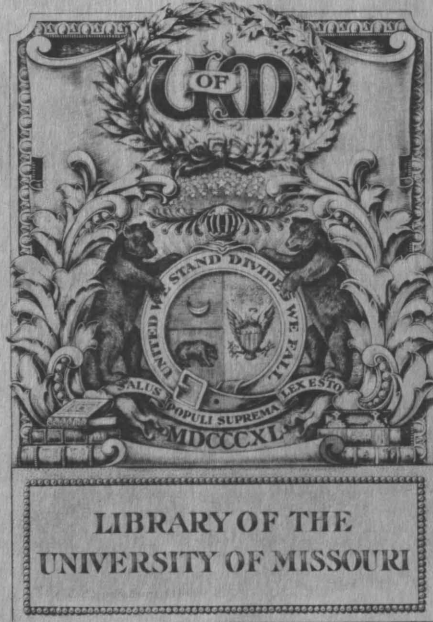


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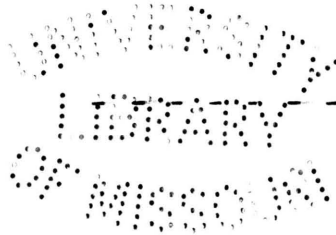
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Form 26

THE RAILROAD AND WAREHOUSE COMMISSION
OF MISSOURI

by

Rockwell Cresap Journey, A. B.



SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in the

GRADUATE SCHOOL

of the

UNIVERSITY OF MISSOURI

1913.

Causery.
W. J. Shepard
Aug 20-13

Approved May 17, 1913
W. J. Shepard
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May 19, 1913

Dr. H. J. Davenport,
52 Acad.

Dear Dr. Davenport:

It is customary for the Graduate Committee to refer dissertations, submitted by candidates for the degree of Master of Arts, to some member of the Group who is not connected with the Department in which the candidate's work has been done. I am sending you herewith a dissertation which has been submitted by Mr. R. V. Journey.

I shall be greatly obliged if you will kindly examine the same at your earliest convenience and report to us for the Graduate Committee whether in your opinion the dissertation meets the general standard which has been established in this University for the Master's dissertation.

Very truly yours,

Walter Miller

Chairman, Graduate Committee.

I have examined with care the above-described thesis - and report that I regard it as meeting the standards established.

H. Davenport.

May 20 - 13.

The Railroad and Warehouse Commission of Missouri.

Chapter I.

The Period of Freedom from Interference.

In this age of corporate business activity, a study of the legal and social relations which this form of business enterprise has borne to this State becomes of immediate interest. Such a study is of concern because the problem is in the process of solution. Moreover the study reveals striking similarities in methods and in results with those attained by adjoining commonwealths. These similarities have been induced by the existence of almost identical economic conditions and by the practice of imitative adaptation.

The one form of corporate business with which this paper deals is the methods of railroad regulation in Missouri. The railroad corporation was the first of a class of public utility corporations to demand serious treatment. In its importance to the general public, it still retains first rank. Technological changes and inventions have produced other public service corporations which, because of the nature of the services

they perform, are affected with a public interest.

The history of railroad regulation in Missouri presents two distinct stages of development. The first stage, covering the period of years from 1850 to 1875, was marked by an extraordinary high degree of enthusiasm for railroad building. It was a period of unbounded confidence in the efficacy of the railroad to afford a market for surplus produce. The second stage, extending from 1875 to the present, may be called the era of restrictive legislation. In this second phase of development, various attempts are made to regulate and control primarily railroad corporations but, also, the newer forms of corporate business, bearing public service obligations, such as the street railways, gas, electric lighting, heating, and motive power, ^{corporations} express companies, water companies, telephone companies, telegraph companies, and all common carriers.

In the first stage of development, the attention of the State was directed to obtaining railroads. The people realized the importance of the railroad as a means for gaining access to markets outside the State. Water transportation had not shown itself adequate to the growing needs of an increasingly productive agricultural community. The State was being settled up rapidly. This

meant increased production of farm produce. Lower prices would ensue unless access to foreign markets was gained. The stage lines were too slow, and could not carry, to advantage, heavy bulk produce.

Forseeing the obvious commercial advantages that a connection with eastern markets would secure, the State adopted the policy of granting very liberal terms and subsidies to private enterprise embarking in railroad construction. Another explanation of this eagerness to secure railroads lies in the discovery of the California gold fields, and the Pacific coast. The people knew very little about the actual wealth of this western country, and readily believed the most exaggerated rumors concerning it. After securing an outlet to both the east, and to the west, the people thought that they would become rapidly rich.

To the railroads were granted lands, money, special charters, and special priveleges. The legislature generously, and even recklessly, granted away the credit of the State. Under the authority of various Acts of the General Assembly, passed between 1851 and 1857, it pledged the credit of the State in the sum of nearly twenty-five million dollars for the payment of railroad bonds.

Counties, towns, villages, and townships were empowered by the legislature to subscribe to the stocks, and bonds of railroad companies, and to grant to railroad corporations, their credit. No legal limitations were placed upon the debt creating capacity of these governmental subdivisions. Counties entered into debt with little regard to their ability to meet their obligations at maturity. Towns and villages, realizing the importance and close relations between railroads and their future growth and prosperity, voted bonds and offered large bonuses to railroad construction companies with utmost eagerness.

To many roads, special charters were granted. Little or no effort was made to reserve to the State, power to regulate the charges and service of these corporations. Charges of bribery and corruption in the legislature were made and substantiated. Complaint arose that the legislature was recklessly and even fraudulently bartering away the credit of the State. At every session of the legislature, the railroads maintained, in the State capitol, paid bands of lobbyists to protect their interest, and to secure whatever preferential treatment they could.

Previous to the year of 1851, there was not one mile of railroad in Missouri or even west of the Mississippi river. Encouraged by the liberal policy of the State, construction work was begun in that year with the city of St. Louis as a base and a terminus. By the opening of the Civil War, the Pacific road had been extended to Sedalia, the Southwest Branch of the Pacific had been built to Rolla, the St. Louis and Iron Mountain road to Macon, the Hannibal and the St. Joseph to St. Joseph, and forty-five miles of the Platte County road ^{had been} laid down in that county. In all, eight hundred miles of railroad had been built.

During the war, there was lull in railroad construction. Conditions were too unsettled, times too hard, and capital was too scarce to permit much construction work to be carried on. Large amounts of property were being destroyed; even the roads that had been built were not paying properties, and were rapidly depreciating. Some effort was made to extend the Pacific, and the Southwest Branch of the Pacific, but very little new construction work was undertaken.

The decade, following the war, was a period of intense activity in railroad building. At the close

of the war, nine hundred and twenty-five miles of road had been built. In 1875, over three thousand miles of road were in operation, and the total mileage of roads was over four thousand five hundred miles.(1) Railroad mileage had more than trebled itself in the decade.

In recapitulation, the first stage of railroad development, marked by a high degree of enthusiasm and unbounded confidence in the railroad as an agency for reaching markets, was pre-eminently a period of railroad construction and building. From the viewpoint of regulation, it was a period of almost complete freedom from State interference. The State generously subsidized this form of internal improvement. Extremely liberal charters were granted. Any legislation, in its nature restrictive, was viewed as an unwise impediment to further railroad development.

At that time, the legal relation of the railroad to the State was in doubt. The railroad corporations derived all their powers from the State by means of a charter grant. Following the principle enunciated by the Supreme Court of the United States in the famous Dartmouth College decision, the railroad companies contended that

(1) Report of Missouri Railroad Commission, 1878, p. 5.

their charters were contracts, the obligations of which, no State could impair because of the prohibition upon the States in the Federal Constitution forbidding them to pass laws which impaired the obligation of a contract.(1) They held that having once parted with certain powers, the State could not, by subsequent legislation, resume these powers or impose new conditions upon the contract by amendment of the charters . The logical implications of the Dartmouth College decision seemed to point to an exemption of the railroad corporations from legislative control in all instances where reservations had not been made in the charter grant. Whether the State could under its police power enforce regulations and restrictions made subsequent to the grant of the charter was a debatable question.

However, the railroad as a common carrier was under certain obligations whatever might have been its position under the statutory law. The common law had recognized the peculiar nature of the service railroad companies were performing. From the very nature of this service, the railroad company was, in its relation to the public, a public service corporation. Its business was

(1) Constitution of United States, Art. I. sec. 10.

impressed with a public use. Though a new method of transporting persons and property, the common law had quickly been applied by the courts to this form of conveyance. The legal status of steam transportation had been assimilated to the common law position of a ferry, or a stage-line. In the Middle Ages, certain callings such as innkeeper, wharfinger, ferryman, had assumed such an importance to the community that to these occupations, duties and obligations, not pertaining to other forms of business, had been attached. As a carrier of persons and freight for a charge, the railroad was under the common law obligations of service to all equally and at a reasonable compensation.

The railroad company was more than a mere business enterprise subject to certain common law duties. It was a corporation deriving all of its powers from the State. Its right to exist as a corporate personality was derived from the act of incorporation. Since the State could incorporate or refuse to create corporations, it could attach to the charter such conditions as it saw fit. If the State did charter railway corporations it did so as a matter of policy. Thus the relation of the railway cor-

poration to the State was that of an agency, created by the State, to perform functions which the State itself did not care to assume. As a public utility, performing quasi-public functions, the corporation was open to state regulation in the absence of constitutional limitations. Its activities were of greater interest to the whole State than those of an ordinary business concern.

Moreover, the position of the railroad corporation was that of a legal monopoly. Its grant of powers gave it authority to operate between defined termini. Within the limits of these termini, the law did not contemplate competitive conditions. The regulations that were presumed to be in force were ^{the} defined powers of the charter grant. These powers had been loosely defined, and the grants carried very liberal terms. In its legal position, the railway corporation differed from ordinary business in that it could exercise the very important power of eminent domain.

In reference to its economic relation to the community, the railroad corporation brought about the most fundamental changes. The people did not realize to what extent the introduction of steam transportation

was changing their economic environment. They believed the competitive conditions, contemplated by the common-law were adequate to insure proper regulations hence they made few attempts at statutory regulation. In their experience, they had met no form of industry not readily responsive to competitive changes. At that time, they had no reason for viewing the railroad as a corporation 'sui generis'. It was looked upon as a method of transportation not different from the stage-lines. Their exponent was the the faith of the typical laissez-faire, who trusts to the natural course of events. The divine course of events would somehow work out to beneficent and predestined ends. State regulation might do as a temporary measure but in the long run, and in the long period of development, it would avail nothing as against the natural course of evolution.

This attitude, so characteristic of the first stage of the development of railroads, effectually prevented any extensive system of State regulation being adopted.

In the meantime, the railroads themselves ^{were} experiencing change. The first stage of development was also a period of consolidation and combination of branch and competing lines. As the roads grew stronger, they began to ignore their duties to the State and to the community. Their

policy became one of getting the business at any cost. They placed their charges at what the traffic would bear. During the fifties there was little complaint of extortionate charges made by the railway companies. In the sixties and early seventies, a storm of protest arose. By their mistaken policy, the roads started a hostile movement, and provoked a new conception of the legal and economic relations of the railroad corporations to the State. This movement was the Granger agitation .

Chapter II.

The Granger Agitation .

In this early period of development, each road was left to arrange its rates as it deemed proper. In order to secure the largest possible traffic, the roads gave discriminatory rates. This discrimination operated in two ways. At competitive points the rates were made very low. In many instances the rates were so low that they were less than the cost of the service. On the other hand, the rates at intermediate points were made high enough to enable the company to recoup the losses it had sustained at competitive points. The result was a shipper often paid more for a short non-competitive haul than he did for a much longer competitive haul. Small towns were at an immense disadvantage. By manipulation of its rates, a railroad company could build or destroy them. A business at one shipping point could be ruined, and a business at a less favorably situated point could be made profitable.

The big shipper was given very favorable rates because he brought much business to the company. The little shipper was made to pay more than his share of

of the burden. At that time, the railroad companies did not publish regular tariffs. A rate was the outcome of a bargain driven between the shipper and the traffic manager.

So long as farm produce was limited in supply, the railroads did not dare to make the rates too exorbitant. They feared they would lose the business altogether if they made the rates too high. But with the advent of the big crop, in 1872, and feeling that the farmer would ship as long as the cost of transportation did not entirely absorb the price of the grain, the rates were made excessive. This led the farmers to conclude that the roads were attempting to rob them. The cost of transportation often exceeded the value of the article transported. The farmer had the produce ready for sale. By exacting high charges, the roads shut him out of the market. His grain rotted in the field. A loud wail of complaint arose that the people were at the mercy of the soulless railroad corporation.

In the legislative session of 1873, petitions poured in upon the legislature urging that something be done toward the regulation of railroad rates especially freight

rates. Senator Ladue of Henry County, in that session, declared that, "freight charges were so exorbitant as to keep farmers from sending their corn to market."(1)

The farmers had believed that the railroad would make them rich. They had shown great willingness to aid railroad building. Now that they had secured a means of reaching foreign markets, they were shut out by the existence of high rates. Instead of making them wealthy, the introduction of the railroad had brought on a migratory movement from the city. Hoping to profit by the roads, many men had moved from the city and had taken up farming. Hence the farmer met with increased competition, resulting in larger yields of grain, and consequently lower prices.

Then came the financial crisis culminating in the panic of 1873. This panic was brought on to a very large degree by the over-capitalization and speculation in railroad stocks. Money had been recklessly sunken in unprofitable railroads. The west believed that the eastern capitalists had brought on the hard times. As a result of loss of confidence in the business world,

Daily Tribune, Jefferson City, Missouri, Jan. 4, 1873.

prices fell extremely low. In some instances, the value of farm produce fell as much as seventy-five percent.

The owners of the railroads were these eastern capitalists whom the west blamed for the panic, These same capitalists were charging exorbitant rates on their railroads. They were entirely ignorant of agricultural conditions in the west. Public opinion did not reach them. Their main interest in their railroad properties was confined to their income-bearing power. Between the isolated shipper and the strong corporation, no community of interest was recognized. The managers of the roads were blind to the fact that to operate successfully they must meet public approval.

The roads were not fulfilling even their common law obligations. They denied the existence of any such duties, and strenuously insisted that they were like any private business undertaking. They did not care to admit that the service which they were performing was in its nature public. The roads were not serving all, they were not serving all equally, and they were not serving at a reasonable compensation. Indeed the principle that the railroad was performing a public service and was under certain obligations to the public had not as yet received

wide judicial recognition. The railroad was too much of novel device for transportation to have attained a well-defined legal status.

Out of this spirit of discontent and hostility to the railroads arose a movement which has since become known as the Granger agitation. It was distinctly a farmers' movement. The movement originated in the efforts of one Oliver Hudson Kelley, a clerk in the Department of Agriculture at Washington. Perceiving in an official tour of the southern states, the depressed conditions of the farmers, and appreciating the value of organization he planned a union of the farmers. Upon his return to Washington, he organized in 1867 with the co-operation of some four or five departmental clerks a grade or lodge. This lodge became known as the National Grange. Kelley, being a Mason took for his lodge much of the Masonic ritual and formality. Originally this ritual consisted of four degrees.

After the organization of the National Grange, Kelley started west to Minnesota to organize subordinate granges. From this state the movement spread over Iowa, Illinois, Wisconsin, and Missouri.

The ritual of the Grange was symbolic of the occupation of farmer. When first organized, the four degrees for men were Laborer, Cultivator, Harvester, and Husbandmen. Later four corresponding degrees were installed for women. These degrees were Maid, Shepherdess, Gleaner, and Matron. Other degrees were added from time to time.

Though not a political party, the Granger movement stood for certain legislative reforms. The Grangers were eager to secure a reduction in railroad rates. They wanted railroad regulation.

How strong the movement was in Missouri is a matter of some doubt. One thing is certain and that is legislators and politicians feared the Grangers. Senator McGinnis, in the legislative session of 1874, in speaking of the Grangers declared, "The gentlemen of the Senate fear the Grange. It is a formidable organization. It is estimated there are fifteen hundred local granges in this State".(1)

At the State Grange meeting held at Boonville, Missouri, on the eighteenth of February, 1874, it was estimated that there were 1724 Granges in the State with

(1) Daily Tribune, Jan. 21, 1874.

eighty thousand members.(1) Among the distinguished members of the Grange attending that meeting were General John S. Marmaduke, and John Walker of Howard County, both later becoming members of the first railroad commission of this State. In 1874, John Walker was mentioned as the Granger candidate for governor.(2)

While so much agitation was preparing the way for some form of railway control, the physical condition of the roads forced itself upon public attention by reason of the frequent recurrence of accidents. Nearly all the roads had been built with little regard to permanence. The rails were made of iron hence they splintered easily, the bridges were open trestle-work, the track was neither well ballasted, surfaced, or lined, and the trains were not operated by telegraph.

With over twenty-five hundred miles of road in operation in 1872, Governor B. Gratz Brown felt that the question of railroad regulation was sufficiently serious to demand treatment and consideration by the General Assembly of the State. In his message to the adjourned session of the Twenty-Sixth General Assembly of 1871 he declared: " It is evident that it

(1) State Journal, Jefferson City, Mo., Feb. 27, 1874.

(2) Sedalia Times, Sedalia, Mo., April 2, 1874.

is only trifling with public welfare to permit such a vast system as it has now become to go forward longer without supervision being exercised by the State through its appointed agents, designated expressly for that purpose. But it is none the less incumbent on the State to insist on an inspection in all that concerns security to life in passenger traffic, equal facilities to freight, uniformity of charge to all, the systematic despatch of trains, the making with each other proper connections, the establishment of telegraphic lines and stations, and other details that substantially come within the scope of the police power. I, therefore, recommend that you create by law a railroad and telegraph commission with such powers and under such restrictions as you deem sufficient to answer the ends of public protection."(1).

This recommendation was a renewal of a previous one made by the Governor to the regular session of the General Assembly, 1871. Nothing came from either of the recommendations though in the adjourned session of 1871, Representative Bittinger introduced in the House a bill entitled, "An Act to provide for Railroad Commissioners and to define their duties."(2). This bill died in

(1) Message of Gov. B. Gratz Brown to Adj. Session of 26th General Assembly, Dec. 6, 1871.

(2) House Journal of Reg. Session of 26th G.A., p. 299.

committee.

In the legislative session of 1872, Representative Brown of Monroe County introduced a bill designed to give Missouri a supervisory commission having jurisdiction over railroads such as existed in Illinois, Ohio, and Massachusetts. The purpose of such a commission was to supply to the people of the State information as to the cost of construction, cost of operation of the road, earnings, expenses, fares, rates of transportation, and the amount of freight moved. The bill provided for three commissioners, appointed by the Governor, and charged with the duty of hearing complaints and to prosecute violations of the law when they deemed advisable. This bill was patterned after the railroad commission law of Massachusetts which had worked to the satisfaction of both railroad company and the public.(1). The bill died in committee.

In the legislative session of 1873, Senator Benecke introduced a bill providing for a railroad commission composed of three members.(2) In the same session, Senator Ladue brought in a bill providing for the appointment of a railway commission.(3). Neither

(1) Daily Tribune, Jan.17, 1872.
(2) Ibid. Jan. 8, 1873.
(3) Ibid.

bill passed.

In his message to the regular session of the Twenty-Seventh General Assembly, Governor Brown again recommended the creation of a commission, saying in part, "It must be apparent now, if never before, that railway management requires state supervision in the interest of the lives and property of our citizens other than such as can be entirely confided to the trust of the corporation engaged. I renew the recommendation to establish a commission that shall have adequate powers to compel all railway trains to be operated by telegraph."(1) The General Assembly of 1873 did not see fit to carry out the recommendation of the Governor.

Governor Silas Woodson, in his message to the adjourned session of the Twenty-Seventh General Assembly of 1874, again urged the necessity of making provision for some form of commission control for the railroads of the State. His recommendation declared, "The frequent complaints made for several years past and which we still hear against the exactions on the part of the railroad companies have attracted the attention of the General Assembly on several occasions. Up to the present, no act has been passed making provision for or creating for this State, a board of

(1) Message of Gov. B. Gratz Brown to Regular Session of 27th General Assembly, Jan. 1, 1873.

railroad commissioners although effort has been made more than once. The irregularities found to exist in rates of transportation by different roads where there are no competing lines and even where competing lines exist; ruinous charges made when the shipper is placed at the mercy of the railroad company; tardiness found to exist on the part the companies in adjustment of losses suffered; the disposition so commonly found among railroad men to force all who have cause of action to go to the courts to seek redress; the disadvantage under which private citizens go to law with large, influential and wealthy corporations,-all these and a thousand other reasons have been urged in favor of providing by law for a board of managers for the railroads of this State, and vesting it with power to regulate rates. Some of the railroad companies declare that the legislature has no power to regulate their freight or control their actions in any way. If such is the position, the time has now come to test it."(1)

It was not until the regular session of the General Assembly of 1875 that the advocates of state

(1) Message of Gov. Silas Woodson to the Adjourned Session of the 27th General Assembly, Jan. 7, 1874.

regulation were able to get through a bill providing for a commission. In that session, General Shields of Carroll County introduced a measure known as the Shield's Railroad Commissioner's Bill. This proposed law providing for a commission composed of five members whose compensation of \$2000 each per year was to be borne by the railroads of the State.(1) The tenure of the commissioners was made appointive by the Governor. The members of the commission were charged with the duties of superintending the management of the entire railroad system of the State, the inspection of the work-shops, tracks, bridges, rolling-stock, and business affairs of the various roads, and to direct the running of trains over dangerous portions of track.(2)

The Shields bill was referred to the House Committee on Internal Improvements. A substitute bill was reported back with the recommendation that the substitute bill be passed. The substitute did pass with a vote of eighty-two to twenty-six.(3) The vote indicates that the chief opposition to

(1) Sedalia Times, Feb. 4, 1875.

(2) Missouri Statesman, March 19, 1875.

(3) House Journal of Reg. Session of General Assembly of 1875, p. 1080.

railroad regulation came from the southeastern counties of the State. This section of the State was much in need of railroads and railroad connections. The urban vote of St. Louis and Kansas City was about equally divided for and against the measure. It does not appear to have been a city as against the rural districts measure.

The bill passed the Senate without material amendment and was duly signed by Governor Hardin on the twenty-ninth of March, 1875.

It has been found impossible to ascertain which member of the House Committee was responsible for the substitute bill. The substitute bill differed from the Shield's bill in that it provided for three instead of five commissioners, the expense of the commission was placed upon the State and not the railway companies, and in addition to powers of inspecting road and business affairs of the companies, the substitute bill gave the commission power to reduce certain classes of rates.(1)

The author of the substitute bill simply took

Cf. Missouri Statesman, March 19, 1875 and Laws of Missouri, 1875, p. 112.

the Wisconsin law of the eleventh of March, 1874. This law, classified railroad traffic, prescribed statutory maximum rates on the classes thus established, and created a board of railway commissioners.

The Wisconsin law was itself the outcome of the Granger movement in that State. Conditions in Missouri and in Wisconsin were very similar. The railroad companies in both States, guilty of discriminatory practices, were objects of criticism. In the session of the legislature of 1874, the Granger element was able to get through a law designed to regulate the roads. The author of this measure was one Potter, a member of that legislature hence the law became known as the Potter law.

A comparative study of the two laws, section by section, leaves no doubt as to their identity. The Missouri enactment differed from the Potter law in the tenure of the commissioners, their compensation, and their powers. The Potter law provided for three commissioners to be appointed by the Governor with the advice and consent of the Senate whereas the Missouri law provided for an elective board of three members.

