

FREIGHT-RATE BRIEF PUTS PROOF'S BURDEN ON ROADS

SHIPPERS FILE DOCUMENT WITH INTERSTATE COMMERCE COMMISSION.

ATTORNEYS' ARGUMENT

Representatives of Illinois Manufacturers Say That Carriers Must Show That Management is Both Efficient and Economical—Tariff Must Relate Value of Property.

Washington, Jan. 8.—That the railroads of the United States have not demonstrated that their management is both efficient and economical, is the contention made in a brief filed with the interstate commerce commission by W. D. Haynie and H. C. Lust on behalf of the Illinois Manufacturers' association, in the pending investigation of proposed advances in freight rates.

It is evident that there is no presumption one way or the other that the carriers are efficiently and economically operated," says the brief, "and, as the burden rests upon them under the interstate commerce act to prove their cases, they must show efficient management."

It is maintained that this proof has not been demonstrated because "railroad management shows the same evils today as many years ago," when it became necessary to institute governmental regulation of the carriers.

Rates. While the brief deals generally with the rate situation throughout the country, it makes particular reference to proposed advances in western trunk-line territory. These are not advances on class rates, but on commodity rates, approximately 60 commodities being selected to bear the proposed increases.

It is urged that a part of the burden of proof is to show that the rates as to particular commodities affected are reasonable. This, it is submitted, has not been done. Much argument has been submitted on what constitutes a reasonable rate.

"The entire content," asserts the brief, "that it is the value of the service to the shipper, namely, all that the freight will bear. We maintain that all the carrier is entitled to earn is a return not to exceed 6 per cent upon the amount actually invested in good faith in the property, provided it has been efficiently operated, and the rates which yield such a return do not burden the public unduly."

"Where it is sought to make a blanket schedule of rates for many roads in the same territory, it is obvious that inequality and injustice may be done. One road may have cost a hundred million dollars; another road may have cost two hundred millions dollars—all in good faith."

"If you limit the rates so that the cheaper road only earns 5 per cent, you give a less return to the more expensive one, and conversely, if you give a six per cent return to the expensive road, you give an exorbitant return to the cheaper one. We take it that there is no problem before this commission today more important or more perplexing."

It is contended that the proper basis of rates "is the actual investment of the carrier in good faith if the road is efficiently operated and the rates are just to the people. The reasonable rate not only must give only a reasonable return to the road, but it should not exact from the public more than a reasonable sum for the service performed. If it does, the rate cannot stand."

"The carrier must show that the particular commodity on which it is desired to advance the rate can stand the advance, that the rate is not out of line as to other localities."

"Then if the carrier shows that the rate will only yield to it a reasonable return according to its standard of measurement, that its road has been efficiently operated, and that the rate will not be oppressive or unreasonable to the public, the carrier has made out a prima facie case under the statute."

"If it has not made out such a case, this commission is without power to grant an increase."

Analysis. Following these broad principles comes an analysis of the case as presented to the commission in the testimony. This proves, it is contended, that "the carrier has not made out a case, and, therefore, are not entitled to any increase."

It is admitted that the railroads need encouragement of a substantial kind and that the carriers have performed a wonderful service, but it is pointed out that they have reaped stupendous rewards and have shared to a remarkable degree in the prosperous conditions they have helped to create.

As to the best way to meet existing conditions, various court decisions are cited in support of the proposition to base the rate upon the cost in good faith of the average railroad in any given territory. It is suggested that in some way, at some time, the value per mile of road will be established as a basis for the freight rate on that particular road.

Attention is directed to the argument (Continued on Page Seven.)

WINDY CITY SUFFERS IN STORM

Chicago, Jan. 8.—One man was killed and one other seriously hurt and much damage was done to electric signs and windows here today by a windstorm which struck the city soon after noon. The wind, which came from the west, gained in violence until at 3 o'clock a 42-mile gale was blowing. At 6 o'clock it dropped to 40 miles an hour.

The gale was accompanied by a drop in temperature from 40 degrees about, at 9 o'clock, to 16 at nightfall. A further drop to 10 was predicted.

A large iron sign protruding from the third floor of a building on Halsted street was torn from its fastenings. It caught a smaller sign, and both fell with a crash, killing one man and injuring another.

