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State Rights Democrat.

VOL. XXII.

ALBANY, OREGON, FRIDAY, FEBRUARY 11, 1887.

NO 28

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THE INTERSTATE COMMERCE BILL.

The following letter from John H. Mitchell, of Oregon, to B. S. Huntington, Esq., Secretary Board of Trade, Dallas City, Oregon, on the Interstate Commerce Bill, we publish by request:

UNITED STATES SENATE, WASHINGTON, D. C., January 21, 1887. MY DEAR SIR: As you have been informed by telegraph, the Senate has concurred in the report of the Conference Committee on the Interstate Commerce Bill, and the bill as agreed on in conference has passed the Senate without amendment, and in all probability will be agreed to by the House, and become a law.

I hope sincerely the bill will have the effect of meeting the expectations of shippers and remedying the grave difficulties, and prohibiting the gross discriminations upon the part of transportation companies of exacting greater charges for the transportation of persons and property over shorter than longer hauls—and to some of which unjust exactions my attention was recently attracted by a communication from a committee of your Board. That it will have this effect, however, at least on points of shipment in Eastern Oregon and Washington Territory east of Umatilla Junction, or on points in Middle and Southern Oregon, I have very serious doubts; and whether it will meet the question of long and short haul on points on the river between Portland and Umatilla Junction, in Oregon and Washington Territory, may admit of the most serious question.

The bill, under the rules, could not be amended in the Senate. The only way in which any amendment could be reached was by recommitting the report of the Conference Committee with suggestions. I submitted certain amendments, and with a view of placing the bill in a position where they could be considered and adopted, voted to recommit to the Conference Committee, thereby hoping to secure such amendments as would make the bill certain and effective in absolutely prohibiting greater charges for a short haul than a long haul; but failing in securing any amendment, I voted for the bill on its final passage, trusting, as I have said, although with serious apprehension, that it may afford some relief, at least from the unjust discriminations, growing out of charges by common carriers, as is done in many instances of more, and sometimes more than double, and even treble, for transporting persons and property over a shorter than a longer distance. Besides, there are, as I believe, some other provisions in the bill that will prove of much value to the producer, shipper and consumer.

A few of the evils, and what are believed by the people of Oregon and Washington Territory to be unjust discriminations in this matter of transportation, and which are apparent to all, may be briefly stated thus—and some of which only were indicated in the communication to me from your Board hereinbefore referred to:

It is well known that the tariff on all classes of freight from Portland to the interior over the lines of the Oregon Railway and Navigation Company and Oregon and California Railroad Company are infinitely higher to points beyond the first few stations on the various lines from Portland than they are by any of the transcontinental lines from Chicago or St. Louis to Portland; as, for instance, coffee, sugar, beans, hams, water pipe, pig-iron, and like articles are from \$12 to \$14 per ton from Chicago or St. Louis to Portland, while from Portland to Pendleton, Or., these same articles are \$19 per ton; and from Portland to Eugene City, Springfield, Roseburg, Riddle, Grant's Pass, Central Point, Medford, and Ashland from \$8 to the former to \$18.00 per ton to the latter, while the freight charge on many articles of freight are as much as \$30 per ton over the same distance.

But again, referring to the way-points along the line of the Oregon Railway and Navigation Company in Oregon and Washington Territory, and to the matter of transportation between these various points and Eastern cities, it will be seen that a car load of merchandise to any of these way-points from Chicago or Omaha or St. Louis is delivered at such point without going through to Portland, and the freight charges thereon consist of the full through rate to Portland, plus the local rate on merchandise from Portland to the way-point. This local rate between Portland and these way-points bears relation to the through rates to Portland as follows:

From Portland to The Dalles, as 75 to 100; from Portland to Arlington, as 105 to 100; while from Portland to Walla Walla, W. T., La Grande, Union Baker City, and Huntington, Or., as 100 to 200; that is to say, the freight charges for transportation between these latter-named points and Portland are on an average double the rates of transportation between St. Paul or Chicago and Portland; yet the actual haul in each of the cases between Portland and the way points above named is on an average only about one-tenth the distance from these Eastern cities to Portland.

As a consequence, a person desiring to ship a ton of freight from St. Paul to Umatilla, or from Chicago to Baker City, the former being nearly 200 miles nearer St. Paul than Portland, and the latter over 300 miles nearer Chicago than Portland, is compelled to pay just about double the amount a shipper pays on a ton from St. Paul to Portland, or from Chicago via the Union Pacific and Oregon Railway and Navigation Company to Portland.

