CHAPTER ~~IV~~ IX

NATIONALIZING THE RAILROADS

The part the railways had played in making a monopoly of the Standard Oil Company was no new thing in the business life of the country. It was simply the completest and best advertised illustration of their powers. So keen was the competition for freight on all lines East to West, North to South, that large dealers practically made their own terms, being not only accompodated with side tracks and other special conveniences, but also given wholesale rates, or perhaps secret rebates which reduced the cost to them of transportation very considerably below what smaller dealers in the same line of business were compelled to pay. Such allowances were sufficient of themselves in very many cases to render successful competition, as against those who had them, practically impossible.

Such was the conclusion of the Interstate Commerce Commission in its first report in 1887.

It was by no means the big shippers only who secured favors; smaller manufacturers who could make a special plea, bring influences to bear, threaten, cajole, received favors. Sometimes they were granted "from a desire to relieve individuals from the consequences of previous unfair concessions

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to rivals in business." (1)

The system, if such it could be called, was never accepted even by the railroads as anything but an unsafe, and in the end unsatisfactory way of doing business. The secrecy which they joined in granting favors proved the uneasiness of many of them as to what would happen if the shipper who considered himself wronged should appeal to the courts.

"There was not the least doubt," said the Interstate Commerce Commission, "that had the case been properly brought to a judicial test these transactions would in many cases have been held to be illegal by the common law; but the proof was in general difficult, the remedy doubtful or obscure, and the very resort to a remedy against the party which fixed the rates of transportation at pleasure, might prove more injurious than the rebate itself. Parties affected by it, therefore, instead of seeking redress in the courts, were more likely to direct their efforts to the securing of similar favors in their own behalf. They acquiesced in the supposition that there must be or would be a privileged class in respect to rates, and they endeavored to secure for themselves a place in it." (2)

1) History of and Reasons why the Interstate Commerce Act was passed - From First Annual Report of the Interstate Commerce Commission, December 1887. Pages 2 to 11.

2) Idem

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But as in the case of the Standard Oil Company not all shippers acquiesced. There was always a fragment left over from each battle that pulled itself together and prepared for a new attack. The press and public were as a rule with them. It was sympathy with the underdog; it was resentment at the general arrogance of the railroads; and it was a profound conviction that though the ownership of railroad stocks and bonds might be and almost invariably was private, the railroads were public highways created by the state for public use and their obligation was to carry persons and freight on equal terms.(1) They became agencies of the state in accepting the right of eminent domain which belonged to the state.

If the chief complaint against the railroads was their abuse of their duties as common carriers, it was not the only one. These complaints made a damning list when tabulated as they were later by a Congressional Commerce committee. What people complained was:-

"1. That local rates are unreasonably high compared with through rates.

"2. That both local and through rates are unreasonably high at non-competing points, either from the absence of competition or in consequence of pooling agreements that restrict its operation.

"3. That rates are established without apparent regard to the actual cost of the service performed, and are based largely on 'what the traffic will bear.'

1) ~~Taylor, Harry Osborne~~

1) For the so-called Granger laws, passed in the 1870's and based on this principle, and for the action of the Supreme Court in upholding such legislation, see Nevins, Allan The Emergence of Modern America (A History of American Life VIII) 175-176

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"4. That unjustifiable discriminations are constantly made between individuals in the rates charged for like service under similar circumstances.

"5. That improper discriminations are made between articles of freight and branches of business of a like character and between different quantities of the same class of freight.

"6. That unreasonable discriminations are made between localities similarly situated.

"7. That the effect of the prevailing policy of railroad management is, by an elaborate system of secret special rates, rebates, drawbacks and concessions, to foster monopoly, to enrich favored shippers, and to prevent free competition in many lines of trade in which the item of transportation is an important factor.

"8. That such favoritism and secrecy introduce an element of uncertainty into legitimate business that greatly retards the development of our industries and commerce.

"9. That the secret cutting of rates and the sudden fluctuations that constantly take place are demoralizing to all business except that of a purely speculative character, and frequently occasion great injustice and heavy losses.

"10. That, in the absence of national and uniform legislation the railroads are able by various devices to avoid their responsibility as carriers, especially on shipments over more than one road, or from one State to another, and that shippers find great difficulty in recovering damages for the loss of property or for injury thereto.

"11. That railroads refuse to be bound by their own contracts, and arbitrarily collect large sums in the shape of overcharges in addition to the rates agreed upon at the time of shipment.

"12. That railroads often refuse to recognize or be responsible for the acts of dishonest agents acting under their authority.

"13. That the common law fails to afford a remedy for such grievances, and that in cases of dispute the shipper is compelled to submit to the decision of the railroad manager or pool commissioner, or run the risk of incurring further losses by greater discriminations.

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"14. That the differences in the classifications in use in various parts of the country and sometimes for shipments over the same roads in different directions are a fruitful source of misunderstandings, and are often made a means of extortion.

"15. That a privileged class is created by the granting of passes, and that the cost of the passenger service is largely increased by the extent of this abuse.

"16. That the capitalization and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued.

"17. That railroad corporations have improperly engaged in lines of business entirely distinct from that of transportation, and that undue advantages have been afforded to business enterprises in which railroad officials were interested.

"18. That the management of the railroad business is extravagant and wasteful, and that a needless tax is imposed upon the shipping and traveling public by the unnecessary expenditure of large sums in the maintenance of a costly force of agents engaged in a reckless strife for competitive business."(1)

Public resentment at the above "wrongs" was intensified in many parts of the country by a realization that water transportation on which they had in earlier years so largely depended, and which they rightfully felt ought to be a regulator of the railways, was declining. All canals of consequence, the Erie excepted, were owned and controlled by the railroads by 1880. (2) As for the rivers men they had always looked on the railways as enemies, and had fought them in most parts of the country bitterly. That they could combine

1) Report of the Senate Select Committee on Interstate Commerce. (Cullom Committee, 1885-1886. Pages 180, 181. The Causes of Complaint against the Railroad Companies.

