rates on the St. Paul, Minneapolis and Manitoba are lower than those named by the Commission.

Mr. Shephard, the head of a large firm of contractors, instanced that as the effect of long and short haul in the Interstate law in advancing rates on the railways between competing points, he had already paid, during the present season, $30,000 more in freights than he would have done under the tariff of last year.

I. L. Hill, Esq., the most successful and probably the ablest railroad manager in the North-West, said the value or otherwise of a Commission depends entirely upon the law governing the railways and the power given to the Commissioners. As a rule, he found the Commissioners were sensible men, and when they had to look at both sides of the railway problem, the railroads had no difficulty with them. He had no trouble on his road in keeping pace with public opinion, and as a matter of business he reduced rates when practicable, oftentimes even lower than required by the State laws. He believes railroads should be built and operated on commercial principles, and pay a good interest on their actual cost.

In doing so there should be some restriction to the present system in Minnesota, of giving charters indiscriminately (often to build roads where none are needed), and also there should be a strong supervision over the location and construction of new roads, compelling them to build on the lowest grades and easiest curves practicable between terminal points, in order (even at greater first cost) to minimize operating expenses.

IOWA.

Peter A. Dey, Esq., Chairman of the Iowa State Commission, informed us that the Granger Law (so-called) was passed in that State in 1874. This law made classification and rates for both passengers and freight. There being no Commission, the penalties could only be enforced, by the individual aggrieved, through the Courts.

In 1878 a law was passed forbidding railroads charging unreasonable rates or discriminating in favor of individuals or places (under a penalty of three times the actual damage sustained), and creating a board of three Commissioners, to be appointed by the Governor and paid by the State. The money required was collected from the railroads according to the assessed value of their property within the State. They were required to examine into the condition, equipment and management of each railroad in the State, with reference to public safety and convenience, and to advise the said railroads of any improvements which they judged to be proper or of any violation of the laws. In 1884 the law was amended, giving the Commission power to decide what were reasonable rates, and in case any railroad refused or neglected to carry out their recommendations, to report to the Attorney General of the State, whose duty it became to enforce them through the Courts.

In 1886 the Commissioners fixed a maximum scale of rates for the railways, and they expect to have an Act passed at the next session of their Legislature applying the principles of the Interstate Commerce Act to the railways within the State. Some of the roads are already adjusting their tariff within the State to accord with its provisions.

He also stated that as the railways have grown stronger, and from an increased volume of business are able to carry traffic cheaper, they have reduced their rates voluntarily, until at the present time they are actually much lower than those fixed by the Granger Law of 1874.

MISSOURI.

In 1875 a law was passed creating a board of three Commissioners (to be appointed by the Governor) who were to have a general supervision over the railroads in the State, and with power to make classification and maximum rates for freight traffic. A special session of the Legislature was convened in May last for the purpose of legislating in regard to railway management and as far as possible of assimilating the railway Acts of the State with the Interstate Act of Congress. An Act was passed prohibiting discrimination, either in rates or accommodation, or of

pooling freight or earnings of different competing roads for a greater charge for a shorter than for a long haul on the same road and in the same direction. A railroad violating any of these provisions of the Act is liable to the party aggrieved for three times the amount of damages sustained and also to the State in a penalty not to exceed $5,000.

The Commission have to classify freight and adjust rates with the railroads, and if any railroad company refuse or neglect to adopt and publish such tariff rates the Commissioners are to make and publish one for them.

It is also their duty, either at their own instance or on the request of the party aggrieved, to see that all the provisions of the law are enforced.

ILLINOIS.

The constitution of the State of Illinois adopted in 1870 declared railroads to be public highways and free to all for the transportation of their persons or property under such regulations as may be prescribed by law. The Legislature was required to pass laws establishing reasonable maximum rates and prevent discrimination, and to enforce such laws by adequate penalties, even if necessary to the forfeiture of the property and franchise of the railways. In 1871 a board of three Commissioners was created, who were to be appointed by the Governor and paid by the State (with the right to free transportation over the railroads). In order to overcome a decision of the courts which declared that the law relating to discrimination was unconstitutional because it did not make the distinction between discrimination and unjust discrimination and because it did not allow the railroads to explain the reasons for discrimination, the law was amended in 1873, defining and prohibiting extortion and unjust discrimination and fixing penalties in addition to awarding triple damages to the party injured. The Commissioners are to examine into the condition and management of the railroads within the State, also to make for each a schedule of reasonable maximum rates, regulate the interchange of traffic between them and prosecute all violations of the law which come to their knowledge.

For much of this information regarding the laws of Illinois, and also many valuable statistics relating to the traffic over, and working of the railway system of the West, we are indebted to I. W. Midgely, Esq., Chairman of the Southwestern Traffic Association, representing over 40,000 miles of railroad centering in Chicago. He also informed us that the railroads in Illinois usually adopted the tariffs as arranged by the Commissioners or amended by them on conference.

MICHIGAN.

In 1873 the Legislature passed an Act which provided for a Commissioner of Railways to be appointed by the Governor, whose duties were to examine into the condition and management of the railroads within the State and all matters relating to the public safety, with power to regulate the crossing of the track of one railroad over that of another, and the interchange of traffic, as well as to arbitrate in cases of dispute. No special charter can be obtained from the Legislature in this State; but any number of individuals can file articles of association, and a map of location of the proposed railroad with the Secretary of State; which location being approved by a board consisting of the Attorney General, Secretary of State, and Railroad Commissioners, entitles them to a charter under the general Act for incorporation. The laws as now in force prohibit unjust discrimination in rates.

