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# Why Railroads Demand Federal Incorporation

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Similarly, it may be said that the power has been expressly given to Congress to prosecute war and to pass all laws which shall be necessary and proper for carrying that power into execution. That power explicitly conferred and absolutely essential to the safety of the nation is not destroyed or impaired by any later provision of the Constitution or by any one of the amendments. These may all be construed so as to avoid making the Constitution self-destructive, so as to preserve the rights of the citizen from unwarrantable attack, while assuring beyond all hazard the common defense and the perpetuity of our liberties. These rest upon the preservation of the nation.

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## WHY RAILROADS DEMAND FEDERAL INCORPORATION.\*

By Laurence B. Finn.†

Railroads, generally speaking, are the creatures of the states. Their charters declare that they are public highways and they exercise governmental functions, being endowed with the right of eminent domain.

Railroads, like other public highways, can be operated in two ways.

First. By general taxation; providing a fund to acquire the highway and collecting tolls or taxes for proper maintenance and operation.

Second. By granting to individuals charters which privilege them to collect sufficient tolls from those who use the public highway to maintain and operate the road and to pay a fair return on the private capital invested in the construction of the highway. This is commonly known as the tollgate system, which is analogous to the present plan of operating railroad companies.

Under a joint resolution of Congress a general investigation is being conducted on the subject of railroads by a special com-

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\*This article was written some time ago for the Kentucky Law Journal, but because of the delay in starting the present volume Mr. Finn has furnished us with a revised copy. We suggest a comparison of parts of this paper with that of James Poyntz Nelson, of the Chesapeake & Ohio Railway, in Kentucky Law Journal, Vol. V., No. 4.

†Simpson County Bar, Franklin, Ky. Chairman of the Kentucky Railroad Commission; President National Association of Railway Commissioners (1914).

mittee of the Senate and House. Before this committee the plans of common carriers have been disclosed. Their paramount desire is a Federal Incorporation Act—supposedly a general federal statute under which all railroad corporations shall be recreated—thus surrendering their state charters and thereby being relieved of whatever duties or restrictions contained in the constitutions and laws of the several states that are not acceptable to the carriers.

The real object of the carriers in making this demand is seldom mentioned and not generally known. This article proposes to disclose the motive.

The representatives of carriers claim that the purpose of the plan is to be relieved of conflicting state laws, as well as the conflict which they allege exists between the state and federal governments; the catch phrase coined for the occasion being, "We live under 48 different masters, we need only one."

In an article of reasonable length it will be impossible to expose all the fallacies of railroad representatives advanced in support of their plan. Naturally our attention should be directed largely to the arguments advanced by Col. Alfred P. Thom, the eminent lawyer representing the Railway Executives' Advisory Committee, which in turn represents the railroads constituting 84 per cent. of all railroad mileage in the nation. To this affable and persuasive gentleman, personally known to practically all of the Representatives and Senators and departments of the federal government, the railroads assigned the task of presenting their plans and pleas to the Senate and House committee.

Stenographic reports of the hearings before the Joint Committee on Interstate and Foreign Commerce have been printed by the department at Washington; and a synopsis of all the testimony given before this committee has been issued in bulletins compiled by the Railway Executives' Advisory Committee. From these printed documents the plans of the carriers are accurately obtained and form the basis for this discussion.

To justify the demands of common carriers for a Federal Incorporation Act many imaginary ills are alleged from which the carriers claim they should be relieved. The public also are told that car shortage, inadequate services and facilities and lack of

railroad construction are all due to "the dual system of regulation"; and like the patent medicine vendor, who guarantees his drug as a panacea for all ills, railroad representatives offer "Federal Incorporation" as a remedy for all complaints registered by the general public, and a guarantee to railroad capitalists of increased revenues and lower taxes.

From the widespread nature of the business conducted by railroads, together with their entangling alliances with banks, insurance companies and great industrial corporations, assisted by a well organized press, it is within the power of those who control railroad policies to create conditions affecting the welfare of the nation and then use the resulting effect as a basis for demanding coveted concessions from the public. Professor Elliott says that those whom the carriers' business affects, counting employees, stockholders, policyholders in companies whose assets consist of railroad securities, etc., together with other allied interests, comprise about sixty million people. Mr. County, vice president of the Pennsylvania Railway system, estimates the number at fifty millions. In fact, one hundred millions of people are vitally affected by the conduct and business of the railroads of this country.