2) Cullom Report. Vol. II. Page 507

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and co-operate, forming gradually a system which would serve the country much more effectively than either could alone had little or no part in the calculations of the promoters of one or the other system.

The rivalry and war between river and rail was most bitter and dramatic and expensive in the Mississippi Valley. By 1880 it was obvious that the river had lost. It had been bridged in spite of its long resistance and was being rapidly paralleled on both sides by railroads so operated that freight could be carried not only more rapidly but more reasonably. In 1880, 1,037,000 tons of freight had been shipped from St. Louis by water; by 1900 it had fallen to 245,000 tons. (1) This meant that the city which once had been the metropolis of the valley was passing on her supremacy to Chicago. Statistics of over twenty years show it clearly. By the end of our twenty year period Chicago's population was nearly four times as great as it had been twenty years before; St. Louis' about twice. (2)

Nevertheless Chicago in 1880 was fighting for water as well as for rail. She could not, like St. Louis, go by water to Omaha, to Pittsburgh, to Kansas and the Indian Territory, nor did she at that time have a through rail connection with New Orleans. It gave her rival a tremendous advantage in territory which she was eager to enter on at least equal terms.

1) Industrial Commission Vol. XIX. Page 434 for Review of Water Transportation.

2) The Statistical Abstract for the Twelfth Census gives Chicago's population in 1880 as 248,995,848. In 1900 it had risen to 888,945,311; St. Louis' population in 1880 was 114,333,375; in 1900, 233,629,733

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To wipe out this disadvantage the Northern metropolis had been for years eager to establish a water connection with the Mississippi. The utilization of the Illinois river through a system of practical canals was a project ~~xx~~ old as the state backed particularly by farmers and small town people.

In March 1880 a convention was held at Ottawa in the interest of a ship canal between Chicago and the Mississippi. Obviously the main motive behind this was the desire to check the railroad companies. The Governor of the State in his message calling the convention said:-

"The demand for the enlargement of the canal and the completion of the Illinois River improvement grows more urgent every year, and it is a matter which by no means interests Illinois alone, it is of equal importance to all the States which border on the Mississippi River, and to all those which depend upon the great Valley for food supplies. While this water-way happens to be wholly within the territory of Illinois its improvement is not a question of local or State interest." (1)

Although Chicago and Illinois were so interested in a ship canal they were not using to the full their water opening to the East. Chicago had direct communication by water with the Atlantic seaboard, through the Lakes, Erie Canal and Hudson River. The decline of the traffic via the Erie

1) Illinois - The American Encyclopedia - 1880

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Canal, once the chief carrier between the Eastern seaboard and the Middle West, was steady. In 1878 of the tonnage carried by the railroads and canals of New York State, the canals alone handled 27.19%; by 1885 ~~it was but~~ 16.98% ~~and~~ by 1890, 13.94% and by 1895, 9.67%

This decline grew in spite of the fact that the rate by lake and canal from Chicago to New York was considerably lower than that by lake and rail or by rail. The water rate on wheat, for instance, in '78 was 9.15; by all rail it was 17.7. In '85, by water 5.87 and by rail 14. In '90, by water 5.85; by rail 14.31. In '95, water 4.11 and rail 12.17. (1)

In part this decline was due to the persistant hostility of all rail lines to the diversion of traffic over land to water. However, bitterly they might fight one another they united when it came to water transportation. It was a common enemy.(2) Mr. Vanderbilt of the New York Central even let it be known that he would sever connections with any road which accepted freight from the Erie Canal - a decision which cut New England off from ~~the~~ advantages which she might otherwise have enjoyed. (3)

1) Statistical Record of the Progress of the United States Page 33

2) Ripley, William Z. Railway Problems - The Trunk Line Rate System. Page 313

3) Report of Cullom Senate Select Committee on Interstate Commerce. Part II. Page 367

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However, the legitimate advantages of the railroad were the greatest blow to water routes. A railroad gave a wider distribution. It could go into parts of the country higherto inaccessible. It was simple to run a rail to a new wheat area, a new mine, a new oil well, a new phosphate deposit. It was no longer necessary that a town plant itself on a river, a lake, an ocean harbor. Growing cities like Denver, Colorado, Indianapolis, Indiana, proved that a railroad center was as advantageous as a water site.

Loading and unloading freight was much easier from the car than from the boat - easier and less expensive. Transfer from rail to rail was easier than transfer from boat to boat. There was less 'breaking bulk' with the rail.

Nature itself was against the river as a steady traffic bearer. The Mississippi River was entirely closed for transportation by ice in the important reaches of the North for a considerable part of the year. At St. Paul they counted a closed season of four months before the days of the railroad. Then the river men sat idle for the most part; few of them like a certain young clerk on the wharves, known as Jim Hill, utilized every hour of the closed season in storing up information on all sorts of subjects, particularly that which concerned the new country to which he had come. (1)

1) Pyle, Joseph Gilpin. The Life of James J. Hill. Vol. I. Chapter II.

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And if it was not ice it might be floods or water might be too low for navigation and boats be tied up, capital rotting away.

Water transportation suffered as much from its failure to improve its methods, its equipment and its connections, as from these natural disadvantages. If the water companies had been as energetic and as resourceful as the railway companies generally were, the story would have been different. There was no excuse for damp and dirty pits for wheat on lake and canal boats, but grain was frequently injured because of the poor travelling accommodations offered them; there was no excuse for inadequate storage at receiving points, but so inadequate were the terminals that freight often lay in the open at the mercy of rain and thieves.

The National Water Ways Commission, appointed to study the reasons for the decline of water traffic in the United States, said that it found in surveying the rivers and canals of Germany a number of cities and towns which had made a larger investment for terminals and for the storage of freight and the handling of boats than the whole of the Mississippi River above New Orleans. (1)

Again canal or river had satisfactory through connections. The failure of the Erie Canal, for example, to make lake steamers part of a through line, as the railroads did, was a serious handicap, though it is certain that had the canal

1) Final Report of National Waterways Commission - Sixty Second Congress, Second Session - Senate Documents. Vol. XV. Pages 68-73

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made such an attempt Mr. Vanderbilt of the New York Central as well as the management of the Erie would have violently disputed the venture.

