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The Inter-State Commerce Commission

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T H E S I S

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THE INTER-STATE COMMERCE COMMISSION

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by

Charles S. Horner

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Cornell University

1895

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THE INTER-STATE COMMERCE COMMISSION.

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Introduction.

The act to regulate commerce was passed under the authority conferred upon Congress by the Federal Constitution, and in recognition of a duty which, though long delayed, had at length, in the opinion of Congress, become imperative. Congress had from its earliest existence exercised its authority over the ocean and other navigable waters within the jurisdiction of the United States, but it was not until the great case of *Gibbon v. Ogden*, 9 Wheat. 1, reported in 1824, that Congress decided that the waters of a state, when they constituted a highway for foreign and for inter-state commerce, are so far as concerns such commerce, as much within the reach of Federal legislation as are the high seas; and consequently that exclusive rights for their navigation cannot be granted by states whose limits embrace them.

But while Congress was providing from time to time for the regulation of commerce by water, it still abstained from undertaking the regulation of commerce by land. The reason for this abstinence is clear. At first the commerce by land

was so insignificant in amount and the rules of the common law were in general found adequate to the settlement of the questions arising out of it. The commerce of trappers and of traders with the Indians or that of the early settlers in the wilderness, needed only the primitive modes of conveyance; the emigrant wagon in one direction and the pack horse in the other, performed in respect to it the functions now performed by the railroad train. The use of such primitive instrumentalities required little regulation by either state or national law.

With the introduction of steam as a motive power, commerce took on a very different form. Highways unknown to the common law were introduced in the form of railroad lines, which were built and operated for the exclusive use of the corporations building them. These were regulated and controlled by the state governments, and until they in some way encroached upon inter-state commerce or traffic the national government did not interfere, and then only when through the Judicial department assistance was invoked. See the cases of *Ward v. Maryland*, 12 Wall. 418; *Welton v. Missouri*, 91 U. S. 275; *Wheeling Bridge Case*, 13 How. 518.

At that time the assistance of the courts was solicited

by the railroad companies to prevent state laws from interfering with the carriers engaged in inter-state business. The railroad companies practised many abuses upon the shippers and travelling public and little relief was afforded to prevent these abuses. The railroad companies indulged in the practice of pooling their business between different points, and thus maintained a higher rate of carriage than they would have been able to obtain if free competition was indulged in.

Discrimination by the railroad companies in favor of the larger shippers against the weaker shippers was practised. Discriminations as to localities were also common. All these abuses were freely indulged in until it became apparent that some adequate legislation must be had to remedy the existing evils, and to insure to the public impartial facilities for the transportation of persons and property between the states.

The Act to Regulate Commerce was passed by Congress and took effect April 5, 1887. (See United States Statutes at Large, Vol. 24, p. 379, as amended March 2, 1889, Stat. at Large, Vol. 25, p. 855, and Feb. 10, 1891, Stat. at Large, Vol. 26, p. 743.

In writing this treatise it is my aim to explain and distinguish between those carriers subject to, and those not sub-

ject to the act and also to discuss the subject of connecting carriers within the meaning of the act.

C H A P T E R I.

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State and Inter-state Carriers.

Section One reads as follows:- "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, 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 trans-shipment, or shipped from a foreign country to any place in the United States and carried to any 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 shallnot 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 transportation of passengers or property aforesaid, or in connection therewith, or for 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 unlawful."

The act does not include nor apply to all carriers engaged in Inter-state Business, but only such carriers as use a railroad, or railway and water crafts, when both are used under common control, management, or arrangement, for a continuous carriage or shipment of person or property from one state to another, nor does it apply to the carriage of proper-

erty by rail wholly within the state, although shipped from or destined to a place without the state, so that such a place is not a foreign country. (See Ex parte Koebler, 30 Fed. 857; *Hich v. E., T/ & G.*, 1 Int. State Com. Rep/ 735.)

While a railroad wholly within one state and engaged purely in state commerce is not within the act, if such road connects with or issues through bills of lading to points out of the state, they then become, as to that business, inter-state commerce roads and must comply with the act.

In the case of the *New Orleans Cotton Ex. v. Cin. N. O. & Tex. Pac. Ry. Co.*, 2 Strame, 375, The court said, "Commerce between points in the same state, but which in being carried from one place to another passes through another state, is inter-state commerce and is subject to regulation by the inter-state commerce act."

