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**INDIAN RAILWAYS:
RATES AND REGULATIONS**

INDIAN RAILWAYS: RATES AND REGULATIONS

By
N. B. MEHTA, Ph.D.

With an Introduction by
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CONTENTS

CHAP.		PAGE.
	PREFACE	v
	INTRODUCTION BY W. TETLEY STEPHENSON, M.A.	ix
I.	A SKETCH OF THE RAILWAY POLICY OF THE GOVERNMENT OF INDIA	ii
II.	PROBLEMS OF ORGANIZATION AND FINANCE	47
III.	THE THEORY OF RAILWAY RATES	58
IV.	THE DEVELOPMENT OF RATES AND REGULATION	80
V.	COMPETITION AND RATES DISCRIMINATION	127
VI.	CONCLUSION : THE URGENCY OF A RATES ADVISORY COMMISSION	164
	APPENDIX	175
	BIBLIOGRAPHY	181

PREFACE

PORTENTS are not lacking that the awakening demos in India is getting tremendously interested, *inter alia*, in railway matters. Resolutions and questions innumerable in the Imperial Legislature bear sufficient testimony to it. A rapid change is also overcoming the railway management. Following upon the Report of the Acworth Committee, the Railway Board has been overhauled and re-organized; a Central Advisory Council and Local Advisory Committees have been established; and the railway budget has been separated from the insalutary influence of the general budget, and for the examination of it a standing Finance Committee has been constituted. The decision of the representatives of the people that the State should take over the management of the E.I. and the G.I.P. Railways, and its acceptance by the Government, has created a landmark in the annals of Indian railways, reversing as it does, the policy initiated by Lord Hartington and Sir Evelyn Baring in 1882. These are but indications of the important hold which railways are getting on the public mind. And this is as it should be, for hitherto the lot of the railways was frankly incommensurate with their financial, economic and social importance.

Literature on the subject is, however, scanty. This constitutes the *raison d'être* and justification for the present work.

The purpose of the following dissertation is to examine the rates policy pursued by the railways in India, and the power of the Government to control it. It is attempted to show that this power over the railway companies is in the first place inadequate, and that some of it is inconvenient of enforcement or is not actually exercised. Three facts are emphasized: the preponderant financial stake of the State in the railways, the obsolescence of the theory of the

automatic regulation of railway rates by competition or by the law of supply and demand, and the need, therefore, of a more rigorous yet enlightened policy of State control.

Complaints of unduly discriminatory rates imposed by the railways have been numerous and of long standing. While the law formally prohibits undue preference, its sanction is neutralized by the non-existence—for practical purposes—of a body to entertain complaints of such a nature, examine into them and decide upon them or advise the Government to do so. The absence of such a body has been grievously felt by the public, and the criticism of the continued tolerance of such a state of affairs is one which Government cannot very well face. On the other hand, the unsympathetic and short-sighted policy of the railways has turned the hands of the public against them, and State management has been the resounding cry. Yet it needs no stretch of the imagination to perceive that the stress which the public is laying upon State management is accidental. To the public the one obvious fact is the failure of railways to further the needs and aims of the country. What it essentially desires is an efficient and economical service ministering to its legitimate aspirations. Clearly, therefore, there can be no justification if the State managed railways adopt a policy detrimental to social interests. The situation in regard to the Company-managed railways is, however, on a different plane. The power of the State over them is limited by the contracts. So long, therefore, as the contracts are current what is desirable to improve the present situation is that the State should exercise an enlightened yet a more effective control over them—a control so imposed that this national property may achieve the maximum of utility for the community coupled with a reasonable remuneration to the concessionaires. It may also be possible thereby, to bring the public and the railways into more harmonious relations, and dispel mutual apprehensions. An important part of a railway's work is the cultivation of public confidence by publishing its achievements and promise of improvements in service for the future. This aspect the Indian railways have neglected. It is suggested

that to accomplish this purpose a standing Railway Commission of the advisory type, inexpensive and expeditious in operation, should be appointed.

The writer wishes to express his profound sense of obligation to Mr. W. Tetley Stephenson, Head of the Department of Transport at the London School of Economics and Political Science, for his general supervision of the work and his sympathy, stimulus and critical guidance. •The work bears the imprint of his valuable suggestions founded not less upon practical experience than upon theoretical learning.

SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, LONDON.

March, 1925.

N. B. M.

INTRODUCTION

THE railway literature of the world steadily grows, but at a very varying rate in different countries. Each country though, presents its own special problems, and so for each country a special literature is desirable. The present volume is the second book which has been produced with special reference to the railways of India, by a student preparing a Thesis for a higher degree in the University of London.

The first was *The Role of the State in the Provision of Railways*, by H. M. Jagtiani, in which the part that the State should play in railway development was admirably discussed in the light of the experience of England, Prussia and India. Mr. Mehta now follows with a study of railway rates and fares, in which he examines first the principles which underlie rates and fares; then the application of those principles in practice; and finally the need for, and nature of, the control which the State should exercise to ensure the principles being applied reasonably and without undue discrimination. Throughout, India is the country preeminently in the mind of the Author.

Throughout the research which preceded the writing of the book, I was in constant touch with Mr. Mehta, and know how hard he strove to adopt an unbiased attitude, and to keep in check national feelings which might have prejudiced his judgment. The best testimony to his success in this endeavour was given by a distinguished official of one of the great Indian railways, who, having read the book in manuscript, expressed the opinion that it was the fairest, best balanced book he had ever read by an Indian.

It is worthy of note that about the time Mr. Mehta presented his thesis for the Ph.D. degree (which was subsequently awarded him) the Government of India took steps to investigate several of the problems therein dealt

with. Though their conclusions did not result in practical remedies identical with those advocated in the book, they differed in such ways that it is evident that expediency rather than principle had dictated the course that action had finally taken.

Mr. Mehta's book will be useful to students of railways generally. I would, however, commend it not merely to students of railway transport, but as whole-heartedly to all concerned in railway transport in India, whether as Government officials exercising control, or railway officials, or large customers of the railways. The last will understand the railway problem better, whilst the former will get a not unkind description of the way in which their actions in the past have been viewed by the traders. The result should be a better understanding.

W. TETLEY STEPHENSON.

LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE.

APPENDIX

THE INDIAN RAILWAYS ACT, 1890

CHAPTER V

Railway Commissions and Traffic Facilities *Railway Commissions*

26. (1) For the purposes of this Chapter, the Governor-General in Council shall, as occasion may in his opinion require, appoint a Commission, styled a Railway Commission (in this Act referred to as the Commissioners), and consisting of one Law Commissioner and two lay Commissioners.

(2) The Commissioners shall sit at such times and in such places as the Governor-General in Council appoints.

(3) The Law Commissioner shall be such judge of the High Court, having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Commissioners are to sit as, in the case of a High Court established under the Statute 24 and 25 Victoria, Chapter 104, the Chief Justice or, in the case of the Chief Court of the Punjab, the Senior Judge, or, in the case of the Court of the Recorder of Rangoon, the Chief Commissioner of Burma, may, on the request of the Governor-General in Council, assign by writing under his hand.

(4) The Lay Commissioners shall be appointed by the Governor-General in Council, and one at least of them shall be of experience in railway business.

27. The Commissioners shall take cognizance of such cases only as are referred to them by the Governor-General in Council.

28. In any of the following circumstances, namely :—

(a) Where complaint is made to the Governor-General in Council of anything done or any omission made by a railway administration in violation or contravention of any provision of this chapter ;

(b) where any difference which is under the provisions of any agreement required or authorised to be referred to arbitration arises between railway administrations, and the railway administrations apply to the Governor-General in Council to have it referred to the Commissioners ;

(c) where any other difference, being a difference between railway administrations, or one to which a railway administration

is a party, arises and the parties thereto apply to the Governor-General in Council to have it referred to the Commissioners, the Governor-General in Council, may, if he thinks fit, refer the case to the Commissioners for decision.

29. The three Commissioners shall attend at the hearing of any case referred to them for decision under this Chapter, and the Law Commissioner shall preside at the hearing.

30. (1) In hearing any such case, the Commissioners shall have all the powers which may be exercised in the hearing of an original civil suit by a High Court.

(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority, and the final order in the case shall be by way of injunction and not otherwise.