In spite of railroad competition, always keen and often unfair, in spite of the natural advantages of the railway, water transportation did hold its own when it came to heavy freight, such as lumber and coal. When coal could be carried from Pittsburgh to New Orleans two thousand miles at one dollar a ton the rivers got the freight unless it was a rush order.

Andrew Carnegie was exultant over the river traffic out of Pittsburgh:- "The records of 1884 show that there were owned in the one city of Pittsburgh for use on the river four thousand three hundred and twenty-three vessels, including barges, with a tonnage of one million seven hundred thousand tons. One hundred and sixty three of these were steamboats. Twenty thousand miles of navigable waterways lie before these Pittsburgh craft, and many thousand miles more are ready to be opened by easily-constructed improvements in the lesser streams. This work the general government is steadily performing year after year, as well as improving the existing navigation. Even today a boat can start from Pittsburgh for a port four thousand three hundred miles distant, as far as from New York to Queenstown and halfway back, or as far away as the Baltic ports are from New York." (1)

1) Carnegie, Andrew. "Triumphant Democracy" Pages 309-310

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Timber which in 1880 was being cut so lavishly in Wisconsin and Minnesota must be conveyed by river. This was a tremendous and growing business. In 1880, 214,444,000 feet of logs were cut in the region of the St. Croix. Ten years later the cutting was 452,360,890. In the upper Mississippi region, above the St. Anthony's Fall, the logging from '81 to '90 amounted to 3,428,596,480. (1) Practically all of this timber was cut in the winter, hauled to a logging point on the stream, lashed into rafts which before the end of our period were engineered down the river by logging steam boats.

The rafts constantly increased in size. A raft

1) Russell, Charles Edward. A-Rafting on the Mississippi Page 336- Quoting paper in Vol. IX, Minnesota State Historical Society

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three hundred feet long was a good bulk in 1880, but by the end of the century river captains were bringing them down four and five times as long with a width of two hundred and more feet - millions of feet of lumber in each.

From this lumber the homes and towns of the Middle West were building. If ever a great natural resource was put to a good use it was this timber. It was replacing sod houses on the plains of Nebraska, building cribs for corn, shelters for animals, stores for trading, schools and churches for a population which was redeeming the Arid Region, putting the plow to the soil in the Northwest, opening the mines - armies of nationalizers - the armies the Federal Government and the States had in mind when they gave to railroad promoters opportunity for vast wealth if they would provide ways for men and women to go in and out of its immense unsettled territories.

The Great Lakes, if losing wheat to the railroads, were gaining as carriers of coal and ore. This had been made possible by the opening in September of 1881 of a new lock at the St. Mary's ship canal, a lock five hundred and fifteen feet long, eighty feet wide, good for vessels of sixteen feet draft. This was in contrast to the old locks which had drawn twelve feet or less of water which were but three hundred and fifty feet long, seventy wide and good only for vessels which drew twelve feet or less of water. One of the immediate results of the enlarged lock was that the Lake Superior iron ore regions could ship more profitably. (1) It was the inauguration of one of the most imppportant water high ways of the country if not of the world.

1) Chronology of Iron & Steel. Page 199
Compiled by Goodale, Stephen L.
[illegible] Ramsey J.

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Five years after the new lock was opened more tonnage was passing through St. Mary's ship canal than through the Suez canal. Foreseeing what this waterway was destined to be, the United States Government began work about this time on locks eight hundred feet long, one hundred feet wide and twenty one feet of water on the sills. (1)

The success of St. Mary's Canal led to much discussion of similar waterways in other parts of the country. There was talk of a canal across Cape Cod, of one connecting the Hudson with the East River; of another from Lake Huron to Lake Ontario. But the most important were the Inter-Oceanic routes.

The plan which seemed in 1884 the nearest to realization was across Nicaragua. Here there was ready made for vessels sixty miles of navigable river and a lake forty miles wide. The proposition was to connect them by canal and railway with the two oceans. A treaty with Nicaragua authorizing the United States to undertake the necessary construction was announced by President Arthur in his message of December 1, 1884, but the treaty was withdrawn from the Senate by President Cleveland when he came into office a few months later. (2)

Mr. Arthur thought it a good treaty and it is obvious that he felt the need of an Inter-Oceanic route. The "rich territory of the Pacific," he said in his message, "is for the ordinary purposes of commerce practically cut off from communications by water with the Atlantic ports, the political and commercial advantages of such a project can

1) Chronology of Iron & Steel. Page 208. Compiled by Goodale, Stephen L. Edited by Speer, Ransey J.

2) Richardson, Messages and Papers of the Presidents, VIII, 238,327

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scarcely be over-estimated."

To the average business man, however, an Inter-Oceanic route meant simply a check on trans-continental rates which the railroads could not escape unless indeed they succeeded in owning or controlling the ships.

Essential as was the development of water ways in an intelligent natural transportation plan the public saw in it no speedy or sufficient cure for the discrimination and exploitation which it was suffering. There must be federal regulation of interstate commerce. Since the first bill was presented in 1872 by a representative of the oil producers of small supplies the conviction that it was the only way out of their troubles had strengthened. By 1880 the Congressional Commerce Committees were complaining that they were over-burdened with petitions to "do something" to restrain the railways. (1) The petitioners based their prayers on the power the Constitution gave Congress to regulate interstate commerce. It exercised it on the high seas and on all waters of the states which carried foreign and interstate freight. As for the great cross country highways the nature of the traffic was such that the laws of the states, the "rules of the road", the general agreement of all to the right of all to use the roads had succeeded usually in taking care of individuals who attempted to interfere with the rights of others.

