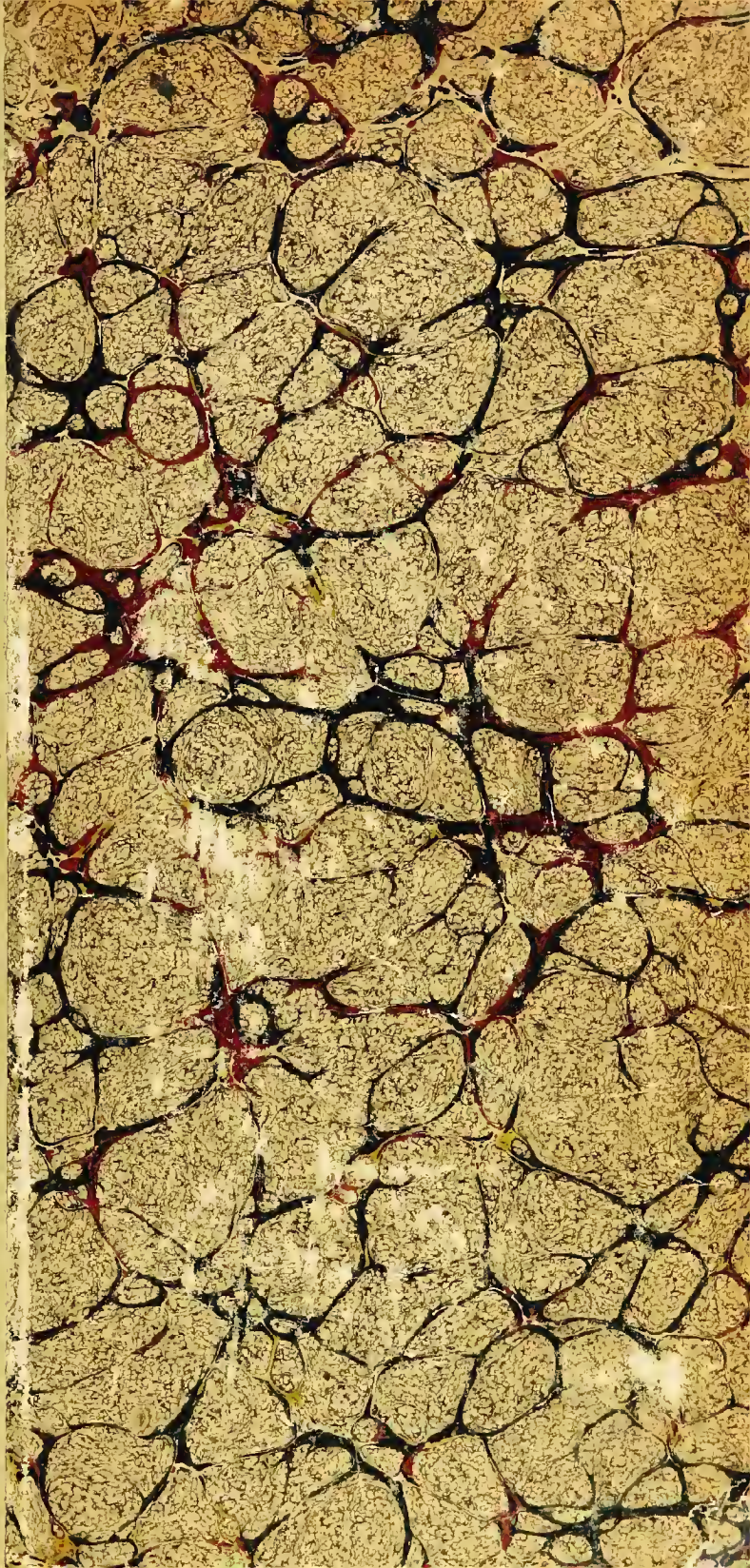

THE WORK

OF THE

Interstate Commerce Commission

By H. T. NEWCOMB,

Of the Bar of the District of Columbia.
Author of "Railway Economics," "The Postal Deficit,"
"Some Consequences of the Trust Movement," "A Study in
Municipal Socialism," "Some Recent Phases of the Labor Problem," etc., etc.

With which have been reprinted certain editorial and other articles throwing light upon the proposed amendment of the Interstate Commerce law.

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CONTENTS.

The Work of the Interstate Commerce Commission.

By H. T. Newcomb.

From its creation until October 9, 1904, the Interstate Commerce Commission rendered two hundred and ninety-seven formal decisions, not including in the number a few early memoranda in which it declined to consider abstract questions, refused to consider applications for the suspension of the general rule of the Fourth section of the Act to regulate commerce, applications for rehearings, etc. In several instances, two or more complaints were heard and decided together, making the total number of cases decided three hundred and fifty-nine.

In the following tabulations, one case, instituted on the Commission's own motion, in which the question determined in the decision was whether the business of express companies is subject to the Interstate Commerce law, has been excluded and so also have been five applications of railway companies for the suspension of the general rule of the Fourth section, with regard to some portion of their business.

The following table shows the number of cases decided, classified according to the character of the complainants and of the defendants:

Complainants.	Defendants.			
	A single railway company.	Two or more railways forming a single line.	Two or more competing railways or competing lines.	Total.
The Congress	..	..	2	2
The Commission	12	..	15	27
State railroad commissions	2	1	10	13
Cities	1	..	7	8
National or interstate associations of shippers	1	1	3	5
State associations of shippers	2	2	7	11
County associations of shippers	..	..	1	1
Commercial organizations representing single cities or towns	9	13	35	57
Commercial organizations representing two or more cities or towns	2	3	3	8
Single individuals, firms, or corporations	83	79	35	197
Two or more persons, firms, or corporations	2	4	4	10
Railway corporations	10	4	..	14
Total	124	107	122	353

The two cases in the foregoing, in which the Congress is given as the complainant, were instituted by the Commission on its own motion, in compliance with resolutions of the United States Senate.

An examination of the work of the Commission shows that in the earlier years the scope of the cases decided was

considerably less extensive than at the present time. There were more cases against single railways and relatively fewer against competing railways or lines of railway. This is shown by the following table, in which the number of cases decided during each year is classified according to the character of the defendants:

Years.	Defendants.			
	A single railway company.	Two or more railways forming a single line.	Two or more competing railways or competing lines.	Total.
1887) 1888	55	33	17	105
1889)				
1890	11	10	15	36
1891	4	8	4	16
1892.	10	13	16	39
1893	2	4	1	7
1894	..	4	2	6
1895	2	2	5	9
1896	2	3	4	9
1897	9	9	7	25
1898	2	1	9	12
1899	5	3	7	15
1900	..	4	7	11
1901	3	3	3	9
1902	4	2	5	11
1903	3	6	10	19
1904, to October 9.....	12	2	10	24
Total	124	107	122	353

From the foregoing table the following summary, in which corresponding figures are shown for six-year periods, has been made:

Years.	Defendants.			
	A single railway company.	Two or more railways forming a single line.	Two or more competing railways or competing lines.	Total.
1887–1892	80	64	52	196
1893–1898	17	23	28	68
1899–1904	27	20	42	89
Total	124	107	122	353

In the following table the cases decided by the Commission are classified according to the nature of the things complained about:

Character of Complaints.	Concerning passenger business.	Concerning freight business.	Total.
Charges excessive *per se*	3	34	37
Charges relatively unreasonable	16	119	135
Charges both absolutely and relatively unreasonable	1	36	37
Classification unreasonable	..	26	26
Greater charge for shorter, intermediate haul; violation of 4th section	..	52	52
Distribution of cars	..	8	8
Miscellaneous	17	41	58
Total	37	316	353

The following table shows the number of cases, relating to passenger business, decided, classified according to the character of the complaint, and the final disposition of the cases:

Disposition.	Complaints of charges excessive *per se*.	Complaints of charges relatively unreasonable.	Complaints of charges both absolutely and relatively unreasonable.	Miscellaneous.	Total.
Dismissed	2	15	1	7	25
No order, general statement only	..	1	..	2	3
Specific changes recommended	1	..	..	..	1
Practices complained of, condemned in general terms	..	..	..	8	8
Total	3	16	1	17	37

The following table shows the number of cases, relating to freight business, decided, classified according to the character of the complaint and the disposition of the cases:

Disposition.	Complaints of charges excessive *per se*.	Complaints of charges relatively unreasonable.	Complaints of charges both absolutely and relatively unreasonable.	Complaints of unreasonable classification.	Complaints of violation of the fourth section.	Complaints concerning the distribution of cars.	Miscellaneous complaints.	Total.
Dismissed	7	39	9	8	12	4	17	96
Held subject to further action	2	6	5	..	1	..	3	17
Specific changes in rates recommended	19	47	10	13	34	..	1	124
Changes in rates recommended in general terms.	3	10	9	3	1	..	2	28
Practices complained of condemned in general terms	3	3	1	2	3	4	13	29
Other action favorable to complainants	..	..	1	..	..	..	3	4
General statement recorded, no order	..	1	1	..	1	..	2	5
Settled while pending	..	13	..	..	..	..	..	13
Total	34	119	36	26	52	8	41	316

The foregoing shows that during eighteen years the Commission has decided 359 cases, of which fifteen were brought by railway companies, including five applications for relief from a general rule of the statute under which it acts. Excluding these cases and the case in which the Commission ruled that it had no authority over the express companies, it has heard and decided 353 cases, of which 316 related to freight business and 37 to passenger business. In only nine cases out of the 37 cases relating to passenger business can the final action of the Commission be said to have been favorable to the complainants; while out of the 316 freight cases, its action was positively favorable to the complainants in only 185 cases, or 58.54 per cent. of the total. Action favorable to the complainants was taken in 194, or 54.96 per cent. of the cases decided.

On December 21, 1896, the Interstate Commerce Commission submitted to the United States Senate a report (Senate Document No. 30, 54th Congress, 2d Session) in response to the following resolution of inquiry:

"*Resolved*, That the Interstate Commerce Commission be directed to transmit to the Senate a statement showing each case in which it has ordered any carrier or carriers subject to its jurisdiction to make any change in the classification of freight or in the rates charged for moving passengers or property, or any modification in the practices affecting such charges, and in connection with every such order; the classification or rates or practices in effect at the time when complaint was filed; those in effect at the date of the order; those directed to be placed in effect; those, if any, put in effect in compliance with such order; and those in effect at the present time

in each case as aforesaid, and the reasons for their action in each case."

This report presumably included every case, from the enactment of the law to the date on which it was submitted, in which the Commission had ordered changes in rates or methods affecting rates. The latest decision, referred to in its pages, was rendered on August 21, 1896. The number of decisions included in the report is 123. The report shows that in one case no action by the carrier was necessary, in one case the order made was vacated by the Commission itself upon rehearing, in one case a settlement was effected by negotiation between the parties; in two cases the Commission did not consider it necessary to make an order and in one case the Commission finally entered an order of dismissal "without prejudice."

In addition, there were eight cases in which the report declares that no disobedience to the order had been reported, and two in which, inadvertently or otherwise, it refrains from stating what action, or non-action, followed its order. There are thus 107 cases in which the fact of obedience or disobedience is revealed by the report. In 58 of these cases there was complete voluntary obedience to the Commission's order. In 11 more there was voluntary partial obedience, while in another "some changes" were made. Of the last 12 cases it should be observed that the degree of obedience was at least sufficient to prevent further action on the part of the Commission or the complainants. This leaves 37 cases, or about one-third of the total, in which the orders of the Commission were not regarded by

the defendants. Four of these cases were not taken to the courts, the inference being that the interests involved were not great enough to warrant such action, or that neither the Commission nor the complainants had any confidence that the action of the Commission would stand the scrutiny of a court of justice. One of the remaining cases was taken into court collaterally, in an action to which the Commission was not a party, and the complainant was enjoined from any attempt to enforce the rights which it purported to give him. The Commission or the complainants appealed to the courts in the other 32 cases, asking for decrees enforcing the orders of the former. At the time the report was rendered twelve of these appeals had been decided adversely to the complainants (although some of these decisions were in lower courts and appeals were pending). In one case partial compliance had been directed, and in two cases full compliance had been ordered.* Seventeen cases were still pending. It is possible, however, to make a much more complete showing concerning the action taken by the Federal courts on appeals for the enforcement of the Commission's orders. These facts were fully reported to the Congress, for the period from April 16, 1890, to April 16, 1900, in response to a resolution of inquiry addressed to the Interstate Commerce Commission by the United States Senate. The Commission's statement is published as Senate Document No. 319 of the Fifty-sixth Congress, first session. Using the tabulated statement appearing in this report as the

* These decrees for full compliance were by the Circuit Courts and both were subsequently set aside by the Supreme Court.

basis, the following statement has been prepared showing all cases from the creation of the Commission to the end of the period covered by its Seventeenth Annual Report (1903), in which the Federal courts have been asked to enforce its orders: [See folder.]

The foregoing shows that 43 suits have been brought in the Circuit Courts of the United States for the enforcement of the orders of the Commission. Sixteen of these suits have proceeded to full adjudication in the Supreme Court of the United States. In 15 of these 16 cases that Court has refused to require obedience to the order of the Commission, while in the single remaining case, the final decree sustained a part only of the Commission's order. The various Circuit Courts of Appeals have also considered 16 cases in which they were asked to direct obedience to orders of the Commission. In 11 of these cases the decision was against the Commission's order; in four of them the Commission was sustained and in one it was sustained in part. In the four instances in which the Circuit Courts of Appeals decided in favor of the Commission, appeal to the Supreme Court resulted in a reversal of this action. The Circuit Courts have passed upon 31 cases of this character. In 24 of them, they have decided against the Commission's order, and in seven it has been sustained. In all but one of the seven instances in which the action of the Circuit Court has been favorable to the Commission, such action has been reversed on appeal. In addition to the foregoing 12 petitions for the enforcement of the Commission's orders have been filed in the Circuit Courts, and have been withdrawn or are still pending. In very few of them is there any apparent likelihood of further prosecution.

Title of case.	When decided by the Commission.	When petition was filed.	Circuit Court.		Circuit Court of Appeals.		Supreme Court.	
			When and how decided.	Citation.	When and how decided.	Citation.	When and how decided.	Citation.
Ky. & Ind. Bridge Co. *v.* L. & N. R. Co.	Aug., 1888	Sept., 1888	Jan., 1889; Commission reversed.	37 F. R., 567				
I. C. C. *v.* B. & O. (party rates)	Feb., 1890	May, 1890	Aug., 1890 do.	43 F. R., 37			May, 1892; Commission reversed.	145 U. S., 263
I. C. C. *v.* A. T. & S. F. (San Bernardino).	July, 1890	Apl., 1891	Apl., 1892 do.	50 F. R., 295	Withdrawn			
I. C. C. *v.* Lehigh Valley (Coxe Bros.).	Mar., 1891	May, 1891	May, 1896 do.	74 F. R., 784	do	82 F. R., 1002		
I. C. C. *v.* C. N. O. & T. P. (Social Circle).	June, 1891	Oct., 1891	June, 1893 do.	56 F. R., 925	May, 1894; Commission sustained in part.	4 I. C. R., 582	Mar., 1896; Commission sustained in part.	162 U. S., 184
I. C. C. *v.* Georgia R. R. (Heard)	May, 1889	Nov., 1901	Withdrawn					
I. C. C. *v.* D. G. H. & M. (Cartage).	Apl., 1890	Nov., 1891	Oct., 1893; Commission sustained.	57 F. R., 1002	Apl., 1896; Commission reversed.	74 F R., 803	May, 1897; Commission reversed.	167 U. S., 633
Fla. Fruit Ex. *v.* S. F. & W. (Orange rates).	Oct., 1891	Dec., 1891	Dec, 1892 do.	4 I. C. R., 400	May, 1894; Commission sustained.	7 I. C. R., 589	May, 1897 do.	167 U. S., 512
I. C. C. *v.* T. & P. (Import rates).	Jan., 1891	Jan., 1892	Oct., 1892 do.	52 F. R., 187	Oct., 1893 do.	57 F. R., 948	Mar., 1896 do.	162 U. S., 197
I. C. C. *v.* N. Y. P. & N. (Delaware Grange).	Apl., 1891	Aug., 1892	——, 1893; Commission reversed.	Never reported.	No appeal			
I. C. C. *v.* Northern Pacific (Raworth).	Apl., 1892	Aug., 1892	Still pending					
I. C. C. *v.* L. & N. (Nashville coal).	Nov., 1892	Mar., 1893	Apl., 1896; Commission reversed.	73 F. R., 409	Apparently not pressed before Court of Appeals.			
I. C. C. *v.* L. & N. (Middlesboro).	Feb., 1893	Mar., 1893	Apparently not pressed.					
I. C. C. *v.* E. T. V. & G. (Chattanooga).	Dec., 1892	Apl., 1893	Feb., 1898; Commission sustained.	85 F. R., 107	Nov., 1899; Commission reversed.	99 F. R., 52	Apl., 1901; Commission reversed.	181 U. S., 1
I. C. C. *v.* W. & A. R. R. (Ga. Com.).	Nov., 1892	May, 1893	June, 1898; Commission reversed.	88 F. R., 186	Mar., 1899; Commission reversed.	93 F. R., 83	Apl., 1901 do.	181 U. S., 29
I. C. C. *v.* Clyde S. S. Co. (Ga. Com.).	Nov., 1892	May, 1893	June, 1898 do.	88 F. R., 186	Mar., 1899 do.	93 F. R., 83	Apl., 1901 do.	181 U. S., 29
I. C. C. *v.* Clyde S. S. Co. (Ga. Com.).	Nov., 1892	May, 1893	June, 1898; Commission reversed.	88 F. R., 186	Mar., 1899; Commission reversed.	93 F. R., 83	Apl., 1901; Commission reversed.	181 U. S., 29
I. C. C. *v.* O. S. S. Co. (Ga. Com)	Nov., 1892	May, 1893	Apparently not pressed.					
I. C. C. *v.* O. & T. P. (Ga. Com)	Nov., 1892	May, 1893	Apparently not pressed.					
I. C. C. *v.* C. M. & St. P. (Minneapolis).	Jan., 1893	July, 1893	Withdrawn					
I. C. C. *v.* Ala. Mid. (Troy)	Aug., 1893	Jan., 1894	July, 1895; Commission reversed.	69 F. R., 227	June, 1896; Commission reversed.	74 F. R., 715	Nov., 1897; Commission reversed.	168 U. S., 144
I. C. C. *v.* D. L. & W. (Window shades).	Mar., 1894	June, 1894	Dec., 1894 do.	64 F. R., 723	No appeal taken			
I. C. C. *v.* C. N. O. & T. P. (Freight Bureau).	May, 1894	Sept., 1894	Oct., 1896 do.	76 F. R., 183	Certified to Supreme Court.		May, 1897; Commission reversed.	167 U. S., 479
Shinkle, W. & R. Co. *v.* L. & N. (Freight Bureau.)	May, 1894	Sept., 1894	Oct., 1896 do.	62 F. R., 690 76 F. R., 1007	Certified to Supreme Court.		May, 1897 do.	167 U. S., 479
Behlmer *v.* L. & N. (Hay).	June, 1894	——, 1894	Jan., 1896 do.	71 F. R., 835	Nov., 1897; Commission sustained.	83 F. R., 898	Jan., 1900 do.	175 U. S., 648
I. C. C. *v.* N. E. R. R. (Truck Farmers).	Apl., 1895	Jan., 1896	Apl., 1896 do.	74 F. R., 70	Nov., 1897; Commission reversed.	83 F. R., 611	No appeal	
Colorado Fuel and Iron Co. *v.* S. Pac. (Iron).	Nov., 1895	Oct., 1898	Commission sustained		Apl., 1900 do.	101 F. R. 779	Nov., 1901; Dismissed per stipulation.	46 L. Ed., 1264
I. C. C. *v.* W. N. Y. & P. (Oil).	Oct., 1895	May, 1896	Still pending					
I. C. C. *v.* Sy. Ry. (Piedmont).	June, 1896	Nov., 1896	Nov., 1900; Commission reversed.	105 F. R., 703				
I. C. C. *v.* Sy. Ry. *et al.* (Piedmont).	June, 1896	Nov., 1896	Nov., 1900 do.	105 F. R., 703				
I. C. C. *v.* L. & N. (Lagrange).	Dec., 1897	July, 1898	Dec., 1899; Commission sustained.	102 F. R., 709	May, 1901; Commission reversed.	108 F. R., 988	May, 1903; Commission reversed.	190 U. S., 273
Brewer *v.* Central Ga. (Griffin)	June, 1897	——, 1897	Jan., 1898; Commission reversed.	84 F. R., 258	No appeal			
Farmers L. & T. *v.* N. P. (Spokane Falls).	Nov., 1892	——, 1897	Oct., 1897 do.	83 F. R., 249	do			
I. C. C. *v.* C. B. & Q. (Cattle raisers).	Jan., 1898	Mar., 1899	Dec., 1899 do.	98 F. R., 173	June, 1900; Commission reversed.	103 F. R., 249	June, 1902; Commission reversed.	186 U. S., 320
Tileston Mill Co. *v.* Northern Pacific).	Nov., 1899	Jan., 1900.						
City of St. Cloud *v.* Northern Pacific.	Nov., 1899	Jan., 1900						
I. C. C. *v.* Southern Ry. (Danville).	Feb., 1900		Aug., 1902; Commission reversed.	117 F. R., 741	May, 1903; Commission reversed.	122 F. R., 800	Appeal pending	
I. C. C. *v.* L. & N. (Savannah Naval Stores of Cotton).	Jan., 1900		July, 1902; Commission sustained.	118 F. R., 613				
I. C. C. *v.* Cin. Port. & Va. (Wilmington).	Dec., 1901		Aug., 1903; Commission reversed.	124 F. R., 624				
I. C. C. *v.* N. C., A. S. & L. (Hampton).	Mar., 1900		do		Feb., 1903; Commission reversed.	120 F. R., 934	Appeal pending	
I. C. C. *v.* Southern Pacific (Kearney).	Mar., 1900		Commission reversed.					
I. C. C. *v.* Southern Pacific (Orange routes).	Apl., 1902		Sept., 1904; Commission sustained.	132 F. R., 829	Appeal pending in the Supreme Court.			
I. C. C. *v.* L. S. & M. S. (Hay).	Oct., 1902		Still pending					

The net result of the action of Federal courts upon petitions to enforce the orders of the Commission up to the present time is that in one case partial compliance with the order has been required by a decree of the Supreme Court of the United States, while in one other case a decree favorable to the Commission from a Circuit Court was not made the subject of appeal. Therefore, out of 43 applications to the courts, there are only two in which the Commission has been finally sustained. In both of these the order of the Commission condemned an existing rate upon the ground that it was unreasonable in its relation to other rates.

The foregoing enumerations do not include the two cases most recently decided by the Federal Courts. In one of these, that of the Interstate Commerce Commission *v.* The Southern Pacific Company, known as "The Orange Routing case," the Circuit Court has sustained the Commission, but an appeal was taken at once. In the other case the Circuit Court has decided adversely to the Commission, the suit being that to enforce the order of the Interstate Commerce Commission against the Southern Pacific Company, *et al.*, known as the "Kearney Long and Short Haul case."

The reports of the Commission show that from its creation until the end of the fiscal year 1903 it expended $3,537,978.22, of which $69,662.46 was for the enforcement of the Safety Appliance legislation. Deducting the latter amount, it appears that in slightly less than 17 years the cost to the Federal Government of the rate regulation carried out through the Commission amounted to $3,468,-

315.76. The following table shows the expenditures for each fiscal year:

Fiscal Year.	*Expenditures.*	
	General business.	*Under Safety Appliance laws.*
1887	$15,140.05	.....
1888	97,867.54	.....
1889	149,180.47	.....
1890	180,440.07	.....
1891	214,844.33	.....
1892	221,745.37	.....
1893	217,792.33	.....
1894	209,250.36	.....
1895	216,206.99	.....
1896	234,941.12	.....
1897	234,909.44	.....
1898	237,358.38	.....
1899	238,125.98	.....
1900	243,624.19	.....
1901	255,979.75	$11,908.86
1902	271,728.93	23,488.14
1903	298,842.92	34,265.46
	$3,537,978.22	$69,662.46

Assuming that the expenditures for the fiscal year 1904 and that portion of the fiscal year 1905 which ended with October 9, 1904 (the last date covered by the tabulations concerning the Commission's decisions), were at about the rate of the fiscal year 1903, it is reasonable to estimate

the unreported expenditures for this period at $336,600.00, making a total from the creation of the Commission to October 9, 1904, of $3,804,915.76. As the Commission decided 353 cases during this period, the expenditure was at the rate of $10,778.80 for each case decided. As its action was favorable to the complainants in 194 cases, the rate of expenditure is $19,612.97 for each case of that character. As there are only two cases in which the courts have sustained its action, it has cost the Government nearly two million dollars for each case of alleged unjust discrimination in rates which has survived the test of judicial scrutiny.

All of the foregoing relates to the complaints which the Commission characterizes as formal. It is impossible to include in this memorandum very much concerning the informal complaints. Senate Document No. 319, previously referred to, shows that during the three years, 1898, 1899 and 1900, there were 59 formal complaints and 275 informal complaints. It also shows, what is rather interesting, that 63 informal complaints were concluded by suggesting to the complainants that they file formal complaints, and that during the same period there were only 59 formal complaints filed. This suggests the inquiry whether the Commission does not manufacture a large part of the business which it handles. The Seventeenth Annual Report of the Commission, submitted to Congress on December 15, 1903, shows that at that time there had been received altogether 727 formal complaints and 2,798 informal complaints. The report does not indicate anything concerning the disposition of these cases, although perhaps it may be assumed that the proportions shown in Senate Document

No. 319 still prevail. During the three years covered by that report, 275 informal complaints were filed, of which 67 were pending when the report was rendered. Of the remaining 208, 175, or 69.71 per cent., had been settled in one way or another by informal action on the part of the Commission.