The people, as I understand, are complaining, not of the through rates, but of these excessive charges to non-competing points. What the people, therefore, away from competing points in Eastern Oregon and Washington Territory, as well, desire—at least what they believe to be to their interest—is an absolutely effective provision that will in each and every case absolutely prohibit transportation companies, under severe penalties, for charging more for transporting passengers or freight over a shorter than over a longer distance on the same line. And while it is a matter of very serious doubt with me whether such a provision of law will have the desired effect, and will absolutely reduce the freight to and from way-points, or whether, on the contrary, the effect may not be to increase the through rates on the long hauls, and thus maintain the local rates at high rates on the short hauls, I am decidedly in favor of giving it a trial. But to give it an entirely fair, honest, and complete test, it is all important that the prohibitory clause intended to meet the evil above suggested should be clear, unambiguous, direct, plain, positive, and certain, and not couched in such language, or coupled with such conditions, as to render it ineffective or absolutely nugatory.

It was my fear that the provision in the bill just passed was of the nature last described that led me to make an effort to secure its amendment. I now desire to point out wherein I thought the provision should have been amended in order to be effective as a long and short haul provision, and in what respect I moved to amend as a suggestion to the Conference Committee. The clause of the bill on this subject of long and short hauls is contained in the fourth section, and is as follows:

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the commission appointed under the provisions of this act such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

I moved to amend this section by striking from it the following six words: "Under substantially similar circumstances and conditions."

The second section of the bill, prohibiting unjust discriminations in the matter of charging one person more or less than another for a like and contemporaneous service, is as follows:

Sec. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

I also moved to strike from this section the following six words: "Under substantially similar circumstances and conditions." Unfortunately, a grave difference of opinion existed in the Senate among leading lawyers as to the construction that should be given to these six words and the effect they would have in the case of the fourth

section, particularly upon the subject of long and short hauls. Senator Callom, the chairman of the Conference Committee upon the part of the Senate, and who prepared the bill, gave it as his unqualified opinion that the question of competition as between the two hauls—the one a long and the other a short haul—would be a circumstance to be considered in determining whether the two hauls were "under substantially similar circumstances and conditions." In this construction I in part concurred, and with the still further view that it would be an absolutely controlling circumstance, rendering the case entirely dissimilar to that where there was no competition; and I insisted that, in my judgment, the courts would so construe it in most cases that would arise, and that, therefore, inasmuch as in almost every instance that would arise there would be competition in the one case—that of the long haul—and no competition in the other or the short haul, it would only be in the rarest of cases that the section would operate to prohibit a greater charge for a short than a long distance. Possibly it may be said that a ton of freight transported from St. Paul over the Northern Pacific and Oregon Railway and Navigation Company to Portland is transported "under substantially similar circumstances and conditions" to that of a ton of like freight over the same line from St. Paul to The Dalles, or Arlington, or Umatilla, the latter being the point of junction of competing railroads, if we may admit that the Northern Pacific combines with the Oregon Railway and Navigation Company or controls or uses its line from Walla to Umatilla; but yet there is, with these six words in the section, a very serious question with me whether this can be truly said to be so, inasmuch as it may very properly be said that as between St. Paul and Portland there is competition—first, by rail to San Francisco from St. Paul, and thence by the steamers of the Oregon Railway and Navigation Company to Portland; and second, via the Canadian Pacific, Puget Sound, and so on. But still further, when the Northern Pacific shall have completed its line across the Cascade Mountains to Puget Sound, which will be at a very early day, whereby that company will have a direct line between St. Paul and Portland, then the stations along the Columbia river between Portland, Or., and Walla or Pasco, in Washington Territory, will, so far as the line from St. Paul to Portland via the valley of the Columbia is concerned, be non-competing points; whereas, between St. Paul and The Dalles and Arlington and Umatilla and Walla, there is no such competing line. So that, should the courts hold that these facts, or rather this circumstance of competition in the one case, and none in the other, make transportation over the two routes substantially dissimilar, then in that event unquestionably there would be nothing in this bill that would prevent the transportation company from charging more, or even three times as much, for transporting a ton of freight from St. Paul to The Dalles, or to Arlington or Umatilla, or Walla, than from St. Paul to Portland, and vice versa.