The Potter law fixed the salary of the commissioners at twenty-five hundred dollars each while the Missouri enactment provided a compensation of three thousand dollars for each commissioner. The Wisconsin law contained no provision empowering and making it the duty of the commission to inspect track while the Missouri law charged the commission with that duty.(1) It is quite probable that this section of the Missouri law was taken from the Shields' bill and incorporated into it because of the frequency of wrecks upon Missouri roads in the preceding three years.

The justification of a law, apparently suited to railroad conditions in Wisconsin, upon railroads in Missouri was not evident. In topography, the two states differed, and this would cause a difference in the cost of railroad operations. The law itself took no account of any differences in the operating expenses of the roads in the two state . For the roads in both states, the law prescribed the same maximum freight and passenger rates. The two states of Missouri and Wisconsin differed in other important particulars . It is to be noted, from a comparative study, that the ratio of inhabitants per mile of road in Wisconsin

(1) Cf. Laws of Mo., 1875, p. 112 with Appendix A of Report of Wisconsin Railroad Commission, 1875.

and in Missouri, a striking discrepancy is found to exist. In 1875, Missouri had one hundred and eighty-seven more inhabitants per mile than did Wisconsin.(1) Moreover the gross receipts of Missouri roads exceeded those of Wisconsin roads, in 1875, by \$5,047,573.(2) The gross passenger earnings of Missouri exceeded the gross passenger receipts of Wisconsin roads, in 1875, by \$1,029,405. Again the total mileage of road operated, in 1875, in Missouri was nearly five hundred miles more than the total mileage in operation in Wisconsin.(3)

Any argument, as a justification for the adoption of Wisconsin legislation, proceeding on the ground of similar railroad conditions in the two states, is invalid. The best explanation of why the Missouri legislators chose a railroad law of Wisconsin in preference to railroad legislation of any of the eastern states is to be found in the statutory prescription of maximum rates which the Wisconsin enactment set up. The Grangers wanted a law which fixed the highest rates the railroads could exact. In neither Wisconsin or in Missouri did they exhibit such anxiety over a railroad commission. In each instance,

(1) Appendix 'A'
(2) Ibid.
(3) Ibid.

a commission was created. In neither instance, were the commissions endowed with liberal grants of power. When Missouri adopted the commission principle, her neighbor of Illinois had a commission with strong powers. The Illinois commission was then being bitterly fought by the railroads by suits drawing into controversy, the powers of the commission. The position of the Wisconsin commission was somewhat better defined for the railroads had acknowledged its authority, under protest, after a threat from the Governor of the State. The difference in the position of the two commissions was probably influential in enabling the the Missouri legislators to arrive at a choice .

Whatever errors were made by Missouri forcing upon her railroads Wisconsin rates were probably committed on the side of safety to the roads. However, so much cannot be said of the State of Wisconsin. The railroads convinced the subsequent legislature of 1875 of the injustice of Wisconsin Potter rates and secured their repeal. With some slight modifications, Missouri still retains the classification of freight traffic, and the class rates of 1875.

The Missouri law of 1875, prescribing maximum rates of charge for railway companies and creating a board of railroad commissioners, was the first serious attempt on the part of the State to provide for the regulation of one class of public utilities namely railroad corporations. Regulatory legislation, antecedent to this enactment, had been passed, but in nearly all instances, the laws were special in their application, and applied only to certain companies.

In adopting the commission method of regulation, Missouri did not invent or disclose any new method of railway control. State railway commissions had existed since 1836 when a commission was established in Rhode Island. By 1871, eight states had commissions of which all were of the weak or advisory type.(1) The chief functions of this type of commission were advisory and supervisory. To them, complaints could be made, and if the commission found upon investigation that the matter complained of was in need of rectification, it recommended to the railway company the necessary change. In case of non-compliance with

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(1) Rhode Island, 1836; New Hampshire, 1844; Connecticut, 1853; Vermont, 1855; Maine, 1858; Ohio, 1867; Massachusetts, 1869; Michigan, 1873; and in 1871, Illinois.

the recommendation of the commission, no action could be taken. The commission was powerless to do more than make report of this failure of the railway companies to observe the recommendation to either the governor or to the legislature. The Massachusetts commission was a typical weak commission. Its duties were to make investigation as to whether the roads were living up to the terms of their charters, to report any violation of charter rights, to care for the safety and accommodation of the traveling public, to inspect the books of the companies and to require a uniform system of accounting, to summon witnesses, to decide the merits of controversies and to act as arbiter of disputes between the roads and complainants, and to make annual report of its proceedings to the legislature. For the enforcement of its recommendations, the weak type of commission relied upon the force of public opinion. In a conservative eastern community, the home of the owners and managers of the roads, public opinion operated much more effectively than in the radical western states. The force of western public opinion never reached the eastern owners of the roads.

The first western state to set up a really strong commission was Illinois. The Illinois commission was established in 1871 but really was not effective until the amendment of the law in 1873. The chief duties of this type of commission so far as they pertained to railroads were to make schedules of maximum passenger and freight rates, to investigate complaints, to enforce the observance of the law by prosecuting violations of it, to take precautions to secure proper and safe physical condition of road-bed, bridges, and trestles, to require annual reports from the railroad companies, and to make to the governor, annual reports of its proceedings.(1) The Illinois commission was a 'strong' commission. It had power to make and enforce rates. In this respect, it opened up a new era in railroad regulation. The majority of the states have followed the example set by Illinois, and have adopted some form of strong commission.

The Missouri law of 1875 provided for an elective commission composed of three members. No change ever occurred in the organization of the commission. Being thoroughly imbued with the idea of elective tenure,

(1) Hinckley, Illinois Railway Legislation and Commission Control since 1870. University of Illinois Studies, Vol.I, No.6, p.43. Urbana, Ill., 1904.

it is scarcely conceivable that the framers of the law would have provided an appointive commission. This principle of elective tenure has not operated ^{in general} to secure for the office of commissioner efficient men. The only body to which the commission has been accountable was the electorate. The electorate had in reference to the commission two functions to perform. It had to pass upon the qualifications of the men running for the office, and it had to pass judgment upon the record of any commissioner attempting to be re-elected.

The electorate has not been sufficiently enlightened to justify a man running for election to the office of railroad commissioner on the plea of his special fitness. The result was the office became a part of the party organization. In running down the official roster and biographies of the members of the commission from the date of its establishment to the time of its abolition, April 15, 1913, one is struck by the frequent recurrence of party qualifications which the law never contemplated. As illustrations of these qualities urged as indicative of the candidate's

fitness for office, the following are offered: "he is a democrat and says he always supports the party nominees."(1); "he has always been a Republican and has taken an active interest in party conventions and in party work "(2)"; " he has been President of the State Association of Democratic Clubs "(3) ; " he has never been in a strike "(4).

During the thirty-six years in which the principle of elective tenure was in operation, the electorate of Missouri chose at successive general elections as members of the commission one lawyer, two civil engineers, two locomotive engineers, one passenger conductor, one railroad brakeman, one merchant, one journalist, and five farmers.(5)

When one considers the immensity and difficulty involved in a problem of railroad regulation, e.g. rate-making, little surprise need be exhibited because the Missouri commission did not accomplish much. The capability of the men who served on the commission explains a large part of this failure. The men not only

(1) Comr. Hickman.....Official Manual, Mo., 1891-92, p.350.
(2) Comr. Wightman.....Official Manual, Mo., 1905-06, p.18.
(3) Comr. Knott.....Official Manual, Mo., 1905-06, p.18.
(4) Comr. Hennessey,...Official Manual, Mo., 1891-92, p.350.
(5) Appendix B.

were not qualified; their previous training was not such as to permit them to become qualified.

Since 1892, the electorate has not elected for membership on the commission any man whose previous occupational training was at all germane to the duties of the office of railroad commissioner. An explanation of why locomotive engineers, railroad brakemen, journalists, and farmers were selected for the office involves an account of party history in Missouri too extensive for the limits of this paper. One must conclude that the electorate did not exercise any measure of discrimination in its selection of officers of the commission. Political considerations governed the selection and fixed for the office extralegal qualifications.

Even the legal requirements for the office were wanting in definiteness and precision. The law required the commissioners to have no interest in railroads.(1) In addition to subscription to the constitutional oath of office, each commissioner had to enter into bond, approved by the governor, in the

(1) Laws of Mo., 1875, p. 112; Revised Statutes of Mo., 1909, sec. 3250.

penal sum of twenty thousand dollars, and conditioned on the faithful performance of the duties of the office.

The law of 1875 fixed the term of the office at six years. To some extent, the long term and the principle of renewal by thirds at successive general elections every two years has operated to mitigate the defect produced by the introduction and continuation of the elective principle. This rotation in office probably explains why a six year term, in preference to any other period of time, was adopted. To the commission, the long term has both an advantage and a disadvantage. It has been advantageous in that it gave the members of the commission ample time to become thoroughly acquainted with the duties of the office. But this long term alone has not been sufficient to render the commissioners competent for we find Governor Joseph W. Folk, in his message to the Forty-fifth General Assembly of 1909, recommending, "the need of a rate expert employed continuously by the State. The railroads are represented by such experts while heretofore the people's side of the question

has been represented by those whose knowledge is limited except where experts have been temporarily engaged."(1)

The disadvantage of the long term has been the periodicity of responsibility. Once in office, no practical method of holding the members of the commission to a strict accountability to the electorate existed. The governor had no power to remove a commissioner for inefficiency or neglect of duty. Being responsible to that indefinite and shifting body, the electorate, and then accountable only once every six years, the commissioners had no stimulus to urge them to undertake new and progressive measures.

The law of 1875 provided for each commissioner, payable by the State, a compensation of three thousand dollars a year. This sum was five hundred dollars greater than the amount paid to each of the Wisconsin commissioners. Experience has demonstrated that a salary of three thousand dollars a year, handicapped by the elective tenure, has been insufficient to secure competent commissioners.

(1) Message of Gov. Joseph W. Folk to the Forty-fifth General Assembly, January, 1909.

Under the enactment of 1875, the commission was also permitted to employ a secretary. His salary was originally fixed by that law at fifteen hundred dollars but under the amendment of 1881 his compensation was increased to two thousand dollars.(1) Another enactment of 1881 gave the commission an official seal and made its records certified to by the seal evidence in the courts.

As defined by the original enactment of 1875, the power of the commission fell into three classes, namely, powers over rates, powers over service, and powers over the annual reports made to it by the railway companies. The nature and development of each of these classes of powers will be considered in the order mentioned.

(1) Laws of Mo., 1881, p. 82.

Chapter III.

Rate-making Powers.

The rate-making powers of the commission were very much restricted because the law, creating it, classified both passenger and freight traffic and prescribed maximum rates on the classes thus established.

In reference to passenger traffic, provision was made for three classes of roads, designated as class "A", class "B", and class "C" roads. All roads which were through or trunk lines belonged to class "A"; class "B" roads were branch lines operated or controlled by trunk line companies; class "C" included all other roads not belonging to the enumerated classes. For each of these three classes, statutory maximum rates for passenger traffic were prescribed. Class "A" roads could not exceed three cents per mile in their passenger charges; class "B", and class "C" roads were limited in their passenger rates to four cents a mile. Provision was made in this section of the enactment for a reduction of the statutory passenger rates by the commission but

it was so carelessly worded as to leave very seriously in doubt any power of the commission over passenger rates.(1)

In reference to freight traffic, the law of 1875 established a classification of all freight. Without regard to whether the road was class "A", class "B", or class "C," the statute classified freight into four general groups, designated as first, second, third, and fourth classes, and into seven special segregations called class 'D', 'E', 'F', 'G', 'H', 'I', and 'J'. The law did not assign any articles of freight to the general classes thus leaving more than three-fourths of the freight unclassified. Certain enumerated articles were assigned to the seven special classes.(2)

A glance at this classification brings out the striking fact that the classified commodities were such as, in the main, moved from the farm to the urban markets. The classified freight was mainly bulk farm produce. Little was said concerning commodities moving from the city to the farm. A Granger

(1) Cf. Sec. 2, and Sec. 12, Laws of Mo., 1875, p. 112.

(2) Laws of Mo., 1875, p. 112.

agitation, eager to reduce freight rates on farm produce, would make such a classification. No more striking proof of the argument that the law of 1875 was the outcome of the Granger movement in this State could be offered. In 1875, the number of persons in the State, engaged in agricultural pursuits, constituted practically sixty per cent of the total number of persons engaged in all occupations.(1)

The contention that this classification was mainly one of products which the farmer was interested in is well demonstrated from an analysis of the seven special classes. Class 'D' included all grain in car-load lots; class 'E' comprised flour in lots of fifty barrels or more, and lime in lots of twenty-four barrels or more; class 'F' comprehended salt in lots of sixty barrels or more, water-lime, and stucco in lots of twenty-four barrels or more; class 'G' comprised lumber, laths, and shingles in car-load lots; class 'H' was composed of live-stock in car-load lots; class 'I' included agricultural implements, furniture, and wagons in car-load lots; and class 'J' comprised coal, brick, sand, stone, railroad ties, cordwood, and all heavy fourth class articles.

(1) Compendium of Ninth Census of United States, 1870, p. 594. Francis A. Walker, Supt. of Census. Government Printing Office, Washington D. C. 1872.

in car-load lots.(1)

The commissioners were authorized to classify all articles of freight not enumerated, and to the several articles in the seven special classes, add other freight commodities except in special classes 'D', 'E', 'G', and 'H'. Hence the power of the commission to classify and thus to determine the class-rate was definitely restricted to the four general classes and to the three special classes of 'F', 'I', and 'J'. The exempted classes comprised grain; flour and lime; lumber, laths, and shingles; and live-stock. These exempted articles were in car-load lots.(2)

Upon the seven special classes, the statute prescribed maximum rates of charge. No rates were prescribed upon the general classes, the intention of the law being that such rates as the railroad companies might establish should prevail.

These statutory maximum rates were based on the principle of equal mileage, i.e. the charge should be proportionate to the distance hauled. With an increased haul went a proportionate decrease in the rate of charge. The law intended to make the rates equal

(1) Laws of Mo., 1875, p.112.

(2) Ibid.

for the same distance on all roads in the State. The maximum rate, prescribed by statute, included the tapering distance rate plus an allowance for terminal charges. An analysis of the maximum rate shows, for example, a terminal charge per car of six dollars, and the tapering distance rate per car-load for the first twenty-five mile haul, four dollars; for the second twenty-five mile haul, three dollars; for any succeeding twenty-five mile haul, one dollar and fifty cents. In fixing freight rates, it was necessary to include the cost of handling at terminal points. In determining passenger rates, no allowance to cover the cost of handling was necessary for the passengers handled themselves.(1)

This theory of equal mileage rates has been the basis of all railroad rate-making in Missouri whether the rates were made by the legislature or by the commission.

The equal mileage theory as a basis for rate-making is obsolete and open to a number of important criticisms for it does not take account of the divergent costs that enter in a service afforded by the railway com-

(1) Report of Mo. Railroad Commissioners, 1878, p.47.

panies. First, it assumed an identical cost of operation per mile on all roads. It ignores any differential in the cost of the service. It does cost one road more to do business than it does another. One road may pass through very rough and hilly country while another road may be free from steep grades and curves. In the former instance, only fifteen or twenty cars per train could be hauled while in the latter example, a train could haul fifty to sixty cars at the same expense per mile.. Even upon divisions of the same road, a differential in the cost of operation exists.

The equal mileage theory also ignores the existence of competitive conditions on one road or part of a line, and the absence of such conditions on another line. One portion of a road may have to meet water competition. Another road may be free from that competition. Under the equal mileage theory, for both roads, the rates are identical. In the one instance, the rates would be confiscatory and prohibitory while in the other they would bring in a fair return on the investment.

The equal mileage theory does not consider the

back-haul. It contemplates a return of the cars, which went out loaded, empty. As an illustration, a shipment of a car of corn originates in St. Louis, Missouri, and moves to Sedalia, Mo., its destination. The equal mileage theory as adopted by the statute covers this distance by prescribing a rate or charge for each twenty five miles of the haul. The car is returned to its point of origination of shipment loaded with potatoes. No rate is prescribed by statute for this return or back haul. Some cars may be returned empty and others may be returned loaded. In either case, the cost of the return service to the railroad company is nearly identical. In the one instance, the service yields an income to the company while in the other it is an expense.

Just as the power of the commission over classification was limited to certain enumerated classes, so its power over rates was confined, by the law of 1875, to making reductions of the freight rates on the seven special classes of freight. The commission had under that law no power to modify the rates, or to set up rates on the four general classes of freight. In no instance

did the commission have power to advance rates. The evident intention of the framers of the law was to secure justice from the railroad companies. They were not interested in securing justice to the companies. Logically, with the power to reduce rates should have gone the correlative power to advance rates.

The law of 1875 also made provision for the treatment of the passage of freight over connecting lines as continuous and at one charge in place of the two local charges of the connecting roads.(1)

After the passage of the law of March 29th, 1875, Governor Charles H. Hardin appointed as members of the first commission, H. J. Spaunhorst, a well-known banker of St. Louis, Missouri, Senator H. C. Young of Greene County, and John Walker of Howard County, Missouri. Both Mr. Spaunhorst, and Mr. Young declined to serve on the commission. In their place, the Governor appointed Mortimer McIlhany of Audrain County, and John S. Marmaduke, then Secretary of the State Board of Agriculture. These men were to serve until the general election of 1876 when the tenure of office became elective.

(1) Laws of Mo., 1875, p. 112.

The commission held its first meeting in Jefferson City, and, after organizing by selecting as chairman of the commission Mortimer McIlhany, and as secretary, George C. Pratt of Columbia, immediately adjourned to St. Louis and there opened an office in obedience to the Act under which it was created. The office of the commission was located at Sixth and Locust streets. It entered upon its duties on the twenty-seventh day of April, 1875.

Before taking up the work of the commission, it is well to pause and examine the provisions of our State Constitution relating to railway corporations, and their regulation. The railroad commission is older than the state constitution though both date from the year of 1875. The commission was created in March, 1875, while the Constitution was not adopted by the electorate until the 30th of November, 1875. No mention is made, in the Constitution, of the commission or of any similar body. For its continued existence as legal body, the commission looks to the Schedule of that instrument. This article provides:

Section 1. " That all laws in force at the adoption of this Constitution, not inconsistent therewith,

shall remain in full force until altered or repealed by the General Assembly";

Section 6. " All persons now filling any office or appointment in this State shall continue in the exercise of their duties hereof, according to their respective commissions or appointments unless otherwise provided by law."

The Constitution of 1875 contains one whole article devoted to corporations and the provisions of this article have special application to one class of corporations, namely railway companies. This article provides that:

" All existing charters or grants of special or exclusive privileges under which a 'bona fide' organization shall not have taken place, and business commenced in good faith, at the adoption of this Constitution, shall thereafter have no validity."(1)

" No corporation, after the adoption of this Constitution, shall be created by special laws; nor shall any existing charter be extended, changed or amended ^{by} special laws, except those for charitable, penal or reformatory

(1) Constitution of Mo., 1875, Art. XII, Sec. 1.

purposes, which are under the patronage and control of the State."(1)

" The exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State."(2)

" It shall not be lawful in this State for any railway company to charge for freight or passengers a greater amount, for the transportation of the same, for a less distance than the amount charged for any greater distance; and suitable laws shall be passed by the General Assembly to enforce this provision; but excursion and commutation tickets may be issued at special rates."(3)

" Railways heretofore constructed , or that may hereafter constructed in this State, are hereby declared public highways, and railroad companies, common carriers. The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the differ-

- (1) Sec. 2.
(2) Sec. 5.
(3) Sec. 12.

ent railroads in this State, and shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties."(1)

" No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having ^{the} control of a parallel or competing line. The question whether railroads are parallel or competing lines shall, when demanded, be decided by a jury, as in other civil issues."(2)

" The General Assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any

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(1) Sec. 14.
(2) Sec. 17.

county or municipal subdivision of the State, a new liability in respect to transactions or considerations already past."(1)

" No president, director, officer, agent or employe of any railroad company shall be interested, directly or indirectly, in furnishing material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company."(2)

" No discrimination in charges or facilities in transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback or otherwise; and no railroad company or any lessee, manager or employe thereof, shall make any preference in furnishing cars or motive power."(3)

" No railroad or other transportation company shall grant free passes or tickets, ^{or passes or tickets} at a discount, to members of the General Assembly, or members of the Board of Equalization, or any State, or county, or municipal officers; and the acceptance of such pass or ticket, by a member

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- (1) Sec. 19.
 - (2) Sec. 22.
 - (3) Sec. 23.

of the General Assembly, or any other such officer, shall be a forfeiture of his office."(1)

" No corporation shall engage in business other than that expressly authorized in its charter or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business."(2)

" Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made , and where shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meet-

(1) Sec. 24.

(2) Sec. 7.

ing annually in this State, public notice of which shall be given thirty days previously, and shall report annually under oath, to the State Auditor, or some officer designated by law, all of their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The General Assembly shall pass laws enforcing, by suitable penalties, the provisions of this section."(1)

" No railroad corporation in existence at the time of the adoption of this Constitution shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads."(2)

The many limitations and restrictions placed by the organic law of this State upon the powers of corporation, especially railroad corporations , demonstrate the importance that the framers of the Constitution of 1875 attached to corporate regulation and control. The other striking feature of this twelfth article of that constitution is the mandatory instructions given the General Assembly with reference to its powers over rail-

(1) Sec. 15.
(2) Sec. 21.

road corporations. The significance of these constitutional provisions will appear in the course of the discussion.

The first work of the commission, after its organization, was the preparation of a circular setting forth the provisions of the law. This was mailed to the chief officers of all the railroad companies.

The time between the preparation and the publication of this circular was spent, informally, by the commission in attempting to induce the officers of the railway companies to adopt the statutory rates. In most instances, the companies refused to be bound by the legislative enactment. Following the rule laid down by the Supreme Court of the United States, in 1819, in the case of the Trustees of Dartmouth College v. Woodward, the railroads denied any power of the State to prescribe rates or control them through the exercise of its police power.(1)

The railroad companies had received from the State charters of incorporation. These charter grants uniformly provided that, " the said company may receive

(1) Trustees of Dartmouth College v. Woodward, 4 Wheaton 518.

such tolls and freights as may be determined upon by the board of directors(1) The roads claiming exemption from the law of 1875 because of charter provisions were the Hannibal and St. Joseph, the Missouri, Kansas, and Texas, and the Atlantic and Pacific. The contention of these companies was that their charter was a contract between them and the State, the obligation of which could not be impaired by the State passing any subsequent legislation because of the prohibition upon the states in the Federal constitution, forbidding them to impair the obligation of a contract.(2)

At that time, the power of the state legislature to prescribe rates, subsequent to the grant of a charter, and to delegate rate-making powers to a commission was in doubt.

In November, 1875, a case was decided by the Missouri Supreme Court involving the power of the legislature to fix railroad rates. This was the case of Sloan v. Missouri Pacific Railroad Company, a suit which arose under an Act of 1872, forbidding unjust discrimination in freight rates and also forbidding a higher charge for

(1) Laws of Mo., 1856, p. 156.

