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COMBINATION AMONG  
RAILWAY COMPANIES

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BY

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# Combination among Railway Companies

THE subject which I am to discuss with you in these lectures is Combination among Railway Companies in this country. It may be convenient to you to state how I propose to deal with it. First of all, I shall shortly glance at the history of the question ; then I shall discuss the various methods in which combination may be effected ; thirdly, I shall discuss the question from the point of view of the Companies who are themselves parties to the combination ; fourthly, from the point of view of outside Companies ; lastly, from the point of view of the public. In this way I propose to map out the field that I hope to cover.

## I—HISTORY

THE question is not a new one. Indeed, I suppose it is as old as railways themselves, for from the very first it claimed the attention of Parliament, of the public, and of the railway world. The early history of British railways, like that of the nation, is very largely that of the consolidation of many small units into a few large powers.

This was inevitable. The first railways were constructed merely as local lines, to deal with local needs. The first of all, the Darlington and Stockton line, which was authorised in 1825 and opened for traffic in

1825, was made for the purpose of carrying the coal from the pits around Darlington to the coast at Stockton, and the harbour which has now grown into Middlesbrough. So, in the same way, the better known Liverpool and Manchester line was opened in 1830 for the purpose of affording a cheaper and quicker method of getting the raw cotton from Liverpool to the factories in Manchester and South-East Lancashire, and on both these lines the conveyance of passengers was at first subordinate to those purposes which I have mentioned.

The success of the Liverpool and Manchester line led to Parliamentary powers being sought for, and in many cases obtained, for numerous other projects, but at first the pace was not very rapid. For each of the years 1832 to 1835, an average number of eleven Acts of Parliament authorising the construction of railways were passed. In 1836 there was an increase in the rate of progress and twenty-nine Acts were passed. Most of these were for comparatively short lengths of line, the most notable exceptions being the London and Birmingham Company, whose original line was 113 miles in length, and the Grand Junction line from Birmingham to Warrington which was eighty-three miles long. These were authorised in 1833. The original Great Western from London to Bristol was authorised in 1836 with a length of 118 miles. This is what one might call the parochial stage in the history of railway development. It was not to be expected that all the possibilities of this new method of transit would be foreseen at once. Speed was slow, accommodation primitive, the public unaccustomed to the travelling habit; and again, which was perhaps more important, capital and enterprise were scattered and in many hands.

The result was—the quite natural result—that these early lines were promoted under independent control on a small scale to meet the limited requirements of the time, instead of being planned to correspond with that

industrial and social development which they themselves were largely responsible for bringing into being.

But it quickly became apparent that this wide diversity of ownership and control was attended with serious inconvenience, and that it prevented full use being made of the railroads of the country as a whole. This is put shortly, and better than I can express it, in the Report of the Royal Commission on Railways of 1867, where they say, "The earlier railways had been formed by Companies owning comparatively short lines; great loss of time on the road and inconvenience arose from the want of unity in management, and from disputes between the Companies." There is an interesting contemporary bit of evidence on this point in the Report of Mr. Samuel Laing, afterwards Chairman of the Brighton Company and a very well-known figure in the railway world, which he presented to the Board of Trade in 1844. He was then an official at the Board of Trade, and he says, "As regards the public, the existence of so many independent Companies subject to no control, has been attended with considerable inconvenience in addition to the evil of high fares. For instance, where a great line of communication is broken up into several links, each in the hands of an independent Company, the through passenger is not only exposed to loss of time and inconvenience, but frequently pecuniary losses in having to stay at some stage of his journey for several hours, or proceed by a more expensive class." Of course, these were the days when many trains had only first-class compartments, and few had first, second, and third. He then gives examples of the want of connecting trains at Birmingham, between the London and Birmingham and the Grand Junction Companies, and also referred to another inconvenience, namely, that in many cases there were two stations in one town, causing people to cross over from one to another, a thing which one has occasionally still to do.

As showing upon what a small scale the early

Companies were projected, in 1843 there were seventy Railway Companies in Great Britain with a total mileage of 2,100 miles, thus giving an average mileage to each Company of only thirty miles.

Notwithstanding this acknowledged inconvenience both the public and Parliament regarded proposals for reducing the number of Companies with great suspicion.

A dilemma arose between the inconvenience of the railways being owned by a number of small Companies on the one hand, and the dislike of the public at large and of Parliament to lessening the means of competition by sanctioning amalgamation on the other; and it is well to consider what the position was in the period I am speaking of—in the early forties—and I then think that the public opposition to combination becomes more intelligible than it otherwise would be.

Railway Companies then were practically subject to very little statutory control. There was no law requiring them to give facilities. The law as to preference was in a hazy state, and was subsequently shown to be of limited application. The service was poor, and the public may well have expected that the best means of improving it was to insist on maintaining competition. There is another point that requires attention, and that is that the whole idea of a corporation which not merely owned the road—a road that was rapidly becoming the main means of transit to the extinction of other modes of conveyance—but itself had become the sole machine for conducting operations on that road, was a wholly novel idea at this period. I have no doubt that you are aware that the original idea in authorising railroads was that every person desiring to make use of them should be allowed to go upon them with his own engine, carriages and waggons, and that by paying a toll he should be allowed to proceed over them just in the same way as the public were at liberty to pass over the turn-pike roads, which at that time formed the great highways throughout

the country ; the principle was originally intended to be just the same. Just as a person paid a toll and proceeded over a turnpike, so he should pay a toll and be at liberty to proceed over a railway. That idea was very quickly exploded because the necessities of railway working rendered it wholly impossible that every person should go upon a railroad when he liked and how he liked, and the thing became a dream impossible of accomplishment.

Therefore, the public were face to face with the position that the whole transit industry of the country was rapidly passing into the hands of a number of corporations who had not the legal right but the practical power of preventing anyone carrying upon their roads except themselves.

Under those circumstances, Parliament took action, and they appointed a series of Committees to consider the new position that had grown up by reason of the coming of the railroads.

Now I think in considering all these early reports of Parliamentary Committees it is necessary to remember that the state of railway Law and railway accommodation was very different then from what it is, not merely to-day, but some thirty years later, say, in 1872; and therefore what was no doubt perfectly true and accurate at that time is not necessarily so apposite to the circumstances of a later period. One often sees extracts from these early Reports quoted like the Book of the Law or the Gospel in connection with modern controversies, but I think this word of warning is necessary, that while these early reports are extremely interesting and valuable, they must not necessarily be taken as complete authority on present day conditions.

There was a Committee of the House of Commons which sat in 1839-40, but beyond finding that the interests of the Companies and the public were not identical, I do not know that their Report is of any material interest for our present purposes.



In 1844 there was an important Committee appointed under the Chairmanship of Mr. Gladstone to again consider the railway question. The recommendations of that Committee were very interesting. They may still be important, because they recommend that as regards lines constructed after that date, the State should have the right of purchase, and an Act of Parliament was passed in the same year—1844—carrying that recommendation into effect. But that is not material to our subject—and the main interest for our present purpose was that this Committee also recommended that the Board of Trade should report on all Railway Bills introduced into Parliament. As a result of this Report, in August of the same year—1844—the Government appointed a body known as the Railway Board, under the presidency of Lord Dalhousie, which acted under the supervision of the Board of Trade, and which, I think, was much the same as the present Railway Department of the Board of Trade.

The history of this Railway Board was a short one, and, I am afraid, not a very happy one. At this time what is known as the railway mania was rapidly approaching a climax. The air was full of schemes for new railways and amalgamations, and in the following years—1845-6-7—a very large number of Bills were introduced into Parliament to carry, or which hoped to carry, these schemes, into effect. The Railway Board reported in 1845 upon some of these schemes, and this Report is interesting because they set out the principles on which, in their opinion, amalgamation should be granted. Generally speaking they were against amalgamation, except where the lines were short branch lines or where they were continuous lines; but where the railways were in any sense competitive they reported strongly against any schemes which sought to carry out the amalgamation of competitive lines, and suggested that working agreements, subject to revision, were the best means of obtaining the

advantages of combination without its attendant disadvantages.

Before proceeding to discuss the fate that attended these schemes, I think I ought to finish off the year 1845 by saying that the growing suspicion as to railway combinations showed itself in two other ways. The first was an attempt to maintain the independence of the canals, which had largely passed under the control, if not into the ownership, of the Railway Companies. In 1845 an Act of Parliament was passed to enable Canal Companies themselves to become carriers, (powers which they had not previously had), and to make working agreements with other Canal Companies.

The second of these attempts to restrict the growing tendency to combination among Railway Companies in 1845 was an Act which was passed to prevent the exercise of all general powers of combination which had been obtained by Railway Companies in that Session. This Act is also interesting because of the misrepresentation which appears subsequently to have attached to it. It has been said that this Act of 1845 applied to all Acts, giving general powers of combination, and to all modes of combination, and indeed you may find that stated in Blue-books and Reports of Royal Commissions, and I therefore would just read to you the exact words to show that it only applies to Acts of Parliament giving general powers passed in that particular Session. It is the only instance, so far as I am aware, when Parliament passed numerous Acts authorising the Companies to do one thing, and then, in the same year, passed a subsequent Act forbidding them to carry out the very powers they had obtained in the previous part of the Session. The Act says:—

“Whereas provisions have been introduced in various Acts of Parliament during the present Session of Parliament relating to railways, giving to Railway Companies general powers of granting or accepting a lease, sale, or transfer of their own or other lines of railway. Now it shall not be lawful for the Company

or Proprietors of any railway, by virtue of any powers contained in any Act passed in the present Session, to make, grant, or accept a sale, lease, or transfer of any railway unless under the authority of a distinct provision in some Act of Parliament."<sup>1</sup> So it is a limited thing, unimportant in itself, but it does show the trend of public opinion at that time.

1846 was a great year for Railway Companies and their advisers. The Royal Commission of 1867 states that some 200 Railway and Canal Amalgamation schemes were put forward in that year. I believe that the figure 200 has been questioned, and that is why I give the authority. Both the House of Commons and the House of Lords—the House of Commons being the more important—appointed Committees to consider the whole of these amalgamation schemes and to report. You will remember that the old Railway Board had already reported strongly against these schemes, except in those cases where they were small lines or continuous lines.

#### *Commons Committee, 1846*

The House of Commons Committee of 1846 presented two reports. In the first they stated that they were not opposed to the principle of amalgamation as such, but they were against the granting of general powers—that is, of course, powers giving to a Company authority to make all arrangements and combinations with anybody without stating the terms or the parties with whom that arrangement was to be made—they were opposed to the granting of such powers, but they were not against the principle of amalgamation as such; and they recommended that the various schemes should be sent to Select Committees to be considered on their merits. This, of course, was nothing more nor less than a distinct snub for the Railway Board, which did not survive it, and ceased to exist about this time.

<sup>1</sup> 8 and 9 Vict., c. 96.

The second report of this Committee is not so important, and dealt mainly with the question of Canal amalgamation, and there again they expressed themselves as not being opposed to the amalgamation of canals with railways, provided that the canal tolls were kept low and proper provision made for keeping canals in a proper state of repair and well supplied with water.

### *Origin of Existing Companies*

Want of time makes it impossible to go into the history of the existing Railway Companies to show how they are built up in every case by a series of amalgamations—and I think the subject has already been discussed here before—but, in passing, it is interesting to note that in this year—1846—several of what are now the great Companies first took form, and first appeared on the page of history.

The London and North Western was incorporated this year as a union of the London and Birmingham, the Grand Junction—the line from Birmingham to Warrington, where it joined a branch of the original Liverpool and Manchester railway—and the Manchester and Birmingham. These and other smaller lines became the nucleus of the London and North Western, with a mileage of 379 miles.

In the same way the Great Western, whose original line from London to Bristol had been authorised in 1836, acquired 126 more miles by taking in three Companies, the Berkshire and Hampshire, the Monmouth and Hereford, and the Oxford and Rugby.

The London, Brighton and South Coast was formed by an amalgamation of the London and Brighton and London and Croydon.

The Great Central—or, as known till recently, the Manchester, Sheffield, and Lincolnshire—in the same way first appears on the scene as a combination of the Sheffield, Ashton, and Manchester, the Sheffield, Lincolnshire and Grimsby, and the Sheffield Junction, with a mileage of 188 miles.

The Midland Company, which had been incorporated in 1844 as the result of the union of the North Midland, the Midland Counties, and the Birmingham and Derby Companies, also acquired a further mileage of 132 miles belonging to four other small companies.

Eight small Companies in the North-east united under the title of the York and Newcastle, which a year later became the York, Newcastle, and Berwick. This Company, along with the York and North Midland and the Leeds Northern Companies in 1854, were amalgamated under the title of the North Eastern Railway Company.

The London and South Western, which had commenced its career in 1834 as the London and Southampton, and had taken its present name in 1839, acquired the lines of three smaller companies—namely, the Southampton and Dorchester, the Guildford Junction, and the Richmond.

The South Eastern had been incorporated in 1836 for the purpose of continuing the original London and Croydon line to Dover, and in this year—1846—acquired the Reigate and Reading Company's railway.

A year later, in 1847, the Lancashire and Yorkshire was formed as a result of the union of ten Companies in Lancashire and Yorkshire, the most important of these being the Manchester and Leeds, the Wakefield and Goole, and, perhaps, also the Liverpool and Bury; so that at the end of 1846, or 1847, you really have the railway map assuming something like its present-day appearance.

The London and North Western, also in 1847, turned its attention from land to water, and by means of a perpetual lease obtained control of the extensive system of canals known as the Shropshire Union. While I am referring to the history of the existing Companies, I may as well add that the present Great Eastern came into existence in 1862 as the result of a union between the Eastern Counties, the Eastern

Union, the Norfolk and other Companies in East Anglia.

*Railway Commission, 1846-51*

To return to the year 1846, as the result of recommendations of the Lords and Commons Committees already referred to, a separate Government Department, known as the Railway Commission, consisting of five members, was established, to which was transferred the railway work of the Board of Trade. It was proposed to give this body extensive powers of control, with powers to decide disputes between Railway Companies, to approve by-laws, and to report on new schemes. A Bill was introduced for this purpose in 1847, but was withdrawn. The Commission, for some reason, does not appear to have been a success, and in 1851 it was abolished and its functions retransferred to the Board of Trade. It had, of course, no connection with the present Railway Commission.

*Narrow Gauge Adopted, 1846*

I ought also to mention that in 1846 a Royal Commission sat to decide the important question of the standard gauge to be adopted in future for English railways. After a great fight it reported in favour of the narrow gauge as we now know it, and an Act was passed in the same year restricting the broad gauge to the district then served by the Great Western Company in the Western counties.

*Clearing House Established, 1847*

In 1847 there was formed an institution—like many other important institutions, at first in a humble way—which has had a great influence on English railways and on their combined working. This was the Clearing House, which was at first a voluntary Association of a few narrow-gauge Companies for the purpose of regulating the interchange of traffic and the adjustment of rates. Three years later, in 1850, the Clearing House

became incorporated by an Act of Parliament, and, as you know, it has gone on from strength to strength.

Between 1847 and 1853 the process of consolidation and co-operation was still proceeding, and a new feature now presents itself in the shape of numerous working agreements or pooling arrangements. Of these, perhaps the most important was the great Scotch pooling agreement of 1850, which was an agreement by the Companies then interested in the Scotch traffic for pooling the traffic from England to Edinburgh and Glasgow and the North of those cities in certain fixed proportions.

To show how this system of working agreements had grown up at this time, I cannot do better than refer you to the report of another Committee of the House of Commons, or, rather, anticipate the reference to it; this sat in 1853, to consider the subject of amalgamation of Railway Companies. They found that there were a very large number of what they called understandings between the Companies. The evidence shows that the London and North Western alone had twenty-seven arrangements of this kind. As examples, this Committee states that the whole traffic, both by canal and railway, between Liverpool and Manchester, was the subject of a common understanding, and that no competition of any kind existed in regard to this traffic; again, that the London and North Western and the Great Northern Companies had an arrangement for a division of traffic under arbitration, whereby the whole country, from London to Edinburgh and Glasgow, was divided according to a fixed plan (this, of course, referring to the Scotch agreement which I have already mentioned); also that there was an agreement between the Great Northern and Eastern Counties Companies dividing the country served by them into two parts, effectually putting an end to any real competition."

Those are merely the most important examples of

the system of working arrangements which had now become common throughout the country.

*Proposals of 1853*

In 1853 there was another outbreak of amalgamation fever, if I may call it so. The London and North Western had two important schemes. They proposed to amalgamate with the Midland, a considerable Company, though of course not so great as it now is, and they also proposed to acquire leases of the lines of the Shrewsbury and Birmingham, and Shrewsbury and Chester Companies, now part of the Great Western, but then independent Companies. There were also proposals for the amalgamation of the Caledonian and the Edinburgh and Glasgow, now part of the North British system, and also an important scheme for the amalgamation of the London and South Western, and the London, Brighton and South Coast Companies.

In view of the serious nature of these proposals, the House of Commons appointed a Committee, under the chairmanship of Mr. (afterwards Lord) Cardwell, to consider again this question of railway amalgamations. Their findings of fact I have already mentioned.

Before discussing their report, I might perhaps state what seem to have been the reasons for this renewed recourse to amalgamation proposals.

I think that the first was that grave doubts had been placed upon the legality of these working agreements, by reason of several decisions in the Courts, which had been given about the years 1850 and 1851. As an example I may take the case of *Beman v. Rufford*, in 1851 (1 Sim., N.S. 550). There the point at issue was whether an agreement whereby the London and North Western undertook, without any statutory powers, to work a line then known as the Oxford, Worcester, and Wolverhampton line, now part of the Great Western, for twenty-one years on such terms as really gave them complete control of the line, was legal. I am not going



into the details of the legal question now, but on the facts of that particular case the Court of Chancery decided that this agreement, although not in terms a lease, was in fact a lease—that is to say, the London and North Western were the tenants and had complete control of the Oxford and Worcester line, and that such agreement, in the absence of statutory authority, was void. There were other cases<sup>1</sup> of a similar nature, but I have said enough to show that great doubt existed about the legality of these agreements, which had been made in every case without express powers.

