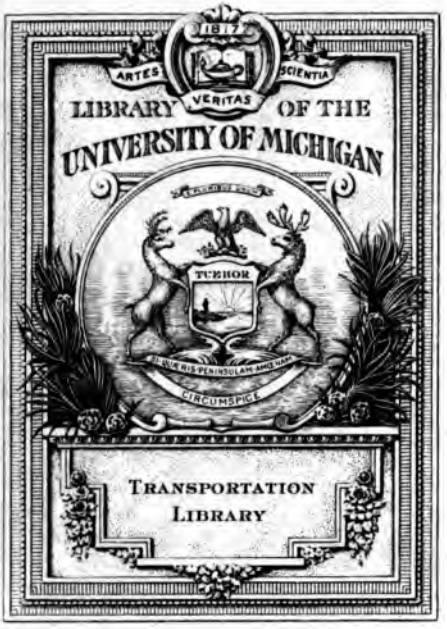
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THE PEOPLE AND THE RAILWAYS

A POPULAR DISCUSSION OF

THE RAILWAY PROBLEM IN THE UNITED STATES,

BY WAY OF ANSWER TO "THE RAILWAYS AND THE REPUBLIC," BY JAMES F. HUDSON, AND WITH AN EXAMINATION OF

THE INTERSTATE COMMERCE LAW

BY

APPLETON MORGAN.

(Of the New York Bar.)

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1888.

AN ALBUM OF STATESMANSHIP.

"We're going to lead the railroads a wild and lively dance, and make it lurid for them in the Legislature this winter." (The Editor of a Democratic Agricultural Paper in Iowa.)

"We don't propose to hear the railroad side of the question now. We'll hang them first and try them afterwards." (A Reform Member of a Senate Railroad Committee.)

"We will pass the anti-railroad legislation and hear the railroad men afterwards. The condemned are always allowed to speak from the scaffold." (Another Reform Senator of a Railroad Committee.)

"I wrote a radical mining bill, and submitted it to the coal-miners themselves, and told them that if it wasn't severe enough against the mine-owners, to add to it anything they wanted, and I would advocate and secure its passage in the House." (A Reform Member and Leader of the Lower House of a Legislature, and the owner of a Reform Newspaper.)

"Let us make a secret compact of a pledged and sworn majority, and vote this legislation through without debate, right or wrong. If it hurts the railroads let them take care of themselves. Our leader has said, 'Organized capital may be depended upon to take care of itself.'" (The next Reform Leader in rank in the Lower House of a Legislature.)

"Light! Who wants any light on this subject? I am not open to conviction? But I am ready to vote for this bill to-day and hear the railroads to-morrow." (Another Reform Senator of a Railroad Committee.)

"If the proposed legislation should bankrupt any of the railroads in the State, I will call an extra session of the Legislature to relieve them." (A Governor of a State lobbying before a Senate Railroad Committee.)—*Iowa State Register*, February 27, 1888.

PREFACE.

THE animosity towards the Railway Interest, shown in a volume, "THE RAILWAYS AND THE REPUBLIC," by Mr. James F. Hudson, has been so largely prevalent among our people; so many honest and worthy persons have conscientiously shared in it, that it has seemed to me that a conscientious attempt to allay it would not be looked upon either as surplusage or as mere assumption. If I have, therefore, in the following pages, personified this animosity as "Mr. Hudson," it has been purely for my own convenience, not in the least because I think his book either important or dangerous on the whole. In rejoining to Mr. Hudson's book, not the least of the labor has been the reduction of his rambling and riotous charges, statements and conclusions to some sort of classification as to their subject-matter, and so to avoid the necessity of an equally ponderous volume of six hundred pages.

I have tried to point out that the viciousness of the Interstate Commerce Law lay, not so much in the changes it might or could affect in the present railway conveniences of this people (indeed, except that it has somewhat built up the Canadian Pacific Railway at the expense of our own railroads, I am unaware that it has affected any change whatever, anywhere, up to the present time), as in the risk of putting upon our national statute books a law under which wicked, artful or ignorant men might throw the transportation business of this continent, and so the continent itself, into chaos inside of twenty-four hours.

Portions of this work having previously appeared in *The Popular Science Monthly*, *The Railway Review*, *The North Western Railroader* and *Science*, I am indebted to the proprietors of those publications for permission to use them here.

A. M

NEW YORK, *July* 1*st*, 1888.

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THE PEOPLE AND THE RAILWAYS.

CHAPTER I.

IS COMBINATION CRIME?

WHEN, once upon a time, announcement was made, in despotic opulence of mural decoration, that Mr. Barnum's and Mr. Forepaugh's circuses had pooled their attractions under a single tent, the American small boy lodged no protest, nor did he invoke the statutes of this republic against the dangers with which its institutions were threatened. But when whisky, or coal, or cotton-seed oil, or prunes, or beeswax, propose to adhere in happy family compact, the occasion is not allowed to pass without jeremiad on the perils of this commonwealth and the departure of the liberties of this people.

In a paper entitled "Modern Feudalism," in the "North American Review" for April, 1887, I understand Mr. James F. Hudson to suggest that any old-fashioned ideas as to the economy of large producers over small ones, and supposed consequential security of wages, greatest good of the greatest number, etc., which may still obtain in the community, are survivals of the dark ages, and without place in the enlightened civilization of this continent; and to assert that any combination of corporations or large manufacturers or producers for manufacture or production of a single staple, which shall purchase the interest or business of smaller manufacturers or producers, is a menacing danger, not only to the consumer, but to the State. Mr. Hudson has nothing to submit as to any possible small competitor who might perhaps be willing or even anxious to be crushed out "for a consideration" rather than assume all the chances of himself crushing out the larger competitor. Nor do I find him discussing the question as to what interest

it is to the consumer whether the product he consumes be manufactured or quarried by a small concern or a large one. His propositions, however, are sufficiently startling to the old-fashioned reader of what once was the science of political economy to warrant, I think, notice in these pages.

Mr. Hudson, to begin with, is of opinion that any incorporation, combination, or "trust" organized for business purposes is a "corner" in the thing manufactured, and therefore against the written law of the land as well as the public interest. He is wrong here at the outset. Everybody who knows anything about the matter knows that to "corner" a product is to raise its price, not to the consumer, but to the operators against whom the "corner" is engineered. However disastrous a "corner" may be to the "shorts" who fight it: ultimately fatal to the schemers (who risk public indignation if they succeed or the prospect of bankruptcy if they fail in sustaining it), I have yet to learn of any permanent injury to the consumer—or to the great body of the people—resulting from the wickedest corner that ever was attempted. Without attempting any palliation of or excuse for the gamblers who stack staples instead of "chips" and shuffle values instead of cards, it is yet, perhaps, proper to suggest that even trusts, combinations, and incorporations for business purposes are of some ultimate good to the community and benefit to the bread-winner; and to point out the actual fact that, so far from raising, it is to the immediate interest of a combination of small business interests into a large one to at once cheapen the prices of its product to the very minimum margin of profit at which manufacture can be carried on. Otherwise the crop of new combinations to be bought out would be endless. For, surely, so long as the product in which the combination deals can be manufactured at a profit, just so long will there be manufacturers. Mr. Hudson, no doubt, burns gas. But any consumer of illuminating oil can tell him that he can buy from an agent of Mr. Hudson's pet grievance, the Standard Oil Company, cheaper * than he

* The Standard Oil Company has so reduced the cost of the process of refining that the price of refined oil has been lowered from seventy to less

could before there was any such terrible "octopus," and when every producer had his favorite jobber; and if Mr. Hudson ever sent a telegram from New York to Chicago before the days of the Western Union Telegraph Company (which, naughty as it is, only charges twenty-five cents for ten words to Chicago), at the rate of about two dollars per ten words to Chicago, without grumbling at the positive incongruity of the price, he is a much more reasonable man than some of his readers take him to be. And to demonstrate that—whatever the immediate causes—the immediate effect of combinations is apt to be to convenience rather than to incommode the customer or client; let me allude, in passing, to (what everybody knows) the fact that the single powerful ownership of the telegraph lines of the United States has resulted in the steady improvement of the service (the sending of four messages at once upon a single wire and in opposite directions being not the greatest of these improvements). Perhaps Mr. Hudson thinks that these improvements would have been more patriotically used if the inventors had employed them to break down, instead of to aggrandize and strengthen, the "monopoly." But unless Mr. Hudson dreams of a paradise where inventors seek not to be paid, are not stimulated to activity by hope of reward (if, that is, he writes for his contemporaries and not for an ideal republic), he must be aware of the impossibility of legislating away the inducements to human industry or the instinct of men to prefer worldly prosperity and bank accounts to poverty and dependence. Had these inventions been used to break down existing companies, the result would have been finally the same. They would have been purchased by the strongest purse. But the inventor would first have been ruined. But Mr. Hudson, for one, still writes. Such propositions as that there is not a dollar of capital in the United States which does not represent somebody's labor and somebody's self-denial, or that every

than seven cents per gallon. The people who paid four dollars *per capita* for light now pay less than forty cents *per capita*, which is equivalent to a benefit to the people of this country (counting them at 60,000,000) of $216,000,000 per annum.—"New York Tribune," May 15, 1887.

dollar which accrues in profit to-day to the railroads or other great corporate interests of this country represents from two hundred to three hundred dollars paid directly, and in cash, to the wage-workers (the very men for whom Mr. Hudson assumes to speak)—such propositions, I say, do not deter him in the least, nor do I anticipate that they ever will. If the corporations of the United States (chartered by the people of the United States for transportation, manufacturing, and other purposes), in endeavoring to keep abreast of the commerce and trade of the people of the United States, have grown to such enormous proportions as to attract the envy and enmity of those not holding their securities, I respectfully submit that that is no reason why those corporations should be punished, or their interests wrecked, embarrassed, or confiscated, Mr. Hudson to the contrary notwithstanding.

The fact—the truth is, that (however it may be in other countries) the accumulation of wealth and centralization of commerce in great combinations has never, in the United States, been a source of oppression or of poverty to the non-capitalist or wage-worker. The greatest oppressors of the poor, to the contrary, are not always the largest corporations. It is quite as likely, for example, to be a small Chatham Street haberdasher (who himself struggles against the bottom prices of his next-door "puller-in"), as a Broadway furnishing company, who pays a starved seamstress three cents apiece for making shirts, and holds a chattel mortgage on her sewing-machine as security for the material upon which she operates it. Mr. Hudson appears to infer that the smaller the manufacturer, the better off the consumer and the wage-worker; that the smaller he is, the smaller his prices to the one and the higher his wages to the other. I do not claim that the larger the shirt-dealer, the higher the prices he pays to his seamstresses. I do not claim that the soulless individual becomes soulful the moment he finds himself incorporated (the epigram is the other way). But I do claim that the converse is not the fact. I have not had Mr. Hudson's opportunities, perhaps; but, so far as the laws of human selfishness and greed go,

I happen to know that the larger the principal the more secure the wages of the wage-worker, and the scale thereof at least not necessarily or even probably lower.

The fact is (whether Mr. Hudson will ever become aware of it is another and less important consideration), that the very first thing a successful manufacturing combination does, and must do, is to put the price of its product down to a figure where it will not pay for designing speculators to form new stock companies for it to "crush" at a hundred or more cents on a dollar. For, did it keep up its prices, either one of two things would inevitably happen: either new factories would be started, or the inventive genius of this people would invent a substitute for the product they furnished, and so ruin the combination beyond resurrection.

So rapidly have prices lowered, indeed, in the past, and so constantly are they still falling, that earnest economists have begun to wonder what the end would be; and even the labor agitators have turned from the (to them) seemingly abstract question of hours and wages, as between the employer and the employed, to find in this the supposed greatest peril of the latter. It even appears that one Powderly, a chief of one of the so-called "labor movements," has made it the text of certain of his harangues. And, with what Dickens would call perhaps "a fatal freshness," Mr. Hudson himself (who has just left denying the right of industries to centralize themselves because the first thing they did after centralization was to put up prices), on the next page, says, "Mr. Powderly has inveighed against the sin of cheapness, and given his assent to the principle of combination to raise prices, on the assumption that such combinations involve an advance in wages." (Though to what purpose Mr. Hudson has preserved this excerpt his context fails to discover, since good faith to his own argument, if not to his readers, should have led to its suppression.)

But Mr. Hudson rattles on as follows: "It is an old truth that commerce, founded on the basis of distributing the staples of life at the least cost, is the highest practical benevolence; while devices to rule commerce by the suspension of competition,

and to exact arbitrary profits from the masses, are the extreme of selfishness and oppression. The universal nature of this truth was perceived when the world emerged from the mediæval system of economics, but it seems in danger of being forgotten. This is illustrated by the criticism of Mr. E. P. Alexander, the most recent writer on the railway question, that those who hold competition to be the only just measure of profits in any industry are years behind the age in comprehension of the science of the railway question."

Whatever there may be beyond platitude in the above is pure invention. The element of "the least cost" as parcel of the definition of "commerce" is certainly novel, and as interesting as it is novel. And certainly, too, the remainder of the sentence —from the words "the universal nature of this truth" (which truth ?—Mr. Hudson has alluded to several) onward—is an extremely remarkable statement to come from the pen of a writer who assumes to deal with economical questions and matters of social science. The allusion to Mr. Alexander is equally childish, and without bearing upon the matter which we believe Mr. Hudson claims to be discussing; unless, indeed, he thought it necessary to show, in passing, how thoroughly he had failed to comprehend the question of American railway systems, to the discussion of which Mr. Alexander has lately contributed a most admirable monograph. When Mr. Alexander used the words dragged from their context as above, he was pointing out how the question of modern industrial competition had long since ceased to involve simple problems of competition in getting business alone; how it at present includes also the element of the cost *versus* the price of doing business at all—that is to say, the value of the opportunity to do business at all, as against the actual outlay in cost necessary to do the business brought to the party offering to do the business at all (which element, everybody—who knows anything of the matter at all—knows to be not only a very serious and a very practical one, but actually the paramount one, under present conditions). (As others besides Mr. Hudson may be ignorant of Mr. Alexander's meaning just

here, I may explain that, to the railway, the value of doing a competing business, of keeping its trains running and so perpetuating its charter, is naturally always a larger consideration than the mere question of a profit—is, in fact, the most vital consideration that could be named. Or, should the question present itself differently: a bankrupt railroad is worse than no railroad at all. It can run recklessly and cheaply, since unable to respond in damages for lives or property injured or destroyed. And yet, were competition the only rule by which railways were operated among themselves, this very bankrupt road could force every neighboring road to regulate itself by its own tortuous procedure. For, just as a chain is no stronger than its weakest link, so the best railroad in the country can be no better than the worst, if competition and nothing but competition is to be the rule.)

But with all earthly matters Mr. Hudson will have nothing but competition. He will not hear of such a thing as a combination. He proceeds: "But the very question at issue is whether they (*i. e.*, these old ideas of competition) are not more in accord with the essential principles of nineteenth-century democracy than those who are turning commerce back to the era of prices fixed by combinations and the suspension of competition." If this is the very question at issue, it would seem as if Mr. Hudson has so far been artfully misleading us. He certainly has not alluded to it before. So far as careful perusal of his paper has informed us, the question at issue seemed to be whether a small manufacturer had a right to sell out his business to a bigger one; at what point a large manufacturer, who has used his capital in buying out his smaller neighbors, must call a halt, and submit to a redistribution all around; and as to whether small manufacturers should be compelled to do business at a loss rather than sell out to larger ones. However, let us patiently shift our ground as often as necessary, if so be we can discover what it is that our Mr. Hudson really does mean. If it is a fact that modern civilization has really introduced new elements—and other principles besides the principle of competition—into commerce, then

by all means let us abolish, let us destroy them (Mr. Hudson knows how to destroy a principle), and get back at once—to what? Not to feudal days, certainly; for that would be modern feudalism, and that is what Mr. Hudson will none of. Perhaps we had better, while we are about it, go back to the Deluge, to Noah the navigator, who spent one hundred and twenty years in building a ship whose quarter-deck he was himself to tread—(not having any competitors in the ark-building trade he felt safe in allowing himself a reasonable time)—to the patriarchal rather than to the feudal system.

But, having decided where to go, how are we to turn back commerce? What is commerce? Webster says that what we mean by that term is "the interchange or mutual change of goods, wares, productions, or property of any kind between nations, by purchase and sale, trade, traffic." Very powerful indeed, one would imagine, must be the forces or agencies which shall turn back such tendencies as these—the operations of the laws of human necessity which culminate in the rule of supply and demand as working upon the entire human race. According to Mr. Hudson, however, these tendencies, laws, and rules do not amount to so very much. It is an easy enough matter to handle them. We have only to legislate railway companies out of existence, and then enact statutes forbidding two of the same trade to combine. Then things will run smoothly. The State will hold the trackage of the late railroad companies as a highway; and every dealer, manufacturer, agriculturist, miner, will carry his product to and fro, and—there you are! No more modern feudalism; nothing but peace, plenty, and communism!

Faulconridge would only frighten boys with bugs, but a moral drawn from the middle ages, by reason of its mere remoteness, appears always to be a powerful antic with which to worry the non-capitalist imagination. Any combination of like interests for business purposes—the copartnership formed by three butter-dealers or six coal-miners to continue the business of selling butter or mining coal; the corporation, or "trust," or combination formed by amalgamation of any existing companies—is a palpa-

ble return to the days of feudalism. Thus, the present system of combinations becomes "modern feudalism." Your combinations are so large that they build up a favored and aristocratic class, like the old crown vassals. And again, these industrial combinations are hand and glove with the railways, and so form a network of capital in the meshes of which the poor man is strangled. Now, the simple facts upon which Mr. Hudson assumes to found this hue and cry are these, viz.: The normal tendency of trade to trade-centers, where it can be most conveniently handled, has its inevitable corollary in the tendency, within the trade center, to centralization of the different branches of trade. In the middle ages the principle operated to build up such imperial centers as Nuremberg, Antwerp, and London, and the corollary to organize, within those centers, the great trade-guilds. In later years the Atlantic Ocean, the Hudson River, and Long Island Sound combined to make New York city an emporium for the deposit and distribution of the products and industries of two continents, while the merely innocent convenience of traders within that city (not any aristocratic or would-be feudal motives on their part) operated to root and group the leather interest into one quarter, cotton goods into another, oils, and provisions, and ironmongery into still others. And if two or more traders in an identical staple, finding themselves neighbors or united in a community of interest, saw fit to bind themselves into a single firm or trading company, it was no matter of conspiracy against the public weal, but the merest consideration of personal convenience and facility. When the railroads came, they found themselves obliged—by the very charters which created them—to haul for anybody who chose to employ them, and to do the most extensive hauling for those who had the largest bulk of hauling for them to do. They were not authorized by their acts of incorporation to first demand certificates of good moral character, or affidavits that the would-be customer was not a combination of individuals or stockholders in a trust or a private corporation. And yet, superfluous as this statement is, it is actually out of such familiar truisms as these (it is difficult to treat the simpleness of the situa-

tion without tautology) that Mr. Hudson raises figment after figment and chimera after chimera to disturb and alarm the non-producing and manufacturing classes of this already imperiled community! And the purport of these figments and the portent of these chimeras is always that any use of capital in bulk is crime against this people and this republic; and that the incorporation for business purposes "stands in" with some railway company or all railway companies, because incorporations—and especially railway incorporations—hate the bread-winner and the wage-worker, and desire that he be crushed and swept from the face of the earth; in other words, are feudal, mediæval, and unpatriotic. That is the whole text and comment of Mr. Hudson's elocution. Even feudalism itself was not a curse. It was a proper and convenient institution for its day and date; considering the popular ignorance and helplessness, anything else would have been a less tolerable tyranny. It was the growth of circumstances, rather than—as Mr. Hudson thinks—the forcing of an arbitrary situation by the strong and aristocratic upon the plebeian and the weak: so, to begin with, granting Mr. Hudson's favored and capitalist class, and granting that they "force" any condition of things upon the non-capitalist class, the analogy of this state of things to the institution of feudalism is false and misleading. But feudalism was more than a situation. It was the only form in which the society of the unlettered and formative civilization could be held together at all—the only one which could, on the one hand, curb the despotism of thrones, while on the other conserving the safety and tranquillity of the people. It was the mother of parliamentary government and of civil liberty, to which —in the fullness of time—it yielded and disappeared.

To give a meaning to Mr. Hudson's vision of an analogy between modern industrial centralization and feudalism, let us assume, however, that he means (he does not say so) the mediæval trade-guilds. Now, these trade-guilds, perhaps, were an accompaniment of—certainly they were contemporary with—the institution of feudalism. Moreover, they were broken up and wiped away by the very institution which Mr. Hudson can not find

words enough to stigmatize as the root of every modern evil—viz., the growth of private capital and the combinations of capitalists. The mediæval guild was a thing apart, and its type and character have disappeared forever; and yet, peaceful and judicious as those guilds were, even the anarchist and labor unionist of to-day may dignify his district delegation by comparing it to the guilds of the middle ages, with more show of reason than can Mr. Hudson compare them to our modern corporations. The modern trades-union is an organization whose object is to monopolize—or at least to secure—the right to labor for wages for its own members; to prevent by force, if necessary and convenient (and it latterly has been supposed to be both necessary and convenient), the labor of anybody not one of its members; and to boycott any employer who claims the right to employ the labor of anybody and everybody not its members. The ancient guild was composed of the masters of a certain trade; of men who had, by mastering its practical art, become entitled to that designation—men who practiced it for a livelihood. It had also the industrial and educational function of perpetuating itself by the training of its apprentices to become, in their turn, masters. In the days of feudalism, when the great crown tenants held their territory from the crown by fee of service in its wars (a service they levied on the people to perform in time of war, grinding a profit to themselves by way of reprisal from this same people in time of peace), these guilds preserved the useful arts which ameliorate our own happier times. Each guild met and discussed the state of its particular trade; devised means of improving it (their discussions taking the place now filled by the industrial newspaper, the trade-journal, and the price-current). It passed laws also; but these laws were for the guidance of its own members, not by any means to be supplied outside of it in an attempt by force of arms to make employment for its own members at the expense of the vested rights and liberties of the rest of mankind. So honorable were they in thought, deed, and word, that the wealthiest London merchant to-day is not above marching in procession in their memory behind their banners on Lord-Mayor's-day, arrayed, as Chaucer says they were in his;

" . . . in one livery
Of a great and solemn Fraternitie."

To compare them to the unhappy organizations of which laboring-men to-day are the coerced victims—wherein the ignorance of the honest wage-worker is used to deplete his small earnings for the support of vile "master-workmen" and "walking delegates" who toil not, neither spin—and the artificer in brass or iron of mediæval times (who kept his apprentices in his own household as a part of his family, to succeed him as a master of his trade and as a member of his guild) with the modern "knight of labor," who will not that any should toil for bread who has not first paid a tax to his "lodge," or "headquarters," or camp—is to insult the guild of the middle ages and its master. But, for all that, the guild and the trades-union are nearer in theory and in practice than the guild and the modern business corporation as chartered in any known quarter of the civilized world to-day. One thing, however, there was in those middle ages, of which, happily for Mr. Hudson and his kind, no analogy has survived—namely, statutes against heresy and seditious utterances, and capital punishments, such as disemboweling, the axe, fagot, etc., for the stirrer-up of discord and unreasonable public discontent. So much for feudalism and the guilds.

Mr. Hudson's next sentence is a long one, and it reads heroically: "It is the almost universal plea, in mitigation for this infraction of economic law, that the capital engaged in combination can not earn fair profits if competition is allowed free play. But what constitutes the just measure of reward for capital? What are the fair profits for capital seeking investment in bonds, mortgages, or loans on commercial paper? The rate of interest that is fixed by free competition. What is the just measure of returns on capital invested in houses, stores, farms, small manufactures, or a thousand other forms of ordinary enterprise? Free competition. What, indeed, is the force which fixes the rate of wages, despite efforts of labor organizations to oppose combination to the action of that force, and notwithstanding the violence provoked where these organizations are brought into conflict with

the great combinations of capital? The competition of labor for wages. But the result of combination is to establish, for a favored class of capital, by means of the control of the highways of commerce, an exemption from the force which fixes the just reward of all other human effort, so that excessive profits can be exacted from the masses, to be counted by the tens of millions annually; and if the ideal of railway pooling could be attained, this policy would impose upon the nation a burden of fictitious capital three times the amount of the national debt!"

The term "free competition" in the above, as we have shown, means "forced competition" (at least it means that if the remainder of Mr. Hudson's paper means anything). A and B must compete, whether they will or no: the moment they combine and become A & B, or A, B & Co., or The A and B Manufacturing Company, they are a public calamity and a standing threat to our free institutions! The reader will notice also that labor organizations are law-abiding, peaceful, and highly creditable organizations, unless unhappily "brought into conflict with the great combinations of capital," in which case, of course, the broken heads and boycotts are the fault of the great combinations. (Query: What "great combination of capital" was at fault in the case of the poor widow whose bakery business was broken up in New York recently because she kept a journeyman baker who did not happen to be a member of a particular boycotters' union which was "competing for labor" in the vicinity of her bake-shop?) A few other simple negations are necessary in disposing of the above sentence—namely: There is no such thing as "the rate of interest" that is "fixed by free competition." The rates of interest are fixed by the laws of demand and supply in the mercantile world, and by statute so far as courts and legal proceedings are concerned. Labor does not, even when wicked capital combines, compete for wages. It appears to be oftener the rule, nowadays, that wages compete for labor; and finally, the combination or centralizing of capital is not an infraction of economic law at all; nor are any one of the above statements we have been at the pains to contradict ever offered as a "plea" or as "pleas"

for such an infraction. As to what the "competition of labor for wages" is at the present date, we may illustrate by a single example. Last summer the workmen in a sugar-refinery in Brooklyn struck for an advance in wages. The proprietor called them together, showed them his books, explained to them his expenses, and demonstrated to them that if he paid them the wages demanded, his sugar would cost him more than the market price at which imported sugars were that moment selling in New York city, and that therefore, he not only could not compete with the imported sugar, but must close his refinery. The "walking delegate," however, had his orders: the strike could not be "off." The rates must be paid; and so the refinery was closed. But, in this Mr. Hudson perceives nothing but justice. Having declined to see that the laws of supply and demand have anything to do with prices, why should they stand in the way of a capitalist paying what wages his "competing workmen" demand? The owner of the Brooklyn refinery was one of the "favored class of capital," who, "by means of the control of the highways of commerce" (the refinery in question stands on the dock, and ocean-going vessels load and discharge at its hatches), "establish an exemption from the force which fixes the reward of human effort." But in this case some force (whether that of the "walking delegate" or of the laws of commerce, or of the New York market) closed his refinery, nevertheless. The workmen who refused to keep their contracts of employment with the sugar-refiner—nay (for such the facts were), threatened to break his machinery and burn and pillage his establishment—and who, by force and arms, kept other workmen from taking their places, were in reality honest, well-meaning, law-abiding citizens! But they had unhappily, been "brought into conflict with great combinations of capital," and Mr. Hudson's arguments are not answerable for the result. You and I have a perfect right to use our means to manufacture sugar or to mine for coal, or to add to the prosperity and wealth of our community by adding to our own by employing it in any industry we may elect for. But we must be careful not to stand in the highway where "the competition of labor for wages" may

be perchance brought into our vicinity. For that competition might happen to run up against us, and so be brought into conflict with us, and thereby "violence" might be "provoked." And then, if our business is ruined and our property destroyed, Mr. Hudson is not responsible—we had fair warning! Mr. Hudson can fill his pages with any doctrines it pleases him to invent, and find publishers for them; but he will not pay us for our smoking factories and broken machinery. That is our affair, not Mr. Hudson's.

Mr. Huxley somewhere speaks of gentlemen who put their statements "into italics as the Queen puts her soldiers into bearskin caps, to make them look formidable." Mr. Hudson puts his statements into figures for the same paramount purpose. His picture of the bloated capitalists, by combinations extracting from the masses a sum three times as large as the national debt, is appalling, to be sure. And were this not sufficiently appalling, he adds to it the following dazzling array: "Let us suppose, for the sake of the argument, that the abolition of competition will return a certain proportion of the enhanced profits to the workingman in the shape of increased wages. If the anthracite-coal pool raises the price of coal fifty cents per ton, and gives the miners ten cents of the advance, a gain of $3,000,000 is secured in the annual wages of the miners; but a burden of $15,000,000 is imposed on the labor that consumes the coal. If the coke syndicate raises its price fifty cents per ton, and gives its workingman ten cents advance, the advantage to labor at the coke-ovens is $400,000 in a year; but a loss of many times the amount is inflicted on labor in the various forms in which that product finally reaches the consumer. If the same operation were repeated by combinations controlling every industry and every staple of consumption, what would be the result? An addition would be made to the cost of life, of which one fifth would be given back to labor in the form of increased wages, and four fifths would be drawn from labor to swell the profits of capital. Change the proportion to whatever form you like, the fact remains that all these combinations are organized to increase the profits of the capital

engaged in them; and the increase must either be drawn from the pockets of consumers or extracted from the wages of laborers." —(Page 286.)

Monstrous! The idea of a combination being organized to increase its profits! What an example to the youth of America! What utter demoralization would ensue did it become the habit of our citizens generally to go into trade to increase their profits! Let every statesman, every economist, every preacher in the land, impress upon this generation rather the duty of every man to go into trade for the good of somebody else, and to continue therein to lessen, not to increase, his worldly store! Let him run his business, his warehouse, his factory, his steamships and railroads at a loss, and, the moment he finds his transactions profitable, let him wind up, lest he should "swell the profit of capital"; and if he will not, let the law, or Mr. Hudson, see to it. The statements that an assumed increase in the price of coal imposes a burden of $15,000,000, or of any other sum "upon the labor that consumes the coal" or "on labor in the various forms in which that product finally reaches the consumers," may have a meaning in Mr. Hudson's ears. But indeed they do not convey any elsewhere.

So long as the tendency of the products of the earth is to find a market, just so long will it be the tendency within that market for the handling of different classes of products to centralize, until corn and grain are handled in one locality, pork and packed provisions in another, fruits in another, hides and pelts and leather in another. Here is natural law, and here is Mr. Hudson, too, demonstrating the imminent danger to the United States from the normal operation of this natural law. There is, of course, but one remedy for all this (though Mr. Hudson, indeed, fails to point it out), namely, a strong centralized, paternal government like that of the late Brigham Young, who walked in and out among his people, encouraging them in their efforts to amass fortunes; and then, when the fortunes were amassed, receiving heavenly visions instructing the "sealing" of those fortunes to himself! There would be no Trust possible in such a government

as that, anyhow! Such a governmental paternity, to be sure, might answer Mr. Hudson's purposes in confiscating the accretions of private capital. But it is difficult to see how otherwise than under just such a particular state we could enjoy the reforms he seeks.

Whenever it shall appear, or come to pass, that the interests of consumers (that is, of the people) are imperiled by the methods which the ramifications of modern civilization impose upon commerce and the operations of trade, it may come within the constitutional jurisdiction of Congress to inquire into and abridge those methods. But until such time shall come is it not, or ought it not to be, a question whether gentlemen who assume to deal with economic questions do not owe some duty to their country—not the old Greek idea of patriotism, perhaps, but still a duty—and whether that duty might not properly consist in declining to supply specious and sophistical propositions to become fire-brands in the grasp of poverty and of ignorance?

CHAPTER II.

THE AMERICAN RAILROAD.

But Mr. Hudson does not content his fluent pen with diatribes as to combinations in general. He has uttered and printed a volume of six hundred pages, entitled "*The Railways and the Republic*," in which, with some literary knack, he has run together all the newspaper and magazine stories—doubtless many of them only too true—he has ever heard of clever and unscrupulous deals in Wall Street, and "jobs" in State legislatures, breaking the whole mass into chapters with such headings as "The Problem of Railway Domination," "Ten Years of Discrimination," "The History of a Commercial Crime," "Public Obligations and Corporate Practices," "The Discussion of Remedies," etc., etc., which, however—interesting subject titles as they are—do not usher the reader to anything except the same class of stories,

lumped in precisely the same inconnection (even the last chapter named, so far from a "Discussion of Remedies," being of the same scrappy and hearsay character.)

But, were Mr. Hudson's book only hearsay, it would hardly be worth warning anybody against it. Most unfortunately for its readers, the hearsay (for there is not an item or statement in the whole six hundred pages as to which Mr. Hudson has, or claims to have, the slightest personal knowledge or special access) is sometimes concatenated into a remark or a reflection that, to a casual perusal, might carry a sort of semblance of coherence. Here, for example, is one of these concatenations: (Page 279).

"When too much grain, too much meat, too much iron, too much cloth, and too much coal is produced in the country, the fact that labor suffers from the lack of grain, meat, cloth and coal, proves that there are barriers to trade between the producers. The most prominent and most universal of these barriers are the railway pools. The combinations which are formed with the purpose of raising the cost of exchanging the grain of the West for the goods of the East above the level that would be reached by the workings of competition; which restrict the production of fuel and sustain artificial prices to consumers, when thousands are freezing; which build up monopolies in the agents of light and heat; and which are everywhere imposing restrictions upon trade which create the paradox of general want in the presence of universal abundance, are offering the greatest provocation to violent and dangerous attacks upon the railway interest. Whether the popular feeling is provoked to express itself in adverse and extreme legislation, or whether the work of combination is perpetuated and extended until monopolies like the petroleum and coal pools become universal, and an exasperated and maddened proletariat tears the whole system down in general ruin, the evils of that policy will, if continued, eventually bring a revulsion beside which its questionable pecuniary gains will be as a mole-hill on the side of Himalaya. Not only in the interest of public justice and free competition should the railways abandon their present work of suspending competition and building up monopolies; but

the instinct of self-preservation should lead them to restore the free and unrestricted working of the legitimate influences of trade. The abandonment, or continuance, of the pooling policy, as sketched in the preceding pages, may involve the safety or ruin of the entire railway interest of the continent." Now, rhetorically speaking, this reminds of nothing quite so forcibly as the once famous "Item" which Mr. Mark Twain tells us his esteemed friend, Mr. John William Skae, once stopped the press of *The Californian* to insert; and which ran as follows:

"Last evening, about six o'clock, as Mr. William Schuyler, an old and respectable citizen of South Park, was leaving his residence to go down town as has been his usual custom for many years with the exception only of a short interval in the spring of 1850, during which he was confined to his bed by injuries received by attempting to stop a runaway horse by thoughtlessly placing himself directly in its wake and throwing up his hands and shouting, which if he had done so even a single moment sooner must inevitably have frightened the animal still more instead of checking its speed, although disastrous enough to himself as it was and rendered still more melancholy and distressing by reason of the presence of his wife's mother, who was there and saw the sad occurrence, notwithstanding it is at least likely, though not necessarily so, that she should be reconnoitering in another direction when incidents occur, not being vivacious and on the lookout, as a general thing, but even the reverse as her own mother is said to have stated, who is no more, but died in the full hope of a glorious resurrection, upwards of three years ago, aged eighty-six, being a Christian woman and without guile, as it were, or property in consequence of the fire of 1849, which destroyed every blasted thing she had in the world. But such is life. Let us all take warning by this solemn occurrence and let us endeavor so to conduct ourselves that when we come to die we can do it. Let us place our hands upon our heart and say with earnestness and sincerity that from this day forth we will beware of the intoxicating bowl."

Mr. Skae's item to be sure was only mortuary and, towards its conclusion, didactic. But Mr. Hudson's is assertive and peremptory. He begins by asserting that there is too much iron, too much coal and too much cloth produced in this country. Before the

reader has pause to breathe his next assertion comes, viz: "Labor," is suffering for the want of certain other staples, and this double stunner of politico-economical information is clinched with the rapidly successive statements that the two together "prove" that there are barriers to trade somewhere; that these barriers are the railway "pools;" that these are formed, etc., etc.; that, etc., etc.; that etc., etc.; that if this sort of thing goes on, that etc., etc., and finally winds up with a threat that unless all that has gone before is not speedily stopped the whole railway system of the country will go to smash.

But we do not propose examining Mr. Hudson's book rhetorically. Unfortunately, however comic its *ensemble*, the result of such loose writing just now, in the present state of affairs, is not comic. This sort of thing is perilling vested rights; is preventing the adjustment of commercial and social inequalities; is bringing absolute wrong and suffering upon innocent investors and property holders. The outrageous and unmitigated falsehood that a railway "pool" is really a "corner," in transportation (which will be discussed further on in these pages) is really the least harmful thing in the paragraph above quoted. The facts that a "pool" is operated to reduce tariffs, and must in the nature of things have that result; that there is no practical exchange or barter of coal for iron, or cloth for meat and the like, are not, unhappily, easily demonstrated to the "proletariat." The real vital danger to the masses of the community from such declamatory slop-work as the above, is that it is quotable for what it sounds to be, and not for what it is; that once it gets itself into print it can be used for harm; the book which contains it read from before the eyes of a class to whom books are things of awe and respect, and that it can be made a text for heaven knows what comment, what harangue and with heaven knows (and this people lately have come to suspect) what danger to the public peace and safety.

The American railroad, as an institution, is not immaculate. Its general offices are no more insured against entrance of designing and wickedly-minded men than is the pulpit, the Sunday

school, or the strawberry-festival. Granted, however, that, like most human concerns, the American railroad needs reformation, the very considerable question arises, Where shall we look for the reformer? It has not yet come, perhaps, to be a principle in economics that the safest and most expert administrator of a specialty is the one who has had the least practical experience thereof. But there nevertheless appears to be, if not an exact enunciation of such a principle, a by no means unusual tendency to such a practice. To take a familiar example: a great transatlantic steamship, *en route* from shore to shore, or a limited express train, with its costly freightage of packed Pullman, express, and baggage carriages, easily represents millions in money value, besides its human freightage. The captain, the conductor, the engineers, and crew are picked men, raised to their several responsibilities through every lower grade of drill and experience, adapted each to his part by long usuetude: who have been intrusted with all this precious burden by those who must answer with their fortunes, their liberty even, for the waste of its loss. Let the great steamship founder, the "limited" crash through a trestle—living or dead, these men will be found at their posts. But there will never fail of gifted gentlemen, eminent conversationalists, ready writers to the newspapers, (who happened to be in their downy beds while these men were perishing, but) who, nevertheless, will tell us exactly what this company and their picked employés should have done, and how the catastrophe might have been avoided. One cannot read very far into Mr. Hudson's "The Railways and the Republic" without coming across this same tendency to counsel and criticise in matters special and expert, as to which the self-elected critic and counsellor is specifically and universally ignorant and incompetent.

The problem of railway management and operation has grown so intricate, so vast, so complicated and enormous, that it is a maxim that no one man, whatever his habitude, knows "how to run a railroad." The executive officer, the auditor, superintendent or actuary of twenty-five years' service, instead of having kept abreast of his employment, finds that his service has out-

grown him, not in fact alone, but in proportion; and that he can deal with remote details only when concreted by his subordinates into results which in turn are *his* details. He is himself only the pendulum of the clock-work, the governor of the engine; without his co-operatives and assistants he is powerless, although at the outset of his quarter century he may have been equal to every item of his department. Take a single trunk line connecting the city of New York with that Western focus to which, like Rome, all roads lead—Chicago. Every one of its army of eighty thousand employés knows his duty: his duty, often duplicated, perhaps, yet not duplicated, since every item of circumstance must daily and hourly vary it. From the president to the track-walker, no single individual could justify his employment for an instant, did he not, besides his routine, know precisely the single and only proper thing to do to save life and property in any contingency, foreseen or unforeseen; and, moreover, how in the performance not to swerve one atom below or above his exact prerogative. And if—in operation, the reciprocal duties of these eighty thousand must be exactly and incessantly performed in order that every passenger and every pound of freight shall reach its debarkation in safety—what single mind can grasp the relation of numberless such trunk-lines to the great public who trust their lives, persons, and property to them all? Add to this situation that this public, having largely invested their fortunes in these very transporting lines, are dependent for its incomes from their prosperity. Does not the great ramification strike us as one rather too enormous for any single recipe to meet, or to be guided by any one infallible and inexorable rule of constant and rigid procedure?

There is not a single criticism of railway management or outbreak of popular anti-railway feeling which has not its own perfectly well-known periodicity. As a rule, they lapse with time and disappear without exposition. But that all these criticisms and complaints should be carefully clipped, hoarded, pasted together, and sent out as a monograph signed by one name, is an occurrence so exceptional that its occasion might seem to warrant

a replication to the array, once for all. Especially when the volume impresses us at every paragraph as having been compiled by a gentleman who not only has never been engaged in the management of railways, operatively or financially, but has never discovered, in all the immense delicacy of mechanism which moves 8,778,581,061 of people one mile, and billions of dollars' worth of treasure in every direction across and along a continent in a single year, and supports a property representing $7,676,399,054 of securities, a single point for his admiration or even for his approval.

Archimedes had the world for a load and natural science for a lever; but even Archimedes was obliged to sigh for a place whereon to plant his fulcrum. It appears to me that, in this laborious work of five hundred closely printed octavo pages, what Mr. Hudson lacks most of all is a standpoint. He has a load, he has a grievance for a lever, but, since he can not himself float in space, he makes no impression on what he claims to be the burden to be moved. Mr. Hudson's want of standpoint is prominent at his very outset in his very title-page. He calls his book "The Railways and the Republic," thus antagonizing his two terms. But the grouping is vicious, to begin with; since railroads, whether regarded as legal entities or as companies of individuals, are as much part and parcel of the republic as is Mr. Hudson himself. Starting upon this false major premise, Mr. Hudson proceeds in the first of his eleven chapters to give us the indictment, the remaining ten to be the counts of the particulars.

CHAPTER III.

OF RAILWAY "DOMINATION."

THE title given to this indictment, "The Problem of Railway Domination," is again illicit. Where is the "domination" to be eliminated? Frankly admitting that the present writer believes that railways belong to the persons whose money has built or pur-

chased them, and that their *quasi*-public character is justified and satisfied by their honest performance, by the best methods that applied science up to date has furnished, of the duties of public transportation, he purposes from this standpoint to examine: first, Mr. Hudson's indictment as a whole, passing thereafter—as far as the limits of a single volume will allow—to the particulars exhibited.

According to Mr. Hudson, the railways of the United States either "dominate" at present, or propose sooner or later to "dominate," the republic. How? By being "gigantic monopolists," says Mr. Hudson. And how do they become gigantic monopolists? By being gigantic corporations, controlled by men of altogether too enormous private fortunes. Now, we have always known that a railway was a corporation, and that some of our railways might fairly be called "gigantic." But there is not one of these "gigantic" corporations which is, in any sense of the term known to dictionaries at least, a monopoly. To be exactly all-fours with the lexicographers, the only railways in the Union which are monopolies are countable on the fingers of one hand, and must be as insignificant in extent, capitalization, importance of terminals and every other characteristic, as they are in number. Everybody knows that a shipper or traveler from New York to any point in the United States has an abundant choice of routes before him. Whether his objective be Buffalo, New Orleans, or San Francisco, or any city or town large enough to make a dot on the map, or any one of the ten thousand points reachable from every one of these, there are certainly half a dozen lines of railway at his option; and if there are two points in the United States between which there is but one means of transportation, it is because the points themselves are of such exceedingly minor importance that a second means has entirely failed to be a temptation to local capitalists. I once happened upon a railroad on the top of the Alleghany Mountains, five miles in length, called the Wilcox and Burning-Well Railroad, running between a tannery and a saw-mill, which—as there was no other means of going from one to the other except by taking an axe and a compass and tempting the aboriginal

forest—might, I think, be fairly called a monopoly, especially since the owner of the railroad was also the owner of both the terminal tannery and the terminal saw-mill. But the great majority of American railways are, just now, competitors rather than monopolists, and, if gigantic at all, are gigantic competitors. It is to be admitted, of course, that to construct, maintain, and operate a "gigantic" railway, gigantic corporations may not be unnecessary.