Carriers by water are not included within the act, unless they are owned, controlled, or have arrangements with the railroad.

It is not within the power of Congress to compel railroads, or carriers by water, to enter into joint arrangements with each other, but after such arrangements are formed, the carriers by water are then subject to the inter-state commerce law, and under the control of Congress. (*Ayr & Har. Trustees*

v. Glasgow Ry. Co., 4 R. & C. Traf. Cases, 81.)

In the case of the Belfast &c. Ry. Co/ v. G. N. R. R. Co., 4 R. & C. Traf. Cases, 379, it was held "an arrangement between a railroad company and a steamship company for a service of vessels between certain points the hour of departure to be determined by the steamship company, regard being had however to the convenience of the railroad company, and the arrival and departure of their trains " is an agreement within the act.

In this case the main point the court seemed to keep in mind was that carriers, while under a separate arrangement, were so far under the same arrangement that they were bound to run their trains and vessels so that they would connect with each other; and therefore that arrangement existed between the carriers which subjected the water carrier to this act.

C H A P T E R II.

Carriers by Water.

It is clear that the act does not include carriers wholly by water, even though they are engaged in the like commerce, and as such be rivals of the carriers that are subject to the control of the act.

Many reasons were suggested for this omission to include these carriers, but perhaps the best and most influential one was that the evils of corporate management had not existed to such an extent in the case of carriers by water as in that of carriers by land.

The cost of building, maintaining and operating a water line is so small, when compared with that of a railroad, that individuals and partnership firms can afford to operate boat lines, thus making competition sharper and having a tendency to make the rate of carriage lower. In their competition with the carriers by land the carriers by water were sometimes at a disadvantage, and compelled to accept lower rates owing to the slowness of transportation by water when compared to that by rail. The water carriers operate as obstacles to monopoly and as checks upon extortion by the railroad companies, and this has some influence in prejudicing public favor in

their behalf. But aside from these, the carriers by water often indulge in abuses which it was the intent of Congress to terminate.

Carriers by water often discriminate between customers on grounds not sanctioned by equity, when their interests seem to require it, they make rates at pleasure, they put the rates up or down without notifying the public, they give secret rebates to large dealers as an inducement to secure their business, they often charge less for longer hauls than for shorter over the same line in the same direction, the shorter being included in the longer haul.

Although the abuses practised by the railroad companies which led to the passage of the Interstate Commerce Law may be indulged in by carriers by water, it is not claimed that they are common. The fact that there has been no general public complaint of them may be regarded as strong evidence to the contrary. But as the law now is, it is clear that they may be practised by the carriers by water at pleasure, and this very fact has a tendency to make rivals in business imagine that it is being done even oftener than it is. The existence of such a suspicion, with plausible ground for it, naturally tempts those carriers that are subject to the act to

retaliating measures, where escape from detection is thought likely, and the enforcement of the law is thereby made more difficult where one class of competitors is restricted, while the other is left at full liberty.

Another and far greater evil exists than that practised by the water carriers. Those lines which are subject to the Inter-state Commerce Act, in order to protect their business, often have to meet the rates made by the water carriers, not only to their own actual loss but to the discrimination between different localities and situated on the line of the railroad which is affected by the water carrier.

In the case of the San Bernardino Board of Trade v. The A. T. & St. F. Ry. Co., the A. & P. Ry. Co., the B. & Ind. Ry. Co., The Cal. So. Ry. Co., the Chicago Kansas & Nebraska Co., The Mo. Pac. Ry. Co. & the St. Louis & San Francisco Ry. Co., 4 I. C. Rep., 98, it was said.-- "Where complaint alleges that a greater charge in the aggregate for the transportation of a like kind of property is made for a shorter, than a longer distance, of the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another. Held, complaint is sufficient to put the carrier on proof that the services

were rendered under such dissimilar circumstances as to justify a greater charge. The water competition which will justify a greater charge for a shorter distance by railroad must be actual."

In the case of *George Rice v. The A. T. & Santa Fe, R. R. et al*, 4 I. C. Rep. 104, it was held, the competition between all waterlines and all rail lines in the carriage of petroleum and its products from one point to another, was held to be such competition as 'o justify a greater charge for the shorter haul, the shorter haul being included within the longer. (See also *Bater v. Penna. R.R. Co.*, 3 Strauses I. C. Rep. 435; *Rice v. A. T. & StFe R. R. Co.* 3 Strauses I. C. Rep. 186; *King & Co. v. N. Y. & N. H. R/ R. Co.*, 3 Strauses I. C. Rep. 335; *Lehman v. Higginson & Co. v. S. P. R. Co.*, 3 I. C. Rep. 80).