The wind caused such a storm on the lake that boats did not venture out of port.

WHITE-HAIRED BOY IN CUBAN ISLE IS GOMEZ

PRESIDENT OF HAVANA WRAPPED COUNTRY SITS FIRMLY IN SADDLE.

Havana, Jan. 8, Tuesday.—As the second year of Cuba's second independence draws to a close, it finds the administration of General Gomez apparently more firmly entrenched in power than any previous time since the termination of the provisional government of Governor Magoon.

So far as appears on the surface, General Gomez dominates the situation and enters on the third year of his administration under much better auspices than those that attended his inauguration, succeeded, as that was, almost immediately by a clash between the president and the vice president, Zayas, over the appointment of Ricardo Arnato as chief of the secret police. This came very near to disrupting the administration.

As this apparent stability of the government is curiously at variance with the many alarming reports of threatened revolution and an impending third and last intervention, which recently have been circulated in the United States, and which have been received here with expressions of astonishment, coupled with the general belief that they have been largely manufactured by a propaganda inimical to the Cuban self-government.

Though the president has not been able to enlist in his support the better element of the Cuban people and has incurred the animosity of some men most influential, the fact remains that Major General Jose Miguel Gomez is well seated in the saddle.

The government finds itself facing a period of probable immunity from agitation that will continue many months. With the sugar-grinding season in full operation and the greater part of the laboring people employed, all thought of revolution is believed far from their minds.

The only exception to this condition is found in the province of Pinar del Rio, where there is reported to be much distress and much muttering of discontent, but this condition has been practically normal in that province for years.

August is the political cyclonic season in Cuba, because work is then scarce and the political campaigns are in full blast. It is possible that the malcontents may be heard from anytime, but until then Cuba appears sure of peace.

CRIMINAL CAUGHT.

San Francisco, Jan. 8.—Joseph Conigli, alias Goldberg, alias "Jesky the Nigger," a notorious criminal who is wanted in several states, was captured here today at the aviation grounds. The chief mark against him is from Brooklyn. He is wanted there on a charge of grand larceny. The police say that he with four other men was arrested there a year ago on the charge of writing threatening letters to face track men demanding thousands of dollars and threatening to poison horses and do other cruel things if the money was not delivered.

ON SUSPICION.

Oklahoma City, Jan. 8.—George L. Evans is under arrest here pending an investigation of the death of his wife, who was found in their home here this morning supposedly poisoned. A partly emptied bottle of carbolic acid was in the room, but physicians say there are no indications that the woman died from the effects of it. An autopsy will be held Monday. Evans is a newspaper man from Des Moines, Iowa.

IN HELL'S ANTEROOM



GOVERNOR TO NAME YOUNGER ELKINS SENATOR

EXECUTIVE OF WEST VIRGINIA MAKES ANNOUNCEMENT OF INTENTION.

Charlestown, W. Va., Jan. 8.—Davis Elkins, son of the late United States Senator Stephen B. Elkins, will be the successor to the vacancy caused by the death of his father for the few days that will elapse pending the election of a senator by the legislature.

UP-AND-DOWN WAR ON AVIATION FIELD

San Francisco, Jan. 8.—Owing to dangerous cross-currents of wind that swept across the peninsula today the aviators at Camp Seward were forced to give a tame exhibition to the crowd of close to 100,000 that had gathered in and out of the field to witness the flights.

WASHINGTON SOLONS HAVE PLAIN PATTERN

Olympia, Wash., Jan. 8.—The Washington legislature will meet tomorrow with organization half perfected, it having been decided at conferences of the members that Howard D. Taylor of King county shall be speaker of the house and W. H. Paul Hamus of Pierce county, president of the senate.

AMPLE CAPITAL READY TO BOLSTER UP BANKS

New York, Jan. 8.—A meeting of representatives of several large financial interests, bankers and others, was held tonight at the home of Paul D. Cravath, a lawyer, and steps were taken to prevent the closing of the Madison Trust company, closed yesterday as an indirect result of the operations of Joseph G. Robin, the fallen banker now in prison.

LISBON IS AROUSED BY PAPERS

Lisbon, Jan. 8.—The popular fury aroused by the publication of a copy of the monarchist newspapers culminated today in violent manifestations. The offices of three newspapers were wrecked, and it was necessary to order out troops to disperse the mobs. Soldiers are now guarding the premises.