(3) At the hearing, the Commissioners may permit any party to appear before them either by himself or by any legal practitioner entitled to practise in any High Court.

31. (1) An appeal shall not lie from any of the Commissioners upon any question of fact on which two of the Commissioners are agreed.

(2) Subject to the provisions of sub-section (1), an appeal shall lie from an order of the Commissioners—

(a) Where the Law Commissioner was the Recorder or Additional Recorder of Rangoon, to the High Court of Judicature at Fort William in Bengal, and

(b) in any other case, to the High Court of which the Law Commissioner was a member.

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many judges, not being fewer than three, as the High Court may by rule prescribe.

(4) In the hearing of the appeal, the High Court shall, subject to the other provisions of this chapter, have all the powers which it has as an appellate Court under the Code of Civil Procedure, and may make any order which the Commissioners could have made.

32. Notwithstanding any appeal to the High Court from an order of the Commissioners, the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court.

33. (1) The Commissioners, in the exercise of their jurisdiction under this Chapter, may from time to time, with the general or special sanction of the Governor-General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors.

(2) There shall be paid to such persons such remuneration as

the Governor-General in Council upon the recommendation of the Commissioners may direct.

34. The Governor-General in Council may make rules regulating proceedings before the Commissioners, and enabling the Commissioners to carry into effect the provisions of this Chapter, and prescribing fees to be taken in relation to proceedings before the Commissioners.

35. The costs of and incidental to any proceedings before the Commissioners or the High Court under this Chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court of which the Law Commissioner was a judge, as if the payment had been ordered by a decree of a High Court.

36. (1) The Court of which the Law Commissioner was a judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners, or on appeal before the High Court, or of the representative of any such person, that an injunction made under this Chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

(2) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making application under sub-section (1) or to the Government.

37. A document purporting to be signed by the Commissioners or any of them, shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed, and to have been duly executed or issued by the Commissioners.

38. The Commissioners shall, as soon as may be after the disposal of each case referred to them, submit to the Governor-General in Council a special report on the case, and the Governor-General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject-matter thereof.

39. Except for the purpose of the last foregoing section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them :—

Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor-General in

Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, re-appoint the Commissioners for the purpose of hearing an application for a review of their decision, and of granting the same and re-hearing the case if they think that the case should be reheard.

40. Subject to the foregoing provisions of this Chapter, and to any direction of Her Majesty in Council, an order of the Commissioners shall be final, and shall not be questioned in or restrained by any court.

41. Except as provided in this Act, no suit shall be instituted or proceedings taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter, or of any order made thereunder by the Commissioners or by a High Court.

Traffic Facilities

42. (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it, and for the return of rolling-stock.

(2) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station without any unreasonable delay, and without any such preference or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may, by means of such railways, be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding, and delivering by every railway administration, of through traffic to and from the railway of any other railway administration at through rates. Provided as follows :—

(a) The railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its

amount and its apportionment, and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund :

(b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment, and route, and if it has any objection, what the grounds of the objection are ;

(c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period.

(d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Governor-General in Council may, if he thinks fit, on the request of any of the railway administrations, refer the case to the Commissioners for decision ;

(e) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of a rate is a due and reasonable facility in the interests of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly, or fix such other rate as may seem to the Commissioners to be just and reasonable ;

(f) if the objection is only to the apportionment of the rate and the case has been referred to the Commissioners, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective : in the case of any other objection the operation of the rate shall be suspended until the Commissioners make their order in the case ;

(g) the Commissioners in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof ;

(h) the Commissioners shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route ;

(i) subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed

through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate, than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly;

(7) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Governor-General in Council may by general or special order prescribe.

43. Whenever it is shown that a railway administration charges one trader or class of traders, or the traders of any local area, lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders, or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

(2) In deciding whether a lower charge does or does not amount to an undue preference, the Commissioners may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

44. Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat, or raft which does not belong to or is not hired or worked by the railway administration, the provisions of the last two foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway.

45. A railway administration may charge reasonable terminals.

46. (1) The Governor-General in Council may, if he thinks fit, refer to the Commissioners for decision any question or dispute which may arise with respect to the terminals charged by the railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid to the railway administration in respect of terminals.

