

THE INTENT OF THE
INTERSTATE COMMERCE ACT OF 1887

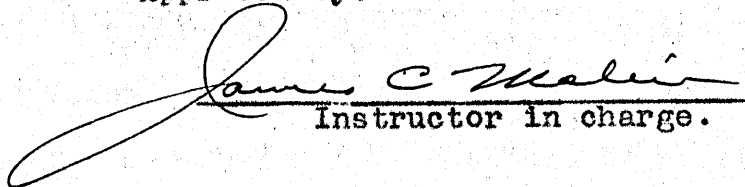
by

Ira C. Ihde


A.B., McPherson College, 1928

Submitted to the Department
of History and the Faculty
of the Graduate School of the
University of Kansas in partial
fulfillment of the requirements
for the degree of Master of Arts.

Approved by:


Instructor in charge.

23 July 1931.


Head or chairman of Dept.

INTRODUCTION

It shall be the purpose of this paper to present, in part, the questions involved in the early attempt of governmental regulation of the railroads. The plan is to deal specifically with the question of railroad regulation as it appeared in the Forty-eighth and Forty-ninth Congresses from 3 December 1883 until 4 February 1887, when the Interstate Commerce Act was passed. Court decisions that have affected the original intention of the Act are also reviewed. The questions which entered into the problem are taken up principally from the Congressional side and conclusions drawn from that. All petitions and bills which were presented and introduced into Congress during this period are compared and analyzed and the final bill is traced through its various steps until its passage. Some of the questions to be considered are the elements of opposition that came into the situation. The question of State rights which was still somewhat vague. How extensive and real should be the powers of a Commission if one should be created? Should this Commission have the power upon complaint to determine and enforce a reasonable maximum rate? What should be a reasonable rate for a public carrier?

Did the Act intend to include in its provisions the express and sleeping car companies? What was the purpose of the long and short haul? What was the general attitude in regard to railroad pools? What was the best method to prevent discriminations between individuals and localities? Would this legislation be the first step in the direction that would lead to ultimate government regulation and perhaps ownership of railroads and other private enterprises? These questions are considered and answered in the light of the material gathered from the Congressional debates and from the Senate investigation upon the question of railroads.

TABLE OF CONTENTS

Introduction - - - - - Page
1

Chapter I

Agitation for Federal Action, 48 Congress, 1 and
2 session, 1883-1885 - - - - - -1

Organizations that urged railroad regulation-Labor Movement-Greenbackers-Granger Movement-Alliance Movement-petitions in 48 Congress-sections represented-contents of petitions-bills in 48 Congress-Senate Bill No1 2112 introduced by Committee on Railroads-provisions-House Bill 5461 introduced by Committee on Commerce-provisions-House Bill No.5461 (Reagan's Substitute) introduced by Mr. Reagan-provisions-passed by House-amended and passed by the Senate-provisions as passed by Senate-Chart analyzing the four major bills.

Chapter II

The Cullom Investigation and Report - - - - - -47

The Senate resolution creating an investigating committee-members of the committee-method and procedure of the committee-taking testimony-sentiment found regarding the establishment of a Commission-Nature and extent of discrimination practiced-Congression of the Committee in regard to a Commission-publicity as an aid to railroad regulation-rates-maximum and minimum rates-long and short haul-water competition-pooling-general summary of rates with the conclusions of the Committee.

Chapter III

Passage of the Interstate Commerce Act - - - - - - - -78

1011
Petitions and bill in 49 Congress-
Analyzation of contents and interests
representated-Senate Bill No.1532 intro-
duced by the Cullom Committee-provisions-
remarks by Sen. Cullom-passed in Senate
with minor adendment--in the House a
substitute-recommended and passed-bill
sent to Conference Committee-Senate bill
amended in conference-provisions-passed in
Senate-passed in House-signed by the
President-questions involved in the passage
of the Act-express and sleeping car companies
pooling-the long and short haul-publicity-
rates-commission-intentions of the Act.

Chapter IV

Interpretations Affecting the Interstate Commerce Act-114

Favorable reception-resistance from unwilling
witnesses concerning rebates-relation to courts-
decision of the commission to release express
and sleeping car companies from the Act. Argu-
ments presented-ask further action by Congress
Maximum Freight Rate Case-Opinion of the
Supreme Court-functions of the Commission as
outlined by the Supreme Court--effects of the
decision.

References by Chapters - - - - - - - - - - - - - -129

Bibliography - - - - - - - - - - - - - - - - - -134

Chapter I

AGITATION FOR FEDERAL ACTION

48th. Congress 1 and 2 Session. 1883-1885

Statesmen seemed to shrink from the task of taking hold of the railroads and placing them where they would be carefully regulated by law. Public opinion, however, demanded that they do something to remedy the evils that were rampant in railroad management. The intolerable arrogance of the great railway managers helped to crystallize public opinion against them. Honorable exceptions there were, but the "Public be damned" attitude of the Old Commodore Vanderbilt was evidently a general, although somewhat exaggerated one. It is certain that there was no well defined sense of responsibility to the public. All attempts at reform or investigation were treated as "interference with private business."¹

Various organizations took up the cry for justice in transportation and announced their stand in resolutions of their respective organizations. The Grange, an organization established in 1867 headed by O. H. Kelley, engaged in an effort to correct transportation abuses and to arouse cooperation among farmers in general. In 1872 the Labor Reformers in a resolution demanded fair rates and no discrimination. In 1876 the Prohibitionists in their platform

called for lower rates. The Greenbackers in 1880 stood for uniform rates and in their platform in 1884 they advocated the abolishment of pooling, stock-watering and discrimination. The Republican Party in the campaign of 1884 promised an act to regulate commerce if elected.²

The number and nature of bills and petitions submitted to Congress during the Forty-eighth Congress also give a good index to the importance of the railroad question at this time. The content of the bills and petitions together with the arguments advanced will give one an idea as to what public men had in mind in regard to railroad regulation. The bills and petitions of the Forty-eighth Congress, 1st session, will be taken up in chronological order in a rather general way as only one bill, namely S2112, which was reported by Senator Cullom of Illinois on 28 April 1884, received careful consideration.

The first bill, H.R.64, of the session was introduced by Mr. Rosecrans of California. The purpose of the bill was to prevent undue discrimination in railway transportation. It was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

Mr. Belford, of Colorado, introduced H.R.123, a bill to regulate railroad traffic between the states and territories. The bill was read a first and second time, referred to the Committee on Commerce and ordered to be printed.

A bill, H.R.480, was introduced by Mr. McCoid of Iowa. The purpose of the bill was to provide for the regulation of Commerce by railroads among the states, and for the protection of the people from extortion and oppression, and of capital invested in railways from maladministration and railroad wars. The bill was read a first and second time, referred to the Committee on Commerce and ordered to be printed.

Mr. Anderson, of Kansas, introduced a bill, H.R.506, to prevent unjust discriminations by railroad companies and subjecting them to the control of the states under certain circumstances. The bill was read a first and second time, referred to the Committee on Commerce and ordered to be printed.

Mr. Hopkins, of Pennsylvania, introduced a bill, H.R.1343, to regulate interstate commerce and to prohibit unjust discriminations by common carriers. It was read a first and second time and referred to the Committee on Commerce and ordered to be printed.

Mr. Reagan, of Texas, introduced a bill, H.R.1561, to regulate interstate commerce and to prohibit unjust discriminations by common carriers. The bill was read a first and second time and ordered to be printed.

A bill, H.R.2148, was introduced by Mr. Willis, of Kentucky, to regulate commerce among the states. It was read a first and second time, referred to the Committee on Commerce and ordered to be printed.

Mr. Winans, of Michigan, introduced a bill H.R.3251 to regulate the transportation of freight by railways, to prevent unjust discrimination therein, and to provide for a uniform rate. It was read a first and second time and ordered to be printed.

Mr. Barksdale, of Mississippi, introduced a bill, H.R.3265, to regulate commerce by railroad among the several states. This bill was read a first and second time, referred to the Committee on Commerce and ordered to be printed.

Mr. Brewer, of New Jersey, introduced a bill, H.R.986, to regulate the commerce between the states pertaining to commercial travelers. This bill was read twice and referred to the Committee on Manufacturers. It was reported back, as H.R. Report 1321, with recommendations for passage. Then it was referred to the Committee of the Whole House on the state of the Union, and accompanying report ordered to be printed.

A bill, H.R.6985, was introduced by Mr. Poland, of Vermont, to regulate commerce among the several states, and to codify the law relating to bills of exchange and other commercial paper. The bill was read twice, referred to the Committee on Judiciary and ordered to be printed.

In the Senate the first bill was introduced by Senator Cullom of Illinois, the chief advocate of railroad legislation, having served on the State of Illinois

Railroad Commission for six years. In his bill, S.840, he proposed to establish a board of commissioners to regulate interstate commerce, and for other purposes. The bill was read twice, referred to the Committee on Railroads. It was reported back and indefinitely postponed.

The second bill was introduced by Senator Wilson of Iowa. This bill, S.1142, proposed to establish a board of commissioners of interstate commerce, prescribe the duties thereof, and for other purposes. It was read twice and referred to the Committee on Railroads, from which it was reported back and then indefinitely postponed by the Senate.

The most important bill, S.2112, that was submitted during the session was introduced by the Committee on Railroads. It was proposed to establish a commission to regulate interstate commerce, and for other purposes. It was introduced by Mr. Cullom of the Committee on Railroads on 28 April 1884. This bill was discussed on the Senate floor. This was the first bill that was given practically any consideration during this period by either House of Congress. As it formed a basis for future bills and future legislation it is well that the contents of the bill be herein given. On 5 July 1884, Senator Cullom presented the provisions of the bill in person. The summarized contents of this bill follow:

Section 1, provides for a commission of five members appointed by the President for a term of five years. Provision is made for the removal of any commissioner by the President for incompetency or malfeasance in office.

Section II, grants the commission the supervision over all matters pertaining to the regulation of commerce among the several States and Territories, and the methods of operation of all transportation companies engaged in interstate commerce; and makes it the duty of the commission to enforce the provisions of the act by all lawful means within its power.

Section III, states that to charge or receive more than a reasonable rate of compensation is declared to be an extortion and a misdemeanor.

Section IV, states that if any transportation company engaged in interstate transportation shall neglect or refuse to furnish the same facilities for the carriage, receiving, delivery, storage and handling of interstate commerce freights to one person that is at the same time furnished to any other person; or shall charge or receive, any greater compensation for transporting a similar amount amount and kind of property a shorter distance than for a longer distance over the same line of road and in the same direction, but this provision shall not be construed to legalize the charging as much for a shorter as for a

longer distance in any case, such transportation company shall be deemed guilty of unjust discrimination.

Section V, provides that when complaint is made to the commission, charging extortion or unjust discrimination a statement of such charges shall be forwarded to the transportation company thus accused, which shall be required to satisfy the complaint or answer the same in writing within a reasonable given time. If the complaint is not settled between the two, then the commission shall proceed to take testimony, examine the case, make an award, determine, in other words, the amount of damages, if any, that the shipper has sustained, notify the corporation of the fact and the amount, and specify a time within which the damages shall be paid. If they should fail to be paid, then the commission is authorized to turn the papers in the case over to the district attorney of the United States for the district in which the accusation shall have been made.

Section VI, provides that if any company shall neglect or refuse to pay the damages assessed against it by the commission, and to desist from the further violation of the act, the commission shall certify the facts to the United States district attorney of the judicial district in which the act complained of occurred, and it shall be his duty, at the complainant's request, to forthwith commence such proceedings, in the name of the

complainant, as may be necessary to recover any damages ^{sustained} sustained by him, the complainant to pay the costs of suit, except attorney's fees, in case of failure to recover. The section also fixes the penalty for conviction, for extortion or unjust discrimination at a fine of not exceeding \$1,000 for each offence. The same penalty is fixed for refusal to make the annual reports required by the commission, and for refusal to answer any question, or to produce any book, paper, contract or other document called for by the commission in making any investigation. The same penalty is also fixed for violating any other provisions of the act or for attempt in any manner to obstruct the enforcement of its provisions.

Section VII, provides a salary of \$7,500 to the commissioners annually, with traveling expenses. Witnesses to be paid the same as in the United States Courts.

Section VIII, authorizes the commission to prescribe the forms to be used in business, and makes a majority a quorum for the transaction of business.

Section IX, gives the commission, in making investigations, power to require the attendance of witnesses, to administer oaths, and to require the production of all books, papers, contracts, and documents relating to the matter under investigation and necessary for the information of the commission. Such investigations may be conducted in any part of the United States, and

the powers, conferred for this purpose may be delegated to any member or members of the commission.

Section X, provides for annual reports from all the companies coming within the provisions of the act, and specifies the more important subjects upon which information shall be required, so that the reports shall contain all the information for the public, and any which the commission may desire.

Section XI, provides for the publication of the annual report of the commission together with such recommendations as to additional legislation on the subject as the commission may deem necessary.

Section XII, makes the route of a company engaged in interstate commerce include all the railroad and water routes used by said company under any sort of an arrangement, and makes it unlawful to enter into any agreement to prevent the carriage of interstate commerce freights from being continuous, whether carried partly, by vessel, or carried on one or several railroads.

Section XIII, defines the term "transportation company engaged in interstate commerce," showing that it applies to both railroads and vessels, and to all persons, firms, and companies, to all associations of persons or companies, incorporated or not, and to all associations of corporations engaged in the transportation of interstate freights or property.

Section XIV, appropriates \$60,000 for the purpose of the act for the coming fiscal year.³

In presenting the bill Senator Cullom of Illinois, realizing that considerable opposition would be met in giving a commission so much power, stated,

I desire here to say that, speaking from my personal experience in the position I occupied for six years in my own state, having a railroad commission existing at that time, my observation has been that it is in the interest of the people as well as in the interests of the corporations that a very considerable power should be given to a commission, if that commission is composed of honorable and honest and capable men, to settle difficulties between corporations and the people, so as to keep out of the courts very much litigation that would take place in the absence of such a commission. This bill has been framed upon the idea that such a commission should have a sort of preliminary power to settle disputes between the people dealing with the transportation companies and the companies themselves: but at the end if they should be unable to settle, then the parties should have the right to go into court and litigate the questions in dispute. My judgment is that with a national law with that sort of a provision in it which shall give an honorable commission that power there would in the end be very few cases which would ever find their way into the courts of the United States and everybody knows that is is a substantial denial of justice to a complainant to send him there if he happens to be a poor man.⁴

The bill did not propose to confer upon the commission the powers properly exercised by the courts, but simply authorized it to act as a court of arbitration. There was much opposition to the commission and Senator Cullom's idea was by no means universal as will be brought out in a further discussion of this bill.

After a brief discussion, further consideration of the bill was postponed until two o'clock Thursday after the first Monday in December 1884, which was the opening week of the 48th Congress, 2nd session.

The next bill introduced in this session of Congress was H.R.209, by Mr. Henderson of Illinois. It proposed to establish a board of commissioners of interstate commerce, and for other purposes. It was read twice, referred to the Committee on Commerce and ordered to be printed.

A bill, H.R.1344, was introduced by Mr. Hopkins of Pennsylvania. It proposed to establish a board of commissioners of interstate commerce. It was read twice, referred to the Committee on Commerce and ordered to be printed.

Mr. Wilson, of Iowa, introduced a bill, H.R.2012, to regulate interstate commerce. It was read twice, referred to the Committee on Commerce and ordered to be printed.

Mr. Long, of Massachusetts, introduced a bill, H.R.2246, to establish a board of commissioners of interstate commerce and for other purposes. It was read twice, referred to the Committee on Commerce and ordered to be printed.

Mr. Denster, of Wisconsin, introduced bill H.R.2887, to establish a board of railroad commissioners to regulate commerce among the several states and for other purposes.

It was read twice, referred to the Committee on Commerce and ordered to be printed.

A bill, H.R.5196, was introduced by Mr. Stewart of Vermont. It proposed to establish a board of commissioners of interstate commerce, and to regulate such commerce. It was read twice, referred to the Committee on Commerce and ordered to be printed.

Mr. Peters, of Kansas, introduced a bill, H.R.2119, to regulate interstate commerce through a national court of arbitration. This bill was read twice, referred to the Committee on Commerce and ordered to be printed.

Mr. Rice, of Massachusetts, introduced a bill, H.R.779, to establish a board of commissioners of interstate commerce and for other purposes. The bill was read twice, referred to the Committee on Commerce and was ordered to be printed.

Mr. Horr, of Michigan, introduced a bill, H.R.792, to establish a board of commissioners of interstate commerce as a bureau of the Interior Department. The bill was read twice, referred to the Committee on Commerce and ordered to be printed.

Mr. Stevens, of New York, introduced a bill, H.R.5360, to establish an interstate railway transportation bureau for the regulation of commerce with foreign nations, and among the several states, and with the Indian tribes. The bill was read twice, referred to the Committee on Commerce and ordered to be printed.

