RAILWAY LEGISLATION
IN THE
UNITED STATES

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Railway Legislation in the United States

BY

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PREFACE

THE aim of this volume is to present a condensed analysis of the private and public laws which govern railways in the United States, and of the important decisions relating to interstate commerce. Statements and comments are based upon actual analysis and in large part upon analytical tables of charters and laws enacted in the various states. These tables present so many typographical difficulties that it was not thought expedient to publish them.

Chapter IV of the Introduction originally appeared in the *Annals of the American Academy of Political and Social Science*, for January, 1902; and chapters II, III, and IV of Part III appeared in the *Political Science Quarterly* for September, 1902. The author desires to acknowledge his indebtedness to the editors of these publications for their courtesy and kindness in permitting the use of this material in the present volume. Part II was included in a more general form in a report published in Volume IX of the Report of the

United States Industrial Commission, "Railway Regulation under Foreign and Domestic Charters." It is hoped that the addition of specific references will add to the value of this material in the present volume.

B. H. MEYER.

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PART I

INTRODUCTION

CHAPTER I

The Significance of Railways

The introduction of railways created a new world. So accustomed have we become to a civilization with railways that it requires conscious efforts to realize the economic, social, political, and moral influences which have emanated from them. Just as a single life spanned the gap between the Declaration of Independence and the laying of the first rail of the Baltimore and Ohio on July 4, 1828, so a single life still active upon the scene may have stored in its experiences all the manifold changes wrought by this modernized stage-coach; and the experiences of youth united with the work of manhood and the reflections of old age constitute the history and philosophy of railways as we know them to-day.

For every four hundred of the population of the United States there exists one mile of railway, or an aggregate of nearly 196,000 miles. These railways directly employ more than one out of every hundred of the population. They represent a capitalization equal to about one-eighth of the total wealth of the country, annual gross earnings amounting to $23 per capita, net earnings equal to

$7.67 cents per capita, and $2 yearly in dividends for every enumerated member of this nation. For every fifty-five persons the railways operate one freight car, and they place at the disposal of every sixteen hundred persons a little less than one passenger coach. Had all persons, young and old, travelled the same distance, each would have travelled 218 miles; and the tons of freight carried one mile approximates 1860 per capita.[1] These are mere playthings, but they are likely to convey to one's mind more definite notions than these same facts expressed in accurate statistics.

The beginnings of railways in all countries were accompanied by opposition from interests that looked upon steam locomotion as a threatening power. The fear of economic derangements acted as a retarding force even in localities devoid of adequate means of transportation and communication. In territories enjoying improved facilities this opposition sometimes resulted in violence. Of the latter, the United States knows relatively nothing; the former can be illustrated in every state and territory. The early opposition to railways foreshadowed in a negative manner what actual development was to demonstrate in a positive way with respect to their social and economic influences. The pack-horse, the stage-coach, and the country tavern, and all that goes with these

[1] Based upon figures compiled from official sources for *The Commercial Advertiser* for November 29, 1902, Financial Supplement, and the Reports of the Interstate Commerce Commission.

were soon superseded by other agencies better adapted to meet the new conditions of life. Limitless areas were transformed into fruitful farms, and the railways themselves became objects of wealth in the land whose value they had helped to create. The isolated settler was placed in touch with the world; and his wants, no longer dependent upon garden or farm or local market, could draw for their satisfaction upon the storehouses of the earth. The merchant's bazaar henceforth could offer commodities produced under many flags, and the man of learning exchanged ideas with scholars the world over. International unions, scientific, literary, industrial, and political even, sprang up in quick response to the throbbing of the larger life. The "bonds of consanguinity," concerning which earlier American statesmen expressed so much solicitude, could now be preserved indissolubly among all sections of our country. The government became omnipresent and the law omnipotent. Such was the revolution caused by the railway.

As a means of accomplishing great ends, the significance of railways is not diminishing. Russia is using railways in order to gain permanent control of Manchuria; in Persia railway rates provide a means of evading the most-favored-nation clause of treaty obligations; Germany is financiering a railway through the Tigris-Euphrates valley in order to gain influence in what is destined to become a clearing-house of continents, while at

home Germany is making her railways the occasion of a closer federation; in South Africa the railways constitute the greatest lever for raising that long-suffering region; Canada is sending locomotives as missionaries into her great northwest; Mexico is attempting to use railways in controlling trusts and adverse tariff legislation; Peru is trying to push the iron road over the Cordilleras and unite ocean and river; in the United States "twentieth century limited" and "overland limited" trains are closing the "suture" between East and West. The world over railways are harnessed in the interest of progress. To be sure, railways have made and unmade towns; they have caused flowers to blossom and to wither; they have strangled one and made the other fat; they have raised their wizard's wand and commanded puppets to do their bidding; they have placed legislatures on wheels and hauled them whither they had constructed the track. But with it all, railways have been and continue to be one of the greatest agents of universal progress which the world has ever known. If we can but harness the railway as an institution as the railway engineer has harnessed the steam in his locomotive, human progress will be accelerated and human welfare become more widely diffused. This harness is the law.

CHAPTER II

Characteristics of Railway Legislation in the United States

The law as a harness has been an oddly constructed harness. The collar has been unevenly padded, so that parts of the shoulder have borne most of the pressure and become sore, while other parts have escaped the pressure of the draft. The traces have been constructed of material of varying degrees of strength; and they have been cut of unequal length, adding to the discomfiture resulting from a badly constructed collar. Important buckles have been left out, and not all the straps have been sewed together. The horse has at times become restless. Sometimes this restlessness has been due to his intolerance of all restraint, and sometimes to the misfit of the harness. The makers of the harness have not always taken care to get the measurements of the horse, relying unduly upon their casual observations of him as he pranced through the fields. In other words, railway legislation in the United States is full of inconsistencies and anomalies, spasmodic expressions of legislative impulses, and the futile attempts of administrative bunglers.

On the other hand, there is much that is valuable in existing laws. The growth of decades has produced many good results. No one can advance arguments adequate to justify the general repeal of existing laws and a substitution therefore of laws thought to be better. Amendments with a reconstruction of parts is probably a prudent rule. New conditions require new rules. Laws which were but poorly fitted to meet former conditions are much less adapted to meet the changed conditions of to-day.

Starting with England as the original area of diffusion, railway charters were carried into every quarter of the globe. The first that were landed on this side of the Atlantic bore close resemblances to their prototypes in the British Isles. Then, as they were carried westward, the carefulness of their construction and the comprehensiveness of their scope diminished as the distance from the Atlantic increased. The march across the continent consumed less than five decades, ending with the later sixties. Among the charters granted in Eastern States there are many which are relatively complete. In New England and in the Middle States there is little of that mutilation which characterizes the construction of charters farther west. In the West, charters frequently show great recklessness in their construction and enactment. Railways everywhere involve certain common matters of public and private interest. These common matters would

logically find their expression in common charter provisions. Such, however, is not the case. Generally speaking, the differences among railway charters are far greater than their similarities. These differences, furthermore, are not found chiefly in charters granted to railways running through territories which differ in topography, where differences would be warranted, but they are found in charters granted for the construction of railways through the same or essentially similar territory. The number of points treated in charters varies from about a dozen to more than forty. In a very small number of cases charters are even more fragmentary. The fragmentary charter may have been granted for an important railway, and the complete charter for a railway of local significance. The perfection of the charter and the importance of the railway do not generally travel in the same direction.

Railway charters are private, local, or special laws. Originally these were the only laws relating to railways found on our statute books, although in a single instance reference was made in a charter to a general law granted as early as 1808. This was an exception to a rule which was exceedingly general. In a number of states legislators apparently sought to lighten their labors by abbreviating charters. Charters were granted containing a few clauses relating to purely local and individual matters, followed by a blanket provision to the effect that the company thereby

incorporated shall enjoy all the rights and privileges previously granted to a certain other railway company. This practice led to greater uniformity in the contents of charters and was one of the factors which encouraged the enactment of general laws relating to all railways within the commonwealth in which such laws were enacted. The early general laws usually related to some specific point; such as sign boards, fences, right of way, and the ringing of bells. Gradually the scope of the general laws was extended, until finally they embraced all the provisions of the best private charters and became general laws for incorporation of railway companies. These general laws were frequently made a part of the general laws on corporations, although in many instances they have been kept separate to the present time. In fact, the latter appears to be the prevailing tendency. This is a commendable feature of contemporary railway history, for railways have so many peculiarities of their own that separate treatment of them in our laws is likely to result in better adjustments and less friction.

Having placed general railway laws upon the statute books, it would seem that the era of special charters had come to a close in the state for which the general law had been enacted. But such is not the case. Almost numberless instances could be cited in which special charters were granted without the least reference to the general law previously enacted. In some cases the special charters

were granted within incredibly short periods of time after the passage of the general law. Whatever else this may show, it reveals loose methods and carelessness in administration. Yet in spite of these slips and gaps, general legislation made steady gains, so that by about 1870 the era of special legislation may be said to have been passed. In the East it had been passed in most respects by about 1850. General legislation has obvious advantages over special legislation, in that it treats all railways alike and formulates a general policy in the observance of which the railways and the state are much more likely to get together. There exists greater similarity among successive general laws in a state than among successive charters granted by the same state; but among the general laws of different states the differences are frequently as great as among the special charters. These differences among the laws of different states are significant, especially from the point of view of a railway company whose system lies in different states. A railway system should be operated as a unified network. This is demanded alike by public and private interests. But how can the best results be obtained if the same system of railways is subjected to varying antagonistic or mutually exclusive provisions of law? This state of affairs must necessarily create dissatisfaction among both parties. Greater uniformity in the railway laws of the states is imperative. If this cannot be accomplished, a wider scope of federal

legislation suggests itself as a feasible solution. There can be no excuse for widely different methods of classification and rate schedules when the same commodities are concerned; nor should a multiplicity of reports be called for. A uniform rule of assessment and taxation is unquestionably desirable.

Railway legislation in the United States lacks adjustment, the machinery for making adjustments, and the machinery for administering with efficiency the laws supposed to be in force. The railway business is complex. It ministers to manifold wants. It has many interests. The law should somewhere delegate power which can be exercised with discretion by authorized administrative agents, rather than prescribe rigid rules for traffic matters which may require one type of decision to-day and the opposite type to-morrow. The easiest and perhaps the best way of providing the elements of elasticity and adjustment, which are now so generally lacking, is to invest a competent authority with ample discretionary powers.

The lack of elasticity in railway legislation is also illustrated by the many constitutional provisions which have been incorporated in the constitutions of various states. The chapter on Constitutional Provisions illustrates this. There are certain general and fundamental principles which can perhaps be incorporated in constitutions to advantage; such as, eminent domain, publicity, and equality of treatment. But rigid provisions relat-

ing to the long and short haul, discriminations, and classification are likely to hinder that free development of traffic arrangements which the railway business requires. There are circumstances under which a greater charge for a shorter haul, over the same line, in the same direction is justifiable and necessary. There are discriminations which are not unjust. State classifications, unless they are essentially alike, if not identical, except in matters of commodity tariffs, are likely to obstruct progress toward a uniform national classification. Constitutional amendments are not easy to secure, and the less our constitutions are concerned with such changeable matters, the better will schemes of public regulation achieve their ends.

CHAPTER III

Foreign Side-lights[1]

In these times of commercial expansion and the establishment of more far-reaching and complex international relations a survey of foreign experience is especially appropriate. The railway as an institution is everywhere the same. As an industry it presents characteristics which are in many respects different from those common to other industries. These peculiarities of the railway business have been so often pointed out that it is not necessary to repeat them here. Railway legislation, like legislation in other domains of the industrial world, must bear definite relations to the business treated in such laws, and the fact being indisputable that the intrinsic nature of railway enterprise is everywhere the same, the corollary must go unchallenged that railway legislation must, in its essential features, bear a corresponding degree of similarity and identity. It is only in secondary and local characteristics that we find differences of importance in a study of the railways of different countries; hence it follows that only in

[1] Consult Part V of the author's "Report on Railway Regulation," United States Industrial Commission Reports, Vol. IX, p. 943.

such secondary matters should laws aiming at the control of railways differ in the substantial elements of their contents. The experiences of foreign countries have frequently been brushed aside on the assumption that whatever success or failure may have characterized foreign effort, nothing of vital importance to American states could possibly be discerned therein because of differences in conditions which, it is alleged, exist between the United States and the respective foreign countries. No one will be inclined to deny that certain important differences do exist, but the position can be successfully maintained that, so far as railways are concerned, these differences do not, as a rule, touch upon the essential features of the railway problem, and that along the large lines of industrial growth and development every important modern nation is cosmopolitan; that is, modern social and economic conditions have the world over become more and more alike, and, as this similarity increases, the need for similar legislation in all the different countries becomes increasingly urgent.

Railway charters — using this term in the sense of special legislation, as well as grants of railway charters under general laws — are essentially alike the world over so far as the great nations are concerned. In all the different countries railway charters bear upon them the marks of lineal descent from early English charters, which in turn were copied directly from the charters granted to

canal and road companies. This similarity between railway and macadam or plank road charters can be readily detected in our laws. Many common road charters are identical in language with contemporary railway charters, the only differences lying in a few things peculiar to road companies, such as the smaller size of shares, provisions on toll gates, the use of the road by drovers, etc. Were one to take out of a railway charter and a common road charter clauses relating directly to these topics, it would probably be impossible to determine whether a certain charter had originally been granted to a common road or a railway company. Certain archaic features which were embodied in the Liverpool-Manchester charter may be discerned in charters of different states in the United States, as well as in those of foreign countries. One of the most common of these is the right of different shippers to use the same track. One of the most serious objections brought against some of the early railway projects was the impossibility of using ordinary coaches and vehicles in the transportation of persons and property over railways. Inventors during the earlier decades of the nineteenth century devised contrivances by which carriages could be used on both common and rail roads. These provisions were inserted in some cases for the purpose of reserving to the state certain rights which it might otherwise find difficult to assert. It was thought that the state, or a person or persons authorized to do

so by the state, could become active competitors over the same tracks, and thus enforce rules of justice. The fallacy of this theory was soon discovered, but the archaic clauses continued to find their way into charters.

Several years ago a distinguished jurist stated in a public address that in Europe railways had been constructed in the beginning by public capital, while in the United States they had been built by private capital. Reference is here made to this address simply because it illustrates the prevalence of certain erroneous theories even among distinguished men. As a matter of fact the exact reverse is more nearly true. With the exception of a few short lines, every railway of Europe, during the early decades of railway history, was constructed by private capital; while in the United States the first railways were generally built to a greater or less extent by public funds contributed in the form of land grants or subscriptions and bonuses from towns, counties, cities, states, and the federal government. The appeal to this alleged difference in the sources of railway funds in Europe and the United States is usually made for the purpose of explaining existing differences in methods of regulation and administration. Since this difference in the origin of funds does not exist, it cannot explain facts; but even if it did exist, it could not be made to explain the facts for which it is said to be the touchstone.

European countries resorted to special legisla-

tion to a much smaller extent. A few private charters were usually first granted, after which incorporation was by general law. But the first private or special charters were subjected to the most rigid examination and public hearings and discussions. In these examinations, hearings, and discussions we find the origin of ideas and points of view which were later incorporated in general laws. The relative promptness and thoroughness with which European countries legislated upon railway subjects saved them from some of the excesses of the evils from which we have suffered. There are probably few if any abuses connected with railways which did not manifest themselves there, but these never gained such headway, because of the greater care and thoroughness exercised in remedial and preventive legislation.

Excepting taxation, there is practically no subject relating to railways with reference to which laws have been enacted which is not treated the same way in the law, whether it applies to an important trunk line or to a relatively unimportant local road. In other words, our laws do not recognize differences in the relative importance of railways. In the state of Wisconsin, for instance, there are two great systems which have a large mileage in the state, and several other great systems have branches within its borders. These railways clearly belong to the first class. Then there are several railways extending through the state, but going little or no farther. These consti-

tute a second class. A third class is represented by a number of railways which have an autonomous existence, but which serve primarily as feeders for the largest systems. Ore and lumber railways, devoted solely to the transportation of commodities for their proprietors, constitute a fourth class. And for the sake of completeness private branches and switch lines may be added as a fifth class. It requires no lengthy argument to show that the greatest differences exist with respect to the relative degrees of importance represented by these five classes of railways; and while a single general law may advantageously cover provisions on points common to all these railways, additional legislation should be formulated for each separate class of railways. It seems highly inexpedient to attempt to regulate a great interstate system by means of the same laws which are fitted to a purely local line, and *vice versa.*

Next to the United States, England comes nearest to not having a legal classification. An English law of 1868 imposes less onerous duties upon "light railways," which are confined to a low maximum speed and a low maximum burden per axle. Prussia has from the first recognized primary and secondary railways; but not until 1892 were narrow-gauge and other local railways included in the term "railway" at all. French law formally recognizes only two classes, but a very rigid administrative division of the first class into two subclasses really creates a third class of

roads. These three classes are, the primary network of railways of general interest, the secondary network of railways of general interest, and railways of local interest. The particular class to which a railway shall belong depends upon the place which is assigned to it by the authorities of the state in the "declaration of public utility." Belgium recognizes three classes, — railways of general interest, parochial, and urban railways. In Holland three classes also exist, — primary, secondary, and regional. The Austrian and Hungarian classifications are essentially like that of Prussia, including main and local roads. The Italian law of 1879 distinguishes between four classes, based upon the proportion of the total cost of the railways borne respectively by the federal government and by subordinate political unities. Secondary Italian railways are divided into five classes, depending upon the width of tracks, speed, curves, grades, etc.

The convenience of classifications of this kind is apparent; and, furthermore, such classifications are in themselves a recognition of varying degrees of importance attached to different kinds of railways. Under the laws of the different states in the Union, a short and insignificant road in an isolated corner of the state is governed by the same laws through which an attempt is made to control and regulate the most extensive system embracing thousands of miles of double, triple, and quadruple tracks. Along this line foreign legisla-

tion may teach us a valuable lesson in that it points out the imperative necessity of recognizing in the law decisive differences in the social and economic importance of different railway systems.

Dogmatic adherence to the doctrine of free and unrestrained competition among railways is not a chief characteristic of foreign railway history. In England, Germany, France, and Austria, the limitations of competition were recognized in the deliberations accompanying the granting of the first charters. The construction of "competitive" lines within certain periods of time was usually prohibited. Railways were recognized as undertakings which possess characteristics differing widely from ordinary industrial enterprises. A British Parliamentary committee of 1872 reported that "competition between railways exists only to a limited extent, and cannot be maintained by legislation," and that "combination between railway companies is increasing, and is likely to increase, whether by amalgamation or otherwise." In France there were thirty-three railway companies in 1846; in 1855, there were twenty-four; in 1857, eleven; and in 1859, excepting eight subordinate lines, only six companies were left. These six constitute the great French railway companies of to-day, among whom the territory of France is parcelled out, each company enjoying exclusive privileges within its respective domains. For years Austrian railways have exercised the privilege of making traffic arrangements analogous to Ameri-

can "pools," and in the countries of Germany railway federation is in progress to-day. Germany repudiated the doctrine of free competition before the era of nationalization had begun. Japan has adopted a unique compromise measure for the granting of charters by dividing the franchise to a company into three parts. The first part is a preliminary charter which authorizes persons to make surveys and to submit to the government estimates and propositions for construction. During this stage no subscriptions to stock can be received, nor can any work of construction be begun. Different parties may compete for the second part of the franchise or construction charter. The first charter is temporary; the second is permanent. The construction charter authorizes the company, now a legal body, to build the railway within the limits of the general railway law. When the company desires to open a part or the whole of the road for traffic, a communication must be addressed to the head of the national or central railway department, now the department of communication. The department of communication, having received such notice of the intention of the company to open its new line to traffic, shall order an inspection of the road, with respect of gauge, bridges, rolling stock, buildings, etc., in accordance with the provisions of the "estimation." If the inspection is satisfactory, then a business charter or "grant to begin business" is given to the company. This charter finally authorizes the corporation to do business.

One of the leading considerations in the granting of charters for the construction of new lines under the Prussian law of 1838 is the economic necessity of the projected road and its probable influence on existing railways. This has been one of the fundamental principles in Prussian administration that no new railway shall be built where it is not needed, or where it may do serious injury to an existing or previously chartered railway. Japan is pursuing a similar course by rejecting applications for charters, when the necessity for the construction of the new railway cannot be fully demonstrated, or when it prejudices the just interests of existing lines. In these respects American laws are lamentably weak. Our fallacious theories of unrestricted competition have led to the construction of duplicate lines for purposes of blackmail, and the destruction of valuable properties through the recklessness with which charters have been granted.

In the *Code of Per Diem Rules*[1] adopted by the American Railway Association, the first page is devoted to definitions. Terms like "home car," "private car," "home," "home route," are carefully defined. We look in vain for a similar set of definitions of terms used in railway laws in the United States.[2] Neither the interstate commerce law nor the laws of the states contain adequate

[1] J. W. Midgley, *Code of Per Diem Rules*, 1902.

[2] The laws of Massachusetts contain quite a number of definitions, and the terms employed in the statistics of the Interstate Commerce Commission are carefully defined in the official report blanks.

definitions of terms like "railway," "through traffic," and "proportional rates." It may be a difficult matter to formulate accurate definitions of technical terms employed in matters relating to railway traffic, yet for the sake of clearness and uniformity definitions should be incorporated in our laws. At present such definitions are found only incidentally in decisions of courts and of commissions. In the laws of England and of British colonies, on the other hand, the custom of defining the terms employed in the laws appears to be well established. The Canadian law, for instance, defines such terms as "company," "court," "department," "goods," "highway," "lines," "map or plans," "near," "owner," "railway," "toll," "tariff," "the undertaking," and "working expenditure."

Compared with the United States, European countries were rather slow in expanding their railway systems during earlier epochs. This difference in the rapidity with which railways were projected and constructed on the two continents may be explained, partly, first, by the more highly developed systems of macadam roads and canals which sufficed fairly well to meet the needs of commerce; and, second, by the more buoyant and speculative temper which prevailed in the United States, together with the absence of good roads and canals and the necessity of finding means for transporting her rapidily growing surplus to market. Germany, for instance, had a well-organized stage-coach system operating on her fine highways. Her canals

and rivers assisted in caring for her commerce, which was just beginning to develop at the opening of the railway era. These conditions also explain, in part at least, the greater deliberation with which Germany proceeded, and afforded better opportunities for the state to exercise its prerogatives and reserve rights and privileges which have proved to be valuable. In the United States, on the other hand, the need for transportation facilities was imperative, and the history of internal improvements aided in throwing the task of providing these facilities into private hands. Newspaper articles and public discussions during the thirties and forties bear witness to the fact that the relative merits of public and private ownership were brought before the public fairly well at that time. But the logic of events was against the assumption of such duties by the state. The national system of internal improvements[1] was inaugurated by Jefferson, in 1806, in the Cumberland Road law. Under the influence of growing nationalism it was vigorously discussed and temporarily checked in the Bonus bill of 1816–17. The constitutional phase of the discussion received a hopeful impulse toward a solution, in the attempt to separate the questions of constitutionality and of expediency, in the long debates of 1818–19. The failure of the Cumberland Road bill of 1822, and President Monroe's scholarly letter, drew into ques-

[1] Meyer, *A History of Early Railroad Legislation in Wisconsin.* Wisconsin Historical Collection (1898), Vol. XIV, pp. 229–234.

tion with renewed vigor the constitutionality of the system. All the old ground was torn up, and no phase of the question left untouched, in the protracted debates of 1824. During the administration of J. Q. Adams, the idea of a system of internal improvements was once more brought prominently before the public, and in the Maysville Road veto (1830) it received its death-blow at the hands of Jackson. This marks the downfall of a national system of internal improvements. While the national government still continues to make appropriations, all hopes of establishing a system of internal improvements by direct federal agency — and from which the federal government might derive revenue — were abandoned in 1830. Jackson's determination to free the nation from debt, and to adhere to principles of strict economy, and his uncompromising hostility to corporate "monsters," were the forces which dealt the fatal blow. The new democracy, whose banner Jackson had hoisted, adopted politics of great geographical dimensions. Expansion was its war-cry. The schemes which were born in this atmosphere bore on them the stamp of the wide plains stretching far beyond the dim horizon, and of the great streams and forests which the new-born "nation" possessed. The geography of the country had become the mainspring of the human mind.

The argument, in brief, was this: Internal improvements are a necessity. The federal government cannot undertake them. Therefore, since

something must be done, the states must impose upon themselves this important duty. The increasing activity of the states in undertaking works of internal improvement was a characteristic of the period from 1830 to 1837. The unparalleled success of the Erie Canal was something which every state thought itself capable of repeating in its own projects. We need but recall Jackson's war on the United States Bank, the pet banks, paper money, land bills, the distribution of the surplus, and the specie circulars, in order to bring vividly before us the sequences of the internal improvements and general speculative mania. We are told that the Michigan legislature had "projected one mile of improvement for every 150 of the inhabitants, which, upon common averages, gives one mile for every thirty votes," and that the state had contracted an indebtedness of $200,000,000 "unsecured by any property adequate to the support of such a burden."[1] The atmosphere which had once been the nursery of gigantic projects had now become close and oppressive, not only to citizens of our own country, but to foreigners who had sunk many a fine sovereign in the credit of the states.

The country now entered upon a period of state repudiation, national discredit, and the agitation of federal assumption.[2] The state governments had tried to do what was abandoned by the federal

[1] H. C. Adams, *Public Debts* (N.Y. 1887), p. 336.

[2] Scott, *Repudiation of State Debts*, (N.Y. 1893).

government in 1830, and in the attempt had fallen into disrepute. The pressure for improvements became stronger as the country developed. Their construction had been taken out of the hands of the federal government. The state governments had failed. And now there was but one alternative, — not to build them at all, or to leave internal improvements to private corporations. The latter policy was chosen. Jackson's "monster" had now gained the ascendency. The period following 1837 marks the decline of the states as economic agents and the rise of private corporations. Considering the temper of the American people and the prevailing industrial conditions, this issue was probably the best under the circumstances, although the gross disregard of public rights connected with the history of many railway companies will always remain a blot in our industrial evolution. It resulted in a certain drifting apart of public and private interests, while the memory of early abuses seems ever ready to stimulate drastic legislation.

CHAPTER IV

Economic Adjustments[1]

In the opening sentence of the first chapter it was said that the world was born again with the introduction of railways. Many changes in industrial, commercial, social, and political relations followed, and have continued to come, so that every succeeding day brings us a new world with its changed relations, calling for continual readjustment to these new conditions. In this process of readjustment there takes place a conflict of diverse and antagonistic interests, the weaker or less important yielding to the stronger or more important. The assertion that the interests of the railways and of the public are harmonious and identical cannot prevent conflicts, for neither the entire public nor every railway manager will view the situation in this light. There certainly exist elements of harmony in the interests represented by the railways on the one hand and by the public on the other. For instance, a railway company extends its system into new and remote territory, thereby increasing the value of the lands and other

[1] The contents of this chapter appeared in the *Annals of the American Academy of Political and Social Science* for January, 1902, under the head of "Advisory Councils in Railway Administration."

property in that territory. A new source of supply has been tapped and the traffic of the road is proportionately increased. With the increase in traffic and the rise in value of other property in that territory the railway property becomes more valuable, and thus increases the sources of public revenue. Up to this point there exists harmony; but the possibilities of a conflict of interests must not be overlooked. The railway property having become very valuable, the authorities of the state may assess this property to a degree which the railway authorities regard excessive; or the railway company may levy a transportation charge which the public considers excessive, or it may give preferences to one industry or place or productive area over another industry, place, or area.

This lack of harmony between the two great parties may be due to a lack of mutual appreciation of each other's rights and privileges; it may be due to ignorance, to unscrupulousness, to intrinsically irreconcilable points of view, to extraneous factors over which neither can exercise control, or to numerous other contingencies. Whatever the cause, the possibility of a conflict usually exists in those elements of railway transportation which are not embraced in that part of the business representing purely harmonious and identical interests. This chapter will be devoted to suggestions for arriving at a better understanding of questions in dispute and for facilitating the exchange of views

and conciliation of interests on the part of all the factors involved in railway problems.

Before entering upon a discussion of these suggestions, three propositions will be stated, which the writer regards incontrovertible, but which he will not discuss in this connection, although he is prepared to support them with ample evidence and without fear of successful contradiction. These propositions are: —

1. That the present situation with respect to railway affairs in the United States is untenable and indefensible.

2. That the great majority of the railway managers and other railway officials are sincerely desirous of administering, to the best of their abilities, the properties under their control in the most efficient manner, having due regard for the interests of both the stockholders and the public; but that all the various interests affected by their action are not represented in proportion to their importance, if at all; and that consequently injustice may be done.

3. That there is nothing in the present statutory and administrative regulation of railways to prevent the arbitrary and harmful action of the weak or unscrupulous manager from defeating the desires of the majority of the officials who would voluntarily pursue a more beneficent course.

In the Annual Report for 1898, the Interstate Commerce Commission said: "The situation has become intolerable, both from the standpoint of

the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each other and shippers all the while in doubt as to the rates secured by their competitors. . . . Enormous sums are spent in purchasing business and secret rates accorded far below the standard published charges. The general public gets little benefit from the reductions, for concessions are mainly confined to the heavier shippers." That the situation here described is as oppressive to the railways as it is odious to shippers no one will doubt. In view of this prevailing demoralization, the Commission called conferences with railway presidents during the following year which appear to have accomplished considerable good. At a time when published tariffs constitute little more than "a basis from which to calculate concessions and discriminations" anything which is likely to assist in reëstablishing order must be approved.

The Commission chose a plan which is of wider application and which is of importance in its bearing upon the subject of advisory councils; for what were these conferences but modifications of the advisory council system? In extending invitations to officials, neither existing nor former railway associations were taken into consideration. "The selection in each case was made with reference to the territory in which different connecting and

competing lines operate, and the rate conditions in that territory, and not with reference to the relations of the carriers through organized associations or otherwise." Nor were attempts made to carry out a system of individual conferences; not only because this would consume much more time, but also and chiefly because "each road in promising to observe its own tariffs, and intending in good faith to keep that promise, needs the assurance that its competitors will also in good faith observe their tariffs." Mutual and concurrent promises, says the Commission, are necessary to secure conformity to the act to regulate commerce. This is but another way of expressing a part of the third proposition formulated above. As for practical results, "the Commission believes that the propriety of holding these conferences has been fully vindicated by the results which have followed." Editorials in the *Financial Chronicle* and other leading journals commented favorably on the probable influence of these conferences.

The conferences between the Interstate Commerce Commission and railway officials represent efforts aiming primarily toward a better understanding among different railways, leaving the equally important and larger question of the relation of the railways to the great diversity of interests in their respective territories essentially without adequate expression, even if these conferences were to be made a permanent feature in railway administration. Conferences representing *all* the varied

interests affected by railways, which means practically the whole population, must be provided for before a complete exchange of opinions and mutual understandings can be secured. The railways have by no means been entirely neglectful of this important work. Special agents have been sent out by them to make a careful study of the industrial and social conditions of the territory through which their respective roads pass, and to "explain the attitude of the railways and to learn conditions." In *Harper's Magazine* for February, 1901, mention was made of a general freight agent who has associated with him one hundred assistants who instruct and educate the people in the knowledge that makes for the prosperity of the railways and of the agricultural and industrial classes. Railways have studied soils and given instruction to farmers in stock and grain raising, dairying, gardening, market conditions, and business methods. They have maintained a large specialized class of employees to assist in developing the resources of the territory through which they run, and have in this manner increased appreciably the variety, quantity, and quality of the commodities shipped out of the respective states. Railways have employed industrial commissioners, land inspectors, horticultural agents, superintendents of dairies, and a host of similar officers whose functions are chiefly, if not solely, economic and social, and whose existence is in itself ample evidence of the necessity of providing some means by which the social and economic

interests of the country can be brought into close and harmonious relations with the railways.

On the other hand, chambers of commerce, boards of trade, business men's associations, agricultural societies, and analogous organizations have maintained departments, bureaus, secretaries, or standing committees on transportation, with the view of guarding and promoting the interests of their respective clienteles, in so far as these may be affected by railway transportation. Delegates and committees have held conferences with railway managers and other railway officials. Resolutions have been passed and laws proposed looking toward a change in the existing relations between the railways and these people. But such efforts have usually been one-sided, emanating either from the railways or from the shipping public, acting independently of one another, with perhaps little accurate knowledge of each other's points of view. There exists no regularly constituted middle ground on which the two parties can meet and deliberate, on the basis of authentic facts, and arrive at conclusions just and satisfactory to both and in accordance with the needs of the whole population, viewed in the broadest possible light.

Having seen that both the railways and the public have been feeling for each other, but that an uncovered suture still remains between them, the writer ventures to suggest a plan which may at least serve as a point of departure for the discus-

sion of the wide and momentous questions involved, and possibly the plan may embody elements capable of elaboration into permanent arrangements. It should be understood, however, and this the writer desires expressly to emphasize, that this plan is suggestive only, that it is not given with dogmatic assertions as to its practicability, nor with the inference that it is complete and perpetual. Many conferences will have to be held, numerous hearings given, much deliberation engaged in, and a multitude of facts considered before a final working-plan can be adopted. The interests involved are so enormous, and the possibilities of a conflict so great, that nothing but a large, tolerant, and analytically accurate view can meet the situation.

The leading features of the plan here suggested are the following: The establishment by law of a system of state and interstate councils, having advisory power only, and representing all the various interests of the entire population as far as practicable. State councils might be organized in connection with state railway commissions, where these exist, or independently in those states which have no commissions. The size of state councils might vary with railway mileage, and the number and importance of the existing commercial and agricultural organizations. Both the elective and the appointive principles might be applied, the former to insure representation and the latter to secure expert knowledge and specialized efficiency.

The proportion of appointive to elective members might be made to vary whenever adequate reasons for such variation are properly presented to the Secretary of Commerce or other higher official, although at least three-fourths of the aggregate membership should perhaps be made elective. The governors of the respective states naturally suggest themselves as proper officers to exercise the appointing power with respect to state councils, and the President of the United States, through the Secretary of Commerce and Labor for interstate councils. The elective members should represent, in addition to persons representing the railways, all the various state organizations which meet prescribed requirements existing within that state, and which have primarily intrastate significance. Among these societies may be mentioned boards of trade, chambers of commerce, exchanges, business men's associations, associations of lumbermen, grocers, butchers, foundrymen, all the various manufacturers, dairymen, fruit-growers, agricultural societies, etc. The members to be appointed by the governor might be selected partly with the view of equalizing the representation of different interests. No paid officials would be necessary, with the possible exception of a permanent secretary, who could be attached to the office of the railway commission or some other high administrative officer. It would not even be necessary to pay the expenses of the council out of the public treasury, for a small tax on the organizations represented,

which their interests could doubtless well afford to pay, would be sufficient to defray the expenses of the representative. Certainly no salaries or per diem rates ought to be paid out of public funds during the formative period of the councils. If future development should demonstrate the desirability of payment to members, the law could be modified to meet the situation. Periodical meetings should be provided for, perhaps quarterly, and the interval of time between the meeting of state and interstate councils should be sufficiently long to enable the latter to review thoroughly the proceedings and recommendations of the former. All meetings should be public and the proceedings printed.

The territorial basis of interstate councils is not so easily defined, because of the different things which may be regarded as fundamental in such a division of the area of the United States. The Interstate Commerce Commission has adhered to its original classification of railways into ten groups, based upon topographical considerations, density of population, nature of industrial life, and competitive conditions, although, in regard to the last, the Commission expressed itself as unable to discover system in railway competition at the time the classification was made. To organize one interstate council for each of these ten groups would make the higher councils too numerous, and, under present conditions, it would hardly bring together representatives of those

roads which belong together from the point of view of ownership and of rivalry in the same productive areas. A second possibility is the organization of an interstate council for each of the systems of railways, among which a community of interests has been established. But this, too, would involve ten or a dozen councils and an administrative separation of railways which belong together. The third, and what appears to be the most feasible plan, is that of accepting the present territorial limits of the dominating freight classifications and organizing an interstate council within each of them, with the possible division of the territory west of the Mississippi. This would make three interstate councils: one north of the Ohio and Potomac rivers and east of the Mississippi; the second south of the Ohio and Potomac rivers and east of the Mississippi; and the third for the territory west of the Mississippi. The distribution and election or appointment of members should be governed by the same principles as those which have been suggested for state councils. Each of the great railway systems should have representatives, perhaps on a mileage basis. The great national associations, such as the millers', builders', druggists', grocers', liquor-dealers', etc., might be requested to send a representative to some one of the three interstate councils; and, finally, the state councils lying within any one of these interstate divisions should elect representatives

to membership in the higher council. In case a state lies partly in one and partly in another intersfate district, the Secretary of Commerce or other officer might designate the proportion of representation to be allotted to each part, in accordance with law. The proceedings should also be public and published by the government. The Interstate Commerce Commission, every member of which should be made *ex officio* a member of the interstate councils, might supervise the publication of proceedings.

The aim of the suggested plan is obvious, — to represent all the varied interests of our population *in an advisory capacity*, in the conduct of our railways. These councils are to be clearing houses of information through which the railways and the public will learn to know each other's interests better, and through which the material interests of both of these great parties will be built up in accordance with principles of justice and equity. Every attempt to interfere in the purely business management of a railway should be resisted; but every attempt on the part of a railway to disregard the just rights of the public should likewise be promptly checked and thoroughly ventilated in the councils. The authenticated facts which such councils can bring together and the publicity which is to be given them cannot help but exert a powerful influence in educating the public in railway affairs and enlighten the railways on the interests of the

public. By giving councils only advisory powers, the legal responsibility still remains where it belongs, — in the hands of the railway officials. The advice and recommendations of councils need not be followed, but at the next meeting of the council the manager in question can be called upon to give the reasons for his action; and with well-informed representatives about him, nothing but the truth can prevail. In this lies one of the greatest benefits to be derived from such a scheme, and it is difficult to conceive of a more potent factor in protecting the railways against each other, and in visiting obloquy upon the one weak or unscrupulous manager who persists in defeating the best plans of the one hundred who would adhere to principles of justice without legal compulsion.