1) Congress - American Encyclopedia, 1880

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When the railroads came it was a different matter. They were children of the state. Their rights and their obligations were tied up in charters with which the Federal Government had nothing to do. The State taxed, made laws governing rights of ways, pretended to protect its citizens when they felt the railroad was going beyond its charter privileges, even sometimes fixed the rates to be charged.

The Federal Government kept its hands off and when the state and corporation could not agree, as when the corporation declared the taxation was excessive or when the state passed regulations which obstructed through traffic, then the judiciary settled it. But as time went on the railroads became stronger than their creators.

In 1873 Cushman K. Davis, afterwards United States Senator from Minnesota, declared that he was perfectly satisfied that there was not a railroad company in his state whose franchises were not subject to forfeiture for flagrant, repeated and probable malversation and abuse. (1)

The states had not been supine, if most of them had come impotent. Each had tried in its own way to keep control of the roads, some by punishing with taxes, others by fixing arbitrary rates, others by turning over the business to a Commission. Massachusetts had first tried this plan in 1869 and had failed. The procedure of her commission was to take succeeded where by legislation she had

1) Pyle, Joseph Gilpin. The Life of James J. Hill. Vol. I Page 133. (1917)

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up each abuse or complaint separately, study it carefully and make a decision which seemed to it reasonable and in harmony with its findings. In making a decision the facts and their meanings were clearly explained to the public. The certainty that their acts, good and bad, would be openly reported to the state checked the railroads as no law had ever been able to do.

When the public became convinced that the Commission was not to be fooled or bribed it ceased its clamor for punishment by law.

By 1880 some fourteen states had adopted the Massachusettes plan of regulation by Commission though some of them had had a long fight. The Constitutionality of the Illinois Railroad Law passed in 1872 was contested for seven years. By the time the Courts decided to uphold it the Commission had cut passenger rates from five to three and a half cents a mile and the roads were making returns readily and cheerfully though at first they had refused them. However, there was still plenty of "complicated questions" relating to rebates, pooling, through local and competitive rates. (1)

While a commission might, as in the case of Illinois, succeed fairly well in dealing with railroads, to which it had given charters, its courts had little or no control over foreign corporations. They could take their controversies to

(1 Report of Railroad Commissions of Illinois for 1880.
Digest Appleton's Annual for 1880. Page 377

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the Federal Courts.

"They come into a State," Mr. Weaver of Iowa complained in Congress in 1880, "for the purpose of making money, carrying on transactions with citizens of the State, and why should they not be compelled to go into the State courts, there to adjudicate matters arising between themselves and citizens of the State? They are citizens of the State for all other practical purposes; but, when a controversy arises under the law as it now stands, the corporation has only to go into the State court and there set forth the fact that it is a foreign corporation, organized under the law of Massachusetts or of some other State and the cause is removed to the Federal court." (1)

Each year it became more obvious that the question must be nationalized, that it was too complicated for state handling. Jealous as the states were of their prerogative some of them began to turn to the Federal Government. Thus in 1880 the State of Mississippi begged Congress to "provide, by appropriate legislation, some adequate means of restraining such unjust discrimination by the passage of a general law regulating the tariff and freight rates on all railroads and navigable streams in the United States." (2)

The discussion in committees and on the floor of Congress as to what could be done took more and more time and showed both reluctance and confusion. There were a few

1) Appletons Annual (1880) Digest of discussion in Congress on Interstate Commerce Bill.
2) Appleton's Annual - Mississippi, 1880

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gentlemen like Judge J. H. Reagan, Representative from Texas, to whom regulation of railways presented no difficulty. All you had to do was to pass a bill forbidding certain practices which a right-minded person could not but agree were unfair - such were rebates, drawbacks, pooling - forbid these and order equal rates and opportunities. The failure to do things forbidden or not do things ordered should be made a criminal offense and "the penalty on conviction" should not be less than $1,000.00." This was the gist of the Reagan bill as it first appeared in 1878, as it stood in the final contest over a measure in 1886. (1)

As to bringing in experts, consulting railroad builders, financial managers, Mr. Reagan saw no necessity for that. Common justice, common right, common necessity settles the question against rebates and drawbacks, against the pooling of freights and against the destroying of one city or town or business for the benefit of another. (2)

Mr. Reagan's easy solution had many opponents. It was the "strong feeling", as Mr. Davis of West Virginia told the house, when in 1880 a bill to establish a board of commissioners to look after Interstate Commerce was brought in, that it was best to allow the states and the railroads to control their own affairs and that Congress should have

1) See United States Congress Interstate Commerce Annual Enclyclopaedia, 1881-1885 for Reagan bill and digest of discussions. Also Haney, L. H. A Congressional History of Railways in the United States, 1850-1887 (Univ. of Wis. Bull. No. 341.) 288,- 290, 293-298

2) Appletons' Annual, 1881. Page 176

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very little to do with them. (1)

It goes without saying that this was the point of view of the railroad "experts and officials" who as Mr. Reagan complained filled the committee rooms and corridors and often placed themselves on the floor of the house with their attorneys, "the ablest in the United States, all of them paid out of the peoples' money." (2) But it was also the conviction of not a few of the ablest economists of the day, among them so thorough student of the railroad and its meaning to the well-being of the people as Mr. Edward Atkinson who considered the effort to regulate railway traffic by national statute as only another futile attempt to alter the nature of things, and an effort to overcome hardships which "can only be remedied by the slow progress of events" and not by the enactment of "meddlesome statutes." (3)

But between these extreme views was the body of Congress realizing that some way must be found to stop pillaging by roads without hindering their development. This was the view voiced in December 1883 by President Arthur, the first president of the United States to challenge the absolute power individuals and corporations were exercising over private interests and to assert boldly that Congress

1) Appletons' Annual, 1880. Page 184

2) Annual Cyclopaedia, Vol. X, 1885. Congress (interstate Commerce. Page 210

3) Atkinson, Edward. Railway Service of the United States Annual Cyclopaedia, 1884. Vol. IX. Page 686

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could not tolerate such abuses.

