

MEMORANDUM
ON
THE
STATUTORY CONTROL OF
RAILWAYS.

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Brig.-Gen. F. D. HAMMOND, C.B.E., D.S.O.

Memorandum on the Statutory Control of Railways.

4, Dean's Yard, Westminster, S.W. 1,
August 5th, 1931.

Sir,

I HAVE the honour to forward this memorandum, which I have prepared in accordance with the instructions contained in your letter P. & L. (C) 607 of the 25th June, 1931.

2. That letter instructed me to prepare a "memorandum showing the advantages and disadvantages to be expected from the establishment in India of a Statutory Railway Authority as a feature in the proposed Federal Constitution."

3. The duty required of me was more fully explained in a letter from Sir Louis Kershaw, K.C.S.I., C.I.E., in which I was asked to set out in the memorandum "the practice in other countries, foreign and Dominion, where there is a state railway system, including both those which have a Statutory Authority and those which have not, and the advantages and disadvantages to be expected from the establishment of a Statutory Authority, as indicated by experience in other countries, stated from the technical and not from the political point of view." I was further asked to offer my views, so far as I might be in a position to do so, on the application to the special conditions of India of the experience of other countries, both as those conditions are at present and as they would be under the federal constitution now contemplated, including my ideas as to any special provisions that might be required for Company-managed and Indian State railways.

4. The countries with which I deal in this memorandum are :—
- Canada.
 - Union of South Africa.
 - Germany.
 - Belgium.
 - France.
 - Argentine Republic.
 - Australia.
 - New Zealand.
 - Switzerland.
 - United States of America.
 - Great Britain.

5. Choice in these questions is always difficult, but I have endeavoured in this case not merely to give instances which are representative, but also to include all the more important countries which have introduced legislation on railway control during recent years. I have included the United States and Great Britain because, although in neither country are the railways state-owned, useful experience may be gained from their legislation.

6. In all cases where recent legislation has been introduced I have described the organisation at considerable length so that the details may be available for reference, if it should be decided to take any action.

Canada.

7. Before the War the railway policy of Canada was essentially in favour of private ownership and management, although State and Provincial aid had been given in many cases to help construction. Out of 26,727 miles of railway in the Dominion only some 2,000 miles were owned by the Government, and these had been built as part of the bargain struck with the Maritime Provinces at the time of confederation. There was no marked movement towards state ownership and the Intercolonial was constantly held up as an example of the bad results to be expected from state ownership and management as opposed to the fine results obtained by the Canadian Pacific Railway, both financially and in the way of development. In addition to the Canadian Pacific Railway, the principal privately-owned systems were the Grand Trunk, with its subsidiary, the Grand Trunk Pacific, and the Canadian Northern.

8. During the war these two last-named systems got into grave financial difficulties and a Royal Commission was appointed to investigate the whole situation, particularly in view of the large guarantees given by the Dominion and Provincial Governments. The principal recommendations of the Commission in the Report which it made in 1917 were that these undertakings were unable to maintain an independent existence and that they should be transferred to the Government, which alone could carry the burden. The Commission examined and rejected the solution of Government operation under a Minister responsible to Parliament on the grounds that it would not give better service or rates, that if the Government operated these systems it should, in fairness, take over the Canadian Pacific Railway also, whilst the latter gave good service and should not be interfered with, and that 7,000 miles of line owned by Canadian companies in the United States of America were subject to the foreign jurisdiction of that Government. They recommended, accordingly, that a new public authority, a Board of Trustees, should be formed to which the Canadian Northern, the Grand Trunk, the Grand Trunk Pacific, the Intercolonial and the National Trans-continental Railways should be transferred, and by which they would be operated as a united system on a commercial basis, that the Government should assume responsibility to this new authority for the interest on the existing securities of all these undertakings and, finally, the Commission laid stress on the point that this Board of Trustees should be non-political, permanent and self-perpetuating. These recommendations were not unanimous, one member of the Commission of three dissenting.

9. The Canadian National Railways were finally formed and into it at various times were absorbed the Canadian Northern, the Grand Trunk, the Grand Trunk Pacific, the Intercolonial and the

National Transcontinental systems. Thus, excluding a few smaller lines like the Pacific Great Eastern in British Columbia, the railways of Canada are now divided between two big corporations, the Canadian National Railway Company, which is state-owned, and the Canadian Pacific Railway Company, which is privately owned.

10. The constitution of the Canadian National Railways did not follow the lines proposed by the Royal Commission. The principle of forming a company was maintained, but, in place of a Board of Trustees, non-political, permanent, and self-perpetuating, subject only to the approval of the Government to nomination, the act constituting the company provided for a Board of Directors. These Directors are nominated by the Governor in Council and may not be less than five nor more than fifteen in number. They hold office from one annual meeting to another or until their successors are appointed, unless removed by the Governor in Council for cause.

11. The highest executive officer is called, following the American practice and that recently adopted on the London Midland and Scottish Railway, President, and he is also Chairman of the Board. He is assisted by Vice-Presidents in charge of the various departments of the Railway, and of these the Vice-President in charge of legal affairs sits on the Board and acts as Vice-Chairman of it. In addition the Deputy Minister of Railways and Canals, who is a civil servant and the permanent head of the staff of the Ministry, also sits on the Board. These three may be called the permanent members. The other members of the Board are appointed by the Government in power; thus at the last General Election when the Conservatives came into office they asked for the resignation of the whole Board with the exception of the three whom I have called the permanent members.

12. The estimates are placed before the Board and approved by them. They are then presented to the Minister of Railways and Canals. The Minister is already aware of their main provisions owing to the presence of his Deputy Minister on the Board. Finally, they are presented to Parliament and are examined in detail in Special Committee.

13. The deficit on the results of the year has to be paid out of the Consolidated Revenue Fund. That there have been deficits is not to be wondered at. Although no compensation had to be paid for the common and preference stocks of the Grand Trunk, of the other systems incorporated the Canadian Northern at the time of taking over could not earn enough to pay operating expenses and fixed charges, the Grand Trunk Pacific could not pay operating expenses, both it and the Canadian Northern needed new equipment, the Intercolonial had never been able to do more than pay operating expenses and the National Transcontinental had also operating deficits due to insufficient traffic.

These railways had never been built with a view to forming one system and in many places were duplicated and formerly in competition. The mere fact that they have been merged into one

system, while it might effect economies, could not increase traffics, which were what the lines stood most in need of. The railways had been developed in fact far in advance of the country and its traffic and merging the less prosperous ones into a single system could not remedy the over-building.

14. Politics have always entered largely into Canadian railway policy, the Canadian Pacific Railway being regarded as the protégé of the Conservative party and the Grand Trunk of the Liberal, and it cannot be said that, despite the efforts of the President and Vice-Presidents, they have even now been eliminated from certain phases of railway policy, more particularly in respect of new lines. The Canadian Press gives plenty of evidence to the contrary, but great strides have been made in this direction and the President has undoubtedly welded this heterogeneous collection into one corporate body and, besides giving an admirable service to the country, has inspired this body with a remarkable *esprit de corps*. It is thus rather difficult to judge the organisation, to judge how far the success which it has attained has been due to the man and how much to the system, and how it will succeed when the man has gone and when the initial momentum which he has imparted to the machine has died down.

15. The organisation appears to retain one of the bad features of direct management under a Minister. The severe criticisms to which, at the time of writing, the estimates are being submitted in Special Committee seem, to judge from press accounts, to include subjects which are essentially those of management rather than of policy, though it was always difficult to lay down a hard and fast rule as to where policy ends and management begins.

16. Politics have, however, been eliminated nearly entirely from one of the most important questions, that of rates, the control of which is in the hands of the Board of Railway Commissioners. Rates, whether for national or privately owned railways, are under the sole jurisdiction of this body. It is the Canadian counterpart of the Interstate Commerce Commission in the United States. The Act incorporating the Canadian National Railway Company provided that the Act of 1919 establishing the Board of Railway Commissioners should apply to that Company except as regards those provisions relating to the location of lines of railways and the making and filing of plans and profiles. Thus in matters of rates and safety the Canadian National Railways are on the same footing as the Canadian Pacific Railway.

17. The Board of Railway Commissioners is composed of 6 members, appointed for a term of 10 years by the Governor in Council. They may be removed at any time by the Governor in Council upon address by the Senate and House of Commons. They are eligible for re-appointment, but cease to hold office upon reaching the age of 75. One of them is appointed by the Governor in Council Chief Commissioner and another Assistant Chief Commissioner, and these must be or have been either judges of a superior court or lawyers of at least 10 years' standing. No special

qualifications are laid down for the other Commissioners. The Chief Commissioner receives a salary of \$12,500 a year, the Assistant Chief Commissioner \$9,000, and each of the other Commissioners \$8,000 a year.

18. The Board has full jurisdiction to hear and determine all matters, whether of law or of fact, and has the full powers, rights and privileges of a superior court. It can enquire, not only into matters brought before it by parties, but also of its own motion can enquire into and determine matters provided for under the Railway Act of 1919 establishing it. At the request of the Minister of Railways and Canals it shall also enquire into and determine similar matters. These are very wide and include all phases of rates, safety, accounts, stocks and debenture issues and many matters similar to those which would be included in England in the bye-laws of a railway company.

Any decision or order of the Board may be made by the Board a rule of the Exchequer Court and it may fix penalties, when not already provided in the Act, for offences against any regulation or order made by it.

An appeal lies from the Board to the Supreme Court only on a question of jurisdiction, but an appeal can also lie by leave of the Board on a question of law.

The Governor in Council may at any time vary or rescind an order or decision of the Board, but such power, I am informed, has been rarely, if ever, used.

The Act provides in full for the legislation governing railway companies on such points as issue of shares, calls, meetings of shareholders, appointment and powers of directors and payment of dividends which in this country are governed by the Companies Act.

All plans and profiles of new lines must be approved by it and it inspects and gives permission to open for traffic.

It can go further and order a line to be opened and issue an order to a railway company to build and operate a spur not more than 6 miles long to an industry where the industry and the railway company have not been able to come to terms. In this case it lays down the terms for operation. Pooling of traffic is prohibited without its approval. Thus it will be seen that, quite apart from the questions of rates, its powers are very extensive.

19. In the matter of rates and fares it decides all questions of preferential treatment and discrimination and prescribes the classification, which is uniform throughout Canada. Conditions of carriage must be approved by it.

Finally it is the duty of the Board in the words of the Act to "fix, determine, to enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require." This power is not limited by any Act of the Parliament of Canada, provided that rates on grain and flour shall from a certain prescribed date be governed

by the agreement of 1897 between the Government of Canada and the Canadian Pacific Railway, known as the Crow's Nest Pass Agreement.

The railways in the first place present their tariffs for the approval of the Board but the latter may initiate and enforce such changes in the tariff as it thinks desirable.

All rates whether special, standard or competitive, the three classes into which rates are divided in the Act, must be made public and a copy must be open to inspection by any one during office hours.

The Crow's Nest Pass Agreement provided that in consideration of approximately three million dollars received from the Canadian Government, the Canadian Pacific Railway was to extend its line westward in the Crow's Nest Pass territory and to maintain for ever on grain and flour reduced rates which were specified in the Agreement. Apart from a few years after the war when they were allowed to be raised, the rates for the movement of grain and flour both east and west have been fixed by this agreement.

20. An interesting feature in this machinery for fixing rates is that, unlike the British and American Acts, where certain revenues or percentages were laid down as the standard by which rates were to be judged, the Canadian Act took the existing rates as the basis and laid down as the standard whereby these and any subsequent changes therein were to be judged that they were to be just and reasonable bearing in mind changing conditions and the cost to the railway of effecting the service.

While, as in the case of any similar tribunal, the decisions of the Board have not always met with universal approval, it can be claimed that this machinery has proved at least as efficient, whether judged from the point of view of the country or of the railways, as the tribunals elsewhere with their rather elaborate "yard-sticks" and is certainly more flexible and quicker in action.

The Board enjoys a high reputation and has been remarkably free from political influence, more particularly when it is remembered that new appointments have been made from the ranks of the political party in power. The reason appears to lie in the length of the term of service. When a man accepts so long a term of service as 10 years it means resigning all political aspirations, and at the end of that time he has little to hope for from his party. Also the length of the term ensures that there is a fair distribution of the Board between the two parties.

The Union of South Africa.

21. The South Africa Act of 1909, which established the constitution of the Union of South Africa, laid down that "all ports, harbours and railways belonging to the several Colonies at the establishment of the Union shall vest in the Governor General in Council," that "subject to the authority of the Governor General in Council, the control and management of the railways,

ports and harbours of the Union shall be exercised through a board consisting of not more than three commissioners and a Minister of State, who shall be chairman. Each commissioner shall hold office for a period of 5 years, but may be re-appointed." Further the Act laid down that "The railways, ports and harbours of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland provinces of the Union." Further provisions were made to ensure that the finances of the Railways should be completely separated from those of the State, that the interest due on capital invested in the Railways should be paid over to the Consolidated Revenue Fund of the Union, and that the earnings of the Railways should be so regulated as to be not more than sufficient to make the Railways self-supporting. Finally it laid down that if the Railways were required by the Government to provide any service gratuitously or at less than cost, or if any works or lines were constructed against the advice of the Railway Board and the Board considered that there would be insufficient revenue therefrom to meet working expenses and interest charges, the resulting loss as agreed to by the Controller and Auditor General should be paid from the Consolidated Revenue Fund to the Railway and Harbours Fund.

Seldom, if ever, can greater pains have been taken to draw up a constitution with the object of ensuring that the state-owned railways, while being directly state-managed and with the final control in the hands of the Parliament, should be run on business lines and free of political interference.

22. That the South African Railways have been managed, generally speaking, with conspicuous success cannot be denied, but accusations have frequently been made that in many respects their administration has not followed business principles and it certainly cannot be said that it has been free of political interference. There is no single instance where payments have been made from the Consolidated Revenue Fund to the Railways on account of services given at less than cost or for losses on working branch lines.