#### **The Public Interest in Fair Railway Rates.**

The truth is, the necessity of railroads to the happiness, convenience and commerce of the country has not yet been fully realized and their relationship to the public is frequently misstated. "The prosperity of the railroads and the prosperity of the country," said President Wilson, "are inseparably connected." Properly interpreted, this statement is true; but, when misconstrued, it ascribes to railroads the distinction of being the originators of prosperity. Prosperity does not begin or end with the prosperity of common carriers. They are simply the thermometers registering the activity of business. High freight rates, which create a great surplus for railroads, do not create prosperity for the nation. The exchange of commodities creates business. As this exchange is performed through the service of railroads, the railroads' business measures the prosperity of the country.

The source and origin of prosperity should always be kept in mind. Like all things constructed it must have a foundation and

no structure is complete without a superstructure. The toiling masses are the foundation of prosperity. Capital assembled or concentrated in the development of enterprises is the superstructure. Capital and labor both have their proper services to perform and if properly applied work together for the good of all mankind; but a wise builder considers first the foundation. Labor, the foundation of prosperity, produces the commodities. By the exchange of these commodities labor receives its reward. Any unnecessary burden placed upon the exchange deprives labor of its just reward and destroys the foundation of prosperity.

The functions of railroads are of such public necessity and prime importance that business adversity, labor disputes, strikes, wars and famines should no more retard the wheels of transportation than should such calamities retard the wheels of the government.

A very subtle argument was made by Col. Alfred P. Thom before the Senate and House committees:

“The first consideration of the public,” said he, “is to obtain transportation facilities. What the cost is, is in reality a secondary consideration. This is illustrated by the sentiment of the country last summer when it was menaced by the prospect of an entire suspension of transportation when business men would have been willing to pay almost anything to get their goods to market.”

Thus the railroad representatives would have the public consider the cost paid for transportation from the same standpoint that a drowning man would estimate the price of a floating log. Upon such an occasion the value of the log could not be estimated; but the circumstances should neither fix the customary price for logs, nor necessitate the conclusion that the cost of lumber was of no consequence to the public.

But if the carriers can once impress the public that transportation charges are of no consequence to the public they have won their case.

In fact, a few large shippers declare that the freight rate is of no consequence to them so long as they are placed upon an equality with their competitors; but they fail to catch the vision from the broader standpoint of the interested public. A large

majority of the public neither own railroad securities nor contract directly for transportation; yet their interest in freight rates is the all-important feature connected with this great question.

The public buys from someone who pays the freight. The public sells to someone who pays the freight. When the public buys from the man who pays the freight, the freight is added; when the public sells to the man who pays the freight, the freight is deducted. While the freight rate is small when itemized into individual contributions, it must be remembered that one hundred million people are contributing their mite to the success of various industries and public undertakings and unless these mites are justly distributed the stream of wealth will be diverted from its natural flow. The coffers of some industries will overflow while others will be empty. As drops of water make the ocean so do these mites contributed by millions of people create a sea of wealth and the inequitable distribution of profits is the source of all our economic ills. Just prior to the European war railroad securities had absorbed almost one-sixth of the accumulated wealth of the nation.

### Conflicting Laws.

Characteristic of the inaccurate information upon which the public is asked to make up its mind on transportation problems, I quote an extract from an article in the Review of Reviews, of September, 1914, written by Mr. Harrington Emerson. The editor of the Review of Reviews qualifies Mr. Emerson as authority on the subject, by stating that "his convictions concerning the possibility of efficient organization of railroad operations have been given the widest publicity by Mr. Brandeis." (Now Justice Brandeis of the Supreme Court of the United States.) Said Mr. Emerson:

"The question as to the necessity or desirability of all the flood of restrictive measures that have become laws is not involved. The burden remains. It adds to the expenses when locomotives cannot cross a state line or when the equipment of a passenger car differs in every state through which the car runs. These multitudinous restrictions have the same general effect upon railroad finances that the hookworm parasite has on human beings. One hookworm would not count, a hundred thousand are depleting."

As chairman of the Committee on State and Federal Legislation of the National Association of Railway Commissioners, I have concluded a thorough investigation of all the state laws relating to transportation companies, and such a condition as is assumed by the statement of Mr. Emerson does not exist. In fact, the Supreme Court of the United States in the case of the South Covington & Cincinnati Street Railway Company, Plaintiffs in Error, vs the City of Covington, decided January 5, 1915, expressly enunciates principles positively prohibiting such a condition as is described by Mr. Emerson. Note this extract from the opinion in speaking of a city ordinance attempting to regulate the equipment of a street car company which served both Cincinnati, Ohio, and Covington, Kentucky:

“If Covington can regulate these matters Cincinnati certainly can and interstate business might be impeded by conflicting and varying regulations in this respect with which it might be impossible to comply. On one side of the river one set of regulations might be enforced and on the other side quite a different set and both seeking to control a practically continuous movement of cars.”