Senator Ingalls, of Kansas, introduced a bill, S. 826, to provide for the appointment of a commission to investigate the subject of railway transportation. The bill was read a first and second time, and referred to the Committee on Railroads. It was reported back adversely and indefinitely postponed.⁵

The 48th Congress, first session, received three resolutions in regard to railroad regulation. The first was from ^{the} Iowa Congressional delegation pleading the cause of the bill, S. 1142. The second resolution came from the Iowa State Legislature to the Committee on Commerce. The resolution asked that action be taken in regard to regulation of commerce.⁶ The third resolution came from the New York State Legislature to the Committee on Commerce. The resolution stated that water systems in the United States are of interstate nature, and therefore Congress should control them.⁷

Six petitions came to this session of Congress asking railroad legislation in some form or other. Senator Cameron, of Wisconsin, presented a memorial, signed by several hundred of his constituents, requesting Congress to enact a law providing that railroads engaged in carrying commodities from one state to another should not charge more by the car-load for a shorter distance than the same company charges for a longer distance. The petition was referred to the Committee on Railroads.⁸

Mr. Wellborn, of Texas, presented a petition from the legislature of that State, asking for a right-of-way for a railroad through Indian territory. The petition was referred to the Committee on Indian Affairs. ⁹

Mr. Nelson, of Minnesota, presented a petition from M. Burdick and other citizens, asking that federal legislation take place. The petition was referred to the Committee on Commerce. ¹⁰

Mr. Price, of Wisconsin, presented a petition from the supervisors of the St. Croix Company of Wisconsin, asking for an act to regulate railroad charges. The petition was referred to the Committee on Commerce. ¹¹

Mr. Maginnis, of Montana, presented a petition from the Board of Trade, of Livingston, Montana, protesting against the forfeiture of the Northern Pacific land grant. The petition was referred to the Committee on Public Lands. ¹²

The final petition of this session was presented by Mr. George, of Mississippi. The petition asked for a land donation for the construction of a railroad as was given to some other states. It came from the State of Mississippi.

A summary of the activity in regard to interstate commerce and the railroads, of the first session of the Forty-eighth Congress shows that there were twenty-one House bills presented, and four Senate bills, three resolutions and six petitions. These agitations came from

practically all parts of the country, showing that the railroad abuses were universal and not limited to the middle west as is generally supposed. The agitations dealt with various phases but the paramount question seemed to be the establishment of some kind of a federal commission. The Committee on Railroads' bill, S.2112, presented by Senator Cullom was by far the greatest definite step taken in this session for the establishment of this Commission. It was the only bill of this session carried over into the next session and was by far the greatest contribution, so far, in laying the foundations for a commission and for railroad regulation.

The second session of the forty-eighth Congress produced fewer bills on the subject of interstate commerce, but the study and consideration of those which it produced became more earnest and intensive.

The first discussion on interstate commerce in this session was on the bill, S.2212, which was carried over from the first session. Senator Cullom brought up this bill for consideration, defending the establishment of a strong commission. The discussion however was cut short because of the introduction of a bill in the House, H.R.5461, which is the second of the important bills in regard to railroad legislation. The bill was introduced from the Committee on Commerce by Mr. Reagan of Texas, 2 December 1884. After introducing this bill, Mr. Reagan immediately introduced a substitute bill which proposed

no commission but involved all the courts. On 16 December 1884 by a vote of 142 to 98, 83 not voting, it was agreed to bring the Reagan substitute before the House under consideration instead of the committee's bill.

This bill with a few amendments and alterations, as will be pointed out later, was passed by the House on 8 January 1885. The vote was 161 to 75 and 87 not voting. The bill was then sent to the Senate, where it was debated, amended, and passed. It was passed by the Senate on 4 February 1885, the vote being 43 to 12, and 21 not voting. The Senators who opposed the bill, together with the state and party they represent follow:

Bayard, of Delaware, D. :	Maxey, of Texas, R.
Butler, of S. Carolina, D. :	Morgan, of Wash., R.
Cockrell, of Missouri, D. :	Pendleton, of Ohio, R.
Coke, of Texas, D. :	Saulsbury, of Delaware, R.
Colquitt, of Georgia, D. :	Vance, of N. Carolina, R.
McPherson, of N. Jersey, R. :	Van Wyck, of Nebraska, R.

After the bill passed the Senate it was sent to the House. There Mr. Reagan, of Texas, asked unanimous consent to take up House Bill, 5461, with the Senate Amendments with a view to move to non-concur and ask a Committee of Conference. The House objected to consider, and nothing further was done in this session of Congress on this particular bill.

The four bills that laid the foundation for future railroad regulations are S.2112, H.R.5461, H.R.5461 (Reagan's substitute), and H.R.5461, as passed by the Senate. The contents of S.2112 have already been given and the contents of H.R.5461 as from the committee of the House for the purposes of comparison follow:

Section I, states that all charges by persons engaged in transportation shall be reasonable for such service.

Section II, provides that it shall be unlawful to charge or receive more from one person than from another under substantially similar circumstances; and all persons engaged as aforesaid shall furnish, without discrimination the same facilities to all and shall perform with equal expedition the same kind of services connected with the contemporaneous transportation thereof as aforesaid. No break, stoppage, or interruption nor any contract, agreement, or understanding, shall be made to prevent the carriage from being continuous unless for some practical and necessary purpose.

Section III, prohibits any rebates, drawbacks, or other advantages, which under similar circumstances are not allowed to all other persons.

Section IV, states that it shall be unlawful for any person or persons to enter into any combination or agreement with intent to prevent the carriage of such property from being continuous; and it shall be unlawful to enter into any contract, agreement or combination for

the pooling of freights, or to pool the freights of different and competing railroads, by dividing between them the aggregate or net proceeds of the earnings of such railroads, or any portion of them.

Section V, provides that the provisions of this act shall apply to all property, and the receiving, handling, storing, or carriage of the same, on one actually or substantially continuous carriage, or as part of such continuous carriage, and the compensation therefore, whether such property be carried wholly on one railroad or partly on several railroads, and whether such services are performed by or to one person alone or in connection with another or other persons.

Section VI, provides that any person who shall violate any of the provisions of this act shall be liable to the person injured for the actual damages caused by such violation, which may be recovered in any State or United States court of competent jurisdiction. The court before which any such action is tried, if it shall be found that the violation was wilful, or continued after the notice provided by the tenth section of this act, shall make an allowance by way of additional costs to the party injured sufficient to cover all his counsel and attorney fees, and all expenses and disbursements in the action, including his own necessary personal expenses.

Section VII, provides that any person violating this act is guilty of a misdemeanor and subject to a

fine of not exceeding, \$1,000 for each violation. The courts of the United States shall have exclusive jurisdiction of all prosecutions arising under this section. It shall be the duty of district attorneys of the United States to institute and prosecute to effect criminal proceedings for all such violations. The provisions of this section shall not apply to the first section of this act.

Section VIII, provides that the President appoint three commissioners, one experienced in law, one in railroad business, whose duty shall be the carrying into effect the provisions of this act. Their term shall be six years. They may be removed for cause by the President, but not otherwise. They shall receive a salary of \$7,500. Provided, that before entering upon the discharge of their duties they shall, in addition to the oath required of them by law, take and subscribe to an oath that they are neither directly nor indirectly interested in the ownership or earnings of any railroad company what-ever.

Section IX, states that the commission shall exercise only the powers herein conferred. They may hire assistants and have free travel while on duty.

Section X, describes the procedure of a complainant. If anyone has a complaint he shall apply to the commission by petition in writing, which shall briefly state the subject of such complaint. If the petition is signed by any board of trade or commercial body, or when

signed by an individual, if it bears the certificate of any district attorney of the United States, or of any district or county attorney; that he has examined the facts and in his opinion the complaint is well founded, the commission is hereby required to entertain and investigate the same. In all other cases the commission shall decide whether or not the petition ought to be proceeded with. The commission may, if they think fit, before requiring or permitting any formal proceedings to be taken or any petition communicate the same to the railroad company against whom it is made, so as to afford them an opportunity of making such observations or taking such action thereon as they may think fit. The commission shall have power, and in a proper case is required, to cause a copy of the petition to be served upon the railroad company complained against, and to issue a notice requiring such company to appear before the commission and answer the said petition. The answer shall be in writing. The commission may then investigate and if the railroad is found to have violated this act then the commission within a reasonable amount of time, not to exceed twenty days, after the report and findings are made, cause a copy thereof to be served upon or delivered to the railroad company so found to have violated this act, to which shall be appended a notice to be issued by said commission to such company forthwith to cease and desist from such violation; and also to deliver

to the district attorney of the United States for the district in which the act complained of occurred another copy of such report, findings and notice.

Section XI, states that upon notice that any such railroad company has neglected or refused to conform to the decision of the commission, it shall be the duty of such district attorney to apply by petition, in the name of the party aggrieved, to the Circuit Court of the United States for such district, for, and it shall be the duty of such Court to grant, an order upon such railroad company to show cause why such company should not be enjoined and restrained against the continuance of such violation, and for such other order and relief in the premises as may be just and proper. For the purpose of making any order or decree in the premises, final or otherwise, such Court shall be always open, and the day on which any such order or decree is made shall be a special term of such Court. Upon the service and return of such order to show cause, and notice to the parties interested, such Court shall proceed in a summary manner to ascertain whether the said report and findings are true; and whenever said Court shall be of opinion that such company has done or is doing any act in violation or contravention of this act in said report and findings described, it shall so adjudge; and it then shall be the duty of said Court forthwith to issue a

writ of injunction, requiring such railroad company to desist from such violation and respect of the matters in said report contained to conform to and obey all the provisions of said act. Such Court may enforce obedience to any such injunction, order, or decree, by any person or party, by fine, proceedings for contempt, and all other means within its lawful jurisdiction sitting as a court of equity. Any person interested to restrain such violation may, on application to the Court, be allowed to appear and be heard, by himself or counsel; and upon proof that any district attorney has failed in any proper case for the period of ten days to apply for such order to show cause, the Court may permit such application to be made and prosecuted to effect by or in behalf of any person interested. Such Court may, in its discretion, award or deny costs to any party to such proceeding. In any case where the Court shall adjudge that the violation of this act by any company has been wilful, or continued after notice to desist therefrom, the Court may award to any party injured such a gross sum by way of costs as will reimburse all his costs, charges, expenses, counsel fees, and disbursements, to be paid by such company.

Section XII, states that all proceedings before said commission shall be upon reasonable notice to all parties interested, and such forms shall conform as nearly as possible to those in use in the Courts of the United States. Any party may appear and be heard in person or by attorney.

Section XIII, states that for the purposes of this act the commission shall, subject as in this act maintained, have full powers to ascertain and report upon all questions of fact arising under this act, and shall also have the powers following:

A. They may, by subpoena, require the attendance of witnesses.

B. They may require the production of all books, papers, and documents relating to any matter before them, and to that end may invoke the aid of any Court of the United States.

C. Either of them may administer oaths or affirmatives.

Section XIV, states that the offices of the commission should be in Washington, D.C. Meetings, however may be held other places if more convenient. The commission should keep a records of its proceedings. Reports should be required of the railroads, and railroad books should be examined if necessary. The commission should make an annual report to Congress, and otherwise endeavor to procure data necessary to the gradual enactment of an intelligent system of national legislation regulating interstate railroad commerce.

Section XV, states that the Secretary of Interior should provide offices for the commission, and that witnesses summoned to testify before the commission should be paid the same as the witnesses in the federal courts.

Section XVI, states that the Board of Commissioners shall inquire into that method of railroad management or combination known as pooling, and state the result of their inquiry in their first annual report, and whether, in their judgment any, and if so what, legislation is expedient in relation thereto.

Section XVII, states that this shall not apply to intrastate commerce or to property carried for the United States or to the transportation of persons or articles free or at reduced rates for state or municipal governments or for charitable purposes, or to or from public fairs and expositions for exhibition thereat.

Section XVIII, defines the term "railroad company." It shall signify a corporation which either owns or operates a railroad, and shall include receivers, leases, and trustees operating railroads. The word "person" includes all persons in any manner engaged in interstate railway commerce in whatever capacity, whether as principals, agents, or employees.

Section XIX, provides a sum of \$40,000, or so much thereof as may be necessary for the uses and purposes of this act for the fiscal year ending June 30, A.D.1885, and the intervening time anterior thereto.

The preceding bill was introduced by Mr. Reagan of Texas, authorized by the Committee; Mr. Reagan was, however, not in sympathy with the bill. He believed the

bill had good provisions but he sincerely doubted the advisability of a commission. He thereupon immediately presented a bill of his own authorship known as H.R.5461 (Reagan's substitute). This bill was the second important bill in the session and the third in the 48th Congress. Mr. Reagan opposed a commission. He said in regard to the commission:

I doubt the expediency of providing for such a commission and will state why. If we provide for the appointment of a railroad commission, we must remember the railroad corporations, few in number as to the heads that control them can easily combine their influence and bring to bear by indirection if they dare not to do it directly, influences which will be likely to control in the appointment of commissioners. We know the power of the corporations to secure or prevent legislation. If Congress has found now for nine years the impossibility of legislating upon this great question, what is to be the fate of the people if their interests are left in the hands of three men upon whom all these influences can be concentrated. 15

Mr. Reagan further stated that the purpose of legislation was not to inflict injury upon the railroad corporations, nor to cripple their usefulness or inflict loss upon those who have invested in these various railroad enterprises. The purpose is simply to protect the people against the abuse of the monopoly power of railroad corporations and not to injure them or their stockholders. 16

Reagan's Substitute H.R.5461, with a few amendments passed the House of Representatives on 8 January 1885

by a vote of 161 to 75, 87 not voting. The provisions of the bill as introduced by Mr. Reagan on 2 December 1884 together with the amended provisions follow:

(Underscored amended to the original).

Section I, provides that it shall be unlawful for any person or persons engaged alone or associated with others in the transportation of property by railroad or by pipe line or lines, directly or indirectly to charge or to receive from any person or persons any greater or less rate or amount of freight, compensation, or reward than is by him or them charged to or received from any other person or persons for like and contemporaneous service in the carrying, receiving, delivery, storing, or handling of the same. All charges for such services shall be reasonable. Any person or persons having purchased a ticket to be conveyed from one State to another or paid the required fare, shall receive the same treatment and be afforded equal facilities and accommodations as are furnished all other persons holding tickets of the same class without discrimination. But nothing in this act shall be construed to deny to railroads the right to provide separate accommodations for the passengers as they may deem best for the public comfort and safety, or to relate to transportation relating to points wholly within a State. Provided: That no discrimination is made on account of race or color: and that furnishing

separate accomodation, with equal facilities and equal comforts, at the same charges, shall not be considered a discrimination. Nor shall any railroad company or its officers charge to or receive from any person any sum exceeding three cents per mile for distance traveled.

No break, stoppage, or interruption, nor any contract, agreement, or understanding, shall be made to prevent the carriage of any property from being treated as one continuous carriage, from the place of shipment to the place of destination, unless it is made in good faith for some practical and necessary purpose, without any intent to avoid or interrupt such continuous carriage or to evade any provisions of this act.

Section II, provides that it shall be unlawful for any person or persons engaged in the transportation of property, to allow any rebate, drawback, or other advantage, in any form, upon shipment made or services rendered as aforesaid by him or them.

Section III, provides that it shall be unlawful for anyone engaged in interstate commerce to enter into any combination, contract, or agreement, by change of schedule, carriage in different cars, or by any other means, with intent to prevent the carriage of such property from being continuous, whether carried on one or several wads. And it shall be unlawful to enter into any contract, agreement, or combination for the pooling of freights, or to pool the 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 of them.

Section IV, provides that it shall be unlawful to charge or receive greater compensation, for a shorter than for a longer distance, which includes the shorter, on any railroad, or pipe line.

Section V, provides that all persons engaged in interstate commerce shall adopt and keep posted schedules which shall plainly state:

- 1st. The different kinds and classes of property to be carried.
- 2nd. The rates and prices for all services. And the accounts for such service shall show what part of the charges are for transportation, and what part are for loading, unloading, and other terminal facilities. Such schedules may be changed from time to time as hereinafter provided. Copies of schedules shall be kept plainly posted in at least two places in every depot where freights are received or delivered. All changes to be posted five days before they go into effect. It shall be unlawful to receive more or less compensations than shall be specified in such schedule as may at the time be in force.
- 3rd. The different places between which property shall be carried.

4th. It shall be the duty to file these schedules within fifteen days after posting, with the Clerk of the Circuit Court of the United States in and for each judicial circuit in or through which any railroad may be operated; and it shall be the duty of said Clerk to file and preserve the same as a part of the records of his office.

Section VI, provides that each and all provisions of this act shall apply to all property, and the receiving, delivery, loading, unloading, handling, storing, or carriage of the same, on one actually or substantially continuous carriage, as provided for in the first section of this act, and the compensation, therefore, whether such property be carried wholly on one railroad or partly on several railroads, or wholly by one pipe line or partly by several pipe lines, and whether such services are performed or compensation paid or received by or to one person alone or in connection with another, or other persons.

Section VII, provides that each and every act, matter, or thing in this act declared to be unlawful is hereby prohibited; and in case any person or persons shall do or omit to do any of these acts, such person shall forfeit and pay to the person or persons who may sustain damage thereby a sum equal to three times the amount of the damage or persons so damaged by suit in any State or United States court of competent jurisdiction where the

person causing such damage can be found, or may have an agent, or a place of business; and if the court before any such action is tried shall be of opinion that the violation of the law was wilful, it shall make allowance, by way of additional costs, to the party injured, sufficient to cover his counsel and attorney fees. Any action to be brought as aforesaid may be considered, and is so brought, shall be regarded as a subject of equity jurisdiction and discovery, and affirmative relief may be sought and obtained therein. In any such action so brought as a case of equitable cognizance as aforesaid any officer of any company may and shall be compelled to attend, appear, and testify and give evidence; and no claim that any such testimony or evidence might or might not tend to criminate the person testifying or giving evidence shall be of any avail, but such evidence or testimony shall not be used as against such person on the trial of any indictment against him. The attendance of any persons may be compelled and the production of books and papers shall be compelled. No action aforesaid shall be sustained unless brought within one year after the cause of action shall accrue. And any circuit or district of the United States having jurisdiction of the persons shall have the power, the other remedies herein provided. No cause brought under this act in any state court of competent jurisdiction shall be removed to any United States Court.

