1888.

NEW ZEALAND.

RAILWAY RATES, ETC., UNITED STATES OF AMERICA.

Laid upon the Table, with leave of the House, by Hon. Mr. Mitchelson.

MEMORANDUM.

THE Government, having recently obtained a Report on American Railroads (U.S.), in which the scope and operation of the railroad laws in various States and of the Inter-State Commerce laws have been briefly explained, has thought it desirable to supplement this information by a reprint of the United States Inter-State Commerce Act and the first annual report of the Inter-State Commerce Commission. The restrictions which the United States Government have found necessary to impose on railroad companies in rate-making are of vital importance, involving principles which may be held to be of still greater cogency in the case of State-owned lines than they are in that of private ones. The paper has been reprinted from an English Parliamentary paper.

AN ACT TO REGULATE COMMERCE.—[Public—No. 41.]

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 transhipment, 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 connexion 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 authorising 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 authorised 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 freight as aforesaid, each day of its continuance shall be deemed a separate offence.

Sec. 6. That every common carrier subject to the provisions of this Act shall print and keep for 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 railroad, as defined by the first section of this Act. 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 upon such railroad, 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 schedule shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every dépôt or station upon any such railroad, in such places and in such form that they 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 for public inspection, at every dépôt 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 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 for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted, and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

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 Comission, 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; but no

common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

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 offence may be committed, and if such common carrier be a foreign corporation, in the judicial 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 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 transhipment 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. 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 wilfully 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 wilfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly 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 misdemeanour, and shall, upon conviction thereof in any district Court of the United States within the jurisdiction of which such offence was committed, be subject to a fine of not to exceed five thousand dollars for each offence.

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* one thousand eight 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 term 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. 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 for the purposes of this Act the Commission shall have power to require the attendance and testimony of witnesses, and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation; and to that end 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.

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 the 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. 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 *primâ 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.

Sec. 15. That if in any case in which an investigation shall be made by the 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 cognisable 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 any further liability or penalty for such particular violation of law.

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate, or refuse, or neglect to obey any lawful order or requirement of the Commission in this Act named, it shall be the duty of the Commission, and 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 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 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 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. 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. 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.

Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of 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 employés as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and 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 employés under their orders, in making any investigation in any other places than in the City of Washington, shall be allowed and paid on the presentation of itemised vouchers therefor, approved by the Chairman of the Commission and the Secretary of the Interior.

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 of 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 authorised 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 equipment; the number of employés, 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 purpose 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. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed, as are the other reports issued from the Interior Department. 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.

Sec. 22. That nothing in this Act shall apply to 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 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; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employés, 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 employés; 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.

Sec. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this Act for the fiscal year ending thirtieth June, *anno Domini* eighteen hundred and eighty-eight, and the intervening time anterior thereto.

Sec. 24. That the provisions of sections eleven and eighteen of this Act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately, and the remaining provisions of this Act shall take effect sixty days after its passage.

Approved, 4th February, 1887.

FIRST ANNUAL REPORT OF THE INTER-STATE COMMERCE COMMISSION.

[*Inter-State Commerce Commission:* Hon. Thomas M. Cooley, of Michigan, Chairman; Hon. William R. Morrison, of Illinois; Hon. Augustus Schoonmaker, of New York; Hon. Aldace F. Walker, of Vermont; and Hon. Walter L. Bragg, of Alabama. Edward A. Moseley, Secretary.]

The INTER-STATE COMMERCE COMMISSIONERS to the Hon. LUCIUS Q. C. LAMAR, Secretary of the Interior.

SIR,— 1st December, 1887.

The undersigned Commissioners appointed under "An Act to regulate Commerce," approved the 4th February, 1887, in discharge of the duty imposed by the 21st section of the said Act, which directs the Commission on or before the first day of December in each year to make a report to the Secretary of the Interior, to be by him transmitted to Congress, the report to "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," beg leave to respectfully report,—

It is provided in the Act referred to that its provisions 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 transhipment, 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." It is further provided that "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."

The railroad mileage of the United States, computed to the close of the fiscal year 1886, of the companies respectively, was 133,606. The number of corporations represented in this mileage was 1,425, but by the consolidation or leasing of roads the number of corporations controlling and operating roads as carriers was reduced to 700. It is estimated that 4,380 miles of road have been

constructed since the foregoing statistics were obtained, making a total mileage at this time of 137,986. It is impossible to say, with entire accuracy, what is the number of railroad companies subject to the provisions of the Act, but it is believed that not less than 1,200, operated by about 500 corporations as carriers, engage either regularly or at times in inter-State commerce, so as to make the Act applicable. The Commission has as yet no statistics of its own collection to lay before the public, but in a manual generally accepted as reliable the cost of construction and equipment of the 133,606 miles of road is estimated at $7,254,995,223, and the funded debt of the companies at $3,882,966,330. Interest, according to the same authority, was paid by these companies for the last fiscal year to the amount of $187,356,540, and the aggregate payment to stockholders in dividends was $80,094,138.

Some idea of the magnitude of the interest which the Act undertakes to regulate may be obtained from these figures, but they fall far short of measuring, or even of indicating, its importance. The regulation of no other business would concern so many or such diversified interests, or would affect in so many ways the results of enterprise, the prosperity of commercial and manufacturing ventures, the intellectual and social intercourse of the people, or the general comfort and convenience of the citizen in his everyday life. The railroads provide for the people facilities and conveniences of a business and social nature which have become altogether indispensable, and the importance of so regulating these that the best results may be had, not by the general public alone, but by the owners of railroad property also, is quite beyond computation.

The Act to regulate commerce was passed under the authority conferred upon Congress by the Federal Constitution " to regulate commerce with foreign nations, among the several States, and with the Indian tribes," and in recognition of a duty which, though long delayed, had at length, in the opinion of Congress, become imperative. The reasons for the delay are well understood. When the grant of this power of regulation was made by the Constitution, the Commerce between the States which might be controlled under it was quite insignificant both in volume and value. It was for the most part carried on by means of coastwise vessels, and by water-craft of various kinds, which were sailed or otherwise propelled on the lakes, rivers, and smaller streams of the interior. On the land there was very little that could be said to rise to the dignity of inter-State commerce, and the regulation of that little, as also of that which was exclusively State traffic, was for the most part left to the rules of the common law. The exceptional regulations, if any seemed to be called for, were made by the State laws. In a few cases where persons had associated themselves together as regular carriers of persons on definite routes, exclusive rights were granted to them by the States as such carriers, the motive to such grants being a belief on the part of the State authorities that without the exclusive privilege the regular transportation would not be adequately and reliably provided for.

For the regulation of commerce on the ocean and other navigable waters, Congress very promptly passed the necessary laws; but its jurisdiction within the limits of the States was not very clearly understood, and it was not until the great case of Gibbons *versus* Ogden, decided in 1824, that it was authoritatively and finally determined that the waters of a State, when they constituted a highway for foreign and 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 providing from time to time for the regulation of commerce by water Congress still abstained from undertaking the regulation of commerce by land. The reasons for this continued to be the same as at the first. The land commerce was 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 hunters, of traders with the Indians, or that of the early settlers in the wilderness, needed only the most primitive modes of conveyance; the emigrant waggon in one direction and the pack-horse and canoe in the other performed in respect to it the functions now performed by the railroad train and the steamboat. The use of such primitive instrumentalities required little regulation by either State or national law. When Congress provided for the construction of the Cumberland Road as a great national highway, it was thought quite undesirable to regulate its use by national law or to take national supervision of the commerce upon it; and, with the commerce on the ordinary highways, it was left to the supervision and care of the States respectively through or into which the road should be built.

With the application of steam as a motive-power for propelling vessels the conditions were immediately, to a considerable extent, changed. An impetus was given to the internal commerce of the country which promised immense results, and which made immediate and imperative demand for other and very different highways to those which accommodated the pack-horses and heavy waggons of the early traders and settlers. But even then the circumstances were favourable to a prolongation of State control. The first improved highways were turnpikes, the next in grade were canals, but the highways by water as well as the highways by land were provided for by the State. The General Government made some appropriations for canals where they were needed as improvements in existing navigation, but the great artificial channels of water transportation were State creations. Such was the case with the Erie Canal, which, during the period when emigration to the wilderness was greatest, and when improvement in the new territories was most rapid, constituted the most important of all the highways connecting the interior with the seaboard. Such also were the canals which were constructed to connect the Delaware with the Hudson, the Chesapeake with the Ohio, the waters of Lake Erie with the Ohio at Portsmouth, at Cincinnati, and at Evansville, the waters of Lake Michigan with the Mississippi, and many others now almost forgotten, but which were of great temporary importance and value.

As the States constructed these great inter-State highways, it was not unnatural that they should be left in charge of the regulation of trade upon them, especially as no complaint was made that their regulations were unjust, or that they discriminated unfairly as against the citizens or the

business of other States. When, in 1830, steam-power began to be applied to the propulsion of vehicles upon land, the same reasons as regards control continued to prevail. The roads constructed for such vehicles were authorised by and built under the authority of the States; the corporate charters under which they were operated, and which prescribed the rights, privileges, and powers of the associated owners, were State laws; the States determined for them the measure of their taxation, and limited, if it seemed politic, their charges and their profits. The States thus touched them so nearly in all their interests and all their functions that Federal intervention seemed not only unnecessary but intrusive unless State power should be abused; and, the abuse not often appearing, intervention was scarcely thought of by any one.

For a long time, therefore, the power of the Federal Government in the regulation of commerce between the States was put forth by way of negation rather than affirmatively—that is to say, it was put forth in restraint of excessive State power when it appeared, instead of by way of affirmative national regulation. The national restraint, when there was any, was commonly effected by invoking the action of the judicial department of the Government, and by its assistance arresting such State action as appeared to constitute an unauthorised interference with inter-State traffic and intercourse. This special intervention, whether in the exercise of an original jurisdiction, as in the Wheeling Bridge case, reported in 13 Howard, 518, or under an appellate authority, as in Ward *versus* Maryland (12 Wallace, 418), and Welton *versus* Missouri (91 United States Reports, 275), has been important and useful in a considerable number of cases, but in the nature of things it could not accomplish the purposes of general regulation. On the other hand, the effect was to leave the corporations into whose hands the internal commerce of the country had principally fallen to make the law for themselves in many important particulars, the State power being inadequate to complete regulation, and the national power not being put forth for the purpose.

The common law still remained operative, but there were many reasons why it was inadequate for the purposes of complete regulation. One very obvious reason was that the new method of land transportation was wholly unknown to the common law, and was so different from those under which common-law rules had grown up that doubts and differences of opinion as to the extent to which those rules could be made applicable were inevitable. A highway of which the ownership is in private citizens or corporations, who permit no other vehicles but their own to run upon it, bears obviously but faint resemblance to the common highway upon which every man may walk or ride, or drive his wagon or his carriage. If we undertake to apply to the one the rules which have grown up in regulation of the others, there must necessarily be a considerable period in which the state of the law will in many important particulars be uncertain, and while that continues to be the case those who have the power to act, and who must necessarily act by rule, and according to some established system, will for all practical purposes make the law, because the rule and the system will be of their establishment.

Such, to a considerable extent, has been the fact regarding the business of transporting persons and property by rail. Those who have controlled the railroads have not only made rules for the government of their own corporate affairs, but very largely also they have determined at pleasure what should be the terms of their contract relations with others, and others have acquiesced, though oftentimes unwillingly, because they could not with confidence affirm that the law would not compel it, and a test of the question would be difficult and expensive. The carriers of the country were thus enabled to determine in great measure what rules should govern the transportation of persons and property—rules which intimately concerned the commercial, industrial, and social life of the people.

The circumstances of railroad development tended to make this indirect and abnormal law-making exceedingly unequal and oftentimes oppressive. When railroads began to be built the demand for participation in their benefits went up from every city and hamlet in the land, and the public was impatient of any obstacles to their free construction and of any doubts that might be suggested as to the substantial benefit to flow from any possible line that might be built. Under an imperative popular demand, general laws were enacted in many States which enabled projectors of roads to organize at pleasure and select their own lines; and where there were no such laws the grant of a special charter was almost a matter of course, and the securities against abuse of corporate powers were little more than nominal. For a long time the promoter of a railway was looked upon as a public benefactor, and laws were passed under which municipal bodies were allowed to give public money or loan public credit in aid of his schemes on an assumption that almost any road would prove reasonably remunerative, but that in any event the indirect advantages which the public would reap must more than compensate for the expenditures.

In time it came to be perceived that these sanguine expectations were delusive. A very large proportion of all the public money invested in railroads was wholly sunk and lost. Many roads were undertaken by parties who were without capital, and who relied upon obtaining it by a sale of bonds to a credulous public. The corporation thus without capital was bankrupt from its inception, and the corporators were very likely to be mere adventurers, who would employ their chartered powers in such manner as would most conduce to their personal ends.