EDITORIAL AND OTHER ARTICLES.

THE INDUSTRIAL IMPORTANCE OF RAILWAY TRANSPORTATION.

(The Commercial and Financial Chronicle, Editorial, May 25, 1904.)

It is the function of a railway system to change the economic aspect of the area in which it operates from that of a region occupied by isolated and industrially independent communities to that of a single, homogeneous market, in which local prices vary within moderate limits fixed by the low cost of rapid, reliable and plentiful transportation facilities. The United States has grown with its railway system so that it is only in the oldest States that such isolation and independence ever really existed;* but the development of railway methods and the cheapening of railway service has done a great deal, within a comparatively recent period, to render the economic organization of the country increasingly compact and complex. Probably to most

* In his "Modern Factory System" Mr. Cooke Taylor thus describes the situation as it existed in England at the beginning of the nineteenth century: "In the first quarter of the century England was rather an aggregate of isolated districts and disunited towns than one animated, close, compact kingdom. Each city was dependent on the country in its neighborhood for food supplies; and many a district, rich in mineral or agricultural wealth, lay neglected because far from a seaport or canal. The England of to-day is the opposite of all this. It is one huge congeries, composed of various members, literally bound together with links of iron, and in instantaneous communication with every other member and with the whole world."

people the process of drawing together seemed complete long ago, and few realize that it is yet actively in progress. Yet that it is still going on, is the only explanation of statistics of unquestioned reliability. The American public is purchasing a constantly increasing quantity of railway transportation, and the rate of increase from year to year exceeds both the growth of population and the extension of railway mileage. The following comparisons between population and the annual ton-mileage of railway freight help to establish this fact:

Year.	Population of the United States (not including Alaska or Island possessions.)	Number of tons of freight carried one mile by the railways.	Ton-miles per capita.
1880.....	50,155,783	32,348,846,693	645
1890.....	62,947,714	76,207,047,298	1,211
1900.....	76,085,794	141,599,157,270	1,861
1902.....	78,576,436*	157,289,370,053	2,002

*Estimated by U. S. Census Bureau.

The foregoing shows that while the population of the country has increased but 56.66 per cent. in twenty-two years, the demand for railway freight transportation has increased 330.23 per cent. This is explained by the fact that while the average freight service per capita of population in 1880 was equivalent to carrying 645 tons one mile, the service now demanded is equal to moving 2,002 tons one mile, an increase of 210.39 per cent. The increase in population from 1890 to 1902 was 24.83 per cent.; that in

the freight ton-mileage of the railways 106.40 per cent., and that in the railway freight service per capita 65.32 per cent. Comparisons with regard to passenger transportation show similar results, as appears by the following:

Year.	Population.	Number of passengers carried one mile by rail.	Passenger miles per capita.
1880.....	50,155,783	5,740,112,502	114
1890.....	62,947,714	11,847,785,617	188
1900.....	76,085,794	16,039,007,217	211
1902.....	78,576,436	19,689,937,620	251

Thus, in twenty-two years railway passenger transportation has increased 243.02 per cent., while population has grown but 56.66 per cent., indicating an increase per capita in the use of railway passenger facilities of 120.18 per cent. The corresponding figures for the period from 1890 to 1902 are: For the growth of population, 24.83 per cent.; for the growth of railway passenger service, 66.19 per cent.; for the growth of passenger service per capita, 33.51 per cent. It is worth noting that freight transportation per capita increased less rapidly from 1900 to 1902 than passenger transportation; the increase in the former amounting to 7.58 per cent., as compared with 18.96 per cent. for the latter. It would be interesting to inquire whether this was merely a consequence of general prosperity, or, if not, what was the cause? Comparisons between the railway mileage of the country and the business done established the fact that

railway facilities were never of greater utility than they are at present. The passenger and freight movement per mile of line, for each of the years indicated, is shown below:

Year.	Passengers carried one mile.	Tons of freight carried one mile.
1880	65,434	368,757
1890	72,421	465,822
1900	82,955	732,362
1902	99,314	793,351

In other words, the passenger services performed by the average mile of steam railway in 1902 exceeded those of 1900 by 19.72 per cent., those of 1890 by 37.13 per cent. and those of 1880 by 51.78 per cent. Comparing the freight service per mile in 1902 with former years shows an increase of 8.33 per cent. over 1900, one of 70.31 per cent. over 1890, and one of 115.14 per cent. over 1880. Another measure of the more important place which railway transportation is assuming in the national economy may be found in the increasing proportion of the population which is directly engaged in the railway service. The changes of the last two decades in this respect are quite as notable as those already cited. They are shown below:

YEAR.	Population.	Number of railway employees.	Railway employees per 10,000 of population.
1880	50,155,783	418,957	84
1890	62,947,714	749,301	119
1900	76,085,794	1,017,653	134
1902	78,576,436	1,189,315	151

Thus the suggestion that the volume of railway business has grown more rapidly than other industries receives support from the fact that the railways are taking into their service a progressively increasing proportion of the inhabitants of the country. In this connection it is important not to overlook the fact that railway labor is of the highest grade and receives very high compensation. During the fiscal year 1902 the railways paid to their employees the sum of $676,028,592, or an average of $568 each. The aggregate amount paid out in wages to railway employees in 1880 was $195,350,013, or at the rate of $466. While the railways have gathered into their service an increasing army of employees, they have developed an organization so efficient as steadily to produce greater service per employee. This is shown by the following figures:

Year.	Passengers carried one mile per employee.	Tons of freight carried one mile per employee.
1880	13,701	77,213
1890	15,812	101,704
1900	15,761	139,143
1902	16,556	132,252

The slightly decreased quantity of freight transportation per employee shown for 1902 is no doubt due to the vast quantity of improvement work in progress during that year.

Such statistics as the foregoing afford a complete answer to the charge that railway rates are excessive, or as now adjusted constitute an undue burden upon industry Transportation of freight, and to a large degree that of persons, is resorted to only as a means of making the productive processes of society less laborious. The increasing use of railway facilities proves that rates are low enough to permit this result.

THE AGGREGATE COST OF RAILWAY TRANSPORTATION.

(*The Railway Age, Editorial, April* 22, 1904.)

The report submitted to the United States Senate by the Interstate Commerce Commission in answer to the resolution calling for information concerning changes in railway rates and their effect contains certain figures that are likely to be widely quoted as evidence that the charges exacted for this form of transportation are excessive. They appear on pages 4 and 5 of the report, which has been published as a Senate document, and are summarized by Chairman Knapp in the following sentence:

> This method of computation is not without value as indicating enormous additions in recent years to the cost of railway transportation to the people of the United States.

The "method of computation" referred to rests upon the assumption that the amount obtained by multiplying the difference between the average receipts per ton of freight carried during different periods by the tonnage movement of the later year represents an actual loss or gain to the shipping public. By this method the Commission compares the years 1899 and 1903, with the following result:

Items.	1899.	1903.	Increase.
Aggregate freight tonnage	959,763,583	1,221,475,948	261,712,365
Total freight receipts	$913,737,155	$1,318,320,604	$404,583,449
Average receipts per ton	$0.9520	$1.0793	$0.1273

In other words, the people of the United States paid 44.28 per cent. more, or a sum amounting to nearly half a billion dollars, for railway freight transportation in 1903 than in 1899, and, according to the theory of the Commission, obtained only 37.27 per cent. more service. Following this theory to its logical conclusion, it appears that of the $400,000,000, in round numbers, additional, paid for transportation in 1903, about $250,000,000, or 62.50 per cent., was on account of the demand of the public for more service, and about $150,000,000, or 37.50 per cent., on account of the demand of the railways for higher rates. The estimate of the Commission is that the people paid $155,475,502 more to the railways for freight service in 1903 than they would had the lower rates of 1899 remained in force. The report also places the cost of higher rates for 1900 at $456,736, that of 1901 at $81,599,443, and that of 1902 at $64,528,216.

Obviously this "method of computation" can be employed so as to produce the most varying and startling results. If freight shippers have lost so much in comparison with 1899, how many millions have they gained or lost in comparison with other years? Suppose 1890 be made

the basis. In that year the railways carried 636,541,617 tons of freight and received therefor $714,464,277. This means that for 52.11 per cent. of the service, using the Commission's method of measurement, performed in 1903, they received 54.18 per cent. of the revenue of the later year. Thus the average revenue per ton of freight in 1890 was $1.1224. The average is given for what it is worth. It is 4.31 cents higher than the average for 1903, used by the Commission, and 17.04 cents higher than that for 1899. Now, let the saving to the shipping public, calculated on the basis of the average of 1890, be set against the loss on the basis of that of 1899, both computations being according to precisely the same method. The following is the result:

Years.	Aggregate tonnage movement.	Gain to public by comparison with 1890.	Loss to public by comparison with 1899.
1900	1,101,680,238	$187,285,640	$456,736
1901	1,089,226,440	104,021,125	81,599,443
1902	1,200,315,787	139,956,821	64,528,216
1903	1,221,475,948	52,645,613	155,475,502
Total	4,612,698,413	$483,909,199	$302,059,897

Thus in the four years shown freight shippers have gained, on the Commission's theory, $181,949,302 more by the lower averages as compared with 1890 than they have lost by the higher averages as compared with 1899. One comparison is as good as the other, and either is illuminated

by the other. Both might well be classified as statistical fooling.

Not much, at best, can be gained from such data as those presented in the report under discussion. Common sense, however, should suggest the conclusion that if the people of the United States have increased their demands upon the railways for freight transportation no less than 37 per cent. since 1899, and have consented to pay 44 per cent. more for such services, they have not lost by the operation. Transportation may be, and doubtless is, a necessity of modern civilization, but constantly and rapidly increasing purchases of transportation are in no way a necessity, even of the most complex social and industrial organization. Whoever buys a commodity brought from a distance instead of one produced in his own vicinage does so because the transported article is cheaper. Whoever pays for more transportation this year than he did last year does so either because his income has increased or because by the change he augments his purchasing power.

The labored effort of the Commission to show that the proportion of low-grade freight tonnage is greater than formerly compares curiously with the complete omission of reference to the fact that the purchasing power of the money received for freight service, both in wages and material, is much lower per unit than it was in 1899. Equally suggestive is the absence of any allusion to the fact that lower operating cost has been attained through extraordinary capital expenditures, and ought, therefore, to be off-set, in part, by a greater aggregate return to shares and bonds.

The bold statement, "there is a constant tendency toward an increase in the percentage of the tonnage of low-grade freight," demands some attention. It is commonly made, and perhaps widely accepted, but it is wholly erroneous. A little consideration ought to show that such a result must be impossible in a country in which urban population is growing so much more rapidly than that of rural communities, and in which the relative importance of agriculture, mining, lumbering, and similar industries is rapidly giving way before the growth of manufactures. This is especially evident when the part which the concentration of manufactures has borne to their development is recognized. In fact, the recent rapid augmentation of railway freight movement has been very largely due to the effect of unprecedented prosperity in enabling the public to purchase more manufactured goods. Its most notable feature, to those familiar with the details of transportation, has been the higher proportion of westbound traffic to eastbound traffic, and the veriest tyro in such matters ought to know that westbound freight is of the higher grade and eastbound of the lower. About all the basis there ever was for the belief that low-grade traffic increases most rapidly is found in the statistics of the movement of mining products. But this apparent basis disappears in the light of appreciation of the fact that a large part of the eastern traffic in such products consists of anthracite coal, which does not move at the lowest rates (owing to the topography of the country through which it is hauled, the relatively short movement and the absence of back-loads), while the greater portion of the aggregate shipments of minerals is in the West and

South, where relatively scanty population requires higher rates than the average for the country.

Light upon the question which the Senate submitted to the Commission would undoubtedly be of great value, for the most widely differing conclusions have had authoritative promulgation, and that which is popularly accepted is pretty sure, sooner or later, to influence legislative action. We believe, however, that the Commission itself will realize upon reflection that it has as yet contributed nothing of value to the discussion. The subject merits a complete, cautious and impartial investigation, one extending to the value of the standard of payment for railway services, the rates of wages paid to railway employees and the cost of railway supplies.

THERE ARE STATISTICS AND STATISTICS.

(*The Railway Age, Editorial, May* 13, 1904.)

We have heretofore commented, at some length, upon the somewhat startling response of the Interstate Commerce Commission to the Senate inquiry concerning changes in rates. We recur, briefly, to the subject only to illustrate our point. The report in answer to this inquiry (Document No. 257, U. S. Senate, Fifty-eighth Congress, Second Session) gives (on page four) certain figures which purport to show the "average rate per ton" of freight carried for successive years from 1899 to 1903, inclusive. Now similar averages are shown in the successive annual reports of the statistician to the Commission, but it chances that the figures of the new report do not agree with those of the statistician. Far be it from us to say which, if either, is correct, but here are the averages with the pages of the statistician's reports, for the respective years, in which they appear:

Year.	Senate Document No. 257.	Statistician's reports.	
		Average.	Page of report.
1899	$0.9520	$0.97131	96
1900	.9524	.97530	95
1901	1.0269	1.05116	91
1902	1.0058	1.03219	93
1903	1.0793	..	..

The statistician's report for 1903 has not been published. Whatever it may show, however, we venture to predict that it will not be the figures used by the Commission in its effort to prove that there has been an extortionate advance in rates. Perhaps the data herein quoted do not seriously discredit the Commission's conclusions; they certainly are not cited for that purpose. They do, however, throw an interesting light upon the precision of its methods.

IT IS GENERAL RATE-MAKING.

(*The Railroad Gazette, Editorial, January* 20, 1905.)

Objection is raised in some quarters to the use of the term rate-making in connection with the enlargement of powers which is sought on behalf of the Interstate Commerce Commission. There is in this term a suggestion of arbitrary interference with contractual relations, which in most cases are perfectly harmonious, that is not without a substantial basis. The liberty-loving people of America are not yet ready generally to substitute arbitrary statutes for free contracts, and those who would move in the direction of such a substitution are undeniably acting the part of wisdom when they seek a less repellant designation of the measure they advocate. To ask for power "to correct a rate," or "to substitute a reasonable rate for one which has been found to be unreasonable," particularly when it is provided that the power is never to be exercised except after "complaint, full hearing, a report and opinion," and proceedings "essentially judicial in character and form," sounds like a comparatively harmless invasion of the liberty of individuals to contract freely for the services which they require. It is seldom profitable to spend time in discussion over definitions, and in the present instance the facts are so far beyond dispute that were the influence of words and names upon public opinion less profound there would be little controversy over the terms by which the facts are characterized. But the human mind still works much as

it did in the time of Bacon, and there is yet far-reaching truth in his observation that—

"The idols of the market-place are the most troublesome of all—those, namely, which have entwined themselves round the understanding from the association of words and names. For men imagine that their reason governs words, whilst, in fact, words react upon the understanding; and this has rendered philosophy and the sciences sophistical and inactive."

The Interstate Commerce Commission has chosen to designate the power it seeks as that to "order the reasonable rate to be substituted for that which has been found to be unlawful," the President calls it "the power to revise rates and regulations," the opponents of the proposed modifications in the law call it "general rate-making." Now if the Commission had used plural forms, and said "order reasonable rates to be substituted for those," etc., it would have been accurate to declare that none of these characterizations is wholly inapplicable. The proposed changes in the law would provide for general rate-making through empowering the Commission, after observing certain formalities of procedure, to "revise rates and regulations," and to substitute what it should regard as a reasonable rate for each and every rate complained against and thereafter decided to be unlawful. The basis of the proposed exercise of enlarged authority is to be a complaint, and the jurisdiction of the Commission, in each case within the general scope of the law, is to be as broad or as narrow as the complaint. What are the limits of the complaints, thus becomes a vital inquiry. First it is to be observed that

anyone may complain. The law declares that no "complaint shall at any time be dismissed because of the absence of direct damage to the complainant," and in Interstate Commerce Commission *v.* Baird (194 U. S. 25), the Supreme Court decided that after the filing of a complaint "no alternative is left the Commission but to investigate the complaint if it presents matter within the purview of the Act and the powers granted to the Commission." The law also provides that "any person, firm, corporation, or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization," may be a complainant. Again, any complainant may attack in his complaint all the rates between any two points or from and to any number of points, the only limitation being that they shall be rates applicable to traffic crossing State or Territorial lines in passing from one State or Territory to another, or to or from a State or Territory from or to a foreign country. In fact, a single complaint might involve every railway rate applicable to interstate or foreign traffic originating at or destined to any and every point in the United States. This statement may be startling to those who are but superficially acquainted with the work of the Interstate Commerce Commission, but it will not be surprising to anyone who has followed its decisions or studied the law or its interpretation by the Federal Courts. An excellent illustration is found in the very case in which the attempt of the Commission to prescribe future rates was declared to have exceeded its authority. This case, being originally that of the Freight Bureau of the Cincinnati Chamber of Commerce *v.* the Cincinnati, New Orleans and

Texas Pacific Railway *et al.*, was heard and disposed of by the Commission together with that of the Chicago Freight Bureau *v.* the Louisville, New Albany and Chicago Railway *et al.* (4 Inter. Com. Rep. 593). The breadth of the complaint and the scope of the Commission's decision and order, in this case, may be gathered from the following extracts from the opinion of the Commission:

"The general ground of complaint in the Cincinnati case is that the rates of freight established by the defendant carriers from the Eastern Seaboard and Central territories, respectively, to Southern territory (the Commission defined Eastern Seaboard territory as consisting of Baltimore, Philadelphia, New York and contiguous territory; Southern territory as consisting of Knoxville, Chattanooga, Rome, Georgia, Atlanta, Birmingham, Anniston, Alabama, Selma, Alabama, Meridian, Mississippi, and contiguous territory; Central territory as consisting of Cincinnati, Louisville, Indianapolis, Evansville, Chicago, Cairo, St. Louis, and contiguous territory), unjustly discriminate in favor of the merchants and manufacturers whose business is located and transacted in Eastern Seaboard territory, and against merchants and manufacturers whose business is located and transacted in Cincinnati and other points in central territory. It is stated that 'the burden of the complaint lies against the relation which exists between the current rates of freight on manufactured articles and merchandise' . . . the complaint in the Chicago case contains similar tabular statements and charges, made applicable to Chicago, and in addition calls in question the reasonableness in themselves of the through rates from Chicago to Southern territory. . . ."

The foregoing shows that the mere filing of this complaint, followed by an investigation conducted "in such manner

and by such means" as the Commission should "deem proper" under a statute similar to the pending "Quarles-Cooper" bill, would have given the Commission authority to change the rates or the relations among the rates, which is the same thing, on all southbound, through railway freight in all of the United States east of the Mississippi river. This is general rate-making.* The Commission's order in this case (which the Supreme Court refused to enforce) specifically required changes in the rates from

* Of course this is not really an open question. It has been considered by the United States Supreme Court and decided in the following language:

"In this connection it must be borne in mind that the Commission is not limited in its inquiry and action to cases in which a formal complaint has been made, but, under Sec. 13, 'may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.' By Sec. 14, whenever an investigation is made by the Commission, it becomes its duty to make a report in writing, which shall include a finding of the facts upon which its conclusions are based, together with a recommendation as to what reparation, if any, ought to be made to any party or parties who may be found to have been injured. And by Secs. 15 and 16, if it appears to the satisfaction of the Commission that anything has been done or omitted to be done, in violation of the provisions of the act, or of any law cognizable by the Commission, it is made its duty to cause a copy of its report to be delivered to the carrier, with notice to desist, and failing that, to apply to the courts for an order compelling obedience. There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. In this very case the order of the Commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati and Chicago, respectively, to several named southern points and the territory contiguous thereto, so that if the power exists, as is claimed, there would be no escape from the conclusion that it would be within the discretion of the Commission of its own

Cincinnati and Chicago to Knoxville, Chattanooga, Rome, Atlanta, Meridian, Birmingham, Anniston, and Selma, and also directed the carriers to readjust their rates from the same points of origin "to points other than those hereinabove specified," so as to establish due and proper relations to the rates specifically applied to the points named. The Commission added:

"We are not unmindful that a compliance with the order in these cases may and probably will necessitate a readjustment of rates from Central territory to other points in Southern territory than those named. . . ."

Among many other illustrations of the magnitude of the authority which is proposed to base upon the complaint of persons who need make no show of direct damage in order to have standing before the Commission the complaint of the Business Men's League of St. Louis against the Atchison, Topeka & Santa Fé Railway *et al.* (9 Inter. Com. Rep. 318), is typical. Every important railway system west of the Mississippi river was a defendant in this case. The Pacific Coast Jobbers' and Manufacturers' Association intervened on behalf of the defendants, while as intervenors on behalf of the complainant there appeared several of the greatest

motion to suggest that the interstate rates on all the roads of the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such a hearing make one general order, reaching to every road and covering every rate. It will never do to make a provision prescribing the mode and manner applicable to all investigations and all actions equivalent to a grant of power in reference to some specific matter not otherwise conferred." Interstate Commerce Commission *v.* Cincinnati, N. O. & T. P. R. Co., 167 U. S. 257.

jobbing firms of Chicago, and commercial organizations representing the cities of Milwaukee, Kansas City, Saint Joseph, Duluth, and Santa Ana, California. Among other matters involved in the complaint was the classification of freight applied to all traffic not carried on special commodity rates in the whole territory from the Great Lakes and the Mississippi river to the Pacific Coast. Most of the important commodity rates in the same territory were also involved. The Commission preferred to issue no order in this case and to hold it open for further investigation, but its report and opinion state conclusions from which it is evident that if its authority were sufficient, as it would have been under the "Quarles-Cooper" bill, the Commission would undertake a general revision of all the railway freight rates in this vast territory. These are the facts. Advocates of legislation which would hamper every other industry along with that of the railways may try to belittle the proposed changes in order to smooth the road to their enactment, but those who will take the trouble to examine a few of the cases already decided by the Commission will not easily be deluded. The power to "revise rates and regulations" is the power generally to make rates. Applied to American interstate and foreign railway services it is greater power than has ever been exercised by any president or prince, by any Congress or Parliament, by any body of five men or of five thousand men. It is power to bind or to loose industry, to enrich or to impoverish both labor and capital, to build up or to tear down communities and commerce. Given to the Interstate Commerce Commission it will not have been transferred from the railways, for neither singly nor col-

lectively can they or do they now exercise it; it will have been taken from the public; travelers, shippers, and railways; among whom it is now diffused, and concentrated in the hands of a Government which by that act of concentration will be made the most powerful and the most centralized of all governments on earth from the earliest dawn of history to the present day.

THE ECONOMIC LIMITS OF LEGISLATIVE AUTHORITY.

(*The Railroad Gazette, Editorial, July* 15, 1904.)

The most potent legislative body cannot exercise effectively every power with which it may nominally be endowed. The monarch who attempted to order the tides was no more impotent to force them to obey his will than the Parliament which sought by statute to prevent the workmen of England from obtaining the enhanced wages that were the natural consequence of the scarcity of labor caused by the ravages of the Black Death. Beside the inexorable law of supply and demand the fiat of the most august legislative assembly is a vain and useless expenditure of effort. But that which cannot be accomplished by direct means can sometimes be brought about by indirect measures. If the markets of the United States were open to foreign producers, no statute could enforce a price of $30 per ton for steel rails at a time when similar rails sold in Canada for $20 per ton, or in England for $15 per ton, but by fixing a tax on imported rails of $20 per ton the high domestic price might, we do not say it would, be maintained. No statute could effectively fix the wages of common labor at $3 per day, but arbitrary restriction of the labor market might, temporarily at least, make it impossible to conduct enterprises which could not afford to pay that rate.

We are moved to these reflections upon the plain teaching of the economic history of the world by a sentence contained in an article contributed to the *North American*

Review for June by Hon. Charles A. Prouty, a member of the Interstate Commerce Commission. Mr. Prouty declares that "the only way to regulate railroad rates is to regulate them," by which he evidently means that the Commission of which he is a conspicuous member ought to have rate-making authority. Such a declaration clearly arrays its author with those who, in spite of the lessons of experience, believe that legislation is all-powerful and who would fall back upon the law-making power for relief from every ill of industrial life. It is all the more surprising coming from a member of the body which for seventeen years has struggled with varying degrees of ineffectiveness to secure the observance of rates named by the carriers themselves, for it would seem that the plainest teaching of that experience ought to be the fact that railroad transportation will, in the end, sell for the price (or rate) which those who desire it and can afford to pay for it are willing to pay. How can it be imagined that rates made by statute of Congress or by a commission entrusted with a part of the Congressional authority over interstate commerce can be enforced if all of the agencies of the Commission and of the Federal Department of Justice have for nearly two decades proved powerless to compel the railroads to sell transportation at the rates named in schedules promulgated by their own officers? The Interstate Commerce law requires that every participant in interstate railroad transportation shall publish schedules showing all its charges and shall file copies of every schedule and every change in such schedules with the Commission. Deviations from the rates named in these schedules are misdemeanors always punishable by fine, and

during most of the seventeen years they have also been punishable by imprisonment. Yet every annual report issued by the Commission has its story of wholesale departures from the legal rates. One after another, in annual succession, the Commission has devised and recommended new safeguards against such violations of law. Some of the amendments suggested have been adopted, and at least one of them has been repealed as well in accordance with a later suggestion from the Commission. But rate-cutting has not stopped although during the recent period of heavy traffic it was greatly reduced. The law in regard to evidence was amended so as to remove the opportunity to avoid testifying in regard to rate-cutting on the ground that it might be self-incriminating, and the courts have been invoked, as in the Brimson and Brown cases, but there has been no complete disappearance of the practice. Even injunctions and the Elkins law have been avoided by means of allowing excessive divisions to industrial railroads and special allowances to the owners of private cars. What can all this mean, unless it is that rates which lack the economic sanction, that is, those which fail accurately to express the actual relation between the supply of railroad transportation and the demand for it, are unstable and are sure to be discarded in favor of those which meet the requirements of the situation? Yet Mr. Prouty thinks that the Commission can prescribe rates for the two hundred thousand miles of railroad and the billions of dollars of annual traffic of the United States. The railroads employ hundreds of traffic experts, men whose lives have been devoted to the study of industrial needs and often those of restricted sections or

particular classes of traffic. These experts have formulated schedules of rates, and the whole power of Congress, supplemented by the wishes and commands of railroad owners, has failed to secure the observance of the rates named in these schedules. Is it reasonable to assert that where these experts have failed invariably to discover the stable rate, a body of five lawyers, however distinguished and able, can succeed? Yet that is precisely the conclusion to which Mr. Prouty's article leads. He overlooks or wilfully rejects the proposal to secure reasonable stability by removing the incentive to rate-cutting, that is, by permitting agreements to maintain rates and to divide tonnage or earnings, and chooses the direct, arbitrary and universally ineffective method. He proposes legislation on an exact par with that against which Adam Smith directed the strongest portion of "The Wealth of Nations," the successive failures of which are so skilfully recorded by Thorold Rogers.