(2) Constitution of United States, Art. I, sec. 10.

a short than for a long haul. The defendant company had a charter empowering it, " to charge such tolls as the board of directors might determine upon". The company was also exempt under the authority of the exemption acts of 1868 for a period of ten years from state regulation of its charges. In the course of the decision, the court said, " power to regulate tolls is then granted to this defendant not merely by its charter but by the Act of 1868 under which the defendant bought. This right, it is conceded, is subject to the inherent right of the State to make police regulations, and to the common law right of every citizen to hold a common carrier responsible for every violation of its duty as such common carrier. But the Act of 1872 undertakes to define the obligations of railroad companies, and to declare that a charge for one distance, if it exceeds a charge for a longer distance, is an unjust discrimination. It may be so but whether it is or is not is a question for the courts to decide, and not the legislature.

The objection to the Act of 1872 is that the legislature undertook to pronounce certain discriminations

made by the company unjust. The legislature had no power to do this. The right to fix tolls had already been confided to the defendant until the year, 1878.

An arbitrary rule was adopted by the legislature to determine that certain rates were unjust. Whether they were or not was a matter depending on circumstances of which the legislature were not the judges. The liability of the defendant at common law and on general principles not abrogated by the legislature were matters for the determination of courts of justice with the aid of juries."(1)

In the Sloan case, it was held that the reasonableness or unreasonableness of a rate was a matter for courts to decide with aid of juries, and that the legislature had no power to determine the reasonableness of a rate. This case is of importance for it defined the jurisdiction and powers of the legislature and of the commission. In this case, the charter under construction by the court, was a special charter.

In this seventh decade of the past century, a series of cases arose, involving the principles of legis-

(1) Cf. Laws of Mo., 1872, p. 69, and Sloan v. Missouri Pacific Railroad Company 61 Mo. 24.

lative rate-making, commission rate-making, and commission control, in Illinois. The principles involved in these cases were so intimately associated with the powers and the work of the Missouri commission as to render their resume' necessary.

In 1871, the legislature of Illinois passed a measure entitled an " Act to prevent unjust discriminations", the chief provisions of which were prohibitions upon railroads charging as much or more for carrying goods a less distance than for a greater distance, charging different rates for handling and receiving freight at the same or different points, and forbidding roads to charge more for transportation a given distance on one portion than for the same distance on another portion of the road. (1)

In attempting to enforce this law the Illinois Railroad and Warehouse Commission met opposition from the railway companies. At length, in order to test the validity of the enactment a suit was brought by the commission in the name of the people of the State against the Chicago and Alton Railroad Company, in the McLean County circuit court. The decision of the cir-

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(1) Public Laws of 37th General Assembly, p. 625.

cuit court was against the railroad company. The grounds of the decision were that the state must protect all of its citizens equally, and anything in the charter of a railroad company construed contrary to the principle of equality must be void for railroad companies have no rights derogatory of the welfare of the people. A charter grant did not confer rights incompatible with the police power of the State.(1)

The case was appealed to the Supreme Court of the State of Illinois, and the decision of the lower court was reversed. The grounds of this decision was that the law made the charging of a greater compensation for a less distance conclusive evidence of unjust discrimination, whereas, to meet the requirements of the constitution of Illinois, it should have given the railway companies the right of trial by jury, not only on the fact of discrimination, but upon the issue whether such discrimination was just or not.(2) The court held that the legislature had complete power to prohibit unjust discriminations, but could go no farther than to declare certain practices of the railroads merely prima facie, not conclusive, evidence of unjust discrimination.

(1) Report of R. R. & W. Com. of Ill., 1872, p. 46-69.
(2) 67 Ill. 11.

The McLean County case was decided by the state supreme court in 1873. In 1871, the General Assembly of Illinois passed six laws providing for the regulation of the rates, service, and reports of railway companies, and creating a railroad and warehouse commission.(1) A suit arose out of an overcharge, in violation of the statutory rate, made by the rail road company. This case, generally known as the Neal Ruggles case, was decided by the state supreme court in 1878. In the words of the court, " the legislature of this state has the power under the constitution to fix a maximum rate of charges by individuals as common carriers, or others exercising a business public in its character or in which the public has an interest to be protected against extortion or oppression, and it has the same rightful power in respect to corporations exercising the same business and such regulation does not impair the obligation of contract in their charter"(2)

However the rule that railroad corporations were subject to the police power of the state, and the state could make and enforce upon them rate regulations with-

(1) Laws of Illinois, 1871-72.

(2) 91 Ill. 256.

out impairing the obligation of contract in the charter grant was not fully established until the decision of the Supreme Court of the United States in 1876 in cases known as the Granger cases, and arising out of the Granger movement of Illinois, Iowa, Wisconsin, and Minnesota. These cases involved the power of the state legislature to regulate the charges made by elevators for the storage of grain, and the rates charged by transportation companies for the carriage of freight and passengers. In substance, the decisions of the court were that the common law power of the state to regulate public service callings such as ferries, common carriers, hackmen, barbers, millers, wharfingers, and innkeepers applies to grain elevators, and transportation companies, and was in no way diminished by the constitution of the United States. The court held that the reasonableness of a rate was a legislative matter. Extracts from the decisions follow:

(1) *Munn v. Ill.* 94 U. S. 134,

(1) " Under the powers inherent in every sovereignty, the government regulates the conduct of its citizens one toward another, and the manner in which each

shall use his own property, when such regulation becomes necessary for the public good."

(2) " Property becomes clothed with a public interest when used in such a manner as to make it of public consequence, and affect the community at large."

(3) " When private property is devoted to a public use, it is subject to public regulation."

(4) " Neither is it a matter of any moment that no statute can be found precisely like this. It is conceded that the business is of recent origin, and that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long and well established principle in social science, and this statute simply extends the law to meet this new development of commercial progress. There is no attempt to compel the owners of these warehouses to grant to the public an interest in their property, but to declare their obligations if they use it in this particular manner.

(5) " In countries where the common law prevails, it has been customary from time immemorial for

the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable!"

(6) " We know that this is a power which may be abused ; but that is no argument against its existence. For protection from abuses by the legislature the people must resort to the polls, not to the courts." Decision rendered in October, 1876.

(II.) Peik v. Chicago and Northwestern Ry Co. 94 U.S. 164.

Lawrence v. Same. 94 U. S. 164.

(1) " These suits present the single question of the power of the legislature of Wisconsin to provide by law for a maximum charge to be made by the Chicago and Northwestern Railway Company for fare and freight upon the transportation of persons and property within the State. That company was by its charter authorized " to demand and receive such sum or sums for the transportation of persons and property, and for the storage of property, as it shall deem reasonable."

(2) " Under a section of the constitution of Wisconsin reserving to the legislature power to repeal all corporate charters, nothing more was intended than

to leave the stockholders in corporations in such a position that the legislature could place them on the same footing with natural persons before the law, and disable them from permanently evading the burdens on all others engaged in similar vocations, by appealing to the letter of their charter."

(3) " As to the claim that the courts must decide what is a reasonable rate and not the legislature. This is not new to the case. It has been fully considered in *Munn v. Ill.* Where property is clothed with a public interest, the legislature may fix the limit to that which shall in law be reasonable for its use. This limit binds the court as well as the people. If it has been improperly fixed, the legislature, not the courts must be appealed to for a change."

(III). *Chicago, Burlington and Quincy Railroad Company v. Iowa*, 94 U. S. 155.

(1) " Railroad companies are carriers for hire Engaged in a public employment affecting the public interest, they are, unless protected by their charters, subject to the legislative control as to their rates of fare and freight." Decision rendered, October, 1876.

(IV) Shields v. Ohio, 95 U.S. 319.

(1) The General Assembly does not therefore impair the obligation of a contract by prescribing the rates for the transportation of passengers by the new company, although one of the original companies was prior to the adoption of that constitution, organized under a charter which imposed no limitations as to such rates." Decision rendered October, 1876.

(V) Chicago, etc. Railway Company v. Minnesota,
134 U.S. 418.

"
(1) It is contended by the railway company that the State, Minnesota, is bound by the contract made by the Territory in the charter granted to the Minneapolis and Cedar Valley Railroad Company; that a contract exists that the company should have the power of regulating its rates of toll; that any legislation by the State infringing upon that right impairs the obligation of contract; there was no provision in the charter or in any general statute reserving to the State the right to alter or amend the charter.....

"
(2) There is nothing in the mere grant of power, by section 9 of the charter, to the directors to make needful rules and regulations touching the rates of toll.... which can properly be interpreted as authorizing us to hold that the State parted with its general authority to regulate at any time in the future when it might see fit to do so the rates of toll to be collected by the company.

(3) " In Stone v. Farmers' Loan and Trust Co. 116 U.S. 307, 325, the conclusion is arrived at that the right of a State to reasonably limit the amount of charges by a railroad company for the transportation of persons and property within its jurisdiction cannot be granted away by its legislature unless by words of positive grant or words equivalent in law

.....

It is interesting to note that Missouri's experience in railroad regulation was not unique. Similar legislation was in progress in nearly all the middle western states, notably, Wisconsin, Ohio, Minnesota, Iowa, and Illinois. In the enforcement of its regulatory legislation each of these states had similar difficulties and met intense opposition from the railroad companies. And it was out of this conflict and litigation that certain well established and well recognized principles of regulation emerged. These principles, two in number, were formulated by the Supreme Court of the United States. The principles were the following: (1) railroad companies, as public service corporations, were subject to the police power of the State in the regulation of their rates in the absence of express charter exemptions; (2) the reasonableness of a rate was a legislative , and ..

not a judicial question.

Unlike the Illinois commission, the Missouri commission passed through no such period of conflict. Possessed of no money and having no means of enforcing the law, the railroad companies ignored it. The legislature of 1875 adjourned without making any appropriation to the commission.

In 1881, the commission reported that the Burlington and Southern road had never recognized the right of the State to regulate its rates on account of a charter provision, copied from the charter of the Hannibal and St. Joseph road and covering a portion of its line.(1) Again, in 1882, the commission reported that the Hannibal and St. Joseph, and the Chicago , Rock Island and Pacific companies had never come in under the law because of charter provisions. The commission presumed " the decision of the Supreme Court in the State v. Ruggles settles the matter so far as rates are concerned.(2)

In a statement made before the Senate Committee on Internal Improvements of the extra-session of the

(1) Report of Mo. R.R. Com., 1881, p. 15.

(2) Ibid. , 1882, p. 14.

General Assembly, 1887, Mr. E. P. Ripley, general traffic manager of the Chicago, Burlington, and Quincy road said, " I think it is the opinion of quite a number of the counsel of different roads that the authority given to the commission to reduce rates can be successfully contested, and the advice of counsel to a great many of the roads is that it is not necessary for them to pay any attention to the mandates of the commission in that regard. Our road does not recognize the charges fixed by the commissioners in this State, nor do we recognize their right to reduce rates."(1)

In addition to the roads claiming perpetual charter exemptions from state control and regulation, another class of roads were free from state interference, and the operation of the law of 1875, for a period of ten years, because of the so-called Exemption Acts.

These Acts were seven in number, passed the 17th and 31st of March, 1868, and applying to the following roads, Missouri Pacific, St. Louis, Iron Mountain, and Southern, Louisiana and Missouri River, St. Louis, Keokuk, and Northwestern, and the Kansas City, St. Joseph, and Council Bluffs. The Acts, nearly identical, run thus:

(1) Report of Senate Committee on Internal Improvements
of Extra-session of 34th General Assembly, 1887,
pp. 41, 480.

" The said railroad shall be subject to the provisions of the general laws of the State now in force or hereafter enacted, classifying and fixing the regulations , rates, and charges for the transportation of freight and passengers; provided, any provision, subjecting the company to future legislation in regard to rates, and charges for the transportation of freight and passengers shall not take effect until ten years after the passage of this Act."(1)

These roads, upon defaulting in their interest obligations, were seized in the sixties under authority of the State's statutory lien. To insure and to facilitate their sale, they were exempted from any possibility of harassing legislation for a ten year period, extending from 1868 to 1878. The result was that two-thirds of the railroad traffic in this State was exempted from the operation of the law of 1875 until 1878.

Therefore, the commission made no effort to secure the enforcement of the enactment of 1875 until these roads were subject to the ~~general~~ general railroad laws of the State. Thereupon the commission proceeded to

(1) Laws of Mo., 1868, p. 6, 95, 105, 112, 114, .

classify the roads, pursuant to the provisions of the law into class "A", and class "B", and class "C". The law described class "A" roads as trunk lines without defining the term, trunk line. Hence, to the commission, the act of classifying became a matter of some difficulty. The law itself should have assigned by designation of their corporate name, the roads to the three classes.

Finally, the commission made the ruling that trunk line roads were "such as had terminals at large towns, and made connections with important roads in such towns."(1) As late as 1899, the commission reported that, "this ruling has not been acquiesced in by all the companies."(2) It has been found impossible to ascertain to what extent the commission's classification and assignment of roads in reference to their passenger traffic was acquiesced in between 1878 and 1899. In 1881, the commission found that out of the total mileage of road then in operation in the State, class "A" mileage, upon which the law prescribed a passenger rate of three cents per mile, constituted forty-five percent of the total mileage.(3)

- (1) Report of R. R. W. Com., 1899, p. 7.
(2) Ibid.
(3) Report of R. R. Com., 1881, p. 13.

In Iowa, Kansas, and Illinois passenger rates were, in 1883, three cents per mile while in Missouri, in the same year, the rates were three and four cents per mile.(1)

How much influence this legal reduction in passenger and freight rates, in 1875, had on earnings and on railroad development in this State is difficult to ascertain because the factors involved cannot be isolated. The law reduced passenger fare from five to four and three cents per mile, this being on the average a reduction of thirty percent; on the leading articles of freight the reduction was still greater. The commission estimated that the total saving on passenger fare alone amounted to over a million dollars annually.(2) This estimate was made in 1875 before the leading railroads had accepted the statutory rates hence it is very probably unreliable. The appended table indicates a decline for the year 1877 as compared with 1875 in gross passenger earnings of five percent, gross passenger earnings per mile, nine percent, and in the number of miles constructed, thirty percent.(3) Had this law of 1875, regulating rates, been enforced previous to 1878, it might have

(1) Ibid., 1883, p. 17.
(2) Ibid., 1878, p. 112.
(3) Appendix " C ".

been assumed to have been the cause of the falling off in mileage and gross receipts. After its partial enforcement in and after the year, 1878, both the receipts and the mileage showed a rapid increase together with a decreasing ratio of cost of operations to earnings. So interwoven are the commercial conditions, the panic of 1873, with railroad income and building that it is nearly impossible to give correct data. To a very large degree, the fluctuation in earnings, and in the number of miles constructed each year for the five years following the date of the law may be safely attributed to the panic, and not to the reduction made in rates. Recovering from the effects of the panic, the business of the companies, in the eighties, increased rapidly.(1)

In reference to its power to classify freight, and the classification set up by the statute, the commission made no effort to enforce the law until 1878, for over three-fourths of the freight traffic passed over roads exempted from the operation of the law until 1878. In that year, the commission published a classification of all freight, effective July the first. Ores

(1) Report of R. R. Com., 1882, p. 13.

were placed in class "J", and the rates on that class and on class "H", comprising live-stock, were reduced.

Some of the absurdities of this statutory classification should be pointed out. For instance, lime, having only one-tenth the commercial value of flour was placed in the same class with flour, namely class "E". Flour worth \$6.50 per barrel, and lime worth \$0.65 per barrel took the same rate per barrel per mile. And this was one of the classes exempted by the law from the power of the commission to alter. The class rate might as applied to flour be equitable, and as applied to lime would be entirely prohibitory. However, the commission was able to grant relief through its power to reduce rates on the special classes. Another illustration of how defective this classification is seen from a study of class "D". This class comprised all grain in car-load lots. The class rate here prescribed might be just as applied to wheat selling at \$1.50 per one-hundred pounds, but would prevent the shipment of corn worth only \$0.50 a hundred-weight. The law assigned articles to the special classes with little regard to the nature of the commodity classified, or its commercial

value. The rates prescribed upon the classes were liberal upon some articles in the class and prohibitory in regard to others. Horses, beef cattle, calves, sheep and hogs, all bore the same class rate because they belonged to class "H" comprising live-stock notwithstanding their different values. Four of the special classes were entirely taken out from under the power of the commission to modify. This was one of the defects of the classification. The classification was crude and imperfect, and to both shipper and transportation company, worked injustice. Even among the articles of one class, the roads could make discriminations for the rates were only maximum rates. For instance, the companies, to meet competition, would give a lower rate on soft than on hard lumber.

Whether the classification was statutory or made by the commission, the railroad companies ignored when they pleased to do so and observed it, if it were favorable to them. The commission had no authority and no money to enforce the law. As an illustration, apples were classified by the commission so as to receive a class rate of \$11.00 per car shipped the distance of.

eighteen miles. The railroad company charged for that distance the exorbitant tariff of \$22.00 per car with absolute impunity. The only method of enforcing the law was for the aggrieved shipper to institute suit to recover the civil and criminal penalties provided in the law.(1) Over-charges, violating the class rates prescribed by the enactment of 1875, or subsequent changes in that classification, made by the commission, were a prolific source of complaint. Complaints of over-charges were especially frequent on live-stock, ores, and metals. In 1878, the commission declared, " in regard to freight classification, many companies are still ignoring or evading it entirely."(2)

Closely associated with the question of classification was the matter of rates for the rates were class-rates. In reference to the rates on the four general classes, not prescribed by the statute, the commission ordered, in June, 1878, that the general class rates should not be higher than they were on the roads on the first of January, 1878. By virtue of the authority vested in them, and feeling that the class rates on the special classes, "H" and "J" were too high, the commission

(1) Laws of MO., 1875, p. 112.

(2) Report of R. R. Com., 1878, p. 16.

made a reduction. What has been said in regard to the roads ignoring with impunity the statutory or commission's classification applies equally well to rates whether prescribed by statute or fixed by the commission. The railroad companies contended that the power of the commission to reduce rates was a delegation of legislative power hence unconstitutional because it was contrary to Article IV, section, of the Constitution which declares that: " The legislative power, subject to the limitations herein contained, shall be vested in Senate and House of Representatives..... No case arose in Missouri on this issue. It was not until 1886 that the Supreme Court of the United States decided this point. In cases involving the validity of a statute of Mississippi, passed March 11, 1884, creating and conferring rate-making on a railway commission the Court upheld this delegation of authority.(1) In the case of the Chicago, etc. Railway Company v. Minnesota, the Court in 1889 again sustained the commission principle and also defined the limit to which a commission could go in determining and fixing a

(1) Railroad Commission Cases 116 U.S. 307.

rate. The commission had no authority, or money to employ counsel for advice or otherwise, and was itself in doubt as to whether its power to reduce rates extended to general as well as special classes or was restricted wholly to the latter. It finally decided that its power to reduce applied only to rates on the seven special classes.

Intimately associated with the problem of class rates was the matter of car-load rates. It will be remembered that the statutory rates were rates on the car-load in four of the seven special classes, namely, classes, "G", "H", "I", and "J". Less than car-load rates were never prescribed by statute, and the railway companies were free to charge what they pleased upon less than car-load shipments. Immediately, the necessity of defining the term, car-load, arose. In 1878, the commission ruled that a car-load consisted of twenty tons. At that time, the legal hundred-weight was one-hundred pounds. The customary hundred-weight was for some articles one hundred pounds while for others such as iron and lumber it was one hundred and twelve pounds. Hence

the legal ton contained 2000 pounds while the customary ton was sometimes 2000 and often times 2240 pounds. In defining a car-load as composed of twenty legal hundred weight or twenty thousand pounds, the commission was governed both by the law and by the more prevalent usage.

The railroad companies did not see fit to acquiesce in this uniform definition of the car-load, and continued to use the long ton of 2240 pounds for most bulky articles of freight, and the short ton for other freight. This was another fruitful source of complaint of overcharges and discrimination. No uniformity existed, nor could the commission enforce such. This matter continued in doubt until a decision of the Missouri Supreme Court, in 1892, sustaining the ruling of the commission. This was the case of *Ross v. Kansas City, St. Joseph, and Council Bluffs Railroad Company* in which action was begun to recover the statutory penalty of three times the amount of the alleged over-charge pursuant to the provisions of the enactment of 1875.(1)

The law thus permitted a differential on car-load and less than carload shipments. The railway companies

(1) *Ross v. Kansas City, St. Joseph, and Council Bluff Railroad Company*, 111 Mo. 118.

were able to charge a much higher rate in proportion to the weight of the shipment on less than a car-load than on such shipment. That is the L. C. L. rates were higher than the C. L. rates notwithstanding the less weight.

The effect of the statutory car-load rates were to build up the business of the large shipper, who made shipment on the car-load basis, as against the small shipper who by the very nature of his business was compelled to make less than car-load shipments. The difference between the car-load and less than car-load did not originate in any excess cost of the one shipment over the other but in a desire to give preference to certain localities.

To mitigate the evils of car-load rates, the commission ruled that the rate on shipments of less than a car-load, and on shipments in excess of the car-load, should bear the same ratio to the car-load rate that the weight of the shipment bore to the carload. This ruling was ignored by the railroad companies, especially as long as the car-load was itself a matter of doubt.

When it came to executing that part of the law of 1875 relating to and treating shipments over connecting

lines of road as in continuous passage, and providing one charge for both roads, the commission encountered much difficulty. The enactment itself failed to set up any arbiter of the distribution of the charge. The railway companies were unwilling to divide the joint earnings on any equitable basis for the section of the statute, establishing rates, fixed them upon the unit of a twenty-five mile haul, allowing for the first haul a much larger share of earnings than on second, third, or any succeeding haul. Whenever the outgoing freight exceeded the incoming freight upon any line, that road had had the advantage in the charge in the proportion of first as compared with second, third, or any successive haul. The road getting the best of it was reluctant to divide equally, and the company getting the worst of it protested vigorously. The road getting the first haul bearing a charge of \$10 was unwilling to divide with a connecting line getting a second or successive haul at a \$4 charge. Each road wanted to make its haul a first haul, and not treat the passage as continuous. If the amount of freight carried both ways over connecting lines was equal, the

the accounts of the companies would have cancelled. The European practice of a pro rata division of the charge according to the mileage was not satisfactory for it was contrary to the spirit of the law in that the statute permitted a higher charge for first than for successive hauls.

Upon their request, the commission called a conference of the general freight agents of the roads in order to reach some uniform basis for the distribution of the joint charge. The commission offered the proposal to distribute the earnings for the joint service in the ratio that the separate local charges bore to the total local charges. The attorney for the Missouri Pacific road rejected this interpretation of the statute and declared that, "'the point where the freight was received' as provided in the law meant the point at which each road received it, therefore no question of the division of earnings existed." All the parties present declared that they would follow the construction placed upon the law by the Missouri Pacific attorney. In self-defense, the other companies were compelled to follow suit,

and the result was higher rates than before. "This, declared the Acting President of the St. Louis and San Francisco road, was the purpose of the movement and of the conference."(1) The statement well illustrates in what contempt the roads held the commission.

The provision of the law requiring joint rates was never carried out.(2) A suit was entered by one Owen, a shipper in Dallas County, Missouri, against the St. Louis and San Francisco road to recover the amount of the alleged over-charge and damages. In the circuit court of Dallas county, the plaintiff received a verdict in the sum of \$9360. Upon appeal to the Supreme Court of Missouri, judgment was reversed at the October term, 1884. The ruling of the higher court was that while the roads may arrange joint tariffs for the through passage of freight, such arrangements are not compulsory, and in their absence each road collects its local fare.(3) This ruling was incorporated in the laws of the extra-session of the General Assembly, 1887, in the provision providing that in case the roads did establish joint rates, they should be filed with and approved by the commission.(4)

(1) Report of the R. R. Com., 1878, p. 14.