It requires little observation to see that as long as there are water carriers ~~or~~ not brought within the act, there will be much litigation constantly occurring under the unjust discrimination clause. In many classes of freight where quickness of transportation is not essential the water carries on the great lakes are dangerous competitors with the railroad companies. If congress would take the subject under

consideration with a view to include all carriers within the act, it would simplify matters greatly and would be intrinsically just and right and relieve the commissioners from a vast amount of unnecessary labor w^hich they are burdened at present.

C H A P T E R III.

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Express Carriers.

The question whether the express companies are included in the act is one which has caused much discussion.

The express business has an origin more recent than that of the railroad companies; but since its origin it has had a growth more rapid and wonderful than that of the railroad system of the United States.

The express business is carried on by the association of its members in many different forms; some are partnerships of individual members, or joint associations constituting a species of statutory partnership but resembling corporations in having the interests of the members represented by shares in a capital stock, and also in provision made for perpetuity. Some are corporations organized under state charters or general incorporation acts.

The express companies make arrangements with the railroad companies for the carriage of their freight and agents at a certain rate. This rate is usually a certain percentage of the total receipts from the freight traffic. It is usually the custom of the express companies to make such arrangements

with the railroads over which it operates that it shall be the only express company operating upon the lines, thereby obtaining a monopoly of the business in that territory.

Some of the western railroads have combined for the purpose of convenience, and have formed nominal corporations to do the business over their several lines and divide the net proceeds. Their organizations resemble some of the fast freight lines more than they do those of the independent express companies. The business carried by these nominal, so called express companies, is purely railroad business though done by this common agency. There is no recognized distinction between what is called express freight and what is not, except the distinction in the mode of transportation. The express business is usually transported by means of cars attached to passenger trains, which insures to the shipper more rapid carriage and more prompt delivery than that class of goods which is known as railroad freight, and for which the shipper pays a higher rate of carriage.

Immediately after the organization of the Interstate Commerce Commission the question arose as to whether it was intended to include express companies, and whether they must comply with the act by filing and posting their tariff sheets.

The Commission decided, - "that the express companies should be so included until they were satisfied that they were not meant to be subjected to the act." Some of the express companies complied with the act while the greater number of them refused. To enable the express companies to present their case clearly it was decided to give them an early opportunity to do so. In the following cases I have endeavored to give in substance the arguments as set forth by the leading express companies. Many other arguments were heard before the Commission in behalf of the express companies, but the main arguments are fully developed in the subsequent pages.

In Re Expres Co, Southern Express Co. Answer, Int. Com. Rep. Vol. I. p. 448.

In response to a request of the Inter State Commerce Commission to tell why the tariff rate sheets had not been gotten out, the express companies sent the following arguments. The express company is a corporation formed to carry on business of transporting goods both animate and inanimate to different places. The modes used to so transport the goods are, by railroads, steamships, and horses. The express companies do not own, operate, or control the various lines over which they carry goods, the only vehicles owned by the companies are

the horses and wagons used mostly to receive and deliver express to the carriers.

The express companies exercise the right of using the different lines by virtue of separate and sometimes perfectly different arrangements. With some the contract is for car space, others tonnage, and in a third the contract may be for a percentage of the revenue from the business. To hold that express companies are contemplated in the act, is in our judgment erroneous.

"The term railroads 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"

This clause certainly defines in clear and concise terms what is meant to be included in the act and it certainly does not directly or by implication include express companies. The schedule which is referred to in Section 6 Paragraph 1, is clearly meant to apply to railroad companies or a continuous line composed of several railroads owned or operated as a solid line.

It is a schedule which is entirely under the control of

the management, it must plainly state the places upon the railroad under the management and contain the classification of freight in force upon the same, and copies for the use of the public must be kept in every depot upon the said railroad. The express company does not own or operate any of the railroads over which it does business. It has no control over schedules or classifications of their freight, and has no offices or agents at many of their depots or stations. The express company is an employer of the railroad and to include them within the act is clearly erroneous.

The National Express Company, 1 Int. Com. Rep. 451.