As was said in *Hall vs. DeCuir*, 95 U. S. 485: “Commerce can not flourish in the midst of such embarrassments.”

As the Supreme Court has held that state laws cannot interfere with interstate commerce by unreasonable rules relating to the physical equipment of transportation companies; so the phantom, “that locomotives cannot cross state lines” and that “passenger coaches differ in every state through which the car runs,” vanishes.

We will next investigate to what extent state regulation of rates affects the revenues of carriers.

#### State Regulation of Intrastate Rates.

It must be borne in mind that the rates, subject to the unrestricted regulation of the several states, constitute less than 10 per cent. and possibly not more than 5 per cent. of the total amount of business done by common carriers. This is the statement of railroad representatives. Therefore, if the regulation of state rates

causes disaster, this disaster is the result of state commissions reducing intrastate rates with such moderation that the state rates cannot be established by the carriers as being confiscatory; for if a rate is reduced so low that it is confiscatory the courts will set it aside. Therefore, only non-confiscatory rates, established by state commissions comprising not more than 2½ per cent. of the carriers' business (for more than 50 per cent. of the state rates are voluntarily established by carriers), are charged with being responsible for car shortage, inadequate services and facilities and a cessation of railroad construction. To state the proposition refutes the claim.

### Some More of Colonel Thom.

An impressive statement made by Colonel Thom in his argument before the Senate and House committees and frequently repeated in his public addresses and magazine articles is to the effect:

“That the present system of governmental regulation of common carriers had its genesis in the abuses of the past and is based on the principles of repression, correction and punishment, rather than on constructive principles. The conflict between the theory that railroads were private enterprises and the theory of the public character of the instrumentalities of commerce was a victory won in anger and the terms which were imposed were the terms of the victor upon the vanquished.”

The terms imposed “by the victor over the vanquished,” so dramatically described by Colonel Thom, were contained in the Interstate Commerce Act of April, 1887; but the dramatic effect of the statement is lost by being unfortunately staged; for the act of 1887 was so emasculated by the federal courts that it necessitated the comparatively recent amendments of the Hepburn Act of 1906 and the Mann-Elkins Act of 1910 to clothe the Interstate Commerce Commission with sufficient authority to justify its existence as a regulating board.

### Railroad Construction.

State regulation of common carriers has been charged as the direct cause of a lack of railroad construction. From Bulletin



No. 2, issued by the Railway Executives' Advisory Committee, we lift the following extract:

"Mr. Thom showed that while New Jersey has 31 miles of railroad per 100 square miles of territory, the average for the United States is only 8.53 miles, and in Idaho there are only 3.35 miles per 100 square miles. Pointing to a large map of Idaho, he showed the territory in that state containing a vast wealth of agricultural and mineral lands as yet untouched.

"'Less than 33 per cent. of the resources of the state now have railroad facilities,' Mr. Thom said."

All such statements must be analyzed with their relation to the demand of common carriers, to-wit: The elimination of state control and regulation; for conditions complained of are not pertinent, unless they are the result of "the dual system of regulation."

Now, Wyoming, which joins Idaho, is one of the states that never had a Railroad Commission until 1916; and which has never attempted to exercise any regulation or control over common carriers. Idaho (with state regulation) has 2,748 miles of railroad and 83,888 square miles of territory; while Wyoming (without state regulation) has 97,914 square miles of territory, and only 1,820 miles of railroad.

Carriers advertise the fact that in 1916 there were only 1,000 miles of railroad built in the United States. If this is true, the state of California, which has the most complete and effective system of state regulation of any state in the nation, can claim the credit of having constructed within its borders one-fifth of the entire mileage built in the United States in the year 1916.

### Insolvency of Railroads.

The carriers have widely advertised the insolvency of the railroads as a basis for demanding the elimination of state regulation. Arguments before the Senate and House committees and articles in newspapers and magazines, friendly to railroad companies, proclaim that the insolvency of the railroads of the country is conclusive evidence that the "dual system of regulation" must cease and that freight rates must be increased.