The Secretary of Commerce and Labor has been mentioned in several connections, assuming that such a new cabinet office is to be created. It is to be hoped that such will be the case, and the proposed system of railway advisory councils be given a place in this new cabinet office. Should, however, Congress not see fit to establish a department of commerce,[1] the suggested councils could nevertheless be fitted into the present order of things by making the Interstate Commerce Commission the head of the advisory system. The Commission, being hard worked already, could perhaps exercise only directive and supervisory powers over the

[1] Such a department has now been established.

councils, but some officer in the offices of the Commission, or to be added to the Commission, could be intrusted with the detailed management of the council system. *The council system, as proposed, fits into the present order of things. There is nothing radical or disorganizing about it. It simply aims to bring together into one harmonious system the various isolated, independent efforts which have long been made by many railways in the United States and by private organizations. It aims to do systematically and well what is now attempted without system, in a manner more or less one-sided.*

Institutional history is largely the history of transplanted custom and law. The most fundamental institutions of American civilization find their origin in the remote history of European peoples, and scores of existing statutes, state and federal, are mere adaptations of foreign law to conditions in the United States. The suggested plan for railway councils is in harmony with this feature of our civic development. Advisory councils have been in successful operation in various countries, and any one who will take the trouble to look into their history will probably be convinced of their efficiency and beneficence. While most contemporary systems of councils exist in connection with state railways, *the advisory system finds its origin in private initiative*. About the time our granger agitation had reached its zenith, and when the Hamlet of the play had made his appearance in the form of the Potter law of Wisconsin, the

Chamber of Commerce of the city of Mülhausen arranged for a conference between its representatives and representatives of a railway upon which that city was largely dependent. The result of the conference was so encouraging that it attracted the attention of a high state official, who immediately recognized the intrinsic merits of the plan and took action with the view of embodying its principles in a permanent institution. "This arrangement," says the minister in a circular letter, "primarily strives to establish intimate connection between the places intrusted with the administration of the railways and the trading classes. It will keep the representatives of the railways better informed as to the changing needs of trade and industry and maintain a continued understanding between them; and, on the other hand, it will impart to commerce, etc., a greater insight into the peculiarities of the railway business and the legitimate demands of the administration, and consequently, by means of earnest and moderate action, it will react beneficially upon both sides through an exchange of views." It was only a few years later, in 1882, when Prussia established her system of advisory councils, which twenty years of experience has demonstrated to be most excellent. There are circuit councils and a national council, the former constituting advisory bodies of the different railway directories in whose hands legal responsibility rests, and the latter being advisory to the Minister of Public Works, who is the highest legally

responsible railway officer. The circuit councils are more local in their nature and vary in size from about twenty-five to three times that number. Membership is chiefly elective. The national council is composed of forty members, of whom ten are appointed by the Minister of Public Works and thirty elected by the circuit councils. The councils may be called upon to deliver opinions on questions submitted to them by the proper officials, and they may, in turn, institute inquiries and make recommendations on their own motion. They have no legal power over the administration of railways, except in this advisory capacity, and full freedom is granted to railway officials to act as they deem best in the management of railway properties.

Japan was the next country to establish an advisory council by law. The Japanese council is composed of not more than twenty persons, representing the cabinet departments, both houses of Parliament and, for special purposes, members with limited tenure, who serve as experts in the council. The powers of the council relate to questions of location, construction, financiering, and operation. While the department of communication and other branches of the government may direct inquiries to the council, the latter may also act on its own initiative and bring its conclusions and findings before the proper officials. A comparison of Japanese with Prussian councils shows important differences in their composition. Under

the Prussian law bureaucracy is guarded against by the exclusion from the council of all immediate state officials. In Japan the law specifically provides for the inclusion in the council of cabinet officers and members of the legislature. Under the Japanese system it is possible to pack the advisory council with persons in harmony with the government, which *may* destroy the value of the council. While avenues of communication between legislatures and advisory councils should be kept open, the law should make it impossible for members of the legislature and state officers to hold a seat in the advisory council. State legislatures and Congress may wish to act on the findings of fact or recommendations of advisory councils, and if the membership of councils and legislatures can be made essentially one, the advisory nature of the councils will be annihilated. The exclusion of public officers and legislators from councils should be insisted upon.

In Switzerland, circuit councils and an administrative council were instituted by the federal law of 1897. Circuit councils embrace from fifteen to twenty members, of whom the Bundesrath elects four and the cantons eleven to sixteen. The higher or administrative council numbers fifty-five, of whom twenty-five are elected by the Bundesrath, an equal number by the cantons, and the remaining five by the circuit councils. The law expressly provides that in these elections agriculture, trade and industry shall be properly represented.

These three — Prussia, Japan, and Switzerland — are the only countries in which advisory councils have been created by law. In a large number of other countries similar councils have been established through administrative agents, the composition and functions of the councils following the principles of the Prussian system. For a quarter of a century France has had a consulting committee of forty-five which is quite similar to the Japanese council in that its members are not elected, but appointed chiefly from officials and members of the legislature, and that social and economic interests are represented only to a limited extent. The functions of this committee relate to approval of rates, construction of laws and ordinances, granting charters, railway agreements, stations, train service, etc. It is similar to the advisory councils of the other three countries in that it may be called upon for opinions and undertake investigations on its own initiative. In Russia, the Minister of Trade appoints representatives of the agricultural and industrial classes; the railway companies elect their members subject to the approval of the minister; and the Czar appoints representatives of the departments of the cabinet. The Italian tariff council consists of higher ministerial officials and railway directors, while the supreme council is composed of general inspectors and chiefs of divisions, divided into three groups, each of which can act only on matters relating to the lines of interest represented by that group. Bavaria has an advi-

sory council composed of twenty-five members appointed by the king. A number of the members are nominated by industrial organizations. Of the eighteen members in the council of Saxony, six are elected by chambers of commerce, five by agricultural societies, and seven are appointed by the Minister of Finance.

More than half a dozen other European states can be added to the list, but it is unnecessary. Enough has been said to show that the system of advisory councils proposed for the United States is not a leap into the dark. It is a practical scheme, elaborated in various countries by practical men, and it has stood the test of experience. It involves no destruction of existing arrangements. It requires none but nominal appropriations out of the public treasury. It necessitates no important new machinery. In fact, it is but a bringing together of separated wheels and shafts and placing them in proper connection with one another so as to constitute an efficient machine for public service.

That the public frequently feels suspicious concerning railways no one will question. That this suspicion is sometimes well founded is beyond controversy; and that this same suspicion on the part of the public is often out of all proportion to the cause is equally true. By way of illustration, a personal incident may be alluded to. Several years ago, through the courtesy of a railway president, the writer came into possession, for private use, of the proceedings of a railway committee,

which are private in their nature. He had wondered many times what such a committee might be doing; and, because of the secrecy surrounding its proceedings, was inclined to believe that action contrary to public interests was sometimes agreed upon. After a careful examination of the entire set of documents, he is prepared to state that he firmly believes that the publication of every page of these proceedings could bring nothing but good, or at least no harm, to the railways concerned. Throughout the reading of the many resolutions, orders, petitions, and decisions one is impressed again and again with the earnest desire on the part of the railway men concerned to find the correct solution and to pursue a just line of action. But the public is much like the boy with a balloon — it wants to know what there is inside. The public factor in railway enterprise is so large compared with the private factor, that the public is fairly entitled to know, within reasonable limits, what is inside. And this the railways have recognized in many ways, for it is a familiar fact that no stock can sell well and maintain its level on the exchange unless the promoters take the public into their confidence to the extent of issuing full and accurate financial statements. The chairman of one of the great classification committees struck the core of the question when he said that the general public might without detriment to railway interests know everything his committee was doing and that public opinion would uphold their action, but that per-

haps not enough was at present given to the public. A system of advisory councils makes it easy for both railways and people to acquaint each other with their doings, and the resulting knowledge will add as much to harmony between them as it will increase the value of the services performed by the railways.

PART II

THE PROGRESS OF RAILWAY LEGISLATION[1]

[1] The greater portion of Part II was included in a report to the United States Industrial Commission, published in Vol. IX, pp. 897–1004, of the Reports of the Commission. The present treatment differs from the report to the Commission in that specific references have been indicated wherever practicable.

CHAPTER I

Early Railway Charters

General Characteristics. — A railway charter may be defined as a special act of a legislative body authorizing a person or persons duly organized to construct and operate a railway or railways in a certain territory under certain conditions. Such a legislative act is a private law. With the exception of a few of the Western States — Arizona (Territory), California, Colorado, Idaho, and Montana — which began with general laws, special charters have been granted by every state and territory in the United States. The charters have numerous resemblances and differences which will be noted more in detail later on, but at the outset it is well to notice certain features which charters in all parts of the United States have in common. In spite of numerous striking differences which exist, we may speak of a typical railway charter.

The leading features which are common to railway charters of the different states may be associated with the following points, every charter having one or more provisions relating to some or all of these points: Name of company; number

of commissioners; number of board of directors; the amount of capital stock; size and number of shares; the amount of the payment per share at the time of subscription, and the maximum assessment per share, together with the number of days' notice required; systems of voting; the time limit as to beginning and completing construction, junctions, branches, and extensions; route; expropriation and methods of valuation, together with the manner in which disputes are settled; the amount of land which may be held; the number of miles to be constructed before traffic may be opened; the power to borrow money and the rate of interest; the distribution of dividends, liability of stockholders, annual reports, passenger and freight rates. In every state charters may be found which contain provisions on only a few of these points, while in most states charters were granted containing provisions on all of them, and perhaps others not here indicated.

Following an old English custom, a few charters in a number of states contain a preamble. Where a preamble is found, it usually sets forth the reasons why the proposed railway should be constructed, the public service which it can be made to perform, and the manner in which the project is to be carried out. Preambles of this kind can be found in charters of states so far apart as Wisconsin, Pennsylvania, and Georgia. Similarly, charters in some North Atlantic States declare the public use of the projected railways. Both the

preamble and the declaration of public utility serve the same purpose, namely, to bring before the legislative body before the franchise is granted the social and economic conditions which make the project desirable, if not necessary.

While there is no general order in which the different provisions of a typical railway charter are incorporated, in the individual charters of the different states, it is very common for a charter to enumerate first of all a number of persons, designated commissioners, under whose direction the proposed railway is to be organized. These commissioners are authorized to open subscription books in specified localities on a certain date, and to continue to receive subscriptions during a certain period of time. The charter further specifies that, after a certain minimum sum has been subscribed, and a certain payment on each subscription, varying greatly in its amount, has been made, the subscribers shall hold a meeting and elect a board of directors. The size of the board to be elected, like the number of commissioners, varies very greatly in the different charters, although nine and thirteen are perhaps the most common numbers. In a few states, like Connecticut, Maryland, and Kentucky, charters were granted making it obligatory on the part of the elective officers to bind themselves to the performance of their respective duties by an oath.

The board of directors having been elected, the company has obtained legal status and is prepared

to carry out the provisions of the charter in its possession. The powers granted to the company, acting through the board of directors, include powers common to corporate bodies, such as purchasing, holding, selling, and leasing property; to have perpetual succession; to sue and be sued; to use a common seal; and in general to exercise those powers, rights, and privileges which other corporate bodies exercise, in order to carry out the provisions of the charter.

One power which is invariably given to the board of directors, with or without restrictions, relates to rates; and, considering the great importance which has always been attached to the question of rates, it may be well to bring together typical features of charters of different states on this important question.

Charter Provisions as to Rates. — A charter granted by Connecticut in 1832 provides that the company may charge "such rates per mile as may be agreed upon and established from time to time by the directors of said corporation."[1] This, in substance, is the provision on rates which is more frequently found in railway charters in the United States than any other. The Connecticut charter just referred to names three "commissioners," who shall be sworn to a faithful discharge of the trust imposed upon them by virtue of the act, and who shall not be interested in any way whatsoever in the company.[2]

[1] Pr. Laws, 1835–36, p. 992.

[2] §§ 5, 7, 8, of charter.

A Colorado charter[1] of 1865 provides as follows: "They [the board of directors] shall have power to establish such rates for the transportation of persons and property in all matters and things respecting the use of said road and the transportation of property as may be necessary: *Provided*, That the legislative assembly of this territory, or any legislative body, having legislative authority over the county in which said road is located, may, after the expiration of twenty-five years from the passage of this act, and at the expiration of each period of twenty years thereafter, prescribe rates to be charged and collected by said corporation for transporting passengers and freight over said road and the branches thereof."[2]

One of the earliest Florida[3] charters grants the company "the right to demand and receive such prices and sums for transportation as may be from time to time authorized and fixed by the by-laws of said company or companies: *Provided*, That such prices and sums shall not be increased without at least sixty days' previous notice thereof being given." This charter further provided that the "tolls" should not yield more to the company than twenty per cent per annum on its stock, and any excess over twenty per cent should be paid into the internal improvement fund.

Maximum rates are prescribed in a charter granted by Georgia[4] in 1837, as follows: "*Pro-*

[1] Laws, 1865, p. 111.
[2] § 8.
[3] Laws, 1849–51, ch. 317, § 14.
[4] Laws, 1837, p. 193.

vided, That the charge of transportation or conveyance shall not exceed twenty-five cents per one hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every hundred miles, and five cents a mile for every passenger." Similar provisions were incorporated in Georgia during succeeding years.

An Indiana[1] charter of 1832 empowers the company to "change, lower, or raise rates at pleasure: *Provided*, That the rates established from time to time shall be posted in some conspicuous place or places."

A provision similar to that found in the Florida charter above quoted is found in a Connecticut charter of 1829. "It shall be lawful for them [board of directors] to charge for every hundred pounds transported sixty miles or upwards, $2\frac{1}{2}$ mills per hundred pounds weight for each mile; for every hundred pounds weight transported over twenty miles and under sixty miles, 3 mills for each mile; for every hundred pounds below twenty miles, $3\frac{1}{2}$ mills per mile." Passengers were to pay 4 cents per mile.

A charter granted by Maryland[2] in 1827 prescribed different rates for different directions. From north to south the freight charges were not to exceed one cent per ton-mile for toll and three cents per ton-mile for transportation; south to north the charges were not to exceed three cents per ton-mile for tolls and three cents per

[1] Laws, 1832, ch. 144.

[2] Laws, 1827, ch. 72.

ton-mile for transportation. The maximum rate for the transportation of passengers was fixed at three cents per mile. The same state granted a charter in 1831 which fixed the maximum rate for freight at three cents per ton-mile for both toll and transportation, and for passengers not exceeding three cents per mile, provided the passenger does not carry baggage exceeding fifty pounds in weight and occupying space not exceeding two cubic feet.

The early Massachusetts charters, like other New England charters, are the most complete that can be found in the legislation of any of the states. One of the earliest charters,[1] granted in 1829, refers to a general law enacted by Massachusetts in 1808,[2] thus subjecting the corporation created by the charter to the provisions of a general law. That is perhaps the earliest instance of its kind. While this charter fixes a maximum freight rate, it does not mention passenger rates at all; but another charter granted by the same state during the same year provides that the company may impose charges "not exceeding three cents, and for every passenger passing and repassing not exceeding two cents per mile, which shall be conveyed upon said railroad, exclusive of the expense of transportation, payable at such time and in such manner as may be described in the by-laws." It will be noticed that this charter, like the Maryland charter

[1] Laws, 1829, ch. 26.

[2] Laws, 1808, ch. 65.

already referred to, makes at least a theoretical division of the aggregate charge into "toll" and "transportation."

The early charters granted by Michigan are essentially like those granted by Ohio, Illinois, and Wisconsin. Many of them are quite complete and contain leading features of typical charters. Those which are more carefully drawn contain provisions relating to maximum rates for both freight and passengers. The amount which the company may charge varies, however, very materially, not only in charters granted during succeeding years, but also in those enacted during the same year. For all of the Western States the statement holds true that among earlier charters we find more numerous examples of maximum rates, even though the same charters give the board of directors wide discretionary powers over rates. Following the period during which charters of this kind were granted, it was more common to omit the maximum rate feature and to incorporate the power over rates in the board of directors, giving this body the right to charge such rates as it may from time to time think expedient. It may be noticed that an early Ohio[1] charter makes a distinction in charges upon ordinary and "pleasure carriages."

There is no essential difference among the early charters of Pennsylvania and Maryland, except

[1] Laws, 1838, p. 140.

perhaps that in Pennsylvania a distinction was sometimes made between "through" and "way" passengers. Nor is the difference between the charters in these states and those granted by North and South Carolina a striking one, except that the systems of voting rather common in the Carolinas do not appear in the Atlantic States farther north. In 1837 North Carolina granted a charter which provided for maximum rates as follows: "On persons, not exceeding six cents per mile for each, unless the distances to which any person be transported be less than ten miles, in which case the president and board of directors may be entitled to make an extra charge of fifty cents for taking up and putting down each person so transported; for transportation of goods, . . . not exceeding an average of ten cents per ton-mile; and for the transportation of mails, such sums as they may agree upon."[1] In a similar manner later charters in both North and South Carolina prescribe maximum rates. These rates frequently bear a direct relation to distance and space occupied.

These quotations suffice to indicate the manner in which early charters in different parts of the United States attempted to control rates. The variety existing among provisions of this kind is no greater than among provisions on other subjects, and in nearly all instances the maximum rates prescribed appear to have been much above

[1] Laws, 1837, ch. 40, § 30.

what railway companies would in ordinary circumstances be inclined to charge.

As a matter of interest, rather than of importance, it may be noted that in a few states several charters prescribe rates by reference to another charter previously granted by the same legislature. Thus a Michigan[1] charter of 1848 refers[2] to rates charged by the Michigan Central Railway; a Georgia[3] charter of 1838 specifies that the company may charge as much as the Georgia Railroad and Banking Company; in 1831 Mississippi adopted a charter granted by Louisiana; and a Tennessee[4] charter of 1851 grants the same provisions which have previously been granted to the Nashville and Chattanooga road.

Publicity of Rates. — Publicity of rates is not generally provided for, although provisions on this subject are found in some of the charters granted by Indiana, Louisiana, Maine, New Hampshire, Vermont, New Jersey, South Carolina, Georgia, Missouri, and in occasional charters granted in the Northwestern States, all of which are fairly well illustrated by the clause of an Indiana charter quoted above. A Louisiana[5] charter of 1831, after providing that such rates may be charged as shall have been previously fixed by the resolution of the board of directors, stipulates that "rates

[1] Laws, 1848, no. 152.

[2] Rates not to exceed those charged by the Michigan Central.

[3] Laws, 1838, p. 174. [4] Laws, 1851–52, ch. 103.

[5] Laws, 1831, ch. 55.

shall be published in some newspaper, . . . and it shall be unlawful to increase such rates, after the same shall have been established, during the period for which they have been established." The same charter further provides that every new board of directors shall publish a schedule of rates within ten days after its election. Another charter granted two years later specifies the number of newspapers in which the schedule of rates shall be published, and that such rates "shall not be changed during the year in which they are established." Publicity of a different kind, and quite unique in railway legislation, is provided for by joint resolution of the South Carolina[1] legislature of 1836, "That no charter for the incorporation of railroad companies, or in extension thereof, shall be granted by the legislature unless three months' public notice of the application for same be previously given by advertising in one of the papers of the city of Charleston, and also in the paper of one of the counties in which said road may be situated, or, if there be no newspaper in such county, then by publication of such notice at the court-house or some conspicuous place in the county." The South Carolina resolution evidently aimed to accomplish the same thing as the declaration of utility in some of the other states, namely, to give interested parties an opportunity to be heard and to demonstrate to the public the necessity of incorporating the projected company.

[1] Rev. Stat., 1873, ch. 65, p. 366.

Another, but a much more restricted, kind of publicity is that provided for in some charters granted in all parts of the country, by giving stockholders the right to inspect the books of the company at any time. This, however, is not publicity as we now understand it, for it simply gives the persons directly interested in the financial success of the enterprise access to the books, while the real and essential publicity suggested to-day is of a very different kind. It is therefore more a matter of curiosity than of vital importance that notice is taken of a New Hampshire[1] charter of 1836, which provides that the books of the company shall be open for inspection by a committee of the legislature. Analogous provisions are occasionally met with in charters of Rhode Island and the Northwestern States, but to what extent legislative committees ever exercise this privilege does not appear.

Discriminations. — Relatively few early charters contain any reference to the matter of discrimination, which figures so largely in later railway legislation. Among the states which granted charters containing clauses on discrimination are North Carolina, Rhode Island, Vermont, and Wisconsin. A North Carolina[2] charter of 1837 says, "They shall give no undue preference to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for trans-

[1] Laws, 1836, ch. 66, § 6. [2] Laws, 1837, ch. 40.

portation with the tolls paid or tendered." An early Wisconsin charter contains a much more elaborate provision on discriminations.

Administrative Agents. — So far as internal evidence is concerned, early charters were granted upon the assumption that the companies organized under them would voluntarily fulfil the obligations imposed by the franchise. The assumption which underlies early as well as later railway charters is that they execute themselves. It is consequently doubly interesting to observe that the small state of Rhode Island apparently took the initiative in establishing commissions, for in 1836 the legislature[1] of that state passed "An act to establish railroad commissioners." After providing for the appointment of three commissioners by the general assembly, the act specifies that "it shall be the duty of said board of commissioners, upon complaint or otherwise, whenever a majority of them shall deem it expedient, personally to examine into any or all of the transactions or proceedings of any railroad corporation that now is, or hereafter may be, authorized and established in this state, in order to secure to all the citizens and inhabitants of the same the full and equal privileges of the transportation of passengers and property at all times that may be granted, either directly or indirectly, by any such corporation to the citizens of any other state or states, and ratably in proportion to the distance any such persons or property may be

[1] Laws, 1836, p. 1087.

transported on any railroad as aforesaid; and to inquire into any contract, understanding, or agreement by which any railroad company shall attempt to transfer or give to any steamboat company any favor or preference over any other such company or boat, either as to freight or passage, contrary to the true intent and meaning of this act and the several acts hereafter passed in relation to railroads."

The commissioners in the Connecticut charter quoted before may here be recalled, together with the boards of internal improvement of Tennessee [1] and Florida,[2] which had some, although much more restricted, administrative powers over certain railways. Analogous functions were performed under a Vermont[3] charter of 1843, by which "the supreme court at any stated session thereof, . . . upon application of ten freeholders in any town or towns through which said road may pass, may alter or establish the rates of toll upon said road for any term not exceeding ten years at any one time." It is evident that the Rhode Island commission is the only one of these bodies that could exercise, under the law, fairly comprehensive administrative functions. The Vermont court is here alluded to simply because it is an illustration of the introduction into the management of railway affairs of persons other than those directly interested in the corporation.

[1] Laws, 1838. [2] Laws, 1855, ch. 610.
[3] Laws, 1843, no. 56, § 9.

Powers reserved to the Legislature. — Considered numerically, a majority of the charters granted in the different states do not reserve to the legislature either specified or general powers. It is very common, however, for charters to contain provisions reserving to the legislature the right to regulate, with more or less latitude, the charges of transportation. In the New England States this power could generally be exercised under charter rights as long as the net income of the railway in question exceeded a certain per cent, usually ten. Thus a Massachusetts [1] charter of 1829 reserves to the legislature the right to revise the schedule of rates every four years if the net income exceeds ten per cent. A contemporary New Hampshire [2] charter gives the board of directors full power over rates, and permits the legislature to reduce them after ten per cent net on the investment has been realized. A clause typical of provisions of this kind is found in an early Maryland [3] charter, "That nothing in this act shall be construed so as to prevent the legislature of this state from legislating upon the subject of the tolls reserved in this act at any time after the expiration of twenty years after the passage of the act: *Provided*, That at no time shall the toll be so regulated or reduced as to yield less than six per cent per annum." Other Maryland as well as Pennsylvania charters embody analogous provisions. Ten per cent net income is

[1] Laws, 1829, ch. 93, § 10. [2] Laws, 1844, ch. 128, § 11.
[3] Laws, 1831, ch. 104, § 24.

by far the most common limit placed upon the discretionary powers of legislatures over railway rates in all the states in which such chartered provisions are found. In a few instances the rate of net profits permitted under the law is very much larger. For instance, in Indiana[1] charters were granted permitting the legislature to regulate rates whenever the profits exceeded fifteen per cent, and any excess above fifteen per cent was to be paid into the common school fund.

Another right reserved to the state in a considerable number of charters is the power to purchase the railway after a certain number of years. This power was frequently reserved in the charters of the New England States, the significance of which was perhaps illustrated in the agitation accompanying the recent leasing of the Boston and Albany Railway. A number of early Massachusetts charters reserved to the state the power to purchase after a period of twenty years. In Vermont this period of discretionary power of the state varied from twenty to fifty years. New Hampshire followed Massachusetts, fixing it at twenty. An Illinois[2] charter of 1850 gives the state the right to purchase, after twenty-five years, by refunding to the company the cost of the entire plant, with interest at the rate of six per cent per annum. In New Jersey[3] similar right was reserved after thirty years. An early Michigan[4]

[1] Laws, 1832, ch. 144, § 24.
[2] Laws, 1850, p. 150.
[3] Laws, 1832, p. 376, § 17.
[4] Laws, 1836, p. 267, § 19.

charter contains a provision which is typical of isolated charters in all of the Northwestern States, "The state shall have the right, at any time after the expiration of fifteen years from the completion of said road, to purchase and hold the same for the use of the state at a price not exceeding the original cost of said road, exclusive of repairs thereof, and fourteen per cent thereon, of which cost an accurate account shall be kept and submitted annually, on the first Monday in January, to the legislature, duly attested by the oath of the officers of said company, and at such other times as the legislature shall require the same." In Missouri[1] a charter granted in 1837 reserved to the general assembly the right to purchase the railway by giving notice in writing four years in advance. This charter also provided for the appointment of valuers whose function it was to fix the price of the transfer.

Limitations on the Life of Charters. — The preceding paragraph illustrates one class of limitations placed upon some charters in all parts of the United States. While a majority of the charters are silent upon this point, now and then charters were granted which were limited in their existence to a certain period of years, varying all the way from ten and twenty to ninety-nine or more years. One of the powers granted in the charters which do not contain provisions directly limiting their life was that which gave to the board of directors "perpetual succession," which means, of course, a fran-

[1] Laws, 1837, p. 253, § 22.

chise unlimited in the period of its existence. In the Northwestern States a few charters were granted limiting the life of the corporation to fifty and sixty years. Florida granted a few which were to lapse after a period of twenty years; Louisiana, after forty and fifty, and, in one instance, twenty-five. In one charter, a provision is found that after a certain number of years the same shall expire, and the assets of the corporation shall be distributed among the stockholders. The session laws of the different states contain numerous acts extending the charter period in those cases where the original act contained time limits; and it is obvious that in all those instances in which the charter reserved to the legislature the right to purchase, no time limit whatever was necessary.

Limitations on the Power of Taxation. — After the country at large had begun to realize the necessity and importance of railway transportation, various means were resorted to in order to encourage the construction of railways. American manufacturers were unable to provide the necessary material. This had to be imported from abroad, hence it was but natural that legislators should have resorted to the expediency of exempting from import duties materials to be used in the construction of railways. But the railways, after they had been constructed, represented valuable property, and to that extent increased the taxable resources of the territory in which they lay. To provide against the imposition of taxes which might become bur-

densome or even discourage the construction of railways, legislatures of states in all parts of the Union incorporated, in some charters, a provision limiting the power of the respective states to tax railway property, and, in a considerable number of instances, exempting such property altogether from taxation, usually for a limited period of years. "That the capital stock of said corporation shall be and remain free from taxation until the profits collected by said railroad corporation shall be sufficient to afford a dividend of five per cent per annum on the capital stock." This is from a Connecticut [1] charter of 1833, and represents analogous provisions found in New England charters of that period. In Massachusetts some charters exempted railway property from taxation for one or more years, after which the legislature had the right to levy a tax not exceeding a certain sum, frequently twenty-five cents per annum, on each share of the stock. In the Northwestern States isolated charters limit the power of taxation to a certain per cent on the capital stock; others to a certain per cent on the net income. Then, again, other charters make railway property liable to taxation like all other property; and late laws in a few of the Western states specifically state that no railway property shall be exempted from taxation.

State Participation. — To a limited extent the individual states participated in the construction

[1] Hartford and New Haven, passed in 1833. Pr. Laws, 1835–36, p. 1002, § 14.

of railways, either by becoming stockholders and lending the credit of the state, or by giving direct financial aid. The well-known illustrations of the railways owned by the states of Georgia and South Carolina and the city of Cincinnati stand quite alone in the contemporary railway history of the United States. The history of internal improvements had been such as to discourage the active participation of our commonwealths in the construction of railways. Works of internal improvement, greatly exceeding both the capacity to construct and to utilize them, had been projected by many states. The inevitable failure of these gigantic projects brought these states into disrepute as active economic agents; hence we find, in constitutions and charters granted after this period of disaster in state works of internal improvement, direct prohibitions of state participation. As a matter of historical interest, however, it may be well to notice a few typical instances of direct or indirect participation of the state in building up our railway system. It should be noted that the term "state" is here used in the specific rather than the generic sense, for even after constitutional prohibitions and statutory restrictions had become common, the smaller political units — county, town, village, and city — freely participated in railway enterprises. Large numbers of illustration can be found in nearly every state. An act of the legislature of Maryland,[1] in 1827, authorized subscrip-

[1] Laws, 1827, ch. 104.

tion on the part of the state to the stock of the Baltimore and Ohio Railway. A contemporary Michigan[1] charter empowers the state to take stock in the company chartered; likewise in case of New Jersey;[2] also in Arkansas[3] and other states in the Mississippi Valley. An early Indiana[4] charter limits the state in its subscriptions to five hundred shares, and in Louisiana[5] the governor is authorized to subscribe a certain amount in behalf of the state after a certain number of shares have actually been paid for by individuals. In turn, the governor may appoint one director to represent the interests of the state. It is important to notice that in this representation of the state in the management of railways to protect the financial interests of the commonwealth may be found the beginning of attempts at administrative control of our railways. In like manner the board of internal improvements, and later the commissioner of railroads appointed by the governor, were intrusted with the interests of the state in the control of railways to which Tennessee had given aid. Isolated charters in Wisconsin, Michigan, and other Northwestern States, as well as in various other states, authorized the company to borrow money and to pledge the credit of the state in its payment. In a few states, like Wisconsin and Texas, attempts were made to utilize the school fund in the construction

[1] Laws, 1836, p. 267, § 21.
[2] Laws, 1832, p. 376, § 21.
[3] Laws, 1860, p. 18.
[4] Laws, 1832, ch. 144, § 24.
[5] Laws, 1833, ch. 1.

of railways, on the plea that such an investment of these funds would be carrying out the provision of the law directing that school moneys shall be invested in the most profitable manner. In the estimation of the promoters of such plans, nothing could be more profitable than the railways which they had projected.

Miscellaneous Provisions. — Under this head mention will be made of provisions found in isolated charters in states in all parts of the country, being essentially alike in substance, although varying in the form of expression or exact scope of their contents. During the early part of the nineteenth century it was common to organize corporations for a variety of purposes. Experience soon demonstrated that corporations which divided their interests and their energy among two or more enterprises became involved sooner or later in difficulties, if not in absolute failure. As a result of this experience it was not long before state legislatures enacted general laws or inserted provisions in special charters to the effect that corporations shall be organized only for one specified purpose. A few charters, for instance, were granted, which authorized the construction of a railway, as well as participation in other kinds of business. An excellent illustration of this is found in the title of the Georgia Railroad and Banking Company, which has lasted into our own times. There appears to have existed a very close affiliation between railroading and banking, the same

corporation frequently engaging in both kinds of business. A reaction against this is clearly shown in statutes and charter provisions prohibiting railway companies from engaging in the banking business. Such prohibitions are found in the charters of Alabama,[1] Illinois,[2] Kansas,[3] Michigan,[4] Nebraska,[5] Pennsylvania,[6] South Carolina,[7] Florida,[8] Georgia,[9] Wisconsin,[10] and other states.

The route of the railways chartered by the various acts is described with varying degrees of completeness and accuracy. In perhaps the great majority of charters the termini and a few leading intermediate points are named; in others, only the termini; and in still others, nothing more definite than the expression that the railway in question shall be constructed between some eligible point on a certain river to another eligible point on a certain lake or in a certain township. Instances are recorded in which projectors solicited aid in the construction of a railway along one route and then chose another, and repeated their solicitations for aid along the second, and perhaps secured support from both.

The amount of land which the railway company might legally hold was quite generally restricted to that which was necessary for construction and

[1] Laws, 1849–50, p. 190.
[2] Laws, 1842–43, p. 199.
[3] Laws, 1857, p. 7, § 1.
[4] Laws, 1848, no. 199.
[5] Laws, 1857, p. 223.
[6] Laws, 1849, no. 76.
[7] Laws, 1835, p. 409.
[8] Laws, 1849–51, ch. 317, § 19.
[9] Laws, 1837, p. 193.
[10] Laws, 1847, p. 23.

operation — a strip of one hundred feet in width, and, in addition, whatever may be necessary in order to secure material and for the construction of depots, warehouses, and other necessary buildings. In many of the states the right of way was donated to the company; and, of course, in numerous instances, state and federal grants were given in aid of railways. But to provide for the purchase of the necessary land, charters usually contain provisions relating to eminent domain or expropriation. Most charters name some officer or tribunal before whom cases relating to condemned property may be heard, and the manner in which decisions and awards may be made.

The capital stock of the company was usually named in the charter, although, with very few exceptions, the amount of the capital stock apparently bears no relation to the magnitude of the railway in question. In only a few instances does the charter fix a definite ratio between the number of miles of road and the amount of the capital stock. While now and then a charter does not provide for the payment of anything whatsoever at the time subscriptions are made, or calls for only a dollar or two, in a large number of charters a payment of five dollars is called for at the time subscribers enter their names on the books of the company. Usually the manner in which the balance shall be paid is indicated, and the number of days' notice which must be given is stated. The voting power of stockholders is quite generally limited to one

vote per share, although in the North and South Atlantic States the graded system of voting, by which the number of votes of the individual stockholder decreases as his holdings increase, is common.

It is a familiar fact that our early railways were built for short distances and without reference to one another, and that our present magnificent systems are but consolidations of large numbers of smaller roads. We are not surprised, therefore, to find the subject of consolidations rarely touched upon in early charters. To be sure the term is used; and now and then a clause, either directly authorizing or prohibiting consolidations, was put into a charter. The right to cross other railways, as well as to form junctions, was frequently granted; and in reality such a right can easily be construed as the right to consolidate. Similarly, the power to operate and lease other railways was frequently given, although in the Southern States the term "farming" is sometimes used.

Most later charters expressly prohibit the leasing or joint operation of parallel or competing lines; and, in numerous early charters, companies are protected against the construction of parallel lines, either within a certain number of years or a certain distance from their own roads.

A great majority of charters provide for an annual report in one form or another. This report is most frequently made by the board of directors to the stockholders; in fewer instances to the legis-

lature; and, in still others, to both the stockholders and the legislature. The number of items specified in this report varies all the way from less than ten to more than one hundred.

Forerunners of laws relating to safety appliances and the protection of persons and property can also be detected in early charters. Provisions may be found relating to the order in which cars shall be put into a train, the manner in which crossings shall be protected, bells placed upon locomotives and fences built along tracks. (It is a matter of curiosity that, in some of our earliest charters, provision is made for the construction of gates across the railway tracks, which the train operators are to open and close whenever they cross the public highways.)

The transportation of troops and munitions of war is occasionally provided for; and in various Southern States railway officers are expressly exempted from the performance of military duty. In a few charters the power of the company to own slaves is treated. A sinking fund is also mentioned in a very few of them.

An archaic feature of our charters is found in the provisions relating to the use of the same railway track by different shippers, and the rules governing the construction of rolling stock. For example, in Massachusetts [1] a corporation was authorized to specify in its by-laws the form and construction of the wheels, and the weight of the

[1] Laws, 1826, ch. 26, § 6.

loads which should pass over its road. This clause had directly in view the use of vehicles other than those owned by the corporation. In several charters granted in the Northwestern States the form of the vehicles, as well as the price to be charged for the transportation of goods and owners' vehicles, is specified in the charters. In New Jersey,[1] it is provided "that no farmer belonging to this state shall be required to pay any toll for the transportation of the produce of his farm to market over the said road or roads, in his own carriage, weighing not more than one ton, when the weight of such produce shall not exceed 1,000 pounds, but the same farmer may be charged toll as for empty carriage." It will be noticed that the term "toll" is here used to designate remuneration for the act of transportation, while the term "expense" or "cost of transportation," as was noted in an earlier paragraph, relates more particularly to remuneration for the use of the track, and represents a contribution to the fixed charges of the road.

[1] Laws, 1831, p. 100.

CHAPTER II

Later Charters and Early General Laws

General Characteristics. — The terms "early" and "late," used with reference to railway charters, are relative in their significance; for a year which is early in the history of one state may be late in that of another. For instance, charters granted in the New England and Middle States between 1835 and 1840 may be characterized as later, while those granted in states like Wisconsin and Minnesota during those years would decidedly belong to the earlier charters of that section. The legislative history of railways in the various states of the Union is essentially similar, and as we observe the movements of this legislation from east to west we may notice that in turn each state goes through, in the main, all the experiences and stages of advancement of other states which preceded it in railway development. An examination of the contents of these charters, as one observes their march westward, clearly indicates the fact that the restrictions of the earlier types granted in the East are gradually made milder, if they are not altogether lost. Occasionally there is a reversion to type — a Western charter embodying all the

salient restrictions and regulating features of the severest Eastern charters. The additional observation may be made that the maximum rate provisions, which are rather common in the earlier charters of the East and Middle West, are frequently embodied in later charters. Then, as time advances and the more modern phases of railroading make their appearance, clauses referring to consolidations, discriminations, and even long and short haul are occasionally inserted. Aside from the enumeration of names comprising the board of commissioners, which usually appears in the first or second section of the charter, no regular order is maintained.