Section VIII, provides, that anyone who shall wilfully do, or cause or willingly suffer or permit to be done anything in this act prohibited shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than two thousand dollars.

Section IX, states that this act shall not apply to commerce wholly within one state; nor shall it apply to property carried for the United States at lower rates of freight and charges than for the general public, or to the transportation of articles free or at reduced rates of freight for charitable purposes, or to or from public fairs, and expositions for exhibition.

Section X, states that the words "persons or persons" used in this act, except where otherwise provided, shall be construed and held to mean person or persons, officer or officers, corporation or corporations, company or companies, receiver or receivers, agent or agents, or other person or persons, acting or engaged in any of the matters and things mentioned in this acts. ¹⁷

After the introduction of these bills, discussion on them began. Mr. Reagan of Texas opened the discussion by stating:

There are two bills pending before the House; one, the bill authorized by the committee, the other a substitute offered by myself as a member of the committee. The committee's bill has good provisions in it. It has provisions that commended the approval of a majority of the committee. It will be for the House when the subject is presented to determine whether it desires a bill in some other form. ¹⁸

On 16 December 1884, by a vote of 142 to 98, 83 not voting, it was agreed to bring the Reagan Substitute before the House for consideration instead of the committee's bill. This bill was passed in the House on 8 January 1885. The vote being 161 to 75; 87 not voting.

The bill, H.R. 5461 (Reagan's substitute) was then sent to the Senate. In the Senate it was amended and passed on 4 February 1885 by a vote of 43 to 12; and 21 not voting. This was the fourth and last major bill of the 48th Congress, and for a basis of comparison the summarized contents are herein given:

Section I, creates a commission which shall be composed of nine commissioners, who shall be appointed by the President by and with the consent of the Senate, one of whom shall be selected from each judicial circuit of the United States. There shall be not more than five to the same political party. The term shall be six years. Any commissioner may be removed by the President for incompetency or malfeasance in office.

Section II, states that the commission hereby created shall have and exercise the powers and discharge the duties defined and granted in this act, and to take into consideration and to thoroughly investigate all the various questions relating to commerce between the States,

and especially in the matter of the transportation thereof so far as may be necessary to the establishment of a just system of regulations for the government of the same.

Section III, provides that if any transportation company engaged in interstate commerce shall collect, demand, or receive more than a reasonable rate of compensation for the transportation of freight, of any description, shall be deemed guilty of extortion which is hereby declared to be a misdemeanor.

Section IV, provides that if any transportation company engaged in interstate commerce, shall directly or indirectly, by any rebate, drawback, or other device, charge, demand, collect, or receive from any person a greater compensation for any service than it charges, demands, collects or receives from any other person for doing him in a like business and under substantially similar circumstances and conditions, contemporaneously a like service, or if any such transportation company shall neglect or refuse to furnish the same facilities for the carriage, receiving, delivery, storage, and handling of interstate commerce freight to one person that is at the same time furnished to any other person under substantially similar circumstances, such transportation company shall be deemed guilty of unjust discrimination, which is hereby declared to be a misdemeanor.

Section V, provides that whenever complaint is made to the commission, in such manner as it may prescribe, charging any transportation company engaged in interstate commerce with extortion or unjust discrimination in the transaction of such business, a statement of the charges thus made shall be forwarded to the transportation company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable given time.

If such transportation company shall, within the time specified, make reparations for the injury done and the complaint shall be withdrawn, the case shall be dismissed and the transportation company shall be relieved of liability for any other penalty for the particular violation of this act thus complained of. If however such transportation company shall not satisfy the complaint within the time specified, or if it shall neglect or refuse to answer the same as required, or if either party to the proceeding shall demand a hearing, and 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, to determine all questions of fact at issue, to record its findings and to furnish a report thereof to both parties. And if it shall appear that transportation company has been guilty of either extortion or unjust discrimination as charged, it shall be the duty of the commission to give notice to

such company to discontinue the practice thereof forthwith, and to pay the complainant, within a reasonable given time, the damages, if any, to which the commission may find the complainant justly entitled in consequence thereof. And if such damages shall be paid as required, and the commission shall be satisfied that the transportation company has ceased to practice the extortion or unjust discrimination complained of, an order to that effect shall be entered on record by the commission, and the transportation company shall be relieved of liability for any other penalty for the particular act complained of.

Section VI, provides that if any transportation company shall neglect or refuse to pay the damages assessed against it by the commission, and to desist from further violation of this act, it shall be the duty of the commission to certify the facts to the district attorney of the United States for the judicial district in which the act complained of occurred; and it shall be the duty of the district attorney, at the request of the complainant, to forthwith commence such proceedings, in the name of the complainant, as may be necessary to recover any damages sustained by him, or to compel the transportation company to comply with the provisions of this act, or both; and the Circuit Court of the United States for said district shall have

jurisdiction to try said case, without regard to the citizenship of the parties. Costs shall be awarded as in other cases; but in case judgment is rendered against the defendant, the court may in its discretion, allow to the district attorney a reasonable fee for prosecuting said cause, to be taxed as part of the costs; and in case of failure to recover, the complainant shall pay the costs of the suit, attorney's fees excepted.

Any transportation company convicted shall forfeit and pay for each offense a fine of not exceeding \$1,000.

Any such transportation company that shall neglect or refuse to make such annual reports as the commission may require, or that shall neglect or refuse to answer any question or to produce any book, paper, contract, or other document, or properly certified abstract thereof, called for by the commission, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding \$1,000 for each offense herein described.

Any such transportation company or any person or persons that shall violate any of the provisions of this act not in this section specified, or that shall in any manner attempt to obstruct the enforcement of its provisions, shall be deemed guilty of a misdemeanor, and,

on conviction, thereof, shall be fined a sum not exceeding \$1,000.

Section VII, sets the salary of the commissioners at \$7,500. Traveling expenses are to be paid in addition. Witnesses to the commission are to be paid the same as witnesses in a court.

Section VIII, provides that the commission may make such orders as it may deem necessary for the regulation of its business, and prescribe the forms to be used therein. A majority of the commission shall constitute a quorum for the transaction of business, except as hereinafter provided.

Section IX, provides that in making any investigation required by this act the commission shall have power to summon and require the attendance of witnesses, to administer oaths, and to require the productions of all books, papers, contracts, and documents, or properly certified abstracts thereof, relating to the matter under investigation and necessary for the information of the commission in connection therewith. The commission is hereby authorized to conduct investigations in any part of the United States, and it may delegate the powers conferred by this section to any member or members of the commission.

Section X, provides that the commission is hereby authorized to require annual reports from all transportation companies, and to require specific answers to all questions

upon which the commission may need information. Such reports shall show in detail the amount of capital stock issued; the dividends paid; the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the company's property, franchises and equipment; the number of employees and the salary paid each class; the amount expended in improvements; the monthly earnings and receipts from each branch of business, the balance of profit and loss, and a complete exhibit of the financial operations of the company each year. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other companies as the commission may require.

Section XI, provides that the commission shall make an annual report to Congress. This report should contain important data together with such recommendations as to additional legislation as the commission may deem necessary. And the commission shall precede its first report with an investigation of the subject of interstate commerce, which shall embrace the subjects of establishing a system of both maximum and minimum charges; for the preservation of free competition; prohibition of discriminations; for the preservation and enforcement of the right of shippers to select lines; for the prevention of such pooling arrangements to refrain from just competition;

to protect against unjust exactions based on a class of securities known as "water stock." The investigation should be conducted fairly to all interests involved.

Section XII, provides that the route of ^{any} transportation should include all the railroad and water routes in use by such company, whether owned by said company or used by it under license, lease, or permission otherwise given. And it shall be unlawful for any transportation company to enter into any combination, contract or agreement expressed or implied, to prevent by change of time schedule, carriage in different cars, or other means or devices, the carriage of interstate commerce freights from being continuous from the place of shipment to the place of destination, whether said freight is carried on one or several railroads, unless such interruption was made in good faith and for some necessary purpose.

Section XIII, provides that the term "transportation company" as used in this act, shall be taken to mean any corporation, company, or individual now owning, operating or using any railroad or railroads, or any vessel or vessels, in whole or in part, provided said corporation, company, or individual is engaged in the business of transporting freights or property of any description by railroad from one state to another state or territory of the United States.

Section XIV, provides that this act shall be applicable to all railroad and partly by railroad and partly by vessel companies: Provided that this act shall not apply to transportation wholly by water.

Section XV, appropriates a sum of \$90,000 for the use and purposes of this act for the fiscal year ending June 30, 1885, A. D.; and it is expressly provided that no pending litigation between railroad companies shall in any way be affected by this act.

Section XVI, provided that nothing in this act contained shall be held to require any person aggrieved by the act or omission of a transportation company within the provisions of this act, to pursue the remedy provided in section five and six hereof for the ascertainment and recovery of damages on account thereof; but such person may, by civil action in any court of competent jurisdiction, maintain an action as though this act had not been passed; and in such cases the duties, obligations, liabilities, and responsibilities of such transportation company in all respects shall be the same as though said action had been commenced in pursuance of the remedy in said sections five and six provided.¹⁹

After this bill passed the Senate it was sent to the House. There Mr. Reagan, of Texas, said, "I ask unanimous consent to take up House bill No. 5461 with the Senate amendments with a view to move to non-concur and ask a committee of conference." The House objected

to this, however, and nothing further was done in this session of Congress on this particular bill.

The preceding bill, H.R.5461, was amended and passed by the Senate is the last of the series of the four bills that laid the foundations for railroad regulation. There are many provisions that are identical in some of the bills, yet there was enough difference in all to give each careful consideration. The following chart presents a comparison of the four bills as to their similarities and differences upon the most prominent points of dispute:

	1.	2.	3.	4.
Contents	S.2112 Introduced By Cullom as Chairman of Committee on Rail- roads. April 28, 1884	H.R. 5461 Introduced By Reagan as Chairman of the Committee on Commer- ce Dec. 2, 1884	H.R. 5461 (Reagan Substitute) Passed Jan. 8, 1885	H. R. 5461 <u>Amended and Passed.</u> Feb. 4, 1885.
1. Commission	Five members Five year term Appointed by Pres. Removal by Pres. for incompetency Salary \$7,500.	Three members Six year term One experienced in law, one in r.r. business Salary, \$7,500 Removal for cause by President.	None	Nine members One from each judicial circuit Term 6 yrs. Re- moval for cause by Pres. Salary \$7,500.
2. Pooling		Prohibits-Sec. 4. Commission to in- vestigation and re- port upon expedient legislation thereto Sec. 16.	Prohibits	
3. Appropriation	\$60,000 for the first year.	\$40,000, or as much as may be necessary thereof for first year.		
4. Fines for violation	Reparation plus fine of not exceeding \$1,000 for each offense	Reparation plus additional costs to party injured (Council fees and Personal expenses) plus a fine of not exceeding \$1,000 for each offense.	Three times the actual damages plus additional attorney fees, costs plus, if wilfully done, a fine not more than \$2,000 for each of- fense.	Reparation plus a fine not ex- ceeding \$1,000 for each offense
5. Rebates and Drawbacks	Cannot refuse to furnish the same facilities that are at the same time furnished to another per- son.	Unlawful if not allowed to all other persons under similar circumstances.	Absolutely prohibited	Unlawful if not allowed to other persons under substantially similar circum- stances.
6. Long and Short Haul	Guilty of discrimina- tion if greater com- pensation is received for shorter distance on same line in some direction. This should not be construed to legalize charging as much for a shorter as for a longer distance in any case.		Unlawful to receive greater compen- sation for a short- er than a longer distance, which in- cludes the shorter.	
7. Passenger rates.	All rates must be reasonable	All charges shall be reasonable	Unlawful to receive from any person any sum exceeding 3 cents per mile	
8. Freight rates	To receive more than a reasonable rate is a misdemeanor. Pen- alty exempted if repa- ration is made.	All charges shall be reasonable Exempts penalty	All charges for services shall be reasonable. Imposes penalty.	To receive more than a reason- able rate for freights is a misdemeanor. Penalty exempted if reparation is made
9. Procedure when com- plaint is made.	Complaint is made to commission which for- wards charge to trans- portation company. Company is given chance to satisfy claim or answer charge in writing. If not settled commission investigates and makes grand and specific time in which it shall be paid. If company fails to pay then commis- sion turns the papers in case of the U.S. Dis- trict attorney. Attorney to commence proceedings to recover compensation. Complainant to pay costs of suit, except attorney's fees, in case of failure to recover.	Complaint to apply by petition to com- mission. If petition is signed by a notary- public then the commis- sion is required to act otherwise it may do as it sees fit. First the petition, before any investigation, may be communicated to the transportation company which may settle. If not settled, then com- mission to investigate. If found guilty of violations copy of report and findings ser- ved on transportation co. Also one copy to U.S. district attorney. 20 days time to repair. If no reparations are made then Dist. Attor- ney asks U.S. Court for a statement why the transportation co. has not obeyed by decision of commission. The court in a summary man- ner ascertains whether findings are true. If true, court will com- pel obedience.	Suit in any State or U.S. Court of competent juris- diction court may compel attendance and testimony of any officer of com- pany. Production of papers books may be compelled. Com- plaint must be made within one year of violation. Court to have power to issue writ of man- damus to prevent unjust discrimina- tion. No cause brought under this act in any state court of competent jurisdiction shall be removed to any United States Court.	Complaint is made to com. which forwards same to transport. co. which may satisfy or answer in writing. If re- paration is made case is dropped and no penalty as- sessed. If not as- settled com. shall investigate all questions of injury and furnish a report of its findings to both parties. If com. finds the co. guilty it will give a reasonable time in which to make reparation. If made penalty exempted. If trans- co. fails to obey then com. shall certify the facts to U.S. dist. attorney who shall com- mence suit to re- cover. If failure to recover complainant shall pay costs of suit attorney's fees excepted.
10. Report of the commission to Congress	Annual: recom- mendations as to additional legis- lation	Annual: procure data necessary to the grad- ual enactment of an intelligent system of national legislation regulating inter- state r.r. commerce. Sec. 16. Investigate Pooling and in first report and state what, if any legislation, is expedient in relation thereto.		Annual: should con- tain important data; recommendations as to additional legis- lation. 1st. report to embrace the sub- ject of: Establish- ing max. and min. rates. Right of ship- pers to select lines. Preservation of free competition. Preven- tion of Pooling. Watered stock, protect. against
11. Report of Trans- portation Com- panies to Com- mission.	Annual: may spec- ify the more import- ant subjects upon which information shall be required.	Reports annual. Such as commission may desire.		Annual: Shall show in detail; amount of cap- ital stock and amounts paid therefor; Divid- ends paid; no. of r.r. stockholders. Funded and floating debt. Interest paid. Cost & value of prop. No. of employees & salary. Amts. expended for improv. Monthly oper- ating expenses. Financial statement, profits, loss. Inform- ation in relation to contracts or agreement with other co's. Any other com. may desire.
12. It is unlawful to--	1. To receive more than a reasonable rate of compensa- tion. 2. To refuse the same facilities for the same compensation. 3. To receive a great- er compensation for transporting property a shorter than a long- er distance. 4. To enter into any agreement to prevent the carriage of inter- state commerce freights from being continuous.	1. To receive more than from another under substantially similar circumstances. 2. To refuse to furn- ish equal facilities. 3. To enter into any agreement to prevent carriage of freights from being continuous. 4. To allow rebates or drawbacks which are not allowed to others under similar circum- stances. 5. To enter pooling arrangements.	1. To receive more than from one person than from another for like service. 2. To refuse equal facilities and equal comforts for the same charges. 3. To receive more than 3 cents per mile for distance travelled. 4. To enter into any agreement to prevent carriage of freights from being continuous. 5. To allow rebate or any drawback or any other ad- vantage. 6. To enter pooling arrangements of any kind. 7. To receive a greater compensation for transporting prop- erty a shorter than a longer dis- tance.	1. To allow rebates or drawback to one that under substan- tially similar circum- stances are not allow- ed to others. 2. To refuse the same facilities for equal compensation.
13. Reasonable rates	To receive or charge more than a reason- able rate is declared to be an extortion and a misdemeanor.	All charges by persons engaged in transport- ation shall be reason- able and just for such service.	All charges for such services shall be reason- able.	To collect more than a reasonable rate of compensation is declared to be a misdemeanor.

During the 48th Congress, 2 session, fourteen petitions reached the two houses--four to the House and ten to the Senate. There were more petitions in this session because the people realized it was the task of the national government, whereas previously they had sought aid from state governments.

The first petition, on 2 December 1884 came to the Senate from the Vermont State Legislature, most earnestly requesting Congress to use all honorable means to secure the passage of some suitable measure concerning the subject matter of interstate commerce by national legislation. The petition was tabled. ²⁰

On 17 December 1884, the Senate received a petition from the Board of Trade and Transportation of the City of New York, asking the enactment of a law regulating interstate commerce. The petition was tabled. ²¹

On 19 December 1884, the Senate received another petition from the New York Board of Trade and Transportation asking the appointment of a board of railroad commissioners. The petition was tabled. ²²

The House of Representatives received a petition from a group of citizens of Ohio on 10 January 1885 asking regulation in some form of interstate commerce. ²³

On 10 January 1885 the Senate received a petition from the Board of Supervisors of St. Croix County, Wisconsin, praying that Congress may enact a law providing

that railroads engaged in the transportation of commodities from one state to another shall not charge more for shorter distance than the same company charges for a longer distance haul. The petition was tabled.

