FIRE RATES.

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that, on the contrary, rates are being raised all over the State, and he wished to know what that officer proposed to do "to protect the people." The equalization expected, was evidently equalization downward, the minimum which any insurer said he would take being made the maximum which any insurer could get.

Companies and Commission at Deadlock

Then Commissioner Barnes suddenly yielded to pressure and, without the prescribed notice and hearing, ordered a reduction of 12% after September 1st, save a few excepted risks which include what are known as "special hazards." A special meeting of company managers was held in Chicago on August 28th, to consider the situation, and Mr. Barnes had a personal meeting with a number of them on September 15th; but thus far they have not been able to agree whether to take the subject to the courts, merely appointing a committee to look up the legal points involved.

Following this example by still other States in the West and South is entirely probable, and one proposition already made is that the loss experience in each State by itself for a term of years should be the rule for determining rates. In Arkansas a county prosecuting officer has begun an anti-trust action against 65 companies, demanding penalties amounting to a million from each one, and he has been outdone by a law officer in Mississippi who has entered similar suit against many companies, to prevent combinations for reported to aggregate 250 millions. Upon such wild work as this the reader can be left to make his own comment.

Fire Underwriting Stops Suddenly

While these proceedings have been going on, fire underwriting in the State of Indiana came to a sudden temporary halt by the action of the State Attorney-General in filing a suit against many companies, to prevent combinations for maintaining rates, under a joint agreement known as the Dean schedule; a restraining order prevented renewal of many expiring policies which had been written on that schedule, and so things came to a halt until a court ruling could be obtained. He lately sought, unsuccessfully, to have several insurance and inspection "bureaus" declared in contempt of court, and the situation at this date of writing is still unsettled. A demurrer, holding that the action cannot be maintained because Indiana has no anti-trust law and the common law is not applicable to such cases, has just been taken under consideration by the Court in Indianapolis, and a hearing on the contempt procedure has been set for Oct. 9.

We must explain here that for many years, in many States, an "anti-compact" fight has been going on, and laws have been passed to prevent the companies from agreeing on any common schedule, upon the wholly-mistaken theory that agreement means high rates and that those will be kept down if the companies can only be prevented from comparing notes and using any common material. The singular feature is that while some States are still trying to keep the companies apart, two or three others have dropped that and are trying to force them together, thus making compulsory what is still forbidden elsewhere. Even in Kansas, the anti-trust and anti-compact litigation begun by the State's Attorney-General last year is still undisposed of and that official refuses to drop it. Two opposite courses, aimed at the same result, are thus going on.

Coercion of the Companies

The aim of the entire agitation, says our contemporary, is coercion of the companies in respect to rates. It has been said, in order to illustrate the principle of the business, that insurance is practically a tax and the underwriters merely assess and collect it. An apologist for the Kansas law hit upon this old illustration and actually said that, inasmuch as insurance premiums, by the companies' own admission, are "a tax," it is certainly right for the States to have something to say about levying it.

A total false analogy between insurance and common carriers has been assumed. The likeness between the Kansas movement and the terms of the law, on one hand, and the Inter-State Commerce Commission and its law won the other, is very noticeable. This likeness and the false analogy are shown very strikingly, in a recent decision of the Court of Errors and Appeals of New Jersey. The Newark Fire Insurance Exchange was formed several years ago, as a movement for exchanging information and securing approximate uniformity of rates in Newark and in Hudson County. It was immediately assailed, in the customary manner, as being a compact. The case has dragged along but lately that Court issued an injunction against some 121 companies, holding the Exchange an illegal combination in restraint of trade. Said Justice Garretson:

What the Judge Said

"If a corporation, engaged in a business that is affected with a public interest, contracts to enter upon a line of conduct in respect to such business that tends to affect such public interest injuriously and is contrary to public policy, such contract is ultra vires and such corporations may be restrained in equity at the suit of the Attorney-General, without regard to whether or not actual injury has resulted to the public."

Here we have an echo of the Northern Securities case, in almost the language then used, declaring that the law does not discriminate between doing wrong or intending to do wrong and the possession of ability to do it. A minority opinion has well set forth the other view, and the evidence showed decline rather than advance in the local rates since the Exchange was organized. A confusion appears between the "public service" by carriers, such as this State is now professing to regulate, and the "public interest" which attaches to every moral and useful business; for it is plain that if all business "affected with a public interest" is to be regulated by statute, the regulation cannot consistently omit anything.

There were two assumptions in this case, both apparently unsound: one, that the compact actually was in restraint of trade; the other, that "control" within the area resulted. "The business of fire insurance (said Justice Garretson) as it is carried on in this State by corporations created, licensed and regulated by the State, is a business affected with a public interest," &c. The licensing and regulating, then, stand upon the assumed "public interest;" the public interest, in turn, is proven to exist by the fact of licensing and regulating. An excellent example of arguing in a circle, one would say.

Shut-out Competition

So, as pointed out above, the latest attempt towards lower rates is to construct a schedule, subject to review and change by a State functionary, and practically compel all companies to use it; this aims at uniformity. Meanwhile, the former process of preventing uniformity and agreement is still going on generally. It is an attempt to definitely substitute coercion for competition, notwithstanding insurance does not contain one element of possible monopoly, but is absolutely open to competition by all the free capital of the world. Dissatisfied persons who really believe rates too high have only to organize themselves, under general laws, into new companies and put the issue to test.

"Such is the situation to which some years of increasing indulgence in indiscriminatng attack upon corporatons have brought us. Commissioner Hardison of Massachusetts, in his annual report lately submitted, devotes several pages to the subject, arguing that rate-making by States opens a way to rates which may sap the companies' ability to bear the sudden blow of conflagrations. But there are reasons for believing that this course of general attack has reached its climax and has even begun recession; if not so, it is certain that recession cannot delay much longer. As for underwriting in particular, any attempt to seriously enforce this denial of fundamental business rights tends straight to formal insurance by the States themselves, which ought to undertake that entire function if they persist in making all the terms."