ARGUMENTS FOR THE COMMISSION

Representative From Douglas County Reviews Decisions

In the opinion of Representative S. C. Jackson, of Douglas county, who arrived in Salem yesterday, it is beyond the power of the legislature to enact railroad legislation that are not subject to judicial review, and, if any laws are enacted looking to the regulation of railroads in this state and the regulation of interstate and interstate rates for freight and passengers they will have to provide means whereby they can be reviewed by the judiciary and be reasonable in their requirements.

Mr. Jackson has made a special study of the railroad question since it has become such an important issue in this state and there is a general demand for railroad legislation, from a legal and technical standpoint, has looked up all of the leading authorities upon the subject and has come to the conclusion that the old doctrine that "the judgment of the legislature, fixing railroad rates, binds the courts as well as the people" has been renounced by later decisions of the supreme court of the United States and that the power of railroad legislation is more of a judicial one than legislative:. In an interview with The Journal, Mr. Jackson said:

"It seems that the concensus of opinion is that there will be some railroad legislation had at the coming session of the legislature. The people have placed themselves on record strongly favoring legislation along this line to remove past abuses along the line of unjust discrimination, extortions and instability in rates. It is not so much that a commission bill should be passed regulating rates controlling the railroads but what the people want is an effective measure and one which will stand the test of the courts in a judicial review.

"Should an act be passed which would not stand the test of the courts we would be as bad off as we were before. Railroads have in the past resisted legislative control principally upon four grounds: First, that legislatures have no right to fix rates; second, conceding the right, their acts are void insofar as the attempt to regulate interstate rates; third, again conceding the right, they mainain that their charters exempt them from legislative control; fourth, again conceding the right to make rates, the legislative power is not absolute but subject to judicial review through the courts.

"The first proposition mentioned was settled as far back as 1876 in what is known as the Granger cases, which arose under the laws of Illinois, Iowa, Wisconsin and Minnesota In these decisions the court placed the right of legislative control on three grounds: First, the railroads are common carriers for hire, exercising a sort of public office in which public rights are involved; second they are public highways and as such are subject to state control; third, the right of eminent domain is extended and the fundamental principles of which is that the power and the exercise for a public purpose and that only.

"The courts have laid down this general doctrine 'that when property is clothed with a public interest, or devoted to a use in which the public has an interest it becomes subject to legislative control as to the rates for its use.' The second proposition or objection, that the state can regulate only interstate rates has been upheld in the case of the Wabash Railway company vs. Illinois and that is now the law as established by the courts, though prior to 1886 in the Granger cases it was held that, in the absence of congressional action, the states could control interstate rates insofar as they effected its citizens.

"The rule laid down in the Wabash case was instrumental in the passage of our interstate commerce act, on January 21, 1887, establishing our interstates commerce commission. The third objection, that the charters exempt them from legislative control, and did not meet with any favor in the courts, the case of Ruggles vs. Illinois put that contention to rest.

"But the fourth objection raised by the railroads, that the rates fixed by legislative authority is not supreme but is subject to judicial review, has apparently met with favor by the supreme court of the United States in its later decision. However, the law in that respect, until 1886, was the other way. In the case of Munn vs. Illinois, Chief Justice Waite, in passing upon that case, used this language: 'It is insistent, however, that the owner of property is entitled to a reasonable compensation for its use even though it be clothed with a public interest and what is reasonable is a judicial and not a legislative question. As has already been so shown, the practice has been otherwise * * * * We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by legislators the people must resort to the polls and not to the courts. Of the propriety of legislative interference within the scope of the legislative power, the legislature is the exclusive judge.'

"This is the language of Justice Waite in 1876 and was the law of the land for a decade thereafter and guided the courts in subsequent decisions until 1886. In that year the same chief justice, in passing upon the case of Stone vs. Farmers L. & T. Co., reported in 116 U. S., he reaffirmed this doctrine, but in the decision, we find the following dictum from which later the doctrine of judicial review emanated: 'From what has just been said it is not to be inferred that this form of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense to regulate fares and freights the state cannot require the railroad corporation to carry persons or property without regard; 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.'

"This dictum of Justice Waite left the law in a much unsettled condition for several years thereafter and the courts, in passing upon railroad rate laws, found themselves at a loss as to just what principle they should base their decisions upon. However the case came up squarely before Justice Brewer, then a circuit judge, in 1888. He took up the dictum of Justice Waite and declared it to be the law. This case arose in Iowa. In passing upon that case, Justice Brewer uses this language:

" 'It is obvious from the last quotation that the mere fact that the legislature has pursued the forms of law in prescribing a schedule of rates does not prevent inquiry by the courts and the question is open and must be decided in each case. Whether the rates prescribed are within the limits of legislative power, or mere proceedings which, in the end, if not restrained, will work a confiscation of the property of complainant. Of course some rule must exist, fixing definite, to control the action of the courts, for it cannot be that a chancellor is at liberty to substitute his discretion as to the reasonableness of rates for that of the legislature * * * * *

" 'The right of judicial interference exists only when the schedule of rates established will fail to secure to the owners of the property some compensation or income from their investment. As to the amount of such compensation, if some compensation or reward is in fact secured, the legislature is the sole judge. The question is one alone of policy. The rule, therefore, to be laid down is this: That where the supposed rates will give some compensation, however small, to the owner of railroad property, the courts have no power to interfere. Appeal must then be made to the legislature and to the people.'

"This is an enunciation of the doctrine of judicial review, in its infant state. It will be noted, however, that the ruling as to some compensation did not meet with favor with the railroads and in the later decisions the word 'some' has been construed to mean reasonable, or profitable. In 1890 the test case came and was decided by a divided court. The case is known as the Chicago M. & S. Co., vs. Minnesota, reported in 134 U. S. The majority opinion was rendered by Justice Blatchford in which he says, referring to the Minnesota statutes, that ' it conflicts with the constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its rights to a judicial investigation by due process of law. The question of reasonableness of rates charged for transportation is eminently a question for judicial investigation, requiring due process of law for its determination.'

"It will be seen that the supreme court of the United States has completely changed front. Mr. Justice Waite's oft-repeated assertions, in the Granger cases and other decisions following them, that the judgment of the legislature, fixing railroad rates, binds the courts as the extraordinary doctrine of judicial legislation has been established and we might say that the courts has placed a limitation upon the right of the legislature, a co-ordinate branch of government, to regulate dates of railroads. That the legislature cannot pass such laws which cannot be reviewed by the courts, and turn down, if their judgment does not coincide with the judgment of the legislature as to the reasonableness of the rates fixed.

"As was said before it is not that some commission bill, designed to regulate rates may be passed, but what the people want and what the people are demanding is railroad laws that will be effecttive and correct the evils of private regulation of rates. Nothing short of this will meet their requirements at this time. The measure must be such a one as will stand the test of the courts and at the same time reach the results the country needs. The car-shortage proposition is but one phase of the railroad question. I see no reason why a law couldn't be enacted which would control the supply of cars the same as the regulation of rates. But such a law would have to provide a means for judicial review and be reasonable in its requirements."

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