(2) In deciding the question or dispute the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

INDEX

- Accounts, Government examiners of, 48.
- Acworth Committee, on advisory councils, 126; Government control, 170; level of rates, 116; public relations, 122; Railway Board, 51, 52; rates policy, principles of, 161; Rates Tribunal, 167, 172; Secretary of State, functions of, 168; traders' complaints, 158; urgency of reform, 53.
- Acworth, Sir William, on discrimination, 68; spheres of influence, 46; traffic managers, advice to, 70.
- Administration, report on, 43 n. 48, 102.
- Advisory Commission, advocated, 173; need of, 164; powers of, 174.
- Advisory Councils, absence of, 144; advocated, 125, 126.
- Afghan War, effect of, on railway construction, 36.
- Amalgamation, tendency towards, 109.
- Argyll, Duke of, 29.
- Ashley Committee of 1881, 104.
- "Assisted companies," 42.
- B**
- Bandies, complete with railways, 85.
- Baring, Sir Evelyn, *see* Cromer, Lord.
- Bell, Horace, book of, referred to, 42, 43.
- Bengal Central Railway, 42.
- Bengal Nagpur Railway, 41, 43, 141.
- Block rates, 134-138, 140, 143.
- Board, Government, 49.
- Board of Control, averse to guarantee, 16, 17.
- Bombay and Baroda Railway, Government terms of agreement with, 19.
- Bombay Chamber of Commerce, 46.
- Branch Lines, 43, 44.
- British Railway Acts of 1873 and 1888, 166.
- British railway practice in India, 98.
- Broach case, 135.
- Buckingham Canal case, 138.
- Budget, railway finances separated from, v, 55.
- C**
- Canning, Lord, on terms of contracts, 26.
- Capital, expenditure of, limited, 38; raising, difficulty of, 16, 17; raising of, by Government, 23, 30.
- Central Advisory Council, establishment of, v.
- Chamber of Commerce, complaints of, 143.
- Chapman, Mr., on railway construction, 15.
- Chesney, General, on Government terms of agreement, 33, 34.
- Chord line opened, 95.
- Classes, passenger, need for, in India, 81.
- Classification Committee, 120.
- Classification of goods, changes in, made without notice, 125; proposed on E.I.R., 111; uniformity desirable in, 118, 119.
- Clearing House, 110, 118.
- Commission, Railway, recommended, 52.
- Commission, Standing, need for, 167.
- Communications Department, Acworth Committee on, 140.
- Company-managed railways, power of State over, vi.
- Competition, absence of, 97, 101, 102; boat, 96; discrimination resulting from, 132; ineffectiveness of, 128; rates reduction due to, 145; Secretary of State on, 103.
- Complaints, Acworth Committee on, 158; body to deal with, absence of, vi; Chamber of Commerce on, 143; discrimination justified, of, 157; traders', 123, 125, 146, 159, 167.