Now, railways "dominate," says Mr. Hudson, by being these gigantic corporations against which units have no chance. But just as capital is the storage of labor, so a corporation is the aggregate of units, and if units can combine to "dominate" other and uncombined units, why can not these other units combine to resist the domination? Mr. Hudson does not recognize such a question, suggests no device by which the unit unassisted by capital can equal in strength the unit when so assisted, nor any reason why the units incorporated for transportation purposes should not compete for the transportation business of the units not incorporated for transportation purposes. This word "competition," however, is no favorite of Mr. Hudson's. He immensely prefers "domination": and properly so, too, since in the employment of the latter word lie not only his premises, but the conclusions at which he assumes to arrive. The railways, concreted, "dominate" the republic (that is to say, all the United States except the railways), and therefore, since they "dominate" by doing the transportation business of those not in that business, the only safety is to reverse the situation, so that the units not incorporated for transportation purposes should hereafter dominate the units who are so incorporated. In other words: Let our railroads, by all means, be run by men who do not understand railroading, and let those who do understand the running of railroads step down and out at once.

But why should those individually concerned in railway management step down and out? Why, says Mr. Hudson, because several of them have accumulated enormous fortunes; fortunes fabulous, even when compared with all the other private fortunes in

the world. But whence come these ten or a dozen (if so many) vast fortunes? Why, says Mr. Hudson, with admirable circumferentiality, from the domination of railways. Clearly we must get this kernel out of Mr. Hudson's crop if we are to proceed with him any further: and to dispose of it may require a moment or two of our attention.

The greatest of powers, undoubtedly, is the human brain; and, so long as it is the instinct of man to scheme for his own aggrandizement, certainly the greatest brain will scheme to the greatest profit to himself. A dozen men in the United States have been able to amass, from management (or, if the word is preferred, manipulation) of the securities of the railway systems of the country, the largest single fortunes known to history: not in land, in interests in estimated wealth, but in actual comfortable, convertible cash, representing no manual labor of their own, no commensurate investment of capital, and no proportional benefit to the race. But, because Mr. Hudson is virtuous, are there to be no more cakes and ale? Because Mr. Gould is very rich, are there to be no more railway companies? Because these dozen fortunes are beyond any heretofore conceived relation of reward for personal industry, is the material by manipulation of the securities of which they have been accumulated, noxious, bad in itself, and dangerous to the common weal? These fortunes are, for our present purpose, the pure result of brain-labor, the rewards of pure thought. Let us leave out of the reckoning whether they are honest or dishonest fortunes; or, if Mr. Hudson prefers, let us concede them to be dishonest. The fact, the only fact, necessary to the discussion of his own questions on his own ground is that they have been accumulated by the purchase, manipulation, and operation of railways. The people make the laws, not the railroads. To argue that railroads, *quoad* railroads, are hateful to public policy, dangerous to the public peace, threatening to public morals, and destined in time to destroy the commonwealth, as private luxury once destroyed old Rome, seems to me the simple fallacy which logicians call an "undistributed middle." As well condemn any other thing because at some time some-

thing of its species has been manipulated to a personal and exorbitant profit. Banish corn, wheat, or coal, because great "corners" have been planned in those staples, and hundreds of thousands of dealers obliged to pay more than they ought to have paid, when a few schemers, who had schemed for months, had suddenly sprung upon these unsuspecting gentlemen their long-perfected plans!

Shakespeare makes one of his characters put the question, "How do men live?" and another answers it: "Marry, as the fishes in the sea, the big ones eat up the little ones." The struggle for existence which our brute ancestors carried on with teeth and claws and fangs, we still perpetuate with interlocked and grappling brains. They strove and tore and trampled each other for the food their bellies craved, *in specie;* we fight for values instead. But the result is the same: the strongest brain, as once the strongest limb, wins. And when, as within the last half-century right here in the United States, in what is scarcely more than the close of the first half-century of the railroad, a few phenomenal brains have amassed more of these values than their share, more than they can consume with their own personal wants —while I admit that the problem looks serious to those whose brains have not taken part in the struggle—the wrong seems to me one for which Nature, not art or science or schools, is at present mostly responsible, just as much as she is responsible for the lion that rends the ox, or the fox that pillages the farm-yard. The United States of America does not make treaties with individuals: and yet the treaty between the United States and the kingdom of Hawaii is, or was once, practically for the single benefit of one man. Why? Because there happens to be but one article of export from Hawaii to the United States; and because that one product happens, or happened, to be controlled by the brains and capital of one man. So this anomaly—this wrong, we suppose Mr. Hudson would call it—is to be charged to the crime of having brains, or to the domination of (not railways this time, but) sugar! Perhaps the situation can be made very clear to Mr. Hudson by a quotation from himself:

He says, page 1: "Watt could see in the steam which lifted the lid from the tea-kettle a force which might yield man some aid in his labors; but he could not foresee the immense application of that force to every phase of life. He could not dream of the millions of factories, the thousands of steamships or the myriads of railway-trains that lay dormant in his discovery." And yet it is simply and solely because a human brain here and there did foresee what Mr. Hudson says Watt could not or did not—that massive fortunes, larger than an aggregate of thousands amassed by mere manual labor and economy, have been accumulated. Shall the owner of such a brain assume that Nature in so endowing him endowed him with a curse to his fellow-men, and that it is his natural or moral duty to devise a means of redistributing this accumulation to the two hundred thousand or hundred thousand millions who, like Watt, could not foresee? I do not so understand Mr. Hudson to urge; but perhaps he will kindly indicate to what other duty his attempt at satire on the men who, by building, buying, controlling and operating railways, amass vast properties, surely and implacably points.

The processes by which the fish with capital swallows the fish without capital—by which money attracts money, and foresight eclipses hindsight—stand possibly in bolder and nearer relief, just now, in the case of the three or five railway kings (whose fortunes may last another generation or two without division) than elsewhere. But, that they are processes unfamiliar in any given commercial undertaking or venture, I do not find any note in Mr. Hudson's indictment to assert. His indictment of railways and railway management is the constant and simple and single charge that they "dominate" the non-railway world by making the rich richer and the poor poorer; and this, principally, by piling up vast accumulations of wealth in the hands of the very few. Mr. Hudson is wary enough to see that railroads, not being *per se* illegal, the accident and consequence are not illegal; he, therefore, argues deftly that the railways, although legal, are illegally handled by their managers. This illegality he separates into seven counts—that the transportation business, legitimate in itself, has

been made pernicious to public and private rights, and "dominates" them by certain imported incidents, viz., by—

I. Land-grants.
II. Pools.
III. Construction companies.
IV. Rebates and discriminations.
  (*a*) by "drawbacks" or returns to shippers,
  (*b*) by "long and short haul"—that is, by charging more money for the shorter service.
V. "Fast freight lines."
VI. Stock "watering"—or "(As Mr. Hudson terms it) "The Fictitious Element in Railway Policy."
VII. "Eminent domain."

Mr. Hudson does not add to these—sleeping, hotel, and parlor-car companies, railway-lighting companies, and all the numerous other auxiliaries to modern railway management, which save the time and economize the capital, while they accommodate the patronage of railways. I know not why, but since he has left them out of the indictment, we will follow his example. But Mr. Hudson does pause just here—by what logical process is not apparent—to fulminate to the length of many solid pages over and against the Standard Oil Company, its history, career, and the procedure by which, before the days of "pools," it was able to force favorable contracts upon the railways to its own vast advantage; accumulating thereby assets almost as enormous as either of the three or four private fortunes in which Mr. Hudson sees such imminent peril to the republic. As we are just now considering the railways, perhaps we might as well leave out the oil company. We may admit, I think, however, in passing, that the Standard Company was an accident—a thing by itself, like the moon or the Gulf Stream—from whose existence even a possibility of another can not be predicated, since the present system of "pooling" associations would render its repetition practically impossible. Mr. Hudson is perfectly right in announcing that this great corporation is not a charity or an eleemosynary foundation of any sort; that it does business for the enrichment of its own stockholders

rather than in behalf of those of its rivals; that it takes all it can get—is soulless, grasping, and selfish. That it has been engineered by men of brains until it has become in certain localities a practical monopoly may also be conceded. That, so long as the laws under which it is incorporated permit other incorporations for like purposes, it is a monopoly, legally or derivatively speaking, I am afraid must be denied. And yet—it may surprise some readers to know—it is actually possible to say something even for the Standard Oil Company which shall not prate of selfishness, extortion and greed. Lest, however, I may be called an apologist for that "octopus," I prefer to use other words than my own in saying it, and so quote from the New York *Tribune* of 15 th, 1887:

"A good deal of the prejudice against great corporations is vulgar and ignorant. These organizations as a rule become powerful and rich in proportion as they serve the public efficiently, and confer upon it valuable benefits. If the corporation has realized many millions, there is a probability that the public has realized through its services several times as many millions, and only the stupid or the malevolent will forget the service rendered when they see the magnitude of the reward obtained. The Standard Oil Company, for instance, has so improved the processes of refining that the price of refined oil has been reduced from 70 to less than 7 cents per gallon. Had the people of this country been able to obtain at any price as abundant, comfortable and convenient light as they now enjoy, it would have cost them $4 *per capita* in 1860, whereas it now costs them less than 40 cents *per capita*. That means an actual benefit conferred worth $216,000,000 yearly to a present population of 60,000,000, and if the company which made the investments, and took the risks that secured this result, obtains a large return for it, who will say it didn't deserve to?"

In other words, whoever has been robbed by the Standard Oil Company, it is not the people. Whosoever it has crushed, it is not the consumer. If that corporation has made its product cheap to the consumer by domineering over and grinding the railways, Mr. Hudson, who loves not railways, ought to be found among the warmest admirers of the Standard Oil Company and even quoting it here by name as the greatest of Railway Reform-

ers. If it has accomplished this great reduction in the staple it handles by grinding other producers and handlers—other corporations—then the question arises as to how far consumers are interested in the rivalries of producers—so long as they themselves are cheaply served—which question, Mr. Hudson is careful not to include within his otherwise comprehensive purview.

But by far the most remarkable feature of Mr. Hudson's equipment for the discussion upon which he enters is his understanding of what a railway tariff schedule represents, and what is the meaning of railway competition.

Mr. Hudson is under the impression that railways compete with each other just as tradesmen on opposite sides of a street—each putting up or putting down prices; each keeping his eye on the other's advertised prices and marking up or marking down his stock accordingly. The impression is a natural one, and we can not wonder that Mr. Hudson has received it. But the least familiarity with the inside of a railroad office (and it is unfortunate that he did not acquire, at least at second hand, such a familiarity before selecting Railroads as the theme on which to become an authority) would have convinced him that, excepting the one element of distance, no element entering into the framing of tariff schedules is either constant or determinable in advance. The tariff schedules are framed by a conference of many departments, by long and intricate computations, by estimates of probable business, expenses and calculations of profit and loss, all tempered by the results of a lifetime of experience, by the cost of material, of labor and services, maintenance of way, by gradient, limit of motive power, wear and tear of engines and rolling stock. Nor, after being arrived at, and settled upon, are they exposed, like price-lists, for other railroads to undersell or undercarry. The competition is not among the companies so much so as among the trade centres and what are known as trade areas, which latter are not concentric, but overlap and often include each other. For example, there is scarcely an appreciable difference in the rates from Chicago to New York, or Chicago to Baltimore (as a matter of fact may be only from two and two-thirds to three cents

per hundred pounds.) Such a city as Albany, Syracuse or Rochester—the actual mileages being annihilated by railroads—are really as near in point of rates to either Boston, New York, Philadelphia or Baltimore—and to one as another. Therefore, the competition is not by which road the tariff is less, but to which seaport shall the load be delivered. And the merchants of New York, Philadelphia, Boston, Chicago, Baltimore — nay, even Pittsburg, St. Louis, Cincinnati—are the competing parties on our lines of interstate commerce, while the railways are the humble servants of these merchants, not their masters or in any way dominating them. As far south as New Orleans, as far north as Louisville, merchants are competing. In dressed beef, grain, packed provisions, flour and other staples, the competition goes on practically without consideration as to distance, and upon the differences in the prices of these staples in Europe and at various points in our own country depend not only prices but railway rates. The price of wheat in Liverpool has much more to do with the railway freight tariff on that staple from New York to Chicago than the actual distance in miles between those two points or the cost per wheel of hauling it. But of these facts Mr. Hudson has no suspicion; and so he blunders along with his examples of railway extortion and consequent peril to the republic. Verily, a little learning is by far the most dangerous of accomplishments! It is within the memory of most of us, that this government once attempted to handle its armies in the field by telegrams from Washington, and that the result was not illustrious. For myself, I doubt if the attempt to operate our railways from the same centre would be of any more potency for good upon the trade of this Union than the other plan was distinguished for putting down rebellion. It may not unreasonably, however, as a sort of plea in abatement, should we require one in the course of this discussion, to deny at the outset, first, that railways are ever (or hardly ever) the private and personal property of their officers—merely calling attention to the fact that their ownership, as a rule, shifts with every sale of stocks made in Wall Street, or on the 'Change of a dozen capitals; second, that in Mr. Hudson's formula (page 5) "of

the existence of actual abuses in the railway system of the country there is little room for dispute;" it were not impossible to substitute for the term "railway system of the country" the term "everything human;" and third (and this, even, perhaps at the risk of becoming elementary), that one railroad company is not all railroads. Such syllogisms as: 1. A railway corporation which charges more for a short haul than a long haul is a public enemy. 2. The A B and C D Railroad charges more for a short haul than a long haul; *ergo*, ALL railroads are public enemies—or, 1. A corporation which "waters" its capital stock is a public enemy. 2. The E F and G H Railroad once "watered" its stock; *ergo*, ALL railroads are public enemies—and the like, are mere replica of the schoolboy fallacy: Food is necessary to life: Corn is food; *ergo*, corn is necessary to life (in which the undistributed middle is supposed to elude an urchin logician), and are altogether beside adult discussion of economical questions. But let Mr. Hudson's processes be waived while we address ourselves to the material of the charges he pastes—and I assume that he pastes them correctly—in his scrap-book. Let us pass to the counts of his indictment.

CHAPTER IV.

OF LAND-GRANTS.

OF land-grants Mr. Hudson says: "We might even make allowance for the men who, having received a gift of an empire of lands and money for the construction of a transcontinental railway, proceed to bribe legislators and buy up public officials to prevent adverse action as to the ratification of past donations. . . ." (page 6). "If the Government has secured the settlement of the Western Territories, the pacification of the Indians, and quick transit to the Pacific coast, by giving the men who built the transcontinental railways the money to build the roads, and an empire of land in addition, it is still permissible to ask whether it

will not suffice to present the projectors of the next enterprise with the completed railroad, without adding the millions of acres of territory to induce them to take the gift" (page 8). This is hardly in what might be termed "the scientific spirit." But let that pass. The point is, does Mr. Hudson know what a land-grant is? In the free and buoyant West, where language is as bounding and breezy as its own prairies, a land-grant is often spoken of as a "land-grab." Mr. Hudson is more choice in his phrase, and calls it simply and grandly, a gift—a "gift of empire"—but his idea appears to be much the same. If the Government makes one a gift of land, that ought to be the end of it, by every principle of morality and justice, if not of politics. The Government is just as much bound by its gifts (barring the rule of construction to be noted) as any other giver. But Mr. Hudson says it is not a gift, exactly; but "a gift . . . for the construction of a transcontinental railway." Those who have tried it have been heard to affirm that "the construction of a transcontinental railway" is a matter of some considerable magnitude, requiring time, perseverance, and even labor. The Government, then, makes men a gift to build a transcontinental railway much as Mr. Hudson would make a builder a gift to build Mr. Hudson a house; and Mr. Hudson will even "make allowance for" men who will bribe legislators to prevent adverse action as to ratification of such a gift as that! Bribery is an intolerable crime; of all crimes most subversive of the public weal. But if bribery were ever, or ever by any possibility could be, justifiable as a last resort, it seems to me it would be justifiable to prevent adverse action by legislators who were determined to prevent the Government from ratifying a gift of land to men who had relied upon its honor and good faith even to such a trifling extent as to build a mere transcontinental railway! If the Government gives Mr. Hudson land, surely it ought not to take it away again, ratified or unratified. But, if it gives him land in consideration of labor and services rendered and material furnished, and he deliver the material and perform the labor and services, surely he ought not to be put to the peril of the Government's refusal to ratify the gift. or to the expense of

bribing legislators. But if Mr. Hudson had received a gift of lands (and even "an empire" is not—some who have attempted it say—too great for the task) in exchange for the construction of a transcontinental railway, from the General Government, I think, on reflection, he would consider himself harshly treated if, on constructing the same, the Government should withhold ratification of its gift. And if Mr. Hudson, why not a railway company?

But what is a land-grant, or "gift of an empire," since Mr. Hudson prefers that term? To begin with, it is a devotion or dedication of a certain portion of the public domain to railway purposes. Instead of purchasing it at two or three dollars an acre, the railroad company purchases it by building a railroad; not where and when they pleased, but between certain points, perhaps even through mountain-ranges, no matter how great the difficulties or how costly the construction, tunnels or viaducts, banks or bridges; not at their leisure, but in good faith as nearly within a specified time as human industry and allowance for the uncertainty of human events, financial and physical, would permit. Surely, this is no "gift" or "grab," to begin with. But, on building this railroad, does the land thus "given" become the property of the company? Not yet. There are other details; the land must be surveyed by Government surveyors, and the company must pay the cost of the survey in cash before it can take possession. Even Government surveyors do not work for nothing, and land in its native wildness, where human foot hath scarcely trod, is not apt to recoup much of engineering expenses. Nor is this all. If there happens to be upon the "empire" of land (which is granted by the square mile, and without reference to any map, or former record of grant, by general description in terms of quantity only) any acre or plot already occupied by an individual, Indian tribe, or other company, does the Government guarantee its own "grant of empire" given to this company as a consideration for the labor, services, and material it has exhausted in building a transcontinental railway? Strange as it may seem, the Government not only does nothing of the sort, but in its own general land-office sits as arbitrator between this earlier proprietor

or these earlier proprietors and its own grantee, upon its own grant; and appeals to the rule (first laid down by Lord Ellenborough) that, whereas a private grant is to be construed strictly against the grantor, a public grant, from a state to a subject, is to be construed strictly against the grantee! This matter (in which the Government's grantee is made that unusual character, a defendant with the burden of proof) is tried before the grantor Government, is heard by the commissioner whose decision is to be affirmed or reversed on another hearing before another employé of the grantor, the Secretary of the Interior. Or should the contesting proprietor or alleged proprietors elect to begin his or their action for trespass in the local State or Territorial court, it can be carried step by step up to the Supreme Court at Washington. As a matter of fact the reports of this court teem with these cases, wherefrom the reader can imagine something of the routine litigants have undergone to get there. All these hearings and rehearings, appeals and new trials, and further appeals, have to be attended and argued by counsel in behalf of the Government's own grantee, the defendant company. And since, should the company finally secure its title to the land the Government had already granted it, it can only sell it for two or three dollars an acre, and lawyers' bills are not apt to be prepared on a *diminuendo* scale, the public mind can now begin to appreciate how recklessly magnanimous a "gift" this land-grant was on the part of the Government, and the extent of Mr. Hudson's charity in being able to "make allowance" for the recipients!

But the above is not all. This gift, Mr. Hudson himself admits, has to be ratified, and legislators bribed to ratify it. He would come nearer the truth did he assert that it has to be ratified at every session of Congress. I have in my mind a company whose land grant was received considerably more than twenty years ago, and which has earned it by building and operating its entire road, and yet I doubt if the lawyers of that company could, without considerable research, mention a year in which that grant had not been a matter of attack upon the floor of Congress. Nor is it yet at rest there, although that road is oper-

ating over three thousand miles of trackage. Mr. Hudson says that the men who receive these dubious "gifts of empire," "bribe legislators and buy up public officials," to prevent adverse action as to the ratification. Doubtless he knows of what he speaks. Our legislators are elected by the people, and to the people they are responsible. But the fact that our legislators do not, as a rule, allow land-grant questions to rest, and are constantly demanding adverse action, even in cases as old as the one I have just referred to, does not look as if land-grant companies had largely added to the expense of receiving their already costly present of lands by large "bribes to legislators and purchase of public officials"; for certainly they have not prevented adverse action upon these grants to any very memorable extent.

Mr. Hudson speaks of money-grants as well as land-grants to a transcontinental railroad. In the throes of a bloody civil war it is to the eternal credit of one patriotic Congress that it did vote a loan to a transcontinental railway company to enable it to connect the shores of two oceans whose communications otherwise were at the mercy of pirates and privateers, fitted out by a rival nation, interested in driving our commerce from every sea. But, with the necessity, the policy ceased forever. In other cases, to make their heavily purchased "gifts" available, the plan of mortgaging them was resorted to. They have been so mortgaged, and, on the faith of the Government, the bonds secured by these mortgages are now held by this people; this republic—whose enemies, Mr. Hudson will have us believe, all railways are. Nor is it a figure of speech to say, in this case not only, but in every case of a railroad upon which a mortgage is spread, that so far from the railway being the enemy, it is the creature of the republic, for the republic is the people, and the people, by owning the securities of a railway, own the railway itself. Mr. Hudson may fire the popular heart of the non-investor by his periods; but if, perchance, he desires more than this, he can not yet claim to have found either a place to stand, or a fulcrum for his lever.

CHAPTER V.

POOLS, CONSTRUCTION COMPANIES, REBATES, FAST FREIGHT LINES, ETC.

POOLS are combinations of railways at once with and against each other, never against the public, or (if Mr. Hudson prefers) the republic. The name is unfortunate, as suggesting a pot or lump, whereas, in fact, the pool is an elaborate system of differentiation and equating, by which railroads practically pay into the pool, not their lumped receipts, but percentages thereof. These pools are the legitimate and necessary results of the rechartering over and over again of railway companies to transact business between the same points, by paralleling each other. So long as the people in their legislatures will thus charter parallel lines serving identical points—thus dividing territory they once granted entire—it is not exactly clear how they can complain if the lines built (by money invested if not on the good faith of the people, at least in reliance upon an undivided business) combine to save themselves from bankruptcy. Without such combination the strongest company must bankrupt and "gobble" the others, which survival of the fittest would be exactly what Mr. Hudson declaims and deprecates—a Monopoly; and this time a most grasping and cruel one, since the first aim of the surviving road must logically be to recoup itself for the tremendous expenses of the "gobble" by extravagant overcharges! Had a pooling system existed at the date of its birth, the Standard Oil Company octopus could never have grown up. And it is interesting reading—as Joe Gargery would say—to find our Mr. Hudson snarling on one page at railways because they render such monopolies as the Standard Oil Company possible, and, on the next, cursing pools as against public interest. And not only are pools safeguards against private monopolies, but, as against the "tie-up"

and the boycott, bound to become the needed, possibly the only, antidote if not the only relief, possible. Individuals may, and no doubt do, from geographical conditions, suffer from the absence of competition which pools guarantee. Doubtless a shipper at Buffalo could make better terms to New York were five trunk lines engaged in the suicidal pastime of cutting each other's throats. But the greatest good of the greatest number is subserved by an honest rate, and that the pool secures to it.

Mr. Joseph Nimmo, Jr., late Chief of the United States Government Bureau of Statistics, (not a railroad man nor interested in railways) summarizes the effect of pooling combinations as follows:—

First. They have been instrumental in preventing unjust discriminations through special secret rates to favored shippers, and the consequent demoralization of trade.

Second. They have prevented many unjust and ruinous discriminations against towns and cities, and against particular States or sections of the country.

Third. They have put a stop to violently fluctuating rates.

Fourth. They have had the effect of protecting the weaker lines and of preventing their absorption by the stronger lines, and thus of conserving elements of competition in transportation.

Fifth. By preventing the absorption of the weaker by the stronger lines, they have prevented the threatened danger to the country of its being districted among a few great corporations, by which means the regulating influence of the competition to trade forces would have been eliminated, and transportation would have gotten the mastery of trade.

Sixth. They have tended to prevent those shocks to the financial interest of the country which generally accompany the bankruptcy of great railroad corporations.

Seventh. Since they have been adopted the railroad transportation facilities of the country have been greatly extended. The volume of traffic has also enormously increased, and rates have constantly fallen. These facts seem to prove that railroad federation has not had the effect of obstructing the beneficial operation of the overruling competition of trade forces and of the direct com-

petition between transportation lines. Statistics herein before presented clearly indicate this fact.

But Mr. Hudson on almost every one of his six hundred pages persists in treating the "pool" as meaning a corner in transportation, nothing more and nothing less. He gloats over this definition, tells us that though the rich man has more iron than he wants the poor man cannot have bread because the pool has cornered transportation so that that iron cannot be converted into cash so that the poor man can get his trifle of that cash to buy bread with for his starving family (p. 249), and makes other like statements, which, deliberately and disgustingly false as they are, may yet be quoted by the Socialists and Anarchists for whose applause Mr. Hudson constantly and flagrantly caters. It needs but the most superficial examination of the matter to know that Mr. Hudson's statements are utterly false. That a pool is not a corner in transportation but a careful joint system whose operation must necessarily tend to the benefits which Mr. Nimmo catalogues. Mr. Hudson himself even, if he would reflect, would see that two, or six or a dozen railway companies could not combine to put up transportation rates without cutting their own throats. Supposing that the only three railway companies in a territory should refuse to move grain unless at a prohibitive rate of a dollar a bushel—what would result? What indeed, except that the railways would have no business for their hands to do? Mr. Hudson says (p. 324) that it is a practical maxim among business men that to quarrel with the railways is commercial suicide. Perhaps. But if it is, certainly the converse is not untrue; for the railways to quarrel with the business of their territory cannot be of large advantage to the railways.

Construction companies are conservers of time and capital at once to the public and to the railway builder. If a railway between two given points be needed at all, it is needed as soon as possible. The construction company, by procuring the capital, obviates the delay of resorting to individual subscriptions, and the dilatoriness of small subscribers; and, by securing a rapid building and equipment of the desired road, serves the public by affording them

cures the stockholder and builder by relieving against the reasonable probability that a railroad built to develop new territory would pass into the bondholders' or into a receiver's hands before the territory could be developed, the benefit to the stockholders ought not reasonably to be considered an offset to the benefit to the shippers.

Rebates and discriminations are neither peculiar to railways nor dangerous to the "republic." They are as necessary and as harmless to the former as is the chromo which the seamstress or the shop-girl gets with her quarter-pound of tea from the small tea-merchant, and no more dangerous to the latter than are the aforesaid chromos to the small recipients. The trouble Mr. Hudson finds with them is that the railway systematizes them instead of granting them at random or for sentimental reasons. The *quasi*-public character of railways, he thinks, should make these rebates illegal. The railway, in exchange for its right of eminent domain, should listen to the wants of the whole people instead of to individuals. Undoubtedly. But the whole people are not shippers over any one railroad; nor does any one railroad draw its revenue from the whole people. Of course, I am proceeding upon the supposition that the United States Government does not propose to become a gigantic railway corporation, and add to its legislative, judicial, and executive functions the operating of 125,379 miles of railway, with a funded debt of $3,669,115,722. Did "the republic" undertake such a task, does Mr. Hudson, after reading his own book, believe that there would be no rebates or discriminations extended to anybody for political, economical, or social purposes?

The subject of "fast freight lines" might well be dismissed in the same breath, these being a financial consideration entirely between the companies and their stockholders. It may be noted, however, that they are public accommodations, affording to large parcels the safety, care, and prompt delivery which express companies afford to small ones, and that, like the express companies, they have grown to be public necessities. They not only

secure the delivery of freight at destinations beyond the receiving line, but have introduced new amenities into civilization by distributing products. By their aid the New Yorker finds daily on his table the fruits of California, or the glorious beef from Texas grazing; and the dweller in the lake-shore States his seafood, as if each had changed places with the grower and gatherer. Nor do the figures show an increase, but, paradoxical as it may seem, a substantial decrease in tariffs on non-perishable freights by their means.

Construction companies, however, Mr. Hudson prefers to describe as conspiracies of the founders of the corporation to enrich themselves by robbing it, that when they have ruined their corporation they may sell out their stocks and bonds before the swindle is discovered, and finally inflict the loss upon the investing public (p. 279). He does not say, be it observed, that they are sometimes, or often, or even generally, this terrible swindle. He simply gives the above as a definition of the term "construction companies"; and so everywhere, not a single device, not a single contrivance, not a single method or custom of a railway company, by any chance finds favor in his eyes. They are never under any circumstances, anything but schemes to plunder, override, and cheat Mr. Hudson's involuntary clients, the people.

CHAPTER VI.

"LONG HAUL" AND "SHORT HAUL."

THERE certainly never arose in practical railway operation a situation wherein a railway company was solicitous to charge less money for doing more work and to pay its own expenses meanwhile. But in practical railway policy a difference between the cost and the value of certain business to the company might, and sometimes does, arise which appeals to the company's instinct of

self-preservation too despotically to be disregarded. A railway company, which has for long years acceptably served its local and throuoh patrons, finds itself suddenly paralleled by a rival company, serving all or some of the same localities not only, but prepared as a part of its (the second comer's) investment to undergo the expense of "cutting" rates, and so to supplant the first comer by offering to take business for less than the actual expense of doing it, even though some of the competing points are farther distant from the common terminals of the paralleled line than the actual length of the roads. Under such circumstances, the value of all of its original business it could retain would be clearly of more value to the first company than the then present cost of doing it: and the result would, of course, by every law of human economy or of human nature, be that the first company would either anticipate or respond to the "cut." The effect in either case would be to cheapen tariffs to the shipper—to the people. But Mr. Hudson, at this moment, does not care for the people. Later on he will take up the cudgels for them, but just now he kindly holds a brief for the railroads. He thinks it shameful that deserving and hard-working railroads should be obliged to take long hauls for actually less than they are legally entitled to charge for short hauls—for much smaller distances. Mr. Hudson has no objection, of course, to one of his fellow-countrymen riding from New York to Chicago for five dollars, or shipping live-stock from Toledo to Buffalo at one dollar a car-load during a railway war. (Or, if he should still remember the poor public, it will be not the poor public who ride a thousand miles for five dollars, or at the rate of half a cent a mile, but the poor public who commonly ride one hundred and sixty-seven miles for five dollars, thereby being compelled to either walk or pay the legal mileage of three cents which the company is allowed by law to charge.) But should the railway companies find that carrying passengers from New York to Chicago for five dollars, or cattle from Toledo to Buffalo at one dollar a car-load does not pay—that by making such rates they are robbing—not the public at large, perhaps, but their own stockholders, and depreciating their own securities; and

should, since no others offer, the railway companies themselves propose becoming their own reformers, and so evolve the idea of pool commissions whereby each company might yet live and enjoy the franchises the people had given it—when this new aspect presents itself, we say—Mr. Hudson shifts back to his original brief, and finds the railways once again the rampant enemies of his corraled clients—the people. But on taking up his brief our unfortunate Mr. Hudson finds himself once more out of court, confronted with the terrible truth that under the pool the rates have not only not been raised but have actually fallen below a legalized minimum, and his occupation and standpoint again departed. A comparison of tariffs before and after the local pool systems existing at the passage of the Interstate Commerce bill of course can not be attempted here. But it will be found to correspond everywhere throughout the country to the following figures taken at random. (Of course the tariffs need not be compared with figures existing at the inception of railroads or at intervals of ten years since, because everybody knows—who knows anything, or who reflects upon the subject at all—that the history of the railway has been the history of tariff reductions upon every commodity, every product of human manufacture or yield of Nature):

HAUL.	Rates before establishment of pool (per 100 lbs.)	Rates after establishment of pool (per 100 lbs.)
Omaha to Kansas City or Denver, first class	$2.40	$2.10
Omaha to Kansas City or Denver, fourth class	1.40	1.15
Omaha to Salt Lake City, first class	3.30	3.00
Omaha to Salt Lake City, fourth class	1.75	1.50
*New York to Pittsburg, fourth class.	.30	.20
*New York to Altoona, fourth class.	.28	.17

All the above being non-competitive or "short-haul" points (since Kansas City, Denver, and Salt Lake can only be reached

* I take these last two quotations from Mr. E. P. Alexander's "Railway Practice; its Principles and Suggested Reforms reviewed," New York, 1887. In 1885, Mr. Joseph Nimmo, Jr., chief of the government Bureau

from Omaha—or the points Pittsourg or Altoona can only reached from New York—by land transportation), there was no legal, certainly no natural, reason (according to Mr. Hudson) why the mere technical fact of a pool should have lowered rates. If, as Mr. Hudson asserts, railways are selfish, grasping, lawless monopolies, enemies of the republic and devourers of the people, there was, on the contrary, every reason why, when three or four railways pooled their issues and monopolized all the possible rail connections to thatpoint, rates should be as high as, if not higher than before. Certainly there is no reason, legal or natural, why, to a point like Altoona, among the mountains, to which but a single through line has had the courage or the charter to climb (and that one, according to Mr. Hudson, one of the most grasping of all his category of grasping monopolies), freights should be lower after the organization of a pool than they were before. The explanation appears, however, as the demonstration proceeds and the technical meaning of the terms "long haul" and "short haul" becomes self-evident. Clearly the points we have named become "short hauls" as against (for example) San Francisco, the haul to which is therefore called a "long haul." Now, in establishing rates to San

of Statistics, gave the following table of Rates from Chicago to San Francisco:

[Rates per 100 pounds.]

Classes.	Freight tariff of	
	December 18, 1869.	January 1, 1880.
	Dollars.	*Dollars.*
First	7 50	5 00
Second	6 20	4 00
Third	5 20	3 25
Fourth	4 20	2 50
Special, A	.....	2 25
Special, B	.....	2 00
Special, C	.....	1 75
Special, D	.....	1 50

Francisco, certainly it is very apparent that the railroads which have pooled to Salt Lake City or Denver must take a new factor into the account, for San Francisco has a most excellent water communication with the entire world, and is perfectly independent of railways, monopolies or otherwise. In other words, it is Nature and not railroad corporations that have discriminated against Denver and Salt Lake City, and in favor of San Francisco, by making it a commercial fact that (since water is cheaper than land transportation) San Francisco is actually nearer New York than Denver or Salt Lake City. The fact is that—so long as railway rates are regulated by geography—however distorted they may appear to the non-expert, the substitution of arbitrary for geographical rules in framing a tariff would result in rendering them still more distorted and uneven. And if the railways, pooled or unpooled, charge proportionately less rates to San Francisco than to Denver or Altoona or Salt Lake City, the higher power that has ordered it is the irresistible power of Nature. To what lengths of invective and diatribe Mr. Hudson and his kind would proceed, did Nature and geography "pool" with the railways, it is amusing to speculate; but the fact—which oppresses the railway company at present, and imposes upon it the necessity of accommodating its rates to Nature (since Nature will not accommodate herself to the railways)—is that no pool can be made with the ocean, which charges nothing to the sons of men who plow its bosom with their ships, and which is at no expense to keep itself in repair. For, let it be always remembered, in discussing these and like questions, a railroad is not, *per se*, a means of transportation. Such a definition is very far from being definitive by exclusion, as a definition ought to be. A railroad is a prepared and exclusive highway for traffic by means of the motive power of the locomotive engine, and is available only where locomotives can be used. There are still the foot-path, the bridle-path, the wagon-road, the ocean, the river, the canal, with which it must compete. There is still the inclined plane, with which (for the down-grade, certainly) no locomotive even can compete. And so, even were railway companies, the terrible affairs, the grasping

monopolies, the enemies of the human race, which Mr. Hudson asserts them, they are only so because the human race uses them, if it uses them at all, in preference to other means of transportation. Should Mr. Hudson induce his *clientèle* to discontinue their preference, the fact might be different; but in order to accept Mr. Hudson's conclusion (which, be it remarked again, is not the rule of the Interstate Commerce Law) that railways are public enemies because their tariffs sometimes are greater for the short than the long haul, we must primarily assume the two propositions: first, that the public are not at liberty to use any other means of transportation than the railways; and, second, that there is no such thing as competition. Does Mr. Hudson desire us to accept these propositions, or think that he has established them? What else does he mean by such a paragraph as this (page 40): "While the force of competition causes the railways to accept moderate or even narrow profits on the Western grain-traffic, the absence of that force allows them to collect what, by comparison, are shown to be exorbitant profits on the grain shipped by the farmers of the Eastern or Middle States." As a matter of fact, the figures actually show that it is combination, not competition, which has reduced the rates charged by the enemies of the republic and forced them to "accept moderate or even narrow profits." Surely, Mr. Hudson does not wish us to believe him guilty of catering to the general public by misstatements of fact in cases with which, from the least apparent foothold for grievance, he assumes such fluent familiarity. And yet, what else can we conclude from his retort to Mr. Fink's calm statement before the Senate Committee on Railroads in 1883, to the general effect above stated (viz., that geographical and not arbitrary conditions controlled pool-rates) in which he happens to mention Winona (using that town, as we have used Denver or Salt Lake City above, as an instance of a "short-haul" point)? "Why," says Mr. Hudson (page 161), "the road, if built for Winona, should have stopped at that place and given its exclusive attention to the transportation interests of that town." And, if this could be exceeded in artless incapacity, he

meets Mr. Alexander's statement (page 162), that "no railway has ever raised its local charges to meet the loss caused by lowering its through rates," by the following: "When railway rates have been reduced fifty per cent on through traffic within the last ten years, and local rates have virtually remained unchanged, the burden of the local shippers has been practically doubled, no matter what sophistry is used to conceal the fact." Surely, it needs no expert in railway affairs to detect that the "sophistry" just here is not Mr. Alexander's. Lawyers of a certain grade sometimes talk to juries in this vein, but they are shrewd enough to know their jury pretty well before attempting it. An industry that employs seven or eight thousand millions of capital in these United States ought, one would say, to be reasonably suspected of employing brains here and there—certainly ought not rashly to be assumed to neglect the entire remainder of its continental field (to say nothing of the keeping of its own books), in order to concentrate its entire energies upon the commercial destruction of a single village! There has yet to be discovered, I suppose, a human institution in whose workings there was not hardship or inequality somewhere. But Mr. Hudson has only, it seems to him, to select his hardship to demolish the entire railway system—his principle being, not the greatest good to the greatest number, but the least good to the greatest number (or, possibly, the greatest good to the least number), so that the selected village is favored. But what else would this be, again, but a monopoly of commercial privileges; and how soon—did the railway or the railways adopt Mr. Hudson's suggestion and discriminate exclusively in favor of his village—before Mr. Hudson would be on his feet again with an entirely new compilation of grievances, demanding to know why this particular village was selected out of the entire continent to be so pre-eminently favored? Does not even Mr. Hudson begin to catch a glimpse of just how vast, how complicated, and inexhaustible this railway problem really is? But possibly he does not, for he says, You charge this village of B too much. No, we charge everybody according to geographical position; it saves us labor to do so, says Mr. Alex-

ander. Well, anyhow, says Mr. Hudson, you lowered the rate to A, and did not lower the rate to B, and that's the act of a public enemy; and he straightway sits down and inflicts us with a book of 500 pages, of which the argument is (or ought to be, to be consistent) that A is not the public or even the republic, whereas B is both the one and the other. If Mr. Hudson will kindly turn to one of his own pages (in which possibly the mass of excerpta has bewildered him), he will be doubtless surprised to find (page 159) an admission that, astounding as it may seem, on a single trunk-line in a single year, as between the anti-pool rates of 1865 and the pool rates of 1882, a saving to the public, in freights alone, of $318,947,486,261 has been effected. But, having made the admission, he is ready to meet it after his kind. "This is an astonishing instance," he continues, "of giving away what the giver never owned or possessed; the fact is kept out of sight that the business of 1882 is the result of the progressive reduction of rates for many years, and could never have existed but for the reductions." Surely, the shades of Adam Smith and Ricardo have never witnessed quite such a wiping out of the laws of supply and demand as this! Mr. Hudson will have us believe that the people of the United States on the line of the given railroad would not have eaten and drunk, or purchased supplies, worn clothes or slept on beds, and that population itself for seventeen years would have suspended its rules—perhaps the laws of gravitation themselves have ceased—had not this railroad reduced its rates. But let us overlook any possible increase of population or of the wants or luxuries of a given territory in the space of ~~twenty-two~~ years, and consider this particular railway company as all railways. The argument will then remain as follows: Railways are public enemies because they are exorbitant in their charges. But figures show that their charges are constantly decreasing. Never mind that, says Mr. Hudson, if railways reduce their rates they only do so from the selfish motive of getting still more business. Most shippers over a railway would be contented if the railway would only charge them low rates. But Mr. Hudson (who, possibly, is not a shipper over any line) will have none of their reduced rates

unless they reduce them from the proper motive. After all, the act is nothing. It is the motive which must govern. And doubtless we could nowhere elicit a more virtuous, certainly nowhere a better specimen than this of Mr. Hudson's public-spirited argument against railroads, from this most exhaustive and most entertaining of scrap-books. "No matter what you do, if your 'eart is only true," says the old song. And so says Mr. Hudson to the railroads of this republic. But let it at least be remembered in their behalf that, even if they did it with selfish motives, the railways were themselves the first to attempt their own reformation. Railroads are and must remain built for the private emolument of their owners, and not for charitable purposes. They were not proof against the temptation of charging more money for a short haul to non-competitive points than for a long haul to competitive points in the struggle to live alongside of paralleling lines which the people themselves have chartered. But, when the pool removed this temptation by making all points non-competitive—although no law, human or divine, compelled them—they did voluntarily resist the temptation to pool at maximum rates—the rates not only fell, but became proportionate to cost of hauling, the competition remaining only as to those "long-haul" points in whose favor Nature has discriminated by establishing water communications. Mr. Hudson has, perhaps, read a great many books. He should not have omitted from among them the late Dr. Lieber's "Civil Liberty and Self-Government" (especially the chapter wherein is treated the principle of the "Freedom of Rivers.") Then, remembering that the United States has not only two ocean coastlines, but great lakes and a system of navigable rivers more magnificent and more benign than that of any other country, he might possibly have perceived how—in his railway problem—so slight a consideration as our national geography might be at least as important a factor as a handful of selected individual hardships. Mr. Hudson does not relish the rates charged by our railway companies. He suggests no others, but is entirely clear, none the less, that they should be changed somehow. If rates are at present arranged upon a system, let us drop the system and make them

arbitrary—according to Mr. Hudson's selection, if he would only agree to abide by it. If your present rates are robbing the people, low as they are—very well, lower them still more, and rob your stockholders. It is evident that Mr. Hudson, for one, is no stockholder. But are not our stockholders parcel of the people? And so the old impossibility of finding standpoint—or rather, the necessity of shifting his point of view with each newspaper-clipping he pastes in his scrap-book—renders Mr. Hudson everywhere specious, inconsistent and absurd; which leads us up to the next chapter where we must consider the reason why railway stockholders are not to be considered along with or as well as other citizens of this republic, by Mr. Hudson.