It is striking proof of the recklessness of corporate management that 108 roads, representing a mileage of 11,066, are now in the hands of receivers, managing them under the direction of Courts, whose attention is thus necessarily withdrawn from the ordinary and more appropriate duties of judicial bodies. So serious has been the evil of bringing worthless schemes into existence, and making them the basis for an appropriation of public moneys or for the issue of worthless evidences of debt, that a number of the States have so amended their Constitutions as to take from the Legislature the power either to lend the credit of the State in aid of corporations proposing to construct railroads, or to authorise municipal bodies to render aid, either in money or credit. State legislation has at the same time been in the direction of making compulsory the actual payment of a *bonâ fide* capital before a corporation shall be at liberty to test the credulity of the public by an issue of negotiable securities.

When roads were built for which the business was inadequate, the managers were likely to seek support by entering upon competition for business which more legitimately belonged to the other roads, and which could only be obtained by offering rates so low that, if long continued, they must prove destructive. A competitive warfare was thus opened up in which each party endeavoured to underbid the other, with little regard to prudential considerations, and freights were in a great many cases carried at a loss, in the hope that in time the power of the rival to continue the strife would be crippled, and the field practically left to a victor who could then make its own terms with customers. When the competition was less extreme than this, there was still a great deal of earnest strife for business, some of which was open, and with equal offerings of rates and accommodations to all, but very much of which was carried on secretly, and then the very large dealers practically made their own terms, being not only accommodated with side-tracks and other special conveniences, but also given what were sometimes spoken of as wholesale rates, or perhaps secret rebates, which reduced the cost to them of transportation very greatly below what smaller dealers in the same line of business were compelled to pay. Such allowances were sufficient of themselves in very many cases to render successful competition, as against those who had them, practically impossible.

The system of making special arrangements with shippers was in many parts of the country not confined to large manufacturers and dealers, but was extended from person to person under the pressure of alleged business necessity, or because of personal importunity or favouritism, and even in some cases from a desire to relieve individuals from the consequences of previous unfair concessions to rivals in business. The result was that shipments of importance were commonly made under special bargains entered into for the occasion, or to stand until revoked, of which the shipper and the representative of the road were the only parties having knowledge. These arrangements took the form of special rates, rebates and drawbacks, underbilling, reduced classification, or whatever might be best adapted to keep the transaction from the public; but the public very well understood that private arrangements were to be had if the proper motives were presented. The memorandum-book carried in the pocket of the general freight agent often contained the only record of the rates made to the different patrons of the road, and it was in his power to place a man or a community under an immense obligation by conceding a special rate on one day, and to nullify the effect of it on the next by doing even better by a competitor.

The system, if it can be called such, involved a great measure of secrecy, and its necessary conditions were such as to prevent effective efforts to break it down, though the willingness to make the effort was not wanting among intelligent shippers. It was of the last importance to the shipper that he be on good terms with those who made the rates he must pay: to contend against them was sometimes regarded as a species of presumption which was best dealt with by increasing existing burdens; and the shipper was cautious about incurring the risk. Nevertheless it was a common observation, even among those who might hope for special favours, that a system of rates open to all, and fair as between localities, would be far preferable to a system of special contracts into which so large a personal element entered or was commonly supposed to enter. Permanence of rates was also seen to be of very high importance to every man engaging in business enterprises, since without it business contracts were lottery ventures. It was also perceived that the absolute sum of the money charges exacted for transportation, if not clearly beyond the bounds of reason, was of inferior importance in comparison with the obtaining of rates that should be open, equal, relatively just as between places, and as steady as in the nature of things was practicable.

Special favours or rebates to large dealers were not always given because of any profit which was anticipated from the business obtained by allowing them; there were other reasons to influence their allowance. It was early perceived that shares in railroad corporations were an enticing subject for speculation, and that the ease with which the hopes and expectations of buyers and holders could be operated upon pointed out a possible road to speedy wealth for those who should have the management of the roads. For speculative purposes an increase in the volume of business might be as useful as an increase in net returns; for it might easily be made to look, to those who knew nothing of its cause, like the beginning of great and increasing prosperity to the road. But a temporary increase was sometimes worked up for still other reasons, such as to render plausible some demand for an extension of line or for some other great expenditure, or to assist in making terms in a consolidation, or to strengthen the demand for a larger share in a pool.

Whatever was the motive, the allowance of the special rate or rebate was essentially unjust and corrupting: it wronged the smaller dealer, oftentimes to an extent that was ruinous, and it was very generally accompanied by an allowance of free personal transportation to the larger dealer, which had the effect to emphasize its evils. There was not the least doubt that had the case been properly brought to a judicial test these transactions would in many cases have been held to be illegal at the common law; but the proof was in general difficult, the remedy doubtful or obscure, and the very resort to a remedy against the party which fixed the rates of transportation at pleasure, as has already been explained, might prove more injurious than the rebate itself. Parties affected by it, therefore, instead of seeking redress in the Courts, were more likely to direct their efforts to the securing of similar favours on their own behalf. They acquiesced in the supposition that there must or would be a privileged class in respect to rates, and they endeavoured to secure for themselves a place in it.

Personal discrimination in rates was sometimes made under the plausible pretence of encouraging manufactures or other industries. It was, perhaps, made a bargain in the establishment of some new business or in its removal from one place to another that its proprietors should have rates more favourable than were given to the public at large; and this, though really a public wrong, because tending to destroy existing industries in proportion as it unfairly built up others, was generally defended by the parties to it on the ground of public benefit.

Local discriminations, though not at first blush so unjust and offensive, have, nevertheless, been exceedingly mischievous; and, if some towns have grown, others have withered away under

their influence. In some sections of the country, if rates were maintained as they were at the time the inter-State commerce law took effect, it would have been practically impossible for a new town, however great its natural advantages, to acquire the prosperity and the strength which would make it a rival of the towns which were specially favoured in rates, for the rates themselves would establish for it indefinitely a condition of subordination and dependence to "trade centres." The tendency of railroad competition has been to press the rates down and still further down at these trade centres, while the depression at intermediate points has been rather upon business than upon rates. In very many cases it has resulted in the charging of more for a short than for a long haul on the same line in the same direction; and, though this has been justified by railroad managers as resulting from the necessities of the situation, it is not to be denied that the necessity has in many cases been artificially created and without sufficient reason.

The inevitable result was that this management of the business had a direct and very decided tendency to strengthen unjustly the strong among the customers and to depress the weak. These were very great evils, and the indirect consequences were even greater and more pernicious than the direct, for they tended to fix in the public mind a belief that injustice and inequality in the employment of public agencies were not condemned by the law, and that success in business was to be sought for in favouritism rather than in legitimate competition and enterprise.

The evils of free transportation of persons were not less conspicuous than those which have been mentioned. This, where it extended beyond the persons engaged in railroad service, was commonly favouritism in a most unjust and offensive form. Free transportation was given not only to secure business, but to conciliate the favour of localities and of public bodies; and, while it was often demanded by persons who had, or claimed to have, influence which was capable of being made use of to the prejudice of the railroads, it was also accepted by public officers of all grades and of all varieties of service. In these last cases the pass system was particularly obnoxious and baneful; for if any return was to be made or was expected of public officers, it was of something which was not theirs to give, but which belonged to the public or to constituents. A ticket entitling one to free passage by rail was often more effective in enlisting the assistance and support of the holder than its value in money would have been, and in a great many cases it would be received and availed of when the offer of money, made to accomplish the same end, would have been spurned as a bribe. Much suspicion of public men resulted, which was sometimes just, but also sometimes unjust and cruel; and some deterioration of the moral sense of the community, traceable to this cause, was unavoidable while the abuse continued. The parties most frequently and most largely favoured were those possessing large means and having large business interests.

The general fact came to be that, in proportion to the distance they were carried, those able to pay the most paid the least. One without means had seldom any ground on which to demand free transportation, while with wealth he was likely to have many grounds on which he could make it for the interest of the railroad company to favour him, and he was sometimes favoured with free transportation not only for himself and his family but for business agents also, and even sometimes for his customers. The demand for free transportation was often in the nature of blackmail, and was yielded to unwillingly and through fear of damaging consequences from a refusal. But the evils were present as much when it was extorted as when it was freely given.

These were some of the evils that made interference by national legislation imperative. But there were others that were of no small importance. Rates when there was no competition were sometimes so high as to be oppressive, and when competition existed by lines upon which the public confidently relied to protect them against such a wrong, a consolidation was effected and the high rates perpetuated by that means. In some cases the roads, created as conveniences in transportation, were so managed in respect to business passing or destined to pass over other roads that they constituted hindrances instead of helps, to the great annoyance of travel and to the serious loss of those who intrusted their property to them. Then, their rates were changed at pleasure and without public notification; their dealings to a large extent were kept from the public eye, the obligation of publicity not being recognised; and the public were therefore without the means of judging whether their charges for railroad service were reasonable and just or the contrary.

But the publications actually made only increased the difficulties. Railroad rates, difficult enough to be understood by the uninitiated when printed plainly in one general tariff with classification annexed, became mysterious enigmas when several different tariffs were printed, as was the case in some sections; some relating to competitive points and others to what were called local points, and each referring to voluminous and, perhaps, different classifications, which were printed but not posted, and which were observed or disregarded at will in the rates as published. Such unsystematic and misleading publications naturally led to many overcharges and controversies, and naturally invited and favoured special rates and injurious preferences.

These were serious evils; and they not only to some extent blunted the sense of right and wrong among the people and tended to fix an impression upon the public mind that unfair advantages in the competition of business were perfectly admissible when not criminal, but they built up or strengthened a class feeling and embittered the relations between those who for every reason of interest ought to be in harmony. It was high time that adequate power should be put forth to bring them to an end. Railroads are a public agency. The authority to construct them with extraordinary privileges in management and operation is an expression of sovereign power, only given from a consideration of great public benefits which might be expected to result therefrom. From every grant of such a privilege resulted a duty of protection and regulation, that the grant might not be abused and the public defrauded of the anticipated benefits.

The abuses of corporate authority to the injury of the public were not the only reasons operating upon the public mind to bring about the legislation now under consideration: some other things which in their direct effects were wrongs to stockholders only had their influence also, and this by no means a light one. The manner in which corporate stocks were manipulated for the benefit of managers and to the destruction of the interest of the owners was often a great scandal, resulting

sometimes in the bankruptcy and practical destruction of roads which, if properly managed, would have been not only profitable, but widely useful. This in its direct results might be a wrong to individuals only, but in its indirect influence it was a great public wrong also.

The most striking and obvious fact in such a case commonly is, that persons having control of railroads have in a very short time by means of the control amassed great fortunes. The natural conclusion which one draws who must judge from surface appearances is, that these fortunes are unfairly acquired at the expense of the public; that they represent excessive charges on railroad business or unfair employment of inside privileges, and furnish in themselves conclusive evidence that current rates are wrong and probably extortionate. An impression of this sort, when it happens to be wide of the fact, is for many reasons unfortunate. It creates or strengthens a prejudice against all railroad management—the honest as well as the dishonest—which affects the public view of all railroad questions; it renders it more difficult to deal with such questions calmly and dispassionately; it makes the public restive under the charges they are subjected to, even though they be moderate and necessary; it tends to strengthen a feeling among the unthinking that capital represents extortion. However careful, considerate, fair, and just the management of any particular road may be, and however closely it may confine itself to its legitimate business, it is impossible that it should wholly escape the ill effects of this prejudice, which are visited upon all roads because some conspicuous railroad managers have by their misconduct given in the public mind a character to all.

Evils of the class last mentioned were difficult of legislative correction, because they sprang from the over-confidence of stockholders in the officers chosen to manage their interest, and whose acts at the time they perhaps assented to. But, if capable of correction by any legislative authority, it was in general that of the States, not that of the nation. The States in the main conferred the corporate power, and it was for the States by their legislation to provide for the protection of the individual interests which were brought into existence by their permission. The National Government had to do with the commerce which these artificial entities of State creation might be concerned in. Nevertheless, the manifest misuse of corporate powers strengthened the demand for national legislation, and this very naturally, because the private gains resulting from corporate abuse were supposed to spring, to some extent at least, from excessive burdens imposed upon the commerce which the nation ought to regulate and protect.

For the purpose of correcting the evils above alluded to, so far as it was constitutionally competent for national legislation to do so, the Act to regulate commerce lays down certain rules to be observed by the carriers to which its provisions apply, which are intended to be and emphatically are rules of equity and equality, and which, if properly observed, ought to, and in time no doubt will, restore the management of the transportation business of the country to public confidence.

The Act to regulate Commerce.