STABILITY IN RATES.

(*The Railway Age, Editorial, May* 13, 1904.)

No one disputes the proposition that one of the most important conditions of industrial prosperity is reasonable stability in the charges for interstate railway transportation. This need has long been recognized by the railways themselves and, in some degree, at least, by legislative bodies. The railway method of providing the needed permanence in rates is by making contracts between rival lines, which remove the incentive to rate cutting. So far the legislative method has been to make rate cutting an offence against the law. It cannot be said, speaking historically, that either method has proved entirely satisfactory. Pooling did not, as practiced in this country from 1870 to 1887, wholly remove the evils of too violent rivalry for traffic, and fear of the law has not prevented rate cutting since 1887. But pooling did have some effect in modifying the severity of competition, and there is good reason for attributing most of its failure to attain complete success to the unfortunate legal status which prevented or was commonly believed to prevent, resort to the courts for the enforcement of the pooling contracts. At any rate there is sufficient justification for the contention that the measure of success of pooling warrants its retrial whenever it can legally be attempted, and renders it incumbent upon Congress to legalize proper pooling agreements subject to suitable supervision.

Legal prohibition of rate cutting and statutory insistence on the conditions out of which rate demoralization naturally grows still constitute the essential conditions of railway rate-making. It is illegal to agree not to compete, or to contract in regard to rates or facilities; it is equally illegal to resort to the ordinary and essential practices of effective competition. Between these two stools a fall is inevitable. Rates are usually maintained when traffic is so plentiful that each carrier has enough; they are commonly cut when there is not sufficient business to go around. Probably there is no way, short of consolidation or pooling, to change the situation. No one has as yet given a satisfactory reason for believing that legislation in fixing railway rates can be any more successful than legislation fixing rates of wages or prices.

The unanimous verdict of all who have studied economic history is that its plainest lesson teaches the impotence of all attempts to keep prices or wages from rising or falling according to market conditions. The vendor of commodities has always found some way to meet the views of possible purchasers, no matter what the law has said as to the terms of sale. If the law has fixed a price so high as to leave him with an unsalable surplus, at the legal price, he has always violated the law sufficiently to sell the remainder. If the legal price has been lower than purchasers were ready to pay, the law has yielded before the fundamental economic rule. This is universal history. The same is true of wages, as witnessed by the fruitless efforts of England's Parliament to legislate against the natural consequences of the reduction of the labor supply caused by the

Black Death. Is the case different when it comes to railway rates? The Interstate Commerce law says that rates shall be published, and that no more nor less than the published rates shall be charged. Yet from 1887 to the present hour the country has never been free from rate cutting.

At the behest of the commission appointed to enforce the law Congress added the imprisonment penalty to that by fine originally provided, and a few years later, again on the recommendation of the commission, it took it out again; but rate cutting continued. The courts successively decided in favor of the commission, the Brimson and Brown cases, thus ostensibly adding materially to its power to secure evidence of deviations from the published schedules; but rate cutting was not affected. The great ability of Judge Cooley and that of the present chairman, Mr. Knapp, has not served to solve the problem. Human capacity could not have struggled more courageously or adroitly against the inevitable than has the commission to enforce tariff rates under a law which provides the cause of departure from them. Threats, advice, coaxing, pleading have all proved of no avail. The commission has held meetings with railway officers for the purpose of securing agreements, that in spite of the secrecy with which they were surrounded are commonly believed to have approached as closely as possible to the limits set by the anti-trust law; it has held formal and solemn investigations where testimony has been adduced, which if authenticated in a district court of the United States would have opened the prison doors to some high railway officers; it has secured injunctions of sweeping effect; but rate cutting, although diminished at times, has never ceased.

What is the conclusion from all this? Is it not that rates subject to inter-line rivalries cannot be in a state of stable equilibrium? The carrier by rail has transportation to sell and must sell it. The potential shipper has commodities to be moved, but he may send them by another route or even to a different destination. If the published rate is too high the carrier has no alternative except to reduce it. Under these circumstances the most skilfully formulated statute is of no avail. Economic necessity knows no law. If American industry is to be given the protection of stable railway rates it cannot be by the method so far favored by State legislatures and by Congress. The way to prevent rate cutting is to permit the carriers to contract among themselves for the removal of the incentive to rate cutting. Let them agree to divide traffic in reasonable proportions, to carry it for reasonable rates, and the schedules will be observed, for no carrier can gain by violating them.

ARE RATE-MAKING COMMISSIONS SUCCESSFUL?

(*The Railroad Gazette, Editorial, December* 30, 1904.)

It is an interesting phenomenon, in connection with the agitation for the enlargement of the powers of the Interstate Commerce Commission, that so much effort is expended in the exploitation of the evils alleged to exist that none is available to show the applicability of the proposed remedies. Without for a moment admitting that the frictional evils incident to the mutual adjustments necessary between a rapidly developing transportation system and an industrial organization, of which the former is a part, which is moving forward with equal speed, are as great as the proponents of the Quarles-Cooper bill contend, it is worth while to ask whether, if they were, the remedy proposed would correct them. Thirty States of the American Union now have railroad commissions, and in twenty-two instances these commissions have rate-making powers. Would it not be reasonable to investigate the results in these States before adopting similar legislation concerning interstate commerce? Such data as are now available indicate that official rate-making has not been very satisfactory to those States which have tried it.* Georgia, for

* In a speech delivered in the United States Senate on January 11, 1905, Honorable Francis G. Newlands, of Nevada, said: "Now, as to the rate-regulating power, my judgment is, and it is the belief of almost all experienced men in this country, that the rate-regulating power exercised by the States has not, as a rule, been beneficially exercised."

example, was one of the earliest States to adopt a drastic railroad commission law, and has consistently followed the plan of interposing its authority between the buyers and sellers of railroad transportation. Yet the newspapers of Georgia to-day declare that the shippers of that State pay more than their neighbors in adjoining States, and that interstate traffic, which the Interstate Commerce Commission so loudly complains is not subject to effective regulation, is carried similar distances at much lower rates. A recent editorial in the Atlanta Journal contains the following:

A merchant in Marietta can ship certain goods to Chattanooga for fifteen cents per hundred; to Knoxville for nineteen cents per hundred. To ship the same goods to Atlanta he must pay thirty cents per hundred; to Macon, seventy cents per hundred. Atlanta is twenty miles from Marietta, Chattanooga is one hundred and twenty-eight miles, and yet the Chattanooga merchant pays just one-half the freight the Atlanta merchant does. Why? Because Chattanooga is out of the State and Atlanta is in it. This is merely one of a hundred instances where Georgia points are placed at a positive disadvantage in freight rates, because they are located in the State.

The editorial from which the foregoing is an extract shows traces of feeling which suggest the attitude of an advocate rather than one of judicial impartiality; but in spite of this it is clear that the results of a drastic regulative system are not now wholly satisfying to the people of Georgia. It has been suggested that the psychological aspect of railroad regulation of this sort is too often ignored, and

that where the reduction of rates is more or less vigorously looked after by public authorities, railroad officers are not unlikely to leave the duty of looking for desirable reductions wholly to the body with which the legislature has required them to share it. Something of this sort seems to have occurred to the shippers of Georgia, for in the editorial already quoted there appears the following explanation of the situation against which the complaint is made:

> . . . when a merchant approaches the railroad for rates in Georgia, he is met with the reply that the railroad commission regulates that, and he can get no reduction.
>
> If, however, they are asked for rates to towns outside of Georgia, the application receives immediate and favorable consideration, and the best rates are granted, because the point of destination is beyond the limits of the State, and, therefore, not controlled by the State Commission.

In another paragraph of the same editorial the situation is summarized with similar effect, and perhaps even more forcibly as follows:

> As matters now stand the plain logic of the situation is that within the State of Georgia, rates being regulated by the railroad commission, shippers are powerless to receive fair treatment from the railroads, while to points just beyond the limits of the State they can receive the most favorable rates, and shippers from these points into the State receive the lowest rate that can be obtained; much lower, as a rule, than the Georgia shipper can get.

Anyone would underestimate the significance of the foregoing who failed to note that the State rates and the inter-

state rates are over the same railroads and must be promulgated by the same officers; the controlling, and, in fact, the sole difference being that in the case of the interstate rates the shippers deal at first hand and face to face with the railroads and their officers, while in the case of the State rates the legislature has interposed its authority, and that of the State Commission, between the two actual parties to every contract for railroad service, thus requiring the negotiations to be conducted at much more than an arm's length. The method of doing business thus imposed upon the shippers of State traffic, and the railroads carrying it, is cumbersome and absurd; it is only natural that its consequences should be burdensome.

If rate-making power is conceded to the Interstate Commerce Commission the shippers of interstate freight may find themselves in the situation that is now distressing the local shippers of Georgia. Left to himself, the competent railroad rate-making officer devotes much time and thought to the search for opportunities to assist in the development of the regions contiguous and tributary to his system, and to increase net revenue by reducing rates. In order to avoid overlooking any such opportunity his door is always open to those who seek reductions, and he investigates patiently every industrial situation that affords even the most meagre promise of additional traffic in return for lower rates. The creation of an official board with authority to compel reductions transforms such an enlightened and useful officer into an advocate of the existing rates. He is told, in effect, that the State will look out for the needs of business in the way of reduced rates of transportation, and

he knows that, until driven to plead confiscatory taking of property without due process of law at the bar of justice, the revenues of his corporation will have no defender but himself and his fellow officers. He knows that a justifiable reduction will be made an argument for others that are wholly devoid of justification, and he naturally assumes an attitude of hostility to all reductions. Again, capital is reluctant to engage in railroad enterprises where the rate-making power has been taken from its employees and lodged in political officers, and the States which have the most drastic regulative laws have usually seen the slowest development of railroad facilities, with the natural accompaniment of slow development, the retardation of the natural decline in rates.

A PSYCHOLOGICAL ELEMENT.

(*The Railway Age, Editorial, May* 20, 1904.)

Those who propose drastic restrictions upon the rate-making powers of railway officers seem to leave out of consideration an important psychological element in the relations between the buyers and sellers of transportation. Indeed, this element is far too commonly neglected in dealing with industrial affairs. The mental attitude of rate-making officers toward rate reductions is always of primary importance. Left to himself the attitude of the traffic man is certain to be one of inquiry. "Where," he will continually ask himself, "can I modify rates so as to increase the volume of traffic sufficiently to add more to gross receipts than to the higher cost of performing the increased aggregate of service?" Under such circumstances the desire to favor industries which may produce more traffic at least balances the desire to keep rates up to the current level. But to complicate the situation by adding the threat of enforced reductions which cannot have the legitimate basis of adding to net returns and of using a voluntary reduction as a justification for compelling involuntary ones elsewhere is to force a quite different attitude. Then the railway officer has more or less excuse for resisting every reduction, and is sure to fear unexpected and undesirable consequences from the most justifiable change. He will be prone, perhaps too prone, to wish "to let well

enough alone," and not to enter upon policies the end of which he can neither predict nor control. That this is a reason for foregoing all attempts at statutory regulation of rates we do not assert, but it is clearly worthy of thoughtful consideration and adds to the burden of proof which common sense imposes upon those who urge radical departures from the system of free contract under which the legitimate interests of agriculture and of manufactures have grown with those of the country's railways.

THE TON-MILE UNIT.

(*The Commercial and Financial Chronicle, Editorial, August* 20, 1904.)

In the report in which it replied to the inquiry of the United States Senate concerning changes in railway rates and their effect upon the carriers' revenues, the Interstate Commerce Commission repeated a statement that has been so frequently made that it is to be feared it may pass into general acceptance without any real scrutiny. This statement, as formulated by the Auditor of the Commission, is as follows: "It may be said that there is a constant tendency toward an increase in the percentage of the tonnage of low-grade freight, so that if there had been no advances in rates or classification since the year ending June 30, 1899, it is safe to say that the average rate per ton for each of the subsequent years would have been somewhat less than for that year." In other words, the Commission believes that the change in the character of the traffic carried between 1899 and 1903 was such that had every rate schedule remained as it was at the beginning of the period, the average representing receipts per ton per mile would have declined. This contention is important if it is true; if untrue, its fallacy ought to be exposed before it gains further currency.

We have no doubt the argument is made in perfect sincerity, but to anyone at all conversant with railroad affairs and industrial conditions it will be evident on a moment's

reflection that there is a weak element in it. Remember that the Auditor of the Commission does not say that the percentage of low-class freight is higher than it was twenty-five or thirty years ago. That might raise a question that could not be answered off-hand. He confines himself entirely to the period "since the year ending June 30, 1899," and says that in this period there has been "a constant tendency" towards an increase in the percentage of low-grade freight, with the result that "if there had been no advances in rates or classification" the average rate per ton-mile "*for each of the years*" subsequent to 1899 "would have been somewhat less than for that year."

The question therefore arises, what was going on in business affairs in the four years from 1899 to 1903 that there should have been "a constant tendency toward an increase in the percentage" of low-grade freight year by year? The period referred to was one of great industrial activity —without a parallel in that respect, we may truthfully say, even in this country—and the increase in the *quantity* of low-grade freight arising from that prosperity was of really noteworthy dimensions. But it does not follow from that that the ratio of low-grade freight to total tonnage was thereby increased. The low-grade traffic has long formed a preponderating proportion of the whole, and hence even to maintain the old ratio these classes of tonnage would have to increase very much faster in *quantity* than the other classes. It is this fact of a great expansion in the quantity of low-class tonnage that is most manifest to the eye, and we fear that it was that circumstance which led our friend into thinking that it meant an increase in the ratio such traffic bears to total traffic.

Obviously an increase in the percentage of low-class freight would involve a reduction in the percentage of high-class freight. As it happens, circumstances and conditions do not afford warrant for belief in such a reduction. High-class freight consists of merchandise, manufactures and miscellaneous articles and commodities, the most of them of considerable value in regard to bulk, and therefore able to stand high rates, since the transportation charge, even at such rates, can constitute only a small part of the cost of the goods at point of delivery. Dry goods are one of the items of high-class freights. Manufactures and finished goods generally fall in the same category. What controls the volume of the shipments of these goods? The demand, of course, and this demand naturally varies according to the consumptive requirements of the population. These requirements in turn are dependent upon business conditions—upon whether labor is fully and profitably employed and upon whether manufacturers, merchants and producers are making money or not.

It is within the range of knowledge of all our readers that during the four years in question all classes of the population were extremely prosperous. Wage earners had no difficulty in finding employment, and many of them worked overtime. Their rate of pay was increased again and again—in fact they could command their own terms. Manufacturers turned out more goods than in any previous similar period in their business experience. Merchants and traders increased their sales correspondingly, while the farming community has not even yet encountered any set-back in its long era of good times. In brief, everybody was

in a condition to buy on an extensive scale. In such a state of things, is there the least likelihood that the percentage of high-class freight shipped over the railroads would fall off? Is there not rather every reason for thinking the ratio would increase? We shall show below that it actually has increased.

While these are general observations, they find full support in a study of the statistics as far as they are available for that purpose. Of all the traffic changes which take place, those in the territorial distribution of tonnage movement are most accurately and comprehensively portrayed in published statistics. The Commission's own statistician long ago adopted a geographical classification of the data which he compiles, and the averages in which his conclusions are expressed are presented for each of ten great divisions of the country as well as for the United States as a whole. In 1899 there were three of these divisions in which the average receipts per ton per mile were lower than six mills, the range being from 5.29 mills in Group III to 5.94 mills in Group IV. The lowest average for any other group was 8.07 mills and the highest 11.36 mills. The average for the entire country was 7.24 mills, the lowest of any year in the history of the American railway system.

Complete figures for the year 1903 have not been made public, but it is known that the average revenue per ton of freight per mile for the entire country was 7.63 mills, an insignificant advance over 7.57 mills, the average of 1902. Comparisons between 1899 and 1902 are, therefore, likely to serve with sufficient accuracy to portray the changes from 1899 to the present date.

In 1899 55.45 per cent. of the traffic movement of the United States was within the three groups where rates were lowest, none of which had an average of receipts per ton per mile as high as 6 mills. From 1899 to 1902 the ton mileage of the country increased 33,622,112,900 (27.19 per cent.) and of this great increase 61.52 per cent. went to the groups in which the average in 1899 exceeded 8 mills. The business of the three groups having low rates grew but 19.36 per cent., while that of the seven higher groups grew almost twice as rapidly, or actually 36.93 per cent. Thus changes in the geographical distribution of traffic, which can easily be traced in the Commission's reports, would have resulted in a higher instead of a lower average rate per ton per mile "had there been no advance in rates or classification."

The exact value of this change can be measured by using the traffic movement of each group in 1902 as a "weight" to be applied to the average ton-mile revenue of the same group in 1899, and thus obtaining a weighted average. Such a calculation shows that the more rapid growth of traffic in the regions where rates are highest would have accounted for an advance of 0.13 mill to 7.37, or more than one-third of the actual rise.

Beyond the changed distribution of traffic there is, however, a great deal of evidence that the ton-mile unit is moving upward rather than downward in quality. The opinion to the contrary is based primarily upon the importance of mine products in the aggregate tonnage of the country. The notion that this great class, which represented 51.47 per cent. of the country's railway traffic in 1899 and 52.36 per cent. in 1902, is carried at the lowest rates, is not sup-

ported by the facts. One-fifth of it is anthracite coal, which is charged for at rates that considerably exceed the general average of the country, while more than a quarter moves in those portions of the country comprised in groups VI, VII, VIII, IX, and X, in which traffic conditions still require rates considerably above the average.

Generally speaking, the classes of traffic which move at the lowest rates are farm products, including both vegetable and animal products in that designation. This class of traffic has not grown, and in the nature of things could not have grown as rapidly as others. "Products of agriculture" supplied 11.33 per cent. of the railway tonnage of 1899 and but 9.23 per cent. in 1902, while during the same years the proportion supplied by "products of animals" fell off from 3.12 per cent. to 2.64 per cent. Manufactured articles, which make up but 13.45 per cent. of all tonnage in 1899, and move at relatively high rates, supplied 14.49 per cent. of the total in 1902. These data clearly tend toward a conclusion diametrically opposed to that quoted from the Commission's report.

Although detailed statistics are not available, the well known fact that westbound traffic has since 1899 grown so as to constitute an unprecedentedly heavy proportion of the total is also strong evidence in the same direction. Eastbound movement is commonly of low-grade freight paying relatively low rates; westbound movement is of higher grade and pays relatively higher rates. The contention of the Commission is distinctly "not proven."

RAILWAY CHARGES AND THE STANDARD OF PAYMENT.

(*The Commercial and Financial Chronicle, Editorial, June* 11, 1904.)

For three years the Interstate Commerce Commission has persistently bewailed an advance in railway charges which is purely a creature of its imagination. When the rise in prices which marked the period of unprecedented business activity that began in 1898 had raised the cost of railway supplies and enhanced every item of operating expenses, including wages, the railways were faced by a problem which could be met in but one way. Not every railway manager understood that the real definition of this problem was that the standard money in which rates were measured and paid had suffered a depreciation; yet such in fact was the case.

The railways found themselves tied to a set of published rate schedules, while those of whom they purchased labor or materials were perfectly free to take advantage of the growing intensity of demand. The consequence was that for months the prices of commodities moved upward almost without exception and without any corresponding movement in railway rates. When the discrepancy became so great that to bear it was no longer possible, railway managers did what they had never expected to do and had postponed unduly; they revised their schedules and in many cases substituted higher figures. In some respects the revision was complicated by the desire to secure more

economical handling of freight, and there are traces of readjustments in regard to shipments in less than carload quantities which were probably the result of a conviction that a greater preference for car lots was desirable. Aside from these few changes it would be impossible to point to any instance in which the new figures reflected the actual rise in the prices of the articles affected. "Appreciation in general prices," says Professor Taussig, "is depreciation of the standard." Prices had increased; the standard of payment had decreased in value, that is, in purchasing power, and railway managers found it desirable and practicable to protect their revenues against a part of the loss occasioned by the change. They could not keep their charges at the former level, but they did succeed in preventing a part of the fall that threatened. It is strange that those who in 1896 explained so glibly the effect which the free and unlimited coinage of silver at the ratio of sixteen to one would have upon the standard of value have so failed to appreciate the similar consequences of vastly augmented gold production and an increase in paper issues convertible into gold, accompanied by tremendously increased pressure upon the monetary supply in consequence of unusual business activity.

That the explanation here given is correct can now be established by unquestionable statistics. Roughly speaking, the general level of railway freight rates expressed in money, *i. e.*, nominal rates, may be read in the average receipts per ton-mile. The statistics compiled by the Interstate Commerce Commission show that this average was lowest in the fiscal year 1899, when it stood at 7.24 mills,

and that it gradually rose to 7.57 mills in 1902. These averages, showing a nominal advance of 4.56 per cent., can now be compared with statistics of wholesale prices compiled by the Department of Labor. A few such comparisons follow, the prices used being those of 1898, because, as has been said, the advance in prices antedated the changes in railway schedules which they made imperative.

Items.	1898 or 1899.	1902.	Advance, per cent.
Railway rate—			
Per passenger per mile	1.925* cts.	1.986 cts.	3.17
Per ton of freight per mile	0.724 cts.	0.757 cts.	4.56
Prices—			
Barley, per bushel	43.48 cts.	63.21 cts.	45.38
Cattle, extra steers, per 100 lbs.	$5.3779	$7.4721	38.94
Corn, No. 2, per bushel	31.44 cts.	59.68 cts.	89.82
Cotton, upland middling, per lb	5.972 cts.	8.932 cts.	49.56
Hay, timothy, No. 1, per ton	$8.3317	$12.6154	51.41
Hogs, heavy, per 100 lbs	$3.8053	$6.9704	83.18
Oats, cash, per bushel	24.70 cts.	39.60 cts.	60.32
Butter, creamery extra, per lb.	19.54 cts.	24.80 cts.	26.92
Eggs, new laid, fancy, nearby, per dozen	18.17 cts.	24.09 cts.	32.58
Potatoes, Burbank, per bushel	50.94 cts.	59.58 cts.	16.96
Coal, anthracite, broken, per ton	$3.2108	$3.7186	15.82
Coal, bituminous, George's Creek at mine, per ton	91.25 cts.	$2.1250	131.51
Steel rails, per ton	$17.6250	$28.000	58.87
Leather, oak, sole, per pound	32.13 cts.	37.42 cts.	16.46
Cloth, all wool, indigo blue suitings, per yard	$1.9763	$2.1576	9.17
Wool, Ohio fine fleece, scoured, per lb	61.50 cts.	65.46 cts.	6.44
Petroleum, crude, per bbl	91.18 cts.	$1.5886	74.23
Axes, M. C. O., Yankee, each	37.50 cts.	50.50 cts.	34.67
Barbed wire, galvanized, per 100 lbs	$1.8375	$2.7375	48.98
Lead pipe, per 100 lbs	$4.6000	$5.1958	12.95
Nails, wire, 8-penny, fence and common, per 100 lbs	$1.4375	$2.0750	44.35
Lumber, white pine boards, No. 2 barn, per 1,000 feet	$15.5000	$24.0000	54.84

*Although the Commission's statistician published this average in four successive annual reports it turns out to have been erroneous. The lowest average per passenger per mile was 1.973 cents in 1898.

Such comparisons could be multiplied almost indefinitely, and the larger the number shown the more complete would be the evidence that general prices are higher now, in relation to railway rates, than ever before. In other words, railway rates, measured by the purchasing power of the money in which they are paid, are now at the lowest level ever attained. Of course, there are a few commodities the prices of which have moved downward. Even the highest business activity, accompanied by the most notable increase in the production of the standard money metal, could not offset the natural consequences of production of a greater supply than could be marketed at prices equivalent to those formerly registered under different conditions and in a more highly valued standard. Among farm products, wheat affords about the sole exception to the general upward movement, and last year's prices of this commodity almost conform to the general rule. An excellent way to state the relations subsisting at any time between railway charges and prices is to ascertain how much transportation could have been procured for the price of a single unit of any commodity. Such data are shown below, the rates and prices used being the same as those shown in the previous table.

