

is substantially the same as the English Act Well, by that legislation, by the Canal and Traffic Act of 1854, they abolished the Commission which had acted from 1846 to 1853. They found that it had not effected what it had been designed to effect, and they proposed that one of the Courts of the country should deal with the subject. That proposal has found advocates in this Parliament possibly, and certainly in the press. It has been suggested, why not hand over to one of the Courts, with the authority to delegate some power to an engineer or a barrister, the powers it is proposed to confer on this Commission. Well, if we are to be guided by the experience of the old country, we find that the Court of Common Pleas failed to give satisfaction. The result of the action of this Court is stated in this report as follows:—

"The latter of these principles is an amplified statement of the general law relating to carriers, and no fault has been found with the decisions made by the Court in respect of this part of the Act. But complaints have been made that the difficulty and expense of taking a case before the Court of Common Pleas are such as to deter any but wealthy traders who have a great interest at stake, from contesting cases with the powerful railway companies; and questions of undue preference are often so technical, so dependent on special circumstances of railway management, and so closely connected with questions of "due facilities," as to lead the Committee to the conclusion that even this part of the Act has not been as much brought into play as it would have been, if speedy and summary reference could have been made to a tribunal having practical knowledge of the subject."

Sir ALBERT J. SMITH. What subject did they deal with?

Mr. McCARTHY. They had power to deal with all subjects relating to railways, to issue injunctions to the companies to afford facilities for traffic, and so forth. When the Bill was before the House of Lords, Lord Campbell uttered these words, which were afterwards found to be prophetic:

"That was not a code which the Judges could interpret; it left them altogether to exercise their discretion as to what they might deem reasonable. They were, besides, to form a just judgment on all matters of complaint relating to railway management that might come before them, and they were to lay down a code of regulations for the government of railway companies. The Judges, and himself among them, felt themselves incompetent to decide on these matters. He had spent a great part of his life in studying the laws of his country, but he confessed he was wholly unacquainted with railway management, as well as the transit of goods by boats; he knew not how to determine what was a reasonable fare, what was undue delay, or within what time trucks and boats should be returned. He believed he had correctly represented the feelings of all his learned brethren on the Bench, in reference to this Bill, with one exception, whom he mentioned with honor, respect, and reverence; he meant the learned Chief Justice of the Court of Common Pleas."

And again:

"He (Lord Campbell) would humbly suggest, that if the discharge of the duties imposed by the Bill should devolve on the Court of Common Pleas, where there were Judges as learned as ever sat in Westminster Hall, it would give satisfaction to the country; at the same time, however, he did not propose to throw on other Judges a task which ought not to have been imposed on any of them. They should have a lay tribunal for the decision of questions of the nature contemplated by the Bill, and not one composed of the Judges."

With reference to the proposition to create a Court of Railway Commissioners, the report states:

"How such a body should be constituted is a further question. No existing institution possesses the necessary qualities. The Board of Trade has not the requisite judicial character or means of action; a Court of Law fails in practical knowledge and administrative facility; and a Committee of the Houses of Parliament has no permanence. A new body ought, therefore, in our opinion, to be constituted for the purpose, which might be called the "Railway and Canal Commission." It should consist of not less than three persons of high standing, one of whom should be an eminent lawyer, and one a person well acquainted with railway management."

That Commission was tried for some years and was found to be a failure; then one of the Courts was given increased jurisdiction and arbitrary power, and after several years experience that was also found to be a failure; and finally, after the matter was gone into in a most exhaustive and thorough manner, it was found that the only way to deal properly with the railway com-

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panies was to appoint a board of men of practical experience and knowledge who would be able to deal promptly and effectively with the grievances complained of with respect to railway companies. Now, has that Commission given satisfaction? It has been in force since 1873. If it has not given satisfaction it would not be proper to propose here, as I do in this Bill, to re-enact in substance the provisions of the Railway Commission Bill of England. Well, what do we find? We find that this Commission, who are bound to report to Parliament every year what they have done in the preceding year, have been able to settle most of the questions which had puzzled all the existing bodies, whether legal or administrative, who had attempted to deal with them. We find that they have compelled railways to carry out the law of the land practically, efficiently and inexpensively, and when the time came for its renewal—for it was originally proposed to remain in force only five years—the Government proposed not only to renew it, but to give it increased powers. The late Government of Lord Beaconsfield announced that to be their intention, and I notice that the other day Mr. Chamberlain, in answer to a question, stated that the present Government intended to take the question into consideration, and deal with it in the same spirit. I need not take up the time of the House in showing in what way this Bill proved to be efficient. I would refer any hon. gentlemen who are curious on that point, to Mr. Hodge's work on railways, one of the leading authorities on the subject, from which I will read an extract:

"The Railway Commissioners have now exercised the jurisdiction transferred to them in 1873, for more than three years. It seems desirable to attempt to form some estimate of the law which they have administered. It may be observed, at the outset, that the cases which have been brought before the Commissioners already, nearly equal in number those which were brought before the Judges under the Act of 1874; that, whereas the Judges frequently deferred in opinion and pronounced separate judgments, the Commissioners have always co-ocurred in one unanimous judgment; and that, although the judgments of the Commissioners nowhere directly conflict the decisions of the Judges, and made reference to the principles laid down in those decisions, the Commissioners have, in no case, referred to a particular decision by name."

On reference to the reports of the Commissioners, it will be found that in no case but one has an appeal from their judgment been allowed.

Sir ALBERT J. SMITH. Are any of them lawyers?

Mr. McCARTHY. I think two of them are not lawyers and one is. One has only to read the reports submitted to Parliament and their judgments to see that they thoroughly understand their business—that they know perfectly well the railway laws as well as the practical working of the railways. It is true that recently there have been some applications by way of prohibitions, that the railway companies have felt that the Commissioners have been trenching beyond the limits assigned to them by Parliament, and in one case, not very long ago, at all events, it was decided that the Railway Commission had gone beyond the limits assigned to it by their Commission in directing companies to construct larger stations and provide in that way more facilities for the people. Still, it is quite different to say that within the limits of the Act of Parliament their judgments have ever been successfully denied. I propose to transfer by this Bill most of the powers which are vested in the Railway Committee of the Privy Council to this Railway Commission. I do not propose that they should all be transferred. I do not propose, for instance, that the right should be taken from the Committee of the Privy Council to say when a railway should be open for traffic. I think that is a matter of such vital importance, that perhaps it is proper the Government of the day should be charged with the responsibility of saying where a railway should be open for traffic, or when, having got out of repair, it should be closed.