It is clear that states copied largely from one another, and, in the process of copying, different charter sections appear to have become badly mixed; and in numerous instances a considerable number, even a majority, of clauses incorporated in the more complete charter which served as the model are left out altogether.

While large numbers of special charters were granted up to 1870, general laws relating to railways appeared early in the thirties, and in a few isolated cases even before that time. A custom which aided in bringing about the transition from special to general laws was the abbreviation of railway charters by reference to previously granted charters in the same or, in isolated cases, in other states. Under this custom the charter only contained a few purely individual and local specifica-

tions, with the additional blanket provision that the company thereby incorporated shall enjoy all the rights and privileges previously granted to another specified corporation. Thus, in New York numerous charters are abridged by reference to the Attica and Buffalo charter,[1] granted in 1836. The same method was largely employed in the construction of charters in Maine, Virginia,[2] Missouri,[3] Minnesota,[4] Tennessee,[5] and other states. When, as was often the case, a considerable number of charters were abridged in the same state by reference to some one charter, an element of uniformity was introduced with almost as much efficiency as if general laws had been enacted.

One of the peculiarities of railway legislation in all sections of the country is the granting of special laws after general laws had been enacted in the respective states. Indeed, it is not uncommon to find upon the statute books a comprehensive general law enacted on a certain day, and perhaps a special charter granted, if not on the same, then on immediately succeeding days. Large numbers of special charters were granted, completely ignoring in their provisions existing general laws.

The Northern Pacific Franchise.— A late illustration of the organization of a railway company under special charter is afforded by the history of

[1] Laws, 1836, p. 319.

[2] Laws, 1839, ch. 107, p. 74, and charters granted subsequently.

[3] Laws, 1837, p. 247.

[4] Laws, 1857, ch. 53.

[5] Laws, 1851–52, ch. 103, 192, and others.

the Northern Pacific Railroad, the leading facts of which are set forth by the general counsel of that company in the preface to his compilation of the Northern Pacific charters.

"PREFACE"

"Soon after the institution of the foreclosure proceeding it was determined that it would be necessary to reorganize the Northern Pacific Railroad Company under a new charter, to be obtained either from Congress or from some one of the states. Congressional legislation was considered doubtful, and the reorganization committee early took steps to secure a charter for reorganization under a state law.

"In all of the states in which any portion of the property is situated the granting of charters by special act is prohibited, and corporate organization can only be effected under general laws. Such a constitutional amendment had been adopted in Wisconsin in November, 1871, but the supreme court of Wisconsin had several times decided that the amendment was prospective in its operation, and left the legislature at liberty to amend special charters granted prior to the adoption of the constitutional amendment.

"It was considered preferable to secure a special charter, which should be open from time to time to special amendment, and it was determined that the charter of the Superior and St. Croix Railroad

Company (a Wisconsin corporation) would be the best adapted for the purpose. This charter was acquired by the purchase of all the stock of the company and was amended by special act (ch. 244, Laws of 1885) of the legislature of Wisconsin, as hereinafter set forth.

"As the reorganized company was to acquire the vast properties of the Northern Pacific Railroad Company and to issue thereon a great amount of stock and bonds in order to carry out the plan of reorganization, it was thought prudent to leave unsettled no possible question, however technical, based upon non-user or upon any other ground, concerning the validity of the charter. To test the question the attorney-general of Wisconsin applied to the supreme court of that state for leave to file in the court, according to the practice thereof, a bill in the nature of a *quo warranto* to forfeit the franchise on the ground of non-user. The case was fully argued, and on the 19th day of June, 1896, the supreme court unanimously decided that the corporation was not dissolved by non-user, and that if any ground for forfeiting the charter had existed it was waived by chapter 244 of the Laws of 1895 amending the charter above referred to. So that before the purchase of the properties of the Northern Pacific Railroad Company and the increase of its capital stock and the provision for the issue of securities, the validity of the charter of the present Northern Pacific Railway Company (formerly Superior and St. Croix Railroad Company), by the

unanimous decision of the highest court of the state, had become *res adjudicata*."

The Superior and St. Croix Railroad Company, upon the basis of whose charter the Northern Pacific now does business, was granted in 1870 and provided for the construction of a rather short and not very important railway in the northwestern part of the state of Wisconsin. The road, however, was not built, and the charter provisions were not made use of. A few unimportant amendments were adopted in 1871, and in 1895 the legislature of Wisconsin adopted another and very comprehensive amendment which, together with the original charter, constitutes the present franchise of this great transcontinental line. The amendment of 1895 describes the route of the present Northern Pacific; it gives the company power, among other things, "to receive and store any property in any of its depots or other buildings, including elevators . . . ; to demand, collect, and receive such sum or sums of money for the transportation of persons and property and for the storage of property as shall be reasonable." The extension of the road and its connection with other lines was not directly provided for in the charter itself, but the general laws of the state, as amended in 1897, grant ample powers for this purpose: —

"Any railroad corporation organized and existing under the laws of the territory or state of Wiscon-

sin, or existing by consolidation of different railway companies under the laws of the territory or state of Wisconsin, and of any other territory or territories, state or states, may consolidate its stock, franchises, and property with any other railroad corporation, whether within or without the state, when their respective railroads can be lawfully connected and operated together, to constitute one continual main line, with or without branches, upon such terms as may be agreed upon, and become one corporation by any name selected, which within this state shall possess all the powers, franchises, and immunities, including the right of further consolidation with other corporations under this section, and be subject to all the liabilities and restrictions of this chapter, and such in addition, including land grants and exemptions of land from taxation, as such corporations peculiarly possessed or were subject to at the time of consolidation or amalgamation by the laws then in force applicable to them or either of them."

The Wisconsin statutes, like those of most other states, as will be noted more in detail later, prohibit the consolidation, lease, purchase, or control by one railroad corporation of another parallel or competing line, to be determined by jury. To complete its franchise the Northern Pacific filed this charter in all the other states through which it runs, and appointed certain persons as its legal representatives in those commonwealths. In Idaho

a special promise was exacted to the effect that the corporation accepts in full the provisions of the state constitution. It should be noticed that the reorganization of the Northern Pacific under a special charter took place at a time when every state through which its lines pass had on its statute books general laws governing the organization of railway companies.

The physical location of a railway is by no means an indication of the source of its legal power, for, as in the case of the Northern Pacific, a great system may be operated on the basis of a charter granted to an insignificant road in a distant state. The Southern Pacific, for instance, is organized under the laws of Kentucky. What constitutes the essence of the legal privilege of a modern railway corporation is an extremely complex problem, the difficulty of which is strongly impressed upon us when we realize that scores, if not hundreds, of separate charters granted by different states are comprised in the existing franchises of our great companies. The Pennsylvania company, for instance, represents more than a hundred and fifty original lines, each having its special charter or certificate of incorporation. Many of these charters represent conflicting, if not mutually exclusive privileges, and what the charter rights of such a corporation are is a question difficult of solution. Not only is there a possibility of conflict between the diverse provisions of different charters, but also between the charters and the general laws, although

in many states the supremacy of general over special laws has been at least acquiesced in, if not publicly recognized. The chairman of the Massachusetts Railway Commission writes[1] that in that state it has been recognized that general laws have superseded the earlier special enactments. This appears especially significant when we remember that, with a few minor exceptions, all the railways of Massachusetts were incorporated under special charters — a compilation of which makes a good-sized volume — before comprehensive general laws had been passed. This possibility of a conflict between special and general laws is illustrated in the railway history of Michigan. The legislature of that state, in 1898, created a commission composed of the railway commissioner and two state officers to negotiate with certain railway companies of the state operating under special charters, for the purpose of ascertaining upon what terms the companies would be willing to surrender their charters. While the question of the amount of taxes these companies were to pay was the immediate cause of this action on the part of the legislature, a similar situation with respect to the other question is by no means an impossibility. No further reference is here made to this difference between the railways and the state, because it involves the question of taxation, which constitutes a special branch of inquiry too large for treatment in this place.

Early General Laws. — In the chapter on early

[1] Private correspondence.

charters reference is made to a law of Massachusetts of 1808. In 1833[1] the legislature of that state enacted a law "defining the rights and duties of railway corporations in certain cases." This law was included in a larger act on canals, turnpikes, and railroads. The law of 1833 also embodied the idea of a preamble by specifying that petitions for the construction of a railway shall be accompanied by the report of a competent engineer. Connecticut,[2] in 1849, adopted a fairly comprehensive amendment to the earlier act relating to railroad companies. In the first section this law provides that all railway companies shall be subject to general laws, except when otherwise specially provided for. A similar provision to that found in Massachusetts was embodied in the law providing for the report of a competent engineer in connection with the petition for a charter. The usual provisions with respect to organization, shares of stock, location, annual reports, and other financial affairs of railway companies were provided for. In Maine[3] a general law adopted in 1841 contained the following section: "No petition for the establishment of any railroad corporation shall be acted upon unless the same is accompanied and supported by the report of a skilful engineer, founded on actual examination of the road and by other evidence, showing the character of the soil, the manner in which it is proposed to construct said

[1] Laws, 1833, ch. 187 and Rev. Stat., p. 342.
[2] Laws, 1849, ch. 37. [3] Rev. Stat., 1841, ch. 81.

railroad, the general profile of the country through which it is proposed to be made, the feasibility of the route, and an estimate of the probable expense of constructing the same. The petition shall set forth the places of beginning and ends of the proposed railroad, the distance between the same, the general course of said railroad, together with the names of five towns through which the same, on actual survey, may be found to pass." This provision is typical of analogous clauses in the laws of other North Atlantic states. By 1848 Maine granted charters containing only a few sections, together with the additional statement that "all the privileges and immunities usually granted to such corporations" shall be delegated to the company thereby formed. New Hampshire[1] adopted a general law in 1843 dealing with expropriation, crossings, fences, contracts among railway companies, and so on. The year following, "An act to render railroad corporations public in certain cases, and constituting a board of railroad commissioners" was adopted. The commission established by this law was empowered to lay out routes on petition only, to inspect roads and railway accounts. Vermont enacted similar laws in 1846–47 and 1849, the latter being quite a comprehensive general law.

New York, which is representative of the Middle States, had passed thirty general laws before 1834, beginning with an act to prevent injury to railroad

[1] Laws, 1843, ch. 142.

property and insure the safety of passengers. These laws embraced subjects like the relation of railroads to canals, highways, Indian lands, taxation, maps and profiles, contracts, loaning the credit of the state, carrying mails, junctions, baggage checks, altering lines, transportation of freight, suits against companies, destruction of noxious weeds, and such like. A law of 1843 compelled railway companies to report annually to the secretary of state. Like the New England states, New York declared the "public use" of a railway, and demanded proof that the proposed railway was of "sufficient utility to justify the taking of private property" in accordance with the provisions of the general law authorizing the organization of railway companies. By 1848 New York had worked out a fairly comprehensive general law, but it was not until 1850 that what may be called the fundamental law of the state was adopted. (The New York law of 1850 was transcribed, with the exception of a few sections relating to the Erie Canal, by the legislature of Wisconsin in 1853, which, however, failed to pass the bill.) The law of 1850 forbids the organization of corporations by special acts, except for municipal purposes and in cases where, in the judgment of the legislature, the objects of the corporation cannot be obtained under general laws. In addition, it contains among others, provisions relating only to the organization of railway companies, subscription and forfeiture of stock, transfer and increase of stock, expropria-

tion, change of route, filing maps and profiles, paying labor employed in construction, formation of trains, baggage, intoxication of employees, annual report of over one hundred items, and other phases of legislative control.

Notwithstanding numerous general laws the New York and Erie Railway secured 17 amendments before 1850. The Portsmouth and Concord Railway secured 1 amendment during each of the first ten years of its existence. The Western Branch, Massachusetts, secured 22 amendments before 1853, and the Eastern Branch secured 18. Thirteen were granted to the Housatonic between 1838 and 1850; the Camden and Amboy, 15; the Delaware and Raritan, 14. The Pennsylvania adopted 22 up to 1854, and the Baltimore and Ohio, 21 between 1828 and 1852. Since these amendments dealt with such topics as the increase of stock, the issuance of bonds, holding lands, building telegraphs, extending lines and forming connections, the construction of bridges, and so on, it is obvious that a single comprehensive law, properly observed, would have answered all the purposes, and in a uniform way, of all the special charters with which the various legislatures had to concern themselves. Numerous contemporary newspaper paragraphs can be found deploring the fact that legislatures are obliged to use so much of their time for the construction of special laws which could be so much more efficiently dealt with under general statutes.

Among the states of the Middle West, Illinois began early. In 1849[1] the legislature of that state passed "An act to provide for a general system of railroad incorporations." This law prescribes the formation of railway corporations and the powers, duties, and liabilities of officers. The board of directors is given full power over rates, but these are limited to three cents per mile for passengers, unless otherwise provided for by special act of the legislature. The legislature is empowered to reduce rates without the consent of the company, but no such reduction shall cause the net profits to fall below fifteen per cent per annum. The probable use of the proposed railway must first be ascertained, and the interested parties must be given an opportunity to be heard. Annual reports are demanded, and the act is to apply to all existing corporations, so far as the same is not in conflict with special charters granted. The legislature of Massachusetts, in 1855, adopted a comprehensive general law, including provisions on legislative control of rates, junctions, taxing capital stock one per cent per annum, providing for reasonably good service, consolidation, and so on. However, in this, as in so many other states, during succeeding years charters were granted by the legislature which are as long and involved as if no general laws had been in existence. Iowa[2] passed an incorporation law, providing for the incorporation of railroads, at the first session of its general assembly, and in most

[1] Laws, 1849, p. 15. [2] Dixon, "State Railroad Control in Iowa," p. 20.

of the earlier legislation of that state interference with railway management is foreshadowed. A law of 1856[1] contains the significant provision that "railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may from time to time be enacted." In 1860, maximum rates were prescribed, and two years later railways were required to maintain offices within the state and to submit annual reports. Another law provided for the periodical publication of rates and certain provisions relating to safety.

The active regulation of rates was attempted in 1866, but most of the restrictive laws enacted up to this time were rarely enforced. Kansas,[2] after most prolific crops of private charters, passed an elaborate general law in 1857, but within three days after this law had been passed a special charter was granted without reference to the act in question, although covering in its provisions matters which the general law treated very elaborately. The contents of this rather elaborate law are essentially like those of the Illinois law.

Taking North Carolina and Alabama as representatives of another section of the country, it may be said that their general laws, while fairly comprehensive, are not as complete as the best laws of states farther north. The North Carolina law of 1871[3] embraces seventy sections, in one of which a maximum rate of five cents for passengers is pre-

[1] Dixon, p. 21. [2] Laws, 1857, p. 7. [3] Laws, 1871–72, ch. 138.

scribed; another calls for an annual report of one hundred and five items, and another prohibits consolidation with parallel or competing lines. The Alabama[1] law of 1850 reserves to the legislature the right to alter or repeal any certificate of incorporation; it places a limit upon the indebtedness which the company may assume, and contains furthermore the very novel provision that no railroad shall be constructed through an orchard without the owner's consent. In 1853 all railway companies were made subordinate to general laws.

California was one of the few states which began to legislate on railway matters in general rather than special acts, beginning with 1850. In 1853[2] a law was passed which enabled any twenty-five persons to form a railway company. The life of the franchise was limited to fifty years. While section 2 of the law specified that the capital stock of the company shall exactly equal the actual cost of the road, section 16 empowered the company to increase its capital stock "to any amount which may be deemed sufficient and proper for the purpose of the corporation." This law was amended in 1853, 1856, and 1857, but in 1861[3] the whole of it was repealed and another law, supplementary to the original general act of 1850, was adopted. An important provision of this last law is found in section 1, which specifies that at least $1,000 per mile shall be subscribed, and ten per cent actually

[1] Laws, 1848–50, p. 54. [2] Laws, 1853, ch. 72.
[3] Laws, 1861, ch. 532.

paid in before the articles of incorporation can be filed. The form of the articles of the association is prescribed, and the period of its existence limited to fifty years. A sinking fund for the redemption of bonds is provided for, and the unusual liberty of laying out its road, "not exceeding nine rods wide," is given to the company. There are elaborate sections on eminent domain, arbitration, tolls, and so on. By a vote of three-fourths of the constituents of the companies, consolidated railway corporations may be organized. Maximum rates of ten cents per passenger-mile and fifteen cents per ton-mile are prescribed, although the company cannot be compelled to undertake the transportation of a small quantity of freight for less than twenty-five cents. The maximum rates of the California law are in part exceeded by those prescribed in a Washington charter granted in 1862,[1] which are ten cents per passenger-mile and forty cents per ton-mile. It is also a significant fact that the first general law enacted by the legislature of Washington, in 1873,[2] relates to "extortion and unjust discrimination in the rates charged for the transportation of passengers and freight on railroads in this territory." Montana,[3] Colorado,[4] Arizona,[5] and Idaho [6] are other states which, like California, began with general laws.

[1] Laws, 1862, p. 119, § 10.
[2] Laws, 1873, p. 455.
[3] Laws, 1873, p. 93.
[4] Laws, 1862, p. 44.
[5] Acts of Territorial Assembly, 1877, p. 24.
[6] Laws, 1864, On Corporations.

CHAPTER III

Constitutional Provisions

General Considerations. — Constitutional provisions probably represent the more fundamental and permanent features of railway legislation. It may be assumed that the provision incorporated in the constitutions of the various states of the Union were thought to represent those matters respecting railways which the people of the different states, represented in their respective legislatures, considered most important and least likely to require changes in the future. The history of American constitutions does not reveal great readiness on the part of the people to change or modify their organic laws; and in view of this slowness in bringing about constitutional changes an element of fixity and rigidity is infused into the legislative control of railways.

The constitutions of the older states, as a class, contain fewer and less comprehensive provisions relating to railways; and two of them, Massachusetts and New Hampshire, embody no direct provisions of this kind, while Rhode Island is saved from being classified with these two states by a brief and rather unimportant constitutional pro-

vision. In addition, there is an absence of clauses relating to railways in the organic codes of the territories of Arizona and New Mexico. With these exceptions, every state in the Union contains more or less elaborate provisions on this subject, varying from the less comprehensive and incomplete sections of many of the constitutions of the older states to those much wider in their scope and stringent in their nature, as in the recently adopted constitution of Montana.

By far the greater part of the contents of all the constitutional provisions may be grouped under three general heads: first, those relating to incorporation; second, those relating to public aid, and, third, to direct regulation and control, the latter having in view the correction of abuses and the establishment of equitable rates. While a few of these provisions are negative in their character, a good many of them are positive, empowering legislatures to establish rates and to do other things calculated to subordinate the agencies of transportation to the public good.

Acceptance of the Constitution. — Fifteen state constitutions contain provisions to the effect that no railway, canal, or other transportation company in existence at the time of the ratification of the constitution shall have the benefit of any future legislation by general or special laws other than in execution of a trust created by law or by a contract, except on the condition of complete acceptance of all the provisions of the section or article

of the constitution in question. In a few instances the further provision is embodied that whenever existing charters are revised or amended, the same shall become subject to the constitution.[1]

Corporations organized under General Laws. — In the chapter on Early Railway Charters it was noted that great crops of special charters were produced in all sections of the country, and it was perhaps a reaction against these excesses in special and local legislation which led to the adoption of constitutional provisions prohibiting the organization of railway and similar companies under special charters. One method of avoiding these constitutional and statutory provisions was observed in the case of the Northern Pacific Railway; but section 21 of the original charter of the Superior and St. Croix Railroad Company declared "that in the judgment of the legislature of this state the object of the corporation hereby created cannot be attained under the general laws." The later constitutions of the Western states are very stringent in this respect, and the organization of a large class of corporations, of which railways are an important member, under special acts, is rigidly prohibited.[2]

[1] The constitutions incorporating such provisions are found in Alabama, Arkansas, Colorado, Delaware, Idaho, Kentucky, Louisiana, Mississippi, Montana, North Dakota, Pennsylvania, South Dakota, Texas, Utah, and Wyoming.

[2] The following states have incorporated such prohibitions in their constitutions: Arkansas, California, Colorado, Delaware, Florida, Illinois, Idaho, Indiana, Iowa, Louisiana, Maryland, Michigan, Min-

Previously granted Charters. — Closely allied to the last type of constitutional provisions is another, found in only six states, which invalidates all charters and special or exclusive privileges granted before the adoption of the constitution, unless organization had been actually effected. Organization thereafter could not be effected without a full acceptance of the new constitution.[1]

Special Charters. — In addition to the positive provision that railway companies shall be organized under general laws, nineteen constitutions contain the negative clause that no special charters shall be granted, except for charitable, educational, and certain other purposes, when the same shall remain under state control. A few constitutions specify that special charters may be granted to corporations and organizations not having in view financial gain.[2]

Railways Public Carriers. — The analogy of railways to common roads and other public highways is expressed in constitutional provisions declaring all railway and canal companies to be common carriers. While provisions bearing on this topic are differently worded in the different constitu-

nesota, Missouri, New York, North Carolina, South Carolina, Utah, West Virginia, Wisconsin, and Wyoming.

[1] This is found in the constitutions of Arkansas, California, Colorado, Kentucky, Idaho, and Wyoming.

[2] The following are the states whose constitutions contain such provisions: Arkansas, Colorado, Idaho, Kentucky, Kansas, Minnesota, Mississippi, Missouri, Nevada, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, and Wyoming.

tions, sometimes a separate section being devoted to it, and in other instances only a phrase or sentence embodied in another section, the meaning is usually the same; namely, the declaration that the railway is a public highway and that railway companies are common carriers.[1]

Eminent Domain and Public Use. — Ever since the Supreme Court of the United States handed down the decision of Munn *v.* Illinois, declaring that whenever a person devotes his property to a use in which the public has an interest, he must grant, to the extent of that interest, the right of the state to control that property, no one could consistently question the public nature of railways. This fact has found common expression in the term "quasi public," which is now generally applied to railway corporations. A large number of state constitutions declare that the respective legislatures may take the franchise and property of railway companies and subject the same to public use, when the general welfare requires it, in the same manner in which the property of individuals is taken. In other words, these states reserve in their constitutions the power to exercise the right of eminent domain over all the corporate property of a railway company.[2]

[1] The following constitutions contain such provisions: Alabama, Arkansas, Colorado, Idaho, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Texas, Utah, Washington, West Virginia, and Wyoming.

[2] The following states have this provision: Arkansas, California, Colorado, Idaho, Illinois, Kentucky, Mississippi, Missouri, Montana,

Power to annul Charters. — Sixteen states reserve constitutional power to alter, amend, revoke, or annul charters granted under special or general laws, whenever in the opinion of the legislature it may be injurious to the citizens of the state in question to continue the same. Usually the additional clause is incorporated that in case of such repeal or revocation no injustice shall be done to the members of the corporation.[1]

Public Aid. — Even after the downfall of the national system of internal improvements, together with the failure of individual states to make such works a success, subordinate political units — counties, towns, cities, villages, etc. — extended aid to railway companies in a variety of ways, the most common among which were granting the right of way, making cash donations, purchasing bonds, or becoming stockholders, loaning the public credit, etc. Provisions relating to subscriptions to stock are found in fourteen, and to loaning of the public credit in sixteen constitutions.[2]

Nebraska, North Dakota, Pennsylvania, South Dakota, Washington, West Virginia, and Wyoming.

[1] Found in the constitutions of Arkansas, California, Colorado, Idaho, Iowa, Kansas, Mississippi, Montana, New York, North Carolina, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

[2] The former including the following states: Arkansas, Connecticut, Delaware, Florida, Idaho, Louisiana, Kentucky, Mississippi, Missouri, Oregon, Pennsylvania, Virginia, Washington, and Wyoming; the latter, Connecticut, Florida, Louisiana, Maine, Mississippi, Nevada, New York, North Carolina, — excepting a few specified cases, — Oregon, Pennsylvania, Texas, Utah, Virginia, Washington,

Intersections, Junctions, and Consolidations. — Varying somewhat in the number of subjects specified in the constitution, eleven states make provision for the connection, crossing, and intersection of railways and interchange of traffic. In one form or another it is prescribed that every railway shall have the right to intersect, cross, or connect with any other railway, and that it shall receive and transport the freight and coaches, loaded or empty, of every other railway, without delay or discrimination. Closely allied to the subject of connections and the interchange of traffic is the question of consolidations, and constitutional provisions dealing with both subjects are found in several states. The most common form in which the traffic arrangements of the different roads is expressed is that which permits one railway to lease, control, purchase, or consolidate with any other railway, provided that the other is not a parallel or competing line. To what extent provisions relating to mere interchange of traffic would permit the consolidation of competing lines is not clear. Isolated provisions prohibiting the stock of other railway companies may be found.[1]

Wisconsin, and Wyoming. Idaho breaks the monotony of this rule, in that it prohibits certain political units from becoming stockholders in all joint stock companies, except "railroad corporations, companies, or associations."

[1] Among the states prohibiting the consolidation of competing lines are: Arkansas, Colorado, Illinois, Kentucky, Missouri, Montana, North Dakota, South Dakota, Texas, Utah, Washington, and West Virginia. The following provide for junctions, connections,

Vote of Shareholders. — Only nine States provide for some system of suffrage on the part of shareholders, and for these the constitution of Illinois appears to have served as a model. "The general assembly shall provide, by law, . . . the right of every stockholder to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate such shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit." [1]

Free Transportation. — The granting of free passes to members of the legislature, state, municipal, and other officers, or the selling of the tickets at a discount, is constitutionally prohibited in Alabama, Arkansas, California, Florida, Kentucky, Mississippi, Missouri, New York, Pennsylvania, Washington, and Wisconsin. The constitution of Wyoming also treats of the sale of unused tickets or parts of tickets.

Regulation. — The establishment of tariff schedules and the regulation of rates are treated in the constitutions of Georgia, Mississippi, Missouri,

etc.: Alabama, Kentucky, Idaho, Louisiana, Mississippi, Missouri, Montana, Pennsylvania, South Dakota, Texas, and Wyoming.

[1] Found in the following constitutions: Delaware, Illinois, Idaho, Kentucky, Mississippi, Missouri, Montana, Nebraska, and West Virginia.

Utah, Washington, and West Virginia. The legislature expressly reserves full power of control in addition to reservations expressed in other sections of the constitutions of Alabama, Florida, Idaho, Illinois, Louisiana, Nebraska, South Dakota, and Wyoming. Discrimination against persons and places or industrial sections are occasionally directly prohibited in the constitution. The form in which the prohibitions are expressed varies, but they all have in view the equal treatment of all the interests affected by the railway service.[1]

Pooling. — The formation of trusts or combinations, and the making of contracts restricting competition or having in view the control of prices, is prohibited in ten constitutions.[2]

Miscellaneous. — Only a few states provide in their constitutions for the organization of administrative bodies, such as railway commissions, and the powers and duties of the same. The California constitution not only prescribes the organization of the commission, but enumerates the more important powers of this commission, specifies the manner in which the commission shall be elected by the districts into which the state is constitutionally divided, and fixes fines for violations of the law on the part of railway agents or employees.

[1] The following constitutions contain more or less complete provisions on the subject of discrimination: Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Kentucky, Missouri, Montana, Nebraska, Pennsylvania, Texas, Utah, Washington, and Wyoming.

[2] California, Kentucky, Idaho, Mississippi, Montana, North Dakota, South Dakota, Utah, Washington, and Wyoming.

Analogous provisions are found in the constitutions of Kentucky and Louisiana. The constitutions of Arkansas, Missouri, and Pennsylvania make it unlawful for railway officials to be interested in the purchase of materials and supplies for the construction of a railway. The constitutions of Arkansas, Kentucky, and Indiana prohibit the charging of a greater sum for a shorter distance over the same line in the same direction under similar conditions. Four constitutions — Colorado, Kentucky, Mississippi, and Montana — make it unlawful for a corporation to require its servants or employees, as a condition of their employment, to sign a contract limiting the liability of the company in case of suits for damage, or precluding the possibility of bringing such suits altogether, by contract. About ten constitutions specifically limit the activities of a chartered corporation to the business which is expressly provided for in the charter. In a few cases the constitutions specify that no railway company can become a foreign corporation by consolidation; and, in a small number, a provision common in many of the earlier laws is enacted, compelling railway companies to establish stations or depots whenever they pass within a certain distance of towns and villages, frequently the county seat. The constitution of Washington stands alone in that it expressly prohibits discriminations against express companies. Idaho and Wyoming demand the appointment of legal representatives of railway companies in those

States.[1] The Missouri constitution provides for the payment into the state treasury of specified sums of money proportionate to the amount of capital stock before a charter can be issued.

This analysis presents the leading features of the constitutional provisions of the several states. None of importance have been omitted and only a few of the less important ones have not received mention.

[1] This provision is common in general laws but not in constitutions.

CHAPTER IV

Present General Railway Legislation[1]

Terms applicable to Later Charters. — In a technical sense the term "charter" can scarcely be applied to the instruments issued to railway corporations under contemporary general laws. The word "charter," through long usage, has come to signify a special grant of authority and power. In the constitutions of twenty-one states, as was noticed in the preceding chapter, the incorporation of railway companies under special or local acts is prohibited; in other states this prohibition is found in general laws, and in some states in both the constitution and general laws. The statutes of South Carolina mention the organization of railway companies "under charters," and in the Kansas statutes the term "charter" is also used. But these are exceptions. Terms like "articles of association," "certificate of incorporation," "articles of incorporation," "articles of agreement," and "letters patent" have come into use, and

[1] This chapter is based on the latest Revised Statutes of the several states, and General Laws enacted since the publication of such statutes when the Revised Statutes were not up to date. To specify references to statutes in detail would unduly burden this book with foot-notes.

carry with them the significance of earlier special charters. Articles, certificates, etc., are charters only in a loose and general sense, because the contents of the franchise itself are expressed in the general law relating to railways and the constitutional limitations under which these have been exacted. The grant of a charter involves a distinct legislative act authorizing the company receiving the same to exercise, in a measure, the rights of sovereignty, and to do the things for which the organization was accomplished. A certificate of incorporation, on the other hand, is issued in pursuance of law by administrative and not by direct legislative authority. Formerly a separate act of the legislature was necessary. Under general laws an administrative act for each such grant of power is all that is requisite for the organization of a railway company. To be sure, there is a very direct connection between the earlier charters and the later general laws, for many of the latter embody not only the essential features of the former, but frequently they are expressed in similar and even identical language. The change of name to article or certificate did not carry with it any radical change in the nature of the franchise. In this respect there exists continuity of development. The greatest change brought about by the transition from special charters to incorporation under general laws consisted in uniformity. Almost infinite variety in charter provisions was common during the earlier

period of special legislation. Under general laws, even when compliance therewith was not enforced or enforceable, a certain degree of uniformity was brought about from the very first.

Conditions under which Railway Companies may be organized. — There are features of railway legislation in the United States which reveal many elements of uniformity as to the conditions under which railway companies may be organized; and yet, after admitting this much, we are compelled to recognize the fact that railway laws are very far from being uniform, and that numerous variations and differences are noticeable.

The number of persons who may associate themselves for the purpose of incorporating railway companies varies from two or more in Washington to any number in Iowa. Between these extremes there exist ten different numerical groups which may effect an organization: 3 or more in Florida, Oregon, Montana, and Wyoming; 5 or more in Illinois, Indiana, Kansas, Nebraska, Wisconsin, Montana, etc.; 6 in Louisiana; 7 in Michigan, Kentucky, Alabama, New Jersey (for roads less than 10 miles in length); 10 in Maine, Georgia, Arkansas, Texas, etc.; 13 in New Jersey (for roads more than 10 miles in length); 15 in New York, Indiana, etc.; 20 in Vermont; 25 in Massachusetts, New Hampshire, etc. These numbers, or more, may in some states be composed of any persons whatsoever; in others a certain proportion must be citizens, and in a few all of them

must be citizens. Certain restrictions are occasionally made with respect to residence, both on the part of the stockholders and on the part of the board of directors and officers. The object of restrictive provisions relating to residence was evidently to prevent the projected road from being controlled by "foreign influence." During the early history of railways in the United States the possibility of foreign control, on the assumption that such control would result in the neglect of local interests, was used as a weapon to encourage local subscriptions to the stock of railway companies.

Contents of the Articles. — The nature of the contents of the articles of association, or certificates of incorporation, can best be indicated by presenting the salient features of such articles in a few of the leading states, which may be considered typical of analogous provisions from the laws of other states, understanding by the term "typical," not identity, but essential similarity, leaving room for modifications of one kind or another in particular cases.

The law of *Illinois* requires a statement of the name of the corporation to be organized, the states from and to which the railway is to be constructed, the location of the principal offices, the time of beginning and completing construction of the railway, the amount of capital stock, and the number and size of the shares, the names and residences of the persons who contemplate effecting an organization, and the names of the first board of directors.

According to the statutes of *Maine*, the articles must contain the name of the corporation, the gauge of the projected railway, the names of the places from and to which the same is to be constructed, the amount of the capital stock, which shall be not less than $3000 per mile for narrow-gauge and $6000 for standard-gauge railways, the number of shares of stock, and the names and residences of five directors. Since, on this point, the laws of Maine[1] are in many respects much better than those of most of the states, a full quotation is here inserted: —

"Said directors shall present to the board of railroad commissioners a petition for the privilege of said articles of association, accompanied with a map of the proposed road, on a proper scale. The board of railroad commissioners shall, on presentation of such petition, appoint a day for a hearing thereon, and the petitioners shall give such notice thereof as the said board deems reasonable and proper, in order that all persons interested may have an opportunity to appear and be heard therein. If the board of directors, after notice and hearing parties, finds that all the provisions (of law) have been complied with and that public convenience requires the construction of said railroad, said board shall indorse upon said articles a certificate of such facts and the approval of the board in writing. The secretary of state shall, upon payment of $20 to the state, cause the same, with the

[1] General Laws, 1899, p. 117, sec. 1.

indorsement thereon, to be recorded, and shall issue a certificate in the following form."

Then follows the prescribed form of certificate, with the contents indicated above.

The laws of *Arkansas*, for 1899, created a state board of railroad incorporation, composed of the governor, who acts as chairman, the attorney-general, auditor, secretary of state, treasurer, and commissioner of state lands. This board hears all applications for certificates of incorporation, and on its recommendation such certificates may be filed with the secretary of state, and thus legally empower an organization to construct a railway under the terms of the general laws of the state. Ten or more persons may organize, elect a board of directors, and subscribe to the articles of association when $2000 per mile has been subscribed and five per cent of the subscriptions paid to the board of directors, a majority of which must be citizens of the state.

The laws of *California* require the articles of incorporation to state the name of the projected corporation; the purpose for which it is to be organized; the places from and to which the railway is to be constructed, as well as all intermediate branches; the estimated length of the road; the amount of the capital stock, $1000 per mile of which must be subscribed before the articles can be filed, and ten per cent actually paid in. The number of directors varies from five to eleven, but five of them must be residents of the state. The

sale of railway franchises by municipalities must be advertised, and the franchise given to the highest bidder.

Massachusetts. — The articles must contain the name, route, gauge, capital stock, and other common items. In case of standard-gauge railways $10,000 per mile must have been subscribed, and for narrow-gauge $3000. The amount of the capital stock depends upon the detailed estimate of costs. No increase in capital stock can be made without the authority of the railway commission, before whom a hearing must previously have been given, upon which such increase or refusal to permit such increase is determined. The articles and certificate must be filed with the secretary of state. All petitions[1] for such charters must be accompanied by a map upon a proper scale, showing in detail the entire route of the road. A "certificate of public exigency" is also required before a charter can be granted. The railway commission, upon due notice, must give a hearing to all persons interested in the projected railway, and not until such persons have been given an opportunity to be heard, and all the other provisions of the law complied with, can a charter be granted. It will be noticed that the Massachusetts law still provides for the granting of special charters, although these special grants are surrounded by wholesome and what appear to be entirely adequate provisions and safeguards.

[1] Compare the laws of Maine.

Michigan. — Although a law of 1891 of this state declared every railway company operating within the limits of the state "to be in all respects subject to the general laws of the state respecting railroads, as now existing or as hereafter amended," a conflict between such charter provisions and general law provisions is still possible, as has already been indicated in another connection. Consequently, in 1889 there was created in this state a commission, — composed of the commissioner of railroads, the state treasurer, and the secretary of state, — whose duty it is to negotiate with railway companies operating under special charter, to determine upon what terms such railway companies will surrender their charter rights. For this purpose the commission is given authority to inquire into the business of railways, to secure the necessary information by subpœnaing witnesses, etc.

Georgia. — In addition to the usual provisions of the articles of incorporation the laws of Georgia provide for a petition which must be presented at least four weeks before a charter can be secured. Companies may amend their charters by adopting the general railway laws of the state.

Significance of Certificates and Articles. — These articles and certificates empower railway companies to make examinations and surveys for the proposed railway, in order to select the most advantageous route; to purchase, receive, and hold an amount of real estate necessary for the construction, maintenance, and operation of the road; to own other

kinds of property essential to railway business; to have perpetual succession, or succession for a certain period of time; to have the power to sue and to be sued; to establish connections with other railways; to charge or to receive such remuneration for their services as from time to time may seem reasonable; and, in general, to enjoy those rights, privileges, and immunities which the law guarantees to all similar corporations, and which are essential in carrying out the legitimate aims and purposes of the corporation. The completeness with which the powers and duties of railway corporations are prescribed in different laws varies somewhat, yet there exist, perhaps, greater similarity and more completeness in this respect than in any other subject of railway legislation. In some states corporate powers of railway companies are enumerated in separate laws; and, in others, all the leading features of legal provisions relating to railways are expressed in the commission laws. It is unnecessary to enumerate in the lengthy phraseology of the law books the detailed rights and privileges of railway companies, for they are chiefly the same as those enjoyed by corporations in general, and are not essential to a consideration of the degree of regulation and control which is possible under the existing railway laws of the different states of the Union.