(2) Report of R. R. W. Com., 1899, p. 8.

(3) Owen v. St. Louis & San Francisco Ry. Co. 83 Mo. 454.

(4) Laws of Mo., 1887, (extra-session) p.17.

Following the decision of the court, the commission allowed to each interested road, a local charge, in the absence of joint agreements, and only required that such local charges should not be unreasonable and exorbitant.

In accordance with the authority vested in them, the commission promulgated various tariff schedules for freight. The earliest tariff schedule, issued by the commission, was in 1878. This was slightly amended in 1880. Upon complaint of higher freight rates in Missouri than in Illinois, Iowa, and Wisconsin, the commission determined to draw up a revised schedule of reduced rates on all classes of freight. The question of the authority of the commission to reduce rates on the general classes of freight was controverted. The commission asked instructions from the Attorney-General of the State. His advice was that the authority of the commission was restricted to a reduction of the special class rates.(1) Thereupon, the commission suspended action to establish rates on the four general classes, and left these rates to be adjusted by the shipper and the railroad company.

(1) Report of R. R. Com., 1886, p.19.

After holding conferences with the representatives of the commercial exchanges in St. Louis, and Kansas City and with other persons the commission issued a new classification of freight, and a revised schedule of maximum freight rates, effective May 1, 1886.(1) In this schedule, the commission eliminated as far as possible car-load rates, and the condition of owner's risk. To relieve themselves of liability for damages to goods in transit, it was customary for the road to exact from the shipper before accepting the goods for transportation, a release. Under the law, the carrier could not, by contract, relieve itself of the consequences of its own negligence, yet this was what it was seeking to do.

In drawing up this schedule of rates, the commission was apparently much influenced by the then prevailing rates in Illinois. At that time, the schedule of rates, issued and enforced by the Illinois commissioners, were, on the average, twenty percent lower than Missouri rates. In speaking of this tariff schedule, issued, in 1886, by the Missouri commission, before the Senate Committee on Internal Improvements of the extra-session of the Thirty-fourth General Assembly, 1887, Mr.

(1) Ibid., Appendix D.

E. P. Ripley, General Traffic Manager of the Chicago, Burlington, and Quincy road declared, " I will say in reference to the Missouri commissioners' tariff that I understand the underlying idea of it is the Illinois commissioners' tariff. They seem to have adopted that tariff where it was low and clearly ignored it where it was high, and a combination of the two makes a lower tariff than that in Illinois. The Illinois tariff in itself is not a model by any means. It is the work of three gentlemen who have been in office less than six months."(1) Likewise, Mr. A. G. Newman, General Traffic Manager of the Missouri Pacific road said, " a comparison of the figures promulgated by the commissioners with tariffs now current in Missouri cannot be made fairly as the commissioners' rates are based on a classification not in use by any of the lines in this State, or any adjoining state. They are not fixed so far as we can learn by comparison with the tariffs of other roads in other states, west of the Mississippi river, and are not the result of any experience as to the cost of railway transportation. We have been advised that the

(1) Report of Senate Committee on Internal Improvements of 34th General Assembly, (extra-session) p. 25.

commissioners, in reaching the figures they have submitted, were governed to a great extent by the prevailing rates in Illinois."(1)

What principles the commission has used in reaching a classification, and a rate schedule, are difficult to ascertain. Among those enumerated by the secretary of the last commission were the nature of the commodity, its commercial value, and its cost of handling.(2) In general, the attitude of the commission was that a classification was a matter of small importance to the shipper, and was established for the convenience of the railway company alone. It considered the shipper as interested only in the rate. However, since the rates were fixed upon classes, to the shipper, it was equally important that the classification be an equitable one.

So important have the western railways found the matter of classification that they keep in constant employment, in Chicago, Illinois, a standing committee on classification. At various times, new, revised, and amended classifications are promulgated by this body, and are known as Official Western Classifications, be-

(1) Ibid., p. 217.

(2) Statement of Secretary, T. M. Bradbury to the writer, March 22, 1913.

cause they apply to all freight moving on all railroads west of the Mississippi river.

Under authority of the act of the General Assembly of the extra-session of the 1887, supplementary to the original enactment of 1875, railroad companies were compelled to file with the commission, their classification of articles of freight.(1) In 1887, the Official Classification was adopted by the commission. Since that time it has been in force in Missouri, and was in force at the date of the abolition of the commission, April 15, 1913. In part, the Official Western Classification used the car-load as a unit for rate-making purposes.

When it came to enforcing that part of the law relating to rates, the commission was absolutely powerless. It had no money. It had no authority to employ counsel. It could not even call upon the attorney-general of the State to institute suit to compel observance of the law. The commission itself had no power and could not originate suit to compel compliance with the law or its own orders except when its orders related to the physical condition of the road-bed. All penalties, attached to a violation of the law, with the exception of the physical condition of the track, were

(1) Laws of Mo., 1887, (extra-session) p. 15.

left to be enforced by private individuals who were parties aggrieved. The State made no effort to enforce the law of 1875, bore none of the expense of its enforcement, and could not as the law then stood act through any of its constituted agencies to secure enforcement. In order that private parties might have full opportunity to begin action against violations of the law, justices of the peace were given concurrent jurisdiction with the circuit courts in prosecutions for violations of the law in all cases where the amount involved did not exceed two hundred dollars.(1)

Even the penalties which were provided were totally inadequate. For a violation of the law, the railroad forfeited any right to recover compensation for the service rendered, and its agent was to be deemed to be guilty of a misdemeanor upon conviction of which, he was to be punished by a fine not exceeding two hundred dollars in amount.(2) In addition, the injured party was entitled to recover for a violation of the law civil damages in the sum of three times the amount of the excess charge. For a violation of an order of the commission, relating to rates,

(1) Laws of Mo., 1875, p. 112.

(2) Ibid.

the guilty party was to be subject to a fine of not less than twenty or more than two hundred dollars, and in addition, was made liable to the injured party in the sum of three times the excess charge.(1)

Trusting to this lack of proper means of enforcement, the railroad companies very largely ignored the law. Shippers, injured by discriminatory practices of the railroads, were given few remedies other than those already existent at common law. Under authority of that law, very few prosecutions were ever begun. A private individual made little headway in fighting a large and wealthy corporation with its host of expert attorneys. Often times, the cost of the suit was greatly in excess of the amount of damage sustained. In speaking in reference to this part of the law of 1875, Judge Trimble, Solicitor for the Chicago, Burlington, and Quincy road, before the Senate Committee on Internal Improvements of the extra-session of the Thirty-fourth General Assembly, 1887, testified, " If he has been discriminated against; he don't want to involve himself in a law suit for the purpose of saving five or ten dollars, and they don't do it. I have

(1) Ibid.

never heard of any such suit in Missouri. I know none of the roads which I represent have been sued."(1) Colonel Hayward, construction agent of the Missouri Central road, made to the same committee, a similar statement to the effect, " I know there are laws upon our statute books that are, in my judgment, violated with utmost impunity, wholesome regulations, and yet no railroad man pays any earthly attention to them, and it is not to the interest probably of individuals to commence suits in the courts to maintain their rights."(2)

To further shut off any possibility of securing the enforcement even through the agency of private individuals, the Act of 1875 penalized any party making complaint to the commission by placing upon him , when the charges made in the complaint were not sustained, any cost that might accrue from an investigation of the complaint. No provision, more effective in hindering the enforcement of the law, could have been devised.

The framers of the enactment of 1875 evidently considered the citizen and the corporation on a parity. This

(1) Report of Senate Committee on Internal Improvements
of the 34th General Assembly, 1887, (extra-session) p.70.
(2) Ibid. p. 157.

is well indicated by leaving the enforcement of the enforcement of the law to parties aggrieved, giving the justices of the peace concurrent jurisdiction with the circuit courts in order that the judicial machinery might be rendered easy of access, and the provision making the railroad company bear the cost accruing from any complaint if the charges were sustained, and if not sustained, the party complainant was made to bear the expense.

Experience demonstrated that the railroad corporation and the citizen were not equal. The corporation could wear out the private suitor, keep the case pending in court so interminably long that the individual despaired of ever getting relief. Hedging itself behind the technicalities of legal procedure, the corporation could make the costs of any suit so excessive as to be practically prohibitory.

One fact stood out clear and unmistakable. It was that any law, attempting to accomplish the ends contemplated by the law of 1875, had to be enforced by the state, and at the expense of the State. Any method of enforcement, short of this one, meant the law would be disregarded, discriminatory rates would flourish, and the authority of the commission treated with contempt. As the law then

stood, the commission could not secure its enforcement. In a statement before the Senate Committee on Internal Improvements of the extra-session of the Thirty-fourth General Assembly, 1887, Colonel Hayward, construction agent of Missouri Central road, well recognized this fact, " the present board of commissioners of the State of Missouri, if they are good for anything at all, they are merely worth what advice they see fit to give. They possess no power; the law says they may do certain things; if the railroad companies see fit to disregard their action, I know of no power they possess to enforce it."(1)

Again and again, between the years, 1875 to 1887, the commission recommended to the Governor and to the legislature, amendment of the law so as to provide adequate penalties for its violation, and to secure its enforcement by the State and at the expense of the State, instead of confining the remedies to civil actions for damages brought by individuals. Conflict of interests in the General Assembly prevented any material change being made in the laws regulating railways. Coming as they did from a section of the State, undeveloped, and greatly in need of railroads, the members of the various General Assemblies from the southern

(1) Ibid. p. 152.

and south-eastern counties of the State were opposed to any legislation having a tendency to retard railroad development. The members from the counties, north of the Missouri river, were eager for effective railroad regulation because they represented counties well traversed by roads, and they were experiencing all the evils that flowed from an unregulated monopoly. Among the complaints made were extortionate charges, rates discriminatory both as to persons and to localities, pooling of freights, division of earnings, violation of the long and short haul clause of the State Constitution, and the consolidation of competing lines.

Competition as a method of regulating railroad rates was evidently becoming less effective every year. In 1881, the commission found three companies, the Missouri Pacific, the Wabash, and the St. Louis and Iron Mountain controlling over fifty percent of the railroad mileage of the State. In interests, these three companies were closely allied by the fact that the same persons owned large blocks of stock in each of them hence they were practically under one control. Of the seven hundred stations where freight was received and delivered, less than six percent were com-

peting points, and ninety-four were non-competing points. Even where competition did exist, it was rarely between different lines, running to the same commercial center, but between lines running to different trade centers.(1)

It was the conflict of interests between the two sections of the State that prevented any material changes being made in the law. In the legislative session of 1883, the House Committee on Internal Improvements reported a bill designed to remove restrictions on the power of the commission over classification, and over rates. This bill was a substantial copy of the Illinois commission law. If it had passed, the Missouri commission would have been empowered to make and to enforce rate schedules for both passenger and freight traffic. In the same session, the Senate committee on the same subject reported a measure enabling the commission to enforce penalties for violations of the law through the State's attorney. Neither bill passed.

The General Assemblies of 1885 and 1887 adjourned their regular sessions without making any change in the law. In each of these sessions, bills were presented, but their passage could not be secured. Every one real-

(1) Report of R. R. Com., 1881, p. 11.

ized that the organic and the statute law were being violated with utmost impunity. In his message to the regular session of the Thirty-Fourth General Assembly, 1887, Governor John S. Marmaduke, a former railroad commissioner, forcibly called attention to the State Constitution which was being ignored, " I call the attention of the legislature to the State Constitution, Article XII, section 7, which prohibits corporations from engaging in business other than that which is expressly authorized in their charter; section 17, prohibiting the consolidation of parallel or competing lines under one management; section 24, forbidding railroad companies to issue free passes to members of the General Assembly, members of the Board of Equalization, and any state or county officer; and finally, section 4, which declares railways public highways, and companies operating them, common carriers, and directs the General Assembly to pass laws, correcting abuses and to prevent unjust discrimination and extortion, to fix maximum rates of charge, and to enforce all such laws by adequate penalties!(1)

It was not until the Governor had called the General Assembly into extra session, following the adjourn-

(1) House Journal of 34th General Assembly, 1887, (regular session) p. 46.

ment of the regular session of 1887 that the necessary corrective legislation could be secured. In this session as in preceding ones, the conflict of interests again came into prominence. The members from the southern and south-eastern counties feared regulatory legislation, while the members from the northern counties of the State were favorable to such legislation. The struggle turned upon the issue of maximum rates, and an extension of the powers of the commission. The question was whether the legislature should fix maximum rates of charge for the roads, and empower the commission to reduce rates on complaint, or should it give the commission itself power to make tariff schedules for all roads. The members from the southern counties were opposed to the legislature prescribing maximum rates or delegating to the commission such a power. They were not opposed to the legislature forbidding the pooling of freights, prohibiting the division of earnings, passing laws carrying into execution the long and short haul clause of the State Constitution, and enacting measures designed to secure the enforcement of the law by the State and at its expense. These were laws which did not disturb any honest business.

So strong was the opposition to any regulatory legislation that it appeared that no measure would become enacted into law. Finally a measure was found satisfactory to all parties. This enactment received the popular nickname, The Swamp-Angel. The name is appropriately suggestive of the circumstances surrounding its passage. Compromise measure that it was, the Swamp-Angel meet the political exigencies of the hour. The term, Swamp-Angel, denotes the fact that the law was a distinct concession to the members of the General Assembly from the swamp lands of south-east Missouri. The "angelic" features of the law were to be found in its harmless character so far as the railroads were concerned.(1)

In reference to rates, the Swamp Angel made it mandatory upon the railroad companies to publish, to post, and to file with the commission, rate schedules containing the classifications of freight. A charge in excess of the published and filed rate was declared illegal and prohibited. The schedules of rates, made up by the railroads, and filed with commission, could not exceed the statutory maximum rates in force, or that might thereafter be in force.(2)

(1) Daily Tribune, June 28, 1887.

(2) Laws of Mo., 1887, p. 15. (extra-session).

It was made the duty of the commission to see that the schedules of rates, filed with them by the railroad companies, were reasonable, that they did not exceed the the statutory maximum rates, and that the were observed by the companies. If, for a period of thirty days, any road neglected to file with the commission its schedules of rates, then it became the duty of the commission to make out and publish at the expense of the negligent road a schedule of charges. All schedules of rates, upon being published and filed with the commission, and approved by it, became the legal rate. All charges other than the legal rate were declared illegal, and were forbidden.

Likewise, joint tariffs for the continuous passage of freight over connecting lines had to be filed with and approved by the commission. Furthermore, the commission was charged with duty of securing the enforcement of the law.(1)

In a large measure, the Act of 1887 was merely declaratory of the provisions of the State Constitution dealing with railroad corporations. The "Swamp Angel" declared all railroads public highways, and the companies operating thses roads common carriers with all the common law obligations, namely, to serve, to serve all, to serve all equally, and to serve all at a reasonable charge for the service.

(1) Ibid.

All unreasonable charges were declared unlawful, unjust, and were prohibited; discrimination was defined and prohibited; the charging of more for a short than for a long haul was forbidden; and the pooling of freights, and the division of earnings were declared illegal, and were prohibited.(1)

For any failure of the roads to comply with provisions of the law, the company which was negligent rendered itself liable to the injured party for triple damages and a reasonable attorney's fee. In addition to this remedy given to the aggrieved person, upon written complaint as to rates or on its own motion, the commission was under the duty of making investigations of the matter in complaint, and arriving at a decision in accordance with the facts ascertained.(2) If the commission found the carrier guilty of a violation of the law, it ordered it to desist, and to pay, within a time specified in its order, the amount of damages the commission awarded the injured complainant. If the decision of the commission was against the complainant, the State paid the costs incurred in making the investigation; if the decision of the commission went against

(1) Ibid.
(2) Ibid.

the railroad company, then the company itself bore the costs. In case the company failed to pay the damages awarded to the complainant, recovery was to be had through a civil action, begun by the Attorney-General of the State, in the name of the State, and to the use of the injured complainant.(1) For non-compliance on the part of the carrier with the lawful orders of the commission, made upon complaint and after investigation, either the commission or the party in interest could secure an injunction from the circuit court of the county through which the road ran. For any disobedience of its injunction, the court could impose a fine of one hundred dollars a day for each day's continuance of the offense.(2)

Upon conviction of a violation of the law, the carrier forfeited a fine of not more than \$5000 which was to be recovered by either the county or State's attorney, at the request of the commission, through a civil action in the name and to the use of the State.(3) These penalties were to go into the county school fund in counties where sued for. Suits for the recovery of penalties were given priority over all actions on the docket other than criminal.(4)

(1) Laws of Mo., 1887, p. 15. (extra-session)
(2) Ibid.
(3) Ibid.
(4) Ibid.

The orders of the commission, certified to by its seal, were made prima facie evidence of the facts therein stated or the reasonableness of a rate therein fixed. A standing in court was in this manner given to the commission. Upon the company, the burden of proof as to the reasonableness of a rate was thrown.

To provide for any expenses arising out of investigations and hearings by the commission, and prosecutions of suits for violations of the law by the Attorney-General, the Act of 1887 carried an appropriation of ten thousand dollars for the use of the commission, and accessible to it upon requisition approved by the governor.

In order to facilitate investigations, hearings, and the gathering of information, the commission was empowered to summon witnesses, and to compel the production of books, papers, and other documentary evidence. For any disobedience of its summons, the commission was given authority to assess the same penalty that circuit courts imposed for contempt.(1)

It is evident that the intent of the law of 1887 so far as it related to rates was that adjustments in freight rates were to be made upon complaint, and that each com

(1) Ibid.

plaint was to be handled on its merits. No sweeping or radical changes were made. In general, the law of 1875 remained in force with scarcely a modification, supplemented by the enactment of 1887. This latter Act went little beyond provision for the enforcement of the original law through the agency of the county or State's attorney, acting upon the request of the commission. The original classification of passenger traffic was not disturbed; the power of the commission over the physical condition of the road-bed was left unimpaired; no change was made in the power of the commission to compel the railroad companies to make annual report of their physical and financial condition.

The one change that was made by the Act of 1887 was in the power of the commission over rates. First, the commission was empowered to reduce all freight rates, regardless of whether the rates were on the special or on the general classes. Under the provisions of the supplementary enactment of 1887, it was the duty of the commission to see that the rates made by the railway companies, and filed with it, were reasonable, whatever that might mean. The statute made no attempt to define a reasonable rate, but

left the matter to be determined upon individual complaint.

Following the enactment of the Swamp Angel, the commission confined its activities to the adjustment of complaints, physical inspection of track, and the compilation of statistical material gained from the annual statements made to the commission by the railway companies. Whatever rate reductions the commission made were in isolated cases arising on complaint.

No important changes were made either by law or by the commission in railway charges until the first decade of the twentieth century. In 1907, the Forty-Fourth General Assembly passed a measure known as the two cent passenger law. Under this enactment, the railroads were classified according to the amount of their passenger traffic, and statutory maximum rates per mile were prescribed upon the classes thus established. The law of 1907 added one class of roads to the statutory classification of 1875. Under the law of 1875, class "A" roads were defined as trunk lines; under the law of 1907, class "A" roads were again defined as trunk lines, and in addition, their branches or branch lines. Branch lines were, in the original classification, class "B" roads. In the law of 1907, class "B" roads were described as all other roads operated by trunk

line companies. The law of 1907 defined class "C" roads as, " all other roads of greater length than forty-five miles."(1) Class "D" roads were defined, by that law, as, " other roads of less than forty-five miles in length, and not controlled by a trunk line company."(2) This last class was the new class, and was not in the law of 1875.

Railroads belonging to classes "A", "B", and "C" were limited to a compensation not to exceed two cents per mile; class "D" roads were not permitted to charge more than four cents per mile.(3)

This law of 1907 was the first regulatory legislation over passenger charges that had been enacted for a period of thirty years. Passenger charges had undergone no change since the passage of the law of 1875, and the statutory maximum rates then prescribed remained without change until the enactment of 1907. The maximum rates then prescribed were three cents per mile on trunk line roads, and on all other roads, four cents per mile.(4)

The railroad companies immediately attacked the constitutionality of the law of 1907 on the ground that it conflicted with the clause of the Fourteenth Amendment to the

(1) Laws of Mo., 1907, p.171; Mo. Rev. Stat. 1909, sec. 3221.
(2) Ibid.
(3) Ibid.
(4) Cf. Laws of Mo., 1907, p. 171, and Laws of Mo., 1875, p. 115.

provides that no shall
Federal Constitution which ~~prohibits any State from~~ "de-
priving any person of life, liberty, or property, with-
out due process of law; nor deny to any person within its
jurisdiction the equal protection of the laws."

The United States Circuit Court for the Western Dis-
trict held the law of 1907 unconstitutional because it was
in conflict with the due process of law clause of the Four-
teenth Amendment of that constitution. The State of Mis-
souri took an appeal from the decision of the lower court
to the Supreme Court of the United States, and the case
is now pending for decision in that Court. Whether the
Supreme Court will sustain the decision of the lower court
remains to be seen.

In this connection, since the decision of the Sup-
reme Court in the Granger cases, in 1876, certain well
established principles of constitutional law, governing the
power of a state legislature to prescribe rates of charge
and its power to delegate to a commission rate making powers,
have developed.

It will be remembered that, in the Granger decisions,
the Court ruled that a railroad corporation was subject
to the police power of the State notwithstanding a general

grant of power in the charter to make charges for the service. The court adopted the attitude that this general grant of power to charge was to be construed strictly, and the corporation was not exempt from legislation regulating its charges or its affairs except where the charter contained an express exemption.

Moreover the court then held that the reasonableness of a rate whether fixed by the state legislature or by a railway commission, under authority of a delegation of power to it by the legislature, was purely a legislative matter over which the court had no control. The legislature might fix confiscatory rates but the court had no power to declare that law void.

Since 1875, the court has found power to declare confiscatory rates, whether fixed by the legislature or by the commission, unconstitutional and void. It has found that power in the Fourteenth Amendment, section 1, which forbids any State to "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In the Railroad Commission cases, decided in 1886,

the Supreme Court said, " From what has thus been said, it is not to be inferred that this power of limitation or regulation is the power to destroy, and limitation is not confiscation. Under pretence of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law. What would have been this effect we need not now say for no tariff has yet been fixed by the commission, and the statute of Mississippi expressly provides ' that in all trials of cases brought for a violation of any tariff of charges, as fixed by the commission, it may be shown in defence that such tariff so fixed is unjust.' "(1)

The statement of the court that, "the power to regulate is not the power to destroy" was dictum and was not essential to the decision of the case.

Three years after the decision in the Railroad Commission cases, in 1889, a case came before the court involving the power of the state legislature to make a rate found by a railway commission final, and conclusively reasonable.

This was the case of Chicago, etc. Railway Co. v. Minnesota 134 U.S. 418. In holding this delegation of power unconstitutional, the court declared:

" We are of the opinion that the statute deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy, and substitute therefor as an absolute finality, the action of a railroad commission which in view of the powers conceded to it by the State court, cannot be regarded as clothed with judicial functions, or possessing the machinery of a court of justice."(1)

In this decision, the court reversed its former rule in the Granger cases, the court holding that, "it is necessarily within the power of the court to declare illegal and unreasonable a rate fixed by the legislature or by the commission."(2)

In Reagan v. Farmers' Loan and Trust CO. a case coming from the Supreme Court of Texas, and involving the power of the legislature to pass a law empowering the com-

(1) 134 U.S. 418.