24

On 15 January 1885, the Senate received a petition from John J. Smith and other citizens of Massachusetts saying that they had seen with pleasure the passage of a bill through the House relating to interstate commerce, containing a clause forbidding any discrimination in passenger traffic on account of race or color; and they desired that in any bill which might be passed by the Senate on the subject a similar provision to be inserted.

25

The petition was tabled.

On 23 January 1885, the House of Representatives received a petition from the Michigan Travelers Association asking for the passage of the bill to regulate commerce between the states relative to commercial travelers. The petition was tabled.

26

On 30 January 1885 the Senate received a petition from J.T. Cobb, secretary, and eleven other members of the Michigan State Grange praying for the passage of the so-called Reagan interstate commerce bill. The petition was tabled. On the same day another petition was received from a large number of citizens of Lake County, Ohio, constituting the Farmers Association of that county, praying for the passage of the Reagan bill. The petition was

27

tabled.

On 3 February 1885 the Senate received a petition from A. W. Parker and H.R. Morgan of Pleasant Valley, Wisconsin, urging such legislation as shall prohibit railroads between states from charging more for a short than for a long distance carriage. The petition was
28
tabled.

On 6 February 1885 the Senate received a petition from the citizens of Erin Prairie, Wisconsin, praying for such legislation as shall prohibit railroads between states from charging more for a short than for a long
29
distance. The petition was tabled.

On 7 February 1885, the House of Representatives received a petition from the Pittsburg Pennsylvania Chamber of Commerce asking Congress to prevent railroad discrimination and pooling. The petition was referred
30
to the Committee on Commerce.

On 24 February 1885, the Senate received a petition from the Quincy Illinois Board of Commerce recommending the Reagan interstate commerce bill for
31
passage. The petition was tabled.

On 24 February 1885 the last petition of the session was received by the House of Representatives from the Board of Supervisors of the town of New Richmond, St. Croix County, Wisconsin, asking for a law prohibiting railroads from charging more for a short than for a long haul. The petition was referred to

the Committee on Commerce.

A summary of the two sessions of the 48th Congress shows twenty-one House bills, four Senate bills, six petitions, and three resolutions of the first session compared with one House bill, two Senate bills, and fourteen petitions of the second session. In the latter there were fewer bills and a more thorough discussion and debate of those presented.

Chapter II

THE CULLOM INVESTIGATION AND REPORT

On 17 March 1885 the Senate of the United States adopted the following resolution:

Resolved, That a select committee of five Senators be appointed to investigate and report upon the subject of the regulation of the transportation by railroad and water routes in connection or in competition with said railroads of freights and passengers between the several States, with authority to set during the recess of Congress, and with power to summon witnesses and to do whatever is necessary for a full examination of the subject, and report to the Senate on or before the second Monday of December next. Said Committee shall have power to appoint a clerk and stenographer, and the expenses of such investigation shall be paid from the appropriation for expenses of inquiries and investigations ordered by the Senate.¹

On 21 March 1885 the President of the Senate appointed the following Senators on this committee: Shelbry M. Cullom, Chairman; Warner Miller; Orville H. Platt; Arthur P. Gorman; Isham G. Harris.²

The field opened up for investigation was extensive. It would require perhaps years of time and effort to study thoroughly the legal, social and economic problems involved. So under these circumstances, the Committee decided that it could best carry out the purpose of the resolution under which it was appointed by devoting its attention mainly to the consideration of the question--whether any legislation to regulate the management of the transportation lines of the country was advisable, and if so, what the scope and

character of that legislation should be. The plan of procedure adopted by the committee was to visit some of the leading commercial centers of the United States and to take testimony to ascertain what causes of complaint existed against the corporations engaged in transportation, and to gather opinions of the people as to what remedies could be applied by Congress. The committee took testimony from all phases of industry. They interviewed railroad executives, farmers, mayors, Chamber of Commerce representatives, members of state railroad commissions, merchants, lawyers, editors, and any other individuals or groups that might give them facts concerning their mission.

With the view of suggesting subjects for discussion at these hearings, the Committee sent out a circular letter, to those persons, whom they invited to appear, containing fifteen questions that had been most prominently agitated in connection with efforts to control the railroad corporations by legislation. These questions would form the basis of the discussion at the meetings. The hearings, however, were not limited to the discussion of the suggested questions. The fifteen questions contained in the circular letter were outlined as follows:

1. The best method of preventing the practice of extortion and unjust discrimination by corporations engaged in interstate commerce.

2. The reasonableness of the rates now charged by such corporations for local and through traffic.

3. Whether publicity of rates should be required by law; whether changes or rates without public notice should be prohibited, and the best method of securing uniformity and stability of rates.

4. The advisability of establishing a system of maximum and minimum rates for the transportation of interstate commerce.

5. The elements of cost, the conditions of business, and the other factors that should be considered in fixing the tariffs on interstate commerce.

6. Should any system of rebates and drawbacks be allowed? If so, should such transactions be regulated by law? Or should they be entirely prohibited?

7. Should pooling contracts and agreements between railroads during an interstate business be permitted, or should they be entirely prohibited by law? If they should be regulated by law, would it be sufficient the terms of such agreements to be made public and subject to official approval?

8. Should provision be made by law for securing to shippers the right to select the lines and parts of lines over which their shipments shall be transported?

9. By what methods can a uniform schedule of rates for the transportation of passengers and freights by all the corporations engaged in interstate commerce be best secured?

10. Should corporations engaged in interstate commerce be permitted to charge a lower proportionate rate for a long than for a short haul? Does the public interest require any legislation on that subject?

11. Should any concessions in rates be allowed to large shippers except such as represent the actual difference in the expenses of handling large shipments over small shipments, and should such concessions be made known to the public?

12. Should corporations engaged in interstate commerce be required to adopt a uniform system of accounts?

13. Is it desirable that such corporations should be required to make annual reports to the government? If so, what information as to their earnings, expenses, and operations should such reports contain?

14. In making provision for securing cheap transportation, is it or is it not important that the government should develop and maintain a system of water routes?

15. In what manner can legislation for the regulation of interstate commerce be best enforced? Should a commission or other special tribunal be established to carry out the provisions of any law Congress may enact?⁴

As it has been stated previously the discussion at the hearings was not limited to these fifteen questions. The discussion during the course of the investigation centered largely upon four major issues. These issues were: first; the advisability of having a commission with large

or limited powers, or of leaving the regulation and enforcement in the hands of the regular courts; second, the evils of discrimination and the method that should be used to check these evils; third, a discussion of the advisability of publicity as a remedy for unjust discrimination; and fourth, the problem of rates which involved the questions of maximum and minimum rates, the long and short haul, water competition, and pooling. These four major issues will be discussed in the order in which they have been named.

An examination of the testimony taken showed an almost universal opinion in favor of the establishment of some kind of a national commission. A small minority opposed a commission of any type. Some of these based their opposition on the assumption that a commission would be a substitute for specific regulation by statute. That it would be a harmless concession to the popular demand for legislation with no advantages to the people, and no disadvantage to the railroads. Others opposed the commission because they feared a few men could easily be bribed one way or another and that the commission would become a football in politics. The testimony of Mr. John Norris, editor of The Philadelphia Record supports this view:

A commission would be dangerous. In the first place it would bring the railroad interest into politics. If the Commissioners are to be appointed by the President, the railroad interests have some concern in the election of a President and it would be more harmful to the railroad's

interest than to the public...the creation of a commission would be harmful to all interests. It would give an almost autocratic power to some few men and a discretion which, considering the importance of the interest involved, would be an extraordinary one.⁵

The main question in regard to the commission was not whether there should be one or not but what should be the nature of the commission. The question was as to whether the commission should have merely limited or advisory powers or whether it should be final in authority and have the power to enforce its decisions. The views favoring the first type, namely that of an advisory commission, were many. The following extracts of testimony by representatives of various interests of the country support this view; they are a typical example of hundreds of others expressing the same view. Mr. C. F. Adams, president of the Union Pacific Railroad, said:

I have always thought that if Congress would provide for a commission of men who were at once honest, intelligent, and experienced, whose business it should be to observe the question very much as a physician would observe the progress of disease, the results of their observations might be of value in leading gradually to the building up of legislation. But beyond that I do not believe it would be within the power of human wisdom to formulate a law which would greatly affect, except to impede and hamper the present course of events.⁶

Expressing practically the same view, for the necessity of a commission Mr. George C. Pratt, Chairman of the Railroad Commission of the State of Missouri, said:

There shall a commission for the purpose, in the first place, of studying this subject and ascertaining what is the truth in regard to it, in all respects and devising whatever improvements may be necessary, and finally establishing an equitable system of governmental control over the subject of transportation by railroads. We have come to a conclusion that as to that necessity, a commission is a settled question.

Mr. William B. Dean, a merchant of St. Paul, representing the Jobber's Union of that city, referring to the creation of a commission, said:

We believe the railroad question is comparatively in its infancy and is an exceedingly complex one. We believe that the laws which will ultimately govern it have hardly begun to come to the surface, and that those laws would be evolved and made equal more quickly through a commission whose attention would be directed to the examination of complaints and the suggestion of remedies than by any method now in vogue.

These three testimonies are for an advisory or clerical commission for the chief purpose of gathering material for future legislation by Congress. This theory was supported by many others. Another viewpoint for an advisory commission was for the purpose of publicity. The proposed commission would serve a useful purpose in collecting and giving publicity to accurate information concerning the affairs and transactions of the corporations engaged in interstate commerce. The publicity of the whole thing would help to solve the problem. Mr. H. V. Poor, editor of the Manual of Railroads, testifying before the committee, said:

The only measure by Congress that I would think advisable would be the creation of a bureau at Washington to which all railroads should make full returns of their financial conditions and of the results of their operations...Our governments have very little genius or faculty for the supervision of railroads. They can provide that reports shall be made which shall give an adequate idea of the condition of railroad companies and of the manner in which they are conducted, that done public opinion must do the rest.⁹

Mr. Jackson S. Schultz, a prominent merchant of New York, who represented the Chamber of Commerce before the committee, after detailing unlawful practices by the railroads within his knowledge, was asked what remedy he had to suggest. His answer was:

I say the remedy is a commission: I go so far as to say that if the commission had not any more power than our State Commission, and that is to report and keep the public advised on what is being done, had not the right to send for persons and papers and examine the books, so far as I am personally concerned I am willing to limit the powers in the first instance to the commonest powers and duties.¹⁰

The most general type of commission desired, according to an analysis of the testimonies, was one of executive or mandatory powers. Under this type would be included the right of the findings of the commission to be used as prima facie evidence in the courts, if the transportation company fails to abide by or carry out the verdict of the commission. The sentiment for this type of a commission was more dominant in the western states. The following extracts of testimony are typical of a vast number that supported

this particular type of a commission with power.

Mr. William H. Miller, secretary of the Board of Trade of Kansas City, said:

A railroad commission should be empowered to enforce any law that might be enacted by Congress for the government of railroads. The method of business and the rules laid down for the railroads to observe in that matter should be enforceable by the commission. The power of the commission should extend to a supervision of the whole matter, that is, investigation, to hear complaints. The committee from facts that would come to it, might act on its own volition to correct wrongs and correct discriminations or inequalities. The decisions of the commission, based upon information that came to it, in that way, should be binding. ¹¹

Mr. Louis Harback, a furniture man of Des Moines, Iowa, suggesting a remedy for the railroad evils, said:

Create a national commission and give it supreme power to enforce its decisions on rates and classification, or whatever they should decide on. I believe the fewer the judges the better the judgment. ¹²

Prof. E. J. James of the University of Pennsylvania, testified:

From some study of the administrative side of the question it seems to me that the only outcome of it is to be a national commission with ample powers to execute the fundamental law of anti-discrimination, with power to secure absolute publicity in regard to all railroad matters. ¹³

Mr. Robert Elliott, a grain merchant of Milwaukee referring to the necessity of regulation, said:

The majority of opinions favor its being done through a commission that would be vested with power to fight the battle of the aggrieved party, so that he should not be compelled to go into Court and wrestle with

this matter. The burden of the fight should be upon the commission. They should bring the delinquent road into court. If that were the case you would not have any such delinquents. They would desist from any such practices, and the citizen would have only to lay his claims before the commission and the commission would only need to call the attention of the delinquent road to the fact, and the wrong would promptly be corrected. I have great faith in the efficacy of legislation upon the general question and in the workings of a commission. 14

Mr. E. A. Giller, master of the State Grange of Illinois, said:

In order to enforce legislation there ought to be authority of some kind, so that those having grievances could make the same known and have the matter attended to without expense to the complainant. 15

The conclusion reached by the committee after having heard all the testimonies, was that there must be a commission. No statutes passed by Congress could be effective and successful unless there was adequate machinery for carrying them into execution. This machinery must be a national interstate commerce commission. The proposed commission should serve a useful purpose in collecting and giving publicity to accurate information regarding interstate commerce. The commission should have ample authority and every facility necessary for acquiring this information. The proposed commission should study thoroughly the railroad problem in view of future regulation and make reports to Congress in

this matter for future legislation. The commission should also investigate and pass judgment upon individual cases that come to it. These decisions are not necessarily final but the facts gathered by the commission shall be used as prima facie evidence in the courts, if the case is carried to the courts. The commission then would act as a preliminary, and often final, court to cases brought to it. By these various methods a commission would be indispensable in solving the railroad problem.

The second major issue upon which the discussion of the investigating committee centered was that of discrimination. There were discriminations between persons, places, and commodities. The discrimination of issuing free passes to certain individuals was more far reaching than one would at first suppose. The discriminations were always in a way to try to get more traffic. Small towns were discriminated against in favor of larger cities, and the small shipper would be discriminated against in favor of the large shipper. Secrecy and crooked methods were employed in the scramble to be favored by the railroads. Reduced rates were obtained by those who needed them least. Monopolies were so fostered and built up by rebates that they often became strong enough to control the railroads. These discriminations were usually due not to a willing intent of the railroads, but as a result of non-regulation. The whole confusing

situation was due to a lack of a comprehensive regulating system or a co-operative scheme that would put a stop to such harmful competition.

The attitude of the general public, representing all classes of people and all phases of industry, in regard to discrimination may be observed from typical extracts of testimony.

Mr. D.D.C. Mink of the Clyde Steamship Lines, said:

I would heartily favor making it illegal to pay any rebates, provided that the law could be so framed that you could not drive a horse and cart through it after it was made. There are so many ways of getting around paying a rebate that to legislate so loose that there was the slightest loop-hole would be very dangerous.¹⁷

Mr. James H. Seymour, representing the New York Mercantile Exchange said:

Rebates and drawbacks should not be allowed. They open the door for all the mischief. You call it discrimination, I call it favoritism. That is the trouble. Rebates and drawbacks should be entirely prohibited by law.¹⁸

When asked to give a remedy for the discrimination evil, Mr. Josiah J. White, representing the New York City Chamber of Commerce, replied:

There is no way in which to prevent the secret rebate system unless you provide a reward for the informer. The shipper who gets a rebate is not going to tell of it, because if he does his rebate will be shut off; the railroad agent is not going to tell it; and the only way to get the information would be to provide a reward for some clerk to tell of it and expose it. It can be stopped, in my opinion, in that way and no other.¹⁹

That the railroads themselves opposed discrimination can be seen from the testimony given by the representatives of railroad companies.

Mr. George R. Blanchard, ex-president of the Erie Railroad, stated:

That preference, resulting in wrong or ruin ought to be stopped. The railroad companies ought to be first warned and then stopt by compulsion. Yet there is not a board of trade or any public trade body that does not seek to have the railroads break their agreements on rates to benefit its particular class.²⁰

The President of the Union Pacific, Mr. C. F. Adams, said:

It may produce good in the end; but railroad competition, as necessarily practiced, causes for the time being the wildest discrimination and utmost individual hardship. You will always find certain points, when there is a war of rates going on, which have enormous advantages conferred upon them, which advantages are not and cannot be extended to other points. The point therefore, which is not influenced by the war of rates suffers terribly.²¹

The conclusion of the committee in regard to discrimination was that Congress should pass laws for the prevention of these specific discriminations, both by making them unlawful and adding to the remedies now available for securing redress, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers. They suggested that every effort possible should be put forth by Congress to secure equality between man and man in respect to transportation, and that one means to that end would be the prohibition of

personal preferences under suitable penalties. In regard to discrimination to large shippers the committee recommended that the rates upon one car load or upon any greater number should be the same; that any concessions allowed on account of quantity should be made as public as the established rates. Concessions to large shippers would have a tendency to concentrate the control of commerce in the hands of the few. The committee further suggested that Congress should not attempt to fix rates by legislation because of the complex nature of the transportation lines in the different parts of the country. Nor should the proposed commission have the power to fix the original rates. The plan suggested was to allow the railroad officials to establish their own rates in the first instance and then if complaints arise the proposed commission shall investigate and prescribe a just rate based upon the circumstances of the particular road.

In regard to the discrimination of the long and short haul the committee recommended that Congress legislate upon the subject in an experimental way. Care should be taken not to make too rigid a law, but propose that a greater charge for a shorter than a longer haul should be declared presumptive evidence of an unjust discrimination.