The provisions of the few articles which have been presented above are sufficient to show that there exist differences among the states with re-

spect to the time limits within which railways may be constructed; the amount of capital stock, and the subscriptions thereon per mile of railway; the degree of publicity given to the applications for charters, and other things. A fee for filing certificates is charged in a number of states. For instance, in North Carolina $250 must be paid before a bill can be introduced to incorporate or amend. In Maine a fee of $20 is exacted, and similar fees are charged in Wisconsin, Washington, and other states. The laws are weak in the financial requirements which they exact of railway companies. It would seem that some definite proportion should exist between the amount of the capital stock and the length and characteristics of the projected road; but such is not generally the case. Idaho and Indiana require a subscription of $1000 per mile; Kentucky, $250 per mile, of which twenty per cent must be paid in cash; Arkansas, $2000 per mile; Maryland, ten per cent payment on shares; Virginia, a payment of $2 per share when subscriptions are made; New Jersey, $10,000 per mile, and a deposit of $2000 per mile when the articles of association are filed, which latter sum, however, is returned to the board of directors when the road is completed. This is sufficient to show existing variations.

Corporate Life and Reserved Rights of the State. — While many of the early charters and general laws were unrestricted in their nature, it was not long before a reaction against this lack of restraint

set in, and regulating features, more or less adequate in their nature, were introduced in charters and certificates. Many such charters contained in one of their concluding sections the proviso that the charter in question should be considered a public act, and, as such, to be construed favorably for the purposes for which the company was organized. Both in England and the United States, however, it has been held that the mere insertion of such a clause does not make a special or private law a public act, and that unless a charter is public by the nature of its contents it will be construed as a special act when passed with reference to a particular company organized to construct a certain road. The public importance of railways and the vital connection between them, and the social and economic interests of the states, frequently led legislators into a good deal of indulgence, especially during the early period of railway development. The limitations of charter rights had not yet been established; and it was not uncommon for incorporators to maintain that the rights and privileges granted by their charter were absolute and unrestricted. Not until the advent of Granger legislation, culminating in the leading case of Munn *v.* Illinois, had the right of the state to interfere in the management of railways incorporated under special charters been established; and at the present time nearly two-thirds of the states have statutory provisions reserving to the respective states the right to alter, amend, or repeal the fran-

chise of any corporation, whether organized under special or general law. Reference to chapter III, on constitutional provisions, will show similar limitations placed upon franchises by state constitutions.

The nature of the reserved rights of the states and the limitations placed upon the corporate life of railway companies are illustrated by provisions in several states here inserted: —

Maine. — The laws of Maine provide that "no corporation can assign its charter or any rights under it; lease or grant the lease or control of its right or any part of it, or divest itself thereof, without consent of the legislature." In addition, all corporations, whether organized under special or general laws, shall be subject to general laws. In Maine and Massachusetts the state may amend or repeal the charter, or the commonwealth may purchase railways on one year's notice after twenty years' corporate existence.

Illinois. — In Illinois charters are granted for fifty years, with the privilege of renewal for the same length of time; and a law of 1895 reserves to the legislature power to enact laws on all the leading topics relating to corporate existence.

Iowa. — In Iowa companies may likewise be chartered for fifty years, with the privilege of renewal for as many more, and they shall eventually be subject to legislative control. The legislature may alter, abridge, set aside the charter, or impose new conditions which it deems necessary for the public good.

Kansas. — Special charters which do not designate the period of corporate life continue ninety-nine years. The legislature has power to extend the charter period as it may deem proper.

Wisconsin. — The legislature of Wisconsin expressly reserves the power to pass laws relating to reasonable maximum rates, the correction of abuses, unjust discrimination, and for the protection of the just rights of the public. Corporations, however, under the laws of this state, "shall continue perpetually."

North Carolina. — Sixty years, unless otherwise provided for in the act creating the same, is the corporate life under the laws of North Carolina.

Louisiana. — This state limits the corporate existence to ninety-nine years.

Texas. — In Texas a charter is forfeited if ten miles of the proposed road are not put into running order within two years, and twenty miles during every year thereafter until the road is completed. Charters may be granted for a period of fifty years, with the privilege of renewal for an equal number of years.

Maryland and Rhode Island illustrate an entirely different type of statutory provision : —

Rhode Island. — The laws of Rhode Island prescribe a course of procedure which appears to be entirely in harmony with the needs of our growing railway and industrial systems. In that state the general law alters special charters whenever the latter are found to be inconsistent with the former,

Maryland. — Exactly the opposite is true in Maryland, where the adoption of the "general code" is not to affect the rights and privileges granted by special charters.

Provisions found in the laws of all the other states dealing with this subject at all do not contain anything not found in what has here been presented.[1]

Determination of route. — Under early railway methods the route was very indefinitely indicated, the best of all descriptions being frequently contained in that clause in the charter naming the termini of the road; and it will be remembered that not all of the termini were mentioned in some charters, but that merely certain zones thought to contain "eligible points" were loosely indicated. In other charters not only the termini but one or more important intermediate points were designated; in but very few, often insignificant, charters was the entire route described with sufficient definiteness to enable one to tell beforehand exactly where the railway would be constructed. The course of a railway is a matter in which the public has an interest. The manner in which the right of eminent domain has been exercised has de-

[1] States having statutory or constitutional provisions, or both, directly reserving to those states the power to alter, repeal, or amend charters, are the following: Arkansas, California, Colorado, Indiana, Iowa, Kansas, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

pended very greatly upon the extent of the public interest in the railway in question. Before the charter was granted to the Liverpool and Manchester Railway — known to all the world as the first important modern railway — every piece of land to be crossed by the proposed railway had to be described, and the exact location of the entire line definitely determined before the charter was granted. Such a mode of procedure had been practically unknown in the United States until more recent times. Even at the present time great competing systems quietly send out their surveyors to gain an advantage in entering new sections or in constructing lines which will shorten the route between important competitive points. It is not uncommon to have one railway build, section by section, year after year, until finally the design, which must from the first have directed the movements of the constructors, dawns upon the public mind and the real significance of what appeared to be perhaps the construction of a subordinate branch becomes apparent. This may or may not be desirable; that is immaterial. The fact, however, remains that important public interests are affected by just such movements, and every interest which is thus liable to be affected should have an opportunity to be heard before such important industrial operations are undertaken. No state in the Union has legislated in this respect with greater care and completeness than Massachusetts. The laws of that state provide that the termini, together with

the names of the cities and towns through which the projected road or branch is to run, are to be given with as much certainty as the nature of the case will admit. The articles of association of the company fostering the project must be published in each county once a week for a period of three weeks; and the map of the proposed route, together with the report, must be submitted to the mayor, aldermen, and selectmen of the different municipalities affected. Public hearings, after due notice to all persons interested, are also provided for.

In Maine the railroad commissioners must approve the location of the railway before construction is begun. Extensions of existing lines may be built on application to and approval of the commission. Frequently the more remote states are less restrictive in such matters; but the laws of Arkansas make it obligatory for the company to file the map with the county clerk of every county through which the proposed railway is to be run, for the inspection of all persons interested. The location having once been established, no modifications in the line, exceeding a certain distance, are permitted, and a map of the road, together with such modifications, must be filed with the secretary of state. One of the most important provisions bearing upon this question is found in a recent law (1899) of Tennessee, which prohibits one railway company from holding exclusive possession of a narrow pass, thus preventing another

railway company from laying its tracks through the same. If the pass is so narrow that only one track can be laid, joint use of the same is made mandatory upon the road which has built through it. No point named in the articles of incorporation can be avoided under the laws of California. A map of the road must be filed with the secretary of state after location. Changes in the line must also be filed. In Connecticut a map of an approved route must be filed with the town clerks on a prescribed scale; and, after construction, the lineament of the road can be changed only by permission of the board of commissioners. Florida charters must state the place from which and to which the road is to be constructed, its length, and the name of each county through which it runs. However, the direction of the road may be changed by a vote of two-thirds of the directors. Similar provisions are found in the laws of Georgia.

In a number of states maps are not required to be filed until after construction has begun or is completed, or within a year after the road has been finished. In Indiana, on the other hand, a map must be filed with the county clerk in every county named in the articles of association before construction can begin. If necessary, the route may be changed, but no place named in the articles is to be avoided. Kansas also requires the filing of a map with county clerks before construction; and the road bed may be changed, but not the general route. The map, approved by the president and

secretary of the railway company, the attorney-general, railway commissioner, and secretary of state, must be filed in the office of the registrar of deeds under the laws of Michigan. In New Hampshire the railway commission reports to the supreme court on the public utility of the proposed road, and a map of the same, if constructed, must be filed within one year after the railway is opened; and the railway commissioner may authorize a change in the location and assess damages caused thereby. The New York railway commission has power to approve or disapprove railway projects; persons interested are given a hearing; and a map must be filed before construction begins. In North Carolina the charter must be filed within a reasonable time after construction. Petitions must be presented to the "statutory court" if the proposed route appears objectionable to the commissioners. To alter the route by a two-thirds vote of the board of directors, to deflect a route from a certain city by a two-thirds vote of the council, are the privileges enjoyed by railway companies chartered under the laws of North Dakota. In that state they are also required to file a map at any time within six months after definite location has been decided upon. The names of the termini and the counties through which the proposed railway runs must be filed, under the laws of Ohio. For good reasons a change in the route may be made, but the secretary of state must be notified thereof, and all subscribers and all persons who

subscribed for the former route must be released from their obligations. In Wyoming the law simply declares that railway companies may exercise the right of eminent domain in locating or relocating lines. This was a common provision in early charters, under which railway companies were empowered to locate and to relocate the respective roads at their pleasure. Approximately one-half of the states have statutory provisions governing the location of railways; and only a few cause accurate surveys and maps to be made, so that the exact location of a road may be known before construction begins.

Equipment.— The subject of safety in railway transportation has been one of the most prolific sources of railway legislation in recent years. There are few topics about which so many different laws have been passed, and perhaps none in regard to which more separate acts have been approved by the various legislatures. A majority of these laws relate to mechanical appliances and the physical condition of the road, while numerous others have in view the improvement of cars and stations, in so far as these affect the comfort and health of passengers. Numerous police regulations also appear upon the statute books of recent years, relating chiefly to subjects like stealing rides on trains, shooting at trains or throwing missiles, destruction of railway property, interference with railway signals, destroying tracks, or other things affecting the safety of traffic. A

movement is noticeable to encourage the abolition of grade crossings and to guard these more carefully in the many places where they still exist. Bringing trains to a stop at railway crossings, or permitting them to pass without stopping in case interlocking switches are used; the construction of switches and the use of keys for the same; the blocking of frogs, in order to prevent feet of workmen from being caught in them; and similar subjects, relating to safety in the construction of tracks, have called forth numerous recent laws. An old and ever-recurring subject for legislation is that of fences, cattle guards, bells, whistles, etc. The introduction of automatic couplers has been greatly promoted by the legislatures of a number of leading states, as well as the use of continuous train brakes. In a few laws the number of brakemen for every train, or for a certain number of cars, is also prescribed. Several laws regulate the question of precedence among trains. In almost all states laws have been passed regulating the speed of trains in cities, — although these are usually limited by municipal ordinance, — in crossing each other's tracks, and in crossing bridges. In the Southern States the law commonly provides for separate coaches for white and colored persons; in others, the heating of cars and coaches is made compulsory. Fresh water must be supplied at stations and in coaches, and the necessary conveniences for personal comfort provided on trains and in railway stations. In a few cases the laws

provide for the examination of employees and the licensing of engineers, and prohibit the employment of persons addicted to drink. The adequacy with which individual states deal with one or more of these topics will be illustrated by the summaries of the laws upon these points in several leading states.

Alabama. — Speed of trains in cities regulated; fresh water supplied; separate coaches for white and colored persons; conductors may assign seats to colored persons; employees may be examined and licensed; the necessary lights shall be kept on switches.

Arkansas. — Separate coaches to be provided; officers assign seats to passengers; fresh water; railways responsible for baggage forty-eight hours after arrival; the rear of passenger cars to be kept clear.

Connecticut. — Crossings regulated and frogs locked in the manner prescribed by the commission; safety couplers, approved by railway commission, required; speed of trains regulated by the commission; number of brakemen varies with speed and equipment of trains; fresh water to be supplied, and engineers sworn to obey the law.

New York. — Automatic couplers; automatic air brakes for every train, sufficient to control train; railroad commission supervises the construction of switches and signals; tunnels properly lighted and ventilated; when set-offs are used in cars, the commission may approve or disapprove; railway crossings according to law.

Ohio. — Automatic couplers, and interlocking switches at grade crossings, subject to the approval of the commission; commission to prescribe speed of trains over bridges; crossings constructed according to law; engineers addicted to drink not to be employed.[1]

In recent years the commission laws of different states have provided for the reporting of accidents to passengers and employees. These reports are frequently made to the commission in the forms prescribed by that body. In some cases it is made the duty of the commission to investigate railway accidents.[2]

Quality of Service. — Legal provisions falling under this head are closely related to the topics discussed in the section immediately preceding. Under the head of equipment, however, physical conditions were chiefly considered in their bearing upon safety in travel. Although numerous laws on this subject have been enacted, on the whole the physical side of railway transportation has

[1] In addition to those above mentioned the following states have fairly complete statutory provisions on these subjects: Illinois, Kentucky, Maine, Michigan, Nebraska, New Hampshire, Rhode Island, South Carolina, Vermont. Other states, of which the laws are less complete or practically wanting, are: Arizona, Idaho, Kansas, Louisiana, Maryland, Montana, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, New York.

[2] Among the commissions that have power to investigate accidents are those of Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, New York, Ohio, North Carolina, and Virginia.

presented fewer difficulties from the point of view of regulation and control than many others; because the immediate self-interest of railway companies made the prevention of accidents necessary, and for this reason uninterrupted progress has been made in the application of those appliances which make modern railway travel so very safe to passengers and constantly less and less dangerous to employees. Recent laws compelling the introduction of automatic couplers and air brakes illustrate this sufficiently. In the present paragraphs relatively little attention will be paid to physical conditions. These will be assumed; but the question that directly concerns us here is that of state influence on the operation of trains when they have once been put into service.

Train Service. — The general laws of nearly all the states contain a more or less definite provision to the effect that trains shall be run "at regular times" (to use the phrase of New York), that bulletin boards shall be put up, and that trains running on other than schedule time shall be duly announced on these boards. About one-fourth of the states, however, contain more definite provisions, wider in their scope, and looking toward a more direct control of the train service. In Alabama trains may be made to stop at all stations advertised, and at county seats. Under certain conditions double-deck cars must be provided, and the speed of trains in cities is regulated. On petition of fifty citizens every train must stop in the city of the

petitioners, according to the laws of Arkansas; bulletin boards must be provided and trains run at regular intervals; while provisions similar to those of Alabama govern the use of double-deck cars. In California the railway company may regulate the number and frequency of trains, subject to the legislature. Colorado laws compel trains to stop in cities, and give railway companies the power to designate loading points. At these points cars shall be furnished in proportion to need; and, in case of failure on the part of the railway company to provide them, for one reason or another, an appeal may be taken to the railway commission. The laws of Connecticut are more detailed on this topic than those of nearly all the other states. On petition of twenty citizens the railway commission may order trains to stop whenever they pass within one and one-half miles from a village; stations may be established on petition, and the same are not to be discontinued without the assent of the commission. Railway companies are obliged to make proper connections. The Florida railway commission has power to establish train schedules. In Minnesota, in case a sufficient number of cars cannot be provided for all applicants, the same shall be distributed proportionately among them. North Dakota railways are by law compelled to run one train each way on each week-day. Power to control time tables, and consequently the frequency of trains, is given to the South Carolina commission.

Up to 1899 the laws of Texas provided for regu-

lar trains once per day in each direction; but in 1899[1] a law was passed making it obligatory to supply cars, without preference, to applicants. A shipper applying for ten cars or more is to be furnished with them in three days; if the call is for fifty cars or more, the same are to be supplied within ten days. As a protection to the railway company the same may require shippers to deposit one-fourth of the freight rate on the contemplated shipment as a condition of delivery of cars; and this deposit is forfeited in case the cars are not loaded within forty-eight hours. In addition, the shipper may be fined for actual damages sustained by the railway company for his failure to load the cars ordered by him.

With this we have practically exhausted the legal provisions of the states bearing directly upon the frequency of the trains and the delivery of cars. Under the heading of discriminations the same will be indirectly referred to; because, as is well known, failure to supply cars has been one of the most common forms of discrimination. The subject of publicity of rates will indirectly contribute something to this topic, because the same statutory provisions dealing with one, in many instances, also deal with the other. The question of rates, being so important, will be taken up with much more detail later on, and for that reason train service and the publication of schedules may be dismissed for the present.

[1] Laws, ch. 48.

Through Trains, Routes, and Bills of Lading.— Many of the earlier charters and practically all the later charters and general laws provide that railway companies shall permit connections, junctions, and intersections with other lines. Apart from this no direct attempt was made to control through shipments and through service in general. This is primarily a question of interstate commerce and largely out of the control of state authorities. The Interstate Commerce Commission has handed down a large number of decisions bearing upon questions of through rates, routes, and bills of lading, and also on the choice of routes when goods may be directed over different ones varying in length and cost of transportation. The principle has perhaps been well established that railway companies are bound to obey the directions of the shipper, and that without explicit directions the shortest and least expensive route possible must be chosen for the consignment of goods. The legislatures of about one-third of all the states have touched upon this subject in their enactments, and some of them have passed fairly comprehensive laws upon it. The laws of Connecticut give the railroad commission the general power to regulate the exchange of passengers and baggage. In Florida other railways may be authorized to enter terminals and union stations of competitive lines, and two or more railways in the same town may be required to erect union stations. In addition, the Florida commission has the general power to order

adequate and proper railway facilities. In case railways send goods over a longer route when a shorter one could have been used, no more shall be charged for transportation over the longer line. The laws specify that transportation shall be directed over the shortest and most convenient route. The Georgia railway commission has power to establish joint rates, and it is the duty of this commission to investigate through rates, and, if necessary, to make representations before the Interstate Commerce Commission. Likewise, in Iowa, the commission may establish joint through rates, and copies of such joint-rate schedules made by the railway company shall be filed with this body. The Maine law of 1899 governing leases and contracts expressly provides that none of the provisions governing contracts among railways shall be construed to prevent agreements between such corporations "allowing the trains of one to run over the road of another, both corporations assenting thereto." Under the Minnesota law joint rates may be established on demand, and under the law of 1899 the railway commission is given direct power in establishing joint rates upon such important objects of traffic as grain, flax, lumber, coal, and live stock. A rather stringent law was enacted in Missouri in 1899. It gives the railway commission power to order close connections of competing lines, when such connections will not cause serious injury to one or more of the roads in question; and in case of refusal on the

part of the railway companies to make these connections, under conditions determined by the commission, a fine of from $500 to $1000 may be imposed. Copies of all contracts for joint rates must be filed with the Nebraska board of transportation. The corporation commission of North Carolina has power to establish through rates and to approve contracts for the division of earnings in such cases. The law of North Dakota guarantees ample facilities for transferring freight and passengers from one line to another, and prescribes that no railway company shall do anything which may interfere with shipments of freight from being continuous. In 1899 South Carolina enacted a law making connections compulsory, and providing that the expense involved in making such arrangements shall be borne ratably in accordance with the orders of the commission. Older laws provide for through bills of lading. The laws of Texas compel the railway companies to receive freight from connecting lines. Penalties are imposed for collecting more than the charges specified in the bill of lading, and goods are to be delivered on the payment of the amount named in the bill. In Wisconsin, on complaint, the railway commissioner shall investigate connections made between railway companies, and if he thinks the case of sufficient importance he shall bring the same before a board composed of the commissioner, the attorney-general, and the governor, who shall try the case and make a proper order in accordance with their

findings. Perhaps a half dozen additional states have laws specifying that railway companies shall permit an interchange of business; that track connections shall be made on demand, and analogous provisions. More than one-half of the states, it will be noticed, have thus far failed to provide by law for matters relating to through traffic. To what extent the federal law on interstate commerce, and the powers given to the Interstate Commerce Commission, makes this unnecessary or undesirable, lies outside the province of this chapter.

Consolidation and Pooling. — The assumption on which state and federal railway legislation largely rests is that of free and unrestricted competition among the railways of the country. Provisions on consolidation were rather common among early charters, and are almost universal in case of later charters and general laws. Pooling, whether regarded as an end in itself or as a stage in the growth of consolidations, has received much less attention at the hands of state legislatures than discriminations, for more than one-half of the states have no statutory provisions governing pooling contracts or in any way recognizing them. Among economic students it is a familiar fact that railways are not, like many other industries, subject to the laws of competition; that competition acts only within narrow limits among different lines of railways.[1] But the accuracy or inaccuracy of the

[1] See chap. II, Part 3.

assumptions of our laws is not the problem before us. We are concerned here primarily with the statement of facts in regard to legislation governing railway consolidations and pooling.

Consolidations. — Legislation under this head falls into two groups. On the one hand, those laws which either directly or in a modified form permit consolidations among all classes of railways, and, on the other hand, laws which prohibit consolidation among parallel or competing lines but permit it in cases of continuous lines of railway. In a number of states, like Michigan, Maryland, Georgia, and Missouri, laws governing the consolidation of continuous lines are very elaborate. It is common to specify a certain number of days' notice which must be given to shareholders when action upon consolidation schemes is to be taken. The number of votes requisite to approve the consolidation contract is usually prescribed, and varies from a unanimous to a majority vote — a two-thirds or three-fourths vote of the stockholders being most common. It is worth while briefly to indicate the contents of a few typical laws of this kind.

Georgia permits the consolidation of continuous lines and the leasing of other railways, but all contracts must be recorded, and suit for the unlawful acquisition of railway lines may be brought in any country through which the same runs. Under the statutes of Maryland one railway company may acquire the property and rights of other railway companies, but articles governing such acquisition

and control must be filed with the secretary of state. In Michigan these contracts have no force before a duplicate copy has been filed in the office of the secretary of state and the articles of consolidation have been submitted to and approved by a board consisting of the attorney-general, commissioner of railroads, and the secretary of state. In Wisconsin parallel or competing lines are enjoined from consolidating, but the fact whether or not such lines are competitive may be determined by jury. To quote the laws governing this topic in full, even in one or two states, would unduly increase the length of this chapter without adding anything of vital importance to its contents; and it may therefore suffice to give a brief extract from one of the most condensed statutory provisions of this kind: "Any railroad, canal, or other corporation, or the lessee, or purchaser, or manager of any railroad or canal corporation, shall consolidate the stock, property, or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad or canal corporation, owning or having under its control a parallel or competing line; and the question whether railroads or canals are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues." This is illustrative of the provisions in two-thirds of the states. Only a few, like Delaware, Oregon, and Rhode Island, are silent on this point.

Coming now to that group of a dozen states which permit consolidation within limits, attention may be called to the laws of New Jersey under which domestic — that is, state railways — may consolidate, but consolidation with foreign railways is prohibited except with the consent of the legislature; and a law of 1900 expressly provides that railway companies may acquire the rights of other companies. While New York laws prohibit the consolidation of parallel lines, such consolidation may, nevertheless, be permitted by authority of the railway commission. New York provisions for the consolidation of continuous lines, like those of Ohio and Michigan, are extremely elaborate. In Massachusetts the consolidations are subject to the approval of the railway commission; and in Florida contracts for the consolidation of competing lines are ultra vires unless approved by the commission.

Without duplicating further legal provisions bearing upon both types of consolidation, the lack of uniformity upon this, as upon so many other questions, is apparent. When we view the facts of railway history, the steady and uninterrupted consolidations which have absorbed line after line, on the one hand, and the contemporary existence and growth and duplication of laws attempting to govern these, on the other hand, the conclusion is irresistible that somehow these laws did not accomplish the purposes for which they were enacted. The wisdom of the purposes of these laws

may be, and is, seriously questioned by students of railway transportation; but that is not the problem before us. We are concerned simply with the facts of the law, and these facts clearly and unequivocally reveal a wide disparity between the provisions of law and the facts of railway development.

Pooling. — Both the interstate-commerce act and the antitrust law prohibit pooling. The Trans-Missouri Freight Association, the Joint Traffic Association,[1] and other cases have finally decided the illegality of all combinations, just or unjust, good or bad, for the maintenance and control of rates, the restraint of competition or the arbitrary interference in any other way with the free play of competitive forces. For many years pooling was a favorite and one of the most efficient agencies in checking destructive competition and in maintaining reasonable rates and equitable relations among railways. Less than one-half of the states have prohibitive legislation, directly or indirectly, on the subject of pooling, and only about a dozen prohibit this practice.

"That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any por-

[1] See pages 240–242.

tion thereof; and in the case of an agreement for the pooling of freight rates as aforesaid, each day of its continuance shall be deemed a separate offence."

In words identical with or similar to these, the pooling of freight or the division of business is prohibited in Arkansas, California, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.

A group of states, a little smaller than the one just given, contains laws bearing less directly and rigidly upon pooling contracts. The New York law, for instance, authorizes the railroad commission to gather information on contracts and agreements entered into between railway companies. The laws of North and South Carolina make it the duty of their respective commissions to examine and approve or disapprove the contracts among railways. In Vermont the commission is charged with the prevention of unlawful combinations to increase rates. Similar administrative supervision of contracts is provided for in the laws of Florida, Georgia, New Hampshire, Texas, and Ohio. More than one-half of the states have, consequently, no laws regulating pooling.

Tickets: Scalping, Redemption of Unused Tickets, Passes. — The public has long been familiar with arguments for and against ticket brokerage, commonly called scalping. Irrespective of the merits of the arguments on either side, the fact can hardly be disputed that scalping may seriously reduce the

revenue of railways, become an agency of discriminations and other abuses, and in the hands of weak roads provide the latter the means through which they may dictate, in a measure, at least, to the stronger and larger systems. In all but a dozen states, ticket brokerage is extra-legal; that is, the law has ignored the subject, unless we unduly extend the meaning of such general provisions as that found in the laws of California, that railways shall provide tickets. In Connecticut the railway commission may regulate the sale of tickets and prescribe hours during which ticket offices may do business. South Dakota stands alone in that it expressly authorizes scalping. "Any person having an established place of business . . . shall have the right to buy, sell, and exchange passage tickets. . . . Any person purchasing a ticket from the authorized office . . . shall have the right to sell his ticket or tickets to any person doing business under this act."[1] Villages and cities may, however, regulate this business by law. Not nearly so wide in its scope is the Alabama provision licensing ticket brokers on paying a fee of $50 in towns of 10,000 or over. In smaller towns a fee of $20 is exacted. In Colorado all tickets are transferable. They are limited as to time, but not as to person.

On the question of free transportation and passes, New Jersey occupies a position as unique as that of South Dakota, in that the laws of this

[1] Rev. Stat., 1899, §§ 3950, 3951.

state enumerate certain state officers who shall be permitted to ride free. Most of the states that have legislated on scalping have in the same act inserted provisions relating to the redemption of unused or unused portions of tickets. The lists are not entirely identical, scalping being prohibited without providing for the redemption of tickets, and vice versa, in a few states. The nature of legislation of this kind may be illustrated by the following:[1]—

"SECTION 1. No person other than a duly authorized agent of the railroad company issuing the same, shall sell, offer for sale, or rent any railroad mileage book or any coupons therefrom, or any other railroad tickets limited to the use of a person or persons thereon specified at the time of its issuance by the railroad company, under a penalty of not less than $10 nor more than $100 for each offence, to be recovered on complaint.

"SECTION 2. No person other than the one specified in any railroad mileage book or other railroad ticket limited to the use of the person or persons specified thereon at the time of its issuance by the railroad company, shall offer for passage or in payment for transportation on any railroad any such mileage book or coupons therefrom, or any other railroad ticket limited as aforesaid, under a penalty of not less than $1 nor more than $10 for each offence, to be recovered on complaint.

[1] Laws of Maine, 1899, ch. 69.

"SECTION 3. Any railroad company which shall issue a mileage book limited to the person or persons named therein, shall, upon presentation thereof by the person to whom such book was issued or his legal representatives, at some one or more of its principal stations in each county through which its road runs, to be designated by such company, at any time after one year from the time when such book was issued, redeem all the coupons then attached to such book at the same rate per mile as such mileage book was sold at."

A similar law passed by the legislature of New York has recently been declared unconstitutional. Other states prescribing the sale of railway tickets through authorized officers are: Florida, Illinois, Minnesota, Montana, New Jersey, Iowa, Texas, and Pennsylvania. In Montana the railway company must provide its agents with certificates which, when presented to the secretary of state, entitle the holder to a certificate authorizing him to sell tickets for the railway in question on the payment of $1. Selling tickets without such a license is unlawful.

The redemption of unused or unused portions of tickets has been provided for by law in Pennsylvania since 1863. Other states having statutory requirements to this effect are Alabama, Florida, Illinois, Iowa, Michigan, and Minnesota.

Laws governing the free transportation, or transportation at reduced rates, of certain persons or classes of persons, have been enacted in less

than one-fourth of the states, most of these making it a misdemeanor, punishable by a fine, forfeiture of office, or otherwise, for persons holding public offices to accept passes or tickets at rates other than those charged to the public at large. Excursion and commutation tickets and reduced rates for exhibitions, fairs, political and other gatherings may still be granted, as well as special favors extended to charitable, religious, reformatory, and other institutions. States having legislated on this topic are Alabama, Arkansas, California, Colorado, Florida, Massachusetts, Mississippi, Missouri, North Dakota, Pennsylvania, Virginia, Wisconsin. In most of these the law takes the form of positive prohibition of the acceptance of passes on the part of public officials. In 1899 Minnesota passed a law making it obligatory for railway companies to grant free transportation to shippers of car-load lots of live stock. Free baggage is expressly provided for by the laws of a number of states, 150 pounds being the usual exemption on first-class tickets. In recent years laws declaring bicycles baggage have been enacted in a number of states.

Long and Short Hauls. — With the exception of discriminations and reasonable rates, there is no subject which the decisions of the Interstate Commerce Commission touch more frequently than that of long and short hauls. During the period covered by its first annual report fifty-eight petitions, representing ninety-five different railways, were

presented to this body for relief under the fourth section of the interstate-commerce law, commonly known as the long and short haul clause. The question of long and short hauls is chiefly an interstate matter, yet nearly one-half of the state laws contain the long and short haul provision in one form or another, that used in the interstate-commerce law being the most common. Among the states prohibiting a greater charge for a shorter distance included within the longer for transportation in the same direction over the same line, under substantially similar conditions, ten introduced the much needed element of elasticity in that the respective railway commissions, or other authority, may permit the suspension of the long and short haul provision in certain cases and under certain conditions.

"That it shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great a compensation for a shorter as for a longer distance: *Provided, however*, That upon application to the board appointed

under the provisions of this act, such common carrier may, in special cases, after investigation by the board, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the board may, from time to time, prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

"No railroad corporation shall charge or receive for the transportation of freight to any station on its road a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on its road in the same direction. Two or more railroad corporations whose roads connect shall not charge or receive for the transportation of freight to any station on the road of either of them a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the road of either of them in the same direction. In the construction of this section the sum charged or received for the transportation of freight shall include all terminal charges, and the road of a corporation shall include all the road in use by it, whether owned or operated under a contract or lease."

This brings before us a typical provision gov-

erning long and short hauls. Among others, the law of Florida contains the following clause bearing upon the same point: —

The railroad commission "shall have full power by rules and regulations to fix the rates of freight and passenger transportation to be allowed for longer and shorter distances on the same or different railroads, and to fix what shall be the limits of longer and shorter distances."

Alabama expresses the same conditions in almost identical language. Kentucky, Louisiana, Minnesota, Nebraska, North Carolina, Tennessee, and Texas likewise authorized their commissions to suspend the long and short haul provision. In Mississippi the law specifies that "the commission shall regulate and fix the rates to be charged on short hauls in excess of what may be charged on long hauls."

Other states having long and short haul provisions are Arkansas, California, Connecticut, Iowa, Nevada, North Dakota, South Carolina, Vermont, Virginia, and Washington.

Discriminations. — Discriminations have from the first presented the most serious aspects of railway regulation, and we are therefore not surprised to find statutory provisions prohibiting discriminations in sixteen state constitutions and in the laws of three-fourths of all the states. A common form of expressing this prohibition is the following: —

"If any railroad corporation shall wilfully

charge, collect, or receive from any person or persons, for the transportation of any freight upon its railroad, a higher or greater rate, toll, or compensation than it shall at the same time charge, collect, or receive from any other person or persons for the transportation of a like quantity of freight of the same class, being transported from the same point, in the same direction, over equal distance of the same road, or if it shall charge, collect, or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad, a higher or greater sum than it shall at the same time charge, collect, or receive from any other person or persons for the use or transportation of a car or cars of the same class, for a like purpose from the same point in the same direction, and an equal distance, all such discriminating rates, charges, or collections, whether made directly or by means of any rebate, or other shift or evasion, shall be considered and taken as prima facie evidence of discrimination, which is hereby prohibited and declared unlawful, and shall be punished. . . ."

The great importance of the legal attempts to wipe out evil practices, known under the names of discrimination, rebates, extortion, abuses, etc., warrants a brief indication of the essence of the statutory provisions found in a number of other states.

Alabama. — What constitutes extortion decided by jury. Penalty, double the damage inflicted

upon a shipper plus attorney fees. Commission hears complaint.[1]

California. — Railway commission given power to correct abuses. Railways obliged to transport for each other without delay, to grant right of intersection, etc.[2]

Florida. — A law of 1899 prohibits railway companies from charging more than reasonable rates and from practising unjust discriminations.

Illinois. — Extortion and discriminations punished by heavy fines, amply provided for in the law.

Michigan. — Discriminations of all kinds forbidden, and rates at non-competing points not to be greater than those at competitive points.

Nebraska. — Board of transportation shall investigate and prevent discriminations.

Ohio. — Railways shall not discriminate between each other, between way and through freights, between trunk and other railways. Roads shall furnish equal facilities and forward freight by lines specified by the shipper. The latter may enforce by injunction.

South Dakota. — Unjust discriminations and preferences declared unlawful in two separate sections of the law. Discriminations as to goods, cars, railways, persons, etc., expressly prohibited.

Texas. — Discriminations prohibited under former laws; but a law of 1899 punishes discriminations

[1] Consult constitution, Article XIV, section 21.

[2] Consult constitution, Article XI, section 17.

on part of railways against steamship lines in the interchange of traffic. The unusual punishment of not less than two and not more than five years in the penitentiary is inflicted by the law, but this shall not prevent railways from granting reduced rates to charitable and state institutions, to excursionists, fairs, railway officers, etc.

Additional states which have legislated on discriminations are Arkansas, Colorado, Connecticut, Georgia, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, South Carolina, Utah, Vermont, and Wisconsin. In a few of these states the legal provisions simply assert the power of the commission to correct abuses, and in the hands of an energetic commission or other state officer this is probably sufficient successfully to combat the evils of discriminations.

Rates: Publicity and Revision. — This subject is closely connected with the powers and duties of railway commissions. Since, however, not all the states have commissions, and laws relating to the fixing, revising, and publishing of rates exist in some of these states, it is necessary to give separate treatment to this question. The intrinsic importance of the subject of rates warrants its being set off by itself for special treatment. Railway rates have long constituted the pivotal point upon which have turned the most complex as well as important railway problems, and it is no exag-

geration to say that all the other phases of the railway problem sink into relative insignificance in the presence of this predominant question.

Only four states (Connecticut, Delaware, Oregon, and Rhode Island) have no laws regulating rates or providing for their revision and publicity. One of these states, Connecticut, passed laws of this kind at various times from 1853 to 1897. Since the latter date no laws have been on its statute books governing railway rates. In eight states the laws on this subject are less complete than in the great majority of the other states, providing in some instances for the posting of rates, fixing maximum rates, reserving to the legislature the power to alter them or to fix them on complaint, either directly or through an administrative officer.[1] The maximum rates which are established in some instances are so high that they can scarcely be said to afford any regulation of rates; for instance, Nevada prescribes 10 cents as the maximum for passenger rates per mile, and 20 cents per ton-mile for freight, although no railway company need accept less than an aggregate charge of 35 cents for any service of transportation. Another illustration is found in Arkansas, where a law establishes 8 cents per mile on lines of 15 miles in length or less; lines 15 to 75 miles in length, 5 cents; over 75 miles, 3 cents. A company may charge 25 cents "for the carriage of

[1] These States are Florida, Idaho, Indiana, Kentucky, Montana, New Hampshire, New Mexico, Vermont, and Wyoming.

any passenger who may get on or off a train at other than the regular station."

