

Reciprocal Demurrage in the U.S.

Fourteen States have enacted laws to make the Railways ship freight promptly or pay the shipper in proportion to the delays. The Canadian Board of Railway Commissioners has been granted power to deal with Demurrage.

Is it not time they used this power?

Now that Western Canada is in the throes of a grain congestion which, even the railway magnates admit, will probably be the worst ever experienced, it may be well to point out the vast difference in the relation the American and the Canadian farmers stand with regard to railways which fail to transport their grain. In no fewer than fourteen of the American States reciprocal demurrage laws are already in operation, namely, in Arkansas, California, Florida, Georgia, Indiana, Kansas, Missouri, Nebraska, North Dakota, South Dakota, South Carolina, Texas, Virginia and Washington. In many other States, moreover, the agitation is going on for similar laws. Minnesota even passed a fairly sweeping act of the kind in 1907, but the obstruction of the railway companies has prevented its enforcement up to the present, until the Supreme Court decides whether the law is constitutional.

This points to one radical difference between the regulation of railways in Canada and in the United States. The federal government at Washington must be careful not to invade the rights and powers of the individual states which are extremely jealous of their own jurisdiction. Each state has power to regulate the operation of railways within its own bounds, but state laws have no force beyond the limits of any particular state. As most of the railways traverse more than one state, this gives them the opportunity to fight any regulations of the local legislature on the ground of its unconstitutionality. The Interstate Commerce Commission was created in 1887 to relieve Congress from the details and complexities of railway regulation. Many amendments have since been made and now this body of seven men appointed for seven years has power to fix maximum rates, to prevent unjust discrimination, to determine what damages shall be paid to injured shippers and in general to secure just and reasonable transportation charges. There is constant friction, however, between the Interstate Commerce Commission and the various State Legislatures.

In Canada no such problem exists. There is no conflict of provincial and Dominion authority in the matter of railway control. The Dominion Parliament is conceded to have full power to regulate the railways, and since the Canada Railway Act of 1903, when its power over the railways was delegated to the Board of Railway Commissioners, no carrying corporation lays any claim to be beyond its jurisdiction. While the Board has never enforced reciprocal demurrage from the railways, the following amendment passed in 1908 would seem to clothe it with ample powers to enforce such penalties, should it see fit.

The provision is as follows:—

Section 10. "Section 284 of the said act is amended by adding at the end thereof the following subsection:— "The Board may make regulations, applying generally or to any particular railway or any portion thereof, imposing charges for default or delay by any company in furnishing accommoda-

tion, appliances, or means as aforesaid, or in receiving, loading, carrying, unloading or delivering traffic, and may enforce payment of such charges by companies to any person injuriously affected by such default or delay; and any amount so received by any person shall be deducted from the damages recoverable or recovered by such person for such default or delay, and the Board may, by order or regulation, determine what circumstances shall exempt any company from payment of any such charges."

Indiana

In 1907 the Railroad Commission of Indiana held that it had no authority to make rules providing for reciprocal demurrage. Later on the General Assembly passed the bill which enforced a demurrage of \$1.00 for each twenty-four hours' delay by the railway in the following section:—

Chapter 231, Section 8. "Every carrier subject to the provisions of this act which shall fail and neglect to furnish cars to applicants in accordance with the application therefor, and as provided in section 6 of this act shall forfeit and pay to the applicant the sum of \$1.00 for each car for each twenty-four hours or the major part thereof, that the delivery of the same shall be delayed beyond the date when the cars were required to be furnished; provided, that such forfeiture shall not accrue if the carrier shall show to the satisfaction of the court or jury trying the cause that it did not have the cars in its control at the time they were required for delivery, and that for a reasonable time prior to the failure and at the time of the failure it had made, and then made a bona fide and reasonable effort to supply its line with the necessary car equipment to care for the traffic then on its line, and such future traffic as it could reasonably anticipate would be offered for shipment."

Washington

Section 3. "When a shipper makes written application to a railroad company for a car or cars not exceeding

ten cars in number during any one day, to be loaded with any kind of freight embraced in the tariffs of said company stating in such application the character of the freight and its destination, the said railroad company shall furnish the same within six days from 7 a.m. of the day following said application; or when a shipper making application specifies a future date on which he desires to make a shipment, giving not less than six days' notice thereof, the railroad company shall furnish such car or cars on the date specified in the application. The railroad companies shall notify the shipper making such application not less than twenty-four hours prior to the day or date upon which car or cars will be placed for loading, as to the day or date upon which such car or cars will be placed. For failure to comply with this rule the company so offending shall forfeit and pay to the shipper who applied the sum of \$1.00 per car per day or fraction of a day's delay after the expiration of free time, upon demand in writing made within thirty days thereafter by the shipper."

Section 4. "Whenever freight of any character proper for transportation whether in carload lots or less than carload lots is tendered to a railroad company at its customary place for receiving shipment and correct shipping instructions are given, the railroad company's agent must immediately receive the same for shipment, issue bill of lading or shipping receipt therefor, and when such shipments have been so received by any railroad company they must be carried forward at a rate of not less than fifty miles per day of twenty-four hours, computing time from 7 a.m. of the day following the receipt of the shipment; and for failure to receive or transport such shipment within the time prescribed the railroad company so offending shall forfeit and pay to the shipper the sum of \$1.00 per car per day or fraction thereof on all carload freight upon demand in writing by the shipper or some other party whose interest is affected by the delay; provided that in computing the time of freight in transit there shall be allow-

ed twenty-four hours at such point where transferring from one railroad to another or rehandling of freight is necessary."