Perhaps the most vital recommendation of the committee in regard to discrimination was that in all

cases that arose the burden of proof should be upon the railroads and to compel them to justify any violations of the proposed law enactments. ²²

All of the foregoing suggestions of the Cullom committee were framed specifically into the committee's bill which will be discussed in the next chapter.

The third major point around which the discussion at the hearings centered was that of publicity. Today publicity in railroad affairs is quite universally accepted. In the Eighties it was a different question; all quite generally agreed that publicity would aid in solving the railroad problem, but when it came to the actual application, there was much opposition. Railroad representatives believed the principle of publicity was correct but they would object to give the government the right to their books or of actually prescribing methods of bookkeeping to them. They further objected to publicity because it might give advantage to a competing line.

Mr. George R. Blanchard, ex-president of the Erie Railroad, said:

You will find different laws and forms in different states. It would be a useless expense if the Government required still another and perhaps different form from them all, and confusion and not clearness would result, because you can never make foot-notes enough to explain to various people what is variously meant. ²³

Closely following the same trend of thought,

Mr. Albert Fink, said:

It would be difficult to require all the roads to keep uniform accounts, and I do not think it would be necessary. If they furnish you information, which you desire, and which may be useful to you, no other should be asked. Every company has its own system of keeping accounts which has been the outgrowth of years. The officers are accustomed to it and I think it would be impracticable to make any change.²⁴

These two extracts are typical of practically all the railroad men. It is not that they directly opposed the principle of publicity, but that they feared the practical workability of publicity. The testimonies from other industries quite generally favored publicity. They contended that publicity, or the information thus gained, would aid in future legislation of Congress. By having access to railroad books the proposed commission or legislators would have a better basis for making laws. Publicity also would tend to stop evils and bring about stability and fairness, through the power of public opinion.

The conclusions reached by the committee were that publicity is the best remedy for unjust discrimination, and that the posting of rates under the direction of a commission should be required by law. It was their verdict that one of the chief purposes of any legislation for the regulation of interstate commerce should be to secure the fullest publicity, both as to the charges made by common carriers and as to the manner in which their business was conducted. They held that since the business

of a common carrier concerned practically the whole public, the people had a right to know their charges and the net results of their business. The people then could form an intelligent judgment as to whether the charges were reasonable and just. From this information the proposed commission could work on facts insolving railroad problems. The Cullom committee in their bill provided the means by which such information could best and most readily be obtained. ²⁵

The last issue, herein discussed, about which the discussion of the hearings centered was that of railroad rates. There were many phases of the question of railroad rates, dealing with maximum and minimum rates, the long and short haul question, the problem of water competition, the problem of pooling and most important, the basis upon which rates should be determined. These matters were carefully considered by the committee and their findings formulated in the committee's bill.

In regard to the question of maximum and minimum rates, opinion was divided. More of the witnesses testified in favor of them, but mere number or majority did not indicate them advisable. Lawyers, editors, and farmers from all parts of the country advocated minimum and maximum rates, but they were not specific in their methods of putting them into actual practice. Railroad experts and persons who had more intimate

knowledge of the railroads did not believe that it was advisable to prescribe maximum and minimum rates by law.

Mr. Albert Pink, one of the railroad experts, said in regard to these rates:

I think the plan of endeavoring to regulate railroad charges by the establishment of maximum rates is entirely impracticable. This is made clear not only by past experience, but simply by a knowledge of the nature of the case. You cannot fix a maximum rate for a great number of roads without allowing a great deal of margin to cover all possible contingencies.²⁶

The general conclusion of the experts was that the country was too large, and that conditions of geography and economics too varied to allow a set rate by law.

Mr. A. B. Miller, representing the New York Board of Trade and Transportation, said in regard to making maximum and minimum rates:

I think it is entirely possible to be done with a consistent regard to the interest of all parties concerned. I do not believe that any cast-iron regulations or laws can be made in regard to this complex and vexed question. There are ever-varying conditions of labor, of material, good crops, poor crops, etc., that render it utterly impossible that maximum and minimum rates should be established by law and be just.²⁷

Mr. Simon Sterns, another member of the same organization, said:

Maximum rates have been proved by the experience of the English people to be of no protection to the community, because it is very rarely that a company can charge up

to its limit; and minimum rates are again of no value, as there is no special protection in saying that railroads shall not in charges, fall below a certain limit.²⁸

The conclusion of the committee was that the bill should not attempt to establish maximum and minimum rates, nor that that power should be given to the proposed commission.

Another phase of the rate question was that of the long and short haul. This dealt with the question of whether railroads could charge more for a short haul than for a long haul when going in the same direction. A common practice of the roads was to carry commodities from western cities, where there were competing lines, at very low rates. The upshot of the whole matter was a discrimination against the non-competing points along the roads to the eastern markets. It was reasonable to assume that long hauls should be proportionately cheaper, than short hauls, but the tremendous difference in charges and the discrimination practiced made the condition serious. The persons representing these western cities testified in favor of the cheap long hauls although they perhaps realized the wrongness of the theory.

Mr. Charles A. Pillsbury, a large mill owner of Minneapolis, when asked if there is any reason why a transportation company should charge more for a short distance than for a long one, replied:

Yes Sir: sometimes there are good reasons. The road can do additional business, especially

when given in large blocks, as it is here, without any proportionate increase of expenses.²⁹

Following the same trend of thought Mr. D.D.C. Mink of the Clyde Steamship Lines said:

I think the privilege should be allowed the transportation company of charging more for a short than a long haul. Take a way-train stopping for passengers. It costs the road more; the wear and tear in stopping a train ten times in twenty miles is more than going through twenty miles. Therefore, I see nothing unreasonable in charging more for passenger or per ton per mile for a short distance than a long.³⁰

If only the actual costs were taken into consideration the statements of these men would be true and their ideas could be put into practice, but the fact of the matter was that these long hauls were not based on actual cost, they were based upon competition with other roads irrespective of cost. This in turn threw the burden upon the shorter hauls in the non-competing territories.

A large majority of the witnesses examined by the committee were opposed to the cheap long haul. Railroad experts and prominent witnesses of the East together with the witnesses of the high rate territories opposed the theory of the cheap long haul. Many of the witnesses living in the high rate territories wished stringent regulation on the point. They strongly advocated a direct per mile charge on freights and passengers. The most reasonable suggestion given the committee on the subject of long and short hauls was

that of a compromise between a direct mile rate and an extremely low long haul rate. Many of the more capable witnesses testified for this compromise. The testimony of Mr. F. B. Thurber of the Thurber and Whyland and Company, wholesale grocers, is typical. He said:

I think that railroads should be permitted to charge a lower proportionate rate for a long than for a short haul, but this should not be carried so far as to charge more for a shorter than for a long distance in the same direction.⁵¹

The conclusion of the Cullom Committee in regard to the long and short haul was that since there was so much unjust discrimination between places and persons, that a statute by Congress should prohibit a greater aggregate charge for a shorter than for a longer distance as between shipments of the same kind over the same road and going in the same direction. The purpose of the act would be to equalize the existing differences between through and local rates, to protect shippers at interior non-competitive points, and to prevent the carriers from charging such shippers unreasonable rates in order to recoup the losses sustained in reckless rate wars and by carrying through freights at less than cost.⁵²

Water competition also entered into the problem of railroad rates. In the testimonies taken there was an almost universal opinion that water routes should be fostered by the national government and that they, in the end, would be the most effective regulators of

railroad rates. This idea prevailed not only where there were canals, lakes and rivers, but also in the interior. A few contended that the railroads had bought many and would buy more of the canals and that water competition would be ineffective but they were in the vast minority. The concurrence of views on the water question indicated in the testimony was outstanding. A few extracts are here given from the opinions expressed to the committee to show the public sentiment upon the subject.

Mr. George R. Blanchard, ex-president of the Erie Railroad, said:

Waterways are the safeguards against railroad extortion. They not only regulate the charges of carriers by rail parallel to them, but absolutely enforce the same limitations upon rail carriers that are remote from them, because if a carrier by rail that is parallel to water makes water rates, another and more distant railroad cannot get more than its rail rival charges. ³³

Mr. William E. Rogers, member of the Board of Railroad Commissioners of New York State, says:

So long as the waterways are kept open, for instance between Chicago and the Atlantic, and Chicago and the Gulf of Mexico by the Mississippi, it is impossible for the railroads ever to combine so as to produce extortionate rates. For that reason, if for no other, we deemed it of utmost importance that these waterways should be kept open. ³⁴

The same viewpoint is expressed by Mr. Albert Fink, commissioner of the Associated Trunk Lines, and who for many years has dealt with the matters of rates, when he said, "Under ordinary circumstances the Lake,

the Erie Canal, and Mississippi River are the great regulators of railroad transportation charges." ³⁵

Mr. J. J. Woodman, Master of the National Grange, said in his testimony:

Water routes are Nature's great thoroughfares, and it should be a fixed policy of the Government to keep the channels of these great arteries open, that the life blood of commerce may flow freely. Water routes are indispensable in maintaining cheap transportation. ³⁶

In summing up water competition as related to railroad rates the committee concluded that water routes were the most effective cheapeners and regulators of railroad charges. They held that the influence of water rates was not confined to places immediately accessible to water communication, but extended and controlled railroad rates to interior places that had competing lines reaching means of transport by water. The committee recommended the improvement of water routes by the government, especially the Mississippi River and its tributaries. The committee also recommended that the national government regulate and control these water routes.

Another factor which indirectly affected railroad rates was that of pooling. Attention to the evils of pooling was continuously called to the Forty-eighth Congress by Mr. Reagan of Texas. He was instrumental, more than any other single man in arousing a public fear of railroad combinations. The Cullom Committee took special care to get the sentiment of the

public in regard to pooling as practiced by the railroads, so as to get an idea of its ultimate effect on railroad rates. The committee found a wide diversity of opinion on this question. Railroad men usually favored pooling while industrial interests opposed pools and favored a law to prohibit pools. Many of the men who testified against the pools were perhaps governed by an emotional hatred of the railroad rather than by a sane analysis of the subject. There seemed to be no marked sectional differences on the subject. The South and West were perhaps more pronounced in their condemnation of the pools, but the chief contrast was that of industrial interests versus the railroad men. Following are three brief extracts from men representing industrial interests that represent a majority stand on the pools.

Mr. James H. Seymour, from the New York Mercantile Exchange, said:

Pooling should certainly be prohibited by law. When you open the door and allow the railroads to make such arrangements, they are masters of the situation.

Mr. J. H. Walker, a Chicago boot manufacturer, said:

The whole pooling system and the whole theory of the pooling system is to protect the interest of the shareholder. It is against public interest, in my judgment, it ought to be prohibited. 38

In further condemning the pooling system,

Mr. William F. King of Calhoun, Robbins and Company of New York, said:

The experience of the New York merchants during the last few years is that the pooling system has been a curse instead of a benefit.³⁹

In direct contrast with the foregoing statements are the statements of practically all the railroad officials. Two of these will be cited as an example of their content.

Mr. C. F. Adams, president of the Union Pacific Railroad, said:

The effect of pooling has been to equalize and steady rates. It has never been able to hold up the rates. Owing to the natural force of competition, a steady decreasing rate has been the rule year after year until now, the transportation in this country is unquestionably lower than in any other country in the world. 40

The Vice-president of the Carlo Road, Mr. George W. Parker, said:

My judgment is that it is better for both the railroads and the commercial interests of the country that pools or railroad confederations should be legalized. Of course, I assume that its legalization would be attended with restrictive laws that would secure to both the transportation lines and to shippers reasonable rates and regulations through the proposed national commission. 41

The Cullom Committee was divided upon the question of pooling. The majority, however, held that it was not prudent to recommend the prohibition of pooling. They contended that if agreements between carriers should prove necessary to the success of a

system of established public rates, it would seem wiser to permit such agreement rather than by prohibiting them to render the enforcement and maintenance of agreed rates impracticable. The committee intimated that the railroad evils could be largely remedied under the method of regulation proposed in their bill without the prohibition of pooling. They stated that the question had not yet been studied enough to indicate the advisability of prohibited pooling. If experience showed that pooling must be prohibited or regulated, it could readily be corrected by additional legislation.

The greatest problem of railroad rates was to try to determine a principle upon which they should be established, and to determine the factors that entered into a so-called reasonable rate. Should the proposed commission determine and enforce the rates, or should it be left to the individual companies with the power to revise them by the commission? Or should the commission have any power at all over making and enforcing reasonable rates? These are some of the questions that entered into the discussion. Each railroad was entitled to reasonable rates, but what ^{was} a reasonable rate on one line did not necessarily determine what was reasonable upon another less favorably situated and of lesser earning capacity. Differences in rates between railroads differing in their makeup and in their earning capacity

could easily be understood. The reasons which justify these variations are important in enforcing differences in rates between different commodities upon a single railroad, and render it impossible to base rates entirely upon the cost or value of the service rendered in all instances. A set rate by the commission or government on all classes of freight over any number of roads was entirely out of the question when the hundreds of independent railroads, each with conflicting interests, were combined.

During the course of the hearings the discussion of rates seemed to center on four lines, first, leaving the matter of rates entirely up to competition between the railroads. Second, basing rates on what the traffic would bear. Third, rates established by law of Congress or by the commission and fourth, rates based upon the actual cost of service.

Rates based upon competition was the most prevalent idea. Competition for the life of trade was the working basis of practically all industries of the time, not only of railroads. It was quite generally thought that through competition railroad rates would work out themselves. Mr. John O'Donnell, a member of the New York State Railroad Commission, said:

I do not believe that competition should be interfered with. I believe in the freest competition by railroads and if there was a railroad man here he would add, "The survival of the fittest." In my opinion, when railroads get down to an honest basis of capital, they

will be willing to accept competition as basis of charges. If a railroad runs through a favored territory, and another road is built in opposition to it, let it fail if it cannot compete.⁴³

Mr. Henry W. King, a wholesale merchant of Chicago, said:

My views are that, as a rule, the least possible governmental interference the better for the community, in the view that these railways are commercial bodies and that they hold commercial relations to the community. We can usually depend upon those questions being properly settled by the great laws of supply and demand and competition.⁴⁴

Another group of men who testified on rates contended that the just rate would be the one that "The traffic would bear." This type of rate would place the charges upon those who are most able to pay. It would allow the exchange of other commodities at low rates which could not be done through a fixed rate. This would allow for a greater exchange of commodities and thus raise the standard of living. This method would develop the country, would place the burden of rates where they could best be born and would reduce other charges to a point impossible upon the basis of cost of service alone.

A few testimonies were in favor of a fixed rate, to be established by the government on a per a per ton per mile basis. They contended that by making fixed rates they could be enforced. There would

be no loop holes and variations by which railroads could disregard the law. They predicted that enforcement under any other method would be impossible. They pointed out as an evidence of success the way the Post Office Department handles correspondence.

The last method of determining rates was that based upon the actual cost of service. The rates should be made in proportion to the cost and maintenance of the road. The net result should be that the returns of the roads should give a profit on the investment equal to that made by other industries. It could not be determined by any fixed standard. It must vary with the period and with the conditions. It should be sufficient and only sufficient to lead to the continued investment of capital in railroads. Rates should be so adjusted that the total revenue produced by them would compensate the railroad to the extent that the same amount of energy expended in other branches of productive industry was compensated. A typical example of a testimony on this method is the one of Mr. George C. Pratt, Chairman of the Railroad Commission of Missouri. He said:

Our experience is that the line on which fair rates should be adjusted is one which allows a fair profit to the railroad company; and when you have ascertained what will pay them sufficiently on the capital invested, and labor, etc., and the operation of it, and what will meet the improvements which are necessary to an increasing amount of business--when all those are well paid for, then that the balance should remain in the pockets of the community in the shape of cheap transportation. 45

The conclusion of the committee in regard to rates was that since a large range of charges upon the different railroads was inevitable it would be inexpedient to establish any fixed rates by legislation or by a commission. A uniform tariff for all roads would not be equitable. It would work a hardship on roads not favorably located and would allow high profits for those favorably situated. They did not even recommend classifying roads as to locations because it would be practically impossible. The plan that they recommended was to let the railroad rates be established, in the first instance, by the railroad officials, then if a complaint should arise as to the reasonableness of a certain rate, the commission should investigate that particular rate in question. The basis upon which the commission should determine a reasonable rate on any particular shipment should be one which covered the actual expense to the carrier of that particular transaction, plus a proportionately fair contribution towards the sum total of the fixed charges; if any rate was found to be more than ^{that} the railroad company should be asked to lower their rate. The commission would have the right to make all investigations. After investigation, if the railroad refused to lower its rate, it should be taken into the regular courts. The railroad charged with unjust discrimination and the findings of the commission were to be used as prima facie evidence in the court.

The question of whether a rate was reasonable or not could only be determined upon broad grounds. There was no distinct line of demarkation between what was reasonable and what was an unreasonable rate. Every complaint was to be decided upon its own merits. ⁴⁶

From the information obtained from the various and many testimonies and from the study of the railroad question by the committee, they formulated a bill, which Senator Cullom, its Chairman introduced into the Senate of the Forty-ninth Congress. The provisions of the bill were based upon the theory that the great evil chargeable against the operation of the railroads as conducted was unjust discrimination between persons, places, commodities or particular descriptions of traffic. The underlying purpose and aim of the measure was the prevention of these discriminations, both by declaring them unlawful and adding to the remedies already available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, ⁴⁷ and methods of management of the carriers.