In our interviews with the Governor of the State and Railroad Commissioners at Lansing, the managers and other officials and also the solicitor of the Chicago and Grand Trunk with others at Detroit, we learned that the operations of the State Commission were regarded as beneficial, and also that the Interstate law as it was being interpreted by the Commission was, if anything, working advantageously.

Before leaving Detroit we had an interview with Hon. Jas. F. Joy, for many years prominently connected with the railroads of America. He expressed the

opinion that the Interstate law had been a benefit to the railroads, inasmuch as it had prevented unjust discrimination and helped to maintain fair rates on through business. The great trouble with all railways, and especially trunk lines, was in cutting rates and carrying freight too low. For this he would recommend legislation fixing a minimum rate for all railroads, with a heavy penalty in cases of violation. This, he thought, would tend to prevent ruinous competition and the building of unnecessary roads.

NEW YORK.

This State having within its borders the Atlantic terminus of most of the trunk lines to the west, and across the continent, must be seriously affected by the management of these railroads, yet it had no Commission until 1882. It has been legislating on railway subjects since 1850, and the most memorable Commission of enquiry into the abuses of railway management in America was the Hepburn Committee of the Legislature of New York for 1879. The result of this investigation was the legislation of 1882, which amongst other things created a Board of three Commissioners.

These Commissioners are appointed by the Governor, with salary of $8,000 per annum each, which with the salaries of a secretary, accountant, engineers, inspectors, clerks and other expenses, is paid by the State out of a fund collected from the railroads *pro rata* according to their gross earnings. Their powers are those of an investigating and advisory board. They are to keep themselves fully informed in all matters affecting the condition, operation, management and transportation facilities of the railroads, and are also directed to report any violations of the laws to the Attorney General, whose duty it is to take such action as may be necessary for the protection of the public interests.

Their duty is also to recommend that repairs to the superstructure be made when necessary, that additions to the rolling stock and additional station and terminal accommodation shall be afforded where needed, and also such changes in the freight and passenger rates as they deem reasonable and expedient in order to promote the public convenience.

They have no power to enforce these recommendations, but in case of the refusal by any railroad to comply, they report the facts to the Attorney General, who takes action in cases of violation of the law; or to the Legislature, when special legislation is needed.

Charters are granted under the general law for incorporating companies.

Not less than 25 individuals are required to file articles of association with the Secretary of State, after having got the approval of the State Engineer to their map and plan of location, when they are entitled to a charter to build; but if at any time a railway company wishes to increase its capital stock or make a mortgage for a further issue of bonds, they must get authority from the Railroad Commissioners. The Commissioners on receiving applications for such authority send their accountant to examine into the financial condition of the company, to ascertain if the value of stock and bonds previously authorized has been properly expended, and whether the increase asked for is necessary, and on his report they decide whether to authorize such increase of capital or otherwise.

From information gathered in New York City and Albany, we learned that the railroads generally comply with the recommendations of the Commissioners, and almost all complaints were remedied without the necessity of formal action.

MASSACHUSETTS.

The Railroad Commission of this State was frequently referred to during our enquiries as one of the oldest and most useful in America. We understand from the Commission that the law relating to extortion and unjust discrimination was framed largely from the experience of investigation and legislation in relation to English railways. At the time they were passed they prohibited both unjust discrimination

and charging more for a shorter than for a long haul over the same road and in the same direction for the same class of goods.

The Act creating a Board of Commissioners was passed in 1869. It consists of three members appointed by the Governor and paid by the State from funds which are assessed on the railroads in proportion to their gross earnings. Their duties are to make a thorough examination into the physical condition and structures of the railways, to decide upon the location of the road and the stations, to regulate the crossing of railroads and the interchange of traffic between connecting roads, and to examine into the causes of accidents, ordering necessary precautions to prevent the same. They also investigate complaints when made to them of discrimination or unjust charges for transportation of either passengers or freight, and report the result to the railway company complained against, and in case of refusal or neglect to comply with their recommendations they report the same to the Legislature.

The Select Committee of the Senate of the United States on Interstate Commerce in their report in January, 1886, say:—

"In the way of practical results the Massachusetts Commission is shown by its record, and by the testimony, to have exercised by its reports and decisions an acknowledged influence upon the railroads in bringing about needed reforms and to have been successful in the redress of grievances and correction of abuses. It has held the railroads to obedience of the laws and has not only secured the passage of needful legislation but has prevented unwise measures. Through its recommendation voluntary reductions in rates have been made and discriminations of different kinds have been done away with. It has secured uniformity in the accounts and reports of the railroads. It has fixed the responsibility of accidents and has done great service in requiring the adoption of improved appliances for safety."

They also refer to Hon. Charles Francis Adams, for many years Chairman of the Massachusetts Commission, as an acknowledged authority on railroad matters. He said in 1874:—

"The Commission is simply a medium, a species of lens by means of which the otherwise scattered and powerless rays of public opinion could be concentrated to a focus and brought to bear upon any corporation."

It would therefore seem from what has been said that four of the States, Minnesota, Illinois, Missouri and Iowa, have laws regulating among other matters tariff rates, and giving the Commissioners very extensive power in enforcing the laws within the respective States.