It may be argued that the success which has been attained has been due in large measure to the strong personalities of the two able men who have filled the post of General Manager; that it is only owing to the exceptionally strong economic situation of South Africa and to the great developments which have taken place that the Railways have been able to depart in certain cases from business principles without impairing their financial position; that, in fact, a different picture would have been presented had there been a weak General Manager or if during the 20 years which followed Union South Africa had not enjoyed, on the whole, a uniform and remarkable prosperity.

23. Ever since the Constitution has been put into force there has been dispute as to the position of the Board of

Commissioners. The Act laid down that the control and management should be exercised "through" the Board. The Government interpreted this as meaning that the Board was to be an advisory body, while the Board considered that the intention of the words was to make them directly responsible to Parliament. The point was finally settled by the Railway Board Act of 1916, which stated clearly that the Board was only to advise the Minister, and, though the Minister had to consult the Board, he could depart from their advice, the only check being that in that event he had to record his reasons for so doing and these would be reported to the next meeting of the Board and recorded in the Minutes. This Act also gave the Minister a casting vote which he did not possess before.

It is clear from reading the South Africa Act of 1909 that to place the Board in such an insignificant position as this was a wide departure from the intention of the framers of that Act. It places the Railways for all practical purposes in the old position of being administered by a General Manager directly responsible to a Minister, an organisation which had already been tried and found wanting in the older South African colonies before Union.

24. The organisation has other defects. Appointments are essentially matters of management and working rather than of policy. The final authority, in this case the Minister or the Board, has the right to lay down the policy to be followed in making appointments and also the right of approval or refusal. But it is essential to good management that the General Manager should initiate the recommendations for appointments, more particularly those for the higher posts, and the higher authority should only withhold its approval for the strongest reasons. But in South Africa appointments have been made by the Minister contrary to the recommendation of the General Manager and the status of posts has been altered without his having been consulted. Such acts inevitably impair the efficiency of management. It may be argued that acts such as these infringe the spirit, if not the letter, of the statutes establishing the railway administration, but, nevertheless, it affords another instance of the dangers of direct management under a Minister. He is in the position of being able to interpret the rules as he thinks desirable, or, it may be, to pass legislation to alter them as he requires. An excellent example of this is afforded by the law reducing the Railway Board in South Africa to a purely advisory capacity.

25. Besides these difficulties, both the Minister and the General Manager are sometimes placed in anomalous positions. The General Manager has to defend the policy of the Minister before the Select Committee of the Legislature. On such questions, for example, as the construction of a particular branch line, the views of the General Manager may be at variance with those of the Minister but, once the line has been included in the Estimates, he must support his Minister and defend the project before the Select Committee. Similarly, the Minister must defend the General Manager in the House.

26. The main grounds upon which the Railways have been criticised as departing from business principles are in connection with the taking over of the line which was built for military reasons to connect up the South African railway system with South West Africa, with the adoption of the white unskilled labour policy, with the very low rates which it has given in order to establish internal as opposed to imported manufactured articles, and with the low rates given to agricultural exports and to livestock when drought stricken.

In the matter of low rates, while I am personally opposed to the use of railways as an instrument of protection, it must be admitted that quite a good case can be made out for granting low rates in order to foster the export of agricultural products and the development of home industry as well as to assist farmers in times of difficulty on the ground that it is to the interests of the railway to do so. The main dispute is as to the degree of assistance which should be given by the railways and Government respectively.

But it is difficult to see, in view of the clause of the Act regarding business principles, what justification there can be for saddling the railway finances with the annual loss of working a line built for purely military purposes or with the whole of the losses entailed by being forced to adopt the Government policy of employing the more expensive poor whites instead of natives. These are surely cases where the Railways should be indemnified under the clauses of the 1909 Act for the losses that they have incurred. In fact, the Railway Board did recommend that, at any rate, part of the loss on the working of the railways in South West Africa and those connecting therewith should be borne by the Consolidated Fund and their opinion was endorsed by successive Select Committees. The Controller and Auditor General reported to the same effect in strong terms. Nevertheless, the Railway Board eventually abandoned their position, and the South African Railways have had to bear the whole of the losses.

27. It is a significant fact that in no case have the Government been called on to make good losses on working branches, although, apart from the South West Africa case, it is common knowledge, supported by comments from previous Annual Reports that many of the branches have been built for political rather than for railway reasons. The answer to this is that the Board has never, as required by the Act, definitely advised against the construction of any lines; in the South West Africa case the line was built during the War without their being consulted and, being war time, no estimates were prepared of the probable future results.

It is impossible to imagine that during the 21 years the South Africa Act has been in force, when the railway mileage has increased from 7,592 to over 12,000, the Board has seen eye to eye with the Government in the case of every branch line. The only deduction that can be drawn is that the Board has become, in this respect at any rate, entirely subservient to the Minister and this is borne out by the fact that for a long time past the members of the Board have been political nominees of the party in power.

As expressed in the words of a well documented but distinctly hostile critic, Mr. S. H. Frankel, "Under the present system, a Minister of Railways (usually not a railway expert) represents the interests of the Government generally rather than those of railway transport, and a political Board ratifies his decisions, whilst the only expert representative of railway interests is the General Manager, already over-burdened with executive duties. Under such a system, the Administration of the Railways on commercial principles becomes impossible."

28. The lessons which can be drawn from the experience of the South African Railways are, I think, that, apart from affording another instance of the objections to having a General Manager reporting direct to a Minister, who is usually bound to consider Government interests before railway ones, it is essential to define clearly the powers and responsibilities of any controlling body in order to minimise the danger of encroachment by the Minister on their functions, and to ensure that their powers are adequate. It is also well to define clearly the relationship of the General Manager or executive to that controlling body.

Germany.

29. The formation of the German State Railways into a Company was not a spontaneous movement of either the German Government or the German Railways. When the Dawes Committee was appointed in 1924 to examine the problem of reparations in Germany, one of its most important duties was to assess the amount of the reparation indemnities which could be paid by Germany. The largest asset of the German Reich was the State Railways. Before the War practically each individual state of the German Empire had owned its own railways. Shortly after the Armistice these smaller state railways were merged into one single undertaking. With the object of examining how this asset could be best utilised to assist the finances of Germany in the problem of reparations, the services of Sir William Acworth were sought in 1924 by the Dawes Committee. He formulated a proposal which was submitted by himself and M. Lèverve to the Committee and adopted by them.

30. In accordance with this scheme the German State Railway Company was incorporated to operate the State Railways on behalf of the State with a capital of 2 million gold marks of preference and 13 million gold marks of ordinary shares. The former were bearer shares but the latter were registered in the name of the Reich and could not be transferred without the consent of the Reichsrat and Reichstag by a two-thirds majority. One quarter of any issue of preference shares had to be surrendered to the Reich free of charge. The remaining three-quarters could be sold by the Company which would receive the proceeds, the Reich nevertheless having the right to the first half million marks issued or to the proceeds arising from their sale. They were to be issued

at not less than par with interest not greater than 7 per cent. and had the right to repayment before the expiry of the Concession. The preference shares were cumulative and, if it was decided to pay a dividend on the ordinary shares, the equivalent of half the sum so paid out in the ordinary shares was to be paid to the preference shares as an additional dividend. By the 31st December, 1929, 1,081 million marks of preference shares had been issued, of which 500 million had been surrendered to the Reich free of charge.

In addition Reparation Mortgage Bonds to the nominal amount of 11 millions of gold marks, bearing interest at 5 per cent. with a 1 per cent. sinking fund, were issued to the Trustee for the Reparations Commission. Finally the Company were to collect and pay over to the Reich or the Agent for the Reparation Payments the proceeds of the transport tax at the rate then in force. In this respect the Company were merely to act as a collecting agency.

The Company had the right to issue bonds ranking after the Reparation Bonds subject to the agreement of the Board of Management. The amount of such loans was also to be regulated by the number of preference shares issued. No loans of this class had been contracted up to the 31st December, 1929.

31. The Law and the Statutes laid down further how the net operating income was to be applied and the order of the various calls on it, reparations bonds, reserves, and amount thereof, dividends, &c. I do not propose to detail these as they have been altered by the later Statutes.

32. A Board of Management was established to administer the Company. It consisted of 18 members of whom nine were to be appointed by the Government and nine by the Trustee appointed by the Reparations Commissioners. Five of the latter had to be of German nationality. Clauses were inserted so that four of the seats on the Board filled by Government appointment should be assigned to the preference shareholders later.

The members of the Board had to be business men of experience or railway experts; they were not allowed to be members of a Parliament of the Reich or of any of the German States. The term of service was for six years, with eligibility to re-election on retirement, three members retiring every second year.

The President of the Board had to be a German and had to be elected every year by a three-fourths majority of the Board voting. As soon as the preference shareholders had three representatives on the Board, the President was to be chosen from amongst them. The Board were granted full authority over the budget and accounts, the distribution of profits subject to the provisions of the statutes, and over appointments.

The Board were empowered to delegate their powers so far as they thought fit to a permanent committee of six, three from each group, one of whom at least should be a member of foreign nationality, and one should be chosen from the representatives of

the preference shareholders. The Board were empowered to fix their own reasonable remuneration.

33. The management of the Company's affairs, subject to the control of the Board, was to be entrusted to a Directorate. The Board were to appoint the Director General for a period of three years by a three-fourths majority of the Board. The other Directors were to be appointed by the Board on the Director-General's recommendation. All of the Directorate had to be of German nationality and none could be members of the Board. Their appointments had to be confirmed by the President of the Reich. The Board could remove the Director General at any time by a three-fourths majority of the members voting, but such removal would not affect his right to pay and allowances under his contract of appointment.

A Railway Commissioner was also to be appointed by the foreign members of the Board, his term of service being three years. His duties were essentially to watch over the interest of the Reparation Bondholders. For this purpose he was given extensive powers of intervention and of inspection, both financial and technical, and attended meetings of the Board and of Committees, but had no vote.

34. As regards the power of rate making I cannot do better than give a translation of clauses 33 and 34 of the Law incorporating the Company which govern this, as they are very clearly expressed.

CLAUSE 33.—TARIFFS.

(1). The Company shall at the outset charge the tariffs at that moment in force. Subsequently it may change these tariffs or any of them under the conditions set out hereafter. The provisions contained in Treaties in force in reference to tariffs shall be observed by the Company.

(2). There shall be submitted for the approval of the Government any alteration in the methods of tariff application prescribed by the Traffic Instructions in the general tariffs, including the general tariff regulations, in the freight classification and in the scale of supplementary charges, as also the introduction, alteration or withdrawal of international or exceptional tariffs or of any other special concessions in tariffs.

(3). The approval of the Government shall be held to have been given if the Company has not received a reply from the Minister of the Reich responsible for the control of the railways within twenty days of its application for approval. The definite decision of the Government on any tariff proposal submitted by the Company shall always be given with the least possible delay. The existing tariffs shall remain in force until the Government has rendered its decision, or, in case of disagreement between the Government and the Company, until the judgment of the Tribunal, or, as the case may be, of the Arbitrator under the provisions of clauses 44 and 45 of this law, has been pronounced.

(4). The Government may renounce the right of previous approval in such cases as are not of important public interest. In any such case alterations made are to be notified forthwith to the Government.

(5). The Government may further call for a reduction in tariffs or any other alterations in tariff provisions which it considers necessary in the interests of the national economy. In the case of difference between the Government and the Company the case shall be referred to the Tribunal or the Arbitrator under the provisions of clauses 44 and 45 of this Law.

CLAUSE 34.— PROTECTION OF THE INTEREST AND SINKING FUND.

The rights of supervision and control of the operating and tariffs of the Railways reserved to the Government by the present law shall never be so exercised by the Government as to prevent the Company earning a net revenue adequate to secure the regular payment of interest and sinking fund on the bonds and the preference shares.

35. The Special Tribunal to which reference is made in the foregoing clauses of the Concession was to consist of an experienced judge of German nationality to be appointed by the President of the Supreme Court of the Reich for a period of five years and two other members appointed specifically for each case by the President of the Supreme Court, one on the nomination of the Government and the other on the nomination of the Company. To this tribunal was to be referred any case of difference between the Government and the Company in respect of the interpretation of the Concession and the Statutes.

If it was considered that a decision of the Tribunal was liable to imperil the service of the Reparation Bonds or if any delay of the Tribunal in giving its decision was likely to have a similar effect on the service of these bonds, appeal could be made to an Arbitrator of neutral nationality to be appointed by the Court of International Justice, and his decision was to be final and without appeal.

36. Judged by the financial results and by the report of the Commissioner, who was a Frenchman and appointed to supervise the undertaking from the Reparations point of view, this constitution apparently worked well. The net operating surplus went up from 694·2 million reichsmarks in 1926 to 860·2 in 1927 and remained, roughly speaking, at that figure up to and including the year 1929. After meeting the service of the reparation bonds, the allocations for the legal reserve and for the special reserve to write off plant acquired since the concession, a sufficient balance was left to meet the 7 per cent. dividend on the preference shares and a carry forward of between 167 and 179 million marks. No dividend on the ordinary shares was paid, but it was not anticipated that this would be possible during the early years. These results were achieved despite an increase in wages of 20 per cent.

Five cases had been submitted to the Railway Tribunal; two of these involved staff questions, one the question of contributions to be made to local authorities, one the liability of the Company to stamp duty in Prussia, and, finally, one case regarding tariffs. In this case, with the consent of the Government, the Company's request to raise rates so as to produce an additional 250 million marks revenue, which had been refused by the Government, was referred to the Tribunal, who found in favour of the Company, and the rates were raised accordingly.

In judging the success of the administration it must be borne in mind that there were foreign members on the Board and a foreign Commissioner, one of whose principal duties it was to prevent any undue interference by the Government, particularly such as was likely to imperil the service of the obligations and preference shares of the Company.

37. In 1930 an amended constitution was put into force as a consequence of the Experts' Plan drawn up by the Young Committee. This reconstitution was prompted, not by the needs of the Railways or any failure on their part to meet their reparation obligations, but for other international reasons. For this purpose, a sub-committee, consisting of two representatives of the creditor Powers and two representatives of the Reich, drew up proposals for adapting the Law and Statutes of the Company to the Experts' Plans. These proposals were adopted in their entirety.