"While we can not fail to recognize," said President Arthur, "the importance of the vast railway systems of the country and their great and beneficent influences upon the development of our material wealth, we should, on the other hand, remember that no individual, and no corporation, ought to be invested with absolute power over the interests of any other citizen, or class of citizens. The right of these railway corporations to a fair and profitable return upon their investments, and to reasonable freedom in their regulations, must be recognized; but it seems only just that, so far as its constitutional authority will permit, Congress should protect the people at large in their interstate traffic against acts of injustice which the State governments are powerless to prevent." (1)

As the struggle grew in tenseness and bitterness the tendency was to let the sins of the railway blot out their services. Town and localities which had suffered, forgot there was another side to the story, a remarkable and brilliant side from which in spite of all their losses they had at least indirectly profited. It was not difficult for Congressmen who believed the Government should let the railroads alone to grow dithyrambic over their achievements.

Since the close of the Civil War they had made a whole of a country which without them and their ally, the telegraph, would have remained a collection of practically isolated units. In 1880 there were 93,202 miles of railroad in operation carrying literally billions of tons of freight, if reckoned by mile; over thirty nine billion in 1882; over

VII, 185

1) Messages of the President, Arthur, C. A. December 4, 1883

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sixty one billion five years later. (1)

Through this period the rates of freight had steadily fallen. Freight receipts were 1.24 a ton per mile, in 1882 half of what they had been ten years before. (2) In 1890 they stood at $0.93 cents; in 1898, the end of our period, $0.76 cents.

Improvements in the railways went along with increased mileage and cheaper rates. When in 1880 only about three tenths of the roads were equipped with steel rails, ten years later it was close to eight tenths. (3) Rails were of steel and they were heavier, so were locomotives. At the close of the Civil War the latter weighed around 90,000 pounds; by 1881, 102,000 and by the end of our twenty years 230,000. (4)

A brilliant example of their prowess in the '90's is still exhibited - Locomotive Number 999 - placed in service in May 1893 by the New York Central. It celebrated its debut by making a world's record of 122.5 miles per hour. (5)

Freight cars grew in size and stability - train loads increased. Tracks were more solid; lines laid with more attention to proper grading; bridges were safer. The old wooden bridge was

1) Statistical Record of the Progress of the United States 1880-1906 Page 33

2) Idem

3) Interstate Commerce Commission Report. Vol. XIX. Pages 291,292

4) Idem

5) The Railroad Giant - New York Central Lines, Publicity Bureau 1935. No. 999 is carefully preserved and still shown at Expositions and Fairs along the road's route.

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fast disappearing, iron taking its place. In 1874 steel had first been used in the structure of a bridge - the Eads Bridge across the Mississippi at St. Louis, Missouri - four years later a bridge entirely of steel was opened over the Missouri at Glasgow. (1)

1) Chronology of Iron and Steel. Goodhall, S. L. compiler & Speer, J. Ramsey, editor. Pages 186-194
For the Eads Bridge see Nevins, Allan. Emergence of Modern America (A History of American Life) 81

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Most important there had been a continual effort at self-government on the part of the railroads, thus pooling was an effort at regulation. It had been devised to remedy an evil which as Mr. Hewitt of New York told Congress in 1884, had become intolerable, the evil of unlimited competition. The whole list of discriminatory abuses, tabulated in the table already quoted (see above) were to be cured by pooling. It was to put an end to all of the conscienceless bargaining into which shippers were practically forced by competitive routes. All of the evils so notorious under free competition were soon showing themselves in the pools. As the public saw it the device, which had been developed as a practical remedy for the evil of unregulated competition, had now become a greater evil than that it had been created to remedy.

But no recital of benefits, no emphasis on attempts at self-correction, no insistance on their economic value quieted the popular distrust. What people most feared was the growing division of the United States into a group of transportation satrapies ruled by men of force, daring and creative ability, a passion for order, either convinced that the success of their plans was so important to the country that the common law and rules of fair dealing could and should, if necessary, be disregarded, or so greedy for wealth that they were willing to violate all laws and all human consideration if they could secure it for themselves.

That was the popular notion based on cruel experience of a type of leadership conspicuous in building the railway empires of the country.

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There were many sound reasons for these consolidations beside the sinister ones the public harbored. Economy and convenience made them inevitable, a logical response to public demand as well as to considerations of profit and power. Many of the shorter raods were dying of traffic starvation. The mine or oil field or industry on which they depended was exhausted or a more economical route with wider connections had come into the territory, that is consolidation was not always due to raids ending in capture but the sharp war ending in capture was remembered while the slower process of economic development was forgotten. There was no drama in it. Moreover, it was something about which you could do nothing.

What was causing the greatest anxiety among thoughtful observers in the early '80's was the orgy of speculation in railroad stocks. brought on by The "return of prosperity" which after six years of darkest depression came at the end of 1879. A chief factor in the revival was a crop failure that year in Europe so serious as to threaten widespread famine. The United States on the other hand had raised the biggest crops in its history. (1) Over forty percent of our wheat was exported at higher prices than had been known for many years and paid for in gold.

It was temporary demand as far as Europe was concerned but it was treated as if it were permanent as the country always had and still does treat the temporary markets created by war and famine. The immediate effect of the boom in food stuffs was to increase the acreage put into food crops and to lengthen the

1) Industrial Commission. Vol. XIX. Page 555

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mileage of railroads to carry them.

There was now for the first time in years abundant money seeking investment. The United States had resumed specie payment and again Europe was willing to invest in our securities. We had redeemed a large bond issue. Those factors with gold from the big exports of cereals had flooded the market with money. (1)

The favorite investment was rails and the promoters obliged the investing and speculating public by a flood of issues. In 1881 railroad stocks and bonds were _____

1) Between July 1st and November 15, 1879 the favorable balance of trade paid in gold amounted to $59,000,000.
Hayes, Rutherford B. Third Annual Message, December 1879
Messages and Papers of the President. Page 558

Digital Image, 2011, The Ida M. Tarbell Collection, 1890-1944, Allegheny College Pelletier Library.

dealt out at the rate at from one to two million dollars a day.