The leading features of the Act are the following: All charges made for services by carriers subject to the Act must be reasonable and just. Every unjust and unreasonable charge is prohibited and declared to be unlawful. The direct or indirect charging, demanding, collecting, or receiving, for any service rendered, a greater or less compensation from any one or more persons than from any other for a like and contemporaneous service, is declared to be unjust discrimination, and is prohibited. The giving of any undue or unreasonable preference, as between persons or localities, or kinds of traffic, or the subjecting any one of them to undue or unreasonable prejudice or disadvantage, is declared to be unlawful. Reasonable, proper, and equal facilities for the interchange of traffic between lines, and for the receiving, forwarding, and delivering of passengers and property between connecting lines, is required, and discrimination in rates and charges as between connecting lines is forbidden. It is made unlawful to charge or receive any greater compensation in the aggregate for the transportation of passengers or 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 within the longer distance. Contracts, agreements, or combinations for the pooling of freights of different and competing railroads, or for dividing between them the aggregate or net earnings of such railroads or any portion thereof, are declared to be unlawful. All carriers subject to the law are required to print their tariffs for the transportation of persons and property, and to keep them for public inspection at every dépôt or station on their roads. An advance in rates is not to be made until after ten days' public notice, but a reduction in rates may be made to take effect at once, the notice of the same being immediately and publicly given. The rates publicly notified are to be the maximum as well as the minimum charges which can be collected or received for the services respectively for which they purport to be established. Copies of all tariffs are required to be filed with this Commission, which is also to be promptly notified of all changes that shall be made in the same. The joint tariffs of connecting roads are also required to be filed, and also copies of all contracts, agreements, or arrangements between carriers in relation to traffic affected by the Act. It is made unlawful for any carrier to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedules, 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.

These, shortly stated, are the important provisions of the Act which undertakes to prescribe the duties and obligations of the carriers which, by its passage, are brought under Federal control. Some important exceptions are made by the 22nd section, which provides: "That nothing in this Act shall apply to 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 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; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employés, 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 employés; and nothing in this Act contained shall in any way abridge or alter the remedies existing at common law or by statute, but the provisions of this Act are in addition to such remedies."

These provisions, it will be seen, are not intended to qualify, to any injurious extent, the general rules of fairness and equality which the Act has been so careful to prescribe, and the exceptions may all be said to be authorised on public considerations.

In the performance of its duties the Commission has had occasion to decide that the transportation of Indian supplies may be free or at reduced rates under this section (1, Inter-State Commerce Commission Reports, p. 15), as also may be that of the agents and material of the United States Fish Commission (*ibid.* p. 21). The question of what may be included under the exception made for charitable purposes has never come before the Commission in such form as to call for an expression of opinion. It will be noted that in terms it applies to property only, not to persons.

By the 11th section of the Act this Commission is created and established, and other sections prescribe its duties and powers. Those sections it will be necessary to consider somewhat at length further on.

The Commission was organized on the 31st March, 1887, and entered at once upon the discharge of its duties. The other provisions of the Act took effect on the 5th April, 1887. The demands upon its attention were immediate, and some of them of a very perplexing nature. It will be more convenient to take notice of these under specific heads in connection with the provisions of the Act under which they were severally presented for its action.

I.—The Carriers subject to its Jurisdiction.

These are indicated by general designation in the first section of the Act, and the provision on that subject has already been recited. By reference thereto it will be seen that it embraces the 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," in inter-State or international commerce. It does not embrace the carriers wholly by water, though they also may be engaged in the like commerce, and, as such, be rivals of the carriers which it undertakes to control. For the omission to include them many reasons may be suggested, but perhaps the most influential were that the evils of corporate management had not been so obvious in the case of carriers by water as in that of carriers by land; and, moreover, the rates of transportation by water were so extremely low that they were seldom complained of as a grievance, even when they were unequal and unjustly discriminating. In their competition with the carriers by land the carriers by water were sometimes at a disadvantage and compelled to accept lower rates, and this also had some influence in propitiating public favour, inasmuch as they appeared to operate as obstacles to monopoly and as checks upon extortion.

But some of the railroad practices which the Act undertakes to bring to an end have been common among carriers by water also, and if wrong in themselves might justly be forbidden in their case as well. The carriers by water discriminate between their customers on grounds not sanctioned by equity when interest seems to require it; they make rates at pleasure; they put up and put down rates suddenly without public notification; they make secret rebates to secure the business of large dealers; they charge less in some cases for a longer than for a shorter transportation over the same line in the same direction, the shorter being included in the longer distance.

It is not intended, however, by this enumeration to intimate an opinion that these things are common. The fact that there has been no general public complaint of them may be regarded as strong and, perhaps, conclusive evidence to the contrary. But as the statutory law now is they may be practised at pleasure; and the fact that they may be is very likely to lead rivals in business to suspect that they are so practised much oftener than is actually the case. The existence of such a suspicion, with plausible ground for it, naturally tempts to retaliatory measures of a similar nature, where escape from detection is thought likely, and the enforcement of the law as against those who are subject to it is made more troublesome and less certain by the fact that one class of competitors for business is restrained while the other is left at full liberty.

It may be worthy the careful attention of Congress whether the same rules of fairness and equality ought not to be applied to all carriers whose operations subject them to the Federal power; whether those by water as well as those by land ought not in particular to be required to publish their rates, to maintain them steadily, and to apply them impartially, and ought not to be forbidden to give secret rebates. Such rules prescribed and enforced would take away much of the present temptation on the part of carriers by land to violate or evade the law, and would, besides, be intrinsically just and right.

The question whether another class of carriers is within the contemplation of the Act is not so clear. We refer now to those who are engaged in the express business of the country. This business has an origin more recent than that of railroad transportation; it began in a very small way, but it has grown to immense proportions, and now constitutes a large and increasing share of the business done by rail. Of the carriers engaged in this business there are several classes. 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 provisions made for perpetuity. Some are corporations organized under State charters or general incorporation Acts. These have their several names as express companies, and, as such, they make bargains with the railroad companies for the transportations of their freight and their agents at a compensation agreed upon. This compensation is likely to be a definite share in the gross receipts from the freight traffic, and each of the several express companies has a territory of its own, so that each road carries the freight and the agents of one only. Some of the railroad companies, however, have undertaken to do the express business on their own lines through their own agencies. The Baltimore and Ohio Railroad Company did this for a time, and

then sold the business to one of the existing express companies. Some of the Western railroads combine for the purpose, and, for convenience, create a nominal corporation to do the business over their several lines and divide the net proceeds. In organization and general methods this corporation resembles some of the fast freight lines of the country, the railroad companies being the nominal corporators, and the business done being in every sense railroad business, though, for convenience, carried on by the several companies through a common agency.

There is no recognised distinction between what shall be considered express freight and what not, except that which concerns the method of transportation. Express freight is commonly but not always taken in cars attached to passenger trains, and, however taken, it is expedited beyond what is possible with freight in general, and any freight is taken express for which the owner consents to pay the charges. These charges are much greater than are made upon ordinary freight of like or similar kind.

Immediately after the organization of the Commission the question was presented whether the express companies of the country were under obligation to file their tariffs in its office. If they came within the enumeration of carriers in the 1st section of the Act the obligation was upon them, but not if that enumeration failed to include them. The Commission deemed it prudent to rule, until satisfied to the contrary, that they were included, inasmuch as that ruling could harm no one and was in the direction of safety. The Canadian, the Northern Pacific, and the Dominion Express Companies acquiesced in this ruling and filed tariffs, but the companies, for the most part, objected, and it was deemed advisable to offer them an opportunity to present their views. This was accordingly done; able counsel appeared to argue the question, and it was very fully and carefully considered. Many arguments were urged on the part of the companies which are admitted to be forcible. The Act was examined in detail, and it was contended that, on a fair construction of the terms made use of, the express companies could not be embraced. The history of the legislation was also discussed; and it was urged that the public demand for legislative regulation of railroad traffic had been made upon grounds which did not apply to the express traffic. The express companies had not practised secret debates; they had not so frequently made the greater charges for the shorter hauls; they had not made unjust discriminations between persons or places. The argument *ab inconvenienti* was also pressed with great earnestness; it was said to be practically impossible for the express companies to print and publish their tariffs, so numerous are the points to which their business extends; and it was even said that so voluminous would they be that no public building at the national capital could contain them.

The Commission has felt the force of the considerations urged so far as they are drawn from the phraseology of the law, but the other arguments have not appeared to be so weighty. The Commission cannot agree that any serious difficulty would be found in the making and filing of the express tariffs. The companies have no difficulty now in putting into the hands of their agents a tariff which the agents can understand and work by, and which, at the same time, is neither great in bulk nor cumbrous in use. What the express agent can understand it is fair to assume other people can understand also, and it would impose no hardship upon the express company to require that it be kept where the public can inspect it at pleasure. The objection made to this publication is precisely the same that was made by some railroad companies to the publication of their tariffs, and the language employed is no more extravagant; and yet the railroad companies, when compliance has been undertaken, have found the difficulties dwindling into insignificance; and the several express companies which actually filed their tariffs did not, when forwarding them to the Commission, even suggest that any difficulty had been encountered in preparing them.

The arguments from the history of the Act have plausibility. It may be conceded that the evils at which the Act was aimed have not existed to any great extent in the express business. One reason—perhaps the principal reason—for this is that, as each of the several express companies has had a practical monopoly on the lines on which it operates, the inducement to secret rebates and to the unjust discrimination which springs from severe competition has been wanting. It has been easier, also, to make and maintain rates which are proportioned to distance. Water competition, which so seriously affects the ordinary freight traffic of railroads, would scarcely affect at all the traffic for which shippers are willing to pay high rates in order to have great speed. But the complaint of excessive charges upon express traffic 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 that the mischief against which the Act is aimed may reappear and be enacted with impunity.

It has already been said that no clear line of distinction 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 express business through a nominal corporation might hand over to this shadow of their corporate existence the dressed meat, or live-stock business, or the fruit transportation, or any other business in respect to which speed was specially important; and they might continue this process of paring off their proper functions as carriers until they should be little more than the owners of lines of road over which other organizations should be the carriers of freight, and on terms by themselves arbitrarily determined.

The Commission, after a hearing of all the arguments advanced by those who appeared for the express companies, is of opinion that the express business, as far as it is done by the railroad companies themselves, whether directly and by their managing officers, or indirectly and through nominal corporations created for the purpose, is within the Act, and that such companies are under obligation to see that the tariffs are filed, and that the rules of fairness and equality which the Act prescribes are observed. Whether the express companies which are independent of the railroads are within the contemplation of the Act is more doubtful.

The Commission is of opinion that the question is one which Congress ought to put beyond question by either expressly and by designation including the express companies or by excluding

them. The railroad companies that see fit to do their own express business ought not, either as respects principles or methods, to be subjected in the management of such business to any different control or regulation from that which the independent express companies of the country are required to obey. If the latter are not within the contemplation of the Act to regulate commerce all express business, by whomsoever carried on, should be excluded. Justice to the public as well as to that business demands that it be governed throughout the country by rules of general application, and which shall not be dependent on mere forms or on the will of those who happen to be in the control of the railroads, and therefore have the power to determine by what agencies this important portion of the business of the roads shall be conducted.

What is said of the express business is applicable also to the business of furnishing extra accommodations to passengers in sleeping- and parlour-cars. These accommodations are furnished in some cases by the railroad companies and in others by outside corporations, which are not supposed to be embraced by the terms of the law. Outside companies are also to some extent engaged in the transportation of live-stock in cars owned by themselves, but transported over the railroads under special agreements with the railroad companies which supply the motive power. As these last-named companies furnish better accommodations for live-stock, and transport them with less liability to injury and with less shrinkage than is done in the ordinary stock-car, it is not improbable that they, like the companies which furnish special accommodations for passengers, may in time build up a large business, in respect to which they will not be controlled by any existing legislation.

It is well known, also, that the transportation of mineral oil is already to a very large extent in tank cars owned by parties who are not carriers, subject to regulation under the Act to regulate commerce. A willingness to disregard the rules of equality and justice as between shippers, when it can be made for the interest of the carriers to do so, is as likely to make its appearance in the action of the managers of any one of these outside organizations as in that of the managers of the railroads, for the temptations will be the same, and the same class of persons will be bidding for special privileges and advantages which before the Act was passed prospered so unfairly upon railroad favours. The Act has not changed the nature or the grasping disposition of individuals; it has only interposed certain restraints which it is reasonable to assume will be evaded if the opportunity shall be presented.

These facts are noted for the purpose of placing the whole subject distinctly before the national Legislature. If it is 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 further designation of the agencies in transportation, which shall be controlled by such rules, would seem to be indispensable.

II.—The Long- and Short-Haul Clause of the Act.

Another question presenting itself immediately on the organization of the Commission was that respecting the proper construction of the 4th section of the Act, which, after providing "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," proceeds to say: "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 authorised 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."