The principal points of amendment were the substitution for the Reparation Bonds of a Reparation Tax. The annual amount of this tax payable for 37 years equals the interest and sinking fund of the Bonds and thus no change resulted so far as the finances of the Company were concerned. Provision was made for the issue of further preference shares when necessary. There was an alteration as regards the transport tax, but as the Company previously acted only as a collecting agency this again made no change financially.

38. Under the new statutes the net operating income, after the operating payments and the reparation tax have been made, has to be applied as follows :—

- (1) to the service of any bonds or loans.
- (2) 2 per cent. of the gross receipts have to be applied to an Adjustments Reserve to cover any operating deficit, as security for the reparation-tax, and for the service of any bonds or loans. When the maximum, 450 million reichsmarks, of this reserve has been reached, 1 per cent. of the gross receipts have to be applied to form a dividend reserve for the preference shares up to a maximum of 50 million marks. An adjustments reserve of 500 million marks had already been built up under the original constitution, so that this clause merely meant distributing the sums thus received to the new adjustments and dividend reserves.

- (3) Arrears of dividends on the first series of preference shares.
- (4) The current dividend on the first series of preference shares.
- (5) Arrears of dividends on subsequent issues of preference shares.
- (6) The current dividend on the subsequent issues of preference shares.
- (7) Refunds to the Government of any sums it may have paid under its guarantee of the reparations tax. After the above services have been met, the Board will, acting in agreement with the Government, decide on the employment of the balance on the following principles.
- (8) At least 25 per cent. of the balance, not including the balance brought forward from the previous year, will be carried to the dividend reserve up to an amount not exceeding 100 million reichsmarks. Although not precisely stated, this is presumably the maximum in each year.
- (9) Special reserves may be established and a special reserve for redeeming preference shares must be established as from 1925 and may be established earlier. Under this clause the Company have already established a reserve fund for writing off plant acquired since the concession started. It is not required to write off plant dating from earlier than that; the Company's duty is limited to maintaining it. The special preference shares redemption reserve has not yet been started.
- (10) A dividend may then be distributed in the ratio of two-thirds of the sum to be distributed to the ordinary shares and one-third to the preference shares as a supplementary dividend.

What happens if the Company and the Government cannot agree as to the employment of the residue after the first seven statutory requirements have been met is not laid down. Certain cases, such as the amount which it is wise to distribute in dividends, are hardly suitable for decision by the Railway Court and, further, it is not specifically laid down that such cases shall be taken before that Court except for the general clause that disputes between the two in respect of the interpretation of the Statutes shall be so dealt with.

39. Foreign representation on the Board is abolished and also the post of Railway Commissioner. The Government will in future appoint the whole 18 members of the Board, except that for each 500 million marks of preference shares there will be one representative on the Board who will replace one Government nominee. Their term of service is, however, cut down from six to three years. The qualifications that they must be business men of experience or railway experts and not members of a German or German State Parliament remain the same. The method of selection of a President remains the same but his appointment requires the confirmation of the President of the Reich. The

functions of the Board, the creation of a permanent Committee, the appointment and functions of the Director General and Directorate, *mutatis mutandis*, remain the same, except that, instead of the Director General's appointment being subject only to the approval of the President of the Reich, the Board have now to get into touch with the Government beforehand.

The other important change in respect of control is the appointment of a Government Representative who is entitled to take part without vote at all meetings of the Board or of its committees.

The statutes regarding tariffs have not been altered substantially to the detriment of the Company. A special Railway Court has been substituted for the Special Tribunal but the powers have not been altered, only the method of appointment. Their decision is, however, now final and the Arbitrator has been abolished.

As in the previous law the position, pay, and conditions of work of officials and employees are to be regulated in a certain measure by those of Government officials. They are to be similar and where the Company consider that the special circumstances of the Railways necessitate a deviation from the provisions applicable to Government servants, they have to inform and discuss their intentions with the Government. If no agreement can be reached, the final decision is to rest with the Railway Court.

40. The control which the Government now exercises through the Minister of Transport over the Railway Company may be summarised as follows.

The Government has the right to ensure that the railways are administered in accordance with the requirements of traffic and of the needs of German industry and that they are maintained and operated in a manner consistent with safety and public convenience.

Particular subjects which have to be submitted for its approval are the closing of any line or of important stations; all major new works or alterations to technical installations, the extension or restriction of electric traction or changes in the system of signalling as well as the abolition of any of the existing classes of passenger traffic; the creation by the company of a new undertaking or its participation in an existing one. Proposed passenger time tables must be submitted to the Government and in case of international trains must be so submitted before their international discussion. The Company must as far as possible comply with the Government's proposals for alterations therein. The Government also has the right to supervise the maintenance of services in times of emergency.

The construction of new lines, the purchase of existing lines and the conversion of a secondary line into a main line and *vice versa* require the consent of the Government and the plans for new lines shall be finally decided upon by the Government, which is also the final authority in any dispute between the Company and any German state in regard to new lines or alterations.

The Government may at any time require the Company to build new lines even though the Company considers their construction and operation are likely to be unprofitable and will compete unduly with the Company's existing lines, but in that case the Government will pay for the construction and operation of the new line, if so required, as well as compensation for any loss caused by the competition. If the new line should on the other hand increase the profits on the rest of the system the Government shall be entitled to set these profits off against the cost of operation of the new lines.

In regard to tariffs and rate policy the Government has, as shown earlier, the right to approve any alterations in the regulations, standard rates, freight classifications, charges for miscellaneous services, international and exceptional rates, subject always to each party having the right to submit matters in dispute to the Railway Court.

Finally it has the right to be consulted in the appointment of the Director General and all appointments to the Directorate must be confirmed by the President of the Reich.

41. While these powers of control, held in check on many points at any rate by the power of appeal to the Railway Court, may not be excessive, the strongest power which the Government possesses is undoubtedly in its right to appoint the whole of the members of the Board and to have its own direct representative always present at every meeting of the Board or of its committees. The reduction of the term of service of the directors from six years to three weakens the position of the individual members of the Board and increases the power of the Government to intervene in the management. It opens the way to political pressure being exercised on the members of the Board to make them conform to the wishes of the Government, irrespective of whether it may be to the interest of the Railways or not. There appears to be a grave danger that in course of time the Board will be mainly composed of political nominees.

42. The introduction of a right of appeal to a Court against decisions of the Government on rates questions marks a great change. The view held formerly in Germany, as elsewhere on the Continent, was that railways should not necessarily be self-supporting institutions but rather instruments of economic development, and rates were regarded as instruments of policy. By the Statutes of the German Company the Government ceases to be the sole arbiter and rates in future are to be judged from an economic standpoint.

Belgium.

43. When Belgium seceded from Holland in 1830 railways were still in their infancy. It was only 4 or 5 years since the first steam railway had been opened in England, and, though a project was already on foot for the construction of a line from Antwerp

to the Meuse, no line had yet been built in Belgium. The new State determined that it would keep in its own hands the construction and management of all railways. This decision was largely based on the fear that, if privately owned, the control would be in Dutch hands as had been intended for the proposed line from Antwerp to the Meuse, a situation which might have very serious consequences for a small newly-founded State, surrounded by powerful neighbours.

This policy was followed until about 1844 when a complete reversion of feeling took place and private companies were encouraged to construct, run and manage new extensions. After 1870 there was a change, and public feeling veered over once again in favour of State management. This was partly as a result of the Franco-Prussian War, partly because of public annoyance at the inconvenience caused by the variations between the tariffs and conditions of carriage of the different systems. As a consequence the State started to buy back the various concessions which it had granted, until by 1914 most of the main railways of Belgium were state owned and state managed. This principle was continued after the War until 1926. The State Railway system at that time included the whole of the standard gauge railways in the country, with the exception of 212 miles known as the Nord-Belge and leased to the Nord Company of France.

44. There was in addition the extensive metre gauge system managed by the "Société National de chemins de fer vicinaux." This system must not be considered, however, as in any way parallel to the metre gauge railways of India. The Belgian railways are purely agricultural lines of very light construction running often along the sides of the roads, and are controlled by a company whose shares are held by the State, the provinces, and the communes. This company has always been independent of the State Railway Administration and has always been run on the lines of a private undertaking.

45. The policy of State management of the standard gauge railways had not, however, been without its critics both before the War and after. On the one hand, particularly before the War, the Government was accused of using the railways as a "milch-cow" to gain extra revenue, but later and closer examination showed that on the contrary in many years, if proper allowance had been made for charges on capital and for depreciation, there had been in reality a deficit in working. The accusation was possible owing to the fact that the railway budget and accounts were not kept separate from the general budget and revenues.

It was also alleged, and with considerable justice, that the state management owing to the action of Parliament had been forced to buy its fuel and materials in local markets when imported goods would have been cheaper. Political pressure had been brought to make the administration grant preferential tariffs and other privileges which favoured the constituencies of members of the Government Party. Stations of costly and unsuitable design

had been built to satisfy local pretensions and expensive local material had been used in their construction. One of the administrators of the State Railways also drew attention to the exaggerated cost of construction of many of the lines built by the State, due partly to the inordinate time taken over their construction. He also drew unfavourable comparisons as to the excessive number of locomotives on the books, many being of inefficient and out-of-date design, as to the excessive expenditure on fuel and as to the maintenance and renewal of rolling stock. No valid defence was offered to his criticisms. On many occasions, too, the various "rapporteurs" of the Railway Budget to the Chamber of Representatives had pointed out the disadvantages under which the State laboured in its railway management as contrasted with a private undertaking.

46. After the War successive Governments introduced various measures with the object of separating the railway finances from those of the State and of making the railway administration autonomous, but none of these were successful. Finally, in 1926, as a consequence of the serious financial conditions of the country and the fall in the Belgian franc, a Government of political union was formed which included all parties and was vested with special emergency powers. In order to overcome their main difficulty, which was the large number of Treasury Bonds outstanding, they decided to mobilise the assets of the State in order to liquidate the large floating debt; and of these assets the most important was the Railways.

47. With this object in view the Government created a new company called the "Société Nationale des Chemins de Fer Belge," to whom the right to run the State railways was granted for a period of 75 years, the State reserving the right to redeem its property after 21 years, the conditions of redemption being laid down.

Other reasons which prompted the action of the Government were that under direct state management the working results had gradually got worse, the percentage of expenses to gross receipts having risen from 71.98 per cent. in 1913 to 93.33 per cent. in 1925. It was considered that better results could be obtained by a company which was not so open to political pressure. A company could introduce with less friction the increase in tariffs which had become necessary if the Railways were to be placed on a sound financial basis and cease to be a source of loss to the State, and also could compete better for the international transit traffic which, owing to the situation of Belgium, was vital to her railways and for which France had become a serious competitor since the acquisition of Alsace-Lorraine. The success, too, which had been attained by the German National Railway Company, set up under the Dawes plan, afforded an indication of the favourable results which might be expected from the establishment of an undertaking on similar lines in Belgium.

48. The capital of the company thus formed consists of 10 million ordinary shares of 100 francs each and 20 million preference shares of 500 francs each. The whole of these shares, amounting to a nominal value of 11 millions of francs, was handed over to the Belgian Government. The ordinary shares must by law be retained by the State. As each of these shares has one vote whereas there is only one vote to 10 preference shares, the final control of the undertaking is thus ensured to the Belgian State irrespective of what may happen to the preference shares.

The preference shares, which were handed over to the Government by the Railways, were in turn issued by the Government to the public in such amounts as the Government thought fit. The fixed portion of the interest on these shares is paid by the Government and is not a charge on the Railways. The Government, therefore, settles what will be the rate of fixed interest on these preference shares at the time when it disposes of them to the public. It does not concern the Railways. Up to date the rate on such as have been issued to the public is 6 per cent. In addition these preference shares have the right to participate with the ordinary shares in any profits remaining after the statutory liabilities have been met, and this applies both to the preference shares retained by the Government and to those in the hands of the public.

These preference shares, or rather such portion of them as was necessary, the Government employed in reducing its floating debt by making compulsory the exchange of all 6-months Treasury Bonds, and those falling due on the 1st December, 1926, against the new preference shares. The Government, further, in order to give confidence in the face of the falling currency, guaranteed to pay the dividends on the new shares on a basis of 175 francs to the £ sterling. The holders also received a bigger dividend than they did on the previous bonds, whilst the Government was freed from the peril of its large outstanding short-term liabilities. The Government has the right to sell any of the preference shares still held by it. Ten per cent. of the funds received by the Government from the disposal of the preference shares, whether by exchange or sale, must be placed at the disposal of the Society for use as working capital. The Society has to pay to the Treasury the same interest on them as is applicable to that particular public issue of preference shares.

Although the preference shares figure in the balance sheet, they only concern the Society in so far as they share equally with the ordinary shares in any surplus profits.

The Society can only raise loans or issue debentures with the authority of Parliament. An application to issue 600 million francs of debentures was made to Parliament in 1929, but was only authorised in December 1930. The actual issue, which was at 5 per cent. and redeemable in 60 years, was only made in March 1931. The Board also cannot undertake any extension of the system of railways unless so authorised by law.

49. While in the general financial structure the resemblance to a private company was retained, this was not attempted as regards its constitution. An annual General Meeting must be held to which the balance sheet and profit and loss account must be submitted, but the preference shareholders have no voice in the selection of the Board. This consists of 21 members, whose term of service is 6 years. They are chosen as follows :—

Ten members, selected on account of their individual competence, are nominated by the Government on the proposal of the Board. In case of dispute these will be nominated by the Chamber of Representatives by a majority of three-quarters.

Five members are nominated from a double list of candidates proposed by the Public Debt Commissioners.

One member is nominated from a double list of candidates proposed by the members of the Superior Council of Commerce and Industry and by the members of the Superior Council of Professional and Business Men, each Council proposing one candidate.

— One member is proposed in a similar fashion by the workmen and employee members of the Superior Council of Labour.