Coming now to those states which provide more specifically for the establishment and publicity of rates, it will be most convenient to associate such provisions with the considerable number of leading states having enacted them. In Alabama the railroad commissioners may revise or increase rates, always having due regard to the value of the service and other conditions of traffic. Having been approved by the commission, such rates, special as well as general, may be published. In Arkansas a legal form very common in earlier charters and laws is still in existence, limiting the power of the legislature to regulate rates and fares so as never to bring the net income on the capital stock of a railway below fifteen per cent per annum. The rates on lines fifty miles and less in length are fixed by law, but may be reduced by the commission, not, however, so as to bring the net income below ten per cent. The classes of freight and corresponding rates shall be posted five days before taking effect. Up to 1899 an Arkansas law was in effect exempting railways subject to competition from that provision of the law providing for some days' notice; such roads were permitted to put posted rates into effect immediately. Under its constitution the state of California is empowered to regulate rates. The commission fixes reasonable rates, and the railway companies (under the constitution) are liable to a fine of $20,000 for over-

charges. The schedules adopted by the commission must be published by the companies, although the commission itself may publish them. The maximum rates prescribed in California are based on the graded mileage system. In Georgia railway companies may control rates on their respective lines, subject to the commission and laws of the state. Rate schedules shall be published by the commission in certain newspapers, and railway companies must post the same. Weighing of freight is done by sworn weighers. Publicity is compulsory under the laws of Illinois, and the general assembly directs the commission by law to make schedules. On the application of the mayor and council or trustees of a township, the commission shall examine rates under the laws of Iowa, and all rates established by the commission shall be considered just and reasonable until proven otherwise. Railway companies shall promptly post and file with the commission schedules of rates. Ten days' notice is required for an advance in rates, although no previous notice must be given for reductions. The Kansas commission law having been declared unconstitutional, the legal status of the question of rates is perhaps uncertain in that state. Formerly maximum rates were prescribed, and no rates could be increased without sixty days' notice. In Louisiana maximum rates are prescribed by the laws of 1890 and 1894. The commission adopts changes and regulates rates and governs the relations between main and branch lines. In Maine

the legislature may fix rates which shall be subject to the revision of that body and posted. Whenever practicable, rules and regulations shall be printed on the ticket. In Michigan railway companies have power to regulate the time, manner, and compensation for their services, within the limits of maximum rates established by statute. The 1000-mile ticket law of 1891, requiring companies to sell such tickets at the rate of two cents per mile, and to redeem unused portions of the same, was declared unconstitutional in 1899. A recent statute regulates the relation of railways to bridge and tunnel companies and fixes the maximum rates for those companies. The commission may report upon the desirability of classifications of freight, as well as compare and fix proportional rates on milk. The Minnesota companies file schedules with the commission. Published schedules cannot be changed except on ten days' notice. A law of 1899 prevents railway companies from raising rates on grain, flax, lumber, coal, and live stock, except on sixty days' notice, unless permitted to do so by an order of the commission in writing. Railway companies are required to give ten days' notice when the revision of rates is under consideration in Mississippi. The commission may revise both individual and joint rates and approve classifications and rate schedules before the same are posted. The Missouri commission may make classifications and freight rates, and from time to time revise schedules of maximum rates. In Ne-

braska the legislature prescribes maximum rates, from which companies may take an appeal to the supreme court. On order of the court the board of transportation may reduce and revise maximum-rate schedules. No advance can be made without ten days' notice, although reductions are permitted without notice. Railways file schedules with the commission. A New Jersey law permits railway companies to charge what they may think reasonable, below a certain maximum established by law. Railways shall not charge more from way stations than between centres. The legislature of New York may fix maximum rates, reduce the same, and require companies to furnish necessary information to the commission. Penalties are imposed for charging excessive rates. The 1000-mileage-book law of 1895 was declared unconstitutional in 1900. The rates established by the corporation commission of North Carolina shall be considered prima facie reasonable, from which carriers may appeal to the courts. Rate schedules must be posted. In North Dakota railway companies are required to publish schedules of classification, and rates must be examined and revised by the commission. No advance can be made except on ten days' notice; reductions, without notice. Railway companies may appeal to the district courts from any order of the commission. Maximum rates on coal are especially prescribed. Under the laws of Ohio every company shall post its rates, and accept no less than the published rates except on ten days'

notice. Maximum rates are prescribed for both main and branch lines, charges being "evened up" by nickels. The Pennsylvania bureau of railways shall see to it that no more is charged than what is permitted by special charters or general laws under which the railway companies do business. Maximum rates have been commonly prescribed in charters and statutes of the state. A recent law of South Carolina compels railway companies to post schedules of rates. The latter shall be reasonable and just, and may be made by the commission. On complaint, the commission may also revise and fix rates on milk. The railway corporations of Tennessee are required to file schedules with the commission and to secure a certificate of privilege, with which the same shall be published. If railway companies fail to file such schedules, the commission may fix rates. In establishing rates the commission is required by law to take into consideration water competition. The Texas commission may make classifications, establish rates, and provide railway companies with schedules. These cannot go into effect except on twenty days' notice. Carriers may bring direct action to test the reasonableness of such rates. In Vermont railway companies may fix rates, subject to revision by the courts on petition of three or more freeholders. Railways more than fifty miles in length, wholly or partly in the state, shall sell 1000-mile books at not over two cents per mile, on penalty of from $500 to $1000. The laws of Virginia prescribe

maximum rates which, under present conditions, are clearly very much above what any railway company would think of charging, and prevents any statutory reduction as long as the net returns do not exceed fifteen per cent. Copies of rate schedules must be filed with the commission, and no changes are permitted except on ten days' notice for an advance and three days' notice for a reduction. It will be noticed that reductions cannot be made without giving previous notice. This is important. All other states not mentioned thus far have analogous laws on the subject of rates. Some of them do not provide as liberally as many of those which have been quoted, but all of them, in one way or another, cover the subject.

Access to Books.—In about one-half of the states legal provisions governing access to books of railway companies are not very stringent, and frequently do not go beyond the general statement that such books shall be open to officers, directors, and stockholders, or a certain number of them. Railway commissions or other state officers have no direct control over the records of companies.[1]

To illustrate the nature of legal provisions in the other group of states brief statements of laws governing access to books in them may here be

[1] States falling into this group are Arizona Territory, Colorado, Delaware, Idaho, Indiana, Kentucky, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

introduced. In Alabama the commission shall examine books and records of a railway company on application of one director or representatives of one-fiftieth of the capital stock or of one-fiftieth of the total indebtedness. The results of this examination may or may not be published, discretionary power lying with the commission. A committee of the general assembly may investigate the books of Connecticut companies. In Massachusetts the commission shall examine books and papers on request of one director or the holders of one-fiftieth of the stock and bonds of the company. The commission of South Carolina may at any time examine the books, or on written application of one director or of the holders of one-fiftieth of the stock, bonds, etc., the commission shall make such examinations. In Texas the commission, a committee of the legislature, and three stockholders, and "any officer or agent of the state may examine books of railway companies." In states other than those mentioned commissions have access to books and records by law. These are Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Missouri, New Jersey, North Dakota, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, and Vermont.

Annual and Other Reports. — Reference to the sections on charters, as well as early general laws, will recall the fact that annual reports were frequently called for under the private as well as

public laws, and that such reports vary in their comprehensiveness not only among different states, but also among charters granted by the legislature of the same state. In some charters and laws such reports include only a half dozen or dozen items relating to mileage, capital stock, and bonds. In others, a hundred or more items were carefully prescribed and penalties imposed for noncompliance with the provisions of the charter or of the laws. The reports which are called for under existing statutes differ quite as widely as those made pursuant to early legislation. Typical provisions existing at the present time in the laws of those states which provide in a legal way for these needs can be illustrated by reference to the laws of the states here given. In Maine the commission prescribes the form for the annual report of railway companies which shall "be designed to produce uniformity" in the annual returns of all the railroads in New England. Similarly, in Massachusetts, an act of 1899 aims to bring the returns of railway companies into harmony with those of the Interstate Commerce Commission. Reports must be uniform, as prescribed by the commission, and quarterly financial statements shall be made. In New York railway companies make annual reports in forms prescribed by the commission, and the commission in turn makes its annual report. In Pennsylvania officers of railway companies are required to report annually to stockholders and at such other times as the legislature

may require. The law of 1897 orders the secretary of internal affairs to supply blanks for reports of railway companies, copies of which shall be sent to the government and members of the legislature. The bureau of railroads also keeps these reports on file. In Illinois railway directors are required to report annually to the auditor in the manner prescribed by law; also to the commission in a form embracing forty-one items. The commission is required to file and tabulate the reports of railways. The law of Iowa is similar to that of Illinois except that the annual report, as prescribed by the commission, contains only eleven items, and, instead of reporting to the auditor, "a detailed exhibit" of receipts, etc., shall be presented to the government.[1]

Twenty states have statutory provisions less definite and comprehensive in their scope, calling for reports to stockholders by boards of directors, or reports of railway officers to some state officer or officers, or to the legislature, or to two or more of all these.[2]

[1] Other states calling for annual reports, more or less comprehensive, either to the commission or to some executive or administrative state officer, in forms prescribed by the commission, are Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Massachusetts, Missouri, Nebraska, New Hampshire, Ohio, New York, Rhode Island, South Dakota, South Carolina, Texas, Vermont, Virginia, and Pennsylvania.

[2] These states are Alabama, Arkansas, Arizona, California, Georgia, Idaho, Indiana, Louisiana, Montana, Nevada, New Jersey, New Hampshire, North Carolina, North Dakota, Oregon, Tennessee, Utah, Washington, West Virginia, and Wisconsin.

Issues of Stocks and Bonds. — Many controversies have been waged over the question of the capital stock of our railways. A conservative student of the question has placed the capitalized value of the railways of the country at $60,000 per mile, and this he does not consider excessive nor appreciably above the real value of the plants as they exist at the present time. So far as state laws are concerned, it would be difficult to determine the truth of this matter on the basis of information railway companies have been obliged to furnish under the statutes. In Massachusetts an increase in capital stock or signs of indebtedness may be made only on authority of the commission before which such questions are determined on hearing. Ohio railways shall report to the commission the cost of the road, the amount of capital stock, indebtedness, etc. The aggregate indebtedness shall not exceed the capital stock. In Pennsylvania railway stock is limited to $150,000 per mile, bonds to the same amount, and the total of the stock, bonds, and other paper to $300,000 per mile. In Arkansas consolidated companies shall not cause the aggregate of their stocks and bonds to exceed the sum represented by constituent companies. By a majority vote of the stockholders the company may borrow, at seven per cent, an amount not greater than the total capital stock. In Colorado all stock shall represent labor, services, money, and property; the same shall be increased only under general law and by a majority vote of the stock-

holders. Kentucky companies can increase capital stock only on recommendation of the commission. The amount of indebtedness shall never exceed the total cash paid in. In Indiana boards of directors may not increase capital stock; capital stock may not be increased to exceed $15,000 per mile, and a certificate stating the amount of such increase shall be filed with the secretary of state. The New York commission may regulate stock issues and pass upon an increase or a reduction in the same. Other states having similar provisions are Indiana, Illinois, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Jersey, South Dakota, Texas, Wisconsin, and Wyoming.

This leaves a group of more than one-half of the states which do not attempt directly to regulate the issuance of stock by law. In some of them it is provided that a certificate of increase shall be filed with the secretary of state or some other state officer, and that a two-thirds vote of the stockholders is necessary before directors may authorize an increase in capital stock or the issuance of bonds.[1]

State Railway Commissions. — The railway commission laws sometimes embody all the railway

[1] These states are Alabama, Arizona, California, Delaware, Florida, Georgia, Iowa, Kansas, Kentucky, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

legislation in existence in the state. This was true in Oregon; and when, in 1898, the commission law of that state was repealed, Oregon was left practically without any legislation on the subject of railways. In addition to Oregon, Delaware, Rhode Island, and Arizona Territory are the only states which have failed to legislate on railways to any considerable extent. In states where the commission laws embrace only regulative features, questions of organization and management are treated in the general corporation laws or in subtitles under these. The general statement, however, holds true that the regulative features of railway legislation of the different states of the Union are embodied in our commission laws in all states in which commissions exist. The railway commissions represent the only active administrative agent which our laws have provided, and the adequacy or inadequacy of state administration depends upon the authority vested in this agent.

In their composition our commissions represent the same degrees of variety that exist in legislative provisions on most other railway topics. In the number of members they vary from one to five; in the number of years during which they hold office, from two to six. In the manner of their appointment we find popular suffrage, appointive power of a governor, and the advisory power of a branch of the legislature. Their salaries vary from $1000 to perhaps more than five times that amount, being entirely independent of the duties performed by

them, and bearing no relation whatever to the responsibilities vested in them. The funds from which the salaries are paid are sometimes provided by general taxation, sometimes by an assessment on railways in proportion to mileage, and again by levying a certain per cent on the net income of the railways in the state. The absolute lack of system will be apparent to any one who makes even a cursory examination of these provisions.

In qualifications we find less although some variety. It is generally provided that the commissioner or commissioners shall be qualified voters of their respective states; that they shall be citizens of the state, and, in some instances, of the United States; that they shall have attained a certain age, usually that of qualified voters, and finally that they shall have no financial interests in any of the railroads over which they are expected to exercise control.

The jurisdiction of railway commissions varies from controlling railway companies alone, on the one hand, to exercising administrative control over a large combination of corporate interests representing practically the entire industrial life of the commonwealth on the other. The latter is strikingly illustrated by the industries over which the corporation commission of North Carolina is legally bound to exercise supervision. These embrace street railways, steam railways, steamboat and canal companies, express companies, sleeping-car companies, telephone and telegraph companies, banks,

building, loan, and trust associations. The Pennsylvania bureau is required by law to exercise administrative control over railways, banks, mining, and manufacturing establishments. The Illinois, Nebraska, and Minnesota commissions exercise control over railways and warehouses. The New York commission, in addition to railways, has charge of sleeping and drawing-room car companies. Others are charged with railway and street railway companies. Others also with bridges and ferries. Not a few of the commissions are by law obliged to devote more or less of their time and energy to institutions which lie entirely outside of the means of transportation and communication. From the point of view of efficient administration the tendency, if such exists, to empower a single administrative organ to exercise control over a great variety of industrial establishments cannot receive the approval of thoughtful men. All of our great industrial establishments represent interests which are peculiarly their own, and other features which are characteristic only of similar establishments. This calls for special agencies, whose duty it should be to concentrate all their efforts in that particular field. The inclusion of so many industries inevitably leads to a division of interests, and the equally inevitable diminution in concentration and efficiency. Special types of industry require special administrative agents, and that tendency in our laws which burdens a single administrative organ with a great variety of complex duties can-

not be looked upon as desirable. It is beside the mark to attempt to maintain that a large administrative body can, in its membership, be differentiated in such a way as to represent in a consolidated way the specialized interests of all the different leading industries of a state.

Railway commissions are frequently divided into two general classes — advisory and regulative — the former being illustrated by the commissions of states like Massachusetts, Wisconsin, Vermont, Alabama, and the latter by Illinois, Iowa, Nebraska, and Texas. So far as a formal statutory enumeration of specified powers goes, this classification is doubtless correct. But we should not lose sight of the fact that an advisory commission, with its powers exercised by thoroughly competent men familiar with the railway business, and capable of handling the duties of their office with facility, may in the long run accomplish infinitely more than a regulative commission of the strongest type, represented by men whose tenure of office is uncertain, whose familiarity with railways is the most imperfect and superficial, and whose purpose in the attempt to exercise their duties must at best be vague and beclouded. The efficiency of all control and regulation through commissions must ultimately rest upon the man. It is the power that lies behind the throne which vitalizes the machine. A railway commissioner in a state embracing some of the most important railway systems of the country not long ago made the statement that in the

office now occupied by him little was done except the gathering of statistics and the giving of useless advice. He pointed out in detail how the efficiency of that particular office had varied very greatly with the incumbency of different types of men. Without anticipating what may be said in subsequent paragraphs, it will add something to the interest that may attach to an examination of the powers and duties of different commissions to state at the outset that the vital weaknesses of all the legislation of all the different American states may be grouped under two heads: First, the lack of adequate administrative machinery; second, the lack of organic connection between this administrative machinery and the railways, on one hand, and the public on the other; also, this same lack of mutual understanding and vital connection between the railways and the public. To bring about the latter there is not a single efficient provision in all the railway laws of the United States; and the fact that railways have voluntarily, and in some instances with marked success, brought about such mutual understanding by no means affords a sufficient excuse for the absence of provisions establishing such organic connections by law. It has often been said that in America the weakest line is capable of dictating with success to the strongest, and that the strongest, finding itself at the mercy of the weakest, is under the circumstances obliged to pursue a course which is as ruinous to its own interests as it is antagonistic to the interests of the pub-

lic. No one whose privilege it is to know the railway men of the country will for a moment maintain that these are not, as a body, sincerely desirous of serving the public in the best possible way. Their aspirations and ambitions, although legitimately and necessarily keeping in view the immediate interests of the corporations which they represent, go beyond the horizon of narrow selfish interests, and take into view the larger field of mutual prosperity and common gain. But granted that ninety-nine per cent of the railway managers and officials are voluntarily inclined to do that which we believe the public interests demand, what is there to prevent the one recalcitrant road from holding out and demoralizing the entire service and preventing the ninety-nine from living up to their good intentions?[1] The sincere desires of the best railway officials may be frustrated by the arbitrary demands and reckless dictation of a single unscrupulous manager. In this point lies the fatal weakness of American railway legislation. One feels again and again the absolute helplessness in which the shipper finds himself, on the one hand, and the good railway manager on the other. No administrative machinery has been provided whereby this one outlaw can compulsorily be brought into harmonious action with the ninety-nine promptly, thoroughly, and finally. Demoralization in railway affairs has again and again been the result of the imposition upon the ninety-nine considerate offi-

[1] This is what Professor Ely calls "the problem of the twentieth man."

cials of the inferior and defective code of the one unscrupulous manager.

In view of the great importance of commission legislation, it has been deemed desirable to give in greater detail the provisions governing them. Some provisions which are common to many laws, such as those relating to certain qualifications of commissioners and employment of secretaries, clerks, deputies, and experts by these commissions, will not be repeated in all the states. Likewise those clauses governing railway taxation and railway labor, and the duties of commissions with respect to these topics, will be omitted. Nor will repeated references be made to reports made by commissions to governors, auditors, and other officers and legislatures. It will be understood that the making of reports is one of the regular duties of commissions.

Summary of Commission Laws.[1] *Alabama.* — Three commissioners, holding office for four years, appointed by the governor with the advice and consent of the senate. Removable by the supreme court on impeachment, like other state officers. The commission may settle disagreements between connecting roads, with appeal to chancery court; exercise general supervisory power and make recommendations to railway companies and governor, to whom an annual report must be submitted. Railways shall furnish necessary information to com-

[1] See also F. C. Clark, *State Railroad Commissions and how to make them effective.*

mission. Commission to carry on correspondence with similar bodies in other states.

Arkansas. — Three commissioners, elected by qualified voters, shall hold no federal offices; railways shall submit rate schedules; commission may make rates and approve schedules; no change in rates except on ten days' notice; they shall investigate and hear complaints; railway officers shall furnish information; facts as found by commission to be prima facie evidence; may employ experts; examine books of companies; shall determine cost of reconstruction, and, on petition, order connections and fix joint rates; report annually to governor.

Arizona. — No commission.

California. — Three commissioners, elected by districts for four years; legislature may remove by two-thirds vote.[1] "The board shall have power to issue writs of summons and of subpœna in like manner as courts of record." Commission hears complaints, and defendant companies shall appear within fifteen days; decisions and grounds upon which same are based to be given in writing; shall hold public session in San Francisco every month, and if necessary, at other places.

Colorado. — No commission.

Connecticut. — Three commissioners appointed by governor, with consent of senate, for four years; one to be a lawyer, another a civil engineer, and the third a business man: commission

[1] Consult Constitution, Article XII, § 22.

inspects railways twice each year; publishes and posts important railway legislation; may order gates, flagmen, signals, and so on; subpœna witnesses; investigate accidents; recommend to railway companies in writing things conducive to public safety and interest. Appeal from decision of commission may be taken to superior court.

Delaware. — No commission.

Florida. — Three commissioners appointed by governor and senate for four years. The first commission was composed by law of one lawyer, one railway man, and one farmer; succeeding commissioners elected without reference to vocation. Commission has power to establish classifications, rates, and regulations which shall be just and reasonable; hearings must be given to persons and corporations; decisions of commission published at its discretion; commission may examine books, agents, etc.; non-compliance with laws subject railways to fines; commission may institute proceedings through attorney-general; railway officers making false reports fined heavily. The commission has judicial power — "that said railway commissioners are hereby vested with judicial powers to do or enforce or perform any function, duty, or power conferred upon them by this act, to the exercise of which judicial power is necessary."[1] Commission has also power to create rating or basing points: "*Provided*, That

[1] Laws, 1899, no. 39, § 22.

the said commissioners shall have the power to create rating or basing points at places where competing lines meet, or where water or other competition exists, and to break the continuity of rates to and from such points, so as to maintain competition between rival lines and points, and may, in fixing the rate upon any commodity, take into consideration the competition between different localities or shipping points producing or shipping such commodities."[1] Duty of commission to bring proper matters before Interstate Commerce Commission.

Georgia. — Three commissioners appointed by governor and senate for six years — one a lawyer and one a railway man. Commission may make reasonable and just rates and regulations "for each of the corporations doing business in the state." They shall examine rates into and out of the state; may examine agents and officers under oath; compel evidence to be given; penalties are imposed for disobedience to the rules of the commission; commission appeal to Interstate Commerce Commission.[2]

Idaho. — No commission.

Illinois. — Three commissioners appointed for two years by governor and senate; commission shall "visit each county" twice each year and examine railways and warehouses; may bring

[1] Laws, 1899, no. 39, § 6.

[2] Consult Georgia commission cases: 5 I. C. C. 324; 99 Fed. Rep. 52; 168 U. S. 144.

action in any county court for violations of law; attorney-general may compel compliance with orders of commission; commission in its report shall pay especial attention to the possibility of classifying railways in regard to rates and fares; may employ civil engineers.

Indiana. — No commission.

Iowa. — Three commissioners elected for three years; commission has general supervision over railways, and shall investigate matters relating thereto; recommend changes, examine bridges semiannually, subpœna witness, administer oath, and enforce orders through district courts, but the same court may also issue injunctions if the orders of the commission seem unjust. (Marked similarity between this and the federal act regulating commerce.)

Kansas. — Kansas commission law recently declared unconstitutional, but as showing the trend of legislation, salient features of that law are here inserted. The law created a court of visitation composed of three members — one chief justice and two associates — elected for four years. This commission had power to compel adherence to impartial and reasonable train service; require the construction of depots, switches, and other facilities; regulate intersections and joint operation of roads; prescribe the movement of trains and necessary measures of safety for passengers and employees; require uniform appliances; hear and decide cases relating to freight rates, switching

and demurrage charges, and to apportion such charges among connecting railways; regulate rates for carload and less than carload lots, including live stock; classify freight and restrict railways in the exercise of their powers to charter privileges, and compel obedience to railway law.

Kentucky. — Three commissioners, elected by districts for four years. No power to fix rates, but a law of 1899 requires commission to hear complaints of extortion and excessive rates "when complaints shall be made to the railway commissioners accusing any railroad or corporation of charging, collecting, or receiving extortionate freight or passenger rates over its line or lines of railroads in the commonwealth, or when said commission shall receive information or have reason to believe that such rate or rates are being charged, collected, or received, it shall be the duty of said commission to hear and determine the matter as speedily as possible."[1] In addition commission gives notice, fixing time and place of hearing, whereupon rates may be agreed upon and put in operation on ten days' notice. The commission shall also examine through rates and bring proper matters before the Interstate Commerce Commission. It may order improvements and, if its advice is not heeded, call the attention of the attorney-general and the legislature to those matters.

Louisiana. — Three commissioners, elected for six

[1] Laws, 1899, ch. 2.

years by districts, shall inspect railways; hear and determine complaints against classification of rates; compel attendance of witnesses. Sheriffs refusing to execute and enforce process or order of commission subject to penalty as in similar civil cases. "It shall be lawful for the commission to fine and commit to the parish prison of the parish where the commission may be in session at that time any witness or other person adjudged to be in contempt of the authority of said commission, the same as in cases of contempt before the district courts of this state." Railways may appeal from decisions of commission to courts, pending which commission orders are suspended.

Maine. — Three commissioners for three years, appointed by the governor and council. Commission shall examine railways and rolling stock, and give certificate showing their condition to railway companies; may reduce speed on unsafe roads; settle disputes among connecting lines; order erection of stations; investigate accidents; make rulings as to crossings, which are final, unless appealed from within fourteen days; compliance with orders may be compelled by court.

Maryland. — No commission.

Massachusetts. — Three commissioners, appointed for three years by governor and council; commission to exercise supervision of railways; to see that laws are complied with; to inform corporations of necessary improvements, charges, etc.; to examine condition of roads on complaint of city or town

authorities; to investigate causes of accidents; to be furnished with information as to condition, management, etc., of roads; to examine books, accounts, etc.; on request, to publish financial condition; summon witnesses; employ experts; approve by-laws of railway relief societies.

Michigan. — One commissioner, appointed by governor and senate for two years. Commissioner shall examine condition and management of railways; examine tracks; hear petitions for better railway facilities; subpœna witnesses; arbitrate on joint use of stations and terminal facilities; prescribe uniform systems of accounting; prescribe forms of signals and order automatic bells at crossings.

Minnesota. — Three commissioners elected for four years. Commission to investigate rates, fares, and classifications; visit each county annually; hold sessions in any part of state; inquire into management of common carriers, and, at discretion of commission, these may be sued for non-compliance with orders; attorney-general ex officio attorney for commission; commission notifies carriers of petitions and complaints, and fixes rates either on complaint or on its own motion; subpœna witnesses; prescribe uniform systems of accounts; may require uniform gauges if thought necessary after examination.

Mississippi. — Three commissioners, elected for four years by districts. Commissioners may apply to courts of chancery to compel obedience to state

laws, lawful orders, decisions, and determinations. "Every railroad ought to use the same classification of freight, and, as far as practicable, the railroad commission shall require them to do so, and to conform the classification to that in use in interstate commerce, when practicable."[1]

Missouri. — Three commissioners, elected for six years. Commissioners shall prosecute complaints involving unreasonable rates before Interstate Commerce Commission, subpœna witnesses, call for papers and books, and secure other evidence. Courts may even revise orders of commission. Commission may classify freight and reduce rates; institute proceedings against railway companies which promote the consolidation of parallel lines, and prosecute companies for preventing competition between express companies. The commission also has power to establish connections between competing lines.

Montana. — No commission.

Nebraska. — Board of transportation composed of attorney-general, secretary of state, auditor, treasurer, and commissioner of public lands. The law prescribes classification of freight in full. The commission shall inquire into the management and business of railways for the protection of public interests; subpœna witnesses and invoke power of courts; courts may compel obedience by injunction, but railways have power to appeal to supreme court. Proceedings of commission accepted as

[1] Rev. Stat. 1892, § 4, 318.

prima facie evidence; commission shall report investigations in writing.

Nevada. — No commission.

New Hampshire. — Three commissioners, appointed by governor and council for three years. Commission has power to fix maximum rates; investigate accidents and complaints; administer oaths, summon witnesses, and compel them to testify; institute proceedings against railways for violation of law; examine railways annually; investigate accidents, and report to supreme court on necessity of new roads, bridges, or on the desirability of consolidations.

New Jersey. — No commission.

New Mexico. — No commission.

New York. — Three commissioners, appointed for five years by governor and senate. Commission exercises general supervisory powers over railways. Attorney-general may prosecute railways for failure to comply with orders of commission; investigate accidents; make recommendations after hearing, for which the attendance of witnesses is compulsory; make rulings on grade crossings, from which rulings appeal may be taken within sixty days; no mortgages, except purchase mortgages, shall be issued without consent of the commission.

North Carolina. — Corporation commission, composed of three members, elected for six years. Commission has general supervisory powers; may establish rates; prevent discriminations, rebates; call the attention of the Interstate Commerce Com-

mission to proper cases; investigate books and papers; examine officers, and exercise powers and jurisdiction of a court of general jurisdiction on subjects embraced in the act; establish stations, and pass upon applications for discontinuing the same; investigate accidents; act as arbitrators between disagreeing companies. In fixing maximum rates the commission shall always consider the value of services performed and other factors entering into the composition of rates. The commission may make special rates, with a view of developing certain industries.

North Dakota. — Three commissioners, elected for two years. Commission shall have general supervision; inquire into violations of law, neglect of duty, etc. Attorney-general ex officio counsel to enforce decrees of commission. Hearings shall be given on petitions, for which witnesses may be subpœnaed and oaths administered. Where railway companies cross on same grade, commission may compel construction of Y's.

Ohio. — One commissioner, appointed for two years by governor and senate. Commissioner shall examine complaints; subpœna witnesses; call for books; enforce acts against railways having inexperienced employees, the act regulating height of bridges, automatic couplers, limiting the hours of service of employees, fire extinguishers on train, and interlocking switches (interlocking switches are compulsory); investigate accidents.

Oregon. — No commission. Commission estab-

lished in 1887, and in 1898 commission law, and with it practically all other railway legislation, was repealed.

Pennsylvania. — Secretary of internal affairs, elected for four years, appoints a deputy, who supervises railroads. The secretary of internal affairs shall supply the blanks for reports of railway companies, copies of which shall be sent to the governor and members of legislature; such reports filed in bureau of railroads. Special reports may be required. Bureau of railroads shall see that corporations act within legal limits, hear complaints, and, if well founded, instruct attorney-general to institute proceedings against offending companies.

Rhode Island. — One commissioner, appointed by governor for three years. Commissioner shall "personally examine into the proceedings of any railroad corporation," secure compliance with laws, investigate accidents, subpœna witnesses, approve or disapprove the abandonment of stations, order flagmen at crossings, and make orders in regard to grade crossings, from which an appeal may be taken. Commissioner shall report annually to the general assembly, "so far as the public interest may require, with such suggestions and recommendations as he may deem necessary or expedient."

South Carolina. — Three commissioners, elected by general assembly for six years. Commission shall have supervision of all railways; investigate complaints, accidents, etc.; may require informa-

tion concerning rates with connecting roads; may ask additional questions with respect to schedules, and make requests and give advice; investigate accidents. Jointly with railway companies commission may make special rates for the purpose of developing industries of the state. No new railway may be opened without examination and certification of commission. Railway company may appeal from decisions of commission to circuit court.

South Dakota. — Three commissioners, elected at large for six years. Commission shall investigate complaints and furnish report of investigation to complainants; subpœna witnesses; examine books; fix schedules of maximum rates and classifications; establish joint rates on petition of disagreeing railway companies; exercise general supervision, and institute action to compel compliance with law.

Tennessee. — Three commissioners, elected for six years by grand divisions of the state. Commission shall supervise and fix rates, charges, and regulations of freight and passenger tariffs; correct abuses; prevent unjust discriminations and extortions. Commission may subpœna witnesses, examine books, and compel testimony to be given, but no railway employee, officer, etc., shall be subject to legal process on basis of his own testimony; investigate through rates and, in case of violations of law, report to the Interstate Commerce Commission; attorney-general conduct proceedings. Circuit, chancery, and justices' courts shall have jurisdiction of cases arising out of the act.

"Railway companies may make contracts with coal, mining, and manufacturing companies or persons for special rates of freight not to be controlled by this article."[1] This section relates to long and short hauls, and should be read in connection with section 10, chapter 24, laws of 1897, which provides that nothing in the act shall be construed to prevent railways from giving special rates to encourage infant manufacturing industries, and for the encouragement of any other new industry, or for the transportation of any perishable goods.

"That it shall be the duty of the railroad commissioners, by correspondence or otherwise, to confer with the railroad commissioners of other states and the Interstate Commerce Commission, and such persons from states which have no railroad commissions as the governors of such states may appoint, for the purpose of agreeing, if practicable, upon a draft of statutes to be submitted to the legislature of each state, which shall secure uniform control of railway transportation in the several states, and from one state into or through another state, as will best serve the interests of trade and commerce of the whole country."

Texas. — Three commissioners, appointed by governor and senate, holding office for same period with governor. Commission shall adopt all necessary rates, charges, and regulations to govern and regulate railroad freight and passenger rates; to correct abuses and prevent unjust discriminations

[1] Rev. Stat. 1896, § 3060.

and extortion; may change rates and fix same for empty and loaded cars. Emergency freight rates established by law as amended in 1899: . . . "Said commission shall have power, when deemed by it necessary, to prevent interstate rate wars and injury to the business interests of the people or railroads of this state, or in case of any other emergency to be judged by the commission; and it shall be its duty to temporarily alter, amend, or suspend any existing freight rates, tariffs, schedules, orders, and circulars on any railroad, or part of railroad, in this state, and to fix freight rates where none exist."

"Whereas interstate cut freights from other states to Texas are frequently made and put in force on three days' notice to the Interstate Commerce Commission, to remain in force often for only ten days at a time, suspending the regular rates for that time; and whereas these temporary cut rates are intended and actually do benefit only a favored few, who are notified in advance; and whereas such cut rates tend to demoralize traffic and create rate wars, to the great detriment of Texas railway companies and the public generally; and whereas under the law as it now exists emergency rates to meet such cuts and prevent such rate wars cannot be put in force until three days' notice to the roads interested, an imperative public necessity and emergency exists for the suspension of the constitutional rule, requiring bills to be read on three several days, and this bill shall

therefore take effect and be in force from and after its passage."

Utah. — No commission.

Vermont. — Three commissioners, appointed by the governor and senate for two years. Commission exercises general supervision; examines books and witnesses; may employ experts; make recommendations and apply to supreme court to compel compliance with its orders; inquire into lack of connections; recommend repairs, improvements, etc.; and, in general, see that the laws are complied with. So far as consistent with state laws commission shall conform to the rules, etc., of the Interstate Commerce Commission.

Virginia. — One commissioner for two years, elected by general assembly. Commission shall inquire into and examine conditions of railways, and, in general, bring about obedience to law; on complaint of mayor, aldermen, councils, certain judges, commission shall investigate and report to the board of public works, composed of governor, auditor, and treasurer. Persons suffering from violation of law may seek relief in court of equity through commission. Commission shall report on actual working of the railway system in its relation to the business and prosperity of the state; make suggestions as to general railway policy; investigate accidents; and require railway companies to furnish information regarding the management and operation of roads.

Washington. — No commission.

West Virginia. — No commission.

Wisconsin. — One commissioner, elected for two years. Commissioner shall inquire into neglect of duty or violations of law; inspect railways, and ascertain their pecuniary conditions; notify railway companies of complaints, and give notice of hearing; subpœna witnesses; request attorney-general to prosecute in behalf of commission. Decisions of commissioner final unless appealed from within twenty days.

Wyoming. — No commission.

PART III

THE PAST AND FUTURE OF THE INTERSTATE COMMERCE COMMISSION

CHAPTER I

Events Preceding the Act to Regulate Commerce, 1887

During the first half of the nineteenth century federal railway legislation dealt chiefly with rights of way through public lands, and with the remission of duties on railway materials imported from abroad. The Pacific railway agitation was begun during the first and continued into the third quarter of the century. The first land grant act was passed in 1850.[1] In 1866 the "charter of the American railway system" became a law. It provided that "every railroad company in the United States whose road is operated by steam, be and is hereby authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, government supplies, mails, freight, and property, on their way from any state to another state, and to receive compensation therefor; and to connect with roads of other states so as to form continuous lines for the transportation of the same to the place of destination." In 1868 the House com-

[1] J. B. Sanborn, *Congressional Grants of Land in Aid of Railways*, Bulletin, University of Wisconsin, Vol. II. no. 3, in Economics, Political Science and History Series.

mittee on roads and canals — the new committee to handle railway legislation did not appear until several years later — submitted a report in which strong reasons were advanced in favor of a liberal interpretation of the powers of congress over interstate commerce.[1] The committee had been instructed to inquire whether congress had power to regulate interstate railways so as to secure safety of passengers, uniform and equitable rates, and adequate connections with other railways. An affirmative answer was given to every one of these points of inquiry, but the committee did not report a bill. This they refused to do because the requisite facts for the drafting of such a bill were not at hand. Instead, it was recommended that another committee be appointed to collect the data necessary for intelligent action. Meanwhile the Patrons of Husbandry had come upon the scene. From 1867 to 1872 the founders of the order struggled chiefly alone. In 1872 the state grange of Iowa was founded, and by the close of that year about thirteen hundred granges had been organized in various parts of the country. In two years more the order had spread over the whole country, with an aggregate of over 20,000 lodges. In 1874 the Grand Master's address[2] alluded to exorbitant and varying rates, discriminations, and uncertainties. "When we plant a crop

[1] E. J. James, *The Railway Question*, Am. Ec. Ass'n, 1887.

[2] Proceedings, National Grange of Patrons of Husbandry, 1874, p. 14.

we can only guess what it will cost to send it to market, for we are the slaves of those whom we created. . . . In our inmost soul we feel deeply wronged at the return made for the kind and liberal spirit we have shown them" (*i.e.* the railways). Sentiments like these, frequently expressed in vehement language and repeated time without number in subordinate granges, created a profound influence on public opinion and political parties. Congress was petitioned to establish a department of agriculture, to revise the patent laws, improve the Mississippi River, and above all to enact suitable railway legislation. "We hold each senator and representative responsible for his action upon the subject-matter" set forth in the resolutions. The President's message of December, 1872, gave the stimulus to the appointment of a Senate committee of seven known as the Windom committee. The report of this committee "is interesting because it contains the first presentation of a comprehensive plan of regulation of the whole subject of commerce between the states, as it has constituted itself since the introduction of the railway."[1] The primary view of the report was low rates and the preservation of competition. The crisis of 1873 tended to divert attention from discriminations and other abuses to the absolute level of rates, it being assumed that cheap rates would afford relief. Among the measures recommended by the Windom committee were publicity

[1] E. J. James, *The Railway Question*, p. 35.

of rates; prohibition of combinations, stock-watering, and a greater charge for a shorter haul over the same line; reforms in the shipment of grain and in the operation of freight lines; and, finally, the establishment of a bureau of commerce. In the meanwhile states like Illinois, Iowa, Wisconsin, and Minnesota resorted to vigorous and even drastic legislation. Public opinion in the rural districts had reached a white heat. Men in public life dependent upon popular suffrage vied with one another to meet the wishes of the "grangers" and their friends. The indiscriminate distribution of seeds was an incident in this general rivalry to satisfy, conciliate, and appease. In 1878 the Reagan bill, one of the forerunners of and a contributor to the present interstate commerce law, was first introduced. Uninterrupted discussions in and outside of Congress resulted in the appointment of the Cullom committee, whose report is in a sense the corner-stone of the act to regulate commerce. The report was made in 1886. The chief ground of contention was shifted from the level of rates to that of discriminations in their various forms. Great railway combinations had been formed. Through rate necessities of competitive markets, areas, and railways had reduced rates on staple commodities, especially on grain and other agricultural products shipped in large quantities. Fierce railway wars had been fought and abnormally low rates enforced during the periods of conflict. Individual railways, individual shippers, and certain localities rose and

fell with the fortunes of the railway wars. All this tended to concentrate public attention upon the abuses of reckless railway administration. These abuses are reflected in detail in the volume of testimony accompanying the report of the committee. The report proper refers to the exclusive privileges enjoyed by railways and the public functions which they perform. These make the relations and obligations of railways to the community and to the governmental authority something very different from those of the ordinary corporation, and upon such differences both the necessity and justice of regulation rest. Similar ground was taken by the Supreme Court of the United States in the leading case of Munn *vs.* Illinois:[1] "When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use. He may withdraw his grant by discontinuing the use." The committee further pointed out the differences between investments in railway and ordinary business enterprises; they emphasized the public nature of the railway business, making railways *quasi* public servants with power to levy a tax; and, finally, the committee asserted that railways have a right to protection by the state in the enjoyment of their chartered privileges. The importance of lakes, rivers, and

[1] 94 U.S. 113.

canals is recognized, and the doctrine of competition among railways adhered to. On the whole, the ideas expressed in the report convey a feeling of uncertainty with respect to the exact nature of the legislation required and the probable efficacy of such legislation. This uncertainty prevailed throughout the debates on the bill which finally became law, and which, together with the two amendments, will be found verbatim in Appendix IV. It remained to the Interstate Commerce Commission and the courts to give definiteness to the provisions of the law. The manner in which this has been done will be shown in the following chapters.