In construing the meaning of the first section of the interstate commerce act we must get at the intent of Congress. The Inter-state Commerce Act had its inception in a resolution adopted by the Senate of the United States on the 17th of March 1885: "Resolved that a select committee of five senators be appointed to investigate and report upon the subject of the regulation of the transportation by railroads and water routes in connection or in competition with said railroad of freight and passenger between the several states, with authority to sit during the recess of Congress and with the power to summon witnesses - - - - -"

In this resolution the intent is clearly expressed, and was acted upon by the committee who had circulars prepared and sent to the different railroads asking questions upon which the committee wished to be informed; but of the hundreds of such circulars which the committee caused to be sent out, there was not one addressed to express companies, clearly showing that the express companies were not within the contemplation of the proposed legislation.

Adams Express Company, 1 Int. Com. Rep. 456.

The Adams Express Company is a limited partnership, it has no charter, franchise, or right to take tolls, or to run or operate any railroad or transportation route. It is not the creation of any state nor is it the recipient of any grant or other thing from any state. It is merely a firm of individuals. It owns no line or link of transportation. It has no power to regulate fares or freight any more than any other mercantile firm has. The haul or transportation of express parcels over the railroad, or by the railroad performing the service, does not constitute the business nor even the chief fact or of the business of express companies.

This is only one of the elements of its service, the cost of transportation is only about 40 percent of the gross

charges, 50 percent being used to deliver to and from the carriers at the place of receipt and destination. The items of expense to be included are those indulged in upon the different undertakings in which the express companies participate. Who can separate the charges of transportation from the incidental charges upon the collecting of notes, presenting bills of exchange, paying taxes, serving papers, etc.

It would be clearly beyond the power of the judiciary to compel such an apportionment.

Upon a close study of the Inter-state commerce act read in connection with the able arguments made by the attorneys in the preceding cases, one is led to the conclusion that the legislators did not intend to include express companies within the act.

(Inter-state Commerce Comm. v. Express Com., 42 Fed. 448; United States v. Morsman, 42 Fed. 448.)

The frame of the Inter-state Commerce act is this,- "The first section provides that "the provisions of this act shall apply to any common carrier engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water, when the traffic is interstate ." The other sections uniformly refer to "any common carrier subject to the provisions of this act". Therefore the first sec-

tion controls the application of the law by stating what carriers are within its terms.

The act cannot be applied to express companies for they do business by other carriers than those within the act, that is wholly by water and partly and wholly by stages. The word "wholly" in the first section of the act may have been used in contradiction to the word "partly" in the next clause "wholly by railroad or partly by railroad and partly by water", and not as a limitation upon the method of carriage with the meaning by railroad solely, or by railroad and not otherwise, as claimed by the express companies. Nevertheless the literal application of the word "wholly" would exclude a great part of the business transacted by express companies, for it can be truthfully said as to the larger percentage of their shipments that they are not "wholly by railroad, or partly by railroad and partly by water"; a great amount of team and messenger service is involved, as well as use of other vehicles of transportation which are not within the language of the act. The use of that word in the section, which was evidently framed with the greatest care, affords a fair foundation for the claim that the act does not describe the method of transportation employed by express companies with sufficient pre-

cision to bring them within its terms.

Considering the long standing of the express business and the prior legislation on express companies they certainly were in the minds of Congress, and if they had wished to include them in the act they could have done so by name. Certainly from the reading of the act it is clear that the act contemplated railroads and not express companies. For example, Paragraph 1, Section 6 requires carriers "to print and keep for public instruction schedules showing the rates, 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 the railroad". The words "the railroad" excludes the idea that express companies were meant to be included in the act.

Section 5 -- excluding pooling says "for the pooling of freights of different and competing railroads". Express companies could pool their business, but if the act meant to include them it would not have said railroads. Section 6 - speaking of posting notices -- says "shall be kept in every depot or station upon any such railroad." These words are not apt to describe officers of an express company. The express companies receive nothing from the state. The right of

maintain rates which are proportional to distance. Water competition which so seriously effects the freight traffic by railroad will scarcely effect the traffic for which shippers are willing to pay higher rates to secure greater speed, but the complaint of excessive charges upon express carriages has been common and that of greater charges on shorter hauls is sometimes heard, and if it shall be held that express companies are not controlled by the rules of fairness and equality which the act prescribes, it is easy to see what the mischief against which the act is aimed may reappear and be enacted with impunity.