One member is proposed in a similar fashion by the elected and co-opted members of the Superior Council of Agriculture.

Three members are nominated and, in case of a vacancy, replaced by the staff.

Members receive a fixed salary of 1,000 francs a month and must retire on attaining the age of 66. No Minister or member of either Legislative Chamber can become a member of the Board till 2 years have elapsed since he surrendered his office or seat.

The Minister of Railways, if he sees fit, can attend meetings of the Board. In that event he acts as chairman and has a vote.

50. The Board appoint the Director General from outside their own body and have full powers to appoint and promote the staff. They can in theory also fix scales of pay, but in this their hands are tied by a Commission of Labour, half the members of which are appointed by the Board and half by the staff, with a judge as chairman. This body, in fact, establishes rates of pay and conditions of labour.

The Board have authority to make all necessary purchases or enter into contracts with the exception that the approval of the Minister is necessary in the case of any acquisition, alienation or exchange of property where the value exceeds one million francs, any contracts for more than 16 years for more than a million francs, or any negotiated purchase for more than half a million.

The Board have the power to elect from their own members a permanent committee, of whom one must be a representative of the staff. This committee will prepare questions for submission to the Board.

A particularly interesting point to note is that after the balance sheet and profit and loss account have been passed by the General Meeting they must be submitted to the Legislative Chambers, but these bodies have not the right either to approve or reject them. The accounts are inspected, however, by 6 Commissioners, 3 of whom are appointed by the Chamber of Representatives and 3 by the Senate. The restrictions as regards being members of those Chambers which apply to members of the Board apply also to these Commissioners. Their appointments can be terminated at any time by the Chambers who appoint them.

51. In the matter of tariffs, the law creating the National Railway Society states that it will fix and modify its tariffs, but due observance must be paid to the legal prescriptions in force at the time when it was established. Nevertheless, the Government will always have the right to insist on rates being lowered or to forbid their being raised.

This arbitrary power has been somewhat modified by a subsequent convention made in January 1927 between the Belgian State, the Public Debt Commissioners and the National Railway Society. By the terms of this convention the Society undertook to regulate its tariffs so as to give 270 million francs of interest to the ordinary shares held by the State. The State, on its side, recognised that, while taking care that the economic development of the country was not hindered, it had the moral obligation of exercising its powers so that the preference shareholders should receive an extra 2.7 per cent. over and above the 6 per cent. paid by the State. This is equivalent to a net surplus for division between the preference and ordinary shares of 540 million francs.

The Advisory Tariff Committee, which in the days of state management gave its opinion to the Minister on any proposed changes in tariff before they were put into force, was retained and is quite separate from the Society.

52. In fixing the sum which may be distributed as dividend, the law lays down that the sums necessary to maintain the renewal and amortisation funds must be debited to working expenditure. These contributions must be calculated on a normal commercial basis in accordance with formulæ to be settled by agreement between the Minister and the Board.

2½ per cent. of the gross receipts must in addition be applied to the establishment of a reserve fund until the latter, including the interest from the funds thus invested which are placed to its credit, reaches a total of 20 per cent. of the average gross receipts of the last five years.

From the remaining net receipts 5 per cent. must be deducted for allocation to the staff. This sum will be divided between them in the proportion settled by the Board. The balance will be distributed equally between the preference and ordinary shares.

53. The new Society has been in existence now for approximately four years and so far the scheme appears to have worked

well. The operating results have undoubtedly shown a marked improvement when compared with those of the previous state management, and this is the more noteworthy from the fact that the same Director-General is in office and extensive powers have been delegated to him by the Board. The only conclusion which can be drawn is one unfavourable to direct State management.

Turning to financial results, for each of the years 1928 and 1929 400 million francs were distributed as dividends, and in the year 1930, when the world depression had started, 200 millions. It will be seen that in no year has the figure of 540 million francs, laid down in the convention of 1927 as the net surplus which should be aimed at in fixing rates, been reached. In the year 1931 the undertaking will in addition have to bear the charge on the new 600 million francs of debentures.

54. Critical examination of the scheme, however, reveals certain weak points which might have serious results. The first of these is the arbitrary powers possessed by the Government over tariffs, modified though these have been by the convention of 1927. Up to date they have not been abused, and the reasonable increases demanded by the Society have been approved by the Government with a few minor modifications. But abuse is not to be expected during the first years while the project is still a new one introduced by a Government containing all parties. It is more likely to occur later when the fears which prompted its introduction have been forgotten. It is significant too that the net surplus set as a standard for regulating rates has never yet been reached and so is already in danger of becoming a dead letter, which will leave the Government as sole arbiters in the question.

Another danger lies in the position of the Minister. He performs two separate and conflicting functions; he presides, if he so wishes, and votes at Board meetings at which decisions are taken, and later, as Minister, he has to approve or refuse those decisions.

The Government in addition to its control over rates and to the presence of the Minister at Board meetings, has the further power that it can apparently revoke the nominations of the whole of the Board with the exception of the three members nominated by the staff. It can also by its preponderating vote at the Annual General Meeting refuse to accept the accounts.

So far as the control of the Parliament is concerned, this is limited to interpellating the Government, but it can in the last resort make the subject one of confidence and thus force the Government to exercise its powers of revoking nominations to the Board.

55. It was clearly the intention of the framers of the scheme to avoid the intrusion of politics into the appointments to the Board, and the Society was fortunate in the original selections made. The power of revocation of appointment held by the Government is, however, formidable and, although it does not actually select any itself the final nomination is in its hands and it can refuse any or all of the names proposed to it by the selecting

bodies. It remains to be seen, therefore, whether in the long run it will be possible to keep the influence of politics out of these appointments.

56. There is one final point to which attention must be drawn. The inefficiency of the state management had been recognised for some years and attempts had been made to separate the finances and budget of the Railways from those of the State. None of these succeeded, although some of them were initiated by the Government itself. It was only the imminence of financial crisis and fear of the results which finally caused the adoption of a measure which had been recognised as necessary by all who were acquainted with the subject.

France.

57. The railways in France have always been State-owned. By the terms of the first concessions, those framed under the law of 1842, the State carried out the construction of the sub-grade and of the stations, and then conceded the management and operation for a period of years to private companies who had to provide the permanent way and all rolling stock and stores. Various modifications took place in these concessions until 1883 when a convention was drawn up between the Government and the six principal railway companies. The most important financial condition of that convention was that the Treasury guaranteed a fixed dividend and sinking fund on the shares of the various companies, and shared in profits when net revenue exceeded a named sum. The rate of dividend varied as between the companies. To start with, all the companies, except the Nord, had to have recourse to the guarantee, but by 1913 the Est and the Paris-Lyon-Méditerranée had cleared off their debts under the guarantee and all three were earning substantial surplus profits. The Midi and the Paris-Orléans still had large deficits each year which had to be met under the guarantee. The Ouest Railway Company had fallen so heavily into the debt of the State under the terms of the guarantee that the concession was bought back by the State in 1909 and was thenceforward managed directly by it. This did not improve matters and the annual deficits on the system continued to grow larger.

58. The war, however, changed the whole situation; and owing to many factors, the increase in the cost of all stores, the increase in wages, the introduction of the 8-hour day, the railways soon found themselves faced with heavy deficits. The total deficit of the six principal systems for 1919 was 1,201 million francs, and for 1920 2,997 millions, despite an increase in tariffs which ranged from 70 per cent. for third-class passengers to 140 per cent. for goods.

The financial difficulties of the companies were so great and the machinery for authorising increases in tariffs was so slow in action that it was imperative that new agreements should be concluded

with the State. Actually only one convention was passed between the State on the one hand and the five Companies and the Administration of the State Railways on the other. This was made in 1921 and the Alsace-Lorraine Railways were subsequently made parties in 1923.

59. Under the clauses of the Convention which governed the future conduct of the undertakings, the Companies, and in this term I include the Ouest Administration for the present purpose, retained their separate individuality and constitution, but two new organisations were created, a Committee of Direction and a Superior Railway Council.

The former includes only representatives of the Companies, three from each company, making 18 members in all. Its aim is to co-ordinate the management of the systems and the particular objects to which it devotes its attention are co-ordination in technical matters, standardisation of material, rules for the division of traffic and exchange of rolling stock, rules of working, and the consideration of modifications required in the statutes regarding conditions of work, pay and pensions. A Government Commissioner attends the meetings. He can demand that any question which he considers appropriate should be placed on the agenda, summon a meeting of the Committee, or ask for a second discussion on any subject, the first decision on which appears to him to be opposed to the public interest. Decisions are taken by a majority, each railway system having only one vote. The railway to which the Chairman of that particular meeting belongs has a casting vote. Decisions, when taken, are binding on all the systems.

60. The object of this Committee is to co-ordinate the actions of the different systems; the object of the Superior Railway Council is to co-ordinate the administration of the railways with the general interests of the country.

This body consists of 60 members made up as follows:—

- (a) The 18 members of the Committee of Direction.
- ✓ (b) Two representatives of the staff from each of the 6 systems, nominated by the Minister of Public Works.
- (c) 30 representatives of the general interests of the country appointed by decree on the proposal of the Minister of Public Works.

In addition there is a Chairman appointed by decree on the proposal of the Minister. The Director of Railways at the Ministry attends meetings as Government Commissioner.

This Council is primarily an advisory body but in certain cases is said to possess executive powers. The Minister has to place before it all questions, technical, commercial, administrative and financial, which affect all the systems and he may, if he thinks fit, place before it any important questions which affect one or more.

The Minister cannot take a decision contrary to the advice of the Superior Council until after that body has deliberated the question a second time. In the same way the Committee of Direction can demand a reconsideration by the Superior Council if it considers that any resolution of the Council or decision of the Minister is opposed to the interest which it is its duty to protect.

61. One of the questions on which the Council is recognised as having executive power is that of tariffs, and particularly of "raising tariffs in such measure as is necessary to re-establish the balance between receipts on the one hand and expenditure and loan charges on the other." Increases in tariffs are proposed by the Superior Railway Council for the final approval of the Minister of Public Works. Increases in tariffs will have legal force if the Minister of Public Works, after consulting the Minister of Finance, does not object to them within a month.

Furthermore, the Minister of Public Works, with the consent of the Cabinet, can enforce the lowering of particular tariffs, which he thinks injurious to the public interest, even though the Superior Council has twice taken a contrary resolution. Finally all increases in tariffs which raise goods rates by more than 180 per cent. or passenger rates by more than 100 per cent. have to be ratified by Parliament, and the maxima are to be subject to review every five years.

The powers of the Superior Railway Council are hardly, therefore, such as we would call executive as its decisions have to be approved, either specifically by the Minister or by his tacit acquiescence and in certain cases it can be overridden.

62. The financial arrangements are exceedingly complicated. The basis is the Common Fund, into which go the surplus profits of the prosperous systems and from which the deficits of the less prosperous ones are made good. I do not propose to enter into all the details of these complicated arrangements but to give merely a general outline, as to do more would lend no assistance to the present problem and, up to date, the results of the Common Fund are not such as to encourage imitation.

Broadly speaking, against the gross receipts of each system are placed (a) working expenditure, (b) the sum of the loan charges and the effective charges of the "capital social" after making allowance for any repayments or annuities paid by the State or public bodies, (c) shortfall on ancillary services and joint undertakings, (d) a sum varying with each Company which, when added to the interest on the "capital social" as allowed in (b), represents the dividend guaranteed to that Company by the Conventions of 1883 [a special adjustment was made for the State Railway], (e) rewards both to the Company itself and to its staff to encourage increase of receipts and decrease of expenditure. In both cases percentages of any increase of receipts or decrease in expenditure are allotted as rewards, with adjustments to allow for increases in tariffs. On the other hand, there is a penalty for the companies if results are not so good as in 1920.

63. It was recognised that for the first six years there would be a deficit in the Common Fund. Capital would also be required for new construction, to restore the systems to as good a condition as they were in before the War, and for a large improvement and re-equipment programme, as well as for certain losses during the War which some of the Companies had covered by borrowing on Treasury guarantee.

For the monies thus required the Companies were to borrow by issuing loans and debentures, the service of which, both as regards interest and sinking fund, would be at the charge of the State. The object of this, as explained by the Rapporteur to the Senate, was to use the Companies as bankers to the State. The service of these loans was carried against the Common Fund. Any deficit in the latter was a charge against the State.

64. During the first three years of working there were very heavy drafts on the Common Fund from every system, except that of Alsace-Lorraine, which was included for the first time in 1923. By the end of these three years the sums which they had drawn from the Common Fund varied from a total of 1,400 million francs by the State Railway to 190 million francs by the Est. These demands, however, were decreasing, with the result that in 1926, four railways, the Nord, the Est, the P.L.M. and the Alsace-Lorraine, contributed substantial surpluses to the Common Fund, which in that year showed a surplus of 580 million francs. In 1927 the same four systems again were able to contribute to the Fund, though to a small degree, and there was a shortfall in the Fund for the year of only 253 million francs. In 1928 there was a surplus of 677 million francs for the Fund, and in 1929 300 million francs. In 1930, on the contrary, as the results of depression, there was a shortfall of approximately 2,000 million francs, or about £16,000,000 sterling, and it is estimated that in 1931 there will be a shortfall of 3,360 million francs, or about 26½ million sterling.

The whole of these sums cannot, strictly speaking, be called deficits as far as the systems are concerned because, as explained above, many of what we should call capital charges have been included and also a good deal of amortisation. On the other hand, in the case of new construction four-fifths of this is borne by the State and the service of this portion of the capital cost is repaid by the State to the individual system and, therefore, does not fall either on it or on the Common Fund. In other words their system of accounting does not allow one to judge whether, according to our way of thinking, the individual systems have deficits or not.

The Common Fund itself, however, as established under this system of accounting, has undoubtedly a heavy debit balance. The prosperous years of 1926, 1928 and 1929 did not provide surpluses sufficient to meet the shortfalls of previous years, and 1930 has added a big increase to the debit balance. This is met by Treasury borrowings and the service of these loans has to be met by the State.