CHAPTER II

Leading Principles of the Decisions of the Commission[1]

The decisions of the Interstate Commerce Commission, handed down since its organization in 1887, now number 293, some of which cover two or more cases decided at the same time. The facts presented in this long series of cases are kaleidoscopic. A single fact may appear a hundred times, but it always comes again in different company. Never, perhaps, does exactly the same group of facts reappear in exactly the same combination or relationship. Hence each group of facts embraced in a case and each decision based upon the same has an individuality of its own. Generally speaking, no two cases are alike in every respect, and no rule of thumb can be devised by which a decision can be rendered. Yet, though each decision has its peculiar characteristics, an analysis and comparison of many cases and decisions reveals certain common elements or underlying principles and views. To point out these common elements, views, and principles in the decisions of the Inter-

[1] This and the two following chapters were published in the *Political Science Quarterly*, September, 1902.

state Commerce Commission is the chief aim of this discussion.

The problems involved in the decisions are primarily economic, although political and social considerations are not wanting. As a compilation of economic facts alone, tested and certified, the decisions constitute a valuable contribution to industrial history. To know the world as it actually exists should be a leading task of every man. The Interstate Commerce Commission has placed at the disposal of the public the most varied, the most widely distributed, the most concrete, and the best authenticated collection of facts relating to railways in the United States that is available at the present time; and by means of these facts we may learn something of the difficulties involved in railway transportation in this country. By far the greatest number of facts relate to the problems of competition, which in turn involve questions of similarity and dissimilarity of conditions, long and short hauls, coöperation, reasonableness of rates, and discriminations. Closely allied to these questions are those relating to classifications and commodity rates. Standing somewhat by themselves, and yet not disconnected, are decisions relating to through shipments, foreign trade, routing of freight, etc. Questions relating to the enforcement of the Act to Regulate Commerce and to the giving of testimony make their appearance. The interpretation of the act is frequently drawn into consideration, but this feature of the decisions of the commission

can best be associated with the court decisions called forth by the same.[1] All of these topics have numerous subdivisions and ramifications which cross and recross one another in the complex network of relationships which the railway as an institution represents, and which is the ultimate cause of the kaleidoscopic nature of the cases brought before the commission.

Competition and the long and short haul. — The Act to Regulate Commerce assumes that railway transportation is a competitive industry and that competition among carriers should be preserved. The Interstate Commerce Commission has repeatedly asserted this in its annual reports and decisions.[2] A score of decisions relate primarily to water competition in its bearing upon the long and short haul clause. The commission has held that the act permits railways to meet but not to extinguish the competition of water carriers.[3] The cheapening and regulating functions of water competition have been generally recognized;[4] but in the case of very low rates on steel products to San Francisco from the Atlantic and Mississippi valley

[1] It should constantly be borne in mind that in this chapter only the decisions of the commission are considered, *irrespective of the decisions of the courts.*

[2] For instance, Annual Report (1887), pp. 37, 40; Annual Report (1898), p. 20; Decisions, 1, I. C. C. 319; 2. 52; 4. 131.

[3] 7, 224. Hereafter, for the sake of brevity, the decisions will be cited by volume and page numbers only.

[4] Cullom Committee Report (1886); Johnson, *Inland Waterways*, 61; Hadley, *Railroad Transportation*, 93–98 and elsewhere.

points, compared with the rates on the same products from Pueblo, the commission held that water competition is altogether inadequate to account for the general relatively low rating of lumber, grain, and other staple or heavy goods to or between inland points.[1]

The existence of water competition and of competition among railways has been the ground upon which railways have commonly petitioned the commission for relief under section iv of the act. As is generally known, this is the long and short haul section, which makes it unlawful for a railway company "to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance." Obviously the decisions on long and short haul questions turn upon the similarity or dissimilarity of the conditions under which the hauls are made. The commission has uniformly held, from the first, that carriers must judge in the first instance as to the similarity or dissimilarity of the conditions; and that such judgment of the carriers is not final, but is subject to the authority of the commission and of the courts to decide whether an error has been committed, the burden of proof resting upon the carrier. In the leading case, *In re* Louisville and

[1] 6. 488.

Nashville R. R. Co.,[1] the commission accepted the existence of actual competition, which is of controlling force in respect to traffic important in amount, as an adequate cause of dissimilarity in circumstances and conditions. That this competition must be actual, of controlling force and relating to traffic important in amount has repeatedly been emphasized by the commission. "That competition with each other of the railroads which are subject to the federal law can seldom, as we think, make out a case of dissimilar circumstances and conditions within the meaning of the statute, because it must be seldom that it would be reasonable for their competition at points of contact to be pressed to an extent that would create the disparity of rates on their lines which the statute seeks to prevent.[2] The position taken by the commission in this quotation has been consistently maintained and strongly reaffirmed in a recent decision, except in so far as the Supreme Court decisions in the Alabama Midland (168 U. S. 164), Behlmer and other cases have made modifications necessary.[3]

Competition among railways, as such, is not sufficient to make out dissimilar conditions. Such competition must exist under peculiar circumstances, and even this competition can be accepted as only one of the circumstances and conditions

[1] 1. 31. The same principles are restated entirely or in part in 1. 236; 3. 534; 4. 1; 4. 104; 4. 228; 5. 324 and other decisions.

[2] 1. 81; 5. 324.

[3] 8. 346.

entering into the case. Not one but all the circumstances and conditions must be made the standard of comparison.[1] The competition of railways not subject to the act and of foreign railways has been regularly admitted as one of the circumstances, together with those "rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition."[2] Competition with water carriers may do the same,[3] although in "some parts of the country it is not easy to separate railroad competition altogether from competition by the water-ways. Water competition is not limited in force strictly to the points of contact of water and rail lines, but extends its influence to an indefinite distance therefrom, qualifying to greater or less extent the all-rail rates."[4] "If the competition of water carriers at any point is large, active and of controlling force, the all-rail lines competing for traffic at the same point may make rates that are reasonable and just in view of such competition, and that will enable them to participate in the traffic. Railways are not obliged to go out of business and leave it as a monopoly to water carriers";[5] nor can they,[6] under other circumstances, make rates so low as to drive the water transportation out of existence.

Conditions and circumstances admitted as dis-

[1] 1. 436; 5. 156.
[2] 1. 72.
[3] 4. 104, 744.
[4] 1. 81.
[5] 3. 534.
[6] 7. 224.

similar and exceptional under section iv must not be of the carrier's own creation or connived at by him. They must be forced upon him by circumstances over which he has no control or which he cannot control with a reasonable effort.[1] In a petition[2] to have the commission order a railway company to charge the same proportional rates on its line between St. Peter and Pierre that it charged between Chicago and St. Peter, it was held that because of the competition of a powerful rival, sparser population, snow blockades, and other factors increasing the cost of transportation dissimilar conditions existed, and the petition was denied. In another case,[3] water competition, the character of the road, the nature of the traffic, the preponderance of empty cars necessarily moved and *legitimate competition* with other carriers were admitted as elements determining dissimilarity of conditions. "Legitimate competition" was made to include transportation under circumstances and conditions that make a low rate the only alternative to an abandonment of the business, provided that the rate affords some revenue above cost, and works no material injustice to other patrons of a carrier. When, however, such transportation is carried on at a loss and imposes a burden on like traffic at other points and on other traffic, it is to be deemed destructive and illegitimate competition. In a complaint[4] against blanket rates in

[1] 2. 52; 4. 131; 5. 324; 8. 214.
[2] 2. 73.
[3] 4. 1.
[4] 4. 228.

force on all-rail carriers between New York and the great oil fields of Pennsylvania, Ohio and West Virginia, on the one hand, and California points, on the other, to the disadvantage of intermediate points, the commission held that the competition of all-water lines, part-water and part-rail lines, part-water and pipe lines constituted dissimilarity of conditions and justified a violation of section iv. During the World's Fair at Chicago, for the better accommodation of its patrons, a railway established a new route from an Ohio town over which the tickets could not be sold except by violating the long and short haul provision. The commission granted the desired relief.[1] Similar relief[2] was granted to a railway in order that it might better serve a region suffering from crop failure.

The Georgia Commission cases[3] decided that the competition of markets on different lines for the sale of commodities at a given point served by both lines does not create conditions which justify deviation from the long and short haul principle. To determine the force and effect of such competition, it was further held, involves commercial considerations, such as the advantages of business location, the comparative economy of production, the comparative quality and market value of commodities, all of which are entirely

[1] 6. 323. [2] 6. 293.

[3] 5. 324. Similar conclusions in 7. 224; and 7. 344 (competition between mines).

disconnected from circumstances and conditions under which transportation is conducted. Various other grounds for a refusal of relief under section vi have been indicated by the commission. Among these are: disturbances in rates, whether secret or open;[1] unjust and unreasonable rates on the part of a competitor;[2] potential competition;[3] a longer line on part of a competitor;[4] the fact that a commodity is foreign merchandise;[5] the mere situation on a navigable river;[6] competition of carriers subject to the act.[7] The problem involved in competition among railways will be discussed more fully in connection with court decisions. However, one phase of it, the trade-centre theory, may be noticed in this place.

In the territory south of the Potomac and Ohio and east of the Mississippi, known as Southern territory and controlled by the Southern Railway and Steamship Association, it has been customary to establish rates to competitive stations and make charges to non-competitive or local stations by adding to the rate of a competitive point the local rate from such point to the local destination, taking that competitive rate and that local rate which will produce the lowest combination, regardless of whether the competitive or basing point is beyond the local destination or not.[8] Whenever the haul

[1] 7. 61. [2] 2. 231. [3] 4. 104. [4] 8. 346. [5] 4. 447. [6] 1. 236.

[7] 6. 632 and others cited above.

[8] Annual Report, I. C. C. (1892), p. 18; 6. 343 and cases quoted; 2. 25; 3. 19; 4. 686; 5. 96.

to the competitive point or "trade centre" is longer than that to the non-competitive point for which a greater charge is made, the haul being made over the same line in the same direction, the long and short haul principle is violated, and the non-competitive point can bring action against the carrier under section iv. The trade centre method is satisfactory, of course, to the "centres" which it establishes and maintains, but brings disadvantage to smaller "non-competitive" towns and rural communities. What shall and what shall not be made a trade centre is finally decided by an arbitrary authority; and no matter how good the intentions the local or non-competitive points are unable to develop their industries under the same advantages that are enjoyed by the competitive, basing, or distributive points, which have been made such not necessarily by any normal and natural process of industrial development, but by chance or caprice or both. Contrary to the contentions of several carriers, the Commission has refused to admit that the existence of such "trade centres," or the competition between them, creates a dissimilarity of conditions within the meaning of section iv. It has repeatedly condemned the trade-centre idea as interfering with the natural course of trade, establishing arbitrary advantages, and violating both the spirit and the letter of the act to regulate commerce. It has held that trade centres are not entitled to more favorable rates than small towns for which they form dis-

tributing centres; but no interference has been attempted where small towns get rates as favorable as the larger ones;[1] and the equalization[2] of rates between small and large towns to do away with former special favors does not constitute a ground for complaint.[3]

The Question of Rates. — The kernel of the railway problem is the question of rates. Few topics of importance in finance or administration or any other phase of railway transportation can be investigated without sooner or later touching upon rates as the decisive consideration. Upon no subject has the Commission rendered so many decisions as upon this. A long line of cases has arisen directly out of the general question of reasonable rates; another out of discrimination in rates; others, and some of the most important, out of questions connected with exports and imports; and about a dozen groups of decisions or parts of decisions deal with commodity rates and rates on special articles.

The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the act to regulate commerce, imply comparison, and rates to be law-

[1] 2. 25. [2] 1. 401.

[3] The manner in which the decisions quoted on preceding pages have been modified by the courts will be discussed in the two following chapters.

ful must bear just relations to one another.[1] Rates must be relatively fair and reasonable as between localities similarly situated in essential respects, not according to any rule of mathematical precision, but in substance and in fact, having regard to the geographical and relative positions of the localities, so that one will not be favored to the unjust prejudice of the other.[2] Attempts to maintain trade relations, to protect competing markets, to equalize commercial conditions, and analogous considerations cannot justify unreasonable rates.[3] Low charges on one line cannot be made up by high charges on others, and all charges should have a reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic.[4] The length and character of the haul, the cost of service, the volume of business, the condition of competition, the storage capacity, and the geographical situation at the different terminal points are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.[5] That rates should be fixed, says the Commission, in inverse proportion to the natural advantages of competing towns with the view of equalizing commercial conditions, is a proposition unsupported by law and quite at variance with every

[1] 6. 458, 548.
[2] 1. 215; 2. 315; 4. 79.
[3] 6. 195.
[4] 4. 48.
[5] 1. 230.

consideration of justice.[1] Each community is entitled to the benefits arising from its location and natural conditions. Equality of charge is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity.[2] The degree of similarity[3] is determined by all the circumstances entering into the case, and not solely by one standard of comparison.

It is quite impossible to separate questions relating to reasonable rates, discriminations, through rates, etc., from one another. Yet the subject of discriminations has given rise to more controversy and legislation than, perhaps, any dozen other railway topics, and at least brief separate treatment must be accorded to it. In the popular mind discrimination means unjust discrimination, and to the eyes of most legislators all discriminations are unjust. But the well-known illustration of the Delaware oyster town,[4] showing the necessity and justice of discriminations under peculiar circumstances, could be duplicated many times. While all discriminations against individuals, for like and contemporaneous services rendered under "similar circumstances and conditions," are unjust, discriminations against localities may be unavoidable and even just. Sixteen state constitutions and the laws of three-fourths of the states prohibit all discriminations.[5]

[1] 1. 215; 5. 264; 7. 180. [2] 4. 79. [3] 1. 436.
[4] Hadley, *Railroad Transportation*, p. 116.
[5] Part II, ch. III.

The Interstate Commerce Act prohibits and declares unlawful *unjust discriminations*, thus reserving to the Commission discretionary administrative powers in case of discriminations which, to that body, do not appear to be unjust. While every community is entitled to the benefits arising from its location and natural conditions,[1] and the Commission is not authorized to grant special privileges,[2] it may nevertheless permit preferences among localities when sufficient cause exists,[3] and these preferences are not undue.

Among the forms of discrimination pronounced unlawful by the Commission are the following: illegitimate use of private cars[4] or cars not owned by the railway company; discounts based on quantity of freight received by a single shipper,[5] or excessive differences in rates on car-load and less than car-load shipments;[6] combination rates favoring the knowing shipper;[7] mileage tickets not sold impartially;[8] refusal[9] to carry goods over the route directed by the shipper, and directing traffic arbitrarily without good reasons; employment[10] of ticket brokers to sell tickets at reduced rates on commission; party rates lower than contemporaneous rates for single passengers;[11] lower rates[12] from an important centre and not correspondingly lower

[1] 2. 540.
[2] 1. 17.
[3] 8. 93, 290.
[4] 1. 374; 2. 90; 4. 630; 4. 265; 5. 193.
[5] 1. 107.
[6] 2. 90; 5. 638.
[7] 1. 230; 2. 1.
[8] 1. 156.
[9] 7. 43.
[10] 2. 513.
[11] 2. 649; 3. 465.
[12] 8. 214.

rates from intermediate points, giving certain shippers exclusive rights over station facilities; the "expense bill" system; carrying to terminal points at commodity rates an article which, if the class rate were imposed, would still seek rail rather than water transportation; and that large class involving rebates in their various forms, excessive charges, etc.

Certain things have been pronounced by the Commission as not constituting unjust discrimination: the sale of two tickets for passage, one of which the company permits to be transferred and the other not, when the two do not appear to be similar;[1] a contract by a railway company for through shipments with *one* of several competing steamship companies;[2] a low rate for returning oil-tank cars,[3] filled with cotton-seed oil and turpentine; absorbing a terminal charge on live stock in one market and exacting such a charge for terminal service in another city which is reached by a different line;[4] charging equal rates on milk for all points on a milk-train line;[5] separation of white and colored passengers paying the same fare, when accompanied by the same care and protection;[6] making rates for immigrants as a class;[7] and finally, when an article of traffic does not move on

[1] 1. 144. [2] 4. 265. [3] 5. 193. [4] 7. 513.

[5] 2. 272. In the important case, 7. 92, a blanket rate on milk from certain New York points was held to be unjust; also stated differences in the rates on milk in cans and in bottles.

[6] 3. 111; 1. 428. [7] 2. 271.

account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate that will induce the movement of such traffic, provided no extra or additional charge is in consequence put upon other articles carried.[1]

The hobbyist who urges the adoption of some one of the dozen or more principles upon which railway rates may be based, with the confident belief that his particular scheme would forever settle the difficulties of railway charges, finds little encouragement in the decisions of the Commission. No one can go far into the problem of rates without feeling very strongly the utter futility of attempts to reduce all rates to the basis of a single principle. In this, as in so many other domains of economic life, the question is not one *or* the other, but one *and* the other or others. The circumstances and conditions under which goods and persons are transported are far too complex and too involved to admit of so simple a solution for determining rates. The Commission, in deciding concrete cases as they have arisen, has fallen back upon various principles of railway rates, giving one or the other a higher rank as the peculiar combination of facts in that case appeared to demand. Hence the decisions contain references to the principles of value, distance, cost, space, weight, etc.

[1] 6. 61.

In one of its earliest decisions[1] the Commission enumerated the following factors to be taken into consideration in the determination of just and reasonable rates: (1) the earnings and expenses of operation; (2) rates charged upon the same commodity on other roads similarly situated; (3) the diversities between the railway in question and such other roads; (4) the relative amount of through and local business; (5) the proportion borne by the commodity in question to the remainder of the local traffic; (6) the market value of the commodity; (7) the reductions made by the carrier upon other articles which are consumed and necessarily required by the producers of the article in question; (8) all other circumstances affecting the traffic of itself and as related to other considerations entering into the charges of the carrier.

Rates may be established on a mileage basis[2] and the rate per ton-mile grow less in proportion to distance,[3] but a departure from equal mileage rates on different branches or divisions of the same railway must be clearly shown to be necessary before it can be approved.[4] Through rates[5] are not required to be made on a mileage basis, nor local rates to correspond with divisions of a joint through rate over the same line. Mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges. The

[1] 1. 325. [2] 1. 629. [3] 2. 52. [4] 5. 612. [5] 3. 252.

distance being in favor of one of two competing points, and neither cost, the value of the service, nor other conditions of transportation in favor of the other, the shorter distance point cannot justly be denied at least equal rates with the longer.[1] The market value of a commodity, the value of the transportation service to the commodity, its cost of production, and the actual cost of carriage are elements of importance in establishing rates.[2] Value is another important element, but it cannot be made an arbitrary standard independent of all other considerations.[3] Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic; but it is incumbent on parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value,[4] and in case of competitive articles[5] over the same line the relation of rates should be determined by reference to the respective costs of service ascertained with reasonable

[1] 6. 342.

[2] The writer refrains from discussing in this place the meaning of the terms "value," "cost," "expense," etc., as used in transportation matters. A variety of definitions can be constructed synthetically from the decisions. The writer is inclined to restrict the use of the term "value of service" to value of service *to the commodity* considered as an object of purchase and sale on a competitive market; and "cost of transportation" to material sacrifices made by a railway in carrying a particular article at a certain time (which, as is well known, cannot be accurately determined for a particular service).

[3] 8. 158. [4] 5. 529. [5] 4. 611.

accuracy. Although rates should bear a reasonable relation to cost of production and to the value of the service to the producer and shipper, they should never be so low as to impose a burden on other traffic;[1] nor can small earnings,[2] extraordinary or unnecessary cost of operation or management,[3] or other financial necessities[4] and conditions of the carrier justify excessive rates. The degree of risk to the carrier[5] and the capitalization of a railroad[6] have a bearing upon rates. The latter, in order to have consideration, should be accompanied by a history of the capital account, the value of the stock and various securities, and the actual cost and value of the property itself. To make the capital account of railways the measure of legitimate earnings would place, as a rule, the corporation which has been honestly managed from the outset under enormous disadvantages.

Classification. — That rates can be changed by modifying classifications is an elementary proposition of transportation. That principles of railway rates constitute the decisive factors in classification is its corollary. A study of classifications is inseparable from a study of rates, and *vice versâ*. The great classifications in force in the United States to-day are the result of years of effort in improving some original schedules and in consolidating and eliminating scores of others. The three dominating classifications of to-day, with

[1] 4. 48.
[2] 1. 375.
[3] 7. 92.
[4] 6. 601.
[5] 6. 131; 1. 465.
[6] 8. 158.

more than seven thousand specifications, are a great advance upon the schedule of 1856 with thirty-three specifications. This development has been one steady march toward uniformity, in which the Interstate Commerce Commission has always stood on the side of progress, and arguments in favor of a uniform classification have been repeated many times in its reports. "The Commission has repeatedly said that the re arrangement of rates and the simplification of classifications are matters which the carriers should undertake and should carry forward for themselves."[1] While the Commission has been reluctant to enter upon active classification making, its decisions are not without direct bearing upon specific questions relating to classifications, especially in matters of principle. Classification is deemed convenient and essential to any practical system of rate-making, and is so recognized, though not enjoined, by the act to regulate commerce.[2] And when a classification is used as a device to effect unjust discriminations, or as a means of violating other provisions of the statute, the act requires the Commission to so revise and correct such classification and arrangement as to correct abuse. A manufacturer of soap advertised and sold as toilet soap made complaint against a railway company for classifying his soap with other toilet soaps, and not with the lower class of laundry soaps. The Commission held that a manu-

[1] 3. 19. [2] 4. 535.

facturer's description of an article designed to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates.[1] In another case[2] the Commission held that two kinds of soap advertised as alike, and substantially equal in value, should be classified alike for transportation purposes. Products classified alike are presumptively entitled to equal rates;[3] in classifying them, cost,[4] bulk, weight, value, and their general characteristics should be chief considerations;[5] clearness and simplicity should be aimed at and irregularities and inconsistencies eliminated;[6] and a classification must have the same construction in favor of all persons.[7] Unjust discrimination against a commodity is not shown by evidence of a lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value, or general character. The proper method of comparison is the classification accorded by the carriers to similar articles.[8] Railway officials who have made a classification cannot testify to their understanding of its construction. A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms, so that the ordinary business man can understand it, and in connection with the rate sheets can determine for himself what he can be

[1] 4. 41; similarly in 4. 32.
[2] 4. 733.
[3] 3. 252.
[4] 6. 52.
[5] 6. 548.
[6] 2. 1.
[7] 2. 122.
[8] 5. 638.

lawfully charged for transportation. The persons who prepared the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself.[1]

Through Rates. — Through rates and through billing are matters of agreement among carriers engaged in interstate commerce. The Commission has no power to compel them against their consent to enter into arrangements for through rates and for through bills of lading,[2] although the statute encourages such connections,[3] because they furnish cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers.[4] Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby; and whether in so doing they deal with each other wisely or unwisely, fairly or unfairly, is not a matter for the Commission to decide.[5] A through bill of lading is evidence of a through rate.[6] It is not necessary that it should be formally "quoted" by one of the carriers to another who is engaged in the making of it to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself. The fact that the initial or an inter-

[1] 2. 122.
[2] 4. 265; 6. 647; 7. 376.
[3] 4. 535.
[4] 4. 535.
[5] 7. 612.
[6] 2. 131.

mediate carrier charges the full local rate does not destroy the through nature of the shipment,[1] nor is a through rate illegal which, when divided between carriers, gives them less than their local rate, provided that the through rate itself is not less than some one of the local rates, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.[2] Reasons may exist for making through rates less than the sum of the local rates,[3] and traffic conditions may warrant carriers in exacting a share in through rates which gives them more per mile than that which results to a connecting carrier from the division accepted by it;[4] but in such cases carriers must give proof of the circumstances which justify the disproportionate division of a through rate.[5] Although a shipper or consignee has no direct interest in the way a joint rate is divided between carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful; for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from some arbitrary division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share

[1] 2. 131; 6. 1.
[2] 2. 584; 4. 744.
[3] 3. 450.
[4] 8. 277.
[5] 6. 1.

or division.[1] Such complaints, even though brought in the name of an individual, may challenge the entire schedule of rates to competing towns, and such cases, as distinguished from those involving individual grievances only, are peculiarly public in their nature, since they embrace in one proceeding the various business and industrial interests in cities and towns, as those interests may be affected by the charges of public carriers whose facilities are employed in the interchange of commerce.[2] The Commission inquires primarily into the influence of a through rate taken as an entity. How the rate is made[3] is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is a matter for the carriers to determine among themselves.[4] The tariff of rates should also show which carriers united in establishing the joint rates.[5] In the division of joint rates[6] each carrier may receive less than its established local rate; one may receive more and another less than full local rates; but whatever the basis of division, the essential feature of such rates is that the connecting carriers have agreed or mutually consented to carry traffic over the connecting line for a less aggregate charge than the sum of their established local rates. So-called through export rates, *i.e.* rates by rail plus rates by water, are not analogous to joint rates made by joint arrangements, and an

[1] 8. 598; 5. 13; 2. 131.
[2] 6. 458; 5. 97.
[3] 2. 553.
[4] 5. 324.
[5] 5. 44.
[6] 7. 323.

"export rate" may be lower than the rate on the same commodity from the same origin and bound for the same port but not for export, because it is in essence the division of a through rate.[1]

Not to be confused with through rates are combination rates, obtained by adding to the through rate to a certain point the local rate from that point back to the point of destination. This system prevails most widely in southern territory and is connected with the trade-centre theory. Combination rates generally bring disadvantages to the towns to which they apply and advantages to basing points;[2] and when combination rates produce a lower rate than the tariff calls for, they enable the knowing shipper to obtain advantages over the one who has less information.[3]

Differential rates have been treated by the Commission chiefly in connection with export rates to competing seaports and longer routes competing for traffic to a common centre. The export-rate cases will be discussed in a later paragraph; suffice it here to call attention to the grounds upon which the Commission justified a differential export rate to Boston, via New York, as low as the rate to New York. These grounds were: (1) the greater cost of transportation to Boston; (2) the greater volume of business to and from New York; (3) the competition of the Lake, Erie Canal, and Hudson River route, as well as of the railways; (4) the geographical and commercial advantages of

[1] 8. 214. [2] 8. 277. [3] 2. 1.

New York.[1] However, it should also be observed that the Commission has held it neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates, whereby the product of one section of the country is assigned to one market and the product of another section of the country to another market.[2]

Pooling. — Section V of the act prohibits pooling. What constitutes pooling within the meaning of the statute has been decided by the courts, and will be further considered in the next chapter. Reference is here made to rulings of the Commission on contracts and agreements among railway companies other than illegal pooling contracts. An early decision,[3] confirmed by a recent one,[4] maintains that an intra-state railway becomes interstate when it voluntarily enters into through shipment arrangements; but shipments from within a state with the *intention* of reshipment *beyond* the state is not interstate commerce.[5] The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage or shipment, and previous formal arrangement between them, is not necessary to bring such transportation under the

[1] 1. 24, 436.
[2] 8. 185; see also 5. 571; 7. 481; 7. 612; 8. 47.
[3] 1. 315.
[4] 8. 531; see also 167 U. S. 642, and 162 U. S. 184.
[5] 1. 30.

terms of the law;[1] and the successive receipt and forwarding in ordinary course of business by two or more carriers of the interstate traffic shipped under through bills for continuous carriage over their line is assent to a "common arrangement."[2] A railway is obliged to transport freight when the same is offered in the usual way, without any special agreement.[3] Agreements among railway companies supplying a common market from competitive productive areas, which bring advantages to one such area, but disadvantages to the other, are violations of the act.[4]

Referring to the question of jurisdiction, it should be observed that the Commission has included in the "instrumentalities of shipment or carriage," subject to the act, a small road wholly within a state, but used for interstate traffic;[5] likewise commerce between points in the same state, but passing through another state;[6] an electric railway between the District of Columbia and the state of Maryland;[7] a bridge extending across a stream from one state into another;[8] live stock carried through different states to stock yards in a centre of this business is interstate commerce until delivery is made at such yards;[9] a foreign carrier;[10] and foreign merchandise carried on a through bill of lading.[11] Among the matters held not subject to its jurisdiction the Commission

[1] 5. 324; 6. 1.
[2] 6. 1.
[3] 1. 594.
[4] 6. 195.
[5] 1. 495.
[6] 1. 495.
[7] 7. 83.
[8] 2. 162.
[9] 7. 513.
[10] 3. 89.
[11] 4. 109.

has mentioned the following: a steamboat plying between two ports in the same state, but engaged in interstate traffic;[1] fruit destined to New York, but shipped only to Jersey City from points in New Jersey;[2] compelling railways to allow extra baggage to commercial travellers;[3] or to provide a particular kind of cars or other special equipment;[4] to award counsel fees;[5] to render judgments and enter decrees.[6] The jurisdiction of the Commission in matters relating to orders on rates will be discussed in connection with court decisions.

What has been presented thus far may be considered a code for the administration of railways prescribed by the Interstate Commerce Commission.[7] This code is based upon the *formal* decisions of the Commission. Its *informal* work appears at times to overshadow that which is formal; and in an estimate of the services of the Commission informal hearings and mediations should receive a high place. Indeed, there are persons who rate the mediatory work of the Commission

[1] 4. 265. [3] 1. 122. [5] 1. 339.
[2] 2. 142. [4] 5. 193. [6] 5. 166.

[7] "This, then, is the significant fact in the life of the Commission: that out of the opinions expressed upon cases there has begun to develop a system of authoritative rules and established interpretations, which, sooner or later, will come to be recognized as a body of administrative law for inland transportation." — H. C. Adams, "A Decade of Federal Railway Regulation," *Atlantic Monthly*, 81. 433–443.

higher than the performance of its formal functions. On the whole, "the Interstate Commerce Commission has done a great work; no commission or court in this country has ever done a greater work in the same length of time." [1]

[1] Senator Cullom, in *The Railway Age* (April 14, 1893).

CHAPTER III

The Supreme Court and the Interstate Commerce Commission

Many of the principles promulgated in the decisions of the Commission have been radically modified or overruled by the Supreme Court of the United States. For the purposes of this discussion only four groups of decisions will have to be considered: first, court decisions affecting the interpretation of the long and short haul clause; or, more definitely, what are the factors to be included in "circumstances and conditions" affecting long and short hauls. Second, the limitations placed by the court on the Commission's power over railway rates. Third, the power of the Commission in securing testimony. And fourth, decisions relating to agreements and contracts among competing railway companies. The treatment by the courts of the findings of fact before the Commission should, perhaps, also be commented upon in this connection, but that question can be considered equally well in the closing part of this paper.

The Interpretation of the Long and Short Haul Clause. — On March 23, 1889, the Commission

made an order which, among other things, provided as follows: "Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights." Thirteen roads alleged conformity to the order of the Commission, three complied with the same within three months, and eight continued to charge less on imports than on the carriage of domestic traffic. Business organizations of New York, Philadelphia, and San Francisco brought action against the railways violating the order of the Commission with respect to the relative rates on imports and domestic freight, and on January 29, 1891, the Commission handed down the decision[1] known as the Import Rate decision — one of the most important decisions in the history of the federal regulation of railways.

Ample evidence was introduced by the complainants showing that certain carriers were charging less on imported goods than on domestic goods or on freight originating at seaboard points and shipped, perhaps, on the same train with goods of foreign origin to interior or other seaboard points. "Not only was there a lower rate for the inland carriage of foreign traffic, but in numerous cases the total charge from the foreign place of origin through our seaports to destination in the interior of the United States was much less than

[1] 4. 448.

the rail charge alone on domestic goods of like description from the same seaports to the same destination."[1] On certain classes of domestic goods the freight rates from New Orleans to San Francisco were more than three times the through rates from Liverpool to San Francisco on similar goods. The defendant carriers justified their action on the ground that the imported goods were carried under circumstances and conditions substantially dissimilar from those under which domestic goods were carried, because of the competition of ocean lines and ocean and rail lines. They also maintained that the rate on foreign goods from the seaboard to interior towns was a part of the through rate from the foreign point of origin, and that this part of the through rate could, under the law, be less than the local rate over the same line for the same distance. But the Commission denied the right of the railways to discriminate between domestic and foreign goods, and furthermore maintained the opinion that extraterritorial influences, such as the competition of ocean lines or circumstances affecting the movement of foreign commerce before reaching our own country, did not constitute a dissimilarity of circumstances and conditions within the meaning of the act to regulate commerce, and insisted on obedience to the order of March 23, 1889. Some of the carriers refusing to obey, a petition was filed against one of them for the enforcement of the order by a United

[1] Annual Report, I. C. C. (1896), p. 8.

States Circuit Court from which an appeal was taken to the Circuit Court of Appeals, and finally to the Supreme Court of the United States.

The two lower courts upheld the decision of the Commission, but the Supreme Court refused to accept the interpretation of the law as construed by the Commission and lower courts, and held[1] that "among the circumstances and conditions to be considered as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered." In other words, extraterritorial influences, as well as competitive conditions arising wholly outside of the field occupied by the carrier, may be considered in determining similarity and dissimilarity of circumstances and conditions; and consequently the Commission erred in not considering *all* the circumstances and conditions entering into the case.

In thus widening the meaning of the phrase "circumstances and conditions," the Supreme Court entered the wedge which the Troy case[2] drove in full length half a decade later, and which reduces the long and short haul clause of the act to nullity, so that no tangible meaning can be assigned to the same at present. Troy is a city in Alabama reached by two railways and situated fifty-two miles from Montgomery. Montgomery may be reached by a number of different railways. The rates on traffic going over one of these railways

[1] 162 U. S. 197. [2] 168 U. S. 144.

through Troy to Montgomery were higher to Troy than to Montgomery, the railway in question justifying this greater charge for the shorter distance to Troy on the ground that the competition in Montgomery made the circumstances and conditions under which traffic was conducted in Montgomery different from those prevailing in Troy. The Commission ruled that the competition of the railways centring in Montgomery, all of which are subject to the act to regulate commerce, did not justify any one or all of them in violating the long and short haul clause. The Commission has repeatedly held, as stated in Part I above, that not one or several, but all the circumstances and conditions must be drawn into consideration, but the competition of carriers subject to the act had been considered outside of the scope of this principle.[1] Not so with the Supreme Court. It reaffirmed the Import Rate decision, and held that railway com-

[1] "It is improbable that the Commission will interpret the act in the sense that the words 'under substantially similar circumstances and conditions' justify all existing differential rates due to competition. This would practically emasculate the law. . . . The act is an expression of a correct principle, but the limitations of the principle are no less obvious." — Seligman, "Railway Tariffs and the Interstate Commerce Law," *Political Science Quarterly*, II, 263 (June, 1887).

With remarkable insight Professor Seligman outlined probable consequences of the act which subsequent experience has amply demonstrated. Written immediately after the passage of the act, the analysis of railway problems presented in the article is the more striking in the accuracy with which the generalizations foreshadow the events which future years were to bring upon us.

petition can create discriminating circumstances and conditions, and that therefore the higher rate to Troy is not prohibited by the long and short haul section.[1] "Competition is one of the most obvious and effective circumstances that make the conditions, under which a long and short haul is performed, substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce." Competition which affects rates must be considered in section IV, but not in section II. "Under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes. "The mere fact of competition, no matter what its character or extent, does not necessarily relieve the carrier from the restraints of the third and forth sections." It should be noticed that in a different case,[2] arising under section II, which prohibits discrimination among persons, the Supreme Court held that the phrase, "under substantially similar circumstances and conditions," does not include competition, and that this phrase "may have a broader meaning or a wider reach in section IV (long and short haul) than the same phrase found in section II."

The Import Rate and Troy cases, by extending the "reach" of the phrase "substantially similar circumstances and conditions" to include competition among railways subject to the act, opened the

[1] Sec. IV. [2] 167 U. S. 512.

portals wide for that discrimination among places which was prohibited under section IV.