CHAPTER VII.

OF STOCK "WATERING."

A RAILWAY stockholder, says Mr. Hudson, cannot really be robbed, you know, because his stock is "water"; since railway capitalization is largely fictitious. At any rate, this capitalization has so large a fictitious element in it, upon which it is forced to attempt the payment of dividends, that your stockholder is entitled to nobody's sympathy, if he receive no dividend whatever, for or on account of whatever money the original subscriber for the stock held by him put into the construction of the railway tracks, stations, fixtures, rolling stock or furniture of any sort. If you have any sympathy to give us—any tears to shed—give that sympathy to, shed those tears for, the shipper, who (as we have seen) is often forced to pay less to send his freight to California than to Pittsburg, and whose rates are lowered when his objective is Buffalo instead of Schenectady or Palatine Bridge. For, Mr. Hudson or anybody else to the contrary notwithstanding, this was the situation, and the exact situation, at the passage of the Interstate Commerce Law. The history of railways in the United States, as we have just seen, is the history

of the reduction of railway tariffs, and when these tariffs had reached their lowest, there and then steps in the government to regulate and control them. Of course, how much lower these tariffs might have gone, or how much less the long-suffering shipper might have been compelled to pay for freightage, nobody can conjecture. Judging, however, the future by the past, the next change of tariffs, like the last, would have followed the still downward tendency. But let us look into this "water," this alleged or fiat capital, which Mr. Hudson prefers to call "The Fictitious Element in Railway Policy," (Chapter Seven.)

Many a worthy cause and many a worthy man have been slain by an epigram. It was a happy *coup d'esprit* of Wall Street to call the increased capitalization by a corporation a "watering" of its stock; and the phrase has doubtless often done yeoman service in the transactions by which Wall Street lives and thrives. But the fact is that "stock watering" is A CRIME COMMITTED AGAINST and not A CRIME COMMITTED BY a railroad company. In other words, the old syllogism must be accepted very peremptorily here if we are to admit—because corporations sometimes do increase their capital on paper—that all railway companies are public enemies. Nobody can defend, and nobody ought to attempt to defend, the pouring of pure water into the capital stock of a corporation. But there are some four hundred railroad companies in these United States; and Mr. Hudson, to sustain the charge of universal watering against railway companies, instances two capital cases. One of these was one of the most flagrant cases on record (it would be difficult, indeed, to find one more flagrant). It dates back nearly twenty years; was first held up to public criticism by a gentlemen who, more than any other one man, is in receipt of Mr. Hudson's constant and most unqualified strictures everywhere else in Mr. Hudson's pages for his own career as a railroad president; moreover, this very case became the moving cause of legislation which forever prevented a repetition of the particular process by which this particular stock was "watered." As to the other case cited by Mr. Hudson, the "watering," according to his own figures, amounted to one-third

of its increased capital. But I doubt if any shipper of the line of that particular railroad, or any patron of the line who remembers its previous condition, will agree with Mr. Hudson that a betterment of one-third at least did not accrue at about the time of the "watering." Suppose a zigzag line of railways operated by half a dozen petty corporations, requiring endless delays, a change of cars for passengers and breakings of freight bulk between two of the most important terminals in the country—metamorphosed into a system of four through tracks to conserve the safety of life and property by separating freight and passenger service. Suppose the improvement marked by increased prosperity, not only of the line but of the territory it traversed—would there have been no betterment to capitalize, or would the capitalizing of this betterment be "water"? Would stockholders, in such a case, be apt to object to the company borrowing money to make their own stock more valuable? And which is Mr. Hudson's public just now, the public along the line of this improved railway, and who pay its tariffs; or the entire continent from Sandy Hook to the Golden Gate, from Canada to the Gulf of Mexico, for whom Mr. Hudson assumes to take up his parable? Another curious fact which Mr. Hudson may not be aware of (or if aware of, which he has inadvertently omitted to clip and paste in just here), is the fact that up to Feb 4th 1887, these two selected corporations were members of the same pool, serving respective but almost parallel territory at rates at least thirty-three per cent lower than at the dates at which their recapitalization occurred. Mr. Hudson's platitudes against "stock-watering," so long as he confines himself to platitudes and truisms merely, are perfectly safe. But when, in 1886–7, he prints the newspaper-clippings of 1869–70, and moralizes therefrom, he can hardly complain if his public demur, not only to his antique instances, but to his general safety as a guide in the complicated questions with which he assumes to deal. I mention these two examples (which are now ancient history) not to suggest an excuse for them, but as showing how entirely superfluous Mr. Hudson's employment of them is; and how as a matter of fact the wrong, so

far as the public is concerned, had been entirely neutralized by application of the pooling system. Other things being equal, there is no reason why a railroad should not capitalize its earnings by employing them for betterments, any more than that an individual should capitalize his by putting back his earnings into his business. Nor is it quite apparent that any moral dishonesty enters into the act of even capitalizing those betterments which Nature and the march of civilization bring, which I understand are called (just now) "the unearned increment." I do not remember that any company has so far been guilty of this particular sort of watering; but, had the early Dutch settlers of Manhattan Island built the present elevated railway, it is interesting to speculate what sin would have been committed against natural or moral law had their assigns in 1888 capitalized that structure, not at an approximate to its earning power at the date of its construction (in, say, 1666), but at a sum representative of its actual earning power in the later year. Neither am I aware by what mental processes one can insist on "unearned" increments at all, if by that popular term we mean the increase to one's property by the efforts or investments of one's neighbors. It is fashionable, I am aware, to say that if A's corner lot increases fifty per cent by reason of the purchase and improvement of adjoining lots by B, C, D, E, and F, *that* fifty percentage is A's unearned increment; but is A's foresight and shrewdness in investing in the corner lot aforesaid, when he might have placed his money elsewhere, to count for nothing? Are not brains a part of one's capital, and may not A's foresight and shrewdness have been and continued a considerable part of his capital or stock in trade or earning power? Assuming that Mr. Hudson does not contemplate the removal of cerebral inequality between man and man by due process of law, it might occur that, whereas the rest of the alphabet had no confidence in the future of—let us say, a certain B and C Railroad—A might foresee a Pacific Railway, or a commercial development, or the bankruptcy of a competing line—which would make it valuable, and so might without sin buy up its stock at five cents on a dollar and in due time reap substantial

rewards. And supposing even that A, by the transaction (or even by recapitalizing this same B and C Railroad), was ultimately enabled to accumulate one of those enormous fortunes in which Mr. Hudson sees such peril to his republic, would even such a public calamity go to prove railways public enemies, or that any and all increase of capitalization was "stock-watering"? Doubtless improper practices will obtain with evil-minded men until the end of time. But if the enormous fortunes aforesaid have been accumulated by watering railway-stocks, then it instantly follows that they have not been accumulated by the management and operation of railways; and thus another of Mr. Hudson's charges falls to the ground. And the facts are within this statement. As a matter of fact these accumulators of mammoth fortunes were operators in Wall Street, who by accident become loaded with a favorite security, or with the debentures or stock of a single corporation, which necessitated (or at least suggested) their identification or assumption of the management, directorship, or presidency of this, that, or the other railway corporation. In not a single case have these fortunes arisen from the earning power of the road itself. If a certain railway corporation increases its stock without proportionately increasing its earning power, then the transaction is properly characterized as "stock-watering." But it does not make all railways enemies of the republic, nor in any way cause them to "dominate" the people who have granted them franchises for transportation purposes. It is from a prevalence of the very spirit which Mr. Hudson's volume, "The Railways and the Republic," labors vigorously and constantly to cultivate in this people, that railway-wrecking and stock-watering ever become possible. If Mr. Hudson honestly desires to make stock-watering impossible, let him advise his constituency to yield the railways such tariffs as they are obliged to demand, thus enabling them to meet their fixed charges and so keep out of the hands of "speculative directors," who will, from private greed, proceed to "water" their stocks. Here is a field wherein Mr. Hudson could write books to his heart's content, from a consistent, public spirited, and even contemporary standpoint, and

with the best results. The mere collecting of antique newspaper-clippings is, beyond the passing amusement of the hour, of very small utility, and very trifling exemplary value, and certainly of not the slightest assistance whatever in solving the problem of the American railway.

Just as Mr. Hudson everywhere treats the pool as a cornering of transportation facilities, and as an act of hostility to the public; so he treats the feature of over capitalization which is sometimes necessary to obtain funds for the building of trunk lines to open barren territory to civilization (the American policy, by the way, which has added hundreds of millions of dollars to the wealth and dignity of the nation) as "stock-watering." The power of this nation among her sister nations lies in her wealth. Her annual surplus is a better coast defense than all the forts that could be built—than all the torpedoes which could be sunk, than all the iron-clads which could be floated. Doubtless Mr. Hudson himself, dragon of public virtue as he poses himself, would ask the temptation of more than a cent for cent investment to build a railway through a howling wilderness, and to wait for settlers to open it up, to wait patiently through the pioneer-period—the outskirt-period—the development period—for the returns that only compacted improvement brings.

Over capitalization has been a purely American device for civilizing, at once, vast areas which, under old systems, it would have required centuries to bring out of barbarism and uselessness, so that time could be saved by the century and the wealth of the nation reduplicated by the hundreds of millions. It does not occur to Mr. Hudson, the scope of his vision is not large enough to include the idea that it may be patriotism as well as private acquisitiveness which dictates the investment of private capital in that which can only make returns to one's children. Somebody said lately to De Lesseps. "Chevalier, this Panama Canal is costing immense amounts of money. What do you suppose it will ultimately cost." "Who cares how much it will cost," replied the grand old man. "It is for eternity!" And so we have the Railways of the United States. They are built and will not be

abandoned. They are for eternity, and so far as we have gotten along, they have added to the power, wealth and dignity of the nation.

CHAPTER VIII.

OF EMINENT DOMAIN AND WHAT IT ENTAILS.

ANOTHER of Mr. Hudson's specifications against railway companies, and one in which he finds not by any means the least danger to this Republic, is that railway companies usually possess by virtue of their charters, the power or duty of exercising in certain precise cases, the power or facility of eminent domain; that is to say,—that modicum of the power of the state by acceptance of a grant of which a railroad company is understood to accept the burden of certain fixed public obligations.

Mr. Hudson's definition of this facility of railroad companies is as follows: "To take away the property of A and give it to B for the latter's private use and behoof, provided always that B is a railway corporation" (page 114). Now, actually and practically, the above is a remarkably comprehensive and exact definition, not of eminent domain but of what eminent domain is not, and of what it never can be under any circumstances. Mr. Hudson himself has inadvertently told us what it really is: "Experience shows that no railroad twenty-five miles in length can be built without the resort to the power of the State, for there are always some proprietors who demand an exorbitant price, or altogether refuse to let the railway pass over their property. . . . No railroad of greater importance than a mere switch ever has been or ever can be built without invoking the sovereignty of the Government in its behalf" (page 111). Under such circumstances, where a man's neighbors have decided that they want a railway, the law—so far from taking anything from anybody—simply steps in and applies the well-known maxims

that a man must use his own so as not to injure his neighbors; and that, in civilized communities, every citizen yields a fraction of his rights for the general good and society of all. To enable the railway to enforce the general consent, it is convenient to apply these maxims against the recalcitrant citizen by the fiction that the Government endows the railroad company—for the emergency and for the emergency only—with a portion of its own (the Government's) right to take the property of its subjects in cases of necessity (as for the public good in times of peace, or the public defense in time of war, etc.). This force is applied, however, not at the expense of the Government, nor even at the expense of the recalcitrant and unpleasant citizen who will not accord with his neighbors, but at the sole expense of the railway company. The result is that, instead of the citizen suffering for his obduracy and obstinacy, he is actually rewarded—since he ultimately receives a greater value for his land, without being mulcted in any of the expenses of the taking. So far as he is concerned he has lost nothing by his contumacy; whereas the railway, by his contumacy and without fault on its part, has been put to the costliest plan of acquiring the land. For the purchase of any strip of land, at almost any price, is invariably cheaper than the process of condemnation by private "view," which, both in time and money, is by all odds the very costliest known method of obtaining a railroad's right of way. These "views" are, by statutory requirement, made by persons of the vicinage, who, in estimating their neighbor's land, estimate their own; as individuals it can be readily imagined they are not over-solicitous to save the corporation expense, nor to estimate at all without liberal compensation to themselves for their own services: and the result can be readily computed. The laws of eminent domain, as appertaining to railway companies, and their operation in cases of land condemnation, are too technical to be elaborated here. But it may be said, as a matter of fact, that their application ceases with the single act of the acquirement of land. Nor is the power of the Government over the citizen ever, except in this solitary instance, exercised by the railway company from the beginning to

the fine and term of its career; and, moreover, the grant itself is not only not against public policy and interest, but is directly in favor of the public: being positively granted to the railways as against themselves rather than in their favor, so far as a possible question between the railways and the public can possibly arise.

What is known as the police power of railways, which is derived from and determined by the local police power of each separate community, although sometimes granted by proclamation from the State Executive, since Mr. Hudson has not assailed it, I will not defend. In the granting of railway passes I confess my inability to discover a crime against the State. Wherein they differ from the orders that a manager issues to seats in a theatre—especially since his theatrical privileges come from the people by special license—I am unable to perceive. "Passes" are the small currency of the railway company, payable for favors not estimated in, or convertible to, money; and are used just as the small trader bestows an apple or a toy upon the juvenile carrier between his small customer and himself. The company's rule is to issue passes only for services; but the rule is construed liberally to apply to prospective as well as actual services, and to count presumed influence—or, perhaps an assumed or expected favorable mention of the particular corporation issuing them—as a service. But, even if issued for no service, real or prospective, I know of no human being, institution, or concern, public or private, that is not allowed to perform acts complimentary in their nature, or even entirely gratuitous. In the course of many years' experience I have seen fully as many acts of public charity as of private compliment performed by railway companies. A friendless and penniless woman, whose husband has been left behind or has deserted her, *en route* she knows not whither, can be transported to a desired destination, if not in the discretion of the conductor at least by telegraphing for permission to the proper department. And there is not a railway in the country where such gratuitous services are not constant, and as unchronicled and unheralded as they are constant. Nevertheless, while I frankly say that, for one, I can not see where the granting either of charities or of

"passés" militates against the public character imposed by Legislatures upon railroads, or is forbidden by the fact that to facilitate its construction the railway company once enjoyed a parcel of the State's power of eminent domain—I must admit that (except as to employés) the system has always been a nuisance to the railway companies and one which they have constantly labored to abolish. It is impossible to forecast what quantum of credit Mr. Hudson and his kind may take unto themselves for the Interstate Commerce Act, which has at last promised the railways a grateful relief from the pass-beggar. But if that act shall abolish both pools and passes, public sympathy will be with the honest shipper who must pay increased tariffs, rather than with the local Solon who wakes to find that—while screaming at "discriminations" and "long and short hauls"—he has actually been emptying his own pockets of the passes with which he has insisted that they be lined.

The power of the Government over the citizen, then, except in this solitary instance of land condemnation, being never exercised by a corporation: being bestowed invariably and always for the benefit and in the interest of the people, and not of the railway company; taking always the shape of a duty and never the shape always the shape of a duty and never the shape of a privilege—granted that railroads are *quasi*-public corporations, it would appear to follow—since they are only *quasi*-public, that they have still some elements of private proprietorship; and (since it is their private and not their public character which continues) that it is by this private character they must be continually judged. Granted that they must carry freights for the public in such a way as not to injure either the public or the freight in the carrying, most emphatically (it seems to me) it does not follow that they must add to the value of the freights they carry by charging only such rates as the public, or the owners of the freight, insist on. Mr. Hudson, as a member of society, has a presumptive right to light and air; to life, liberty, and the pursuit of happiness. Supposing that society should pass one law affirmatively compelling Mr. Hudson to recognize his neighbor's rights to life, liberty, and the

pursuit of happiness; and, on top of that, another restraining him from interfering with these rights; still another compelling him to positively contribute in cash or services to the life, liberty, and the pursuit of happiness of his neighbors; and add to all these a still further law taking away his (Mr. Hudson's) own life, liberty, etc., because he had not in the past so contributed? Would not Mr. Hudson begin after a while to consider the propriety of looking up his own constitutional privileges; or, possibly, the charter of the particular society that was enacting all these statutes?—or query, perhaps, if the mere grant of power to breathe himself were a fair consideration for the burden of seeing to it that the entire neighborhood breathed? But our laws are daily imposing upon the railway companies they have chartered (on account of this so-called *quasi*-public character which the once granting of this long-lapsed power of eminent domain has saddled upon them) the duty of carrying whatever of passengers or freight is offered—of reasonably accommodating the public—of forfeiture of their charter if, even at a loss, trains are not so run as to accommodate reasonably; of operating, whether at a profit or at a deficit (under penalties for refusal to perform services desired of them)—under a burden of proof always to prove a negative if the refusal is alleged of them—under a disadvantage always before a jury—and of being obliged to accept the jury always of the locality where ideas of value and damage are the largest. Liabilities always to patrons, servants, abutters and adjoiners; to the State; compelled to pay damages for accidents caused by trespasses on their own rights of way; to maintain alert and vigilant counsel always to watch, lest at any moment they inadvertently overlook any of the thousands of statutes that thirty-eight Legislatures are annually pouring from the legislative mill; black-mailed on every hand,* and always under the conviction that the average citizen

* I have been assured that the following story is true, at least I do not believe it improbable. A certain member of the board of aldermen of a city, not a thousand miles from the city of New York, confided to a fellow member that he was hard up. "Well then," replied the latter—"Give notice of your intention to introduce a resolution for a city ordinance providing

sees no dishonesty in getting the better of them by dodging fares, or getting passes under false pretenses; and, if they receive a public gift of land, having it at once construed against them and carried to defend it against the grantor himself in the grantor's own courts—these are the least of the burdens which this once granted and quickly terminated privilege of eminent domain is supposed to impose, and practically does impose, upon railway companies. Admitting their public character—even such a character is, perhaps, not morally a deterrent to the rights of their stockholders to get the interest on their investment; or otherwise a displacement of the unwritten law of *meum* and *tuum*. Railroads, by the uniform decisions of half a century, are indeed public conveniences. But, so far, this character of a public convenience has been only a burden, never a blessing, or even a shield. The man who steals a ride on a railway-train and imputes it to himself for sin would be a curiosity. The railway company has no conscience-fund; and, had it, there would be no contributors. It may submit to robbery, may carry for less than the cost of the service and so plunder its stockholders to its heart's content, and Mr. Hudson and his clique have no protest to put on record. But if under all this load the railway company succumbs to bankruptcy, Mr. Hudson, from his elastic standpoint (or rather from his lack of any standpoint whatever) is enabled to cite this very bankruptcy as another instance of the hostility and danger of railways to the republic. He has charged them with being enemies to the public, firstly, because of their tariffs. He charges them, secondly, with being public enemies because of the bankruptcy which a failure to collect those tariffs has brought upon them; and yet again, thirdly—when that bankruptcy has made the stock nominal in value and so speculative, and a shrewd operator absorbs it and so lays the foundation of a private fortune—Mr. Hudson still

that the ———, ——— and ——— Railway Company provide two brakemen for every passenger, and one for every freight car it runs." The notice was given, the resolution was never introduced. But the member giving the notice made no further complaints of impecuniosity.

charges the railways with being public enemies because the far-seeing operator has accumulated this very private fortune! Moreover, he lumps the whole *catena* of cause and effect into a series of indictments (or, more absurdly still, into a series of specifications under a single indictment against railways as a class or an institution), and proposes as a relief from the whole—what? Why, that the Government confiscate (or purchase by way of condemnation) these railways, and make them a public highway upon which any one may run his own rolling-stock on payment of a trackage-fee!

CHAPTER IX.

CONCLUSIONS FROM THE FOREGOING.

It would seem, then, that while railroads are not philanthropic or charitable bodies, organized for good works among the poor and needy, neither are they basilisks, or gorgons, or minotaurs, destroyers of the state, or dragons that feed upon the people. And now we might well leave Mr. Hudson and all his works, were not his lack of standpoint just here so ludicrous as to tempt from us a further word. He cries (page 9), "Railway projectors have invariably embarked in these enterprises, not so much for the public welfare as for their own private enrichment." What else had Mr. Hudson been led to suppose? The millennial state in which private enterprises are conducted for public ends is certainly not yet a State in the Federal Union, wherever else on this planet it may be discovered. Mr. Hudson's next proposition is that, "if the country has had hundreds of millions added to its wealth by railway construction, the builders have also secured tens of millions for their individual fortunes." In any but the millennial state one would think that a free gift to the commonwealth of ninety per centum of one's profits was a rather liberal tithe, and an exceedingly handsome thing. Most private parties, certainly most governments, would open their coffers to their friends on the same terms. But Mr. Hudson is ashamed to think

that private capital, enterprise, patience, and labor should have been returned anything. Clearly, the Government should take fully cent per cent for the industry of its subjects.

"While the nation has gained in wealth and population by the general extension of railways," says Mr. Hudson, "it does not follow that the wealth could not have been more justly distributed if railway management had been universally governed by the principles of equity" (page 8). What wealth? Mr. Hudson was just now complaining that the entire benefit did not go to Government, and that the individual received ten per cent. Now he regrets that it was not even more widely distributed among individuals. What are Mr. Hudson's views as to the meaning of the word "equity"? Would "equity" have been subserved if the ten per centum or the hundred per centum were distributed by lot, or on a basis of pauperism, or covered at once into the treasury of the republic? The statements that "the equality of all persons is denied by the discriminations of the corporations which the Government has created"; that "under them the increase of national wealth is not distributed among all classes according to their industry and prudence, but is concentrated among those who enjoy the favor of the railway power"; and that by means of railways "general independence and self-respect are made impossible" (page 9), may perhaps be passed over with the remark that if Mr. Hudson himself believed in propositions as silly as these, to argue with him at all would be like reading Herbert Spencer to the Salvation Army. The railway is certainly an eminent factor in our American civilization, though it has not just yet, perhaps, usurped the functions of the humanities!

It is a *bonne bouche* to bring into the discussion at any point in a discussion like this, an allusion to the riots of 1877 in lurid juxtaposition with the French Revolution; and our Mr. Hudson does not neglect his opportunity, but—since, wherever planted, the roots of neither of these cataclysms lie in land-grants, construction companies, pools, rebates, or fast-freight lines—it need not detain us here. I have not touched upon the "Granger" cases (so called), my limits forbidding. But I do not understand

that the principles enunciated in them conflict with any of the statements I have made. I lately had the pleasure of perusing a learned article in an English magazine which proposed that railway companies, like post-office departments, make rates independently of distances or extent of services rendered; or at least establish two rates, "one for short distances and others for long distances: so much for every distance not exceeding one hundred miles, so much for every distance between one hundred and three hundred miles, and so much for all distances exceeding three hundred miles, keeping the one rate for all distances in view as the ultimate object." It seems to me that, if gentlemen who write in this fashion expect their papers to be read, they expect the utmost they are entitled to. Similarly, I think that Mr. Hudson's loving treatment of the ancient claim that, since railways are public highways, any citizen has a right to send his own limited express along the line at any moment on payment of a trackage-fee, ought to stamp the value of his criticism. Mr. Hudson's book is printed on better paper and more nicely bound than the usual socialistic attack upon things as they are. But that he is, or is destined to become, the long-looked for reformer of the American railroad, I fear can hardly be hoped. But even Senator Cullom argues, (see *post* p. 88), that, since Congress cannot constitutionally protect the railways against wreckage and stock jobbery, the next best thing is to collar them.

I know what the railways of this continent are, what services they perform. I know that, by vigilant watch for and adoption of the latest triumphs of engineering and mechanical skill, and by employment of the costliest of expert assistance, they have reduced the percentage of accident to a minimum, and the chances of loss of life to a fraction so small that it is actually a mathematical truth to assert that a man is safer in a railway-train running at full speed than in his bed, or in any other spot on this most precarious globe! What these railways could become if operated upon Mr. Hudson's plan I can not question; the details of that picture I can not, for one, fill in. I know not what terminal facilities, what time-tables, or what per centage of slaughter would be necessary did every man, woman, and child possess the inalien-

able right to place upon their tracks their own locomotives, their own passenger-coaches and freight-carriages, and to run them at their own sweet will hither and thither. Nor can my fancy devise where all this rolling-stock would be stored when not in use (unless, indeed, means were devised to suspend it, by balloons or other aërial contrivance, over the railways themselves). Mr. Hudson does not discuss these questions at all, but leaves them, possibly, to the inventive genius of the race. And there, perhaps, we may also rest them.

But, taking leave of Mr. Hudson and his chimera, we have yet before us the railways themselves. Against the inequality of their own rates and the hardship of the long and short haul (in other words, against the discriminations of Nature and of physical laws), no less than against the peril of bankruptcy and the consequent speculative tendency of their stocks (after which may come the wrecking, the watering, and the vast individual fortunes), the railways of this republic have endeavored, by establishment of pool commissions, to defend both the public and themselves; and, whatever their motive may have been, their record as to that can not be disturbed. As to the effect of the Interstate Commerce Law upon the shipper and the passenger, time and trial alone can testify. But it is precisely such literature as Mr. Hudson's, and the sentiment it manufactures, which have made railway-wrecking, stock-watering and their concomitant disasters possible; while for these disasters, down to date at least, the pool has been found the only and entirely adequate remedy. That remedy, drastic as it is, the railways (far from being public enemies) had themselves applied. The honest administration of railways for all interests, the payment of their fixed charges, the solvency of their securities, the faithful and valuable performance of their duties as carriers, can be conserved in but one way—by living tariffs such as the pools once guaranteed. But we want no living tariffs, says our Mr. Hudson. Give us a governmental control, and we will pay no tariffs—only a trackage-fee! Supposing this revolution accomplished, and how many years or months would, perhaps, elapse before another declamation in five hundred more pages of

close type against the excessive trackage-fees, the favors to public officials or private cronies, or a formulated demand that the Government provide terminals at its own expense (another planet, possibly), sumptuous rolling-stock, motive power, and accident insurance policies for its passengers, would arrive from the constant, sleepless, and irrepressible Mr. Hudson? Is it not, after all, Mr. Hudson and his kind—and not the Wall Street operator who trades on the sham public opinion they manufacture—who are the true stock-waterers, railroad-wreckers, and enemies of this republic?

CHAPTER X.

THE INTERSTATE COMMERCE ACT.

SUCH being, then, the situation, why an Interstate Commerce Act? Why should, for any public reason—for any reason of the public safety—the interstate commerce law have "come to stay?"

I. To begin with, the present act abounds in punishments for and prohibitions against an industry chartered by the people, but nowhere extends to that industry a morsel of approval or of protection. It bristles with penalties, legal, equitable, penal, and as for contempt, against railway companies, but nowhere alludes to any possible case in which a railway company might, by accident, be in the right, and the patron, customer, passenger or shipper in the wrong. The law of the land is more benign in its policy. That law, indeed, hangs murderers and imprisons thieves, but it none the less protects even the life of a murderer and the liberty and property of a thief against other murderers and other thieves and abductors.

II. The constitutions of civilized nations, for the last few centuries, at least, have provided that not even guilt should be punished except by due process of law, and have uniformly refused to set even that due process in motion except upon a complaint of

a grievance. But the interstate commerce law denies the one and does away with any necessity for the other. That statute (section XIII) provides that the commission it creates shall proceed "in such manner and by such means as it shall deem proper," or "on its own motion," and that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant." Even the Venetian council of ten provided for a certain and described hole in the wall through which the anonymous bringers of charges should thrust their accusations. Even the court of star chamber was known to dismiss inquisitions when it found that no wrong had been done. But the statute of interstate commerce appears to issue *lettres de cachet* against anything in the shape of a railway company—to scatter them broadcast, and to invite anyone who happens to have leisure to fill them out, by inserting the name of a railway company. It says to the bystander: Drop us a postal card, or mention to any of our commissioners, or to a mutual friend, the name of any railway company of which you may have heard, and so give us jurisdiction to inquire if that company may have by chance omitted to dot an *i* or cross a *t* in its ledgers, or whether any one of its hundreds or thousands of agents—in the rush of a day's business, or in a shipper's hurry to catch a train—may have named a rate not on the schedule then being prepared at headquarters, or charged a sixpence more than some other agent 250 miles down the line may have accepted a week ago for what might turn out to be a fraction more mileage service in the same general direction! No particular form is necessary. Drop into luncheon with our Commission any day between twelve and one and mention the name of a railway company. The railway company may have done you no damage, nor grieved you in any way; just mention the railroad and we will take jurisdiction of its private (or *quasi*-public) affairs.*

* "The fullest opportunity has been afforded to any citizen of the United States who desired to be heard upon the matter, to present facts personally or by affidavit and arguments *viva voce*, in writing or print."—Opinion of the Interstate Commerce Commission *in re* Louisville and Nashville R. R. Co. p. 2.

Or if you don't happen to have time to mention it, we will take jurisdiction anyhow, "of our own motion," of any railway company whose name we find in the Official Gazette. It really does not matter which; any one will do.

III. Last, but not least—not on account of any individual, nor any railway company, but on high grounds of public policy—if there is anywhere a danger to the public convenience (and the law construes the public convenience to be the public safety), arising in any way, directly or indirectly, out of the existence of the railway industry, a federal statute should be framed to meet that public danger and to protect the people against possible calamity from such threat. Now, it happens that there is just such a real danger threatening the public health and convenience. The greatest financial and personal suffering has resulted in the past and is even now resulting from the machinations of the railway wrecker, and from the consequent bankruptcies and defaults in meeting fixed charges arising from the overconstruction of branch lines and paralleling of trunk lines, that money may be made in their building, and the like. Our national credit has fallen in foreign markets more than once from the defaults of railway companies to pay dividends, and the evil is one which it would be prudence and expediency to the nation and to the people, as well as salvation to the railroads, to protect against. Why not, then, enact a statute that should protect all interests, the railway stockholder's as well as the shipper's—the men who have put their hands into their pockets to clear the forest and lay the track and run the locomotive, as well as those who ship their wheat and coal and beeves over the railways the others have built? Why should the statute of interstate commerce neglect or ignore all their interests and remain simply silent as to anybody but the shipper?

Supposing that A and B are malicious and designing men. Supposing that they should learn that a certain railway company had half a dozen millions of surplus in its treasury, which its stockholders had accumulated by the honest administration of its servants, and the skill of its employés. Supposing that they

should jointly set to work, fabricate rumors, forge dispatches, work on the fears of one timid stockholder after another—in other words, "bear" the market; until by one scheme and device or another, they caused enough securities of that company to be unloaded to bring its stock down from par to where they could buy it in at nominal prices and get control of the company's directory. Supposing, then, that they should proceed to convert the surplus in the treasury of that company to their own pockets by such legalized devices as projecting branch lines, issuing stock therefor, and guaranteeing that stock in the name of the until now solvent road until they had wrecked it beyond repair, sold it out and bought it in, etc., etc. Seriously, ought there not to be a federal statute against such a transaction as this would be, which might not only cause widespread ruin and distress in the locality of the wrecked road, but precipitate panic and imperil the credit of the nation itself? I, for one, certainly do think so, and that if an act of the national legislature is needed to supervise the railway interests of the country—if a railway law is to come and to stay—these are the wrongs that act should prevent or redress, rather than exhaust its provisions upon such mere temporary matters as the posting of tariffs and the regulating of rates by mere mileage, instead of by the value of the business or the cost of the haul, etc. In so far as it regulates any national concern which this people have in their railways, it seems to me that the interstate commerce law is like a policeman who collars the innocent sufferer and clubs the little newsboys and bootblacks who looked on, but lets the bully and the slugger strut away in safety. For, remember, in the case above supposed, the railway that A and B wrecked has still its road-bed, its tariffs, its schedules, its charter, which still compels it to go on paying its operating expenses, running its trains and running for all who desire its services. The interstate commission can still fine it and imprison its officers for contempt of court, if copies of its tariffs are not properly filed at Washington or exposed with sufficient publicity along its line, and it must still try to meet its running expenses by competing with other lines of traffic. A

dollar is worth considerably more to it now than before these wreckers sacked its treasury. But while there is no law to meet those who have taken its substance, there is a sleepless statute watching the wrecked railroad to discover if, perchance—in wicked zeal to earn a dollar here or a sixpence there—it takes what business it can get, without sufficient discretion lest now and then it haul at a greater rate for an annoying fractional than a convenient through haul.

As already demonstrated, no railway company or individual—other things being equal—performs the greater service for the smaller wages. But railways, as well as individuals, must live, and, somehow or other, pay their bills. The railway company is always more or less at the mercy of the stock jobbers and the wreckers, and no national law steps in to protect it. They must take their chances as to these anyhow. But once let the company default in payment of its fixed charges, and there are no chances to take; it is bound hand and foot, and lies at the mercy of the operators, who can then pick its bones at their leisure. And yet, it seems, the situation did not call for enough vigilance, and so the interstate commerce law steps in and says, "Shut your eyes to what your competitors by water are doing, or to the laws of supply and demand. You are not supposed to know that wheat is a thousand miles from its market and beef only twenty miles, or *vice versa.* You are to be indifferent to the fact that dividends must be paid or you may be wrecked, and interest met or you go into the hands of a receiver. But strain your energies to filing of copies of your tariffs properly, and see to it that you never charge more for the short than the long haul under what may or may not hereafter happen to appear to the casual (or, say, to the most attentive and expert) beholder to be "substantially similar conditions."

Judge Deady has recently, it seems, held that a corporation chartered by the State—even if it be a railway company—has yet a right to its corporate life. Unless the commission, therefore, sees fit to rule differently, or until Judge Deady is overruled, such is the law. And if the words "under substantially similar circum

stances and conditions" in section 4 of the act are a substantial part of the law,—what becomes of the Act of Interstate Commerce? What is or was the necessity for any Act at all? It was hardly worth while for Congress to enact that railway companies should be guided by circumstances; and should consider the conditions under which they operated in making their rates.

DEADY, J. "It appears from the petition filed by the receiver that the Oregon and California Road will soon be connected with the California and Oregon Road, when the two will form a through line between Portland and San Francisco: that between these points there is also water communication by steamers and sail vessels that carry passengers and freight at less than the average cost of transportation by rail between the said places and all intervening stations; that the Oregon Pacific Railway, with the aid of steamboats on the Willamette River, now receives a portion of the freight which would otherwise be carried on the Oregon and California Road; that the Canadian Pacific Road connects with a line of steamers running between the western terminus and San Francisco, and that to compete with such all water and rail and water transportation it is necessary to make the corresponding rates on the Oregon and California Road.

"The receiver asks, first, whether under the Interstate Commerce Act such rates can be made for through traffic as will enable the Oregon and California Road to compete for the same at points where competition by water or rail exists, although the rates for the long haul between Portland and San Francisco or intervening points may be less than those for a shorter haul in the same direction between said places or such points, and second, whether in conjunction with the Northern Pacific Railroad or other transportation lines the Oregon and California Road may meet the competition of the transcontinental business orginating to the north and east of Portland, although its share of the through rates may be less than the local charges over the road, or its share of the through rates on competitive business between Portland and San Francisco——"

Judge Deady refers at some length to the decision he made two years before in *ex parte* Koehler, 23 Fed. Rep., 529, in which

he authorized the Receiver of the Oregon and California Road to make a lower rate for a competitive long haul than for a short haul, notwithstanding the act of the Oregon Legislature of 1885, known as the Hoult Law, which prohibited a corporation from charging a greater rate for carrying similar property for a short haul than for a long one in the same direction. In this decision for the first time in the United States, the principle was laid down that a railway corporation has a right to live." * * * "This opinion has been before the world for more than two years, and on account of the importance of the subject, has attracted some attention, but so far as I am aware it has received no unfavorable criticism, and time and reflection have finally satisfied me of the ruling. The Interstate Commission is intended, among other things, to prevent discrimination between long and short hauls, except where they are made under substantially dissimilar circumstances and conditions. In my judgment Congress in limiting the prohibition contained in section 4 has recognized the rule laid down in *ex parte* Koehler as a proper one. Freight carried to or from a competitive point is always carried under substantially dissimilar circumstances and conditions from that carried to or from non-competitive points. In the latter case the railway makes its own rates. In the former case the circumstances are altogether different. The power of a corporation to make rates is limited by the necessities of the situation. Competition controls the charge. It must take what it can get, or, as was said in *ex parte* Koehler, abandon the field and let its trade go to rust. Competition may not be the only circumstance that makes the condition under which longer and short hauls are performed substantially dissimilar, but it certainly is the most obvious and most effective one, and must have been in contemplation of Congress in passing the act. The court refers to the case of the Union Pacific Railway, *v.* the United States (10 U. S. 662, and 117 U. S. 355), wherein the company charged the Government local rates for transporting United States troops from Council Bluffs to Ogden, such rates being higher than the Union Pacific's share for a through passenger to San Francisco. The question was decided in favor of the Union Pacific by the Supreme Court, which held (117 U. S.

355) 'the services rendered by a railway company in transporting local passengers from one point on its line to another is not identical with the service rendered in transporting a through passenger over the same rails.' The decisions of the Supreme Court in these cases were doubtless present in the mind of Congress at the passage of the Interstate Commerce Act, but under the Interstate Act, mere difference in distance is not such a circumstance as will justify a greater or even an equal charge for a short haul than a long one, yet Congress must have contemplated that there might be such a difference in the circumstances attending a long and a short haul as would make it necessary for railway corporations in the acquisition and retention of the business for which their roads are constructed and operated to charge less for a long haul than for a short one. Congress never intended to make of this act a procrustean bed in which the conduct of the business of roads engaged in interstate commerce shall be made to conform to one arbitrary rule without reference to probable and even unavoidable differences in the conditions and circumstances under which it must be transacted." But, eliminating this, and the provisions which establish at Washington a Depository or Congressional Library of Railway Tariffs and Schedules for Immemorial Preservation—and what is left? Certainly nothing except the penal clauses to which allusion has just been made.

The bottom trouble is that the people of this great nation—the masses, the voters—have neither leisure nor inclination to study the workings of the railway industry, an industry that operates 139,986 miles of roadway with $8,000,000,000 of capital, and gives direct employment to two or three millions of the population and indirectly supports some seven millions more (though that there is a single individual of our sixty-five or seventy millions of population who is entirely independent of any railway service may be reasonably doubted.) What they do see is that vast private fortunes have been accumulated somehow in connection with railways. But nothing is further from the thoughts of these masses —these voters—than to pause to inquire whether the private fortune has been produced by the operation of the railways, or by the

manipulation of their securities, by the earnings or by the bankruptcies of the companies themselves. The masses—the voters—say, therefore, "We must have a law to put an end to this over-aggregation of wealth in the hands of a few; it is dangerous to society, to the nation." They have the interstate commerce law. They think it suits them. Perhaps it does. But while it will have no effect on the accumulation of private fortunes, it certainly will not operate to relieve the railway companies from the chances of bankruptcy or the railway wrecker who comes after. Possibly it would be premature to say exactly what the interstate law can or cannot do. That its only effect so far has been to increase rates to the shipper, I suppose is conceded. But the raising of a few rates is a most trifling matter compared with the question whether the law itself is in accord with our national policy. Never mind what private industry it embarrasses if it only conserves a public interest. If it can be shown that the inter state commerce law is patriotic and constitutional, its mere effect upon any matter of private concern sinks at once into the perspective. I am sure that the law the people wanted was one not framed to cripple any given industry, but rather, if possible, to protect all industries. And that in their desire to protect all alike, the fact that railway companies, like other artificial persons, were yet persons in law and entitled to enjoy every privilege given them by the State, was neither intended to be overlooked or denied. I admit, of course, that the common law ought to protect the railway companies from the railway wrecker so that no statute should be required. But so, also, ought the common law to protect the shipper by providing (and it so happens that it does so provide) that every railway should make its rates reasonable, so that no statute should be required. If the common law, however, has failed in either case, let us examine if it has not likewise failed in both. But the fact is, that while the common law has neither protected the railways from the wreckers nor the people from exorbitant rates, the pool has and did both. But, no sooner had it done so, than the interstate commerce law stepped in and abolished the pool!

It is not the purpose of this monograph to attempt to meet all

the specifications of disability which the Inter state Commerce Act must necessarily work. We might inquire, for example, as to the expediency of increasing the national patronage by running all the railway companies of this Union (as we once attempted to run its armies in the field) at Washington. At present the people are happy in the appointment of an interstate commerce commission which leaves nothing to be desired. But can we be certain always of an equal good fortune? Even as we write, rumors of socialist parties and so-called "labor" and anarchist parties hurtle in the air. Is it the part of safety to put into the hands of politicians and office-seekers all these delicate interests in which, as we have seen, the very commercial life of this people—of this nation—is wrapped up? To recapitulate, practically: The railroads of the United States in 1887 had 139,986 miles of track, the value of railroad property was $8,287,834,614, and the earnings for the year were $765,310,519. Over two million persons directly draw their support wholly or in part from the railways, and all the vast commercial and financial interests of sixty-five millions of people are involved in every move or measure that affects their welfare or efficiency. And yet, under the close and skilful management of men of ability, who have given their whole lives to the business, the railways of the country, out of aggregate earnings of nearly $800,000,000 a year, did not average a profit of three per cent per annum on the capital invested in them. In 1885 the excess of available revenue over actual payments of operating expenses, interest and dividends, was but $2,817,218 for the entire railway system of the United States, and the total of the dividends paid was less than one per cent upon the capital, in spite of the fact that of the nearly two million men employed by the railway companies of the nation, over 75,000 are trained and skilled in the profession, some 25,000 being expert clerks and accountants, many of them at salaries of from $10,000 to $25,000 a year. But to remedy these evils the Interstate Commerce Act provides for a bureau headed by five commissioners at salaries of $7,500 per year, with a single chief clerk at $3,500, and while defining the political complexion of these only touches the question of their qualification by practically enacting that no man

should be eligible to the office of commissioner who, from his previous training, occupation or experience, could be supposed to know anything of railway management!—a provision upon the ignoring of which in the appointment of the Hon. Thomas R. Cooley chairman of the first commission, the public is to be sincerely congratulated.