It has already been said that no distinct line exists between the express business, and some branches of what is exclusively railroad service, and the express business may easily^{be} enlarged at the expense of the other. Those roads which now do their own express business through a nominal corporation may keep enlarging their express business and take from the freight, live stock, perishable freight, dressed meat, etc. to which speed is specially important, and they might continue this process of paring off their proper functions as carriers until they would be little more than the owners of lines of road, over which other organizations would be the carriers of

eminent domain is not invoked in their behalf. All the property they possess they get by contract. The power of Congress in respect to their business rests upon its constitutional control over inter-state commerce, which involves the regulation of the relations between common carriers engaged therein and the public, but which in the case of the express company finds no support in any delegation to them by governmental powers.

In other cases which were presented before the commission it was argued for the express companies that the reason for including them within the act did not exist, for they were not in the habit of discriminating between shippers, and that they were never in the practice of giving rebates, they were not in the habit of making a greater charge for the shorter haul. It was argued with plausibility from the history of the case that the evils which were aimed at by the act, have not existed to any great extent in the express business. One reason, perhaps the principal reason for this, is that each of the several express companies has had a practical monopoly on the line on which it operates, the inducements to secret rebates and unjust discrimination which springs from severe competition has been wanting. It has been easier to make and

freight and on terms by themselves arbitrarily determined.

It is clear that express companies controlled and operated by the railroad companies are within the provisions of the act (See Inter State Commerce Comm. v. Express Companies, 42 Fed. 448) and the fact, that some are, and some are not within the act should cause Congress to legislate so as to include or exclude all. For it will prove very difficult for the Inter-state Commerce Commission to draw any clear and distinct lines between these two classes of express companies, and injustice is sure to result unless proper legislation be had.

In Volume I. page 277- of the Inter-state Commerce Reports, ^{it was} said "The commerce commissioners are of the unanimous opinion that if the independent express companies are to be excluded from the act, then the act should exclude all express companies, ~~and~~ upon principle it is not just to include one class of express companies, and exclude another because the former is owned and partly operated by the carrier that is subject to the Inter-state commerce act."

C H A P T E R IV.

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Independent Car Lines.

What is said of the express companies is applicable to the business of furnishing extra accommodation to passengers in sleeping and parlor cars. These cars are furnished in some cases by the railroad companies and in some cases by outside corporations, which are not supposed to be embraced within the law. Independent companies are also employed in the transportation of oil and live stock, furnishing better accommodation to shippers for the transportation of their goods and having some special arrangements with the railroad, by which the independent car lines furnish the cars, and the railroad company furnishes the power and transports them over its lines. It is fair to suppose that under the influence of competition these companies will indulge in the same practices which led to the passage of the Inter-state Commerce Act.

A question as to the transportation of freight in cars owned by others than the railroad company presented itself early in the history of the commission. I now refer to the use of tank cars for the transportation of oil by rail.

In the growth and development of railroad traffic it soon

became evident that many commodities might be transported to much greater advantage in certain kinds of cars especially adapted to the character and peculiar qualities of the particular traffic than the ordinary cars furnished by the carriers. The carriers did not always respond to the demand for improved vehicles of better pattern, but frequently failed to provide them in their own equipment. Consequently, often by agreement, the shipper furnishes his own cars for the transportation of the particular commodity.

The modern practice consists in the hiring by a carrier of the owner's cars, instead of payment by the owner to the carrier for the passage of the car over the road.

Apart from the compensation allowed by the carrier to the shippers for the use of the cars, the latter, the shipper has sometimes insisted and the carrier has conceded, that the circumstances and conditions of transportation, in cars furnished by the latter, were so different from those attending the carriage in the cars of the former as to justify a greater charge per hundred weight, or other unit of transportation, in the one case than in the other.

This was urged with great earnestness before the commission in regard to the transportation of oil in tank cars owned by the shippers, as against oil shipped in barrels on the

carriers cars, and the same commodity shipped in tank cars belonging to the shipper. It was the practice of the carriers to publish their car load rates for oil in tank cars and for oil in barrels respectively, and the latter rate exceeded the former greatly. This of course meant that such shippers as were able to provide themselves with their own tank cars would have a great advantage over their competitors who were obliged to depend for the transportation facilities on the equipment provided by the carrier itself.