- Construction of railways, annual, 53; Commission on, 16; cost of, per mile, 25; delays in, 21; famine necessitates, 39; finance and, 34; guarantee system, under, 28; Railway Board, under, 51; State aid for, 16; State, by the, 35, 36.
- Consulting Engineers, duties of, 20, 47, 48, 50; inexperience of, 24.
- Contracts, badly worded, 24.
- Control, decentralization of, 47, *see* also Government and State control.
- Cost of service, 74-6, 79.
- Cotton, alleged preferential rates on, 154.
- Cotton trade, benefits from railway development, 22; state of, 12, 13.
- Court of Directors of E.I. Coy. on construction, railway, 15; guarantee by Government, 17; profits, 82.
- Credit, use of Government, 31.
- Cromer, Lord, financial statement of, 1881-2, 41; limit to capital expenditure, deplored by, 38; policy initiated by, v.
- Curzon, Lord, on functions of Board, 49.
- D
- Dalhousie, Lord, on Government, functions of, 13; guarantees, 23; Indian Railways, 106; railway development, 11, 12; trade, 145; trunk lines, 20.
- Dingley Tariff Act of 1897, 162.
- Director General of State Railways, 47.
- Discrimination, 127, 129-131, 153; between rich and poor, 67; complaints of, vi, 157, 158; joint costs and, 65.
- Distance, a basis for rate-making, 76, 77.
- E
- Earnings of Indian railways, 55, 124.
- East Indian Railway Company, 20, 37, 42, 95-7, 100.
- East Indian Tramway Company, 26, 27.
- Eastern Bengal Railway, 19, 42.
- Equal mileage rates, 77, 104.
- Experimental lines, 12.
- Export traffic, special rates for, 143, 157.
- Exports, grain, 105.
- F
- Famine, alleviated by railway development, 14; and railway construction, 36; effect of, on traffic, 99.
- Famine Insurance Grant, 39.
- Finance and railway construction, 34.
- Finance Committee established, v. Finance Department, 45, 55.
- Financial Commissioner appointed, 52.
- Fletcher, Mr., on railway fares, 83.
- G
- Gauge, 30, 35, 36.
- Germany, rates in, 69.
- Government, as a commercial entrepreneur, 56; fixing of rates by, 89, 110, 111.
- Government control, 20, 24, 110, 170.
- Government Director, on fares, 86-88; powers of veto of, 24.
- Government of India, and construction, 34, 43; power of, over railways, 99, 109; purchase of railways by, 47; on rates, 102, 107; relations with Secretary of State, 33, 168.
- Grain traffic, 114, 141, 142.
- Grant, Sir J. P., on guarantee system, 26.
- Great Indian Peninsula Railway, 18, 20, 42.
- Great Southern Railway, 19.
- Guarantee system, 16, 17, 19, 23-6, 29, 43, 86, 94.
- Guaranteed railways, 31, 32.
- Gur, rates on, 152.
- H
- Hardinge, Lord, on Government grant, 16.
- Hartington, Lord, v, 37, 41.
- I
- Impartial Commission, need for, 137.
- Import traffic, preferential rates for, 157, 163.
- Inchcape Retrenchment Committee, 125.

Increasing returns, 59, 64, 129.
 Indian Branch Railway Company, 26, 27.
 Indian Industrial Commission, 121.
 Indian Midland Railway, 41, 43.
 Industrial Commission, 160, 161.
 Industrial development due to railways, 145.
 Infant industries, 152.
 Iron industry, 39.

J

Jinnah, Mr., 167.
 Joint costs, 59, 63, 66.

L

Laing, Mr. S., 26.
 "Laissez-faire," 162.
 Land, free provision of, 16, 27, 43.
 Lawrence, Lord, on railway extension, 29.
 Level of rates in India, 112-116.
 Light railways, 31.
 Loans, raising of, 35.
 Local Advisory Committees, v.
 Local Governments, complaints of rates policy by, 161-2; powers of, over rates, 90.
 Local industries, preferential rates for, 159, 160.
 Long-distance traffic, 145.

M

Mackay, Mr., 15.
 Madras Railway, 19, 82-4.
 Mails, free carriage of, 19, 81; speed of, 12.
 Maintenance costs, 16.
 Management under guaranteed companies, 29.
 Marshall, Alfred, on joint costs, 61.
 Match industry, 147-49.
 Mayo, Lord, 29, 92.
 Maximum rates, altered, 117; fixed by Government, 89, 90, 110; futility of, 108.
 McKay Committee, 44, 49, 53, 54.
 Medley, Col. J. G., 119.
 Metre gauge, 35.
 Meyer, Mr. E. H., 73.
 Mileage, annual construction of, 32; increase of, 36; open in India, 52, 53; operated by State, 172.
 Military Board, 47.
 Military considerations, 11, 12, 16.

Militia, free carriage of, 81; reduced fares for, 19.
 Minimum rates fixed by Government, 110.
 Monopoly, the railways a, 80, 128.
 Monsoon, effects of, on communication, 14.
 Mutiny, The Indian, 21, 32.

N

Northcote, Lord, 28, 29.

O

Official Director, 20.
 Oil, rates on, 156.
 Operating ratio, 116.
 Operation, railway, Government control of, 19.
 Oudh and Rohilkand Railway, 42, 92.