Then, allusion should be made here to the embarrassment which the trans-continental companies are suffering from the inroads made into the traffic business by the Canadian Pacific since the interstate law went into effect. As was predicted, the new law, taken in connection with the provisions of the treaty of Washington, which permits the transportation of goods in bond from points in one country through the territory of the other, back to the country from which consignment was originally made, is found to result in a material advantage to the Canadian company. This road is, of course, not affected by the provisions of the interstate law, and so it is able to cut freight rates to figures far below those which are offered by the American roads. Did Congress propose to crush its own constituency in behalf of Canada, if so be in the operation it could "dominate" the railroads? Again, in section 6 of the act, the words: "And any freight shipped from the United States through a foreign country, the through rate on which shall not have been made public as required by this act shall, before it is admitted to the United States, from said foreign country, be subject to customs duties as if said freight were of foreign production; *and any law in conflict with this section is hereby repealed,*" not only repeal a portion of the United States customs law, but make domestic goods subject to duty in domestic ports, thus making the owner or producer suffer for an act not performed or procured by him! What was the intention of Congress here? As we write we are under the disability arising from the fact that no provision of the act has yet been enforced (for fear, as the enemies of the act will have it, of making a case for the Supreme Court, and a probable opinion by that court declaring the act unconstitutional.) The only positive decision by the commission, so far, has been the declara-

tion (*re* Louisville & Nashville R. R. Co.) in which the Commission refused to interpret the act under which itself was created, but declared that the railroad companies must observe it at their own peril, which to some might, perhaps, suggest that Roman Emperor who wrote his laws above the heads and out of sight of his subjects, but punished their non-observance thereof with death.*

To so much of the foregoing as relates to the rights of the stockholder (on its publication in the columns of the *Railway Review.*) I had the honor of receiving (through the same channel) the following reply from Senator Cullom, who championed the Interstate Commerce Bill in the Senate: "The article (mine) in question is based largely upon a misapprehension of the powers of Congress with respect to the regulation of interstate commerce which seems to be quite common, and to which, perhaps, public attention should be called.

The writer begins by stating that he is unable to see any

* As a sample of the speculations with which the non-railway reader perused the provisions of the Interstate Commerce Act, I instance the following:

EXPENSIVE CURIOSITY.

To the Editor of The Tribune.

SIR: The Interstate Commerce of the country looks to Judge Cooley and his associate commissioners to nullify and render inoperative the provisions of the extraordinary law under which they were appointed. If by an expenditure of $100,000 (or of $10,000,000 for that matter) the country can be saved from the folly of a Democratic Congress, and the laws of trade put back to where they were before it began to meddle with the laws of supply and demand, the country can well afford the money. That the first step to centralization should be taken by the party that has always claimed to abhor it (especially when dominated by an element that was once willing to take the hazard of a civil war rather than surrender a modicum of the doctrine of State rights) is only one, and the least, of the curiosities of the Interstate Commerce Act. Indeed, it is a difficult thing exactly to define its purpose. It may be extravagant to suppose the legislation a scheme to help spend the surplus by enacting a law to change a perfectly satisfactory situation and then appointing a costly commission to nullify the law so as to restore the situation. Or it may be a case of the lion in the lobby, the question for the Speaker being whether the animal is to be kept out or let in for the purpose of seeing whether it can be put out—in either case a rather expensive piece of curiosity.

Yours respectfully,

JOHN W. BELL.

necessity for such a statute as the Interstate Commerce Act, and that he does not believe in its justice, fairness, equity, or expediency—either to the people or the railroads. In these respects he certainly differs with a very large majority of both branches of Congress, and, as I believe, of the people of the United States. He criticises the law because 'it abounds with punishments against an industry chartered by the people, but nowhere extends to that industry a morsel of approval or protection.' It might suffice to say in answer to this that the railroads have always shown themselves fully competent to protect their own interests, while the shippers have found great difficulty in doing so. But in the practical administration of the law Mr. Morgan will find, if he will examine it carefully, that all reasonable protection has been afforded the railroads, which are only subject to the penalties provid ed in case of willful and intentional violations of the statute, and which are expressly relieved from liability for violations that may have occurred through accident or mistake in the hurry of great and complicated business transactions, if they are disposed to correct the wrongs thus done when their attention is called to them. As was said by the Interstate Commerce Commission, in one of its first decisions :

'Throughout the act, as it now stands, in confessedly experimental form, there is exhibited an obvious and a generous purpose to allow to the corporations ample scope in the conduct of their business as common carriers for the people, and fair consideration of every reasonable claim, while insisting upon just, impartial, open and consistent rates of charge to which every citizen shall be subject alike whose situation is the same. Surely the people could not ask for less.'

"But the burden of Mr. Morgan's complaint against the law appears to be that it does not protect the railways and the people "from the machinations of the railway wrecker, and from the consequent bankruptcies and defaults in meeting fixed charges arising from the over construction of branch lines and paralleling of trunk lines, that money may be made in their building and the like." And he asks why a national statute should not be en-

acted to protect the interests of the railway stockholders as well as of the shippers.

"If Mr. Morgan will examine the report of the Senate committee on interstate commerce, which drafted the measure that formed the basis of the present law, he will find these questions fully discussed and answered. The committee recognized the importance of preventing in the future the building of unnecessary railroads for purposes of speculation, stock watering, fictitious capitalization, and similar operations by railway speculators and wreckers, which have resulted in imposing a continuous and serious illegitimate burden upon the commerce and people of the country; but inasmuch as, under the constitution, the jurisdiction of Congress extends only to the *transportation* of interstate commerce, and not to the methods of organization, the manner of construction and the financial transactions of railroads chartered by the States, no way could be suggested by which congress by a national statute could properly interfere with matters which were exclusively within the jurisdiction of the respective States. Speaking of these questions, the committee say:

'The importance of affording better guarantees to the investment of capital in future legitimate railroad enterprises, and of maintaining the credit of American railway securities at home and abroad, naturally suggest the inquiry whether any remedy for the evils that have been pointed out lies in the hands of Congress. The peculiarity of the situation is that, so far as concerns the charter restrictions which have been suggested, the jurisdiction of the states extends over both the State and the interstate roads; and the committee, after due consideration of the questions involved, does not believe that Congress, by virtue of its undoubted power to regulate interstate transportation, can, without interference with the rights of the State exercise any direct or indirect control over the granting of charters to railroads by the States or over the other proceedings preliminary to their construction.'

"Congress has endeavored to protect the interests of the shippers in so far as its jurisdiction extends, but it has no authority to

enact such legislation as Mr. Morgan suggests in the interest of railway stockholders, even if it should be deemed advisable."*

Is it possible that the above can be true? Is it a fact that Congress has no jurisdiction over any personal rights except the personal rights of shippers over railways? that the fact of being a railway company or a stockholder or officer of one removes a corporation or a citizen from any benign or protective jurisdiction of Congress, that such artificial or natural person can be reached by an Act of Congress only to ban and never to bless?

But admitting that Senator Cullom's rejoinder is final as to the reason why Congress felt itself able to protect only one party to the contract of transportation (and that one the party already protected at common law), it does not appear to me to meet the foregoing general criticisms of the context of the Interstate Commerce Act; namely, that by abolishing the pool, that act has raised rates to the shipper and put the railways more than ever into the power of the stock-jobber and the railway wrecker by re-inaugurating the era of railway wars and suicidal competitions, while at the same time forbidding them to recoup themselves by holding their own local tariffs. Congress may have had, indeed, no constitutional power to interfere directly and favorably in behalf of the citizen who has invested in railway properties. But, it seems, that it none the less has interfered, indirectly and unfavorably *against* such citizen.

Senator Cullom passes my criticism that the Interstate Commerce Act abolishes the magna charta principle of "due process of law"; but urges that railway companies "are only subject to the pains and penalties provided in case of willful and intentional violation of the statute" and that the present Interstate Commerce Commission has so directly held. Of course, if the railways will refrain from doing any ~~interstate~~ business they will not come under jurisdiction of the interstate act, and I expressly urged that the present commission left nothing to be desired. My point is that the act had provided penalties, "civil, criminal and as for

* The *Railway Review*, Chicago, October 1st, 1887.

contempt"; that it is not impossible that, in view of certain political portents, we might come to have a commission less satisfactory than the present one; and that the power to inflict such penalties upon a perfectly legitimate industry (and one which the people themselves had chartered) is as dangerous as the penalties themselves are undeserved. It does not do to pass bad laws simply because we happen to have conscientious judges who will look to it that they are not strictly administered.

The Interstate Commerce Act is either one-sided, injudicious and unpatriotic, or else it is altogether unnecessary. I think it one-sided, because it favors one party to a contract at the expense of the other; injudicious, because it abolishes the practical method (the pool) which the railways themselves had devised) from the accumulated wisdom of fifty years of experience for actually and practically doing away with the very evil (discrimination) which Congress (with no wisdom or experience on the subject from which wisdom could be born, and with nothing but public clamor and pure theory—however well meant—to guide them), framed a theoretical law to prevent. I think the Interstate Commerce Act unpatriotic, not only because it is turning over to the foreign railroads, which parallel our own through Canadian territory, business which our own can apply and satisfactorily do, but because it itself discriminates against the shipper and the product of native industry. Take for example in the sixth section the words: "And any freight shipped from the United States through a foreign country, the through rate on which shall not have been made public as required by this act, shall, before it is admitted to the United States from said foreign country, be subject to customs duties as if said freight were of foreign production. And any law in conflict with this section is hereby repealed" (which have already been quoted, but cannot be quoted too often.) I have not before me (as perhaps I should have, to competently criticise this passage) the debates of Congress: but here, it seems to me, in a single clause, is not only a repeal of a portion of our federal customs law, but a positive provision subjecting certain domestic goods to duty in domestic ports, and making their citizen owners suffer for acts

not performed or procured by themselves and entirely beyond their control.

But if the interstate commerce act be not one-sided, injudicious and unpatriotic—that is to say, if the clause "under substantially similar circumstances and conditions" is held to be of the essence of the act—then it certainly is unnecessary. For it is certainly unnecessary to pass a law that railway companies shall be guided by circumstances, and observe the conditions under which they operate. The act in such case then, as to the shipper, simply substitutes a question of fact for a question of law, and as to the railway (except that it establishes a sort of national library at Washington for the deposit and preservation of railway schedules) is a nullity. And perhaps for the people this would be the happiest construction possible, were it not for the unfortunate policy of building up Canadian railway systems, constructed by English Government loans for the express purpose of "knifing" the railway systems of the United States.

Says Mr. Nimmo: "The case as it stands is that the Canadian Goveenment has thrown the fnll force of a subsidy of about $130,000,000 expended for the construction of the Canadian Pacific Railway, and of an annual subsidy of $300,000 to a British ocean steamer line, for the purpose of diverting an important branch of our foreign commerce from American to British transportation lines and trade centres, and that, too, with the special object in view of promoting Imperial objects on this continent. The audacity of the scheme would be astounding if it were not British. We must protect American interests against such protection of British interests. One of the reasons assigned in the Declaration of Independence for a creation of a new nation was that the King of Great Britain had given his assent to legislation "for cutting off our trade with all parts of the world." But so far from complaining, we have passed an act of interstate commerce which assists this political railroad to cripple our own railway systems. And the proposition is not to abolish it but to strengthen its provisions by making more rigid the penalties for its infraction.

CHAPTER XI.

APOLOGIES FOR THE LAW FROM ITS PROMOTER; SENATOR CULLOM'S SPEECH—CONSTITUTIONAL QUESTIONS.

It is one of the cardinal rules for the interpretation of statutes that when an apparent ambiguity does not yield readily to known canons of construction, the intention of the framers of the statute should be sought. It is certainly nothing less than simple fairness, therefore, to quote verbatim a speech made by the Hon. Shelby M. Cullom, who fathered the Interstate Commerce Act in the Senate, made by him at Springfield, Illinois, June 29th, 1887. The senator spoke as follows:

"Mr. President and Gentlemen of the Convention:

I appreciate fully the compliment implied in the invitation extended me to address you on this occasion, and I feel gratified that such a representative body of business men should be willing to suspend its regular proceedings to listen to any remarks from me. Realizing that you have come together here as men of affairs to discuss questions affecting your business interests in a business-like way, and feeling that it would be imposing on your courtesy to occupy much of your time, I promise to be brief and to confine myself to some general observations in relation to the subject of interstate commerce and the law recently passed on that subject about which you have requested me to talk.

I may be allowed to say in the outset that since the passage of the law, I have so far been silent in relation to the act or its effects upon the country, preferring to wait for a time after the law had been in force, and until the Commission appointed to enforce it had got fairly to work in the performance of its responsible duties. The law has not been in force quite three months, yet in this brief time the business of the country and of the railroads have made some progress in adjusting themselves to the new law, and I may be mistaken, but I venture to say that I

doubt not that you gentlemen and the farmers with whom you have to deal, feel that you have so far been benefited by the act. You are placed on an equality with each other in your dealings with the railroads, which now pay more attention to the rights of non-competing points; and I am told by grain buyers in this section that freight rates between this section and the East have been reduced very considerably since the law took effect. The enactment of that law at the last session of Congress marked the beginning of a new era in railway administration, and was the culmination of a memorable and long-continued struggle for supremacy between the people of this country and the combined power of the railway corporations which the people brought into being, but which have assumed to be independent of the power that created them. This was the real issue, although it was ingeniously involved in numerous side issues, and all the powerful influences possessed by vast aggregations of capital were arrayed together with the common purpose of preventing the Federal Government from assuming to control the operations of the railroads subject to its authority. The contest which has been waged of late years in Congress was but a continuation of the struggle inaugurated here in Illinois and in neighboring States years ago, and which finally resulted in the notable triumph achieved by the people in the decisions by the United States Supreme Court in the so-called "Granger Cases," and in the establishment of State railroad regulation.

"Whatever may be found upon trial to be the merits or demerits of the new law, I consider its enactment a great victory for the people, because its passage was a declaration by Congress of its power over the subject, under the constitution, and that hereafter the power of the General Government will be used to see that these great highways of traffic are conducted upon honest business principles for the common good, instead, as in many instances, for the benefit of such localities and individuals or corporations as their managers may see fit to build up and favor.

It cannot be denied, and men engaged in the conduct of railroads will not deny, that in the management of the business of

railroads there has not been exercised a proper regard for the rights of the people. The new law is confessedly an experiment as to some of its provisions. Those who are responsible for its terms have never been disposed to claim that it was perfect, but it represented their best judgment after careful investigation.

"To put it in a little different way, it was the best bill to which the two Houses of Congress could agree. It could not reasonably be expected that the intricacies and complications of the railroad problem, which have puzzled the wisest minds of this and other countries for years, could be solved at the first attempt; but a long stride in advance has been taken, and if we hold fast the great advantages already gained, time and experience will render further progress safe and certain.

"The act will not be repealed, and if any persons or corporations imagine it will, they may as well dismiss that expectation. Its substantial provisions have come to stay, because the people will find out, if they have not already, that they are in the interest of the general welfare.

"The new law is often represented by those with whose accustomed privileges it has interfered, to be a vague, ambiguous, bungled affair, which its promoters do not understand and could not explain. This was the fashionable mode of attack upon the measure while it was pending in Congress, but that mode of attack has become less popular since the law went into effect, and those interests have been obliged to study its provisions. As a prominent railroad man said to me some time ago, referring to such statements: "We quit saying that some time ago—we know too well what it means." So far as my observation goes. those who are attacking the law and seeking to overthrow it, are the persons who profess to find difficulties in understanding its meaning. It is in their way. They want to get rid of it. The true ground of objection on the part of such critics is to be found in the purposes and not in the alleged ambiguity of the law. The fact is, that there is nothing particularly new or startling in its provisions; similar provisions are found in the constitutions and statutes of many of the States and in the laws of other countries. Much of the language used

in the most important sections has a settled meaning, having been judicially construed either in this country or in England, and this is especially true of some of the phases which have been most generally attacked as meaningless and ambiguous. Briefly stated, the great purpose of the law is to prevent unjust discrimination. About all the wrong-doing by common carriers in dealing with the people, is the result of unjust discrimination in one form or another. The law requires that all charges shall be reasonable and just—it prohibits all kinds of unjust discriminations between individuals; it prohibits undue or unreasonable preferences or advantages in favor of persons or places, or any particular description of traffic.

"It requires reasonable and equal facilities to be extended to others for the interchange of traffic, and it prohibits pooling. Surely, there is nothing unreasonable or outrageous in these requirements. They simply apply the cardinal principles of the Declaration of Independence to the management of railroads by declaring that all men shall be equal in the eye of the railroad manager, and that all who are situated alike shall be treated alike without fear or favor, and that whatever their situation may be, all must be treated fairly.

"The need of such a declaration has been shown more plainly than ever, by the nature and character of the complaints made against the enforcement of the law. The entire system of railroad management has been honeycombed with discriminations, some justifiable, but more wholly without excuse. The new law, to a large degree, revolutionized the methods of railway rate-making that previously prevailed, and it was to be expected that when it went into operation it would seriously disturb the existing conditions of business. The object of the law is to secure the greatest good to the greatest number, and this could not be accomplished without interfering with the arrangements of those who were recipients of undue or unreasonable advantages. It was necessary that those who had previously been especially favored should be denied these privileges for the common good, and the readjustment of business to the changed condition of

affairs brought about when the law took effect has taken place with very much less friction or commercial disturbance than I had anticipated.

"The prohibition of a greater charge for a shorter than for a longer haul is objected to on the ground that it is an interference with the natural laws of trade and with natural trade centres. My answer to this is, that for many years past the railroads of the country have so absolutely controlled our interstate commerce that we have no means of knowing what are the natural channels of traffic or what would be the effect of the natural laws of trade upon many at least of the present commercial centres. What the critics of the law call natural centres of trade are centres created by railway favoritism, which has diverted trade from its natural channels into artificial ones at the expense of less favored localities. So far the chief opposition to the law by the railroads has been directed against the fourth section, which provides against charging more for the short than for the longer distance on the same line and in the same direction, etc. That section was attacked with such earnestness by so many railroads and combinations of roads after the law took effect and the Commission was appointed, that the Commission was induced to make orders in several cases suspending the operation of that section as to certain roads, and to relieve other roads from the operation of the section in the transaction of certain portions of their business. The Commission has been somewhat severely criticised in certain quarters for so doing. It has recently given notice that the relief will not be continued after the specified time expires. I thought the Commission was straining the authority granted to them in their action in granting relief, and if they had the power it was perhaps a mistake to exercise it to the extent they did. They had just come into office, however, but a few days before the law went into force. There had been a constant expression of fear on the part of some and a declaration of many men operating long lines of road that a compliance with the section would ruin them and the business of the country, and under all the circumstances I was not surprised at the action of the board. They now have

their grip, and feel that they comprehend the situation; and their opinion on petitions for relief under section four of the act indicates that they intend to allow that section of the act to have as much force and effect as other provisions of the statute, except in such special cases as clearly call for relief, and I trust that relief will hereafter be granted only after careful investigation.

"It is easy to abouse a public officer, and the most ignorant can do it, and frequently do with more freedom than do the wise: and I feel like saying, I take pleasure in saying, that while the commission may have made a mistake in giving relief from the short-haul clause to the extent they did in the outset, yet I have no question but that they believed the course they pursued was the wise one, and I am not prepared to say with confidence that it was not. I believe they are doing the best they can. I do not believe that the law would result in any substantial good to the people without such a special tribunal for its enforcement. No law would be of any account to the country without a wise and prudent commission to enforce it. It is fashionable to attack commissioners charged with a special duty, but I trust that the commission charged with the great work of protecting the people in their dealings with the railroads engaged in interstate commerce under this new law will be upheld and strengthened in the performance of their duty. It is their duty to enforce the law, and I hope now that they have made known to the railroads their general views on the question of the construction of the statute as it applies to the operation of railroads, and as it affects their own action, that they will give more definite and specific attention to the question whether the schedules of rates of freight filed in their office are made out according to law without unjust discrimination or extortion against any persons or localities, and also the question whether the roads are actually complying with their schedules and the law.

"The danger in my judgment is that, even with the Commission, after a little time the railroads will drop back into their old habits of unjust discrimination, of paying rebates and practicing favoritism, etc. It will require the vigilance of the Commission

as well as of the people to bring our common carriers into the way of doing business as the law and justice to all require. It is charged that they are not yet doing business in that way. It is charged that they are trying to so operate by appearing to comply with the statute as to make the law offensive to the people, and thereby secure its repeal. I make no such charges, because I do not know what the facts are; but railroad companies and their managers need not attempt to deceive the people, and I trust they will not, for any such attempt will fail and will only prolong the struggle. There should be no antagonism between the shipper and the common carrier; the one is a necessity to the other. You gentlemen engaged in the grain trade cannot get along without the railroads, and I am sure so many railroads cannot be supported without your patronage; so the relation between the railroads and the people should be thoroughly friendly, their prosperity being dependent on each other. The great purpose of the law, as I said, is to prevent unjust discrimination, to bring the common carriers down to legitimate, fair, straightforward dealings. The railroads are common carriers; they are, in a sense, agents of the people; they occupy a different relation to the public from the merchant or the farmer. They are from the very nature of things monopolies, and are performing a public trust, and it is the duty of the State and nation to see that as monopolies they do not abuse the privileges granted to them.

"But gentlemen, I promised you that I would be brief. This subject is too great to discuss satisfactorily in a few moments' time. If the law in its general scope and purpose is right, stand by it; if it is imperfect and needs modifying, strengthening or amending, let the Commission and Congress know wherein; and I trust that it will not be long before we shall have a perfect statute that will secure justice to the people and the railroads alike, and that increased prosperity may result to all."

The minor points of this argument would seem to yield to a very rapid treatment. Some of its readers, indeed, might object to such a division of the inhabitants of the United States into "men engaged in the conduct of railroads" and "the people," as

being neither geographical, political, economical or social: or that it was scarcely reason enough for writing a new law in the statute book for the regulation of either class that such law "represented the best judgment" of those "responsible for it:" or that "it was the best bill to which the two houses could agree." Such a statement, no doubt, fails utterly to reach the question at issue, namely: the necessity for any law of the sort at all. And it surely will not lead to any conviction of the necessity of such a law when the senator himself admits "that the intricacies and complications of the railroad problem" have "puzzled the wisest minds of this and other countries for years," and could not reasonably be expected to be "solved" by the Interstate Commerce Law. The simple rejoinder is, why, then, coquette with these intricacies and complications? Why not leave them to those whose life-training and experience it has been to meet and struggle with them? Why, most of all, enact a provision for summary treatment of these problems by non-experts (who, we are willing enough to admit, were doing the best they could with them) into a law of the land?

Senator Cullom proceeds:

"So far as my observation goes those who are attacking the law and seeking to overthrow it, are the persons who profess to find difficulties in understanding its meaning."

Well, why not? It is certainly not unnatural that persons who are aggrieved by a law should be the ones to attack it. One could hardly expect the reverse; that those who are not aggrieved by a law should be the ones to attack it. We certainly do not find the iron trade attacking the duty on wool or the wool growers fighting the tariffs on iron. Who should be aggrieved by a law regulating the railways if not the railways themselves?

The senator says (going on to dispose of the charge that the law is ambiguous) "much of the language used in the most important sections has a settled meaning, having been judicially construed either in this country or in England, and this is especially true of some of the phrases which have been most generally attacked as meaningless and ambiguous." But if this is true, if

it is true that all the phrases which the Interstate Commerce Act employs have already been judicially construed, and are already a part of the common law applying to carriers, why not let them stand in the common law—why rearrange them and so necessitate their being judicially construed all over again in their new context? We know what a reasonable charge is; that it has been held over and over again a rule of the common law relating to carriers that all their charges must be "reasonable." And any volume of Reports of any State over whose territory a railway runs will give us the rules by which to determine whether a certain charge is or is not "reasonable." But here comes an act and overrules and overrides all common law and says that the "reasonableness" must be "under substantially similar circumstances and conditions," thus raising a question of fact which it might easily require the subpœnaing of the entire pay roll of a trunk line to adequately try! For certainly no item or element of fact, from the price of cotton waste to an eclipse of the sun, could reasonably be excluded were it proposed to exhaustively examine so complicated a problem, and the inquest might readily stretch out to the crack of doom. As to the advisability of controlling our railways as imperial Germany does hers, and of administering them by English procedures, we may have something to say further on.

The senator says: "Briefly stated, the great purpose of the law is to prevent unjust discrimination. About all the wrong doing by common cariers in dealing with the people is the result of injust discrimination in one form or another." But "to prevent unjust discrimination" was the purpose and had come to be the result of the pools which the act abolishes. This I have so fully discussed elsewhere that there need be no demonstration here. But why pass an act to prevent in the future that which has already been prevented in the present and forever? Why theoretically and under construction of the courts provide a prevention for that which has already been actually and practically put an end to?

The history of American Railways down to the date of the Interstate Law is the history of tariff and rate reductions to the

shipper and the passenger. Since that date the procession reversed itself and the rates and the tariffs are on the crescendo again.

Here again the Interstate Law has kept the word of promise to the ear and broken it to the hope. It provides that there shall be no more discrimination. But in the same breath it abolishes the practical instrument which prevents discrimination.

What, then, is meant by the phrase "under substantially similar circumstances and conditions?" If it means what Judge Deady meant when he declared that railway companies have a right to live, then the Interstate Commerce Law is surplusage and unnecessary. For certainly it is not necessary to pass a law providing that railway companies shall be governed by circumstances and operated with reference to existing conditions. Railway companies, are, I suppose, reasonably certain to do that under any circumstances and conditions. The senator says, "If the law is unnecessary it can be amended." Who wants to amend an "unnecessary law?" If the familiar fact that a law can be amended is an excuse for passing it, what law is not entitled to be written in our statute books?

The senator says, "The Interstate Commerce Law is nothing but an application of the cardinal principle of the Declaration of Independence to the management of railroads, declaring that all men should be equal in the eye of the railroad." So be it. But why should not the cardinal principle of the Declaration of Independence be applied to the Railroad Company as well as to the shipper, to the man who invests his money in an embankment and a track and rolling stock, as well as to the man who sends his produce to market by means of those conveniences?

But the words "under substantially similar circumstances and conditions," are not the only ones used in the Interstate Commerce Act which must now be construed, we italicise several others.

"The Law," says Senator Cullom, "prohibits *all kinds of unjust discriminations* between individuals, it prohibits *undue* or *unreasonable preferences or advantages in favor of persons or places or any particular description of traffic.* It requires *rea-*

sonable and equal facilities to be extended by each railroad to others for the interchange of traffic— * * Surely there is nothing unreasonable or outrageous." But every one of these words in the vernacular, is a relative not a positive term, and an act which uses them, unless construed anew in every given case, is like a sumptuary law which should provide that every man wear a hat as large as a piece of chalk, and should neglect to decree the size of the piece of chalk.

The question of the constitutionality of the Interstate Commerce Act is a long one, and would require a volume to even approximately discuss. Authorities are not wanting, for the general policy of the act has been often before the State courts as well as the Supreme Court of the United States. Upon careful perusal of the opinions, often elaborate, from those of Chief Justice Marshall to the late Chief Justice Waite, of course differently constituted minds will reach utterly antipodal conclusions. But admitting that the cautious grant of power to Congress "to regulate * * commerce * * * among the several States" was not limited to securing equality TO THE SEVERAL STATES, and to quieting jealousies between them, but extends to the instruments of commerce, (the tracks, trains, motive power) or even to (where the present Interstate Commerce Act extends it) the question of differentiations between "long hauls" and "short hauls," (and so practically to the differentiation between large parcels which require but little handling, and small parcels which require much handling) that grant could hardly extend to Congress power to attempt to equalize the conditions of each hourly detail, the power to cope with which is a liberal education in railroading, and comes only to the expert of long standing and habitude.

Whether the Interstate Commerce Act, as to its context, exactly and entirely expresses the intention of the fathers in using this extremely cautious language, is certainly a question for the courts. The "regulation of commerce" has not ordinarily been construed to mean the regulation of the manual and mechanical operations of the instruments of commerce. Somewhere or other, it would seem, a discretion must be provided for in the practical

working of the instrument. If, under a grant of power to regulate commerce, Congress can prescribe the particular brand of axle-grease to be used, or the amount of cotton waste to be provided for each wheel, certainly a new jurisdiction would be assumed by Congress. But where exactly is the line to be drawn? The Interstate Commerce Act draws it arbitrarily at the tariff. It does not itemize the curious details that go to the cost of hauling frieghts from one State into another, but it says what proportion the prices charged for that haul must be in relation to each other. But is this line the constitutional line? The gist of the authorities construing this passage appears to be that the intention of the constitutional clause was to secure a perfect equality to the several States as to commercial rights. And to prevent unjust and invidious distinctions which local jealousies or local and partial interests might be disposed to introduce and maintain as against States. (Veazie *v.* Moor, 14 How., 568, 574; Mobile *v.* Kimball, 102 U. S., 691; Welton *v.* Missouri, 91 Id., 275; Gibbons *v.* Ogden, 9 Wheat, 1, 224; and see *The Federalist*, Nos. 7, 71).

"It may be doubted," said Chief Justice Marshall, "whether any of the evils proceeding from the feebleness of the Federal government contributed more to that great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress. It is not therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce between the States. (Brown *v.* Maryland, 12 Wheat. 419, 446)."

So far, then, it would seem as if the power granted to Congress was for the purpose of quieting jealousies between States as to commercial privileges between the States, not to give Congress control of the operations of the instruments of commerce, or to regulate the charges made by transportation companies in differentiating those charges to their expenses, the cost of construction, operation, the volume of freights or the presence of competition. Still less was it designed to make States equal commercially, which geography had made unequal in commercial advantages.

But in Gibbons *v.* Ogden, the same Chief Justice said: "the power to regulate is to prescribe THE RULE by which the commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent * * * as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States * * * * the government, in regulating commerce between foreign nations and among the States, may use means that also may be employed by a State in the exercise of its acknowledged powers; that, for example, of regulating commerce within a State * * * * The power "to regulate commerce" here meant to be granted, was that power to regulate commerce which previously existed in the States." (9 Wheat., 197, 204, 207).

But—with all the above amplification which gives to Congress all the power which the States have (and which they still retain undiminished although they give it) and which interprets the right of Congress to regulate interstate commerce to include a right also to regulate the internal commerce of any one State—it does not seem to be anywhere exactly stated that Congress may regulate any one single detail in the internal operation of any one single instrument of commerce, such as a railway company, and so determine what rate or tariff or classification of freights between what two points shall be a legal and proper, and what illegal and improper. And even the language of Waite, C. J., in delivering the opinion in a late case (Pennsylvania Telegraph Co. *v.* Western Union Telegraph Co., 96 U. S. 1, 9), does not seem, broad as it is, to include it. The Chief Justice's language was as follows: "The power conferred upon Congress to regulate commerce with foreign nations and among the several States is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the new developments of time and circumstances. It was intended for the government of the business to which it relates at all times and under all circumstances, and it is not only the right, but the duty of Congress to take care

that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily incumbered by State legislation."

It will be observed that the Chief Justice (after declaring that a telegraph company occupies the same relation to commerce as a carrier of messages, as a railroad company does as a carrier of goods), based his decision on the right of THE STATES to equality, so far as commerce between them was concerned, and to see that the legislation of any one STATE did not operate as a commercial discrimination against any other. This, at any rate, is exactly consonant with holding of the same court in the earlier case of Welton *v.* Missouri, 91 U. S. 275, viz.: "It (the grant of power to Congress) covers property which is transported as an article of commerce, from foreign countries or among the States, from hostile or interfering State legislation until it has mingled with and become a part of the general property of the country, and protects it even after it has entered a State, from any burdens imposed by reason of its foreign origin." Again, the power is co-extensive with the subject on whom it acts, and cannot be stopped at the external boundary of a State, but must enter its interior. (Marshall, C. J., in Brown *v.* Maryland, 12 Wheat. 446.) "The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does not in any respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of commerce." (Field, J., The Daniel Bull, 10 Wall. 557, 565.)

In the above decisions it would appear that what was insisted on was the right of each State to equal commercial privileges with all the rest; and even the exact words of the decision of Field, J. (in Sherlock *v.* Alling, 93 U. S. 99, 103), in which he holds that the constitutional power of Congress to regulate commerce "authorizes legislation with respect to all the subjects of * * * interstate commerce, the persons engaged in it, and the instruments by which it is carried on," do not seem to cover THE

TARIFFS charged by the "instruments," at any rate unless they discriminate against States. In Canada Southern Railway Co. *v.* Bridge Co., 8 Federal Reports, 190, it was held, indeed, "that Congress may, in the exercise of its power to regulate commerce, prescribe the charges for the use of a bridge over a navigable stream." But the charge was an arbitrary one, or, if not arbitrary, at least bearing some desired proportion to a fixed sum, such as the cost of the bridge, or the average expenses of keeping the bridge in repair. But railway tariffs are not rigid or arbitrary; nor could a railway company be found so superior to the fluctuations of value of material, rates of wages, cost of material, etc., as to make rigid and arbitrary rates. So long as States are not discriminated against, where is there a decision which prevents a railway company from being as much its own judge of the conditions under which it can afford to do business as the grocer or the butcher who watches the markets, and sells his molasses or his beeves at one rate by retail and another by wholesale? But the times when the fathers provided that there should be no discriminations against STATES are not these times. There were no Pacific Railroads—indeed, no railroads at all, State or Interstate. Hereafter it may be argued that, since those words did not contemplate—could not have contemplated—railroads, which were yet to be conceived in the brain of man, it is unconstitutional to apply them to railroads at all. But let us waive that question here. The words "discrimination between States" then could not have certainly contemplated the problems of freight tariffs arising in 1887, just a century later, when almost every railroad in the country was the contracting agent of every other, and receivers of freights for points indifferently upon the Atlantic or Pacific, or Lake or Gulf ports, and every conceivable point anywhere between, in an area of 8,832,000 square miles. The term discrimination against a state at that date could only have meant the debarment of the citizens of one State from transportation privileges into another State, which were granted to a third. How possibly in 1787 could a state of affairs have been contemplated when the enforcement of a "short and long haul

See decision of Bragg, Commissioner in (1st Annual Reports, Interstate Commerce Commission)

clause in a Federal statute should make the wheat and corn and hogs of Kansas, Missouri, Iowa, Nebraska and Minnesota, and the cattle of Texas, New Mexico and Colorado (undiscovered countries then, not even indicated upon the maps of the world), not worth shipment to New York or Baltimore at the rates which railroads, to pay running expenses, charge Pennsylvania, Virginia and New York farmers. Very possibly in the days when our fathers put that clause into the constitution, years ago, potatoes were imported into Boston from Scotland and sold at a profit. But here, in January, 1888, Scotch potatoes have been imported into Boston, and have been sold at a profit, simply because, under the clause they then draughted, a law has been passed providing that the railway systems of the United States (which the poets who were then contemporaries never dreamed of in their wildest flights), should not charge more for a short than for a long haul under substantially similar circumstances and conditions." Is the Interstate Commerce Law intended to put the United States back into the condition in which they were in 1787? I quote from a late authority, which seems to suggest something of the sort: "The humblest artisan, mechanic, and farmer now finds a small advance upon fuel, and every article that he eats or wears, luxuries and necessities as well, and when he becomes educated up to the fact that the advance upon all these articles is owing to this law, which bars the free interchange of commodities throughout our vast domain, which has hitherto existed under the untrammeled laws of trade and business, he will be heard from."

The fact undoubtedly is that the interstate law has introduced the protection of distance for localities, especially to the advantage of Western manufacturers against Eastern manufacturers, and to the disadvantage of the Eastern consumer of Western products. The untrammeled traffic before the law was passed made the breaking down of this barrier of distance possible by cheap through rates.

I have said that the history of the railway in the United States was a history of freight reduction. Let me quote here a couple

of convenient tables, taken at random from those published constantly by the Federal Bureau of Statistics:

STATEMENT SHOWING REDUCTION IN FREIGHT CHARGES PER TON PER MILE ON LEADING TRUNK RAILROADS OF THE UNITED STATES.

Railroads.	1868.	1873.	1883.
	Cents.	Cents.	Cents.
New York Central Railroad †	2.743	1.573	.91
Pennsylvania Railroad *	1.906	1.415	.819
New York, Lake Erie and Western †	1.81	1.454	.78
Boston and Albany Railroad †	2.811	1.958	1.19
Philadelphia and Erie *	1.609	1.135	.62
Lake Shore and Michigan Southern *	2.336	1.335	.728
Michigan Central *	2.45	1.891	.83
Chicago, Burlington and Quincy *	3.248	1.921	.....
Chicago and Northwestern ‡	3.168	2.351	1.42
Chicago, Milwaukee and Saint Paul *	.....	2.50	1.39
Saint Louis, Iron Mountain and Southern *	.....	.....	1.56
Chicago, Rock Island and Pacific §	.....	2.29	1.17
Illinois Central *	.....	2.20	1.43
Chicago and Alton *	.....	.....	1.13
Pittsburgh, Fort Wayne and Chicago *	.....	1.41	.79
Average	2.453	1.803	1.055

AVERAGE CHARGES PER BUSHEL FOR TRANSPORTATION OF WHEAT FOR SIXTEEN YEARS.

	Charge per Bushel.
1868*	42.6
1869	35.1
1870	33.3
1871	31.0
1872	33.5
1873*	33.2
1874	28.7
1875	24.1
1876	16.5
1877	20.3
1878	17.7
1879	17.3
1880	19.7
1881	14.4
1882	14.6
1883*	16.5
1884	13.0

* Year ended December 31. † Year ended September 30.
‡ Year ended May 31. § Year ended March 3*

Among railway experts this history of the reduction of rates is, perhaps erroneously, charged to the constantly decreasing rate wars and the gradual adoption of pooling systems. But let us assign it to their yielding to the laws of supply and demand. It still follows, however, that (since, unless there is a difference of value in commodities at different points, freights cannot be moved at all) if the element of mere distance only is to be considered, the inferior merchandise at a certain point can control the market to the entire exclusion of a better quality further off. Here again was a problem for the railway experts to meet, and they met it by a system of freight classification. But freight classification is "discrimination" which the Interstate Commerce Law, if rigidly applied—puts an end to. In other words the Interstate Commerce Law is a bull in a china shop, rushing in rough-shod among all sorts of delicate complications and elaborate calculations and upsetting them all by a single "fiat" born of the highest sense of the public safety, no doubt—but none the less utterly ruinous if actually applied to the interests, not of the railways but of the people—the very people who have enacted the law and who are the beneficiaries of the reserved powers of the States of which they are respectively citizens without interference with which the interstate law cannot be enforced. Not to mention certain penal jurisdiction conferred upon the commission by the act—which it would be impossible to find in the powers of the general government itself unless actually granted to it by the States themselves. Here again, it is the rights of the citizen no less than of the railroad company (admitting a distinction between a citizen and a company) which are invaded. For a crime implies a criminal and admits of an accessory, and if in any case a railway is a criminal by reason of disobedience of the Interstate Commerce Act, then any aider and abettor of the company committing the act—that is to say, any shipper who accepts the transportation is a criminal equally with the company. But, says the advocate of the law—all these objections are finical and visionary. The "long and short haul" clause has a definite meaning, settled long ago. It is taken from the second section of

the British "Railways and Canal Traffic Act." A sufficient answer to this, however, we have seen would be that if the clause has a defined and settled meaning, it was impolitic to upset and unsettle that meaning by addition of the qualification "under substantially similar circumstances and conditions." (And an equally pertinent answer might be that Great Britain and the United States have different political systems, and do not regard political legislation with the same sentiments.) But the practical and sufficient answer is, that British railway management does not present the same problems as ours to be overcome. There are no extreme linear distances to be overcome; no transcontinental systems, no great climatic differences of tropics and temperate zones whose commodities are to be interchanged; and, above all, no paralleling lines. By the large system obtaining in the United States. by which any and every railroad company is an agent for any and every other, ticketing passengers and billing freight over any other line, it is rather difficult to conceive of a railroad which is or may not be an interstate railroad and subject to jurisdiction of the Interstate Commission. It must not be forgotten then that the single element of distance is, and constantly must be, a very unwise element in this discussion. The sliding scales adopted by the railroads were for the benefit of shippers, not for the benefit of the companies. Everybody acquainted with the matter knows that to charge by the element of distance alone would save the companies from fifty to sixty per cent. of the cost of its bookkeeping and auditing departments, besides enabling them to dispense with certain other departments(such as, for example, its freight contracting departments) altogether. But to adopt that rigid rule would ruin more interests than it conserved, and those the interests of shippers, not of the railroad companies. The "drawback" and the "rebate" are conveniences merely—whereby inequalities of haul and handling can be equated without disturbance of general schedules for particular and single cases. It costs more to handle small parcels going short distances than large parcels going long distances—and no amount of legislation can

make it otherwise, and the making of freight schedules is one in which every department is and must be consulted, and in which hundreds of circumstances and conditions (rarely even "substantially similar") must be taken into the account. We have seen what the railways themselves, of their own motion, have done to meet and ameliorate, if not solve, these difficult and delicate problems. Now let us step aside and see the Interstate Commerce Commission dispose of them! Senator Cullom's statement about trade-centres is so remarkable that it deserves a chapter by itself.

CHAPTER XII.

RAILWAYS AND TRADE CENTRES.

If, therefore, a century or so from now, a student of the political history of the United States shall ask, How happened it that its Congress was once moved to establish a court of star-chamber aimed at an industry not ordinarily operated except by charter; a court which was to be not only an oyer and terminer, but an inquisitor of its own motion; which should dispense with due process of law or with any process at all; which should supply penalties, civil, criminal, and as for contempt with plentiful liberality; but never assume, nay, never so much as hint or suggest a probable or even possible protection or premium upon any probable or even possible good or useful thing to be by any accident done or subserved by that industry—if, we say, the political student should ask that question, in view of the fact that no public interest seemed to have required such a statute, and that its immediate effect was to raise freight rates to the people passing the law—the lawyer of that date might suggest possibly that an application of this rule of interpretation, providing that the intention of the framers of a statute may be looked into (under certain restrictions), would be most likely to furnish some sort of a clew; and in turning to Senator Cullom's speech, just given, possibly might select the following most remarkable passage, as possibly,

the real reason for the passage of this most extraordinary act: "The requirements of the law that all charges shall be reasonable, and that there shall be no unjust discrimination or unreasonable advantage or preference in favor of any person or place, had been shown by the character of the complaints against the enforcement of the act to be absolutely demanded.' In reference to the long and short haul clause, he said: '*For many years the railroads of the country have so absolutely controlled our interstate commerce that we have no means of knowing what are the natural channels of trade, or what would be the effect of the natural laws of trade upon many, at least, of the present commercial centers.* What the critics of the law call *natural centers of trade are centers created by railroad favoritism which has diverted trade from its natural channels into artificial ones at the expense of less favored localities.*'" [The italics here are ours.]

In reading the above, the student of political history aforesaid might be led to remark that to centralize and to submit to the espionage of a single paternal commission of this Government, not only the entire railway interests of the United States (being its operation of 139,986 miles of railway, with a funded debt of $3,669,005.722, upon which interest is to be earned), but the minutest daily detail of such operation, were a rather costly method of gratifying a single Senator's or even a whole Congress's laudable curiosity as to "what are the natural channels of traffic, or what would be the effect of the natural laws of trade upon many, at least, of the present commercial centers"; and that it appears to be a rather cool proposition to charge the cost of gratifying the aforesaid curiosity upon the only party who had betrayed no curiosity in the premises whatever, but kept on its even tenor, operating at its own cost the franchises the people had given it, and endeavoring to pay one and one third per cent on the capital it employed.

But, to drop the student of political history, it is important, it seems to me, for the present generation to know, at last, just why the Interstate Commerce law was passed, and for just what sins of the railways they have been put under pedagogical surveillance.

