

ROBERTSON ON CLARK.

Railway Regulation Discussed Again. The Right of State Control.

"The Situation Evolves the Suggestion of a Commission and the Necessity of the Authority for its Creation."

Dallas News. DALLAS, TEX., July 21.—The proposed amendment to section 2 article 10 of the constitution does not involve in itself an issue of very great importance. That section as it now stands enjoins upon the legislature the duty of railroad legislation, but the power of the legislature to obey this command is supposed to be limited by the succeeding part of the section, which requires maximum rates to be fixed and enforced by "adequate penalties."

The sensational despatch of Judge George Clark's review of the bill first does not concern or obscure his main object to strengthen the opposition to railroad regulation.

The cattle and sheep men will remember that in what Judge Clark now considers was their vital struggle the Warwick was not in the field, but to win them he now makes a post-bellum fight for free grass.

He seeks also to rally about his new standard his old anti-prohibition following, but he cannot so fold his present flag as to make it show the colors of his former banner. The main basis of our opposition to prohibition was the Democratic principle that the law shall restrain no man in his liberty or the pursuit of happiness.

It is difficult to believe that a man who once served with distinction in the office of attorney general of Texas, especially since we are accustomed to a high order of ability and efficiency in that office, could in discussing an amendment which declares railroads to be "public highways" sincerely contend and base an argument upon the proposition that "railroads are private property."

The Hon. J. S. Black, who was prominent among lawyers and orators among Democrats, said upon this question in a speech to the senate committee of the Pennsylvania legislature: "It will, I think, be admitted by all impartial persons of average intelligence, that the companies are not the owners of the railroads. The notion that they are is silly as it is pernicious." The very section of the constitution to be amended declares railroads to be "public highways."

Mr. Black, after proving the state's title to its highways, proceeds thus: "If being settled that the railroads and canals belong of right to the state for the use of the people, and that the corporations who have them in charge are agents to run them for the owners, it will surely not be denied that the proper regulations should be made to prevent those agents from betraying their trust."

Judge Clark, in arguing against a commission, says that "railroads are private property and should be regulated by law" and not by a commission; but when he comes to a part of the discourse defining the laws needed, he says that bad legislation has brought us "almost to the verge of public ruin" and he asks: "Why not take the legislative burden off and give the courts a fair chance to correct what evils there may be in the system in the good, old-fashioned way?"

Still treating the operation of railroads as a private business, Judge Clark says, and from his point of view very justly: "Even the same rates between the same points may often prove reasonable as to one shipper and unreasonable as to another." The right to collect tolls exercised by the railroad companies is the right of taxation, farmed to them by the state, which the constitution declares shall be "equal and uniform."

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unprejudiced man who has sense enough to know his right hand from his left acknowledges that equality must be the rule of right. If the railroads were private property and their operation the private business of the company, what is reasonable between different shippers would be determined by ascertaining what is profitable to the company, and Judge Clark's contention for the right of discrimination between shippers would be undisputed. But in the operation of a "public highway" the state can permit no such distinctions—the tax ought to be and must be "equal and uniform."

Judge Clark says that a commission will do no good, because in reducing rates they would encounter the principle decided in the Florida case cited by him—Atlantic railroad vs. the State—but that principle would obstruct legislation as well as the action of a commission. His argument, therefore, is that any regulation of rates by the legislature directly or by a commission, is futile. This is in accordance with the principle upon which his essay proceeds—that a private person in the management of his private property shall have "the legislative burden off."

I have seen no report of the Florida case, but I gather that it is there held that the rates shall not be reduced below what will realize to the company a fair interest upon the investment. Judge Clark says the amount of the investment cannot possibly be ascertained. It seems to me that a commission with proper powers might approximate the sum, but if it be true that it cannot be ascertained, the stock and debts would be taken as the estimate. If the stock and debts are honestly issued and honestly applied to the construction, equipment and repair of the road, their aggregate would represent the investment. But it is manifest that if Judge Clark is right in his statement that the amount of the investment cannot be ascertained, and if then in applying the principles of the Florida case the courts are to take the aggregate of the stock and debts honestly issued and created or not, as the estimate of the cost of the road, each company has it in its power to fix a minimum, below which neither the legislature nor a commission can reduce rates, and this minimum will be high in proportion as the management of the company is dishonest.

If this is the situation, the public, whose burdens are thus directly affected, are as immediately interested in the amount of stock issued and debts created by a railroad company as it is in the state or county indebtedness. Warwick might here have manifested the impartiality of his courage by bravely suggesting the propriety of some legislation. He would say justly that a county commission should be put in charge who aids in creating against the county a fictitious demand; but he omits to state that purple is unbecoming to the railroad official, who by like means increases the public burdens.

Judge Clark cannot be ignorant of the practice of railroad companies in this particular; he has been through a wreck or two and knows that the only way to railroad indebtedness in Texas is the practicability of floating the bonds. For this reason it is obviously true that dividends upon stock are obsolete.

Judge Clark ought not to characterize all who favor railroad legislation as demagogues. If his views succeed the demagogues would all be his side. Give to the railroads the power to tax without other limit than that fixed by themselves, to punish their enemies and reward their friends, and the unscrupulous seeker of public office would court the railroad influence and boast and display his infatuation of the people.

It is not to the interest of the companies to let the country through which their roads run, but it is their interest to tax it to the utmost capacity short of destruction. Those who fix the rates of taxation are not citizens of Texas, and all important Texas roads are small parts of large systems, and the rates are fixed with a view to the advantage not of our roads but of the systems. The state has conferred upon them the power to oppress. Judge Clark believes the power should be unbridled, except "by the laws of trade, supplemented by individual effort and co-operation." I believe that the power thus given by the state should be carefully guarded, and that the people should be protected from its abuses, in obedience to the constitution, by laws enforced by "adequate penalties."

The people believe that both the rights and duties of the railroad companies in the operation of the state's highways can be defined by law; that they ought to be, and that the laws should be enforced by "adequate penalties."

The railroad companies have demonstrated to former legislatures the impracticability of the bills proposed to regulate freights. They have also demonstrated that it is unwise to the people to leave the regulation of freights to the companies themselves. The situation evolves the suggestion of a commission and the necessity of the authority for its creation. It may be, as Judge Clark thinks, that the capital will cease to flow into the state unless we promise to continue to disregard our constitution, and by vote upon the proposed amendment impliedly promise that those operating our future highways shall exercise the same freedom right to tax unbridled. But on the other hand it will be remembered that a firm will inevitably come which we will wish to obey the instance of a free people and have a potent voice in public matters and that it is possible to postpone the issue until "the little finger of monopoly is stronger than the joints of the law."

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