



1898

EDITORIAL

Follow this and additional works at: <http://digitalcommons.law.yale.edu/ylj>

Recommended Citation

EDITORIAL, 7 Yale L.J. (1898).

Available at: <http://digitalcommons.law.yale.edu/ylj/vol7/iss4/4>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Yale Law Journal by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.

YALE LAW JOURNAL

SUBSCRIPTION PRICE, \$2.50 A YEAR

SINGLE COPIES, 35 CENTS

EDITORS:

CHARLES F. CLEMONS, *Chairman.*

EDWARD W. BEATTIE, JR., *Treasurer.*

WILLIAM A. ARNOLD,

ADDISON S. PRATT,

WILLIAM B. BOARDMAN,

ERNEST C. SIMPSON,

FREDERICK S. JACKSON,

HARRISON G. WAGNER.

Published monthly during the Academic year, by students of the Yale Law School.
P. O. Address, Box 1341, New Haven, Conn.

If a subscriber wishes his copy of the JOURNAL discontinued at the expiration of his subscription, notice to that effect should be sent; otherwise it is assumed that a continuance of the subscription is desired.

"THE bar has degenerated," says a member of one of our highest courts in the course of an after-dinner speech, and *Harper's Weekly* emphasizes this statement in a vigorous editorial of recent date. The pessimist does not have to be convinced that there is only one breed of sheep and that that breed is of the black variety; but we believe that there are many facts which justify one in taking exception to the finding of the learned judge. The average member of the bar may be less of an orator than the average member of a half-century ago, but who will deny that he is more of a lawyer? His speech may be less mellifluent, but his words are more terse and full of meaning; not, however, that the true orator is wanting even in this prosaic generation. There may be numerous instances where "clients are sought, even touted for," and some "young man who honorably declines to accept causes on speculation, or for contingent fees" may be "likely to go without clients," but the fact remains that the weak and disreputable and unscrupulous members of the profession seldom, if ever, have much influence or prominence. Moreover, it is the lawyers of the country who are striving steadily to obtain such uniformity of laws as will actually tend to reduce their practice by lessening business uncertainty and consequent litigation, and by decreasing the volume of law-breaking.

The statement that "questions of procedure are now as delightful to the mind of the average lawyer as questions of merit once were," is best answered by the fact that through the efforts of the bar, procedure has been made less and less technical, and

that, by codification and simplification, causes stand more upon their merits than was ever possible under the common law pleading of the good old days when everything, including the lawyer, was perfect. Let him who accuses the bar of degeneracy follow the work of the American Bar Association (which includes in its membership about one lawyer in every sixty in the United States) to see the great good that the bar is endeavoring to accomplish—for instance, by efforts to make the divorce laws less an object of reproach and scandal, to formulate a code of criminal procedure, such that the guilty may be brought more surely and speedily to justice, to simplify the organization of the Federal courts, and to raise the standard of legal education.

If the people would trust the bar as they should, the country would be better governed. There is great necessity for legislation that is really effective, and more lawyers are needed in the making of laws, as the most cursory examination of the average legislation will show.

As to the statement that the law has become less professional and more commercial, we reply that the same may be said of some other professions. Our government, for example, has become a great business institution, managed largely on business principles; and, if the lawyer has become a little less of a theorizer and a little more of a business man, it is only a necessary consequence of a great economic and social revolution that affects us all. This is an age of common sense, when false "professional dignity" counts for nothing, and things are accomplished with as little bluster and red tape as possible.

The lawyer has lost none of a proper degree of dignity; he is as worthy of respect as ever, and never was a more potent force for good than he is to-day.

* * *

THE Interstate Commerce Commission furnishes the example of a tribunal endowed with plenary power to effect its object but gradually shorn of that power by the decisions of courts till its usefulness is well-nigh destroyed. The eleventh report of the commission, just issued, is of particular interest in view of the strenuous efforts of the Joint Traffic Association to have Congress amend the Interstate Commerce Act so as to legalize pooling. The burden of the report is a plea for power sufficient to enable the commission to deal effectively with the abuses that it was created to prevent. The commission declares its present inability to enforce the clauses of the Act relating to unfair and

discriminating rates, and calls attention to what must be the outcome of the divesting of its powers by the courts, namely, the limitation of its work in the future to the mere investigation and making public of wrongs by carriers.

As to the interesting question of pooling, which has had the attention of the courts to such an extent within the past few years the commission seems to be no more unanimous than are the judges with regard to the desirability of permitting combinations of railways to make rates. The report says that the commission are not entirely agreed as to the wisdom of permitting pooling, but the majority are inclined to recommend that the experiment be tried, but only under condition that the commission or some other tribunal be "at the same time invested with adequate powers of control." The report does not, then, favor the granting of the pooling privilege in the broad sense of the term and states most emphatically that the commission is "unanimous in the opinion that to overturn the Trans-Missouri decision, to repeal the Fifth Section of the Interstate Commerce Act, and enact in its place a pooling bill, thereby permitting and inviting *unlimited* combinations between carriers, would be little better than a crime against the people of the United States."

As the people, the consumers, ultimately pay the freight, their interests demand that, if pooling be legalized it be also properly restricted. No trust can work so much evil as a combination of railways; no trust can have such wide-reaching influence, nor affect so many different persons or things; and no trust is so supreme within its own sphere. Hence, the folly of giving the carriers absolute power to make rates, when there is such a temptation to overlook the public under the natural impulses of self-interest.

There is most certainly need of a tribunal to regulate interstate commerce, and if the commission is to be anything more than a name there must be some sanction to enforce its authority. We believe that Congress will increase the power of the commission so that it can effect a more rigid and impartial enforcement of the Act to Regulate Commerce.