Commodities.	Transportation purchasable.			
	Passengers one mile.		Freight, ton-miles.	
	1898.	1902.	1898.	1902.
Barley, 1 bushel	23	32	60	84
Cattle, extra steers, 100 lbs	279	376	743	987
Corn, No. 2, 1 bushel	16	30	43	79
Cotton, upland middling, 1 pound	3	5	8	12
Hay, timothy, No. 1, 1 ton	433	635	1,151	1,666
Hogs, heavy, 100 lbs	198	351	526	921
Oats, cash, 1 bushel	13	20	34	52
Butter, creamery, extra, 1 pound	10	12	27	33
Eggs, new laid, fancy, nearby, 1 dozen	9	12	25	32
Potatoes, Burbank, 1 bushel	26	30	70	79
Coal, anthracite, broken, 1 ton	167	187	443	491
Coal, bituminous, George's Creek, at mine, 1 ton	47	107	126	281
Steel rails, 1 ton	916	1,410	2,434	3,699
Leather, oak, sole, 1 pound	17	19	44	49
Cloth, all wool, indigo blue suitings, 1 yd.	103	109	273	285
Wool, Ohio, fine fleece, scoured, 1 lb	32	33	85	86
Petroleum, crude, 1 barrel	47	80	126	210
Axes, M. C. O., Yankee, one	19	25	52	67
Barbed wire, galvanized, 100 lbs	95	138	254	362
Lead pipe, 100 lbs	239	262	635	686
Nails, wire, 8-penny, fence and common, 1 lb	75	104	199	274
Lumber, white pine boards, No. 2, barn, 1,000 feet	805	1,208	2,141	3,170

The foregoing shows that a bushel of potatoes would pay for a passenger journey twenty-six miles long at the average charge of the fiscal year 1899, and that three years later it would pay for one four miles or 15.38 per cent. longer. The same bushel of potatoes would have paid for carrying one ton of freight seventy miles in 1899 or 79

miles, 12.86 per cent. further, in 1902. A ton of steel rails would have paid for 916 miles of passenger travel or for carrying a ton of freight 2,434 miles in 1899. In 1902 a ton of rails would have paid for 1,410 passenger-miles or 3,699 ton-miles; increases of 53.93 and 51.97 per cent., respectively. This does not look much like a genuine advance in rates.

The conclusions of the Department of Labor concerning the recent course of wholesale prices are summarized in a series of index numbers which compare the prices of special groups of commodities, and of commodities in general, with the average prices of the decade from 1890 to 1899. Using the familiar passenger-mile and ton-mile units, railway receipts from both classes of traffic can easily be reduced to the same basis. Such comparisons appear below.

Items.	Index numbers.		Advance.
	1898.	1902.	
Railway rates—			
Passenger	96.2	96.8	0.6
Freight	89.7	90.2	0.5
Prices—			
Farm products	96.1	130.5	34.4
Food, etc	94.4	111.3	16.9
Cloths and clothing	93.4	102.0	8.6
Fuel and lighting	95.4	134.3	38.9
Metals and implements	86.4	117.2	30.8
Lumber and building materials	95.3	118.8	23.0
Drugs and chemicals	106.6	114.2	7.6
House furnishing goods	92.0	112.2	20.2
Miscellaneous articles	92.4	114.1	21.7
All commodities	93.4	112.9	19.5

The foregoing means that the average receipts per passenger per mile in 1898 equaled 96.2 per cent. of the average for the ten years from 1890 to 1899, inclusive; that the average price of farm products in 1898 equaled 96.1 per cent. of the average for the ten-year period, and that in 1902 the corresponding averages were 96.8 and 130.5, respectively, showing an increase of less than one point for the railway rate and of 34.4 points for farm products. Other comparisons show similar results. These figures are official, have the highest authority, and effectually refute the claim that there has been an advance in real railway charges.

REAL RATES: HAVE THEY MOVED UPWARD OR DOWNWARD?

(*The Railway Age, Editorial, January* 1, 1904.)

A few years ago substantially all students of transportation affairs and most railway men agreed that a general advance in the charges for railway services was quite impracticable. Just now, however, this doctrine is not nearly so widely accepted, and if but a superficial view of the rate history of the last three years is taken, it will appear to have been shown to be erroneous. The Interstate Commerce Commission, according to the official synopsis of its coming report supplied to the press, regards the idea "that railway rates could not be advanced" as discredited by the events of the last three years, and thinks that the "marked and general advance in rates" is proof that the railways, or their officers and owners, now possess "power to tax unjustly every species of property." Of course this conclusion is no stronger than the facts on which it is based. If there has been no genuine raising of the general level of railway charges, as compared with the prices of commodities in general and rates for other services, there is left no evidence to support the Commission's charge that the railways exercise "a most insidious means of taking unjustly from the general body of the public for the benefit of the few."

The examination of this question should be thorough and painstaking in proportion to the importance of the charge and the authority which will be accorded to it by the public on account of its origin. No one will deny that the rate schedules show a goodly number of instances in which rates a few cents higher than three years ago are demanded for particular services, or that several hundred items in the principal freight classifications have been transferred to higher classes than formerly, or that the average revenue per ton per mile for the United States and for a good many important railways has advanced. On the other hand, every traffic officer can refer to a good many instances in which schedule rates have been reduced, and there is no one who can be excused for not knowing that the public is buying more of the higher priced freight services than ever before, so that if the rate schedules had not been altered at all the average ton-mile revenue would have increased.

But the problem goes deeper than this. Railway charges, like wages and the prices of commodities, are measured in money and paid in money. The wage-earner, however, cannot eat money nor wear it nor shelter himself beneath it. He values it for what it will buy, and his wages are worth to him precisely what they will buy, no more and no less. If at one time he earns two dollars per day he is as well off as on four dollars per day with prices all doubled. It is the same with the seller of goods. If what he has to pay for rent, fuel, clothing, household expenses and amusements doubles he is no better off because he gets one-fourth more for each article he sells. It is precisely the same with

the railway, with its employees and with the holders of its securities. If the wages of railway employees, the cost of fuel, rails, ties, rolling stock, etc., have advanced, the railways are better or worse off in proportion as the increase in money (nominal) rates has exceeded or fallen short of the enhanced cost of services and supplies. Everyone knows that wages and prices have largely increased during recent years. Nearly everyone knows that they have, in most cases, gone upward faster and further than railway rates.

Another way of looking at the problem, based, however, upon the same principle, is to inquire how much transportation can be bought with particular units of different commodities. As has been suggested, the ton-mile unit is not an unvarying one, but it is unquestionably true that it now represents a higher average of service than formerly. Using it as a basis, because it is the most accurate standard available, a few comparisons will be instructive. In 1899 the average revenue per ton of freight carried by railways one mile was 7.24 mills, the lowest point touched in the history of American railways. In 1902 the average was 7.57 mills or 4.56 per cent. higher. These averages represent fiscal years, each of which ended with June 30, and the rates may be compared with prices during the preceding calendar years. Such comparisons appear below:

Items.	Prices.		Equivalent in freight transportation.			
			Ton-miles.		Per cent. of change.	
	1898.	1901.	1898–9.	1901–2.	Increase.	Decrease.
	Cents.	*Cents.*				
Cotton, 1 lb., middling, raw, at New York	5.94	8.75	8	12	50	..
Cotton, 1 yd., New York mills, shirtings, at New York	8.00	10.25	11	14	27	..
Wheat, 1 bu., No. 2, at New York	95.2	83.6	131	110	..	16
Corn, 1 bu., No. 2, at New York	37.6	56.7	52	75	44	..
Oats, 1 bu., No. 2, at New York	29.7	36.6	41	48	17	..
Lard, 1 lb., prime contract, at New York	5.53	8.87	8	12	50	..
Beef, 1 bbl., extra mess, at New York	$9.16	$9.32	1,265	1,231	..	3
Pork, 1 bbl., mess, at New York	9.82	15.62	1,356	2,063	52	..
Coal, soft, 1 ton, at Baltimore	1.60	2.50	221	330	49	..
Coal, hard, 1 ton, at Philadelphia	3.50	3.80	483	502	4	..
Iron, pig, No. 1, foundry, 1 ton, at Philadelphia	11.66	15.87	1,610	2,096	30	..
Steel rails, 1 ton, at mills in Pennsylvania	17.62	27.33	2,434	3,610	48	..

The prices in the foregoing all are from the latest edition of the Statistical Abstract of the United States. The comparisons show that among the twelve highly important commodities named there are only two the prices of which have not advanced much more rapidly than the average receipts from railway freight service. The exceptions are wheat, a crop which almost wholly failed in certain winter wheat States in 1898, and beef, the advance in which began very early during the present period of higher prices. Of the other ten commodities three will buy fully 50 per cent. more freight service than at the rates of 1899, and three will buy from 40 to 49 per cent. more. Of course, this sort of a study of the subject could be carried much further than is possible here, and would have to go further before its results could be accepted as conclusive.

Enough has been given to show that the results of such superficial comparisons as those which relate to mere money rates are likely to be widely deceptive. We would respectfully suggest that the Interstate Commerce Commission could profitably undertake such an investigation as is herein indicated. The results would be very apt, however, entirely to upset some of the favorite contentions of one or more of its members.

RAILWAY RATES AND WHOLESALE PRICES.

(*The Railway Age, Editorial, May* 27, 1904.)

The United States Department of Labor has just published the results of an investigation of the course of wholesale prices for the period from 1890 to 1903, inclusive, which throws a great deal of light upon the alleged advance in railway charges of which so much has recently been made. This report (Bulletin No. 51 of the Department of Labor) affords the most complete means yet available for comparing the recent course of prices for commodities in general with that of the charges for railway service. The plan of the Department is to obtain extensive series of quotations for each class of commodities and to reduce these to yearly averages. Having done this the averages are each separately compared with an average representing the ten-year period from 1890 to 1899, which is made the basis, and the results are stated as percentages. Similar comparisons are made for averages representing all the commodities included in the investigation. Assuming that the general level of railway rates is indicated with at least approximate accuracy by the averages representing passenger receipts per passenger mile and freight receipts per ton-mile, it is obvious that these averages can be reduced to the basis adopted by the Department of Labor, and that comparisons will show whether railway rates, as measured by the commodity standard, have advanced or declined.

The following shows the application of this method to the railway averages:

Years—	Average passenger receipts per passenger per mile.		Average freight receipts per ton per mile.	
	In cents.	In percentages of average for 1890 to 1899.	In cents.	In percentages of average for 1890 to 1899.
1890 to 1899	2.051	100.0	.839	100.0
1890	2.167	105.7	.941	112.2
1891	2.142	104.4	.895	106.7
1892	2.126	103.7	.898	107.0
1893	2.108	102.8	.878	104.6
1894	1.986	96.8	.860	102.5
1895	2.040	99.5	.839	100.0
1896	2.019	98.4	.806	96.1
1897	2.022	98.6	.798	95.1
1898	1.973	96.2	.753	89.7
1899	1.925	93.7	.724	86.3
1900	2.003	97.7	.729	86.9
1901	2.013	98.1	.750	89.4
1902	1.986	96.8	.757	90.2

The percentages in columns three and five of the foregoing are derived in precisely the manner adopted by the Department of Labor for its price comparisons, and are in every way comparable therewith. Such comparisons may now be presented:

WHOLESALE PRICES AND RATES COMPARED WITH AVERAGES 1890 TO 1899. PERCENTAGES.

Years.	Railway Rates.		Wholesale Prices.									
	Passenger rates.	Freight rates.	Farm products.	Food, etc.	Cloths and clothing.	Fuel and lighting.	Metals and implements.	Lumber and building materials.	Drugs and chemicals.	House furnishing goods.	Miscellaneous articles.	All commodities.
1890–1899...	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1890.....	105.7	112.2	110.0	112.4	113.5	104.7	119.2	111.8	110.2	111.1	110.3	112.9
1891.....	104.4	106.7	121.5	115.7	111.3	102.7	111.7	108.4	103.6	110.2	109.4	111.7
1892.....	103.7	107.0	111.7	103.6	109.0	101.1	106.0	102.8	102.9	106.5	106.2	106.1
1893.....	102.8	104.6	107.9	110.2	107.2	100.0	100.7	101.9	100.5	104.9	105.9	105.6
1894.....	96.8	102.5	95.9	99.8	96.1	92.4	90.7	96.3	89.8	100.1	99.8	96.1
1895.....	99.5	100.0	93.3	94.6	92.7	98.1	92.0	94.1	87.9	96.5	94.5	93.6
1896.....	98.4	96.1	78.3	83.8	91.3	104.3	93.7	93.4	92.6	94.0	91.4	90.4
1897.....	98.6	95.1	85.2	87.7	91.1	96.4	86.6	90.4	94.4	89.8	92.1	89.7
1898.....	96.2	89.7	96.1	94.4	93.4	95.4	86.4	95.8	106.6	92.0	92.4	93.4
1899.....	93.9	86.3	100.0	98.3	96.7	105.0	114.7	105.8	111.3	95.1	97.7	101.7
1900.....	97.7	86.9	109.5	104.2	106.8	120.9	120.5	115.7	115.7	106.1	109.8	110.5
1901.....	98.1	89.4	116.9	105.9	101.0	119.5	111.9	116.7	115.2	110.9	107.4	108.5
1902.....	96.8	90.2	130.5	111.3	102.0	134.3	117.2	118.8	114.2	112.2	114.1	112.9

The general results of the foregoing comparisons are the conclusions that railway rates were much lower in 1902, as compared with the averages of 1890 to 1899, than wholesale prices, and that the charges for railway services move upward, in response to changed economic conditions with much less readiness than do such prices. In fact, it is evident that the average unit of each of the nine classes of commodities enumerated would purchase much more transportation either of passengers or freight, in 1902, than in the years from 1890 to 1899, inclusive. Of the entire 260 comparisons presented for all the years included, railway charges show a relatively greater decrease in 146 or 56.1 per cent. Railway rates are relatively lower in every one of the 80 comparisons for the years from 1899 to 1902, inclusive. The latter fact is especially interesting, for this is the period during which the Interstate Commerce Commission contends that there has been an unjustifiable increase in rates.

It will be well to set the advances in railway rates and those in commodity prices, as shown in the foregoing table of percentages as having occurred from 1899 to 1902, side by side. They appear below:

Items.	Percentages, showing comparisons with averages for 1890 to 1899.		Advance.
	1899.	1902.	
Railway rates.			
Passenger	93.9	96.8	2.9
Freight	86.3	90.2	3.9
Prices—			
Farm products	100.0	130.5	30.5
Food, etc	98.3	111.3	13.0
Cloths and clothing	96.7	102.0	5.3
Fuel and lighting	105.0	134.3	29.3
Metals and implements	114.7	117.2	2.5
Lumber and building materials	105.8	118.8	13.0
Drugs and chemicals	111.3	114.2	2.9
House furnishing goods	95.1	112.2	17.1
Miscellaneous articles	97.7	114.1	16.4
All commodities	101.7	112.9	11.2

In other words there are only two groups of commodities among the nine indicated which have not advanced more rapidly than railway transportation during the last four years. The exceptional classes had advanced 28.3 and 4.7 points, respectively, between 1898 and 1889, while passenger rates fell according to the same scale 2.3, and freight rates fell 3.4 points. Farm products increased nearly eight times as fast between 1899 and 1902 as did freight rates, and more than ten times as fast as passenger rates.

RAILWAY RATES AND WAGES.

(*The Commercial and Financial Chronicle, Editorial, November* 12, 1904.)

The gross receipts from the average ton of railway freight carried one mile during the fiscal year 1899 was 7.24 mills. In 1903 the corresponding average was 7.63 mills. Assuming, therefore, that the average ton-mile unit of freight did not change materially and that the purchasing power of money with regard to general commodities and labor was substantially unaltered, there would appear to have been a raising of the general level of railway freight rates equal to 5.39 per cent. of those in force during 1899. We have shown in previous issues, however, that if there has been any modification worth mentioning in the character of the ton-mile unit during the last four years, it has been through the shipment of a larger proportion of the higher grades of freight, and consequently would in itself and without any modification in the rate schedules have been reflected by a moderate increase in the gross receipts per unit of service. We have also shown by reference to the statistics of prices compiled and published by the Bureau of Labor at Washington that the amount charged for the average railway service will purchase less in quantity of most commodities, and especially of those of which the railways are large purchasers, than it would in 1899 or during any year previous to 1903.

The data concerning railway wages contained in the an-

nual report of the Statistician to the Interstate Commerce Commission, of which advance sheets have recently been issued, permit similar comparisons with reference to the wages of railway employees. Thus, on June 30, 1903, the railways of the United States employed 56,041 firemen, and during the twelve months immediately prior to that date paid this class of employees $37,484,283, at the rate of $2.28 per day worked. Four years earlier, during the year 1899, the average daily compensation of railway firemen was but $2.10. Thus, while railway gross receipts per unit of freight service performed increased 5.39 per cent., the railway outlay per unit of service rendered by this class of workmen increased 8.57 per cent. In order to pay the average fireman for one day's labor in 1899, the railways had to earn $2.10, which they could obtain by carrying an average ton of freight 290 miles at the average rate of that year, which was 7.24 mills. But in 1903, when the average rate had nominally risen to 7.63 mills, it took $2.28 to pay the average fireman for a day's labor, and to earn $2.28 at 7.63 mills per mile it is necessary to carry a ton of freight 299 miles. The following table shows the distance which a typical ton of freight had to be carried in 1899 and in 1903 to earn enough to pay for a day's labor of one man belonging to each of the classes of employees named, together with the number of employees in each class at the close of 1903 and the total wages received during that year:

	Number on June 30, 1903.	Total wages during 1903.	Ton-miles required to pay for one day's labor.		Increase, Per cent.
			In 1899.	In 1903.	
Station agents	34,892	$21,011,724	240	245	2.08
Engineers	52,993	64,173,825	514	526	2.33
Firemen	56,041	37,484,283	290	299	3.10
Conductors	39,741	39,932,537	432	443	2.55
Other trainmen	104,885	66,221,636	268	284	5.97
Machinists	44,819	33,414,954	316	328	3.80
Carpenters	56,407	35,526,545	280	287	2.50
Other shopmen	154,635	84,133,168	238	244	2.52
Section foremen	37,101	21,430,984	232	233	.43
Other trackmen	300,714	103,426,685	163	172	5.52
Telegraph operators and despatchers	30,984	19,962,487	267	273	2.25
Employees, account floating equipment	7,949	5,032,788	261	277	6.13
All other employees and laborers	168,430	84,203,290	232	232	No change.
	1,089,591	$615,954,906	..	..	..

The advance in the amount of service which the railways must now perform in order to pay for each unit of labor is at least sufficient to show how unpleasant the situation might have been had there been no movement in the average return per ton mile corresponding, however inadequately, to the notable rise in the wages rates of all classes of railway labor.

Similar results follow comparisons with the average returns for carrying a single passenger one mile by steam railway. The lowest nominal revenue per passenger mile reported by the Interstate Commerce Commission was for the fiscal year 1898, when it was 19.73 mills.

For 1903 the average was 20.06 mills, an advance of 1.67 per cent. To pay an average fireman for one day's labor at the rates of fare and of wages prevailing in 1898, it was necessary to carry one passenger 10.59 miles; with the fares and wages prevailing in 1903 it was necessary to increase this distance 7.37 per cent., to 11.37 miles. The passenger mileage necessary to pay the average trackman (not including section foremen) in 1898 was 5.66 miles, but by 1903 there had been an increase in this figure to 6.53 miles, a rise of 15.37 per cent. in the service required to pay for a single unit of this kind of labor.

The great significance of these comparisons, which might be extended and applied to different sections of the country, will be better appreciated if attention is directed to the fact that the expenditure for labor is by far the greatest item of railway outlay. In 1903 the aggregate payment for labor was $757,321,415, of which only $23,254,220 went to general or other officers. It is noteworthy that of the balance

$615,954,906, or 83.91 per cent., is represented in the table above. This sum is almost precisely one-half of the total operating expenses of all the railways of the United States.

In connection with the earlier discussions referred to, it has now been conclusively shown by reference to the prices of substantially all the services or articles which are bought out of railway earnings, and to practically all the commodities which enter in considerable quantities into railway traffic, that real rates are now lower than ever before. If this is the case, it makes little difference to the traveling and shipping public whether the nominal rates are higher or lower than formerly.

WAGES AND RAILWAY RATES.

(*The Railway Age, Editorial, August* 12, 1904.)

In previous issues we have shown by abundant statistical evidence, obtained from sources of the highest authority, that the rise in the general price level of commodities has been much more rapid than the nominal advance in railway charges which has partially paralleled it. The bulletin on wages and the cost of living just issued by the Federal Bureau of Labor, enables us to make similar comparisons with wages. The general conclusion of the bureau is that average wages per hour for all classes of employees in 1903 equaled 116.3 per cent. of the average for the decade from 1890 to 1899 inclusive, and that weekly earnings per employee were 112.3 per cent. of those during the basic 10-year period. This, compared with an advance of from 12.3 to 16.3 per cent. in wages, revenue per passenger per mile shows on the same basis a decrease of 2.2 per cent. and that per ton of freight per mile a decrease of 9.1 per cent. It will be well to set the figures for each year from 1890 to 1903 side by side:

Percentages of Averages for Decade, 1890–1899.

Year.	Railway rates per mile.		Wages.	
	Per passenger.	Per ton of freight.	Per hour.	Weekly earnings per employee.
1890 to 1899	100.0	100.0	100.0	100.0
1890	105.7	112.2	100.3	101.0
1891	104.4	106.7	100.2	100.7
1892	103.7	107.0	100.8	101.3
1893	102.8	104.6	100.9	101.2
1894	96.8	102.5	97.9	97.7
1895	99.5	100.0	98.3	98.4
1896	98.4	96.1	99.7	99.5
1897	98.6	95.1	99.6	99.2
1898	96.2	89.7	100.3	100.0
1899	93.9	86.3	102.0	101.2
1900	97.7	86.9	105.5	104.1
1901	98.1	89.4	108.0	105.9
1902	96.8	90.2	112.3	109.3
1903	97.8	90.9	116.3	112.3

The foregoing shows that during every year from 1896 to 1903 an average hour's or an average week's work would purchase more railway transportation, either of passengers or freight, than at the average rates of wages and for railway service of the decade from 1890 to 1899. Railway revenue per passenger mile has risen since 1899, when it was at the lowest point ever touched, 4.2 per cent., and from its lowest point, in the same year, receipts per ton of freight per mile have increased 5.3 per cent. During the same years hourly wages increased 14 per cent. and weekly earnings 11 per cent.

In the following table the average wages per hour re-

ceived in the United States by those following certain leading trades are shown for the years 1899 and 1903, and in parallel columns the amount of railway passengers and freight transportation purchasable at the average rates of each year:

Occupation.	Wages per hour.		Miles of railway service purchasable with one hour's earnings.			
			For one passenger.		For one ton of freight.	
	1899.	1903.	1899.	1903.	1899.	1903.
	Cents.	Cents.				
Blacksmiths	26.37	29.62	13.7	14.8	36.4	38.8
Boiler makers	26.54	28.48	13.8	14.2	36.7	37.3
Bricklayers	45.97	54.71	23.9	27.3	63.5	71.7
Carpenters	28.39	35.94	14.7	17.9	39.2	47.1
Compositors	40.86	44.67	21.2	22.3	56.4	58.5
Hod carriers	25.18	28.63	13.1	14.3	34.8	37.5
Iron molders	25.63	30.36	13.3	15.1	35.5	39.8
Laborers, general	14.57	16.76	7.6	8.4	20.1	22.0
Machinists	24.17	27.09	12.6	13.5	33.4	35.5
Painters, house	28.92	34.50	15.0	17.2	39.9	45.2
Plumbers	36.84	43.71	19.1	21.8	50.9	57.3
Stone cutters	35.94	42.25	18.7	21.1	49.6	55.4
Stone masons	37.19	44.86	19.3	22.4	51.4	58.8

Thus the average purchasing power of labor in each of these great lines of employment has very materially increased since 1899. Comparisons with earlier years would show a still more significant augmentation of the ability of labor to buy railway service for the rise in wages rates had been considerable before there was any increase in the cash

payments for railway transportation. "At all times and places," says Adam Smith, the father of the classical political economy, "that is dear which is difficult to come at, or which it costs much labor to acquire; and that cheap which is to be had easily or with very little labor." It is very obvious that Adam Smith would regard railway services in the United States as cheaper at the present time than ever before in the history of the country. Those who would see beneath the surface have only to bear in mind the observation of the same gifted author that all "commodities may be said to have a real and nominal price * * * real price may be said to consist in the quantity of the necessaries and conveniences of life * * * nominal price in the quantity of money." The average unit of railway service now brings to the companies which render it slightly more money than in 1899; that is, nominal rates have advanced a little; but the quantity of labor or goods purchasable with the money received for the average railway service is now lower than at any time in the past; in other words, real rates are at the lowest level ever attained.

ARGUMENT OR HISTORY?

(*The Railway Age, Correspondence, June* 17, 1904.)