The second reason for seeking amalgamation at this date, I think, was the financial position. There are some interesting statistics contained in the evidence given before the Committee of 1853, and these show that the golden wave of prosperity that had attended Railway Companies in early days, say up to 1846, was diminishing. The figures show that between 1845 and 1853, paid-up capital for the purpose of railway enterprise had been issued to the extent of £54,000,000, and that its value in 1853 was only £18,000,000, thus showing a loss on the amount of capital paid up during those seven years—1846 to 1853—of no less than £36,000,000. As bearing this out, in 1851 I find that out of forty Companies the stock of six only stood at a premium. The London and North Western stock stood at 120. The stock of the Lancashire and Carlisle, which I take it had acquired its land cheaply, stood at a premium of 81 to 86; and the stocks of the London, Brighton and South Coast, the Bristol and Exeter, and two other small Companies, were also above par. But, on the other hand, thirty-four railway stocks stood at a discount, including those of such important lines as the Great Western, the Midland, the Great Northern, and the lines which subsequently became the North Eastern in 1854—that is to say, the Leeds Northern, the York and North Midland, and the York and

<sup>1</sup> Several of these are mentioned in Part II. of these lectures in which the validity of the various forms of agreement is discussed.

Newcastle. Therefore, there was a great necessity for economy in working in view of the then financial position of the Railway Companies, and therefore a very strong reason for seeking for powers to amalgamate and combine, which it was hoped would have that effect.

The third reason was the constant fighting between the Companies, or what the Report of the Committee of 1853 calls "The Policy of unsettled relations," which really was the constant rivalry between important Companies to acquire possession of any line that would help them or might prove of help to a rival Company.

These three reasons, I think, are the main ones which led to this renewal of amalgamation proposals in 1853.

*Commons Committee, 1853*

The Committee of 1853 sat for a great number of days, and they presented a series of reports, but the only ones of any importance are the fourth and fifth. Put shortly, their recommendation was against amalgamation, and they give as a reason that Parliament will thereby lose control of the Railway Companies. Instead of amalgamation they recommend that working agreements for a limited period should be authorised, and they seem to assume that the then existing working understandings—to use their own expression—"are not now valid in law." That was possibly stating the case rather too strongly; but it explains their finding that, if amalgamation was not granted and the Companies had to come for the sanction of their working agreements from time to time, Parliament would have the Companies completely under its control. The Committee, no doubt, had been advised that the existing agreements were wholly invalid, and therefore they said "No, let them come from time to time and get their working agreements sanctioned by us, and we shall then always have them under our hand."

They make one or two observations that, I think, are worth referring to here. They say: "It is natural

for traders to compete where the opportunity is unlimited for new rivals to enter the field. It is quite as natural for traders to combine so soon as the whole number of possible competitors may be ascertained and limited"; the conclusion being that Railway Companies being ascertained and limited will inevitably combine.

Then they struck a note which you will find is the dominant one, I think, of all the Committees and Commissions that since have sat to discuss or consider railway questions, and that is—I give the exact words—where they say, "Amalgamation in any case should not be granted until freedom and security of transit are secured"; and they then go on to say that these can be best secured not by particular remedies to meet particular cases, but by general legislation as a whole.

Now, that is the key-note to British railway legislation. You will find that all the general Acts of Parliament dealing with railway matters have been preceded by some sort of inquiry, some Royal Commission, Select Committee, Board of Trade Departmental Committee, or some similar body whose business it was to inquire into the then position of railway law and practice. And almost invariably their remedy is this: "Do not wait for a particular case to crop up, and let it be dealt with as an individual case; pass one general comprehensive Act as a general part of the law of the land so that you will get all the Companies within your net, whether they come to ask for special privileges or not." I think that is the most important point about this Committee of 1853, that they recommended that general legislation should be passed to deal with the railway question as a whole.

#### *Traffic Act, 1854*

The result was that a most important Act—I might call it the traders' Magna Charta—namely, the Railway and Canal Traffic Act of 1854, was passed. Its great foundations were that the Railway Companies

should give reasonable facilities for traffic on their lines, should accept and forward through traffic from and to other Companies' lines, and should grant no undue preference; it further provided that all special contracts, whereby they restricted their liability as carriers, should be signed by the consignor, and that such contracts should be just and reasonable. The Railway and Canal Traffic Act of 1854 is the basis of railway law in this country. There is hardly a railway traffic case that comes into the Courts in which it is not only referred to but is the keystone of the argument.

As a more immediate result of the Report of 1853, none of the amalgamation Bills got beyond second reading.

#### *Hare's Case, 1861*

Now I will pass on quickly. In 1861 the question of pooling agreements again came before the Courts. It really arose on a renewal of the Scotch agreement which I mentioned previously, in the form of a case known as "Hare's case" (30 L.J., ch. 817), brought by a man named Hare against the London and North Western Company, in which he sought to restrain that Company from entering into pooling agreements with seven other Companies with regard to the Scotch traffic, and again the whole question of pooling agreements came up for discussion. Vice-Chancellor Page-Wood, afterwards Lord Hatherley, who tried the case in a very elaborate judgment, which I will have to trouble you with later on, finally decided that pooling agreements, at any rate as regards competitive traffic, were valid, and therefore could not be upset. Hare's case is important, because all pooling agreements to-day are based upon the decision in Hare's case, and it is the authority for their legality.

#### *Royal Commission, 1867*

A Royal Commission sat in 1865 and 1866, and reported in 1867 on railways as a whole; but this

question of railway combination did not receive very much attention from it. There were only two points in their report with which, I think, I need trouble you. Quite unlike the Committee of 1853, they appear to have been in favour of combination, and they say, as regards working and traffic agreements, "We are of opinion that a sound principle to go on in working and traffic agreements between railway companies is to allow any Companies to enter into them without reference to any tribunal, upon the sole condition that the particulars shall be made public in the locality, and that they shall be determinable by either party at the expiration of a limited period. If any such agreement contains anything contrary to the rights of the public, the Court of Common Pleas should have the power of setting it right at the instance of the Board of Trade."

With regard to amalgamation, as a question of public policy, they say that a permanent amalgamation of the undertakings of Railway Companies should not take place "without affording to Parliament the opportunity which it now possesses of determining the conditions under which such amalgamation should be permitted." That is really stating what, of course, was and always has been the law, that Railway Companies cannot amalgamate without getting express Parliamentary sanction. They advised that this should not be weakened in any way. They make an exception as to this with regard to Ireland—as to which I shall have a word to say later.

#### *Joint Committee of 1872*

In 1872 you have the third occasion upon which combination, and in particular amalgamation, became a prominent question. The London and North Western and the Lancashire and Yorkshire Companies proposed to amalgamate. There was also another scheme to amalgamate the Midland and Glasgow and South Western; at that time the Midland were making their line North to Carlisle, and they wanted a route of their

own to Glasgow, which this amalgamation would have given them. There were also other Bills. Again a Committee—this time a Joint Committee of both Houses—was appointed. This Committee went into the matter at great length, and issued a long Report ; but I do not know that they threw very much light on the subject actually before them. They seem to have taken rather a hopeless view, if not a helpless view, of the position. The position as they found it was this : “ That Committees and Commissions have for the last thirty years clung to one form of competition after another. It has nevertheless become more and more evident that competition must fail to do for railways what it does for ordinary trade, and no means have yet been devised by which competition can be permanently maintained. In spite of the recommendations of these authorities, combination and amalgamation have proceeded at the instance of the Companies without check and almost without regulation. United systems now exist (in 1872), constituting by their magnitude and their exclusive possession of whole districts monopolies to which the earlier authorities would have been most strongly opposed.”

Then they give a list of conclusions of fact at which they have arrived :—

1. The first of these is that past amalgamations had not brought with them the evils that were anticipated.

2. Secondly, that competitions between railways existed only to a limited extent and could not be maintained by the Legislature, and that combination was increasing and was likely to increase.

They then take up rather a hedging attitude, for they say : “ Whilst on the one hand there may be amalgamation so large as to be objectionable, on the other hand there are cases in which amalgamation is obviously desirable ; it is impossible to rearrange the railway map, or determine by any general scheme what amalgamation shall be allowed, and what not.” So

that the net result of their findings, I think, really comes to this: that each case ought to be judged on its merits, and that the self-interest of the Companies was not a sufficient safeguard to protect the interests of the public. Beyond that, I do not know that you can get anything very definite on this particular subject out of their Report. They further make a great point that existing competition by river and canal should be maintained, and that no form of inland navigation should be transferred into the direct or indirect control of the Railway Companies.

They then go on, like the 1853 Committee, to recommend that general legislation should be passed to meet the case of all Railway Companies. They say: "While, therefore, the Committee recommend further legislation of a general character, they are of opinion that, in the absence of such legislation, the measures they recommend should be imposed as conditions on Companies seeking amalgamation."

#### *Regulation of Railways Act, 1873*

Then they discuss a variety of points on which they thought that public general legislation should be passed, and as a result of that another general Act was passed, the Regulation of Railways Act, 1873, the most important provisions of which were to set up the Railway Commission—not exactly as we know it, but in much its present form—to require the Companies to give through rates at first only at the instance of another Railway Company, and to publish rates and to keep rate books at their stations.

I further should say that all the amalgamation schemes which, in 1872, came before Parliament were thrown out by the Special Committee appointed to consider them, without, I believe, the opponents being called upon at all.

Since 1872 the process of direct amalgamation has proceeded at a much slower rate. In 1872 there were sixteen Companies in England owning 9,500 miles out

of a total mileage of 11,000, and in 1907 there were thirteen companies owning 14,000 miles out of a total mileage of 15,800. In fact, the only amalgamations of any importance that have taken place since 1872 are the absorption in 1876 of the old Bristol and Exeter Company by the Great Western, which meant an addition of 159 miles to the Great Western system and that of the South Devon Company's line by the Great Western in 1878, which added a further 121 miles to their total. Whilst on the Great Western it is interesting to note that that Company represents a total aggregate of, I believe, 108 separate undertakings.

What was practically an amalgamation, although technically known as a working union, took place in 1899 between the South Eastern and the London, Chatham and Dover Companies.

In 1881 and 1882 there was another Committee of the House of Commons to inquire into Railway Rates and Charges. I do not think that it had anything to do with our special subject, and I therefore just mention it. That important Act of Parliament, known as the Railway and Canal Traffic Act, 1888, was passed as the result of its report; and, perhaps still more important, the whole of the rates of the Railway Companies throughout the Kingdom were revised and put on a new basis in 1891-2, when the Railway Rates and Charges Orders Acts as we now know them were passed; these, of course, now regulate the charging powers of the Companies throughout the country.

During quite recent years there has been a new movement among the Companies in the progress of their combining tendencies; this has taken the form of what are known as pooling agreements. We shall have to discuss these agreements in detail later on. This has been caused largely by the financial position of the Companies. It is common knowledge that working expenses have gone up very greatly during the last twenty years.



In 1870 the proportion of working expenses to gross receipts for all the Companies was 48 per cent. In 1890 it was 54, and 1908 it was nearly 64.

Just to give one example, that of the London and North Western, which is typical of all the Companies. In 1889 the proportion of working expenses to gross receipts was 52 per cent; in 1908 it was 65 per cent., representing an increase of 13 per cent. To consider it from another point of view, approximately—I say approximately because there have been nominal additions to the ordinary capital of some Companies, so that an exact comparison is a little difficult—during the ten years from 1875 to 1885, the dividend on the ordinary stock of all the Companies in the Kingdom was  $4\frac{1}{2}$  per cent.; during the next ten years, 1885 to 1895, I make it as being about 4 per cent.; and during the ten years from 1895 to 1905 it came down to  $3\frac{1}{2}$  per cent.

#### *Recent Agreements*

It became necessary for those responsible for the working of the great Companies to put their heads together to see what could be done to stop this alarming decline in profits.

Competition had increased in various ways. The introduction of motor traction and electric tramcars seriously decreased the earnings of the railways; and there were also the greatly increased requirements of the public, and the far greater accommodation now required to be given in order to secure traffic. Wages, rates and taxes have increased, and the cost of coal and other raw material is higher.

Further combination, as we know, is in the air. We have seen it on all sides; in the banking world and in the shipping world, where, for instance, quite recently there has been a big union between the Union Castle and the Royal Mail Steam Packet Companies. Numerous other examples will no doubt occur to you. At the present moment the Stock Exchange is agitated by the

combination of the London General Omnibus Company and the Tube Railway Company, so that Railway Companies are only in the fashion in following the same movement.

The most important agreements of this kind have been those between the London and North Western and the Lancashire and Yorkshire in 1904, and between the North Western and the Midland in 1908, and the new pooling arrangement for competitive traffic between these three companies in 1909. Then there has been that other great combination between the Great Northern, the Great Central, and Great Eastern Companies. The first two, in 1908, applied to the Railway Commissioners to sanction a working agreement entered into under the presumed powers of a Special Act of 1859, but on this application failing they, along with the Great Eastern, came to Parliament in the following year for a Bill to carry out a working union on a closer basis than was possible by a non-statutory agreement. It is within the remembrance of you all that that Bill was withdrawn, and these three Companies now, so far as I know, work on the basis of a co-operative agreement only. Quite recently the Great Western and the London and South Western have, it is announced, entered into a similar arrangement.

As a result of what was called the proposed working union between the three Greats—the Great Northern, the Great Central, and the Great Eastern—in 1909, public interest was very greatly aroused, and the Board of Trade appointed a Departmental Committee on Railway Agreements and Amalgamations, as it was called, in that year; this sat from June, 1909, to July, 1910, and last year issued its Report, which is the last word on the subject. That Report, I think, may be taken as being strongly in favour of combination as a whole. I shall have to refer to it when I come to deal with other points; but their conclusions briefly are these: (1) That the effect of the limited degree of

<sup>1</sup> See para. 64—66 of Report.

competition still existing between Railway Companies is not necessarily to the public advantage. (2) That even had they come to a different conclusion with regard to the value of competition, they would have been unable to suggest any means for securing its continuance. (3) That experience has shown that informal combinations of this kind, while likely to be of less advantage to the Companies than more formal and complete unions, can destroy competition as effectively, and moreover possess certain incidental disadvantages from the public point of view, from which a monopoly under a single control is free. They then go on to say that in view of these conclusions on matters of fact they have come to the further unanimous conclusion that the natural lines of development of an improved and more economical railway system lie in the direction of more perfect understandings and co-operation between the various Railway Companies, which must frequently, though not always, be secured by formal agreements of varying scope and completeness, amounting in some cases to working unions and amalgamations.

As regards working and traffic agreements, they go even further, and they suggest that the necessity for obtaining Parliamentary sanction should be removed—following here, as they themselves point out, the Commission of 1867, whose report on this point I read to you last week (see par. 129 of the 1911 Report). And then, following out the usual practice of Committees of Inquiry on this subject, just as in 1853 and 1872, so they recommend that general legislation should be passed applying to all Companies to safeguard the interests of the public, no matter whether agreements have been made or not. They say, in paragraph 78 of their Report :—

“ To sum up, we are strongly of opinion that, in so far as protection is required from any of the consequences which may be associated with railway co-operation, such protection should in the main be

afforded by general legislation dealing with the consequences as such independently of whether they occur as the result of agreements or not. Such a method would afford a much more extensive protection than the regulation of agreements. It would protect the public in the case of understandings as well of agreements.”

As a result of this last Report last year, it is probable that the Government will introduce a Bill<sup>1</sup> in the coming Session to carry into effect their various recommendations, which I shall hope to discuss with you when I come to inquire into the effect of railway combinations from the public point of view. Therefore, at the present moment, we find combination existing in fact, and we have also come to this point that the last Committees of Inquiry, as in 1872, have found that combination has not led to the public evils which were anticipated, and that they have reported in favour of combination, subject to certain safeguards which they specify in their Report.

#### *Ireland.*

Just a word as to Ireland. There have been at one time or another seventy-seven separate Companies in Ireland, excluding light railways—a large number for a small country. They are now reduced to sixteen, so that you will see the extent to which amalgamation has been carried out in that country. Various Commissions and other bodies have been appointed from time to time to consider the Irish railway question, which, like everything Irish, seems to possess characteristics of its own, and they one and all reported in favour of amalgamation. The Royal Commission of 1867 was very strongly in favour of it; the Railway Rates Committee of 1881 reported that amalgamation should be encouraged in every way, including if necessary by direct Parliamentary action. There was, in 1888, a Royal Commission on Irish Public Works generally, under

<sup>1</sup> This has since been done.

the chairmanship of Sir James Allport, who was for so long the able manager of the Midland Railway Company, and they reported in favour of the amalgamation of all the Irish Railway Companies into one Company, which should be controlled by what they called the Irish Railway Commission; this would have been a union in private hands under State control. Finally, in 1910, the Vice-Regal Commission, appointed to consider the Irish Railways, issued its report, or rather two reports. Four out of its seven members reported in favour of the nationalisation of the Irish railways, and the remaining three—including Mr. Acworth and Mr. Aspinall, the General Manager of the Lancashire and Yorkshire Railway—were in favour of amalgamation into one Company. But the point was that both parties were in favour of union. The majority thought that, in view of the necessity for exceptionally low railway rates in Ireland, nationalisation would be more for the benefit of the country than amalgamation. Whether either of those recommendations will be carried into effect, time will show. At present Ireland has plenty of other things to claim her attention.

## II—FORMS OF COMBINATION

### (1) *Amalgamation*

I now pass to the second head, and that is the modes in which combination may be affected. Perhaps the simplest is that of amalgamation pure and simple. This can be either the union of two or more Companies into a new Company—such as, for instance, the amalgamation of the London and Birmingham, the Grand Junction, and the Manchester and Birmingham, in 1846, into an entirely new Company—the London and North Western Railway; or it may take the form of the vesting of a smaller Company into a larger one, the larger Company retaining its separate identity. There are numerous instances of this form of amalgamation, one recent case being the vesting of the Lancashire and

Derbyshire and East Coast Company in the Great Central Company in 1906. The Great Central's own position was not altered ; but it simply swallowed up, so to speak, the smaller Company.

Upon an amalgamation, the capital of the amalgamated Company must not exceed the capitals of the former separate Companies. This is provided for by the Standing Orders of both Houses of Parliament, so that there can be no nominal increase of capital upon such a union.