(2) Ibid.

mission to fix rates, the court declared:

" It is within the scope of judicial power and a part of judicial duty to restrain anything which operates to deny to the owners of property invested in the business of transportation that equal protection of the law which is the constitutional right of all owners of other property."(1) Decision rendered in 1894.

In the leading case of *Smyth v. Ames*, decided in 1898, the court sought to ascertain upon what valuation the reasonableness of rates was to be determined. In this decision, the court lays down the rule:

"The basis of all calculations as to the reasonableness of rates must be the fair value of the property used for the service. To ascertain this value, original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under the statute rates, and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just in each case. We do not say that there may not be other matters to be regarded in

(1) 154 U.S. 162.

in estimating the value of the property. What the company is entitled to ask is a fair return upon that which it employs for public convenience.

Railroad rates should be fixed with reference to the fair value of the property used and the service rendered, and not merely to pay expenses, interest, and dividends, nor in order to realize a profit upon excessive capitalization, or fictitious valuation!(1)

Decisions of the court subsequent to that of *Smyth v. Ames* indicated the main elements the court considered as constituting fair value; in fact in the two recent decisions of

Knoxville v. Knoxville Water Co. 212 U.S. 11.

Wilcox v. Consolidated Gas Co. 212 U.S. 19.

decided in 1909, the only costs considered were the cost of reproduction, and existing depreciation. The trend of the recent decisions indicate a tendency to make reproduction cost less depreciation the principal factor in ascertaining fair value.

Since July 28, 1909, the two cent passenger law, and the cases arising out of it have been pending on the docket of the United State's Supreme Court. The restraining order of the lower court, enjoining the officials of the

(1) 169 U.S. 307.

State from enforcing that law was issued at a still earlier date.

Meanwhile, no regulation of passenger charges has existed in the State since 1908. Since that time the passenger charges per mile upon different roads have varied. Thirteen of the eighteen roads have been charging two and one-half cents per mile. Five of the strongest roads in the State, namely, the Missouri Pacific, the Atchison, Topeka, and Santa Fe, the Iron Mountain, the Missouri, Kansas, and Texas, and the Cotton Belt have been charging three cents a mile. In the adjoining States of Illinois, Iowa, Nebraska, and Kansas, the same lines have been charging two cents a mile. As Governor Hadley so well expressed it, "the present situation with reference to passenger rates is very unsatisfactory." (1)

It was in realization of the unsatisfactory situation that the General Assembly of 1911 passed a law authorizing the commission or any public utilities commission thereafter created to establish maximum rates of passenger fare, and dividing the roads for that purpose into classes according to their gross passenger earnings a mile, and empowering the

(1) Message of Gov. Herbert S. Hadley to the 46th General Assembly, Jan. 4, 1911.

commission to determine the class to which each road belonged. Under the provisions of the law of 1911, all railroads in this State were divided into three classes, namely, class "A", class "B", and class "C" on the following basis of the amount of gross passenger earnings per mile:

Class "A"..... all railroads whose gross passenger earnings per mile, not including switches and side trackage, from State travel exceeded \$1500 a year.

Class "B" all roads whose gross passenger earnings per mile was less than \$1500 and more than \$750 a year from State travel.

Class "C"..... all roads whose gross passenger earnings from State travel was not in excess of \$750 a year. (1)

In addition, the law of 1911 conferred upon the commission, power to determine the class of any road, and to fix for each class maximum passenger rates. Like previous enactments of the General Assembly, prescribing maximum rates of charge or delegating to the commission power to ascertain such rates of charge, the railroad companies immediately threw the law of 1911 into the courts, and since

(1) Laws of Mo., 1911, p. 162.

September the 28th 1911, the operation of this law has been suspended by a restraining order of the court.

In regard to freight rates, the situation is no better. In 1903, by an amendatory act, the Forty-Second General Assembly empowered the commission to fix reasonable freight rates on all classes of freight. On complaint of any shipper, mayor, councilman or trustee of any city, town, and village, it became the duty of the commission to proceed to fix and to reduce freight charges.(1) By virtue of this new grant of authority, and after holding one formal hearing in Kansas City and two such hearings in St.Louis, where representatives of shippers and the railroads were heard, the commission issued a schedule of maximum freight rates, and a classification of freight, effective March 1,1904. Among the factors considered in making this schedule of rates were the freight charges in other states, the cost of the roads, the volume of business done, and the cost of handling the freight. The commission estimated, in 1904, that this new schedule of rates would save Missouri shippers \$500,000 annually.(2) This tariff schedule, issued by the commission in 1904 was thrown into the courts immediately, and since that time , its operation has been restrained by an injunct

(1) Laws of Mo., 1903, p. 132.

(2) Report of R.R. W. Com., 1904, p. 3.

ion issued by the Federal court.

In the legislative session of 1905, an Act was passed, fixing maximum freight rates upon special classes "D", "E", "F", "G", "H", "I", and "J" of the original enactment of 1875. In the same session, a law was passed fixing maximum rates for the transportation of undressed stone, crushed rock, sand, and brick.(1)

Again, the railroads threw the laws into the courts. The United States Circuit Court for the Western District of Missouri issued a restraining order enjoining the commission from enforcing either of these laws. Action under these enactments has therefore been practically suspended since the date of their passage.

To correct some minor defect the Maximum Freight Rate law of 1905 was amended in the legislative session of 1907.(2) State officials were, again, enjoined by the Federal Court from enforcing the amended law hence all action under it was suspended.

The result was that , on the date of the abolition of the commission, April 15, 1913, every power it had over freight rates was inoperative, and tied up by injunctions issued by the courts. Its tariff schedule of 1904 could

(1) Laws of Mo., 1905, p. 102.
(2) Ibid., 1907, p. 104.

could not be enforced because the commission was enjoined; the commission could not enforce the Maximum Freight Rate law of 1905; the commission could not enforce the amended Maximum Freight Rate law of 1907; the law of 1905 fixing maximum freight rates on undressed stone, crushed rock, and sand and brick could not be enforced, all because the hands of the commission were tied by injunctions and restraining orders of the court, especially the Federal courts, and all action was suspended pending decision of the court as to the constitutionality of these Acts.

In 1893, the General Assembly extended the jurisdiction of the commission over the rates of express companies. This enactment declared express companies common carriers with all the common law obligations of such carrier, namely to serve, to serve all, to serve all equally, and to serve all at a reasonable charge. Express companies were placed under the duty of filing with the commission their classifications of merchandise, and schedules of rates. If the commission found the classifications unjust, it could modify them; if it found the rates unreasonable, it could establish maximum rates of charge.(1)

(1) Ibid., 1893, p. 122.

The law of 1893, in addition, authorized the commission to compel railroad companies to furnish equal facilities to all express companies, and, moreover, empowered the commission to compel express companies to enter into joint agreements for the exchange of business. It was made the duty of the commission to see that the express companies maintained equitable joint rates. However, the decision of the Missouri Supreme Court, in 1884, in the case of Owen v. St. Louis and Iron Mountain road rendered this provision of no force.(1) The lack of joint facilities between express lines was the source of much complaint. Each company carried the shipment over its own roundabout route in order to absorb all the charge.

Pursuant to this grant of authority, the commission on its own motion took up the matter of express rates. On the first of May, 1904, the commission issued a schedule of maximum rates for express companies.

The express companies immediately threw the question of the constitutionality of these rates into the Federal court. The court issued a order enjoining the commission from enforcing the Maximum Express Rate Schedule of 1904.

(1) Owen v. St. Louis & Iron Mountain Ry. Co. 83 Mo. 454.

Since December, 1907, the restraining order of the court, enjoining the commission from enforcing that schedule of express rates, has been in force.

The result was, on the date of the abolition of the commission, April 15, 1913, there was not a power of the commission over rates of any kind that was not enjoined, in controversy, or in the process of judicial construction. The Commission was enjoined from enforcing

1. The two cent passenger law of 1907.
2. The passenger rate law of 1911.
3. Its Maximum Freight Rate Schedule of 1904.
4. The Maximum Freight Rate Law of 1905.
5. The Amended Maximum Freight Rate Law of 1907.
6. The Maximum Freight Rate Law of 1905 on undressed stone, crushed rock, sand, and brick.
7. The Maximum Express Rate Schedule of 1904.

Forty-one cases, involving the rate-making powers of the commission, were pending in either State or Federal courts. These cases, "involve every statute concerning that Board which in any way relates to the Board's power to fix or determine rates for the transportation of freight, passengers, or express, within this State."(1)

(1) Letter from Assistant Attorney-General of Missouri, W. M. Fitch to the writer, April 3, 1913.

Chapter IV.

Powers over Service.

Under the enactment of 1875, the jurisdiction of the commission over the service afforded by the railroad companies, was limited to supervision of the road-bed and track structure, to placing a speed limit upon trains passing over defective track, and to fixing a date within which repair of track should be made.(1)

For any failure on the part of the superintendent, or other employee of the road to observe the speed limit placed upon a portion of track by the commission, such negligent employee was to be deemed to be guilty of a misdemeanor, and on conviction, fined not more than five hundred dollars, or imprisoned in the county jail for no longer than one year, or both such fine and imprisonment at the discretion of the court.(1)

If the non-compliance with the order of the commission resulted in loss of life or injury to passengers, the negligent superintendent, engineer, and conductor in charge of the train were to be deemed guilty of a felony, and on conviction, be imprisoned in the penitentiary for not

(1) Laws of Mo. 1875, p. 115.

less than two or longer than ten years.

In case the road neglected to make the repairs ordered within the specified time, the commission was entitled to recover, in a court of competent jurisdiction, to the use of the State, the sum of one thousand dollars a day for each days continuance of the defect, after the expiration of the date for repair fixed by the commission. Furthermore, the commission was authorized to advertise, in any newspaper of general circulation along the line of road, the failure of the company to make the repairs within the time specified by the commission.(1)

This was the only section of the law of 1875 carrying penalties sufficiently adequate to secure its enforcement. It was the only part of that law under which the commission was given any authority to originate prosecutions for the violations of the law or of its own orders. Moreover, it was the only section of that law that was ever enforced. To these facts, the commission itself testified:

" In no instance, have corporations disregarded our suggestions concerning unsafe condition of track, the cause being the heavy penalties prescribed. We especially call

(1) Ibid.

your attention to this section that you may perceive the inadequacy of the other sections."(1)

In pursuance of the provisions of this section of the law, the commission determined, in 1875, to make a general inspection of all the railroads in the State. To facilitate such an inspection, the roads were allotted to the commissioners in the following divisions: Mr McIlhany took the roads in the north-eastern part of the State; Mr. Walker, the roads in the north-west and central part; and General Marmaduke, the roads in the south and south-eastern part. In this manner, all the roads in the the State were inspected between October 12, and December 16, 1875. In carrying out this inspection, the commissioners noted the following points in regard to each road:

1. Whether the original construction was made in a permanent and substantial manner.

2. Whether the road-bed was of sufficient width and had suitable side slopes.

3. Whether the culverts, bridges, and abutements were of substantial and durable masonry.

(1) Letter of the Commission to B. J. Waters, Fort Scott, Kansas. Published in Daily Tribune Jan. 9, 1876.

4. Whether the bridges were of approved pattern, good material, and workmanship.

5. Whether the cross-ties were sufficient in number and quantity.

6. Whether the rails, and joint fastenings, were of approved size, pattern, and quality.

7. Whether the track was properly ballasted.

8. Whether the road was in good line, had no low joints, and whether the ditches were clean.

9. Whether the fuel and water stations were sufficient in number and quantity.

10. Whether the rolling stock was sufficient in amount, and condition for the business of the road.

11. Whether strict discipline was maintained over the employes, and whether every man performed his duty with alacrity. In fact, all matters entering into consideration of whether the road was safe.

The commission found the older and trunk line roads in good condition, but the newer and branch lines gave evidence of hasty and imperfect construction, and open trestle-work. Where repairs were needed, the commission

notified the proper railroad officer. All the roads showed a willingness to comply with the requirements of the commissioners, and with the law.

At the time when commission first undertook this duty of making a personal inspection of the physical condition of all the railroads in this State, over three thousand miles of road were in operation. Thirty-six years later, June, 1911, the mileage had more than trebled itself, the total mileage being over eleven thousand miles.(1) Notwithstanding this increase in mileage, the composition of the commission had undergone no change. If the number of commissioners were, in 1875, at all dependent upon the number of miles of railroad which it was their duty to supervise, it is certain that in 1911 such a relationship no longer existed. To enable the commission to carry out this important duty, the legislature of 1875 provided no funds, and the subsequent legislatures did not deviate from the precedent thus established.

The manner in which the commission made the early inspections is a matter of some doubt. Having no money, the commission could not have employed a force of permanent inspectors, nor could it have hired special trains for that

(1) Report of R. R. W. Com., 1911, p. 76.

purpose. The use of regular trains to make inspection trips would have been unsatisfactory, and too slow. To cover three thousand miles of track by walking would have been impossible for the season of favorable weather during which the members of the commission could carry on inspection work was limited to some four or five months a year.

What happened was that the commission, in order to carry out this duty, was forced to accept whatever favors the railroad companies were willing to grant. In reply to pertinent criticisms upon the failure of the commission to thoroughly inspect track, and bridges, Mr. John A. Knott, member of the last commission, replied:

" The Board has been compelled to beg the use of special trains, elegant and private cars of the managers of the roads, furnished with births, and the most tempting meals that can be conceived and prepared by the most competent chefs the best cigars, and other refreshments, furnished without money and without price to the Board, and the chief officers officers of the road on board to see that every want is supplied. These are the environments that surround the railroad commissioners on their inspection trips. Such courtesies may not in the least influence the commissioners in mak-

their reports but no citizen of the State ever saw a railroad commissioner on one of these palaces on wheels without criticising him. In my judgment, such inspections are of no value. The State Constitution forbids State officers from accepting free transportation, yet this is done on every inspection trip. Personally, I have not accepted the privilege of a special train for two years, having accomplished whatever inspection I have done on slow regular trains, and on foot, which is slow and unsatisfactory. This is the situation in regard to the inspection of track."(1)

In speaking of these inspection trips, the Secretary of the last commission recently said: "The railroad companies furnish us, upon request, an engine and passenger coaches free of any charge. The engine is coupled to the rear of the coaches, and pushes us down the line at a speed of fifteen to twenty miles an hour. The commissioners, carrying on the inspection, station themselves on the platform of the coach farthest from the engine in order to gain a clear view of the track as we approach it. Thus we are able to observe any minor defects, such as rotten ties, low joints, broken angle-bars, and split rails. If we feel that any part of the track needs a closer inspection, we have the

(1) Knott, John A., Is the Railroad Commission of Value to the People; A Record for Six Years. Pamphlet, p.10.

train stopped to make a close examination."(1)

These sporadic and superficial inspections have resulted in very little benefit to the traveling public. In 1875, the condition of the tracks and the bridges of the roads was such as to require supervision. After the roads began to receive an income above operating expenses, they made extensive improvements in the road -bed and devoted to the maintenance of way a larger share of their earnings. In 1875, the duty of making a thorough inspection of three thousand miles of track could not be carried out; with the growth in railroad mileage, the execution of that part of the law requiring track inspection became increasingly difficult, and the duty was necessarily performed in a more superficial manner. Though the necessity for track inspection had disappeared, the law still remained on the statute books, and in force .

To what extent, the execution of that part of law relating to the inspection of track has operated to eliminate accidents and wrecks is difficult to ascertain because the commission has keep no record of wrecks. The railroad companies have been under no obligation to make to the commission report of any wrecks. In case the wreck was due to any

(1) Statement of Secretary, T. M. Bradbury, to writer, March 22, 1913.

cause other than defective track, the commission had no power to compel the installation of equipment designed to prevent its recurrence.(1)

While it is not to be doubted that some benefit did result from the supervisory power of the commission over the road-bed, it must be admitted that the more substantial improvements in railroad equipment came from a different source, namely, the desire of the companies to gain a larger income through the medium of better service. The details of service showing the greatest improvement were those over which the commission had no control. These improvements were rendered possible by the existence of a lower cost of operation, and a rapid advancement in railroad technology. The increase in the mileage of steel rails, better rolling stock, stronger motive power, steel bridges, Westinghouse air-brakes, automatic couplers, electric headlights, - all were due to improved technological methods, and new inventions which the commission had no power to compel the railroad companies to put into use.

The frequency of the inspection trips was a matter

(1) Laws of Mo., 1875, p. 115.

left to the discretion of the commission. The commission could undertake the duty either upon receipt of complaint of dangerous track or on its own motion. The commission never used any systematic method of determining when a road was to be inspected. In some instances a period of three years between inspections elapsed.

The early reports of the commission indicate that it placed a great deal of emphasis upon the duty of track inspection. The later reports point to lack of thoroughness in the execution of this section of the law. This is well brought out in a comparison of the reports of the commission for the year, 1879, and the year, 1908:

I. " Report of an Inspection of the St. Louis, and Hannibal, and Keokuk Railroad. Hannibal to Prairieville, Pike County, Missouri, Nov. 13, 14, and 24th 1879. Distance, 48 miles. Inspection of trestles,

" No. 1. Is in bad shape, liable to wash out. Needs new bents; the sills of which should be down to the bed of the stream. Needs new bents under the north end.

" No. 4. Needs new cross-ties.

" No. 6. Needs new track stringers and cross-ties.

" No. 7. Bottom of the posts and the sills show

rot.

"No. 14. Needs three new track stringers"(1)

II. " Report of an inspection of the Missouri Pacific Railway and its branches, by Commissioners Wightman and Oglesby, leaving St. Louis, Sept. 22, 1908. Inspection of the Bagnell branch, Jefferson City to Bagnell;

" The rain continued, and because of it, and the grass grown on the track, it was with difficulty we could see the ties, angle-bars, etc., but we observed the following:

"Between Jefferson City and Russelville, a number of chipped rails and half angle-bars. Two miles west of Russelville, a chipped rail, two feet long, on a road crossing. A chipped rail at the depot, one mile west of Olean. A chipped rail, six inches long, just east of bridge 26. A broken angle-bar in the yards at Eldon, and another one, one-half mile south of Eldon. Just south of bridge 33, a chipped, a split, and a broken rail. A chipped rail, three feet long, one mile west of bridge 37"(2)

(1) Report of R. R. Com., 1879-1880, p. 63.

(2) Report of R. R. W. Com., 1909, p. 58.

The necessity of carefully inspecting bridges was much more apparent to the earlier commissioners than to the later commissioners. Bridges were in fact so much more substantially built by the railroad companies that no evident need for careful inspection of bridges existed.

The section foreman of the road, making daily trips over his six miles of track allotted to him and to his crew, was in a much better position, and much more competent, to ascertain needed repairs than any railroad commissioner, travelling over the road at the rate of twenty to twenty-five miles an hour. The only benefit that could possibly have resulted from inspection of the track by a State official was that, by order, the commission could force the company to make repairs when it was reluctant to do so on account of financial or other reasons.

Conflict between the commission and the railroad companies was avoided by the existence of the heavy penalties which the law placed upon non-compliance of the company with the law or the orders of the commission. In addition, the commission was empowered to begin suit against the company if its orders were disobeyed. These orders of the commission had to relate to repair of track .

Another explanation of the willingness which the companies displayed in obeying the orders of the commission relating to the repair of track was the attitude of the commission itself. The commission was never extremely insistent upon repairs, or upon a prescribed date for their completion. It was always liberal to the companies, and was willing to accept as an excuse and explanation, any valid reason such as the depressed financial condition of the company. There appear to be no suits in which the powers of the commission under this section of the law of 1875 were contested, or the law itself drawn into controversy.

At various times during its thirty-six years of existence new grants of power over particular kinds of service were given to the commission. At no time was any general grant of authority over service made to the commission. The always assumed that it had full and complete power over service; when its recommendations to the railway companies were ignored, it then proceeded to investigate its authority for making such a recommendation. If the commission found that it had authority, it then incorporated its suggestion

into an order. If the order were disobeyed, then the commission could institute prosecution to compel its observance.

In discussing the nature and development of these grants of authority over service to the commission, it is convenient to treat them in the following order:

1. Powers over Safety Devices;
2. Powers over Train Connections;
3. Powers over Demurrage ;
4. Powers over Depot Accomodations;
5. Powers over Accomodations of Express Companies.

1. Powers over Safety Devices.

By an Act of the General Assembly of 1887, the power of the commission was extended to the supervision of the blocking of frogs and guard-rail to prevent accidents. This law provided, for a violation, no penalty, hence it could not be enforced by the commission.(1) Following out the recommendation of the commission, the General Assembly of 1891, amended the law by attaching to a violation, a penalty, and, in addition, made it mandatory upon the judge at every session of courts of record to charge grand juries to make spec-

(1) Laws of Mo., 1887, p. 14. (extra-session)

ial inquiry as to whether the roads were using the "best known appliances or inventions for blocking purposes".(1)

This enactment of 1891 was indefinite in that it failed to specify what was the best known appliances for blocking frogs and guard-rails. It was never observed, for the companies each selected an appliance, and called it the best known one. Though the commission repeatedly urged that it be given authority to decide what appliance was the best known, and compel its universal use, its recommendations were never enacted into law by the General Assembly.

In 1897, the commission made recommendation to the General Assembly that it pass laws giving the commission power to compel the installation of interlocking devices, and, on passenger trains, the use of electric headlights. In the same year, the commission urged upon the legislature the necessity of laws compelling intra-state trains to be equipped with automatic couplers, and train brakes. The trains engaged in inter-state traffic were by authority of an act of Congress equipped with these devices.

It was not until the lapse of a decade that such a law was enacted. In 1907, the General Assembly passed a

(1) Ibid., 1891, p. 81.

law requiring railroad companies to equip their engines with air-brakes, their cars with hand holds, automatic couplers, and standard draw-bars. Under the provisions of this Act at least seventy-five percent of the train had to be equipped with air-brakes.(1)

Finally, under an enactment of the legislature of 1911, the commission was empowered to compel railroad companies to install safety devices at dangerous public crossings, where the street and the railroad crossed each other at the same level. If the commission deemed the crossing sufficiently dangerous, it could, under this enactment, compel the railroad company to station a flagman at such crossing.(2)

2. Powers over Train Connections.

No authority over train connections was conferred on the commission until 1899. Legislation then enacted authorized the commission to require railroad companies to run and operate their passenger trains so as to make reasonable daily connections, at intersection points, with passenger trains on other roads, whenever, in the judgment of the

(1) Ibid., 1907, p. 182.

(2) Ibid., 1911, p. 59.

commission, such connections could be made without serious detriment to the business of the companies concerned.(1)

By an amendatory Act of 1905, the General Assembly imposed the duty on the commission of compelling reasonable daily connections between trains at these intersection points where passenger depots had been located.(2)

In the same session of the General Assembly of 1905, a law was passed making it mandatory upon the commission to compel branch roads of no greater length than twenty-five miles, and terminating in a city with a population of not less than five thousand or more than twenty-five thousand inhabitants, to make reasonable daily connections with main line passenger trains, and, in addition, to maintain and operate passenger and freight depots at terminal points.(3)

And finally, in 1911, the General Assembly empowered the commission to fix the number, kind, and character of passenger trains, operated on branch, and on independent lines.(4)

(1) Laws of Mo., 1899, p. 127.

(2) Ibid., 1905, p. 101.

(3) Ibid.

(4) Ibid., 1911, p. 158.