On June 30, 1915 (the latest statistical reports available), 85 railroads, representing 23,834 miles of road, were in the hands of the receiver. The total railroad mileage in the United States is about 253,000. Some of these roads which are in the hands of the receiver have been investigated and the cause of their insolvency exposed; notably the Rock Island with 5,366 miles and the Frisco with 3,522 miles of road. These two roads, comprising one-third of the mileage of the insolvent railroads in the United States, met their disaster under such circumstances that the public conscience was shocked by the exposure of the fraud and corruption which brought about their ruin.

No railroad representative can cite, or has cited, to a single road that is now in the hands of the receiver in which a public investigation was held where any testimony was produced to the effect that the insolvency of the road was due to state or federal regulation or control. The two largest roads in the hands of the receiver above mentioned became insolvent manifestly from lack of governmental regulation and supervision.

Of the 85 roads in the hands of the receiver there are 55, each of which is less than 100 miles in length. If to the roads above mentioned, there is added the mileage of the Pere Marquette\* (1,792) which had issued \$28,500,000 in stocks, common and preferred, and which in addition thereto had created an indebtedness of \$90,854,809 at the time it went into the hands of the receiver; and the mileage of the Chicago & Eastern Illinois Railroad Company (1,005) which had outstanding common and preferred stocks of \$25,817,800 and had incurred an indebtedness of \$70,072,200 at the time it went into the hands of the receiver; and the mileage of the Wabash Railroad Company (1,951) which had outstanding common and preferred stock of \$92,400,427 and had incurred an indebtedness of \$126,110,107 at the time it went into the hands of the receiver; and the mileage of the Western Pacific Railroad Company (942) which had issued common and preferred stock to the amount

\*The Interstate Commerce Commission has concluded its report concerning the failure of the Pere Marquette. The report is a strong indictment against the financiers who made the consolidation with the C. H. & D. and thereafter unloaded on the B. O. at a loss of fifteen million nine hundred thousand, notwithstanding the fact that the company's comptroller disclosed its "hopeless condition." It was the aim of Morgan & Company to show that they "did not know" the actual condition of the C. H. & D.; but the commission's report disposes of the Morgan contention in the following statement: "We have stated in detail the many facts of record to the contrary."

of \$75,000,000 and had incurred an indebtedness of \$92,923,370 at the time it went into the hands of the receiver; we find that only 23 roads will remain, representing 7,178 miles. The success of a short-line road usually depends upon its contract with the trunk line with which it connects, hence the receivership of so many of the short-line roads. With this record can "the dual system of regulation" be charged with the insolvency of the roads in the hands of the receivers?

### The Revenues of the Carriers.

In Colonel Thom's statement before the joint committee of Congress his attitude concerning freight rates, as the subject relates to the demand of common carriers to be relieved from state regulation and control, is not quite clear. From Bulletin No. 6 we lift the following extract taken from Mr. Thom's statement:

"Not one cent of revenue is to come to the railroads from this investigation. This is not a rate hearing. This is a question whether you are to allow a reorganization that will allow us to meet unprosperous years as well as the prosperous. We ought not to wait for a time of disaster to seek a method of relief from disaster."

From Bulletin No. 3 we take the following:

"We all know," said Colonel Thom, "that the courts have been full of cases where state-made systems of rates have been attacked because the railroads regarded that they did not escape the line of confiscation, but that they were actually confiscatory in their character. We all recognize the fact that the cases which have charged confiscation in this country have been almost entirely cases in regard to state-made systems of rates and seldom in regard to nation-made systems."

### The Carriers' Shell-Game.

For a definition of shell-game the reader is referred to Webster. Its victims are secured by the apparent fairness of the game, but the ball is always under the other shell, to the profit of the operator. Through the skill of the best talent obtainable the railroads' pleas to the public are always plausible, assuming their

statements to be correct. Nevertheless, if the facts develop a contrary premise they still insist upon the same conclusion, to-wit: That freight rates should be raised. As in the shell-game, it does not matter which shell you choose, you lose. So with the railroads, it does not matter what facts are developed, rates should be raised.