It was argued by the railroads that the rate charged by each mode of transportation was of itself reasonable and just; that it was no more than a fair equivalent for the service rendered in each particular case. Any shipper, it was said, by providing himself with tank cars could have the benefit of the low rates accorded to that mode of transportation.

The commissioners replied to the first suggestion that the reasonableness of the rate was usually, to a large extent, a relative one. Therefore, in determining the reasonableness of the charges on barreled oil in carriers cars, the commission felt constrained to keep in view the disparity between them, and the rates charged by the same carrier upon the same commodity when offered in cars furnished by the shippers.

In regard to the suggestion that the carrier is at liberty if he chooses to furnish his own cars, the reply was that it is properly the business of the railroad company to supply their patrons with suitable vehicles of transportation and to offer the use of them to everybody impartially. The fact that such duty is imposed upon a carrier constitutes a very forcible reason why its customers, who are forced to make use of such facilities as it provides for them, shall not find its own want of rolling stock made a ground of discrimination against them. Where the use of a special kind of cars by the carrier is made very profitable to the owner, who is also a shipper, and for such use is in fact designed to operate as a discrimination in that shipper's favor, the effort is sometimes made to screen the real transaction from public scrutiny by the adoption of various devices of more or less subtlety and ingenuity.

A very good illustration was afforded in the case decided by the commission in 1891 (See Int. Comm. Rep., pp. 40, 88.) "Certain large shippers of cattle from Chicago to New York, having their place of business in New York, agreed with one of the lines of railroad leading into New York from the west, to ship all their cattle over that line.

In order to get this large business the railroad company, from the first inception of its dealing with these shippers, appears to have made to them certain valuable concessions. As these concessions were met with similar concessions made by rival lines to their patrons, it became necessary, as it appears to have been thought, to look about for some other means of conferring advantage which the shipper in question had generally been enjoying.

A corporation in form was then gotten up by the shippers, called the Lackawana Live Stock Express Company. The formality of issuing stock and allotting shares in this new company was complied with to a limited extent only. The whole concern evidently belonged to ---- in fact was identical with --- the firm of shippers who organized it. The shippers in question in the name and under the cover of this corporation, then agreed with the railroad company to supply it with a large number of cattle cars of a special make, designed to be used in shipping stock, to be furnished by the express company. For the rental of these improved stock cars the railroad company agreed to pay the express company $3/4$ of a cent for every mile run by each of them whether loaded or empty. In point of fact, although it was not provided for specifically by con-

tract, such extraordinary facilities and rights of way were given these cars over the line of the railroad as to enable them to make more than twice the mileage of ordinary stock cars. In this particular case it was shown that the mileage paid on these cars, within two years, was more than enough to reimburse the owner for the original cost of them and all expenses of operating them meantime. The cars to still remain on hand for a continuation of the business. This was held to constitute an unjust discrimination against all other shippers.

Numerous other illustrations could be given to show that many of the greatest evils still exist which it should have been the intent of the Inter-state Commerce Act to do away with. To obviate this great evil all carriage, whether by independent car lines or by the direct agency of the railroad corporation, should be included within the act. It seems that if it was the will of Congress that all transportation of persons and property by rail should come under the same rules of general right and equity, some other designation of the agencies in transportation which shall be controlled by the rules which seem to be indispensable.

Certainly the independent car lines are included within the act, and it is claimed by the railroad companies that they

are not favored more than any private shipper who owns his own cars.

The Inter-state Commerce Act was framed to protect all **classes** of shippers, the rich and the poor alike; but if the railroad companies are permitted to offer special inducements which are far in advance of the usual interest on the money invested in such cars, the greatest evil which the act tried to terminate will continue, and the Inter-state Commerce Act, inasmuch as it applies to small and poor shippers, will be inoperative.

C H A P T E R V.

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Connecting Carriers.

Clause 2 of Section 3 reads,-- "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".

Section 7 reads,- "That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, express 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 freight 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."

One is led to the conclusion from reading these two sections in connection that every railroad company is under statutory obligation to offer to one railroad whose line joins or crosses it, equal arrangement for a thorough line service. Such is clearly not the case as is shown in the "K. & I. Bridge Co. v. L. & M. R. R. Co., 37 Fed. 567-628. In this case it was held that "The provision of the act, Sec. 3, which reads 'this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business' leaves it open to any common carrier to arrange with other lines for the use of its tracks or terminal facilities without incurring the charge of preferring such lines, or discriminating against what other carriers who are not parties to or included in such arrangement. No common carrier can therefore justly complain of an-

other that it is not allowed the use of that other's track and terminal facilities upon the same or like terms and conditions which under private contract or agreement are conceded to other lines.