3. Powers over Demurrage.

Though possessed of no specific grant of authority over demurrage, the commission claimed jurisdiction over demurrage charges and regulations because such a charge affected the reasonableness of the amount paid for transportation. In determining the amount of the demurrage charge, the commission refused to lay down any general rule or principle, and held that each case would be treated on its merits.

The General Assembly of 1905 passed a law fixing demurrage charges, and the free time on railroads. This enactment gave the railroad company four days within which to furnish cars to shippers — the time to be computed from seven o'clock a. m. of the day following the date of application. Failure on the part of the company to furnish the cars within the allotted time subjected it to a penalty of one dollar a day, also, made it liable to the shipper for any actual damages he sustained by reason of such failure. Upon receipt of shipment, the railroad company was under the obligation of carrying forward the freight at the rate of at least sixty miles a day-, the time to be computed from seven o'clock in the morning of the day following the

date of receipt of the shipment. For any failure on the part of the company to carry the shipment forward at the rate of sixty miles a day, the corporation subjected itself to a penalty of one dollar a car a day, and rendered itself liable to the shipper for any actual damages he sustained by reason of such failure. In computing the time of the freight in transit, Sundays, holidays, and a period of twenty-four hours for making transfers at intersection points, were to be excluded. Upon arrival of the consignment at its destination, the railroad company had to make delivery within twenty-four hours or suffer a penalty of one dollar a car per day, and, in addition, render itself liable to the shipper for any actual damages he sustained by reason of such failure. The time was to be computed from seven o'clock of the morning following the date of the arrival of the shipment at destination.(1)

On his part, the consignee was given, by the law of 1905, a period of forty-eight hours in which to load or unload cars. Upon the expiration of that time, he became subject to a penalty of one dollar a day per car.(2)

(1) Ibid., 1905, p. 111.
(2) Ibid.

An amendatory Act of 1907 modified the demurrage law of 1905 in that the amount of free time was graduated according to the capacity of the car. For loading or unloading cars of less than sixty thousand pounds capacity, a period of forty-eight hours free time was established; for cars of more than sixty thousand pounds capacity the free time was seventy-two hours. It was made the duty of the commission to see that the law was enforced. In addition, the shipper retained his right of action for damages.(1)

4. Powers over Depot Accommodations.

In 1895, the commission was authorized to compel railway companies whose tracks crossed at grade to establish joint depots.(2) This was the first enactment giving to the commission any authority over the depot facilities furnished by the railroad companies.

In 1901, the commission was empowered to authorize, upon petition, the abandonment of depots where, in consideration of the location and erection of a depot, the company had accepted a donation of land, and, in addition, a post office had been established, and a town or village

(1) Laws of Mo., 1907, p. 177.
(2) Ibid., 1895, p. 116.

built.(1)

Such insignificant grants of power over depot facilities did not prevent complaint of unsatisfactory depot accommodations. Repeatedly, the commission urged that it should be given power to compel railway companies to maintain adequate depot accommodations. Many of the companies failed to keep station agents at the smaller stations along their lines. In other instances, the complaints related to the failure of the companies to keep their depots clean, lighted, and heated. To silence these complainants, the General Assembly of 1911 carried out the previous recommendations of the commission by enacting a law making it mandatory upon the commission to entertain complaints of inadequate station facilities, and to see that the railroads provided at each station, adequate depot, storage, and platform facilities. In addition, the commission was authorized to supervise, and to make regulations concerning the sanitary condition of depots.(2)

5. Powers over the Accommodations of Express Companies.

Under an early Act of 1889, the commission was given power and required to compel railroad companies to provide

(1) Ibid., 1901, p. 100.

(2) Ibid., 1911, p. 159-160.

equal facilities for all express companies desiring to do business on their roads.(1)

No further extension of the powers of the commission over the service which express companies afforded their patrons occurred until the legislative session of 1911. In that session, the General Assembly passed a law giving the commission authority to extend the boundaries of the free delivery zones of express companies in towns with a population of over one thousand inhabitants.(2)

From this genetic study of the powers of the commission over service, it is to be observed that no broad and general grant of power over the service afforded by the public utilities under its jurisdiction was ever made. Any commission standing, in relation to the public and to the public service corporations under its supervision, as an agency for the adjustment of differences, and as the arbiter of disputes, could not expect to give complete satisfaction, for over many of the matters complained of, the commission had absolutely no power to act. The people of the State knew they had a railroad commission; they naturally assumed such a commission would have powers sufficiently adequate

(1) Ibid. , 1889, p. 45.

(2) Ibid., 1911, p. 146.

to secure for them redress of the matters complained of. On the other hand, the commission was not sufficiently in touch with public opinion, and did not stand high enough in the public confidence to make its influence, and its weight, felt in legislative halls. On this account, it was never able to convince the General Assemblies of Missouri of the necessity for extending and broadening its powers over the service of the public utility corporation.

As a result of its lack of adequate powers over service, the commission received severe criticism. To indicate wherein the commission was censured, some of the more important criticisms and the replies of the commission follow:

1. Failure to compel companies to move cars of live-stock from the initial point at once. Answer of the commission: No power.
2. Failure to compel companies to allow more free time for unloading cars. Rigid law controls.
3. Failure to investigate the cause of wrecks. No power.
4. Failure to compel companies to connect track at intersections with other lines except connections at grade.
5. Failure to compel companies to stop trains at

intersection points with other lines. No power.

6. Failure to compel the roads to run their trains on schedule time. No power.

7. Failure to compel the roads to enlarge their depots. No power.

8. Failure to compel the roads to furnish separate waiting rooms, in depots, to ladies. No power.

9. Failure to require the roads to build and maintain depots. Not authorizing the commission to do so except at intersections of the railroads at grade.

10. Failure to fix different rates of charge for the upper and the lower berths of sleeping cars. No power.

11. Failure to prevent the abandonment of depots, main line track, sidings, spur tracks, and spurs. No power.

12. Failure to compel companies to keep their coaches clean, and their depots well lighted at night. No power.(1)

(1) Knott., Is the Railroad Commission of Value to the People? A Record for Six Years. Pamphlet, p. 10.

Chapter V.

Powers over Annual Returns.

The law of 1875 imposed upon the railroad companies the duty of rendering to the commission, under oath, annual reports of their condition and operations for the preceding year. The statute itself contained thirty-one interrogatories to be answered by the companies, and empowered the commission to add new interrogatories at its discretion. The following items were called for by the law of 1875:

1. The amount of capital stock subscribed, the number, and the par value of the shares.
2. The names of the owners of the stock, and the amount each owned, and his residence.
3. The amount of capital stock paid in, and by whom.
4. The amount of assets and liabilities.
5. The names and places of residence of the officers of the company.
6. The amount of the funded debt.
7. The amount of the floating debt.
8. The estimated value of the road-bed and bridges.

9. The estimated value of the rolling stock.
10. The estimated value of the stations, buildings, and fixtures.
11. The estimated value of the other property.
12. The estimated value of the single track on the main line.
13. The length of double track on the main line.
14. The length of the branch lines, single or double track.
15. The aggregate length of the sidings and other trackage.
16. The number of tons of through freight carried during the year preceding the report.
17. The tonnage of local freight carried during the year preceding the report.
18. The monthly passenger earnings for the year preceding the report.
19. The cost of train operation.
20. The monthly freight earnings for the year preceding the report.
21. The cost of operation and maintenance of way with a separate report of the officers' salaries for the

year preceding the report.

22. The cost of repairs.

23. The amount expended in improvements.

24. Separate reports for the rates of fare for each month for both way and through passengers.

25. The cost of motive power.

26. The freight tariffs for the year preceding the report.

27. A copy of each published fare for passengers, and of each freight tariff issued regardless of whether it was ever actually in force.

28. The names, kinds of business, and conditions upon which transportation companies operate on the line.

29. The preference given to the cars of transportation companies.

30. The estimated value of single track on the mainline.

31. The running arrangements with other roads. To answer such additional interrogatories as the commission may require. (1)

(1) Laws of Mo., 1875, p. 115.

The purpose of this provision of the law was to throw the light of publicity upon railroad operations in Missouri. These detailed statements concerning the organization, condition, business affairs, and operations of the various railroad companies were to be open to public inspection at the office of the commission. Their incorporation, at a later time, into annual report issued by the commission was not contemplated by the enactment of 1875.

When it came to enforcing this part of the law, the commission found itself absolutely powerless. It had no power to begin prosecutions of violations, and non-compliances, with the law; and if it had such power, no penalty for failure to make the report could be enforced against the railroad companies because the law itself failed to provide any penalties. Only with extreme difficulties, could the companies be induced to make any sort of a report.

In 1875, the commission drew up blank form reports, and sent them out to the railroad companies. In that year eight companies made returns to the commission. And these returns were so meager, so lacking in detail, and so incomplete because of inadequate systems of accounting employed

by the railway companies that they were quite unsatisfactory. The companies doing both an inter-state and an intrastate business did not keep separate accounts of their Missouri operations. At no time did the law ever require them to do so. The result has been that their reports covered their total mileage without any regard to whether that mileage was within or without the State of Missouri.

This failure on the part of the companies to keep separate their Missouri operations rendered their reports of little value for statistical purposes. Any distribution of the statistics submitted by the companies to the commission on the basis of the mileage in this State was inaccurate and open to error. The commission, to obtain statistics of Missouri operations alone, was compelled to divide the total line or the total mileage statistics sent in by the companies by the number of miles that company operated in Missouri.

Ordinarily, the commission made little effort to segregate from the total mileage statistics, Missouri detail, but was contented to publish, in its annual reports to the Governor, the total mileage statistics as filed with it by the roads. Notwithstanding the requirement of the law that the

annual report of the commission should contain, " all such suggestions and information concerning railroads, in this State, as the commission may deem of public interest and importance."(1) To a Missourian, the information that is of public interest and importance is the statistics that cover Missouri mileage alone and not total mileage statistics.

The following is offered in illustration of the mileage method, employed by the commission, of ascertaining information relative to the Missouri operations of the through roads in the State. It is an attempt to find out the number of railroad employes in the State:

" Forty-three companies reported 137,317 persons employed in railraod service for the year ending June 30, 1899. This statement includes general officers, and employes of all classes for the total mileage of all roads reporting. As applied to total mileage, the average number of employes per mile of road, operated in Missouri, is 3. 75. On this basis, the total number of employes in Missouri is 25,540. Twenty-eight companies report 18460 employes in this State. Fifteen companies, operating 2,581 miles of road in Missouri have an aggregate number of employes of

(1) Ibid., 1881, p. 80.

27,675. But of these six companies, employing 19,386 persons, thirty-three and one third percent of their total mileage is in Missouri, and they have, in addition, general offices, extensive terminals, and shops employing a large number of men. Thus, estimating, separately, on a mileage basis for each company not reporting its Missouri employees, the aggregate number of employees of these companies for the State is 10,466 which number added to 18,460 employees reported, gives a total number of employees of 28,296 for Missouri. To this number, must be added at least 150 more employees. It is certain that in estimating the number of employees on a mileage basis for the six companies referred to gives a result less than the actual number employed. It can be safely assumed, however, that 28,500 persons are employed in railroad service in Missouri."(1)

In 1875, eight companies, representing less than one-third of the total mileage of railroad in Missouri, reported. These reports were unsatisfactory. The commission came to the belief that the incompleteness of the reports was due to the fact that the time, prescribed by law for making annual returns, was fixed for the first day of August. The fiscal year was made to close on the 30th of June while the

(1) Report of R. R. W. Com., 1899, p. 31.

current practice of the railroad companies was to close accounts at the end of the calendar year. To some extent, the inconvenient date for reporting fixed by the law explained the failure of some of the companies to report.

Following out the recommendation of the commission, the General Assembly of 1881 changed the time for reporting to the commission from the first of August to the first of April and the fiscal year was made to end with the close of the calendar year.(1)

This arrangement was more satisfactory to both the commission and to the companies. As a result of this change, the returns for 1881 were more complete than in any previous year.

However, the fixing of a more convenient date for reporting did not cause the companies to render complete reports to the commission. Some companies neglected to make any report; others reported one year and failed to report in the following year; and a few companies made annual reports regularly. In 1890, the commission declared, "fourteen companies out of fifty-eight failed to report while the statements from some of the others were meager and unsatisfactory."(2) In 1892, nineteen roads failed to make any report.

(1) Laws of Mo., 1881, p. 79.

(2) Report of R. R. W. Com., 1890, p. 3.

The roads making report gave incomplete returns. Interstate lines refused to give details of their Missouri operations separate from total mileage statistics. The commission concluded: " The statements are almost valueless as statistical records."(1)

To enable the commission to secure complete information from the railroad companies, the General Assembly of 1893 again changed the date for making annual statements to the commission from the first of April to the first of September. The fiscal year, covered by the annual reports, was made to close on the thirtieth of June in place of the thirty-first of December as provided in the enactment of 1881.(2) This was the same date for closing the fiscal year as under the law of 1875.

The purpose of this change was to make the reports of the railway companies to the Missouri commission uniform with those made to the Inter-State Commerce Commission at Washington. As early as 1889, the commission was using blank form reports almost identical with those used by the national commission. The adoption by the Missouri commission of the form report of the Inter-State Commerce Commis-

(1) Ibid., 1892, p. 3.

(2) Laws of Mo., 1893, p. 126-127.

ion was a distinct advantage to the railroad companies because blank reports filled out for the national commission were also acceptable to the Missouri commission, and satisfied the requirements of the Missouri law. This identity of reports meant to the railroad company a saving of a deal of book-keeping and clerk hire.

The companies still failed to comply with the law. In July of each year, the commission sent to the chief officers of the railroad companies blank reports to be filled out & returned to the commission by the 1st of September. The commission itself had to report its proceedings to the governor, for the year ending June 30th, by the 31st of December. Tardiness on the part of the companies in filing their annual reports delayed the report of the commission to the governor.

To enable itself to make prompt report, the commission urged a change in the law so as to make October 1 the date for the companies to file their annual statements. At that time, the Inter-State Commerce Commission was complaining of the tardiness of the companies in making their statements to it. Since the statements were due at the of-

files of the national and the Missouri commission at the same time, and covered the same period, the commission concluded that the first of September was too near the close of the fiscal year to enable the companies to report within the required limit of time.

In pursuance of the recommendations of the commission, the General Assembly amended the law, in 1909, by fixing the time for filing the statements on the first of October of each year.⁽¹⁾ Little improvement resulted from this change of date; the companies still failed to make their reports on time.

In 1908, the Inter-State Commerce Commission filed with the commission its blank form report for railways. The commission approved this form, and it was in use at the time of the abolition of the commission.

The law of 1875 provided no penalty for failure to make annual reports. This lack of any penalty made it impossible to enforce the law. In the hands of the commission, the law was practically a useless instrument. The railroad companies either failed to make any reports or they reported when they pleased to do so. Though the

(1)Ibid., 1909, p. 349.

commission repeatedly urged upon the General Assembly the prescription of penalties adequate to secure its enforcement, nothing was done until 1893. In that session, the General Assembly repealed the sections of the law of 1875 relating to the annual reports of railroad companies to the commission, and enacted a new law requiring railroads to report on printed forms furnished by the commission.(1) Again the legislature failed to provide any penalty for non-compliance with the law. The commission could not secure its enforcement because it was given no authority over the enforcement of the law.

In the legislative session of 1909, a law was passed which made it mandatory upon the commission to make, semi-annually, written demand on the chief officer of express companies to furnish, under oath, a full and correct list of the names of all the officers of the company, and, in addition, certified copies of all contracts for the carriage of express matter. It was the duty of the commission to hand over to the Attorney-General of the State, copies of these contracts, and any information it might obtain relative to a violation of the law.

(1) Ibid., 1893, p. 126.

Furthermore it was made the duty of the chief officer of express companies to furnish to the commission, on October the first, a detailed annual statement of its affairs, and its fiscal operations for the year ending June thirtieth. These statements were also to be made on printed forms furnished by the commission.(1)

Under an amendatory Act of 1911, it became the duty of express companies to furnish the commission, verified monthly statements of the amount of business, both State and interstate, which they transacted. The statements were to be made on blanks prepared and furnished by the commission.(2)

The commission had the additional duty of demanding semi-annually from the chief officer of the railroads statements showing whether any violation of the law, prohibiting competing lines from consolidating, and forbidding an officer of one railroad from being an officer in another road, existed.(3)

In recapitulation, there is little need to make any comment on the power of the commission to compel the railroad companies to make annual statements to it. The law was never enforced; the commission never had any authority to

(1) Laws of Mo., 1909, p. 378.

(2) Ibid., 1911, p. 145.

(3) Revised Statutes of Mo., 1909, sec. 3081-3083.

undertake its enforcement; the railroad companies ignored it, when they pleased, with impunity; when the roads did report, they refused to separate their Missouri operations from their total line operations; often-times, the reports made by the railroad companies were so lacking in detail as to be valueless for statistical purposes. In the absence of Missouri detail, the commission, to ascertain statistics for the Missouri part of the road, had to resort to the mileage method of distributing the total line statistics reported. This method of ascertaining Missouri statistics was unreliable, inaccurate, and seriously open to error.

The commission, having no power to compel the introduction and use by the railroad companies of a uniform system of accounting, was unable to obtain, from the companies, reliable data. Each road merely copied, from its books, the items called for by the blank report furnished by the commission, as they stood. No uniformity in book-keeping existed among the railroad companies. The book entries of one company did not represent the same facts that the entries of another company did. This was a source of error. It gave the companies an excuse for not reporting, on the ground that the data called for could not be obtained.

The commission had no authority and no money to employ a force of skilled accountants to supervise the methods of accountancy used by the railroad companies. It was quite a different thing to be able to compel the production of books and papers in an investigation or hearing, and to be able to subject to the scrutiny of state inspectors, and periodical audits, the accounts of the railway corporations.

Reports of the commission:

Under the provisions of the enactment of 1875, the commission was under no obligation to report its proceedings. However, at the request of Governor Hardin, it made a report for the year, 1875, at its own expense. At the close of 1876, the commission again responded to the request of the Governor, and presented a full statistical history of each road, and of each railroad corporation, in the State. Since this report was voluminous, the commission, with its limited means, was unable to publish it. The report for the year, 1877, was never published. Beginning in 1878, the commission, thereafter, regularly made annual reports of its proceedings to the governor.

In 1881, the General Asembly made it the duty of the commission to report its proceedings, annually, to the governor for the year ending June 30th. The report of the commission had to be made by the 31st of December of each year.(1)

In 1883, the General Assembly enacted a law providing for the printing, and distribution of the annual reports of the commission at the expense of the State.(2)

An analysis of an annual report of the commission to the governor shows the following arrangement of its contents:

Part I.

Report to the Governor.

Roster of Railroad Commissioners.

Part II.

Complaints and Orders of the Commission.

Part III.

New Organizations, Consolidations, Mileage, Capital Stock, Funded Debt, Income, Disbursements, Physical Conditions, Tabulated Statistics, and Maps of the Lines of Road.

Part IV.

Maximum Freight and Express Schedules, issued by

(1) Laws of Mo., 1881, p.80.
(2) Ibid., 1883, p. 52.

the commission, with all amendments in effect, rules and regulations governing the same, and a copy of the laws applying to railroad and express companies.

Part V.

Warehouse Department.(1)

(1) Report of R. R. W. Com., 1906,

Chapter VI.

Warehouse Powers.

The growth of railroad mileage and centers opened up to the Missouri farmers, markets for their surplus produce. The branch lines, reaching into the interior towns and connecting with the main line roads with termini at St. Louis, Kansas City, and St. Joseph, made these terminal points the grain centers of the State. Nearly every shipping point in the State was, in this manner, rendered tributary to these principal grain markets.

Farmers shipped their grain consigned to commission merchants in these centers. All the grain that was sold was inspected under the authority of the local boards of trade. All the grain that was bought was handled on the basis of a grade given to it by a private grain inspector, acting as agent of an interested party, namely, the commission merchant or the members of the boards of trade. This practice of inspection by private individuals, agents of interested parties, gave rise to much complaint. The grain was often purposely graded lower than its actual grade, and the absent shipper was made to suffer. Much confusion existed in the grades of grain for the

the different inspectors made use of no uniform system of grading. A grade established by one inspector did not correspond with a grade set up by another inspector. Moreover, frequent complaint was made of short weights of grain at the terminal points.

To silence complaint, and to secured the needed uniformity in grading grain, the General Assembly passed a grain inspection law, effective the first of November, 1889. Under the provisions of this law, the duty of grain inspection was vested in the commission, and private parties were forbidden to engage in inspection. A new department of the commission was created, namely, the warehouse department. The name of the commission was changed from Railroad Commission to Railroad and Warehouse Commission. The law created the office of Chief Grain Inspector, and this officer was charged with the duty of executing the Grain Inspection Law under the direction of the commission.(1)

The purpose of this enactment was to afford justice to grain growers, and shippers from localities tributary to the grain markets of St. Louis, Kansas City, and St. Joseph, Missouri. Pursuant to the provisions of this law, grain inspection was begun in these centers in 1889.

(1) Laws of Mo., 1889, p. 124.

Under the provisions of the Act of 1889, a certain class of elevators or warehouses, having a storage capacity larger than fifty thousand bushels, and used for the purpose of storing the grain of different owners for a compensation, were declared to be public elevators or warehouses. To qualify as a public warehouseman or elevatorman, the operator had to secure a license, setting forth the name and location of the warehouse, from the circuit court of the county, and, in addition, enter into bond, the amount of which was graduated according to the following capacities of the warehouse:

Capacity.	Amount of Bond.
50,000 bu. or less.....	\$2500.
50,000 -100,000 bu.....	5000.
100,000 - 200,000 bu.	10,000
200,000-- 300,000 bu.	15,000
300,000 - 400,000 bu.	20,000
400,000 - 500,000 bu.	25,000
500,000 - 750,000 bu.	37,500
750,000 - 1,000,000 bu.	50,000
1,000,000 - bu.	100,000.(1)

(1) Ibid. as amended, Laws of 1907, p. 285.

After securing such a license from the circuit court, it became the duty of the public warehouseman to serve, to serve all, to serve all equally, and to serve all at a reasonable charge.

The Act of 1889 provided for the inspection of all grain delivered into or from a public warehouse. This inspection was to be carried on by the Chief Grain Inspector, and his force of assistants. This grain inspection law was a substantial transcript of the Illinois Act of 1871, regulating warehouses in that State, and giving the Railroad Commission the duty of inspecting grain. The Missouri law differed from that of Illinois only in the matter of classification of the elevators and warehouses.(1)

The inspection of grain was started amid violent opposition from the established boards of trade. In attempting to extend the area of State inspection, the commission soon found its authority to inspect grain drawn into controversy. Dissatisfied with the grade given to Kansas and Nebraska wheat, one of the merchants exchanges in Kansas City set up its own force of inspectors, and began to make inspections and gradings that conflicted with those established by the commission. Immediately, the commission began an action in

(1) Cf. Laws of Mo., 1889, p. 124, and Laws of Ill., 1871-2, p. 762.