65. As regards tariffs, it is best to ignore the years when the franc was fluctuating as they cannot be taken as a true criterion. In most cases the increases recommended by the Council appear to have been approved, but, as is inevitable with a Government as the final authority, only after considerable delays. A general increase of 15 per cent. is now under consideration.

With any independent body as the final authority on rates questions there is bound to be a certain lag between the time when the managing authorities have come to the conclusion that an increase is necessary in order to preserve financial stability and the time when the authority can be persuaded to grant them, as that body will require very complete proof before giving their sanction. If that body, in addition to having little knowledge of the subject, is also political and, therefore, unwilling to incur the odium of raising rates and fares, the case for an increase must be overwhelming in order to be successful, and the delay is liable to have dangerous consequences.

It is interesting to observe in this instance, as in those of Germany and Belgium, the departure from the previous theory that railways should not necessarily aim at being self-supporting and that rates should be used as instruments of policy. Although the object has not been attained, the Convention lays down clearly that rates should be so framed as to make the Common Fund balance.

66. Other features in the French scheme which are worthy of attention are the machinery provided in the Committee of Direction for a uniform control by experts over all the railways on technical matters. Further, it establishes a body in the Superior Railway Council to supervise the railways in which, not only are the various interests of the country at large represented, but the railways themselves are given sufficiently large representation to ensure that the management and technical points of view receive adequate consideration. Against this may be set the disadvantage that it appears to our minds rather an unwieldy body, consisting as it does of 60 members, and to partake rather of the nature of a debating assembly than of one which is required to take executive decisions.

Argentine Republic.

67. Railways in the Argentine Republic can be best divided for the purpose of the present memorandum into three categories :—

- (1) Federal State Railways.
- (2) Provincial Government Railways.
- (3) Privately owned Railways belonging to British, French and Argentine Companies.

Of 24,000 miles in the republic more than 19,000 are privately owned, of which about two-thirds are the property of British companies and less than 800 miles belong to the only Argentine company. The Provincial Government railways only constitute about 840 miles whilst those owned and managed by the State total some 4,050 miles.

68. The laws which govern the conduct and operations of railways are the Argentine Railway Law of 1891, and its subsequent amendments, and the Mitre Law of 1907, the latter of which applies only to privately owned railways. Under the law of 1891 a National Railway Direction was established under the control of the Minister of Public Works and presided over by a Director General. This National Railway Direction is a Government department and its duties are to see that the laws concerning railways in all branches are observed. It has no direct responsibility for management or operation.

The State railways are autonomous and are administered by a General Manager appointed by the Government, while Provincial Government railways are similarly managed under the Provincial Minister of Public Works.

For these classes of railways the National Railway Direction reports on tariffs and recommends them for approval to the Minister of Public Works. The basis for adoption is that they must be "reasonable and just." The National Railway Direction also supervises questions of safety, public convenience and service, new construction, and it reports upon new projects. It also supervises the management of all railways guaranteed or leased by the State.

69. The tariffs of most of the privately owned railways are governed by the Mitre Law. This law was introduced in 1907 and all railway companies formed after that date are subject to it, whilst all formed previously were given the option of accepting it. All British companies did so.

This law provides that until 1947 railway companies shall be free from duties on imported material and from all National, Provincial and Municipal taxation in consideration of the payment of 3 per cent. of the net receipts of each year. This 3 per cent. is paid to a special fund the proceeds of which are to be devoted to the construction and maintenance of roads and bridges, more especially those leading to the railways.

The Government can intervene in goods and passenger tariffs when the average gross earnings of the line for three consecutive years exceed 17 per cent. of the recognised capital in shares and debentures, provided that the working expenses do not exceed 60 per cent. of the earnings. In working expenses can be included provisions to renewals funds, reserves against accidents and claims, fire insurance, pensions and benevolent funds, and annual amounts set aside to amortize terminable concessions. If the working expenses exceed 60 per cent. a proportionate increase is allowed in the percentage of 17 which gross earnings are allowed to bear to recognised capital.

This formula on a basis of an operating ratio of 60 per cent. gives thus an average rate of 6·8 per cent. on all recognised capital, including debentures, for three consecutive years before the Government can intervene and demand a reduction in tariffs.

The National Railway Direction only gives its opinion in these tariff cases, but in order to watch over the execution of the law

keeps permanent auditors in the railway companies' offices who have access to all accounts, whether capital or revenue.

Reports and accounts must be submitted in the form prescribed by the Direction and railway companies must answer any special questions or make any statistical returns which the Direction requires. It has also inspectors stationed at important points on the systems to report upon the general railway service, the adequacy and suitability of equipment, and all questions of safety.

In order to obtain recognition of capital all new works with detailed plans have to be submitted for the approval of the Direction.

All extensions of more than 75 kilometres in length have to be submitted to Congress; smaller branches can be approved by the Government.

70. Theoretically the control of both Federal and Provincial State Railways is the same as for private companies with the exception of the points mentioned above, but in practice politics enter a good deal into the appointments made to these systems.

71. It is universally admitted that the success and development of the Argentine has been in large measure due to their railways, and it is equally true to say that the success of the railways has been due in turn to the wisdom of the Mitre Law in allowing a sufficiently good return to attract capital for developing the railways, at any rate at the rates for money ruling at the time it was framed, while it enforced a reasonable measure of control.

Australia.

72. In Australia, except in the very early days, state-owned and state-managed railways have always been the order of the day. Each of the States owns and manages its own railways, and, in addition, the Federal Government owns and operates a trans-continental line, a line in the Northern Territory, and a north-south line which has reached as far north as Alice Springs. In New South Wales and Victoria the management is by a Board of three Commissioners, but the other states and the Federal systems are administered each by a single Commissioner.

In order to get rid of the evils which have resulted from direct state management, various experiments have been tried at different times, such as placing the control in the hands of a Commission entirely removed from politics, and in one case the appointments have been for life. The reasons for the ill-success which attended these experiments were thus explained by the Royal Commission which was formed in 1917 to report on Railways and Transportation in Canada. In their report the Commissioners say :—

“The four older States of Australia, New South Wales, Victoria, South Australia, and Queensland, have had a long experience of public ownership. In each State the history has been very similar. Originally, the railways were managed

under the direct control of a Minister of Railways, responsible to Parliament. In each State the system was found unsatisfactory. In each State commissions were appointed, with functions substantially similar to those which we are recommending to be conferred upon the board of trustees. In each State the result was improvement. But the Australian commissioners were only appointed for five-year terms. And the lack of permanence in the commissioners' tenure of office prevented a permanent success. The first years of the commission's term were usually the most successful, for then the commissioners had the freest hand to manage their undertaking on commercial lines. Some of the States have gone through a chequered history. The commission has been abolished; and the management has been transferred back to a political minister. Once more the result has been unsatisfactory; and a new commission has been appointed, only, in turn, to fail of success. The main cause, as we read the story, has been the lack of permanence of the commission and the short tenure of office of the individual commissioners."

Sir William Acworth, who was a member of this Royal Commission, expressed elsewhere his opinion on this aspect of Australian railways in the following terms:—

"Evidently a commission, which, though composed of individuals personally clean-handed, is not strong enough to crush attempts at jobbery in its neighbourhood, may be even worse for the public interest than a Minister who uses his patronage for political ends. For the Minister can at least be watched and exposed in Parliament by political opponents, while a Commission can take shelter under the cloak of its statutory irresponsibility."

Further, it has never been found possible to withdraw from Parliament the decision as to the construction of new lines and this has been a fruitful source of political interference. Finally, the power of the Labour Unions in Australia has been so great as to make the position of any commission, and, more particularly, of any such body which was independent of the Government, extremely difficult.

Generally speaking, neither the financial results nor the past history of Australian railways are such as to encourage a country to follow its example.

New Zealand.

73. In New Zealand, although several of the lines were originally built by private enterprise or Provincial Councils, practically all have in course of time been taken over by the Government and have been state owned and managed for many years past. In 1924, at the time the Fay-Raven Commission was appointed, the revenue and capital receipts and expenditure of the Railway were included in the Government Funds and Budget, and

the Commission pointed out that, although New Zealand would appear to have escaped the most flagrant disadvantages attached to this system, it was essential to adopt a method of finance more adapted to the needs of a big commercial undertaking.

74. In the matter of control their remarks are so apt to the present problem that I give them in full :—

“In connection with State railways there are invariably difficulties, great and small, brought about by political pressure upon Ministers to give something which, whilst of local value, is not to the general advantage of the railways, or creates an undue preference to one section of the community as compared with another. In the general interests of the country, the farther away a railway administration can be removed from political control the better, in order that an impartial decision may be given upon all questions affecting transportation facilities. In stating this we recognise that where the people own the railways the Government must decide when and where railways are to be built, and what are to be the maximum charges levied upon passengers and merchandize. Having decided these things, however, and appointed competent men to manage the large industrial enterprise of which a railway system is comprised, it is wiser to leave it in expert hands rather than to have political pressure brought to bear upon Ministers, in season and out of season, to do things that ought not to be done and to leave undone those things that, in the general interest, ought to be done.”

The Commission proposed the formation of a Railway Board, consisting of a Chairman and two members, one to control mainly commercial affairs and the other to direct operation. They do not appear to have defined the relationship as between the Minister of Railways and the Railway Board nor their respective powers and responsibilities. Despite this recommendation, the New Zealand Railways were managed up till 1930 by a General Manager reporting directly to the Minister of Railways.

It is interesting to record that the General Manager, in his report for 1929, drew particular attention to the fact that, while the working of the railways had been commercialised, the policy, which was in the final event controlled by the Government, had not; that in most of the major and in a good many of the minor questions which came up for settlement non-commercial aspects entered into the decision. It is clear also, both from this and the 1930 report, that the finances of the Railways were only separated from those of the Dominion in theory and not in fact. In the 1930 report, too, the General Manager states that “by various strokes of the policy pen, the (Revenue and Expenditure) account has been loaded to an extent of approximately half a million pounds.”

Recently, the organisation has been changed and a board has been formed to control the Railways, with the former General Manager as Chairman. I have no definite particulars of the new organisation and, in any event, its value has yet to be proved.

Switzerland.

75. In 1909 the last of the large private companies owning main-line railways in Switzerland was bought by the State, and since then the whole of the main-line railway system has been state-owned. There is a considerable mileage of feeder and mountain railways still owned and worked by private companies but these are of purely local interest. The state-owned railways have always been directly state-managed under a Railway Board of Management. The budget of the Railways is entirely separate from the ordinary budget of the State, the Railway Budget being drawn up by the Board of Management and presented by them to the Council of Ministers, who, in turn, after discussing it, submit it to the two Chambers. Any surplus which arises from the railway budget is devoted solely to railway purposes either for capital or for reduction in rates and improvement in service. Any deficit which arises has to be borne by the State. Any loans or capital issues, as well as the decisions on rates and fares, are reserved for the approval of the Legislature.

76. I have found it difficult to obtain much definite information as to the success which has been obtained by this organisation. In 1917 there was a deficit of approximately 78 million and in 1918 of approximately 215 million Swiss francs. For some years after this much of the transit traffic was lost to Switzerland because the high rate of exchange favoured her neighbours with their depreciated currencies. In fact about the year 1921 there was considerable agitation in Switzerland for denationalization. Since then matters have improved and good years have been reported. There has been considerable local agitation, however, against the low rates which the Swiss Railways have had to quote for transit traffic on the grounds that in order to receive a share of this traffic lower rates have had to be granted to foreign freight traversing the country than to local freight of the same classes.

77. The Swiss Railways are generally regarded as one of the best state-managed systems, the two salient features being that the Railway finances are completely separated from those of the State and that the system is run by a Board of Management.

United States of America.

78. Apart from 500 miles in Alaska, built and operated by the Federal Government, the whole of the immense mileage in the United States has, except for a brief period when railways first started, and again during the War, always been owned and managed by private companies. Many of them have received assistance in finance and land grants from individual States as well as from Congress, but public opinion throughout the country has always been overwhelmingly in favour of private management. This feeling was reinforced by the unfortunate results of the experience of State management during the War.

It was natural in the conditions of the United States Constitution, where so much power is in the hands of the individual States, that the first efforts at regulating railways should be made by these States themselves. The difficulty of regulating railways which traversed many states hampered, however, any effective control, and at the same time the unfair practices of the railways themselves aroused a demand for intervention by the Federal authority. The Inter-state Commerce Commission was therefore established by the Act to Regulate Commerce which was passed by Congress in 1887. One of the main motives underlying this Act was to prevent discrimination by the railway companies between users and to prevent pooling of traffic.

At the beginning the powers of the Inter-state Commerce Commission were very limited; it could not even compel witnesses to give evidence before it. But, gradually by successive Acts of Congress and decisions of the Supreme Court of the United States, its powers have been so increased that at the present time there is no similar body in the world which possesses such extensive and comprehensive powers.

79. Taking first the questions of rates, the Commission is required by law to initiate and establish rates under which the carriers as a whole (or as a whole in each of such rate groups as the Commission may from time to time designate) will, under honest, efficient and economical management and under reasonable expenditure for maintenance, earn a fair aggregate annual net return upon the aggregate value of the railway property of such carriers used in the service of transportation. The Commission shall from time to time determine and publish the percentage of such aggregate property value that constitutes a fair return thereon, and the percentage shall be uniform for all the rate groups that may be designated by the Commission.

“In making such determinations the Commission shall give due consideration to the transportation needs of the country, and to the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging these facilities in order to provide the public with adequate transportation.”

In addition to the duty thus imposed on the Commission of initiating and establishing rates, it has the power to fix minimum as well as maximum rates, and powers not only over inter-state rates but also over rates operating within the confines of any state. It has full powers over the classification of goods and can suspend any proposed change in rates.

80. It should be noted that the percentage must be uniform for each rate group of railways. Where any railway earns a net operating income in excess of the percentage laid down for its group, it is allowed to retain half the excess but must return the other half to the Commission. The railway half must be placed in a reserve fund, upon which the railway may draw for the purpose of paying interest, rental of leased lines, and dividends should its

net operating income fall below the percentage allowed, but for no other purpose. However, after and so long as the reserve fund equals 5 per cent. of the value of the property, the railway may employ its half of the excess earnings for any lawful purpose.