The provision against charging more for the shorter than for the longer haul under the like circumstances and conditions over the same line and in the same direction, the shorter being included within the longer distance, is one of obvious justice and propriety. Indeed, unless one is familiar with the conditions of railroad traffic in sections of the country where the enactment of this provision is found to have its principal importance, he might not readily understand how it could be claimed that circumstances and conditions could be such as to justify the making of any exceptions to the general rule.

It is a part of the history of the Act that one House of Congress was disposed to make the rule of the 4th section imperative and absolute, and it is likely that in some sections of the country many railroad managers would very willingly have conformed to it, because, for the most part, they could have done so without loss, and with very little disturbance to general business. But in some other parts of the country the immediate enforcement of an ironclad rule would have worked changes so radical that many localities in their general interests, many great industries, as well as many railroads, would have found it impossible to conform without suffering very serious injury. In some cases, probably, the injury would have been over-balanced by a greater good; in others it would have been irremediable. To enforce it strictly would have been, in some of its consequences in particular cases, almost like establishing, as to vested interests, a new rule of property.

A study of the conditions under which railroad traffic in certain sections of the country has sprung up is necessary to an understanding of the difficulties which surround the subject. The territory bounded by the Ohio and the Potomac on the north and by the Mississippi on the west presented to the Commission an opportunity, and also an occasion, for such a study. The railroad business of that section has grown to be what it is in sharp competition with water-carriers, who not only have had the ocean at their service, but by means of navigable streams were able to penetrate the interior in all directions. The carriers by water were first in the field, and were having a very thriving business while railroads were coming into existence; but when the roads were built the competition between them and the water-craft soon became sharp and close, and at the chief competing points the question speedily came to be, not what the service in transportation was worth, or even what it would cost to the party performing it, but at what charge for its service the

one carrier or the other might obtain the business. In this competition the boat owners had great advantages: the capital invested in their business was much smaller; they were not restricted closely to one line, but could change from one to another, as the exigencies of business might require; the cost of operation was less; but the railroads had an advantage in greater speed, which at some times, and in respect to some freight, was controlling.

In this competition of boat and railroad the rates of transportation, which were directly controlled by it, soon reached a point to which the railroads could not possibly have reduced all their tariffs and still maintain a profitable existence. They did not attempt such a reduction, but, on the contrary, while reducing their rates at the points of water competition to any figures that should be necessary to enable them to obtain the freights, they kept them up at all other points to such figures as they deemed the service to be worth, or as they could obtain. It often happened, therefore, that the rates for transporting property over the whole length of a road to a terminus on a water highway would not exceed those for the transportation for half the distance only, to a way station not similarly favoured with competition. The seeming injustice was excused on the plea of necessity. The rates to the terminus, it was said, were fixed by the competition, and could not be advanced without abandoning the business to the boats. The greater rates to the local points were no more than was reasonable, and they were not, by reason of the low rates to the competitive point, made greater than they otherwise would have been. On the contrary, if the rates on the railroad were established on a mileage basis throughout, with no regard to special competitive forces at particular points, the effect in diminishing the volume of business would be so serious that local rates at non-competitive points would necessarily be advanced beyond what they are made when the competitive business can be taken also, even though the competitive business be taken at rates which leave little margin above the actual cost of movement. Such is the common argument advanced in support of the short-haul rates.

But the lower rates on the longer hauls have not been due altogether to water competition; railroad competition has been allowed to have a similar effect in reducing them. But as the railroad tariffs are commonly agreed upon between the parties making them, the necessity which controlled the water competition was not so apparent here, and to some extent the lower rates have been conceded to important towns in order to equalise advantages as between them and other towns which were their rivals, and to which low rates had been given under a pressure of necessity. But they were given, also, in many cases as a means of building up a long-haul traffic that could not possibly bear the local rates, and which, consequently, would not exist at all if rates were established on a mileage basis, or on any basis which, as between the long and short-haul traffic, undertook to preserve anything like relative equality.

It would be foreign to the purposes of this report to discuss at this time the question whether in this system of rate making the evils or the advantages were most numerous and important. Some of the evils are obvious, not the least of which is the impossibility of making it apparent to those who have not considered the subject in all its bearings that the greater charge for the shorter haul can in any case be just. The first impression necessarily is that it must be extortionate, and until that is removed it stands as an impeachment of the fairness and relative equity of railroad rates. But, on the other hand, it must be conceded that this method of making rates represents the best judgment of experts who have spent many years in solving the problems of railroad transportation; and its sudden termination, without allowing opportunity for business to adapt itself to the change, would, to some extent, check the prosperity of many important places, render unprofitable many thriving enterprises, and probably put an end to some long-haul traffic now usefully carried on between distant parts of the country. It is also quite clear that the more powerful corporations of the country, controlling the largest traffic and operating on the chief lines of trade through the most thickly settled districts, can conform to the statutory rule with much more ease and much less apparent danger of loss of income than can the weaker lines, whose business is comparatively light and perhaps admits of no dividends, and the pressure of whose fixed charges imposes a constant struggle to avoid bankruptcy.

If Congress intended this immediate change of system it was not for the Commission to inquire whether the evils of making it at once would or would not exceed the benefits. The law must stand as the conclusive evidence of its own wisdom, and the authorities charged with enforcing it were not to question but to obey it. With the Commission, therefore, the first question was one of interpretation; and when it was clearly perceived what Congress intended, the line of duty was plain. The intent should be given effect, not only because it was enacted, but because in the enactment it was determined by the proper authority that the public good required it.

In coming to a consideration of the 4th section of the Act it was immediately perceived that many different views were taken of it, some of which were settled convictions, which were the result of thought and reflection, while others were mere off-hand impressions and deserving of little attention. By some persons it was assumed that the Commission had by the Act been given a general authority to suspend altogether the operation of the 4th section, and upon this utterly baseless and unreasonable assumption the Commission was plied with arguments in support of a general suspension. Other views went to the opposite extreme, and, while holding that the general rule must be enforced in all cases until the Commission had sanctioned exceptions, would restrict the power to make exceptions to individual shipments, made under circumstances and conditions which were special and peculiar. Such a restriction would obviously render the authority to make exceptions of no practical utility.

But among those who had given the subject thought and attention, and whose views for that reason were deserving of consideration, a most important difference of opinion was found to exist regarding the stage at which the intervention of the Commission under the 4th section was to be invoked. By some persons it was believed that a rule was laid down by that section which could not lawfully be departed from until the Commission, on investigation, had determined that the circumstances and conditions of the longer and of the shorter transportation were so dissimilar as

to justify making the greater charge for that which was the shorter, and had prescribed the extent of the permissible exception. By others the fact was emphasized that the charging or receiving "any greater compensation in the aggregate for the transportation of passengers, or of the like kind of property" "for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance," was only declared by the section to be unlawful when both were "under substantially similar circumstances and conditions;" and they confidently affirmed that the carrier could require no order of relief from the Commission when the circumstances and conditions were in fact dissimilar, since the greater charge was not then unlawful and not forbidden. This view would leave the carrier at liberty to act on its own judgment of the conditions and circumstances in any case, subject to responsibility to the law if the greater charge were made for the shorter transportation when the circumstances and conditions were not in fact dissimilar, unless authorised to make such greater charge by the relieving order of the Commission.

When the Commission was called upon, in the performance of its duty, to give an interpretation to this section it was found on comparison of views that the interpretation last above mentioned seemed to all its members to be the one best warranted by the phraseology of the statute. Moreover, when it was considered how vast was the railroad mileage of the country, how numerous were the cases in different sections in which, for divers reasons, the general rule prescribed by the 4th section was then departed from, this interpretation seemed the only one which, in administering the law, would be found practical or workable. Possibly the Commission might therefore have been justified in making immediate announcement of this opinion. It was not, however, believed to be wise to make such announcement at that time. The construction of a new statute having great remedial purposes in view ought not to be hastily made by the tribunal called upon to act under it. When a question of construction comes before the Courts parties interested in taking different views are heard by counsel, and if the case is important the Court is likely to have all the considerations which support the several views presented, and will thus be fully informed when it comes to make decision. The Commission had not had the benefit of discussion by counsel of this most important provision. To delay before taking any action whatever until, in the ordinary course of affairs, a case should arise where the proper construction of the section should be the point in controversy might be exceedingly injurious to many interests. Under these circumstances it seemed to the Commission that the prudent course, and the course most consistent with the general purposes the Act was intended to accomplish, was to take such action as for the time being would disturb as little as possible the general business of the country, and at the same time give ample opportunity for full discussion and consideration of this most important question.

The Act to regulate commerce was not passed to injure any interests, but to conserve and protect. It had for its object to regulate a vast business according to the requirements of justice. Its intervention was supposed to be called for by the existence of numerous evils, and the Commission was created to aid in bringing about great and salutary measures of improvement. The business is one that concerns the citizen intimately in all the relations of life, and sudden changes in it, though in the direction of improvement, might, in their immediate consequences, be more harmful than beneficial. It was much more important to move safely and steadily in the direction of reform than to move hastily, regardless of consequences, and perhaps be compelled to retrace important steps after great and, possibly, irremediable mischief had been done. The Act was not passed for a day or for a year; it had permanent benefits in view, and to accomplish these with the least possible disturbance to the immense interests involved seemed an obvious dictate of duty.

Acting upon these views, and in order to give opportunity for full discussion, the Commission, after having made sufficient investigation into the facts of each case to satisfy itself that a *prima facie* case for its intervention existed, made orders for relief under the 4th section, where such relief was believed to be most imperative. These orders were temporary in their terms, and in making them it was announced that sessions would be held in the section of the country to which a majority of these orders related, at which all parties interested in the questions they presented were at liberty to appear and present their views. Whatever view should ultimately be taken of the proper interpretation of the 4th section, this course could result in no serious injury. If the first impression of the Commission should be held to be correct the orders would only sanction what might have been done without them, but if the opposite view should be taken they would only postpone for a time the strict enforcement of the 4th section, and give opportunity during that period for the business of the country to adapt itself as far as possible to the new requirement. The considerations which were influential in determining when these temporary orders should be granted were not more the relief of the carriers from danger of loss than the prevention of threatened disturbance of business interests in certain localities, which, by its reflex action, seemed liable to embarrass seriously the entire country. When no great or special urgency was shown, connecting threatened injury to important interests with the literal enforcement of the section, or when the only showing made was of the loss of a certain line of traffic to one carrier, which nevertheless was adequately served by being given another direction, temporary orders were not made. Fifty-eight petitions were filed for relief from the operation of the 4th section, some of which were joint; ninety-five railroad companies were petitioners; temporary orders were made in twenty cases, by the terms of which forty-three carriers were, for a limited period and pending full investigation, relieved from the operation of the section as to certain points enumerated in each order, where the charging of less for the longer distance was permitted to be continued for the time being. The opinion of the Commission upon the applications for relief is herewith given in Appendix A. In the same Appendix is given a list of the carriers petitioning, and a statement of the action of the Commission on each case.

In finally announcing its conclusion, as it did on the petition of the Louisville and Nashville Railroad Company for relief, the Commission called the attention of the several carriers which had obtained orders to the desirability of revising their tariffs, and bringing them more nearly into conformity with the general rule of the 4th section. The opinion was expressed that this revision was

practicable without serious injury to the interests involved. This suggestion was acted upon by several of the petitioning carriers, and by a still greater number who had not petitioned for relief; and the Commission takes pleasure now in being able to report that in large sections of the country obedience to the general rule of the 4th section is without important exception. While before the passage of the Act few lines operated as competitors for long-haul traffic could be found upon which the practice of the lesser charge for the longer haul did not exist, on a very large proportion of them all it has now come to an end. This has, in some instances, been accomplished by raising the rates on through traffic, but in many cases where this was done the practical experiment resulted finally in a general reduction throughout the line. In other instances the lower rates on long-haul traffic were retained, and the local rates reduced to the limit thus established. In still other instances a compromise course was pursued, the previous low rates at certain so-called competitive points being raised somewhat, and the local rates at intermediate points reduced sufficiently to be brought within the statutory rule. This last course was pursued upon some of the leading roads in the Southern States as to points to which it was in their power to control the rates made. The process has been continually going on, and is still in progress. Tariffs are from time to time filed with the Commission showing a reconstruction of the rates in the direction of the rule laid down in the 4th section. The carriers making them sometimes protest that the rates are not voluntarily made, but only because the law so requires, and that they will involve large loss of revenue. The apprehension of loss in cases when the local and non-competitive rates are adjusted to the through rates, is, in some cases, supported by strong probabilities.