It is important to remind you that the Companies, or the combined Companies, cannot exceed the previous powers of the two separate Companies—that is to say, they cannot combine two separate powers and make a new one out of it. That seems an obvious remark. Why I mention it here is that there was a case decided last December, which shows that even at this time of day it is not fully appreciated. It was a case in which the Great Central and Midland Companies were parties,<sup>1</sup> and it arose in this way, and will illustrate what I mean. It arose in connection with the taking over of the Lancashire and Derbyshire and East Coast line by the Great Central in 1906. There was a piece of Midland line over which the Great Central had full running powers—that is to say, they could run any kind of train over it, where they liked, and when they liked. This line crossed the old Lancashire and Derbyshire line, and there was a little spur line which came round to connect the old Lancashire and Derbyshire line with the Midland line; the Lancashire and Derbyshire Company had limited running powers over this spur line on to the Midland, which only enabled them to run their trains to and from a certain colliery. The Derbyshire Company had not got general powers; they had limited powers only. The Great Central took the Lancashire and Derbyshire line over, as I have told you, and they said: "The Lancashire and Derbyshire is

<sup>1</sup> L.R. [1912] 1 Ch. 206.

now our own line, and we have full running powers over this bit of the Midland, and therefore we can run as many trains as we like, and to whatever places we like, over the old Derbyshire line and this little spur line on to the Midland, instead of being restricted as the Lancashire and Derbyshire were merely to this colliery traffic." But the Court of Appeal decided six weeks ago that that was not so; that the Great Central could not increase by one iota the former powers of the Lancashire and Derbyshire, and that they could only use this spur line for the purposes of this limited colliery traffic; thereby showing that, although you amalgamate with another line, you do not thereby increase your powers; you are limited to the old powers. You cannot combine two existing powers so as to make a new one.

That is carrying out the provisions of Part V. of the Railway Clauses Act, 1863, which Parliament would almost certainly require to be incorporated with any Amalgamation Act. That Act says in effect that the powers of the Amalgamated Company shall be the powers of the formerly separate Companies, as they stood before amalgamation.

The only other thing which I think I need say on this point of amalgamation is that in previous days a form of amalgamation was discussed known as "districting," namely that the country should be split up into certain areas, and each of these areas handed over to one Company. You have something like it in the North-East of England, where the North Eastern Company have control of the wide district between the Tweed and the Humber, and also in the Eastern Counties, where the Great Eastern Company are a good example of this principle; also in the Prussian State Railways, which are managed on these lines, that is to say, the Prussian Railway system is split up into twenty-one different districts each with a separate administration, and so forming an independent unit for working purposes.

This plan of "districting" was put before the Committee in 1853, but that Committee did not favour the proposal because they thought it implied that "once alone always alone." That is to say, if you gave a Company full control without any competition in one area that Company would take up the position that it had the right to the undisturbed possession of that one district. It was again put forward strongly by two eminent railway men before the Joint Committee of 1872, namely by Mr. Price, who was then Chairman of the Midland Company, and by Sir Edward Watkin, the enterprising and energetic Chairman of the Manchester, Sheffield and Lincolnshire, now the Great Central, and of the South Eastern and also the Metropolitan Companies, if I remember aright. Both favoured this plan and they proposed a scheme whereby the various Companies should be united, so that there should be in the centre of England only two or three great groups, each having a complete line between the Forth and Clyde on the North, the Thames and Severn on the South, and that outside those limits railways occupying outside districts should be encouraged and allowed to compete. The Joint Committee of 1872 considered this proposal, but they rejected it on the ground that there would be no competition in local traffic, and that it would be limited to the larger Companies. So much for amalgamation!

### (2) *Joint Line*

The second form in which combination may be effected is that of a joint railway; that is to say, one line jointly owned by two or more Companies, and managed by a Joint Committee representing those Companies. Of this we have an excellent example in the railway of the Cheshire Lines Committee which forms an extensive system between Liverpool and Manchester and the South of those cities, jointly owned by the Midland, The Great Northern and the Great Central



Companies. There are numerous other examples throughout the breadth of the country.

It is interesting to note that modern railway promotion sometimes gets rid of the opposition of other Companies by putting forward a proposal for a joint line. There was a good example of this in 1903 when a small but important new line of railway was authorised in South Yorkshire, known as the South Yorkshire Joint Railway, for the purpose of opening up the new coalfield near Doncaster. This is jointly owned by no less than five Companies—the Great Central, the Great Northern, the Lancashire and Yorkshire, the Midland and the North Eastern. The tendency to combination among Companies is thus shown. Instead of spending time and money in fighting each other, they, where possible, will agree upon a joint line in which they all will be partners instead of each trying to grab the whole cake for itself.

### (3) *Working Union*

The third form of combination is that known as a working union, which for working purposes is the same as an amalgamation. It must be authorised by Parliament. You have unity of management and operation, but each Company retains its own identity. The capital of each Company remains distinct, and the dividends and returns on that capital are kept distinct, but all revenue would be paid into one common fund, and all expenses would be paid out of that fund, and the net receipts divided in fixed proportions, according to agreement between the Companies. The most prominent example of this form of combination is that existing between the South Eastern and the London, Chatham and Dover Companies, which combined in 1899 in a working union, and are now managed by a Joint Committee representing both Companies; for all practical working purposes they are one Company.

(4) *Lease*

The fourth form of combination is that of a lease, which I think was more common in former days than it is now. In form it is similar to that of the lease of any other property, and it may be in perpetuity. The owning Company grants the possession of their undertaking to the lessee Company or working Company, the latter undertaking to work the line and keep it in repair. This latter covenant must be inserted in order to comply with Sec. 112 of The Railways Clauses Act, 1845. That rent might be either a fixed sum, or it might take the form of a guaranteed dividend upon existing and future capital of the owning Company. In the early days of railways short leases were common, but they had this disadvantage that very often the leasing—that is the working—Company had an eye to ultimately buying up the owning Company, and they were suspected—whether rightly or not I cannot say—of trying to keep down the profits as much as possible in order to buy at as low a price as possible.

In former times a Company often obtained general powers to grant or accept a lease, that is powers to grant or accept a lease to or from anybody not named in the Act of Parliament and on any terms. The House of Lords have made a Standing Order, now Standing Order 124, which has abolished general powers of leasing, or, for that matter, general powers of entering into any kind of working arrangement. The Standing Order is :

“When by any Bill powers are applied for to amalgamate with any other Company or to sell or lease the undertaking, or any part thereof, or to purchase or take on lease the undertaking of any other Company, or to enter into a working agreement otherwise than under Part III. of the Railways Clauses Act, 1863, the Company, person or persons with, to, from, or by whom, and the terms and

conditions on which it is proposed that such amalgamation, sale, purchase, lease or working agreement shall be made, shall be specified in the Bill,"

thereby you see hitting the "general powers" plan on the head, because in order to comply with the Standing Order you have to state to whom you are going to grant your lease, and its terms and conditions.

Amalgamations, working unions, and leases must all be sanctioned by Parliament itself. Any agreement purporting to carry these objects into effect without such sanction would be void, as being *ultra vires*, and as being beyond the powers of the Company.

I shall have to again consider this doctrine later on. At present it is sufficient to say that its effect is that when an incorporated Company has been given certain powers by Parliament it cannot delegate those powers to another, or on the other hand accept further powers from another without the sanction of Parliament. Applying these rules to Leases it therefore follows that a Railway Company cannot grant a lease of its undertaking or accept a lease of another undertaking (see East Anglian Railway Company and Eastern Counties Railway Company, 11 C.B., 775) without express statutory authority. So in the same way a railway Company cannot without statutory authority hand over its undertaking to another by means of a contract which has all the practical effect of a lease although not one in form. This was decided in *Beman v. Rufford*, 1 Sim. N.S., 550, to which I referred at the last lecture and in other cases.<sup>1</sup>

#### (5) *Working Agreement*

The fifth form of combination is that of a working agreement. In this case the line of one Company is exclusively worked and managed by another Company. In practice it does not differ very greatly from a lease. The working Company become the sole operators, and

<sup>1</sup> e.g. *Great Northern Railway Company v. Eastern Counties Railway Company*, 21. L.J. Ch. 837 (1851).

they obtain complete control of the line. The terms of course vary according to circumstances, but it is a usual form for the working Company to undertake to pay over a certain proportion of the gross receipts to the owning Company. In former days this proportion was very often 50 per cent.; in fact, I have known an agreement made so late as 1898 in which that proportion was the agreed figure. In view, however, of the increasing ration of working expenses, I think that you would probably find that the working Company would now require a larger proportion than 50 per cent.; but of course it depends on the nature of the line, and it is impossible to lay down an absolute rule on the subject. The working Company generally undertake to use their best endeavours to develop the traffic of the line. In one recent case<sup>1</sup> the old Lancashire, Derbyshire and East Coast Company undertook to work a small line running into Sheffield, known as the Sheffield District Railway, owned by a Company of that name. As is usual the Derbyshire Company undertook to use their best endeavours to develop the traffic of that line. The Derbyshire Company subsequently became vested in the Great Central Company. As not infrequently occurs, the owning Company complained that the working Company—that was the Great Central—were not using their best endeavours to develop the traffic in accordance with the agreement. The case came before the Railway Commissioners last summer—the Sheffield District Company seeking to obtain an order requiring the Great Central to do more for their line than they had in the past. In the result the Commissioners decided that the Great Central, as the working Company, stood in a kind of *quasi* trustee position to the owning Company, the Sheffield District, and that they must do their best (just as a trustee ought for the property of which he is trustee) to promote the interest and prosperity of the Sheffield District line.

<sup>1</sup> 14 Ry. and Ca. Tr., Ca. 299.

Only last week (27th January, 1912) there was a similar case in Scotland, where a small Company called the Newburgh and North of Fife Railway Company, who had handed over their small line in Fife to the North British Company under a working agreement, made a similar complaint, and there again the Commissioners sitting in Scotland with a Scottish Judge came to the same conclusion, namely that the Company undertaking to work the line of another Company must do it, not in its own interests only, but in the interests of the Company whose line it has taken over.

Just as an agreement by a Company to lease or to accept a lease of a railway is invalid as being *ultra vires* unless authorised by statute, so in the same way an agreement by one Company to hand over the working of its railway to another Company is *ultra vires* as amounting to a delegation of its powers. This is the effect of the decision in *Winch v. Birkenhead Railway Company*, 5 De G. and Sm. 562 (1852). Nor may a Company undertake to work a line without statutory powers. See *Simpson v. Denison*, 10 Hare, 51 (1852). The result therefore is that a working agreement must be expressly authorised either directly by Parliament or by some method recognised by Parliament.

In the first place a working agreement can be authorised by a special Act of Parliament, and it is a common practice to schedule your agreement to the Act of Parliament authorising it. The Act says "the agreement contained in the schedule is hereby confirmed," and then the agreement is set out in full in a Schedule. That is one way of obtaining authority to enter into a working agreement, but, as I will explain in a moment, it is not available if the Company whose line is the subject of the agreement is itself incorporated by the same Act.

A second way is under Part III. of the Railway Clauses Act, 1863. That is a more cumbrous and lengthy business. In the first place you must have an

Act of Parliament authorising the parties to enter into a working agreement, but the terms of the agreement are not set out. By a standing Order<sup>1</sup> of the House of Lords no Bill incorporating a Railway Company can contain any powers of making a working agreement unless it is determinable at the end of a period of ten years at the most and is made in accordance with the provisions of this Act of 1863. When the agreement is made it must be brought before the Railway Commissioners for their approval. Under the Railway Clauses Act, 1863, the Board of Trade had the power to approve working agreements for which general powers had already been obtained under an Act of Parliament, but, as I told you on the last occasion, the Railway Commissioners were established in 1873, and the powers of the Board of Trade for this and other purposes were then handed over to the Railway Commissioners.

On this, I ought to point out that the Railway Commissioners themselves have no direct powers of amending agreements as a Parliamentary Committee would have. But in an indirect way, they can force an amendment upon the parties, because they can say "we are not prepared to approve this agreement unless you insert certain modifications and if this is not done we shall reject it."

A further question has arisen as to whether the Railway Commissioners have the power to revise working agreements. Section 27 of the Railway Clauses Act, 1863, originally gave power to the Board of Trade, at the expiration of the first or any subsequent period of ten years after the making of an agreement, to cause the same to be revised if they were of opinion that the interests of the public were prejudicially affected thereby. Section 10 of the Regulation of Railways Act, 1873, which handed over the powers of the Board of Trade as to the approval of working agreements to the Railway Commissioners, does not

<sup>1</sup> No 123.

expressly refer to the power of revision, and it is still an undecided question whether or not the Railway Commissioners can revise a working agreement which has already been approved by them under the Clauses Act of 1863. They have in two analogous cases that have come before them expressed the opinion that they have that power. The first case, in 1875, was that of the Greenock and Wemyss Bay Company against the Caledonian Company ; and the second was in 1881 in England, between the Corporation of Huddersfield and the Great Northern and Manchester, Sheffield and Lincolnshire Companies. But in both cases the agreement was one authorised by a special Act of Parliament passed before 1863. Therefore the point did not directly arise, and the views then expressed by the Railway Commissioners, who then sat without a High Court Judge, can only be regarded as what are termed "*obiter dicta*."

It is interesting to note that since 1873, when the Railway Commission was established, sixty-seven agreements have been submitted to it for approval ; of these fifty-eight were approved, twenty being Irish and fifteen Scotch. There does not seem to have been much opposition to them, because since 1888, when the Railway Commissioners in their present form came into existence, there has only been one agreement to which there was any opposition. That indeed was a very big one, being the famous Great Northern and Great Central proposed working agreement of 1908, and this was brought up under the provisions of a special Act, and not under the Clauses Act of 1863.

A third way whereby a working agreement may be authorised is by proceeding under the Railway Companies' Powers Act, 1864, as amended by the Railways Powers Act, 1870. Under these Acts the Board of Trade may grant a certificate approving a working agreement, and this certificate has then to be approved by Parliament. But in case of opposition the matter is referred to a Committee so that nothing is gained,

and it is only a roundabout way of getting a special Act. The result has been that the powers given by these Acts have not been used, and the Acts are dead letters.

The recent Departmental Committee in their Report of 1911 recommend that, subject to certain amendments in the General Law, the existing restrictions on the powers of Railway Companies to enter into working agreements, should be removed. They suggest that the power to make running powers agreements given by Section 87 of The Railways Clauses Act, 1845, should be enlarged so as to include power to enter into a full working agreement. If this recommendation is carried into effect a company by incorporating the proposed new section with its special Act will thereby at once be authorised to enter into any kind of working agreement.<sup>1</sup>

#### (6) *Running Powers*

The sixth way in which combination may be effected is by means of running powers. Running powers, speak for themselves, namely, where one Company has the right of running its engines, carriages and wagons, over the line of another Company. They may be, as I have incidentally pointed out, general running powers or limited running powers—that is to say, restricted to a certain kind of traffic, or restricted to certain places.

The terms upon which running powers are usually granted are that the running Company shall make no profits out of the exercise of its privilege. That is the general idea underlying a running power agreement. In a case in which the Caledonian and North British Companies were concerned in 1898,<sup>2</sup> the Railway Commissioners sitting in Scotland decided that 75 per cent. of the mileage receipts should go to the owning Company, and 25 per cent. of the mileage receipts representing the running expenses to the running Company.

<sup>1</sup> The Railway Bill of the present session contains a clause authorising Companies to make working agreements.

<sup>2</sup> 10 Ry. and Ca. Tr., Ca. 259.



Lord Trayner said that this rule had been so often adopted with legislative sanction that it really amounted to a rule. I do not know whether that is a universal rule in England. It really depends on the running expenses, and, of course, that depends on the particular circumstances. Another way in which payment may be made is by tolls—that is, that you pay so much per mile for each train running over the rails of the owning Company. Running powers may be obtained by a special Act of Parliament, and a contest between two Railway Companies in Parliament has often been settled by the Committee giving one running powers. A company seeking running powers cannot, however, get what is called a *locus standi* in opposition to the Bill of another Company; but, of course, it can bring in a Bill of its own asking for running powers.

The more common way of obtaining running powers is by mutual agreement. Section 87 of the Railways Clauses Act of 1845 gives the Companies who incorporate that Act into their special Acts, powers to grant and accept running powers. It says that it shall be lawful for the Company from time to time to enter into any contract with any other Company for the passage over or along the railway, by the special Act authorised to be made, of any engines, carriages, wagons or other carriages of any other Company, and so on; and it is under this Section 87 of the Railway Clauses Act of 1845 that by far and away the greater proportion of running powers in this country have been obtained. A Company cannot under the colour of granting running powers completely delegate its powers to another company. This was decided in *Simpson v. Denison*, which I have already mentioned.

Extensive powers have been obtained in this way, powers really which amount in practice to something very like a lease or working agreement. The point is this, that where a Company does not part with the exclusive use of its own lines, an agreement giving running powers, no matter how extensive, will be valid

under Section 87 of the Clauses Act, 1845, without the sanction of Parliament, provided, of course, that the Clauses Act has been incorporated. The Clauses Acts, as you know, have no operation by themselves; but if they are incorporated with a special Act then they become part and parcel of that special Act. The Clauses Acts are really dry bones until enlivened and vitalised by incorporation with a special Act of Parliament.

In 1873 an action was brought by the Midland Company against the Great Western Company,<sup>1</sup> in which the validity of a certain agreement was questioned. There was a small line owned by the Hereford, Hay and Brecon Company, and by an agreement terminable at six months' notice, the Hereford Company granted to the Midland Company power to pass over the railway with their engines and carriages, and to use the stations and signals. The Hereford Company were to keep the line in repair, and provide the station staff. The Midland were to fix the rates and fares for through traffic, pay the Hereford Company a mileage proportion of such through rates by way of commuted toll, and also work the local traffic if required. These were the main points of the agreement. The Great Western Company claimed that this agreement was *ultra vires* of the powers of the Midland and Hereford Companies. They said, "This agreement of yours is practically a lease or a working agreement. The Midland Company fix the rates, they have power to run as many trains as they like over this line, and if required they are to run the local trains. You, the Hereford Company, have, in fact, parted with all interest in this line, except that of receiving your share of the receipts." The case was heard by what would now be the Court of Appeal, then called the Court of Appeal in Chancery. They decided that, inasmuch as the Hereford Company had not in terms parted with the right of running trains over their line,

<sup>1</sup> 8. ch. app. 841.

and as there was nothing to prevent them becoming carriers on their own line if they wished, this agreement was valid, and that in effect it was only making the fullest use of the powers of granting and accepting running powers given under Section 87 of the Clauses Act, 1845, so that you may thus get something very like a working agreement or a lease by making a judicious use of the powers given by that section. The earlier case of the South Yorkshire Railway Company *v.* Great Northern Railway Company in 1853 (7 Railway Ca. 744), is another example of a full use being made of this section.