The half handed over to the Commission is used to establish and maintain a general railway contingent fund, from which it may make loans to the weaker companies to enable them to meet the needs of the public or may purchase equipment and rolling stock for lease to the weaker companies. It can only exercise these powers when there is a reasonable assurance that the company can pay the interest or lease. The interest rates on these loans must be at least 6 per cent. and leases must be based on the same principle and include also allowance for depreciation. In this, as in the French scheme, the excess profits in the stronger systems are used to help the weaker ones, but only by way of loans easily recoverable, and losses on the weaker systems are not to be made good by the Commission.

In addition to these far-reaching powers and partly in order to enable it to exercise them, the Commission has prescribed a uniform system of accounting for all railways and the railways are forbidden to keep any account or records not authorised by the Commission.

It has exclusive jurisdiction over the issue of securities by railway corporations and can attach to its approval such terms and conditions as it considers necessary and appropriate. A company must obtain a certificate of public convenience and necessity whenever it wishes to build a new line or extension or to abandon any portion of an existing line.

81. Its powers in respect of the use of wagons are very extensive. It can compel a railway to provide itself with safe and adequate facilities for performing what is called by Americans "car service." This includes in addition to the use and supply of wagons, the use, control, supply and movement of locomotives and the supply of trains. It can order the use of terminal facilities belonging to one railway by another and it can give instructions as to the routing of traffic. If it considers that, owing to shortage of rolling stock or congestion, an emergency exists, it can without notice or hearing (1) suspend all rules and regulations regarding car service, (2) give such directions as to car service, without regard to the ownership of locomotives or cars, as it thinks will promote best the interests of the public, (3) require the joint use of terminals or main line tracks for a reasonable distance therefrom, and (4) give directions for priority or preference.

It also exercises extensive powers in the matter of public safety and it can compel railways to instal automatic train-stop or train-control devices where it sees fit.

It was also given powers to sanction the consolidation of competing railways and the acquisition of one railway by another as well as the pooling of traffic and earnings, but no case of this nature will be legal without the sanction of the Commission, which

similarly has no power to enforce consolidation on an unwilling railway. The only matter, it would seem, in railway administration over which it does not have authority is wages which is the function of a separate board.

82. State Commissions still exist in all but three of the states, but their functions are entirely intra-state and have naturally become less important as the authority of the Inter-state Commerce Commission has increased; they are for all practical purposes subordinate to the Inter-state Commerce Commission. They exercise, rather, initial jurisdiction over the local operations of railways within state limits; they review rates and charges applicable to intra-state commerce and decide upon local complaints of inadequate and discriminating service. They also often act as the representatives of state business interests in front of the Inter-state Commerce Commission.

83. The powers of the Inter-state Commerce Commission are so comprehensive and far-reaching that the question at once arises as to what is the constitution of the body which exercises them. It consists of 11 members, each receiving a salary of \$12,000 a year. They are appointed by the President, by and with the consent and advice of the Senate, for terms of seven years and may be re-appointed. It is provided by law that not more than six commissioners shall be appointed from the same political party, and appointments have seldom been based on political grounds. In fact, re-appointment, even by an adverse political party, has been the custom with only one or two exceptions. The terms of service of not more than two members expire in any given year, thus preserving continuity. Commissioners are not allowed to engage in any other business nor to hold an interest in any railway company.

It is interesting to note that few of the men who have been Commissioners have had railway experience. They have been drawn from many sources, but more lawyers have been appointed than from any other profession. Other Commissioners have previously been professional economists, members of State railway commissions, and business men.

84. The Commissioners elect their own Chairman and it is the custom for each Commissioner to hold the Chairmanship for one year. It copes with its large volume of business by separating its work into 5 divisions, each consisting of not less than 3 members, some members sitting in more than one division. Each division is authorised to hear and determine controversies by majority decision in the same manner as though by the full membership of the Commission. Where a petition is rendered for the re-hearing of a decision given by one of the divisions, the case is re-heard by the full Commission. Also any Commissioner who is a member of a division hearing a case may certify the case to the full Commission. Further it is usual for the full Commission to hear any case of national interest or importance and legal questions.

It is not surprising in view of the scope of its activities that the Commission has to employ a large staff. In 1922 it had 1,798 employees and the cost of the organisation to the Federal Government for the year 1920-21 was over 6 million dollars.

85. Although at times the Commission has been accused of having an anti-railway bias, it has enjoyed a high reputation for impartiality and fairness as a judicial and as an administrative body. There has only been one case of any importance in which the Commission has been accused of political motives, and then rather of having regional than political motives. This was the Lake Cargo Coal case and, although the decision prompted the Senate to withhold its approval to the re-appointment of one member to the Commission, the charge of political and regional motives stands on slender grounds.

It is difficult to judge of the effect of the Commission, both in its rate-making and administrative capacities, because since its powers were increased by the Esch-Cummins Act of 1920, until the recent slump and for a short time at the beginning, the United States of America have been enjoying a period of universal prosperity. There is in front of the Commission a demand from the railways for a general increase of 15 per cent. on rates, which at the time of writing has not been decided.

It is important to note that Congress has the power to instruct the Inter-state Commerce Commission by resolution to carry out any policy which the Congress thinks advisable. Thus, at one time, a resolution was passed instructing the Commission to grant as low rates as possible on agricultural produce, and it was incumbent on the Commission to implement that resolution, interpreting the resolution, of course, in the light of any existing legislation. There is danger in such procedure in that it may enforce on the Commission the duty of carrying out a purely political policy. There is only one instance of such a resolution, but the germ of the danger is there and it might in times of depression and stress give an opening to Congress to enforce its own political policies on the Commission. So far, this power of resolution has usually been employed to instruct the Commission to carry out investigations, and any abuse of the power of Congress would probably be grounds for appeal to the Supreme Court on the grounds of infringing the Constitution of the United States of America.

Great Britain.

86. At the time of writing the London Passenger Transport Bill is on its way through Parliament and, if passed, will create a new situation.

Previously, all the railways were owned by private companies and rates and fares were regulated by the Railway Act of 1921. The chief provisions of this Act were that standard charges were in the first place to be drawn up by the railway companies and submitted to a Railway Rates Tribunal, consisting of three permanent members, of whom the Chairman is an experienced

lawyer, the second member a person of experience in commercial affairs, and the third in railway business.

The standard charges were to be so framed as to yield to each company a standard revenue equal to the net revenue earned in 1913, together with various allowances for capital which had been raised since or had not become fully remunerative in 1913. The Railway Rates Tribunal considered the schedule of charges submitted, heard any objections which had been lodged to them, and settled the actual schedules to be applied. These charges are reviewed periodically.

If these schedules have been insufficient to give an average annual net revenue up to the standard revenue, and the deficit is not due to lack of efficiency, the Tribunal has the power to raise the standard charges to such an extent as it thinks necessary in order to enable the standard revenue to be earned. If the average net revenue is, or would have been with efficient management, substantially in excess of the standard revenue, the standard charges are to be modified so as to eliminate 80 per cent. of the excess, the remaining 20 per cent. being added to the standard. The Tribunal has laid down standard conditions of carriage and has the power to determine any questions in regard to the rates classification, the reasonableness of charges for any service or accommodation, and the apportionment and disintegration of rates.

The railway companies have power to charge exceptional rates lower than the standard ones, but they must be more than 5 per cent. and not more than 40 per cent. lower, and these exceptional rates must be reported. In this way latitude is left to individual companies to quote rates to suit special traffics.

An appeal lies from a decision of the Railway Rates Tribunal to the Court of Appeal and thence to the House of Lords. One celebrated case on the question of "capital raised or provided" has already been taken to the House of Lords.

Although the companies have never since the passing of the Act received net revenues up to the standard, they have not yet applied to the Tribunal for the standard charges to be raised as they did not consider the time opportune for a general increase in rates nor that such an increase was likely to result in increased revenue. The depression in trade which has lasted ever since the standard rates have been in force forbids any appreciation of the working of this portion of the Act.

87. Questions of safety are dealt with by the Ministry of Transport and powers to build any new works have to be sought by means of private bills in Parliament.

88. The London Passenger Transport Bill is of particular interest to the present examination in that it aims at establishing a corporation which will, on behalf of the public, take over and manage the whole of the undertakings which are concerned with the passenger transport of London. It is proposed that the Board shall consist of a chairman and four other members, to be appointed

from time to time by the Minister of Transport after consultations with the Treasury. It is specified that they are to be persons who have had wide experience and have shown capacity in industry, commerce or finance or in the conduct of public affairs. They will hold office for such term, not longer than seven years, as the Minister of Transport may determine at the time of the appointment and they may be reappointed. The Minister may remove any member for inability and he will determine their salaries.

The Board will have powers to borrow money for the purposes laid down in the Bill up to a prescribed maximum, subject to regulations to be made by the Minister with the approval of the Treasury, and they may issue stocks for this purpose. They will also issue stocks for exchange with existing securities of undertakings. Some of these stocks exchanged for debentures now carrying a Treasury guarantee of principal and interest will enjoy a similar guarantee.

The Board will make an annual report to the Minister and this will be laid before both Houses of Parliament. Their accounts will be audited by an auditor to be appointed annually by the Board after consultation with and with the approval of the Minister.

It will be the duty of the Board to conduct the undertaking and fix such fares as to secure that their revenues shall be sufficient to defray all the charges which the Act requires them to defray out of their revenues, but these will be subject to revision by the Railway Rates Tribunal on the application of a local authority or in certain cases on the application of the Board. Two members are to be added to the Tribunal on this account.

In contradistinction to fares, the facilities to be given will be subject to the decision of the Minister.

This Bill is of particular interest because a body in the nature of a public trust is being created to manage these transport undertakings with stocks which in certain cases carry a Treasury guarantee, and the only account which the Board will be required to render to Parliament will be their annual report and accounts. There has been no question of submitting their estimates to the legislative bodies. Another interesting feature is that, though they are a public body, their charges will be subject to revision by the Railway Rates Tribunal.

89. Although not a transport undertaking, the constitution of the Central Electricity Board affords a good parallel, because it also is a public utility trust. It consists of a Chairman and seven other members appointed by the Minister of Transport after consultation, not with the Treasury in this case, but with such representatives or bodies representing the following interests as he thinks fit, local government, electricity, commerce, transport, agriculture and labour.

The Chairman and members shall hold office for such term, not less than five years and not more than ten years as may be determined by the Minister before the appointment. Their salaries shall be determined by the Minister.

The Board may issue stocks in accordance with regulations made by the Minister with the approval of the Treasury up to a prescribed limit. The Treasury may guarantee in such manner as they think fit any loans proposed to be raised by the Board and will lay before both Houses of Parliament every year a statement showing the guarantees and an account of the sums paid from the Consolidated Fund in consequence. The Board must also make to the Minister an annual report of their proceedings to be laid before Parliament. The interest in this case lies in the fact that the Board may obtain a guarantee from the Treasury, not merely as in the case of the London Passenger Transport Board for certain stocks already enjoying that guarantee, but for future issues, and yet need, like them, only submit to Parliament its annual report and accounts.

Salient Features which Emerge from Previous Examination.

90. Having concluded the survey of those countries whose experience it is considered might prove of value, I think it would be advisable to summarise a few of the salient features which emerge from this examination.

The first of these features is, I think, the importance of separating as completely as possible the finances of the railways, whether state-owned or state-managed, from the general revenues of the country. That was the course adopted by both Belgium and Germany when it was essential that their finances should be placed on a better basis. It has for a long time been the rule in Switzerland, the most successful instance of a directly state-managed system. * The rather elaborate French organisation has this as one of its objects, at any rate so far as the state-managed railways are concerned. It is expressly provided for in the Constitution of the Union of South Africa, and in the case of Great Britain it has never been contemplated that the finance of the London Passenger Transport Board should be included in the general finances of the country.

91. The next point which emerges is allied to the first. It is that, while the final control of the railways which it owns must necessarily remain with the State, the best method of control is not by detailed discussion of proposed expenditure and estimated revenue by a Legislative body or any committee chosen from it. To submit to this spasmodic scrutiny the ordinary annual expenditure in a commercial undertaking whose expenses must vary with the work to be done is not only hampering to good management but does not give much practical control over essentials to the Legislature. Supervision of the management is wanted but it should be more continuous and in closer touch with its work and its requirements than a Legislative body can be. Further, the intrusion of any political atmosphere into the details of day-to-day management cannot fail to be harmful to efficiency. What should concern the Legislature above all is policy, and ample opportunity for discussion of policy can be afforded when the anticipated net

results of working and the actual results are presented for its approval. This refers only to the yearly results of working, anticipated and actual. When loans are being raised in the name of the State in order to embark on new construction or development or when its guarantee is being pledged in support of new lines, the Legislature naturally has the right of discussion and prior approval.

92. It will have been noted that the principle of interposing between the Legislature and the management some permanent body of control, preferably of business men, is a marked feature of most of the modern schemes. Thus in Belgium many of the members of the Board are chosen not by the Legislature, but by representative bodies. The profit and loss account and the balance sheet have to be submitted to the Legislative Chamber, but these bodies have not the right either to approve or reject them. In Germany it is laid down that the members of the Board must be either business men or railway experts. Apparently the accounts of the company are not presented to the Reichstag for approval. In the case of both Belgium and Germany the organisations appear to have worked well, or, at any rate until the recent economic depression, better than their predecessors.

In France, in addition to the 30 members chosen by the Minister of Public Works to represent the general interests of the country, there are on the Superior Railway Council 18 railway members from the Committee of Direction. Only the final results of the Common Fund are submitted to the Chamber of Deputies and the Senate, and not the individual estimates and results of the Ouest and Alsace-Lorraine Railways.

In Canada the members of the Board, although chosen afresh by the political party in power, have usually been business men and an effort is made to choose one from each province. In this case the estimates are submitted to the House of Commons and are discussed in detail by a committee, but it is doubtful whether this is in any way conducive to efficiency.