To the Editors:

The future historian of railway affairs will be singularly perplexed when he attempts to reconcile the statements concerning the consequences of the decisions of the Supreme Court in the Trans-Missouri and Joint Traffic Association cases contained in Commissioner Prouty's article in the North American Review (to which you referred in your book notes last week), with the recital of facts in the Annual Report to Congress signed by Mr. Prouty, as a member of the Interstate Commerce Commission, on January 9, 1904. Mr. Prouty now believes that railway competition, by which he means that of parallel lines, "even when altogether illicit, has cheapened the cost of transportation," and that maintenance of rates, largely through the efforts of the body of which he is so conspicuous a member is now costing consumers millions of dollars annually. He thinks that railway regulation "never can be secured by enforced competition," and leaves his readers to infer that the only way to limit the power of the railways to lay an "arbitrary tax upon the public" is for Congress to delegate to the Interstate Commerce Commission an extensive share in the legislative function of rate-making, and to invade for the benefit of the same body of the legitimate field of the Federal Judiciary, making the Commission the sole tribu-

nal for the determination of facts pertaining to rate-adjustments. To sustain this position he declares "a word of history is necessary," and proceeds to supply it by discussing the results of the Trans-Missouri and Joint Traffic Association cases as follows:

These decisions at the time produced almost as much commotion as the decision in the Northern Securities case has to-day. Upon the one hand, they were proclaimed as the death knell of railroad property. If railroads could not agree as to competitive rates, nothing remained but continual warfare and final destruction. Only the prompt intervention of Congress could avert these dire consequences. Upon the other hand was corresponding jubilation. Here was an end of railway monopoly. Competition must now resume its legitimate sway. Such was the prediction; what was the result? Absolutely nothing.

The decision of the Supreme Court in the Trans-Missouri case was rendered on March 22, 1897, and that in the Joint Traffic Association case on October 24, 1898. Every railway man whose experience includes the later year knows the effect of these decisions. It was summarized in the Commission's annual report to Congress, signed by the Commission, of which Mr. Prouty was a member, on January 9, 1899. I would quote a few sentences from this report as follows:

" . . . the situation has become intolerable, both from the standpoint of the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each

other, and shippers all the while in doubt as to the rates secured by their competitors. The volume of traffic is so unusual as to frequently exceed the capacity of equipment, yet the contest for tonnage seems never relaxed. Enormous sums are spent in purchasing business, and secret rates accorded far below the standard of published charges."

It was to alleviate the evils described in the foregoing that the Commission undertook the very notable series of conferences with different groups of railway presidents, issuing its invitations "in each case with reference to the territory in which different connecting and competing lines operate and the rate conditions in that territory." The Commission took pains to explain, in connection with its account of these conferences that it

" . . . perfectly understands that competing carriers cannot agree with each other as to what their competitive rates shall be, and then agree with each other to establish and maintain those rates; but the Commission believes it not unlawful for such carriers to mutually agree that each of them will observe whatever rate it publishes . . .

Yet the Commission did not for a moment, I am certain, overlook the fact so clearly stated in its report of the year before, that "rates by competing lines must be substantially the same" with its necessary corollary that the agreements to observe published rates, if effective, would secure precisely the results previously sought by such agreements as those of the Trans-Missouri and Joint Traffic Association. In the advanced position thus assumed, in the brilliance of the plan and its execution, in the success attained, this

series of conferences constitutes by far the brightest page in the history of the Commission. The conception was broad and statesmanlike, its execution was timely and virile, its success was immediate and sweeping. Friends of the Commission will hope that the luster of this record will not be dimmed by belittling the facts which led to the conferences.

B. T. H.

NEW YORK, *June* 13, 1904.

MISLEADING STATISTICS.

(*The Railroad Gazette, Editorial, July* 29, 1904.)

Probably no one will question the statement that the purpose which Congress intended to serve in authorizing the collection, compilation, and publication of railroad statistics by the Interstate Commerce Commission was the enlightenment of the people and their legislative representatives concerning the nature, conditions, and methods of the great railroad industry. This being the case, it is worth while to consider what effect upon the public comprehension of railroad problems is likely to result from the widespread dissemination of the official synopsis of the forthcoming report of its statistician which has just been issued by the Interstate Commerce Commission. This abstract issued "for the press" contains about all that the average citizen will ever see of the work of the statistician. It goes to nearly every newspaper in the country and is liberally accorded space in the columns of the daily and weekly press. When, six or seven months later, the annual report for the fiscal year which ended with June 30, 1903, of which the document under discussion is an abstract, is published, the edition will consist of but a few thousand copies, and most of these will speedily be hidden on library shelves. The publication of the formal volume will receive no attention in the press, for its news value will have been forestalled by the abstract just issued. It is important, therefore, that the abstract should fairly epitomize the data which will finally appear; but on certain matters of great importance it fails

to do so. The capitalization of railroad property should be an aggregate easily ascertained, since all that is necessary in order to determine it with accuracy is to add the capitalization of the separate corporations and to deduct from the sum the total par value of railroad shares and bonds owned by railroad corporations and thus duplicated in the first result. The facts necessary for this simple calculation will appear in the final report, but the present synopsis states the capitalization as $12,599,990,258 in the aggregate, and as averaging $63,186 per mile of line. The press synopsis does not show the amount of securities held by railroad companies, and consequently constituting a part of their assets. But even if these holdings were not increased between June 30, 1902, and the same date of last year, the real capitalization on the latter date was less by $2,208,518,793, or 17.53 per cent., than the amount shown, and the actual average capitalization per mile of line was $52,109 instead of $63,186. When public opinion regards railroad capitalization as excessive, as it is prone to do; when a widely prevalent prejudice conceives that this supposed over-capitalization is the cause of the extortionate rates that are alleged to exist, and when not a few of those citizens who have been misled honestly believe that the aggregate par value of railroad securities has been increased with the deliberate purpose of defrauding the shipping and traveling public and deceiving legislative bodies, the promulgation by a Federal statistical agency of figures which exaggerate the capitalization of the American railroad system by over seventeen per cent. is quite unfortunate.

This, however, is far from being the sole instance of the

presentation of data, or the omission of qualifying and significant facts, in such a way as to give to the synopsis the appearance of having been prepared without proper regard to fairness. The taxes exacted from the railroads by the various State and municipal governments within whose jurisdiction their property is found constitute an important and steadily increasing expenditure. In 1901 this item was $50,944,372, and in 1902 it was 6.91 per cent. more, or $54,465,437. The increase from 1902 to 1903 was substantially the same, or 6.21 per cent., to a total of $57,849,569; yet the item of taxes which is thus equal to one-third of the income received by the holders of railroad shares, does not appear in the synopsis as a separate deduction from gross receipts, but is obscurely introduced as an element in the item of so-called "deductions from net income," which also includes interest on funded debt and current liabilities, payments to lessors, and the cost of permanent improvements. In 1902 no less than 15.20 per cent. of the dividends paid on the capital stock of American railroad corporations was paid to other railroads which were the owners of the dividend-paying shares, and thus furnished the payees with resources from which to meet their own payments of interest and dividends. The dividends paid during 1902 on all railroad shares aggregated $185,391,655, but as $28,176,275 of this amount went to railroad corporations themselves, it is apparent that private investors received but $157,215,380, and that the latter amount is all that the railroads of the country, considered as a system, actually paid to their shareholders. The present synopsis repeats the higher figure and gives the

corresponding amount for the year 1903, which was $197,148,576. It affords no reliable clue to the deduction necessary in order to arrive at the real payment to private investors for this purpose, but it is doubtful if this sum exceeded $160,000,000.

It is a thankless task to point out the deficiencies of an official report, and there can be little pleasure in noting the failure of any American public officer to realize the obligation of impartiality which goes with high public position. Yet it cannot be wholly useless to expose the misleading character of such a widely distributed and generally quoted document as that under discussion, and it should not be regarded as presumptuous to suggest to the statistician the desirability of including in it some of the facts which make the railroad side appear in a more favorable light, as well as all of those which are useful to the partisan "advocate of the small shipper."

CAPITAL COST.

(*The Railway Age, Editorial, January* 29, 1904.)

In current discussion of the relation of railway rates to the cost of producing transportation there is a regrettable tendency to treat cost as including nothing beyond operating expenses. The late Industrial Commission, as was shown by H. T. Newcomb in his elaborate exposure of the numerous errors and omissions in its report on railways, fell grievously into this error. It discussed the operation of the economic law of increasing returns as though its consequences were accurately measured by the difference between gross earnings and operating expenses. The Interstate Commerce Commission is guilty of a similarly misleading utterance when it points to the figures representing the ratio of operating costs to gross receipts with the assumption that a decrease from year to year shows a corresponding decrease in the ultimate cost of doing business.

Just why any serious student of transportation should be led astray in this manner it is most difficult to perceive. Omitting taxes, a legitimate and increasing item of cost, there are two distinct kinds of cost which must be met out of gross railway receipts. These are sufficiently designated when one of them is called operating cost and the other capital cost. Capital costs begin in any industry when labor-saving tools take the place of actual labor, and the proportion which they represent of the aggregate of all

costs depends upon the extent of the use of labor-saving devices. When a machine operated by one man is introduced to displace twenty men whose work it is able to do, the cost of its products is not the wages of the operative alone, but that sum plus the interest on the capital invested together with compensation for whatever risk the capitalist assumes. If subsequently this machine is replaced by another costing twice the amount but capable of doing five times as much work, the new cost is to be determined according to the same formula. Such changes as these are not made unless there is reason to believe that they will reduce the aggregate cost; but no inventor or director of industry claims for one moment that the whole saving in labor goes as a reduction in cost.

Now, what the railways have been doing since 1890 is rapidly turning labor (operating) costs into capital costs with, of course, some net savings by the transformation. Reductions in grades, extensions of the radii of curves, heavier rails, larger cars and more powerful locomotives have all required vast expenditures of capital. These expenditures have been incurred because there was ample reason to believe that they would add to the earning power of the properties in behalf of which they were made, but no railway manager ever intimated that they would not add costs of their own. The very idea is absurd when succinctly stated. It was believed, however, that they would reduce operating expenses by a larger sum than that which they would add to interest and other necessary capital charges. That they have somewhat reduced the proportion of operating costs to aggregate revenue is now

railway history; what relation the saving in this direction bears to the actual addition to capital costs is still a problem. That every substantial improvement in railway facilities ought to decrease the ratio of operating costs and in a somewhat smaller degree increase the capital costs is perfectly clear. It is equally clear that changes which have this effect should be encouraged in every possible way. Capital is the great labor-saving device and the parent of all labor-saving devices. It is desirable that it should be utilized to the utmost practicable extent, not to relieve mankind of the necessity for toil, but in order to make the dividends of toil, which are expressed in increased human comfort, as large as possible.

But capital will not be accumulated for use in the railway or any other industry unless those who accumulate it are fairly treated. Abstinence from consumption must have its wages as well as labor. If the regulative bodies of the United States cultivate the idea that the capital invested in the railway industry is not as worthy a claimant, within the limits of its just demands, as any other factor in the production of transportation by rail, the capital which the industry requires will not be provided by the citizens of this country, nor can they borrow it from abroad until they promise fair returns. When the problem of railway charges is treated principally in the light of statistics of operating expenses the suggestion that capital costs are negligible constitutes a threat that must tend to repel further investments for the purpose of making railway labor more effective. When public authorities take so narrow and prejudiced a view of these problems they are evolving a force

whose disastrous consequences may continue through many future decades. The laws of industry work slowly and imperceptibly at times, but in the long run they are immutable in a degree which makes the laws of the Medes and Persians seem as though written on the sands.

FILED WITH THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES, JANUARY, 1905.

INTERSTATE COMMERCE.

BRIEF,

as to proposed new legislation.

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CONTENTS.

INTERSTATE COMMERCE.

The Scope of the Interstate Commerce Act Has Never Been Diminished by the Courts.

It is sometimes said that the preliminary debates in Congress indicate an intention that the scope of the interstate commerce act should be either broader or narrower than that which it now has. But it has often been ruled by the Supreme Court of the United States that expressions used in such debates have no force in determining the meaning of statutes—that meaning is to be gathered solely from the language of the statute as finally enacted (3 How., 224). Accordingly, nothing of the sort ever had the slightest bearing upon the meaning of the interstate commerce act. The powers of the Commission which it created were those only which were specified by the language of the statute.

The act provided that rates should be reasonable and there should be no unjust discrimination or undue or unreasonable preference, and it was made the duty of the Commission to enforce these rules. Under settled principles of construction, these provisions referred to action regarding existing conditions and not to establishment of rates or regulations for the future. Accordingly, promptly after the act became effective, the Commission decided that it had no power or jurisdiction regarding future conditions. Commissioner Walker said, as to the suggestion that the Commission could "construe, interpret and apply the law by preliminary "judgment" (1 I. C. R. 19), that "a *moment's reflection will show* "*that no such tribunal could be properly erected.* Congress has "not taken the management of the railroads out of the hands "of the railroad companies. It has simply established "certain general principles under which interstate commerce "must be conducted" (*Id.*, 20). Commissioner Cooley said

that, in case the Commission had preliminary power to suspend the long and short haul provision, it "would, in effect, "be required to act as *ratemakers for all the roads* and com- "pelled to adjust the tariffs *so as to meet the exigencies of* "*business, while at the same time endeavoring to protect* "*relative rights and equities of rival carriers and rival locali-* "*ties.* This in any considerable state would be an enormous "task. In a country so large as ours, and with so vast a "mileage of roads, it would be superhuman. A construction "of the statute which should require its performance would "render the due administration of the law altogether imprac- "ticable; and that fact tends strongly to show that such a con- "struction could not have been intended" (*Id.*, 280) * * "No tribunal is empowered to judge for it until after the "carrier has acted, *and then only for the purpose of determining* "*whether its action constitutes a violation of law,*" (*Id.*, 281). Commissioner Schoonmaker said that the Commission had no power in any case to fix rates for the future, but "its power in "respect to rates is to determine whether *those which the* "*roads impose* are for any reason in conflict with the statute" (1 I. C. R. 357). This language was later cited by the Supreme Court (167 U. S., 570) as showing that the Commission at first did not deem itself to be possessed of rate-making power.

After a time the Commission changed its attitude in the matter and made various attempts to regulate future conditions. This course naturally led to litigation. It is frequently said that the Commission exercised this power for ten years without objection or suggestion that its course was unauthorized by law. (Annual Report of the Commission for 1897, p. 11.) This statement is unfounded in fact. As will be shown below at length, when the Commission made the attempt to establish future rates by wholesale (4 I. C. R., 592), that attempt was promptly resisted in the courts, and as soon as the courts could act, the Commission was held to have exceeded its authority (162 U. S., 184; 167 U. S., 511). The rules thus laid down by the Supreme Court were foreshadowed at circuit in cases decided as early as 1889 and 1890 (37 Fed. Rep., 567; 43 Fed.

Rep., 37), and the latter case was affirmed by the Supreme Court in 1892 (145 U. S. 263).

It was settled in 1889, by a judgment of the eminent Judge HOWELL E. JACKSON (37 Fed. Rep. 567), that the Commission had none of the character of a court and its decisions could be enforced only through aid of the judicial tribunals; and in this view the Supreme Court, through Justice HARLAN, later concurred (154 U. S., 485). It is interesting to recall the language of Judge JACKSON, which was as follows.

" The functions of the Commission are those of referees or " special commissioners, appointed to make preliminary inves- " tigation and report upon matters for subsequent judicial " examination and determination. In respect to interstate " commerce matters covered by the law, the Commission may " be regarded as the general referee of each and every circuit " court of the United States, upon which the jurisdiction is " conferred of enforcing the rights, duties and obligations " recognized and imposed by the act. It is neither a federal " court under the constitution, nor does it exercise judicial " powers, nor do its conclusions possess the efficacy of judicial " proceedings " (37 Fed. Rep., 613).

An effort was made in the Fifty-Second Congress (Senate Bill No. 892) to change these rules by giving the Commission judicial character, but the effort was not successful. Shortly (in 1894) the Commission sought to fix future rates upon an extensive scale (4 I. C. R., 592), and brought suit to enforce this action. In due course, this suit reached the Supreme Court of the United States. A decision upon the subject was first made on March 30, 1896, (162 U. S. 184, 196, 197). The court said :

" It is argued on behalf of the Commission that the power " to pass upon the reasonableness of existing rates implies a " right to prescribe rates. This is not necessarily so. The " reasonableness of the rate, in a given case, depends on the " facts, and the function of the Commission is to consider " these facts and give them their proper weight. If the Com- " mission, instead of withholding judgment in such a matter " until an issue shall be made and the facts found, itself fixes a " rate, that rate is prejudged by the Commission to be reason- " able. * * Subject to the two leading prohibitions that " their charges shall not be unjust or unreasonable, and " that they shall not unjustly discriminate so as to give undue " preference or advantage to persons or traffic similarly cir-

" cumstanced, the act to regulate commerce leaves common " carriers as they were at the common law, free to make special " contracts looking to the increase of their business, to classify " their traffic, to adjust and apportion their rates so as to " meet the necessities of commerce, and generally to manage " their important interests upon the same principles which " are regarded as sound and adopted in other trades and pur- " suits."

The last sentence was quoted from the case above cited, which was decided by Judge JACKSON at Circuit on August 11, 1890 (43 Fed., 37) and affirmed by the Supreme Court in 1892 (145 U. S., 263).

The question was again before the Supreme Court upon May 24, 1897, in an action brought by the Commission (167 U. S., 479). Regarding the claim that the Commission had power to fix rates for the future, in a case where it had held the existing rate unreasonable, the court said (p. 509) : " *the vice of this argument is that it is building up indirectly* " *and by implication a power which is not in terms granted.*" Accordingly, it repeated the language quoted just above and said, further, " our conclusion, then, is that Con- " gress has not conferred upon the Commission the legislative " power of prescribing rates, either maximum or minimum or " absolute. As it did not give the express power to the Com- " mission, it did not intend to secure the same result indi- " rectly by empowering that tribunal to determine what, in " reference to the past, was reasonable and just, whether as " maximum, minimum or absolute, and thus enable it to ob- " tain from the courts a peremptory order that in the future " the railroad company should follow the rates thus deter- " mined to have been in the past reasonable and just." In response to the suggestion that this construction of the act rendered the Commission useless, the court said (p. 506) :

" But has the Commission no functions to perform in re- " spect to the matter of rates ; no power to make any inquiry " in respect thereto ? Unquestionably it has, and most im- " portant duties in respect to this matter. It is charged with " the general duty of inquiring as to the management of the " business of railroad companies, and to keep itself informed " as to the manner in which the same is conducted, and has

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" the right to compel complete and full information as to the " manner in which such carriers are transacting their business. " And with this knowledge it is charged with the duty of see- " ing that there is no violation of the long and short haul " clause; that there is no discrimination between individual " shippers, and that nothing is done by rebate or any other " device to give preference to one as against another; that no " undue preferences are given to one place or places or " individual or class of individuals, but that in all things that " equality of right, which is the great purpose of the inter- " state commerce act, shall be secured to all shippers. It " must also see that that publicity, which is required by " section 6, is observed by the railroad companies. Holding " the railroad companies to strict compliance with all these " statutory provisions and enforcing obedience to all these " provisions tends, as observed by Commissioner Cooley in *In* " *re* Chicago, St. Paul & Kansas City Railway, 2 Int. Com. " Com. Rep. 231, 261, to both reasonableness and equality of " rate as contemplated by the interstate commerce act."

In these constructions of the interstate commerce act all of the justices of the Supreme Court concurred at various times, with the exception of Justice HARLAN.

It has since been pertinaciously asserted that these decisions either read into the act something which was not in it or read out of it something which it originally contained. Apparently in order to lend emphasis to this claim, terms somewhat grotesque in the discussion of judicial decisions have often been employed. Thus it has frequently been said that the court "*emasculated*" the statute; the Commission speaks of the courts having made "*discoveries*" contrary to the general understanding (Annual Report for 1897, pp. 6, 9), by which sections of the statute were "*eliminated*" and "*stricken from* " *the act*" (*Id.*, p. 43), and refers to the effect of these adjudications "in defeating the *purposes* of the act" (Annual Report for 1898, p. 5; Annual Report for 1901, p. 5); and the Commissioner of Corporations in his recent report says that " the force of the interstate commerce act has been *seriously* " *weakened* by judicial interpretation."

These fashions of speech show misconception of the processes of jurisprudence. The act contained no provisions in terms authorizing action in regard to future conditions. Accord-

ingly, the Commission promptly held that it had no power in that regard. Thereafter the Commission adopted a contrary view and sought to exercise control over future rates. Thus it became necessary for the Supreme Court to decide which view was sound. It decided that the view first adopted by the Commission was the correct construction of the statute. This, of course, settled by authority the meaning of the act, as originally passed. It took nothing therefrom and added nothing thereto. The court decided merely that nothing contained in the statute, as it was passed in 1887, conferred any power regarding future rates; no more and no less.

It is, therefore, idle and foolish to speak of these decisions as having in any way qualified the act as Congress passed it.

Propaganda for Further Legislation.

The action of Congress, as thus authoritatively construed, was not accepted in all quarters as sufficient. A propaganda was at once set on foot for further legislation to increase generally the powers of the Commission.

The statement has often been made that this movement originated largely with and has been kept alive by the Commission itself. This statement is supported by the facts that in each of its annual reports since these decisions of the Supreme Court the Commission has vigorously criticised those rulings and urged legislation for the purpose of enlarging its powers, and has generally submitted drafts of statutes for that purpose; that at each session of Congress one or more acts of the sort have been introduced, with its approval; that members of the Commission have appeared before Congressional committees and strongly advocated such legislation, and have urged the same in numerous articles, addresses and interviews; that one of the Commissioners attended and urged such action and submitted a draft of an amended statute at a meeting of a commercial organization held upon November 22, 1899, which meeting led to the subsequent formation of what is now known as the Interstate Commerce Law Association—the organization which is principally active in sup-

port of the legislation now proposed; and that by formal order on December 8, 1899, the Commission instructed its secretary to "coöperate assiduously" with any mercantile or agricultural organizations in efforts to secure the result sought and especially the passage of the bill to which reference has just been made (Sen. Bill, 1439, Fifty-sixth Congress, First Session). By a circular letter dated February 3, 1900, the secretary of the Commission, accordingly, stated that said bill was designed to give to the Commission "the authority *intended to be conferred by Congress when the bill* "*was originally enacted;* that the shippers of the country, *with* "*the approval of the Interstate Commerce Commission*, seek such "an amendment as will empower the Commission to proceed "on the lines and to the ends *contemplated by the original* "*act;* that it is respectfully suggested that (the person "addressed) take action expressing (his) approbation and "support to the Senators and Representatives from (his) State, "and to the Committees on Interstate Commerce, and that the "Secretary would be pleased to be advised of any action taken "in the premises." It will be seen that the statements of this official paper were wholly contrary to the decisions of the Supreme Court defining the intent of "Congress when the bill was "originally enacted." Such action by the Commission has followed naturally from the view that the "*purpose* of the act was "to provide a means by which *the public could array itself* "*against the carrier*" (Annual Report for 1897, p. 19).

The Commission, too, has every year taken Congress and the courts severely to task for failing to agree with its views. The decisions regarding the statute have rendered "its enforcement as a remedial statute "practically *impossible*" (Annual Report for 1897, p. 6). "Nearly every *essential* feature of that act has failed "of execution" (*Id.*, p. 37). "By *virtue of judicial* "*decision*, it (the Commission) has *ceased* to be a body for "the regulation of interstate carriers" (*Id.*, p. 51). "The "requests of the Commission for *needful* amendments have been "supported by petitions, etc. * * *yet not a line of the* "*statute has been changed* and none of the burdensome con-"ditions which *call for relief* have been removed or modified"

Propaganda for further legislation.

(Annual Report for 1899, p. 5). "Until *further legislation is* " *provided* the best efforts of regulation must be *feeble* and " *disappointing*" (*Id.*, p. 5). "This (the power to make future " rates) is the point to which the attention of the Congress *has* " *been repeatedly called*; this is the defect in the regulating " statute which *demands* correction. In previous reports this " question has been frequently and fully discussed. We have " commented at length upon the *weakness* and *inadequacy* of " the law as its provisions have been construed by the courts" (Annual Report for 1903, p. 12). "The popular demand may " eventually take that form (the original ratemaking power) " under the stress of *continual delay in remedying ascertained* " *defects in the present plan of regulation*" (Annual Report for 1904, p. 8).

It would be impossible to state in detail the efforts which, incidentally to this propaganda, have been made to stimulate public feeling and create hostility to the carriers. One or two instances must suffice. Thus, the expression "transportation tax" (Annual Report for 1900, pp. 9, 13, 24; Annual Report for 1903, pp. 14, 15, 17) has been habitually applied to the charges of the carriers, apparently for the purpose of arousing the same sort of prejudice against the payment of such charges as is felt by many against the payment of taxes. The expression, of course, has no more accuracy than would such an expression as the "wheat tax," or the "beef tax," or the "corn tax," or the "clothing tax," or the "newspaper tax" have in describing what is currently paid for those articles of general use. The individual consumer has no more to do with fixing the prices thereof than with fixing the charges of the carriers. Those prices, too, are far more of a universal burden than are transportation charges. As the Commission said in its annual report for 1900 (p. 9), "generally a slight increase in the rate does not materially " affect the price to the consumer;" and, again, in its annual report for 1903, "so, too, with the great volume of traffic, the " cost of transportation is not a sufficiently large factor in the " total cost of the article to the consumer, so that a reduc- " tion of the freight rate would stimulate consumption to a " sufficient degree to justify the reduction" (p. 16). * *

Propaganda for further legislation.