The transcontinental roads have not conformed to the general rule of the 4th section. By the managers of those roads it is contended that, in view of the competition which they must meet, not only of ocean vessels but of the Canadian railways, it will be absolutely impossible for them to comply with the strict rule of the 4th section without surrendering a very large portion of their through business, and that such surrender will be equally ruinous to their own interest and to many other large interests on the Pacific coast. How far this contention is just the Commission has, as yet, neither had the occasion nor found the opportunity for judging; but cases now pending in which the rates to interior points are complained of will soon receive attention, and the general question will probably, to some extent, be found involved. Neither is it the case that the roads in the States south of the Ohio have come into general conformity with the rule of the 4th section. Some of them have greatly modified their tariffs in that direction; some profess compliance; while some insist that compliance is not possible without ruin. Of these the case of the Louisville and Nashville Railroad Company may be taken as representative. In pending proceedings against that company for a violation of the 4th section it is frankly avowed by the company that its method of making rates has not been changed since the Act was passed, and at the same time it is insisted that any considerable change is impossible. The local rates cannot be reduced, it is said, because they are as low now as can be afforded, unless the competitive rates are raised, and to raise the competitive rates would be to abandon the business, which would then go to other carriers. It is further insisted for the company that while it gives, as it is compelled to do, very low rates to competing points, the intermediate stations participate in the benefits, because their rates never exceed the rates to the competitive points with the local rates thence to the intermediate stations added, and therefore every reduction to the competitive point causes a like reduction to the intermediate point also. This, as has been said, is the contention which the company makes in pending cases, and in support of which much evidence has been put in.

Some of the cases in which the strict rule of the 4th section is not applied are cases in which the longer hauls are made by circuitous routes, and the charges are necessarily made very low in order to meet the competition of more direct lines. The competition by these circuitous routes is in some cases hardly legitimate, and while it continues it constitutes a disturbing element in the general railroad business of the section. It is nevertheless thought by the local communities to be important, and there are probably some weak lines that would find it difficult to maintain a useful existence if not permitted to engage in competition for a business that would naturally fall to other lines. It happens in some of these cases that the lower charges on the longer hauls are only made lower because the points to which they are made are nearer by direct routes to the common market than the points to which the higher charges are made; and in such cases, to compel the circuitous route to conform to the rule of the 4th section strictly would be to compel an abandonment of some portion of its business. If the direct lines to the common market give to the nearer point the lower rate, the circuitous line has no alternative but to do the same, or to give up any attempt at competition.

The Commission has not, as yet, had occasion to decide a case which involved the construction of the 4th section in its application to traffic by these circuitous routes, the only case in which the question was made having been found, when the facts were examined, not to present it. (1, Inter-State Commerce Commission Reports, p. 199.) In some cases the lower rate on the longer line is a combination of rates over several lines; and it has been contended in some quarters that the 4th section only applies to cases in which the carrier who makes the greater charge for the shorter haul controls the line of longer haul, and makes the charge upon that also. The Commission does not take this view, but has decided in the case of the Vermont State Grange against the Boston and Lowell Railroad Company and others (1, Inter-State Commerce Commission Reports, p. 158) that where a carrier unites with one or more others in making a rate for long-haul traffic the rate so made constitutes a measure for the rates on short-haul traffic upon its own lines as much as it would if the long-haul transportation was on its line exclusively.

Where the practice of making the greater charge upon the shorter haul has long prevailed, the effect of its abrogation upon some portion of the business of the smaller cities of the country should perhaps be noted. Those cities have generally been in position to handle goods of all kinds, purchasing them at importing, manufacturing, and producing points, and reselling to retail dealers in the more immediate vicinity. The rates of freight have favoured these distributing points, and have

been so low that goods could be taken to them and sent forward after handling, or even returned for a certain distance over the same line, at a less aggregate rate of freight than the smaller places could obtain on the same goods from the same initial point. The ability to do this has developed very important business houses, and has largely controlled business methods in some sections of the country, but it no longer exists when the 4th section has been literally applied. The rate from the initial point to the given city—as, for example, from Baltimore or Philadelphia to Danville, Va.—added to the rate from that point to smaller points beyond, will then be more than the through-rates from the initial point to the latter places, and at the same time the rate to the given city will be as great or greater than the rates to the intermediate points on the same line; and the natural effect is to depress the wholesale business at all such points, and to throw the trade into the hands of metropolitan dealers. This fact is clearly seen in some of the cases now pending before the Commission. There are compensations for all such incidental injuries, and, the question involved being one of legislative policy, the Commission deems it sufficient to state the facts as they exist, without comment upon them.

The Commission, on the 20th October, caused a circular letter to be sent to the various carriers subject to the provisions of the Act throughout the United States, inquiring concerning the practical application of the 4th section in making the tariffs in use upon the lines of each respectively. This circular has been very generally answered, and the replies give full information in respect to the manner in which the provisions of the "long- and short-haul" clause are now being observed by the carriers. A very large number of railroad companies, lines, and systems answer unequivocally that there are no points upon their respective lines to or from which inter-State rates for passengers or freights are greater than to or from more distant points in the same direction over the same line. Others, slightly misapprehending the inquiry made, state that no such instances exist upon their own roads, but that joint tariffs are made by them to points upon other roads where variations from the rule exist. Still others state the points upon their lines which are exceptionally treated, and give the reasons which are claimed to justify them in the rates made. The statements and explanations of the different companies, so far as they are other than a simple negative reply, present the situation so clearly and directly from the standpoint of the carriers, and show so distinctly the various circumstances and conditions found in different parts of the country which are claimed by them to affect their traffic to an extent warranting a departure from the letter of the statutory rule, that the Commission has determined to lay the entire series before Congress as an appendix to this report. This appendix, which is marked "E," contains the following documents: 1. Circular letter to carriers of the 20th October, 1887. 2. List of carriers who reply that they do not make inter-State rates where a greater sum is charged for a shorter than for a longer distance in the same direction over the same line to or from any point on their respective roads. 3. Letters and documents from carriers which accepted the invitation of the Commission to make a statement concerning the circumstances and conditions of traffic which they claimed made their case exceptional.

Reviewing railway operations during the period which has elapsed since the Act took effect, the Commission feels warranted in saying that, while less has been done in the direction of bringing the freight tariffs into conformity with the general rule prescribed by the 4th section than some persons perhaps expected, there has, nevertheless, been a gratifying advance in that direction, and there is every reason to believe that this will continue. That substantial benefits will flow from making the rule as general as shall be found practicable cannot be doubted; and, even when the circumstances and conditions of long- and short-haul traffic are dissimilar, the desirability of avoiding any considerable disparity in the charges is great and obvious. So far, therefore, and so fast as business prudence and a proper regard to the interests of the communities which would be disturbed and injured by precipitate changes will admit of its being done, such railroad companies as do not now conform to the statutory rule should make their rates on these two classes of traffic more obviously just and more proportional than they have hitherto been or now are.

III.—The Filing and Publication of Tariffs.

In addition to the publication of the freight and passenger tariffs, each carrier is also required to file with the Commission copies of its schedules of rates, fares, and charges, and promptly to notify the Commission of all changes made in the same; also to file with the Commission copies of all contracts, agreements, or arrangements with other carriers in relation to any traffic affected by the provisions of the 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 the same are, in like manner, required to be filed, and the Commission is empowered to require their publication in so far as it shall be found practicable, and to determine the measure of publicity to be given to such rates, fares, and charges. With these provisions there has been general, but not in all cases satisfactory, compliance on the part of the carriers, and the Commission, acting under the discretionary authority conferred upon it to require the publication of joint tariffs, has made order for their publication in all cases where the joint tariff is competitive to that which is taken by a single line between the same points, the publication under such circumstances being important to the interests of fair and open competition.

But though the carriers make and file their tariffs as required by the Act, there is no general uniformity to the tariffs or to the classifications, either in form or in general method of preparation. This is unfortunate for several reasons, but especially because the public, who have to deal with many carriers, are likely to be confused between the different methods of giving information, and, possibly, to be misled in some cases. The difficulty of making use of them for the purposes of the Commission is also greatly enhanced by the want of uniformity, and the Commission would be very glad to correct it if that were possible. The force of assistants which the appropriation made by the Act enabled the Commission to engage is so small that any steps in this direction have up to this time been quite out of the question. Some idea of the labour devolved upon this

clerical force may be formed when it is known that as near as can now be estimated 110,000 books, papers, and documents, showing rates, fares, and charges for transportation, and contracts, agreements, or arrangements between carriers in relation to inter-State traffic, have been filed in the office of the Commission, all of which required appropriate classification and systematic arrangement. It has been quite impossible to do more with these than to acknowledge the receipt, classify, and index them, and put them in order for reference. The organization of a general system upon which they might most usefully be made has not been attempted, nor even any systematic investigation of their contents, for the purpose of observing to what extent the provisions of the Act to regulate commerce is complied with in their preparation. This latter duty seems to be clearly contemplated by the Act. The Commission has felt it to be its duty not to exceed in its expenditures the appropriation made, unless compelled by a necessity that should be plainly imperative; and steps, however desirable, that required, to give them effect, more clerical force than the appropriation would enable it to secure have therefore been postponed. Should it be within the power of the Commission at any time hereafter to deal with the subject effectively, it will endeavour to do so.

It is within the knowledge of the Commission that some carriers have been advised by their counsel that the prohibition in the Act against an increase of rates, except on ten days' notification, does not apply to joint rates. The Commission does not admit this advice to be sound; but in case the Act should be amended, it is believed the prohibition should, in clear terms, be made to extend to joint rates.

IV.—General Supervision of the Carriers subject to the Act.

It is provided in the 12th section of the Act, "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 for the purposes of this Act the Commission shall have power to require the attendance and testimony of witnesses, and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end 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." This is a very important provision, and the Commission will no doubt have frequent occasion to take action under it. It will not hesitate to do so in any case in which a mischief of public importance is thought to exist, and which is not likely to be brought to its attention on complaint of a private prosecutor. There is every reason to believe, however, that some of the most serious evils which were notorious in the railway service before the passage of the Act, and were in the legislative mind as reasons for its enactment, have now almost ceased to exist. One of these was the giving of special and secret rebates. These were exceedingly common before the Act, and constituted one of the readiest means of making unjust discrimination. No provision in the Act to regulate commerce is more important than that which forbids them. But among all the complaints made to the Commission not one has charged a specific act in violation of this provision, and where a disregard of it has been suggested it has been by way of formal charge, and as an expression of suspicion only. In the litigated cases which have come before the Commission, involving an examination into railroad practices at important centres, there has been entire agreement in the proofs that special rates to individuals and secret rebates were no longer made; a single exceptional instance only has come out in the proofs. Their condemnation by the law, and the provision made for their detection and punishment, have brought about this result. Further evidence in the same direction is furnished by the complaints of those who formerly had them that the law injuriously affects their business; but these complaints, which are aimed at the justice and equity of the law, the public may bear with equanimity, satisfied that in this particular at least substantial benefit has come from its enactment.

Complaints of unjust discrimination and the giving of undue and unreasonable preferences by the open rates are still frequent, and it is not to be denied that in the existing tariffs there are many rates which, as compared with others made by the same carriers, seem to be unfair and oppressive. But even as regards this species of injustice the good effects of the law are manifest. For whereas formerly the carriers made discriminations at pleasure, and gave preferences for which their own interest or convenience was deemed sufficient reason, the discriminations or preferences which are now complained of are such as the carriers understand they may be called upon to defend; and they are aware that the defence, to be successful, must be based on grounds of substantial justice, or at least on grounds not palpably untenable. This necessity for defending the discriminations made may be expected to reduce very considerably their number, and has already done much toward bringing about more just proportions in the classification and rating of property transported.

In the performance of its duty of supervision, the Commission has found it necessary to conduct a very extended and voluminous correspondence, which could not be presented in this place even in abstracts. A few letters from the Commission which laid down rules, or were of more than individual importance, are, however, given in an appendix hereto marked C. In connection with these letters, attention is called to the decision made by the Commission in the case of the Vermont State Grange *versus* the Boston and Lowell Railroad Company *et al.*, that the railroads who unite in fast-freight lines are responsible for their rates, and bound to see that the tariffs are properly filed.

V.—Complaints to and Adjudications by the Commission.

The 9th section of the Act provides 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 Com-

mission or may bring suitin his or her own behalf for the recovery of the damages" in a Federal Court.

The 13th section is, "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." The complaints made to the Commission have been very numerous, and in many cases the complainants have appeared to suppose that the Commission could interpose and correct at once an alleged evil on an *ex parte* statement of its existence. In other cases the statement of facts has been so defective that no opinion could be formed whether or not a real grievance existed. In no case has the Commission declined to give attention to a complaint because of its being informal or imperfectly presented, but when not in shape for its action, if the facts indicated a probable grievance, it has opened correspondence with the carrier with a view to redress. In the majority of cases the correspondence has resulted in satisfactory arrangement. Either the complainant has been found to be mistaken in his facts, or if wronged it has been through the carelessness or mistake of an agent which the carrier readily corrected, or if the facts presented a case of difference of opinion the parties, when brought into communication, succeeded in finding some basis for settlement without further intervention. This method of disposing of complaints is believed by the Commission to be more useful than any other, because its tendency is towards the establishment of desirable relations between the carriers and those who must be their customers; but when such a disposition of a case proves to be impracticable the complainant, if he desires it, is given the necessary directions for putting his complaint in form for an adjudication.