The same feature appears in South Africa and to cope with it the General Manager has to take 34 members of his staff from their headquarters at Johannesburg to Capetown where the House sits. This alone can hardly be described as calculated to promote good management. As regards the Railway Board, the framers of the Act of Union undoubtedly intended to interpose an effective organ of control between the Legislature and the management. The way in which subsequent legislation has operated to diminish the control has already been described.

In Great Britain in the case of the two most important public utility undertakings formed in recent years, the Central Electricity Board and the London Passenger Transport Board, not only will the estimates not be submitted to Parliament, but the Boards are only required to present the results of their year's working to the Minister of Transport to be laid by him before Parliament, but not necessarily for discussion and approval.

It is also of importance to note in how many cases, Canada, Belgium, Germany and Great Britain, members of the Legislature are expressly excluded from membership of the controlling bodies.

93. When we turn to rates and fares we find that in most cases of state-managed railways the present practice is to keep the rate-making power in the hands of Government, but, where many important railways are privately owned, to place the decision in the hands of a Tribunal or to have an agreement between the state and the companies by which it can be fixed as in the case of the Argentine. The danger of leaving such powers unchecked in the hands of Governments is that they will be used as instruments of Government policy, which in many cases will be opposed to the welfare of the railways and be detrimental to any idea of running them as commercial undertakings and consequently to their efficiency. From this cause have arisen many of the cries on the one hand against the railways being used as "milk-cows" and on the other hand against the heavy losses which they occasion and which have to be met by State revenues. It is important to note that this idea of using rates as an instrument of policy was generally accepted on the Continent, but even there the tendency has been to modify this view. This is shown in the Belgian convention whereby the State recognised the moral obligation of exercising its powers over rates so as to produce a certain percentage on the capital, and in the case of Germany by the right held by each party, the Government and the Railways, to submit any matter in dispute regarding rates to the Railway Court. The only case of rates taken before that Court has been decided in favour of the railways and the verdict was accepted by the Government. This change of attitude towards rates, when coupled with the change in form of administration, is significant as it indicates a growing realisation of the wisdom of the view usually held in this country and America that railways, whether state-managed or not, should be run as commercial undertakings and not as instruments of policy, which, especially in a democratic country, may vary with each Government.

The procedure adopted in Canada is worthy of particular attention because it affords an instance where state-owned as well as privately-owned railways have their rates fixed by an independent tribunal and where by that means in a country where railways have often been one of the main political issues the whole question of rates has been lifted out of the arena of politics. This instance has now been reinforced by the London Passenger Transport Bill which provides that changes in fares shall be fixed by the Railway Rates Tribunal.

The Existing Organisation and Control in India.

94. The railways of India, consisting of some 41,000 miles of various gauges, are split up so far as concerns ownership and

management into several different categories, which may be classed roughly as follows :—

- (1) State-owned lines directly managed by the State.
- (2) State-owned lines managed by Companies.
- (3) Company-owned lines managed by Companies.
- (4) Lines belonging to Indian States.
- (5) Miscellaneous lines, including lines owned by district boards and branch lines owned, and in some cases worked, by Indian Companies.

Between the first two there is in practice, so far as administration is concerned, little difference. Although the state-owned lines managed by companies have boards of directors in England, the powers delegated to them by the Railway Board in financial matters are only on a par with those delegated in the case of state-managed railways to the Agents, the title given in India to General Managers. The only powers they have which are not held by the Agents of state-managed railways is that they make their own purchases, make appointments and promotions, and grant leave, but they are bound by the limitations set by the Government of India as to scales of pay, leave, &c. A Government Director nominated by the Secretary of State sits on the Board with powers of veto. His approval has to be obtained for ordinary expenditure in England, and special expenditure in England, such as increasing the London establishment, has to be submitted for the direct sanction of the Secretary of State in Council.

The two railways of any size owned and managed by companies are the Bengal and North Western and the Rohilkhund & Kumaon. These railways have privately-owned capital but, partly owing to the fact that they work certain sections of railway owned by the State and partly owing to the Government power of purchase, their authority in finance and administration, whether over the sections of the line which they own themselves or over those owned by the Government, is no greater than that of the companies which manage state-owned lines.

The lines classed together under the head of miscellaneous include a variety of small lines and branches owned and worked under a variety of conditions. In some cases provision for their construction and maintenance is made by provincial legislation, and legislation by the Central Legislature is only required when they are in physical connection with the main line or are built on the same gauge adjacent to one. Some are owned and worked by rupee companies. In these cases, at the most, control by the Central Government is limited to rates and capital expenditure. In other cases the lines are owned by district boards or rupee companies and are worked on their behalf by connecting main lines.

The final category is the railways in Indian states. The policy of the Government of India regarding the construction and maintenance of these railways has been stated in their Resolution of the 6th December, 1923, which was drawn up by them after discussions with the Princes.

The main provisions of this resolution may be summarized as follows :—

“When a proposal is made that a railway should traverse State territory, the State or States concerned will be afforded full opportunity of making representations on the subject, and such representations will receive most careful consideration. Except when the proposed railway is required for strategic purposes, nothing will, in the absence of mutual agreement, be done which is calculated to infringe the sovereign rights of the States. If after full examination of all possible routes for a proposed strategic railway it is found that there is more than one alternative feasible route, one traversing a State and the others avoiding it, the wishes of the State concerned will, provided conditions are approximately equal, not be overruled.

The Government of India recognise the prior claim of a State to construct and work a new line or extension within its own territory subject to the general provisions of the rules laid down.

The assent of the Government of India is an essential preliminary to the construction or extension of any railway by a State.

Railways built by Indian States will be subject to the maxima and minima rates and fares prescribed by the Railway Department of the Government of India which may, for the time being, be in force on Indian Railways generally.”

Thus, in practice, control over the more important of these railways is limited to new construction and rates, and in some cases also inspections from the point of view of safety are made by Indian Government railway officials. The capital requirements of these railways are found by the States themselves.

95. The controlling organisation in British India is the Railway Board. The Railway Department (Railway Board), to give it its official title, consists of a Chief Commissioner, a Financial Commissioner and three Members. The Chief Commissioner is *ex-officio* Secretary to the Government of India in the Railway Department and, as such, has direct access to the Viceroy. He can overrule his colleagues, with the exception of the Financial Commissioner on matters of finance.

The Financial Commissioner has a rather peculiar position. Financial control on railway questions is exercised by the Finance Member of the Governor-General's Council through the Financial Commissioner of Railways. The latter, as a Member of the Railway Board, is in a position to watch from within the operations of the Railway Department and to bring to the notice of the Finance Member any questions with financial implications either at an early stage, or, if necessary, at or before their inception. He is responsible to the Finance Member and not to the Board in matters of railway finance, and has the right to refer to him any case in which he disagrees with the Chief Commissioner or the Railway

Department as to its financial aspect. There must be few subjects of sufficient importance to warrant the attention of the Railway Board which have no financial implications. The Financial Commissioner also has a seat in the Legislative Assembly, the Railway Department being represented there by the Member for Commerce and Railways.

The three other members of the Board are in charge respectively of engineering, both civil and mechanical, traffic and staff, having under them directors for the various branches. The Financial Commissioner has under him a Director of Finance.

96. In charge of the various railways are Agents who correspond direct with the Railway Board. The powers delegated to Agents of state-worked lines by the Railway Board include full power to sanction expenditure subject to the limitations prescribed in statutory or other authorised rules and orders, and the limitations imposed by the grant for the year, with the following reservations :—

- (a) Capital expenditure on construction of a new line.
- (b) Open line works chargeable to capital of an amount exceeding 1 lakh.
- (c) Provision of additional rolling stock or special works, such as schools or institutions.
- (d) Creation of non-pensionable subordinate posts exceeding certain limits of pay and revision of scales of pay if scheme costs more than Rs. 25,000.
- (e) Compensation in excess of certain standards to railway servants killed or injured.

It must be remembered, however, that this financial freedom is limited by the grant for the year, which is in fact the estimates of expenditure for that railway as passed and approved by higher authority.

The financial powers granted to the Boards of company-managed lines are the same as those delegated to the Agents of state-managed lines.

97. In turn the Governor-General has full powers from the Secretary of State to sanction expenditure from central revenues upon railways and to delegate such powers subject to reservations on certain subjects which must receive the previous sanction of the Secretary of State in Council. The following are the more important subjects :—

- (1) Expenditure either from capital or revenue on a new line estimated to cost more than $1\frac{1}{2}$ crores or when an objection is raised by an authority owning or working with financial interest, a railway which will be connected with the new line or affected by it.
- (2) Expenditure on a single work or group of works on open lines estimated to cost more than $1\frac{1}{2}$ crores.

- (3) Purchase of branch lines belonging to Indian companies when the purchase price exceeds 1½ crores, the purchase of any portion of a railway belonging to an English company and the sale of any portion of a State Railway.
- (4) All outlay which it is proposed to charge finally to loan funds.
- (5) Any final contracts or modification of contracts with English companies.
- (6) The general terms on which branch lines may be constructed by District or Local Boards or Companies.
- (7) Creation of posts in state-managed railways on pay exceeding Rs. 50,000 a year.
- (8) Departures from certain rules regarding free passages, pensions and gratuities, and provident fund.
- (9) Provision for additions to the list of saloons reserved for the use of members of the Railway Board.

98. The estimates of revenue and expenditure, and those for capital expenditure, for the two first categories of railways, state-owned and state-managed, and state-owned and company-managed, are presented to the Railway Board who scrutinise and usually amend them.

These estimates are placed before the Standing Finance Committee for Railways and then the expenditure portion is embodied in the demands for grants which are submitted to the Legislative Assembly. These demands for grants show votable and non-votable expenditure separate. The latter are items such as salaries and pensions of persons appointed by or with the approval of His Majesty or the Secretary of State in Council, those of persons appointed before 1st April, 1924, by the Governor General in Council to superior posts, interest and sinking fund charges on loans and expenditure prescribed by law, which are not subject to the vote of the Legislative Assembly.

Votable expenditure is placed under 15 demands. No great detail is given in these demands, but the estimates of individual railways, which are submitted with the Budget, give the proposed expenditure in considerable detail. The Assembly may assent or refuse or reduce, but any refusal or reduction is subject to the powers of restoration of the Governor General in Council.

99. The Standing Finance Committee for Railways consists of the Financial Commissioner as Chairman and 11 Members elected by the Legislative Assembly from their body. Under the Separation Convention of 1924, which is explained in more detail below, the Railway Department is required to submit to the Standing Finance Committee, prior to the discussion on the demands for grants in the Assembly, the estimates of railway expenditure, as outlined above, and in addition all supplementary grants as well as all proposals for the creation of permanent superior posts in the railway service, both for state and company-managed railways. Thus a proposal to alter a post of Assistant Traffic Superintendent to that of District Traffic Superintendent would be submitted to the Committee for approval.

The appropriation accounts of railway expenditure are presented to the Public Accounts Committee in the same way as those of other Government departments.

100. The disposal of earnings from state-owned railways is governed by what is called the Separation Convention of 1924, embodied in a resolution of the Legislative Assembly of 20th September, 1924.

This resolution laid down in the first place that the railway finances should be separated from the general finances of the country. This separation has been effected only partially. It next lays down that, after charging against gross earnings of state railways all expenses of the railways and the Railway Board, depreciation, payments to state lines worked by companies of their share of surplus profits, and interest payable either to the Government of India or outside parties such as private companies, the net earnings shall be disposed of in the following manner.

The interest on capital and loss on working of certain lines called strategic lines, which are some 1,600 miles long with a capital of about 33 crores, are borne by general revenues.

One per cent. on the capital at charge of Commercial lines (*i.e.*, excluding strategic lines and capital contributed by companies and Indian States) plus one-fifth of any surplus remaining after this fixed return has been paid is contributed to general revenues, the contribution of 1 per cent. being cumulative. These payments are based on the figures of the penultimate year. If, after meeting these payments, a surplus is left, one-third of the excess over 3 crores goes to general revenues.

The share of any of these surpluses taken by the Railway Board forms a Reserve which is to be used for paying any arrears in the annual one per cent. contribution to general revenues, for providing for arrears of depreciation, for writing down capital, and for strengthening the financial position of the railways with a view to improving service and reducing rates.

101. Rates and fares are controlled by the Railway Board which lays down maxima and minima rates. Within these limits the railways are authorised to vary their rates, subject, in certain cases, to the sanction of the Railway Board. For certain Government rates such as postal matter, troops and military stores, the Railway Board prescribes the rates, and these rates under agreements with most of the other railways apply over them also. The Railway Board also prescribes the classification of rates. As noted earlier, maxima and minima rates laid down by the Railway Board apply to Indian States' railways under agreements made with the Princes.

A Railway Rates Advisory Committee was formed in 1926 and consists of a President and two members. The first President was formerly Law Member of the Executive Council. Of the members one represents commercial interests and is nominated specially for each case from a panel elected or nominated by the principal

commercial bodies. The other represents railway interests and appears to be permanent in so far as he is not chosen afresh for each case.

The Committee investigates complaints of undue preference, that rates are unreasonable, that conditions as to packing are unreasonable, and that railways do not provide reasonable facilities. Applications for a hearing must in the first case be addressed to the Agent of the railway, who must submit it with his observations thereon to the Railway Board. It rests with the Government of India to determine in each case whether it is to be referred to the Committee or not and it informs the applicant accordingly. When the Committee has investigated a case, it forwards its recommendations to the Railway Department, which, after consideration, gives such orders thereon as it considers advisable.

102. For the discussion of questions of railway policy there is a Central Advisory Council. This consists of the Member for Commerce and Railways as Chairman and 24 other members; of these 24 places, 12 are filled by the members of the Standing Finance Committee, and 6 by other members of the Legislative Assembly chosen by that body. The remaining 6 members are chosen by the Council of State from amongst their numbers. Thus the whole Council is drawn from the two Chambers of the Legislature.