" Perhaps, in most instances the freight rate is so small a part " of the total cost of a commodity that the consumer is un- " conscious of the increase in rate" (*Id.*, p. 32). But an increase in the price of articles in general use falls directly upon the consumers and is felt at once. Although, however, the burden of the transportation charge is so much the lighter, the general body of the consumers creates the demand which settles the amount of the transportation charge quite as much as the price of the goods transported. *Indeed, the most potent cause of the downward course of rates in the past has been the pressing commercial necessities of shippers and consumers and the efforts of traffic officials to meet them.*

So, too, the Commission, in its annual report for 1903 (pp. 13–15), and one or more of its members in various published statements have asserted with emphasis that rates as a whole have greatly increased of late. In an article recently published in the North American Review one of the Commissioners goes so far as to say, " within the last five years rates upon *every* im- " portant commodity in *every* section have been advanced. " * * We are confronted with increasing monopoly, with " advancing freight rates and with no probable relief in sight." At that time the last figures available were these for 1903, so that the comparison extended back to 1898. Yet in 1898, the average freight rate per ton per mile was .753 cents, or seven mills and fifty three hundredths of a mill, and in 1903, it was .763 cents, or seven mills and sixty three hundredths of a mill (*infra*, p. 14). So that the increase upon which were founded these lugubrious views amounted, in a time of generally rising prices, to ten thousandths of a cent per mile, or ten cents per ton for each thousand miles, or one and three tenths of *one* per cent. Moreover, as will shortly be shown (*infra*, p. 21), *almost no cases of unreasonable rates have ever been established before the Commission and none whatever in the courts*, and the cost of materials between 1898 and 1903 rose out of all proportion to transportation charges (*infra*, pp. 17, 18).

Still further, on March 11, 1904, the Senate requested the Commission to report the principal changes in tariff rates since June 30, 1899, with " an estimate of the effect of such " changes upon the gross *and net revenues* of the railway

" corporations during each fiscal year since then * * and " also to *report the changes in cost of operation and main-* " *tenance of the railways for said years.*" The Commission reported on April 7, 1904, that, comparing 1899 with 1903, there was, from this cause, an addition to the gross earnings amounting to $155,475,502. This was startlingly erroneous; the increase in mileage rate was .39 mills, thirty-nine hundredths of a mill, and the total tonnage in 1903 was 173,221,278,993—multiplying the two together, the increase in gross earnings was, therefore, $67,556,299, instead of $155,475,502. In addition to this, the Commission omitted to answer the request for information regarding *the net revenues and cost of operation and maintenance*, on the ground " that the returns for the fiscal " year 1903, have not yet been compiled, and the figures re- " lating to the cost of operation and maintenance for that " year must, therefore, be omitted " * * but said that its " method of computation was not without value as indicating " enormous additions in recent years to the cost of railway " transportation to the people of the United States."

Yet the figures as to operating expenses were in possession of the Commission quite as much as those as to gross earnings; they were contained in the same official reports of the railway companies to the Commission and showed " enormous additions " to operating expenses within the past year. In the preliminary report of their statistician, dated December 12, 1903, and again in the regular annual report of the Commission for 1903, dated December 15, 1903, operating expenses had already been stated for ninety-eight per cent of the mileage of the country at $1,248,520,483, which was an increase of $620 per mile over 1902. The advance in operating expenses from 1902 to 1903, is stated in the report of the statistician for 1903 (p. 85) to have been $141,290,105, and in the report of the Commission for 1904 (p. 112), it is said that this advance was $141,193,494, and the increase in taxes and interest was $13,262,391, making the total increase in expense of the business in that one year $154,455,885. It will shortly be shown, too, that the Commission's figures indicated that, from 1899 to 1903, the increase in both gross earnings and net revenue had not been as great relatively to the volume of business as the

increase in expenses of operation (*infra*, pp. 15, 16). These facts the Commission did not mention, although the Senate resolution called for information on the precise subject of operating expenses and net revenue.

The results for 1904, which have just been published, further show how completely increasing expenses have exhausted increased gross earnings of the railroads. Their gross earnings increased, over 1903, to the amount of $65,188,714, but the net earnings *decreased* $7,379,393, as compared with the previous year. Operating expenses increased $250 per mile over 1903, and the operating ratio increased from 66.16 per cent to 67.75 per cent of gross earnings, or an increase of 1.59 per cent on the entire amount of gross earnings (Annual Report for 1904, p. 106). The Commission's annual report for 1900 (p. 9) stated that, "generally a slight increase in the rate *does not materially* "*affect the price to the consumer*," but that "since every such "advance adds to the net revenues of the railway, a very "slight increase in all rates, if it should be permanently "maintained, *would enhance enormously the value of rail-* "*way securities.*" The view of this report of March 11, 1904, apparently was that any such result would necessarily be a calamity.

It is much to be regretted that the action has been taken which is indicated by these illustrations. The shippers and the carriers stand in relations to each other very similar to those of merchants and their customers. The effort of all parties interested in the general welfare should be toward closer and more harmonious relations between them. In investigating grievances presented to them and bringing the parties together, the Commission has done a great and beneficent work; and that has been and always will be by far its most important function (Annual Report for 1893, p. 14; Annual Report for 1895, p. 48; Annual Report for 1897, pp. 32, 51; Annual Report for 1904, pp. 36, 73). It is unfortunate that the dignity and usefulness of the Commission in this regard have been, in a measure, compromised by grasping for powers to control the future such as are possessed by no branch of the government and probably could never be successfully exercised.

Propositions to Increase the Commission's Power, Including Pending Legislation.

The changes in the law which have been urged upon Congress have varied considerably from time to time. Shortly after the Supreme Court decisions above stated, a bill was introduced substantially conferring general original rate making power upon the Commission. When this failed, a bill followed providing that the carriers should make the rates in the first instance and the same should thereafter be subject to general revision by the Commission, which would thus really have been the ratemakers. On the failure of this, it is now proposed that when the Commission has decided that an existing rate offends against the statute, it shall have power to establish a rate for the future, thus giving it complete control over all rates (*infra*, pp. 34–36). This proposition was embodied in the bill some time pending before Congress known as the Quarles-Cooper bill. So, too, with the Townsend bill, the provisions of which are briefly as follows.

(1) Whenever the Interstate Commerce Commission shall declare any existing rate, regulation or practice affecting the transportation of persons or property to be unreasonable or unjustly discriminatory, the Commission shall declare what shall be a just and reasonable rate, practice or regulation, to be charged, imposed or followed in the future, and its order shall become operative thirty days after notice; but within sixty days any person directly affected may institute proceedings in the court of transportation to have its lawfulness, justice or reasonableness inquired into and determined. (2) When the rate substituted is a joint rate and the carriers fail to agree as to divisions, the Commission may settle the same. (3) The Commission may at any time, whether before or, on notice to the court, during the progress of a judicial review, reopen its proceedings and modify, suspend or annul its former order. (4) If any party bound thereby shall fail to obey any order of the Commission, it may apply to the court of transportation to enforce obedience by writ of injunction, and in addition the offending party shall for each day of continuance of such neglect be subject to a penalty of five thousand dollars, recoverable in an

action of debt in the court of transportation. (5) A court is established with full jurisdiction in law and equity, to be called the court of transportation and to be composed of five circuit judges of the United States to be designated by the President; this court shall have jurisdiction over all interstate commerce cases and shall possess all the powers of a circuit court, so far as applicable; the proceedings and evidence before the Commission shall be deemed part of the record in the court; the findings of fact of the Commission shall be received as *prima facie* evidence of the facts found and no evidence on behalf of either party shall be admissible which was not offered, but with proper diligence could have been offered, upon the hearing before the Commission; an appeal or writ of error shall lie to the Supreme Court if taken within thirty days, and such appeal or writ of error shall have precedence and shall be subject to the prevailing rules.

These provisions are certainly both novel and drastic. It is clear that (1) they are not required by present conditions; (2) they are not judicious as a future system; (3) they are not warranted by the Constitution of the United States, and (4) they would not be likely to accomplish the desired results.

(1) There is Nothing in Present Conditions Warranting These Drastic Innovations.

The substantive provisions of the interstate commerce act regarding rates are that (*a*) they shall be reasonable and (*b*) they shall not discriminate unjustly and there shall be no undue or unreasonable preference between individuals or localities or classes of traffic (162 U. S., 197). The former provision concerns the public generally and the latter the persons or localities directly affected (43 Fed. Rep., 48).

1. There is nothing in present conditions warranting these drastic innovations.

(a) The Existing Rates Are Reasonable in Themselves.

The past course of freight rates throughout the country has shown that there is no ground for complaint in this respect. It has been as follows, according to official figures, using those of the Interstate Commerce Commission since it was established. *It should be borne in mind that these figures include local as well as interstate business, and that if the two were separated, the interstate rates would be considerably less.*

In 1870,	the	average	earning	per	ton	per	mile	was	1.990	cents
" 1882,	"	"	"	"	"	"	"	"	1.240	"
" 1887,	"	"	"	"	"	"	"	"	1.030	"
" 1888,	"	"	"	"	"	"	"	"	1.001	"
" 1889,	"	"	"	"	"	"	"	"	.922	"
" 1890,	"	"	"	"	"	"	"	"	.941	"
" 1891,	"	"	"	"	"	"	"	"	.895	"
" 1892,	"	"	"	"	"	"	"	"	.898	"
" 1893,	"	"	"	"	"	"	"	"	.879	"
" 1894.	"	"	"	"	"	"	"	"	.860	"
" 1895,	"	"	"	"	"	"	"	"	.839	"
" 1896,	"	"	"	"	"	"	"	"	.806	"
" 1897,	"	"	"	"	"	"	"	"	.798	"
" 1898,	"	"	"	"	"	"	"	"	.753	"
" 1899,	"	"	"	"	"	"	"	"	.724	"
" 1900,	"	"	"	"	"	"	"	"	.729	"
" 1901,	"	"	"	"	"	"	"	"	.750	"
" 1902,	"	"	"	"	"	"	"	"	.757	"
" 1903,	"	"	"	"	"	"	"	"	.763	"

Thus the average in 1870 was more than two and one-half times that in 1903. The freight earnings for 1903 were $1,338,020,026 (Annual Report for 1904, p. 111). On the basis of 1870, they would have been approximately $3,408,497,432. Upon the basis of 1870, the gross freight earnings would, therefore, have been greater by $2,070,790,646 than they in fact were in 1903. When the Interstate Commerce Commission was established in 1887, the rate was 1.03 and in 1903 it was .763—a difference of nearly 26 per cent. If the rates of

1. There is nothing in present conditions warranting these drastic innovations.

(a) The existing rates are reasonable in themselves.

1887 had applied to the traffic of 1903, the earnings would have been about $468,109,714 greater than they were in fact. Ten years ago, in 1893, the rate was .878, and in 1903 it was .763—a difference of 13 per cent. If the rates of 1893 had been applied to the traffic of 1903, the earnings would, therefore, have been about $201,620,288 greater than they were in fact.

Upon the general course of rates the following remarks of the Commission are pertinent. "Where changes of any "importance have taken place in the freight rates of any "section, either for local or competitive traffic, in nearly all "cases lower rates are now charged than prior to the date of "the act to regulate commerce" (Annual Report for 1894, p. 50). "Only from an extended inquiry would it be possible to "accurately estimate the total reduction effected since the "passage of the act to regulate commerce, but that it has been "very considerable is well known. * * Comparing the "amounts received by the railways for transportation with "amounts which they would have received on the volume of "traffic carried from 1889 to 1893, if the average receipts per "mile for 1888, had been maintained during the subsequent "five years, it appears that the public would in such case have "paid for freight and passenger transportation by railroad from "1889 to 1893, inclusive, $525,459,587 more than was actually "paid for such transportation during that period" (*Id.*, p. 51). The foregoing figures as to the rates for each year (*supra*, p. 14), show that the downward course of rates has continued since these remarks were made.

As already said (*supra*, p. 10), some comment has been made upon the fact that between 1899, the lowest point ever reached, and 1903, in a time of generally rising prices, the mileage rate increased .39 of a mill, or thirty-nine thousandths of a cent, or about five per cent. In reply to a resolution of inquiry from the Senate, the Commission reported in March, 1904, (Sen. Doc. 257) that, comparing 1899 with 1903, this increased gross earnings to the amount of $155,475,502, but professed its inability to say how much it had added to net earnings (*supra*, pp. 9, 10).

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(a) The existing rates are reasonable in themselves.

It has been already shown that this was a gross error, as this increase did not exceed $67,556,299 (*supra*, p. 10). Moreover, the Commission's final report for the year ending June 30, 1903, proved that this had not increased net earnings at all, relatively to the volume of traffic. The operating expenses established thereby showed that, comparing 1899 with 1903, the total gross earnings increased 43.7 per cent and the operating expenses increased 46.7 per cent; gross earnings per mile increased 31.1 per cent, while operating expenses per mile increased 34 per cent; the operating ratio of expenses to earnings increased from 65.24 per cent to 66.16 per cent; the number of employees increased from 928,924 to 1,312,537, namely 383,613 or 41.3 per cent, and their compensation from $522,967,896 to $775,321,415, namely $252,353,579 or 48.2 per cent; the average compensation for each individual employee increased from $551.89 to $582.76, making the total increase by reason of this increased rate $50,373,501; the cost of fuel advanced 40 per cent, which would have added to cost of carrying the traffic of 1899 over $41,000,000. From 1902 to 1903 alone, operating expenses, taxes and interest increased $154,455,885 (Annual Report for 1904, p. 112). The figures for 1904 show that, comparing with the previous year, gross earnings increased $65,186,714, but *net* earnings *decreased* $7,379,393; that operating expenses increased $250 per mile; that the operating ratio rose from 66.16 per cent to 67.75 per cent, or 1.59 per cent of the entire gross earnings; and that the operating ratio, notwithstanding this slight increase in the mileage earnings, was 2.51 per cent of the entire gross earnings above the operating ratio of 1899 (Annual Report for 1904, p. 106). These figures show that the slight rise in the mileage earnings from 1899 to 1903 has been totally absorbed by the increase in expenses of operation.

It is interesting, in this connection, to notice a comparison made by the Commission between the business of 1897 and that of 1902, as follows. "As the rates, broadly "speaking, *were about the same in both years*, it follows

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"that the large increase in earnings resulted mainly from "the increased volume of traffic" (Annual Report for 1902, p. 5). The mileage rate in 1897 was .798 cents, and in 1902 was .757 cents. The difference was, therefore, .041 cents, and the Commission described the rates as "*about the same.*" But in 1899, the mileage rate was .724 cents, and in 1903 the rate was .763 cents. The difference, therefore, was .039 cents, or precisely .002 cents—two one-thousandths of a cent—*less* than that when the Commission had described the rates as "*about the same.*" Yet the Commission spoke of the latter difference as establishing "enormous additions in "recent years to the cost of railway transportation" (Sen. Doc., 257). When the difference in rates was .041 cents, they were described as "*about the same;*" a slightly smaller difference amounting to .039 cents cannot, therefore, be consistently described as having made "*enormous* additions to the "cost of transportation."

Again, the average rate in 1897, was .798; in 1899, by reason of unfavorable commercial conditions, but especially of excessively low rates on bituminous coal, the average rate declined to .724; in 1903, it rose to .763—not as high as it had been six years previously, and an increase of thirty-nine thousandths of a cent. This fluctuation clearly came within the view of the Commission that "when reductions have been made on "account of commercial depression, it is difficult to see why "corresponding advances may not properly be made with the re-"turn of business prosperity" (Annual Report for 1903, p. 48).

Indeed, there has been no such rise in railway earnings as has occurred regarding prices of commodities generally. The recently published Bulletin of the Department of Labor (No. 51) with reference to the general course of prices shows that, taking 100 as the average for the period from 1890 to 1899, the price of all commodities in 1902 stood at 112.9, or 12.9 per cent *above* the average of the preceding decade. Applying the same treatment to railway rates, they stood in 1902 at 90.2, or 9.8 per cent *below* the average of the preceding decade. This

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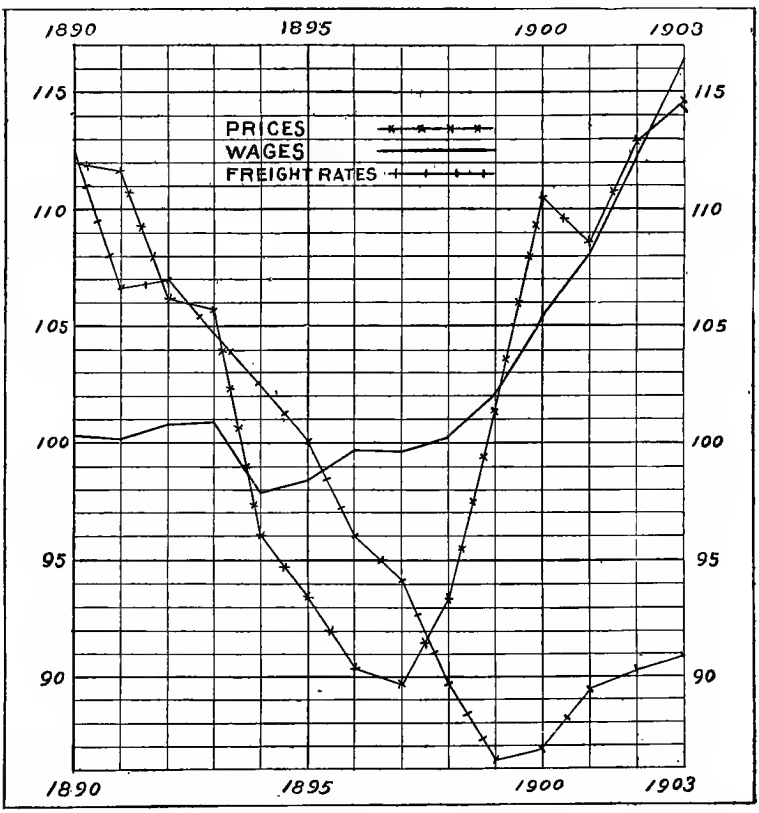
shows that in general railway rates had greatly declined while prices had greatly advanced.*

* This has been conclusively demonstrated in articles recently published by Mr. H. T. Newcomb of Washington and Mr. Slason Thompson of Chicago. The facts are very clearly shown, too, in an article by Mr. William Morton Grinnell, published in the February number of the North American Review.

The enormous divergence between the movement of freight rates and the course of prices and wages is emphasized in this chart.

VARIATIONS IN PRICES, WAGES AND FREIGHT RATES. 1890 – 1903



Based on official statistics of the United States Bureau of Labor and of the Interstate Commerce Commission. In each case the average of the period 1890–1899 is taken as the standard.

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The rates are about one-third the average in England and France and about one-half the average in Germany. A slight effort has been made to discredit the mileage basis as a proper test; the claim made in that connection is that the average has been affected by a disproportionate increase of low grade freight. The suggestion that, in a country constantly developing industrially, raw materials increase disproportionately to finished products is manifestly without merit. Accordingly, the facts are to the contrary. In 1899 the percentage of low grade freight was 76.81 of the whole, but in 1902 it *decreased* to 75.42 and the higher class commodities correspondingly increased. The slight increase in the mileage earnings was in fact *not due to an increase of rates, but to the increase in high class freight.* The mileage basis, too, is generally accepted as the only practicable standard for measuring general conditions. "The rate per ton per mile rule brings rates down to "the narrowest point of scrutiny and for that purpose is valu-"able," although not absolutely controlling upon individual cases where circumstances are exceptional (Annual Report for 1899, p. 37). It may be added that the reductions in rates have been approximately similar in the different parts of the country.

Very few substantial controversies have ever arisen regarding the reasonableness of rates, and the Commission has frequently stated, in substance, that there is no ground therefor. It has from time to time discussed in its reports "unreasonably low rates" (Annual Report for 1893, pp. 38, 39, 220, 221; Annual Report for 1894, p. 60; Annual Report for 1897, pp. 24, 25). In its annual report for 1893, the Commission stated that, "to-day extortionate charges are seldom the "subject of complaint" (p. 12). * * We are not troubled "with the question (under consideration in England) that "rates * * are too high (*Id.*, p. 17). It is significant "that during the period of commercial development and "railroad extension, which have brought communities "into such close business relations and made slight "differences in transportation rates on competitive com-"modities a matter of serious import, there has been,

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" under the operation of the interstate commerce law, a " steady decrease of complaints based on charges unreason- " able in themselves. The concession is quite general among " shippers that, with some exceptions, rates, as a whole, are " low enough, and they often express surprise that the service " can be rendered at prices charged (*Id.*, pp. 218, 219). " Traffic for very many competing localities is being car- " ried at rates which do not yield a due proportion of the " necessary net revenue which carriers must have " (*Id.*, p. 221). In its annual report for 1897, the Commission said (p. 14), " rates to competing and distributing centers are not for the " most part unreasonably high; they are frequently quite " low. * * Many rates in this country are undoubtedly " too low " (*Id.*, p. 2). These facts are of general application, because nearly every city in the country of any " considerable " size is both a commercial and a railroad center, therefore a " competitive point in both respects " (Annual Report for 1896, p. 39). In its annual report for 1898 (p. 27), the Commission said, " it is true, as often asserted, that comparatively few of " our railway rates are unreasonable in and of themselves— " that is, without any reference to other charges made by the " same carrier or to those of other carriers," but they may operate to create a preference between localities. * * * " The cases are *exceedingly rare* in which unreasonableness " has been found merely from the amount of the rate itself as " laid upon the particular traffic and the distance it was car- " ried " (p. 27). On March 18, 1898, the chairman of the Commission testified, before the Senate Committee on Interstate Commerce, that the question of excessive railroad charges— " that is to say, railroad charges which in and of them- " selves are extortionate, is pretty much an obsolete ques- " tion." At that time the rate per ton per mile was within *one one-hundredth of a cent* of that in 1903, when the chairman described the rates as having made " *enormous* additions to " the cost of railway transportation " (*supra*, p. 10). The foregoing table of rates in each year (*supra*, p. 14) shows that since these numerous statements were made the rates have been and now are much lower.

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Accordingly, litigated cases in which rates have been shown to be unreasonable in themselves are practically unknown. In reply to a resolution of enquiry passed by the Senate on April 16, 1900, the Commission reported (Sen. Doc. 319, Fifty-sixth Congress, 1st Session) regarding contested cases which had been before it during ten years prior to that date. It appeared from this report that during that time it had found very few cases of unreasonable rates—as the chairman had previously said, that question had become "obsolete" (*supra*, p. 20). In 1900 and 1901, there were but three cases of unreasonable rates sustained by the Commission. An independent examination shows that from 1887, until the present time, the Commission has found twenty-six cases of rates unreasonable in themselves, or about one and one-half annually. Further than this, not one of these decisions was sustained by the courts, and *there has not been a single case of rates unreasonable in themselves established in the courts since the Interstate Commerce act was passed.*

The record, therefore, proves clearly that the provision of the act that rates shall be reasonable in themselves has been fully observed. The remedies provided by the act have shown no insufficiency. There are no facts establishing the necessity of further power for this purpose in the Commission. The Commission itself suggests no such facts. Even as to the advances claimed to have been made since 1899, amounting to thirty-nine thousandths of a cent per ton per mile (*supra*, pp. 15, 16), it does not show that they have been unwarranted or excessive. In its annual report for 1899, it said "it is not intended to "intimate that these advanced rates are unlawful" * * but "the injustice which *may* result must be without available "redress" (p. 8). In its report for 1903, the Commission said "it would be both unwise and unjust upon the part "of the public to prevent them, if they are reasonable under "all the circumstance" (p. 15); * * "if they are just and "reasonable, they ought not to be prevented" (p. 17). So, too, in a recent article in the North American Review, to which reference has been made, one of the Commissioners

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(b) The law-making power has dealt fully with preference between individuals.

said, " I do not charge that any part of this is *unjust* but that " some way should be devised by which the reasonableness of " these charges should be passed upon by the Government."

The claim is, therefore, not that any injustice has been done in respect to reasonableness of rates: there is no one asserting that he has been damaged and the Commission does not assert the existence of any injustice. It has full authority under the present statute to compel the carriers to cease charging these rates, if they are unreasonable; but it has never taken effective action against the rates thus criticised. So far as it has gone into the matter, the Commission has for the most part sustained recent advances (9 I. C. R., 382). The contention of the Commission, then, is merely and baldly that rates generally should be fixed in advance by the Government (Annual Report for 1898, pp. 20, 24; Annual Report for 1900, p. 21). That claim is put forward without support of anything save the opinion of the Commission.

As no injustice is shown arising from the present method, these expressions of opinion cannot be deemed to warrant the Government in taking control of the railways out of the hands of their owners.

(b) The Law-making Power Has Dealt Fully with Preferences Between Individuals.

Preferences between individuals have been alleged to arise principally, if not wholly, from secret rebates. There has been much resounding talk upon this subject, yet here, too, the record of both the Commission and the courts embraces few adjudicated cases, when the extent of the railway traffic of the country is considered. And *nothing further upon this subject can be accomplished by statutory enactment.* " The power of the statute in this direc- " tion was practically exhausted in creating the offense. " When that was done, when certain acts were declared mis- " demeanors, the subsequent perpetrators of those acts became

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(b) The law-making power has dealt fully with preference between individuals.