It is provided by the 14th section of the Act, "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 *primâ facie* evidence as to each and every fact found."

And by the 15th, "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 cognisable 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."

In none of the cases so far decided by the Commission has it felt called upon to order reparation to be made for past injury. Most of the cases were such as to present no case for reparation—they looked only to the establishment of a rule for the future. Some complaints, however, were evidently made in the expectation that the Commission might proceed to give damages upon a grievance that would support an action on the common law side of the Federal Court. The Commission, when such complaints have been brought to a hearing, has not discovered in the statute a purpose to confer upon it the general power to award damages in the cases of which it may take cognisance. The failure to provide in terms for a judgment and execution is strong negative testimony against such a purpose; but what is, perhaps, more conclusive is that the Act must be so construed as to harmonize with the seventh amendment to the Federal Constitution, which preserves the right of trial by jury in common law suits. It is believed to be unquestionable that parties cannot be deprived of this right through conferring authority to award reparation upon a tribunal that sits without a jury as assistant; and that, therefore, any determination that reparation should be made, in a case in which a suit at law might have been maintained, cannot be made absolutely binding and enforcible against the defendant in the form of a judgment; but that under the statute it will put the defendant to election, either to satisfy the complainant, in which case he will be relieved from further liability or penalty, or, on the other hand, to take the risks of proceed-

ings in a Federal Court to recover damages or penalty, or both, in which case the finding of the Commission would be *prima facie* evidence of the facts recited in it.

Abstracts of the decisions made by the Commission in the cases litigated before it, and which up to this time it has been enabled to decide, are given in an appendix hereto, marked B. A brief statement is also made of the proceedings in all the cases begun by formal complaint, whether already disposed of or still pending. In every case in which the Commission made an order against the carrier complained of, the carrier has filed notice of its compliance. In the course of the hearings before the Commission, a great body of evidence has been taken, which will remain on file in the office for reference or for any future use for which there may be occasion.

VI.—Proceedings before the Commission.

It has been deemed exceedingly desirable that proceedings before the Commission on complaints against carriers should be made as informal as should be consistent with order and regularity, and that dilatory action of every nature should be discouraged. The rules of procedure, therefore, which were early adopted and put in force made no other requirement for a complaint than that it should be in the form of a verified petition and set forth the facts which constitute the grievance complained of. When such a statement has appeared, however informally made, the petition has been accepted, and an answer called for. Demurrers or motions to dismiss have not been favoured, unless the case was such that the whole merits would thereby be presented; but the defendant has been expected to disclose its defence by answer, so that one hearing may be sufficient for the final disposition of the case. By this method of procedure technicalities are discarded, the complaints and the answers to them are treated as presenting business controversies which the parties, if they elect so to do, can manage for themselves. This they may do without being placed at disadvantage by the want of legal learning, unless the case is such as to depend rather upon the law than upon disputed questions of fact, which many of them do not. When parties have managed their own cases the taking of testimony has been somewhat informal also, and the Commission has given its aid in the examination of the witnesses produced, in order that the whole truth bearing on the matter in controversy might, as far as possible, be brought out and made plain. It is a pleasure to note that in this informal mode of procedure the parties have, in general, most heartily co-operated, and that they have been very liberal in agreeing upon the facts when it was practicable to do so, thereby materially shortening the hearings and making them assume more the form of amicable contentions.

A copy of the rules of procedure adopted by the Commission under the 17th section of the Act is hereto appended, marked D.

VII.—Expense of Hearings.

The Act provides for compulsory process to bring witnesses before the Commission, and that when summoned they shall be paid for their attendance. It requires the principal office of the Commission to be at the national capital, and apparently contemplates that its sittings shall in general be there held. It provides, however, in the 19th section that, "Whenever the convenience of the public or of 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."

The Commission understands that witnesses produced by parties to controversies are to be paid by the parties producing them. This, in some cases where they must come long distances, is a great burden, especially in view of the fact that the Commission is not given authority to tax costs or even to impose the costs of the hearing upon the defeated party; and the Commission has endeavoured to obviate it, first by inducing the parties as far as possible to stipulate the facts, and next by providing for the taking of the testimony by deposition, after the manner in which it is taken in the Federal Courts. Where, however, a great number of witnesses are to be examined it has been deemed advisable to hold the sessions near where the transactions which are to be inquired into have taken place, not only because this course is least expensive to the parties, but because, in that way, the facts are more likely to be completely brought out. In some cases this course is almost a necessity. The nature of the questions involved is such that they concern large sections of the country quite as much as they do the parties complainant and defendant, and the case ought to be so conducted that any citizen whose interests may be affected can make his views known. A complainant is often only a representative of many interests or of a considerable district of country, but he may be a self-chosen representative, and those for whom a decision of his case will constitute a precedent ought not to be concluded without a hearing. On the other hand, a railroad company may be rather a nominal than a real defendant; the rate, the classification, or the practice complained of may concern some class of its customers who approve of and defend it more that it does the railroad company itself, and the company might be entirely willing to make the change demanded but for the fact that its doing so would bring forward a new class of complainants. Where thus the real controversy is between different interests or different classes of the carrier's customers the propriety of giving to both the real parties a hearing is obvious, but to make this the most useful and satisfactory it may be necessary to go for the purpose to the part of the country that is specially concerned in the controversy. There are some questions also which, from their nature, are such that they can be best investigated where the business they concern is or where the transactions have taken place out of which they arise. Impressed with this belief, the Commission has held sittings in several Southern States, and also in Vermont, Minnesota, and Illinois, and some of the cases now pending might, no doubt, best be heard at still more distant points; but the appropriation at the service of the Commission has not warranted incurring the necessary expenditures. It seems very certain, however, that the best results cannot be attained through sessions held altogether at the national capital.

VIII.—Annual Reports from Carriers.

The 20th section of the Act provides, "That the Commission is hereby authorised 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 equipment; the number of employés, and the salaries paid each class; the amounts expended for improvement 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 balance 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 purpose of enabling it 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."

In deciding upon the form and requisites of this report, so far as it was in the discretion of the Commission to do so, three points have been had especially in view: First, to make it as concise as possible consistent with the information to be furnished; second, to bring it as nearly as possible into conformity with the best forms now required in the reports called for by the State laws or State Commissions; third, to have the report made as late in the year as possible and still leave time for tabulating and condensing the information furnished in the annual report to be made by the Commission.. The date finally fixed upon as that to which the reports of carriers should relate is the 30th June, which is now the date prescribed for like reports in a number of the States; and it is hoped that without much delay uniformity may be brought about in the reports required under both Federal and State laws, so that all may relate to the same time and involve no different methods of book-keeping for their preparation. In deciding upon a form, the Commission has invited and been aided by suggestions from State Railroad Commissions, and also from auditors of railroad companies.

IX.—Classification of Passengers and Freight.

A number of the complaints made against railway companies have related to the classification of freight. Some of these have sprung from the fact that classifications are not alike in different sections of the country, and parties who have shipped freight under one classification into a section where a different classification prevails have found the charges against them not the same as they had reason to expect. The ground of others has been that the classification in its effect upon rates worked an unjust discrimination between shippers or between different classes of freights. It is greatly to be regretted that the same classification is not adopted by the carriers by rail in all sections of the country. The desirability of uniformity is so great that the suggestion is frequently heard that national legislation should provide for and compel it. If such legislation should be adopted it would be necessary to empower some tribunal to make the classification, and the difficulties which would attend the making would be very great. Relative rates would be involved in it, for classification is the foundation of all rate-making. It was very early in the history of railroads perceived that if these agencies of commerce were to accomplish the greatest practicable good the charges for the transportation of different articles of freight could not be apportioned among such articles by reference to the cost of transporting them severally, for this, if the apportionment of cost were possible, would restrict, within very narrow limits, the commerce in articles whose bulk or weight was large as compared with their value.

On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could never have grown to any considerable magnitude, and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added. The traffic would thus be precluded, because the charge for carriage would be greater that it could bear. On the other hand, the rates for the carriage of artices which within small bulk or weight concentrate great value would on that system of making them be absurdly low—low when compared to the value of the articles, and perhaps not less so when the comparison was with the value of the service in transporting them. It was, therefore, seen not to be unjust to apportion the whole of cost of service among all the articles transported upon a basis that should consider the relative value of the service more than the relative cost of carriage. Such method of apportionment would be the best for the country, because it would enlarge commerce and extend communication; it would be the best for the railroads, because it would build up a large business; and it would not be unjust to property owners, who would thus be made to pay in some proportion to benefit received. Such a system of rate-making would in principle approximate taxation, the value of the article carried being the most important element in determining what shall be paid upon it. Accordingly, and for convenience and certainty in imposing charges, freight is classified, that which comes in one class being charged a higher proportional rate than that which is placed in another. But other considerations besides value must also come in when classification is to be made. Some articles are perishable, some are easily broken, some involve other special risks in carriage, some are bulky, some specially difficult to handle, and so on. All these are considerations which may justly affect

rates, and therefore may be taken into account in classification. But still others have been found potent. Every section of the country has its peculiar products which it desires to market as widely as possible, and is not unwilling that classification should be made use of by the railroads, which serve it as a means of favouring and thus extending the trade in local productions—favouring them by giving them low classification and thus low rates, and discriminating against those of other sections through a classification which rated them more highly.

It has been in the power of every railroad to have a classification of its own, but the necessities of an interchange of business have brought about agreements, and the railroad associations have been given the authority to make classifications for all their members. Their labours in this direction have been extremely important and useful; they have been steadily reducing the number of different classifications in the country, and steadily approaching a condition of things in which there will be one only. But in these associations, when in session for the making of rates, each railroad official has, to some extent, had the district which was served by his road behind him; he has felt the pressure of the interests there, and contended for them as against the interests in classification represented by others, not only because it was desirable that the road should favour the policy its patrons favoured, but also because the same policy was likely to be beneficial to both. The result necessarily is that a classification made by a railroad association represents a series of compromises, to which not only the railroads are parties, but, in a certain sense, business interests and sections of country also; these in many cases being admitted by their representatives to the consultations upon a subject so vitally concerning their interests, and allowed to present their views. This contention of interests still continues to go on in the meetings and conferences, but with a steady tendency in the direction of one uniform classification, and there is reason to hope that, without much further delay, all classifications will be brought into harmony. If any other tribunal were to be given the authority to make classification it must, if it would exercise its power wisely, proceed in much the same way; it must act deliberately, give all interests an opportunity to be heard, take into account all the considerations which ought to bear upon it, cost of service, interest of sections, equity as between industries and between classes of persons, and so on indefinitely. Whether, therefore, the steady tendency in the direction of one uniform classification would be hastened by conferring the power to make one on a national commission is not entirely certain. The work, if taken up anew, would be one requiring much time for its proper performance; it would involve a careful consideration of the interests peculiar to different sections of the country, and a close study of the conditions of railroad service as they bear upon such interests. But these conditions change from month to month; the classification cannot be permanently the same, but must be subject to modification on the same grounds on which it was originally made. The appeals for modification would be as numerous as they would be perplexing, because of the diversity of reasons on which they would be grounded. Under the law as it now is the Commission has appellate powers to correct any unjust classification, and it will keep in view the desirability of general uniformity, and do what it properly can to bring about that result.

The classification of passengers has to some extent been a subject of complaint to the Commission. Some carriers, as a rule, have but one rate of passenger transportation, and but one class of passengers, except as they may be carriers of emigrants in considerable bodies, and they then have emigrant rates, which are lower than those given to other persons, and the emigrants are either given less desirable cars attached to the regular trains, or are sent on trains by themselves. Other carriers make first- and second-class rates by the same train, the difference in charge having some regard to difference in the carriages which are allotted to the classes respectively. In some sections coloured persons are required to take separate cars, though charged the same rates as others. The carriers making this requirement assume to give to coloured persons accommodations equal to those given to white people, and are required by law in some States to do so; but complaint is made that this is not always done. Then, on all roads of any considerable length parlour- and sleeping-cars are run, which, in most cases, are owned by outside corporations, and a special charge made by the owners for seats or berths in them. The palace- and sleeping-car corporations, like the express companies, as has already been said, do not understand that they come within the contemplation of the Act so as to be subject to its provisions, but the persons accommodated by them must also have tickets for passage from the railroad companies, and as to those it is not doubted that the same rules of uniformity and impartiality apply as in other cases.