All that the Inter-state Commerce Act requires of the railroad company is that it shall not discriminate unjustly between connecting carriers, by affording to some better rates and accommodations for interchange of business than it offers to others. In the case of the K. & I. Co. v. L. & N. R. R., 37 Fed. 567-628, it was decided that the act does not necessitate the forming of new connections nor the establishment of new stations for the reception and delivery of freight etc., but only that whatever facilities in the way of yards, stations etc. it affords to some of its connecting lines at any point, the same proper, reasonable and equal facilities can not be denied other lines connecting at the same point.

Upon the question of reasonable, proper and equal facilities for the interchange of traffic between carriers, a very interesting case arose which was tried before the United States Circuit Court in 1892. (See Oregon Short Line v. N. Pac. Ry. Co., 51 Fed. 460.) This case decided that under the Inter-states Commerce Act, a railroad was not required to re-

ceive freight in cars in which it is tendered by a connecting line and transport it in such cars paying car mileage therefor, when it has cars of its own available and the freight would not be injured by transfer. (See also Worcester Ex. Car Co., v. Penna. Ry. Co., 3 Strauses I. C. R., 577).

This case is subject to much doubt as to soundness of principle as can be seen by the able dissenting opinion written by Judge Deady. He says, "To exchange freight in bulk by carload is certainly 'a reasonable and proper facility'. It is a general custom, except in some special instance like this when a carrier disobeys the injunction of the law for the purpose of injuring a competing line in its own interest. To exchange freight by the carload is a 'reasonable and proper facility for the intrrchange of traffic between these lines', and it is such a facility to enable them to receive and forward passengers and property to and from their respective lines and those connecting with them. On the other hand to require the plaintiff to unload its cars with freight destined to points on the Puget Sound, at Portland and there reload the same on the defendant's cars as freight originating at the latter point, is to afford no facility for such purpose at all. Such construction of the statute renders it altogether nug-

tory and leaves the matter as at common law. The section goes beyond the common law and therefore must imply a duty beyond that of receiving freight from the plaintiff when unloaded from its cars".

It certainly would be a very broad construction to put upon the statute to hold that a railroad corporation that forms a through route arrangement with one connecting carrier must be ready to enter into like arrangement with any other railroad company whose line intersects it at the same place. Such a holding would be unjust, and as was said in the case of *The Little Rock & Memphis Co. v. St Louis & Western Ry. Co.*, reported in 63 Fed. 775, "That for legislatures or courts to under6ale to deprive railroad carriers of the right to make their own contracts and arrangements with other companies for continuous lines, would be an attempt to deprive such^h carriers of the management and control of their own property by destroying their right to determine for themselves what contracts and tariff arrangements with connecting carriers are desirable and what are undesirable".

It was further held in *Little Rock & Memphis Ry. Co. v. St Louis & Western Ry. Co.*, 41 Fed. 559, that a court of equity has no power either at common-law or under the Interstate

Commerce Act, to compel a railroad company engaged in interstate commerce to enter into a contract with another company for a joint through road and joint through routing of freight and passengers.

In the case of the *Atchison Topeka & Santa Fe Co. v. D. & N. O. R. Co.*, 110 U. S. 680, the Supreme Court said, "At common law a carrier is not bound to carry except on his own lines; and we think it quite clear that if he contracts to go beyond he may in the absence of statutory regulations to the contrary, determine for himself what agency he shall employ. His contract is equivalent to an extension of his line for the purpose of the contract; and if he holds himself out as a carrier beyond the line, so that he may be required to carry in that way for all alike he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position by extending his route with the help of others, than he would occupy if the means of transportation employed were all his own. He certainly may select his own associates for doing his own work". (See also *Pullman Palace Car Co. v. Mo. Pac. Ry. Co.*, 115 U. S. 589; *Express Cases*, 117 U. S., 1-26; *Little Rock & Memphis Ry. Co. v. St. Louis I. N. & S. Ry. Co.*, 41 Fed. 559).