Two recent instances will further show how far the use of running powers can be carried. In 1906 the Great Western Company entered into a non-statutory agreement with the Rhondda and Swansea Bay Railway Company, whereby the Great Western guaranteed the interest on the Debenture Stock and also a fixed dividend on the Preference and Ordinary Stock of the Rhondda Company, and in return obtained running powers over that Company's railway. The Report of the Departmental Committee of 1911 states that it was alleged and not contradicted that the effect was to transfer the complete control of the traffic of the Rhondda Company to the Great Western Company so that the line became for all intents and purposes as regards working part of the Great Western system. According to the evidence given before that Committee an analogous agreement which has led to a similar result was made in 1908 between the Great Western and Port Talbot Railway Companies.

Running powers may be contingent. A Company may get what is called a "Facilities Clause" inserted for their protection in another Company's special Act, whereby they obtain special facilities for their through traffic to and from the railway of the second Company. This "Facilities Clause" is often nailed down, so to speak, and made effective by the foreign Company having the right to apply for running powers either to

the Railway Commissioners or an Arbitrator in case the facilities are not properly afforded. By this means they get a hold over the other Company, because if the owning Company is not fulfilling its bargain the foreign Company can say "Very well, as the so-called facilities have proved a failure we are going to apply now for running powers over your line so that we may do the work ourselves."

Suggestions have been made from time to time as to legislation giving compulsory running powers. At present, as I have told you, you can only get running powers either by a Special Act, in which case you have to prove your case before Parliament, or by agreement under Section 87 of the Railway Act, 1845. It has been suggested that a Company should have the right under the general law to run over another Company's lines whether the owning Company likes it or not. The Commons Committee of 1853 rejected this proposal on the ground of danger. You can well imagine that confusion and danger might arise where every Company had the right of running their own trains over the line of another Company. The Joint Committee of 1872 also rejected it because they thought that it would be useless. They said that if it was used in a hostile way it would only lead to serious inconvenience in working, and that where real competition existed or resulted the owning and running Companies would combine so that the effect would be a joint ownership or partnership.

#### (7) *Pooling Agreement*

I now come to what is to-day the most prominent, and possibly the most important form of combination, namely, the so-called Pooling Agreement. As I think you will have gathered, pooling is no new thing. You will remember that in some of those old Reports of Parliamentary Committees to which I have referred it is stated that the understandings existing between the Companies in the old days sometimes took this form.

For example there was the extensive pooling arrangement of 1850 between the eight Companies which were then interested in the traffic between England and Scotland. I need not go over that ground again.

Pooling in its simplest form may be described as the division of receipts arising from traffic between two or more competitive points in agreed proportions. These agreed proportions are generally based on the previous receipts obtained by the respective Companies when working in competition with one another. In many cases a fixed proportion representing the minimum running expenses or rather less than the minimum running expenses, is deducted by the receiving Company before the balance is pooled. This is the simplest form, and I would lay stress on the point that as long as it is confined to traffic between two or more definite competitive points the question of co-operative working does not arise. To take a pooling example of this kind, which I believe is in existence to-day, namely, that between the London and South Western and the London, Brighton and South Coast Companies with regard to the London and Isle of Wight and Portsmouth traffic. So far as I know that arrangement does not imply any co-operative working, but it is entirely confined to a division of the receipts arising from traffic between those points, London on the one hand, and the Isle of Wight and Portsmouth on the other.

But in its more developed form—and this is the form which has acquired so much importance to-day—the pooling principle is applied not merely to traffic between two definite points A and B, but to all competitive traffic arising on the systems of two or more Companies irrespective of where it starts or where it is going to terminate, so long as it comes within the description of competitive traffic. When it assumes this form the question of co-operative working becomes of the first importance; it is mainly for this reason that railway companies of late have entered into this

kind of arrangement, because by combining the financial side and the working side they are enabled to afford an equally good if not better service to the public at a lower cost to themselves. Now, when this last development is reached it is obviously something more than a mere pooling agreement, and for want of a better expression I venture on my own initiative to call it "a working alliance," because you have the element of co-operative working combined with the financial element of pooling receipts. The obvious expression would be "a working agreement," but "working agreement" has already acquired the technical meaning which I attempted to explain last week, *viz.*, an agreement whereby one Company works exclusively the railway of another Company, so that if you use the expression "working agreement" to describe this form of pooling *cum* working arrangement, confusion will arise. It is quite true that you often see in newspapers the expression "working agreement" applied to the form of combination which I am now discussing, but it is an inconvenient title which mixes up two totally distinct things, and, therefore, for want of a better description, I shall describe this fully developed form of the old pooling agreement as "a working alliance."

One of the earliest alliances of this kind, so far as I am aware, was one between the London and North Western and the Lancashire and Yorkshire Companies so far back as 1862. This was much on the lines of the agreement now existing between these Companies, and practically applied to all their competitive traffic in Lancashire. The receipts were to be divided in certain agreed proportions; both Companies were to retain 20 per cent. of the gross receipts for working expenses, and there were various provisions as to routing the traffic, thereby introducing the element of working. There have been other similar arrangements the particulars of which have never been published. There are the well-known recent alliances, namely, that

between the London and North Western, the Midland, and the Lancashire and Yorkshire Companies in 1909, following on an earlier agreement of 1904 between the London and North Western and the Lancashire and Yorkshire, and another agreement of 1908 between the London and North Western and the Midland; and the alliance of 1908, first between the Great Northern and the Great Central, and then between these two Companies and the Great Eastern. I believe that the Great Western and London and South Western Companies have lately made a co-operative agreement for competitive traffic, and that the Caledonian, the North British, and the Glasgow and South Western Companies have an arrangement of this sort with regard to their Clyde steamers. This list is not a complete one, but these are some of the more important alliances.

This form of combination might take the following form: you would have the receipts from all competitive traffic of the various combining Companies, after deducting proportions payable to outside Companies, and 20 per cent. of the residue for working expenses pooled and divided on the basis of the actual carryings during the year preceeding the date of the agreement, as agreed to by the accountants of the various Companies. The accountants would also decide what were competitive points. The various Companies would agree to afford to the others all reasonable facilities for interchange of traffic whether divisible under the agreement or not, so as to give the public the best route, and that arrangements should be made in order to secure the most economical methods of working combined with full facilities to the public. Further, if in the opinion of any one of the Companies the position of that Company was fundamentally altered by the independent action of one or other of the Companies, or by the action of some outside Company, and the combining Companies were unable to agree to a revision of the terms, then there might be a provision that the matter should be referred to arbitration.

That is important, as objections are sometimes raised to these agreements, that they are too much a cast-iron character, but provision can be made for a revision of their terms by agreement or if necessary by arbitration. So in the same way an arrangement is sometimes made whereby capital expenditure undertaken by one Company in the interests of all the combining Companies shall also form a ground for demanding revision, to be settled if necessary by arbitration.

The recent Departmental Committee in its Report (Par. 61) appears to have considered that one of the disadvantages of a working alliance is that one Company may be unwilling to incur what is for itself unremunerative capital expenditure, and that the public may therefore suffer. It is curious that this method of dealing with this question of capital expenditure by arbitration does not seem to have been brought to the notice of the Committee.

It is usual and desirable for a pooling agreement to extend over a long period of time, the reason being that if made for only a short period the combining Companies are tempted to look ahead to the termination of the agreement and therefore to play each for its own hand rather than to work in full co-operation with one another.

Unless expressly so agreed the pooling of receipts will not include receipts from lines constructed after the date of the agreement. This is the effect of the decision in the case of *Midland Railway Company v. London and North Western Railway Company* (L.R., 2 Eq. 524). This case arose in connection with the opening of the Midland line to Carlisle which gave that Company a route of their own for their Scotch traffic, and the result was to break up the English-Scottish pool to which I referred on a previous occasion.

#### *Legality of Pooling Agreements*

At present these pooling agreements or working alliances are confined to competitive traffic. This is



very largely for the reason that it is doubtful how far a working alliance with regard to all traffic, competitive and non-competitive, is valid. I shall have to ask for your attention, and I hope that this will be the last legal problem that I shall have to trouble you with, while I briefly consider this question of the legality of pooling agreements. There has been considerable doubt as to how far they are valid, and the Joint Committee of 1872 in their Report made the following observations: They say "Whether the division of traffic receipts on the joint purse principle is valid at law or not is open to considerable doubt. It is clear that the Courts will not set aside such an arrangement on the ground that it is illegal in the sense of being contrary to public policy; but the doubt is whether such an arrangement which is in fact a sort of partnership, is not *ultra vires* of each company, and whether it may not therefore be set aside at the instance of a shareholder. This doubt, the Committee are advised, is such as to make it unsafe for companies to enter into such agreements without the sanction of Parliament, although there is evidence that they may sometimes do so." You will observe that the expression used in this Report is "the joint purse principle." This, I take it, would apply to all traffic including non-competitive, and so far as regards non-competitive traffic I think that it is open to doubt whether a pooling agreement would be upheld. You will also observe that the Committee point out that the real question is whether an agreement of this kind is not outside the powers of the Company, or what is technically called *ultra vires* of the Company. *Ultra vires* is a legal doctrine applied to statutory bodies and corporations. It is shortly summed up by Lord Blackburn, one of the greatest (if not the greatest) of modern lawyers, in the case of the Attorney-General *v.* Great Eastern Railway Company,<sup>1</sup> decided in 1880. He there accepts the following description—"Where there is an Act of Parliament

<sup>1</sup> 5 App. Cas. 481.

creating a Corporation for a particular purpose, and giving it powers for that particular purpose, what it does not expressly or impliedly authorise is to be taken as prohibited"; and later on "Those things which are incident to, and may reasonably and properly be done under the main purpose, though they may not be literally within it would not be prohibited." In other words, any Company—whether created by special Act of Parliament, as in the case of a Railway Company or under the general Joint Stock Companies Act, where its powers are limited by its Memorandum of Association, unless expressly or impliedly authorised, cannot lawfully go beyond the scope of its express or implied powers. To do so is *ultra vires*.

The grounds on which the validity of pooling agreements has been questioned are mainly these: that a Railway Company has, in the absence of express statutory authority, no powers to enter into agreements of this kind; the answer generally given to this is that, with regard to competitive traffic, each company is potentially the carrier of the whole; that if you have three railways between Liverpool and Manchester—the North Western, the Cheshire Lines, and the Lancashire and Yorkshire—there is no reason, we will say, why the Cheshire Lines should not carry every ounce of traffic between the two cities, and therefore it is within the power of the respective Companies to enter into an agreement with regard to such traffic which it was in the contemplation of Parliament should, if necessary, be wholly carried by each Company. That is the answer to the main question of *ultra vires*.

It has also been objected that it may involve the paying away revenue which otherwise would pass to the shareholders, either directly in the way of dividends or indirectly for the benefit of their property. To that the answer is that if the agreement is within the powers of the Company for the reason which I mentioned with regard to objection No. 1,

it is also within the powers of the Company to dispose of its revenue for any purpose connected with such agreement, and that if the directors come to the conclusion that paying over a share of their receipts to another Company, in accordance with a valid contract, is in the long run for the benefit of their Company, it is no more *ultra vires* of their Company to make such a payment than any other lawful payment that might be incurred and paid in the course of carrying on the business of the Company. The third objection is that an arrangement of this sort is a partnership, and that a statutory Company cannot *prima facie* enter into a partnership without express powers. The observations of Lord Lindley, in his book on Partnership, are generally quoted in support of this contention. He there says: "There is no general principle of law which prevents a corporation from being a partner with another corporation, or with ordinary individuals, except the principle that a corporation cannot lawfully employ its funds for purposes not authorised by its constitution. Having regard, however, to this principle, it may be considered as *prima facie ultra vires* for an incorporated company to enter into partnership with other persons." In reply to this objection it can be urged that, in the case of a pooling agreement, there is no union of capital as in the case of partnership; there is no joint liability; and that a Corporation may, in a proper case, enter into a partnership. Lord Lindley's observation at the most only apply to a *prima facie* objection which can be rebutted by other facts.

There is a fourth, rather technical, objection sometimes raised. It is this: In the Railway Clauses Act of 1863, to which I already have had occasion to refer, as being one of the ways in which a working agreement can be sanctioned, when the Act is speaking in Part III. about the necessity for obtaining the approval of the Board of Trade (now the Railway Commissioners)

<sup>1</sup> 7th ed., p. 93.

of working agreements, it says, in Section 22, that where two or more Companies are authorised by a Special Act incorporating this Act to agree with respect to all or any of certain things, including working a railway and maintaining it, and also "the fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues" taken in respect of the traffic, then they must get the consent of the Railway Commissioners. It is argued that inasmuch as this Railway Clauses Act of 1863 states that where Companies are authorised by a Special Act to agree as to "all or any" (which are the important words) of certain things, among which you find fixing, collecting, or apportioning tolls, therefore it must have been the intention of the legislature that any agreement with regard to fixing, collecting, or apportioning tolls must be either sanctioned by Parliament itself or be an agreement requiring the approval of the Railway Commissioners. The answer usually given is that this was a common form taken from the old private Acts before this Clauses Act was passed, that the section must be read as a whole, and that the sentence as to apportionment is not to be cut out and construed by itself. The whole section, and, indeed, the whole of this Part of the Act, was intended to apply to working agreements in their strict sense a necessary incident of which was the apportionment of the tolls and rates between the owning and the running Companies. Section 23 of the Act expressly safeguards agreements that are otherwise valid.

The validity of these pooling agreements with regard to competitive traffic has been discussed in the Courts, in the famous contest between the Shrewsbury and Birmingham and London and North Western Companies, which assumed a variety of forms and went on from 1849 to 1857. The Shrewsbury and Birmingham Company's line in fact only extended from Wellington to Wolverhampton, but by means of junctions at

either end it formed part of a direct route from Shrewsbury to Rugby and the South. The London and North Western, by means of a lease of the Shropshire Union Railway, had obtained a through competing route between Wellington and Rugby. The two Companies, in 1847, entered into a pooling agreement with respect to the receipts arising from the competitive traffic on both routes; but in 1849 the London and North Western refused to carry out their part of the bargain. The reason, I believe, was that in the meantime the Shrewsbury Company had made a working agreement with the Great Western. The case came, in the course of its history, before seven Equity Judges and four Common Law Judges; but only two of these seem to have discussed the question of *ultra vires* at length. One of these, Lord Justice Turner,<sup>1</sup> was strongly of opinion that a pooling agreement for competitive traffic such as this was *ultra vires* and illegal; on the other hand, Lord Cottenham,<sup>2</sup> then Lord Chancellor, upheld the validity of the agreement, although I do not know that he discussed the question of *ultra vires* at such length as did Lord Justice Turner, but it was certainly argued before him. The four Common Law Judges<sup>3</sup> of the Queen's Bench Court also upheld the agreement. The case went to the House of Lords, where it was finally decided on another point; Lord Cranworth,<sup>4</sup> who had succeeded Lord Cottenham as Lord Chancellor, expressed no opinion as to the legality of such a contract; he said that if it had been necessary to decide that question it would probably also have been necessary to have had the case re-argued. The net result, therefore, was that the validity of a pooling agreement made without express powers was left in doubt.

In 1861 the question again arose in the case of *Hare v. London and North Western Railway Company*, 30 L. J., ch. 817, in which the English-Scottish pool was

<sup>1</sup> 4 De. G. 17 & 123.

<sup>2</sup> M. & G. 324.

<sup>3</sup> 17 Q.B. 652.

<sup>4</sup> 6 H.L. Ca. 113.

the object of attack. The case was heard before Vice-chancellor Page-Wood, afterwards Lord Hatherley ; in an elaborate judgment he discussed the various judgments given in the old Shrewsbury and Birmingham case, and in the result held that on balance the authorities were in favour of the validity of pooling agreements so far as competitive traffic was concerned, and therefore upheld the Scotch agreement in that particular case.

Since then it has generally been accepted as good law that a pooling agreement so far as competitive traffic is concerned is valid, notwithstanding the observations of the Joint Committee of 1872 as to the " joint purse principle," which I have read to you and which I think, when looked into, must refer to agreements applying to non-competitive traffic.

#### (8) *Agreement not to promote Competing Railway*

There is another form of negative combination which I need not go into at length. It is hardly a contract, but rather an understanding between two or more Companies not to promote or support new competing lines in their districts.

There is one instance of an agreement of this character being approved by Parliament. In 1863 the West Midland Company (itself the result of the amalgamation of the Oxford, Worcester and Wolverhampton, the Worcester and Hereford, and the Newport and Hereford Companies) was amalgamated with the Great Western. The Amalgamation Act confirmed an agreement between the two combining Companies and the North Western, one of the terms of which was that the Companies were to agree as to the construction of new lines, and that difference as to the necessity for the same should be settled by arbitration. I think that there was a similar arrangement come to in Scotland, between the Caledonian and North British Companies, in 1891.