COLD WAVE COMING FROM ALASKA

Abnormal temperatures will attend the season's rainfall has been greatly deficient. A disturbance over Lake Michigan today will reach the Atlantic states Monday, attended by unsettled weather and local snows.

WOUND IS FATAL.

Winemucca, Nev., Jan. 8.—Mrs. Jean Quillof, whose husband was shot dead by bandits in the holdup of his saloon at Inlay last Friday night, and who was shot in the back by one of the robbers, died at noon today in the county hospital here of her wounds. At least one of the bandits is at large, pursued by the sheriff with a posse. Two men, who were tracked from the scene of the robbery and murder by an Indian trailer, were arrested the morning after the crime was committed and are being held for examination in the county jail.

MRS. ROCHESTER DIES.

Butte, Jan. 8.—(Special.)—Mrs. Alice Middleton Rochester, wife of Nesbit Rochester, cashier of the Miners' Savings bank of this city, died this morning after a brief illness of bronchitis. She was a native of Bowling Green, Ky., where she was born 32 years ago. Surviving are her husband, two small children and relatives in Kentucky, where the body was shipped tonight, accompanied by Mr. Rochester.

COREY IS OPTIMISTIC AS TO YEAR'S OUTLOOK

Pittsburg, Jan. 8.—"The new year looks hopeful and business at present is encouraging, but at this early date it would be impossible to give more than a casual forecast of the prospects for 1911."

WINDY IN COLUMBUS.

Columbus, Ohio, Jan. 8.—From 8:45 to 9 o'clock tonight the wind blew 72 miles an hour in Columbus, exceeding by 16 miles an hour the highest record in 1910. The temperature is falling rapidly.

CANAL-ZONE FORTIFICATIONS PERMITTED BY AGREEMENT

COAL-LAND VALUES INCREASED

Washington, Jan. 8.—Activities of the geological survey in the classification and valuation of the government's western coal lands, begun in 1908, have resulted in an increase of the price set upon the lands of more than \$4,000,000, according to a statement issued by that bureau today. The survey has appraised 14,682,839 acres, with values in some tracts ranging upward of \$400 an acre. The work has been done on the basis of the actual tonnage under each 40-acre tract. The total price set upon the land is \$625,944,849. Under the former system of selling at the minimum prices fixed by the coal law, says the statement, "these lands would have been priced at \$212,020,024, or a difference of over \$400,000,000." The survey also has recommended for restoration to entry within this period 33,368,189 acres as non-coal lands.

FORMER SENATOR FORAKER EXPLAINS DETAILS OF TREATY TO PRESIDENT.

RIGHT TO PROTECT CLEAR

Communication to Taft Deals With Discussion Held by Writer With Former Secretary of State in Regard to Hay-Pauncefote Convention—Tacit Understanding Shown.

Washington, Jan. 8.—A contribution designed to clarify the confused situation that has arisen over the right of the United States to fortify the Panama canal was submitted today by former Senator Foraker of Ohio to President Taft, who made it public.

Throughout the period in which the Hay-Pauncefote treaty was negotiated, Senator Foraker advised with John Hay, then secretary of state, and made many of the suggestions that were incorporated into the treaty, preserving to this government the right to take such means as it deemed necessary to protect the canal and the shipping, without specifically authorizing fortifications.

A Review. Senator Foraker's letter to President Taft reviews the acts of the senate in connection with the treaty making with England and laws passed subsequent to the ratification of the existing Hay-Pauncefote treaty. The letter tells of the ratification of a treaty by the senate on December 20, 1900, which was rejected by the British government.

When it was presented in the senate it contained a provision against fortification and there was much criticism of the secretary because of that fact.

The covenant was amended in accordance with public sentiment, and after Great Britain's rejection of it, harsh and severe criticisms of Mr. Hay were removed.

Mr. Hay was greatly disturbed by the attitude of newspapers and Senator Foraker said he received a call from him one Sunday morning and he seemed "distressed and discouraged."

He showed Senator Foraker a letter from Lord Lansdown indicating that it would not be worth while to make an effort to negotiate another canal treaty unless a provision were made therein for the settlement of the pending treaty between the United States and Canada. Mr. Hay regarded such a treaty as impossible and thought it barred further progress with respect to the canal.

