

1-2 EDWARD VII., A. 1902

provides that of the two appointed commissioners one should be of experience in railway business.

Tenure of Office.—The provisions in regard to the tenure of office in the United States legislation are very defective. The obtaining of the knowledge requisite to deal with the thousand and one problems presented, is, even with previous qualifications, a work of time. The Commission must, of necessity, have a tradition of its own. And to obtain this a much longer term than six years is requisite. It is true that a member may be reappointed; but, owing to the fact that the organization of the Commission is to be partisan, it being required that no more than three members shall belong to the same political party, there is manifestly, under the changing conditions of politics, an obstacle in the way of reappointment. The argument for the lengthening of the term is further strengthened by the fact, that the shorter the term, the larger the salary that must be paid to attract a sufficiently high type of ability. In 1899 one of the members of the Interstate Commerce Commission resigned because the salary received, \$7,500 per annum, was much less than he could make in the private practice of law. It is reported that at present negotiations are under way as a result of which the present chairman of the Interstate Commerce Commission will be offered a railway position paying twice the salary he at present receives. In the case of the English legislation the appointed commissioners hold 'during pleasure.' The experience of both England and the United States points to the conclusion, that the most efficient work would be obtained from the Commission if the members were appointed on the same tenure as the judges. A life tenure would mean a continuity of regulative tradition. It would also mean that the dignity and security attaching to the life tenure would permit the commission to obtain a high order of ability, which could be obtained only in the case of the shorter tenure by the payment of a salary much higher than Canada could afford to give.

Summarizing the foregoing discussion the following conclusions applicable to conditions in Canada would appear:

(1.) There must be great care in the definition of the powers conferred upon the Commission.

(2.) The matters to be dealt with are concerned with administration and policy, rather than formal judicial procedure.

(3.) Subject to an appeal to the Governor in Council the decision of the Commission should be final.

(4.) There should be requirements in regard to technical qualifications for office, one commissioner should be skilled in law and one in railway business.

(5.) The commissioners should hold office on the same tenure as the judges.

One part of the argument made by the Royal Commission in favour of putting the regulative provisions of the Railway Act under the control of the railway committee was concerned with the question of responsibility to Parliament. To quote the words of the reports, 'the political constitution of Canada recognizes direct ministerial responsibility to Parliament much more than in the United States, and therefore as a railway tribunal is necessarily tentative it seems . . . undesirable to remove its operation to its inception beyond the direct criticism and control of Parliament.' The caution here expressed is essential. Ministerial responsibility to Parliament must be recognized. In the Commission legislation of England, this is provided for by giving the Board of Trade a supervisory control in regard to the Commission. If in Canada the decisions of the Commission may be reviewed by the Governor in Council either on appeal or of his own motion, ample provision will be made to safeguard the principle of responsibility.

While the provisions of the legislation organizing the Commission would necessarily give it compelling power, yet the experience of England and of the United States leads to the conclusion that in the solution of its details it will increasingly occupy the position of either a mediator or of an arbitrator. Many matters somewhat trivial in themselves may in default of rectification become serious grievances. Troubles may arise from misapprehension. In the working of the Illinois Commission it has been found in recent years that the commission has in many cases been able to enforce the power of its