It is because these wicked railways have been creating trade-centres! The revelation is a particularly startling one, because among the railways themselves the maxim had always been to try and accommodate themselves to such trade-centres of the country as already existed at any possible expense and at all hazard. No [illegible] injunctions out of chancery were too ~~terrible~~; no right of way was too costly; no rivers too broad; no mountains too solid; but the railway must supermount and penetrate, at whatever expense, to reach the trade-centre which Nature had already provided. This, I say, has always been the maxim of the railway company: "Do the business of your territory, count first cost of construction as absolutely nothing. A railway is a means of supply to a trade-centre, or a connection between two or more trade-centres. The product of the country must have its best markets, but those best markets are at its trade-centres; at all odds we must get to them. No matter where the president of the company lives, or where the capital is subscribed. Construct our line to the best market!" Such, practically, have been the directors' and the promoters' instructions. And, indeed, it has always seemed to be supposed, even outside of the magic circle of the railway companies, that the capital to build railroads was subscribed on the understanding that they were to do the public business, and not operate against it and in its teeth, and that it would be unnecessary demonstration of corporate idiocy to attempt to procure capital upon any other. But now comes Senator Cullom with his proposition, and we are advised that we have all been wrong; that, instead, these naughty railways have been at work not connecting but CREATING trade-centres!

Had anybody but one of the fathers of the Interstate Commerce Commission made this statement, not much attention might have been paid to it. Every railroad man—certainly every shipper over a railway—knows that the establishment of a trade-centre is a matter entirely out of the power and beyond the control of railway companies not only, but of any known human power; a matter regulated by the unwritten laws of trade, laws not only unwritten but, except in their operation, entirely unknown; a result and not

a process. Let Senator Cullom, for example, try and establish a trade-centre, and he will speedily recognize the impossibility of it. And did Senator Cullom try, it would not be the first attempt. There are plenty of platted cities and towns to-day in the United States which have been laid out to make grass grow in the streets of actual cities in whose favor Nature and geography long ago decreed that they should be, in deed and in truth, trade-centres; and the platters, their successors and assigns, yet feel the hiatus made in their bank-accounts by payment for the costly honor of making valuable suggestions to the attraction of gravitation.

I need not, I suppose, refer, for example, to the plethora of "cities" and "city sites," whose prospects the vast dockage and trade territory of Chicago has superseded. But the force, the unwritten law, that has twice built the city of Chicago within the memory of men just entering middle age, was not devised by human brains. Perhaps a better answer to Senator Cullom's remarkable proposition about "trade-centres" could not be devised than a brief tracing of the operations of this law in this very building and rebuilding of a geographical trade-centre of this continent. And if it shall be said "even if human laws did not build Chicago, a lack of exact knowledge of this operation and an interstate jealousy of their inevitable result contributed to the building," yet that ignorance and jealousy, it may be replied, were a part of the result of the working of the law, rather than of the process by which it worked.

No human foresight placed Lake Michigan where it is. But human foresight did perceive that somewhere near its foot a great commercial centre must some day arise. Various points were selected by shrewd pioneers; and if the reader will take down his map he will find them still indicated upon it—Milwaukee, Racine, Kenosha, Waukegan, and Michigan City were perhaps the most promising of these (the latter especially, since here was the very foot of the great trunk or tongue of navigable water which penetrated from the north into the rich central ridge of the nation, along which its integral artery of inland communication must run, and from whose head great navigable wings were spreading

east and west). Yet, while all these points were selected, somehow, the swamp where Chicago now lies was carefully avoided. But it seems those natural causes which we call laws of trade were in operation; the heavy settlement of the Ohio Valley sought its outlet on the lakes, and somehow the first practical expression of that search—a railroad—capped, not Milwaukee, Racine, or Kenosha, but the swamp where rose Chicago. And now occurred a wonderful thing. The jealousy of those lake-ports which the laws of trade had passed aside in favor of Chicago began to operate. Each of these lake-ports saw the increasing prosperity of Chicago, and each and every one of them fell into the very error which Senator Cullom cherishes to-day. . In almost his exact language each one said to itself—You people who are rushing to Chicago to build your docks and elevators are poor deluded creatures, who "have no means of knowing what are the natural channels of traffic." Those railroads are fooling you. Don't go to Chicago. Here at Racine, at Kenosha, at Milwaukee, is the place for your capital. Here is where the great development is to be. (There was no Interstate Commerce law then, but here was its spirit, and its root was, as perhaps a generation later, jealousy pure and simple). But somehow the capital still poured into Chicago; its docks and elevators multiplied. What was the next step of the jilted towns? Each went to work; each for itself built a railroad of its own, mortgaging the property of its citizens, issuing its bonds, pledging its credit, and multiplying its taxes to pay for it. What was the result? Simply that the wheat and corn and produce which had come to each of these ports to be loaded into ships—thereby making the trade on which the town lived and fattened in moderate prosperity—now having a cheaper transit to a larger and therefore better market, went where?—went to Chicago! In other words, these cities had destroyed themselves—impoverished not only their citizens, but loaded their successors with debt—not to increase their own prosperity, but that of hated Chicago! They had tried to fight the inexorable laws of trade and of trade-centres, and had been ruined in the attempt. The West is not free to-day from the

effects of this lake-side effort to guide and assist the natural laws of trade. Money is yet being paid annually into New York trust companies in the vicinity of Wall Street by these same small lake cities (many of which by the prevailing of better counsels have become manufacturing towns of wealth and importance), as their yet uncompleted penance for believing in their own wisdom as against the unwritten statutes of the universe; and if Senator Cullom sincerely believes that trade-centers can be created by human foresight, he can—by following up the map in the direction I have indicated—find many students in the hard school of experience willing to enlighten him.

It has been the bulk of criticism against the Interstate Commerce law, not that it was unconstitutional, but that it was an attempt to equalize by statute what Nature and cosmic forces has rendered unequal; that it was Geography and not the railways which had established sea-ports and lake ports and river-ports; and that —since the sea, the lakes, and rivers did not as a rule charge more for a short than for a long haul—it was putting the statute-book of the United States into the position of a bull warning off comets, to give a railroad a franchise *to live* with one hand, and with the other to brandish a sword over it, if—in operating its franchise—it compete with its competitors! But the bottom objection on the part of the people to the railway companies which has produced the Interstate Commerce law, lies unconsciously far deeper than that. It lies in the fact that the laws of trade invariably select the same points for trade-centres that Nature herself has first selected. New York, Boston, Baltimore, New Orleans, San Francisco, were trade-centres before railroads were devised. When a trade-centre was wanted on Lake Michigan, Chicago was selected, not by men, but by the force of natural laws. What the capitalists called a "swamp," and so avoided, was really a business plain. Sand drifted in, and built a bar before Michigan City; at certain other lake points the bluff, crumbling constantly into the lake, imperiled the harbors; other natural causes worked away at others. The cosmic forces were at work in favor of Chicago, and Chicago was elected trade-centre of the majestic West.

In other words, it is simply because *it can not* dispense with the discriminations of Nature that the people are disappointed with the railway as an institution, and so propose to vent their disappointment by enacting laws bristling with penalties, but nowhere promising them protection; putting their affairs into the hands of non-experts, and calling them to penal and paternal account for every breath they draw. If Senator Cullom seriously believes that the railroads have created the trade-centres of this continent arbitrarily, let him tell us why every railroad company in the country is willing to spend millions of dollars in order to get into such cities as New York and Chicago? Could a railroad create a trade-centre as easily as Senator Cullom imagines, it would certainly come cheaper to that company to make a trade-centre of their own than to buy their way against every known legal, commercial, political, and geographical obstacle—into one already established.

The Pennsylvania Railroad Company was built by Philadelphia capital; certainly it did not desire to discriminate against Philadelphia. If railroads can make trade-centres where they like why did not the Pennsylvania Railroad create a trade-centre for itself in its own City of Brotherly Love? The Lehigh Valley Railroad Company is a loyal Pennsylvania corporation, and its owners are natives there and to the manner born. Why did not the Lehigh Valley Railroad Company make for itself trade-centres on its own line, where land was cheap, instead of crowding into New York City at one end and into Buffalo at the other, at enormous cost? The Grand Trunk Railway is a British institution built to foster the interests of Great Britain's greatest colony, at the direct expense of its greatest commercial rival in the world's family of nations—the United States; why does not the Grand Trunk road make for itself commercial centres at Montreal or Toronto or Hamilton or Ottawa or Windsor? Why has it spent millions of good honest British gold in buying its way into Chicago at one end and Boston at the other? If, the moment railways were organized, they set the laws of Nature and of man alike at defiance, and be-

gan "to divert trade from its natural channels into artificial ones at the expense of less favored localities," as Senator Cullom boldly charges, why is the Baltimore and Ohio Railroad, owned in Baltimore, and largely by that city itself—a corporate pet of the State whose securities are a legal investment for trust funds —expending its earnings and surplus like water to parallel the Pennsylvania in a territory requiring massive construction, and fighting not only that corporation, but the State of New Jersey, in order to get into the city of New York at one end, as it has succeeded in getting into Chicago at the other? Why not save your millions, gentlemen managers of the Baltimore and Ohio Railroad Company, and build a few trade-centres for yourselves at small expense? Senator Cullom says it is simplicity itself to make an artificial trade-centre; that railways have not only had no difficulty in doing it, but have actually and tortuously thereby diverted trade from natural trade-centres to the artificial ones created by themselves. Why not, then, scatter as many trade-centres as your business requires along the line of your railroad, and grow opulent beyond the dreams of avarice by doing business between them, with no possible competition to intrude and make you afraid? Seriously, is it not common information on the subject that the laws of trade are as inexorable as those of gravitation, and that it is simply impossible for human ingenuity to create a trade-centre or to destroy one already made by Nature? Yea, and, moreover, that not only are human beings unable to shift the trade-centre, but they can not even alter the local commercial centres of a trade-centre. When Chicago was wiped out by conflagration it occurred at once to certain clever owners of real estate in the neighborhood of the heart of the city—within the city lines, and of easy communication therewith—that their opportunity had arisen. Instead of buying land in the old business centres at ten thousand dollars a foot, and spending a reasonable fortune in carting away *debris* before beginning to erect new walls let us go to work at once and build on our own lands, they said; the trade of this vast metropolis can not wait, it will come and transact itself on our premises as soon as completed. What

was the fact? The clever ones built well and richly, and sat within and wooed the commerce of Chicago to change its seat. But they wooed in vain. The commerce of Chicago transacted itself knee-deep in its own ashes, and in tents and hemlock shanties, until it could re-rear its own palaces over its own head on the very spot where it had thrived before, and refused to hear the voice of the real-estate charmers, who disappeared in bankruptcy and disappointment as the result of trying even to move the sites of the local habitations in which the commerce of a city dwelt. And their successors have not yet forgotten the experiments of their principals. And so it is throughout the continent. The honest farmer in Vermont or in Central Illinois does not perhaps grumble because a few superficial feet of land on the East River in New York City, or on the Chicago River, in Chicago, are worth more for trade purposes than the aforesaid honest farmer's acres in his interior precincts. But he does complain, and, what is more, makes his complaint a political engine for passing Interstate Commerce and "Granger" laws, when he finds that his produce can not be marketed anywhere except upon these very few square feet, and that the railway will persist in charging him less money to haul his product from Vermont to New York, or from Central Illinois to Chicago, than it does to carry it to the heart of the great American desert, if he shipped it so. Is it not true that the market must be fixed where everybody wants to go and cannot be fixed where nobody wants to go? Is there, in other words, a condition in the problem of transportation (or in any other mundane affair for that matter) in which the laws of demand do not regulate the laws of supply; and, interchangeably, the laws of supply the laws of demand? Surely, it seems a kindergarten sort of business to even ask the question; and yet, honestly, is not this the very bottom of the non-railroad public's objection to railroads (their unconscious objection, no doubt, but still their objection and their grievance); viz.: that, after all these years of railroads, the business centres are just where they always were—New York, Boston, Chicago; that the railroads *have not* diverted the business of the continent from the trade-centres

and planted them elsewhere, and so given other merchants than those of the first commercial centre a chance to grow rich? Is it not, in other words, not *because they have*, but *because they have not* made arbitrary centres and "diverted trade from its natural channels," that they are put under the centralized dictatorship and power of an Interstate Commission? The Almighty set the bounds within which the Atlantic Ocean and Lake Michigan roll and fret. If Senator Cullom states facts when he says that railways built by human hands can divert trade from its natural channels and create by favoritism natural centres of trade, then it is unjust and monstrous that these railroads should still operate themselves on the Scriptural principle, "that to them that hath shall be given, while from them that hath not shall be taken away even that they hath"; and still wickedly cater to the Atlantic Ocean and Lake Michigan ports (which were there before the railways were built), instead of equalizing matters and making trade-centres for the interior where there are no Atlantic Oceans and Lakes Michigan. Why should the railroads cruelly carry trade to and from those ports which are already trade-centres by reason of their waterways? Let the railroad companies be just and fair. To be sure, railways in Europe still despotically carry to Liverpool, Antwerp, Marseilles, but this is a land of equal rights. Let all its citizens have equal privileges, and equal opportunities of getting rich. The New York merchant and the Chicago merchant have grown rich because they have the Atlantic Ocean and Lake Michigan over which to do business. Now let the railways (who have only, according to Senator Cullom, to turn their hands over to oblige us) build some trade-centres for the honest farmer, or the interior merchant. Let us have as many trade-centres as we have watering-places, for example, until this nation, where the people make the laws and own themselves, becomes the land of trade-centres! And if the coarse and brutal railway company —owned by the grasping and bloated capitalist, the heartless Gould, or Vanderbilt, or Huntington, or Garrett—will not give us any trade-centres, let us petition the Interstate Commerce Commission, that these men and their soulless companies cease to

dominate and despotize over this republic, and build us trade-centres wherever we want them; and, if they then refuse, let the Commission itself designate the points where our trade-centres shall hereafter erect themselves, and to which our railways shall build their track.

The simple, honest truth is that railways, like natural persons, must live by doing what is set before them; that however their tariffs are regulated, whether discriminations by rebates and drawbacks are allowed or disallowed, whether they are ordered to charge more for the long haul or the short, whether passes are given to shippers or refused—the railway must do the business the people bring to it, or go into bankruptcy and wind up. If grain seeks Chicago, if beef seeks New York, if cotton seeks New Orleans—to Chicago, New York and New Orleans must the railway haul these products. It cannot carry them to Milwaukee, to Albany, to Mobile. And, moreover, to pay its fixed charges, the railway company, like any natural person, must take the business it pays it to do, and reject that which will not pay it. Neither a railway company, nor all the railways on this continent, nor yet the Interstate Commerce Commission, nor any merely human agency can make a trade-centre. It is a disappointment, no doubt, that this is so; that toward points already favored with ample water communication, and to those only, will railroads extend their tracks, and ultimate their systems. But, even though that disappointment be crystallized in penal and prohibitory legislation, such indeed has always been the vital principle of self-preservation in the railway, as in the human system: and such indeed, I fear (especially since Judge Deady has held judicially that railways have a right to live), will always be the rule, whether or no this people's antidote for their disappointment be to place the railroads in charge of changing administrations at Washington, or whether tariffs will be more reasonable when left to politicians than to railway experts.

CHAPTER XIII.

THE LOUISVILLE AND NASHVILLE DECISION.

THE Interstate Commerce Act was the concentration of popular forces, which had for years fought railway incorporations in our legislatures and in our courts: the crystallized expression of fifty years of popular discontent with railway management throughout this Republic. The people, therefore, looked to the first utterance of a commission created to administer it, for arraignment of the wrecked railways for that disregard of popular rights, that high-handed indifference to law, and supercilious contempt for the non-railway element in the community, with which they had been so often charged—that should be scathing in its terms, and triumphant in its justification of the government's constitutional right to assume control of a private interest, and to take the first step toward that centralization which Washington deprecated in prospect, which Jackson scotched in its birth, and from the possibility of which a bloody and costly civil war was supposed to have finally relieved.

The opportunity for such first utterance came. That opportunity was the presentation of a petition, on the part of one of the corporations brought under the paternal power of the commission,—the Louisville and Nashville Railroad Company,—for relief from the operation of so much of the fourth section of the Act as prohibited railway companies from charging more for the "short haul" than the "long haul,"—a prohibition which was and is the gist of the Interstate Commerce Act, and which opens up the entire question of the right of a railway company to judge for itself as to its right to live, operate its roadway, to pay its fixed charges, or generally conduct the business for which the people had incorporated it.

The commission heard the petition aforesaid and duly promulgated its opinion. But upon promulgation, the opinion, so far as

any crimination of the railway companies or any indication of the constitutionality or policy of the law was concerned, turned out to be as unsatisfactory to the non-railway public as Balaam's cursing of Israel was to Balak. "What hast thou done unto me?" cried the disappointed king. "I took thee to curse mine enemies, and behold, thou hast blessed them altogether." The first pronouncement of the Interstate Commerce Commission begins with an apology for not interfering with the railway companies, which, to say the least, was unique in juridical literature. It declared (p. 5*), that "if the commission were to perform the inquisitorial duties imposed upon it, it would be compelled to forego the performance of judicial and other functions which by the statute were apparently assumed to be of high importance, and even then its authority to grant relief would be performed under such circumstances of embarrassment and delay that it must in a large measure fail to accomplish the beneficial purposes which it must suppose the statute had in view." The commission deprecated any performance under its inquisitorial function, since that function "in a single case might require for its proper determination the taking of evidence all the way from the Pacific to the Atlantic; and this not merely the evidence of witnesses for the petitioning carrier, but of such other parties as might conceive that their interests or the interest of the public would be subserved either by granting the relief applied for, or denying it" (p. 5). Certainly, nobody can blame the commission for preferring to sit cosily in Washington and exercise judicial functions than to take testimony not only of the parties before the commission, but of any party who might consider himself aggrieved by any act of a railway company or by any proximate or remote effect of such act or its theory, from Maine to California. And, even should the commission be able to decide the matter before it without the bother of hearing testimony, the commission admits that "an adjudication upon a petition for re-

*The references are to the official copy of the opinion printed at the Government Printing-Office, Washington, 1887. See *post.* Appendix.

lief would in many cases be far from concluding the labors of the commission in respect to the equities involved: for questions of rates assume new forms, and may require to be met differently from day to day: and in those sections of the country in which the reasons or supposed reasons for exceptional rates are most prevalent, the commission would, in effect, be required to act as rate-makers for all the roads, and compelled 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 localities." "This [and here is a touch of nature which shows, at any rate, that an interstate commissioner's life threatened at the very outset to be no bed of roses] in any considerable state would be an enormous task. In a country so large as ours, and with so vast a mileage, it would be superhuman. A construction of the statute which should require its performance would render the due administration of the law altogether impracticable" (p 5) says the commission finally. And yet if the Interstate Commerce Act means anything, it means just what the commissioners, in their first decision, declared to be impracticable, —superhuman and impracticable! Here are seven commissioners, at a salary of seven thousand five hundred dollars per annum, launched with an appropriation of one hundred thousand dollars from the people's treasury, and on that equipment expected to supervise the hourly business of a continent at present in the hands of perhaps a couple of thousand auditors, with a combined staff of a hundred thousand clerks and agents—with salaries ranging from twenty thousand dollars downwards, and overworked at that! But to proceed with examination of the opinion. Having frankly admitted that to endeavor to discharge the functions it was organized to administer would be superhuman and an impossible task, the commission sets to work, as in duty bound, to find something to do. It is legally bound to assume that it was created for a possible purpose, to do something not superhuman. And so the commission, groping, as it frankly admits, in the dark, strikes at last upon the clause, "under substantially similar circumstances and conditions," and finds at last a foothold. Surely, it says, "if the

carrier . . . shall depart from the general rule, . . . if the circumstances and conditions of the two hauls are dissimilar, the statute is not violated." Clearly, if Congress shall take the grocery trade under its jurisdiction, and declare that the poor man must not be obliged to pay more per pound for his two pounds of sugar than the dealer pays per pound for his two thousand hogsheads, it would put an end to the wholesale grocery business on the instant. But if Congress says that this rule shall only apply to the sugar made "under substantially similar circumstances and conditions," then the sugar trade may go on in peace, as before, relying on the immutable truth that no like transactions are or can be under the same circumstances and conditions, and foregoing to attempt the 'superhuman task' of taking evidence all over the continent,—from the planters, the cultivators, the harvesters of the sugar-crop, the teamsters who carried it to the railroad, the shipper, the booking clerk, the carrying company, and so forth and so on, down through the jobber, the wholesaler, to the consumer or the messenger sent to pay the twenty or twenty-five cents for the brown paper parcel,—in perfect faith that in no two cases can the adjective clause 'substantially similar' he predicated to any one transaction when collated with any other transaction on record. Certainly the commission is right. Indeed, the wonderful part of the opinion is in the exact legal consistency and candor with which it admits that the law is one, *which, if logical, is impossible of enforcement: and, if illogical, can only be administered by leaving matters precisely as they were before the law was passed!* Following the above line of reasoning, the commission declares (p. 6) that the statute becomes practical, and may be enforced without serious embarrassment. The commission, having settled this much, now proceeds to collate the two sections of the Act which relate to the long and short haul (Sections 2 and 4), and proceeds. "It is not at all likely that Congress would deliberately in the same act, and when dealing with the same general subject, make use of a phrase which was not only carefully chosen and peculiar, but also controlling, in such different senses that its effect as used in one place upon the conduct of the parties who were to be reg-

ulated and controlled by it would be essentially different from what it was as used in another" (p. 7). And therefore the commission renders its decision in a sentence which I must be pardoned for putting in italics: "*Beyond question, the carrier must judge for itself what are the substantially similar circumstances and conditions . . . on peril of the consequences*" (p. 7). But is not this what every carrier (nay, every business-man) does, has always done, and always will do to the end of time? And is not this a pronouncement from the mouth of the Interstate Commission itself, that if the clause 'under substantially similar circumstances and conditions' is of the essence of the Act, then the law is a nullity?

But after having arrived, by application of every rule of law, and the legal construction of statutes,—that is to say, by irresistible logic,—to its conclusion on p. 7, the commission proceeds for twenty-two pages more to discuss analytically and still logically the situation. What situation? The case submitted by the petitioner, the Louisville and Nashville Railway Company, was simply the case which arises every moment of the day to any railroad company which carries freight for hire; and while considerable percentage of these cases are not necessarily 'interstate' in their character, yet every practical railroad man (certainly every student of political economy) knows that such a character, from a commercial standpoint, could be given to almost every one of them without any difficulty. The remaining twenty-two pages of this startling opinion—startling in that it is a confession at the outset that the Interstate Commerce Act cannot change the situation without discontinuing the business and commercial transactions of the people of the United States—is merely an analytical examination of the reciprocal relations which arises between a shipper and a carrier in any contract of transportation.

The commission proceeds to lay down the following propositions, which it deduces from the case before it and the evidence taken:—

"1st, That the support and maintenance of a railroad ought properly to be borne by the local traffic for which it is supposed to be built, and the through traffic may justly be carried for any sum not below the costs of its own transportation.

"2d, That the cost of local traffic is greatest, and the charges for carrying it should be in proportion; and, if they are so, they will often result in the greater charge for the shorter haul.

"3d, That traffic carried long distances will much of it become impossible if charged rates corresponding to those which may properly be imposed on local traffic; and it must therefore be taken in recognition of the principle accepted the world over, that the traffic must be charged only what it will bear.

"4th, That the long hauls at low rates tend to build up manufactures and other industries without injury to the traffic upon which rates are heaviest.

"5th, That charges on long hauls which are less than the charges on shorter hauls over the same line, in the same direction, are commonly charges which the carriers do not voluntarily fix, but which are forced upon them by a competition from whose compulsion there is practically no escape."

Since the above propositions are axioms in railway management, and since, however immutable, axiomatic, and eternal they are—were before there was any Interstate Commerce Act or Interstate Commerce Commission, and will be after both have been numbered among the figments of the past; since the commission is not supposed to be organized for the purpose of ruling that black is black, and white is white,—what was left for the commission to say to the railroads of the United States except, "Depart in peace, be ye warmed and filled, you have done nothing worthy of death or of bonds, you have conserved the best interests of the people, have built up a continent, and are worthy of the highest praise?" That is precisely what it does say, for it unhesitatingly adds, "On the construction we give to the statute, these several applications need not have been filed, and therefore they might now be withdrawn without further judgment" (p. 8). But the commission remembered the Act upon which it was created, and that it was expected to justify at least the action of Congress in creating it, and so announced its willingness to go into the merits of the question (it had just decided that there was no question), making its excuse, "that it is

manifestly important to the public interest, as well as to that of the railways themselves, that mistakes shall be as far as possible avoided" (p. 9),—(a proposition to which certainly nobody can demur); or to limit these propositions, or discover anywhere a public need or benefit that the management of the railways of the country have overlooked. How should the situation be changed to benefit the people? How can it be changed without destroying our interstate commerce; nay, without destroying the welfare of the country and paralyzing all business transactions? "Every railroad company," says the Commission, "ought, when it is practicable, so to arrange its tariffs that the burden upon freights shall be proportionate on all portions of its lines, with a view to revenue sufficient to meet all the items of current expense, including the costs of keeping up the road, buildings, and equipment, and of returning a fair profit to owners." But this is precisely what every railroad does, has always done, and always will do. To attempt to make tariffs other than proportionate would require an increasing of its book-keeping expenses, and of its auditing bureaus, to every railroad company, which would make it cheaper to go out of the business than to continue. In other words (the words of the opinion), "a railroad ought not to neglect any traffic of a kind that will increase its receipts more than its expenses" (p. 22). To state it frankly, therefore, the opinion of the commission, in the case of the Louisville and Nashville Railroad Company, is a benign approval of the business methods of our railroad companies which certainly merits the exclamation of King Balak over the efforts of the prophet Balaam.

And then the Commission repeats in detail its already general commendation of the railways of this Republic. It says that they may compete with Canadian railways (p. 22) and with the water-courses (p. 22). And the Commission therefore arrives at its rulings (p. 27), which (except that it interprets the short and long haul clause to mean that a question of fact is thereby substituted for a qnestion of law; and, inferentially, that to determine it the testimony of every individual in the employment of the railway must

be taken by the court) *does not in the slightest degree* change the hibitude and method of running a railway; does not introduce a single innovation, or modify a single rule of railway operation: in other words, Congress has enacted a statute which a commission chartered to enforce it declares *enacts that things shall remain as they are*, and that, if the statute is ever suspected of interfering with things as they are already, the subjects of the statute must interpret it blindly and at their own peril!

It would seem, therefore, that the Commission itself has decided that the railways of this Republic have been, up to the date of its own appointment, properly managed: certainly there is no disapproval of any particular acts, and only in the sixth ruling does it condemn certain possible acts and differentiations which it is not alleged that any railways have been guilty of, and which certainly, therefore, is mere *obiter*, or the expression of a general opinion upon a very interesting but entirely gratuitous conundrum of supposititious railway policy. But is not a disturbance of constitutional limitations a rather high price to pay, even for so valuable a boon as is a governmental approval of American railway management? Once broken, who can say what will pass these barriers? Perhaps there may yet be established at Washington an interstate theatrical commission which shall review and absorb the early functions of Master of the Revels, stage censor, and Lord Chamberlain! And, indeed, for such a bill, Congress need not again borrow its policy from an Empire of Blood and Iron. It can get its suggestion this time from a Republic—from Mexico—where theatres are not only under the espionage of government, but even the migratory Yankee circus is officially coerced into living up to its posters. The theatres of the country have certainly quite as much influence upon the morals of the rising generation as have the railways, and, therefore, their regulation can be very easily construed to be the public policy. Nor are theatres so far removed, in legal status, from the condition occupied by the railways, as may be imagined. Each are licensed by law. Each issues tickets which are limited privileges or (to a certain extent) themselves licenses, extending to certain limits, which are exactly

defined; and each is supposed not to discriminate between individuals of the common public. Moreover, each is taxed or assessed by way of taxation in a manner dependent upon income, instead of holdings. Clearly, the theatres should come next.

CHAPTER XIV.

A YEAR OF INTERSTATE COMMERCE CONTROL.

But, although the Commission thus hastened to declare that the Interstate Commerce Law, with its pains and penalties and forfeitures—with its iron grip—to ban and never to bless—upon the railway interests of the country, was after all only meant in a Pickwickian sense, that nobody had done wrong, and that everybody and everything was comfortable, although the Commission so declared, such was not the spirit in which the act was framed, was very far, as we have seen, from being the spirit of Mr. Hudson's book.

When Government laid the iron hand of a Bismarck upon the railways of this nation, the aggregate number of miles of railroad constructed in the United States in 1886 was about 9,000, the aggregate mileage for the entire country at the close of the year being 137,986, and the rate of increase during the year 7.8 per cent. In New York State the total number of miles of railroad was 7,649, the increase being but 96. The greatest increase in any one State was in Kansas, where 1,678 miles were constructed, and next to that were some of the states and territories along the line of the Northern Pacific, Dakota leading with 821 miles. Nebraska, however, was only third in the list, with 628 miles, while Minnesota had 492 and Wisconsin 451. Texas built 607 miles, Iowa 431, and even Florida had 314 miles to her credit for last year's work.

Throughout the country the mileage of all the roads from which returns of earnings and traffic operations were received, exclusive of elevated roads, was 137,986 The total capital of all such

roads, including elevated roads, was $3,999,508,508, as against $3,817,697,832 for 1885. The funded debt was $3,882,966,330, and the unfunded, $280,673,814, against $3,765,727,066 and $259,108,281 for 1885. The share capital and indebtedness together foot up $8,163,148,652, an increase of $320,615,473, the rate of increase being 4.09 per cent.

Upon the entire capital invested the gross earnings exceeded 10 per cent., and the net earnings almost equalled 3.5 per cent. The interest paid was $189,036,304, and dividends, $81,654,138. Of the funded indebtedness, 4.75 per cent. was paid, being .02 per cent. less than the amount two years before. To the whole share capital the percentages of dividends paid was 2.04 against 2.02 for 1885. The earnings per mile increased 4.9 per cent. having been $6,265 in 1885, and $6,570 last year. The operating expenses of all the roads were $524,880,334, the net earnings being $297,311,615. The total earnings from freight were $550,-359,054, from passengers $211,929,858, and "from miscellaneous sources," $59,903,038. And the sources from whence these figures are derived showed a constant factor of increase calculated by experts at about 11 per cent., with an almost equally constant decrease of operating expenses of from one half of one to one and one half per cent.

Now when this Bismarck grip aforesaid descended upon this enormous industry, upon these railways, their procedure, tariffs and particulars, under guise and pretext of a provision of the Constitution framed at a time when railways were unconceived of in the brain of man, and when the only possible object of that provision must have been to prevent internecine commercial hostilities or discriminations among the States, it was not mere aimless or experimental legislation, no product of mere zeal or temptation to legislate on general principles. The experiment of biennial or even triennial legislatures in some of the States, as tending to decrease the volume of legislation, has always been found to work well. The volumes of session laws of our States are, as to their bulk, apt to become mostly lumber in a surprisingly short time, the number of statutes whose usefulness will survive the first few

years of their passage being found a surprisingly small one. And even of our National Legislature it can be fairly said that the more time it wastes, the greater the nation's gain. But while this act is the offshoot of sentimental prejudice and jealousy, no doubt, its fathers and advocates in Congress cannot be suspected of having been actuated by either jealousy of the railways of or mere zeal to give an account of themselves to the people. The vastness of the nation's growth for half a century had rapidly made railroads into systems. The immensity of the plants, the accumulation of costly rolling stock, the huge volume of business, could not fail to impress the people with a sense of power not proceeding, like the power of the government, from the consent of the governed—that is, from themselves. The enormous operations carried on daily in the people's eyes suggested enormous profits, and engendered popular discontent. These enormous operations necessitated new channels and feeders; that is to say, new railways. To save time, the ingenuity of the nineteenth century had devised construction companies, which, by subscribing for the capital of these new roads, should obviate the slow and tortuous collection of money by private solicitation; and these, centralizing profits as well as subscriptions, massed wealth in localities, and attracted the popular envy. The boundlessness of all these brought great bankruptcies for courts to deal with; and the result of each was the inevitable wrecking of great corporations, and the private accumulation of wealth in the hands of the winners in these legal fights. No sooner was this the situation than a new problem intruded itself upon the already complicated maelstrom. The movement known in Europe indifferently as internationalism, socialism, or nihilism (where it grew originally from the discontent of the constantly enlightening and self-educating masses at the support in opulent idleness of privileged classes, useless courts, and—to the people—always absolute monarchies) was utilized to express among us the popular envy, discontent, and prejudice against corporations it felt in Europe only against kings; and the result was felt in strikes, trade-combinations and central labor unions, where one trade supported another, and

each all, in abandoning work by the thousands and ten thousands at one and the same time. Underlying all this was, of course, the capital fact that the railway industry itself was not at fault; was not responsible for the shrewdness of the Wall Street operator: for intentional defaults in dividends and interest procured for wrecking purposes: for the huge competition and the closeness of margins which put them at the mercy of a single disastrous season. The president of a great railway recently asserted, in answer to a demand from the company's employees for higher wages, that in twelve years his company had not only not netted a dollar, but had actually mined and distributed 51,000,000 tons of coal at a cost of $51,000,000, and paid $53,000,000 for the privilege! The margin of profit had disappeared entirely in the giant competition of American railway companies, which yet had given, and was daily giving, support to almost a tenth part of the people of the United States.

But great economic facts like these, like great investments, lose strength by their very immensity. The laborer working ten hours a day, six days in the week, with a family of ten children, clamoring for food, cannot be approached with figures showing, that, out of a hundred millions of income, his employer had not been able to reserve one ten-thousandth per cent; that the private fortune amassed by one man in railway wrecking was the crytallization of ruinous losses to thousands of smaller capitalists not of the working-men; that the plant of the great corporations had been paid for by the hard-earned savings and small economies of thousands more; and, most of all, that, of the total of all these losses and savings, almost a hundred per cent had gone to pay for labor and for material the cost of which itself was largely the labor of handling it. Such statements as these, few of his betters have the brains to grapple with. The day-laborer may have sundry vague impressions that he should be paid in proportion to the number of his children rather than according to the value of his services; that the idea of anybody handling a million of money is a personal affront; and that altogether he is a slave, and that any change and convulsion, and shifting of bases, could not make him

more wretched, and brought an even chance of betterment. He may not even be equal to these ideas, but simply absorb the single idea that the master of his local union has money to occasionally pay him a *per diem* almost as great for not working as he receives from his employer for working. But he knows that he is the slave of somebody. The nearest railway company is to him the most prominent representation of massed wealth, and he accordingly selects it for the slave-driver against whom he is to rebel. Everybody saw the wrong, but the remedy was not so apparent. Everybody sees logically that the railway as an institution is innocent of all this chaos. But logic is one thing, and practical solution, quelling of clamor, amelioration of disasters, are quite another. So it was that when the complicated problem reached the floor of Congress, it was no longer a sentiment, a prejudice, or a jealousy; it was a mighty and imperious fact, demanding and insisting upon immediate attention. Congress passed the Act to regulate interstate commerce, the President approved it, and it was the law of the land.

On the first day of January 1888, the Interstate Commerce Commission handed in its first annual Report, for the substantial part of a year the government had held in its nominal control this vast interest. Who had been benefited? The best evidence attainable ought to be the statement of the commission appointed to administer the statute taking control of the railways. In this first annual report the Commission says (the italics are ours), "The Act to regulate commerce has now been in operation nearly eight months. . . . It has operated directly to increase railroad earnings, especially in the cutting-off of free passes on interstate passenger traffic. . . . Freight traffic has been exceptionally large in volume, . . . *no destructive rate wars have occurred* but increased stability in rates has tended in the direction of stability in general business." In fine, then, it was the railway companies which had been benefited.

But this was not the object of the statute. The railways had not complained of ill treatment. They had, indeed, recognized the immense complications of competing systems, the damage

suffered by the people from the rate wars and unjust recoupments for the expenses thereof, and had themselves provided a remedy by the establishment of so called 'pools'; which, however, the Act of Interstate Commerce promptly and peremptorily abolished. It is something of a commentary on the words we have put in italics above, that whereas, at the date at which the statute took effect, the situation was tranquil and satisfactory (the 'pools' having lowered rates to a minimum never reached before), the passage of the Act sent tariffs upward at a bound; and before the report above quoted had left the binder's hands, a rate war began in the West whose bitterness, while it raged, surpassed in violence any ever known. Here was an opportunity for the Commission to step in and vindicate the necessity of its creation. By virtue of Section 13 of the Act, it needed not to wait for a complaint or a complainant. It could step in and of its own motion take jurisdiction and settle everything. Did it take such jurisdiction? Not at all. It went placidly on, carefully hearing and writing long opinions as to the petty grievances of individual shippers and of local boards of trade; but its ears were as adders' ears to that din of traffic battle in the West. The companies engaged were daily losing millions, until several of the roads involved ceased to solicit freights, to do no business at all being considerably cheaper than to move their trains for unprofitable transportation. No doubt by this time all dividends have been adjusted to this rate war, and so the people of the United States will pay all the bills; and the railways, relieved of their burdens are going on again. But such relief has not obviated the constant prospect of more wars and more bills for the people to pay. What did all this mean? Did it not mean that the Interstate Commerce Commission had no intention of raising a question between itself and the great Trunk systems of the United States—a question which would inevitably reach the Supreme Court of the United States, where a decision declaring both Act and Commission unconstitutional, null and void, would have undoubtedly been rendered? The Commission was willing enough, it seemed, to hear trivial complaints, but hesitated to argue for its life against eight billions of capital.

But waiving that question what has one year of Interstate Commerce control accomplished? It has been in operation a year. So far as the people of these United States are concerned, has it changed the situation (existing at its approval, and admittedly clamoring for remedy) in the slightest degree? Have strikes ceased? Are rates lower? Have private fortunes disappeared or ceased to be accumulated? Have the railways been curtailed in their alleged despotic sway over the lives, fortunes, and liberties of our people? Had any recipient of a pass over one of our railways, or of a drawback, rebate, or special privilege, complained to Congress that he had been so favored? (That concessions to the few were injuries to the many, and the 'pass' system an unmitigated wrong and nuisance, these were the complaints of the railway companies, not of the people; and Congress had heard them with ears as deaf as adders' ears for the last quarter of a century.)

To these questions some of us are still looking for an answer, others the commission itself has answered for us. The Interstate Commerce Commission (to its credit, everlastingly be it said) did not wait for the filing of its first annual report to come boldly forward and tell the people of the United States that they were in error: that the railways were not their enemies; that, although bound to assume that it had been created for some wise purpose, and therefore to hunt around to find that purpose, the commission did not propose to share in the Hudson communistic cry of 'Down with the railways!' or even to admit that railways were a menace to the liberties of the people. It seized upon its first opportunity to assume that the statute of Interstate Commerce was of no practical value to anybody, but intended to be understood in that purely Pickwickian sense in which, as we have seen, the Commission interpreted the Interstate Commerce Act in the Louisville and Nashville matters; nay, more, in its first report was careful to point out what advantage it had been to the vast interests it had been created to control but had carefully avoided interfering with.

But have the railways been benefited? In holding that railways may, (nay, must, or get themselves into trouble with the

Commission) go on doing just what they always have done, what light has been thrown upon the railway problem in the United States? To say that a grocer may sell sugar, but that if another grocer across the way also sells sugar, the first grocer may not compete with the second grocer, is clearly to so embargo the first grocer as to close him out. To be sure, the law added a clause limiting the prohibition to "substantially similar circumstances and conditions;" but the limitation scarcely helped matters, since it merely substituted a question of fact for a question of law and opened an interminable and costly field for the taking of testimony and the examination of witnesses which could easily paralyze any interest forced to enter it. Besides, to recur to the simile of the grocer, it might be said to permit the retail trade in sugar only on condition that no wholesaling was attempted. Our grocer might sell a pound of sugar at any price he could get, but must be careful, if he sold a thousand hogsheads, not to diminish his rate per pound, either by quoting his commodity at less, or by rebating or offsetting for the comparative magnitude of the transaction, in view of the cheaper average cost of delivery, book-keeping, or consideration of interest, or discount, exchange, or the market value of money.

But if this is complication worth mentioning, what shall we predicate of the attempt to make the same hard and fast line apply to the railway transportation problem? Says E. P. Vining, Esq., late Commissioner of the Northwestern Traffic Association: "As a matter of fact, distance, while it is one of the factors in determining both the cost and the value of transportation, is not by any means the only factor, and is frequently of far less importance than many other elements in the problem. It often costs a railroad company more to stop a train and unload a package of freight, or set a car out, upon a siding distant only 10 miles from the point of departure, than it would to take the freight through without stop for a distance of 100 miles to the terminus of the train's run. Moreover, many of the most important elements in the cost of transporting property by rail, are wholly independent of the length of the haul. It requires as much work to load and

unload a car that is to be hauled ten miles as it does when the property is to be forwarded a hundred or a thousand miles, and the use of the car is required for practically the same length of time in one case as in the other; for it should be remembered that the time during which a car is in motion with a load constitutes but a small portion—usually not more than one-eighth—of the time that the car is used by the shipper. It must often be brought empty from a distance; one day, or, more frequently, two or three days are allowed for loading it, then at the destination the same length of time is allowed for unloading, then the car may not be needed at the point to which it has been sent, and must be forwarded empty to the other end of the road in order to obtain a load. So it results that a road which can show that its cars are kept in motion with a load of freight for an average of three hours out of the twenty-four, can make an exceptionally favorable showing. Now all these disadvantageous circumstances are even more likely to occur in the case of short hauls than they are in long ones; as the chances are that when a car is stopped to be unloaded at a small local station, it will not find a load at that point, while if it is sent through to the terminus of the division, it probably will find a load there. In this important item of expense it will therefore be seen that the distance run, within reasonable limits, affects the cost but slightly. So too, the station expenses, the cost of keeping the roads, clerk hire, general superintendence, and many other elements of the cost are practically independent of distance. In fact, almost the only item that can be named as bearing even an approximate ratio to the distance is the cost of fuel for raising the steam by which the train is moved, and this cuts so insignificant a figure among the total expenses as hardly to be worthy of consideration.

"For many years our western roads have recognized the existence of established trade-centres, and have exercised the greatest care to place them all upon a common footing, and give them all a fair and equal opportunity to compete for business. Where it has been necessary in order to accomplish this result, equalization tariffs, so-called, have been carefully prepared, so that every

possibility of inequality and unfair discrimination might be removed. The charges for transportation from the Atlantic seaboard to each of these trade-centres, when added to the charges from such points to the ultimate destination of the goods, have been made the same *via* all routes, no matter at which one of the trade-centres the goods were purchased by the consumers. Thus, if goods imported or manufactured at New York were wanted at a little inland town in Nebraska, they might be purchased at New York, Chicago, St. Louis, Omaha or Kansas City, and the total charge for transportation from New York to destination would be the same in every case; the charge for transportation from New York to Chicago when added to the rate from Chicago to destination being the same as the total charge for transportation from New York to St. Louis, plus the rate from St. Louis to the destination, and so in every other case. In this manner all unreasonable discrimination has been avoided and all jobbing points have had a fair and equal field throughout the West to obtain all the trade that they could command upon even terms.