" at once liable to criminal prosecution in like manner and by " the same agencies as other offenders. Nor can Congress " provide any summary or exceptional methods for preventing " or punishing this class of transgressions. * * Theoret- " ically, at least, the existing system of laws applicable to the " wrongdoing now referred to is complete and ample. It is " not lacking in strength or certainty " (Annual Report for 1893, p. 7). " No amendment of this statute, therefore, is necessary " or suitable with the view of giving greater power to the " Commission in enforcing its penal provisions " (*Id.*, p. 8). In addition to this, *if secret rebates existed, rates made by the Commission would be as much subject thereto as any others; so that conferring rate-making power upon the Commission would not be an appropriate or effective remedy.*

However, in 1903, the Elkins act was passed, without opposition by any interest, under which the Commission has power to obtain injunctions from the courts prohibiting secret rebates or rate cutting. This was a step in the right direction, as it provided for direct application by the Commission to the courts to enforce the act. It is conceded that the Elkins act has been generally effective. In its annual report for 1903 (pp. 10, 11), the Commission said, " no one familiar with rail- " way conditions can expect that rate cutting and other secret " devices will immediately and wholly disappear, but there is " basis for a confident belief that such offenses are no " longer characteristic of railway operations. That they " have greatly diminished is beyond doubt, and their recur- " rence to the extent formerly known is altogether unlikely. " Indeed, it is believed that never before in the railroad history " of this country have tariff rates been so well or so generally " observed as at the present time. * * In its present " form the law appears to be about all that can be provided " against rate cutting in the way of prohibitive and punitive " legislation; unless further experience discloses defects " not now perceived, we do not anticipate the need of " further amendments of the same character and designed

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(c) The matter of alleged preferences between localities and classes of traffic is very much exaggerated; such claims will always exist, and the present statute furnishes ample means of dealing with them.

" to accomplish the same purpose." In its annual report for 1904 (p. 6), the Commission has just said, " as to that " branch of regulation which deals with the publication and " invariable application of tariffs, the act as amended by the " Elkins law of February 19, 1903, appears to be operating " successfully as applied to carriers subject to its provisions." So, too, one of the Commissioners in the article in the North American Review to which reference has been made above has said that, " the effect of the Elkins bill and the injunction pro- " ceedings has been to secure the maintenance of rates; that " condition will probably continue."

Secret rebates and preferences to individuals have, therefore, been fully dealt with, so far as concerns the lawmaking power. If they reappear, it can be due only to failure by the executive branch of the government to enforce the existing statutes.

(c) The Matter of Alleged Preferences Between Localities and Classes of Traffic is Much Exaggerated; Such Claims Will Always Exist, and the Present Statute Furnishes Ample Means of Dealing With Them.

Nothing covered by the substantive provisions of the interstate commerce act remains to be considered save the matter of alleged unjust or unreasonable *discriminations or preferences between localities and classes of traffic.* This is the matter with which the contested cases before the Commission are principally concerned. It is important to remember that, in the language of the Supreme Court, " it is not all discrimi- " nations or preferences that fall within the inhibition of the " statute; only such as are unjust and unreasonable (145 U. S., 284). " Commerce, in its largest sense, must be deemed " to be one of the most important subjects of legislation, and

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" an intention to promote and facilitate it, and not to hamper " or destroy it, is naturally to be attributed to Congress; " the very terms of the statute that charges must be reason- " able, that discrimination must not be *unjust*, and that " preference or advantage to any particular person, firm or " corporation, or locality must not be *undue* or *unreasonable*, " necessarily imply that strict uniformity is not to be enforced; " but that all circumstances and conditions which reasonable " men would regard as affecting the welfare of the carrying " companies, and of the producers, shippers and consumers " should be considered by a tribunal appointed to carry into " effect and enforce the provisions of the act (162 U. S., 218. " The mere circumstance that there is, in a given case, a " preference or an advantage, does not of itself show that " such preference or advantage is undue or unreason- " able within the meaning of the act" (162 U. S., 220).

Claims that preferences exist and that they are unreasonable arise from the spirit of business rivalry which is always natural, and from the general desire to secure equal advantages with others. Indeed, it may be said of the shippers, with very rare exceptions, that they do not deem the rates too high and do not wish to force them unreasonably low, but wish merely to secure equality of treatment. " Shippers " mainly agree that unstable rates are injurious to business " industries and to commerce generally. They claim that " reasonable rates that are stable are better than sporadic low " rates that are below what is just and reasonable (Annual Report for 1893, p. 39). " The rate is of very little conse- " quence to the merchant, provided it is the same to his com- " petitors as to himself" (Annual Report for 1897, p. 18). As the New York Board of Trade and Transportation said in its recent report upon the subject, " if the carriers are held rigidly " to their tariff rates, it matters not much what those tariffs " are if all shippers are charged and required to pay alike, and

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" excessive tariff rates are no longer to be accounted with to " the same extent as formerly."

The efforts of traffic officials to meet the necessities of shippers and consumers in these regards have had more to do than any other cause with the reduction of rates and their proper adjustment as between different localities. " In " view of their opportunities, and the temptations to " which their traffic officers are exposed, it is per- " haps not too much to say that the obligations of " neutrality in this regard are usually observed, and that dis- " criminations of this character are not often the subject of " complaint " (Annual Report for 1895, p. 17). " The carriers " are better qualified to adjust such matters than any court " or board of public administration, and, within the limita- " tions suggested it is safe and wise to leave to their traffic " managers the adjusting of dissimilar circumstances and " conditions to their business " (Circuit Court of Appeals, cited in Annual Report for 1896, p. 32; also, 5 I. C. R., 697). " It is worth observing that some, at least, of the most im- " portant controversies involving the rates and methods of " railway carriers, are rather between competing communities " or producing regions than between rival lines of railway. " Railway development has extended far beyond the point at " which any of the greater systems finds its interests so iden- " tified with a single community as to feel wholly indifferent to " the demands and needs of all competing communities. In- " deed, there may be entire sincerity in the contention, on the " part of the officers of a great system, that any adjustment " which satisfies the rival communities which it serves cannot " be seriously objectionable from its own point of view. In " such degree as this contention may be sincerely advanced, " the carrier becomes a relatively unimportant factor in the " struggles of rival localities " (Annual Report for 1904, pp. 28, 29). The efforts of the traffic officials to advance the in-

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terest of the localities which they serve will naturally continue. *But, if these struggles between localities are permitted to constantly pare down the carrier's revenue, they are a most destructive factor in the carrier's business.* It is obvious that they will have that effect, if they are to be turned over to the Government for adjustment, without interest or responsibility on its part, save to appease excited litigants.

This demand for absolute equality among localities can never be entirely satisfied. If under any conceivable form of statute the Commission could accomplish this, it would still be very questionable whether that result would be desirable, as it would tend to destroy the active spirit of enterprise which is necessary to commercial success. "It is idle to look forward to an adjustment "of rates which, as applied to localities and differently "circumstanced persons, will bear no heavier upon one "than upon another. Such mathematical equality is mani- "festly unattainable through human endeavor. Not even "common control of all railways through consolidated owner- "ship or government purchase could accomplish such a task "of equalization for thousands of places and millions of "persons. Certainly, the much vaunted theory of uniform "charges for all traffic would, under the greatly diversified "conditions which now prevail throughout the country have "the opposite effect, and inflict greater discriminations than "arise under the existing general practice of fixing charges "which attract traffic to the various lines. *Uniform rate per "mile on all traffic for any distance would arbitrarily limit "commerce to sections and greatly restrict production*" (Annual Report for 1893, p. 218). "Trade is no longer lim- "ited to circumscribed areas; distance hardly ever bars the "making of commercial bargains between widely separated "parties, and almost every article of commerce finds the com- "peting product of another region in any place of sale.

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" The consequence is that products of the farm, the forest, the " mill and the mine are continually demanding from carriers " rates adjusted to values in particular markets. *It is this " competition of product with like product, of market with " market, that has induced carriers, in their eagerness to in- " crease the value of their traffic, to continually reduce their " rates to market points. Such competition is the competition " of commerce itself; the strife between competing indus- " tries which the public interest demands should be left free " from fettering laws and uncontrolled by restraining combina- " tions"* (*Id.*, p. 219). As an illustration may be quoted what the Commission has said regarding rates upon flour. " To an " extent the rate upon flour to the foreign market must be " higher than that upon wheat. This is decreed by physical " conditions which no statute and no commission can alter " (Annual Report for 1901, p. 16).

In states where railroad commissions have power over future rates, questions of alleged discriminations between localities and classes of traffic are as frequent and acute as ever. Like all commercial questions, these matters are best settled between the parties. The foregoing expressions show that the carriers, in general, use their best efforts to properly adjust these difficult questions. And the past record proves that the present remedies have not been insufficient. It will shortly be shown in detail (*infra*, pp. 32, 33) that, since the passage of the act, contested cases of all sorts have been comparatively few in number, *and that, with two exceptions, the Commission has been reversed in all of its decisions as to discriminations or preferences which have been passed upon by the courts.*

Inasmuch, therefore, as the parties are so closely observing the law and the Commission has found substantially no cases of its violation, it is idle to claim any existing necessity in this regard for seizure by the Government of control over railway property.

2. The change proposed is not desirable as a future system.

2. The Change Proposed is not Desirable as a Future System.

Nothing can be gained by comparing this country with others. In many other countries the railroads are largely owned by the Government, and the principal object of controlling rates is to prevent the private roads from making lower rates than the Government roads; the matter is really a branch of the system of taxation. The result is that the rates are much higher than here. Still further, pooling is generally recognized as lawful and in some jurisdictions compulsory, so that the roads participate proportionally in these high rates. Even in England, where the roads are privately owned, the rates are about three times as high as they are here. In addition, half the railroad mileage of the world is in this country, so that there is little profit in considering methods applying throughout the world to the other half of such mileage, under conditions and systems of government almost totally different. So, too, there is nothing in the illustration often employed of the supervision exercised by this country over its national banks (Annual Report for 1895, p. 62). That supervision is entirely in the interest of the stockholders and depositors and not for the purpose of limiting or in any way controlling the charges or earnings of the banks. The system now proposed is anomalous, and must be judged upon its own merits.

The views of the Commission in reference to the operation of such a system are expressed to some extent in its annual reports. "To give each community the "*rightful* benefits of location, to keep different commodities "on an *equal* footing, so that each shall circulate *freely* "and in *natural* volume, and to *prescribe schedule* "*rates* which shall be reasonable, just to both shipper and "carrier, is a task of vast magnitude and importance. In "the performance of that task lies the great and permanent "work of public regulation" (Annual Report for 1893, p. 100). "No one who understands the intricacies of transporta-"tion would care to assert that the determination of a just rate,

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" or the decision as to what constitutes discrimination, is an easy " task. To some extent the principles upon which taxation " rests must be allowed in fixing a just rate; to some extent " the result of the rate upon the development of industries " must be taken into the account in all decisions which the Com- " mission is called upon to make; to some extent every ques- " tion of transportation involves moral and social considera- " tions, so that a just rate cannot be determined independently " of the theory of social progress" (Annual Report for 1895, p. 59). These considerations, it will be noticed, do not include reasonable compensation to the owners of the rail- roads. " Within certain limits, it is good policy for the railway " manager to increase his tonnage, even at the expense of re- " ducing the rate per ton. *Just how far this rule applies no one " can tell.* The merchant who buys an article for a definite " price knows when he sells it whether he makes or loses by the " transaction; and the manufacturer, as a rule, has a pretty " accurate idea of the cost of production, *but the railroad oper- " ator cannot ordinarily say whether he should or should not* as a " matter of policy *take traffic at a certain price*" (*Id.*, p. 17). " The freight rate is a complex problem when applied to " almost all competitive traffic. *Very few people not ac- " quainted with the subject have any idea how difficult the " solution of that problem is*" (Annual Report for 1898, p. 15). " It is often difficult to say what constitutes a reason- " able rate, and more difficult to give in detail the reasons that " lead to the conclusion reached; although the Supreme Court " of the United States has given certain rules by which to test " the reasonableness of transportation charges, and although " the Commission has endeavored to apply those rules, yet " whenever it has interrogated railway officials as to whether " or not they are governed by them when making rates of " transportation, they have invariably answered in the negative " and said that to do so would be impracticable. The carriers " do not apparently possess the necessary data for that pur- " pose and *there is at present no other source from which the " Commission can obtain such data*" (Annual Report for 1903, p. 54). Discriminations between localities or classes of traffic, " can be redressed only by the exercise of sufficient authority

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" to *readjust rate schedules* to be observed in the future on " the basis of relative justice " (Annual Report for 1904, p. 9). " The great bulk of our orders * * must pertain to " the future. They will be *orders fixing either a maximum or* " *a minimum rate* " (Annual Report for 1897, p. 35). " It is " probably near the truth to say that the cases now pending " before the Commission directly or indirectly affect almost " every locality and, therefore, nearly all of the people of the " United States " (Annual Report for 1904, p. 29). In connection with this vast programme of regulation of the affairs of the country generally, it seems proper to mention that during the past year it has been necessary to conduct an official examination of the office of the Commission itself.

Early in the history of the Commission, Judge Cooley, its most eminent member, said regarding a suggestion which would require the Commission to " act as ratemakers for all " the roads ", that " this in any considerable state would be an " enormous task. In a country so large as ours and with so " vast a mileage of roads, it would be superhuman " (1 I. C. R., 280). This superhuman programme regarding the future powers of the Commission is not consistent with sound views of the functions of our government. The constitution would prevent a considerable part of it by the provision (Art. I, Sec. 9), that, " no preference shall be given by any regulation of " commerce or revenue to the ports of one state over those of " another." So, too, President Jefferson in his first message (December 8, 1801) said " agriculture, manufactures, commerce " and navigation, the four pillars of our prosperity are most " thriving when left most free to individual enterprise." Again, one hundred years afterward, President Roosevelt in his first message (December 3, 1901), said, " it must not be forgotten " that our railways are the arteries through which the com- " mercial life blood of this nation flows. Nothing could be " more foolish than the enactment of legislation which would " unnecessarily interfere with the development and operation " of these commercial agencies."

In deciding whether it is desirable to give the Commission power such as this, it is well to consider the record of the past. In its report of April 16, 1900 (Sen. Doc. 319), to which refer-

ence has been made (*supra*, p. 21), the Commission stated the entire number of contested cases decided in the previous ten years as one hundred and eighty, or about eighteen per annum. Of these only thirty-five went to the courts, or about three and one half per annum. The result was that the Commission was sustained in four cases, (two of which were subsequently reversed), reversed in seventeen cases ; twelve were still pending and two were withdrawn. That is to say, about one case in every two and one-half years was sustained by the courts, and slightly more than eighty per cent of the Commission's decisions which had been passed upon were reversed. This the Commission seeks to explain by the fact that it had misconstrued the extent of its powers (Sen. Doc. 319). But there could be no more fundamental or regrettable error than for any tribunal to constantly exceed its jurisdiction. In point of fact, too, the results seem to have been about the same since 1897, when the Supreme Court authoritatively ruled as to the jurisdiction of the Commission, as they were before that time.* Indeed, within the last two months, the courts have overruled the orders of the Commission in the well known Kearney (Nebraska) long and short haul case and in the case of rates on hay and straw. These were the most important cases pending which involved decisions by the Commission as to rates.

An independent examination of the records which has just been made presents a showing even less favorable. From its creation in 1887, until October, 1904, the Commission rendered two hundred and ninety-seven formal decisions involving rates or discriminations, covering three hundred and fifty-three cases, as in some instances cases were heard together. This was a period of seventeen years, and the decisions, therefore, averaged about seventeen and one-half per annum. Action favorable to the complainants was taken in 194, or 54.96 per cent of the cases decided. So that the complaints coming before it which the Commission held to be well founded

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* The facts as to this matter have been worked out with much clearness and detail in several pamphlets published by Mr. Joseph Nimmo, Jr., of Washington. They seem never to have been questioned.

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averaged eleven and one-half per annum. In eighty per cent of these cases the carriers complied with the Commission's decision. Since 1887, forty-three suits have, however, been instituted to enforce final orders of the Commission as to rates. This is an average of about two and one-half per annum. The net result of the action of the courts has been that in one of these cases the Commission was sustained in part by the Supreme Court and in one was sustained by the Circuit Court, and, as the matter was unimportant, there was no appeal. These were both cases of discrimination between localities. In thirty cases the Commission was reversed. Two cases were withdrawn; five have been long pending but have not been pressed for hearing; and four are still pending, in two of which there have since been reversals. *This shows two affirmances and thirty reversals.* In other words, *about ninety three per cent of the decisions of the Commission which were passed upon by the courts were held to have been erroneously decided.*

The pending act proposes that the orders of the Commission shall be operative until they are set aside by the courts: they are to have the force of statutes. The Commission describes itself as "the special tribunal created by Con-"gress and exercising its power" (Annual Report for 1895, p. 17). "If the Commission establishes a rate, that is tanta-"mount to an act of the legislature" (Annual Report for 1897, p. 37). The importance and effect of the Commission's action in the premises are stated by it as follows: "One of the peculiar features of Federal regula-"tion is that every case before the Commission, however "trivial it may appear, involves in its disposition the formu-"lation of principles under the law which have important "bearing upon the business of carriers and the commerce, not "only of the immediate locality, but *often of the entire* "*country*" (Annual Report for 1893, p. 13). But, as just said, over ninety per cent of such decisions have ultimately been overruled. So far as experience is a guide, such a provision as that now proposed would, therefore, probably accomplish injustice in over ninety per cent of the cases affected. For this injustice there would be no remedy, because no recovery could be had from the shippers whose goods had been carried at

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unjustly low rates. After long litigation, therefore, the carrier would in over ninety per cent of the cases succeed in setting aside the order of the Commission, and would have no remedy whatever for the wrong accomplished by that order.

The substantial and valuable work of the Commission, in behalf of the principles laid down by the statute, has been in the way of aiding adjustment between the parties (Annual Report for 1893, p. 14; Annual Report for 1896, p. 55; Annual Report for 1897, pp. 32, 51). In its annual report for 1901, it says "the great mass of complaints are "handled and disposed of by the Commission by pre- "liminary investigation and correspondence or conference "with carriers and shippers" (p. 19). "It may be true that "the people who complain of excessive rates are more unrea- "sonable in the making of this complaint than the carriers are "in the making of their rates. That possibly is so. But it "arises from the lack in these people of a knowledge of the "actual situation" (Annual Report for 1897, p. 22). The total number of complaints during the year 1903 was five hundred and forty six; but only eighty four formal proceedings were instituted before the Commission (Annual Report for 1903, p. 38) and only sixteen cases were decided by the Commission, or in the proportion of one decision to forty-six complaints (*Id.*, pp. 46–65, 276, 282). In 1904, there were four hundred and eighty-seven complaints, but only sixty-two formal proceedings (Annual Report for 1904, pp. 36–39); and twenty-five decisions were rendered, several of which were in the nature of rehearings (*Id.*, pp. 42–64). Since it was created, over ninety per cent of the complaints filed with the Commission seem to have been disposed of informally. *Of the remaining ten per cent, in eight per cent of the cases the carriers have acquiesced in the Commission's decision.* The only question at present is how the remaining *two* per cent shall be passed upon. It has been already pointed out that past experience does not warrant or require any enlargement of the Commission's powers in that respect (*supra*, pp. 31, 32).

Nevertheless, the present bill seeks to provide that, whenever a rate has been held to be unlawful, the Commission may prescribe a rate which shall prevail thereafter. It is sometimes

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said that the original rate making power is not sought (Annual Report for 1895, p. 18; Annual Report for 1897, p. 15). "No "such power has been asked by or is seriously sought to be "conferred upon the Commission" (Annual Report for 1904, p. 8). The President's recent annual message said: "I am of "the opinion that at present it would be undesirable if it were "not impracticable finally to endow the Commission with "general authority to fix railroad rates." Yet it is obvious that the provisions of the bill would have the effect of giving the Commission complete power over all rates; for, after all, *the real rate making power lies with those who pass upon the rates finally, rather than with those who propose them in the first instance.* This is just as the law is settled, not by the decisions of the circuit courts, but of the Supreme Court—the last resort. The Commission itself or any person whomsoever, whether or not he have any interest in the subject matter and whatever his motive, whether he be a genuine shipper, a public official, a crank, or a blackmailer, may institute a proceeding which may include an unlimited number of carriers and attack innumerable rates (194 U. S., 25). Upon the institution of such a proceeding, the Commission is bound to proceed and has complete power in the premises. This would make all rates subject to its decision.

This point does not admit of argument, because it has already been decided. In its annual report for 1904, the Commission says (p. 8): "The amendments now recom-"mended by the Commission as to authority to prescribe "the reasonable rate upon complaint and after hearing, "*would confer in substance the same power that was actually* "*exercised by the Commission* from the date of its organization "up to May, 1897, when the Supreme Court held that such "power was not expressed in the statute." The precise effect of this power has been clearly stated by the Supreme Court as follows (167 U. S., 570). "There is nothing in the act requiring "the Commission to proceed singly against each railroad com-"pany for each supposed or alleged violation of the act. In this "very case the order of the Commission was directed against "a score or more of companies and determined the maximum "rates on half a dozen classes of freight from Cincinnati and

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" Chicago respectively to several named Southern points and " the territory contiguous thereto, so that if the power exists, " as is claimed, there would be no escape from the conclusion " that *it would be within the discretion of the Commission of its* " *own motion to suggest that the interstate rates on all the roads of* " *the country were unjust and unreasonable, notify the several* " *roads of such opinion, direct a hearing and, upon such hearing,* " *make one general order, reaching to every road and covering* " *every rate.*"

Illustrations of this are that the Import Rate case, decided in 1894 (2 I. C. R., 658; 3 *Id.*, 417), involved the rates upon all shipments from abroad to any interior points throughout the country; and the Supreme Court said that the orders therein, " instead of being regulations cal- " culated to promote commerce and enforce the express pro- " visions of the act, are themselves laws of wide import, de- " stroying some branches of commerce that have long existed, " and undertaking to change laws and customs of transporta- " tion in the promotion of what is supposed to be public " policy " (162 U. S., 234); the Maximum Rate case (4 I. C. R., 592, 617), decided in 1894, involved in one proceeding practically all rates on South bound business East of the Mississippi river; and the Business Men's League case (9 I. C. R., 318), decided in 1902, involved substantially all rates from the Mississippi to the Pacific Ocean. As the Commission said, in its annual report for 1893 (p. 13), " *every case before the* " *Commission, however trivial* it may appear, involves in its " disposition the formulation of principles under the law which " have important bearing upon the business and the commerce " not only of the immediate locality, *but often of the entire* " *country.*"

The extent of this power may be judged from the facts that on June 30, 1904, there were 2,358,960 tariffs on file, the annual average being over 130,000, and more than one-third of the Commission's clerical force—which third would apparently be about thirty clerks (Annual Report for 1903, pp. 128–131)—being constantly occupied in the work of merely filing, indexing and furnishing information in reference to them (Annual Report for 1904, pp. 64, 65); that the gross earnings of the

railroads in 1904 were $1,966,633,821 (Annual Report for 1904, p. 105) and the capitalization $12,599,990,258 (Annual Report for 1904, p. 109), which is dependent for its value wholly upon earning power; and that the internal commerce of the country during the year 1904 amounted to approximately $22,000,000,000. As the Commission said in its annual report for 1897, " the amounts involved in the reductions asked for " are enormous (p. 22); * * the amount of money involved " would be much greater than that involved in the decisions of " any trial court in the United States. The results would nat- " urally be of more consequence to the litigants than those of " any such court " (p. 26). It might well have said than all the courts together. *It should, therefore, be plainly understood that the proposed act places all rates under the full and discretionary control of the Commission.*

In the execution of this power it will shortly be seen that the Supreme Court has stated certain rules as following from the guaranty of property contained in the Constitution (*infra*, pp. 43, 44). It has already been seen (*supra*, p. 30) that the Commission has stated its inability to apply the same (Annual Report for 1903, p. 54), and has admitted practically that it has no definite principles of rate making, but is controlled among other things by " moral and social considerations and the theory " of social progress " in determining these vast rights of property (Annual Report for 1895, p. 59). This condition of things is not surprising. Every varied and complicated business must be treated as a whole. It is impossible to dissect it and treat its numerous parts separately in accordance with abstract rules. If the future of the business is to be subject to the control of those who have no interest therein, it would be better that such action should affect the business as a whole than that its income should be cut down by piecemeal without responsibility for the final result. The claim that the present plan has any conservative character or that anything more dangerous could be devised is based upon misconception of its real scope. *Nothing could be more dangerous to the value of railroad property than the system now proposed, of committing its future to the control of persons without interest therein or responsibility for the results of its operation.*

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The danger is that constant reductions, now here and now there, would ultimately destroy the earning power of the property.

The complicated machinery for reviewing the action of the Commission as to future rates would be no effectual safeguard. Such action is legislative, not judicial (167 U. S., 505), and would probably not be subject to judicial review unless it was confiscatory. The right to review in such a case could not be taken away, because it arises from the constitutional guaranty of property (169 U. S., 546). But the burden would be upon the carrier to establish clearly that the character of the Commission's action was confiscatory, and this would be extremely difficult where isolated rates were involved, and the property was cut down here a little and there a little. It is illusory to suppose that any action of the Commission short of confiscation would be under the effective control of the courts (174 U. S., 754). The Commission has clearly expressed this understanding of the matter. "If the Com-" mission establishes a rate, that is tantamount to an act of " the legislature" (Annual Report for 1897, p. 37). As one of the Commissioners expressed the matter at a hearing before the Senate Committee on Interstate Commerce on March 10, 1898 (p. 9), "one doctrine is now settled—that, whereas the " investigation of the question whether an existing rate is a " reasonable and lawful one or not is a judicial question, the " determination of what the rate shall be in the future is a " legislative or administrative *question with which the courts can* " *have nothing to do.*" As another Commissioner said before the same Committee on February 21, 1900 (p. 118), "the pre-" scribing of a rate is, under the decision of the Supreme " Court, a legislative, not a judicial function, and for that " reason the courts could not even if Congress so elect, be in-" vested with that authority." Short of confiscation, therefore, if its view is correct, the Commission would be independent of any court whatever, whether previously existing or specially established by the legislation now proposed.