The bill was not meant to be a panacea for all railroad evils, neither was it meant to be merely an experimental attempt at railroad control. Some of the provisions were meant to be final, while others were to aid in gathering facts for future legislation. The specific contents of the bill and its fate in the Forty-ninth Congress will be taken up in the next chapter.

Chapter III

PASSAGE OF THE INTERSTATE COMMERCE ACT

A summary of the bills and petitions in the Forty-ninth Congress, first session, shows that there were nineteen petitions presented and eighteen bills introduced relating to interstate commerce. Of all these bills and petitions only one was considered and debated by the two houses of Congress. That was S.1532, the one formulated and introduced into the Senate by the Cullom Committee and was based on the findings of that committee. Of the remaining bills thirteen were introduced in the House and four in the Senate. The four bills in the Senate were introduced respectively by Senator Logan of Illinois, Senator Ingalls of Kansas, Senator George of Mississippi, and Senator Conger of Michigan. These four bills dealt with some minor phase of the regulation of commerce. They were read twice and referred to the Senate Committee of which they were related.

The thirteen bills of the House were introduced by representatives of eleven different states ranging from New York to Texas, and from Mississippi to Michigan. Eight of these bills asked for a national court of arbitration or a railroad commission. Three of them were

aimed at unjust discrimination, while the other two asked for some method of codifying railroad laws relating to bills of exchange and other commercial papers.

Sixteen of the nineteen petitions were presented in the Senate. Twelve of these petitions prayed for the passage of the bill under consideration (S.1532). They were all from Boards of Trade, or Merchants Exchanges. One petition from the National Greenback Party presented by Senator Plumb of Kansas asked Congress to stop squandering taxes in dredging mud creeks and constructing canals, and to use the money to pay the war debt, build national double-track steel railroads, and erect a postal telegraph system. The remaining two petitions referred to the forfeiture of unearned lands.

Two of the petitions of the House asked for the passage of the Cullom bill, S.1532, while the third asked for legislation favoring the prohibition of discriminations.

In the second session of the Forty-ninth Congress there were thirty-three petitions presented and one bill introduced relating to interstate commerce. The debate, the previous session, on S.1532 had centered public sentiment and discussion on that bill.

The one bill of the session was introduced into the Senate by Senator Plumb of Kansas. It concerned the

transfer of railroad and other corporations engaged in interstate commerce. The bill was read twice and referred to the select Committee on Interstate Commerce.

Ten petitions were presented in the Senate in the second session. Five of them prayed for the passage of the bill, S.1532. These petitions came from Chambers of Commerce of Eastern cities, and from the State Railroad Commissions of Iowa, Kansas, Nebraska, Colorado, and the Territory of Dakota. The remaining five petitions remonstrated against the passage of two provisions of the bill. They objected to the prohibition of pooling and the long and short haul clause. The other provisions of the bill were urged to be passed. These petitions came from the Chambers of Commerce of Minneapolis, Cincinnati, Tacoma, Columbus, and New York.

Of the twenty-three petitions of the Houses, ten asked for the passage of S.1532. These petitions were from groups of citizens in the Middle West and from the legislatures of Arkansas and Minnesota. Ten of the petitions asked that the long and short haul clause be stricken from the bill, and seven of these also asked that the clause on pooling be stricken. They were all in favor of the remaining sections of the bill. These petitions were from Boards of Trade and Chambers of Commerce of cities of the Middle and far West. Three petitions remonstrated against the passage of the Conference bill. These three petitions were from

the Chambers of Commerce of Montgomery, Alabama; Lawrence, Kansas; and from a group of citizens of Boston, Massachusetts.

The bill, S.1532, that was discussed at great length and passed during the Forty-ninth Congress was introduced by Senator Shelby M. Cullom of Illinois on 14 April 1886. Senator Cullom introduced the bill in behalf of the Committee on Interstate Commerce of which he was Chairman. The bill was the result of the investigation of the committee. For a basis of future comparison and of analysis the summarized contents of the bill together with extracts of remarks made on it by Senator Cullom will follow.

Section I, By the terms of the first section, the provisions of the bill were made to apply only to transportation by or upon a railroad, except where a railroad and water route were together used for a continuous carriage or shipment. All charges were to be reasonable and just.

In commenting on this section, Senator Cullom said:

The bill is not intended to affect the stage-coach, the street railway, the telegraph lines, the canal-boat, or the vessels employed in the inland or coasting trade, even though they may be engaged in interstate commerce, as it would do if it was made to apply to all common carriers engaged in interstate commerce, because it is not deemed necessary to cover

such the regulation of subjects as to its departments, but the definition of the term 'railroad' given in the first section is intended to bring within the application of the bill all the numerous instrumentalities of shipment, such as the fast freight lines, express companies, sleeping car companies, or any other organizations which undertake any part of the work of a carrier by railroad.

No reason is apparent why these auxiliary agents should not be made subject to regulation as well as the railroads. It is plain that if they shall be left unrestricted in their operations the opportunities for evasion of the law by the railroads will be greatly increased, and it is clear that the same necessity exists for protecting the people against discriminating or unreasonable charges by the fast freight lines and these other outside agencies as on the part of the railroads themselves. The concluding paragraph of this section, asserts the common law requirement that all charges shall be reasonable and just.

Section II, This section specifically prohibited every variety of personal favoritism or unjust discrimination. It prohibited special rates, rebates, drawbacks, or other devices for discriminating between shippers similarly situated and making like shipments.

Section III. This section went further and included discriminations against localities and particular descriptions of traffic. Its purpose was to require railroads to furnish to connecting roads all reasonable and proper facilities for the interchange of traffic that might be necessary for the convenience of the public, and to prevent one road or a combination of roads from "freezing out" a connecting line by refusing to accept

traffic from it or deliver traffic to it upon any terms.

Section IV. This section prohibited a greater aggregate charge for a shorter than for a longer distance over the same line, in the same direction and from the same original point of departure. It further provided however, that the commission was authorized to make exceptions in cases where on investigation it might be found necessary.

Senator Cullom made the following comment on this section:

This is the general declaration made, and it is agreed that this is the principle that should be observed as a general rule. The Committee found, however, that this 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 to the railroads to rigidly enforce the general principle.

In order to provide for these exceptional cases it was agreed that the commission should be authorized to make exceptions in cases where an investigation it may be found necessary and proper.

The public sentiment of the country favors a provision of law prohibiting without exceptions, a charge of more for a short than for a longhaul on the same line of road, in the same direction, and from the same point of departure. Those who favor an absolute short haul provision assert that the provision of the bill will amount to nothing. As it stands it is largely in the discretion of the commission, and as the whole scheme of national control is new in this country, in my judgment, it is the wisest to go no further than the committee purposes on so doubtful a point until we see the operation of the law, if it shall become one, and get a report from the commission on the question, if one shall be established.³

Section V. This section requires the carriers to publish a schedule of rates and charges. Under the provisions of this section it was unlawful to charge any person more or less than the published rate, and the carriers would be required to adhere to such published rates until they had been changed in the manner specified. The published rates could not be increased except after a ten days' public notice. They might be reduced without previous public notice, but immediate notice of such reductions would have to be given in such manner as the commission might direct. A failure or refusal to file or publish its tariff would subject a carrier to a writ of mandamus to compel compliance with the requirements of this section, and that failure to comply with the mandamus would be punishable as for contempt. And if that would not answer, to enforce compliance with the law, the courts were also authorized to restrain railroads from engaging in interstate commerce until they publish their rates as required.

Section VI. This section declared it to be unlawful for any common carrier to enter into any agreement to prevent the carriage of freights from being continuous from the place of shipment to the place of destination, and provided that no breaking of bulk, stoppage, or interruption should prevent the carriage of freights from being treated as continuous, unless made for some

necessary purpose and not with the intention of evading the provisions of the act. The purpose of this section was to prevent evasions of the act by such devices as rebilling or transshipping at state lines so as to make it appear that an interstate shipment was a state shipment and would not be affected by federal legislation.

Section VII. This section provided that any common carrier who would wilfully do or permit to be done any of the acts or things declared, in the preceding sections, to be unlawful, would be deemed guilty of a misdemeanor, and would upon conviction thereof, be fined not more than \$5,000.

Section VIII. This section created a commission of five members, who were to be appointed by the President and confirmed by the Senate, and to serve for terms of six years. It provided that not more than three of the commissioners should be selected from the same political party, and that they should not own railroad stock or bonds or engage in any other employment.

Section IX. This section prescribes the general jurisdiction of the commission. It was given the authority to inquire into the management of the business of all railroads and other common carriers subject to the provisions of the act, and to keep itself informed as to the manner and methods in which the same was conducted, The commission

was given the right to obtain from such carriers all the information necessary to enable it to perform its duties and could also invoke the aid of the courts in requiring the attendance of witnesses and the production of books and papers. Provision was made for the punishment by the courts of a common carrier or any person connected therewith who would refuse to obey a subpoena issued by the commission.

Section IX. This section provided that any person, firm, corporation, or association, any mercantile, agricultural, or manufacturing society, any body politic or municipal organization, or any state railroad commission might complain in writing to the commission of anything done or omitted to be done by any common carrier in violation of law, or that the commission might institute investigations on its own motion. When complaint was made the commission was required to forward a statement of the charges to the carrier and to call upon the latter to adjust the matter or make answer within a specified time. If the complaint should be satisfied, that was the end of the matter. If it could not be thus disposed of, it became the duty of the commission to investigate the matters complained of in such manner and by such means as it might deem proper. Such investigations might be conducted in any part of the United States by one or more of the commissioners, but a majority of the commission was required for the final determination of the case.

Section XI. This section required the commission to make a report in writing, whenever an investigation was made, which report would include the findings of fact upon which the conclusions of the commission were based and its recommendations as to what reparation, if any, was to be made by the carrier to the parties found to have been aggrieved. A copy of such report was to be furnished to the complainant and the carrier. The findings of the commission in an investigation would be taken in all judicial proceedings as prima facie evidence as to each and every fact found.

Section XIII. This section pointed out the course to be taken subsequent to an investigation. If it was found that the law had been violated or that an injury had been sustained by the complainant or other parties aggrieved, it became the duty of the commission to notify the carrier to desist from the further violation of the law or to make reparation for the injury done, or both, according to the circumstances of the case. If the carrier was willing to accept the adverse findings of the commission and to settle with the complainant or those injured, without further contest, it was given an opportunity to do so. If, however, the carrier should decline to make settlement in accordance with the findings of the commission, or should persist in violating the law

after notice to desist, the commission was required to certify that fact to the district attorney of the proper district, and to forward him a copy of its report in the case.

In commenting on this section Senator Gullom said:

It may be claimed that, if resort must finally be had to the courts, the complainant gains nothing by the creation of a commission, or by appealing to it for relief, but that does not fairly state the case. In the first place, we are justified by the experience of the state commissioners in believing that the mere fact of the existence of such a tribunal would have the effect of materially diminishing the causes of complaint. In the second place, we are justified in believing that under the course of procedure which has been proposed, and with the aid of the great force of public opinion, the commission would be of great service to the people in bringing about an amicable adjustment of the larger portion of the complaints submitted promptly and to the entire satisfaction of the complainant. But, in the third place, even in those cases in which resort to the courts should happen to become necessary, the complainant would gain rather than lose by prosecuting his case before the commission. All he could lose would be the time occupied in the investigation, while in would gain an immense advantage by having a prima facie case established and by the summary methods provided for its prosecution, and by having his case prosecuted by the government.

Section XIII. This section provided that when a case had been certified to the district attorney he should forthwith bring suit in the name and on behalf of the parties aggrieved for the recovery of the damages sustained. In cases in which the carrier had persisted in violating the law after notice from the commission to desist, it was also made the duty of the

district attorney to apply for and of the court to grant a temporary injunction restraining the carrier from further violation of the law until the matter could be fully heard. Without this provision for a summary injunction upon the prima facie case established by the report of the commission, the railroad company could afford to continue violating the law, and use all its energies to delay litigation. But under the provisions of this section the carrier would be immediately compelled by the courts to desist from what the commission declared to be a violation of law until the courts could determine the question.

Section XXV. This section related to the work of the commission.

Section XV. This section provided for the salaries and expenses of the commission and its employees.

Section XVI. This section authorized sessions in any part of the United States whenever necessary.

Section XVII. This section required annual reports to be made to the commission by the carriers, and specified in detail particular information that such reports should contain.

Section XVIII. This section required an annual report to be made by the commission which was to contain such information and data as might be considered of value in the determination of questions

connected with the regulation of commerce, with such recommendations as to additional legislation as the commission might deem necessary.

Section XIX. This section required the commission to especially investigate the subject of pooling, and to report to Congress whether any legislation on that subject was advisable.

Section XX. This section exempted from the provisions of the act property carried for the United States, State or municipal governments, or for charitable purposes, or to fairs or expositions for exhibition, as well as mileage, excursion or commutation passenger tickets.

Section XXI. This section related to the appropriation that was asked to be made.

This bill was debated in the Senate and a minor amendment was made. In Section IV the long and short haul was made more specific so that there could be fewer exceptions made by the commission. There was little debate on the bill except the advisability of this particular clause. On 12 May 1886 the bill with the minor amendment passed the Senate. The vote was 47 yeas, 4 nays, and 25 absent; the Senators voting as follows:

yeas

Allison	Evarts	Logan	Sabin
Borrry	Fair	McMillan	Saulsbury
Blair	George	McPherson	Sawyer
Bowen	Gorman	Manderson	Sewell
Coll	Gray	Maxey	Sherman

yeas (cont'd)

Camden	Harris	Miller	Spooner
Chace	Hawley	Michel (of Ore)	Teller
Cockrell	Hoar	Morrill	Vest
Coke	Ingalls	Palmer	Woltholl
Cullom	Jones (Ark.)	Payne	Whitthorne
Edmunds	Jones (Nevada)	Platt	Wilson of Iowa
Eustis	Kenna	Pugh	

Nays 4

Brown	Colquitt	Morgan	Ransom
-------	----------	--------	--------

Absent 25

Aldrich	Dolph	Stanford
Beck	Frye	Jones (Fla)
Blackburn	Gibson	Mahone
Butler	Hale	Mitchell (Pennsylvania)
Cameron	Hamptin	Pike
Conger	Harrison	Plumb
Dawes	Hearst	Riddleberger
		Vance
		Van Wyck
		Wilson (Md.)

The bill was then sent to the House where it was referred to the Committee on Commerce. Mr. Reagan as chairman of this committee reported back the bill with an amendment in the form of a substitute. The substitute offered was almost identical to the Reagan Substitute Bill which was passed by the House, during the Forty-eighth Congress.

The essential differences between the House substitute and Senate bill were that the House bill created no commission, it provided for the enforcement of its provisions through the courts of ordinary jurisdiction. The House bill definitely prohibited pooling,

while the Senate bill merely proposed an inquiry on the subject. The Senate bill allowed exceptions to the long and short haul clause, while the House bill specifically prohibited a greater charge for a short haul. Other minor differences may be seen by examining the Chart covering the Reagan Substitute Bill, (H.R.5461). The House bill was much more definite and final in its provisions than the Senate bill.

On 30 July 1886, the House by a vote of 192 yeas, 41 nays, and 89 not voting, passed the substitute bill. Mr. Reagan then moved that the House request a conference with the Senate upon this bill. The motion was passed.

On 31 July, the president pro tempore laid before the Senate the amendment of the House of Representatives to the bill S.1532, which was to strike out all after the enacting clause and insert a substitute. On motion by Senator Cullom, it was resolved that the Senate disagree to the amendment and agree to the conference asked by the House. By unanimous consent, it was ordered that the conferees of the Senate should be appointed by the Chair. The president pro tempore appointed as conferees, Senator Cullom of Illinois, Senator Harris of Tennessee, and Senator Platt of Connecticut.

The Speaker of the House appointed as conferees, Mr. Reagan of Texas, Mr. Weaver of Nebraska, and Mr. Crisp of Georgia.

The Committee of Conference after a full and free conference agreed to recommend to their respective houses

that the Senate bill with amendments should be passed. The most important amendment to the Senate bill by the Conference Committee was the provision definitely prohibiting pooling. Other amendments made the provisions of the long and short haul more specific, and more definitely pointed out unjust discriminations that were prohibited.

The summarized sections of the bill recommended which are identical to the final bill passed are given.

Section I. The Act shall cover all interstate movements of property and passengers, by land, as well as by water when both are used under a common control. This section further provides that all charges shall be reasonable and just, and prohibits all unjust and unreasonable charges.

Section II. All personal discriminations in the form of special rates, rebates, drawbacks, or other devices are prohibited.

Section III. Discriminations between localities and commodities are forbidden, and equal facilities for the interchange of traffic with all connecting lines are required.

Section IV. That it is unlawful to charge more in the aggregate, for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer. There may be exceptions made in special cases through application to the commission.

Section V. All railways subject to the act are prohibited from pooling traffic or earnings, in the aggregate or net. In case of pooling each day of its continuance shall be deemed a separate offense.

Section VI. All rates and schedules must be printed and posted and filed with the commission. No advance charges can be made without ten days' notice. Failure to comply is punishable as for contempt. A writ of injunction shall restrain such carrier from transporting property until he complies with this act.

Section VII. It is unlawful to hinder freights from being continuous from the place of shipment to the place of destination.

Section VIII. A carrier is liable for damages, plus attorney's fees, on account of losses sustained by any person or persons as a result of the violation of any section of this act.

Section IX. Any person claiming injury under the act may bring action before the commission or any district or circuit court of the United States. The power to compel testimony and force production of papers essential to such actions being given.