'quo warranto' to eject the inspectors employed by the commercial exchange. The case went to the Missouri Supreme Court, and was decided in 1892. As defined by the court, the authority of the commission to inspect grain extended only to those warehouses which qualified and met the legal requirements for a public warehouse. In appointing its own force of inspectors, the commercial exchange was usurping no prerogative of the the commission for no power had ever been granted to it to inspect all grain arriving in these centers but only such grain as went into public warehouses.(1)

This section of the law, empowering the commission to inspect grain, was amended by the General Assembly of 1893 so as to give the commission authority to inspect. " grain in all elevators having a capacity of fifty thousand bushels or more, and where the commission might establish state grain inspection."(2) But under the amendment of 1893 the authority of the commission to inspect grain was still restricted to grain in public warehouses.(3)

Again, in 1907, the General Assembly passed a law designed to give the commission authority to determine when and where

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- (1) State ex rel. v. Smith 114 Mo. 180.
(2) Laws of Mo., 1893, p. 180.
(3) State ex rel. v. Goffee 192 Mo. 670.

where the grain inspection law should operate.(1) The Supreme Court of Missouri held this amendment to the Grain Inspection law unconstitutional and void as a delegation of legislative power to the commission, and in conflict with Article IV, section 1a, of the Constitution of Missouri, which declares, " The legislative authority of the State shall be vested in a legislative assembly, consisting of a Senate and House of Representatives,....."(2) Under the amended law of 1907, state inspection of grain was still confined to grain in public warehouses.

Every morning, the railroad companies issued to the state grain inspection department a manifest of all cars loaded with grain, consigned to public warehouses, that had arrived during the preceding twenty-four hours. This manifest indicated the car number, and initial, the kind of grain, and the consignee. The state inspector located the car, climbed into it with his ladder, and pushed down through the grain at several places, a long brass tube known as a grain trier. This tube was fitted with notches through which a wooden plunger worked. The grain gathered up by the trier was emptied at the door of the

(1) Laws of Mo., 1907, p. 285.

(2) Merchants Exchange v. Knott 212 Mo. 616.

car, and tested as to its variety, condition, soundness, plumpness, color, cleanliness, and weight. This test determined the grade of the grain, and the grade fixed its price. The state inspector recorded the test, and made report of it to the office of the state grain department.

To eliminate any errors in copying the state inspector's test, due to the carelessness of the private samplers accompanying the state inspector, duplicate copies of the state inspector's report were made, and delivered to the grain exchanges in St. Louis. In Kansas City, and St. Joseph, the state grain department furnished the commercial exchanges a ticket, accompanied by samples of the grain inspected, showing the car-number, initial, location, grade of grain, and consignee. The reports of the inspector, upon being turned into the office of the state grain department, were copied into a large ledger. Certificates of inspection, in duplicate, were furnished the commission firms in St. Louis and St. Joseph. In Kansas City, these certificates were furnished upon request.

The inspected grain was then delivered from the car into the public warehouse by the railroad company, and the elevatorman. Only grain which had been inspected by State inspectors could be stored in public warehouses. Upon the receipt

of the grain, the warehouse manager issued a warehouse receipt stating the date of the arrival of the grain, its quantity, and its grade. These receipts had to be sent to the State Registrar, in the office of the state grain department, for registration. When registered and properly endorsed by the party to whom issued, the receipts were, by law, made negotiable, and operated as a valid transfer of the property they represented.

To prevent fraud, the law attached heavy penalties to the issuance of fraudulent receipts. Any manager of a public warehouse, guilty of issuing fraudulent receipts, i.e. receipts issued for a greater amount of grain than was actually in store, was punished by imprisonment in the penitentiary from two to ten years. The public warehouseman was also forbidden to insert, in the receipt, any clause modifying his responsibility, as defined by statute.

The law of 1889 made it mandatory upon the operators of public warehouses to publish annually in a newspaper of the vicinity, during the first week of January, the schedule of storage charges for the ensuing year. No charge, higher than the published charge, could be exacted without the consent of the commission. And any reduction made in the published tariff

had to apply equally to all.

To prevent extortionate charges for the storage of grain, the law itself prescribed the following maximum rates of charge for the storage of grain: (1)

- First ten days..... not over 2¢ per bu.
- Any succeeding ten days..... " " 1½ " "

Another duty, placed by the statute, upon the operators of public warehouses was to post in a conspicuous place, on or before Tuesday of each week, a statement of the amount and grade of each kind of grain in store at the close of business on the preceding Saturday.(2) On Tuesday morning, public warehousemen had to make, under oath, a similar statement to the commission.

Furthermore, the law made it compulsory upon the managers of public warehouses to furnish daily statements to the commission concerning the amount, kind, and grade of grain delivered from the warehouse during the previous day. A statement also had to be made of the receipts cancelled, giving the number, amount, kind, and grade of grain received and shipped on each receipt. Any unreceipted grain in transit for through shipment to foreign points had also to be reported.(3)

(1) Laws of Mo., 1889, p.124; also Revised Statutes, Mo., 1909, sec. 6794.
 (2) Revised Statutes, Mo., 1909, sec. 6798.
 (3) Ibid.

Moreover, it was obligatory upon the operators of public warehouses to furnish, in writing, and under oath, a statement of the condition of his business at such times as the commission might make demand.(1)

Any person, injured by a violation of any of the provisions of the Grain Inspection Law imposing these duties upon the managers of public warehouses, was entitled to sue in the name of the State and to his own use on the bond of the public warehouseman.(2)

In order to insure proper execution of the law, the commission was authorized to supervise and control grain inspection through the agency of the Chief Grain Inspector. The Chief Grain Inspector, directly under the control of the commission, was charged with the duty of directing the inspection of all grain in public warehouses. He had to enter into bond for the penal sum of \$50,000, conditioned on the faithful performance of his duties, with sureties approved by the commission. Furthermore, the commission was authorized to appoint additional assistant and deputy grain inspectors, and other employes as the needs of the service required. The commission was empowered to fix the salaries of all persons employed in the State Grain Department, and to regulate the time and manner of payment.(3)

(1) Ibid., sec. 6798.
(2) Ibid., sec. 6803.
(3) Ibid., sec. 6809.

The deputy and assistant inspectors were required to give bonds to the commission in the sum of ten thousand dollars each, conditioned on the faithful performance of the duties assigned by law. A right of action was given to any party injured by the malfeasance of an inspector in office to sue on the bond to his own use.

All the employes of the State Grain Department were responsible to the commission and could be removed by it upon presentation of charges, or upon complaint, in writing, made to the commission by a person alleging improper official acts.

The Act of 1889 also empowered the commission to establish a body known as a Committee of Arbitration, in the three inspection centers of the State, and permitted an appeal from the decision of the State inspector establishing a grade on certain grain to this Committee. Each of these committees consisted of three persons, qualified grain experts, appointed by the commission.

It was the duty of this Committee, upon notification of an appeal, to examine the grain in controversy and to render a decision as to its quality and grade in accordance with the standards and grades set up by the commission, in writing to the office of the Chief Grain Inspector. The decision of

the Committee was final.

The applications for an appeal from the decision of a state inspector had to be made in writing to the Chief Grain Inspector and had to clearly set forth the kind, grade, and locality of the grain in controversy, within twenty-four hours after the time the inspector fixed the grade on the grain. If the application was not filed within the allotted time, or if the grain had passed into the warehouse, or lost its identity, the right to an appeal was lost. It was the duty of the Chief Grain Inspector, upon receiving the application for an appeal, to notify the chairman of the Arbitration Committee of the fact of an appeal. If, in the meantime, the grain in controversy had been entered in the office of the Chief Inspector for a re-inspection, no right to an appeal existed.

The commission was authorized to make rules and regulations governing the procedure of the committee in arbitration, its compensation, and its term of service.(1)

As a matter of fact, so satisfactory has been the service rendered by the State Grain Department that few appeals have been made to the Arbitration Committee. In cases where appeals were taken, uniformly the Committee sustained the State inspection.

The commission was also empowered to establish grades of

(1)Ibid., sec. 6814.

grain in conformity with the standards adopted by the leading grain markets; and to examine into the condition and management of public warehouses.

The powers of the commission in grain inspection over the production of documentary evidence, and the summoning of witnesses, were identical with its powers over this field in railroad regulation. It was the duty of the commission to prosecute violations of the law through the agency of the Attorney-General. At least one member of the commission had to visit and inspect each public warehouse semi-annually.(1)

The Grain Inspection department was expected to sustain itself out of fees derived from the inspection services. The commission was empowered to fix the amount of these fees. In 1904, in Kansas City, the fee was sixty-five cents per car inspected and a sample of the grain was furnished; at St. Louis, the inspection fee was fifty cents a car; and at St. Joseph, it was fifty cents a car inspected.(2) These fees stood as a lien upon the inspected grain, and had to be paid ~~at~~ delivery at the warehouse. As a matter of practice, the fees were not collected at the close of each inspection, but at the end of each

(1) Ibid., sec. 6823.

(2) Report of R. R. W. Com., 1904, p. 441.

month, the Grain Department presented bills to those firms for which it had made inspections.

But State inspection alone did not eradicate all the evils existing in the grain business at terminal points. Many complaints arose from grain shippers because of the shortage of weights at terminal points. In some instances, this shortage was due to leaky cars furnished the shipper by the railroad company; in other instances, it was the result of causes at the trade centers. At that time, the commission was certifying to and accepting the car weights given by the public warehouseman.

In response to a strong demand for State control of the weighing as well as the inspection of grain, the General Assembly of 1893 passed a law requiring the commission to weigh as well as to inspect all grain consigned to public warehouses.(1) Under the provisions of this Act, it became the duty of the Chief Grain Inspector to nominate suitable persons to act as State weighmasters.

The State weighmasters were charged with ^{the} duty of weighing all grain going into or coming out of public elevators, and to make daily report of these weights to the office

(1) Laws of Mo., 1893, p. 182.

of the State Grain Department. These weights, when reported, were recorded by the State Registrar.

The commission was given authority to fix the amount of the weighing fees. These fees were to be paid by the operator of the public warehouse. The commission was also empowered to make such other regulations for the weighing of grain as it might deem proper.(1)

Furthermore, the law rendered it mandatory upon the railroad companies or the warehouseman to provide, upon the order of the commission, suitable scales for the weighing of grain at all such points as the commission might designate. A State weighmaster was given entire control of these scales, and under him were deputy weighmasters in charge of the scales at each public warehouse. At least once each year, the State weighmaster and his assistants had to weigh all grain in public warehouses.(2)

It was made unlawful for any person other than a State weighmaster to issue weight certificates, or to sign any ticket purporting to represent the weight of any lot of grain, consigned to a public elevator with scales in charge of a state weighmaster.

In 1905, the jurisdiction of the commission was ex-

(1) Revised Statute of Mo., 1909, sec. 6827.

(2) State ex. rel. v. Goffee 192 Mo. 670.

tended to the inspection and weighing of hay at St. Louis, Kansas City, and St. Joseph, Missouri. So enormous had become the shipments of hay to these markets that, without state regulation of the inspection and weighing of hay, the absent shipper was at the mercy of the commission firm. In order to insure impartial weights, and fair grading, the General Assembly authorized the commission to take over this duty.(1)

As the duties of the commission became more numerous and more complex, its work and duties demanded a larger force of employees, and its payroll grew. The legislative enactment of 1893, authorizing the commission to weigh grain as well as inspect it, the Act of 1905, empowering it to inspect and weigh hay, and the large increase in the number of grain and hay shipments to the three principal markets of the State, St. Louis, Kansas City, and St. Joseph, materially increased the work of the State Grain Department. The fact is well brought out in the report of the State Grain Department to the commission for the year 1911. For that year, the following inspections at St. Louis, Kansas City, and St. Joseph were made:

(1) Laws of Mo., 1905, p. 171.

Cars,	Inspected on Arrival.
Wheat	29,047.
Corn	26,570.
Oats	8,755.
Barley	300.
Hay	15,254.
Miscellaneous	128.
	<hr/>
Total	80,054.
Cars inspected out	24,880.
	<hr/>
Total Car Inspections	105,934. (1)

In recapitulation, the work of the State Warehouse Department has uniformly given satisfactory service to both the shipper and the city grain merchant. After the definition of its jurisdiction by the Missouri Supreme Court, the commission restricted its inspection work to grain going into or coming out of those warehouses which under the law had qualified as public warehouses.

Many evil practices current before the time that the

(1) Report of R. R. W. Com., 1911, p. 778.

State assumed the duty of grain inspection have been eradicated. Fairer grades of grain have resulted from State inspection. This was advantageous to the shipper and to the consignee. The shipper profited because he knew that he was getting honest grades and honest weights on his shipments of grain. The consignee was benefited by state grain inspection for the purchaser was in a position to know what grade his grain actually was. To those members of the commercial exchanges in the three trade centers of the State who made a specialty of dealing in grain futures, the Act of 1889 was of service for it enabled them to ascertain, from the weekly statements made by the operators of public warehouses to the commission, the amount of grain in storage.

The Missouri Warehouse law, being a copy of the Illinois law on the same subject, vested the warehouse duties in the Railroad Commission because these functions were being performed by the Illinois Railroad and Warehouse Commission. The relation between the railroad duties of the Missouri commission and its warehouse functions was never close. In fact, they were two separate and distinct functions that might well have been vested in two distinct

bodies.

It was in realization of the lack of any connection between these two sets of duties that the General Assembly of 1913 repealed that section of the Grain Inspection law of 1889, vesting warehouse powers in the commission, and created a State Grain Inspection Department entirely separate from the public utilities commission then established. Little change was made in the Grain Inspection law. It was necessary to repeal just one section of that law, and that was the one giving the old railroad commission power over grain inspection. In its place, a new section was enacted creating the office of Chief Grain Inspector, and attaching to this office, the warehouse duties of the railroad commission. The powers and duties of the Chief Grain Inspector are identical with those conferred on the commission by the Act of 1889.

To the recently created office of Chief Grain Inspector, Governor Elliott W. Major appointed one of the members of the last commission who was formerly an employe of the State Grain Department, Mr. J. T. Bradshaw.

Chapter VII.

The Public Utilities Commission of 1913.

In summary, the commission was the product of the commercial and economic conditions of the seventies which lead to the Granger movement in this State. To the Grangers the commission principle was a side issue. Primarily they desired a reduction in rates especially the rates on freight. After making a statutory reduction in both passenger and freight rates, they then created the commission for the purpose of having some agency to compel the railroad companies to keep their charges within the limits of the statutory maximum rates. The commission was established to prevent the roads from making extortionate charges for the services they rendered. To this end, the commission was empowered to reduce rates on the special classes of freight which the law of 1875 established.

The personnel of the various commissions was never such as to excite admiration. The electorate of the State with a few exceptions did not chose as members of the commissions men whose previous training fitted them for the duties of the office. The result was that the railroad companies had at their command better rate experts and better lawyers than the commission had. In this way, the roads were ^{better (more easily)} more able to

convince the courts in a controversy between them and the commission of the justice of their claims. To some extent this fact explains why the courts issued so many restraining orders against the commission. As an attorney for the Wabash railroad recently said in the presence of one of the State officers: " We dont care very much what the commission does. We can get an injunction against it from the courts."

The rate-making powers of the commission under the law of 1875 were limited to a reduction of special class rates. Its power to classify and to fix rates were so limited and so restricted as to seriously hamper and impede its work.

Under the supplementary enactment of 1887 the commission was empowered to enforce upon the railroad companies reasonable rates. Its policy previous to the first decade of the twentieth century was to reduce rates upon individual complaint. For a period of thirty years after the enactment of the regulatory rate legislation of 1875 no material changes in rates were made by either the General Assembly or by the commission.

In the first decade of this century both the General Assembly and the commission adopted the policy of making extensive reductions in rates. In 1904, the commission issued a reduced freight rate schedule fixing maximum rates on all

classes of freight. In the same decade the General Assembly passed a series of laws making changes in both passenger and freight rates. These laws are the Maximum Freight Rate law of 1905 amended in 1907; the Maximum Freight Rate law of 1905 applying to undressed stone, brick, sand, etc.; the two cent passenger rate law of 1907; and the passenger rate law of 1911. In 1905, the commission issued a Maximum Express Rate Schedule. The commission was enjoined from enforcing any and all of these rate schedules and rate laws. At the time of its abolition the commission had no power over rates that was not in the process of construction and interpretation by state or federal courts.

The powers of the commission over service and over the annual returns made to it by the railroad companies were never viewed by the roads with sufficient anxiety to cause them to seek the courts for enjoining and restraining orders. As administered by the commission neither of these powers ^{was} ~~were~~ of any benefit to the people of the State.

In conclusion, it may be said that the railroad commission of Missouri at a later time known as the railroad and warehouse commission was simply an instrumentality by means of which the Granger movement in this State expended its force. For the Granger movement the regulatory legislation and the commission established in 1875 served as a safety valve.

The need of some effective agency for the control of public utility corporations in the State was apparent to every one. The efforts of the State to secure effective regulation of the rates and service of the public utilities had not been attended with satisfactory results.

In the legislative sessions of 1907, 1909, and 1911 various attempts were made to secure the passage of a law providing for some more efficient method of regulation and control. The efforts to secure more effective regulation took three forms.

In 1907, Governor Joseph W. Folk called the General Assembly into extra-session for the purpose of enacting such legislation as might be necessary for the regulation of the rates of public utilities. In the larger cities of the State the problem of securing reasonable rates and service from the public utilities operating there was a grave one. In his message to this session of the General Assembly the Governor pointed out that: " The rule of com-

petition fixes the charges of ordinary businesses upon a reasonable basis. However, where a corporation has a monopoly the public must either pay the price charged or do without the service. In such instances the law must step in and supply the regulation that is ordinarily done by competition.

" Railroad rates have been placed upon a reasonable basis by laws enacted to that end but there is no check to rates now charged by other public utility corporations.

"In furtherance of the principle of local self government I believe that the municipalities of the State should be empowered to fix reasonable rates to be charged by the public service corporations operating therein in order to prevent extortion from the public."(1)

In pursuance of the recommendation of the Governor the General Assembly in the session of 1907 passed an Act enabling the municipalities of the State to create by ordinance of the city council commissions to supervise and regulate the service and rates of public services corporations operating there.(2) In the legislative session of 1909 this law was amended and made to apply to cities of the

(1) Message of Gov. Joseph W. Folk to 44th General Assembly (extra-session) Jan. 1907, p.25.

(2) Laws of Mo., 1907, p.119.

first, second, and third classes.(1)

Under the provisions of these laws public utilities commissions were created in St. ^{Louis} Louis, Kansas City, and St. Joseph, Missouri.

Another line of direction which the efforts to secure effective control of public utilities took was an extension of the powers of the railroad and warehouse commission over the newer forms of public service corporations such as street railways, car companies, sleeping car companies, freight companies, freight line companies, steamboat, vessel boat, power boat companies, companies engaged in the manufacture, sale, and distribution of gas, and electricity for light, heat, and power, telephone, and telegraph companies, and companies engaged in the sale or distribution of water for any purpose whatever. It was generally felt that the experience of the State in regulating only one class of public service corporations, namely, the railroads through its railroad and warehouse commission was not not such as to justify this extension of the commission's powers.

The third line of direction which the movement for more efficient regulation ^{took} was the creation of a public service

(1) Ibid., 1909, p. 138.

commission modelled after the New York or Wisconsin commissions.

It was not until the session of the General Assembly of 1913 that the passage of a law providing for a public utilities commission was secured. This bill was drafted by John Atkinson, Assistant Attorney-General of the State during the administration of Governor Herbert S. Hadley. In both form and content the bill closely follows the Public Service Commission law of New York.

In analyzing this Public Service Commission Act passed by the Forty-Seventh General Assembly of 1913, it will be considered under the following captions:

1. Organization of the Commission;
2. Jurisdiction " " " ;
3. Authorization of public utilities;
4. Valuation powers of the commission;
5. Rate-making powers ;
6. Powers over Service;
7. Powers over Capitalization;
8. Powers over Annual Reports;
9. Power to compel the use of uniform

accounts.

10. Power to compel the maintenance of depreciation accounts;

11. Complaints;

12. Hearings and investigations.

13. Orders .

14. Procedure before the courts.

15. Statutes in conflict repealed.

1. Organization of the commission.

The public service commission consists of five members appointed by the governor. The governor also designates which member of the commission is to act as chairman. The following qualifications are prescribed for the commissioners:

a. Resident of Missouri;

b. Five years residence in the State previous to the date of appointment;

c. Qualified voter;

d. Twenty-five years of age.

A person having any official or pecuniary interest in the public utility corporations under the jurisdiction of the commission is disqualified for membership on the com-

mission.(1)

The term of the members of the commission is six years. The governor is empowered to designate which members of the first commission serve two, four, and six years. After the expiration of the terms of service of the present commissioners the term is six years. (2) Vacancies in the commission are to be filled by appointment by the governor.

The salary of the commissioners is fixed at \$5500 each. The salary of the counsel to the commission is fixed at \$4500 a year; the salary of the secretary of the commission is \$3600; and the compensation of the other employes of the commission such as examiners, inspectors, engineers, auditors, and experts is to be fixed by the commission.(3) The commissioners and all employes of the commission are to have reimbursed to them all actual traveling expenses incurred in the discharge of their official duties.(4) All salaries paid by the commission are to be audited monthly by the State auditor and disbursed monthly on the order of the auditor.

The commissioners may be removed by the governor for

- a. neglect of duty;
- b. inefficiency;
- c. misconduct in office,

(1) Senate Bill No. 1 (engrossed and signed by Governor), p. 11.

(2) Ibid., p. 7.

(3) Ibid., pp. 11, 13.

after giving to each commissioner a copy of the charges and an opportunity to be heard in his own defense. If the commissioner is removed the governor must file a statement of the charges and a copy of his findings thereon in the office of Secretary of State. The legislature is also given power to remove a commissioner by a two-thirds vote of all the members elected to each house after ten days notice in writing of the charges and a public hearing for dereliction of duty, corruption, or incompetency.(1)

A majority of the commissioners constitute a quorum and can perform any duty of the commission. One commissioner may hold hearings and investigations and his order when approved by the commission is deemed to be the order of the commission.(2)

The principal office of the commission is located at Jefferson City, Missouri, where the commission shall reside. The commission is given a seal with which to authenticate copies of records. This seal bears the inscription: "Public Service Commission of the State of Missouri."(3)

The Act provides for an attorney or counsel for the commission to be appointed by the governor for a term of six

(1) Ibid., p. 7.

(2) Ibid., p. 12.

(3) Ibid., p. 12.

years. The attorney must possess the same qualifications for office that the judges of the Missouri Supreme Court possess. He may be removed by the governor in the same manner that a commissioner can be removed. The duties of the attorney are :

1. To represent the commission in all actions and proceedings to which it is a party;
2. To prosecute violations of the law or orders of the commission to a final determination;
3. To advise the commission.(1)

The commission is entitled to employ a Secretary. He serves at the pleasure of the commission. The duties of the Secretary are :

1. To keep a record of the proceedings of the commission;
2. To keep in his custody the documents of the commission;
3. To have general charge of the office.

(1) Ibid., p. 9.

2. Jurisdiction of the Commission.

The jurisdiction of the commission extends to all

a. Railroads and transportation of property and persons and corporations engaged in operating such transportation;

b. Common Carriers which are defined as railroad corporations, street railroads, express companies, car companies, sleeping car companies, freight companies, freight line companies, steamboat, power-boat, vessel-boat companies, ferry companies, and every company or person controlling any agency for public use in the conveyance of persons or property;(1)

c. All persons, companies, and corporations engaged in the manufacture, sale, and distribution of natural or artificial gas for light, heat, or power;

d. All persons, companies, and corporations engaged in the manufacture, sale, or distribution of electricity for light, heat, or power;

e. All telegraph and telephone companies, corporations, and plants;

f. All water corporations and plants

(1) Ibid., p. 3.

engaged in supplying and distributing water for any purpose;

g. All public utility corporations and persons.(1)

3. Authorization of public utilities.

Without the consent of the commission no common carrier, gas, electrical, water, telephone, and telegraph company, corporation, or person engaged in supplying these utilities shall begin the construction of a plant, line or extension of its service without first securing from the commission a certificate of authorization showing the present or future public necessity for such construction or extension. (2)

However, no certificate of authorization is required for an extension of the service of a public utility into a field not heretofore served by a similar public utility. In case of conflict and interference of one public utility with another public service corporation the injured utility may make complaint to and the commission, ^{which} fixes the terms upon ^{which}

(1) Ibid., p. 14.