Just prior to the European war the Eastern carriers made a demand before the Federal Commission for an increase in freight rates based upon the allegation that they needed more revenue to purchase sufficient equipment to handle the enormous business which the growing commerce of the country required. Their demands did not meet with success. Within a short time thereafter the European war arose and their demands were renewed, based upon the allegation that business depression created by the war had stopped traffic and depleted their revenues. Thus we see the carriers alleging that they had too much business; subsequently, that they had too little business; and yet both allegations resulted in the same demand for an increase in freight rates. Their second demand proved quite profitable; but was granted under conditions aptly described by Commissioner Clements in his dissenting opinion found in Volume 32, page 337, Interstate Commerce Commission Reports:

“I am not aware of any prior case in which this Commission, or any court, has held that the need by a carrier of money was of itself proof of the reasonableness of a specific rate, or body of rates, increased to meet such need. The Commission has repeatedly held that the commercial necessities or interests of a particular shipper, community, or kind of industry, considered alone, afford no basis for the reduction of rates, and that it cannot in any case reduce the same except upon an affirmative showing of unreasonableness, after full hearing. In any considerable group of carriers there are probably always some that are in need of more money than they earn, when such need is tested by their obligations, or the disposition of the proceeds thereof. If the basis of the conclusions of the majority of the Commission sanctioning these rates in trunk line territory is sound, and points to the rule of action for the future, the burden placed by the law upon the carriers to justify increases in rates is indeed made light and easy to carry, especially when by concerted action a group of carriers, some strong and some weak, simultaneously propose to increase the great body of their rates.

“If the legislative authority of the Commission is as broad and

unrestricted as this, then I must confess that I have gravely misunderstood the limitations upon our statutory authority as well as the constitutional power of Congress to delegate its legislative power."

### The Prosperity of the Carriers.

The prosperity of common carriers is eloquently proclaimed by the following table which shows the incomes available for dividends earned by the railroads named in the fiscal years of 1915 and 1916:

Union Pacific, 1915, 11%.	1916, 15.65%.
This road has 11 masters; it runs through 10 states.	
Southern Pacific, 1915, 7.2%.	1916, 11%.
This road has 9 masters; it runs through 8 states.	
Atchison, 1915, 9.2%.	1916, 12.3%
This road has 14 masters; it runs through 13 states.	
Northern Pacific, 1915, 7.58%.	1916, 10.47%.
This road has 8 masters; it runs through 7 states.	
Chicago & St. Paul, 1915, 7.71%.	1916, 11.97%.
This road has 12 masters; it runs through 11 states.	
North Western, 1915, 7.55%.	1916, 11.4%.
This road has 8 masters; it runs through 7 states.	
The "Soo Line," otherwise known as the Minneapolis, St. Paul & Sault Ste Marie Railway,	
1915, 7.87%.	1916, 16.3%.
This road has 11 masters; it runs through 10 states.	
Illinois Central, 1915, 6.27%.	1916, 10.8%.
This road has 14 masters; it runs through 13 states.	
L. & N., 1915, 6.8%.	1916, 19.4%.
This road has 13 masters; it runs through 12 states.	
Pennsylvania, 1915, 8.5%.	1916, 11%.
This road has 14 masters; it runs through 13 states and the District of Columbia.	

This list could be multiplied indefinitely showing the enormous surplus available for dividends earned by the railroads of the country under "the dual system of regulation," concerning which they complain.

A recent daily paper publishing the business outlook of the country received a telegram from New York containing the following letter:

“Considering the tremendous gross and net earnings of the railroads it seems little short of malicious towards the stockholders the way railroad managers, backed up by some newspapers, try to destroy the market for railroad securities in order to influence by outward show the Interstate Commerce Commission into giving higher rates to the roads.

“Judged not by any off month but by earnings over several months, the railroads are making more net profits than many other lines of business.”

### The Full-Crew Law.

While many generalities are indulged in by the representatives of carriers alleging disaster to railroad companies as a result of state control, but one state law has been specified and criticized as contributing to this alleged condition. We lift an extract from the second page of Bulletin No. 3, issued November 25, 1916, by the Railway Executive's Advisory Committee, which contains the following statement from Colonel Thom:

#### “EXTRA CREW” LAWS COST \$1,700,000 A YEAR.

“The action of the states of Pennsylvania and New Jersey in passing ‘extra crew’ laws was mentioned as a further example of burdens imposed by state legislation upon the commerce of other states.

“The results of the action of New Jersey and Pennsylvania,” said Mr. Thom, “is to impose an annual charge upon the railroads amounting to \$1,700,000 a year, which is interest at 5 per cent. on \$34,000,000. The commerce of those states does not pay that charge. It pays only their proportion of it. The commerce of Ohio, Indiana, and Illinois and of Delaware, Maryland, and West Virginia is called upon to contribute.”

It must be kept in mind that this criticism of the authority of the states to pass a full-crew law, as it relates to the plans of the railroads, carries with it the presumption that by a Federal Incorporation Act either the Federal Commission or Congress will repeal such laws; and that the carriers will be privileged to operate trains with whatever crews they please.