Section X. A penalty not to exceed \$5,000 shall be imposed for each violation of the law.

Section XI. The commission shall consist of five members, to be appointed by the President with the consent of the Senate. Not more than three commissioners

should belong to the same political party. The term of the commissioners shall be six years.

Section XIII. The commission is given power to make inquiries with the right to compel all information necessary to the proper exercises of its authority under this act. This power shall be enforced by the United States courts in case of refusal.

Section XIII. Anyone may petition the commission of a wrong, stating the facts in writing. The commission will forward these to the carrier who will be given a chance to adjust it. If not adjusted the commission will make an investigation. The commission may also of its own accord initiate investigations.

Section XIV. Written reports of the investigation should be made and recorded. The findings and recommendations for reparation, if any, should be furnished to complainant and carrier. All findings shall be deemed prima facie evidence in all judicial proceedings thereafter.

Section XV. The commission shall, if satisfied that the law has been violated, serve notice upon the violating carrier to desist from such acts, and to make reparation for injury.

Section XVI. Upon refusal of a carrier to observe an order of the commission, that body shall petition to the Circuit Court of the United States of that district. The Court shall proceed to hear and

determine the matter speedily as a court of equity. The findings of the commission to be prima facie evidence. The Court to issue a writ of injunction to restrain such carrier from further violation of any order of the commission.

Section XVII. The conduct of the proceedings of the commission is left largely to that body; a majority shall constitute a quorum. The votes and acts of the commission shall be recorded.

Section XVIII. The salary of the commissioners shall be seven thousand five hundred dollars per year. The salary of the secretary shall be five thousand dollars a year. Other help may be hired as required.

Section XIX. The principal office of the commission shall be in Washington. For convenience, meetings may be held in other places.

Section XX. The commission is authorized to require annual reports from carriers. The commission may prescribe a uniform system of detailed reports.

Section XXI. The commission shall make an annual report to the Secretary of the Interior. This report shall contain information and data collected by the commission, and also recommendations as to additional legislation by Congress.

Section XXII. That nothing in this act shall apply to service at reduced rates for the United States, State or municipal governments or for charitable purposes,

or ministers of religion, or to fairs or expositions, or the issuance of mileage excursion, or commutation passenger tickets or free carriage to their own officers or employees.

Section XXIII. An appropriation of one hundred thousand dollars for the first fiscal year.

Section XXIV. Sections eleven and eighteen shall take effect immediately and the remaining provisions of this act shall take effect sixty days after its passage.⁴

Senator Cullom presented this bill in the Senate and made a long plea for its passage as it was, without delay. There was considerable debate however on the section prohibiting pooling. Many senators objected to such a dogmatic view on the subject. Senator Frye of Maine moved that the bill be sent back to conference with instructions to the Senate Conferees to insist upon striking out the section which prohibits pooling and inserting in its place the original Senate bill, which authorizes the commission to investigate the matter of pooling, and to report at some future day. The motion of Senator Frye was lost by a vote of 25 yeas, 36 nays; and 14 not voting.⁵

Senator Cullom then said that he supposed that the question was now on agreeing to the Conference report. The President pro tempore answered that it was and on 14 January 1887 the Senate passed the

Conference report unamended. The result of the vote was 43 yeas, 15 nays and 17 not voting.

The way the Senators voted:

yeas 43

Allison	Edmunds	Ingalls	Sawyer
Beck	Eustis	Jones(Ark.)	Sewell
Berry	Fair	Jones(Nev.)	Sherman
Blackburne	Frye	McMillan	Spooner
Bowen	George	Manderson	Teller
Cockrell	Gibson	Mitchell(Ore)	Vance
Coke,	Gorman	Palmer	Vest
Colquitt	Gray	Plumb	Wolthall
Conger	Hale	Pugh	Whithorne
Cullom	Harris	Sabin	Wilson(Ia.)
Dolph	Hawley	Saulsbury	

nays 15

Aldrich	Chase	Hoar	Payne
Blair	Cheney	Mahone	Platt
Brown	Evarts	Mitchell(Pa.)	Williams
Cameron	Hampton	Morrill	

absent 17

Butler	Jones (Fla.)	Morgan	Voorhees
Call	Kenna	Ransom	Wilson (Md.)
Camden	McPherson	Riddleberger	
Dawes	Maxey	Standford 6	
Harrison	Miller	Van Wyck	

On 18 January 1887 The House took up the bill for consideration. Here strong pleas for its passage were given by Mr. Crisp of Georgia, a member of the Conference Committee, and Mr. Plumb of Illinois. There were also several speeches in opposition to the bill largely because it prohibited pooling and because they were afraid the long and short haul clause would destroy

cheap through rates. The men who gave these speeches were Mr. Dunham of Illinois; Mr. Bragg of Wisconsin; Mr. Allen of Massachusetts and Mr. Johnson of New York.

On 21 January the House assembled and according to a previous agreement a vote was taken on the Conference report. Several representatives wished to have a separate vote on sections four and five but their wish was not granted. Mr. Crisp then called for the yeas and nays on the question of agreeing to the Conference report. The question was taken; and there were---yeas 219; nays 41; not voting 58; as follows:

yeas 219

Adams, G.E.	Dunham	Lehlbach	Sayers
Adams, J.J.	Dunn	Lindsley	Scott
Allen, J. M.	Eden	Little	Scranton
Anderson, J.A.	Eldrege	Lore	Sessions
Baker	Ellsberry	Louttit	Shaw
Ballentine	Everhart	Lovering	Singleton
Barbour	Farquar	Lowry	Skinner
Barksdale	Fisher	Lyman	Sowden
Barnes	Fleeger	Mahoney	Spooner
Berry	Foran	Matson	Springer
Bayne	Fuller	McAdoo	Steele
Belmont	Funston	McComas	Stephenson
Bennett	Gallinger	McCreary	Stewart, Chas.
Blanchard	Geddes	McKinley	Stone, W.J. (Ky.)
Blount	Gibson, C.H.	McMillin	Stone, W.J. (Mo.)
Bound	Glover	McRae	Storm
Brady	Goff	Millard	Strait
Breckenridge, C.R.	Green	Milliken	Struble
Breckenridge, W.C.P.	Grant	Mills	Swope
Brown, C.E.	Hale	Maffat	Symes
Brown, W. W.	Hall	Morrill	Tarsney
Buck	Halsell	Morrison	Taulbee
Bunnell	Hammond	Muller	Taylor, E.B.
Burnes	Harmer	Murphy	Taylor, I.H.
Burrows	Harris	Neal	Taylor, J.M.
Butterworth	Hatch	Neece	Thomas, J.R.
Bynum	Haynes	Nelson	Thomas, ZACH.
Cabell	Heard	Norwood	Thomas, O.B.
Caldwell	Hemphill	O'Donnell	Thompson

Campbell, Felix	Henderson, D.B.	O'Ferrall	Tillman
Campbell, J.M.	Henderson, J.S.	Osborne	Towashend
Cannon	Henderson, T.J.	Duthwaite	Trigg
Carleton	Henley	Owen	Tucker
Catchings	Hepburn	Parker	Turner
Clements	Hubert	Payson	Van Eaton
Collins	Herman	Peel	Van Schaick
Compton	Hiestand	Perkins	Wade
Comstock	Hires	Perry	Wakefield
Conger	Hitt	Peters	Wallace
Cooper	Holman	Pettibone	Ward, J.H.
Cowles	Holmes	Phelps	Ward, T.B.
Cox, W.R.	Hopkins	Price	Warner, W.
Crain	Howard	Plumb	Warner, A.J.
Crisp	Hudd	Randall	Weber
Croxton	Irion	Richardson	Wellborn
Culberson	Johnston J.T.	Riggs	Wheeler
Curtin	Johnston T.D.	Robertson	White, Milo
Cutcheon	Jones, J.H.	Rockwell	Wilkins
Daniel	Jones, J.T.	Rogers	Willis
Davidson, R.H.	Laffoon	Romeis	Wilson
Dawson	LaFollette	Rowell	Winans
Dingley	Landes	Rusk	Wolford
Dockery	Lanham	Ryan	Woodburn
Dorsey	Lawler	Sadler	Worthington
Dougherty	LeFevre	Sawyer	

nays 41

Allen, C.H.	Evans	Ketcham	Ranney
Anderson, C.M.	Felton	Libbey	Reed
Bliss	Findley	Long	Rice
Boutelle	Fredericke	Markham	Seymour
Bayle	Gay	Martin	Wadsworth
Bragg	Gilfillan	McKenna	Wait
Brumm	Grosvenor	Miller	Weaver, J.B.
Campbell, J.E.	Hayden	Morrow	White, A.C.
Caswell	Hill	Oates	
Dibble	Johnston, F.A.	O'Neill, Charles	
Ely	Kelley	O'Neill, J.J.	

not voting 58

Aiken	Davidson, A.C.	Kleiner	Snyder
Atkinson	Davis	Baird	Spriggs
Bacon	Ermentrout	Maybury	Stahlnecker
Bingham	Ford	Merriman	Stewart, J.W.
Bland	Forney	Mitchell	St. Martin
Browne, T.M.	Gibson, E.	Morgan	Stone, E.F.
Buchanan	Glass	Negley	Swinburne
Burleigh	Guenther	O'Hara	Throckmorton
Campbell, T.J.	Hanback	Payne	Ville
Candler	Hiscock	Pidcock	Weaver, A.J.
Clardy	Houk	Pindar	West
Cobb	Hulton	Reagan	Whiting

Cox, S.S.
Dargan
Davenport

Jackson.
James
King

Reese
Seney 7
Smalls

Wise

On 4 February 1887, President Cleveland approved and signed the Act, S.1532, to regulate interstate commerce.

In the debates in Congress many viewpoints on different questions were given. There were also many different opinions on the actual intentions of the Act and on the intentions of certain phases of the Act. In the next few pages the most important of these questions and intentions will be discussed. The views gathered are taken from the debate speeches of the Senators and representatives in Congress.

One of the questions was whether it was the intention of the framers of the Act to have it apply to express and sleeping cars. There was not a lot of time given to the discussion of these auxiliary instruments of the railroads, but it seems that they were meant to be included in the Act. The wording of the first section of the Act, extending it to all instrumentalities of Commerce would, in a general way, include them. Senator Callom, when he explained the first section, said that it aimed at the railroad corporations, but that it intended to bring within its application all of the numerous instrumentalities of shipment, such as the fast freight lines, express companies and sleeping car companies. He further stated that if they were left unrestricted, the railroads would be greatly increased, and that the

same necessity existed for protecting the people against unjust discriminations and unreasonable charges from them as from the railroads.

8

In speaking of express and sleeping car companies Senator Sherman of Ohio said,

Every railroad has had its little inner ring and all sorts of cunning schemes and devices have been made and entered into not only to cheat the people but to cheat their stockholders. I doubt if there is a single railroad in our own country that has not in it and about it, composed of its officers, some of these parasites which prevent paper dividends from being paid to the stockholders. What are they? The sleeping car company is one. Railroad corporations make an arrangement with a sleeping car company, an organization entirely outside of them, to run cars over their road. Such contracts become much more valuable than the road itself which carries the cars over the rails. Another mode is by the express companies.

9

The same idea was expressed in the House by Mr. Green of North Carolina. He supplemented that by saying there were few abuses as great as those of the express companies. He stated that they enjoy the exclusive right of rapid freight carriage and arbitrary and extortionate charge.

10

There was relatively little said about the express and sleeping car companies, but what was said was all in favor of their regulation. It would seem that the original intention of the Act was to include them in the regulation prescribed.

One of the most discussed topics throughout the entire period of railroad legislation was that of pooling.

The Interstate Commerce Act prohibits pooling but it does not do so because the majority of people wanted to prohibit pooling. The section on pooling was passed because it was impossible to pass the Act without that section. Mr. Reagan and his followers definitely wanted the prohibition of pooling and it was conceded only in order to get them to vote for the entire Act. Those who favored the prohibition of pooling were Mr. Reagan and mostly other Southern representatives and senators. They opposed pools because they believed they would destroy natural competition. Competition, they believed, was the only natural way to insure reasonable rates. They feared that pools would aid in creating a giant railroad monopoly, which could then charge high rates. Rates could then be made without being based on actual cost of the service, and high charges would be made whenever railroad corporations knew they could get them.

Those who stood out against the prohibition of pooling were railroad heads, boards of trade, and most of the senators. Senator Cullom led the opposition to the prohibition of pooling. He conceded only when he knew that it was necessary to save the bill. The argument for the pools was that they would bring about rate stabilization. This would end unjust discrimination and ruinous rate wars. The section of publicity and the one prescribing that rates must be reasonable would

insure ample protection against any dangers that might arise.

It seems that those who were best in a position to know the real effect of the pools did not favor their specific prohibition. They were prohibited by a minority group, so it seems that the literal infornement of this section would be difficult or was not intended.

The problem that was discussed more than any other was that of the long and short haul. First, there were the different views on the question expressed by Senator Cullom and Mr. Reagan. Both were for the principle of a long and short haul provision, but disagreed about the method of putting it in practice. Senator Cullom did not wish to pass a specific long and short haul act; not because he did not believe in it, but because he thought the detailed plans should be worked out by the commission. Mr. Reagan, on the other hand, wished to enact a definite clause with a provision for punishment for violation.

The opinions of the senators and representatives in regard to the long and short haul clause as it was stated in the final bill, were quite evenly divided. Those who opposed the provision were usually Congressmen representatives of the western states that had competitive routes to eastern markets, or the representatives of the industrial centers that depended on their raw

materials being shipped long distances. These men inferred that the long and short haul clause would necessarily raise the through rates and hinder the exchange of commodities. That was their main argument. By way of trying to discourage the passage of this section they further argued that it might lead to higher local rates because the railroad companies would be tempted to charge as much as they legally had a right to charge. They contended that the exception proviso would make the law void in those cases which most seriously needed enforcement because the large companies could bring to bear more pressure on the commission. Another argument advanced was that the wording of the provision was too ambiguous and would lead to endless court litigation. They also pointed out that the section requiring that rates should be reasonable had sufficiently covered the ground and that the long and short haul clause would be superfluous.

Those who were in favor of the long and short haul may be classed into two groups. Those who favored it because they believed the principle was just, and those who favored it because of their sectional interests. In the last group were the representatives of the seaboard states or those who were on non-competitive routes. It was their hope that a higher through rate would bring about cheaper local rates. They also contended that

that higher through rates would tend to decentralize and would bring more cities to the West, and would create a better balanced nation.

The leaders for the enactment of the long and short haul favored it because they believed it would prevent one of the most serious of unjust discriminations, that was discrimination versus localities of non-competitive routes. Oftentimes higher rates were charged on short distances within longer distances for no other reason than that it was possible because there was no competition. This was a discrimination and the purpose of the clause was to check it and provide rates based on actual cost. Competitive rates were below actual cost and the railroads would try to recoup their losses on unreasonable charges on local traffic. The framers of the final bill did not intend to make rigid rules on this matter of long and short hauls but to prevent some of the gross irregularities which were an actual fact. The provision was conservative for it allowed as much to be charged for a short haul as a long haul but not more in the aggregate, this would allow for a higher rate on local traffic. The section further provided exceptions for individual cases which the commission might deem necessary.

A question upon which there was considerable unanimity was that on the type of publicity for which the Act called. It was quite generally believed that

there should be published tariffs and published facts concerning the business of the railroads and then to have the commission digest these reports and suggest future legislation. There was to be anticipated opposition from the railroad officials to the demand of detailed reports, but they too quite generally conceded the principle of publicity. A few Congressmen opposed the sections of publicity because they thought it was unfair to the railroads. Senator Saulsbury of Delaware particularly took this view. He said:

I can see very readily how a report made in compliance with it, disclosing the whole business operations of a company, may operate to the injury of the company and may destroy their credit in the community. A new enterprise just struggling into existence may by such a report be not only crippled but utterly destroyed. I can understand very well how operators in stocks in Wall Street may desire to have this information. They could deal perhaps with more safety, but I can not see that the objects sought by the bill can be aided in the least by such an expose of private transactions and business of a company. We ought not to be unjust to these institutions upon which we are dependent for the transportation of persons and property.¹¹

Generally, however, the legislators were for publicity. They believed that by throwing light upon the practices of unjust discriminations they would do much to discontinue them. Perhaps that would do more than individual prosecutions and court decisions. The State Commissions that had used this measure were quite successful. Published tariffs would aid in adding

stability and uniform rates throughout the railroad industry, and would certainly be a convenience to the individual shipper. Another objective of the Act was that through publicity of railroad business the commission would be able to suggest additional legislation from time to time as it would be deemed necessary. The carrying out and enforcement of the sections on publicity in the Act may certainly be held as major objectives intended by the framers.

Section one of the Interstate Commerce Act provides that "all charges shall be reasonable and just." There were many approaches given as to how to determine a reasonable rate when speaking in general terms, but to determine specifically what should be a reasonable rate would prove a difficult question. No general rules could be made to apply to each specific case, but each case would have to be determined upon its own merits. A quite general conclusion was that a just and equitable rate on any particular shipment would be one which covers the actual expense to the carrier of that particular transaction, plus a proportionately fair contribution towards the sum total of the fixed charges. Any rate which charged more than that should be termed unjust and indefensible. A railroad should be entitled to receive from all the rates enough to pay expenses and a fair return upon its capital invested. Their margin of profit should correspond relatively to the profit made by other

legitimate industries.

