

MAXIMUM RATE DECISION

Business Men Say It Will Insure Stability to Railway Investments.

A SAFEGUARD TO PROPERTY

Simon Sterne Says It Stops Confiscation—Chauncey M. Depew Thinks It Means Greater Development—Francis Lynde Stetson Expects Good Results.

The decision of the United States Supreme Court Monday in the Nebraska maximum freight rate case was received with satisfaction by many business men in this city. Some of them expressed the opinion that the decision will make railroad investments stable and secure, and that if it had been favorable to the Nebraska law it would have proved a disaster to the country.

Simon Sterne said: "It was announced as an important principle of law in the Granger decisions in the early seventies that every interest affected by the public takes the public into copartnership, and had to permit public regulation in consideration of the advantages it enjoyed through its franchise. An attempt was made to abuse that permission by some of the Northwestern and Southwestern States under the impression that that regulation might be carried to the point of confiscation.

"There is a provision in the Constitution reserving police powers to the States for the purpose of controlling their own creations, for restraining monopolistic tendencies, and also for conferring franchises on public highways for the performance of public duties, which involves the obligation that excessive charges shall not be made, and also the recognition of the public right to protect its individual members from oppression. There is, however, another provision in the Constitution, as important as the one that recognizes the power of the States, and that is that the States shall not take private property for public use without compensation. In the Minnesota cases, which were similar to the Nebraska case, the pleading substantially admitted that the exercise of the power in that State had prevented any return to the capital invested in railways and would amount to practical confiscation. The Supreme Court said the State had gone beyond its authority. But in that case the Justice did not define the principle as clearly or declare the rule as definitely as Justice Harlan has done in the present case.

"In the Nebraska case, Justice Harlan says that a great many elements enter into the determination of the question as to what is a reasonable return or profit to capital. First, there would be the question of the amount for which the railway could be duplicated, the amount of its capital stock, bonded indebtedness, &c.; the railways have the right to demand that this be considered and judicially passed upon before any attempt is made to establish for them maximum rates. In the consideration of that subject the question as to how much they earn on their traffic would arise. Justice Harlan puts the whole of this part of the question in a clear and unassailable position when he says:

"It must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the business of an inter-State character done by the carrier or to the profits derived from that business. The State cannot justify unreasonably low rates for domestic transportation, considered upon the ground that the carriers are earning large profits on its inter-State business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that only in that way can it meet losses on its inter-State business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on inter-State business, nor the latter the losses on domestic business."

"To my mind the decision is not only eminently just and proper, but I believe that it will give stability to investments. It sets limits to unjust railway charges on the part of the railway companies, and to the power of the State Railway Commissions to distribute the results of property, which they have not created, among the citizens of the State without proper compensation to the railways and to others who have invested their capital.

"The decision is exceedingly timely, and will prove extremely valuable. It will work for the interests of both the railways and the public."

Chauncey M. Depew's Opinion.

Chauncey M. Depew, President of the New York Central Railroad, said:

"The contention of the men who framed the Nebraska law, and of the people in other Western States who agree with them, has been for years that the Legislatures have the right to confiscate railroad property within the States by fixing rates so low as to leave no return to stock and bond holders. Some of them have gone so far as to say that when people with money build a railway, and after they have enjoyed interest on their investment for a few years, they are sufficiently rewarded, and the State should take the road and confiscate the capital.

"Of course, if the people who have money to build railways believed that this doctrine would prevail, no more railways would be built. If the doctrine had been sustained by the Supreme Court there would have been a panic in railway securities. Every investor would have understood that he held his stock subject to its being made worthless by an act of some Legislature. There is now in bonds and stocks of railways about \$10,000,000,000, and most of the investments of the country are based on these. If that investment can be rendered worthless over night by a bill jammed through a Legislature and approved by a Governor in three hours, nobody would invest in such property. Such a doctrine, if carried out, would cause greater loss than our years of civil war.

"The decision of the Supreme Court is just what every sound lawyer and business man expected it would be. It gives stability to investment, and will help not only railway investments, but all other American business and securities. In other words, it is a declaration from the highest court that property is safe in this country, and that the accumulations of industry are not to be distributed by hostile Legislatures.

"The Legislature has the power to fix rates within lines where the railways can live and get a reasonable return. As to what are reasonable rates, the Supreme Court would decide finally. This is a new country, and railways are necessary to develop it. There are still immense areas yet undeveloped which can never be developed without railway lines.

"If that case had been decided in favor of the Nebraska law, not another mile of railroad would have been built in that State. The railways now within the borders would not have maintained their roadbed and equipment, and in five years Nebraska would have been far behind the rest of the country. There would have followed, inevitably, a cut in expenditures, and wages would have gone down 25 per cent."

Francis Lynde Stetson.

Francis Lynde Stetson said: "This sort of thing is becoming infectious. It is not confined to the West. Last month North Carolina reduced passenger fares to 2½ cents a mile, despite the protest of the railways.

"Immediately after the passage of the McKinley bill in 1890, the Legislatures of the Southern and Western States went to work to throttle the 'monsters.' The Texas Railway Commission reduced rates so low that the matter was taken into the courts. The case is known as the Reagan case because Reagan was Chairman of the commission. Most of the questions involved were the same ones involved in the Nebraska case, which was decided Monday. The chief principle then established was that the owners of railway, as of other property, are entitled to reasonable recompense for its use, and that in its use it is entitled to earn a reasonable profit on the capital really and fairly invested in it. This last qualification is very important. The Supreme Court in the Gill case declined to interfere on the

ground that the actual cost of the property was not shown with sufficient clearness to justify the court in deciding that the rates would not produce a reasonable return on the amount actually invested. The presumption of reasonableness will always be entertained in favor of the State, and any one undertaking to reverse or review the action of the State in reducing rates must make a clear case that the reduction was unreasonable.

"The result of this decision will be to make permanent and incontestable the points of decisions hitherto made, to the relief of the business of the country. If the decision had been the other way, the consequence would have been serious to all legitimate business interests of the country."