Power of the Commission over Rates. — In the Annual Report for 1897[1] the Commission stated that it had exercised the power to prescribe reasonable and just rates for a period of ten years, beginning with an order made in the second month after its organization. "Of the 135 formal orders made in the suits actually heard from its institution down to the present time, 68 have prescribed a change in rate for the future."[2] "We have now before us 38 cases in which the main question is one of reduction of the freight rate."[3] This represents the practice of the Commission during the first ten years of its existence. It is a fact of common knowledge that the notions which existed in Congress in 1887 on the subject of interstate commerce were vague and imperfect, and that this feature in the situation naturally led to the loose and imperfect character of the act. The practice of the Commission of prescribing rates, under certain conditions, was fostered by the necessity of the situations which had to be met; and the reversal of this policy by decisions of the Supreme Court placed the administration of the Interstate Commerce Act on an entirely different basis.

During the fifth year of its existence the Commission asserted[4] that it was not restricted "to finding that an existing rate is unreasonable and

[1] Annual Report (1897), p. 11.
[2] Annual Report (1897), p. 16.
[3] Annual Report (1897), p. 22.
[4] 5. 97.

forbidding its continuance, but has the further authority to ascertain, order, and enforce a rate that is reasonable. The power to determine and declare what is a maximum reasonable rate also results from those provisions of the act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of the law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference between the rate actually charged and the reasonable rate which should have been charged." This was reaffirmed in a subsequent decision.[1] But the Commission has never claimed the power to prescribe a rate in the first instance. "Its power in respect to rates is to determine whether those which the road impose are, for any reason, in conflict with the statute."[2] "We sit for the correction of what is unreasonable and unjust in those tariffs."[3]

The first prominent case[4] leading to the present interpretation of the law arose on the complaint of a Cincinnati firm against a railway for charging more per hundred pounds of freight to Social Circle than to Augusta, 119 miles farther on the same line; and, secondly, for charging rates to Social Circle and to Atlanta, which were in themselves excessive and undue. After a full hearing and investigation the Commission, among other things, issued an order requiring the railway company to cease and desist from charging more than a certain

[1] 5. 122. [2] 1. 152. [3] 7. 191. [4] 4. 744.

amount on such freight from Cincinnati to Atlanta. The Circuit Court, to which an appeal was taken, refused to enforce this order, and the case finally reached the Supreme Court.[1] Discussing that part of the case which relates to the prescription of rates, the court said: "We do not find any provision of the act that expressly, or by necessary implication, confers such a power. It is argued on behalf of the Commission that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. This is not necessarily so. The reasonableness of the rate, in a given case, depends on the facts, and the function of the Commission is to consider these facts, and give them proper weight. If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the commission to be reasonable." [2]

The Commission construed this, as well as analogous opinions of the court in the Import Rate decision,[3] as implying that "If the Commission does withhold its judgment until issue shall be made and the facts found, and then requires a carrier not to exceed charges indicated by the evidence to be reasonable and just, such action is authorized by the act." [4] Acting upon this assumption, the Commission undertook to prescribe maximum rates, and was again overruled by the

[1] 162 U. S. 184.
[2] p. 196.
[3] 162 U. S. 197.
[4] Annual Report (1896), p. 22.

Supreme Court,[1] which held that neither the court nor the Commission can "undertake to name a maximum rate in advance and enjoin a carrier from violating it." The power of the Commission over rates, said the court, is confined to inquiries as to railway management, the prevention of violations of the long and short haul clause, of discriminations and of undue preferences, and the securing to all shippers of "that equality of right which is the great purpose of the Interstate Commerce Act." In a case involving the relation of rates on the same class of goods from a Colorado point to San Francisco and from Chicago to San Francisco, the Commission issued an order fixing a maximum rate from the Colorado point to San Francisco, and specified that the same should not exceed a certain percentage of the rate from Chicago. This order was obeyed for about two years, when it was violated by one of the roads. The case, coming before the Circuit Court of Appeals, was decided adversely to the Commission, in harmony with the other court decisions cited above. This was in April, 1900, and since that time nothing has transpired which would warrant the assumption that the Commission has power to establish rates for the future. All that this body can do at present is to pass upon a rate actually in force, pronounce the same reasonable or unreasonable and, if the latter, investigate the rate after it has been modified by the carrier, voluntarily or under compulsion of the

[1] 167 U. S. 479.

courts, even by a fraction of a cent, and then continue this see-saw process until a reasonable rate has been evolved. Paraphrasing the words of a critic of the old Articles of Confederation, the Commission can "recommend everything and do nothing."

The Power of the Commission to secure Evidence. — Section XII of the act to regulate commerce, both in its original form and as subsequently amended, gives the Commission power to require the attendance of witnesses and the production of books and papers, refusal being punishable by the courts. The amended form of 1889 repeated the original wording of the concluding sentence of section XII, as follows, "The claim that any such testimony or evidence may tend to criminate the person giving such evidence, shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding." The amendment of 1893 was more explicit in respect to compulsory testimony and the penal consequences of the failure to comply with the summons of the Commission, and sought to protect the witness in the following language: "But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpœna, or the subpœna of either of them, or in any such case or proceeding; *Provided*, That no person so testi-

fying shall be exempt from prosecution and punishment for perjury committed in so testifying." These provisions indicate the statutory law in the matter in so far as it is found in the act to regulate commerce. Section 860 of the Revised Statutes of the United States, which had been in force for a quarter of a century, and which provides that witnesses shall not be excused from testifying because their testimony may tend to criminate them, and that such testimony shall not be used against persons so testifying in any criminal proceedings, was incorporated, in substance, in the original law, as well as in the amendment of 1889. The amendment of 1893 was intended to meet the decision of the Supreme Court in the Counselman case,[1] declaring section 860 of the Revised Statutes unconstitutional, because it did not assure that absolute immunity against future prosecutions that is guaranteed by the Fifth Amendment of the Constitution of the United States. Counselman had refused to obey the summons to testify before a grand jury; and, being held for contempt of court, he appealed to the Supreme Court of the United States, with the result indicated above. A year later the amendment of 1893 was passed; but it required three years more to make it effective, so that the Commission existed for over six years without that power which would make it practicable to obtain testimony on which to enforce the penal provisions of the act.

[1] 142 U. S. 547.

The steps by which the power was finally secured may be briefly outlined by reference to the James, the Brimson,[1] and the Brown cases. The James case is of minor consequence because no appeal could be taken to the Supreme Court; as decided by the Circuit Court, it was unfavorable to the amendment of 1893, as not affording the immunity guaranteed by the Constitution of the United States. The court held that while, under the amendment a witness might be freed from the legal consequences of his testimony, the government could not by any enactment save him from the disgrace and taint upon his character which a disclosure of his connection with crime might entail. The Brimson case originated in the same court. The Commission applied for an order to compel one Brimson to answer questions propounded to him by the Commission and to produce books, but the application was refused on the ground that that part of section XII of the Interstate Commerce Act authorizing or requiring courts to use their power in securing compulsory testimony before the Commission was unconstitutional. This was nearly a year before the passing of the amendment of 1893, so that the decision of the Supreme Court, on an appeal by the Commission, related in part at least to the law as amended in 1889. Nevertheless, the Supreme Court held[2] that "the twelfth section of the Interstate Com-

[1] 154 U. S. 447; 155 U. S. 3 (dissenting opinion).
[2] 154 U. S. 447.

merce Act, authorizing the circuit courts of the United States to use their process in aid of inquiries before the Commission established by that act, is not in conflict with the Constitution of the United States." This decision alone was probably sufficient to enable the Commission to secure the necessary evidence, but the Brown case[1] covered all the essential features of the Counselman, James, and Brimson cases combined, and effectually removed the last difficulties in the way of securing for the Commission the testimony of recalcitrant witnesses. Brown was a railway official who refused to answer the questions put to him by the Commission, on the ground that such testimony might incriminate himself. On this point the Supreme Court said that the clause upon which Brown relied should be construed "to effect a practical and beneficent purpose — not necessarily to protect witnesses against every possible detriment which might happen to them from their testimony"; and, commenting upon the possible disgrace which might come to a witness who discloses criminal acts, the court further said: "The fact that the testimony may tend to degrade the witness in public estimation does not exempt him from the duty of disclosure. A person who commits a criminal act is bound to contemplate the consequences of exposure to his good name and reputation, and ought not to call upon the courts to protect that which he has himself

[1] 161 U. S. 591.

esteemed to be of such little value. The safety and welfare of an entire community should not be put into the scale against the reputation of a self-confessed criminal. . . . The design of the constitutional privilege is not to aid the witness in vindicating his character, but to protect him against being compelled to furnish evidence to convict him of a criminal charge." Since this decision, in 1896, the power of the Commission to secure testimony may be regarded as full and adequate; but in all seriousness the query must be added: What is there to prevent an unscrupulous railway official from violating the Interstate Commerce Law in the most flagrant manner, and then testifying with the view of securing personal exemption from the penal provisions of the act?

Indirectly connected with the subject-matter of the preceding paragraph stands the question of the weight given by the courts to the findings of fact by the Commission. Section XIV of the act provides that the findings of the Commission shall be deemed *prima facie* evidence in all judicial proceedings as to each and every fact found; yet it is well known that when cases reach the courts new testimony may be admitted and the entire case perhaps be tried *de novo*,[1] so that the case before the courts is entirely different from that before the Commission. In the Import Rate case[2] the Supreme Court incidentally touched upon the treatment of cases brought in the courts to en-

[1] 37 Fed. Rep. 567; 94 Fed. Rep. 272. [2] 162 U. S. 197.

force the orders of the Commission as follows: "The questions whether certain charges were reasonable or otherwise, whether certain discriminations were due or undue, were questions of fact, to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence, and it did not comport with the true scheme of the statute that the Circuit Court of appeals should undertake, of its own motion, to find and pass upon such questions of fact in a case in the position in which the present one was . . . ; yet, as the act provides that, on such hearing, the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated, we think it plain that if, in such a case, the Commission has failed in its proceedings to give notice to the alleged offender, or has unduly restricted its inquiries upon a mistaken view of the law, the court ought not to accept the findings of the Commission as a legal basis for its own action, but should either inquire into the facts on its own account, or send the case back to the Commission to be lawfully proceeded in."

Agreements and Contracts among Competing Railways. — That the effect of the anti-pooling provisions of the Interstate Commerce Act has been the exact opposite of what was intended, has for years been a matter of public knowledge. The effort to prevent by law agreements among competing railways has resulted in consolidation — a form of combined effort much more effective and

lasting in its consequences than any pooling arrangement could ever have been. The union of separate and formerly competing companies into one larger, compact, and firmly organized corporation is something with which the federal law has never been concerned; but the looser and usually more temporary agreements among railways are by the statute expressly declared unlawful. In addition, the law contemplates stability of rates, relatively just rates and other like ends, which depend upon coöperation. At the present time the larger competitive systems of the United States number about twenty, while at the time of the enactment of the Interstate Commerce Act there were more than five times that number.[1] That this has been the universal history of railway competition is a fact too familiar to require elaboration in this place. "When we view the facts of railway history, the steady and uninterrupted consolidations which have absorbed line after line, on the one hand; and the contemporary existence and growth and duplication of laws attempting to govern these, on the other, the conclusion is irresistible that somehow these laws did not accomplish the purposes for which they were enacted."[2]

The first important decision of the United States Supreme Court, after 1887, bearing upon agreements among railways was the decision against the Trans-Missouri Freight Association in 1897. This

[1] Consult Newcomb, "Recent Great Railway Combinations," *Review of Reviews*, August, 1901. [2] p. 139.

association had been formed in 1889 "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local." The decision involved two leading questions: first, Does the "act to protect trade and commerce against unlawful restraints and combinations," popularly known as the Sherman Anti-Trust Law of 1890, apply to and cover railways? Second, If so, does the Trans-Missouri agreement violate any provisions of this law? The court answered both questions in the affirmative.

The Joint Traffic decision,[1] which followed a year and a half later and covered essentially the same ground, involved in addition several subsidiary questions: Does the Joint Traffic agreement actually prevent the constituent railways from competing with one another? Is the Anti-Trust Law constitutional? And, finally, does the Joint Traffic agreement violate the anti-pooling provisions of the Interstate Commerce Law? As to the leading questions, the court held that the Anti-Trust Law applies to *all* combinations, including those among common carriers. Combinations "may be different in different kinds of corporations, and yet they all have an essential similarity, and have been induced by motives of individual or corporate aggrandizement as against the public interest." The decision recounts the history of the Anti-Trust Act in Congress, which goes to show that the act

[1] 171 U. S. 505.

applies to the Trans-Missouri agreement, and that it includes *every* contract and prohibits *every* agreement in restraint of trade, no matter what its terms may be. Hence the law forbids *all* contracts, whether just or unjust, whether in reasonable or unreasonable restraint of trade. "The claim that the company has the right to charge reasonable rates, and that, therefore, it has the right to enter into combination with competing roads to maintain such rates, cannot be admitted."

Both the Interstate Commerce Law and the Anti-Trust Law have thus had the effect of discountenancing coöperative arrangements of every kind among railways other than that closer coöperation under unified management in corporate form. Both have accelerated the natural tendency of railways toward consolidation, and both have signally failed in accomplishing the purpose for which they were enacted. Both prohibit associated action of companies so long as they are separate, but leave them to themselves after consolidation.[1]

[1] It is needless to say that this statement, while true as a general proposition, requires modification in so far as the actual powers of the commission permit regulation; nor does the statement take cognizance of that form of railway coöperation which is said to exist upon no formal agreements but rather upon what "any one was saying as he looked at his neighbor."

CHAPTER IV

The Cullom Bill

In an earlier chapter[1] the writer has stated three propositions which may serve as an introduction to a discussion of pending legislation: (1) That the present situation with respect to railway affairs in the United States is untenable and indefensible. (2) That the great majority of railway managers and other railway officials are sincerely desirous of administering, to the best of their abilities, the properties under their control in the most efficient manner, having due regard for the interests of both the stockholders and the public; but that *all* the various interests affected by their action are not represented in proportion to their importance, if at all; and that consequently injustice may be done.[2] (3) That there is nothing in the present statutory and administrative regulation of railways to prevent the arbitrary and harmful action of the weak or unscrupulous manager from defeating the

[1] Pt. I, ch. IV.

[2] A writer on criminal law, for instance, would hardly consider it necessary to state that the majority of citizens were neither thieves nor robbers. Public opinion has so often passed judgment on railway men *en masse* that this statement appears to be necessary in the present connection.

desires of the majority of the officials, who would voluntarily pursue a more beneficent course.

The third proposition bears directly upon the present status of the Interstate Commerce Law. "That the leading traffic officials of many of the principal railway lines — men occupying high positions and charged with the most important duties — should deliberately violate the statute law of the land, and in some cases agree with each other to do so; that it should be thought by them necessary to destroy vouchers and so to manipulate bookkeeping as to obliterate evidence of the transactions; that hundreds of thousands of dollars should be paid in unlawful rebates to a few great packing houses; that the business of railroad transportation, the most important but one in the country to-day, paying the highest salaries and holding out to young men the greatest inducements, should to such an extent be conducted in open disregard of law — must be surprising and offensive to all right-minded persons. Equally startling, at least, is the fact that the owners of these packing houses, men whose names are known throughout the commercial world, should seemingly be eager to augment their gains with the enormous amounts of these rebates, which they receive in plain defiance of a federal statute. These facts carry their own comment, and nothing said here can add to their significance. The Commission is not unmindful of the palliating circumstances under which railway traffic officials act. These have been fully set

forth in previous reports, and the Commission has stated in that connection what, in its opinion, is the proper remedy. We certainly believe that existing laws should be so amended that railway managers who desire to observe them can do so without risk of sacrificing their property."[1] The Commission may mediate, report, advise, investigate, order — all good things in themselves and sometimes very effective; but when it comes to the vital point of enforcing right rules of action it is absolutely helpless in practice, irrespective of what theoretical analyses of the law may attribute to it. To repeat an earlier statement, the Commission may recommend everything and do nothing. Neither in the federal law, nor in the laws of a single state, nor in the laws of all the states collectively does there exist adequate power to protect the railways against each other, on the one hand, or the public against the railways on the other. In view of such a situation, amendments to the Interstate Commerce Law are imperative. Several of these are indispensable; with respect to others, compromises might well be resorted to, or they might be omitted altogether, if thereby the work of bringing into existence an efficient law can be facilitated.

The changes contemplated in the Cullom Bill[2] are enumerated differently by different persons,

[1] Fifteenth Annual Report (1901), p. 6.

[2] Bill, S. 1439, 56 Cong., 1 Sess. A bill to amend an act entitled "An Act to Regulate Commerce," etc. This bill has not yet been

varying in number from several to nineteen,[1] depending upon individual classifications and judgment. The centre of the "railway problem" has always been the question of rates, and it is but natural that the nucleus of the proposed amendments should consist of provisions governing rates. Under the present Interstate Commerce Law, as interpreted by the Supreme Court, the Commission has no power to prescribe a rate for the future. The Commission has power to pass upon the absolute and relative reasonableness of a particular rate and, if the rate is found unreasonable, order a reduction or a change in the relations of rates. This order can be enforced through the courts. "Now the actual history of these suits shows that it has required between three and four years to arrive at a conclusion."[2] Let us assume three years as the average. Suppose a certain rate of $1.25 is pronounced unreasonable, and that $1 is considered reasonable. The latter the Commission cannot prescribe under the present law, but it can order a reduction of the former. A recalcitrant manager satisfies the order of the Commission by reducing the rate a fractional part of a cent, after three years of litigation in the courts. Even at the rate of five cents per order, it would

taken up by the present Congress. A similar bill was introduced in the preceding Congress by Senator Cullom.

[1] Blanchard, testimony before Senate Committee on Interstate Commerce (1900), p. 382.

[2] Commissioner Prouty, testimony before Senate Committee on Interstate Commerce (1900), p. 37.

require fifteen years to establish the reasonable rate. But long before this result may have been achieved new contingencies may have arisen, and a rate which at first appeared reasonable may be most unreasonable under the changed circumstances. Practically immediate obedience to orders is the only manner in which carriers and shippers can be protected. A delay of some duration, or even of a week, may change the situation enough to make future changes relatively valueless to the complainant. Here, as in so many other cases, we are again confronted by the relentlessness of the third proposition, — there exists no power capable of compelling prompt obedience. "Promptness," which consumes years and which affects interests based upon short periods of time, is an abuse of the English language. The Cullom Bill provides a remedy: "If after a full hearing it is determined that any party complainant is entitled to an award of damages under the provisions of this Act for a violation of its provisions, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named. If, after such hearing, it is determined that any carrier is in violation of the provisions of this Act, the Commission shall make an order directing such carrier to cease and desist from such further violation, and *shall prescribe in such order the thing which the carrier is required to do or not to do for the future* to bring itself into conformity with the provisions of this Act; and in

so doing it shall have power (*a*) to fix a maximum rate covering the entire cost of the service, (*b*) to fix both a maximum and minimum rate, or differential in rate, when that may be necessary to prevent discrimination under the third section, (*c*) to determine the division between carriers of a joint rate and the terms and conditions under which business shall be interchanged when that is necessary to an execution of the provisions of this Act, (*d*) to make changes in classification, (*e*) to so amend the rules and regulations under which traffic moves as to bring them into conformity with the provisions of this Act."

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act. An order not for the payment of money shall be termed an administrative order. "Every order shall fix the date when it is to take effect, which shall in no case be less than ten and ordinarily not less than thirty days from the service of such an order upon the carrier. Such order shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy of the report and opinion of the Commission, together with a copy of the order, and the registry mail receipt shall be *prima facie* evidence of the receipt of such order by the carrier in due course of mail."

Perhaps the most important feature of this section is the power which it gives to the Commission

to prescribe what "to do or not to do for the future" in order to bring about a line of action in harmony with the law. What follows are essentially consequences and conditions. Charters and earlier laws took care to prescribe maximum rates, which were frequently placed so ridiculously high that practically no railway manager would ever think of charging them. Minimum rates were rarely prescribed, and differentials never. It is otherwise with the proposed law. The establishment of minimum and differential rates is at present of infinitely greater consequence than the prescription of maximum charges. The power of the Commission in determining divisions of through rates is likely to do away with one of the sources of discriminations.

All legislation rests upon the assumption of a reasonable purpose, and the prevalence of good sense among administrators of the law. Unless one is willing to attribute to the Interstate Commerce Commission the lack of a reasonable purpose, as well as love of fair play and justice, and of ordinary good sense, the opposition to the "rate-making powers" contemplated in the proposed law is at once unwarranted and fallacious. Nothing but abstract dialecticism and jugglery with "transcendental" words can lead to the unreasonable conclusion that such a power over the rate will vest the Commission with authority to establish the market price of a commodity or service (transportation) in an arbitrary manner, and place the

manufacturers of this commodity in an unfavorable position in the financial control of their properties. If, in the last instance, we must choose between a rate established by a manager, *practically* unrestricted by law, whose business and duty it is to take the railway point of view, and a rate pronounced reasonable by a body of five capable men whose highest function it is to view impartially the interests of the public *and* of the railways, there can be no mistake in accepting the judgment of the latter, especially when their judgment is subject to review by the courts and is safeguarded in every way by powers directly vested by the bill in the judiciary.

"Any carrier may, within thirty days from the service of an administrative order upon it, begin, in the Circuit Court of the United States for the district in which its principal operating office is situated, proceedings to review such an order and the findings on which it is based. . . . The court may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law or is unjust and unreasonable on the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court. Either party may appeal from the judgment or decree of the Circuit Court to the Supreme Court of the United States; but such appeal shall not operate to stay or supersede the order of the Circuit Court nor the execution of any writ or process

thereon. In the Supreme Court the cause shall be given preference over all others, excepting criminal causes."

Especial emphasis should be placed upon the promptness with which a carrier can find a remedy in the courts in case the Commission should make an unjust order. For fifteen years it has taken, on the average, three or four years to get a final decision; and to assert, in the face of that fact, that the proposed law affords no adequate remedy for unreasonable orders of the Commission, sounds very much like the old cry of "stop thief!" Furthermore, the Commission can make no order except after a full and impartial hearing. Having all the facts before it, and having duly weighed the evidence, the Commission may revise a rate fixed by the carriers in the first instance. That the Commission should be incapable of properly comprehending the facts entering into a question of rates, is too preposterous to admit of discussion. And unless we are willing to believe the absurd proposition that both the Commission and the federal courts can *together* not understand a rate question and decide equitably in the premises, we are compelled to admit that substantial justice will be done under the proposed law to an extent hitherto unknown — justice administered with promptness and efficiency to carriers and shippers alike and to competitive cities, harbors, productive areas, and industries.

In connection with the publication of rates the

most important point in the bill determines the relation of charges actually collected to the tariffs contained on sheets published and filed, a departure from the latter being in violation of law: "Whenever any carrier files or publishes a particular rate under the provisions of this Act, or participates in any rate so filed or published, that rate, as against such carrier, its officers, or agents, in any prosecution begun under this Act, shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an unjust discrimination.

"Whenever, on the trial of a defendant for a violation of this Act, such defendant is shown to have given, aided, abetted, or assisted in the giving of a rate to one or more individuals, firms, companies, or corporations different from the rate or rates fixed for such service by the tariff of rates provided for by this Act, such showing shall be deemed evidence sufficient to authorize a conviction; and it shall not be necessary on the trial of any indictment hereunder for unjust discrimination to allege or to prove that other and less favorable rates were offered or granted to other shippers by the defendant, or to allege or prove the names of such shippers, the true intent of this being that the published tariff shall be conclusive evidence that the rates therein prescribed were the rates charged to the general public."

Under the present law a departure from the pub-

lished rate is not unlawful unless it can be shown that the degree of departure is different for different shippers. For instance, if a published rate of one dollar is assumed, and it can be shown that A secured a rate of ninety cents, the law has not been violated unless it can also be shown that B secured a rate of, say, eighty cents. In other words, departures from published rates are not discriminations unless such departures vary for different individuals, a fact which it is practically impossible to prove. While it was undoubtedly the intent of section x of the act to impose a penalty upon the corporation itself, under its peculiar phraseology, it has, however, been judicially determined that the corporation is not liable. *The agent alone can be punished.* Now the object of rate-cutting is to get business and make money, and the corporation, if any one, profits by the illegal act. It is the real offender, and ought certainly, as well as its officer, to pay the penalty. It is anomalous and unjust that the representative or employee only should be liable to prosecution, while the real offender, the corporation, the principal, and beneficiary in the transaction, is not. If every illegal act of that character subjected the carrier to a substantial forfeiture, so that the money result of the transaction was likely to be the other way, the inducement to commit such offences would be greatly diminished.

In the Cullom Bill the long and short haul section appears in a radically modified state by the

omission of the words "under substantially similar circumstances and conditions," thus absolutely prohibiting a greater charge for the shorter haul unless, as under the present law, the Commission authorizes the same. The change will prevent violations of the long and short haul principle that are justified on the ground of competition among carriers subject to the act.

From a theoretical point of view a single national classification of freight would be desirable, and in practice such a classification is perhaps not impossible, although the reduction of the number of classifications to three — excepting the state classifications — has greatly reduced the inconvenience and discriminations resulting from a diversity of classifications. The testimony before the Industrial Commission can scarcely be said to give very strong support to the idea of a national system; yet that same testimony offers no strong and decisive arguments against such a system. The objection that commodities like oranges and cotton must be classified differently in different sections of the country, which would not be permitted under a national classification, is more apparent than real; for these and similar articles could be carried, as they are in part at present, at commodity rates, properly adjusted to meet the conditions of transportation in different sections of the United States. Goods carried at commodity rates constitute the bulk[1]

[1] The great mass of articles in point of numbers, and probably also in point of gross revenue, go at class rates.

of freight carried under the present system, and it is by no means improbable that the number of commodity rates necessary under a national system of classification would be smaller than that now in existence. The testimony is all but unanimous that commodity rates have been unduly extended. An experienced railway official of high rank stated to the writer not long ago that some day a Napoleon would arise in the railway world who would "demolish, with a heavy club," all the vast and needlessly complex classification structures, and substitute for this historical agglomeration a simple classification supplemented by a reasonable number of commodity rates. That the task of elaborating a national classification is not an easy or simple one is obvious; but that the task is not beyond the ability of men of capacity is equally obvious, and one can discover no insuperable obstacles in the way of the Commission's undertaking this work in conference with railway men.[1]

[1] It is not desirable to enter into the details of the principles and problems of classification. However, two important disadvantages inherent in the present system should not be overlooked. (1) The unjust discriminations which occur in territories where the classifications overlap each other. For instance, the Official applies to Chicago and the Mississippi River, and the Western from Chicago and the Mississippi River; and in the territory between Chicago and the Mississippi numerous complaints of injustice from different classifications of the same articles have arisen. The Official applies on traffic from Chicago to Norfolk and Richmond; the Southern applies on through traffic from Chicago to Wilmington and other Carolina cities, and wide disparities in rates to competing Carolina and Virginia towns are found to be due to this cause. (2) The

The provisions of the Cullom Bill as to railway accounting are worthy of notice. The Commission is given discretionary power to prescribe forms of accounts. This has already been done to a considerable extent, and much progress has been made, moreover, toward uniformity in annual reports. The Commission is to have access to all accounts at all times, and may employ experts to do this work. Some railway men favor this provision, while others oppose it chiefly on the ground that it gives outsiders access to information which can be used against the road. This objection does not seem well taken unless we are again to assume lack of good judgment and fidelity in the examiner. There is no reason to suppose that the examiners will not be men of highest ability and integrity. Supervision of railway accounting may prevent improper management of stock and bond issues — a matter which past railway legislation has generally neglected; and, in addition, the inspection of accounts might become an efficient method of stopping rebates. There is, perhaps, no single feature of railway evils which is more difficult to handle than this, and even the inspection of books need not lead to an undue optimism with respect to a final solution.

inability to fix joint through tariffs on an article not classified the same in two classifications, and where the local rates are added to make the total through charge. An example is the through traffic crossing the Mississippi, on which rates east and west of that river, based on two classifications, are combined.

The subject of agreements among railways is less adequately provided for in the Cullom Bill. If the history of competition in railway development the world over proves anything conclusively, it establishes the futility of competition as a workable basis of railway operation and administration. While a certain amount of competition may always persist and bring about improvements in the service, speaking generally, competition in railway affairs has failed at nearly every point, and any legislation which rests upon the doctrine of competition among railways must inevitably fail. A prudent course of action would recognize the inadequacy of competition and accept a reasonable amount of freedom for carriers in making agreements among themselves, subject to the supervision of the Commission. The agreements contemplated in this connection are more comprehensive than pooling arrangements, which are only a species of which the other is the genus. The history of railway pooling, however, does not afford a single forcible argument against granting to railways the privilege of coöperating in any manner which seems expedient to them, provided such cöoperative arrangements are based upon contracts properly scrutinized and supervised and enforcible in the courts. Hence a provision legalizing organizations like the former Joint Traffic Association and permitting agreements among railways on the eight or more different subjects which have hitherto been the object of railway agreements, would appear to

be desirable. Clearing-house arrangements should also be facilitated.

The standing which, by the Cullom Bill, is to be given in the courts to decisions and proceedings of the Commission remedies one of the most unfortunate weaknesses in the present statute. Time and again the case before the court has been made, through the introduction of new facts, an entirely different one from that before the Commission. The proposed law makes this impossible. "The proceedings certified from the Commission, together with any additional testimony taken as above, shall constitute the record upon which the case shall be heard by the Circuit Court."

With respect to fines for violation of the act, a clearer distinction should, perhaps, be made between fines on the offending person and fines on the guilty corporation. It seems a gross injustice to mulct a man for doing that which corporate management may compel him to do. Personal fines may be wholesome in such cases as making false entries, under-billing, etc., but these should not be too heavy. The bulk of the pecuniary loss following an infraction of the law should fall upon the corporation. Heavy fines, often repeated, would have an appreciable influence on dividends, and this would immediately touch the pockets of the stockholders and bondholders who, in turn, would be transformed into an army of remonstrators working toward a reduction in the number of fines, and a better observance of the law.

The inclusion in the Cullom Bill of the act in relation to testimony before the Interstate Commerce Commission, passed February 11, 1893, is a matter of convenience and does not affect anything vital in the measure.

In the light of the facts presented in this book it would seem both desirable and necessary that the increase in power contemplated in the Cullom Bill should be granted. However, if Congress does not see fit to do this, it is to be hoped that an end will be put to the present delay in the execution of orders, and that the unscrupulous manager will no longer be permitted to impose his code of ethics upon the great majority of conscientious and just railway officials.

The vigorous protests which have recently been made by several prominent railway officials against an increase of the powers of the Commission, on the ground that the present law is adequate if only the Commission will properly use the power vested in it, carry much weight because of the high standing of the authors of these protests. Yet the writer has been unable to find any escape from the conclusions presented in this chapter, and nothing but an entirely new collection of facts, differing in import from those now available, could, it seems, warrant a modification of these conclusions.

NOTE. — The Cullom Bill was superseded by two bills[1] introduced during the first session of the 57th Congress, which in turn were superseded by a consolidated bill[2] introduced during the second session (December 3, 1902) of the 57th Congress. The last bill is now on the calendar. While these bills have supplanted the Cullom Bill, everything which has been said in the discussion of the latter would also have to be said in regard to the former. The content of a discussion of pending legislation would be essentially the same irrespective of the special bill to which it applies. And the historical significance of the Cullom Bill is of sufficient importance to warrant the retention of the analysis made of it in this chapter.

House bill 8337 provides for strict adherence to the published rates, and also fines shippers for making false representations as to classification, in order to secure other than published rates. The Interstate Commerce Commission is empowered, on complaint, to determine rates, the relation of rates, classifications, etc., for the future. The record of the hearings before the commission is to be accepted by the court as the basis of its findings. The bill provides for appeals, and gives the United States courts power to enforce obedience to the law and in general to exercise full legal jurisdiction.

The Senate bill 3521 likewise empowers the Interstate Commerce Commission to prescribe, in certain cases, just and reasonable rates for the future, as well as the division of rates and the limits of time during which its orders can be enforced. The rates thus prescribed are reviewable by

[1] (1) H. R. 8337: A Bill to amend an Act entitled "An Act to Regulate Commerce," approved February 4, 1887, and all acts amendatory thereof. Introduced by Representative Corliss, and in the Senate, in identical form, by Senator Nelson.

(1) S. 3521: A Bill to enlarge the jurisdiction and powers of the Interstate Commerce Commission. Introduced by Senator Elkins.

[2] H. R. 15592: A Bill to enlarge the jurisdiction and powers of the Interstate Commerce Commission.

United States courts, and may be suspended under specified conditions. The records, testimony, etc., of the commission shall be accepted as *prima facie* evidence in the United States courts, and additional testimony may be taken in accordance with law. The method of appeal is also described. Agreements for the division of traffic and other species of coöperation are permitted, and the commission is empowered to investigate such pooling and other arrangements on complaint. United States courts are empowered to enforce obedience, and in the case of railways passing both through foreign countries and through the United States, traffic in the United States may be suspended on such roads in order to enforce the act. The published rates must be adhered to by both railways and shippers under prescribed penalties.

The third bill is an amended form of the second so as to meet the main provisions of the first. Important railway as well as commercial interests have given their support to the measure, and interests formerly hostile to such legislation are said to have acquiesced in it.

APPENDIX I

AN AMERICAN RAILWAY CHARTER

CHARTER OF THE BALTIMORE & OHIO RAILROAD COMPANY

ACT OF FEBRUARY 28TH, 1827

Passed by the General Assembly of Maryland
Chapter CXXIII

1. *Be it enacted by the General Assembly of Maryland*, That Isaac M'Kim, Thomas Ellicott, Joseph W. Patterson, John M'Kim, Junior, William Stewart, Talbot Jones, Roswell L. Colt, George Brown, and Evan Thomas, be and they are hereby appointed commissioners, under the direction of a majority of whom subscriptions may be received to the capital stock of the Baltimore and Ohio Rail Road Company, hereby incorporated; and they, or a majority of them, may cause books to be opened at such times and places as they may direct, for the purpose of receiving subscriptions to the capital stock of said company, after having given such notice of the times and places of opening the same as they may deem proper; and that upon the first opening of said books, they shall be kept open for at least ten successive days, from ten o'clock A.M. until two o'clock P.M., and if at the expiration of that period such a subscription to the capital stock of said company, as is necessary to its incorporation, shall not have been obtained, the said commissioners, or a majority of them, may cause the said books to be opened, from time to time, after the expiration of the said

ten days, for the space of twelve months thereafter, or until the sum necessary to the incorporation of the company shall be subscribed, if sooner subscribed; and if any of the said commissioners shall die, resign, or refuse to act, during the continuance of the duties devolved upon them by this act, another may be appointed in his stead by the remaining commissioners, or a majority of them.

2. *And be it enacted*, That the capital stock of the said Baltimore and Ohio Rail Road Company, shall be three millions of dollars, in shares of one hundred dollars each, of which ten thousand shares shall be reserved for subscription by the state of Maryland, and five thousand for the city of Baltimore, for the space of twelve months after the passage of this act by the legislature of Maryland, and the remaining fifteen thousand shares may be subscribed for by any other corporation or by individuals; and that as soon as ten thousand shares of the said capital stock shall be subscribed, the subscribers of the said stock, their successors and assigns, shall be, and they are hereby declared to be, incorporated into a company, by the name of The Baltimore and Ohio Rail Road Company, and by that name shall be capable in law of purchasing, holding, selling, leasing and conveying, estates real, personal and mixed, so far as shall be necessary for the purposes hereinafter mentioned, and no further; and shall have perpetual succession, and by said corporate name may sue and be sued, and may have and use a common seal, which they shall have power to alter or renew at their pleasure, and shall have, enjoy and may exercise, all the powers, rights and privileges, which other corporate bodies may lawfully do, for the purposes mentioned in this act.

3. *And be it enacted*, That if more than fifteen thousand shares shall be subscribed to the capital stock of said company, not reserved to the state of Maryland, or to the city of Baltimore, the said commissioners, or a majority of them, shall reduce the subscription to fifteen thousand shares, by striking off from the largest number of shares in succession, until the subscriptions are reduced to fifteen thousand shares, or all the subscriptions to one share; and if there still be an excess, then

lots shall be drawn by the commissioners to determine who are to be excluded.

4. *And be it enacted*, That upon every such subscription, there shall be paid at the time of subscribing to the said commissioners, or to their agents, appointed to receive such subscriptions, the sum of one dollar on every share subscribed, and the residue thereof shall be paid in such instalments, and at such times, as it may be required by the president and directors of said company; *Provided*, that not more than one-third of the subscription be demanded, in any one year from the commencement of the work, nor any payment demanded until at least sixty days public notice of such demand shall have been given by the said president and directors; and if any subscriber shall fail or neglect to pay any instalment, or part of said subscription, thus demanded, for the space of sixty days next after the time the same shall be due and payable, the stock, on which it is demanded, shall be forfeited to the company, and may be sold by the said president and directors for the benefit of the company; but the president and directors may remit any such forfeiture on such terms as they shall deem proper.

5. *And be it enacted*, That if the subscription herein made necessary to the incorporation of the said company, shall not be obtained within twelve months after the first opening of the subscription books by the said commissioners, this act, and all the subscriptions under it, shall be null and void; and the said commissioners, after discharging the expenses of opening the books, shall return the residue of the money, paid in upon such subscriptions, to the several subscribers, in proper proportions to the sums respectively paid in by them.

6. *And be it enacted*, That at the expiration of the ten days for which the books are first opened, if ten thousand shares of said capital stock shall have been subscribed, or if not, as soon thereafter as the same shall be subscribed, if within one year after the first opening of the books, the said commissioners, or a majority of them, shall call a general meeting of the subscribers, at such time and place as they may appoint, and shall

give at least twenty days public notice thereof; and at such meeting the said commissioners shall lay the subscription books before the subscribers then and there present, and thereupon the said subscribers, or a majority of them, shall elect twelve directors, by ballot, to manage the affairs of said company; and these twelve directors, or a majority of them, shall have the power of electing a president of said company, either from among the directors, or others, and of allowing him such compensation for his services as they may deem proper; and that in said election, and on all other occasions wherein a vote of the stockholders of said company is to be taken, each stockholder shall be allowed one vote for every share owned by it, him or her, and every stockholder may depute any other person to vote and act for it, him or her, as its, his or her proxy, and the commissioners aforesaid, or any three or more of them, shall be judges of the said first election of directors.