When the President was Governor of New Jersey in 1912 he urged the legislature to pass a full-crew law in the following message:

"I recommend, moreover, the passage at an early date of an act requiring railroads operating in this state to provide their trains with adequate crews. Our sister state of Pennsylvania has adopted legislation of this kind and the railways whose lines cross Pennsylvania into New Jersey actually carry full crews to the border of this state and then send their trains on through New Jersey with diminished crews, to the jeopardy, as I believe, of life and property, requiring more of the small crew than it can safely and thoroughly do."

In the state of Pennsylvania the railroads succeeded in having the legislature repeal the full-crew law. Governor Martin G. Brumbaugh gave the following reasons for vetoing "the repealer":

"There has been much discussion of this bill. An extensive and systematic publicity campaign was inaugurated to secure its passage. The members of the legislature, so they inform me, were subjected to the pleadings of a large and persistent lobby until the bill had passed. Thousands of letters and other literature came to them and to the Executive. Employees in the office of one corporation stated to me frankly that they were very anxiously working for the repealer because as one—their spokesman—put it, 'If we help the company get this repealer we will get an increase of salary.'

"All the discussion of this question seemed to indicate to the public mind that there are now under law a great army of unnecessary employees carried on the trains. As a matter of fact, there is only one additional employee required by the present law above the number necessarily and willingly carried by the company. This one extra man had caused all this discussion and legislation. To this statement the companies assent quite as freely as do the employees. This one man is then the significant factor. The companies assert that he is not needed; the employees assert that he is.

"Within one year the railroad companies secured an increased freight rate by action of the Interstate Commerce Commission. A potential argument of the companies for this increase was the fact that the full-crew law added to the expense of operating their service. They had scarcely secured the increased rate until steps were taken to repeal the law requiring this full crew."

Arkansas, Arizona, California, Indiana, Maine, Maryland, Massachusetts, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Washington and Wisconsin have passed laws providing for a sufficiency of crews.

**Full-Crew Law An Asset, Not a Liability.**

In New York the full-crew law became operative in 1914. The number of accidents in the year 1913, prior to the enactment of the full-crew law, amounted to 7,626. In 1915, the accidents were reduced to 4,981. In 1913, 51 passengers were killed; in 1915, 9. In 1913, there were 1,748 passengers injured; in 1915, only 833. The number of employees killed in 1913 were 250; in 1915, 142. The number of employees injured in 1913 were 3,760; in 1915, 2,114.

If the average damage paid to each passenger injured amounted to \$500, and the number was reduced by 915, the sum saved would amount to \$457,500. If the employees killed were reduced by 108, and \$4,000 are allowed in each case on the basis of the Workingmen's Compensation Law as damages for the death of each employee, the amount saved would amount to \$432,000. Injured employees were reduced by the number of 1,616; allowing \$500 for each injured employee, the sum saved would amount to \$808,800, making a total saving in the items mentioned of \$1,897,500, not counting the amount of property saved by eliminating railroad accidents.

The Public Service Commission of the Second District of New York in their Ninth Annual Report state in connection with this reduction of deaths and accidents,

“That a small part of this reduction is not attributable to the decreased train mileage, but rather to increased efficiency and watchfulness of employees.”

Thus we have overwhelming evidence that the one state policy which is most criticized is essential; that the President has advocated it and that it results in economy to the carriers and saves many lives.

**The Press.**

The facts about railroads do not reach the public. Through a well organized press bureau only such information as the carriers wish receives general circulation. On April 1, 1914, Hon. A. H. Smith, president of the New York Central Railway Company, tes-



tified before the Interstate Commerce Commission in behalf of the Eastern roads favoring a 5 per cent. increase in freight rates. The carriers were endeavoring to create the belief in the minds of the public that the railroads were sorely pressed for revenues. The transcript of the record shows the following questions and answers:

Q. Can you name one year when your corporate income above all fixed charges and above all operating expenses was as great as the year 1913 aside from the single year 1910?

Mr. Smith. No.

Q. Is your net operating revenue average during the past five years higher or lower than the average for the preceding five years?

Mr. Smith. 55 and 72. The first was 55 millions and the second 72 millions.

Q. Was your average net corporate income greater in the latter five year period or the former?

Mr. Smith. 23 millions and 33 millions in round figures.

Q. Greater in the latter five year period?

Mr. Smith. Yes, sir.

Q. Was not the percentage of your return on your capital during the latter five year period greater than during the former five year period?

Mr. Smith. Yes, sir.