In 1880 over seven thousand miles were built, about equal to the excited building in 1871 which was the basis of the Panic of 1873. In 1881 nearly ten thousand miles; in '82, eleven thousand five hundred ninety one miles.

Mr. Poor says, a conservative and well-informed student of railroads in his manual for 1884, that this new mileage was capitalized at seventy thousand to the mile and did not cost over $30,000. (1)

One feature of the financing which was carried to dizzy heights was the stock dividends. In 1880 the Louisville Nashville and the Chicago & Rock Island Railroads each declared one hundred percent dividends. All told the railroad corporations distributed something like $40,000,000 in this year in this sort of bonus.

There were those who warned that this thing could not last. There were ~~plenty of~~ investors who remembered the fevers of the early '70's and the long convalescence. It was noted that there were capitalists who were putting aside their money in trust companies; it was noted, too, that it was the Americans, not the foreigners, who were in the market now. But the mass of professional and amateur speculators could not believe ~~it~~ that the boom was collapsing.

1) Parsons, Frank. Relation of the Railroad to the Public Quoting Poor's Manual, Page 109

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The excitement continued through 1882, but in 1883 the formula began to fail. The crops were not so good; the country was ravaged by rate wars in the East, West and South. The New York Central and the West Shore cut passenger rates to a cent a mile. The war extended to the Pennsylvania, the Erie, the Delaware and Lackawanna, the Baltimore and Ohio. Earnings fell off drastically when dividends began to be cut.

Rapidly through 1884 the wind came out of the inflated structure. Europe began to call back gold. The price of wheat fell in early April bringing on a panic in Chicago. One of the most magnificent speculators of the '80's, James R. Keene, was caught in the market and failed; exports fell off. We had sold a bill of about $686,000,000 worth of agricultrual products in 1880; it amounted to only about $546,000,000 in 1884; $485,000,000 in 1886. (1) Bank failrues which had fallen from a high of $10,478 in 1878, largest number listed up to that time, rose in 1884 to $10,968. (2)

In May there was the disastrous failure of Grant and Ward. The nation was shocked less by the financial irresponsibility of Ward than by the appalling proof that a man of character, of inestimable services, of undoubted honesty, like General Grant, could be used for the purposes of conscienceless speculators. This was a more serious thing than any financial loss. "The failure," said the Nation, was "the most colossal that ever took place among merely private firms in the United States, and one of

1) Report of Industrial Commission. Vol. XIX. Page 188 (1901)
2) First Report of Commission of Labor, 1885. Industrial Depressions Page 67

Digital Image, 2011, The Ida M. Tarbell Collection, 1890-1944, Allegheny College Pelletier Library.

the most disgraceful." (1)

The failure of Grant and Ward was followed closely by a defalcation of some $3,000,000 by John C. Eno, the President of the Second National Bank of New York-money lost in Wall Street speculations was the explanation. The money was made good but it took more than money to overcome the shock to confidence. Wild rumors filled the air. The Metropolitan National Bank whose president, George I. Seney, was deep in railroad speculations had to close its door because of a run. Then began one of those mad stock exchange stampedes that leave so many casualities on the field. Stock firm after stock firm, bank after bank, were obliged to shut down.

By the end of 1884 it was clear to the country that its dearly gained prosperity was shattered, so far as railroad values were concerned. It was to be long before they were to touch the levels of 1881 again. A table of twenty eight railroad stocks, which in 1878 averaged seventy three, rose to one hundred fourteen in 1880 and 1881 and one hundred sixteen in 1881 and 1882 fell in 1884 and 1885 to seventy five, and although there were five of the next thirteen years when they averaged around one hundred it was not until 1898 and 1899 that they were back where they were in 1881-1882. (2)

1) Nation (N.Y.) May 22,29,1884
2) Final Report Industrial Commission, Vol. XIX, P. 29

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No better proof of the recklessness of the railroad financing and management in this period existed than the fact that in 1886 one hundred eight roads reporting a mileage of 11,066 miles were in the hands of receivers. The humiliation of it was that this orgy of building and speculation should have occured so soon after the railroad experiences of the '70's. It was like rubbing salt into wounds to have Mr. Charles Francis Adams come out in 1886 with his vigorous, informed and fearless chapters from Erie. (1)

Popular exasperation over the management and financing of the railroads, intensified by the panic of 1884, was in no way quieted when it was learned that communities could no longer punish a road which they believed was defrauding it by excessive taxation. This weapon which had been at times used ruthlessly was taken away by the decision of the Supreme Court of the United States handed down in 1883 that the State of California in assessing the value of the property of the Southern Pacific railroad had ~~vitiated~~ voided the Fourteenth Amendment to the Constitution ratified in July 1868.

1) Chapters of Erie and Other Essays
Adams, Charles Francis & Adams, Henry. (1886)

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The first section of that amendment - the Civil Rights Clause as it is called, reads:-

Article XIV - All persons born or naturalized in the United States, and subject to the jurisdiction, thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person withinits jurisdiction the equal protection of the laws.

One who reads this text for the first time and who knowsnothing of its history would not question that it applied to white citizens as well as black, but up to 1883 the general assumption by the public had been that it was drawn and adopted to protect the black man only. Opinion had been handed down in two cases prior to '83, but they had been favorable to none but negroes. The Federal Courts had specially stated that it was doubtful whether the amendment could be used to prevent discrimination against whites.

