

Sir ALBERT J. SMITH. Does the Commission give that power?

Mr. McCARTHY. I cannot say. It is possible it does. There is not, of course, a Railway Committee in the English Privy Council. This, I think, should be a Court formed for the purpose of determining the disposition of matter rather than administering them. It is in its nature a practical tribunal, but it is not for the purpose of deciding matters of that kind until it is formally brought before them. I also thought that the power of closing railway companies when the roads are out of repair, should be left with the Government, but that in most other matters the jurisdiction should be handed over to this Commission—in point of fact, that the Commission should do all that is necessary to be done, in order to show that the law is carried out. If the House will pardon me, I will read the conclusions arrived at by this Railway Committee of 1872, upon the various suggestions made as to how roads should be managed. It was proposed—I, myself, had the suggestion made to me—that it was in the power of Parliament to fix absolutely the tolls, to determine on the Statute-books how much a railway should charge for fares and freight. After discussing that matter very fully the Committee reported as follows:—

“ Pressed by these difficulties, the proposers of equal mileage have admitted that there must be numerous exceptions—*e. g.*, where there is sea competition (*i. e.*, as above stated, at about three-fifths of the railway stations of the United Kingdom), where low rates for long distances will bring a profit, or where the article carried at low rates is a necessary, such as coal. It is scarcely necessary to observe that such exceptions as these, whilst inadequate to meet all the various cases, destroy the value of ‘equal mileage’ as a principle, or the possibility of applying it as a general rule.”

Then it was said that the rates should be fixed by relation to cost and profit on capital, and that is the only provision we have in the law, *viz.*: that when a railway company was proved to be earning a certain profit the Government should have the power to determine its rates of toll. That was not found by any means to be practicable, and the view of the Committee was as follows:—

“ But the data thus assumed are very difficult, if not impossible, to ascertain. The original cost of the particular line; the cost of carriage of the particular goods on that portion of the line, as compared with the cost of carriage of other goods on the same line; and of the same on other goods on other portions of the line; and the proportion of all these to the whole charges and expenses of the company, are items which it might be difficult for the companies themselves to give, and impossible for a Committee or Government department to ascertain. Still more difficult is the determination of profit. The companies are now entitled to make as much profit as they can, so long as they do not exceed their maximum rates and any attempt to establish a standard of charge depending on profit involves the necessity of determining by law or authority what shall be the maximum dividend. The difficulties attending any proposal of this kind are more fully considered below, and are shown to be practically insuperable.”

“ The proposal to fix a standard for rates and fares by relation to cost and profit may therefore be dismissed as impracticable.”

Then it was proposed there should be a revision of rates and fares. The Committee concluded also that was impracticable. Thus almost every proposition that I have seen in print or heard in discussing this subject with railway men and others, was considered as late as 1872 by this Committee of both Houses to be impracticable after they had taken evidence of the engineers and the principal railway and business men. The result was that the Committee resolved that the recommendation of the Royal Commission as to the publishing of rates—which is one of the clauses of this Bill—should be adopted. The rates were to be published at the railway stations. The suggestions adopted, and adopted on the evidence of Mr. Broughton, then manager of the Mid-Wales Railway—now, I believe, general manager of the Great Western Railway here—Mr. Price, chairman of the Midland Railway Company, Mr. Allport, its manager, and Sir E. Watkin, chairman of

the Manchester, Sheffield and Lincolnshire Railway, were as follows:—

“ Every company is to have the power of making a through rate for goods to any place on any other line. The companies over whose lines the goods are sent are to forward them without delay or obstruction. If there is any difficulty about the proportion in which the charge is to be divided between the sending and the owning companies, the question is to be settled by the court above referred to, which is also to have the power of enforcing the law, and of settling every question between the companies.”

Then they determined that a new tribunal should be established:

“ One thing, at any rate, is obvious from the previous discussion of the proposed suggestions for regulating the relations of railway companies to the public, *viz.*, that it is difficult to provide any fixed or self-acting rules which will, through the medium of self-interest or of the ordinary action of law, do what is necessary to protect the public. Consequently, almost every witness, whether representing the commercial or the railway interest, has suggested the appeal to some board or tribunal, which shall settle disputes, and, in fact, do what self-interest or the law itself cannot do. What this tribunal should be, and what its functions, are questions on which witnesses differ.”

I do not propose to read all the suggestions, but only those more pertinent to my subject:

“ The fourth function would be that of investigating complaints of fairness or unfairness between traders, or between towns and districts, so far as they can be raised under the Railway and Canal Traffic Act. The decisions of the courts as between different classes of traders have, as noticed in an earlier part of this Report, been satisfactory in principle, and there seems no reason to suppose that any tribunal specially constituted would come to sounder conclusions. But then it is urged that the expense of going before the Court of Common Pleas is so great as to give the wealthy companies great advantages over private traders; that the absence of publication of rates prevents the trader from knowing whether he has a case or not, and that a court constituted of persons specially acquainted with the subject would settle questions of this kind without the expense and difficulty which is necessary in order to obtain decisions from a court of law. It is further urged that questions concerning the fairness of charges are matters of administrative policy rather than simple questions of law, and would be better dealt with by a special tribunal. There is considerable force in these statements; and if it is found desirable to establish a special tribunal for the purpose of settling other questions arising under the Railway and Canal Traffic Act, it seems also desirable that it should decide questions arising under this part of it.”

The fifth function is as follows:—

“ The fifth function of such a tribunal would be to see that proper facilities are given for the forwarding of passengers and goods under that part of the Railway and Canal Traffic Act which relates to this subject.”

“ This is much insisted on by various railway managers, and especially by Mr. Broughton, Sir E. Watkin, and Mr. Price. They point out that the Act in question has not operated directly for want of administrative efficiency in the tribunal; and, as incident to a general scheme of through rates, facilities, and running powers, they would give the court power to settle all questions between different railway companies concerning the interchange of traffic; the terms on which through fares rates are to be divided; the charges for the use of stations, sidings, warehouses, and servants; and, when running powers are given, the various questions arising out of them. They would also give this court the power, in cases where proper facilities are refused, of giving running powers against the defaulting company; and even in some cases, not very clearly defined, of acquiring joint stations, new junctions, or additional lines.”

I observe the railway managers do not insist on it here in the same way, because nearly every railway company has petitioned against this Bill in language which is strikingly similar. Here Mr. Broughton, Sir E. Watkin and Mr. Price were very strong in favor of a tribunal being established which would see that proper facilities were given for the forwarding of passengers and goods under that part of the Railway and Canal Traffic Act which relates to the subject. The sixth function was defined as follows:—

“ The sixth proposed function of this tribunal would be the control of tolls on canals in the hands of railway companies. If, as above suggested, power is given to canal companies to make a through toll, and if provision is made for putting an end to bar or compensation tolls, questions arising under such a law might conveniently be referred to the same tribunal. And there seems to be no reason why it should not decide, in the case of canals, any questions similar in character to those which it has to decide in the case of railways.”

Now these were in substance the conclusions arrived at by the Committee, which were embodied in an Act of Parliament, and which I have substantially copied in the Bill before