Under the Interstate Commerce Law this situation of affairs has been changed, and changed for the worse. The tendency is now to throw all business upon the shortest lines regardless of the business interests that have been built up upon the longer routes. Each centre of trade has a little section of the country surrounding it in which it has an advantage over all its competitors, but everywhere else it is at a disadvantage as compared with some one or more of the towns with which it has heretofore competed upon even terms.

"The Interstate Commerce Commissioners have done something towards removing the difficulty so far as through shipments are concerned by ruling that the longer lines may make the same rates that are established by the short lines, and may do this without reducing their rates for hauling a part of the way over the same track. This, however, only emphasizes the injustice that is inflicted upon the jobbing towns that are situated upon the longer routes, as they now see freight carried from New York through their own city to western destinations at a through

rate materially lower than the sum of the rates from New York to their city plus the charge for transportation therefrom to the ultimate destination. They therefore find it impossible to longer compete for much of the trade that once was theirs, and much of the dullness that is gradually settling down upon our western cities is owing to this cause. It is evident, therefore," continues Mr. Vining, "that the law in this way creates an injustice far greater than any which it was intended to remove; an injustice far greater than the most reckless of railroad officers would have dared to inflict upon the patrons of his road." When the Interstate Commerce Commission, therefore, in the Louisville and Nashville case held that the public welfare required railways to be operated subsequently to the Act, precisely as they had been operated before it, and the only public safety was to overlook the Act completely, it kept to the line of truth and soberness, no doubt. But how has it helped the railways? Clearly they must get together and settle the transportation problem for themselves, or else let it go unsettled.

It was clearly unfair that this dog-in-the-manger law, this iron-clad statute which forbade them on peril of death to pool their issues, either to discuss or settle them themselves, and at the same time declined to settle their issues for them—which compelled them to fight their costly fight at the expense of their stockholders and forbade them to treat for peace—it was clearly unfair that this statute should be other than Pickwickianically enforced. So, long ago, the warring railroad companies came together in 'conference,' 'committee,' or 'synod,' and terminated the ruinous battle I have above alluded to. Only (in deference to the statutes of united Germany, and the Bismarck policy whose spirit has lately materialized among us in the shape of an interstate commerce law), whatever they called it, they were mighty careful not to call it a "pool."

CHAPTER XV.

THE "ACT OF GOD" AND THE RAILWAY COMPANY.

So far back that memory of man runneth not to the contrary—imported into the very earliest English jurisprudence from the Roman Code, was the theory of Nemesis, of the Inevitable, the Unavoidable. When it reached our Motherland and Christian times, and clamored for recognition in the Common Law, our reverent Norman-Saxon lawyers, to be sure, called it the "Act of God." But it was the Stoic "Fate" of the Roman—his "Nemesis," his "Adrastea,"—just the same; and the earliest English digests declared that "the act of God or of the public enemy" discharged all legal responsibility.

The Roman law having always been, as it still is, the law of continental Europe, it was inevitable that such American colonies as were settled from the continent should retain the doctrine of the "act of God," and that when the Spanish brought it to Mexico, and implanted it in a community saturated with superstition, it should have augmented quite as rapidly as its adumbration has waned with us, Religious faith being in Mexico to-day as living and active a force in common personal life with the great body of the people as it was in Europe in the middle ages; we have an illustration of how, while the limitations of the Old-World doctrine have been gradually narrowing in the United States, it still holds its ground in Mexico with proportions which practically make it the leading condition of all contracts, expressed and implied. "As an instance" (writes Mr. W. W. Nevin, Secretary of the Mexican National Construction Company (*Science*, Dec. 3, 1887), "of how this provision enters into express contracts, in Mexico, let us take the great railway-concessions to the leading American companies. In these concessions "fuerza mayor" generally appears in three distinct places. The obligations of the company to build within certain fixed periods are suspended in case of "fuerza

mayor." The concessions are forfeited by the companies carrying any foreign armed force or goods contraband of war, unless they can show that this was done because they were unable to resist "fuerza mayor." Certain bounties granted to the railways cease during the time that the operation of the lines is suspended, even if the suspension should take place by reason of "fuerza mayor." In the smaller transactions of daily life this doctrine continually appears as an unwritten law, which suspends all other laws, or contracts. or obligations. Superior force, which often in Mexico means what would simply be called disaster in the United States, is to the Mexican mind a good defense against almost any obligation. For instance: should one lease a boat for a month at a fixed sum, and unusual storms prevent using the boat for half the month, that would be ample reason why the lessee should tender only half the rent to the lessor, and he feel constrained to accept the offer.

'Fuerza mayor' is translated as 'superior force,' or 'uncontrollable circumstances. These circumstances are nowhere, to my knowledge, defined, but the facts of what are uncontrollable circumstances are to be decided in each case. The coercion of an armed force is 'fuerza mayor.' The violence of storms is 'fuerza mayor.' The flooding of a river is 'fuerza mayor.' And, as before remarked, very generally what we are apt to consider as disaster, in Mexico becomes 'fuerza mayor,' and operates to relieve a contract of its obligations. To the American mind a contract made must be carried out, and disaster, if there is any, falls on the man who has loosely guarded his contract." Mr. Nevin adds: "In the confluence of the American and Mexican civilizations now taking place, it becomes an interesting question how this wide difference between the usage of the two countries will adjust itself." My own idea is that as United States capital and energy are speedily civilizing Mexico by building railroads within her territory, doubtless we may expect a very considerable attenuation of the doctrine at no distant day. But in the common law countries of England and the United States the doctrine is oftener laughed at than applied. In our very

youthful days, indeed, we may have been taught that railway accidents were sent to teach us the shortness and uncertainty of human life. But most of us have survived that view of the matter. Counsel for a railway company, who, in defending an action for damages for haystacks destroyed by fire communicated from the company's locomotive, claimed that his client had no control over the winds of heaven, speedily found himself out of court—his client should have used spark-arresters. But until a very recent date, courts of justice habitually saved time and routine labor by assuming accidents far less remote from their proximate causes than the distance between a haystack and a smokestack to be 'Acts of God;' though, indeed, a very recent English court, while recognizing the principle, declared that a shipwreck, to be a veritable act of God, must have happened in extremely bad weather. And yet, possibly a well-known rule of law limiting the responsibility of the employer for mental conditions of the employé may not be entirely without bearing upon the question at hand. The common law expressly declares that there are possible conditions of an employé's mind which discharge the employer. An employé who, in ejecting trespassers, becomes vindictive, passionate, or willful, and on that account employs a surplusage of force, so acts at his own and not at his employer's peril. Might there not, for example, be a question whether an entirely unforeseen and instantaneous absence of mind on an employé's part was any more within his employer's control than a burst of passion? Let us see. Though to-day in the United States the principle has all but disappeared from our digests, its existence is rather suggested by the somewhat startling fact, that, in all our recent chronicle of railway casualty (and I confine myself to the United States in this chapter, because our safety appliances are invariably the latest, costliest, and most elaborate in the world, our corps of watchmen and care-takers the most numerous, and our estimates of the value of human life incomparably the largest), as a rule the simplest accident is the deadliest, and the utmost perfection of life-saving appliances (whose adoption saves in nine hundred and ninety-nine cases in the thousand) may yet turn out to be

helplessness itself in the thousandth case when the calamity arrives: in other words, the disaster, when it comes, will be found to consist in the operation of some perfectly familiar law of nature (as of gravitation or inertia), set in motion by the simple oversight of some trained and trustworthy subordinate; which would have resulted from identical causes thirty centuries ago to the most primitive of conveyances equally as well as to our own limited expresses, with their air-brakes, vestibules and coupler-buffers.

In examination of the history of railway accidents in the United States, the physical conformation of the country should not be overlooked. As railways were first constructed among us, and had their formative days of operation, in the Eastern States rather than among the flat lands and ordinarily easy grades of the Ohio valley, it was only natural that the bulk of experiment, mismanagement, error, and fatality, should have been expended on our Atlantic slopes. The period of the railway in the United States is yet one very insignificant in point of years. To-day, the maps of our territory of greatest railway development have Lake Michigan and the Mississippi, instead of the Atlantic Ocean, for their east. But by the time that railway construction had begun to extend westwardly from those boundaries, those greatest insurances of safety—the air-brake, the coupler-buffer, the steel-rail, the improved means of communication between the engineer, conductor, and his crew, which had been slowly wrought out in the East—had come into practical use. Hence it is that the Pacific railroads, though spanning gorges, climbing summits, and surmounting problems of construction to which the achievements of our Atlantic slope railroads are moderate, have no such records of manslaughter and destruction as we find in the records of Eastern rail-transportation. At present every American railway is equipped—is obliged by law to be equipped—with the last improvement in safety-insuring devices, not only for the convenience of the passenger, but for the safety of the employé against his employer as well as against fellow-employé. And it is an amenity to the credit of the railway system (which ought not to be lost

sight of in these days when wage-workers are taught to look upon anything incorporated as their deadliest foe) that it has introduced into the common law of the land the principle that an employer's duty to his employé is only discharged by furnishing him the safest tools for his work which the strides of science have devised.

For a long period of years, these strides of science seemed to have happily abolished—in the United States—the great railroad disasters of the past. Since the frightful catastrophe at Carr's Rock on the Erie Railway of twenty years ago, science and experience have rendered the giddy curves and bold escarpments of its Delaware division as safe as the tangents crossing an Iowa prairie. The Angola and Ashtabula terrors on the Lake Shore Railway wound up practically the list for that line; while, had it not been for a phenomenal piece of silly and unaccountable carelessness at Spuyten Duyvel (when Mr. Wagner, an inventor of parlor-car conveniences, was crushed to death in one of his own coaches), the New York Central wonld have closed up its own perspective of great calamities at New Hamburgh, something in the neighborhood of fifteen years ago, six or seven years later than Carr's Rock. But this fifteen years of succeeding and wonderful immunity from great railway-disaster—most wonderful when we consider that it corresponds with an era of railway-building in the United States unparalleled in the history of human industry—was brought to a termination by a rapid succession of calamities, grouped into a period of ten months of the year 1887, which, in point of loss of human lives (and no other point is worth considering), were, if not the most terrible in railway annals, yet fall little in horror below the Wigan slaughter, or the annihilation at Tay Bridge, of the multiple horrors of which (analogous to those of shipwreck and railwreck combined) no living tongue shall ever tell the story. These five occurred during the first ten months of that year, (1) on the Baltimore and Ohio Railroad at Republic, Jan. 4, 1887; (2) on the Central Vermont Railroad at White River, Vt., Feb. 11; (3) on the Boston and Providence Railroad at Forest Hills, March 14; (4) on the Toledo, Peoria, and Western

Railroad at Chatsworth, Aug. 10; and (5) at Kout's Station on the Chicago and Atlantic Railway, Sept. 12 of the present year. These—being remarkable not only as breaking the long immunity, but as illustrating (what has come to be a truth in the relations of the railway to the people, viz.:) that most accidents are occasioned by lapses, not of the company, but of representatives of that very class from which criticisms upon railway companies and managements is always found to spring — I think warrant examination here. It will, I think, be found that they were each and all due, not to any defect of machinery, signals, or other mechanical appliances which the corporation could have supplied, or to any defective or careless management, but to those unaccountable omissions of trained minor servants to perform a perfunctory detail of their routine work—a detail which it was their second nature to perform—which it would have ordinarily required a physical effort for them *not* to perform, or to have kept them from performing; that is to say (for it is difficult to exactly formulate it in words), an instantaneous mental incapacity on the part of a trained workman or care-taker, over which laws, rules and incorporations have no control, and against the possibility of which neither hope of reward nor fear of loss or punishments can afford any defense or protection whatever. They all occurred on perfectly equipped roads, and from the simplest natural causes. Each of the accidents might have happened to the rudest contrivance of primeval or prehistoric man,—to the cart which used the section of a tree-trunk for a central wheel, or to the hollowed tree-trunk which itself formed a means of water-transportation—as will appear from their recapitulation.

The Republic accident was in this wise: a freight-train, which had ample time to make a run of some dozen miles to get out of the way of a through express coming in an opposite direction, which had made that run easily every night for years, for once failed to accomplish it. All the mechanical appliances and motive power of the train were in perfect order; its crew were old servants of the company. But the weather was exceptionally cold, the water in the tank of the engines was all but congealed, and the

crew of the freight-train found themselves encroaching on the time of the express. Here was not only no novel situation, but, on the contrary, perhaps the simplest which can occur in any railway management. There was no emergency to meet. Probably not an hour passes in a day but that, somewhere in the vast railroad operations of the country, the case is paralleled. But here at Republic, on the night of the fourth day of January, 1887, the hand sent ahead with the signal failed to carry it: two trains met. The old catch problem of the irresistible force meeting the immovable body demonstrated itself; namely, the trains were destroyed, and twenty human beings lost their lives.

Just a month later, Feb. 5, came the disaster at White River. A night express thundered upon a bridge, which was supposed to be properly inspected. Every mechanical portion of the train was working as it should; every servant of the company was at his post; nevertheless, the locomotive left the rails instead of following them; the express-train was plunged to the frozen surface of the river fifty feet below; and, of its three hundred passengers, thirty-two never breathed again, or were roasted in slow agony from burning *debris* upon a floor of ice. Every bridge on every railroad-line in the nation is ordered to be watched. A corporation must act by its agents. This bridge had probably been hourly inspected for years, but somebody had failed to inspect it on the fifth day of February, 1887. Another month went by, and on the morning of the 14th of March a packed train on the Boston and Providence Railroad of three hundred mechanics and working-women was moved into Boston for the day's business. Somebody had failed to report or to discover a flaw in the iron-work of a bridge at a point called Forest Hills. The locomotive followed the rails. Everything upon the train was in perfect order; no appliance in the company's power to provide was lacking; but the bridge sank. The entire train except two rear cars was piled up in kindling-wood in a defile made by a passing road below; and from the undistinguished mass forty persons were drawn out dead. Four months of absence of great calamity by rail was then to succeed. But on the evening of the 10th of August an excursion party, gathered at

Peoria and other points in Illinois, was to be carried to Niagara Falls. There were sixteen cars loaded with excursionists, and two engines were needed to draw them. The ordinary rules were observed, and due notice of the extra movements of such an unusual train was duly wired ahead for the guidance of watchmen and track-walkers. All went regularly; but it seems that a side-fire had been kindled on the right of way for clearing-up purposes, and that some track-walker whose duty it was to watch it had allowed it to communicate to the beams of the wooden bridge at or near Chatsworth. The train reached the bridge, but the bridge was already disabled by fire. It sank as did the one at Forest Hills, and eighty-five passengers were killed,—a most unprecedented death-list for an American railway accident. Compared to the above, the fifth of these fast-recurring disasters seems almost dwarfed, and yet it was the most wonderful—from the standpoint of our present examination—of all. An engine drawing an express passenger-train on the Chicago and Atlantic Railway became disabled by the breaking of an eccentric strap. The engineer hauled up at a water-tank for repairs. A freight-train which followed, relying upon the schedule which the first train should ordinarily make, ran into the rear of the train with the disabled engine. Nine persons only were killed,—a small list compared with those we have previously noted. But doubtless it is as terrible to the victim to be killed in a list of nine as in a list of eighty. It was the story of the Republic disaster over again. Some brain had failed to do the regular act which it had performed for years as regularly as clock-work.

Now here, in less than nine months, one hundred and eigthy-six lives, all precious to their owners if to nobody else, are sacrificed. Nobody but the claim agents of the corporations can ever know the number of wounded and maimed (nor even they, since many of those who escape do not care to press their undoubted claims), and the stockholders of the unfortunate corporation do not care to advertise the dead loss of material, or what it costs in cash to replace its ruined rolling-stock and transported material, lest the newspapers of the country dilate upon the preference shown for income

over flesh and blood, and lash the popular dislike of corporations into fury with the stereotype with which every railway-accident fills our admirable press. But allowing four to one,—a minimum allowance,—nearly eight hundred more human beings have suffered a loss of limb or extreme physical pain, and several hundred thousands of dollars of direct expenses were incurred, for every one of these accidents which should never, in the ordinary course of human procedure, have happened at all.

I say, should never have happened; but where shall the responsibility be placed? By law it is placed, and rightly, so far as human laws go, upon the railway companies. But every railway-officer knows that the penalty his company suffers for such accidents as the five above described is exemplary,—is vindictive only, so far as the companies themselves are concerned. That they have done—were doing at the time the accident happened—all that experience and science had taught them how to do, or that their professional or expert brethren employed in the same industry could have done under like circumstances, they know, and every railroad-man in the country knows, perfectly well. But the railway-official also knows very well, however, and realizes very submissively, that for these accidents he will be held to answer, and *not* before a jury of experts, or of his peers. The newspapers in no one of the above instances fail to ascribe these accidents to the 'greed of corporations.' The 'greed of corporations,' to be sure, is only another name for the duty of every corporation to pay dividends, if it can; and doubtless, were there no such duty or no such chance of payment, there would be no railroads, from the simple disinclination of ordinary mortals to invest money in costly enterprises without hope of return or increment. But waiving that consideration, certainly it is hedging on the superfluous and the elementary to say that no railway company courts accidents; that, no matter how large any individual loss by reason of the casualty may be, the company (that is to say, its stockholders collectively) must be the largest losers of all. When Sir James Coke said that corporations had no souls, he did not utter an epigram; he simply stated a fact. A corporation has no sentiments; it is sim-

ply put together for business purposes, because a number of individuals see in association the means of investing in a lawful industry too heavy for any one of them to singly handle. An attempt to earn dividends is properly described as 'greed,' of course. But what reader of newspaper denunciation pauses to subtract from any particular year's 'greed,' of any particular corporation, the million of dollars or less that a great disaster like that at Chatsworth or Forest Hills draws out of a company's treasury? Whatever the present state of clamor against corporations may develop, it is at least apparent, from considerations of pure 'greed,' that a railway corporation is not a Moloch, or a contrivance incorporated for the purpose of burning or mutilating human beings, or crushing their bones, or mangling their limbs. Philares is said to have built a hollow bronze ox in which to roast his subjects for fun, and the Druids to have made wicker cages in which to burn as many living babies as possible for economy's sake. But bronze oxen and wicker cages are comparatively inexpensive, and there were no courts handy in which damages could be recovered by the survivors. Locomotive engines and Pullman coaches are, however, rather costly receptacles in which to holocaust passengers. In spite of newspaper declamation, is it not self-evident that no railway company gloats over the ruin caused by an accident upon its line?

To return to the five accidents above mentioned. In not one of them does it appear from the reports to the company—the newspaper accounts, or even the findings of the local coroner's jury (a class of valuable material which is not apt to be over complimentary to the railway-company)—that any of the mechanical agencies—operating-gear, engines, couplings, air-brakes, signals, wheels of the trains wrecked—were old, superannuated, or in bad repair; that the track was in bad condition, or that ordinary wear and tear had been allowed to remain unmet or exceeded. The utmost that can be said was, that, out of some three millions of men employed in the service of the railway companies of the United States, *five* seem, for some utterly unaccountable reason, to have each failed in *their* duty of a moment, and that the moment in which each failed

happened in the course of chance to be the supreme and crucial moment respectively in the lives of some two hundred human beings. It is too late in the day to call these failures, perhaps, "acts of God," but what else are they? They are not the fault of the company. The company has no control over the minds of their servants. It could, indeed, negatively control their minds by so overworking them that nature refused longer to perform its functions. (And for the safety of the community we think the law ought to take cognizance of a company which overworked its employés, and hold it to the same responsibility in that case as in cases where the company furnishes dangerous conveyances to its patrons, or old, worn and imperfect machinery to its servants.) But in the five cases above selected there was no such allegation. The men sent out to warn an approaching train at Republic and at Kout's Station for once omitted their routine duty. The track-walker at Chatsworth forgot the bonfire kindled on the right of way. The bridge inspector at White River and at Forest Hills failed to discover, or, discovering, to report, a flaw in a girder or a brace. To say that the companies failed to provide proper persons to perform these duties, is to say that they were willing to take the risk of losses running into millions rather than spend from five to a hundred dollars in cash: and most people who know anything, know that (newspaper reporters and leader-writers, even, to the contrary) that is not the way railroads are managed in the United States, at all events. And we may add, that, had it been, the above enumerated accidents would not have waited until the year of grace, 1887, to have transpired. The railroad company, then, is at the mercy of its employés. I will not cite figures, because figures can be "cooked." But if anybody will sit down and compute the millions spent annually—not on public grounds, but for the purely selfish purpose of avoiding expensive accidents (that is, in self-preservation)—by the railways of the United States, in premiums for new inventions, in training-schools and shops for the education of its servants and the development of improvements, for the purchase of the latest devices for the saving of life

and property, he will find his command of figures taxed to express the aggregate result. And if he will remember the number of courts and lawyers in this great country of ours, and the general gusto with which juries mulct railway companies, he will not wonder, I think, that science cannot move fast enough in devising improvements to be utilized in the physical management of railways. The presumptive margin of profit in railway operation is small enough as it is; but when the recurrence of such accidents as those at Republic, at White River, at Forest Hills, at Chatsworth, and at Kout's Station are admitted into the forecast, it is apt to produce a rather considerable shrinkage in the prospect, or in the temptation of stockholders to build more railroads.

Congress has established a bureau at Washington for the filing of railway schedules, and for discovering what, if any, "long hauls" and "short hauls" can possibly be "under substantially similar circumstances and conditions." What public benefit this bureau may become to the public, it remains to be demonstrated. But, if the establishment of another bureau or commission to devise a means for supplying railway companies with infallible employés were contemplated by the government, the government's good intentions, at least, could not well be questioned. Of the three millions of railway employés in this nation, the percentage who do not do their duty is too microscopical for expression in decimals; but the railway industry happens to be one in which an invisible percentage of carelessness produces enormously visible calamitous results; that is the price we pay for being carried back and forth to our business at five miles in ten minutes instead of five miles in an hour. But before the absolutely infallible employé is found, some eminent counsel of a railway company may yet be bold enough to claim, that, since railway companies cannot take their brakemen and track-walkers from the class of the community which produces Sumners, Websters, and Conklings, the unknown mental processes which sometimes lead a brakeman or a track-walker,—from causes entirely and subjectively mental, to happen to think of something else than his routine duty,—ought to discharge a corporation which has no

soul—if not from pecuniary damages for loss of life, limb, or property it has no agency in procuring, at least from newspaper declamation, and charges of sacrificing its passengers and patrons to mere "greed." Since, (however we may explain it), it happens to be one of the most persistent of truths that accidents are of more frequent occurrence upon bankrupt or non-dividend paying than upon solvent and dividend paying railroads, one might say, logically speaking, that the "greed" of a railway company was a public security rather than a danger.

There is an apparent moral to be drawn from these records of casualty, which, from one point of view, perhaps, is safe enough. We may say, and say with great truth, that no achievement of applied science can be substituted for human watchfulness and care. But to this there would be exceptions. The automatic hay-press, which rams and packs and binds, not only, but debouches the completed bale in time to pack another in the place from which that bale is debouched; the Hoe printing-press, which counts the sheets it prints; and hundreds of others,—are watchfulness personified (and I am told there are mechanisms employed in the most delicate processes of watch-making which are said even to correct a chance misplacement of the material to be worked upon); but, since the operation of none of these is occupied with the transportation of human beings, should these automata fail, no lives are lost, and no public outcry awakened. The better statement is, I think, that no machine can counteract human willfulness or neglect. The machine can only do the share of work allotted it. If the man fails in his, no accuracy of invention can suffice. A dial may register the failure of a watchman to visit a certain point so many times a night, and tell its unalterable tale in the morning. But, where a train of human freight rushes on to death and disaster, death and disaster tell the tale, upon the instant of the dereliction, and when it is too late to correct the fault or supply the omission. And the public scarifies with its denunciation the owners of the machine, and not the man or men who ought to have cleared its track but did not.

Everybody must trust somebody, corporations must trust everybody they employ: nay, more, the railway company must not only trust everybody, but it is at the mercy of every track-walker on its line; and, worse than that, every passenger that railway transports, every pound of freight it moves, is at his mercy too. Should that track-walker's eye be turned from an obstruction or overlook a detail, the eternal vigilance of every other servant of the company is worse than useless. The crash must come, and all the sooner because the machinery which moves the train is of the latest and best, and the coaches the completest and most luxurious that human ingenuity has devised. Penalties, threats, the prospect of rewards, alike fail to make the man do his duty, or to prevent his forgetfulness or willful absence of mind or body at a crucial point, or the intellectual hiatus of a moment which causes his hand to forget once in a half a million of times the required act which it is quite his second nature to do at all the other times. What is it? Is it an "act of God?" Is it inevitable necessity, or is it Nemesis?

The physical perils of the sea appear to have been already overcome. But the peril of panic remains, that no human ingenuity can prevent, and no human discipline, however it may foresee, control. The wheelsman of the "Ville de Havre" had watched a vessel steering towards them for hours in a clear night; but when that vessel was about to crush the great steamer, the very thought of the monumental magnitude of the approaching peril paralyzed that wheelsman's brain, and the brain-paralysis steeled his hand, and he could not turn his wheel the few points that meant safety to a priceless human freight. What is there to provide against here? Shall we still preserve the antique phrase "act of God," or merely say that it is fate or luck? Call it what we will, there is yet, it would seem, an element in all mundane affairs for which nothing human can invent an antidote or remedy, and which possibly should relieve, under our human laws, of the responsibility. Whether or not mere human framers of human laws ever devise a statute for an emergency, of one thing, however, we can, I think, be sure

enough; namely, if a relief from this "act of God" should ever come, it will be because science, and not the reporters, nor yet the leader-writers of our daily newspapers, have grappled with the problem. Everything except the human brain, the human brain appears to have conquered, or to be in a fair way to conquer. But to go outside of itself to control itself—that, it seems, so far to have been unable to do. All that a soulless corporation can do, it will do and does do. But soullessness brings its disadvantages. One of the disadvantages of soullessness is that it has nothing to do with ethical questions. Another is that it cannot consult its own convenience, but must do every thing by established routine. It cannot say, "This claim is so trifling that we will save our auditors, our bookkeepers, our accountants, and pay it." If it be twelve and a half cents it must take its course equally as if it were twelve and a half thousand dollars. Nor can the soulless corporation sympathize with distress or honest deserving, nor with the best of good intentions take into account the number of an employé's children, or estimate the value of his services upon the number of persons dependent upon him for support. On one of the largest railways on the continent there is a rule that conductors whose trains arri ve at a bridge which has been rendered unsafe by accident, or carried away, shall side-track, or haul up, and telegraph back for instructions. It happened once that a through express passenger-train,—one of the heaviest and most important on the line,—on arriving at a small bridge, found that it had been partially carried away. The conductor, an old and experienced servant of the company, duly brought his train to a standstill, sent out his signals, and wired for instructions. He wired and wired again; but, no instructions coming, he himself inspected the wrecked bridge, and saw how it could be rendered secure. With such aid as was at hand, he repaired it, crossed his train, and, on arriving at the end of his run, was promptly discharged from the company's service. A soulless corporation can only think at its head, cannot sentimentalize over circumstances, cannot reward zeal. There must be in each mem-

ber a dependence on the rigid rules to which every other member is subject; and, moreover, each member must assume the implicit obedience of every other member to those rules. The conductor's zeal, although it saved his train, might have paralyzed the time-tables of the entire line. But instead of assuming, as bound to do, that his fellow employés were doing their duty, possibly expecting the approval of his passengers, he disobeyed orders. The company having no soul, could not appreciate or reward his zeal. It only knew that orders had been disobeyed. The passengers, I believe, took due care that the newspapers heard of his skill and courage, may even have voted him a series of engrossed resolutions, or presented him with a gold watch, or a blazoned badge. Indeed, I think I remember that the conduct of the company on this occasion was generally displeasing to the newspapers of the locality, and that the company came in for an abundance of caustic criticism and invective. By imperiously demanding obedience to its rules, however, that railway is still carrying passengers in safety over its thousand miles of track. I do not know what has become of those local newspapers. In other words, if railway companies are understood, among other crimes, to be arbitrary, cruel, and remorseless, it is because of this rigid exaction of duty —unthinking, unreflecting duty—from its every servant, from president to track-walker; whence only is the public safety and the public convenience conserved. The pawnbroker who lowers his dole, and increases his security in proportion to the necessity of the client; the seller of furniture on instalments who bides his time and collects the prices of his goods, and then for a last instalment rapines them back,—these may be industries that fatten on the poor seamstress and the burdened workman who toils for less than bread. But pawnbrokers and instalment vendors do not spring from the capitalist class (they usually come, on the contrary, from the very class of the poor seamstress and the poorer day-laborer), nor do they operate our railways. So far from grinding their employés, I would like to be advised of employers who do more for the employed than the railway corporations of the United States. The railroad company is more apt, I think,

to build lyceums, to stock libraries, to provide gymnasiums and reading-rooms for its servants, than to crush and tyrannize over them. But what the railway company can do, it does do. It will instantly adopt—nay, stimulate by rewards—the latest improvements in safety securing appliances. Up to the date of the latest of the five accidents above specified, no practicable means of heating cars had been invented except car-stoves. Steam-pipes from the engine had, indeed, been proposed for twenty years, but no coupler-joint had been perfected, and no means of keeping the steam from cooling, sufficient to overcome the extreme coolable surface of a pipe serving long trains in the severe weather of the mountains, or the low temperatures of the North and North-west, devised. At present, however (stimulated, in fact, by the very casualties specified at Republic and White River), there are certainly three or four of these contrivances which have been tested and found practicable. Therefore, a passenger hereafter overturned and partially roasted by a stove in a railway car in the United States, would certainly be deprived of the opportunity of asserting that he had been roasted by an 'act of God,' since the company could have availed itself of that particular progress of applied science which had invented a heating apparatus which in case of accidents would not induce combustion of the train.*

*Two New York City newspapers, the *Evening Post* and the *Railroad Gazette* find large fault with the above analysis of the five great railway accidents of the year 1887. Says the *Evening Post*, "Mr. Appleton Morgan tries to palliate or even to deny the responsibility of the corporations for most of the serious railroad accidents of the past year. We have of late become quite accustomed to such pleas on behalf of the Anarchists; but when the same line of argument is invoked in favor of a railway company, by a lawyer of Mr. Morgan's standing, it is a surprise, and by no means a welcome one." I myself do not see what I have to do with the Anarchists, or the Anarchists with me. An Anarchist is one who intrudes upon the still unsettled problem of labor *versus* capital, and proposes solving it by eliminating the element of labor, and substituting cataclysm therefor. The idea of cataclysm may have suggested a railway accident, otherwise the *Post's* correspondence of ideas does not impress me as of much importance; the *Post* is astonished that I should have given an account of the Forest Hill disaster at variance with the official report of the Massa-

There appears to be one other thing, however, up to date, that a railway company cannot do. It cannot satisfy the newspapers

chusetts Board of Railway Commissioners who investigated it, saying, "We do not understand how it was possible for a writer of good standing to disregard these facts. Either he must have presumed on the ignorance of his readers, or else he never took the trouble to look into the matter itself. The latter is perhaps the more charitable supposition. But it need hardly be said that for a writer in a scientific periodical either excuse is equally weak." Doubtless the *Post* did not, at that writing, understand how anybody could prefer the report of experts to the official reports of non-experts upon so complicated an affair as a railway accident. But it ought to have had some glimmering of an idea as to how such a preference was possible, a day or so later, when itself printed prominently, and without comment, the following item: "After a number of weeks spent in the investigation of the Chatsworth train-wreck, the Illinois Railroad and Warehouse Commission has submitted to Governor Oglesby a report stating, that, in their opinion, the 'train would not have been destroyed if the bridge had not burned before the train reached it.'" Before so masterly an analysis of the casuistry of proximate causes, no wonder the *Evening Post* was speechless. "If so be that the ship is sunk," said Captain Busby "Why, so then so. If so be that the ship is not sunk, why so then so, also."

That the average newspaper should experience a difficulty in conceiving that every railway accident was beyond the company's control does not amaze me; but I admit to some surprise at the following criticism upon my paper, in the *Railroad Gazette*, a most valuable and intelligent commentator, usually, upon railway affairs: viz., "At Republic, he [myself] says the man sent with the red light failed to carry it; no mention is made of the fact that two men failed in their duty to send him. Concerning Forest Hill, Mr. Morgan makes the original assertion that no appliance in the company's power to provide was lacking; which, perhaps, must be admitted as true, as a competent bridge-engineer (which the company neglected to provide) could not be called an 'appliance.'" So far from exploding, this appears to me a much stronger putting of my point than I was equal to on the facts as they reached me. According to the *Gazette*, the fault at Republic was not that the one red-light man did not go ahead, but that two officials did not send him. So, not one human brain, but two, failed to do their duty. If, as I argued, a corporation cannot control the deflections of even one human brain, how can it control the deflections, independent and coincident, of two? The fact that one man was absent-minded, I held to be beyond the power of a corporation to prevent. But the utterly unprecedented coincidence of two brains at the same moment,

of its good faith. Different investigators, tribunals, or commissions may receive different reports of the causes directly forward-

in the same spot, and under the same circumstances, forgetting their duty, —and that duty their identical duty to do the same thing,—does really seem to me to be about as nearly an absolute act of God as any case of which most experts could conceive. And, again, supposing that the inspector of bridges of the Boston and Providence Railroad was incompetent: here, again, a human brain was at fault. If it can be shown that the Boston and Providence Company knew him to be incompetent, or had discharged a competent bridge-inspector to deliberately install an incompetent one, that would have been another matter. But it does not so appear, neither does it appear that any bridge inspected by this particular bridge-engineer had previously fallen. Speaking of this unfortunate bridge-engineer of the Boston and Providence Railway Company, the Massachusetts Board of Railway Commissioners says, "This man had been in the employment of the corporation for a long series of years, his trade was that of a machinist, he had not been educated as a civil engineer, and the management had abundant reason to know that he was not qualified, and had had no opportunity to qualify himself, to do the work assigned to him with reference to this bridge." *Ergo*, had he been discharged prior to the accident, the accident would not have happened. Perhaps not. If a railway company could only foresee accidents, could know in advance just exactly when one of its bridges was going to collapse, doubtless it could avert the disaster by discharging the bridge-inspector, so that he could not report that bridge secure, so that no train would try to cross it (which would resemble, indeed, the intrepid mariner who warded off a cyclone by collaring the barometer and holding it upside down). But, seriously, should our railway companies every now and then discharge their old, tried, and faithful employees—men "who had been in the employment of the corporation for a long series of years"—lest they should at some time or other in the future become unfortunate, unfaithful or careless? Perhaps a man not "educated as a civil engineer" could not possibly, after having been "in the employment of the corporation for a long series of years," come to know as much about railway-bridges as if in his youth he had spent a couple of years with a tutor, or in a polytechnic college. Does not the *Railroad Gazette's* statement of the causes of the Forest Hill accident exactly carry out my own criticism; namely, that a human brain, trusted and unusually accurate, for once failed to do its work? The Illinois Commission found that the Chatsworth disaster would not have happened had the bridge fallen before the fated train reached it. Their Massachusetts contemporaries reported, that, had the bridge-inspector been discharged before he reported the bridge safe, the

ing a casualty. A question of precedence between parallel proximate causes is always an exceedingly nice one. Indeed, the only report of a railway accident likely to be substantially unreliable is the newspaper report; and this not necessarily because the newspaper is biassed against the company, but simply because newspapers are at the mercy of their reporters, precisely as railway companies are at the mercy of their employés. The reporter first on the ground takes the impressions of the bystanders, and reconciles them somehow out of his inner consciousness. The only persons present who possess the slightest actual knowledge as to the why and wherefore of the catastrophe are the employees of the company, and they are silent. They have their duties, none the less rigid in case of accident than when all goes well, and are at their posts, saving life and property, and preventing further destruction by signals, and have neither the time nor the right to instruct reporters; though, I may add, their silence is always taken as a final confession of guilt on the part of the company. Indeed, on reading the average American newspaper accounts of railway disasters, I have repeatedly found myself exclaiming, "Why did not this dastardly and murderous company complete the catalogue of its crimes by braining the survivors with crowbars, and adding to its ill-gotten wealth by impartially pillaging the dead bodies of all its victims?" I once had occasion to investigate an accident which derailed a way-train, throwing it over the double track and immediately before an express-

fated train wonld never have attempted to run over it. I do not, upon the whole, see much to choose between them. As I write, word comes that the Minnesota Board of Railway Commissioners, as if emulous to compete in usefulness with its compeers of Illinois and Massachusetts, had decreed that no upper berths in Pullman sleeping-coaches must be made up until actually sold to passengers: which would oblige sleepy passengers either to sit up during transit through that intelligent commonwealth, or else sleep with entire indifference to the dusky porter and the possible newcomer, and sundry joint operations not (as most of us know) over-conducive to balmy and seductive repose. But the rule may be trusted, as may most extra non-expert regulations, to disappear as gently as it is peremptorily suggested.

train coming in the opposite direction, almost exactly upon the time when the express-train was due at the point where the derailment occurred. Upon the trial of a resulting lawsuit, the crew of the wrecked train testified unanimously to the fact: the company's time-table and the registers of the train-despatchers at both ends of the division (which could not have been disturbed without throwing the whole business of the road into chaos) proved it. But some passengers whom the unusual sensation of escaping from destruction had unnerved, and to whom a series of crowded and unique experiences had made a few moments seem like hours, testified that there had been ample time to flag the express-train (some of them putting the interval at several hours); and the jury unanimously believed the passengers, as against the company's witnesses, and thus morally convicted the employees of perjuring themselves under orders, in order to mulct a corporation in damages. Juries from the interior do these things as regularly as the opportunities present themselves; and the excuse lies, not in the opportunity, but in the nature of things, and in the axiom that "bigotry" and "ignorance" are synonymous terms. But unfortunately there is no such palliation or excuse for the ready writers and composers of leaders on the staff of our great newspapers: for these are cultivated gentlemen, who know perfectly well that railway corporations avoid accidents as they avoid bankruptcy, and enforce a ceaseless and enlightened vigilance to prevent them; that railway companies do not practise small economies, do not risk bankruptcy (for a single great accident, like that at Revere, may bankrupt, as that one actually bankrupted, an entire corporation) for the sake of a few dollars: yet, knowing this, persist in telling the public that railways are careless of public rights, and indifferent to human life. To be sure, these gentlemen do not second the religious press in advising that locomotive-engineers and East River pilots read their Bibles when on duty,—a habit which would doubtless largely increase the perils of steam-transportation; but they often, as we shall see, make suggestions quite as invaluable.

On the evening of Tuesday, Dec. 20, 1887, there *was not* a

bloody and terrible disaster on the Elevated Railroad in this city. A train packed with human beings *was not* precipitated into a narrow street below, crowded with men, women, and children; horses, trucks, and vans. The wheels of a particular train, upon that occasion, left the track, but the prudence and skill of the builders of the elevated structure vindicated themselves: the jar never deflected it an atom, the stout sleepers held the train, and nobody was scratched. But no one, on reading the leaders printed in the daily newspapers of this city, would have supposed that a terrible calamity had been averted. Had that entire train, full of human beings, been precipitated upon these passing men and women, horses, trucks, and vans,—the daily newspapers could not have censured the Manhattan Elevated Railway Company more emphatically than they did; or drawn for the occasion more vigorous and virtuous lessons of the greed of railway corporations, and of the woes of a long-suffering public. While every practical railway man in the country must have admired the perfect and almost automatic construction which saved so much waste of life and property on that occasion, not a newspaper commended the management, but rather took an additional opportunity of villifying railroads in general, and the Manhattan Railway Company in particular. I did not read all the eloquent leaders with which the press improved the occasion of the non-occurrence of an appalling disaster on the New York Elevated Railroad; but I remember one, that after feelingly dilating on the ghastly picture of gore and agony which *was not* presented on that occasion, exclaimed,—

"We must require of those who undertake such responsibilities absolute security, not a pretty tolerable degree of safety. It is not enough that accidents shall not be frequent; they must be impossible. The system must be managed on the principle that there are no railroad accidents; that what are called such are due to some species of neglect, which truly competent management could and would have prevented" (*Commercial Advertiser*, Dec. 22, 1887). If the gentleman who wrote those words will continue to walk uprightly and piously before men unto his life's end, will read his catechism and endeavor to reflect its precepts in his daily

gait and conversation, he will doubtless eventually proceed to a vicinage beyond this fitful fever of life where accidents are "impossible." I doubt if he finds it upon this poor planet. But, although perfectly innocuous to those as clever as himself, is it not manufacturing a dangerous public sentiment—and one as unpatriotic as it is dangerous—to constantly kindle and fan the impression, that, of all the necessary industries which civilization requires, the industry of maintaining a railway, or anything that runs by steam, is a greedy and despotic power, that lives by crushing not only the bones of passengers, but the civil liberties of the people? If it is, and if it is wrong to do dangerous and unpatriotic deeds, then the gentlemen who write these feverish and furious leaders—unless they repent—will certainly never behold the land where no accidents happen. I may add, perhaps, as germane to my text, that the newspapers all appear to agree, that—if nobody was killed on that occasion at Franklin Street—it was not the fault of the Manhattan Elevated Railway Company, but a genuine "act of God," for which the railway was in no ways responsible.

What, then, we really require is not a new law, or a new custom, or a new statute, but an infallible foresight and judgment. Our newspaper leader-writers are not, unfortunately, the only gentlemen in the country who can prophesy things after they come to pass. There are plenty of gentlemen, equally competent in that regard, now employed upon the railway lines of this continent. If, however, a gentleman could be found with the much rarer gift of prophecy as to things to come before they actually transpire, I imagine that it would be difficult to name a salary he could not command from a railway company. Indeed, neglect by a railway company to secure the services of such advance prophet ought certainly to be such a negligence as would settle the company's liability entirely beyond all possible legal interference. There is nothing upon which newspaper comment is more familiar than the well-worn theme of the fallibility of human testimony; even four inspired Evangelists, they tell us, could not agree upon a given state of facts. They press this fallibility against railroad companies. Do they ever press it in their favor?

CHAPTER XVI.

CAN RAILWAY STRIKES BE PREVENTED ?

SEVERAL years ago I was the attorney of a leading railway company operating about a thousand miles of trackage—in those days a good deal of a road. A newly-inaugurated president, determined, among other reforms, to do away with labor difficulties, happened at about the same time to begin his administration. His plan for meeting all labor problems, and to abolish the possibility of strikes, he contrived as follows: He sent out a general order to "all concerned," stating that, thereafter:—A new department of the administration was constituted to be called the "Department of Honor," with headquarters in the general offices. The function of this department of honor was the keeping of a "Roll of Honor," in which, to begin with, the name of every official and employé of the road, from highest to lowest, was to be enrolled. Then "an intelligent system of promotions" was to be inaugurated. Every one employed in any capacity was to be assured that—once filled—the pay roll of the road should only be recruited at the lowest grade in each function; that vacancies in each succeeding grade were to be filled by succession from the grade below; that, except for cause, there should be no dismissals; and that, moreover, any creditable action or particularly efficient discharge of one's duty, or notable act of faithfulness, was to be entered on the books—such entries to distinguish the employé opposite whose name they were made, for peculiar preferment if opportunity came.