*(9) Clearing House Conferences*

Finally, I should draw your attention to a class of arrangement regulating the general principles upon which Railway Companies conduct their undertakings, and also agreements for the purpose of facilitating the transactions relating to joint traffic. I refer to what are known as Clearing House Conferences, which play an important part in the administration of British railways. These conferences, of which there are many, refer to the fixing of competitive rates. As you are aware, competition in rates and charges has not existed for many years, and rates are now a matter of arrangement between the various Companies concerned. So far back as the sixties, formal meetings of the representatives of the various Companies began to be held for the purpose of settling the rates between competitive points in various parts of the country. So far as I have been able to ascertain the earliest of these would appear to be a conference described as the London, Liverpool and Manchester, which seems to have been formed about 1860. That was for the purpose, I presume, of fixing the rates between those points. There is also what is known as the English and Irish Conference, the English and Scotch Conference, the West Riding Conference, and others; so recently as 1906 a conference was formed for the purpose of dealing with the rates to the Humber ports, such as Hull and Grimsby. The most important of these conferences I have not mentioned; this is the Normanton Conference, which now meets at the Clearing House in London, but which originally met at Normanton, that being a convenient centre in early days. It was formed in 1865, and deals with the mass of competitive rates in this country. It meets monthly at the Clearing House, and the persons taking part in it are the chief rates clerks of the various Companies. They fix the rates between two competitive stations, and each new proposal for an exceptional rate which would be competitive in its nature, or which would

affect some other company, is brought before it, discussed and determined. It would also appear that rates between non-competitive stations can be arranged at the Normanton Conference by agreement between the Companies concerned. It has been found necessary to hold these conferences, because a new rate once made affects all the existing rates, and may also create an undue preference. Accordingly, if a trader comes forward with a new proposal, having some exceptional kind of traffic, or some large quantity of goods to be conveyed, and asks for an exceptional rate it has become necessary, in view of the multitude of existing rates, to carefully consider how far a new rate for that particular traffic would affect existing rates.

There are, again, conferences of various classes of officials, such as the general managers' conference, the goods managers' conference, the superintendents' conference, and others meeting from time to time.

#### (10) *Joint Claims Committee*

Last of all there is another body, known as the Joint Claims Committee. It is a comparatively new institution, having existed only some ten years. It was formed because of the increasing tendency or rather temptation to treat claims for loss and damage to goods carried on owner's risk conditions with undue leniency in order to secure traffic. Finally, the managers felt that it was absolutely necessary to draw the line somewhere and to set up some standard whereby these claims should be adjudicated. The result was, about the year 1902 this Joint Claims Committee was formed. It also meets once a month, and is composed of the chief claims clerks of the various Companies, except two fairly large Companies. With these two exceptions the chief claims clerks meet, and every doubtful claim put forward by a trader, with respect to traffic carried at owner's risk, is carefully considered and dealt with. It is interesting to note the proportion of claims that are admitted. It seems



to be a fair statement to say that some 85 per cent. of the claims brought before the Committee are admitted wholly or in part. In 1909, one of the great Companies sent 8,166 claims to the Joint Claims Committee to be settled by them, and of those 7,504 were paid. The total numbers of claims made against the same Company, in this same year, was in round numbers 290,000; of these only 112 resulted in County Court proceedings, and of the 112 only 27 ever reached Court. These figures speak for themselves.

### III—THE COMBINING COMPANIES

THE third head of my subject is the effect of combination on Railway Companies who are parties to it. What I have to say now, and, I think, during the remainder of these lectures, mainly applies to those cases of co-operation between Companies which at one time had been working independently of, and often in competition with, each other. I think that we may almost set on one side cases of leases and working agreements where for working purposes there has never been more than one Company. What I now have to say would apply mainly to amalgamations, working unions, and working alliances—that is to say, where two Companies, previously more or less in opposition, have come to terms and are working in co-operation with each other.

#### *Unity of Management*

In the first place you have unity of management in the case of amalgamation or a working union; in the case of a working alliance the two Companies still retain their separate individuality and their separate management. Provided that the combined Company does not become unreasonably large, unity of control will produce increased economy and efficiency. In any event, union or co-operation, as the case may be, enables the leading officials to direct their energies towards the development and efficient transaction of

their Company's business instead of spending time and labour in defending their own position or attacking that of a competitor. So in the same way, in the various districts the district officials can devote their attention to the improved working of their Companies systems, instead of canvassing for traffic one against another.

#### *Saving in Capital Expenditure*

The next effect, I think, is that wasteful capital expenditure is avoided, and this works out in two ways. In the first place it is no longer necessary to build a new line which might not be remunerative in itself through the territory of a former rival, because the railway of that rival serving that district is now working in combination with your own system, and the revenue arising therefrom will form part of the common fund or, in the case of an alliance, will be put into the pool if it comes under the head of competitive traffic receipts. But the more important effect is that not only is it unnecessary to expend capital on possibly unremunerative lines, but you can raise money more readily for remunerative schemes and developments because your stockholders and the public have a guarantee that the money to be raised will be expended on lines that will be fully worked and that, therefore, will be remunerative. It has not been easy of recent years to raise money for railway purposes, and therefore it is very desirable, both in the interests of the Companies and of the public, that capital should be available for proper and reasonably necessary lines.

Further, if you have combination between a wealthy Company and a poor Company, it enables the poor Company to raise capital on much more favourable terms when allied with a wealthy Company than when standing by itself. It has been stated that the Taff Vale Company, which represents, I think, a union of some fourteen smaller Companies, includes several lines

which would have been absolutely derelict had they not amalgamated with the Taff Vale Company, and therefore been strengthened by their union with that Company. Money was raised for the purpose of putting them into proper condition, and they are now working as part of the whole system.

*Duplicate Services, etc., avoided*

The next result is that duplicate accommodation and services are avoided. It is thus, in many cases, possible to use one station instead of two. Take the case of Ashford in Kent, where both the South Eastern and Chatham had a passenger station prior to the working union between those Companies. Now passenger traffic is dealt with entirely at what was formerly the South Eastern station, which has been rebuilt and greatly improved, and the old Chatham station is used for other purposes, thereby leading to economy and efficiency. The same thing applies to goods yards. Where formerly there were two goods yards, neither fully used, it is possible to shut up one and make full use of the other. So again with regard to receiving offices in towns, both in London and elsewhere; it is possible to deal with all the work in certain districts at one receiving office instead of having two or three separate ones, belonging to different companies, as before.

Further, even where you retain the separate stations and accommodation, they can be adapted for different classes of traffic. To take another instance of the effect of the South Eastern and Chatham union: Blackfriars, which was formerly the general goods station of the Chatham in London, is now very largely used for fruit traffic, and it has been specially arranged for dealing with fruit. Owing to this traffic being concentrated at one place it can be dealt with more quickly and economically, and so, no doubt, to the advantage of the traders in that business.

Another result of this saving of duplicate services is

perhaps more important than those I have mentioned, viz., unnecessary mileage is avoided. By that I mean you can run one full train instead of two half-empty trains, thereby obviously effecting considerable economy in working expenses and also freeing the line of the Company on which the train has been discontinued so that it can accommodate some other form of traffic. There is a good example of this in the meat trade between Scotland and England. Prior to the agreement between the Midland and the North Western both Companies ran night meat trains between Carlisle and London. Now the North Western, I believe, run one, and if necessary two, and the Midland run none, or only one, according to the requirements of the traffic. The North Western take the bulk of the traffic and then the Midland will, if necessary, run an extra train; but they are all full trains. The result is that the Midland line is free to that extent to accommodate other traffic, which in the old days it could have done only with difficulty. Whereas, before the agreement, the Midland would have been running possibly half empty or short trains down to London, now they can take new traffic upon their existing lines. Previously it might have been necessary to widen their lines in order to accommodate that new traffic, but now they have got rid of this meat trade and, therefore, when new traffic comes along, the old line is available without any further capital expenditure. It is stated, in this one way alone, the Midland are saving some 3,000 train miles a week.

#### *Shortest Route Available*

Still more important, and I think that from a running point of view this is the great point about co-operative working, you have the shortest route available in every case. Of this there are innumerable examples; but the example often given of this, although it is not a very long distance, is the one between Heysham, on the Lancashire coast, and

Carnforth. By the Midland, which is a very round-about route, the distance is 27 miles; by the North Western it is 10 miles. Prior to the arrangement between these Companies both tried their best to get the traffic between those points. Now it is all sent by the North Western route, and therefore the Midland are saved the running of what must have been unremunerative trains, because they had to carry at the same rates as the North Western, although their route was nearly three times as long. Another example is that of the route between Halifax and Leicester; also a case arising out of the North Western, Midland, and Lancashire and Yorkshire alliance. Formerly, the Midland traffic was brought by the Lancashire and Yorkshire to Normanton; it was there transferred to the Midland and brought down by them to Leicester. Now it is all brought down direct, via the Lancashire and Yorkshire and North Western lines without any transshipment, and one day is saved in transit. Of course, many other examples could be given. Another that occurs to me is that the Great Central may find it convenient to send their Grimsby fish traffic by the shorter Great Northern route to London, but I cannot say how far this is done. Observe that this saving of mileage is mainly confined to goods and mineral traffic; it has not been found possible or desirable, from a financial point of view, to cut down the passenger service to any extent. This is because there are other places beside London, and the intermediate towns require a good service, and it pays to give them a good service. The Midland trains to Manchester still run as before, and I believe pay well, because there are places like Bedford, Leicester, Nottingham, Derby, and other towns *en route*; it is this intermediate traffic which renders the retention of the former passenger services necessary and profitable.

Again, goods that are handed to one Company can be transferred to another combining Company so that they may be sent by the shortest route, unless they

are consigned, which is rarely the case, to go by one particular route. Thus, if goods are handed over at Leicester to a North Western office for conveyance to London, they can be transferred to the Midland Company, who, of course, have the best and quickest route between Leicester and London. The North Western are, in this way, saved the running of unremunerative trains by a circuitous route up to London, and the Midland take the whole of the traffic. *Vice versa* the North Western can take the whole of the Northampton traffic.

#### *Full Use made of different Lines*

Another advantage is that you can make full use of all your lines. You can distribute the traffic over the various available routes, so that if one line was formerly congested, and another not fully used, you can adjust the routing of the traffic and relieve the first line and make full use of the second. A case that occurs to me (I have not had it verified, but I should think that it possibly does happen) is the effect of the amalgamation between the Great Central and Lancashire and Derbyshire Companies, which took place in 1906. They afforded, in part, parallel routes between Chesterfield and Sheffield to Lincolnshire and Grimsby. Suppose that there is coal at Chesterfield to be shipped at Grimsby; part of it can be sent by the old Great Central route and part can be diverted to the former Lancashire and Derbyshire as far as Lincoln. The Great Central, with an increasing traffic, might have found it necessary to widen their own line, but they can now make use of the former Lancashire and Derbyshire. Capital expenditure is avoided, and both lines are made full use of.

#### *Fluctuation in Traffic diminished*

Another result is that by extending your sphere of operations, fluctuations in traffic are, if not wholly avoided, diminished. Where you get diversified classes of traffic instead of being dependent on one or two

commodities only, it means that you have various trades to depend on ; if there is depression in one you may make it good by prosperity in another. Take a small coal line like the Barry in South Wales ; if there is a miners' strike in South Wales or a depression in the coal trade, it is hard pressed because the coal trade is practically its sole source of traffic. If you get a larger line, like the North Western, which depends not only on coal but on every trade in the country, there is far less likelihood of a bad year, because it is unlikely that all the various trades which form its customers will all be depressed at one and the same moment. This also benefits the staff, because with a steady flow of traffic, or what electricians would call a constant load, a Company can retain a proportionately large permanent staff, whereas fluctuating traffic means the employment of casual labour.

#### *Full Loads obtained*

Another most important result is that you obtain greater opportunities of obtaining full wagon loads between different points. This means that you obtain more remunerative working and also avoid transshipments, thus giving greater dispatch in delivery.

#### *Unreasonable facilities reduced*

Again, economies no doubt may be effected by the Companies being no longer subject to the temptation to give what railway officials might describe as unreasonable facilities to the public. Of course, whether the public would agree with that expression is another question. Perhaps I had better defer dealing with this point until I come to consider the subject from the public point of view, but as an example of what I mean you have the well-known instance of the Scottish demurrage cases. Prior to the arrangement between the Caledonian, the North British, and the Glasgow and South Western Companies, the Scottish coal traders

were allowed practically free use of the railway wagons for storage purposes for an unlimited time. All the Companies were anxious to get the traffic, and one of the facilities that they gave the traders was to allow them to store their coal in the railway wagons as long as they liked at either end without charge. When the understanding between these Companies was come to, all this was stopped. The Companies told the traders, "we can no longer give you unrestricted use of our wagons, we are going to give you three or four days at either end in which to load or unload, and after that we shall charge you a small sum per day for the use of the wagons by way of demurrage." The traders were greatly opposed to this innovation and went to the Railway Commissioners who heard the case in the summer of last year in Edinburgh, with the result that judgment was given in favour of the Companies. The point I wish to emphasise is that as a result of combination between the Scottish Companies a facility which has been held to be unreasonable was withdrawn.

Finally, you have the obvious advantage to the Companies that the rolling stock can be used for a common purpose. Thus haulage of empties is avoided. Here, again, great saving may be effected.

#### *Reduction in Rates*

I will now ask you to consider the other side of the question. So far I have dealt with what appear to be the advantages to the Companies; on the other hand, there may be disadvantages. One very important result certainly of amalgamation is that the Companies may lose what is known as their short distance rates, and also that a former through rate may be reduced if the through route is treated as a continuous railway belonging to one Company.

Under Section II of the schedule to the standard Rates and Charges Orders of 1891-2, each Company may charge for conveyance over their own line for three miles, four and a half miles or six miles,



although the actual transit is in fact less than those distances. The charge varies because it depends on whether the Companies charge two terminals, one terminal, or no terminals. Again, in calculating the maximum conveyance rate a higher rate per mile is authorised for the earlier part of the journey over the railway of each Company, namely, for the first twenty miles, and then in a decreasing ratio for the next thirty and fifty miles, and distances in excess of those figures. Accordingly, where the total transit extended before combination over the lines of two or more Companies, the maximum through rate would have been built up out of the several rates chargeable by each Company, each rate being calculated afresh according to the respective charging powers of each Company. By that I do not mean to say that in every case the through rate is necessarily the sum total of the several local rates, but on the other hand there is no doubt that the charging powers of the Companies are important factors in making up the through rate. The respective rates over each Company's line would have been calculated as if each applied to a new journey, and therefore there would have been a higher rate per mile for the first part of the transit over the line of each Company. It is clear that if the railways of the formerly separate Companies be regarded as one continuous line, the rate will have to be calculated as one rate, and therefore in many cases short distances will disappear, and it will also no longer be possible to charge higher mileage rates for the first part of the journey more than once, as there will be only one Company and one railway for rate purposes.

Some instructive illustrations were given by Mr. Dent, the General Manager of the South Eastern and Chatham Companies, before the recent Departmental Committee in 1910 as to the effect of those two railway being regarded as one continuous railway for the purpose of calculating rates. These are some of the figures he gave. For instance, for the conveyance of

bricks from Southborough, near Tunbridge Wells on the South Eastern, to South Bromley on the Chatham, the old maximum rate per ton would have been 3s. 1d., and it is now 2s., a considerable decrease. So, in the same way, for the conveyance of flour from Dartford on the South Eastern to Sittingbourne on the Chatham the old tonnage rate would have been 6s. 7d., and the new rate is 4s. 6d. And then as an illustration of that difficult subject to grasp—and, if I may say so, still more difficult subject to explain—the loss of short distance rates, he gives an illustration as regards the conveyance of cement from Cuxton on the South Eastern to New Brompton on the Chatham. On the South Eastern the transit was over a distance of  $2\frac{1}{2}$  miles, and they were entitled to charge, before the union, as for  $4\frac{1}{2}$  miles, there being a terminal at the point of departure; on the Chatham side the distance was  $3\frac{1}{2}$  miles, and for that they were also entitled to charge also as for  $4\frac{1}{2}$  miles. The result of the union has been that the charge is now made for the actual distance traversed, namely,  $5\frac{1}{2}$  miles plus terminals, and that the maximum tonnage rate is only 3s. 5d. in place of a former actual rate of 4s.

If the Great Northern, Great Central, and Great Eastern working union had gone through, it was calculated that the three Companies would have lost £100,000 per annum as the result of every rate being calculated as a single continuous rate. One gentleman at the close of my last lecture put to me a question, as to whether and how the method of calculating rates is affected by a pooling agreement or working alliance, as you will remember I called it. The answer is that there would be no change as regards the calculation of these short distance rates if the Companies did not get beyond a pooling agreement, because the Companies do not lose thereby their separate individuality; they still remain separate Companies under separate control and therefore their powers of charging are not in any way affected.

Strictly speaking, that would also be the case under a working union under the general law, but both in the case of the South Eastern and Chatham Companies in 1899, and also when the Great Northern, Great Central and Great Eastern Bill came up in the Commons in 1909, the promoting Companies accepted clauses as a result of negotiations with the Board of Trade—I am not sure about the South Eastern case, but certainly in the Great Central case—whereby they agreed that, if the union was carried through, the several systems should for the purposes of calculating rates be regarded as one continuous railway. Therefore the effect would be that in many cases these short distances rates would disappear ; and also that, for the purpose of calculating rates throughout the entire distance, the higher rates applicable to the first portions of the transit could only be charged once instead of twice or more, as would have been possible had the several systems been regarded as separate railways.

In the case of a working agreement, Section 18 of the Regulation of Railways Act, 1868, enacts that where two railways are worked by one Company, then, for the purposes of rates and charges, both lines are to be considered as one.

In the case of amalgamation it follows that there is a union of two Companies, and that, therefore, this point as to the unification of charges must apply.

The Report of the Departmental Committee of 1911 on this point sums up their recommendation as follows in Par. 188 (XVIII) :—

“ The following conditions should be applicable to Companies amalgamating or entering into working unions, leases, or working agreements : (a) The Companies' systems should be deemed to be the railway of one Company ; (b) the maximum rates chargeable should be reckoned continuously as if the Companies were one Company.”

So that the net result is that for all classes of combination, except a pooling agreement, which is perhaps the most important at the present time, by the law as it stands with regard to amalgamation and working agreements, there will be only one continuous rate ; and no doubt, looking to the past action of the Board of Trade and the recommendation of this Committee, any future proposals for carrying out a working union would not be allowed to proceed unless the Act carrying them into effect contained some provision that the two or more combining systems should be regarded as one for the purpose of calculating rates. I ought also to point out that rates may be reduced as a result of a shorter route being made available and used by the combining Companies.