7. *And be it enacted*, That to continue the succession of the president and directors of said company, twelve directors shall be chosen annually, on the second Monday of October in every year, in the city of Baltimore, by the stockholders of said company, and that the state of Maryland, and the city of Baltimore, may each appoint one additional director of said company for every twenty-five hundred shares of stock of said company by them respectively owned at the time of such election, but shall not be permitted to vote upon their stock in the election of the directors by the stockholders, in general meeting; and that the directors of said company, or a majority of them, shall have power to appoint judges of all elections, and to elect a president of said company, either from amongst the directors, or others, and to allow him such compensation for his services as they may deem proper; and if any vacancy shall occur by death, resignation, or refusal to act, of any president or director, before the year for which he was elected has expired, a person to fill such vacant place, for the residue of the year, may be appointed by the president and directors of said company, or a majority of them; and that the president and directors of the company shall hold and exercise their offices until a new elec-

tion of president and directors; and that all elections which are by this act, or by the laws of said company, to be made on a particular day, or at a particular time, if not made on such day, or at such time, may be made at any time within thirty days thereafter.

8. *And be it enacted*, That a general meeting of the stockholders of said company shall be held annually, at the time and place appointed for the election of the president and directors of said company; that they may be called at any time during the interval between said annual meetings by the president and directors, or a majority of them, or by the stockholders owning at least one-fourth of the whole stock subscribed, upon giving thirty days public notice of the time and place of holding the same; and when any such meetings are called by the stockholders, such notice shall specify the particular object of the call; and if at any such called meetings a majority (in value) of the stockholders of said company are not present, in person or by proxy, such meetings shall be adjourned from day to day, without transacting any business, for any time not exceeding three days, and if within said three days, stockholders having a majority (in value) of the stock subscribed do not thus attend, such meeting shall be dissolved.

9. *And be it enacted*, That at the regular annual meetings of the stockholders of said company, it shall be the duty of the president and directors, in office for the preceding year, to exhibit a clear and distinct statement of the affairs of the company; that at any called meetings of the stockholders, a majority of those present may require similar statements from the president and directors, whose duty it shall be to furnish them when thus required, and that at all general meetings of the stockholders, a majority (in value) of all the stockholders in said company, may remove from office any president, or any of the directors of said company, and may appoint others in their stead.

10. *And be it enacted*, That every president and director of said company, before he acts as such, shall swear, or affirm, as the case may be, that he will well and truly discharge the duties of his said office, to the best of his skill and judgment.

11. *And be it enacted*, That if any of the said fifteen thousand shares of the capital stock of said company, not reserved to the city of Baltimore, or to the state of Maryland, shall remain unsubscribed until the organization of the said company, or if the shares of said capital stock herein before reserved to the said state or city, or any part of them, shall be subscribed by said state or city respectively, during the time for which such stock is reserved for them, in either case the president and directors of the said company, or a majority of them, shall have power to open books, and to receive subscriptions to any of the capital stock of said company which may thus remain unsubscribed for, or to sell or dispose of such unsubscribed stock for benefit of the company, for any sum not under its par value; and the purchasers or subscribers of such stock shall have all the rights, powers and privileges, of original subscribers, and shall be subject to the same regulations.

12. *And be it enacted*, That the said president and directors, or a majority of them, may appoint all such officers, engineers, agents or servants whatsoever, as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure; that they, or a majority of them, shall have power to determine, by contract, the compensation of all the engineers, officers, agents or servants, in the employ of said company, and to determine by their by-laws, the manner of adjusting and settling all accounts against the company, and also the manner and evidence of transfers of stock in said company; and that they, or a majority of them, shall have power to pass all by-laws, which they may deem necessary or proper for exercising all the powers vested in the company hereby incorporated, and for carrying the objects of this act into effect; *Provided only*, that such by-laws shall not be contrary to the laws of the United States, or the laws of any of the states assenting to this act, or any of the provisions of this act.

13. *And be it enacted*, That if the capital stock of said company shall be deemed insufficient for the purposes of this act, it shall and may be lawful for the president and directors of said company, or a majority of them, from time to time, to increase

the said capital stock by the addition of as many shares as they may deem necessary, for which they may at their option cause subscriptions to be received in the manner prescribed by them, or may sell the same for the benefit of the company, for any sum not under their par value; and that they, or a majority of them, shall have power to borrow money for the objects of this act, to issue certificates or other evidences of such loans, and to pledge the property of the company for the payment of the same, and its interest.

14. *And be it enacted*, That the president and directors of said company shall be and they are hereby invested with all the rights and powers necessary to the construction and repair of a rail road from the city of Baltimore, to some suitable point on the Ohio river, to be by them determined, not exceeding sixty-six feet wide, with as many sets of tracks as the said president and directors, or a majority of them, may deem necessary; and they or a majority of them, may cause to be made, or contract with others for making, said rail road, or any part of it; and they, their agents, or those with whom they may contract for making any part of the same, or their agents, may enter upon and use, and excavate, any land which may be wanted for the site of said road, or the erection of warehouses, or other works necessary to said road, or for any other purpose necessary or useful in the construction or repair of said road, or its works, and that they may build bridges, may fix scales and weights, may lay rails, may take and use any earth, timber, gravel, stone, or other materials, which may be wanted for the construction or repair of any part of said road, or any of its works; and may make and construct all works whatsoever, which may be necessary and expedient, in order to the proper completion of said road; and that they, or a majority of them, may make, or cause to be made, lateral rail roads, in any direction whatsoever, in connexion with said rail road from the city of Baltimore to the Ohio river, and in the construction of the same, or their works, shall have, possess, and may exercise, all the rights and powers hereby given to them in order to the

construction or repair of the said rail road from the city of Baltimore to the Ohio river.

15. *And be it enacted*, That the president and directors of said company, or a majority of them, or any person or persons authorized by a majority of them, may agree with the owner or owners of any land, earth, timber, gravel, stone, or other materials, or any improvements which may be wanted for the construction or repair of any of said roads, or of any of their works, for the purchase or use and occupation of the same, and if they cannot agree, or if the owner or owners, or any of them, be a *feme covert*, under age, *non compos mentis*, or out of the county in which the property wanted may lie, when such land or materials shall be wanted, application may be made to any justice of the peace of such county, who shall thereupon issue his warrant, under hand and seal, directed to the sheriff of said county, requiring him to summon a jury of twenty inhabitants of said county, not related nor in anywise interested, to meet on the land, or near to the other property or materials to be valued, on a day named in said warrant, not less than ten nor more than twenty days after the issuing of the same, and if at said time and place any of said jurors summoned do not attend, the said sheriff shall immediately summon as many jurors, as may be necessary with the jurors in attendance, to furnish a panel of twenty jurors in attendance, and from them each party, or its, his, her, or their agent, if either be not present in person or by agent, the sheriff for him, her, it or them, may strike off four jurors, and the remaining twelve shall act as the jury of inquest of damages; and before they act as such, the said sheriff shall administer to each of them an oath, or affirmation, as the case may be, that he will justly and impartially value the damages which the owner or owners will sustain by the use or occupation of the same required by the company; and the jury in estimating such damages shall take into the estimate the benefit resulting to the said owner or owners from conducting such rail road through, along or near, to the property of said owner or owners, but only in extinguishment of the claim for damages; and the said jury shall reduce their inquisition to writing, and shall sign and seal

the same, and it shall then be returned by said sheriff to the clerk or prothonotary of his county, as the case may be, and by such clerk or prothonotary, filed in his court, and shall be confirmed by said court at its next session, if no sufficient cause to the contrary be shewn; and when confirmed, shall be recorded by said clerk or prothonotary, at the expense of said company, but if set aside, the said court may direct another inquisition to be taken in the manner above prescribed; and such inquisition shall describe the property taken, or the bounds of the land condemned, and the quantity or duration of the interest in the same, valued for the company, and such valuation, when paid or tendered to the owner or owners of said property, or his, her, or their legal representatives, shall entitle the said company to the estate and interest in the same thus valued, as fully as if it had been conveyed by the owner or owners of the same; and the valuation, if not received when tendered, may at any time thereafter be received from the company, without costs, by the said owner or owners, or his, her, or their legal representative or representatives.

16. *And be it enacted*, That wherever, in the construction of said road or roads, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the president and directors of said company so to construct the said road across such established road or way, as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon-ways across said road or roads, from one part of his land to the other.

17. *And be it enacted*, That whensoever it shall be necessary for said company to have, use or occupy, any lands, materials, or other property, in order to the construction or repair of any part of said road or roads, or their works or necessary buildings, the president and directors of said company, or their agents, or those contracting with them for making or repairing the same, may immediately take and use the same, (they having first caused the property wanted to be viewed by a jury, formed in

the manner herein before prescribed,) in those cases where the property is to be changed or altered by admixture with other substances before such alteration is made, and that it shall not be necessary, after such view, in order to the use or occupation of the same, to wait the issue of the proceedings upon such view; and the inquest of the jury, after confirmation and after payment or tender of the valuation, shall be a bar to all actions for taking or using such property, whether commenced before or after such confirmation, or the payment of said valuation.

18. *And be it enacted*, That the said president and directors, or a majority of them, shall have power to purchase, with the funds of said company, and place on, any rail road constructed by them under this act, all machines, wagons, vehicles, or carriages of any description whatsoever, which they may deem necessary or proper for the purposes of transportation on said road, and they shall have power to charge for tolls upon (and the transportation of persons,) goods, produce, merchandise, or property of any kind whatsoever, transported by them along said railway from the city of Baltimore to the Ohio river, any sum not exceeding the following rates, viz. On all goods, produce, merchandise, or property of any description whatsoever, transported by them from west to east, not exceeding one cent a ton per mile for toll, and three cents a ton per mile for transportation; on all goods, produce, merchandise, or property of any description whatsoever, transported by them from east to west, not exceeding three cents a ton per mile for tolls, and three cents a ton per mile for transportation, and for the transportation of passengers not exceeding three cents per mile for each passenger; and it shall not be lawful for any other company, or any person or persons whatsoever, to travel upon or use any of the roads of said company, or to transport persons, merchandise, produce, or property of any description whatsoever, along said roads, or any of them, without the license or permission of the president and directors of said company; and that the said road or roads, with all their works, improvements and profits, and all the machinery of transportation used on said road, are hereby vested in the

said company, incorporated by this act, and their successors, forever; and the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the states assenting to this law.

19. *And be it enacted*, That the said president and directors shall annually, or semi-annually, declare and make such dividend as they may deem proper, of the net profits arising from the resources of the said company, after deducting the necessary current and probable contingent expenses; and that they shall divide the same amongst the proprietors of the stock of said company, in proper proportions to their respective shares.

20. *And be it enacted*, That if any person or persons shall wilfully, by any means whatsoever, injure, impair or destroy, any part of any rail road, constructed by said company under this act, or any of their necessary works, buildings, carriages, vehicles or machines, of said company, such person or persons, so offending, shall, each of them, for every such offence, forfeit and pay to the said company the sum of five hundred dollars, which may be recovered in the name of said company, by an action of debt, in the county court of the county wherein the offence shall be committed, and shall also be subject to indictment in said court, and upon conviction of such offence, shall be punished by fine and imprisonment, in the discretion of the court.

21. *And be it enacted*, That as soon as this act shall have been passed by the legislature of Maryland, books may be opened, subscriptions received, and the said company organized, and that when organized the said company, and the president and directors of the same, shall have all the powers, rights and privileges, granted by this act, and shall be subject to all its regulations in constructing or repairing any of the said rail roads or other necessary works or buildings which may or can be constructed within the limits of the state of Maryland, and in transporting persons, goods, merchandise, or property of any description, along any of said roads, and that the provisions of this act shall be wholly in force, as to all the property of the company, which may be situated or

may be within the state of Maryland, and which said company is permitted to hold under this act.

22. *And be it enacted*, That if said road shall not be commenced in two years from the passage of this act, and shall not be finished within this state in ten years from the time of the commencement thereof, then this act shall be null and void.

23. *And be it enacted*, That full right and privilege is hereby reserved to the citizens of this state, or any company hereafter to be incorporated under the authority of this state, to connect with the road hereby provided for, any other rail road leading from the main route to any part or parts of this state, provided that in forming such connection no injury shall be done to the works of the company hereby incorporated.

APPENDIX II

ARTICLES OF INCORPORATION UNDER GENERAL LAWS

SOUTHERN RAILWAY COMPANY

JUNE 18, 1894

To all to whom these Presents may come:

The undersigned, whose names are hereto subscribed, CHARLES H. COSTER and ANTHONY J. THOMAS, a Purchasing Committee (hereinafter called PURCHASERS) who did purchase the railroad and other property of The Richmond and Danville Railroad Company at a sale thereof held in the City of Richmond on the 15th day of June, 1894, under a decree of foreclosure and sale entered on the 13th day of April, 1894, in a certain suit in equity pending in the Circuit Court of the United States of America for the Eastern District of Virginia, wherein the Central Trust Company of New York and others were complainants, and The Richmond and Danville Railroad Company, a corporation created by and existing under the laws of the State of Virginia, was defendant, in which suit it was sought to foreclose the consolidated mortgage, dated the 22d day of October in the year 1886, and upon or about that day duly executed, acknowledged and delivered by said railroad corporation to said Central Trust Company of New York, and subsequently supplemented and confirmed by said railroad corporation by instruments dated November 1, 1886,

and April 30, 1888, respectively, in which suit also it w
undertaken to sell the whole of the mortgaged property a
premises, being the rights, property, privileges and franchis
of said The Richmond and Danville Railroad Company,
which Purchasing Committee the Special Masters appointe
by said United States Circuit Court — to wit, MATTHEW
PLEASANTS, THOMAS S. ATKINS and CHARLES PRICE — b
deed bearing date the 18th day of June, 1894, in pursuan
of the said decree of said Court and of other Courts in sa
deed mentioned did make conveyance of the said railroad a
other property and franchises so purchased, more fully d
scribed in said deed, reference being hereby made to the sam
and to the record thereof this day made in the Chancery Cou
of the City of Richmond, in the State of Virginia, as fully a
though the same were incorporated at length herein.

And the undersigned, whose names are also hereto sul
scribed — to wit, SAMUEL SPENCER, ALEXANDER B. ANDREW
FRANCIS LYNDE STETSON and WILLIAM A. C. EWEN (her
inafter called ASSOCIATES) — whom such purchasers ha
associated with them in this organization of a new corporatio
pursuant to Section 2 of the Act of Assembly of the Commo
wealth of Virginia next hereinafter mentioned,

Do hereby certify, In accordance with the statutes of th
State of Virginia in such case made and provided, and esp
cially in accordance with Section 1 of the Act of Assembly o
the Commonwealth of Virginia entitled "An Act authorizi
the purchasers of the Richmond and Danville Railroad, the
assigns and successors, to become and be a corporation,
adopt a name therefor, and to possess and exercise gener
powers; and authorizing the leasing to or by, and the conso
dation therewith of, other corporations," approved Februa
20, 1894, of which a copy marked "Schedule A" is hereun
annexed and made a part of this declaration.

FIRST. That the Purchasers and their Associates ha
elected to become a corporation under the said Act under th
name of "SOUTHERN RAILWAY COMPANY."

SECOND. That the purposes of said corporation shall

to have, hold, enjoy, possess and exercise the said railroad, property and franchises of The Richmond and Danville Railroad Company which passed to the Purchasers at the sale hereinbefore recited, and be invested with all the estate, right, title and interest in and to such railroad and other property with their appurtenances and all the franchises, rights and privileges thereto pertaining; and generally, and from time to time, to have, hold, enjoy, possess and exercise any and all of the rights, powers, privileges and franchises conferred by the said Act of the Assembly of the Commonwealth of Virginia, approved February 20, 1894, or by any other act or law of which it may lawfully claim the benefit.

THIRD. That the capital stock of the Southern Railway Company shall be one hundred and eighty million dollars ($180,000,000), divided into shares of the par value of one hundred dollars ($100) each, of which shares six hundred thousand (600,000) shall be preferred shares, and the remainder shall be common shares; provided, however, that from time to time hereafter, as provided in the said Act of Assembly of the Commonwealth of Virginia, such capital stock and the several classes thereof may be increased up to but not exceeding the limit prescribed by the said Act.

FOURTH. That the Southern Railway Company from time to time may issue bonds to the amount of one hundred and twenty million dollars ($120,000,000), secured by a mortgage or mortgages of the property and franchises of the Railway Company, in addition to prior liens thereon, assumed, extended or renewed, or any substitutions therefor, and subject to further increase as provided by the said Act of Assembly.

FIFTH. That such capital stock and bonds shall, so far as necessary, be delivered from time to time hereafter in settlement for the purchase of property in conformity with the plan and agreement of reorganization under which the railroads, property and franchises have been or shall be bought by the said Purchasing Committee or Company.

SIXTH. That the first Board of Directors shall consist of five members, who shall hold office until the first meeting of

the stockholders of the Company to be held, and the names of such Board of Directors shall be

SAMUEL SPENCER,
CHARLES H. COSTER,
ALEXANDER B. ANDREWS,
FRANCIS LYNDE STETSON,
WILLIAM A. C. EWEN,

and the name of the President shall be SAMUEL SPENCER.

And to witness the acceptance of the before-mentioned Act of Assembly by the said Purchasers and their Associates they have signed and sealed these Presents, and have caused the same to be filed and recorded in the office of the Secretary of the Commonwealth and Keeper of the Seals of the State of Virginia, and in the Chancery Court of the City of Richmond, in the State of Virginia, this eighteenth day of June, 1894.

Witness: { *Purchasers.*

{ *Associates.*

STATE OF VIRGINIA, }
CITY OF RICHMOND, } ss.:

Before me, the undersigned a Notary Public, personally appeared in my city aforesaid CHARLES H. COSTER, ANTHONY J. THOMAS, SAMUEL SPENCER, ALEXANDER B. ANDREWS, FRANCIS LYNDE STETSON and WILLIAM A. C. EWEN, the parties named in the foregoing writing bearing date on the 18th day of June, 1894, and acknowledged the same to be their act and deed, to the end that the same might be recorded as such.

Given under my hand and official seal this eighteenth day of June, in the year one thousand eight hundred and ninety-four.

Notary Public.

APPENDIX III

THE MASSACHUSETTS COMMISSION LAW

OF RAILROAD CORPORATIONS AND RAILROADS

PUBLIC STATUTES, CHAPTER 112

(The following Sections of this Chapter apply also to Street Railway Companies and Street Railways.)

MATTERS OF CONSTRUCTION

SECTION 1. In the construction of this and the following chapter, unless such meaning would be repugnant to the context or to the manifest intention of the general court, the phrase "railroads and railways" shall include all railroads and railways in this commonwealth, except tramways in mines and marine railways, whether operated by steam or by animal power, and whether operated by the corporations owning them or by other corporations or otherwise; "railroad" shall mean a railroad or railway usually operated by steam power; "street railway" shall mean a railroad or railway usually operated by animal power; "railroad corporation" and "railroad company" shall mean the corporation which lays out, constructs, maintains, or operates a railroad operated by steam power; "street railway company" shall mean a corporation by which a street railway is constructed, maintained, or operated; "the board" shall mean the board of railroad commissioners.

BOARD OF RAILROAD COMMISSIONERS

SECTION 9. There shall be a board of railroad commissioners, consisting of three competent persons. The governor with the advice and consent of the council shall, before the first day of July in each year, appoint a commissioner, to continue in office for the term of three years from said day; and if a vacancy happens, he shall in the same manner appoint a commissioner for the residue of the term, and may in the same manner remove any commissioner. Said board shall have a clerk, to be appointed by the governor, who shall keep a full and faithful record of its proceedings, and serve such notices as the commissioners may require. The commissioners and clerk shall be sworn before entering upon the discharge of their duties. No person in the employment of or owning stock in a railroad corporation shall hold either of said offices. No such commissioner or clerk shall personally, or through a partner or agent, render any professional service or make or perform any business contract with or for

a railroad corporation chartered under the laws of this commonwealth, excepting contracts made with them as common carriers, nor shall he directly or indirectly receive a commission, bonus, discount, present, or reward from any such corporation.

SECTION 10. The annual salary of the chairman of the board shall be four thousand dollars, that of the other commissioners three thousand five hundred dollars each, and that of their clerk [two thousand] *twenty-five hundred* dollars, payable [quarterly] *monthly on the first day of each month* from the treasury of the commonwealth. The commissioners shall be provided with an office in the state house, or in some other suitable place in the city of Boston, in which their records shall be kept. In the discharge of their official duties, they shall be transported over the several railroads and railways in the commonwealth free of charge, and may employ and take with them experts or other agents, whose services they deem to be temporarily of importance. The board may expend a sum not exceeding [five hundred] *two thousand* dollars annually in procuring necessary books, maps, statistics and stationery, and in defraying expenses incidental and necessary to the discharge of its duties, and a sum not exceeding [two thousand] *twenty-five hundred* dollars annually in defraying the compensation of an accountant, payable [quarterly] *monthly on the first day of each month.* A statement of such expenditures shall accompany its annual report.

Acts of 1885, Chapter 119.

An Act to establish the Salary of the Clerk of the Board of Railroad Commissioners.

SECTION 1. The annual salary of the clerk of the board of railroad commissioners shall be twenty-five hundred dollars from the first day of January in the year eighteen hundred and eighty-five.

SECTION 2. So much of section ten of chapter one hundred and twelve of the Public Statutes as is inconsistent with this act is hereby repealed.

SECTION 3. This act shall take effect upon its passage. [*Approved April 1, 1885.*

Acts of 1890, Chapter 200.

An Act relating to the Board of Railroad Commissioners.

SECTION 1. The board of railroad commissioners is hereby authorized to expend a sum not exceeding two thousand dollars annually in procuring necessary books, maps, statistics and stationery, and in defraying expenses incidental and necessary to the discharge of its duties. A statement of such expenditures shall accompany its annual report.

SECTION 2. So much of section ten of chapter one hundred and twelve of the Public Statutes as is inconsistent with this act is hereby repealed.

SECTION 3. The provisions of section twelve of chapter one hundred and twelve of the Public Statutes shall apply to the expenses authorized by this act.

SECTION 4. This act shall take effect upon its passage. [*Approved April 21, 1890.*

SECTION 11. The board may employ an accountant skilled in the methods of railroad accounting, who shall, under its direction, supervise the method by which the accounts of corporations operating railroads or street railways are kept.

Acts of 1885, Chapter 164.

An Act concerning the Compensation of the Accountant of the Board of Railroad Commissioners.

SECTION 1. The board of railroad commissioners may allow as compensation to the accountant, authorized by section eleven of chapter one hundred and twelve of the Public Statutes, a sum not exceeding twenty-five hundred dollars per year.

SECTION 2. So much of section ten of said chapter one hundred and twelve as is inconsistent with this act is hereby repealed.

SECTION 3. This act shall take effect upon its passage. [*Approved April 14, 1885.*

Acts of 1885, Chapter 224.

An Act in relation to the payment of the Salaries of the Board of Railroad Commissioners, of the Clerk and the Accountant of said Board, and of the Inspector and Assayer of Liquors.

SECTION 1. The salaries of the board of railroad commissioners, and of the clerk and the accountant of said board, and the salary of the inspector and assayer of liquors, shall be paid monthly on the first day of each month.

SECTION 2. So much of section ten of chapter one hundred and twelve of the Public Statutes, and so much of section twenty-nine of chapter one hundred of the Public Statutes, as require the payment quarterly of the salaries of the officers named in section one of this act, are hereby repealed.

SECTION 3. This act shall take effect upon its passage. [*Approved May 12, 1885.*

SECTION 12. The annual expenses of the board, including the salaries of the commissioners and clerk and the compensation of the accountant, shall be borne by the several corporations owning or operating railroads or street railways, according to their gross earnings by the transportation of persons and property, and shall be apportioned by the tax commissioner, who, on or before the first day of July in each year, shall assess upon each of said corporations its just proportion of such expenses, in proportion to its said earnings for the year next preceding that in which the assessment is made; and such assessments shall be collected in the manner provided by law for the collection of taxes upon corporations.

General Powers and Duties of the Board.

SECTION 13. The board shall make an annual report of its doings to the general court, including such statements, facts, and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the commonwealth, and such suggestions as to its general railroad policy, or any part thereof,

or the condition, affairs, or conduct of any railroad corporation, as may seem to it appropriate.

SECTION 14. The board shall have the general supervision of all railroads and railways, and shall examine the same; and the commissioners shall keep themselves informed as to the condition of railroads and railways and the manner in which they are operated with reference to the security and accommodation of the public, and as to the compliance of the several corporations with their charters and the laws of the commonwealth. The provisions of the six following sections shall apply to all railroads and railways, and to the corporations, trustees, or others owning or operating the same.

SECTION 15. The board, whenever in its judgment any such corporation has violated a law, or neglects in any respect to comply with the terms of the act by which it was created or with the provisions of any law of the commonwealth, shall give notice thereof in writing to such corporation; and, if the violation or neglect is continued after such notice, shall forthwith present the facts to the attorney-general, who shall take such proceedings thereon as he may deem expedient.

SECTION 16. The board, whenever it deems that repairs are necessary upon any railroad, or that an addition to its rolling stock, or an addition to or change of its stations or station-houses, or a change in its rates of fares for transporting freight or passengers or in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, shall in writing inform the corporation of the improvements and changes which it considers to be proper; and a report of the proceedings shall be included in the annual report of the board.

SECTION 17. Upon the complaint and application of the mayor and aldermen of a city or the selectmen of a town within which a part of any railroad is located, the board shall examine the condition and operation thereof; and if twenty or more legal voters in a city or town, by petition in writing, request the mayor and aldermen or selectmen to make such

complaint and application, and they decline so to do, they shall indorse upon the petition the reason of such non-compliance and return it to the petitioners, who may within ten days thereafter present it to said board; and the board may thereupon proceed to make such examination in the same manner as if called upon by the mayor and aldermen or the selectmen, first giving to the petitioners and to the corporation reasonable notice in writing of the time and place of entering upon the same. If upon such examination it appears to the board that the complaint is well founded, it shall so adjudge, and shall inform the corporation operating such railroad of its adjudication in the same manner as is provided in the preceding section.

SECTION 18. The board shall investigate the causes of any accident on a railroad resulting in loss of life; and of any accident, not so resulting, which it may deem to require investigation.

SECTION 19. Every railroad corporation shall at all times, on request, furnish to the board any information required by it concerning the condition, management, and operation of the road of such corporation, and particularly copies of all leases, contracts, and agreements for transportation with express companies or otherwise to which it is a party, and also with the rates for transporting freight and passengers upon its road and other roads with which its business is connected.

SECTION 20. No request or advice of the board shall impair in any manner the legal duties and obligations of a railroad corporation, or its legal liability for the consequences of its acts, or of the neglect or mismanagement of any of its agents or servants.

SECTION 21. The board shall from time to time in each year examine the books and accounts of all corporations operating railroads or street railways, to see that they are kept in a uniform manner and upon the system prescribed by the board. Statements of the doings and financial condition of the several corporations shall be prepared and published at such times as the board shall deem expedient.

SECTION 22. On the application in writing of a director, or of any person or persons owning one-fiftieth part of the paid-in capital stock of a corporation operating a railroad or street railway, or owning the bonds or other evidences of indebtedness of such corporation equal in amount to one-fiftieth part of its paid-in capital stock, the board shall examine the books and the financial condition of said corporation, and shall cause the result of such examination to be published in one or more daily papers in the city of Boston.

SECTION 23. The board shall at all times have access to the list of stockholders of every corporation operating a railroad or street railway, and may at any time cause the same to be copied, in whole or in part, for the information of the board or of persons owning stock in such corporation.

SECTION 24. A corporation refusing to submit its books to the examination of the board, or neglecting to keep its accounts in the method prescribed by the board, shall be liable to the penalties provided in section eighty-four, in the case of the neglect or refusal to make a report or return.

SECTION 25. Either of the said commissioners, in all cases investigated by the board, may summon witnesses in behalf of the commonwealth, and may administer oaths and take testimony. The fees of such witnesses for attendance and travel shall be the same as for witnesses before the superior court, and shall be paid from the treasury of the commonwealth, and a certificate of the board shall be filed with the auditor; and any justice of the superior court, either in term time or vacation, upon application of the board, may in his discretion compel the attendance of such witnesses and the giving of testimony before the board in the same manner and to the same extent as before said court.

For additional Powers and Duties of the Board affecting Street Railways, see

St. 1887, c. 413, § 8;	*St. 1891, c. 216;*	*St. 1894, c. 462;*
St. 1888, c. 278;	*St. 1892, c. 228;*	*St. 1894, c. 472;*
St. 1889, c. 316;	*St. 1893, c. 315;*	*St. 1894, c. 506;*
St. 1890, c. 326;	*St. 1894, c. 383;*	*St. 1894, c. 543.*

APPENDIX IV

THE INTERSTATE COMMERCE LAW

THE ACT TO REGULATE COMMERCE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however*, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic

between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however*, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offence.

SEC. 6. (*As amended March 2, 1889.*) That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates

and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or

charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity

which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judi-

cial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for

the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

SEC. 10. (*As amended March 2, 1889.*) That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or will-

ingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation

of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonmemt in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be

appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

"SEC. 12. (*As amended March 2, 1889, and February 10, 1891.*) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this

act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

"Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

"The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such deposi-

tions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission."

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of

anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

SEC. 14. (*As amended March 2, 1889.*) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to

the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

SEC. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

SEC. 16. (*As amended March 2, 1889.*) That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey

or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for

such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining he or they shall be entitled to recover a reasonable counsel or

attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

SEC. 17. (*As amended March 2, 1889.*) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpœnas.

SEC. 18. (*As amended.*) That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

SEC. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to

rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purposes of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

SEC. 21. (*As amended March 2, 1889.*) That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

SEC. 22. (*As amended March 2, 1889, and February 8, 1895.*) That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers'

and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act: *Provided further*, That nothing in this act shall prevent the issuance of joint interchangeable five-thousand mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the

copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this act shall apply to any violation of the requirements of this proviso.

NEW SECTION. (*Added March 2, 1889.*) That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

Public No. 41, approved February 4, 1887, as amended by Public No. 125, approved March 2, 1889, and Public No. 72, approved February 10, 1891. Public No. 38, approved February 8, 1895.

An act in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and amendments thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpœna of the Commission, whether such subpœna be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpœna, or the subpœna of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpœna or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Public No. 54, approved, February 11, 1893.

An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

SEC. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

SEC. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

SEC. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

SEC. 5. That within ninety days from the passage of this

act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

SEC. 6. That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed, and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred. And it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to locomotives used in hauling such trains.

SEC. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

SEC. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provisions of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Public No. 113, approved, March 2, 1893.

An act supplementary to the act of July first, eighteen hundred and sixty-two, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and also of the act of July second, eighteen hundred and sixty-four, and other acts amendatory of said first-named act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain, and operate, for railroad, Governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

SEC. 2. That whenever any telegraph company which shall have accepted the provisions of title sixty-five of the Revised Statutes shall extend its line to any station or office of a

telegraph line belonging to any one of said railroad or telegraph companies, referred to in the first section of this act, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies, referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

SEC. 3. That if any such railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line shall refuse or fail, in whole or in part, to maintain, and operate a telegraph line as provided in this act and acts to which this is supplementary, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Interstate Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Interstate Commerce Commission, when such determination and order are made, to notify the parties concerned, and, if necessary,

enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said Interstate Commerce Commissioners: *Provided*, That the said Commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

SEC. 4. That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.

SEC. 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said

connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the circuit or district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient.

SEC. 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Interstate Commerce Commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and

telegraph companies annually hereafter to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings and all expenses of maintenance, use, and operation thereof and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said Commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said Commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

SEC. 7. That nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the Postmaster-General now has under title sixty-five of the Revised Statutes to fix rates, or, of the Government, to purchase lines as provided under said title, or to have its messages given precedence in transmission.

Public No. 237, approved, August 7, 1888.

SUPPLEMENT

Since this book was completed in December, 1902, the Elkins Bill has become a law. A copy of the law is given below together with an explanatory statement from the Interstate Commerce Commission. This statement of the Commission was issued at the request of a leading railway official, and must be regarded as a private letter sent in response to a private inquiry. The secretary of the Commission reminds the author that this "is purely an *ex parte* opinion and simply the Commission's 'present impressions.' I know of no other expression in regard to the matter, and the communication to Mr. Morton carried with it no authoritative declaration of the law."

[PUBLIC — NO. 103.]

An Act to further regulate commerce with foreign nations and among the States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation

to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this Act for offenses under said Acts to regulate commerce, whether committed before or after the passage of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted ; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a

particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

SEC. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction ; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and

require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled An Act to regulate commerce and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case

prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

SEC. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act.

SEC. 5. That this Act shall take effect from its passage.

Approved, February 19, 1903.

[PUBLIC — NO. 82.]

An Act To expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more ; and if there

be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this Act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

Approved, February 11, 1903.

VIEWS OF THE COMMISSION ON THE ELKINS LAW

February 27, 1903.

MR. PAUL MORTON, Vice President
A. T. & S. F. Ry. Co., Chicago, Ill.

DEAR SIR:

It has not been practicable to make earlier reply to your letters of 16th and 17th instant.

The Commission is always reluctant and frequently refuses to answer hypothetical questions or give an *ex parte* opinion as to the meaning or application of the law. In this case, however, it seems proper to comply with your request and indicate the present impressions of the Commission upon the several points you suggest.

The Elkins Bill apparently makes the following changes in the regulating statute:

1. The carrier is made criminally liable in all cases where the individual has been heretofore.

2. Willful failure to publish tariffs as required by law, or to observe such tariffs, is made a misdemeanor, punishable by a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense.

3. "To offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property . . . whereby any such property shall, by any device whatever, be transported at a less rate than that named in the tariffs published and filed by such carrier" is made an offense, punishable by like fine as above.

It will be observed that the word "discrimination" is used in the paragraph above quoted, and this may add something to the former law.

It will be further observed that the paragraph quoted applies solely to the transportation of property.

4. Punishment by imprisonment is repealed in all cases.

5. In proceedings before the Commission, or before the courts, shippers as well as carriers may be included as parties.

6. The Federal Circuit Courts are given power to interfere by summary process to prevent departures from the published rates or other "discriminations forbidden by law."

Broadly speaking, as it seems to the Commission, there is no material change in the *acts* or *things* prohibited and declared to be unlawful. The criminal remedies for illegal conduct are changed and the criminal provisions of the law made more definite and positive. It is believed that these provisions can now be enforced as they could not before.

Taking up the specific questions in your letters we answer them as follows:

First. We are of the opinion that free or reduced transportation given "on account of" a shipper's business, or to influence that business, which is the same thing, would be a "rebate, concession, or discrimination" under the Elkins Bill. Any concession of that kind to be legal should be specified in the tariff and granted alike to all shippers.

The granting of free transportation to shippers is often a serious discrimination. The only way to deal with it effec-

tively is to stop it altogether; and since this law furnishes a possible means of doing so its enforcement should be the aim of the carriers as well as the Commission.

Second. The subject of drayage has been discussed by the Commission and the courts. The fair import of those discussions appears to be that this service is connected with the transportation, and that the charges therefor should be stated in the published tariffs. This being so it would be a violation of the law to perform the service of drayage without providing for it in the tariffs, or to perform it for one and not for another.

Third. It is not believed that the payment of a reasonable commission for soliciting freight, or on the sale of tickets, can be held to be a rebate if the transaction is an honest one. If commissions are paid with the intent or expectation that they will be used, or if they are used, for the purpose or with the effect of granting a concession, the payment of such commissions would doubtless be held, and ought to be held, a violation of the law.

Fourth. The Commission has held that the present statute requires the publication of export and import tariffs. The Elkins Bill does not apparently change the requirements of the law in this respect, but it does afford the means for enforcing those requirements.

Fifth. It is difficult to see how the practice of charging lower rates to those who are establishing new industries than are charged at the same time to shippers of the same articles between the same points can be excepted from the operation and obligations of the law, however unobjectionable such a practice may be from a railroad and general economic standpoint.

Sixth. We prefer not to express an opinion at this time as to whether railroads may lawfully transport supplies for each other at reduced rates.

Seventh. The Commission has held that storage is a part of the service of transportation which the carrier performs, and that the charges for that service should be published in the

tariffs. The rendering of this service without such publication, or the rendering of it to one shipper and not to another, would seem to be in plain violation of the Elkins law.

Eighth. Generally speaking the divisions of a reasonable rate between connecting carriers is a matter of indifference to the public. If, however, an allowance is made to a private road for only nominal service it would be a "concession or discrimination." The question would seem to be in each case whether the arrangement was reasonable and free from discriminating design or effect.

Ninth. The first section of the Elkins Bill appears to refer exclusively to the transportation of property. The third section, investing the Circuit Courts with additional jurisdiction, covers both property and passengers.

You will understand that the foregoing are in the nature of first impressions, and that the Commission would not feel precluded by anything herein said from modifying the views above expressed in deciding an actual controversy after hearing both sides.

The Commission appreciates the difficulty of applying the hard and fast rules of a statute to unlike and changing conditions, and is not infrequently embarrassed by the want of discretionary authority. We believe that these recent amendments will prove highly efficient in their operation, because we are confident that the law in its present form will be supported by prevailing railroad sentiment and that in the efforts to enforce it the Commission will have the coöperation of railway managers generally.

Yours very truly,

(Signed) MARTIN A. KNAPP,
Chairman.

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[1] Because of the full Table of Contents and the topical arrangement of the material, it was not thought expedient to prepare an elaborate index covering every point.

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