Q. This Commission, the Interstate Commerce Commission, has unanimously held in the 1910 hearing that if a company was able to pay all of its fixed charges, all of its operating expenses and all of its taxes and then have  $7\frac{1}{2}$  per cent. above all these charges on its outstanding capital that ought to be adequate. Your attention is called to the fact that your average, 7.93, is higher than the Commission held to be adequate. Second, that the next five year average from 1908 to 1912 shows there was an increase of 30 per cent., the average being 9.33 per cent., and lastly, I call your attention to the fact that the profit on the outstanding capital stock in 1913 was 11.8 per cent.

Mr. Smith. Yes, I think it would be fair to take the average.

Notwithstanding this testimony, on April 2, 1914, the public received the impression of Mr. Smith's testimony created by the following newspaper notices:

New York World, April 2 (Headline)—“‘Going to the Devil Fast,’ says head of New York Central. President Smith Asserts

Income of Road Decreased Three Million in 1913 Despite Big Revenues.”

Special to the World, Washington, April 1.—“‘As I See It We Are Going to the Devil as Fast as We Can.’ This was the statement made to members of the Interstate Commerce Commission today by A. H. Smith, President of the New York Central.”

New York Times, April 2 (Headline)—“Rate Decision Likely This Month. Rapid Progress by Interstate Board in Hearings on Five Per Cent. Increase Plea. New York Central’s Plight:—‘We Are Going to the Devil as Fast as We Can,’ President Smith Asserts.”

To the same effect are telegrams from Washington published in Philadelphia, Baltimore and many other newspapers in the cities of the country. Thus we see the press of the nation giving widespread publicity to a statement of the president of the New York Central Railroad Company that “we are going to the devil”; but not mentioning the fact that his company had earned more than 11 per cent. upon its capital stock after paying all outstanding charges.

Now, while the statement of President Smith might have been literally true, the news items created the impression that the president of the New York Central was speaking figuratively of the railroads.

#### **The Real Motive Behind Federal Incorporation Is To Protect Fictitious Values.**

The Boston News Bureau of September 14, 1915, carried an article dated Washington, which indicates the gigantic efforts put forth by the carriers to influence the congressional committee to favor a Federal Incorporation Act:

“Every class of citizen doing business with the railroads of the country will be represented before the joint Congressional Committee charged with investigation of railroad legislation. Representatives of the railroads today began a systematic round-up of prospective witnesses. Agents of the road, under direction of the legal advisers of the Railway Executives’ Advisory Committee, started to comb the country for representative bankers, shippers, commercial organization officials and railroad men. J. P. Morgan will head the bankers who will submit their views to the commit-

tee, and he will be accompanied by half dozen of Wall Street's biggest men who deal in the securities of the roads. The railroads likewise expect to produce bankers from various small towns throughout the country to give their views on railroad finance."

Thus we see that it is Wall Street's interest in the securities of railroads that is the paramount issue. It becomes acute at this particular time, in view of the fact that the Interstate Commerce Commission is about to establish certain principles in fixing the value of the railroad companies of the nation, at which task they are now engaged. If the railroads are successful in contending for an "unearned increment value," then their outstanding stocks and bonds may not exceed such an estimated value of the carriers' property; but such a strong attack has been made against such an absurd element of value that the fictitious securities which have been issued by common carriers are dangerously threatened.

There are at least thirteen states with constitutions and laws which provide in substance,

"That no corporation shall issue stocks or bonds except for an equivalent in money paid, or labor done, or property actually received and applied to the purposes for which such corporation was created; and neither labor nor property shall be received in payment of stocks or bonds at a greater value than the market price at the time such labor was done or property delivered; and all fictitious increase of stock or indebtedness shall be void."\*

Idaho, Illinois, Missouri, Nebraska, Pennsylvania, South Carolina, South Dakota, Utah, Washington, West Virginia, Wisconsin and Kentucky are some of the states whose laws provide "that all fictitious increase or issue of stock or indebtedness by railroad corporations shall be void."

As practically all of the great railroad corporations are chartered under state laws which provide "that railroad companies are public highways and common carriers," and "that the fictitious issues of stocks and bonds are void," the threatened crisis causes Wall Street and the railroad companies to be insistent upon a policy which will privilege common carriers to surrender their present charters and take out a new lease on life under a Federal

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\* Section 193, Constitution of Kentucky.

Incorporation Act. Millions of dollars already have been spent in making a valuation of the physical property of common carriers and the expenditure of such enormous sums would not have received the approval of the public unless the public had been assured of some worthwhile results.