#### *Revision of Rates*

A further result which may accrue to the combining Companies is that it is possible that their schedule of rates as a whole may be revised. This was recommended as a condition of amalgamation so far back as 1846 by the Committee of that year, which sat to consider Railway Amalgamations. This, I think, was formerly a more important question than it is to-day. The charging powers possessed by the Companies are now largely standardised by the Rates and Charges Orders Acts of 1891 and 1892, which fixed them on very much the same basis for all the Companies, and therefore there is less variation between the respective rates of charge than existed before that date.

Three suggestions have been made as regards this matter. First, that where you have two varying scales of rates, either in the case of one Company or as between the combining Companies, the lowest scale should be applied to the whole of the combined system. Thus, where you have a Company, A, with a higher rate authorised for certain classes of traffic than that authorised for Company B, and the two Companies

combine, the scale of Company B should prevail and should take the place of Company A's scale.

This was carried out to some extent in the South Eastern and Chatham case, when the former exceptionally high Continental fares were reduced to the amount of the ordinary fares. There was also in the same case an increase in the allowance of free luggage for Continental passengers, which formerly had been less than that allowed to passengers who were not going out of the country.

In 1863 there was an example of two varying schedules of rates being placed on the same basis, plus a modification, when the Great Western amalgamated with the South Wales Railway Company. The South Wales maximum rates were higher than those of the Great Western and under the amalgamation Act these were to be retained until 6 per cent. had been paid for three consecutive years upon the ordinary stock of the Great Western. The schedule was to be reduced only when the earnings of the Company reached a sum which Parliament thought sufficient to authorise a reduction. I notice that this exemption is still retained in the Great Western Charges Order of 1891, where an increased rate for traffic in classes A and B on the South Wales line is authorised until the 6 per cent. is paid.

The Report of the Committee of 1911 contains a recommendation in favour of this suggestion, that where you have varying scales in force, the lowest should be taken as the standard scale for the combined railway. They say in Par. 150 of their Report :—

“When different scales of maximum charges apply to the amalgamated lines it appears to us that the practice of revising the maximum rates with a view to applying a uniform scale of charges to the whole amalgamated system is one which can conveniently and fairly be followed to the extent to which we explain below.”

Later on they say :—

“ It will usually not be unreasonable that if the Companies possess different scales of maximum charges the lowest scale applying to any of the Companies should be made applicable to the combined system.”

There is one instance of the converse of this proposal where the lower of the scales of rates was increased to the standard of the higher, namely, in the case of the amalgamation of the Lancashire, Derbyshire, and East Coast Company with the Great Central Company, in 1906. The Derbyshire Company's coal rates were lower than those of the Great Central; and on amalgamation the Derbyshire maximum rates were put up to the Great Central level. The actual result of that union was, however, to reduce rates owing to the saving of mileage thereby effected.

A second suggestion with regard to revising rates is that the whole of the existing rates and charges should be recast and put upon a new basis, as a condition of combination being permitted. I have not been able to find any example in practice. On this the Report of 1911 says, Par. 152 :—

“ The second suggestion is that the whole schedule of maximum rates which two Companies are authorised to charge should be considered afresh on amalgamation, and a reduced scale of maximum charges should be prescribed for the amalgamated Company. We cannot recommend this as a general practice.”

So that I presume that, considering the weight which is due to this Report, we shall not hear anything more of that.

There is a third suggestion sometimes made with regard to revision of rates upon combination, and that is that the maximum rates authorised should be reduced to the lowest actual rates in fact being charged

by the several Companies at the time of combination. This, in fact, was done in 1900 in two Irish cases, namely, on the amalgamation of the Waterford, Limerick and Western, and the Waterford and Central Ireland Companies, with the Great Southern and Western Company. The two small Companies, the Waterford and Limerick and the Central Ireland, were in both cases taken over by the Great Southern and Western, the largest Company, I think, in Ireland, and in both these Acts there were sections providing that the rates charged by the Great Southern and Western Company in respect of traffic on railways previously owned or worked by the Waterford and Limerick or by the Central Ireland, as the case might be, should, where higher, be reduced to the level of the rates for the time being charged by the Great Southern Company. You note the words, "for the time being charged." Those are the actual rates, not the maximum rates authorised, but the rates in fact being charged by the Company in respect of corresponding traffic carried under similar circumstances on railways already owned by the Great Southern and Western. I believe that the Great Southern and Western, in fact, agreed to this clause being inserted in the Acts because the actual rates on their own line and on the lines taken over were the same.

With regard to this suggestion that actual rates should take the place of maximum rates as regards the actual authorised rates—in other words that the actual rates should become the maximum rates—the Committee of 1911 say, Par. 152 :—

"It has been suggested that, in accordance with a recommendation of a Select Committee on Railways and Canals Amalgamation of 1896, the maximum charges after amalgamation should not, as a rule, exceed the lowest actual charges which have been previously made by the respective Companies."

They then quote the Irish cases I have just given you and add—

“ In view, however, of the fact that the actual charges which railway Companies make are not usually calculated according to any definite scale, an obligation of this kind would have no very precise meaning, and we, therefore, do not recommend its adoption.”

As to the Committee of 1846 I am not sure that their recommendation went as far as this, but as the Committee of 1911 do not favour the proposal I need not say anything more on this point.

Conditions as to revision of rates and other matters would only apply when the Companies have to come to Parliament for statutory sanction to their proposals. That is to say, in the case of a pooling agreement or working alliance, which, as I have explained, is valid under the existing powers of the Companies—certainly as regards competitive traffic—and does not require Parliamentary sanction, no pressure could be brought to bear upon the Companies entering into the pooling agreement, and their existing powers of charge would remain unaltered. But in every case where Companies seek to combine by means of an amalgamation or working union, or a working agreement, or a lease, all of which require statutory sanction, then they are placed in the position of having to make terms with their adversaries, or of having to accept the conditions put upon them by Parliament. The same principle is applicable to the numerous other restrictive and protective clauses that are from time to time inserted in Railway Bills, for protecting the interests of various Corporations or persons who think themselves aggrieved.

The Committee of 1911 do not propose that any change should be made so as to subject to revision the rates of Companies entering into pooling agreements. In Par. 155 of their Report they say :—

“ Revision of maximum charges on the lines which we have indicated can only be effected by provisions



inserted by Parliament in Special Acts authorising particular unions, and we do not recommend that any machinery should be set up by which such revision of maximum charges might be accomplished in the case of less intimate forms of combination not requiring Parliamentary sanction."

#### *Area of Undue Preference Extended*

The last way in which the combining Companies may be affected is that their area of undue preference may be enlarged. That is to say, that where prior to combination the public might have been obtaining more favourable terms from one of the combining Companies than from the other or others, yet so long as each Company treated all the members of the public on its own system fairly none of them would have been open to any charge of undue preference. But as soon as the several systems are combined the principle of undue preference will apply to the whole of the combined system, and the practice of the combined Company must be assimilated with regard to its treatment of all the traders and persons making use of their line. This, however, will not apply to the case of a pooling agreement where each of the allied Companies retains its own individuality and management.

#### *Objections to Pooling Agreements.*

It may be convenient here to consider for a moment certain objections that have been made to pooling agreements or working alliances as compared with amalgamations. Certain leaders of the railway world are of opinion that the advantages of amalgamation are considerably greater than those obtained from pooling agreements. There is one obvious difference between the two—whether or not it be an advantage or a disadvantage I think is entirely a question of fact in each case—and that is that in an amalgamation you have unity of control and management, and that such advantages and economies as may be effected thereby

are not obtained in a pooling agreement. It is, however, a moot point as to how large the unit of railway administration ought to be, and therefore whether it is possible to unite more than a certain size of railway under one administration with advantageous results.

It is further objected that pooling may sometimes be what one railway manager has described as a "lopsided common purse." By that I think he means that although you may share the receipts on the basis of past receipts, it does not follow that the expenditure will remain the same. The new arrangement may throw a greater burden of expenditure upon one Company than was formerly the case ; it may get all the lean, and its partners get more than their fair share of the fat, with the result that although it is doing more work and gaining larger receipts its share is still no more than it was before the agreement. In most pooling agreements I believe that there is a provision whereby the Companies are entitled to deduct something like 20 per cent. before paying in their receipts into the pool, the 20 per cent. representing something rather less than the running expenses incurred in carrying the traffic over their own lines ; so that one way of getting over the objection as to the expenditure not being fairly allocated would be to exactly proportion the running expenses, and permit each Company to deduct their exact running expenses before paying in the balance of the pool.

There still remains the difficulty that the basis of past receipts may not remain a fair one if one of the Companies is called upon to carry more traffic and so earn an increased proportion of the total pooled revenue. Speaking as a theorist on this point, it seems to me that each agreement might contain a provision to the effect that, if in the case of any one of the Companies the position of such Company has been fundamentally altered as the result of the agreement, and if the combining Companies are unable to agree upon a revision of the terms of the agreement, then the

matter should be referred to arbitration for revision. It would seem that if that were fairly carried out this grievance would not remain a substantial one. There is, I think, a provision for arbitration in certain events to be found in some of the pooling agreements of the present day.

It is further objected, and this is a somewhat similar objection, that as regards capital expenditure one Company may be called upon to incur an undue proportion of capital expenditure, and so bear an unfair proportion of the cost of carrying out the pooling agreement. There again it might be found that an arbitration clause, somewhat in the terms which I have already indicated, and such as in fact is contained in some agreements, would meet the case. As regards this point, the Report of the Committee in 1911 is as follows. They say in Par. 61 :—

“ For example, the ordinary pooling agreement which provides for the pooling of gross competitive receipts, but leaves each Company to provide its own capital and pay the expenses incurred on its own line may sometimes make the Railway Companies concerned less ready to provide facilities than they would have been had they been amalgamated. The essence of a pooling arrangement is that if one of the Companies carries an increased bulk of of traffic subject to the agreement it does not obtain the whole of the increased receipts. The motive to spend capital or incur expense in order to develop pooled traffic is consequently lessened.”

Then they go on to consider that in some little detail, and they say :—

“ A pooling agreement is therefore more likely to affect the public adversely than an absolute amalgamation.”

With regard to this expression of opinion it is not I think, quite accurate to say that a pooling agreement means the pooling of “ gross receipts,” as

provision is often made for the deduction of a percentage approximately representing rather less than the amount of running expenses. Again, it must be remembered that a working alliance is a matter of give-and-take, and that if spread over a reasonably wide area will probably equate itself.

With regard to the objection that the inducement to expend further capital is diminished one of the advantages to the combining Companies is, as I have already pointed out, that a full use can be made of existing lines, that is of past capital expenditure, and while this is found to be sufficient further expenditure will no doubt be avoided.

Again, although one of the combining Companies may be doing more work and so earning a greater proportion of the total pooled revenue than it was prior to the alliance, it does not follow that its separate receipts would have increased had it remained outside the agreement, and it may be that on balance its financial position is improved as the result of the alliance.

### *Staff*

Finally, in considering the effect on the combining Companies, I must consider the effect on the staff of those Companies.

On behalf of the staff it has been contended that combination causes dismissals, and has a detrimental effect on the conditions of service. I have been at some pains to find out examples of any actual dismissals which have been due to combination, and have found few, if any. There appears to have been a case in Scotland at Grangemouth as the result of the working agreement between the Caledonian and the North British Companies whereby some forty-three men were dismissed from the service of the North British Company. But it has been stated by the Companies that of these, thirty were taken on by the Caledonian Railway, and of the remaining thirteen,

six found work at Grangemouth Docks, and the others appear to have been satisfactorily accounted for except one unfortunate man who is described as having been drowned.

There was some allegation before the recent Committee that the men on the Rhondda and Swansea Bay line (which you may remember I referred to as being largely under the control of the Great Western as a result of their exercising running powers over the line) were to some extent thereby affected, but the Great Western Company gave what appears to have been a full explanation of that, and, so far as I can make out, it does not come to much.

Therefore, the chief complaint appears to be that it may affect the conditions of service; and that the chance of promotion, especially in the upper grades, may be diminished. The men reasonably point out that their work is special work, unfitting them as a whole for other work, or even for other grades of railway work. A man who started in the locomotive department may find some difficulty in turning his hands and thoughts to a different kind of work, or in obtaining a different kind of work even if he is able to do it.

The third point made on behalf of the staff is the possible loss of their superannuation allowance, although it appears in some cases that the men can stay on in a Superannuation Fund, although they have left the service of the Company by which that fund has been established.

In the same way the clerks employed at the Clearing House have been apprehensive that their work might be decreased, and that, therefore, there would be less need for their services if combination between Railway Companies were developed to any large extent.

Various suggestions have been made with the object of protecting the staff. I do not say that these are all the suggestions, but they appear to be some of

the more important ones. One is that no member of the uniformed staff should be dismissed if his dismissal is due only to the combination between the Companies. In the same way, that no clerk should be dismissed for seven years after the combination without compensation. It is also proposed by one representative of the staff that any radical change in a man's work should entitle him to retire if he wishes, and that upon so retiring he should be entitled to compensation. Also, that if any member of the staff could prove that he had suffered direct loss as the result of the combination, he should be compensated; also, of course, that all pension rights should be safeguarded.

Now, one of the conditions in the Treaty between the Board of Trade and the Great Northern, Great Central and Great Eastern Companies in 1909, applied to this question of the staff. One of the agreed clauses was to the effect that, if during three years after the passing of the Act authorising the union between the Companies, any permanent servant should be dismissed by reason of the passing of the Act, he should be compensated, compensation to be settled by arbitration if necessary. No right to compensation should be given to any servant who was dismissed for misconduct, or whose services were dispensed with for any other reason than that they were not required by reason of the passing of the Act. In the same year, when there were two amalgamation Bills before Parliament, in which the Taff Vale Company was interested—one being the proposed amalgamation of the Taff Vale and Rhymney Companies, and the other of the Taff Vale and Cardiff Companies—the promoting Companies in both cases inserted a clause in their Bills that no permanent servant should be discharged as a result of those Acts being passed. Neither in the case of the Great Northern, Great Central and Great Eastern Bill, nor of these two Welsh Bills, did the Bills in fact pass, and therefore

these clauses can only be regarded as the pious intentions of their promoters.

On behalf of the Railway Companies it has been urged that in point of fact combination has not affected the members of the staff, and in confirmation of this the London and North Western and the Midland Companies state that out of some 140,000 men employed by them only 1,717 have been affected as the result of their working alliance, and that not a single man has in fact been dismissed, although in some few cases the work may have been changed, and the rate of wages slightly decreased.

So, in the same way, the South Eastern and Chatham Companies state that as a result of their working union, no one has been dismissed, except a few clerks in the Accountant's Department who were pensioned; and that in fact the combined Companies are now employing some 2,000 more men than they were at the time of the union. But it is admitted that there have been some new branches of work undertaken by them, so that might account for some of this increased employment, but not for all. In the South Eastern and Chatham case it is also stated that the Chatham men, whose wages in some cases were not so high as similar grades on the South Eastern, were put upon the same level as their colleagues on the South Eastern system. The same thing happened upon the amalgamation of the Lancashire and Derbyshire Company with the Great Central in 1906, when the wages of the men employed by the former Company were raised to the Great Central standard.

Further, with regard to the alleged loss of employment, or possible loss of employment, as a result of combination, it is pointed out that the annual wastage in railway service in this country is something between 5 and 7 per cent., and therefore any slight redundancy that might be caused by combination would very soon right itself.

The real objection of the Companies to the Board of Trade clause to which I have referred in the Great Northern, Great Central and Great Eastern case is that it might impose upon them the task of having to prove that every dismissal was not due to combination. They say that that would lead to a great deal of difficulty and possibly ill-will, which they are anxious to avoid. They also object that all attempts at improved working and increased efficiency would be interfered with, and that discipline might also be affected. Again, those Companies who have entered, or propose entering, into combinations which require Parliamentary sanction, feel it a grievance that they should have these restrictions placed upon them, when in the case of Companies entering into a pooling agreement or working alliance no such restrictions have in fact, or will be, placed upon them, because they are not under the necessity of coming to Parliament at all.

The Report of the Committee of 1911 goes into this matter at great length. It is unnecessary for me to read the whole of it to you. At the commencement they state in Par. 159 :—

“ We have acted on the assumption that it is an accepted principle that Parliament acknowledges a special duty to regulate industries which are directly created by its own Acts, and which as a consequence may be modified by subsequent Acts. This principle Parliament has never hesitated to apply in practice to railway servants, as occasion has arisen.”

They then discuss at considerable length the various arguments put forward on both sides, which I have tried to summarise to you, and then they go on to find as follows. Their more important findings appear to be these :—

“ We find in regard to railway employees :—

(1) That the contention of the railway servants as to the specialisation of their industry and the



peculiar difficulty they find in changing their employment, has a substantial foundation as regards many classes of railway servants. Men leaving one railway can seldom rely upon obtaining employment upon another, except in the lower grades, as the Companies usually have their own men waiting promotion. The value of a railway servant often consists largely in a special skill, which is of no worth in other employment."

(2) That one of the main inducements to compete for admission to the railway services is the strong presumption of the permanence of employment during good behaviour.

(3) That amalgamation and working unions may result in the displacement of labour, especially in the higher grades. Even pooling arrangements may operate in this direction.

(4) These amalgamations or more partial unifications may block promotion, and some men may receive less pay than before. On the other hand, other men are likely to receive increased pay, and on amalgamation there is usually an upward assimilation of wages.

(5) Dismissals might involve the loss of valuable pension rights.

(6) Amalgamations and such unifications as we have been considering do not make many dismissals necessary. The normal wastage of the staff is sufficient as a rule to prevent the necessity of dismissals in the rank and file."

They then make the following recommendation :—

(i) "We are prepared to recommend that conditions for the protection of the staff not less stringent than those embodied in the clause which it was agreed to insert in the Bill of the Great Northern, Great Eastern, and Great Central Companies of 1909 should be imposed upon Railway Companies seeking powers from Parliament to amalgamate or form working unions."

Therefore, in the case of amalgamation and working unions they recommend the clause, which these three railways accepted in their Bill of 1909, shall be inserted in all future Bills. As regards other agreements, meaning no doubt pooling agreements, they say :—

(ii) “Although we recognise the fact that other and minor agreements between Railway Companies may produce considerable displacements of labour, we find these agreements are so varied in character and extent that we have considered it impossible to impose a similar statutory restriction upon them.”