Four States, Michigan, Wisconsin, New York and Massachusetts, while they have laws providing against unjust discrimination and extortion, and while the Commissioners in each have full and extensive power in the oversight of the condition of the roads on all matters relating to the security of life and property, yet in regard to questions relating to rates their duties are only of an investigating and advisory nature.

We may also add from personal observation and enquiry, that the States of Connecticut, New Hampshire and Maine, have Railroad Commissioners whose duties are confined to the examination and oversight of the physical condition of the railroads as affecting the safety to life and property in transportation; they have to report yearly to the Legislatures of their respective States on these matters, as well as on the financial condition of each railway within the State.

The testimony we were able to obtain from personal interviews with the Governor and Secretaries of State (in the States visited) as expressing the views of the people by whom they were elected, also from leading men engaged in trade and manufacturing—from the reports and opinions of the different State Commissioners, and also from the managers or other officials of such railroads and traffic associations as we were able to see, lead us to the conclusion that in the United States, the form of Commission most popular with all classes and most successful in correcting abuses and instituting reforms, is one for investigating and advising such as that adopted by the State of Massachusetts, and copied in many of its leading features by New York. This system was brought to its present state of efficiency in Massachusetts mainly

through the labor of Charles F. Adams, Esq., for many years the Chairman of the Commission, and now President of the Union Pacific Railroad, Boston.

Mr. Adams not being at home when we first visited Boston, we deemed it necessary to make a second visit to that city to see him, and at the same time to visit New Haven to see Prof. Hadley, of Yale College, who has made the railway problem of both America and Europe a special study.

Prof. Hadley thought as the railways of Europe (outside of Great Britain) were so largely owned or under control of the Governments, and the circumstances governing them were so different from those governing the railways of America, that no laws regulating them would be of use in America.

In Prussia nineteen-twentieths of all the railroads are practically owned by the Government, and there the tariff on all good except coal and such articles (which are carried by special contract) are based upon equal mileage rates with a terminal fee added.

In Belgium all the railroads, excepting one, are owned by the Government, and here where the freight charges are the lowest of any country in the world the same principle of equal mileage rates is applied.

In France the territory is divided by the Government between a certain number of companies who have the exclusive right to build and operate railroads within their respective districts. The result is that roads are not always built as fast as needed to meet the requirements of the increasing demands of trade, and in 1884 the Government had to guarantee some of the companies even as high as 13 per cent. on the actual cost in order to secure the construction of certain branch lines which they considered demanded in the interest of the country.

The tariff rates on all the railroads in France are made by the companies and Government jointly, and no railroad can charge either more or less without first getting the consent of the Government. This has a beneficial effect in keeping rates uniform, and if applied here might prevent the building of many competing lines (where there is no business to warrant them), and also in maintaining fair remunerative rates would protect the value of railway securities.

The system of pooling was almost universal both with private and Government roads, and often with also water routes with good results.

In regard to the Interstate law Prof. Hadley stated that in the present shape it was not meeting all the requirements expected, yet by reason of the decision of the Commissioners its effect upon the railroads has not been injurious.

There are two classes dissatisfied: 1st, those who were able to take care of themselves, and formerly had special favors; and 2nd, those who think it has not borne so heavily upon the railways as was expected and as they thought it should.

As a matter of fact he said the railway problem is now so complicated and the commercial prosperity of the whole country so dependent upon its proper solution, that it requires the most careful study and mature judgment.

Neither the courts nor the Legislature are competent or have the time to decide correctly regarding the proper management of railway traffic. They may often give decisions or pass measures seriously and perhaps injuriously affecting the trade of a whole continent. Too much stress cannot be laid upon the necessity of having intelligent and carefully prepared laws.

Mr. Hadley thinks a competent advisory Board of Commissioners with power to investigate and consider with the railway managers all the peculiarities of their traffic would be able to come to conclusions beneficial to trade and useful to the railroads in meeting public opinion and shaping legislation.

Mr. Adams says the present Interstate Commerce Act was passed under pressure of popular clamor, was not properly digested and is defective in many respects. It could not be expected that Congress, a body composed of men elected on account of their local ability to represent the particular districts in which they reside, are able to deal intelligently with so comprehensive a subject as the railways, often running through districts thousands of miles removed from their own and affecting for good or evil the business interests of a whole continent. The present Board of Interstate

Commissioners are an able body of men, and he had no doubt that in time they would improve the present Act until they got a good law through Congress. They have already by their decisions on the long and short haul clause suspended its operation, literally (as interpreted) in many cases actually demanded in the interests of commerce, which shows that as an absolute law it is impracticable. He thinks an advisory Commission of good men to investigate causes of complaint and assist in shaping legislation best in the interest of both the railways and commerce. He has no doubt that the fear, that under the Interstate law, a cut in through rates would be disastrous to their local traffic, has prevented the cutting of rates by the trunk lines.

The attempt of Congress to prevent pooling must tend towards consolidation, or of the larger roads swallowing up the smaller. He thinks that parties making very large shipments are fully entitled to lower rates than those making smaller shipments. The railways could certainly do the business cheaper and with less risk, and he did not see that the public were injured. He instanced some coal mines who, shipping thousands of tons of coal daily by having special rates, really gave cheaper coal to the consumer.