(2) Ibid., pp. 54-56; 85; 116.

the utilities shall operate.(1)

4. Powers of the commission over valuation.

The commission is empowered to determine the value of property of all public utilities and every fact bearing on value.(2) The commission is empowered to make revaluations from time to time. For the purpose of ascertaining facts bearing on value the commission is empowered to enter upon the property of any public utility under its jurisdiction, to make investigations, to hold hearings, and to resort to any available source of information. The evidence which is adduced at these investigations and hearings and the findings of fact thereon by the commission are to be reduced to writing and certified to by the seal of the commission and are conclusive evidence of the facts or acts therein stated.(3)

(1) Ibid.

(2) Ibid., pp. 65-66; 95-96; 124-125.

(3) Ibid.

5. Rate-making Powers of the commission.

It is the duty of the public utilities under the jurisdiction of the commission to print, to post, and to file with the commission their schedules of rates. Common carriers are required to furnish their patrons, upon request, written statements of the rates applicable to shipments between points within this State. A common carrier failing to furnish such a statement to a patron is made to forfeit to the use of the State a penalty of not less than \$200 or more than \$300. In addition, the common carrier is made liable to the injured party for damages to the amount of the injury with interest at six percent.(1)

The public utilities cannot make any change in their rates which have been filed with the commission without the consent of the commission except upon thirty days notice to the public and the commission.(2) Any changes in the rates made by a public utility must likewise be printed, posted, and filed with the commission.(3) The public utilities are forbidden to charge unreasonable rates, to charge more than the published rate, to give rebates and preferential rates, and to engage in the business of a public utility

(1) Ibid., pp. 23-31; 73, 74, 76, 77-80, 82-83; 102-105, 111-112, 114.

(2) Ibid.

(3) Ibid.

without having first filed with the commission their schedules of rates.(1)

On its own motion or upon complaint, the commission can, when it feels that the rates which have been filed by the public utility are unjust or insufficient to yield a fair return for the service with due regard among other things to a reasonable average return on the value of the property used in the public service and to the necessity of making reservations out of income for contingencies and surplus, fix maximum rates of charge. These maximum rates of charge fixed by the commission must be reasonable and must be fixed after the commission has given the interested parties an opportunity to be heard.(2)

Pending an investigation the commission is empowered to suspend any new rate, regulation, or classification filed by the public utility for a period of 120 days, and if the commission deems necessary it may extend the period of suspension to six months.(3) On its own motion or upon complaint the commission may hold hearings as to ^{the} propriety of the new rate or regulation. At these hearings the burden of proof as to the reasonableness of the rate or regulation is placed upon the public utility making the new rate or

(1) Ibid.,
(2) Ibid.
(3) Ibid.

regulation.(1)

The commission is empowered to establish joint charges for common carriers whose lines connect whenever the common carriers fail to file their joint rates within the prescribed date for filing, and to compel the common carriers to agree on a basis for the distribution of the cost and earnings of the joint service.(2)

Furthermore, the commission may apply by petition to the Inter-State Commerce Commission for relief from the excessive or discriminatory charges and the inadequate service of public utilities engaged in inter-state commerce.(3)

(1) Ibid.
(2) Ibid.
(3) Ibid.

6. Powers of the commission over service.

Common carriers are required to provide sufficient cars to meet the needs of the service, to furnish sufficient motive power to meet the requirements of the service, and are forbidden to discriminate in the distribution of cars.(1)

The commission is empowered to regulate

- a. Car distribution;
- b. the amount of free time for loading and unloading cars;
- c. Demurrage charges;
- d. The free delivery zones of express companies.(2)

The commission is given authority to compel common carriers to provide suitable weight testing cars for testing track scales, to compel the roads to haul the car free of charge, and to fix the fees for the use of the weight testing car. The commission is empowered to divide the cost of the car among the roads, and to exercise supervision and control over it.(3)

(1) Ibid., p. 33.
(2) Ibid., p. 34.
(3) Ibid., p. 34-35.

The commission is given general supervision of the business of common carriers and is empowered to examine into their condition, capitalization, franchise, and the management of their properties with a view to adequate service and obedience of the common carriers to the law and to the orders of the commission.(1)

The commission is given authority to compel railroad companies to furnish once each year an inspection train for the use of the commission in making physical inspections of the roads.(2) The cost of the transportation of the commissioners in making inspections may be paid by the commission if it so elects.

The commission is empowered to compel common carriers to use

- a. Sufficient cars to meet public needs;
- b. Sufficient motive power to meet the requirements of the service;
- c. To compel the running of trains on schedule time and to compel the running of a sufficient number of trains;
- d. To compel common carriers to provide adequate service.(3)

(1) Ibid., p. 37.

(2) Ibid.

(3) Ibid., p. 53.

d. To appoint inspectors of gas, water, and electrometers;

e. To test meters at the request of the consumer and to charge the inspection or testing fee to the public utility if the gas meter is found to be incorrect to the prejudice of the consumer to the extent of more than two percent; electrometer - to the extent of more than four percent; and water meter- to the extent of more than five percent. If the meters are found incorrect to the prejudice of the consumer to an extent less than enumerated, the consumer pays the testing fee.(1)

The powers of the commission over the service of telephone and telegraph companies are,

a. To compel connections between telephone lines, and between telegraph lines where the public convenience will be promoted;(2)

b. To compel the introduction and installation of repairs and improvements in the service adequate to serve the public needs.(3)

(1) Ibid., pp.74, 75, 84, 85.

(2) Ibid., p. 113.

(3) Ibid., p. 116.

It is made the duty of common carriers to give to the commission immediate notice of accidents. It is the duty of the commission to investigate the causes of all accidents which result in loss of life or injury to persons or property along the line of the common carrier.(1)

The commission is empowered to fix regulations governing transfers on street railways(surface).(2)

The commission is authorized to compel, after a hearing, the interchange of cars of freight and to fix the basis of the division of the costs and earnings of the joint service.(3)

The commission has power to determine and compel, by order, the introduction and use of safe and adequate regulations, practices, and equipment by common carriers.(4)

The powers of the commission over the service of persons, companies, and corporations engaged in the manufacture, sale, and distribution of gas, electricity, and water are:-

- a. To supervise the service, its quality and purity;
- b. To fix standards of measurement for testing the quality of service;
- c. To approve of meters;

(1) Ibid., p. 40.
 (2) Ibid., p. 48.
 (3) Ibid., p. 47.
 (4) Ibid., p. 45.

7. Powers of the commission over capitalization.

The Act declares that the right of public service corporations to issue stocks, bonds, and other evidences of indebtedness, and to create liens upon their property is a special privilege which is subject to State regulation and control by the commission.(1) Without the consent of the commission no public utility is entitled to issue any evidences of indebtedness which are payable in more than one year after the date of issue. A public utility may, with the consent of the commission and after having obtained from the commission a certificate of authorization, issue stocks, bonds, and other evidences of indebtedness payable in more than one year after the date of issue for the following purposes:

- a. To acquire property;
- b. To construct, complete, extend, or improve its facilities;
- c. To maintain its service;
- d. To discharge or refund its lawful obligations;
- e. To reimburse moneys expended from income;

(1) Ibid., pp. 57, 86, 117.

f. To reimburse any other moneys in the treasury of the corporation not secured from an issue of stocks, bonds, and other evidences of indebtedness payable in more than one year from date of issue within five years prior to the date of the filing of the application for an authorization to make the issue.(1)

The certificate of authorization granted to a public utility seeking permission to issue stocks and bonds shall state

- a. The amount of the issue;
- b. The purposes to which the proceeds derived from the sale of the issue are to be applied;
- c. That the property bought by the proceeds derived from the sale of the issue of stocks or bonds is reasonably necessary to the public convenience.(2) The public utilities are forbidden to devote the proceeds of an issue of stocks and bonds to any purposes other than those specified in the certificate of authorization given by the commission.(3) The commission is empowered to compel each public utility to account for the disposition of the proceeds of a sale of the evidences of indebtedness and to insure the disposition of the proceeds to the purposes specified.

(1) Ibid., pp. 59 -60, 89 -90, 119 -120.

(2) Ibid., p. 90.

(3) Ibid., pp. 61, 90, 120.

The commission is forbidden to authorize the capitalization of the franchise of any public utility beyond the amount (exclusive of any tax or annual charge) actually paid in consideration for it to the State or political subdivision of the State.(1)

No public utility is permitted to dispose of or encumber its property use^d in the public service without the consent of the commission.(2)

No public utility corporation is permitted to acquire more than ten percent of the total capital stock of any other public utility engaged in a similar business without the consent of the commission and except where the stock is held as collateral security.(3)

In the reorganization of any public utility the commission is empowered to determine the amount of the capital stock which must not exceed the fair value of the property involved and taking into consideration

- a. The original cost of construction;
- b. Duplication costs;
- c. Present condition of the property;
- d. Other relevant facts.

The commission may impose reasonable conditions upon any

(1) Ibid., 61, 91, 121.
(2) Ibid., 57, 87, 117.
(3) Ibid., 58, 88, 118.

reorganization.(1)

The capital stock of a public utility corporation formed by the merger or consolidation of two or more public utilities ^{must} not exceed the sum of the capital stock of the corporation consolidated at its par value and any additional sum actually paid in cash.(2) A public utility is forbidden to capitalize any contract or lease for consolidation or merger or to issue any evidences of indebtedness against it.(3)

(1) Ibid., pp. 68, 97, 127.
(2) Ibid., pp. 61, 91, 121.
(3) Ibid.

8. Powers of the Commission over annual reports.

It is made the duty of the public utilities under the jurisdiction of the commission to make a report to it annually and at such other times as the commission may demand. The commission is empowered to determine the form of the report, the period of time covered by the report, and the date of filing it with the commission.(1) The reports of the public utilities made to the commission annually must show in detail the following items:

a. The amount of the authorized capital stock, the amount of capital stock issued and the amount outstanding;

b. The amount of the authorized bonded indebtedness, the amount of bonded indebtedness issued, and the amount of bonded indebtedness outstanding;

c. The receipts and expenditures for the preceding year;

d. The names of the officers, and the aggregate amounts paid in salaries and in wages;

e. The location of the plant with a full description of the property and franchises and how each came.

(1)Ibid., pp'38 -40, 77, 108 -109.

to be owned;

f. Such other facts pertaining to the operation and maintenance of the plant and the affairs of the public utility as the commission may require.(1)

In reference to common carriers the commission is empowered to prescribe the form of the report and the character of information it shall contain. The commission is required to furnish blank reports to the common carriers not later than June 30. This blank report provided by the commission must conform as nearly as may be to that furnished to the common carriers by the Inter-State Commerce Commission. It is the duty of the common carriers to file their reports with the commission not later than September 30.(2) the commission must preserve the original of these reports in its office. Furthermore, the commission is authorized to require of common carriers periodic reports and specific answers to questions that it may ask.(3)

Reports of the Commission.

All proceedings, documents, and records of the commission are declared public records.(4) It is

-
- (1) Ibid., pp. 77, 108.
 - (2) Ibid., pp. 38 -39.
 - (3) Ibid., p. 39.
 - (4) Ibid., p. 17.

the duty of the commission to make an annual report to the governor on the second Monday in January.(1) This report is to be laid before the next succeeding legislature. The findings , orders, and decisions of the commissioner to be compiled by the Secretary for publication in a series of volumes which are to be designated " Reports of the public service commission of the State of Missouri.(2)

9. Power of the commission to compel the use of uniform accounts.

The commission is empowered to compel the introduction and use of a uniform system of accounting by the several classes of public utilities under its jurisdiction.(3) In reference to common carriers the commission may prescribe a form of accounting that will cover the movement of the traffic. The system of accounting prescribed for common carriers by the commission must conform to that employed by the Inter-State Commerce Commission.(4)

(1) Ibid., p. 17.
(2) Ibid.
(3) Ibid., pp. 53, 76, 109.
(4) Ibid., p. 53.

10. Power of the commission to compel the maintenance of depreciation accounts.

The commission is authorized to compel the public utility corporations under its jurisdiction to carry an adequate depreciation fund in accordance with the rules and regulations it prescribes.(1) The commission may fix adequate rates of depreciation for the several classes of property of the public utility and the public service corporation must conform its depreciation accounts to the rates so fixed. The moneys for the depreciation fund are to be set aside for that purpose out of earnings and the income from the investments of the moneys in that fund are to be carried in the depreciation fund.(2) The public utility can expend the moneys in the depreciation fund under such rules and regulations as the commission may prescribe.(3)

(1) Ibid., 68, 97, 126-127.

(2) Ibid.

(3) Ibid.

11. Powers of the commission over complaints.

Any person feeling himself injured by the rates, regulations, or practices of a common carrier may make complaint to the commission by petition or in writing. The commission shall forward a copy of the complaint made to it to the common carrier complained of and may accompany it with an order directing the common carrier to render satisfaction to the complainant.(1)

Upon the receipt of a complaint, in writing, made by the mayor, president of the board of aldermen, or a majority of the council or the commission or any other legislative body of the city, town, village, or county where the alleged violation of the law or the order of the commission has occurred or by not less than twenty-five consumers, as to the service or the charges of any gas, electric, or water public utility, it becomes the duty of the commission to investigate the cause of the complaint. After a hearing and an investigation the commission is empowered to fix maximum rates of charge and may order an improvement in the service afforded by these public utilities.(2)

A person may also make complaint of the rates or service of telephone or telegraph corporations to the commission. Upon receipt of the complaint it becomes the duty

(1) Ibid., p. 41.

(2) Ibid., p. 98.

of the commission after an investigation to direct the public utility concerned to rectify the matters concerning which complaint was made.(1) A person, corporation, commercial or political organization, or public utility may complain.

12. Powers of the commission over hearings and investigations.

The commission is authorized to hold hearings, conduct investigations, summon witnesses, and compel the production of books, papers, documents, and other records.(2) The commission is empowered to adopt rules governing hearings and the taking of testimony, and is not bound by the technical rules of evidences.(3)

13. Power of the commission to make and enforce orders.

The commission is empowered to make and enforce its orders in reference to the service, rates, and reports of the public utilities under its jurisdiction. The orders of the commission may be served upon the public utility by messenger or by mail. Every order of the commission becomes effective thirty days after the date of service. For

(1) Ibid., p. 110.

(2) Ibid., pp. 38, 65 -66, 76, 79, 80, 95, 107, 125, 130, 131.

(3) Ibid.,

a violation of an order of the commission the public utility is made to forfeit to the State the sum of one thousand dollars; each days continuance of the violation is a distinct offense.(1) The penalty for the violation of the order of the commission is to be recovered in an action begun by the counsel for the commission.

14. Procedure before the courts.

A public utility affected by an order of the commission is entitled to seek redress from the courts. However, no public utility is entitled to an action in the courts until it has made application to the commission for a re-hearing. This application must set forth the reason why the public utility considers the order of the commission unlawful or unreasonable. The application for a re-hearing does not stay the operation of the order of the commission.(2)

Within thirty days after the commission has acted on the application for a re-hearing the public utility may apply to the circuit court of the county where the hearing was held or where the commission has its principal office for a writ of

(1) Ibid., pp. 45, 71, 100, 106, 113.

(2) Ibid., p. 133.

review in order that the lawfulness or the reasonableness of the order issued by the commission may be determined.(1) No evidence not introduced at the hearing of the commission may be brought before the court.(2) The court hears the cause without the intervention of a jury on the evidence and exhibits introduced before and certified to by the commission.(3)

If the circuit court reverses the order of the commission because of its failure to receive testimony properly proffered the court remands the cause to the commission with instructions to enter a new order based upon the testimony it is directed to receive.(4)

The only courts in this State that have jurisdiction to reverse, correct, or suspend the operation of an order of the commission are the circuit courts and the State Supreme Court on appeal.(5)

The pendency of a writ of review does not stay the operation of an order of the commission unless the court so directs. No order of the circuit court staying the operation of the order of the commission can be entered except upon three days notice and after a hearing.(6)

(1) Ibid., p. 134.

(2) Ibid.

(3) Ibid., p. 135.

(4) Ibid.

(5) Ibid.

(6) Ibid.

If the order of the commission is reversed by the circuit court the judgment of the court does not take effect until the party seeking the review of the order of the commission files a suspending bond approved by the court.(1)

Whenever the circuit court stays the operation of an order of the commission respecting the charges or classifications of a public utility the court must direct the public utility affected to commit to the custody of the court all sums of money in excess of the amount it would have charged and collected if the order of the commission had not been suspended.(2)

All money collected by the public utility in excess of the amount authorized by the decision of the court together with the interest thereon must be returned to the persons entitled to it in the manner the court directs.(3)

All actions against the commission are given priority in the circuit courts over all causes other than election contests.(4)

A public utility may appeal from the judgment of the circuit court to the supreme court of this State. The original transcript of the record, testimony, and exhibits

(1) Ibid., p. 136.
(2) Ibid.,
(3) Ibid., p. 137.
(4) Ibid., p. 138.

certified to and filed by the commission in the circuit court together with the transcript of the proceedings of the circuit court constitute the record of appeal to the supreme court.(1) A public utility making an appeal to the supreme court must file a cost bond at the discretion of the court. If the supreme court suspends an order of the commission then the public utility must also file a suspending bond with the court.(2) Upon an appeal to the supreme court the cause is placed on the docket of the then pending term and is given precedence over all civil causes of a different nature.(3)

15. Statutes in conflict repealed.

The Act repeals sections 9568, 9569 and 9570, article 8, chapter 84, Revised Statutes, 1909, and all acts and parts of acts in conflict with its provisions.(4) The provisions of this Act are intended to be supplementary to all laws not directly in conflict with them.(5)

After the date of the taking effect of the Act all the

(1) Ibid., p. 139.

(2) Ibid.

(3) Ibid.

powers and duties of the board of railroad commissioners or of the board of railroad and warehouse commissioners imposed by statute in relation to public utilities are conferred on the public service commission.(1) It is made the duty of the board of railroad and warehouse commissioners to transfer its records to the public service commission.(2) This Act does not affect pending civil or criminal action brought by or against the board of railroad and warehouse commissioners, and pertaining to the public utilities under the jurisdiction of the commission.(3) All orders of the board of railroad and warehouse commission relating to public utilities continue in force until repealed by the public service commission.(4)

Since there were no adequate provisions of law for the regulation and control of public utilities the Act declares that an emergency exists within the meaning of the Constitution therefore this Act was made to take effect on and after April 15, 1913.(5)

(1) Ibid., p. 146.

(2) Ibid.

(3) Ibid.

(4) Ibid., p. 147.

(5) Ibid., p. 149.

The public service commission Act of April 15, 1913 establishes a commission with ample power to regulate and control the rates, service, and capitalization of the public utilities operating in Missouri. The enactment of such a law by the Forty-Seventh General Assembly of 1913 was a piece of progressive and constructive legislation which it is hoped that the State will follow out in other lines of administration.

Recently Governor Elliott W. Major appointed the members of this first commission. In general his appointments are commendable. The Governor appointed the following men to the commission:

H. B. Shaw, formerly Dean of the School of Engineering, University of Missouri, (Democrat);

John Atkinson of Doniphan County, Assistant Attorney-General during the administration of Governor Herbert S. Hadley. Mr Atkinson drafted the Act creating the commission (Democrat);

John Kennish, formerly Judge of the State Supreme Court (Republican);

Frank A. Wightman, member of the last railroad commission, (Republican);

The Governor has not announced the

appointment of the fifth commissioner.

The public service commission Act of 1913 establishes the principle of State-wide control of public utilities. The laws of 1907 and of 1909 under authority of which the municipalities of the first, second, and third classes were enabled to control their public utilities through local commission are repealed. Under the provisions of the Act of 1913 municipally owned or operated public utilities are placed under the jurisdiction and control of the commission.

The commission, controlling as it does millions of dollars of corporate property, and the destinies of the employes and owners of the public utilities, may be made an agency for good or for evil. In this respect the remarks of a manager of one of the leading public utilities in the United States, Theodore N. Vail of the Bell telephone system, are in point:

" It must be admitted that regulation and control by commission has become a permanent feature of our economic policy particularly as to utilities. That being so, it is essential for the well being of the community that such regulation and control should be effective, equitable,

acceptable to the public, and final. There must be absolute confidence on the part of the public in its constituted commission and the public utilities must have confidence in its fair intent and equity. To deserve this confidence the members of the commissions must be of a high order, free from prejudice or political favoritism or bias; and not only competent to but also determined to render their decisions on the showing of fact without regard to popular clamor on the one side or corporate pressure on the other. To secure this type of commissioners there must be permanency of term and lapse of time sufficient to obtain an accumulation of practice, experience, and precedent, and a thorough co-operation between the public, the commissions, and the public utilities with confidence, deference, dependence, and absolute frankness on every side."(1)

(1) Vail, Theodore N., Public Utilities and Public Policy, Atlantic Monthly, March, 1913, p. 311.
Atlantic Monthly Company, Boston, Mass.

Appendix "A"

Comparison of Missouri and Wisconsin, in 1875, as to

1. Ratio of railroad mileage to population:
Number of inhabitants per mile of railroad:
Missouri677
Wisconsin490

Excess in Mo. 187.(1)

2. Total Mileage Operated(railroad):
Missouri3050
Wisconsin2565

Excess in Mo. 485.(2)

3. Receipts:
Gross:

Missouri\$16,000,000
Wisconsin 10,952,427

Excess in Mo. 5,047,405.(3)

Gross Passenger:

Missouri4,000,000
Wisconsin 2,960,595.

Excess in Mo. 1,039,405.(4)

(1) Cf. Report of Wisconsin R. R. Com., 1875, p. 10 with
Report of Mo. R. R. Com., 1875, p. 12.

(2) Cf. Report of W.R.R. Com. 1875, p. 10 with MO. R.R. Com., 1881,
p. 13/

(3) Ibid. with Mo., 1883, p. 9/

(4) Ibid.

Appendix "B".
Occupational Distribution of R. R. Commissioners 1875-1913

Lawyer	Civil Engineer	Locomotive Engineer or Fireman	Passenger Conductor
Breathitt	Harding Pratt	Flory Hennessey Rice	Wightman

Brakeman	Merchant	Journalist	Farmer
Oglesby	Marmaduke	Knott	Sevier Downing Hickman Cowgill McCully

Appendix "C"

I. Influence of the law of 1875 on railroad development in Mo:
Comparison of the year, 1875, with the year, 1877: as
to:

1. Gross Passenger Earnings:

Year of 1875	\$15,826,450
Year of 1877	14,932,390

Excess for 1875 894,060 percent
cent of decrease for 1877 equals05(1)

2. Gross Passenger Earnings per Mile of road:

Year of 1875	\$5,189
Year of 1877	4,681

Decline 508 percent
cent of decline equals09(2)

3. Number of Miles Constructed:

Year of 1875	170
Year of 1877	120

Decline 50
Percent of Decline29(3)

(1) Report of Mo. R. R. Com., 1883, p. 13.
(2) Ibid.
(3) Ibid., 1881, p. 9.

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