Therefore, as regards pooling agreements, they recommend that there shall be no restriction as regards the effect of any such agreement upon the staff. It would thus appear that those entering into pooling agreements may have a preference—whether undue or not, I am unable to say—over those who have to come to Parliament in order that their proposals be carried into effect.

They then say :—

(iii) “We do not think it necessary to recommend that any statutory protection should be given against alterations in the conditions of employment as a result of amalgamations which, although not involving dismissal, may yet be in some respects unfavourable. There would be a danger that any such obligation might hamper the Companies in introducing new methods of working even where the staff would on the whole benefit, and that it would lead to disputes and friction without securing any corresponding benefit.”

Finally they recommend :—

(iv) “As regards pension funds care should be taken in Acts authorising working unions and amalgamations, that the pension rights of the men are preserved.”

This concludes my third head—the effect of combination on the Companies who are parties to such combination.

#### IV—OUTSIDE COMPANIES

I NOW come to the fourth head of my subject, namely, the effect of combination on outside Companies.

##### *Diversion of Traffic*

One of the most important effects may be the diversion of traffic. No doubt diversion of traffic may occur without combination between any Companies. For obvious reasons all Companies try to obtain as long a haul as possible, and there may be other special reasons whereby one Company prefers traffic to follow one route rather than another. But if combination takes place some diversion will almost inevitably occur, because the combining Companies will then do their utmost to keep through traffic on their own rails.

Let us take the case of what were originally three Companies: one, A, forming we will say end-on junctions with two other Companies competing with each other—B and C. Prior to combination, traffic originating on system A for places served by both B and C Companies has been divided among those two Companies, part going by B's route and part by C's route, the rates being the same, and the facilities being approximately the same. But combine A and B and you then have a through route in the hands of one Company, and poor C will be left in the cold altogether.

Take what I may call an impossible example. That is why I take it to explain my meaning. Take a Company south of the Thames, the Midland, and we will say the Great Northern. The present traffic from the South of England to Sheffield or Leeds—Leeds is better, as it is directly served both by the Great Northern and the Midland—will proceed over

the Southern line in any case, and then either by the Great Northern or the Midland. Assume just for the sake of this argument that the Southern Company were to combine with the Midland. In that case you would have a through route (including the exercise of certain running powers in London) from the south to Leeds in the hands of one Company, or of two allied Companies, and it is therefore perfectly plain that it would be to the interest of that Company or of those Companies to send all the traffic by their own route, and that the Great Northern would get little or nothing unless it was traffic specially consigned by their route.

*“Local Traffic” Rule*

This is more especially the case because we now come to an important rule of what I may call railway etiquette or practice, known as the Local Traffic Rule. As I understand it, it is this: Where as between common points of origin and of destination there is one route wholly in the hands of one Company, and there is also an alternative route in the hands partly of another Company which is at the point of origin, and partly in the hands of the first Company, which is at the destination, the Company owning the first route are under no obligation to receive traffic between the two points offered to it at the point of junction between the line of the second Company and their own line on the alternative route. I do not know if that is clear to you. As between points X and Y there are two distinct competitive routes. Route No. 1 is owned throughout by Company A; route No. 2 is owned at the point of starting, the point of origin, by Company B; and then later on, its line joins a line leading to Y, owned by Company A. The rule of railway practice is that at this point of junction Company A is under no obligation to receive traffic for Y offered to it by Company B if that traffic comes from X, which is served by

Company A's own route, that is by route No. 1, which is wholly in Company A's hands.

This is probably the most important way in which combination affects other Companies. As a result of combination you have an extension of this Local Traffic Rule, and in many cases what had previously been a free route for an outside Company is now closed to it, because by means of combination there is a through route open and available wholly in the hands of the combined Company, and as a result the combined Company will no longer accept competitive traffic offered to it by the third, that is the outside Company. This is often the effect of combination in practice, and so you will find sections inserted in Amalgamation Acts providing that, notwithstanding combination, the outside Companies shall still have the same rights of having their local traffic transferred to and conveyed on the system of the combined Company, notwithstanding the existence of this Local Traffic rule.

For instance, in the Great Central and Lancashire and Derbyshire Amalgamation Act of 1906, the Midland—which was hit in this way, opposed the Bill on that ground, and they got a section put in for their protection. The section confirms a scheduled agreement between the Great Central, and the Midland, and when you turn to the agreement you find one of its provisions is that the Midland Company may at all times canvass for and obtain traffic, both in goods and minerals, which in consequence of the intended amalgamation of the undertakings of the Great Central and the Derbyshire Companies, would become local traffic of the Great Central Company; therefore, the Midland are still entitled to have their traffic taken over and received by the Great Central, notwithstanding that as a result of the amalgamation certain traffic, which had formerly started on the Lancashire and Derbyshire, and had then been transferred to the Great Central, became local traffic of

the Great Central—that is to say, traffic starting and terminating on their own system. But for this protection the Great Central would have been entitled to turn round to the Midland and say, “No; now we have a through route between these places by means of our own line, and we shall no longer accept your traffic between these same points.”

You will find that one of the most common causes of opposition by other Companies in all these amalgamation proposals is that they will be affected by the extension of this Local Traffic Rule, in the manner which I have tried to describe.

This rule does not arise in connection with pooling agreements, because there the two or more combining Companies retain their identity, and therefore there can be no union of routes in one hand so as to create “local traffic.” But although this is a rule of railway practice, it is a rule that the Courts of Law refuse to recognise. The point arose some three years ago in a case before the Railway Commissioners brought by the Great Central Company against the Lancashire and Yorkshire Company<sup>1</sup>—I need not go into the details, but it involved this question as to the validity of the local traffic rule. The able judge at present presiding over the Railway Commission, Mr. Justice A. T. Lawrence, then said that this practice, however convenient it may be, has no validity in law, and that it was no defence whatever to the demand by the Great Central Company that their traffic should be accepted. I ought to add, so that you may not be under any misconception in the matter, that this part of the application of the Great Central was refused on other grounds, so that in the result they lost this part of their case, but so far as this point of local traffic was concerned, the defence put forward by the Lancashire and Yorkshire was not approved or supported by the Court. The Report of the Committee of 1911 on this question, in paragraph 98, is to

<sup>1</sup> xiii. Ry. and Ca. Tr. Ca. 266.

the effect that inasmuch as Railway Companies have the remedy in their own hands, by going to the Court, they did not propose to make any recommendation that the existing law should be strengthened.

*Exchange Junctions Altered*

The next point in which outside Companies may be affected is that the points of exchange, where traffic coming from one Company to another is exchanged, may be altered; the outside Companies may be required to hand over traffic to the combined Company at a different point in the through journey, with the result that the outside Company will obtain a shorter haul. An example of this will show what I mean. In the South Eastern and Chatham union the Great Western obtained special protection that the points of exchange should not be altered, the reason being that prior to the union they had exchanged the South Eastern traffic at Reading, where, as you know, the Great Western joins the South Eastern; but as regards the Chatham line they had brought it all the way up to London and then, by the little West London line, round to the old goods depot of the Chatham at Stewart's Lane, Battersea, where they handed it over to the Chatham and received traffic coming in the opposite direction. The natural result of the union would have been that all the traffic of the South Eastern and Chatham would have been exchanged at Reading; in order to protect themselves, and to retain the long haul so far as the Chatham traffic was concerned, the Great Western got a special section put into the Act authorising the union whereby they retained the right to hand over and receive traffic at Stewart's Lane as before. A similar clause was also inserted for the benefit of the Brighton, whose previous points of exchange had been at Redhill, so far as the South Eastern were concerned, and Norwood Junction for the Chatham; there again the Brighton Company

retained their rights, although without them they would have had to hand over and receive the whole of the traffic at Redhill.

#### *Effect on Rates*

Another effect on outside Companies is that where rates are reduced as a result of combination between Companies owing to the several railways being treated as one—a subject which you will remember that I dealt with in the last lecture—competing rates on other Companies' systems will also have to be reduced to the same point as the new rates on the combined system. This, I believe, works out in a far larger number of cases than might be supposed. When the Great Northern, Great Central, and Great Eastern union was proposed, other Companies went into the matter and found that, in many cases, owing to the decrease of the rates that would have resulted from those three systems being thrown into one, their own competing rates would have been also seriously reduced. For example, the rates from places served by the North Western or Midland, to places in the Eastern counties such as Cambridge or Norwich, would have been affected.

So also, in the same way, if rates are revised as a result or a condition of combination, any reduction that might be brought about in that way will in the same way affect the rates of competing outside Companies.

#### *Effect on Agreements*

The last effect on outside Companies is with respect to existing agreements. There was an example of this in the amalgamation of the Great Central and Lancashire and Derbyshire and East Coast Companies in 1906. There the Lancashire and Derbyshire which was a small line with a small passenger traffic, had, under an agreement, the right to use the Midland station at Sheffield. So long as that was confined to the little Lancashire and Derbyshire the Midland had



no objection, but as soon as the Lancashire and Derbyshire was merged into the Great Central it became a different question altogether, and the Midland had considerable objection to their passenger station being used by the Great Central. Therefore, in the amalgamation, the Midland got a provision inserted in the Amalgamation Act to the effect that the previous rights of the Lancashire and Derbyshire, so far as regards the use of this Midland station at Sheffield, should, subject to certain conditions, cease. No doubt there are other instances in which the result of amalgamation, or some other form of combination, would affect existing agreements so as to render them objectionable to an outside Company, which was a party to such agreements.

#### V—THE PUBLIC

THE last head which I have to discuss is that of combination from the public point of view.

##### *Competition*

Combination means a diminution in competition. We are thus at once faced with the much debated problem of competition, and the advantages thereby obtained, and the evils produced by its absence. I cannot now do more than glance at this involved subject.

*Prima facie* it would appear that the public stand to gain by competition between Railway Companies, or, indeed, between any kind of traders; it is unnecessary to labour this.

A well-known railway manager has said: "Every railway man knows that most of the good in our railway system is due to the spirit of emulation and competition. Take away that spur and British railways would soon cease to be, what, with all their faults, we have reason to boast they are, the best in the world."

The construction of a new railway in particular may cause a reduction in rates such as followed the opening of the Barry Railway in 1889, and will certainly do so should it afford a shorter route. The opening of an effective new competitive route, it is fairly safe to predict, will result in an improved service and increased facilities on the older line or lines.

Granted, then, that there is a *prima facie* presumption in favour of unrestricted competition, it appears to me that there are certain considerations especially applicable to the railway industry which modify, and to some extent rebut, this presumption. And here let me again remind you of the finding of the Committee of 1911, "that the effects of the limited degree of competition still existing between Railway Companies, are not necessarily to the public advantage."

The first of these considerations is that a railway must be of sufficiently large size to afford the best service to the public. This was recognised so long ago as 1846, when the Commons Committee, which sat in that year, pointed out that small Companies were not able to give the greatest benefit to the public. In a previous lecture I referred to the railways of Ireland, and showed how their amalgamation has been repeatedly recommended by various Commissions and Committees of inquiry. Therefore, I think it may be fairly said that the combination of small Companies is in the public interest. An unduly small Company makes neither for efficiency or economy.

Another consideration is that all combinations are not necessarily between competing lines. This is sometimes overlooked; but if you examine the cases of combination in this country you will find that many have been between continuous lines and not between competing lines at all. For instance, the Great Western main line to Cornwall is the result of the union of several lines—the original Great Western

to Bristol, the Bristol and Exeter, the South Devon through Devonshire on to Plymouth, and so on. The same thing is true with regard to their line to Birmingham and Birkenhead. The North Eastern main line was formed by the amalgamation of continuous lines from Leeds and York to Berwick. Therefore it does not follow that because you have combination competition is thereby abolished, for the good reason that in many cases competition never existed.

*Competition most Valuable before Railway System  
fully developed*

There is a third point to which I am inclined to attach some importance. This is that the value of competition is considerably greater in the earlier stages of railway development than in the later. When you reach the point of high efficiency combined with small profits, competition becomes less valuable and will also become less active. The standard of public requirements is constantly being raised, and the Companies, by competition no doubt, do their utmost up to a point to secure the favour of the public by continually raising the standard of accommodation and of the facilities which they offer. But there comes a point when it is impossible to offer a higher standard to the public and at the same time work the undertaking at anything like a reasonable profit; once you reach that point it becomes a question as to how far competition is of value. I grant that it is open to question, and it is difficult to say when that point of the reasonable satisfaction of the public requirements is reached. Comparing the present day facilities afforded for all classes of traffic, not only with those given in the early history of Railway Companies, but even with those of thirty years ago, it must be admitted that the standard has risen enormously, and I think that it is fairly open to argument whether it is possible to give a much

greater service and further facilities than those now given if a reasonable financial return is to be obtained.

*Self-interest of Companies*

Another point to be remembered is this : A Railway Company will develop traffic in its own interest ; whether competition exists or not, a Railway Company exists for the purpose of conducting as much business and of carrying as much traffic as possible. It therefore follows that it will not stand still for the sole reason that there is no active competitor to urge it on to further efforts. A notable instance of this is the North Eastern Company, and there is an oft-quoted passage in the Report of the Joint Committee of 1872—well known to railway men—where that Committee says : “ The case of the North Eastern is a striking illustration. That railway, or system of railways, is composed of thirty-seven lines, several of which formerly competed with each other. Before their amalgamation they generally had high rates and fares, and low dividends. The system is now the most complete monopoly in the United Kingdom ; from the Tyne to the Humber, with one local exception, it has the country to itself, and it has the lowest fares and highest dividends of any large English Company.” I do not know that that description about the highest dividend quite holds true now ; but the North Eastern, taken as a whole, has done nothing to derogate from that favourable description of forty years ago. I do not appear as an advertising agent for the North Eastern, but I think it is admitted that it is a most progressive Company, and that it does its utmost to develop traffic by affording facilities not always found in other places where the benefits of competition exist. It has a sliding scale for iron ore, which does not exist elsewhere, the scale varying with the price of pig-iron ; if pig-iron goes up, the scale goes up, and it descends proportionately when

the price of pig-iron falls. I believe that it gives exceptionally low grain rates ; it has the well-known thousand miles first-class ticket ; and its third class return fares are less than those of other Companies. So that on this system, at any rate, the absence of competition has not deprived the public of these facilities.

Notwithstanding the recent increase in combination, railway competition is not dead. There is still keen competition for the North to London traffic between the North Western and Midland on the one hand and the Great Northern and Great Central on the other. The opening of the new Great Western route to Birmingham has increased the competition as regards the traffic between London and the West Midlands, and the opening of the Fishguard and Rosslare route has had the same result as regards the England to Ireland traffic.

#### *Competition in Rates*

For many years, as you know, competition in rates and fares as between existing Companies has been dead. The reports of the 1872 Committee, and of the earlier committees which I have mentioned in the course of these lectures, constantly refer to the absence of competition of this kind. The fact that the rate conferences to which I have previously referred, first appeared in the sixties, shows that for the last fifty years at least the idea of combination in fixing rates has been in existence. It may be that, in some cases, competition introduced by a new Company, would have a beneficial effect from a public point of view in reducing rates ; but it is almost certain that some arrangement will be come to in such a case, resulting possibly in permanently lower charges.

#### *Competition in Facilities*

Where competition has existed, and does exist, is in facilities. It is objected that the present tendency

to combination among Railway Companies will be to restrict and to stereotype the facilities now enjoyed by the public. I do not know that any very striking example of this was brought to the attention of the recent Committee. Some instances were quoted in which free cartage had been withdrawn—namely, where a trader's premises were served by two combining Companies one of which had a private siding connection, thereby inducing the other Company to give free cartage prior to the combination being effected. Incidentally, I do not know whether and how far free cartage might not amount to an undue preference; but, assuming it was not, the trader suffered to the extent of losing his free cartage. On the other hand he could despatch and receive all his traffic at his siding, so that in the result his position would be much the same. You will see in a moment how the Committee of 1911 propose to meet a question of this kind. In the same way certain indulgences previously afforded by some Companies—by indulgencies, I mean facilities which they were not required by law to give—have been brought to an end as a result of combination. The most noticeable example of this is the Scottish wagon cases to which I have already referred, where the free use of wagons for storage purposes was abolished as a result of an agreement between the Scottish Companies.

#### *Other Forms of Competition*

It must be remembered that although competition among Railway Companies may be restricted, you cannot do away with other forms of competition. In a country like this there is always a most potent competitor in the sea. Carriage by sea is cheaper than carriage by rail, and this has always influenced railway rates. You will constantly find a low rate which is objected to as amounting to an undue preference, defended and justified on the ground of competition by sea.

Another growing form of competition is that afforded by motor vehicles on the road, which I understand is being felt in several districts, and will probably increase. As regards passenger traffic you have the growing competition of the electric tram and motor omnibus.

### *Competition between Districts*

There is also another important factor in considering this question, and that is competition between districts. Although one particular town may be served by one Railway Company only, or by two or more Companies who have entered into a form of combination, yet that town will be in competition as regards its staple trades and industries with other districts all over the country; unless it receives proper railway facilities for its traffic its trade will languish and decay, and the Railway Company will lose its traffic and suffer according. Therefore, in order to retain its traffic from that particular district, the Company must give a reasonably efficient service whether competition exists or not. This is especially seen in the case of sea ports. Grimsby, which is served by the Great Central so far as the access from manufacturing districts is concerned, is in competition with Hull, which is mainly served by the North Eastern, a competition that will be increased by the opening of the new dock at Immingham, near Grimsby. Although you cannot say that competition between Railway Companies exists to any great extent, either at Grimsby or Hull, yet the competition between the two towns exists, and therefore both the Great Central and the North Eastern find it necessary to give a good service to the towns respectively served by them in order to attract traffic to and to retain traffic on their own systems. There was another example in the recent case brought by the Port of London Authority against the Midland and

other Railway Companies. There the Railway Companies are giving exceptionally low export rates from the manufacturing districts in the North to London in order to attract traffic to London and so get it on their lines running to London from the North. The Port of London, of course, is in competition with various ports in the North—Liverpool, Hull, Newcastle and others nearer to the manufacturing centres—and the Railway Companies would lose this London export traffic if they did not give these low rates.