In addition Local Advisory Committees have been established for each railway administration. The Agent of the railway is *ex-officio* Chairman, and the remaining members consist of two nominated by the Local Government, 3 representatives of the local Legislative Council selected to represent rural interests and the travelling public, 1 representative of the local municipality at the railway headquarters, and 5 members representing industries and commerce, who are drawn from the local bodies representing trade interests.

103. Questions and standards of safety come under the Railway Board, who have for this purpose a number of government inspectors reporting directly to them. In the case of railways belonging to Indian States, certain of these are inspected by the Government inspectors by agreement with the Government of India.

Conclusions.

104. The final task now remains of trying to apply the experience of other countries to the special conditions of India both as those conditions are at present and as they would be under the federal constitution now contemplated. Before entering on this task I wish to state that I have no claim to personal knowledge or experience of Indian railways or of Indian conditions. Such knowledge as I have is based solely on documents and the views which I shall express will be based solely on the same foundation.

The Government of India in their Despatch of the 20th September, 1930, on proposals for constitutional reform drew attention to

the necessity for separating commercial management from direction of policy, and pointed out that the question of the separation of railway finance was one which should be explored. They also outlined the purposes for which the Parliament of Great Britain must continue to be interested and classed these under the headings of Defence, Finance, Services, and the Anglo-Indian community.

Sub-Committee "D" (Federal Structure) of the Indian Round Table Conference classified Railways as to be Federal as to policy and legislation, administration to be Federal to the extent of the powers now exercised by the Railway Board.

105. The administration of the Railways in British India is now highly centralised in the Railway Board; as shown earlier, the administration of even the company-managed lines, except for selection for appointments and purchase of stores, is centralised there. The railways themselves cut across provincial boundaries and pay no attention to them. From the railway, as from the federal point of view, to decentralise, therefore, would have been extremely difficult and would have been accompanied by many disadvantages and few apparent advantages.

106. Turning to the question of the separation of railway finance, the remarks of the Government of India bring into relief the conclusions reached earlier in this memorandum. These conclusions also receive remarkable support from the recommendations of the Acworth Committee.

In addition to the Chairman who was the most distinguished railway economist of his day and one whose advice had been sought by Canada, the United States, and many continental countries, this Committee included three former Agents of Indian railways, two of whom had also been Presidents of the Railway Board. European and Indian commercial interests as well as banking interests were represented on it and one member was a Member of the Council of State. Three of the members were of Indian nationality. Such a Committee naturally commands a high authority and cannot be accused of ignorance of Indian railways or of Indian conditions. While they disagreed on certain points, they gave a unanimous recommendation that there should be complete separation, that the Finance Department should cease to control the internal finance of the Railways, and that they should be responsible for earning and expending their own revenue and for providing such net revenue as might be required to meet the interest on the debt incurred for railway purposes.

This recommendation, as has been seen, has been only very partially implemented. The funds voted each year "lapse" at the end of the financial year in accordance with the ordinary Government practice. The Depreciation, Reserve and Revenue funds are held by the Finance Department, and finally there is the position of the Financial Commissioner, who sits on the Railway Board but is responsible on financial questions not to that Board, but to the Finance Member of Council. This is very far from the

complete separation envisaged by the Acworth Committee. In view of their recommendation and of the experience of other countries the conclusion is unavoidable that, both in present conditions and as they would be under a federal constitution, an effective separation should be made.

107. The Government of India, in dealing with the necessity of separating the commercial management from the direction of policy, expresses the opinion that "a continuance of the present system, under which the railways are directly administered by a branch of the executive Government, would, as soon as the legislature was in a position to assert its authority, develop tendencies leading directly to inefficiency and ultimately endangering the financial result of railway working," and spoke of a system of administration "which, while leaving to Government and the legislature the control of broad questions of policy, would locate the commercial management elsewhere."

This again is in consonance with the experience of other countries and points clearly to the necessity for the establishment of some body which, as I have expressed it, should be interposed between the Legislature and the management. In this the support of the Acworth Committee cannot be claimed. They postulated a purely technical Railway Board under a Member for Communications who would present to the Legislative Assembly the Railway Budget as an annex to the general Budget. But I would submit that the present problem is by no means the same as that placed before the Committee. Sir William Acworth himself has framed more than one scheme which depended upon the creation of a body of this character for its execution. Conditions have changed and proposals must be modified to suit the changes. The present proposal is merely in a way a step forward in the process of development.

108. Before discussing the composition of this body I think it would be advisable to examine the question of the functions which it would be called upon to perform. In the first place I would recommend that the full powers over rates and fares now held by the Railway Board should be transferred to an independent Tribunal. My principal object in doing so, assuming that conditions remain as they are at present, is in order to remove this question as far as possible from political influence. Up to date the rates question in India does not appear to have had any marked political tendency, but that is no guarantee that it will have none in the future, especially under the stress of economic depression. The Acworth Committee had many complaints about rates before them, though not of a political nature, and, in fact, recommended the formation of a Rates Tribunal, which would decide on the reasonableness of rates, the conditions attached thereto, and the reasonableness of facilities. They apparently contemplated that the maxima and minima rates should be fixed, as now, by the Railway Board and that only complaints should go before the Tribunal. To the grounds which that Committee put forward for the creation of a

Tribunal, I add the further one of the danger of political influence so long as decisions on rates are solely in the hands of Government. For this reason I would go further than the Acworth Committee and would recommend that all control whatsoever over such questions should be removed from the Railway Board or their successors in administration, and, following the Canadian precedent, be placed in the hands of an independent Tribunal.

In the event of a federal constitution there is a further advantage to be gained by this course. In accordance with the agreements made, railways in Indian States are subject to maxima and minima rates in the same way as Indian railways generally. There would not, therefore, be any substantial departure, in principle at any rate, in making the rates and facilities on those railways the subject of review by a Federal Rates Tribunal, while there might be considerable objection to the same powers being exercised by a Federal Authority which was administering the railways in British India.

109. For the same reason and also because it is becoming increasingly apparent that safety cannot be entirely divorced from economics, it would seem advisable to place the question of safety also under the Tribunal. Railways in Indian States are now in most cases inspected by Indian Government railway inspectors, and so again there would be no substantial departure in principle from the present state of affairs.

It may seem strange thus to place a duty of inspection on a body whose primary duty is to give decisions on matters of rates, but I can claim in support of my proposal that both the Interstate Commerce Commission in America and the Board of Railway Commissioners in Canada have shown that the functions are not incompatible.

110. For such a large system as that of the Indian Railways, especially if the Indian State-owned railways are added, the Tribunal should consist of at least 5 members, and I am of the opinion that the President should be a judge or lawyer of high standing. To protect them from being flooded with frivolous complaints it would be necessary to require a deposit which could be forfeited.

The standard by which the Tribunal should judge rates should, I suggest, be also similar to that in Canada. That is to say, the existing rates and fares should be taken as the original basis, and for the future these and any subsequent changes therein should be judged on the grounds of whether they were just and reasonable, bearing in mind changing conditions and the cost of transportation. Included in the cost of transportation would be any obligations under which the Railways might be placed by convention with the Government or by statute as to the allocation of funds for depreciation and reserves and as to contribution to general revenues.

If the proposals regarding safety precautions and inspection were adopted, the present inspecting staff could be transferred *in toto* from the Railway Board to the Tribunal.

111. It is necessary now to revert to the functions and constitution of the new body to be formed to take charge of the commercial management, which I shall refer to as the New Board. The general policy to be followed by the Railways, it is agreed, should be controlled by the Legislature, subject to such checks as it may be considered necessary to give to the Governor-General for the purposes in which the British Parliament will continue to be interested. Many of the main lines of this policy could, it appears to me, be quite suitably laid down in advance, such as the instructions as to the manner in which provision is to be made for depreciation, the limits, both maximum and minimum, of the amounts to be set aside for reserves, the use and disposal of these funds as well as of any provident or other funds, the proportion of these that must be invested and the method of investment, the interest and sinking fund charges which the Railways have to meet against the capital at their charge, the amount which the Railways will be expected to pay over to general revenues in excess of this and the disposal of any surplus which may remain. Most of these subjects are already embodied in the Resolution of the Legislative Assembly of the 20th September, 1924, and, as suggested in the Government of India Despatch, could quite appropriately be included in the statutes establishing the New Board, as has been done in Germany, France and Belgium. With an independent Tribunal which fixed the rates and fares to be charged bearing in mind the statutory provisions thus imposed on the Railways, a general financial policy as regards the normal annual revenue and expenditure would thus be prescribed for the New Board. It will be for the Government and Legislature to observe that this policy was being followed and to modify it as might be thought appropriate.

112. The policy to be adopted as regards capital expenditure is on rather a different footing. In so far as the Railways can meet their capital requirements from their own surplus funds, and I include in that term such of their depreciation, reserve, and other funds as under the statutes they would be allowed to use, I do not think that it should be incumbent on them to seek the approval of the Government or the Legislature except in the case of the construction of a new line. But, whenever new capital has to be raised, either by borrowing from the State or from any other source or a new line is projected, it is essential that the prior approval of the Government and the Legislature should be obtained. Similarly there should be a provision in the statutes restraining the New Board from over-spending on capital account in anticipation of approval.

113. Other aspects of policy such as those connected with labour must be under the final control of the Legislature and the Government, and these are above all questions in which it is difficult to draw a line between policy and management. Herein lies, however, one of the advantages of an independent Rates Tribunal because the effect of the action of the Legislature in these

matters must be taken into account by the Tribunal in assessing rates.

114. The relations between the New Board on the one hand and the Agents of State-managed railways and the Boards of Company-managed railways on the other could remain on very much the same basis as at present. They would, as now, submit their estimates for approval to the New Board but would, with the separation of railway finance, have more control over their own accounts.

The powers of the New Board in relation to finance would be enlarged in so far as they would be freed of the detailed control of the Finance Department. Against this they could not enjoy presumably the full present powers of the Railway Board coupled with those of the Finance Department, because they would be subject to such limitations as it might be considered necessary to retain in the hands of the Governor-General to safeguard the matters in which Parliament is interested, as indicated in the Despatch of the Government of India. It would, of course, be necessary to have an independent check of their accounts by the Auditor-General.

Again in the matter of appointments the Despatch contemplates the retention of certain powers by the Governor-General, but subject to these it would appear suitable to place in the hands of the New Board the powers of appointment now held by the Railway Board and also such matters as proposals for the creation of permanent posts which are now referred to the Standing Finance Committee, and decisions as to the scale of salaries. Appointments on company-managed lines could as now be dealt with by the boards of those companies and in general in these matters the relation of the boards of the companies to the New Board might remain on much the same basis as at present.

The New Board would thus enjoy generally the powers of administration now possessed by the present Board, together with the detailed powers over railway finance now exercised by the Finance Department, subject to any limitations which it might be considered advisable to leave in the hands of the Governor-General. They would present annually to the Legislature, through the appropriate Member, a full report and accounts, and, in addition to discussion on this, railway policy would come up for review in the Legislature on the contribution from the Railways to the General Budget as well as on proposals for borrowing or for new construction.

The statutes establishing the New Board would enjoin the procedure to be followed in regard to depreciation and reserves and the other kindred subjects detailed earlier.

115. The best form for the New Board would, I think, be that of a public utility corporation on the lines of the London Passenger Transport Board or the Central Electricity Board. I have considered and rejected the idea of an owning company,

because while there would be complications in connection with the creation and exchange of stock there would appear to be no compensating advantages in this case.

The composition of the New Board presents rather special difficulties for one who cannot pretend to have personal experience of Indian conditions, because it is thus more difficult to assess the relative value to be given to the various interests. I would urge, however, that a high proportion of the members should be elected by bodies representative of commerce, industry, banking, agriculture and manufacture, because it is these men above all with their special knowledge who will be wanted to direct the commercial management. Whether it would be advisable to adopt the rule, in force in many countries, excluding Members of the Legislature, I am unable to say, but it is essential, if this is not adopted, that a limit should be imposed at least on the numbers admitted in order to prevent the Board from becoming a mere reflex of the politics of the country and not of its commerce. Also for so vast a country as India, with important centres so far apart as Calcutta, Bombay and Madras, local representation seems more than usually necessary. To allow for the representation of all these interests will involve a large board. Many of the boards in the continental schemes appear most unwieldy to our view and the difficulty will lie in giving adequate representation to the more important interests without letting the Board swell to inordinate dimensions. I would submit that, despite the extra cost to the railways, the members of the Board should receive remuneration for their services.

116. There will have clearly to be an executive authority in charge of the work of the Board. This will have to be composed of men trained in railway work and drawn from the railway service. I think it would be advisable for the Board to have a large share in their choice; otherwise there might be continual friction. A possible solution might be that the Board should select the men for these appointments for the final approval of the Governor-General, the scope of their selection being confined to such limitations as the Governor-General might think it necessary to impose. Following the American precedent, the senior executive officer might fill the post of President and Chairman of the Board, while the other officers of the Executive Committee might be ranked as Vice-Presidents. If a Board of this nature were formed there would no longer be any need either for a Central Advisory Council or for a Standing Finance Committee, though it might be found wise to preserve the Local Advisory Councils in order to keep the Agents in touch with local opinion.

117. While I have endeavoured in the organisation which I have outlined to adapt the experience of other countries to the Indian case, I have also tried to keep in view the need for an organisation which would not only be workable in existing conditions but capable of modification to suit a federal constitution. I have, therefore, purposely adhered rather closely to the model of the

present organisation so far as concerns the relations of the central authority to the state-managed and company-managed railways in order to cause as little disturbance in these relationships as possible. On the other hand I have excluded from the jurisdiction of this central managing authority jurisdiction over rates and safety, the main points of contact between the present Railway Board and the railways in Indian States. When a federal constitution is established, there would be no need therefore for any violent change, and railways in Indian States could be placed under the control of the New Board or not, according to the form of federation adopted. Also it would be open to them to join this scheme at a subsequent date if this was considered advisable.

In concluding this memorandum I wish to express my thanks to the many authorities and authors from whom I have drawn my information. These are so numerous that it has been impossible to acknowledge my indebtedness in each case individually.

I am,

Sir,

Your obedient servant,

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