I have no doubt many of my then colleagues are alive who will remember this "Roll of Honor." They will recall that it came to grief very suddenly indeed from a great variety of causes. In the first place the requisitions of the "Chief for the Roll of Honor" for names were not largely honored. A division super-

intendent would report the names of his staff; but a "walking boss," even if he happened to be able to write, hardly knew how to go about collecting the names of his gang—and, if he did, some of his gang were pretty sure not to know their own names, or, if they did, how to spell them. Again, the constant vigilance of the signal department, the night forces, the train dispatcher's alertness, seriously precluded much attention to a new detail, which was looked upon as a "frill,"—a fancy,—a whim; while the responsible officials rather resented additional calls upon their crowded hours of labor. Not to particularize, the thing was a rapidly developed failure. At the end of six months the names enrolled were ridiculously few in number compared to the pay rolls; the clerical forces were about all that appeared on the books, and the single entry of meritorious action was an item that a certain clerk in the legal department had got married and gone off on his wedding tour!

It also happened to this same railroad company, during my term in its service, that a general strike of railway employés (such as are commoner than almost anything else to-day) spread over the East. Our road got the full benefit of it; and, on every division except one, engines were stalled, freight trains sidetracked, passenger services discontinued and business was entirely at a standstill. But on that single division it happened that the paymaster had not been seen for three months! The fact was that everybody's pay was in arrears, and the men simply *could not afford to strike!*

I have often pondered over this coincidence; namely that, whereas an elaborate system—logically devised—had utterly failed to prevent the occurrence of strikes, the mere accident of a failure to pay off a remote division had effectually prevented them. And it has often seemed to me (and seems to me still) that possibly out of this coincidence and the hint it gives, a sort of scheme—not willful but logical—might be devised. We certainly need something in the way of a hint on the railways of this continent. The only remedies for strikes that have ever been proposed, to my knowledge, are co-operation, arbitration and that by judicial

compulsion. But so far as railways are concerned, all of these have dismally failed.

We cannot run a co-operative railroad where the employés share in the profits (as long, at least, as there are such things as fixed charges, and the profits, if any, belong to the stockholders). Arbitration is a monumental failure for many great reasons; such as, for example, that arbitration implies two things; first, an equality of the arbitrating parties; and, secondly, willingness to be bound by the decision of the arbitrator. But the arbitrating parties are precluded by their numbers from meeting *in specie* or *en masse;* and a committee of railroad officers and of track walkers cannot be equal either in station, confidence or intelligence. The one must necessarily despise or patronize, the other fear or hate, the opposite side. The president or general counsel of the company may recognize the hand that surfaces up the track or sweeps out the station-house as an equal on paper. But they will hardly come together on the same floor to exchange views. And the result or award of an arbitration between two such incongruous and antagonistic or mutually suspicious elements—since it must be submitted to the good sense of each—can hardly impress the two parties alike. The concession of the stronger invariably excites the suspicion of the weaker intelligence. It fears a trap, a ruse; the concession of the weaker intelligence invokes always the contempt of the stronger.

The other remedy, the judicial one (namely that since railway companies are *quasi*-public, their employés are *quasi*-public servants, and so criminally liable for neglect of their duties, for refusing to work, etc.), while perfectly logical, I believe to be entirely impracticable. It might do in Germany. But in the United States an attempt to force men to work by legal or equitable process enforceable by the *posse comitatus*, by the sheriff or the militia or the United States troops, or writs of assistance, would be resented by an uprising which would imperil life as well as property, and be pretty sure to be settled at the polls, if not sooner. Mr. Simon Sterne is undoubtedly right when he says that, "When, as recent experience seems to indicate, the commu-

nity is in danger of a stoppage of a service upon which its welfare depends, the community has the right to step in and to attach such conditions to the service as to ensure its performance and its continuance, precisely for the same reason that it ensures the regularity and continuance of the service of its soldiers on the frontier and of its navies on the seas, by terms of service made independent of caprice and conspiracy." But even were it possible to practically enforce compulsory labor on the part of railway employees, so long as legislators are elected by votes, it is pretty safe to say that no statute embodying Mr. Sterne's suggestion will ever be enacted in these United States; while statutes to meet and dispose of any such construction of common law as Mr. Sterne implies would very soon be as "plenty as blackberries." There must be some other way than coercion found to make the employed as well as the employer recognize the mutuality of a contract.

And so the problem is constant, and the problem of strikes, is one (as the late Charles Lever said of the "Irish Question") in which "every attempt at its solution is a new factor of irreconcilability." Where are we to look for a solution? Some of us have pinned our faith to an Interstate Commission,—which most clearly has the right, under the statute establishing it, to deal with any matter that involves or affects the moving of freight between two States. But the principal business of our present Interstate Commission appears to be to keep the question of the constitutionality of the act creating it away from any competent judicial tribunal. It sits in regulation of trivial incidents between small shippers and individual roads; but where great public interests clash (as in the late traffic war in the West)—although clearly authorized to take jurisdiction—it as clearly and carefully overlooks its prerogative. Practically, then, strikes must go on, and the railways must fight them as best they can, and the stockholders must pay the expenses of these fights with what appetite they can.

Now, taking the experience of the railway company I have spoken of—the fact that its elaborate system for the prevention of strikes was abortive, while a casual deficit in its treasury was

effective to that end—it seems to me that a plan something like this might work well:—

Let every employé of a railroad company sign for a definite period (say one year), he to be retained by the company for a year, barring incompetencey, disobedience, willful negligence or incapacity. Let his pay begin at the beginning of the second month of his term of employment. And let him fully understand that this first month's pay will be added to his twelfth month's pay, but be forfeited if—by his own fault or willfulness—he leaves the company's service. The matter cannot be a hardship if understood by the employé in advance so that he can provide for it. It is not considered a hardship when we withold a percentage of the contractor's monthly estimate as guarantee for performance of his contract. Why not try the same plan with the employé? It seems to me—after considerable reflection—that the result must work good on both sides. To the company, because it ensures permanence, effort and vigilance from the employé; to the employé, because it gives him something to look ahead for. It would be immaterial to this plan whether the pay was rendered otherwise adequate by making the second month's pay equal to a month and a half's service or not, the result would always be that the employé would have something coming to him at the end of the year;—which he was certain of if faithful, and which he would certainly lose if he "struck" or boycotted, or grew dissatisfied and left. (If disabled, he should be allowed it, perhaps; and in case of death it should go to his family or representatives.) Above all, this delayed payment (or delayed percentage, if we so assessed it) would be an effectual check upon "the walking delegate." That modern convenience could then charm never so wisely, but the laborer would refuse to hear the voice of the charmer. He would say: "You draw $30 a month for working. We will pay you $20 a month for not working." But the fly would keep outside the web and retort, "Ah, but how about my deferred wages!" At any rate, I offer the suggestion respectfully, as one to which, in the midst of all the others current, it might not be amiss to award a trial.

In other words my suggestion is: That the employé be led to understand that his employment is a contract made in good faith and for consideration on his part as well as on the part of the company. And that not the company alone, but each party thereto, is equally bound by, and liable for non-fulfillment of, such contract.

CHAPTER XVII.

A GOVERNMENT CONTROL OF RAILWAYS—WHAT IT WOULD MEAN.

They take too much upon themselves? Well then, give them more! They are tyrants already! Make them dictators! As it is, our government is divided into the Executive, the Legislative, the Judicial functions! Let us incarnate the State into a fourth function—the transportational. This would be a feat in the way of making "the punishment fit the crime" worthy of the Gilbert-Sullivan Mikado himself; the great difficulty would be that it might return in time to plague the inventor.

For, that which the Government monopolizes and operates, is a part of the government, and must be clothed with its authority. The post office is benign to us if we study its regulations and conform ourselves to them, but if it miscarries our letters and loses our money packages, what redress have we, except to complain? To be sure, the Government will send a searcher or decoy after our precious estrays, and the particular post offices involved will possibly be more careful in the future. But we have no grievances, no action, no remedy.

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effective to that end—it seems to me that a plan something like this might work well:—

Let every employé of a railroad company sign for a definite period (say one year), he to be retained by the company for a year, barring incompetencey, disobedience, willful negligence or incapacity. Let his pay begin at the beginning of the second month of his term of employment. And let him fully understand that this first month's pay will be added to his twelfth month's pay, but be forfeited if—by his own fault or willfulness—he leaves the company's service. The matter cannot be a hardship if understood by the employé in advance so that he can provide for it. It is not considered a hardship when we withold a percentage of the contractor's monthly estimate as guarantee for performance of his contract. Why not try the same plan with the employé? It seems to me—after considerable reflection—that the result must work good on both sides. To the company, because it ensures permanence, effort and vigilance from the employé; to the employé, because it gives him something to look ahead for. It would be immaterial to this plan whether the pay was rendered otherwise adequate by making the second month's pay equal to a month and a half's service or not, the result would always be that the employé would have something coming to him at the end of the year;—which he was certain of if faithful, and which he would certainly lose if he "struck" or boycotted, or grew dissatisfied and left. (If disabled, he should be allowed it, perhaps; and in case of death it should go to his family or representatives.) Above all, this delayed payment (or delayed percentage, if we so assessed it) would be an effectual check upon "the walking delegate." That modern convenience could then charm never so wisely, but the laborer would refuse to hear the voice of the charmer. He would say: "You draw $30 a month for working. We will pay you $20 a month for not working." But the fly would keep outside the web and retort, "Ah, but how about my deferred wages!" At any rate, I offer the suggestion respectfully, as one to which, in the midst of all the others current, it might not be amiss to award a trial.

In other words my suggestion is: That the employé be led to understand that his employment is a contract made in good faith and for consideration on his part as well as on the part of the company. And that not the company alone, but each party thereto, is equally bound by, and liable for non-fulfillment of, such contract.

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or the longest ranged guns would or could ever be)—and as internecine embattlement is equally out of the question: there appears to be no present reason why the general Government should take control of the railways of this Republic. But, nevertheless, it appears to be considered essential to a discussion of railway problems in the United States to contemplate the acquirement and operation of our railroad lines by the general Government.

In the daily press—in the review and the monthly magazine—on the floor of Congress—in the convention and the caucus—the proposition is made and mooted, and the large majority of easily-considered and suddenly formed opinions appear to regard some plan for the purpose as desirable, constitutional and feasible. Those publicists and political econo- [illegible] the same plan with the employé? It seems to me—after considerable reflection—that the result must work good on both sides. To the company, because it ensures permanence, effort and vigilance from the employé; to the employé, because it gives him something to look ahead for. It would be immaterial to this plan whether the pay was rendered otherwise adequate by making the second month's pay equal to a month and a half's service or not, the result would always be that the employé would have something coming to him at the end of the year;—which he was certain of if faithful, and which he would certainly lose if he "struck" or boycotted, or grew dissatisfied and left. (If disabled, he should be allowed it, perhaps; and in case of death it should go to his family or representatives.) Above all, this delayed payment (or delayed percentage, if we so assessed it) would be an effectual check upon "the walking delegate." That modern convenience could then charm never so wisely, but the laborer would refuse to hear the voice of the charmer. He would say: "You draw $30 a month for working. We will pay you $20 a month for not working." But the fly boots he has agreed to furnish upon occasion. Our green-grocer or our butcher may disappoint our tables, but at least we can remonstrate with him, and, if need be, carry our custom elsewhere. But where our tailor, our bootmaker, our green-grocer and our

butcher are, at the same time, our Government—clothed with the same majesty of the law, were they the State incarnate, to protest, to remove our custom, or even to very gently request better service in the future, might not be a privilege that remained to us. All this seems to go without preachment. But it seems to occur to nobody that in the case of our railways the consideration applies in the slightest. The railroads are tyrants, they dominate this public, they purchase legislators, corrupt judiciaries, rule us with a rod of iron! is the popular cry. What is the remedy? Why, make them still stronger, make them the very Government itself! These railways abrogate too much already, treat us as if they were rulers indeed, and as if we, the people, were slaves! Well, then, *make* them our rulers indeed, make them the State itself! They take too much upon themselves! Well then, give them more! They are tyrants already! Make them dictators! As it is, our government is divided into the Executive, the Legislative, the Judicial functions! Let us incarnate the State into a fourth function—the transportational. This would be a feat in the way of making "the punishment fit the crime" worthy of the Gilbert-Sullivan Mikado himself; the great difficulty would be that it might return in time to plague the inventor.

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the Government control all the rail and telegraph transportation facilities, (and we doubt not it would follow practically as it already does logically), our water courses and our telephones, possibly our horse cars and livery stables, (certainly our theatres, ought to be controlled long before our railways; they are institutions specially taxed upon receipts, they issue permits which are construed sometimes to be licenses, sometimes leases, and sometimes mere privileges, and it is conceded that they may have something to do with the public interest—if public morality is a public interest, at least—) the proposition, we say, finds an abundance always of proposers. As it is now, when a railway sets fire to our barns or kills our stock, or smashes our freights, we can couple it into any court in the land, and the jury will be "agin the corporation" every time. The cattle the railway has killed will always be found to have been the costliest of their species; our barns the richest and our freights the most priceless. But if we are to be compelled to complain to a defendant sitting as a court of claims, against the acts of this same defendant operating as a railway company, possibly its assessment of the flagrancy of its own trespass might lean as largely the other way.

Would it not be well for every one of those who clamor so loudly for the government control of railways to spend a year in inquiring into the practical effect of a government's control of the railway facilities of its people? I do not mean an enquiry among the bureaux to find out just how the thing is done; who appoints, or reports to who; to absorb the system of responsibility by which a train man is officially moved by wires pulled in the Prime Minister's Cabinet—conducting such investigation under courtesy of an escort from the same Prime Minister. Let them take up their residence among the people who are permitted to use their Government's railways for their daily wants, and let the enquirers gather the facts unofficially from station master to door man, from guard to ticket-taker, the passenger, the shipper, the abating proprietor—let one of them send a telegram and pay for the response and wait until he gets that response, if it please God he gets it at all, until his *mauvais quart d'heure* has grown into

twenty-four *mauvais quarts d'heure,* and then let these gentlemen come back and urge upon our voters that they send representatives to Congress to put our railways into the hands of the Government. At present, utterly depraved as our railways are, and skillful as the high priced legal talent they monopolize, they do, sometimes, pay for our baggage when they smash it, our cattle when they kill them, our freight when they destroy or mislay it, for our legs and arms and eyes when they maim us. I do not know whether all this would be done with a greater or less alacrity under a system of governmental controlled railways. But I think I do know, that the more paternal a government becomes, it is apt to take rather less than more care of the individual subject. The paternal relation in this case, as in most others, rather reaching out to grasp the money bag and accumulations of personal capital, than to smooth the aching brow of hard handed toil or visit the widow and the fatherless in their affliction. And I am of the opinion, that when reversed conditions operate and the paternal Government becomes parentally severe, the severity would fall just in the reverse order upon the poor and the fatherless rather than upon the billionaire and the capitalist.

I have nothing to offer as to the vast addition to the civil list, the aggregation of patronage, with its tremendous opportunities for favoritism, speculation and every possible form of dishonesty, which would follow the operation of our railways employing five or six million of people, and indirectly about as many more; for that is merely a matter for dilation, the suggestion has been made often enough, and as often attempted to be laid. Still less is this paper a discussion of methods. There are plenty of exhaustive dissertations, as to what the Government might, could, or would do with their railways. What I propose to discuss in this chapter is, the marked difficulty and hardship which would accrue, supposing we were resolved upon the policy of governmental absorbition of railways, from the realization of even the fairest, most generous and most liberal, plan the government could select for the purchase. Of course, the quickest plan would be to just seize upon the railways and run them. But objection would

be, that some of the more absurd among the high priced lawyers might object that this was unconstitutional; even that it was unconstitutional for the government to go into the railway business at all. And, by the time these interesting objections were heard at the court of last resort, a new party might have obtained the ascendancy in national counsel and the railroading craze of the government diverted from its purpose. On the whole, perhaps, it would be as well to recognize the organic grant of power, known as the constitution, and under subdivision of Section 8, which gives Congress power to regulate commerce between the States, enact a statute which should provide for purchasing the railways from their owners. But at what valuation? At actual cost or at such an appreciation thereof as would return a fair bonus to the projectors? The question of "stock watering" often the street slang for over capitalization and capitalization of increments or betterments, which are perfectly legitimate and often even patriotic—as where, for example, a trackless forest is added to the civilized and revenue gathering domain of the nation by a line of railways which by no course of possibility could pay its builders even their money back, and where over capitalization was the only possible inducement not only, but the only possible method of raising the money necessary to build—would confront the national purchaser just here. All these have been discussed to satiety. The fairest plan would seem to be, if the railways were to be purchased at all, to enact that, when any railroad company had paid its stockholders a certain agreed dividend for a certain number of years, then the government should purchase its entire line and plant, at a valuation of its stock based upon the payment of such dividends. If any plan were practicable I think this plan would be. And if any plan of Governmental railway purchase could ever be just and honest to the involuntary vendors I think this one might be made so. But even here the question would arise: At what price should the government buy the subject? To buy an investment at its actual value is no benefit to the purchaser; and to buy it at less would be oppression to the seller. And, this question decided, how could the government, being

the purchaser, ascertain the value of what it purchased, and protect itself against the middlemen and brokers, the valuers and officials through whom the sale was made? And how could it prevent as many repetitions of what would be the most monumental of jobs from being repeated as often as would-be sellers of railroads could scent a profit, and so build to sell and build and build again; as, even without the glittering government purchaser in prospect, has been often enough done under our present circumstances?

But how could this justest of all the possible plans be carried out? Let us see. In the first place, the government could not purchase one railway without purchasing all. It might built or buy a line for employment in some one of its functions, of course, —but what we are now discussing is the thing apart from this. And the railways in the United States, all told number about four or five hundred, perhaps two tenths of which number are directly paralleling or competing roads, which the Government, in justice to itself, would have to reduce by taking up the tracks and otherwise obliterating—since the Government, could only buy to operate, and it would be senseless to operate paralleling roads. But to take up these roads would be one of the minor of the hardships of which I have spoken. In the second place there are only a minimum number of railroads in the country that pay any dividend at all, and still fewer that have paid dividends for any great length of time. Supposing, therefore, that the statute for acquiring the railways should enact that the Government should purchase any railroad whose company's stock has paid a dividend of four per cent per annum for five or six or twenty years: and that, as fast as any railroad company arrived at that point of consecutive prosperity, the Government should so purchase that railroad; would not one of two things be certain, viz: Either the Government would find itself the owner of a railroad compelled to compete with a railroad in private hands, or the private owners of every railroad in the United States could turn the tables on the General Government, so that instead of forcing the railways companies to sell to the government, the railways

could force the government to buy, by simply "doctoring" their dividends? In either case, what greater hardship can be imagined? The government, with limitless resources, competing with its own citizens with their modest capital. How long would it be before the citizens were ruined? But, great as it would be, what would the ruin of a handful of citizens amount to beside the ability of another handful of citizen to "cook" a lot of consecutive dividends and so force the general government to buy railroads as fast as they pleased. We clamor somewhat about Jay Gouldism as it is, when we have but the one Jay Gould. How many Jay Goulds and opportunities for him, would we make by passing the most reasonable of statutes permitting the government to obtain control of our railways? Even government cannot make laws fast enough to meet, let alone to anticipate, the inventive genius of this people in money getting; and to abolish the general railway laws of every state in the Union, would not take away from a single state its railway chartering power.

This is a free country, and legislation is quite as free as everything else. But the very exuberance of personal liberty may tend to its curtailment. We have seen the policy of free public schools develop into the policy of a compulsory education: general railway law into an Interstate Commerce Act. And a right to prohibit the drinking of beer may not be radically so very far removed from the right to compel the drinking of rum, or to enforce attendance at Church or Sunday School, or to support the theatres, or to ride on government railways. Stranger things have happened than that a people whose forefathers refused to drink tea because it was taxed, should be willing to send their telegrams only on government wires, or ship their products only on government wheels a century and a quarter later. Indeed, I think it will be found that the European governments, which control their railways, do not always stop there, but take other of their subject's necessities and conveniences (such as tobacco, etc.) under their paternal wing. And if we borrow the principle, we will all the more be apt to borrow its productions.

It is not pretended that, in the relations of the public to the

railways it has chartered, there are no frictions to be overcome, no inequalities to be adjusted: no wrongs to be righted in their correspondence with all those other great corporate interests, whether municipal or private, with which they must come in contact, so long as the general prosperity of the continent continues. The tendency of every well conceived and carefully nourished commercial and municipal interest is, and always will and must be to enlarge and magnify itself. The fisherman in the Arabian Nights unbottled a giant that he was quite aware of the impossibility of ever bottling again. But giants are apt to be good natured, and that fisherman, as I remember the legend, suffered no harm. The alarmist and the timid man is apt, no doubt, to associate size with a disposition to tyrannize ; but, in nature, the rule works quite the other way. Size and spite are entirely incompatible in nature, and a little reflection will convince that they do not amalgamate in commercial matters. But, even if the railway is a giant which uses its giant's strength tyrannously, the remedy is not to amote, to stamp out, to suppress or "gobble" or confiscate the railway. If there is any private grief, it should be taken to the courts which are always open, (and, we may add, are none to kind to the giant railway)—and, as to the public interest, that must be taken to the forum where all public interests must ultimately go—to the calm, patriotic, earnest, peace-loving, and law-abiding convention of common sense and not to the clamor of the rabble or the mob of the Market Place. The remedy is not yet formulative, but in the future, and must be worked out concurrently with the working of the Institution sought to be remedied—from within that Institution, and not from without it; not by arraigning it against all the other institutions of Commerce and Trade which it was created to serve, and by whose prosperity it lives, but by amalgamating them with it and treating them—as they are—as identical. The railway system has been a growth ;—the growth concurrently with and inseparable from, the growth of Commerce and Trade ; the goodly share of the world's wealth it has created, has also created it. Compare the prosperity of any territory in the United States with the prosperity of the

Railway System which forms its artery ; and the question, which created which ? is like the question debated in the Limekiln Club, as to whether the hen was the mother of the egg or the egg the mother of the hen. It is impossible to imagine the one except as both the cause and effect of the other. The growth of each synchronizes with that of the other. First the railway, then commerce, wealth, civilization : first commerce, wealth, civilization, then the railway; state the formula as you please. From the beginning of the railway, the railway interest and the interests of trade have been inseparable : each has been prostrated when the other was prostrated, buoyant when the other was buoyant, supreme when the other was supreme. And the railway system of this nation can no more be isolated from the commercial and financial interests than could the blood circulate in the arterial system of a human being whose heart has been plucked out, or that the heart could receive and propel blood through the arterial system of a dead man. But this does not prevent our erudite Mr. Hudson, for convenience of treatment, no doubt, from separating them separately and distinctly as follows: "The rights of the thousands of millions of railway property are important, but not more so than those of the ten of thousands of millions of private property and business capital that suffer for want of such legislation." (p. 316.)

Growing up, then, with the wealth and convenience of the nation, with, and out of its trade, its civilization and its commercial and financial necessities—it was impossible that friction, hardship and loss should not somewhere result in the operation of the railway interest as regards the people. It takes a long time for complex systems to adjust themselves to each other; and having the greater share of the complexities, the Railway was the proximate cause, no doubt, of the greater shares of these frictions, hardships and losses. Sometimes the railway has outrun the development of the territory; sometimes the development of its territory has outrun the railway ; sometimes a railway has been unable to move its trains ; sometimes it has stalled them for want of freights to move. But in neither case has the remedy, correction and adjustment been found by antagonizing the railway with

its territory, and making law and rules and regulations by each for the corruption of the other. Personal and sectional jealousies, too, have crept in to complicate the situation. In the countless myriads of details, from collecting for a sixpence worth to the thousand dollars worth of transportation, somebody, no doubt, has been charged more for a short haul than for a long one. Here was the parable of the laborer in the vineyard, who was perfectly satisfied with his penny a day until his fellow laborer received a penny also for somewhat less work: or, as Mr. Hudson puts it, "For while the rate of 16 cents for hauling one hundred pounds of freight 56 miles may be reasonable enough in itself, it stands side by side with the rate of 10 cents for hauling the same goods 172 miles. If one rate is fair, what must the other be?" (p. 161) It does not occur to Mr. Hudson that the simple fact may have been that the circumstances and conditions under which these two rates were made, might have been different. If Mr. Hudson supposes that a railway company 172 miles long is in the habit of suspending its business and bringing its books into a single office in order to discriminate between two individual shippers out of personal favoritism, he has a very crude conception of the volume of trade necessary to enable a railroad to exist, or of the details of railroad book-keeping. But this sentence is not more crude and artless than any other I am able to find in his volume, though indeed, it gives as good an idea as any other I could select therefrom of his whole intellectual process, viz: The, by this time, familiar profession of collecting real or rumored items of discriminations on individual railroads, and hurling the mass of them at the public as an indictment against the entire railway system of the United States, and demanding that under that indictment that system be instantly pronounced guilty without benefit of clergy. Such matter of fact, of daily and hourly occurrence, as the fact that when individual hardships have occurred in the service of the public by the railways, they have either been too trivial to be redressed, or, if important enough to carry to the courts, have been carried there and there have been speedily and properly redressed—such a fact as this, we say—has no effect upon such

railway reformers as Mr. Hudson's. Nothing less than placing the entire Railway system of the nation under penal laws, will satisfy, in his eyes, a single, solitary, inequality in the freight inadvertently or purposely charged, to shippers for an identical service. In every other walk of human life the intention governs; but Mr. Hudson never stops to enquire whether discrimination is intentional or unintentional; it is enough for him that it exists. Doubtless in Railway history cases of discrimination have been counted by the millions. I know of no walk in life in which our poor human nature has been able to resist or to avoid them. The fakir from his stall, the grocer behind his counter, the very judge on the bench has dealt in them. "Who hath died for this fault? There's many have committed it!" But whatever others have done, the Railway Companies of the United States saw themselves, first of all, the evils of discrimination and themselves set to work to find the remedy. There never has been a day in the history of America railroading when somebody in the service of a Railway Company has not been employed at a liberal salary to grapple with "The Railway Problem." The combined wisdom and experience of the shrewd and trained men who operate our railways at last developed the "Pooling System"; inaugurated it, employed the best and most expert men they could find anywhere to administer it, and abided themselves by their arbitraments. The Companies themselves paid these accomplished gentlemen their liberal salaries to adjust these public matters. They did not call upon the public to pay them. What was the result? The public was satisfied, rates went down, everything was moving smoothly, when the Interstate Commerce act stepped in and set everything at odds again. For dispersion of the Pool Commissioners, gentlemen of lifelong study and experience, for whom every question of differentiation involved the most intricate calculations of price, wages, markets, trade, even first costs of railway plants, there came a hostile Act of Congress like a bull in a china shop. The delicate calculations were tumbled together into the scrap heap—the Commissioners were sent home, and politics and political patronage are hereafter charged with solving the Railway Problem in the

United States! I admit that, so far, the interstate commerce commission has not changed a single item in our Railway Procedure —that our daily newspapers still devote the same unnumbered pages to railway "strikes," "cuts" and "wars." I admit that it has been officially decided *in banc*, that the railways must go on doing just as they have always done, and that the railways have obeyed their mandates. But, all the same, I find in the text of the Interstate Commerce Law doctrines and enactment which if inforced would be dangerous to the liberty of this people, and—since we may not always have a perfect commission—I think it dangerous to leave the law upon our statute books.

It may all be for the best. But, for my part, it seems to me that it would have been better to allow the Railway Companies to continue to work out the salvation of the people, for experience had taught them that it was their own salvation as well!!

The centralization of industrial corporations known as "Trusts," are popularly supposed, somehow or other, to be inimical to the public weal. Yet any stockholder of an en-Trusted company can (and, dividends not forthcoming, probably would) complain. But, should the government of the United States resolve itself into one huge Railway Trust, and maintain—as Mr. Hudson and his congeners demand—all the railroad trackage on this continent as public highways over which every citizen could run his own conveyances; no matter what this Trust might see fit to do, there could be no complainant and no courts in which to complain. And, most serious of all (not to mention certain minor inconveniences, such as that the Trust could not constitutionally lay itself up treasures in heaven by transporting ministers of the gospel at half rates), it is possible that constant problems of terminals, car-storage, misunderstandings between locomotives as to right of way, etc., would render any other than a Railway President ineligible for President of the United States.

The modernization of methods which accompanies civilization —the telephone, the telegraph, the railway—require quite other rules than those imposed upon society by the Middle Ages. In these matters rules must keep up with circumstances, not circum-

stances bend to rules. Time was when the expenses of a war were limited to the men withdrawn from useful employments and the properties destroyed. But, to-day, commercial effects in the antipodes of the battle-field—the single discharge of a gun or the touch of an electric button, cannot be removed from a computation of first cost, until the very facilities for making war have rendered wars themselves improbable. And, similarly, to subject the pulses and arteries of commerce to rigid and Procrustean edicts framed in mob or market place, in labor-union or in cabinet, is and must be commercial suicide and nothing less. Nay more, they can only recoil upon the people, the nation, the power which utters them. Thus it is estimated that the Interstate Commerce Act has inflicted upon this people in a single year—in increased freights paid to the Railway companies since the abolition of pools—a burden of sixty millions of dollars, (thus justifying the Interstate Commerce commission in declaring—in its first annual report—that the Act "has operated directly to increase railroad earnings.") But, as this estimate would only be about ~~a cent~~ a dollar apiece for our great population (little enough to pay for an experiment), I have preferred, in these pages, to speak of the Interstate Commerce Act as simply null and void in practical benefit or damage at present, and to confine the discussion to its portent as a menace and a peril to possible political emergencies of the future. We cannot now, if we would, go back to the days of the nomad and the Shepherd Kings in order to dodge the Corporation, the Railway Company, and the Trade Centre!

THE END.

APPENDIX A.

AN ACT TO REGULATE COMMERCE.

[For a careful annotation of this Act see Mr. Dos Passos' little volume published by G. P. Putnam's Sons, New York, 1887; also, Mr. Harper's Commentary published by Robert Clarke & Co., Cincinnati, 1887. I can add nothing to these exhaustive annotations.]

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

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

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

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

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

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and de-

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

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

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

SEC. 6. That every common carrier subject to the provisions of this act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroads, as defined by

the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

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

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go to into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous

public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted, and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

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

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines on routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the place in which they shall be published; but no common carrier

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

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transhipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and

being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

SEC. 8 That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

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

SEC. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

SEC. 11. That a Commission is hereby created and established, to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon

the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance, and testimony of witnesses and the production of all books, papers, tariffs, contracts agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

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

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to

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

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

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

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

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

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

SEC. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to reply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its

officers, agents, or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the

ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

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

be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

SEC. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employés as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

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

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

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific

answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stock-holders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employés and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

Sec. 22. That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the

United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employés, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employés; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act.

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

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

Approved, February 4, 1887.

APPENDIX B.

The decision in *Re* Louisville & Nashville, Interstate Commerce Commission, Washington, *June* 15, 1887, in the matter of the petitions of The Louisville and Nashville Railroad Company and others.

OPINION OF THE COMMISSION.

COOLEY, *Chairman.*

The Louisville and Nashville Railroad Company was one of the first to apply for relief under the fourth section of the Act to regulate commerce, which, after declaring the general rule that more shall not be charged or received in the aggregate by a common carrier subject to the law, for the transportation of passengers or of the like kind of property, under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer, proceeds then to authorize exceptions, and confers upon the Commission certain powers in respect thereto.

From the first there have been two opinions regarding the proper construction of this provision for exceptions; one view being that no exception can be lawful unless made with the sanction of the Commission; and the other, apparently better supported on the words of the statute, that an order of relief is not required when the circumstances and conditions are substantially dissimilar, since the carrier, in acting upon them, would commit no breach of law, though it would be responsible in

case it were found that the circumstances and conditions were misconceived or misjudged. Under this last view the order for relief would be needful only when the case was not one of plainly dissimilar circumstances and conditions, but in which, nevertheless, there might be reasons and equities that would sanction such greater charge.

The Commission is informed that the interstate roads north of the Potomac and the Ohio and east of the Missouri, with substantial unanimity, have conformed to the requirements of the fourth section by putting in force tariffs re-arranged accordingly. Some friction was manifested for a time, arising largely from the discontinuance of special rates, favors, and privileges, and from the adoption of new classifications; but where the fourth section has been thus made operative very few instances have come to our attention of injury thereby occasioned.

The roads which anticipated especial injury to commerce from the strict enforcement of the law were principally those situated in the Southern States and the transcontinental lines. After a little time some of the north and south roads in the territory first mentioned found themselves excluded to a certain extent from business which they had previously handled, but these instances were not numerous, so far as the Commission is at present advised.

In the cases where loss of revenue to the roads and injury to the business of the country was most seriously anticipated, the railroad companies, although some of them took the ground that the statute contemplated they would determine for themselves the exceptional cases in which they might make a lower charge for a longer haul, nevertheless were unwilling to incur the peril of so arranging their tariffs that they would in any instance conflict with the general rule which the act prescribed, apparently deeming it more prudent to suffer temporary loss of traffic until the act could receive authoritative construction than to subject themselves to heavy penalties in case it should finally be held that the general rule must be applied in every case until the authority of the Commission for making exceptions had been given. The

Louisville and Nashville Company was one of those which took this position, and upon its application a temporary order of relief was made. Following the making of that and of other like orders, the Commission proceeded to take a great amount of testimony bearing upon the question whether the several carriers relieved were warranted in making rates on their lines which were not in conformity to the statutory rule, and in doing so it invited light from all sources, and was glad to have the assistance, not only of the railroad companies, but of competing steamboat owners, of boards of trade, and of citizens generally, whatever might be their line of business. The fullest opportunity has been afforded to any citizen of the United States who desired to be heard upon the matter, to present facts personally or by affidavit, and arguments *viva voce*, in writing, or in print. The invitation has been quite largely accepted; the subject has been laid fully before us, and we have endeavored to give to it the consideration its importance demands.

In making the orders of temporary relief no opinion was expressed upon the question whether they were necessary for the protection of the carriers in case the circumstances and conditions were found to be in fact dissimilar. The railroad companies did not raise that question, but, as has been said, elected as a matter of prudence to apply for the preliminary order. No objection could well be taken to this course provided it should prove to be practicable for the Commission to take up and in a reasonable time dispose of the several applications made to it; but it was almost immediately perceived that the number was to be so great that this would be quite out of the question. Each order for relief would necessarily be preceded by investigation into the facts, on evidence which in most cases would be best obtained along the line of the road itself. A single case might therefore require for its proper determination the taking of evidence all the way from the Pacific to the Atlantic, and this not merely the evidence of witnesses for the petitioning carrier, but of such other parties as might conceive that their interests or the interests of the public would be subserved either by granting the relief applied for or by denying it.

If the Commission were to give to the petitions the time needed for their proper determination, it would be compelled to forego the performance of judicial and other functions which by the statute were apparently assumed to be of high importance, and even then its authority to grant relief would be performed under such circumstances of embarrassment and delay that it must in large measure fail to accomplish the beneficial purposes which we must suppose the statute had in view. Assuming—as we must when the law provides for it—that it is important to the public interest that a privilege to charge more for the shorter haul than for the longer over the same line in the same direction, should be admitted in some cases, as had been the custom, the interruption of the privilege when the case was proper for it would presumptively cause mischief, and should not, therefore, be compulsory while the slow processes of an investigation were going on, especially as the particular investigation might itself be compelled to await the determination of many others. Moreover, an adjudication upon a petition for relief would in many cases be far from concluding the labors of the Commission in respect to the equities involved, for questions of rates assume new forms, and may require to be met differently from day to day; and in those sections of the country in which the reasons or supposed reasons for exceptional rates are most prevalent, the Commission would, in effect, be required to act as rate makers for all the roads and compelled 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 localities. 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 impracticable, and that fact tends strongly to show that such a construction could not have been intended.

We have listened, with an earnest desire to reach a just conclusion, to all the arguments presented on the construction of the statute, by those appearing either to advocate or to oppose the

applications, and after mature consideration we are satisfied that the statute does not require that the Commission shall prescribe in every instance the exceptional case and grant its order for relief before the carrier is at liberty in its tariffs to depart from the general rule. The terms of the statute clearly lead to the opposite conclusion. It declares:

"It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance."

Here we have clearly stated what is unlawful and forbidden; and for doing the unlawful and forbidden act penalties are then provided. But that which the act does not declare unlawful must remain lawful if it was so before, and that which it fails to forbid the carrier is left at liberty to do without permission of any one. The charging or receiving the greater compensation for the shorter than for the longer haul is seen to be forbidden only when both are under substantially similar circumstances and conditions; and therefore if in any case the carrier, without first obtaining an order of relief, shall depart from the general rule, its doing so will not alone convict it of illegality, since if the circumstances and conditions of the two hauls are dissimilar the statute is not violated. Should an interested party dispute that the action of the carrier was warranted, an issue would be presented for adjudication, and the risks of that adjudication the carrier would necessarily assume. The later clause in the same section, which empowers the Commission to make orders for relief in its discretion, does not in doing so restrict it to a finding of circumstances and conditions strictly dissimilar, but seems intended to give a discretionary authority for cases that could not well be indicated in advance by general designation, while the cases which upon their facts should be acted upon as clearly exceptional would be left for adjudication when the action of the carrier was challenged. The statute becomes on this construction practical, and this section may be enforced without serious embarrassment.

From the recital of the history of the framing of this section (which is given further on) it appears among other things that the proviso respecting orders for relief was devised by the Senate committee which originally drafted the section, and that it was an essential part of it as first proposed; the prohibitory part of the section being then quite stringent, but a discretion being conferred upon the Commission to relieve against its operation. Afterwards the words "under substantially similar circumstances and conditions" were inserted in the first sentence of the section. The proviso was perfectly intelligible so long as the leading clause contained a hard and fast rule against charging more for the shorter than for the longer haul. It was then obvious that a discretion was left to the Commission in the matter of relaxing the rule when different circumstances and conditions rendered such relaxation in its judgment proper. Had the section passed as it then stood, the exercise of such a discretion might have been entered upon by the Commission with a distinct understanding of the task imposed, even though its adequate performance might have been out of the question; but modified as it now stands, the necessity for a relieving order is greatly narrowed, it being obvious that no order is needed to relieve against the operation of the statute when nothing is done or proposed which it makes unlawful.

If any serious doubt of the proper construction of the clause of the statute now under review should, after careful consideration of its terms, still remain, it would seem that it must be removed when section 2, in which the same controlling words are made use of, is examined in connection. That section provides:

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

Here it will be observed that the phrase is precisely the same; and there can be no doubt that the words were carefully chosen, probably because they were believed to express more accurately and precisely than would any others the exact thought which was in the legislative mind. And in this section, as well as in section 4, the phrase is employed to mark the limit of the carrier's privilege; its privilege, too, in respect to the very subject-matter with which section 4, where it is employed, has to do, namely, the charges for transportation service. It is not at all likely that Congress would deliberately, in the same act and when dealing with the same general subject, make use of a phrase which was not only carefully chosen and peculiar, but also controlling, in such different senses that its effect as used in one place upon the conduct of the parties who were to be regulated and controlled by it would be essentially different from what it was as used in another. But beyond question the carrier must judge for itself what are the "substantially similar circumstances and conditions" which preclude the special rate, rebate, or drawback, which is made unlawful by the second section, since 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. The carrier judges on peril of the consequences; but the special rate, rebate, or drawback which it grants is not illegal when it turns out that the circumstances and conditions were not such as to forbid it; and as Congress clearly intended this, it must also when using the same words in the fourth section have intended that the carrier whose privilege was in the same way limited by them, should in the same way act upon its judgment of the limiting circumstances and conditions.

Most of the applications made to the Commission for relief may be said to be based upon a showing of dissimilar circumstances and conditions claimed to justify the larger charge for the shorter haul. The Commission was asked to find that such dissimilar circumstances and conditions existed, and the question was presented in a great variety of forms. Upon this question it was believed that investigation into the conditions of railroad service in

the States south of the Ohio and east of the Mississippi would be particularly useful. In the system of rate-making practiced in that section, the making of a greater charge on interstate business to and from intermediate stations than to and from competitive points requiring a longer haul had been, it appears, substantially universal, and business men in the larger towns united with the carriers in asserting that the cessation of the practice would force a stoppage of trade to an extent that would be destructive of many considerable interests. That section, therefore, seemed to afford a proper field for an inquiry into the reasons supposed to justify the practice. When the investigation was concluded the reasons which had been advanced appeared to be substantially the following:

That the support and maintenance of a railroad ought properly to be borne by the local traffic for which it is supposed to be built, and the through traffic may justly be carried for any sum not below the actual cost of its own transportation.

That the cost of local traffic is greatest, and the charges for carrying it should be in proportion, and if they are so they will often result in the greater charge for the shorter haul.

That traffic carried long distances will much of it become impossible if charged rates corresponding to those which may properly be imposed on local traffic; and it must therefore be taken in recognition of the principle, accepted the world over, that traffic must be charged only what it will bear.

That the long hauls at low rates tend to build up manufactures and other industries without injury to the traffic upon which the rates are heaviest.

That charges on long hauls, which are less than the charges on shorter hauls over the same line in the same direction, are commonly charges which the carriers do not voluntarily fix, but which are forced upon them by a competition from whose compulsion there is practically no escape.

On some one or more of these reasons each of the applications was planted.

On the construction which we give to the statute these several

applications need not have been filed, and therefore they might now be withdrawn without further judgment. But though the carrier might have acted on the judgment of its managers, it would have been at the peril of the consequences, and as it elected not to assume the responsibility, but to apply to the Commission for a relieving order, it may be proper to consider the application on its merits, especially as the question, What is a case of dissimilar circumstances and conditions within the meaning of the law? must in general be a mixed question of law and fact, upon which differences of opinion would be expected to arise. It is manifestly important to the public interest, as well as to that of the railroads themselves, that mistakes shall as far as possible be avoided. It is also important that the general rule laid down by the statute be strictly complied with whenever compliance appears to be fairly practicable, and that carriers direct their attention more to the feasibility of coming into conformity with it, than to the possibility of finding reasons upon which to ground exceptions. They are therefore entitled to the benefit of such conclusions as we have already reached upon the general merits of their applications, that they may be guided thereby in the preparation of their tariffs respectively. In giving these conclusions we limit ourselves strictly to the cases presented, and leave out of view such other grounds of relief, if any, as are not yet formally brought forward.

I. The fact that the shorter haul is of local traffic and the longer is not we cannot accept as making out a case of dissimilar circumstances and conditions within the meaning of the statute. The claim to that effect which was advanced in support of one of the applications rests upon a theory that railroads are constructed for the special accommodation of the traffic along their lines respectively, and that consequently that traffic may be relied upon for their support, and may fairly be charged with all the items of cost and maintenance. Traffic originating at a distance and taken over the line may on this theory be justly transported at any rates the carrier may consent to accept not below the actual cost of movement, and the local shippers are not in position to complain

that such rates, as compared with what they must pay, seem to discriminate unjustly. But this theory has very little foundation in fact. It is not true, as a general rule, that railroads are constructed in exclusive reliance upon local traffic; on the contrary, through traffic is also contemplated, and is sometimes expected to yield returns even greater than that which the local traffic is likely to give. And whenever a road is constructed with special regard to local traffic, it is very likely to be the case that the local communities take upon themselves especial burdens in aid of the construction. When they do so they may justly claim that their traffic should be favored if discrimination of any sort is to be admitted. There are cases also in which roads have been constructed with special regard to long-haul traffic, some of them with the aid of Government grants, and in such cases the theory lacks all plausibility. Indeed it may be said to become plausible in any case only when, after a road has been constructed, some new and unanticipated business is offered it for long-haul, but at rates relatively lower than the local traffic is charged. It may be neither unreasonable nor unjust to accept the lower rates for the long haul traffic in some cases on grounds stated further on; but it will not be because of any such inherent difference between long and short haul traffic as can make the latter chargeable with heavier burdens.

