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The Fourth Section of the Interstate Commerce Act

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OF THE INTERSTATE COMMERCE ACT.

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The passage of the Interstate Commerce Act by the United States Congress during the year 1887 naturally leads one to believe that the change in theories for a century or more, unquestioned, regarding the relations existing between State and citizen ~~are~~ being made simultaneously with changes in industrial methods.

Congress, in the passage of this act, has asserted authority over man acting in his private capacity, and in a sweeping manner never before heard of. It is most improbable, and I think I am safe in saying, that no similar act will be passed relating to other industries, when we consider and study the nature and effect of the Act in question.

As is well known, railroading is a quasi-public business, and one to a greater or less degree effecting the interests of the country at large, so that Congress may act in this case in a restrictive manner, which if used toward most other enterprises, conducted with private capital, would be highly unconstitutional. The constitutional right of the Legislature to pass the Act is given by Sec. 8 of Art. I of the Constitution of the United States, and by which Congress is given the power "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes"

The extent of the power which this section intended to confer may be ascertained by examining the debates in the Constitutional Convention, as reported in the "Federalist".

"It was intended", said the learned judge in Cook v. State of Pennsylvania, (97 U. S. 566), in his allusion to the power conferred upon Congress to regulate commerce, "to guard against any taxation by the States which would interfere with the freest interchange of commodities among the people of the different States."

The 9th Sec. of Art. I of the Constitution forbids any tax or duty to be laid upon goods passing between the States. One State shall have an equal right with another, and no preference may be shown.

By the 5th Amendment to the Constitution of the United States it is provided that, "No person shall be ..... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." So it would be clearly unlawful for Congress, in the exercise of its power to try and force roads to continue business at a loss, or to establish such low rates as to render profits impossible. Coming, as we have, upon the question of rates, a question most important under the Act, I shall spend my time in a treatment of this subject,- not the entire subject of rates however,- but to that division found in the 4th Sec. of the Act, and what is familiarly termed "the long and short haul clause".

The construction of this section is constantly brought before the Commission and is one necessitating much care and attention. This section of the Act, as enacted by Congress, reads as follows:

"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 carriers may be relieved from the operation of this section of this Act."

Before this Act came into force, the rates throughout the country were regulated entirely by the proprietors of the different roads, and, in a way, as best suited their interests and welfare. During the first year or so after this enactment by Congress, much was done in the direction of bringing railroad rates into conformity with the general rule of Sec. 4 of the Act.

In July 1888 the Chicago, St. Paul & Kansas City

R. R. Co., a company having a line from Chicago to St. Paul and Minneapolis, announced to the Commission (which is the body appointed by the President, under this Act, and with the authority to inquire into the management of all common carriers) its purpose to reduce very largely its rates between the termini of its road without reducing intermediate rates; the effect of which would be to make the rate upon any consignment to many of the intermediate stations greater than it would be if carried through to the terminus.

The Company gave two reasons as justifying their action. First,- That the intermediate rates were just and reasonable, and therefore there was no injustice in maintaining them. Second,- That the competition between the terminal points forced them to greatly reduce their rates. The rates as reduced were below what was reasonable, but the action of the other companies made them all that was possible to obtain and conditions were established dissimilar to those prevailing at intermediate points, so as to justify the action and avoid the statute.

The Commission immediately ordered a hearing. The reason for the change of rates was shown to be as stated above, which seemed strong, and was certainly plausible. But the question involved was a question of the construction of the Act. Its answer was to be arrived at on considerations of what was probably the legislative intent. It was seen that the circumstances and conditions relied upon as entitling the carrier to make the exceptional rates were not ones growing

out of natural causes; they were not the outcome of competition by water routes; there was no peculiarity of the line, which would make rates at the termini, and at other stations, relatively just; the only dissimilarity in the circumstances and conditions which attended, was the sharp competition at the termini, and which did not exist at intermediate points.

But this is a circumstances which is apt to exist between many of the roads of the United States, and if this is without the statute, the fourth section would be practically valueless. The legislature never intended the consequence. It did not intend, as the Commission believed, that the carriers subject to the law should at pleasure make the rule of the statute ineffectual. In the present case the carrier under investigation conformed to this conclusion, and graded its rates accordingly, and the objectionable rates made by the carrier complained of were soon discontinued.