Previous to the passage of the Act it was customary on many of the roads of the country to give reduced rates to the class of persons known as "commercial travellers;" but this was made illegal by the provisions in the Act against unjust discrimination (1, Inter-State Commerce Reports, p. 8). It was also common in some quarters to give special rates to land-lookers, explorers, or settlers, who were supposed to be looking for or establishing new homes in a section where their purchase, settlement, or improvement would benefit the carrier giving them; but this also is held to be now forbidden (1, Inter-State Commerce Reports, p. 208). The opinion of the Commission, as declared in these cases, is that, under the law, it is no longer competent for the carrier to discriminate among passengers enjoying the same accommodations by means of any special classification dependent upon occupation or other condition or circumstance of a personal nature, except as the law itself, by the 22nd section, has in terms authorised it.

X.—Voluntary Association of Railroad Managers.

Nearly every railroad in its origin has been independent of all others, and in the early history of such roads they were commonly provided for as local conveniences, with no prevision of the great highways of trade and communication which they have since become. It was in many cases thought to be important that a road should be kept as distinct in its business from all others as possible, and at their termini in some instances they were not allowed to have the same freight or passenger stations with other roads, lest the local draymen and hackmen should be deprived of a profitable employment.

When the great possibilities of railroad service came to be better understood these primitive notions of local benefits gave way before a more enlightened public sentiment, and the fact was recognised that the public interest would be best subserved by making the connection between the roads as close as possible, in order that the commerce between different sections and localities might go on steadily and uninterruptedly. The railroad companies perceived also that their interest lay in the same direction, and they not only entered into close business relations with each other, but in many cases formed consolidations. The tendency to consolidation excited public distrust, being looked upon as a device to avoid competition and to deprive the public of the benefits of having more than one line of transportation for the same traffic, which, in some cases, had been the chief inducement to the building of particular lines. Laws were therefore passed forbidding consolidation; but these were avoided by taking leases of roads, or by acquiring a controlling interest in the stock, and then entering into permanent running arrangements. But it sometimes happened that the managers of a road deemed it for its interest to work in complete independence, and, while making profit out of the local conveniences it supplied, it found means to add to these a further profit from the inconvenience it could cause to the business of other roads. It therefore discriminated between other roads; it hindered the business of one while it furnished all possible facilities to the business of another; and this it was enabled to do because it was not compellable by law to make joint running arrangements or joint tariffs for business with other roads. Such action was likely to incommode the public quite as much as it did the road which was discriminated against, but it seemed impossible to deal with it adequately by law. To make railroads of the greatest possible service to the country contract relations would be essential, because there would need to be joint tariffs, joint running arrangements, an interchange of cars, and a giving of credit to a large extent, some of which were obviously beyond the reach of compulsory legislation, and even if they were not, could be best settled and all the incidents and qualifications fixed by the voluntary action of the parties in control of the roads respectively. Agreement upon these and kindred matters became, therefere, a settled policy, and short independent lines of road seemed to lose their identity and to become parts of great trunk lines, and associations were formed which embraced all the managers of roads in a State or section of the country. To these associations were remitted many questions of common interest, including such as are above referred to. Classification was also confided to such associations, it being evident that differences in classification were serious obstacles to a harmonious and satisfactory interchange of traffic. But what perhaps more than anything else influenced the formation of such associations and the conferring upon them of large authority, was the liability, which was constantly imminent, that destructive wars of rates would spring up between competing roads, to the serious injury of the parties and the general disturbance of business. Accordingly, one of the chief functions of such associations has been the fixing of rates and the devising of means whereby their several members can be compelled or induced to observe the rates when fixed. And in devising these means the chief difficulty was encountered. Agreements upon rates were voluntary arrangements which could be departed from at pleasure, and if they had behind them no sanction, they were not likely to stand in the way of a war of rates when the provocation to one seemed sufficient. Accordingly, the scheme of pooling freights or the earnings from traffic was devised and put in force through the agency of these associations, as a means whereby steadiness in rates might be maintained. The scheme was one which was made use of in other countries and had been found of service to the roads. The pooling system was looked upon with distrust by the public, mainly because it seemed to be a scheme whereby competition between the roads could be obviated, and rates for railroad service put up or kept up to unreasonable figures. But if railroad managers supposed that by this scheme they were to stop competition among themselves, the result has not answered their expectations. The competition has still gone on; each road striving to obtain as large a share of the business as possible, and no agreement among them could altogether prevent a yielding to the pressure of shippers for lower rates.

In 1877, when the pooling system was put in force by the Trunk Line Association, the rates charged on the first, second, third, and fourth classes of freights from New York to Chicago were, respectively, 100, 75, 60, and 45 cents per 100lb. They are now 75, 65, 50, and 35 cents, but the classification as to many articles has in the meantime been reduced, so that the actual reduction is greater than these figures would indicate. Rates from Chicago to New York are also proportionately less. A similar result has been apparent elsewhere. The pooling system has done much to maintain steadiness in rates, but the managers have not been able by means of it to keep rates up to former standards. It has done something, however, to check a prevailing tendency to consolidation. The motives to consolidation are diminished by any contrivance which removes obstacles to the interchange of business and increases the facilities and conveniences for uninterrupted commercial intercourse.

The Act to regulate commerce, expressing in that particular the desire of Congress to preserve to the people the benefits of competition, contains the following provision: "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."

But, while thus prohibiting pooling, the Act undertakes to give by other provisions some of the securities which railway managers had hoped might be realised from that device. The 7th section provides, "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, 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."

And in the third it is declared that, "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 Act 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."

The 4th section of the Act has also important possibilities as a restraint upon reckless rate wars. The reductions, when such wars are in progress, have generally been made chiefly at competitive points a considerable distance apart; and when a reduction of rates at such points involves also a reduction to or from a great number of intermediate points, a resort to a cutting of rates that goes beyond the warrant of legitimate competition becomes unlikely in proportion, as it would be injurious to the party inaugurating it.

The pooling of freights and of railroad earnings, so far as the Commission has knowledge or information on the subject, came to an end when the Act took effect. But as pooling was only one of several purposes had in view in forming railroad associations, the leading associations have not been dissolved, but have been continued in existence for other objects. Among these objects are the making of regulations for uninterrupted and harmonious railroad communication and exchange of traffic within the territory embraced by their workings. Some regulations, in addition to those made by the law, are almost, if not altogether, indispensable. Thus, while the 7th section of the Act forbids the carriers preventing shipments from being continuous by the device of changing time-schedules, carriage in different cars, &c., it has not undertaken to provide for the making of such time-schedules as would facilitate the continuous shipment, or to prescribe rules for the loading and movement of cars for that purpose. However desirable this might have been if it were practicable to make rules which, while general in their nature, should be sufficiently definite for enforcement as laws, it was doubtless perceived by Congress that these and many other matters of detail, though they might be of high importance, could not be wisely and effectively dealt with by general legislation, but that such legislation must chiefly be restricted to provisions for regulation and to prevent abuse. Moreover, these matters of detail, to a considerable extent, involve the element of contract and also of credit, when one company becomes the agent for another in the sale of tickets and the collection of freight-moneys, and they then require the assenting minds of parties; and the number of parties whose minds are to be brought into accord being commonly very considerable, an association of officers or agents is made the means of bringing about the desired unity of action, and is also made a common arbiter, to prevent frequent and serious disturbances.

Classification also, as has been said, is not by the Act taken out of the hands of the carriers, though a certain power of supervision is vested in the Commission; and classification is not only best made by joint action, but if it were not so made, and the methods of the roads thereby brought into harmony, it would probably become indispensable, however undesirable it might otherwise be, for the law to undertake to provide for it. Moreover, when classification is made and put into effect, it becomes necessary to make provision for inspection or some sort of supervision of its application in order to prevent its being employed as a device for giving preferences as between shippers. A fraudulent classification, through connivance of the agent in making out deceptive shipping bills, has often been resorted to for this purpose; and, as the fraud affects the competing carriers as well as the shippers who are discriminated against by means of the cheat, the carriers and the public alike are interested in such a supervision of the work of all the roads as will be likely to detect the fraud. Self-interest on the part of the carriers will impel to this supervision, and it is most generally done through some common agency. If it shall be fairly done as between the carriers themselves it will tend to the protection of the public, and the benefits will be on the same line with those the Act undertakes to establish or provide for.

XI.—Reasonable Charges.

Of the duties devolved upon the Commission by the Act to regulate commerce none is more perplexing and difficult than that of passing upon complaints made of rates as being unreasonable. The question of the reasonableness of rates involves so many considerations, and is affected by so many circumstances and conditions which may at first blush seem foreign, that it is quite impossible to deal with it on purely mathematical principles, or on any principles whatever, without a consciousness that no conclusion which may be reached can by demonstration be shown to be absolutely correct. Some of the difficulties in the way have been indicated in what has been said on classification, and it has been shown that to take each class of freight by itself and measure the reasonableness of charges by reference to the cost of transporting that particular class, though it might seem abstractly just, would neither be practicable for the carriers nor consistent with the public interest.

The public interest is best served when the rates are so apportioned as to encourage the largest practicable exchange of products between different sections of our country and with foreign countries, and this can only be done by making value an important consideration, and by placing upon the higher classes of freight some share of the burden that on a relatively equal apportionment, if service alone were considered, would fall upon those of less value. With this method of arranging tariffs little fault is found, and perhaps none at all by persons who consider the subject from the stand-point of public interest. Indeed, in the complaints thus far made to the Commission, little fault has been found with the principles on which tariffs for the transportation of freight are professedly arranged, while applications of those principles in particular cases have been complained of frequently and very earnestly.

Among the reasons most frequently operating to cause complaints of rates may be mentioned: The want of steadiness in rates. The disproportion between the charges for long and those for short distances. The great disparity between the charges made for transportation by roads differently circumstanced as to advantages. The extremely low rates which are compelled by competition in some cases, and which may make rates which are not unreasonable seem, on comparison, extremely high. Some others will be mentioned further on.

The want of steadiness in rates is commonly the fault of railroad managers, and may come from want of care in arranging their schedules, or from want of business foresight. But more often perhaps it grows out of disagreements between competing companies, which, when they become serious, may result in wars of rates between them. Wars of rates, when mutual injury is the chief purpose in view, as is sometimes the case, are not only mischievous in their immediate effects upon the parties to them, and upon the business community whose calculations and plans must for a time be disturbed, but they have a permanently injurious influence upon the railroad service because of their effect upon the public mind. When railroad companies determine for themselves what their rates shall be, it is not unnatural for the public to infer that the lowest rates charged at any time are not below what can be afforded at all times, and that when these are advanced, the company is reaching out for extortionate profits.

Now, there are few important lines in the country that have not, at some time in their history, been carrying freight at prices that if long continued would cause bankruptcy. But to a large proportion of the public the fact that the rates were accepted was proof that they were reasonable; and when advanced rates are complained of, the complainants, to demonstrate their unreasonableness, go back to the war prices, and cite them as conclusive proof of what the companies then charging them can afford to accept. Many popular complaints have their origin in the ideas regarding rates which these wars have engendered or fed, and the evils of the controversies do not end when the controversies are over, but may continue to disturb the relations of railroad companies with their patrons for many years afterwards. It may be truly said, also, that while railroad competition is to be protected, wars in railroad rates unrestrained by competitive principles are disturbers in every direction; if the community reaps a temporary advantage, it is one whose benefits are unequally distributed, and these are likely to be more than counterbalanced by the incidental unsettling of prices and interference with safe business calculations. The public authorities at the same time find that the task of regulation has been made more troublesome and difficult through the effect of war rates upon the public mind. These are consequences which result so inevitably from this species of warfare, that it would naturally be expected they would be kept constantly in mind by railroad managers. It is inevitable that the probability that any prescribed rates will be accepted by the public as just shall to some extent be affected by the fact that at some previous time they have been lower; perhaps considerably lower. The disproportion between the rate charged and the distance the property is carried is also important in its effect upon the minds of those who have not the time or perhaps the opportunity to study the subject and understand the reasons. There are grounds on which short-haul traffic may be charged more in proportion to the distance of transportation than long-haul traffic, some of which any one would readily understand and appreciate. Thus, it is seen that a considerable proportion of the carrier's service is the same whether the transportation is for the short or for the long distance; there must be the same loading and unloading, the same number of papers and entries on books, and so on. It is also seen that short-haul traffic is more often taken up and laid down in small quantities, and that for this reason the proportionate train service is much greater.

But when all these considerations are taken into account it will still appear that the long-haul traffic is given an advantage in rates which must be accounted for on grounds which are not so readily apparent. When the reasons are seen it may perhaps appear that there is in fact no wrong either to the shippers, who are apparently discriminated against, or to the general public.