II. That the cost to the carrier of handling and transporting local traffic is greater than that of traffic carried long distances is a fact which may with greater reason, when the difference is considerable and clearly shown, be claimed to make out a case of dissimilar circumstances and conditions under the statute. Cost of the service is always an important element in the fixing of rates; and the evidence taken by the Commission tends to show—what indeed is well known and understood—that in proportion to amount and to the distance it is transported, the cost of the local traffic to the carrier is considerably the greater. This fact fairly establishes in favor of the carrier an equity entitling it to make for the more onerous service a greater proportionate charge. But it does not follow that the difference may be so great as to make

the case an exception to the general rule the statute has prescribed. It is obvious that the statute intends that the greater charge for the shorter haul shall only be made in cases which on their facts are exceptional; and when the carrier shows the general fact that the local traffic is most expensive he thereby proves not the exception, but the rule. To establish the exception it would be necessary to go further and make proof that in case of the particular traffic the difference in cost would be exceptionally great. Such cases sometimes arise. They occur on water as well as on land, and vessel owners on the rivers make the greater charge for the shorter haul in the same direction in many cases, defending their doing so with good reason on this very ground of greater cost, in making landings, &c. The carriers by land may sometimes justify the like charges with equal reason.

There is in the case, however, an inherent difficulty of no small moment. While cost, as has been said, is an element to be taken into account in the fixing of rates, and one of the very highest importance, it cannot, for reasons well understood, be made the sole basis, but it must in any case be used with caution and reserve. This is not merely because the word "cost" is made use of in different senses when applied to railroad traffic; it being often used to cover merely the expense of loading, moving, and unloading trains, but also because, in whatever sense the word may be used, it is quite impossible to apportion with accuracy the cost of service among the items of traffic. First of all when it is undertaken there must be an apportionment between the passenger traffic and the freight traffic; and if we suppose this to be made with reasonable accuracy there must then be a like apportionment between the different kinds and classes of freight. Freight comes to a road in infinite variety; some heavy, some light, some in large packages, some in small; some perishable or of special value and requiring peculiar accommodations and care; it is picked up in varying quantities at numerous stations, to be carried differing distances, sometimes on fast trains and sometimes on slow; the service is performed by men whose compensation differs, but the most of whom have something to do with all branches of the traf-

fic, so that all assist in carrying it on over a road and by means of buildings, appliances, and equipment which have been provided for the whole. Any attempt to apportion the cost therefore would at the best and under the most favorable circumstances only reach an approximation. This is so well understood the world over that the propositions which from time to time have been made in other countries to measure the charges of the carrier by the cost of the carriage solely have always been abandoned after investigation.

We may well believe, therefore, that the statute, in its provision against the greater charge for the shorter haul, did not intend that a difference in cost which is practically universal, and could not possibly be arrived at with accuracy, should as a general fact be a governing consideration, to the extent that would support the greater charge for the shorter haul in the cases in which such greater charge was in general prohibited. Where there are no circumstances to make the short haul exceptionally expensive to the carrier, or the long haul relatively inexpensive, a difference in rates which reason and fairness will justify may still be made within the limitation of the statute; but to make out the exceptional case, in which the general rule of the statute may be disregarded on the ground that the circumstances and conditions are not substantially similar, the difference in cost should itself be exceptional, and be capable of proof amounting to practical demonstration.

In support of one of the applications presented to us the carrier was able to make a showing of lower cost on long-haul freight more clear and distinct than is commonly possible. The showing was that the through business on its 450 miles of road was transacted by different trains from the local; that these moved much more rapidly and carried vastly the most freight to the train; that the number of men required was much less in proportion, not only upon the trains, but for the station and terminal service, and consequently all the items of expense were much smaller. These facts, which were apparent to the customers of the road, together with the peculiarly effective water competition, which affected principally the through traffic, influenced intelligent men doing

business at local stations to admit, in giving evidence, that it might be just, and even necessary in some cases, that the charge for the shorter haul should be the greater. The disproportion, it was insisted, had been too great; but when the question is one of degree, regulation rather than prohibition must be admitted to be the appropriate remedy; and the carrier must keep in mind that if the right be established in any case to make the greater charge for the shorter haul, it is not a right to make a charge not just or reasonable in itself, or one which will work unjust preference between individuals, localities, or commodities. It is, on the other hand, a right grounded in justice, and must be so exercised that the result shall be equitable.

III. We have next the case of dissimilar circumstances and conditions supposed to be made out by a showing that property now transported long distances at very low rates could not be transported at all unless concessions in rates were made to it. This is a common fact in railroad transportation; the cases are to be met with in the traffic of all the long lines. The necessity for making concessions to long-haul traffic in the case of articles whose value in proportion to bulk or weight is small, and especially in that of the necessaries of life, which are handled in large quantities, and in the supply of which the most distant countries compete, has long been conceded wherever railroads exist. The household goods of immigrants to the West have been carried for them at very low rates, and the results of their agriculture have afterwards been taken for seaboard and European markets in recognition of the general principle that the traffic must not be charged rates beyond what it can bear. This is a just and sound principle when justly applied; and the country may be said not only to have acquiesced in its recognition, but to have desired and urged its application in a great variety of cases. Any suggestion that it was meant by the statute to abrogate it would scarcely be plausible, especially since, when not misapplied, it can harm no one, but may be, and often is, of great and manifest advantage, in enabling distant sections of the country to come into closer commercial relations, and to exchange to their mutual ben-

efit their dissimilar productions, or to compete with each other in those which are similar.

But the cases must be very rare in which the larger charge in the aggregate for the shorter haul of the same kind of property over the same line in the same direction could be justified, when no other reason supported it than the fact that the traffic for the longer haul would bear no more. Manifestly such a discrimination when not imperative on other grounds is unjust; and the injustice becomes oppression when the effect is to increase the burden upon the traffic which has the shorter haul. There is a plain limit to the application of the principle that property is to be carried at rates it will bear; and the limit is reached when the rates charged are so low that further reduction would necessitate an increase of the charges upon other traffic in order to make up to the carrier such loss as the reduction causes. If some common vegetable, worth but five cents a hundred pounds more at a market a thousand miles distant than it is where it is grown, were to be transported that distance for the sum named, the producer nearer the market if subjected to a higher charge would have a right to complain that not only did the discrimination reduce the market value of his produce, but that the acceptance of the unreasonably low rates from the distant producer had a tendency to increase the charge for the shorter haul, so as to make it not only relatively, but, when considered by itself, unreasonably high.

It is a matter of public notoriety that a belief has prevailed to a considerable extent that long haul traffic was in many cases carried at a loss; that the carriers were enabled to take it by making the charges for short haul traffic greater than would otherwise be necessary or reasonable, and that this constituted an abuse that ought to be corrected by law. Persons who did not hold to this belief have, on the other hand, taken low charges on long haul traffic as a proper measure for all charges, and have insisted that if the railroads could accept the low charges for one class of business they could and ought to do so for all classes. And this, as a rule, would be quite true if the railroads had it in their power to make the rates for all; which, however, is far from being the

fact. There are many cases in which they have the option only to take the traffic at rates prescribed by its owners, or not to take it at all. But in respect to such cases, we must repeat, by way of emphasis, that a successful appeal cannot be made to the equity of the statute on the mere ground that long-haul traffic will not bear higher rates, if in fact those it can bear, if accepted, will cause a loss to the carrier which must be made up on short-haul traffic. To have one's property carried at a loss would not be matter of right, but of favor; and favors in transportation are not to be granted to any one class at the expense of any other.

IV. The greater charge for the shorter haul has been in some cases defended, on the ground that manufactures and other industries were thereby favored and built up. But a question likely to arise in such cases is whether that which is done for some is not at the expense or to the unjust prejudice of others. The statutes of some of the Southern States seek to encourage manufactures by permitting special rates to be made in their favor; and railroad companies, in some cases which were brought to our notice, have entered into contracts with parties proposing to establish large manufactories or otherwise engage extensively in business, whereby, in consideration of the investment of some named sum in the proposed enterprise, they agree that favorable rates, which are specified, shall be given on its traffic for a term of years. The purpose of such laws and such contracts is no doubt commendable, but the practical difficulty of giving them effect without prejudice to the interest of others is always found to be serious. Very often they tend to the benefit of large establishments and to the prejudice of small. Manufactures are infinite in variety and extent, and while it might be easy for those whose transactions were large to obtain the benefit of an impartial law made for the encouragement of all, the small establishments, sending out their goods in small lots and irregularly, might find the law practically of little or no value. The railroad companies not unwilling to make long-time contracts for rates which contemplate a large business, would scarcely be expected to stipulate for them with the small establishments, which exist in variety in every town and hamlet.

As a matter of fact the laws and the contracts which are made for the benefit of manufactures usually contemplate not all kinds of manufactures, but only those leading and most prominent kinds which require large capital, and whose operations are on an extensive scale. Encouragement to these is of public advantage when it wrongs no one; but it is just as much the duty of the common carrier in making its low rates on long hauls to consider whom they may ruin as whom they may build up; and while the carrier cannot be held responsible for the consequences which flow legitimately from tariffs impartially arranged, it cannot justify on the ground of public benefit the unequal rates which, however beneficial to some, may be equally mischievous to others. A great establishment, strengthened by the favor of the public carriers until it acquires the power to crush competition and actually exercises that power, may by that very fact become an enemy to the civil state; and no benefit it can give to the public in the low prices of its commodities or otherwise can compensate for the general sense of wrong which those must feel who are injured by it, or for the sentiment which grows up in view of its operations, that the laws fails to give the equality of right and privilege which it nominally promises. That some such great establishments have been fostered by the aid of the railroad companies is commonly believed; and provisions against unjust discriminations in this statute had for their object, among other things, to bring this mischief to an end. The plausible excuse of public benefit, if it ever had force in such cases, has none now, for the statute forbids what public sentiment had already condemned.

It was shown by the evidence that the rates upon long hauls were such as would admit of the pine lumber of Mississippi being sold in Wisconsin in competition with lumber there cut, and of the iron of Alabama being carried through Pittsburgh to Eastern manufactories. If the lines originating in Wisconsin and Pennsylvania give to the producers of those States corresponding rates for the traffic in the other direction under similar circumstances, this will prejudice no one; but, on the contrary, may operate to the public advantage, provided always that the rates actually

charged are compensatory. The petitioner in this case claims that in no case does it carry such long-haul traffic at rates which fall below cost. By this, however, is meant only the cost of movement of the particular traffic, leaving out of view the fixed charges of the road, which must, in any event, be provided for, whether the long-haul traffic is or is not taken. This distinction between the cost of movement and the fixed charges often becomes of importance in such cases as that of the lumber trade just mentioned. That trade is new; the roads which take it were built without anticipating its springing up, and their managers made their calculation for business to meet the whole cost of operation in reliance upon such traffic as was then apparent or probable. The fixed charges of the road may, for purposes of illustration, be assumed to equal one-half of the whole, the cost of movement of freight the other half. The rates laid were doubtless calculated to cover the whole, with a margin for profit, and were so laid that all traffic would contribute towards both fixed charges and cost of movement. But now comes this new business, and from the nature of the case low rates are a necessity to it; it can pay perhaps little if anything more than half what is paid by other traffic. But taking it will not increase perceptibly the fixed charges of the road, because those are made up of items that must be paid whether the traffic is large or small. What is added to the cost by taking it is simply the expense of its own handling and movement; and upon the supposition made, there might perhaps be gain to the road instead of loss in taking it at anything above half the rates which are levied upon other traffic corresponding to it in classification. It might therefore be carried at such rates without wrong to any one. But if it were carried at lower rates still, not only would the other traffic be left to pay the fixed charges and the cost of its own movement, but it would also, to some extent, be burdened with the cost of movement of the long-haul traffic thus added to the business of the road.

The injustice of this would be very apparent, and it would become intolerable if some portion of the short-haul traffic was competitive to the long-haul traffic, and was so heavily taxed by

higher rates as to make continuance impossible. It is very plain that an unrestricted power to make such rates is liable to infinite abuses, and that it may as easily be made use of to injure one enterprise as to build up another. In the earnest and sometimes unreasoning rivalry of railroad companies, it has no doubt often been employed as much to give mere volume to business as for any anticipated net revenue; and the wrongs have in such cases far exceeded any possible advantages that could accrue either to the roads themselves or to the public. It cannot be supposed that in any case the true interest of a road will be prejudiced by its being held strictly to the rule that excessively low rates on some traffic are not to be compensated for by excessively high rates on other traffic. And if rates are so graded as to violate the statutory general rule, it cannot be accepted as justification for the higher rates on the shorter haul that the lower rates on the longer haul had encouragement to manufacturers or other industries for their motive.

V. The chief ground on which the applicants pressed for relief from the long and short haul clause of the statute was that competition forced the railroad companies to make rates to and from connecting points to the level of which it was not possible to bring the charges at non-competitive points, because the doing so would cause such reduction of revenues as would force roads into bankruptcy and ultimately into suspension. It was, therefore, as was said, inevitable that in a great number of cases the greater charge should be made for the shorter haul; and nothing but putting a stop to competition by law would prevent it. This it was insisted the new law does not attempt or intend. On the contrary the importance of competition in fostering and regulating the internal commerce among the States is clearly noted. In the sixth section carriers are permitted to reduce their rates at any time, but are forbidden to raise them except after giving ten days' notice. In the fifth section the pooling of freight is forbidden, unquestionably because the practice was regarded as having a tendency to prevent or check competition. The act studiously omits to bring the steamboats and other independent

water lines within its control, and must, therefore, have contemplated the continuance not only of competition, but of those things which competition renders inevitable. The existence of competitive forces to an extent that the railroad companies at competitive points are unable to control, it was therefore argued, would make out a case of circumstances and conditions so dissimilar to those prevailing at non-competitive points as might justify the making of the greater charge for the shorter haul which was in general prohibited.

The competition which was brought to our attention as having this imperative force was, *first*, the competition of railroads with water-ways; *second*, the competition of railroads with other railroads which are not subject to the provisions of the "Act to regulate commerce"; *third*, the competition with each other of railroads which are subject to that act; *fourth*, the competition of business or trade centres with each other, operating indirectly upon the roads which form their channels of trade; and *fifth*, the competition of business interests in like manner operating upon the roads, by whose assistance the business is carried on. This fifth species of competition has already been remarked upon to some extent, and it has been seen that it will not justify a railroad company in discriminating between its own customers to an extent that would create an exception to the general rule the statute prescribes. We pass it now without further remark. The others demand at our hands due consideration.

I. It was fairly shown before us that instances exist, and may be found, along the routes of petitioner's lines in the States of Kentucky, Tennessee, Georgia, Alabama, Mississippi, and Louisiana, where the competition of water-ways forces down the railroad rates below what it is possible to make them at non-competitive points and still maintain the roads with success or efficiency. The reason is that the carriers by water can perform the service at very much less cost than the carriers by land. The general fact is that railroad rates for the transportation of property must approximate closely those which are made between the same points by steamer, and the steamer rates are generally, if not invariably,

much below what the railroads can afford to accept upon all their business. In such cases, if competition is maintained, more must be charged at interior points than can be obtained at the points of competition; and if the competitive rates are such as are productive of some gain, however slight, the non-competitive points are likely to receive indirect advantage therefrom, while the competitive points have the larger and more direct benefit, and are afforded a choice of agencies in transportation whose rivalry may fairly be expected to keep the cost down to a minimum. The interior points may have no ground for complaint in such a case, provided the rates they are charged are in themselves just and reasonable, even though the effect be that in some cases more is charged for the short than for the long haul over the same line in the same direction. This general fact is recognized the world over; and of English railways it has been often remarked that some of them would be deprived of much of their value if they were not allowed to meet water competition by such concessions at the points of contact as the competition would compel.

The only question that fairly arises in regard to it is whether the competition is kept within proper bounds. Vessel owners produced evidence before us to show that the railroads put down their rates to a ruinous point in their determination to take the competitive traffic at all hazards, and eventually to crush out competition; and railroad managers retorted with evidence that the blame for unremunerative rates was upon their rivals. But the question of relative fault is not important now. Low rates are a necessity of the situation; and if railroads compete with water transportation either on the ocean or on the navigable rivers, they have no choice but to accept such rates. To compel the roads to observe strictly the general rule laid down by the fourth section would necessitate their abandonment of some classes of business in which their competition with water transportation is now of public importance. Vessel owners who appeared before us to oppose the applications made for relief, put their opposition in some cases explicitly on the ground that denying the applications would enable the vessel men to put up their own rates. This was to be

expected, and is far from being blameworthy if in fact their business is not now reasonably profitable; but it is suggestive of the fact that the interest of the public and that of any class of public carriers is not in all respects identical.

It is more than probable that the complaints made by the vessel owners against certain of the railroads are to some extent well founded; that the railroads have not only made the rates at points of competition with vessels much too low in order that they might at all events obtain the business, but that this had been done in disregard alike of right and of true policy, This is only saying that in their wars of rates with vessel owners they have sometimes shown the same recklessness as in like wars among themselves; but the fact still remains that they must either be allowed to compete with vessel owners and make low charges for the purpose, or they must leave vessel owners in possession of the business without the check upon charges which competition would afford.

The question here is whether this limitation of competition was intended by the statute; or, on the other hand, did Congress intend that the existence of competition might in some cases make out the dissimilar circumstances and conditions which would support a greater charge for the shorter haul, even though it might be over the same line in the same direction, the shorter being included in the longer distance? On this subject the history of the proceedings in Congress which resulted in the adoption of the fourth section as it stands is instructive, and with such brevity as is practicable it is recited here, not as determining conclusively the construction of the section, but as showing beyond question that the benefits of competition were meant to be retained, and that exceptions to the rigorous general rule were provided for to meet the contingencies which the competition might create.

In the report of the Senate select committee, submitted January 18, 1886, known as the Cullom report, is found the following language

No question connected with the problem of railroad regulation has given the committee more perplexity than that relating to the utility and expedi-

ency of legislation prohibiting a carrier from charging more for a shorter than a longer haul under any circumstances; not that we have any doubt as to the injustice of such a charge under most circumstances, but because it seems inexpedient to enforce such a regulation under all circumstances.

When the effect of the proposed prohibition is considered with reference to the whole internal commerce of the United States, and especially with reference to the necessity of preserving the prevailing cheap rates for long distance transportation, there is reason to fear that the result of rigidly enforcing the proposed regulation would be to stifle competition in numberless cases where it now exists and is to the general public interest, and perhaps to deprive the country of the benefits of the low through rates now and for years given to and from the tide-water, without practical or appreciable advantage to intervening points.

The bill introduced with the report contained the following provision upon this subject:

SECTION 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or property for a shorter than for a longer distance over the same line in the same direction, and from the same original point of departure, if such greater charge for the shorter distance constitute an unjust discrimination; but such greater charge for a shorter distance shall be presumptive evidence of unjust discrimination, which may, however, be rebutted by the common carrier.

Upon application to the Commission appointed under the provisions of this act, such common carriers may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time make general rules covering exceptions to any such common carrier in cases where there is competition by river, sea, canal, or lake, exempting such designated common carrier from the operation of this section of this act; and when such exceptions shall have been made and published they shall have like force and effect as though the same had been specified in this section.

Afterwards, and before debate, the committee on February 16, 1886, reported as a substitute for this bill another, in which the following language is found:

SEC. 4. That it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or property subject to the provisions of this act for a shorter than for a longer distance over the same line in the same direction, and from the same original point of departure: provided however, that upon application to the Commission, &c. * * * [substantially as before].

The formal discussion of the measure was commenced April 14, 1886, the chairman of the select committee opening the debate by a speech in which he said concerning the fourth section:

> It is agreed that this is the principle that should be observed as a general rule. The committee found, however, that the principle was not of universal application; that there were cases in which the railroads were compelled to make lower rates for longer than for shorter distances by the great law of competition, which is stronger than any law we can make, and that in some cases it would be a great hardship to the public as well as the railroads to rigidly enforce the general principle.

It is perfectly clear that the intention of the original framers of the Senate bill was to leave it to the discretion of the Commission to exempt carriers from the operation of the rule in cases when the "great law of competition" made such a relaxation proper, having in view the interests of the carriers and the people.

On May 6, 1886, Senator Cullom moved to amend the section by striking out the words "covering exceptions to any such common carrier in cases when there is competition by river, sea, canal, or lake." He supported this motion by the suggestion that these words were not necessary, and that without them the Commission would have the same power and more. Senator Harris favored the amendment, as giving a broader discretion to the Commission, and it was adopted.

On May 12th, a motion was made by Senator Camden to change the phraseology of the first part of the section, so that it should read "of like kind of property under substantially similar circumstances and conditions." This amendment was agreed to as a substitute for a previous amendment proposed by Senator Camden, and with little additional debate.

The bill was finally passed on the part of the Senate, section 4 remaining substantially as above, with the insertion of the following:

> But this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance.

The bill then went to the House of Representatives, and was

referred to the Committee on Commerce. That committee reported as a substitute for it the bill before pending in the House, which contained the following provision upon the subject embraced in section 4 of the Senate bill:

That it shall be unlawful for any person or persons engaged in the transportation of property as provided in the first section of this act to charge or receive any greater compensation for a similar amount and kind of property, for carrying, receiving, storing, forwarding, or hauling the same, for a shorter than for a longer distance, which includes the shorter distance on any one railroad; and the road of a corporation shall include all the road in use by such corporation, whether owned or operated by it under a contract, agreement, or lease by such corporation.

In opening the debate on July 21, 1886, Mr. Reagan, chairman of the House Committee on Commerce, severely criticised the fourth section of the Senate bill, saying that the closing part of the section substantially nullified the former part, while his proposed substitute contained an absolute prohibition.

The minority of the committee, four in number, opposed the substitution, and in their report the following passage occurs:

Nor do the minority favor the provision prohibiting a greater charge for a shorter than a longer haul, as it was shown to a satisfactory degree, as we think, in the hearing, that, where two competing points were connected by water as well as rail, it was impossible for the railroads to secure the traffic unless they made their rates as low as the water rates, and that while they might be able to do this on a portion of their traffic, it would be destructive of their interests to reduce all their rates to those which were forced upon them between certain points by the competition of the water routes.

It is obvious, therefore, that, in the House as well as in the Senate, it was understood that the existence of competition was intended to be included in the margin of discretion provided for by the Senate measure. The question as to this point was distinctly marked; the debate, so far as this section was concerned, was upon that basis. On July 30, 1886, the substituted bill was agreed to and passed on the part of the House. A conference committee was appointed, and at the second session of the Congress that committee agreed upon a report, which was presented

to the Senate December 15, 1886. By this report the fourth section of the Senate bill was amended so as to read as it now stands.

The work of the conference committee was very elaborately and carefully performed. The two bills which were referred to it presented very clearly the views which had prevailed in the two houses respectively, on the general subject of relative charges on long and short haul traffic—the House view of an inflexible rule, forbidding absolutely the greater charge for the shorter haul, and the Senate view that the rule should be subject to exceptions when the circumstances and conditions required it. The conference committee accepted deliberately the Senate view, and presented it, in the report to the two houses. In the Senate the report, before adoption, was discussed, and what was proposed by it on this point of vital interest was very distinctly brought out and made prominent; and in the House, where also the report was adopted, nothing which was said by any one indicated that the situation was otherwise understood.

It is impossible to resist the conclusion that in finally rejecting the "long and short haul clause" of the House bill, which prescribed an inflexible rule, not to be departed from in any case, and retaining in substance the fourth section as it had passed the Senate, both houses understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance, but that they were, instead, leaving the door open for exceptions in certain cases, and, among others, in cases where the circumstances and conditions of the traffic were effected by the element of competition, and where exceptions might be a necessity if the competition was to continue. And water competition was beyond doubt especially in view.

In thus deliberately making provision for competition, even though it might be necessary to allow for the purpose exceptions to the general rule laid down in the statute, Congress must be supposed to have done so because the public interest required it That competition is the life of trade is one of the most generally accepted of maxims; among its principal benefits is the protection

it gives against extortionate charges. But legitimate, open, and fair competition was meant; not everything that has been done under the name of competition, and which in many cases has been equally destructive of public and of private right. Among the common abuses have been the granting of special favors in exceptional rates, rebates, drawbacks, &c., all of which are now expressly prohibited by law when they assume the form of unjust discrimination. There has also been favoritism between places and communities as a result of violent competition, but this also is no longer permissible. Other similar wrongs will be referred to further on; but the wars of rates, under the excitement of which traffic is carried at a loss, to be made good by excessive charges on other traffic at other times, is not the least of those from which the public has suffered. And these wars are as indefensible when vessel owners are their objects as when made between the railroads themselves, and are not to be justified on any pretence of competition. Water transportation is entitled to such traffic as in fair rivalry and at fair prices it can take, and the railroads in competition with it must recognize this right and not recklessly attempt to preclude its exercise. It is true that while the roads are obliged to publish their tariffs and the carriers by water are not, the former are at a disadvantage in the competition; but possibly the law in this regard may be amended if justice shall be found to require it.

Every railroad company ought, when it is practicable, to so arrange its tariffs that the burden upon freights shall be proportional on all portions of its line and with a view to revenue sufficient to meet all the items of current expense, including the cost of keeping up the road, buildings, and equipment, and of returning a fair profit to owners. But it is obvious that, in some cases, when there is water competition at leading points, it may be impossible to make some portion of the traffic pay its equal proportion of the whole cost. If it can then be made to pay anything toward the cost, above what the taking of it would add to the expense, the railroad ought not, in general, to be forced to reject it, since the surplus, under such circumstances, would be profit. As

has been tersely said by M. de la Gournerie, formerly inspector-general of bridges and railways in France, a railroad "ought not to neglect any traffic of a kind that will increase its receipts more than its expenses"; and long-haul traffic which can only be had on these terms may sometimes be taken without wronging any one, when, to carry all traffic, or even the major part of it, at the like rates, would be simply ruinous. But we desire to apply generally to every kind of competition herein discussed the observation above made, that when competition leads to the transportation of property below actual cost, fairly computed, it ceases to be legitimate. Fair and reasonable competition is a public benefit; excessive and unreasonable competition is a public injury. Competition is to be regulated, not abolished. The other sections of the law of themselves imply ample authority for its regulation, and, in connection with the fourth section, support the interpretation that it is wholly inadmissible to press competition to a point where expenses are increased beyond the increase of income.

II. The question whether railroad competition with other railroads which are not subject to the control of this law, can present a case of dissimilar circumstances and conditions, within the meaning of section 4, may possibly be one of greater doubt. The classes of roads not thus subject, and whose competition might be severe, are the Canadian roads and roads which are entirely within the control of a single State. As regards the latter, it is not improbable that cases exist of roads not restrained by any long and short haul clause corresponding to the Federal statute, which are so situated in respect to rivals coming under the law of Congress as to be able to monopolize to the public detriment the traffic at important points of competition unless the latter are given equal freedom of action. We do not understand, however, that any of the pending applications are of this nature, and we therefore leave such cases to be considered when they shall be presented more directly. Competition with Canadian roads may, it is believed, present a case of dissimilar circumstances and conditions. Whenever such roads compete with roads in the United States for business between one part of our country and another, a state

of circumstances arises and exists as to such business which justifies American roads in meeting such competition by a corresponding reduction of rates, without regard to the fact that in so doing the rates between the terminals may be reduced below rates to and from intermediate places which are otherwise reasonable and just in themselves. The fact that American roads are left free to meet such competition is of itself an assurance that no extensive war of rates is likely to be engaged in by the Canadian roads, or, if engaged in, to be long pursued.

III. The competition with each other of the railroads which are subject to the Federal law can seldom, as we think, make out a case of dissimilar circumstances and conditions within the meaning of the statute, because it must be seldom that it would be reasonable for their competition at points of contact to be pressed to an extent that would create the disparity of rates on their lines which the statute seeks to prevent. But we cannot now assume that no case has arisen or can hereafter arise which on its own peculiar facts and in consideration of its special equities can be deemed to present a just claim under the statute.

First, it may be observed here that in some parts of the country it is not easy to separate railroad competition altogether from competition by the water-ways.

Water competition is not limited in force strictly to the points of contact of water and rail lines, but extends its influence to an indefinite distance therefrom, qualifying to greater or less extent the all-rail rates. But passing that consideration by, it will be found on investigation that cases will exist in which, unless the force of strictly railroad competition is allowed to create exceptions under the statute, an existing competition which is supposed to be of public interest must come to an end. And where that is the case the strong lines will in general be gainers at the expense and sometimes to the destruction of those which are weaker.

One such case is that of the railroad extending from Pittsburgh, Pa., parallel to the Pennsylvania Railroad as far as Youngstown, and thence to Ashtabula, Ohio, where, through connection with the Lake Shore, it gives to the people of Pittsburgh and Youngs-

town competition with the Pennsylvania road in their business to and from New York and New England. The peculiarity of the competition is, that the business on the roads respectively is started in opposite directions when destined to the same point, so that on east-bound traffic from Pittsburgh the haul by one road is shorter than from Youngstown and longer by the other. As the Pennsylvania road has the shorter line, it is in position to determine what the rates shall be and the longer line has no option but to conform to them. In making them the leading road gives to Pittsburgh lower rates than to Youngstown, as it justly should do, in recognition of the geographical position. But the other road must do the same, though over its line the traffic between Youngstown and the seaboard will have the shorter haul. There is nothing unreasonable or unjust in this ; and if the longer line were to attempt a change which should reduce the rates from Youngstown to the level of those of Pittsburgh it would in doing so only open a war of rates in which all the advantages would be with its rival. Finding itself in this dilemma, it applied to the Commission for an order permitting a greater charge to be made on traffic to and from Youngstown than is made on that to and from Pittsburgh, and its application is strenuously opposed by the Pennsylvania road, which insists that competition by this round-about route is illegitimate and ought not therefore in any manner to be aided.

Whether this position is sound the Commission may determine hereafter. It is sufficient to say of the case at this time that it is one—and not a solitary instance—in which a strict application of the general rule laid down by the statute must be fatal to competition. If the competition in itself is illegitimate, it may be right to permit its destruction. But it is not admitted by those interested in the road just mentioned that its case is of this nature. It is shown that it was constructed by Pittsburgh capital for the express purpose of the competition ; and it appears that though the route is indirect, the competition has given it considerable bnsiness, and large investments have been made in reliance upon its continuance.

One fact obvious on the statement of this case is that the wrong against which the long and short haul clause of the statute is aimed is not to be found in it. When the greater charge for the shorter haul over the same line in the same direction is spoken of, the natural suggestion to the mind is of a line leading with some directness to the place to which the traffic is destined; and there seems to be in such greater charge a manifest unfairness, since it deprives the place of shipment nearest the destination of its proper advantage of situation. But in the case stated the position is the opposite to this; the greater charge for the shorter haul preserves the proper advantage of situation, and has in itself no element of injustice to localities. It is the situation which forces upon the road an unequal charge which is nevertheless not unfair, and a strict application of the statute must compel the surrender of what is now competitive traffic to the older and more direct route whose very conformity to the general rule precludes conformity by the competitor.

There are other cases in the country of roads now taking part in competitive traffic which the peculiarities of situation will compel them to abandon if the long and short haul clause of the statute is strictly applied. This to some extent might be the case with certain north and south roads, like the road from Cincinnati to Toledo, and that from New Albany to Chicago, which have heretofore engaged considerably in east and west bound traffic which they deliver to or receive from other roads crossing them, or at their terminals. In many cases these roads have been accustomed to make the greater charge for the shorter haul simply because the direction they run compels it; but in doing so they may wrong no one, because the rates are not determined by them but by the direct east and west lines, and are made with regard to relative distance. Both the roads named now have applications pending for relief from an embarrassment for which they are not themselves responsible; and they aver, with plausibility at least, that the public interest will suffer if they are shut out from such share in competition as they have hitherto taken. We do not pass upon these cases finally at this time, and,

therefore, do not undertake to say of them that they constitute cases in which the competition of roads subject to the Federal law creates the dissimilar circumstances and conditions which make up an exceptional case. But this brief reference to the facts is suggestive of a possibility, at least, that the exceptional case may exist; and if it does exist a strict enforcement of the general rule might be found quite as injurious to the public interests as to those of the railroads which would thereby be shut out from competition.

IV. Whether the competition of towns which are trade centres or distributing points can in any case make out the dissimilar circumstances and conditions independent of the competition of the carriers is a question which may be said to be presented by the evidence taken, but not with such distinctness as to call for an expression of opinion at this time. The pre-eminence of such trade centres in the territory reached by the petitioner's roads is peculiar, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions or none at all to less important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and non-competitive towns—the former being the "trade centres"—must have had some influence to increase steadily the disparity in growth and prosperity.

By some of the witnesses before us this was bitterly complained of, while by others it was defended as being best for both classes of towns. The smaller towns in this part of the country it was said, are dependent on the trade centers for their supplies, and they get indirectly the benefit of low rates to the distributing points in lower prices than could otherwise be given to them. In proportion also as the distributing points are prosperous, they can and do extend to the dealers at other points credit and indulgence. The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining within certain limits what towns shall be trade centers, and what their relative advantages; and while it may be, as they assert it is, that in deciding upon rates under the

pressure of the competition of trade centres they endeavor to do justice between them, yet as they do not, at the same time, feel a like pressure from non-competitive points, it is obvious that justice to such points is in great danger of being overlooked, and it is altogether likely that it is so to some extent.

One result is that towns recognized by railroad managers as trade centres come to be looked upon as towns with special privileges, and other towns strive for recognition as such, and complain, perhaps, of injustice when they fail. It was made very clear by the evidence produced in behalf of the railroads that the exceptionally favorable rates which were given to certain localities were in some cases given to build up trade centres; and as they had had that effect, and large establishments had been located at such centers invited by the favoring rates, it was urged that there would be injustice in now compelling the roads to go back to the rule of equality. Of this it may be said, *first*, that as between different localities it is no sound reason for discriminating in favor of one as against another that the purpose is to build up the favored locality as a trade centre; and, *second*, if the discrimination has existed and has had its effect, the fact that large establishments have thereby been encouraged is no reason why the injustice should be perpetuated. This statute aims at equality of right and privilege, not less between towns than between individuals, and it will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them.

These general views will indicate as far as we deem at this time necessary the bounds within which the railroad managers must limit their action in making charges which are greater in the aggregate for the transportation of passengers or of the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance. With responsibility to the law and to the restraining power of the Commission in case the bounds are exceeded, it may confidently be expected that all carriers will bring themselves into conformity with the general law so far as it may be found reasonably practicable, and that the occasions for special interfer-

ence will not be numerous. Our observations and investigations so far made lead to the conclusion that strict conformity to the general rule is possible in large sections of the country, without material injury to either public or private interests; and that in other sections the exceptions can be and ought to be made much less numerous than they have been hitherto, and that when exceptions are admitted the charges should be less disproportionate. Very many of the roads, as we are informed, have so arranged their tariffs as to make no exception whatever; and where that has been proved to be reasonably feasible, return to the former custom cannot be tolerated. In any case in which a company fails to bring its tariffs into conformity with the general rule, if parties whose interests are thereby unfavorably affected complain, it must be prepared to justify its action by a showing of circumstances and conditions which render it just and reasonable.

In the views above expressed the members of the Commission, after full consideration, are unanimous.

The order for temporary relief which was made in favor of the petitioner will be allowed to remain in force until the day originally limited for its expiration, and in the meantime its officers will have the opportunity to make thorough revision of its freight and passenger tariffs, in order to bring them as nearly as may be reasonably feasible into harmony with the general rule of the statute and with the views expressed in this opinion. That they may be brought much nearer to conformity than they now are without the sacrifice of any substantial interests, we have very little question; and as business adapts itself to the new principle established by Congress, it will no doubt be found that exceptions can safely and steadily be made less and less numerous.

The other applications for relief under this section which remain to be disposed of are as follows: Fifteen are by the Richmond and Danville Railroad Company, The East Tennessee, Virginia and Georgia Railroad Company, and other members of the Southern Railway and Steamship Association, which is an association of railroad and steamship companies operating lines of transpor-

tation in the territory south of the Ohio and Potomac and east of the Mississippi River. Eleven are by other railroad lines in the same territory, the Mobile and Ohio, "Queen and Crescent," Illinois Central, and others. Two are on behalf of companies in Louisiana and Texas. Seven are presented by the various transcontinental lines. One is in favor of the New York, New Haven and Hartford and other companies operating short lines in Connecticut, Rhode Island and Massachusetts, which also seek relief against alleged water competition. One is filed by the Delaware and Hudson Canal Company, and another by the Rome, Watertown and Ogdensburg Railroad Company, in the State of New York, asking relief in respect to Canadian competition. Four are presented in behalf of the Pittsburgh and Lake Erie, the Cincinnati, Hamilton and Dayton, and two other roads similarly situated. One by the Mason City and Fort Dodge Company, a north and south road in the State of Iowa. Four are in behalf of certain roads in the vicinity of Peoria. Two are in behalf of roads in Southern Illinois, relating to their connections south of the Ohio. Three are by the Wisconsin Central and two other roads in Wisconsin and Minnesota. One by the New York, Philadelphia and Norfolk, in Delaware. One by the Memphis and Little Rock, in Arkansas; and one by the Detroit, Grand Haven and Milwaukee, in the State of Michigan.

The temporary orders which have been made on some of these petitions will in like manner be permitted to remain in force until the expiration of the time originally limited in each. No further order will be made upon any of the petitions, for although some two or three of the cases may not, by the facts recited in the applications for relief, be brought strictly within the principles above discussed, yet they all present what are claimed to be different circumstances and conditions adequate to authorize exceptions to the general rule; and if the petitioners are persuaded that the fact is as they represent, they should act under the statute accordingly.

The points that are intended to be decided at this time are as follows:

First. That the prohibition in the fourth section against a greater charge for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein is limited to cases in which the circumstances and conditions are substantially similar.

Second. That the phrase "under substantially similar circumstances and conditions" in the fourth section, is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance.

Third. That the judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts, to decide whether error has been committed, or whether the statute has been violated. And in case of complaint for violating the fourth section of the act the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar.

Fourth. That the provisions of section one, requiring charges to be reasonable and just, and of section two, forbidding unjust discrimination, apply when exceptional charges are made under section four as they do in other cases.

Fifth. That the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, in the following cases:

1. When the competition is with carriers by water which are not subject to the provisions of the statute.

2. When the competition is with foreign or other railroads which are not subject to the provisions of the statute.

3. In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the

general rule of the statute would be destructive of legitimate competition.

Sixth. The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic and that which is given the more favorable rates is not.

Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long-haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry.

Nor that it is designed to build up business or trade centres.

Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centres or industrial establishments have been built up.

The fact that long-haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.

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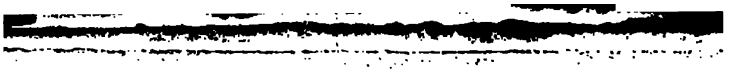

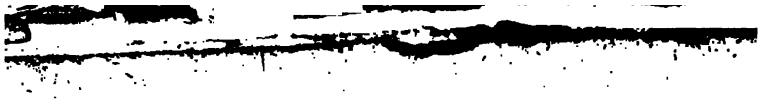

"The People and the Railways" is a popular discussion of the railway problem in the United States, also containing a dissertation on the inter-state commerce law, and was written by Appleton Morgan, one of the shining lights of the New York bar, who recently won considerable distinction by writing a volume upon Shakspere. This effort is designed in great part as an answer to the argument in James F. Hudson's book, "The Railways and the Republics," many parts of which Mr. Morgan characterizes as "rambling and riotous charges." He believes the inter-state commerce law to be thoroughly vicious. Some parts of the work have heretofore appeared in leading magazines. New York: Belford Clarke & Co.

Book Chat. Chicago

THE PEOPLE AND THE RAILWAYS. pleton Morgan.—A popular discussion railway problem in the United States, in as an answer to, and refutation of Mr. Ja Hudson's "The Railways and the Rep which, according to Mr. Morgan, has don to foster the animosity towards the rail terest, so largely prevalent among the pe this country. An examination of the Int Commerce Law, and of the possible per consequences it may have, if used by artful or ignorant men, is also contained book, which is thoroughly indexed.—B Clarke & Co.

7.919

MR. APPLETON MORGAN in his work on 'The People and the Railways' appears as a defender of the railway companies. The book consists of two tolerably distinct portions, the first of which is in the main a reply to Mr. Hudson's work entitled 'The Railways and the Republic,' published a few years since, while the second discusses the Interstate Commerce Act and various other matters relating to the railway problem. In replying to Mr. Hudson and in criticising the 'long haul and short haul' clause of the new law, the author often has the advantage; but his work as a whole is by no means a success, and is more likely to increase the popular dislike of the railway companies than to diminish it. Mr. Morgan's style is at best deficient in clearness, and is sometimes loaded down with parentheses, which increase the obscurity. His temper, we are sorry to say, is still worse, and he seems to have written this book in a constant state of irritation. He speaks of one of Mr. Hudson's statements as 'an outrageous and unmitigated falsehood;' of others as 'antique newspaper clippings;' and of others still as 'deliberately and disgustingly false'; and these are only the worst ebullitions of an ill-temper that shows itself in almost every chapter. In the matter of the book there is much that is sound; but there is also much of an opposite character, for the author will not admit that the railway companies are ever in the wrong. Thus, he sees nothing wrong in free passes, nor in discrimination in favor of some individuals and against others; and he declares that railroad accidents are the act of God, for which neither the companies nor their employees ought to held responsible. In short, he speaks throughout as an advocate and never as a statesman; and we shall have to look to some different authority for a solution of the railway problem. (Chicago: Belford, Clarke & Co.)

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belonged to its own jurisdiction—

still I admit the commission has been very kind to the companies — its first act – (see same on p 137.) and only the unlawful passes issued by the Railway companies of the U.S. for every conceivable reason or pretext – by some marvellous conduct the case particular case was one where the pass was issued but unused by the recipient.

The best [illegible] our Interstate Commerce Commission What it will not do – Congress yet may do –

Case to forbid carrying of oil in tanks for less than oil in –

If freight is 15 cents on Ky to Chicago & 25c [illegible] and the paralleling [illegible] cheaper [illegible] the traffic – and the [illegible] go with [illegible] free [illegible] see Memorandum

Page Case is Burlington and Missouri River RR Co –

ICC v. 3 Fed. 346 B'way - 114; 9 R. R. v. Ramsey 205 [illegible] St. Chicago

Conferences [illegible] E. P. Alexander [illegible] Chauncey Depew M. B. [illegible] E. P. [illegible]