The Standard Oil Company may have grown rich from concessions made by railroads, but they have refined oil on so extensive a scale and they could do it so cheaply that no small concern could compete, and as a matter of fact refined oil never was so cheap as since they have been established, so he did not see wherein the public suffered. He did not think equal mileage rates fair, as no railway could carry traffic as cheaply through a sparsely settled country as through a more densely populated one. He doubted the policy of the Legislature attempting to fix even maximum rates, but he would like to see some way to prevent cutting rates or reducing them below what was fairly remunerative. In regard to charters for railroads it was not possible now to prevent their being granted where asked for, but the public would learn by experience that where they encourage unnecessary roads to be built they must ultimately pay for them.

From Mr. Lincoln, of Boston, agent for one of the European lines of steamers and so prominently engaged in foreign commerce as to be delegated to represent the merchants of Boston before the Select Committee of the United States Senate on Commerce, and also the Interstate Commissioners, we learned that through the interpretation of the law by the Interstate Commissioners its operations had not the injurious effect on the trade of Boston expected, and so far as it had tended to prevent cutting rates it had been a boon to the merchants. As a business man he deprecated railroad wars, which always cause a great deal of uncertainty in business.

In the absence of the President of the Fitchburg Railroad and Hoosac Tunnel Line to the west, we gathered from their solicitor, that owing largely to the interpretation of the law by the Interstate Commissioners in the interest of commerce it had worked better than they had expected.

Mr. G. R. Blanchard, President of the Central Traffic Association of Chicago, one of the very best authorities on matters connected with railway traffic in America, and who represents an association comprising over 50,000 miles of railway, in all matters affecting their interests before Congress and the Interstate Board of Commissioners, stated that the law as it had been interpreted had not worked injuriously to the railways. To some extent it had helped to maintain rates, as no road cared to take the initiative in cutting rates, fearing the effect of the operation of the long and short haul upon their local traffic.

The clause to prevent pooling if persisted in he said would lead to the amalgamation of the principal roads into large systems. The cost per ton of handling goods at way stations was often five and six times greater than at terminals (owing, of course, to the relatively small quantity), consequently adding to the cost of hauling local freight short distances.

He did not object to a fair Commission to stand between the railroads and the Legislatures, even though they had extensive power subject always to appeal to the courts. It was, in his opinion, much easier to arrive at intelligent conclusions with

five men whose time was given to the study of the subject than with two or three hundred changing at every election and representing most frequently entirely different interests. He would very much like to see some treaty, understanding, or arrangement, bringing the American and Canadian railway systems more in harmony.

Mr. Midgely, of Chicago, to whom we have referred before, made statements of a similar nature. He believed an investigating and advisory Commission useful, but considered giving them the power to make classification and fix rates likely to make trouble, even if it were not unconstitutional.

We came in contact with and interviewed a great number of prominent business men and railway officials, besides those mentioned in our report, and found the opinion generally unanimous in favor of legislative supervision of some kind over the operations and management of the railways; and that a Board of Commissioners was best adapted to make effectual such supervision.

We also found a similar unanimity expressed that "the Interstate Commerce Law had come to stay," and that even some railways that at first were opposed to its passage, are now beginning to look upon it as not injurious to them but on the contrary in some respects beneficial, and susceptible of being amended so as to be much more so. It was also made apparent that the railway problem is so intricate and extensive, and its proper solution has so much to do with the commercial prosperity of the country, that too much care and study cannot be given in the preparation of any legislation dealing with it.

We cannot close this report without referring to the most cordial and kind manner in which we were met and assisted in our labors by all those gentlemen with whom we came in contact during our visit to the United States.

But we beg especially to refer to the kindness and valuable assistance rendered us by Mr. Hickson, General Manager of the Grand Trunk Railway, and his able assistants on the Chicago and Grand Trunk Railway, at Detroit and Chicago.

All which is respectfully submitted.

(Signed) E. R. BURPEE,
GEORGE MOBERLY.

APPENDIX No. 2.

SUPPLEMENTARY REPORT OF THE SUB-COMMITTEE VISITING THE UNITED STATES.

To the Chairman and Members of the Royal Commission on Railways:

Since submitting the report and information resulting from our visit of enquiry to the United States last September, we have been prosecuting our enquiries further in the same direction; particularly on the following points:—

First.—Working of the Interstate law, regulating commerce.

Second.—Allowing railways to be built under a General Railway Act without requiring separate charters from the Legislature.

Third.—Practicability of railway companies conducting the express business on their roads.

Fourth.—The powers under which one railway may expropriate the property of another railway.

On the first point, E. B. Phillips, a gentleman of long experience in matters connected with railway management, President of the Fitchburg Railroad and Hoosac Tunnel Route, says:—

"So far the operation of the Interstate Commerce Law has been injurious to the through business from the west, and to the export trade of Boston, but not to so great an extent as was feared. This was due to the ruling of the Commissioners interpreting the law, and declaring that it was not illegal for the trunk lines to allow an export rebate on the western products from the port of Boston."

Albert Fink, of New York, Commissioner for the Trunk Line Association, who is generally acknowledged as the best authority in America on questions of railway transportation, informed us: "That the Interstate Commerce Law is defective, and if literally enforced would have proven disastrous to the railways and the commerce of the country. Happily the appointment of excellent and practical men on the Commission, by suspending the operation of some sections of the Act, has prevented interruption to the carrying trade of the country and the consequent ruin which would have followed its literal enforcement. This Commission have not judicial powers."