Drifting into a general discussion of the whole subject, Senator Foraker and Secretary Hay, it appears, agreed that it would be idle to undertake to secure ratification of any treaty that flatly prohibited fortification by the United States or involved this government in any obligation to consult any other power regarding protection of its own property. Senator Foraker suggested several changes from the convention which had been rejected by Great Britain, among them new matter and some transpositions that would soften the effect.

Amendments.

They included the following: The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect against lawlessness and disorder.

Senator Foraker said that he marked these changes in copy of the Hay-Pauncefote treaty which was handed to him by Mr. Hay, who took it away with him, and in the fall of the same year, on August 25, 1901, wrote to the senator in confidence that he had hoped to conclude a new treaty with England in line "with all the suggestions which you kindly made to me."

That treaty was negotiated and sent to the senate in December, 1901, and was ratified without amendment, and in due time was ratified by Great Britain and became a binding agreement.

In his letter to the president Senator Foraker shows that he had no doubt that the United States was reserving the right to fortify the canal.

May Fortify.

From the treaty provision for the establishment of a military force on the canal, Senator Foraker says it would follow, as a matter of course, that such a military force would have a right to do whatever was necessary in the way of entrenching itself, "or in plain words, fortifying itself against attacks."

He adds that the idea was that with canal construction at a cost of hundreds of millions of dollars, "no one would ever question our right to do whatever might be necessary in our judgment to uphold our authority and protect our property and commercial rights."

Quoting from the Spooner law providing for the construction of the canal and from the treaty with Panama, Senator Foraker shows it to have been the intention of the United States to protect the canal and harbors. (Continued on Page Ten.)

YORK STATE BOSSES MEASURE MANY CANDIDATES

IDENTITY OF MOST-FAVORED ENTRY IN SENATORIAL RACE IS MYSTERY.

Albany, N. Y., Jan. 8.—Few of the supporters of the candidates for the United States senatorship who remained over the legislative recess go so far as to assert that the man they favor has a sure lead. The senatorial situation remains about as it was at the end of last week, when Charles E. Murphy, the Tammany leader, and Edward M. Shepard and William F. Sheehan, the two candidates who have been making the most active campaigns, returned to New York.

The leaders still have a week before the democratic caucus on the senatorship and tonight democratic members of both houses consider that thus far the leaders have reached no decision. The action of the democratic organization of Rensselaer county last week in presenting the claims of Seymour Van Sant Voord to Mr. Murphy now places Mr. Van Sant Voord with Mr. Sheehan and Mr. Shepard before the legislature as one who has formally become a candidate.

Members of the legislature who admit that he has certain influential connections that could make him a formidable candidate, especially if the Sheehan and Shepard forces are deadlocked, Mr. Van Sant Voord is a close friend of Governor Dix and of Winfield A. Huppuch, chairman of the democratic state committee.

Governor Dix is doing his utmost to show that he favors no particular candidate. It happens, however, that Mr. Shepard's most active supporters are William Church Osborne, the governor's personal counsel, and Thomas M. Osborne, one of Mr. Dix's closest friends.

On the other hand, Mr. Sheehan is a law partner of Alton B. Parker, who bore the brunt of the oratorical work in the recent gubernatorial campaign, and who some say, minimized his own senatorial chances in Mr. Sheehan's favor. Judge D. Cady Herwick, Justice James W. Gerard, J. Sergeant Cram and Daniel F. Cochran have not withdrawn, and Judge Parker also is being discussed, notwithstanding his declaration that he does not want the office.

BURNED TO DEATH.

Furt Madison, Ill., Jan. 8.—Jessie Payne, 12 years old, daughter of the proprietor of a department store, died today of burns suffered while playing Indian with other children. She tried to jump over a camp fire and her Indian costume caught fire.

MATCH FOR "HACK."

Baltimore, Jan. 8.—Arrangements were concluded today for a handicap wrestling match to be held in this city January 29 between George Hackenschmidt, ex-champion of the Miners' Savings bank of this city, and Gus Schoenich (American), under the terms of which Hackenschmidt undertakes to throw Schoenich twice within an hour.