Many cases similar to the one above mentioned, come constantly before the Commission, and the greatest care must be exercised to prevent the fourth section from becoming worthless.

In the Southern and South-western States the Commission found that the roads were slow in conforming to the new law, but this might be a very natural consequence, as water competition in that section of the country was very brisk, and led to more trouble in establishing the rates. Water competition is a subject of great interest, and one often arising under the section in question. The railroads are,

or at least were a few years ago, too much inclined to press the competition to such a rate that the Commission would look upon it as unreasonable and compel the railroad to change the rate. The carriers by water have as much right to remunerative rates as the carriers by land, and the carrier by rail does not, therefore, make out a complete case when called upon to justify extraordinary differences between his rate at a point of water competition and other points, when he shows that at the former he made very low rates because otherwise he could not have obtained the business. Perhaps in the light of public interest he should not have had it, for undoubtedly the public good is best subserved when all the carriers which the needs of the country require are suffered to do business at a reasonable compensation, and where their rates, as between all their points, are relatively as nearly equal and just as under the circumstances they can be made. The facts are sometimes overlooked in the making up of railroad rate sheets when water competition is to be taken into account and its influence allowed for.

We have in the 4th Section of this Act the phrase,- "after investigation by the Commission." Let us look briefly at its meaning as decided by the Commission and the Federal Courts.

In the case of In re Louisville & Nashville R. R. Co. v. Interstate Commerce Commission,(Com. Rep. Vol. I, p 31,)Judge Cooley says, "From the first there have been two opinions regarding the proper construction of the provision

for exceptions to the 4th Section, one view being that no exception can be lawful unless made with the sanction of the Commission; and the other,- apparently better supported on the words of the statute,- that an order of relief is not required when the circumstances and conditions are substantially dissimilar, since the carrier in acting upon them, would commit no breach of law, though he would be responsible in case the circumstances were found to be misconceived."

Under this last view an order would be necessary only in a case where the circumstances were plainly dissimilar. To be sure, the carrier in acting runs the risk of having the Commission decide the circumstances similar, in which case he must stand the loss. The Commission may decide against the railroad company and issue an order which the company may refuse to obey. In this case the Federal Court takes up the matter, not alone upon the facts of the Commission's report, but a new trial is ordered, which admits new matter as well as the evidence in the former trial. If the court reverse the decision of the Commission the railroad company may keep its changed rates and is liable for no damages. The carrier must be its own judge and judges in peril of the consequences.

We come now to a difficult, and by far the most important, question arising under this section, and that is,- what constitutes dissimilar circumstances, and does mere competition create such a state?

We find in the case of The James & Mayer Buggy Co. v. The Cincinnati, New Orleans & Texas R. R. Co., (5th Rep.

of Com. p 90) that water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer distance point and as to freight, which, if not carried over the line on which it is located, would reach such destination by water transportation.

In the 1892 reports the Commission decided that the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions, entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer distance; in the following cases.

1. Competition with carriers by water which are not subject to provisions of the statute.

2. Competition with foreign or other railroads which are not subject to statute.

3. In rare cases of competition between railroads which are subject to statute, when strict application of the general rule of statute would be destructive of legitimate competition.

Turning our attention to the first of the above three classes of competition, <u>water competition</u>, we find little disagreement among the decisions. In the case of the Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia R. R. Co., found in the 1893 reports, it is held that where actual water competition rates may be fixed the competition must, however, be of a controlling factor, and the

mere fact that a point is situated on a stream is held in the case of W. O. Hartwell v. Columbus & Western R. R. Co., (1 I. C. Rep. 631) as not sufficient of itself to justify the lesser charge for a longer haul to such a point; but competition, as stated above, must be actual, of controlling force, and in respect to traffic important in amount, in order to avoid the 4th Section.

There sometimes arise cases where the rail and water competition between shorter distances is of greater force than between the longer. In this case the Commission holds the railroad not justified in charging lower rates to the longer than to the shorter hauls.

Not alone must there be competition between rail and water, but it must be of some controlling force. The article must be one which the railroad would naturally carry and the competition must be real. There might be dissimilarity of circumstances with one road, which would not occur with another. Circumstances and conditions that may be considered in estimating the dissimilarity created by water competition are:- the character of the roads, the character of the traffic, large number of empty cars moving in the direction in which the traffic must be taken, and legitimacy of the competition by the rail carrier.