In his opinion no Commission or set of men should have the right to regulate or make rates for railways in which they have no interest. It seemed little short of confiscation of the property of the men who have invested their money in the securities which have built the roads. In his experience, three-fourths of all the complaints made against the railways were imaginary, and when investigated and all the circumstances connected therewith considered, the complaints vanished.

Advisory Commissions are a means of making these explanations public and thus prevent the repetition of the complaints.

When a Railway Commission have great powers, as is sometimes the case, there is danger that in order to court popular favor with some classes, or from undue influence, they may use their power to oppress some roads.

In the matter of railroad charters, his experience has satisfied him that the right to build railroads should be free to all, and it being so, there is less danger of charters being taken out for useless and speculative schemes, or with the intention of selling to existing roads. He would make it obligatory by statute that at least one-half the capital of the proposed road should be *bond fide* subscribed for, before a charter is granted, and that the whole subscription should be paid, and actually expended in the construction of the road, before any bonds on it are allowed to issue.

He said; "Your Government cannot be too careful on this point. It is very important to existing roads, and even more so to investors of capital; and if rigidly enforced would create more confidence in our securities." His opinion is that a greater power both over the character of a road and its financial standing can be exercised on a charter granted by a fixed statute, than will be done in a special charter granted by the Legislature.

He could not see the justice in a railroad being compelled to allow another and perhaps competing road, to appropriate their tracks, buildings and property, even if they are willing to pay for them.

He believed that almost invariably, any railway rather than have a parallel road built a short distance along their right of way would agree to allow the use of their track for a reasonable compensation, and in his opinion it had better be left to themselves and the courts.

In our interview with Mr. Crocker, Chairman of the Massachusetts Commission, in regard to railway charters, he and his Board were quite pronounced in the opinion that the right to build railroads under statutory limitations should be free to all. Their experience in Massachusetts, since this mode has been in operation, is that the Legislature has been relieved of a vast amount of work, and fewer speculative and unnecessary roads have been started.

In the matter of the expropriation of the real estate or other property of one railroad company by another, he said there was no power under the laws of Massachusetts, but, when necessary, the railway company wishing to exercise the right of appropriating a portion of another road's property, applied to the Legislature to grant them that right. He did not think the Legislature of Massachusetts would delegate this power.

On this question, at the instance of Mr. Boardman, Manager of the Railroad Gazette in New York, a visit was made to J. D. Lawson, in New Jersey, who has made railway law a specialty.

From him we learned that under the constitution of the State of California and the Territories of Idaho, Utah and Montana the law of eminent domain provides that all real estate or property of private individuals may be taken for public use; and in the same way property which has been expropriated for one public use may be expropriated again for another public use if more necessary.

There is no other State in the Union where the constitution makes such provision. The question has, however, been tested in the courts, and decisions have almost always been that the power to expropriate real estate "already expropriated and owned by one railroad," for the use of another railroad, can only be exercised by the Legislature.

Following are some leading decisions made by courts in different States:—

Illinois Court, 1876, *Full Bench.*

"One street railroad company cannot, under the power granted by the Eminent Domain Act, take a fragment of a competing road in successful operation, thereby destroying the usefulness and value of the whole road, but it may, by paying just compensation and by proper authority, condemn the entire road."

Indiana Supreme Court, December 17th, 1875.

Judge Gresham ruled:—

"That the lands appropriated by the complainant, and owned and occupied by it under its charter, remained liable by virtue of the general Act for the incorporation of railroad companies, as all other lands in the State, to be taken for public use for a fair compensation.

"Lands appropriated for a public use are not withdrawn from liability to further appropriation, where the public good requires it. The language of the Act is general and authorizes the taking of any land.

"Lands appropriated to one public use, may be taken and appropriated to another and distinct public use. Property condemned and appropriated to the use of one corporation for the benefit of the public, cannot be again seized by the State and given to another corporation for the same purpose. This, in effect, would be to take from one corporation its franchise and bestow it on another. Such an act would not be warranted by the Law of Eminent Domain. Property once dedicated to a public use and given to a corporation, remains its property against all the world, and can only be taken from those on whom it is first bestowed when the public interest requires that it shall be appropriated to another and different use."

New Jersey (1872).

The Supreme Court decided:—

"That all railroads in the State had the power to cross the tracks of another railroad without any special law, but had no power without special law to take any of the land of a railroad to build parallel or alongside."

New York Court of Appeals, in 1873.

Re Boston and Albany, decided:—

"That, though the railroad law allowed a railroad corporation power to take any real estate for railway purposes, yet after the land has once been appropriated for public use, it cannot be taken again without special legislation."

The same principle was established by the Supreme Court, Mass., in 1872, case of E. R. R. *vs.* B. & M. III Mass. Reports, page 125.

Also in Connecticut, case of N. Y. R. *vs.* Boston, 36 Conn. Reports, page 196.

Michigan, 1877, *re* Grand Rapids and Indiana Railway, 35 Mich. Reports, page 265, Supreme Court decision:—

"Courts have uniformly held no difference between individual and corporate rights, and one railroad can take the property of another corporation by making proper compensation."

Illinois—February, 1881.