It certainly can be stated as a proposition of law, firmly established by the weight of authority, that the Interstate Commerce Act has not tried to dictate to the railroad companies subject to its provisions what contracts they shall make with connecting carriers for a through business arrangement. All that the inter-state commerce act requires is that there shall be no unjust discrimination between carriers subject to the act for the interchange of business.

Mr. Justice Field in Oregon Short Line & U. N. Ry. Co. v. Northern Pacific Ry. Co., 51 Fed. 475, in delivering his opinion said:- "It follows from this that the common carrier is left free to enter into arrangements for the use of its tracks or terminal facilities with one or more lines without subjecting itself to the charge of giving undue or unreasonable influence or advantage to such lines, or of unlawfully discriminating against other carriers. In making arrangements for such use by other companies, a common carrier will be governed by considerations of what is best for its own interests" "

(See also St. Louis Drayage Co. v. Louisville & N. R. R. Advance Sheets, 65 Fed. No. 1, advance sheets).

Although a railroad company is not required to form business arrangements with connecting lines still it is incumbent

upon the companies to offer all reasonable facilities for the interchange of business between the connecting lines, (See Section 7 of the Interstate Commerce Act) and it has been the object of both national and state legislation to encourage and compel as far as possible, the carriers to afford necessary facilities for through and continuous travel and business. This can be seen by an examination of the Statutes of the United States and the several states.

The act of June 15, 1866, (U. S. Rev. Stat., Chap. 124), authorized every railroad company in the United States to carry over its road all passengers 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 line for the transportation of the same to the place of destination."

An act of July 25, 1865, (U. S. R. Stat., Chap. 246) authorized the construction of certain bridges over the Mississippi River which "when constructed should be free for the crossing of all trains of railroads terminating on either side of the river, for reasonable compensation".

The Revised Statutes of Ohio of 1890, Section 3340, provides,) "when the tracks of a company crosses a track of the same gauge of another company, either company may connect the

tracks of the two roads so crossing, so as to admit of the passage of cars from one road to the other with facility and avoid the necessity of changing cars or transshipping freight"

"Sec. 3341,- When the tracks of two companies connect as aforesaid, either company shall, when required, transport over its road, to its destination thereon, any freight offered in the cars in which it is offered - - - - -".

Like or similar regulations are found in the following states:

Alabama, Art. XIII., Sec. 21 of the Constitution; Code of 1886, Sec. 1165.

California, Art. XII., Sec. 17, Constitution.

Colorado, Art. XV., Sec. 4 of the Constitution.

Connecticut, General Laws of 1888, Sec. 3529.

Florida, Act of June 7, 1887, Sec. 4.

Georgia, Code of 1882, Sec. 719.

Indiana, Code of 1881, Sec. 3903.

Idaho, Rev. Stats., 1887, Sec. 2666.

Illinois, Stats., Sec. 1304.

Iowa, Act of April 15, 1888, Sec. 4, Apr. 8, 1890, Sec. 2.

Kansas, Act of March 6, 1885, Sec. 9.

Louisiana, Const. of 1879, Sec .

Massachusetts, Public Acts of 1882, Chap. 112, Sec/ 215.

Maine, Rev. Stats. 1889, Chap. 51, Sec. 129.

Minnesota, Act of March 7, 1887, Sec. 3.

Michigan, Act 198, Session laws of 1873, as amended to
1883, Sec. 9.

Missouri, Rev. Stat. 1879, Sec. 819, Act of July 5, 1887,
Sec. 3.

Nebraska, Act of 1887, Chap. 60, Sec. 3.

New Hampshire, Genl. Laws, Chap. 164, Sec. 1.

New York, Laws of 1847, Chap. 122, Sec. 1.

New Mexico, Laws of 1884, Sec. 2733.

North Dakota, Act of March 19, 1890, Sec. 3 Act of Feb.
12, 1890, Sec. 1.

Pennsylvania, Art. XVII. Sec. 1, Const, 1873.

Rhode Island, Genl. Laws, Chap. 158, Sec. 21.

South Dakota, Art. XVII., Sec. 16, Const.

South Carolina, Act Feb., 1882, G. S. 1471.

Texas, Act of April 2, 1887, Sec. 1, Art. 425.

Vermont, Rev. Stat. of 1880, Sec. 3398.

Virginia, Code of 1887, Sec. 1208.

West Virginia, Act of 1875, Chap. 82.