It is not uncommon that in railroad freight-service the rates for the transportation of a particular kind of property, instead of being regularly progressive, shall be found arranged on a system of grouping, whereby the charges to all points within a defined territory shall be the same, though the distances will vary. Thus, at the present time the rates which are made from New York to Chicago are also made from New York to all points within a territory about Chicago, which includes some important towns in western Indiana and western Michigan. A question might be made by such towns whether grouping them with Chicago and making them pay the same rates is just; but the grouping system in general departs so little from the distance proportions that it is seldom the ground of complaint. There are cases, however, in which the distance proportions are purposely disregarded, and the doing so is justified by the managers on the negative ground that no one is wronged by it, and on the affirmative ground that the public is benefited. Cases of the sort may perhaps be found about all our large cities in which the railroads, as to some particular agricultural production needed for daily consumption in the city, have gradually extended the area from which they would receive and transport it at the lowest rates, until they may be found carrying the article at the same price for a hundred miles as for twenty. The low rate for the long distance has extended the area of production and benefited the city; and it is possible to conceive of cases in which the opposite course, of taking distance into the account in all rate making, would have kept production so far restricted in territory that producers near the city could never have been given as low rates as they receive now, when they are charged the same as their more distant competitors. Where such a case appears, the failure to measure the charges from regard to distance could not dogmatically be pronounced unjust, if it appeared that the railroad on the one side and the public on the other was benefited by the course actually adopted. But to increase the rates to the nearer producers, or even to keep them at a point which, though fair in the first place, has in the course of events become unreasonably high, in order to be able to put those at a distance on an equal footing in the market with such nearer producers, would be manifestly unjust. Not even on grounds of general public advantage do we understand that this

would be justified; for public benefits, when they are to be had at the cost of individual citizens, can not rightfully, nor we suppose lawfully, be assessed on one class of the people exclusively.

The great disparity in the charges of different roads for the transportation of the same kind of property is a prolific cause of complaint, sometimes justly founded and sometimes not. It is apparent sometimes, in the complaints which are made to the Commission, that the parties complaining hold the opinion, or at least have an impression, that the cost of transporting a particular species of property is substantially the same on all roads, and that subsequently the charges made by one road may prove, with tolerable certainty, that the higher charges made by another road are unjust. If the circumstances and conditions under which the traffic is carried by the two roads are substantially the same, the comparison would be legitimate and the argument from it of very great force. But when any such comparison is made, there are some circumstances having an important bearing upon rates which cannot be left out of view. Among these may be specified:

The length of haul.—A thousand tons of wheat can be loaded, transported a thousand miles, and delivered much more cheaply in proportion to distance than the same quantity can be loaded, transported a hundred miles, and delivered.

The quantity hauled.—A train load of coal can be transported more cheaply in proportion to quantity than a single car load, and a car load more cheaply than 100lb. So if the business is large, though it be the transportation of many kinds of property, it can be done relatively more cheaply than if it were small.

Return freights.—If lumber or other property in quantity is to be delivered at points where there will be return loads for the same cars, the delivery can be made much more cheaply than at points where return freights could not be expected.

Cost of moving trains.—This is very much less on some roads than on others by reason of lighter grades, cheaper fuel, less liability to obstruction from storms, and other causes which may disturb the track or delay trains.

These are among the causes which have an important bearing on relative rates. Beyond these the relative cost of roads must be allowed force also, if the owners are to be permitted to charge such rates as will make their investments remunerative. A complaint that rates are unreasonable may therefore require for its proper adjudication a careful inquiry not only into the circumstances and conditions of the road which makes them and of the traffic upon it, but also into those of other roads whose lower rates are supposed by comparison to show the injustice of the rates complained of.

But there are reasons which make it necessary, in adjudicating a case of alleged excessive rates, to consider rates on other lines or at other points, even when the complaining party makes no argument or draws no conclusion from them. Questions of rates on one line or at one point cannot be considered by themselves exclusively; a change in them may affect the rates in a considerable part of the country. Rates from the interior to New York necessarily have close relation to rates from the same points to Philadelphia, Boston, and Baltimore; rates from the sea-board to Toledo must have a similar relation to those from the sea-board to Detroit and other towns whose business men compete with those of Toledo in a common territory. Just rates are always relative; the Act itself provides for its being so when it forbids unjust discrimination as between localities. This prohibition may sometimes give to competition an effect upon rates beyond what it would have if the competitive forces alone were considered.

The Commission has had occasion, where a railroad company operated lines which run parallel to each other, to hold that if the company yielded to competitive forces so far as to give the towns on one line very low rates, the effect of such low rates upon the business of rival towns on the other line could not be ignored when their rates came under consideration. The natural influence of just competitive forces ought to be allowed as it would be as between two lines owned by different companies; and if the rates on one line were made very low because of competition, keeping the others high because the absence of competition enabled it to be done, might amount, within the meaning of the law, to unjust discrimination. Consolidation of rival lines, or the bringing them under the same management, cannot justify ignoring on one line the effect of competitive forces on the other; those forces always, when not unnaturally restrained, have an influence which reaches beyond the points whose business is controlled by it, and by secondary effect modifies prices to more distant points. This is well understood in the transportation business; the modifying effect of rates by lake and canal is perceived in the charges on all lines from the Mississippi to the sea-board; the rates to and from Duluth affect all charges in the north-west to and from Chicago. Any arrangement by consolidation or otherwise that should undertake to eliminate this influence would, if made on a large scale, be futile, because it would antagonise laws of trade and communication which would be too powerful for it, and on a small scale, affecting particular towns or small districts, it might be illegal from its manifest inequality or injustice.

Competition.

A study of the Act to regulate commerce has satisfied the members of the Commission that it was intended in its passage to preserve for the people the benefits of competition as between the several transportation lines of the country. If that shall be done the towns which have great natural advantages, or advantages acquired by large expenditures of money in establishing new thoroughfares of commerce, will have cheaper rates than can ordinarily be obtained by towns less favourably situated. New York with its noble harbour, its central location, the Hudson River, and the Erie Canal for interior water-ways, cannot be deprived of the benefits which spring from these great natural and acquired advantages without altogether eliminating competition as a force in transportation charges, and by an exercise of sovereign legislative power establishing arbitrary rates over the whole country.

It might possibly be within the competency of legislative power to prescribe for the several inter-State railroads equal mileage rates for the whole country; but this, if enforced, would put an

end to competition as a factor in making rates, and to a very large extent deprive the great business centres of the country of their several natural advantages, and also of the benefit of expenditures made by them in creating for themselves new channels of trade. It would, in fact, work a revolution in the business of the country, which, though it might be greatly beneficial in some directions, would be fearfully destructive in others. Congress has not by the existing legislation undertaken to inaugurate such a revolution; nothing in the Act to regulate commerce looks in that direction, unless it be the prohibition to charge more for a shorter than for a longer haul on the same line in the same direction, the shorter being included in the longer distance. But that prohibition is not absolute, and if it were, a strict enforcement would necessarily be at the expense of the competitive centres which have heretofore had the exceptionally low rates. The rates have made them centres for a valuable wholesale trade which they cannot expect to retain permanently in its entirety if they are deprived even in part of the advantages which they have hitherto had from the competition of rival carriers. The benefit which non-competitive points receive must be largely at the expense of the competitive. This is one of the inevitable consequences of perfecting the reform in the direction of basing rates upon distance more than has been the case hitherto. It is an incidental disadvantage to some which is supposed to be more than made up by the more equal apportionment of transportation benefits.

The competition by water is the most important factor in forcing rates to a low level at the points where the lines of land and water transportation intersect. Where there are good channels of water transportation the cost of moving traffic upon it is so very greatly below the cost of rail transportation that the railroads would scarcely be able to compete at all if rapidity of transit were not in most cases a matter of such importance that it enables the railroads to demand and obtain higher rates than are made by boat. But even when compensated for the extra speed, the rates which the roads can obtain in competition with the natural waterways must be extremely low and in some cases leave little if any margin for profit. The experience of the country has demonstrated that the artificial waterways can not be successful competitors with the railroads on equal terms. If the effort is to make the business upon them pay the cost of their maintenance and a fair return upon the capital invested in them, its futility must soon appear. The railroads long since deprived the great canals of Ohio, Indiana, and Illinois of nearly all their importance, and the Erie Canal is only maintained as a great channel of trade by the liberality of the State of New York in making its use free; the State thus taking upon itself a large share of the cost of transportation which would be assessed upon the property carried if the canal were owned and held for the profit of operation as the railroads are.

In their competitive struggles with each other towns cannot ignore the effect which the existence of natural waterways must have upon railroad tariffs; the railroad companies cannot ignore it, nor can the Commission ignore it if competition is still to exist and be allowed its force according to natural laws. Neither can the great free Erie Canal be ignored; it influences the rates to New York more than any other one cause, and indirectly, through its influence upon the rates to New York, it influences those to all other sea-board cities, and indeed to all that section of the country.

Other considerations bearing upon the reasonableness of rates might be mentioned, but enough has been said to show the difficulty of the task which the law has cast upon the Commission, and the impossibility that that task shall be so performed as to give satisfaction to all complaints. The question of rates, as has already been shown, is often quite as much a question between rival interests and localities as between the railroads and any one or more of such localities or interests; but while each strives to secure such rates as will most benefit itself, the Commission must look beyond the parties complaining and complained of, and make its decisions on a survey of the whole field, that either directly or indirectly will be effected by them.

XII.—General Observations.

The Act to regulate commerce has now been in operation nearly eight months. One immediate effect was to cause inconvenience in many quarters, and even yet the business of some parts of the country is not fully adjusted to it. Some carriers also are not as yet in their operations conforming in all respects to its spirit and purpose. Nevertheless the Commission feels justified in saying that the operation of the Act has in general been beneficial. In some particulars, as we understand has also been the case with similar statutes in some of the States, it has operated directly to increase railroad earnings, especially in the cutting off of free passes on inter-State passenger traffic, and in putting an end to rebates, drawbacks, and special rates upon freight business. The results of the law in these respects are also eminently satisfactory to the general public, certainly to all who had not been wont to profit by special or personal advantages. In connection with the abolition of the pass system, there has been some reduction in passenger fares, especially in the charge made for mileage tickets in the north-west, the section of the country where they are perhaps most employed.

Freight traffic for the year has been exceptionally large in volume, and is believed to have been in no small degree stimulated by a growing confidence that the days of rebates and special rates were ended, and that open rates on an equal basis were now offered to all comers. The reflex action of this development of confidence among business men has been highly favourable to the roads.

In some localities the passage of the Act was made the occasion on the part of dissatisfied and short-sighted railroad managers for new exactions, through a direct raising of rates, by change in classification and otherwise. The manifestation of the spirit which induced such action is now but seldom observed, and the wrongs resulting from it have in general been corrected. The effect of the operation of the fourth section has been specially described above, and the Commission repeats in this place its opinion that, however serious may have been the results in some cases, the general effect has been beneficial. The changes in classification made since the Act took effect have been

in the direction of greater uniformity, and have also in general, it is believed, been concessions to business interests.

The tendency of rates has been downward, and they have seldom been permanently advanced except when excessive competition had reduced them to points at which they could not well be maintained. No destructive rate wars have occurred, but increased stability in rates has tended in the direction of stability in general business. There is still, however, great mischief resulting from frequent changes in freight rates on the part of some companies; changes that in some cases it is difficult to suggest excuse for.

The general results of the law have been in important ways favourable to both the roads and the public; while the comparatively few complaints that have been heard of its results are either made with imperfect knowledge of the facts, or spring from the remembrance of practices which the law was deliberately framed to put an end to.

XIII.—Amendments of the Law.

The Commission has not seen occasion for recommending any very considerable changes in the Act under which its work is performed. It has seemed to its members that the law for the regulation of inter-State commerce should be permitted to have a growth, and that it would most surely as well as most safely attain a high degree of efficiency and usefulness in that way. The general features of the Act are grounded in principles that will stand the test of time and experience, and only time and experience can determine whether all the provisions made for their enforcement are safe, sound, and workable. When they prove not to be, experience will be a safe guide in legislation to perfect them.

Incidentally in this report some need of amendment has been pointed out. Especially ought the law, as we think, to indicate in plain terms whether the express business and all other transportation by the carriers named in the Act shall be governed by its provisions. The provision against the sudden raising of rates ought to be clearly made applicable to joint rates as well as to others. The Commission ought also to have the authority and the means to bring about something like uniformity in the method of publishing rates, which is now in great confusion, and to carefully examine, collect, and supervise the schedules, contracts, &c., required by the law to be filed, as well as properly to handle the mass of statistical information called for by the 20th section. For all these purposes, as well as for others imperfectly provided for, a considerable addition to the force employed with the Commission will be indispensable. Other matters, and particularly whether transportation by water shall be made subject to the Act, are submitted to the wisdom of Congress without recommendation.

All which is respectfully submitted.

Thomas M. Cooley, Aldace F. Walker,
William R. Morrison, Walter L. Bragg,
Augustus Schoonmaker,
Inter-State Commerce Commissioners.

Hon. Lucius Q. C. Lamar, Secretary of the Interior.

[*Approximate Cost of Paper.*—Preparation, nil; printing 1,525 copies), £19 11s.]

By authority: G. Didsbury, Government Printer, Wellington.—1888.