The attorney for the Southern Pacific suit was a former United States Senator, Roscoe Conkling. Mr. Conkling had been a member of the committee which framed the Fourteenth Amendment. In a brilliant and exhaustive analysis of the discussion which led up to the final passing of the amendment he convinced the Supreme Court that the intention of the committee was the protection of the life and property of all persons who were citizens and that corporation were persons,

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Conkling's argument settled the question for the Supreme Court so conclusively that in 1886 in the Wabash case Chief Justice Waite declared that the court did not wish to hear arguments on the question that the 14th Amendment gave protection only to freedmen. "We are all of the opinion," he said, "that it applies to these corporations." As one of Mr. Conkling's associates in the trial said, "the color line has disappeared from American jurisprudence." (1)

The railroad, therefore, under the 14th Amendment found early in the '80's a protection from attack which was unexpected and startling. Between 1878 and 1898 the United States Supreme Court handed down decisions in one hundred and one cases where corporations had sought relief from what they regarded as oppressive state activities. In this time only fourteen cases were decided for Negroes. (2)

This wide interpretation of the Amendment has been disputed by able students of property, among them President Arthur T. Hadley who in 1908 wrote, "the 14th Amendment was framed to protect the negro from oppression from the whites not to protect corporations from oppression by the legislatures."

The Supreme Court in the Wabash Case gave the railroads the protection of the 14th Amendment, it also for the first time declared that the states could not regulate rates that effected interstate commerce - another spur to a hesitating Congress. It must do something. (3)

1) Kendrick, B. H. Journal of the Joint Committee on Reconstruction. Ph. D. Thesis, Columbia University, 1914

2) Collins, Charles Wallace. The Fourteenth Amendment and the States

3) Haney, L. H. Congressional History of Railways. Pages 290-291

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These events added to the formidable indictment already quoted the report which came from the special Senate Committee under the chairmanship of Senator Shelby M. Cullom of Illinois "The causes of complaint against the railroad companies," (See Page 16 orig.) increased the popular demand that Congress act. And act it did in January of 1887 after nearly twenty years of discussion by adopting a bill which authorized an Interstate Commerce Commission.

The leading features of this bill, outlined by the Commission itself in its first report, were:-

"All charges made for services by carriers subject to the act must be reasonable and just. Every unjust and unreasonable charge is prohibited and declared to be unlawful.

"The direct or indirect charging, demanding, collecting, or receiving, for any service rendered, a greater or less compensation from any one or more persons than from any other for a like and contemporaneous service, is declared to be unjust discrimination and is prohibited.

"The giving of any undue or unreasonable preference, asbetween persons or localities, or kinds of traffic, or the subjecting any one of them to undue or unreasonable prejudice or disadvantage, is declared to be unlawful.

"Reasonable, proper, and equal facilities for the interchange of traffic between lines, and for the receiving, forwarding, delivering of passengers and property between connecting lines is required, and discrimination in rates and charges as between connecting lines is forbidden.

"It is made unlawful to charge or receive any greater compensation in the aggregate for the transportation of passengers or the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance.

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"Contracts, agreements, or combinations for the pooling of freights of difference railroads, or for dividing between them the aggregate or net earnings of such railroads or any portion thereof are declared to be unlawful.

"All carriers subject to the law are required to print their tariffs for the transportation of persons and property, and to keep them for public inspection at every depot or station on their roads. An advance in rates is not to be made until after ten days' public notice, but a reduction in rates may be made to take effect at once, the notice of the same being immediately and publicly given. The rates publicly notified are to the maximum as well as the minimum charges which can be collected or received for the services respectively for which they purport to be established.

"Copies of all tariffs are required to be filed with this Commission, which is also to be promptly notified af all changes that shall be made in the same. The joint tariffs of connecting roads are also required to be filed, and also copies of all contracts, agreements, or arrangements between carriers in relation to traffic affected by the act.

"It is made unlawful for any carrier to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or by other means of devices, the carriage of freights from being continuous from the place of shipment to the place of destination." (1)

On the whole the bill was fairly well received. Everybody but railroad managers welcomed the publication of tariffs and a system of uniform accounting. The clauses on the short and long haul came in for excited criticism of those who thought it meant always changing equal mileage regardless of conditions. "One hundred times as much for one thousand miles as for ten miles." In Cincinnati there was what Harper's Weekly called an "earnest uprising" of business men against "a

1) History of and Reasons why, the Interstate Commerce Act was passed, from the First Annual Report of the Interstate Commerce Commission, December 1887, Pages 2 to 11.

Digital Image, 2011, The Ida M. Tarbell Collection, 1890-1944, Allegheny College Pelletier Library.

provision which the bill did not contain and which no railway reformer ever committed the absurdity of proposing." (1)

The chief protest from business, from railway management and from economists centered on the pooling clause. However, those towns and individuals which had suffered by the discrimination of the pools rejoiced. There was Atlanta which according to the Constitution had been steadily sandbagged by the Southern pool because they regarded Atlanta "responsible for the railroad Commission." The Chicago Tribune felt that the pool managers were only getting what was coming to them, so "odious had been their discriminations in favor of individuals and places." (2)

The severest complaint of the public was the failure to put teeth into the bill, fix punishments in definite fines and prison terms. Discriminationswere outlawed; all changes must be "reasonable and just" but if the Commission decided they were "unreasonable and unjust" it had no power to force the culprit to change his ways. All it could do was to forbid continuance and if it was found that its order was not obeyed institute suit in the Federal Courts. It was too slow a process to satisfy harassed shippers and towns which saw their neighbors prospering while they were dying. Nevertheless,

1) Harper's Weekly. January 15, 1887. Page 42

2) Public Opinion, January 8, 1887

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it was a beginning. That was what the Press, as a whole, saw in it. "It is the shadow and not the substance of governmental control," cried the Chicago Herald, "but it is a step in the right direction."

"It is the beginning of a National railroad policy," said both the Cincinnati Commercial Gazette and the New York Evening World. The New York Evening Post thought it the most important piece of legislation since the resumption of specie payment. The New York Sun was not so enthusiastic, calling the bill, "An extraordinary measure of paternal government." "Nevertheless, "let it pass," said Mr. Dana. "A good deal of rascality will disappear with secret rates and rate cutting; much more money which now goes to pool commissioners and clerks will be saved." (1)

Obviously the success and the new law depended on the makeup of the Commission which should administer it. One of the objections which opponents of regulation by commission made - Mr. Reagan of Texas was the most out spoken - was that men free from the influence of railways copporations could never be found. Another was that men who could be trusted not to yield to the corporations would be too ignorant of the railway to handle the problems which everybody now recognized to be more intricate than they had once realized.