California

Section 10. "Demurrage and reciprocal demurrage accruing under these rules, will be charged at the rate of \$3.00 per car per day or fraction of a day. The payment by any railroad company of demurrage provided in these rules shall in no way invalidate or offset any claims any shipper or consignee may have for damages occasioned by delay or negligence on the part of such railroad company, nor shall anything herein contained be held to lessen the duties of any common carrier in the shipment of live stock or other perishable properties."

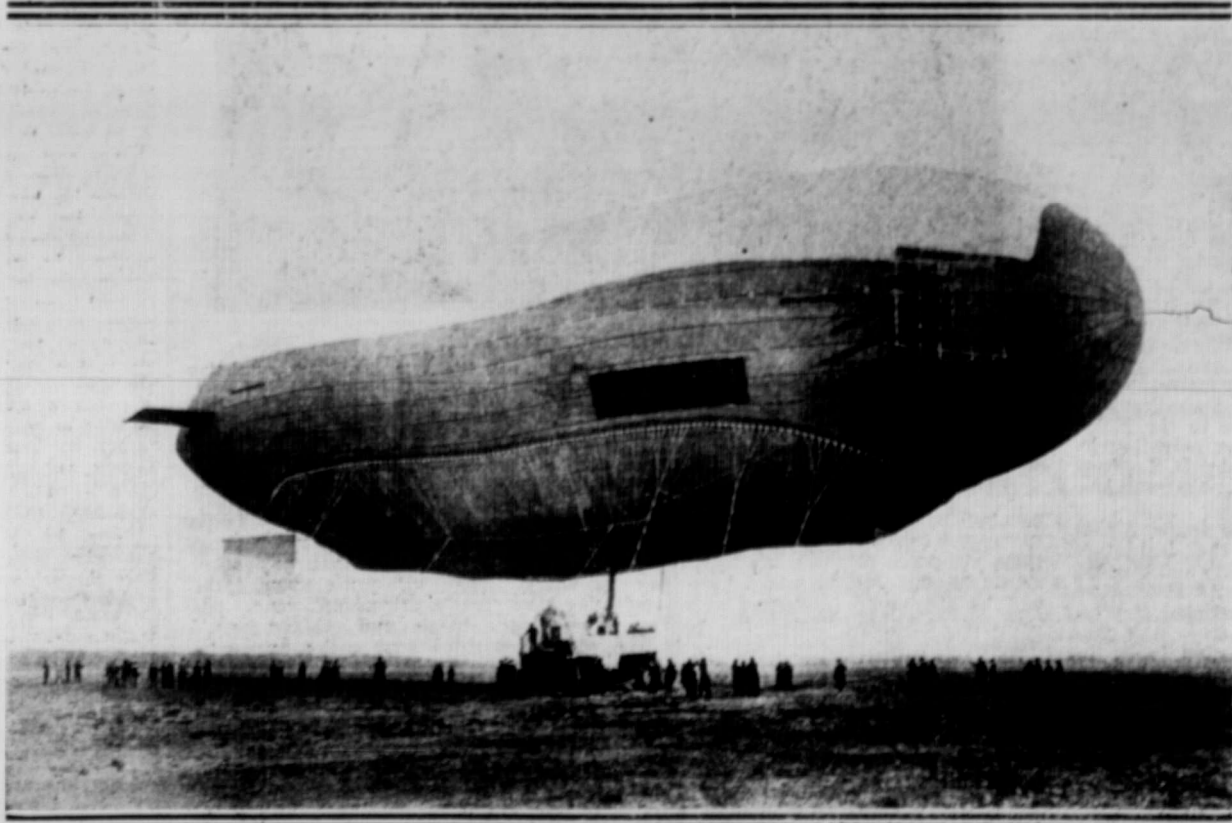
Section 12. "(b) A shipper may order cars for placing at any time within fifteen days from the time of the order, and the carrier shall be required to place the cars on the date required by the shipper, except that on orders for three cars or less the carrier shall be allowed forty-eight hours to place such cars for loading after the first 7 a.m. following the receipt of the order; seventy-two hours for any number of cars more than three and less than six; ninety-six hours for any number of cars more than six and less than eight, etc."

"(c) Any carrier that fails to place cars under the provisions of this rule shall pay to the shipper \$3.00 per day for the number of cars in the shipper's order not so placed until such time as shipper's order shall be filled, unless released at the shipper's request; provided, however, that any shipper who desires to take advantage of this rule must file with the carrier from whom he desires to order his cars a good and sufficient bond in the sum of \$20.00 if he desires to order but one car and \$15 for each additional car. This bond shall be security for the payment on behalf of the shipper to the carrier for the use of any car or cars ordered by such shipper which shall be set out by the carrier and not used by the shipper at the rate of \$3 per day computed from the first 7 a.m. after the car is set out."

Arkansas

Section 1. "When a shipper makes a written application to the station agent of a railroad company for a car or cars to be loaded with any kind of freight embraced in the tariff of said company stating in said application the character of the freight and its final destination the railroad company shall furnish the same at the place of shipment within six days from 7 a.m. the day following such application. Or when a shipper making such application specifies a future day on which he desires to make a shipment giving not less than six days' notice thereof the railroad company shall furnish such car or cars on the date specified in the application. For failure to comply with this section, the railroad company so offending shall forfeit and pay to the shipper applying the sum of \$5 per car per day, or frac-

Continued on Page 19



ACROSS THE OCEAN BY THE AIR LINES

The balloon Suchard, in which Joseph Brucker hopes to cross the Atlantic. He was to have started from Tenerife, Canary Islands, but because of adverse wind conditions, which he believed would prevail all summer, he postponed his attempt till autumn.