The people have a right to expect and the carriers have a right to apprehend that the Democratic party will use the valuation of the common carriers as a means of eliminating the fictitious and fraudulent issues of stocks and bonds. The platform upon which President Wilson was elected in 1912 declared:

“We pledge our party to secure the Interstate Commerce Commission the power to value the physical property of the railroads.”

The Presidential Campaign Book on page 275 declared:

“That there were nine billion five hundred millions of water in the stocks and bonds of the railroad companies.”

Other extracts from the article contained in the Campaign Book read as follows:

“Reference to railroad over-capitalization has about the same effect upon railroad presidents as a red flag has upon an angry bull. No other charge has drawn from them such instant and fiery denial.”

“Who gets all this money? The railroad presidents would have you believe the widows and orphans are the chief beneficiaries. That is buncombe burlesque and rot! The Morgans, Harrimans, Hills, Vanderbilts, Rockefellers, and men of their stamp are the real plum pickers.”

Thus read some of the extracts from the Campaign Book of 1912 which is stamped with the approval and signature of the present President of the United States.

As an evidence of how the chief representative of the common carriers views the adjustment of stocks and bonds issued by common carriers to the real value of railroad companies, I quote the following from the testimony of Colonel Thom, found in Part 7, page 399, Hearings Before the Joint Sub-committee on Interstate and Foreign Commerce, issued December 2, 1916:

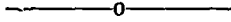
"Now, I say the reason why you cannot adapt the capitalization to value unless it is done already by the correspondence between the two is because you would be undertaking a task which would result in the financial ruin of the world. You would be trying to take hold of values which had been bought and had been distributed among the innocent, investing public and trying to affect those values, and you cannot do it by the power of government without an upheaval that it is not in the power of government to stem."

Thus the real purpose of a Federal Incorporation Act is exposed; and while these fictitious stocks and bonds have been issued in plain violation of the fundamental laws of the states under which the carriers operated, an argument as old as the Imperial Republic of Rome is advanced in defense of the lawless policy of common carriers.

There was an old Licinian law in the days of the Imperial Republic of Rome which required that the lands of Italy should be cultivated by free labor and not by slaves; and that no one should own over 500 jugera (acres) of land. Under the influence of plutocracy it had not been enforced. All attempts to restore the law had been defeated by the combined power of the privileged class. Tiberius, one of the Gracchi, was elected a tribune of the people and he set about to revive the Licinian law. The arguments favoring its restoration were unanswerable except in this particular, to-wit: The law had been allowed to become a dead letter and its restoration would work hardships on the present owners of the land. The patricians argued, "We have inherited these lands from our fathers and grandfathers." The great Roman tribune, Tiberius, answered, "Your fathers and grandfathers never owned them."

When it became evident, however, that the privileged class were about to lose, they became desperate and resorted to their usual tactics of bribery. They suborned Octavius, one of the tribunes, to veto the measure proposed by his colleagues. Thus it always has been that the privileged class seem to have no conscience on the subject of their privilege. History does not record one single instance in which plutocracy entrenched by precedent or custom have ever voluntarily made restitution to society of the rights which they have despoiled.

The iron jaws of greed once clinched upon a privilege never relax until loosened by the resistless power of the people.



## SOME THOUGHTS ON SECTION 606 OF THE CIVIL CODE.

By Lillard Carter\*

Evidence has been defined as the means by which disputed facts in litigation are determined. We may go further. It is the only means provided by law by which disputed facts may be determined. The provisions of the Kentucky code limiting testimony are so narrow and rigid that it is often difficult for the judge and jury to ascertain the facts. The facts involved are so hedged about by code provisions that all the truth frequently cannot be told, and only a very imperfect presentation of the facts involved can be made.

The law of evidence, like substantive law, has been the product of a very slow evolution, changing from time to time to meet the new conditions incident to the slow and continuous development of the Anglo-Saxon race. And in this we have come far. It is a far cry from a trial by the judgment of God and the trial by combat to a trial by a jury whose verdict was rendered in favor of the party producing the greater number of witnesses. For it should not be forgotten that under the laws of our ancestors the right of a cause was determined by the number of witnesses rather than by the pertinency of their testimony. There was much progress from the time of such procedure to the comparatively recent adoption of the doctrine that the jury are the judges of the credibility of the witnesses and the weight of their testimony.

No sound basis for the trial of causes was reached until it became established law that it is the province of the jury to determine what weight to attach to the testimony of witnesses. The jury is composed of mature men of the vicinage and, therefore, qual-

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