Justice Dickey, in case of Lake Shore R. R. *vs.* Chicago, decided:—

"That under ordinary Eminent Domain Act one railroad has not power to take property of another; but recognize the fact that the legislative power of the State can make it valid."

Virginia Court of Appeal—1881.

Report 40, page 743:—

"The taking and condemnation, by a railroad company, of part of the road bed or another company, is an interference with the rights and franchise of such other company. One railroad company has no riget, without express statutory authority, to acquire for its own uses land already acquired by another railroad company."

Peter A. Dey, chairman of the Iowa Board of Railroad Commissioners, writes on this subject: "I beg to state that, in Iowa, when one railroad company desires to cross the track of another company, the ruling of our Commission, as to the safety and kind of crossing at the proposed point, is first obtained. Then, if an agreement cannot be arrived at between the companies interested, the junior company applies to the court for a jury to condemn the right of way necessary, and to fix the damages following to the senior company.

"The question as to the right of one company to use the terminal facilities of another company, in a case where the only available ground is occupied, is not covered by the law of this State. We have a law under which a company is required to haul the cars of connecting lines over its lines, and under this law, and the gen-

eral law as to the rights of shippers as against common carriers, the Iowa Commissioners have decided that a company at a terminal point must switch the cars of another company over any of its side tracks or tracks voluntarily extended beyond its station house, at the request of a shipper, adequate compensation to follow. This decision has been contested by the companies affected, and is now in the courts for final adjudication."

EXPRESS BUSINESS.

James Eggleston, Manager of the American Express Company for New England, gives the following information, which seems to show that it is not expedient that the railroads should undertake express business :—

"The express business is primarily a commission business, the express man undertaking to serve whomsoever may employ him in doing various errands at some other place than where such employer lives, taking care and charge of such commission personally or by deputy. The transportation of merchandise is an incidental matter, and dependent upon the commission given the express man to execute. The expresses neither own the lines of railroad upon which they do business, nor have they (as a rule) any exclusive privileges, any one possessing the necessary security being able to do an express business for themselves, and you will find, by enquiry of any of the leading railroad or express company's officials, that the proportion of the expense for actual transportation upon the railroad is one-third of the total expense to the expresses for transacting their business, the two-thirds balance being spent in giving the commissions entrusted to it proper care, such as is the employment of teams, drivers, agents, &c., at their offices, and of messengers, transfer men, &c., *en route*, and that fact alone proves that express charges should continue to be controlled by competition.

"I would add that the expresses, both large and small, are (as a rule) private enterprises, and are not doing business by any Act of Congress or of the State Legislature."

All of which is respectfully submitted.

(Signed) R. R. BURPEE,
GEO. MOBERLY,
Commissioners.

APPENDIX No. 3.

EXTRACTS.

ENGLISH RAILROAD LEGISLATION. (*See Hadley, page* 163.)

The history of the general questions of railroad policy and legislation may be pretty sharply divided into two periods. Railroad construction formed the subject of discussions and action in the first period, railroad combination in the second. The dividing line between the two periods falls in the years 1845 and 1848.

It was at first supposed that a railway would be used like a canal, individuals furnishing their own cars and motive power. The clauses in the charter were drawn up with the idea; it was soon seen to be false. Competition between different carriers on the same railroad was impossible. Could competition between different railroads be secured instead?

It is to the credit of English statesmen that they did not deceive themselves in this respect. They learned more in a few years from the workings on a few miles of railroad than the general public has learned from all the railroads in the world in half a century. They recognized that competition could not be relied upon or aimed at with hope or success. As early as 1836 Mr. Morrison, of Inverness, delivered a remarkable speech in which he made the points: that railroads must naturally be monopoly; competing roads will combine; that parallel roads are a waste of capital; and that fixed maximum rates are useless.

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In the years 1839 to 1845 several attempts were made to secure railroad legislation, Mr. Gladstone taking an active part in these matters. Beyond a declaration of the right to revise tariffs, and even to purchase the railroads for State management in the remote future, nothing was actually accomplished. One or two experiments in the way of Railroad Commissions made during those years had worse than no result. Free railroad competition was meantime being and found wanting. It was not tried on purpose or because Parliament believed in the principle. It was because so many speculators wanted to build railroads and Parliament had not the moral courage to refuse them charters.

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Railroad combinations of importance may be said to have begun in 1844. In 1845 the Board of Trade made a report to Parliament on the subject of amalgamation, taking the ground that it was right for continuous but not for competing lines. In 1846 a special committee of Parliament considered the subject, but no distinct action was taken on their report.

Another committee on the same subject was appointed in 1853. Cardwell and Gladstone were its leading members. They made a strong effort to do something, but found it easier to explain the troubles than to find remedies. They hoped to encourage "running powers," by which one company should have the right to run its trains over the lines of other companies. Serious obstacles met them in the attempt. Nevertheless, if *anything* at all was to be done, it must be done in this way A railroad which had a London connection must not be allowed to freeze out one which had no such connection; otherwise the London road would compel the country to unite with them on their own terms.

This was the point the committee seized clearly; and the Bill which they brought in and which became law under the title of the "Railways and Canals Traffic Act, 1854," was conceived with this view—to protect the local roads in their through business. It provided, first, that every company should afford proper facilities for forwarding traffic, and second, that no preference should be given.