In cases where a lower rate must be made or cause an abandonment of the business, and which affords some profit above costs of management, and works no injustice to other patrons, this would be legitimate competition; but where the

low rate causes the running of the road at a loss, and imposes a burden upon similar traffic at other points in such a case, the competition would be deemed destructive and illegitimate.

We find many marked instances of water competition in this country, but perhaps no better example can be found than that between New York City and Boston. Between these two cities there is an immense amount of traffic daily, and it would be most unjust if the rail was not allowed to fix prices so as to compete with the water. The Commission grants this case as one showing circumstances dissimilar and hence allow the railroads to lower their rates so as to compete with the boats. Just out of Boston is the town of Readville, being situated eight miles inland, where the water competition does not reach. Suit was brought by this town to compel the railroad to reduce their rates to the Boston rates, but the Commission held that to their town the competition did not flow and the rates need not be changed.

When circumstances arise under the 4th Section which are such as the Commission would decide dissimilar, there may be lesser rates to longer than to shorter distances, but in no case must there be prejudice or advantage shown to one person, company, firm or corporation, over another.

In some cases the conditions and differences in the advantages of one road over another may be artificial and unnatural, in which case there is a continued reduction of rates and this is not undesirable; but where the advantages are

natural and real which one region has and enjoys over another, such continuing disturbances of rates should not be inaugurated, especially when the charges are commodity rates, not shown to be unreasonable in themselves.

Another good example of water competition in this country is shown in the traffic carried on between the cities on the Pacific and those in our eastern states. The Commission holds that as to such articles as would be carried by water unless the railroads were allowed to fix their rates so as to compete with the boats,- as to such, the 4th Section might be avoided; but as to that class which would still seek the rail, rather than the water transportation, even though the rail rates remained unchanged,- as to such, the rates must remain fixed, and any violation of this rule is unjust discrimination against the intermediate towns compelled to pay the higher class rate on the same article.

Another case came before the Commission, the complaint alleging that higher rates were charged from New York to Chattanooga than to Memphis and Nashville, which are on the same line and in the same direction and being at a greater distance. There was found to be water competition of controlling force in case of Memphis, and so they were justified in asking lower rates to their city, but as to Nashville, no competition exists and any greater charge for transportation to Chattanooga than to Nashville would be in violation of the 4th Section of this Act.

Numerous cases of water competition might be cited,

but they are all so similar in nature that it seems of little necessity. We find water traffic of great importance in this country, which comes naturally from the resources found here. Much trade is carried on on the great lakes and rivers, which causes numerous cases of competition with the railroads, and makes this question a most important one.

Other than in competition with carriers by water, the circumstances allowing less to be charged for longer than for shorter distances, is where competition is with foreign railroads or roads not subject to the provisions of this statute, also in rare cases of competition between roads subject to the statute, when strict application of the general rule of the statute would destroy rightful competition.

Competition in these cases, as in water competition, must be real and actual, not a possibility of competition. Where the same carrier operates two parallel lines, the low charges on one road should not be made up by high rates on the other. This would result in much damage to the community of the second road, and would finally result in loss to the road, for a railroad is greatly regulated in its success by the prosperity of the surrounding community. A carrier shall not establish rates on the different branches of its road, so as to draw trade to one particular locality, which would naturally run elsewhere. Such preference is not excused on the grounds of competition.

I have said that in case of competition with a foreign road, rates might be regulated accordingly, but this

is not so in every case as the foreign road oft-times agrees with the rates of the United States roads. This is so in the run from San Francisco to Denver and to Kansas City. Until recently Canadian competition compelled a lower rate from San Francisco to Kansas City than to Denver, but now that the foreign road has adopted our rate, competition is no longer in force.

Perhaps on this question of competition with foreign roads, no better and simpler case could be cited than one occuring at the time of the World's Fair. The Rome, Watertown & Ogdensburg R. R. had a rate to Chicago and return of $36.00. After the opening of the Fair the Canadian roads established a rate from the above places to Chicago and return of $24.00. The Rome, Watertown & Ogdensburg road then made a rate of $25.75. The large traffic of foreigners to the Fair necessitated the use of all roads to Chicago to insure safety and convenience of visitors. On applying to the Commission the Rome, Watertown & Ogdensburg road was relieved from the operation of the 4th Section of the Act, during the continuance of the Fair. If this had not been granted it would have been a great injustice to the road and an injury to the United States, for if our rates were compelled to remain fixed, most of the World's Fair traffic from the East would have been over the Canadian roads.