In the same way there is competition in the production of certain goods. Two places will compete with each other in the production of the same class of goods, or in a certain trade. Take, for instance, the fish trade at Grimsby, Fleetwood, and Milford Haven. The Great Northern and Great Central at the first, the North Western and Lancashire and Yorkshire at the second, and the Great Western at the third, are all giving fast services to London and other great cities in order to develop the trade of these places and in order to obtain traffic for themselves. Another example of this competition between places is that between Bournemouth, Brighton, Torquay, and other watering places which depend very largely on the passenger service afforded to them. It is common knowledge that the passenger service given by the South Western to Bournemouth is extremely good, although there is no competition there, the reason being that if the South Western did not give a good service there would be less inducement for people to live at and visit Bournemouth, and many would go to Torquay or other places where a better service was afforded, with a consequent loss to the Railway Company. The same thing applies to residential districts near London and other towns which greatly depend on their railway service.



*Advantages to Public*

I will now point out some ways in which benefits are obtained by the public as a result of combination. As regards passenger traffic, tickets (including season and traders' tickets) are available by any route, so that people going from London to Manchester, we will say, by the North Western, have the option, if they wish, of coming back by the Midland route; thus a double service of trains is put at their disposal, so that if they happen to miss one they will not have to wait long for another on the other line.

In many cases through trains are run by a shorter route, since there is no inducement for one Company to secure the longest possible haul on its own system if a shorter route is available over an ally's railway. Thus passengers from Liverpool to Scotland, travelling via the West Coast route, are now carried without any change by the shorter Lancashire and Yorkshire line from Liverpool to Preston instead of the longer North Western route. The alliance between these two Companies and the Midland has led to a number of new through routes being opened, thus saving time and the necessity for changing carriages. The through services between Nottingham and Leamington, or from the Lancashire and Yorkshire stations to London are examples. In the same way many more through bookings are available.

With respect to goods traffic many of the advantages which I mentioned as accruing to the Companies themselves, will also be shared by the public. Thus the use of the shortest route means quicker delivery. Full wagon loads can now be obtained in many more cases, with the result that a wagon can travel direct between the points of departure and destination instead of the goods being transhipped at one or more points en route from one wagon to another; time and labour are thus saved. This is more important than might be supposed, because it appears that the average consignment of goods is a

small one, being not more than  $2\frac{1}{2}$  cwt. As regards traffic between comparatively small places transshipment was previously, in many cases, necessary, but by concentrating all the traffic on one route full wagon loads can be obtained.

Another result is that all stations, goods yards, and receiving offices of the combining Companies are available for the public ; the trader can therefore make use of the nearest station or yard, no matter which railway is to be used. For instance, in Liverpool, where it is the custom for traders to do their own carting, the trader wishing to despatch his goods by the North Western can cart to the nearest yard, whether it belongs to the Midland or the Lancashire and Yorkshire, or the North Western, as the case may be, instead of as before, possibly having to traverse a long distance before he got to the nearest North Western yard. In the same way goods can be delivered without extra charge at the station or yard most convenient to the trader, there again saving him trouble and expense in taking delivery. At Buxton the North Western goods station is at a more convenient part of the town for business purposes than the Midland station ; now, all traders sending goods to Buxton, whether by Midland or North Western, can have them delivered at the North Western station, thereby saving expense and inconvenience.

The public further get the benefit of the reduction in rates in the case of an amalgamation, or (when made applicable) of a working union, which results from the combining railways being treated as one for the calculation of rates. I have already dealt with this point.

There is another benefit appreciated by the public, and that is that it is possible to quote a new rate more quickly, since it will not be necessary to consult a previously competing Company if the rate only applies to the combined system. There is sometimes a complaint that when a trader asks what a rate will be for a

certain consignment he cannot get a speedy reply, owing to the necessity of consulting other Companies.

*Disadvantages from Traders' Standpoints*

On the other hand, a trader cannot play off one Company against another; this seems to be a grievance felt in some quarters. It may be that in the past rival Companies granted indulgencies and refrained from enforcing their rights in order to obtain and retain business. Combination has greatly diminished this, if it has not destroyed it. The formation of the Joint Claims Committee, to which you will remember I referred on a former occasion, now deals with all claims under owners' risk notes on their merits, and the temptation to act with undue leniency in order to secure the continuance of a trader's custom is removed.

It has been objected that, in some cases, rates have been raised directly or indirectly as a result of combination. As to this you must remember that under the Traffic Act, 1894, any increase in rates may be brought before the Railway Commissioners, and it will then become necessary to justify the same. The action of the coal-carrying Companies in abolishing the free allowance of  $\frac{1}{2}$  cwt. per ton in 1907 was, in some quarters, quoted as an instance of the evils resulting from combination; but whatever may have been the cause for this step, it has since been upheld by the Commissioners.<sup>1</sup> It must also be remembered that this step was taken not only by allied Companies but by competitive Companies, such as the Midland and Great Northern.

The main objections on the part of the traders are, I think, rather to the Joint Claims Committee, to some of the conditions of the owners' risk note and to the Rates Conferences. You will also find that traders often object to the through land and sea rates, where the Railway Companies also own steamships and quote a through rate, which represents what is said to be a very

<sup>1</sup> xiv. Ry. & Ca. Tr. Ca. 100.

low rate or freight on their steamers in order to secure traffic for their railway. But as regards amalgamations and other forms of co-operation there is a curious lack of solid complaint.

*Protection for Public*

One trader has said that with proper precautions protecting traders against oppressive or despotic treatment they would be in favour of amalgamation. This brings me to my next point—that is, what ought that protection to be?

First, what is the existing protection? So far as regards amalgamations, working unions, leases, and, in some cases, working agreements, these must be approved by Parliament before they can be carried into effect. Here all parties who can show a reasonable cause why they should be heard have full power of appearing and presenting their objections. Experience shows that the combining companies will do their utmost to come to terms with opponents, and a Parliamentary Committee can be trusted to see that justice is done in a case where no settlement is made. In addition, the Board of Trade will play the part of a watch-dog in the public interest. As regards pooling agreements, certainly as regards competitive traffic, Parliamentary sanction is unnecessary.

Secondly, as regards any increase of rates, under the law as it stands, the increase must be justified by the Railway Company. This is the result of the Railway Traffic Act, 1894, which provides that in any case of increase of rates any trader affected can bring the increase before the Railway Commissioners, whereupon the Railway Company is required to explain and justify that increase, the onus of proof being on the Company. In the South Eastern and Chatham Act of 1899 this was even carried a stage further, for it was there provided that neither goods rates nor passenger fares should in fact be raised without the previous sanction of the Commissioners.

Thus these combined Companies cannot even raise their rates without getting a previous sanction.

Thirdly, as regards facilities, a Railway Company is under the Traffic Act, 1854, bound to give reasonable facilities. Reasonable is, of course, a question of fact in every case, but as I have said, the standard of public requirement is constantly rising, and what was reasonable yesterday will probably not be sufficient for to-morrow. Any interested person can bring a Railway Company before the Royal Commissioners and ask that reasonable facilities may be ordered as regards any particular point. There is a special provision in the South-Eastern—Chatham Union Act enabling any local authority in the district served by those Companies to complain to the Board of Trade with regard to the passenger train service, and the Board of Trade can make such order as they think fit.

As a last resource, Parliament itself can step in and pass legislation requiring the Companies to give further facilities or further accommodation in any respect in which the existing law may have been found to be inadequate. This is no empty remedy. The very Act I spoke of, the Traffic Act of 1894, was passed as a result of rates throughout the country being raised by the Companies upon the revised Rates and Charges Orders of 1891-2 coming into operation. In consequence of the public outcry Parliament intervened, and now such increases of rates must be justified. Another example was in 1904, when the Courts having held that a Railway Company was under no obligation to deliver traffic at a private siding, Parliament again passed an Act known as the Private Siding Act requiring all Railway Companies to afford reasonable facilities for connecting private sidings with their railways and for receiving and delivering traffic at such sidings.

Many other remedies are open to the dissatisfied members of the public. A not uncommon one of recent years has been what is called blocking Railway Companies' Bills in Parliament. All sorts of grievances

serious and otherwise, are then dealt with when the Bill comes up for second reading. The ordinary practice was for a private Bill of this kind to go through second reading unopposed, but it is becoming more and more a custom for Members who wish to give utterance to an alleged grievance against the Company to block, *i.e.*, to put down a motion of opposition to the second reading, in which case it becomes a matter certainly of delay, and in some cases of difficulty for the Bill to proceed. As a classical example of what can be done in this way, a few years ago, when a Bill of one of the great Companies was blocked in this way, the Company's solicitor in vain tried to find out why this blocking motion had been put down. At last he got hold of the Member who had done it and asked him what the objection was, as the Company had always tried to meet the public requirements. It was only an ordinary Bill and did not propose anything startling. The Member replied, "The fact is, when I was in one of your refreshment rooms you charged me 3d. for a cup of tea, and I think it ought only to have been 2d." So that gives you some idea of how far this power of blocking can be carried.

Another remedy is that under Section 31 of the Traffic Act, 1888, any person can complain to the Board of Trade. The Board of Trade then have power to call upon the Company for an explanation in a proper case, and the Board will try and settle the dispute. In this way, I believe, for the twenty years from 1888 to 1907 some 1,577 complaints were dealt with, in 523 of which the complainant stated that he was satisfied with the explanation given.

Again, a rather obsolete method is open. The old Regulation of Railways Act, 1844, provides that the Attorney General may, on certificate of the Board of Trade that a Railway Company is exceeding its powers or is failing to comply with the provisions of any general or special Act, take action against the Company.

Then there is always the remedy of promoting a new

line to compete with existing lines, which is perhaps not so often done now, as the country is pretty well supplied with railways, and perhaps the financial prospects are not so alluring as they were supposed to be. But still, given a reasonable chance, you will still find plenty of railway enterprise. For instance, in the South Yorkshire coalfields, near Doncaster, there has been a considerable amount of railway promotion, and you also see it in active operation around London, where new electric schemes have been and are being promoted in the present session of Parliament.

#### *Proposed Remedies*

So much for existing remedies. I will consider for a moment some of the proposed remedies. First, it is suggested that Parliamentary sanction should be required for pooling agreements as well as for those other forms of combination which I mentioned just now. The Committee of 1911 did not favour this. In fact, they recommend that Companies should have more extended powers of entering into combinations than they have at present, and so far as regards pooling agreements, they do not favor the suggestion that Parliamentary sanction should be required. They say in Par. 127 of their Report, "With regard to the approval of agreements between Companies, careful consideration has led us to the conclusion that the time has come when it should be definitely recognised that the Railway system of the country is necessarily to so considerable an extent a single entity that the *bona fide* transference of power between individual Companies should not be a matter requiring the consent of Parliament. . . Companies should be allowed to delegate such powers as they think proper . . . subject only to such conditions as we suggest below." They then, in Par. 129, recommend that the Railway Clauses of 1845 should be extended so as to give Companies full powers to enter into working agreements without going to Parliament or the Railway Commissioners,

just in the same way as they can make agreements with regard to running powers<sup>1</sup>. So that you see that this particular suggestion has become rather a boomerang, for, instead of recommending that pooling agreements and alliances ought to be approved by Parliament, the Committee go the other way and say that the Companies ought to be free to enter into full working agreements.

Another suggestion is that all agreements should be published. Under a private Act of 1859 copies of all agreements, pooling and otherwise, which the Lancashire and Yorkshire Company may enter into have to be sent to the Board of Trade. Of course, when an agreement has to be approved by Parliament or some other body its terms become public property. The 1911 Committee are in favour of this. They say in Par. 134, "We think that all agreements which enable a Railway Company to exercise powers which it could not otherwise exercise, or which oblige it to abstain from exercising powers which it would otherwise be entitled to exercise, or which provide for the pooling of traffic, ought to be made public."<sup>2</sup> They also express the hope that full information as to rates, conferences, and similar bodies will be published.

The revision of rates and charges I have already dealt with.

Another suggestion is that the Railway Commissioners should be empowered to revise rates which have been fixed as the result of agreement between different Companies. The suggestion that an outside tribunal should settle rates has been made on many occasions. The example of the United States is quoted, and it is argued that the Railway Commissioners can under certain circumstances fix a through rate. The Committee of 1911 in their Report, Par. 76, say that they "cannot see that to give such a power to any tribunal would afford the public any real protection."

<sup>1</sup> The Railway Bill of the present session contains a clause authorising Railway Companies to enter into working agreements.

<sup>2</sup> The Railway Bill of the present session contains in part a clause which gives effect to this recommendation.



Another proposal is that any increase of passenger fares should be placed on the same footing as an increase in goods rates, so that where passenger fares are increased they should require to be justified before the Commissioners in the same way as increases in goods rates now have to be under the Traffic Act, 1894. As I told you in the case of the South Eastern and Chatham Companies, the fares cannot even be raised without the previous sanction of the Commissioners. The present suggestion is that Companies should be free to increase passenger fares, but if brought before the Commissioners they should be required to justify them and to show that the increases are reasonable. On this the Committee of 1911 say, in Par. 188 (III.) of their Report: "It should be declared that the law with regard to increased charges applies to passenger fares and other charges made for the conveyance of traffic by passenger train." With regard to these suggestions, which have been supported by this Committee, I have to remind you that the President of the Board of Trade, Mr. Buxton, has pretty plainly hinted that if time permits, the Government will introduce a Bill to carry into effect these recommendations. Therefore, it may be that within a short time this particular suggestion as regards increase of passenger fares will be duly carried into law.<sup>1</sup>

It has also been suggested that the Board of Trade should have power to report on all Bills authorising combination if any alteration in the maximum powers of charge appears to the Board to be desirable. I suppose that this may be taken to be that any proposed alteration would be on the down grade and not on the up grade. The 1911 Committee on this point say in Par. 188 (XVII.): "The Standing Order of the House of Commons should be extended so as to require a report on Bills authorising railway combinations if any

<sup>1</sup> The Railway Bill of the present session gives effect to this recommendation.

alteration in the maximum powers of charge appears to the Board of Trade to be desirable." Here again they favour the proposal.

I ought to say a word on what will now be regarded as the Board of Trade standard or model clauses in cases of combination. I refer to those that the Board agreed with the Great Northern, the Great Central and Great Eastern in 1909. I have already mentioned one of those dealing with the staff, namely, that any member of the staff who was dismissed as a result of the proposed union should receive compensation. The other clauses then agreed were, first, that in calculating maximum charges the Railway Companies should be regarded as a continuous railway. I have already dealt with that. The second is practically the point about passenger fares, which I have just mentioned; these were not to be increased by reason of the union, and if the fares (including cheap fares, etc.) were raised, the Joint Committee of the three railways should be required to prove before the Commissioners that the increase was not due to the union. The Committee of 1911 goes a little further and recommends that all increases in passenger fares should be justified before the Commissioners. The third clause was that rates and charges were not to be increased by reason of the union, but if they were increased any alteration that was brought about by that union was not to be considered a reasonable ground for such increase by the Commissioners, the effect being that the Commissioners would have to disallow the increase, if the only ground for that increase was that it was due to the union. The fourth clause was that if any representation was made to the Board of Trade that facilities as a whole had been unreasonably diminished—as compared with those existing before the union—then the Board of Trade was to call for an explanation, and failing a satisfactory one, to refer the matter to the Railway Commissioners. If the Commissioners found that there was no reasonable justification for the

diminution, and that the public interest was prejudiced, they might order the facilities to be restored.

Now these clauses have to some extent been adopted and extended by the recommendations of the 1911 Committee. I have dealt with the point as to justifying any increase of passenger fares. With regard to any alleged diminution of facilities, the Committee recommend in Par. 188 (II.) that it should be provided that, where a facility or service is diminished or withdrawn it shall lie upon the Company to show that the reduction or withdrawal is reasonable. They also go further and recommend that it should lie upon the Company to justify a charge made for services hitherto rendered gratuitously.<sup>1</sup> That would apply to a case like the withdrawal of free cartage to which I alluded. You must recollect that the great point of all these recommendations of the 1911 Committee is that they should apply not merely to combining Companies but to all Companies. In one of the earlier lectures I said that the outstanding feature of railway legislation was that it was generally preceded by some sort of enquiry, such as a Committee of Parliament, or a Royal Commission, and that in nearly every case those bodies recommended that the general law should be altered and not that particular cases should be dealt with on their own merits. Here again you find this Committee of 1911 recommending in the ways I have mentioned that the general law should be amended. Where, for example, a facility is diminished or a new charge is made for a service previously rendered gratuitously, no matter whether it be by combining Companies or by an independent Company, like the North Eastern, outside any scheme of combination, they think that the Company should, if called upon, justify its action. There are a few other points—I do not know that they particularly affect combination—on which the 1911 Committee recommend that the general law should be

<sup>1</sup> The Railway Bill of the present session gives effect to these recommendations.

altered. These are that the procedure of the Railway Commission should be simplified in dealing with small cases, that the Board of Trade or the Railway Commissioners should have power to amend the statutory classification of traffic, and that the common law obligations of the Companies (as carriers) should be amended in certain respects.<sup>1</sup> In particular they say in Par. 188 (VIII.) of their Report: "Where goods are carried under certain conditions at owner's risk, the trader should be entitled to have the same description of goods carried under the same conditions, but at Company's risk, at a difference in rate which is reasonably sufficient to cover the risk to the Railway Company." It is now too late to discuss the law of carriers, nor does it fall within my subject. I would only point out that, as I understand the law, the conditions of an owner's risk note, which constitute a contract relieving the Railway Company of its full liability as a common carrier, can only be enforced if they are just and reasonable. It has been held that they are not just and reasonable unless the consignor has a reasonable alternative of sending his goods at Company's risk. What is a reasonable alternative must depend on the facts of each case, but there is authority for saying that any rate within the maximum is *prima facie* reasonable. If, therefore, this recommendation means that there ought to be two hard and fast scales of rates, one at Company's risk, and another at owner's risk, each reasonable in relation to one another, the result may be that rates will be subject to revision, either by in effect reducing the statutory maxima or by increasing the actual owner's risk rates.

<sup>1</sup> The Railway Bill of the present session gives effect to these recommendations.

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