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From 1853 to 1872 Parliament suggested a great many things and accomplished nothing. Least of all did they check the tendency of the roads to consolidate. Much was expected of the Royal Commission from 1865 to 1867; but nothing came of it.

Another committee was appointed in 1872, and this time, for a wonder, something was actually accomplished. They brought forward no new views, and in one sense no new laws. They simply provided means for carrying out the old laws and the old views. The outcome of their work was an Act for carrying into effect the provisions of the Act of 1854.

They recommended the appointment of a special Railway Commission provisionally established for five years, to take cognizance of a variety of cases under the Act of 1854, whose decisions were to have judicial force. They were further to decide many cases where the interests of different railways conflicted. The Bill was passed in 1873. With the Act of 1873 the general railway legislation may be said to have closed.

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The idea of a Railway Commission was by no means new. As long ago as 1840 it was felt that some such authority was necessary. In that year powers were given to the Board of Trade not unlike those now exercised by the Massachusetts Railroad Commission. Those powers were further defined in 1842. The Board of Trade was as well adapted to the work as any body then existing. It failed when the Massachusetts Commission succeeded, not because of the differences of the law, but because the English public sentiment with regard to railroads was not sufficiently active to give such a body the necessary moral support to make up for lack of legal authority.

In 1844 another Commission was appointed with more specific powers. Their special duty was to make preliminary reports to Parliament on applications for railroad charters. After a luckless existence of about a year, this Board was abolished. In 1846 Parliament tried the experiment of a Commission of another kind. It offered first rate salaries and secured well known men; then it avoided all causes of offence by not giving them any powers. This lasted five years.

We have seen what were the events which let to the passage of the Regulation of Railways Act in 1873. The Commission appointed under that Act was to consist of three members, one of them a railroad man and one a lawyer. They receive the salary of £3,000 each. They were to decide all questions arising under the Act of 1854 and subsequent Acts connected with it. They were further empowered to arbritrate between railroads in a variety of cases; to compel companies to make through rates, which should conform to the intention of the Act of 1854; to secure publicity of rates, to decide what constitutes a proper terminal charge, and some other less important matters. On questions of fact their decision was to be final; on questions of law it was subject to appeal. The Railway Commissioners themselves were to determine what were questions of law and what were questions of fact. Subsequent Acts have made but slight changes in these powers.

In 1878, the original term of the Commission expired. People supposed that it would be made permanent. Instead of that the renewals have been for shorter periods, leaving the Commissioners a precarious tenure and showing dissatisfaction somewhere. A Parliament investigation on railroad rates in 1881–82, showed the ground of dissatisfaction only too clearly. The substance is that the power of the Commission satisfied nobody. It has power enough to annoy the railroad, and not power enough to help the public efficiently.

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The Commission could not act, partly from want of jurisdiction, partly from want of executive power; its jurisdiction did not cover by any means the whole ground. The provisions about terminals, arbitration, working agreements, &c., &c., amounted to very little. Its real power was under the Act of 1854. It could under this Act require companies to furnish "proper facilities" and it could prevent it giving "preferences." But it could not compel a company to comply with special acts or special provisions of its charters.

Nor could it enforce its decrees. "On the face of the Act of 1873 the decisions of the Commission as to what were questions of fact or questions of law, appeared to be final. But by a writ of mandamus from a Court of Appeal, the decision on this point could be at once taken out of the hands of the Commissioners by compelling them 'to state a case' which could then be made the subject of action in the higher court."

So this important power was made of no effect.

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It is not easy to see what can be done in the face of these difficulties, so different from anything we see in most American States. Our Commissioners with fewer powers, have infinitely more power. The reason is, in America, to defy such an authority involves untold dangers; public sentiment being irritable and unrestrained, whereas in England it involves no danger at all, public sentiment being long suffering and conservative.

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In England as everywhere else two distinct sets of grievances, involving totally different treatment. Some charges are complained of as exorbitant in themselves involving extortion. Others are complained of as unequal, involving discrimination. When railroads were first started, they feared the first evil and hardly thought of the second. They tried to prevent extortion by a very definite system of maximum rates. It is hardly necessary to say these provisions were of little effect. First, the railroad could carry much cheaper than was at first expected, so that most of the maxima were too high to be of any practicable effect. Second, the whole system of provision concerning equal mileage rates, terminal, classification, &c., is quite inapplicable to the new conditions of railway service which have grown up since the original charters.

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The subject of exorbitant rates is really a subordinate one. It is the question of differential rates that mostly agitates the public mind, and it comes in almost exactly the same forms which it takes in America. One set of low rates arises from competition of different routes, another from special contracts to develop business.

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By the Act of 1845 the companies were allowed to vary their charges at will within the maxima, but must charge all persons the same rate for the same service.

From the very outset the court enforced the point that there should be no personal preference. That under exactly similar circumstances all shippers should be treated alike. The railroads could make as many special rates as they pleased, but they must be given to everybody under the same conditions.

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The present state of things may be summed up as follows:—

1. The roads may make what special rates they please, but if they make a rate for one man, they must extend the same privilege to all others in like circumstances. If they have been secretly paying rebates to one shipper, they may be compelled to refund any other shipper similarly placed, the same rebates on all his shipments, since the special contract with the one shipper began.

2. It is held by the Commissioners that two shippers are similarly placed and must be similarly treated when the cost to the railroad of handling the goods for one is the same as for the other, and conversely, unless some special reason can be shown the railroad has no right to put a less favorably situated shipper on an equality with a more favorably situated one.