If in the creation of competition the circumstances and conditions have been established by the carrier himself, or are such as might have been avoided by a reasonable exer-

tion and effort on his part, then in these cases, even though the circumstances and conditions are not of his creation and could not be obviated by reasonable effort on his part, in this case he is justified in regulating his rates to prevent a loss to the road.

Rates can never be arbitrarily charged by the carrier. They must be adjusted with regard to the interests of the public as well as the carrier. Rates should always be comparatively reasonable; that is where competition exists, and where it does not there should be some reasonableness in the comparative charges. Such a competitive rate should never be charged as to make the carrier run its road at a loss, and on the other hand a rate high beyond all reason should never be charged. The more even the rates for the longer and shorter distances, the better satisfied will be the community, and I think I am safe in saying,- the more prosperous will be the road. If lower rates are charged for a longer than for a shorter haul, and a complaint follows, the carrier will probably aver substantial dissimilarity in circumstances and conditions under the 4th Section, as justifying the greater charge for the shorter distance, and he must show by his pleading that the conditions are dissimilar, but upon an application for relief under the 4th Section proviso, the carrier is not limited by such a rule of evidence and may present to the Commission every material reason for an order in his favor.

C O N C L U S I O N

Were we to look at all the cases which arise under "the long and short haul clause" we would undertake an endless task; suffice to say that we have viewed some of the most important ones. From the first much complaint arose against the operation of this Section of the Act, and seemed from the start to be increasing until this last year, when signs of less dissatisfaction appeared. Certain it seems that the operation of this Section cannot fail to work good upon the country. Rates are now fairly proportional between the local communities and the great centers. The result seems to be greater satisfaction to the local communities and this is accomplished without affecting the great centers of commerce, and it seems that the outcome cannot but be beneficial to the carriers themselves. Nothing is more desirable to a railroad, than that its patrons should believe its rates to be just; in fact, the success of the road is largely due to the sentiment of the people along its line. Let the rates remain different between the terminal points and local towns, as have been cases in the past, and a feeling of dissatisfaction will arise all along the line. The towns come to a standstill, manufactories close; slowly but surely the town once brisk in trade fades away. Can a railroad remain prosperous with this happening all along its line, or is the prosperous road the one running through the busy and hustling

community? This question answers itself.

During the last year most of the complaint has come from the New England States, with special reference to the City of Boston. The idea that this section effects the interests of Boston differently from New York or any other commercial center, seems unfounded and the fact that no complaint is heard from the railroads about Boston seems almost conclusive proof that the industries are not effected, for as stated above, the prosperity of the community is sure to regulate the profits of the road.

Previous to the passage of the Interstate Commerce Act, and between the years 1850 and 1885, seventeen of the States of the Union had by statute made illegal the charging of a higher rate for a shorter than for a longer distance. Some of the provisions were broad and general, while others were narrow and failed to cover all cases. When this Act was passed in 1887 by Congress, several States, (including Missouri, Minnesota and Nebraska), passed statutes in general harmony with the Federal laws, and others have since done the same.

From the fact that one half of the States of the Union, by enactments covering almost half a century, have declared the principles of the long and short haul clause to be just, and for the public interest; from the fact that the enactments have remained in force, and that no cry has been heard from either the people or the railroads; is it not reasonable to think that the result of the 4th Section of the

Interstate Commerce Act will be the general promotion of the welfare of this Country?

At the time the Act went into force there were numerous cases where less was charged for the longer haul than for the shorter, and so it was cautiously, and with regard to the existing state of things, that this law was to be put into force.

Exceptions were in some cases made to the law, and the Commission always acted as it deemed wise. The then existing differences in rates have been slowly abolished and I cannot doubt that if the carriers by rail shall accept this principle as being clearly right and just, and proceed to eliminate those cases where greater charges are paid for a shorter distance, for the same goods over the same line, and in the same direction, than for a like longer distance, that it will not only be of benefit to the public, but also to the railroads themselves.