Furthermore, the proposed bills confer upon the Commission entirely new powers. It is now empowered merely to prevent preferences upon lines formed by a single railroad or by agreement of two or more for joint rates (Secs. 1, 3). "There

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" is one class of discriminations which we have never pos-
" sessed the power to effectually correct, even while we as-
" sumed the right to fix the maximum rate. We refer to that
" class of cases where the differential in question is to be
" maintained by independent lines as well as by a common
" line " (Annual Report for 1897, p. 24). " The Commission is
" not empowered to fix a minimum rate when that remedy is
" found necessary to correct wrongful discriminations between
" localities " (Annual Report for 1898, p. 23). " This Com-
" mission has no authority to require carriers to make a
" through route or establish joint rates " (Annual Report for 1893, p. 16); and there is now no power over divisions of joint rates (Annual Report for 1901, p. 28). But the proposed acts provide that the Commission shall have power to settle both divisions of joint rates and the "just relation of rates" by different lines at common points. This is expressed in the Quarles-Cooper bill and follows by implication from the provisions of the Townsend bill.

It needs no argument to show that this power regarding the "just relation of rates" would concentrate in a single board power to determine the commercial and industrial future of all the various localities throughout the country. " Every community and every pursuit is so
" dependent upon the agencies of transportation, so directly
" affected by the cost of this necessary service, that an inequi-
" table adjustment of rates between competing towns or com-
" modities may produce serious and widespread disaster "
(Annual Report for 1893, p. 6). The Commission's conception of the use of such a power was shown in the Differential Case (7 I. C. R., 669, 670). After pointing out the degree of New York's commercial importance, it said, " a preliminary question
" is how far is this port of New York " *entitled*," or how far can
" that port expect to continue to enjoy that commercial
" supremacy. *Plainly not to the same extent.* It would be in
" accordance neither with the theory of our institutions nor with
" the history of the development of our nation to *permit* any
" one port upon our vast extent of seacoast to monopolize the
" trade with foreign nations. Within recent years the United
" States Government has expended large sums in improve-

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" ments of other ports. These vast sums have not been appro-
" priated and expended certainly upon the theory that it was
" *desirable* for the foreign trade of the country to flow through
" the port of New York alone. Rather does this recognize it
" as the policy of our Government that its foreign com-
" merce should be *distributed* between various ports."
The Commission, accordingly, sustained the differentials against New York, in flat disregard of the constitutional provision that "no preference shall be given by any regu-
" lation of commerce or revenue to the ports of one state
" over those of another" (Art. I., Sec. 9, Subd. 5). Yet, singularly enough, the Commission has just held that "it is no
" part of its duty to equalize differences in the natural advan-
" tages of localities through the adjustment of tariff rates"
(Annual Report for 1904, p. 45).

These varying principles can equally be applied to any locality in the country, as may suit the fancy of the Commission. Paraphrasing the Commission's language, this statute would "put into its hands the power
" to determine what localities shall pay and what receive
" tribute" (Annual Report for 1897, p. 45). *As over ninety per cent of the Commissions orders as to rates which have gone before the courts have been overruled* (*supra*, pp. 32, 33), *it is impossible to foretell what havoc would follow from the exercise of such powers.*

The change proposed would be merely a further step toward general governmental direction of commerce. Congress is not given by the Constitution any special power over the carriers. The provision is that it shall have "power to regulate commerce
" with foreign nations and among the several states" (Art. I, Sec. 8, Subd. 3). But the shipper of goods is engaged in interstate commerce equally with the carrier of the goods shipped (175 U. S., 211; 193 U. S., 38). The shipper and his business are, therefore, quite as much within the power of Congress as the carrier and its business. Accordingly, the Supreme Court has held in the Lottery case (188 U. S. 321) that it is competent for Congress to prohibit transportation of lottery tickets as merchandise, and two former assistant attorneys general of the United States have since

published articles in the reviews vigorously asserting that this establishes the power of Congress to exclude from interstate commerce whatever it sees fit. The Commissioner of Corporations is suggesting that a Federal license shall be required as a condition of engaging in interstate commerce—in other words, that engaging in interstate commerce as a means of livelihood shall no longer be a right, but a *privilege* to be enjoyed only by those possessing a *license* upon such terms as the government shall see fit to prescribe. This makes it clear that the method of governmental regulation proposed would apply to all the operations of interstate commerce and would be equally dangerous to all engaged therein. *The pending bills, if successful, would be merely one step in the direction of general socialism, which would affect manufacturers, shippers and carriers alike, and would subject to governmental control the question what the citizens of the country shall be allowed to earn by the use of their constitutional rights of liberty and property.*

Finally, the bill would establish rigid methods of transacting business which would tend to arrest commercial progress. The most effective cause of reduction of rates is the effort of traffic officials to enable their respective shippers to extend their business and constantly reach further markets and consumers. " The location of new business enterprises is " frequently settled since the passage of the act to regulate " commerce, as well as before, not so much by the wishes of " those who control them and the advantages for economical " production or trade afforded at particular places as by the " favorable transportation rates which railway managers can " be induced to put in force " (Annual Report for 1894, p. 57). This process of development can be continued only through gradual reductions of rates, and in its continuance shipper, carrier and consumer are alike interested. But this process of development will be arrested if the rates are finally subjected to the veto of a body having no substantial interest in the success of the transportation business or of the industries upon the several lines. Moreover, after a rate is once established under the proposed statute it will continue in effect until changed by the Commission. *Such change of*

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a rate once established could not be accomplished by any act of the courts.

Every rate once fixed would thus be incapable of change without a proceeding before the Commission as dilatory as a lawsuit; and as the Commission proceeded, the scope of this rigid condition of rates would constantly extend. Every practical man must realize that business is carried on successfully by negotiation and agreement of the parties, rather than by the judgment of any tribunal. "Business by law-suit" would be a lamentable failure. There is no successful branch of business in which the general future relations of those engaged therein are regulated by third parties, whether an administrative commission or a court of justice.

If, indeed, a condition of absolute equality among different localities could be established at a particular moment of time, it would be temporary only. Industry in this country is intensely progressive, and the perfect equality of one day would probably be the grossest inequality of another. The absence of elasticity in a system of government rate making is one of its most serious faults; thus the rate making state commissions have had to fall back on distance tariffs, on account of their inability to make those delicate adjustments which are constantly made by railway traffic officers. Such rigidity is a bar to industrial progress, and probably accounts, in large measure, for the fact that in the states which have rate making commissions the rates are higher, under similar circumstances and conditions, than in other states which have left the contract of transportation to unrestricted negotiation between the parties.

These considerations establish that such a system would be full of danger, the extent of which can scarcely be judged.

3. Such a Drastic System Would Fail Practically by Reason of the Provisions of the Constitution.

It may well be doubted, however, whether the Townsend bill, or the other various bills which have been proposed, would prove any more enforceable than is the case generally with

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unnaturally drastic statutes. It has been already pointed out that the Commission has no judicial quality (*supra*, p. 3), so that its decisions would always have to be enforced in the courts, if at all. The procedure would, therefore, be as complicated as at present.

Moreover, various difficult constitutional questions would arise. The power to regulate commerce has, indeed, been said to be "plenary"—a word of no exact juridical meaning. But, "like the other powers granted to Congress by the constitu- "tion, the power to regulate commerce is subject to all the "limitations imposed by such instrument, and among them is "that of the fifth amendment" (148 U. S. 312, 336). "It is "scarcely necessary to say that the power given to Congress "to regulate interstate commerce does not carry with it any "power to destroy or impair those guaranties" (154 U. S. 447, 479; 9 Wheaton 1, 196; 2 Peters, 627, 657). The provision of the fifth amendment is that "no person shall be "deprived of * * liberty or property without due process "of law, nor shall private property be taken for public use "without just compensation." It is well settled that the carrier is entitled under such constitutional guaranties to receive compensation which is reasonable (169 U. S. 466), and that rule is expressed in the proposed acts.

The character of the questions which would be open in every such litigation is stated by the Supreme Court, through Justice HARLAN, as follows (169 U. S. 546):

"It cannot be assumed that any railroad corporation, ac- "cepting franchises, rights and privileges at the hands of the "public, ever supposed that it acquired, or that it was in- "tended to grant to it, the power to construct and maintain a "public highway simply for its benefit, without regard to the "rights of the public. But it is equally true that the cor- "poration performing such public services and the people "financially interested in its business and affairs have rights "that may not be invaded by legislative enactment in disre- "gard of the fundamental guarantees for the protection of "property. The corporation may not be required to use its "property for the benefit of the public without receiving just "compensation for the services rendered by it. How such "compensation may be ascertained, and what are the neces- "sary elements in such an inquiry will always be an embar-

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" rassing question. * * We hold, however, that the basis " of all calculations as to the reasonableness of rates to be " charged by a corporation maintaining a highway under legis- " lative sanction must be the fair value of the property being " used by it for the convenience of the public. And in order " to ascertain that value, the original cost of construction, the " amount expended in permanent improvements, the amount " and market value of its bonds and stock, the present as com- " pared with the original cost of construction, the probable " earning capacity of the property under particular rates pre- " scribed by statute, and the sum required to meet operating " expenses, are all matters for consideration and are to be " given such weight as may be just and right in each case. " We do not say that there may not be other matters to be " regarded in estimating the value of the property. What the " company is entitled to ask is a fair return upon the value of " that which it employs for the public convenience. On the " other hand, what the public is entitled to demand is that no " more be exacted from it for the use of a public highway than " the services rendered by it are reasonably worth" (*Id.* 546, 547).

Whenever, therefore, a rate should be established by the Commission, it would necessarily be subject to review on the issues thus stated, and the findings of the Commission would have no appreciable *prima facie* force, because the question of reasonableness would be jurisdictional and could be determined only by judicial decision (134 U. S. 618 ; 169 U. S. 466). The Commission has stated that it is unable to apply these constitutional rules (Annual Report for 1903, p. 54), but that " to some extent every question of tran- " sportation involves moral and social considerations, so " that a just rate cannot be determined independently of " the theory of social progress" (Annual Report for 1895, p. 59). These considerations and theories have never been defined by the Commission ; they are not embraced in the matters enumerated by the Supreme Court as bearing upon the question whether rates are reasonable within the purview of the Constitution. No argument is needed to show how difficult and overwhelming would be the litigation arising from such a situation.

Still further, as already said, the constitution provides (Art. I, Sec. 9, Subd. 5) that "*no preference shall be given by any*

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"*regulation of commerce or revenue to the ports of one state* "*over those of another.*" But ports now exist, by statute and usage, not only at the seashore but throughout the country. On that issue also practically every decision of the Commission establishing a future rate would be subject to review; for anything of the sort varying natural conditions would be a "regulation of commerce" giving "a preference to the ports "of one state over another." It is clear that very few such decisions would stand the test of this provision.

Incidentally it may be observed that, under the Townsend bill, the court is to hear the case on the record before the Commission and no testimony is to be admitted which could, with due diligence, have been produced before the Commission. It certainly is a startling novelty to provide that the evidence upon which judicial action is to be based shall be taken by a *quasi* prosecuting body which has no judicial character and is not bound by the rules of evidence (194 U. S., 25), and that the court can receive no further evidence upon the main issue which it is to try, and which will raise a jurisdictional and constitutional question, unless it shall appear that such evidence could not have been produced before the said non-judicial body. It cannot be that such a proceeding would be due process of law; for at no stage would be recognized the right of the parties to present their evidence to the judicial body which was to pass upon the issues. In case the Commission should exclude competent evidence, the courts would have no power to receive it. There would, therefore, be no hearing such as is necessary to constitute due process of law.

The Townsend bill provides, further, that after an order has been made by the Commission, it may be enforced by injunction and by action of debt for the penalties which it establishes. It is clear, however, that upon an application for an injunction, the question of reasonableness of the rates would be open to litigation for the reasons stated above (154 U. S., 397, 398). Indeed, the Supreme Court has held exactly that, upon any application to the courts for enforcement of an order of the Commission, the merits of such order are fully open to litigation; failure to obey the Commission's

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order cannot give rise to any penalty (154 U. S., 479, 485, 489). "Such a body could not, under our system of government, "and consistently, with due process of law be invested with "authority to compel obedience to its orders by a judgment "of fine or imprisonment (*Id.*, p. 485). No question of "contempt could arise until the issue of law, in the circuit "court, is determined adversely to the defendants and they "refuse to obey, *not the order of the Commission but the final* "*order of the court*" (*Id.*, 489; see, also, 37 Fed. Rep., 614, 615). In 32 Fed. Rep., 241, Justice FIELD ruled precisely that a statute empowering the court to punish for contempt one who refused to obey an order of a railway commission was void, because the court was required to act not judicially, but merely ministerially in enforcing the commission's order. This provision apparently requiring the courts to enforce the orders of the Commission by injunction is, therefore, illusory and would prove nugatory so far as concerns any preliminary relief. Those orders would have no greater force than at present; there could be no proceedings "for contempt until "the defendant had refused to obey, *not the order of the Com-* "*mission but the final order of the court*" (*supra*, p. 44).

The situation would be similar in any action of debt. In the latter case the further question would arise whether the proposed statute does not contravene the seventh amendment to the constitution, providing that "the right "of trial by jury shall be preserved." Apparently the Commission's findings are to have *prima facie* force and no further testimony is admissible which could have been produced before the Commission. The effect is to make the finding of the Commission as to the reasonableness of the rate conclusive upon the jury: that is to say, the jury is sought to be deprived of the opportunity to pass on the credibility of the evidence and of the power to decide the crucial facts. This obviously would not be preserving, but rather destroying, the right to trial by jury. Accordingly, the Commission has recently expressed the view that the provisions of the act authorizing it to make orders leading to an award of damages, are constitutional solely because such orders are in

4. Such a system would not accomplish the desired result.

fact without legal effect. "The order for reparation is not "obligatory upon the carrier. It amounts simply to a recom- "mendation which can only be enforced by a suit at law in "which full opportunity for a jury trial is accorded. * * No "order of the Commission awarding damages can be enforced "against the carriers, not a dollar of their property can be "taken except by the judgment of a court in which this ques- "tion can be raised and passed upon" (10 I. C. R., 89). These views indicate that in any action of debt for penalties, the merits would be fully open.

These brief suggestions, which could be greatly amplified if necessary, make it clear that, under the Townsend bill or any other of a similar character, there would be quite as much litigation as at present and it would be quite as difficult to reach results. Indeed, it may be fairly said that the Townsend bill contains greater elements of vagueness and uncertainty as to procedure than any act now in force.

4. Such a System Would Not Accomplish the Desired Result.

It seems unlikely that more drastic legislation would result in anything save annoyance and disappointment.

The interstate commerce act itself is a fair illustration of this. Its substantive provisions are that rates shall be reasonable and there shall be no unjust discrimination or undue or unreasonable preference; everyone has always agreed to their justice. The procedure for their enforcement is now absolutely complete. Anyone can file a complaint; the findings of the Commission are *prima facie* evidence of the facts found; the courts act on as short notice as they deem proper and proceed speedily without formal pleadings or proceedings; the constitutional protection from self crimination has been removed by statute, so that anyone can be compelled to testify; cases arising under the statute have preference over everything; individuals and corporations violating the act, whether carriers or shippers, are subject to heavy fines; the provisions of the act may also be enforced civilly by de-

4. Such a system would not accomplish the desired result.

cree in equity, with subsequent contempt proceedings, involving fine and imprisonment; and in all cases appeals lie directly to the Supreme Court (194 U. S., 25). In reference to no other subject matter does such drastic procedure exist—American jurisprudence has no further resources.

Yet at the end of seventeen years, the Commission says that all this has accomplished little or nothing, and that it must, as far as possible, be made independent of the courts, apparently because they have overruled more than ninety per cent of its decisions which have been litigated. But this is a great mistake. The approximately ninety per cent of complaints settled between the parties and the additional eight per cent in which the carriers have complied with the orders of the Commission, show where the act has been effective; its provisions which represent ordinary business methods have been eminently successful (*supra*, pp. 33, 34). As to the remaining *two* per cent of the cases, however, experience has in great measure demonstrated the failure of unnaturally drastic methods.

The Sherman anti-trust act has had a similar result. After giving to its first section the startling construction that it prohibited all contracts in restraint of trade, although they might be perfectly reasonable, the Supreme Court has been gradually receding from that construction. No one has even tried to enforce the other provisions of the act—their weakness has been too manifest. The historian Lecky well says that most of the great reforms of English history were accomplished by repealing statutes, not by enacting them.

This shows that the constant enactment of new statutes is a very crude expedient for meeting the difficult situations of life. Any real remedy must always come from the slow but inevitable working of natural laws and from improved conditions in business and society. In the present case, these natural methods have already largely done away with unreasonable rates and with preferences between individuals (*supra*, pp. 14-23). As regards the remaining matter of alleged preferences between localities and kinds of traffic, the record shows that few of these claims are well founded.

The remedy consists in promotion of better relations between the parties and enforcement of existing law in the courts.

Indeed, but two such cases have been established in the courts during seventeen years (*supra*, pp. 32, 33).

In the face of this, it is idle to claim that any good would result from still more drastic methods.

The Remedy Consists in Promotion of Better Relations Between the Parties, and Enforcement of the Existing Law in the Courts.

This is the proper function of the Interstate Commerce Commission. As already said (*supra*, p. 34), it has done admirable work in promoting better relations by aiding in the settlement without controversy of more than ninety per cent of the complaints which have come before it. Quite possibly this better understanding might be aided, too, by the voluntary organization of joint committees of shippers and traffic officials who would consider informally matters of joint interest and make recommendations which both sides would almost certainly adopt. The parties would thus come together originally and the Commission be relieved of much detail. This has been already suggested by the Commission, which said, in its annual report for 1898 (p. 22), that such a course "might "do much to promote just conduct and harmonious relations "between the railways and the public and thus prove mutually "beneficial to a high degree." In some parts of the country, as Ohio and Kansas, a successful beginning has been made in this direction.*

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* Rather curiously the efficacy of this method is fully recognized in "The Transportation Tax," issued by the Cattle Growers' Interstate Committee, Denver, 1904 (p. 48). The Committee reports that it has conferred with the railroad officials and "has been met by the railroads in a very friendly and courteous "manner. The committee has succeeded in accomplishing very much in "the way of immediate and temporary relief. Service has been greatly "improved, and in some instances, rates have been adjusted upon a more "satisfactory basis, while the railroad officials with whom the committee "has met, have shown a disposition to treat the cattlemen with the greatest "fairness; the committee has realized, however, that relief granted must be "of a temporary nature. * * Through its officers and subcommittees, it "hopes to continue the present cordial relations with the railroad officials to "the end that business may be conducted with as little friction as possible."

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As to the litigated cases, however, the remedy must be in the courts, as it is when property rights generally are alleged to be infringed. It has already been seen (*supra*, p. 33) that there have been but thirty-two cases litigated to final adjudication in the last seventeen years, and the statutes now provide that the hearing of interstate commerce cases shall have preference in the courts over everything. Obviously, therefore, whatever expense and delay exist are due to the preliminary hearings before the Commission. Its functions in that regard are anomalous and inconsistent. At present the Commission defines itself as "not a court; "it is a special tribunal engaged in an *administrative* "and *semi-judicial* capacity investigating railway rates and "practices" (Annual Report for 1896, p. 71; Annual Report for 1903, p. 33). "Congress has not seen fit to grant legisla- "tive power to the Commission" (162 U. S., 216). "The "power given is the power to execute and enforce, not to "legislate" (167 U. S., 501). To this it is now proposed to add the *legislative* function (167 U. S., 505, 506) of making rates for the future.

Such a combination is not recognized by American constitutional principles. It has always been a fundamental rule that the executive, legislative and judicial functions cannot be exercised by the same persons (Federalist 47, 66, 71). "The legislature makes, the executive exe- "cutes and the judiciary construes the law" (10 Wheaton, 46). "It is believed to be one of the chief merits of the "American system of written constitutional law, that all the "powers entrusted to government, whether State or National, "are divided into the three grand departments, the executive, "the legislative and the judicial; that the functions appropriate "to each of these branches of government shall be vested in a "separate body of public servants, and that the perfection of "the system requires that the lines which separate and divide "these departments shall be broadly and clearly defined" (103 U. S., 190). If the bills proposed should become law, the Commission would be in the unique position of exercising all three of the powers of government.

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But as the courts have to pass ultimately upon contested cases, the preliminary hearing before the Commission is merely dilatory in its effect. As the Commission said in its annual report for 1897, "* * what is the effect of the order "thus made? Really nothing whatever (p. 31); the trial "before the Commission, with all its attendant expense "and consumption of time, goes practically for nothing (p. "31); our order when made binds nobody (p. 32). Nobody "is compelled to obey it. Nobody suffers any penalty for "refusing to obey it" (p. 33). It is useless to compare conditions under the English act (Annual Report for 1893, p. 16). There Parliament is supreme because there is no written constitution. But here, by reason of the provisions of the Constitution, *no form of statute can be devised which will give the Commission's orders any validity as adjudications* (154 U. S., 485).

The justices of the circuit courts are constantly passing upon questions involving railroad management and in many cases have the advantage of a knowledge of local conditions which the Commission cannot possess. So, too, they are judicial officers appointed for life and habitually occupied with the disposition of varying questions of law and fact; while the Commission is an administrative body, the members of which hold office for a term of years only, are frequently changed and generally have little experience before their appointment. It may be doubted whether anything would be gained in the premises by establishing a special court. The existing judicial machinery is ample to deal with the subject, and the statutes secure an immediate hearing. In the last seventeen years there have been but thirty-two cases under the act which have been brought to a final hearing. A special court with less thau two cases a year seems unnecessary. Its experience would probably be similar to that in England where a special tribunal was established, after much agitation, and was astonished to find that it had little to do.

Under Section 12 of the interstate commerce act, "the "Commission is authorized and required to execute and "enforce the provisions of this act," and it is the duty

of any United States attorney to institute proper proceedings on its request. It was, accordingly, held at circuit that the Commission might without formal order upon its part, apply directly to the courts to enforce the statute (65 Fed. Rep., 903), and the Commission expressed approval of this method as useful in very many cases (Annual Report for 1894, p. 7; Annual Report for 1895, p. 80; Annual Report for 1896, pp. 15, 89). Whatever doubt may have existed as to this power has been removed by the Elkins law, so far as concerns any alleged secret discrimination (189 U. S. 274). Under this the Commission makes such investigation as it sees fit, and resorts directly to the courts when it deems the law to be violated. As the Commission states in its annual reports for 1903 and 1904, that method has proved effective. Its scope can easily be enlarged, if necessary.

This method of applying directly to the courts whenever there was a substantial controversy, would simplify the present procedure and that indicated in the Townsend and similar bills; it would terminate the vain attempt to blend administrative and judicial duties; the Commission would no longer spend its time in proceedings which "go practically for nothing" (Annual Report for 1907, p. 21) and are almost invariably reversed by the courts (*supra*, pp. 32, 33). The Commission would thus be free to fully discharge the important administrative duties imposed upon it by statute (154 U. S. 447)—as one of its members has said, "the burdens imposed upon "(the Commission) under the law are quite sufficient to sat-"isfy the most grasping ambition" (Annual Report for 1893, p. 225). It would be free to investigate to whatever extent it deemed necessary and to enforce the law promptly through the courts which alone can act effectively, and to which, under the constitution, the Commission must always resort at last.

This is the orderly manner in which all other governmental functions are administered. Under the American constitutional system, the prosecutor can never be a judge in the cause. No reason has been suggested, and certainly experience has indicated none, why this great subject of Federal power should be alone subjected to dilatory preliminary proceedings in

which the prosecutor goes through the motions of having judicial character which it does not in fact possess (154 U. S., 479, 485, 489), and makes decisions which, as it says itself, " bind nobody and go for nothing " (*supra*, p. 51). No useful purpose is served by such empty procedure.

Where state commissions have power over future rates the claim of preferences between localities and kinds of traffic, is as acute as it ever was. On the other hand, the most intelligent state in the country is Massachusetts, the most populous and richest is New York, one of the greatest in every way is Ohio—yet their commissions have no power to fix rates. The second state in population and the greatest in industrial activity is Pennsylvania, but it has no commission whatever. Indeed, *more than one-half of the population of the country lives in states where there are no rate making commissions, and in those states, generally speaking, there is peace.*

On the other hand, one of the first states to endow a railroad commission with full power over rates was Illinois. Yet its shippers constantly inveigh against the action of the commission, both as to reasonableness of rates and preferences between localities. Whatever difficulties exist as to both local and interstate traffic centre mostly about Chicago and points dependent thereon. But there is no good reason why the whole country should be subjected to the dangers of Governmental rate-making, because of these local conditions. If the law be vigorously enforced, they will cease to exist there, as they have throughout the country generally.

The true remedy, therefore, is to ameliorate, rather than exasperate, the relations of the parties; and, discontinuing idle preliminaries, to apply at once to the courts for relief whenever the law is violated. This is the method of enforcing both private and public rights which is in accord with Anglo-Saxon methods of government. No good reason can be given for departing from it. This course will have the immense advantage of securing immediate relief wherever it is needed; while any novel system will be experimental at the

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best, and must equally depend for success upon the manner in which it is administered.

The present remedies are ample as regards existing conditions; yet the executive branch of the government has not made effective use of them but has constantly demanded more authority. Before that is granted, the existing statutes should be efficiently enforced. The suggestion of additional power has little merit, in the face of omission to use power already possessed.

Respectfully submitted,

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Dated, January, 1905.