1) Public Opion January 8, 1887. Digest of newspaper comment on Interstate Commerce Commission bill.

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The law called for five commissioners and President Cleveland was not slow in naming them. At their head stood Thomas M. Cooley of Michigan, a lawyer of first rank, a Republican who had served twenty one years on the Supreme Court of his state, an experience which had familiarized him with all classes of railway problems. Following Cooley in order of naming were:- William R. Morrison of Illinois, a Democrat whose eight terms in Congress covered the entire period of the railway agitation and who had won Mr. Cleveland's respect for the ability and character he had shown in handling tariff reform; Augustus Schoonmaker, a Democrat of New York who seems to have had no active experience with railways but who was dear to Mr. Cleveland as a civil service reformer; Aldace F. Walker of Vermont, a Republican who had fathered the Vermont Railroad Commission, and a corporation tax law as well as been active in settling troubles of the Vermont and Canada railway; Walter L. Bragg of Alabama, a Democrat, a lawyer and the president of his state's highly radical railway commission.

The Commission was well received. "Very respectable citizens," said the New York Sun. The New York Post found that Mr. Cleveland's critics "only broke silence to applaud." This was not literally true, however. There was considerable sarcasm centered on the fact that there was no trans-Mississippi representive. "Mr. Cleveland ought to study geography before he appoints another Commission." The country beyond the Mississippi was something beside landscapes; of course

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Mr. Cleveland who had never been outside of his dear Buffalo did not realize that.

It was natural that railroad managers should complain because there was no railroad expert on the Commission, but the fact that there was none seems not to have dismayed the press. The Philadelphia Record thought it no loss, "experts thinking there is very little they do not know." (1)

At last the transportation of the country was nationalized, at last the government of the United States had decided that it could no longer allow men to exploit their fellows in the name of progress, that the Constitution gave it the power to control the individual in national business and the time had come to exercise it.

But it had also decided that checks and balances and punishments were to be applied only after all the facts were in and then by reason and not by wrath and this was to prove a slow process. The work of applying the new law was like setting a path through a jungle so complicated were the most of the cases which at once flooded the new body. They often had all the involvements of established customs. If based, as most of them were on some form of privilege which worked to the benefit of one group or locality and to the harm of another, the practices had been so long in existence that disturbing them was looked on as an invasion of rights. Possession being nine points of the law.

1) Public Opinion, March 1887

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Their complaints were divided into four groups by Ripley. Was the rates charged reasonable in itself or extortionate? Was it fair to allow a relatively greater rate from some competing point? Was it fair to charge more for one commodity than another? Were certain shippers to be allowed better rates than their competitors? (1) The Commission said the rates must not be unreasonable but when it came to say what was reasonable, that is fix a schedule the Supreme Court decided this was beyond their power. Judge Brewer laid down in 1897 precisely what the Court conceived to be its power:-

"It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And, with this knowledge, it is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done, by rebate or any other device, to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the Interstate Commerce Act

1) Ripley, William Z. Railway Problems (1907) Page XV of Introduction

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shall be secured to all shippers. It must also see that that publicity which is required by section six is observed by the railroad companies. Holding the railroad companies to strict compliance with all these statutory provisions, ~~and enforcing obedience to all these statutory provisions~~, and enforcing obedience to all these provisions tends to both reasonableness and equality of rate, as contemplated by the Interstate Commerce Act." (1)

There was the greatest difficulty in getting all the facts, in understanding their relations when collected, in deciding whether or no the shipping was conducted "under substantially similar circumstances and conditions." There were cases when it seemed practically impossible to do any of these essential things fully and satisfactorily. (2)

Sometimes the Commission faced the dilemma of doing actucal harm by applying what was the plain meaning of the law. Untangling established customs even if they be obviously unjust to some and to the advantage of others forced a long train of re-adjustments too complicated for prompt action, to complicated one may suspect for any six men however able, learned and hard working.

When a decision had been given it might be years before it was enforced because of a succession of subterfuges and appeals. Thus in 1888 the independent shippers of oil from the Oil Regions of Pennsylvania to the seaboard complained to the

1) Ripley, William Z. Railway Problems (1907) Page 189

2) Ripley, William Z. Railways Problems (1907) Page 260-285

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Commission that the rate of fifty two cents on oil in barrels had suddenly been increased to sixty six cents. It was contrary to the established custom of charging the same rate whether the oil was carried in barrels or tank cars and it was obviously (only too obviously the state of things in the conflict between the oil trust and the independent being what it was at the moment) that it had been forced on the railroads by the Standard further to embarrass the irreconcilable in the business.

One of the complaints against the Commission was from the beginning that it moved too deliberately. It is difficult to see how it could have hurried considering the intricacies and the ~~xxxxxx~~ number of the strange problems heaped on its shoulders. The independent oil men now complained loudly because they did not get a decision until December 1892, though the Hearings came in May 1889. (1)

The Commission finally sustained their complaint however and ordered the railroads to make the rates equal whether the oil went in barrels or tanks and to furnish tanks if shippers gave reasonable notice. To years later the Commission ordered reparations of nearly $100,000 to be paid to injured shippers. Long after our period ended the shippers were still trying to collect those damages.

What it all amounted to was that an enormously involved problems had been put up to Commission courts, railroads and shippers for solving, and that the solutions were hindred not only

1) Tarbell, I. M. The History of the Standard Oil Company (1904) Vol. II. Page 281

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by the greed of those who profited by discrimination of one kind or another, by the lack of sympathy and understanding which was often encountered in the courts, but also by the limitations of human intelligence and ability, the impossibility of any six men born into the world making over promptly and justly a national activity involving practically the entire population one put together in haste to meet national needs and ambitions.

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