P

Parliamentary Committee on railway problems, 40.
 Passenger traffic, 22.
 Pears, Col., 85.
 Pigeon, Prof., on joint costs, 61.
 Pilferage, 96.
 Politics and railways, 152.
 Preferential rates, for cotton, 153; for import and export traffic, 146, 157; for leather, 154; for local industries, 160; Government of India on, 153; law relating to, 147.
 Prices, rise in, 114.
 Priestley, Mr., 113.
 Private enterprise, 29, 37, 41, 164.
 Profit-earning rights, 162, 164.
 Profits, division of, 33; regulation of, 16; uncontrolled, 82.
 Public, attitude of the, to State management, vi; railway relations with, 144.
 Public interests and those of the railways, 163.
 Public Works Department, 40.
 Public Works Secretariat, 47.
 Purchase of railways by Government, 41.

R

Rahimtoola, Sir Ibrahim, 46.
 Railway Acts, British, of 1873 and 1888, 166.
 Railway Board, vii, 46, 50-2, 122, 136-8, 160, 168.

- Railway Commission, suggested, vii.
 Railway Conference, 101, 118, 160.
 Railway Conference Association, 120.
 Railway Department, 50-2.
 Railways Act, American, 77.
 Railways Act, Indian, 147, 166, 175-80.
 Rajputana Malwa State Railway, 101.
 Rate-cutting, 117.
 Rates, burden of, passed on to the consumer, 72; development of, Chap. IV; dissatisfaction with, 158; fixing of, in Europe, 79; Government control of, 74, 111, 171; increase in, since before the war, 123; Industrial Commission on, 161; level of, in India, 112, 116; low, good effect of, 98, 99; maximum, 89, 90, 108, 110, 117; minimum, 110; on grain traffic, 141, 142; on oil, 156; on matches, 147-49; on sugar, 149; ports, to and from, 155, 158; telescopic, 121; theory of, Chap. III.
 Rates Advisory Commission, need for, 164.
 Rates Tribunal, Acworth Committee in favour of a, 167, 172.
 Report, of Acworth Committee, *see* Acworth Committee; of Government Director, 86; of McKay Committee, *see* McKay Committee.
 Rendel, Mr., 94.
 Robertson, Mr. T., 44, 48, 112, 119, 121.
 Royal Commission of 1867, 104.
 Rupee, depreciation of, 43.
- S
- Salisbury, Lord, 35.
 Secretary of State, interference of, 99, 107; on construction, 43; questions referred to, 20; regulation of rates by, 91, 92; relations of, with Government of Government of India, 168.
 Select Committee of 1884, 106, 167.
 Simplification of goods traffic, 118.
 Sonthal Rebellion, 32.
 Southern Mahratta Railway, 40, 41.
 Spheres of influence, 46.
 Standing Commission advocated, 171.
- State, the, aid of, 116; borrowing of money by, 28, 40; competition and, 132, 143; construction by, 36; credit of, 29; mileage operated by, 172; role of, as an entrepreneur, 28.
 State control of railways, vi, 19, 80, 81, 105, 164.
 State management, v-vi, 42, 172.
 Stephenson, Mr. W. Tetley, vii, 55.
 Strachey, General, 41.
 Subsidy, 26, 43.
 Suez Canal, effect of opening of, 93.
 Sugar industry, 149-52.
 Surcharge, 115, 116.
- T
- Tapering rates, 113, 121.
 Tariff Simplification Committee, 120.
 Taussig on joint costs, 61.
 Telescopic rates, 121.
 Terrain suitable for railway construction, 15.
 Thackersey, Sir Vithaldas, 147, 167.
 Through rates, 118, 119.
 Tirhat State Railway, 41.
 Transport facilities prior to railways, 13.
 Transportation Act, American, of 1920, 76.
 Traffic, nature of, in India, 144, 151.
 Trunk lines, right of Government to purchase, 15.
- U
- Unification, problems of, 118.
 United States, rapid development of, 69.
- V
- Value of service theory, 78, 79.
 Veto, powers of, by Government Director, 24.
 Vignoles, Mr. C. B., 15.
- W
- Wagons, shortage of, 53.
 War, effect on railways of the, 114, 115.
 Waterways, competition of, 133.
 Wheat, export of, 104.
 Wilson, Sir James, 158.
- Z
- Zone system, 77.

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