3. But the last Parliament Committee has refused to endorse these principles and has said that "a preference is not unjust so long as it is the natural result of fair competition."

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This brings us to 1886, when the time for which the Commission was created had expired, and a Bill was before Parliament. "The principal objects of which are

to reconstitute and perpetuate the Railway and Canal Commission, established by the regulation of Railway Acts of 1873, to enlarge its jurisdiction and powers, and to regulate the rates to be charged for traffic on railways and canals." This Bill has now been before Parliament two years, and is not yet disposed of. We quote what Mr. Grierson says as introductory in a work published a few months ago:—

"For many reasons the failure to pass the Railway and Canal Traffic Bill ought not to be regretted even by those who are dissatisfied with railway companies, but who sincerely desire to benefit the trade of the country. In the discussion of that Bill, and in the debates on the subject of railway rates in recent Sessions of Parliament, the existence of many misconceptions was disclosed. As to principles, there was little agreement; there was, if possible, still less as to details. Charges which have often been explained or refuted were repeated as if they were new, and as if they had never been answered. One of the greatest defects of the discussion was its fragmentary, one-sided character; it was carried on with far too little regard to the interests of many classes, districts and ports, which would have been seriously injured by some of the changes hastily proposed. Many of those who professed to represent traders, ignored the interests of large sections of them; and what would benefit the consumers was, to a remarkable degree, lost sight of. The delay may be useful, and it may be hoped that any future legislation will be shaped according to the interest of all traders, and not of a part of them only, and of the general public, to whom extended, and not restricted trade, cheapness, and a wide area of supply are desirable."

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"One point is at the outset very clear—the inconsistent nature of many of the charges made against railway companies. Within the last twenty years such complaints have been the subject of three elaborate enquiries before Royal Commissions of Parliamentary Committees. Before all of them were submitted proposals completely at variance with each other. With equal emphasis railways are now asked to satisfy contradictory demands; and to a large extent the multifarious charges made against them answer or cancel each other. Many traders demand the very opposite of what is a necessity to others, and of what consumers, naturally anxious to enlarge the field of supply, earnestly desire. Some of the former complain, for example, in language which seems borrowed from mediæval times, that their 'geographical' or 'natural advantages' are diminished. Other traders blame railway companies for not sufficiently effacing natural disadvantages and not offering inducements for the development of trade in new districts. Exporters want favorable terms; importers do the same; and no other class protests against concessions either in favor of exports or imports. It is a remarkable fact that many of the proposals which were most in fashion a few years ago, have now been abandoned, and that in Parliament and the press we now hear chiefly of schemes totally different from those which were formerly supported. Equal mileage rates were once strongly advocated."

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"Ingenious schemes were devised for equalizing, within certain zones or areas, rates, irrespective of distance and other circumstances. There is a fashion in so-called railway reform. Such schemes are now little heard of; they have given place to proposals essentially different, which may in their turn make way for others.

"In all the recent discussion of rates much was heard of those who were discontented, but very little of those who, being satisfied, were silent. Most errors in Political Economy, it has been said, come from not taking into account what is not seen. Especially true is this of the question of railway rates, not the least important problem of Political Economy. Of the trades and interests which are dissatisfied with existing arrangements, people hear and see so much. Unfortunately they appear to take little heed of other interests, equally important, which are contented, or comparatively so, which do not send deputations to the Board of Trade, and which

changes, such as have been from time to time proposed, would injure or even go far to ruin."

AMERICAN LEGISLATURE.

Last April the United States Congress, as the result of the labors of a Committee of the House of Representatives appointed in 1879-78, and a Special Committee of the Senate appointed in 1885 under pressure of a wave of popular excitement, passed an Act to regulate Interstate Commerce, and appointed an able Commission. Their very first act was to suspend the operation of some of the vital sections of the Act, and after nine months they are recommending important changes.

In some of the Western States there has been hasty laws passed under excitement which retarded the cause which the promoters had in view. In 1873 Illinois passed stringent laws regulating the management of the railways, and appointed a commission to fix rates. Similar laws were passed immediately by Iowa and Minnesota. In 1874 Wisconsin passed a similar Bill, the "Potter Law." They were all inoperative on account of their power, and appeals were made to the Court by railways for protection. While the courts established the fact that the States had the right to pass such laws, a more potent factor was at work, and in all the States the laws were repealed or were not enforced.

Hadley says, page 135:-"But a more powerful force than the authority of the courts was working against the Granger system of regulations. The laws of trade could not be violated with impunity. The effects there must have been sharply felt in Wisconsin—the law reducing railroad rates to the basis which competitive points enjoyed left nothing to pay fixed charges. In the second year of its operation the Wisconsin roads paid a dividend; only four paid interests on their bonds; railroad construction has come to a standstill. Even the facilities on existing roads could not be kept up. Foreign capital refused to invest in Wisconsin, the development of the State was sharply checked; the men who most favored the law found themselves heavy losers. These points were plain to every one. They formed the theme of the Governor's Message at the beginning of 1876. The very men who passed the law in 1874 repealed it in 1876. In other States the laws either were repealed, as in Iowa, or were sparingly and cautiously enforced. By the time the Supreme Court published the Granger discussions the fight had been settled, not by constitutional limitations but by industrial ones."