But let us inquire further. Take points on the line of the Oregon Railway and Navigation Company east of Umatilla Junction, the competing point at Umatilla, or on the line of the Northern Pacific east of that point. What, then, is the effect of these six words, "under substantially similar circumstances and conditions" in this fourth section? It is, it seems to me, to render the section absolutely inoperative and of no account, in so far as affording protection to the people in Eastern Oregon and Eastern Washington Territory is concerned whose point of shipment is on either line east of Umatilla, for the reason that, as between Chicago or St. Paul and Portland, via the Northern Pacific, as well as between St. Paul and any and all points on the line of the Oregon Railway and Navigation Company west of the junction at Umatilla, there is not only competition, but the sharpest kind of competition, on through freights over the line of the Union Pacific, Oregon Short Line and O. R. & Nav. Co. line; whereas, between St. Paul or Chicago, and any point on the Oregon Railway and Navigation Company's line in Eastern Oregon east of Umatilla Junction, or between St. Paul or Chicago, and any point on the Northern Pacific or Oregon Railway and Navigation Co.'s line east of Umatilla, there is absolutely no competition; and, therefore, the transportation on either of these through lines from Chicago or St. Paul to Portland is entirely and absolutely dissimilar to the transportation of like kind of freight from either St. Paul or Chicago over either line to any point east of the junction at Umatilla. And hence it seemed to me quite clear that such cases as this section 4 would not, and could not be held with these six words in it prohibit a greater charge for any short haul from St. Paul or Chicago to any

point on either line east of Umatilla Junction than on the long haul through to Portland on either line. And hence I desired and voted to amend by striking out these objectionable, qualifying, and, as I believe, practically wholly destructive words.

But a moment's consideration will show how useless and impotent is this bill in its present shape to relieve shippers in Middle and Southern Oregon at non-competing points from Eugene City to Ashland, inclusive, on the line of the Oregon and California Railroad. When the Oregon and California, and California and Oregon lines are connected we will have a through line by rail between Portland and San Francisco. Through freights over this line—either way—will necessarily be very low, from the fact that such transportation is brought in direct competition with a line of steamers and sailing vessels running between these two ports, to say nothing of the lines of steamers to Yaquina and Coos Bay. Suppose, therefore, through freights on that line either way, that is, between San Francisco and Portland, should be, say four dollars per ton, it is now by sailing vessels, I believe, about that, and by steamers six or eight dollars per ton on merchandise by measurement; and suppose the railroad company would charge six dollars per ton for hauling a ton of freight from Portland to Eugene City, right dollars to Springfield, ten dollars to Roseburg, twelve dollars to Riddle, sixteen dollars to Medford, and twenty dollars to Ashland, the first of which (to Eugene) would be one-third more than for the long haul from Portland to San Francisco, while the last (twenty dollars to Ashland) would, for these 340 miles, or about one-half the whole distance to San Francisco, be five times more than the charge for the long distance of over 700 miles between Portland and San Francisco; and it is quite probable that something like this will be the result when the road is completed unless otherwise regulated by law.

In such an event, therefore, would I inquire, the provisions of this Interstate Commerce Bill prohibit the railroad company from making these several higher rates for these several shorter hauls than are charged for the longer haul between Portland and San Francisco? I imagine not, for the simple reason that the long haul is subject to the sharp competition by sea, and therefore the railroad company may for this reason be forced to put through rates at an extremely low figure, in order to get any business against ocean transportation; and, therefore, it is that the transportation over the long haul is not, and would not be in such a case, "under substantially similar circumstances and conditions" as that on any of the short hauls named. And that, the "circumstances and conditions" being entirely dissimilar, the bill by its express term does not, in my judgment, as it stands, inhibit a greater charge for the short than for the long haul. Had my amendment been agreed to, and these six objectionable words stricken from the bill, then it would clearly prevent such charges. Should a different construction, however, be given to this section by the courts as it stands, I shall be happily disappointed. Were it not that I gave public and emphatic expression to these views in the Senate when this bill was under discussion, I should hesitate now to express them, as I do not wish to see the bill, should it become a law, brought into discredit in advance, but on the contrary, hope it may have a fair trial; and should its practical workings prove satisfactory to the great interests it is intended to protect, all well, and if, on the contrary, found defective in its application to the business of the country, further legislation may supply the defects. Possibly a fair test may demonstrate to all that it is not, after all, wise to insert a long-and-short-haul provision of any character in legislation upon the subject of interstate commerce; and again it may be seen that a much more stringent measure on this subject than that contained in this bill is both wise and imperative.

That some adequate notion may be had of the estimate placed on this bill by prominent members of each House, who desired the bill amended to make it certain and effective, I beg to quote the following extract from a speech made in the House of Representatives January 19th, in discussing the report of the Conference Committee, by Representative Weaver, of Iowa, who is universally recognized as a firm and enthusiastic supporter of the rights of the people against the encroachments of corporate power, and who was a warm supporter of the Reagan bill in the House. He said:

It seems to be the theory of the pending bill to do as little for the people as possible, and in making that remark I wish to say I am entirely impersonal in everything I say here, and desire to be so. It seems to be the theory of the pending bill, I repeat, to do as little for the people

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