It was not the intention of the framers that the commission should fix the original rates for the railroads. The original rates were to be made by the railroad officials, then if a complaint arose over any particular rate, it became the duty of the Commission to investigate the merits of the particular rate in question. After a thorough investigation the commission should pronounce a maximum reasonable rate. The railroad company should then change this rate, if found to be too high, to a charge within the commission's findings. Any rate higher than the commission's maximum reasonable rate should be prohibited and declared unlawful, and the corporation in question shall be prosecuted in any district court of the United States, if it refused to change its rate within proper limits. It was the intention of the Act that the commission should have definite power in establishing and aiding the courts to compel maximum reasonable rates.

One of the major differences between Senator Cullom and Mr. Reagan's methods in regard to interstate commerce regulation was that of a commission. Mr. Reagan believed that hearing and justice should come through the regular courts, while Senator Cullom favored a commission. Those who opposed the commission held that the commissioners could be bribed more easily by

the railroad corporations than a vast number of judges in courts. Establishing a national commission would put the matter into politics and thus hinder its effectiveness. The opponents of the commission also held that one commission could never serve efficiently such a vast area as the United States. Other doubted the constitutionality of a commission, because it meant a separation of powers, that is, that the commission was given judicial powers by the legislature.

The majority sentiment, however, was in favor of a commission. The commission composed of intelligent men would study specifically railroad problems and would thus certainly aid in solving them. The individual need not act through the commission, however, he still possessed the choice of acting directly through the regular courts if he so wished.

The intended purpose of the commission may be summarily classed into three parts. First, it should give or supervise publicity to railroad affairs, both as to charges and business. This publicity, it was anticipated, would greatly decrease abuses and would stabilize charges for the shipper. Second, the commission should aid in investigating and prosecuting, if necessary, cases of abuse that arise. Third, the commission should gather facts and information so that it may suggest future legislation in regard to interstate commerce.

The Interstate Commerce Act was not expected at the time of its passage to be an adequate remedy for all the wrongs of the railroad system. A part of its sections were more or less experimental and initial in the field and it was expected that in time its imperfections would be corrected by further legislation. There were, however, some things that the framers of the Act intended to do definitely. These may be summarized as follows; first, it wished to insure reasonable rates and stop unjust discriminations. Second, it wished to give publicity to tariffs and to the business of the railroads. Third, it wanted to establish a commission. There were several definite duties prescribed to this commission. It was to gather information and recommend future necessary legislation; it was to supervise publicity and it was to have the power to prescribe maximum reasonable rates in cases brought to it. It was intended that this commission, composed of capable men, should aid in settling difficulties between corporations and the people, so as to keep out of the courts very much litigation that would take place in the absence of such a commission. It was intended that such a commission should have a sort of preliminary power to settle disputes between the complainants and the railroads; but at the end if they should be unable to settle them, the parties should

have the power to go into court and litigate the questions in dispute. These were the definite intentions of the Act.

By the passage of the Interstate Commerce Act the United States entered upon a new field of legislation. It was a pioneer act of governmental regulation of private industries, a principle which was soon to be established and given a broad field in social and economic activities. In this respect the Act was perhaps the most important piece of legislation in its decade.

Chapter IV

INTERPRETATIONS AFFECTING THE INTERSTATE COMMERCE ACT

The first response to the Interstate Commerce Act by the railroads was quite favorable. There was some opposition to filling and remodeling schedules to meet its demands, but generally they tried to obey its provisions. In its first Annual Report the Commission stated that the railroads "conformed promptly" to its orders. Schedules were published and made to conform to the long and short haul clause, which resulted in a reduction of local rates. Many pools voluntarily¹ disbanded or reorganized to conform to the law.

But opposition and disregard of the Act soon began to appear in various forms. Some of the early resistances which the Commission encountered were that witnesses refused to testify against themselves in rebate cases, and that others questioned the legal authority of the Commission to exact it. Some witnesses declined to answer questions or refused to produce books when asked to by the Commission. Both of these questions reached the Supreme Court and both were decided in favor of the Commission. Another difficulty encountered by the Commission was its relation to the courts. Instead

of being a co-ordinate body with the courts, as was expected, it was reduced to an entirely subordinate position. Its function became merely to institute proceedings and thereafter to appear as a complainant² before other tribunals.

On 28 December 1877 a decision by the Interstate Commerce Commission released the express and sleeping car companies from the provisions of the Act which further reduced its scope. Immediately after the organization of the Commission the question was presented whether the express companies of the country were under obligation to file their tariffs with the Commission. The Commission ruled, until they could be satisfied to the contrary, that they were included and proceeded to ask for files of their tariffs, but the companies³ for the most part objected and refused to acquiesce.

Upon the failure of the majority of express companies to heed the law, the Commission on 19 July 1887 sent the following circular letter to each company.

July 19th, 1887.

To the-----Express Company:

The Commission has observed your failure to comply with the requirements of section 6 of the Act of Congress, approved February 4th, 1887, entitled An Act to regulate commerce. In view of the time which has elapsed since the law went into effect it is obvious that this failure on your part is intentional and not merely inadvertent. The

reasons for the course taken by your company have not as yet been laid before the Commission, and it has not as yet entertained the consideration of the question whether or not express companies are common carriers subject to the provisions of said Act, further than to say on April 4th, 1887, in answer to an inquiry by the Canadian Express Company, that until a hearing upon the subject is asked for it will assume that the law does apply to such companies. The Commission is now ready to act definitely upon this subject. Your company is therefore notified and requested to comply with the provisions of said section forthwith. Should you desire to be heard upon the matter the Commission, before final action, will entertain the consideration of unwritten or printed argument, if filed within thirty days, provided you give us notice at once of your intention to do so.

For the Commission

Very respectfully,

Edward A. Moseley, Secretary. ⁴

To this communication various responses were received. Five leading express companies filed briefs to the Commission. The position taken in these briefs was to the effect that the business of the express companies was not subject to the provisions of the Act to regulate commerce. Some of the companies expressed a desire to be heard orally, whereupon the Commission issued the following notice:

Interstate Commerce Commission
Office of the Secretary
Washington, October 12, 1887.

In case any express companies desire to be heard orally by council upon the subject of the circular letter of July 19, 1887, in addition to the printed briefs which have been quite generally submitted,

the Commission will hear them at its rooms, in the city of Washington, on the 25th day of October, 1887, at 11 o'clock a.m.

Very truly yours,

Edward A. Moseley, Secretary. 5

On the day named all oral arguments were presented by representatives of five different companies. Four of these companies had previously submitted written briefs.

In these briefs and arguments several different lines of approach were taken by the express companies to prove their exemption of the Act. One of their arguments was that since transportation of property was not their sole business, and since the Act did not apply to all the business of the express companies, it should not be taken as applicable to any of it. They pointed out that they also performed many other functions such as collection of debts, the recording of instruments of title, the entrance of goods at custom houses, and the performance of other errands. The Commission, however, did not consider this a weighty argument. It pointed out that railroads were also engaged in other branches of activity and that this in no way relieved them from the provisions of the Act.

Another argument advanced was that it would be practically impossible for them to print and publish their tariffs because of the numerous points to which their business extended. The Commission, however, did not think that an impossibility. It pointed out that the

railroad companies were also complicated, but that they were filing their tariffs. The Commission also pointed out that as three express companies had filed their tariffs, there was proof that proof that it could be done.

A further argument was to the effect that the Act was a penal statute and that all its provisions would have to be construed pursuant to the strict rules of construction. Thus, they stated that there were certain features of the Act which were not applicable to the business carried on by them, such as the prohibition of pooling, and the reference to tracks and terminal facilities. The argument being that, unless the party in question could be subjected to all the provisions of the penal statute and could comply with each of them singly, it could not be subjected to any of them.

To this argument the Commission answered that in that case a railroad company might limit its operation to the transportation of freight, and claim in like manner that because it did not carry both passengers and freight it was not subject to any of the requirements of the statute. The argument was not plausible in the eyes of the Commission.

There were two arguments advanced, however, by the express companies that found favor with the Commission. One was that in the history of the legislation of the act the public demand for regulation of railroad traffic had been made upon grounds which did not apply to the express

traffic. The express companies held that they had not practiced secret rebates, that they had not so frequently made the greater charges for the shorter hauls, and that they had not made unjust discrimination between persons or places. They further pointed out that in the investigation which preceded the enactment of the law it was an investigation of railroads and did not include express companies.

The Committee reached no definite conclusion on this argument. It held that this argument would not exempt auxiliary express companies from the Act, but it expressed a doubt as to its application to independent companies.

The final argument of the express companies was that the phraseology of the Act did not include them. They pointed out as an example, section five, in which these words, "for the pooling of freights of different and competing railroads," were unfortunately selected if the possibility of an express pool was in the legislative mind. Another example pointed out was in section six which requires carriers "to print and keep for public instruction schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad." The words "its railroad," the express companies held, excluded the

the idea that they were intended by the law, for they had no railroads. The express company representatives further argued that the express business was well known in every portion of the country, was perfectly understood by Congress at the time of the enactment of the law in question. They held that Congress in the addition of a few words, could have expressed the legislative intent, if such had existed.

The conclusion reached by the Commission after hearing all the arguments was that they did not think that the terms of the Act were sufficiently clear to warrant its jurisdiction over the express companies which were independent of the railroads, but so far as the business was done by the railroads themselves, either directly or indirectly through corporations created for that purpose, the Commission believed it was subject to its regulation. The Commission, however, was not on firm ground and before acting further in this matter it would await the Action of Congress.

The Commission then in its first Annual Report to Congress recommended that "Congress ought to put beyond question by either expressly or by designation including the express companies or by excluding them." In the meantime the Commission

refrained from exercising ^{such} jurisdiction as it possessed for the reason that a limited and sectional regulation, when the great mass of the business was not

touched by the rules established, would be at best of little value, and might seem unjustly to put the business regulated at relative disadvantage to that which did not submit to like control.⁶

Congress did not act on this question for nearly two decades, so the express companies and sleeping car companies were not subject to the Interstate Commerce Act during that period.

This action of the Commission was seemingly contrary to the intention of the framers of the Act as it has been pointed out in the preceding chapters. The plan of Senator Cullom as the leading framer of the Act was to give the Commission large powers without hampering their action with specified details. It seems that through this plan he lost for the Commission some of its intended power.

The greatest blow to the Commission in the first decade of its existence came by way of a decision of the Supreme Court on 24 May 1897. This case was the Interstate Commerce Commission Vs. Cincinnati, New Orleans and Texas Pacific Railway Company, generally known as the Maximum Freight Rate Case. This decision denied the Commission the power of making a maximum reasonable rate. In this case the Commission as many times previously had decided that a reduction of rates was reasonable and necessary; the Supreme Court, however, denied this power of the Commission.

The decision of the Court was eight to one, Justice Harlan dissenting. Justice Brewer gave the

opinion of the Court. A summarized account of the Opinion of the Court follows:

The Court held that since Congress did not specifically vest in the Commission the power and the duty to fix rates, that power could not be implied. It held that the language by which such power might have been given was so often used and so familiar to the legislative mind that certainly they would have put it specifically in the Act if that had been their intention. The Court pointed out that administrative control over railroads through boards and commissions was no new thing at the time of the passage of the Act and that definite words could have been easily inserted if they had been desired. The Opinion then gave extracts of State statutes of Alabama, California, Florida, Georgia, Illinois, Iowa, Minnesota, Mississippi, New Hampshire, North Dakota, South Carolina, Kansas, Kentucky, Massachusetts, New York, and Vermont, which related to railroad boards and commissions, to show that a definite phraseology might have been used if the intent had been to give the Commissioners the legislative power of fixing rates. ⁷

The Opinion through analogy further attempted to show that the Commission did not have the implied power to fix rates; it stated that the President of the United States 'shall take care that ^{the} laws be faithfully executed,' the Act to regulate commerce is one of those laws, yet

no one would argue that the President by implication, possesses the power to make rates for carriers engaged in interstate commerce. Or that the common law requirement that 'all charges shall be reasonable and just' gave the Courts the power, by implication, to make rates for carriers.

The second line of argument followed by the Court was that the Act specifically gave or recognized the right to make and maintain rates to the carriers. The Act provided that the carrier shall print and keep open to the public, schedules showing the rates and charges which such carrier has established. The Court further pointed out other provisions in the Act which related to rates, such as the method of filing them, proper procedure for a change of rates, and the proper publication of the rates. In summarizing this particular argument the decisions read:

The fact that the carrier is given the power to establish rates in the first instance, and the right to change, and the conditions of such change specified, is irresistible evidence that this action on the part of the carrier is not subordinate to and dependent upon the judgment of the Commission.⁸

A summarized account of the reasoning of the Court as given in the decision follows:

We have, therefore, these considerations presented: First. The power to prescribe a tariff of rates for carriage by a common carrier is a legislative and not an administrative or judicial function...Second. That Congress has

transferred such a power to any administrative body is not to be presumed or implied from any doubtful and uncertain language. The words and phrases efficacious to make such a delegation of power are well understood and have been frequently used, and if Congress had intended to grant such a power to the Interstate Commerce Commission it cannot be doubted that it would have used language open to no misconstruction, but clear and direct. Third. Incorporating into a statute the common law obligation resting upon the carrier to make all its charges reasonable and just, and directing the Commission to execute and enforce the provisions of the Act, does not by implication carry to the Commission or invest it with the power to exercise the legislative function of prescribing the rates which shall control in the future. Fourth. Beyond the inference which irresistibly follows from the omission to grant in express terms to the commission this power of fixing rates, is the clear language of section 6, recognizing the right of the carrier to establish rates, to increase, or reduce them, and prescribing the conditions upon which such increase or reduction may be made, and requiring, as the only conditions of its action, first, publication, and second, the filing of the tariff with the commission. The grant to the commission of the power to prescribe the form of the schedules, and to direct the place and manner of publication of joint rates, thus specifying the scope and limit of its functions in this respect, strengthens the conclusion that the power to prescribe rates or fix any tariff for the future is not among the powers granted to the Commission.

These considerations convince us that under the interstate commerce act the commission has no power to prescribe the tariff of rates which shall control in the future, and, therefore, cannot invoke any such tariff by it prescribed.⁹

After giving this opinion the Court then went on to give some delegated functions of the Commission. It held that it was the duty of the Commission to keep itself informed as to the management of the business by railroad companies, and that it had the right to compel

full and complete information in this respect. The Court held that with this knowledge it was its duty to see that there was no violation of the long and short haul clause, and that there was no discrimination, or rebates or preference given to one place or places or individuals, and to enforce the publicity as prescribed in the Act. The enforcement of these provisions, the Court held, would tend to both reasonableness and equality of rate as contemplated by the Act. ¹⁰

This decision of the Court came as a blow to the Commission. It took away from the Commission one of its most effective tools of railroad regulation. The immediate effect of the decision was to put an end to any enforcement of decision relative to rates. The railroads soon refused to obey any orders which the Commission issued for the redress of grievances. The number of formal complaints dwindled year by year, because the Commission now had to confine its inquiry to the past and only on complaint of the person who paid the charges, it could not determine and enforce a reasonable rate for the future. The difference between this range of power and that which had been claimed by the Commission for ten years was that under the original interpretation of the law it not only decided whether rates were unreasonable or not but also prescribed a maximum reasonable rate, if it found the existing one too high, and had the reasonable rate enforced by the Courts. Now the only

action open to the Commission was to declare rates
 of the past unreasonable if they so found them. 11

The reaction of the members of the Interstate Commerce Commission may be seen from the following excerpt from their report of 1897:

It has assumed (the Commission) that it was charged under the Act with the duty of determining whether the rate complained of was just and reasonable, and, if found to be unjust and unreasonable, of correcting that violation of the statute. In doing so it has been assumed that the plain, and in fact, the only way to do this was to prohibit the charging of the unreasonable rate and compel the charging of one which was reasonable. Up to the present time the Commission has proceeded upon the theory. Of the 135 formal orders made in suits actually heard from its institution down to the present time, sixty-eight have prescribed a change in rate for the future.

The decision above referred to determines that all this is wrong. We can proceed no further along the lines followed in the past. No relief can be given in the cases which are now before us. An entirely new system must be adopted. We can no longer inquire what shall be done in the future. Our action is entirely confined to an inquiry as to what has taken place in the past. 12

Thus the Interstate Commerce Commission was tremendously shorn of one of its powers, a power which it definitely believed had been given to it by the framers of the law, and a power which it exercised immediately and repeatedly affirmed, in the early years, without question either by the carriers or by the Federal courts. It is true that this power was not specifically expressed in the Interstate Commerce Act, but after

reading the debates of the intimate framers of the Act one cannot help but feel that it was intended. Senator Cullom repeatedly urged a commission with power and a law which would not prescribe too specifically its duties. He was of the opinion that details would destroy the effectiveness of a commission. Practically all of the senators of the Middle West favored an elastic commission with mandatory powers, based on somewhat the same plan as the Illinois State Commission. State Railroad Commissions of the Middle West advocated a commission with power, so the senators who had studied the railroad problem were familiar with this type of commission. Mr. J. W. McDill, a member of the Iowa State Railroad Commission expressed an opinion that was quite general in the minds of the legislators of the Middle West when he said;

I do not think it would be wise probably to impose upon such a commission the duty of fixing rates generally, but I think they ought to be authorized to examine a case when a complaint is made with reference to a rate, and they ought to have the power, if they find the rate complained of is too high or too low, to fix it as it ought to be. 13

The Supreme Court decided that the Commission did not have the power to prescribe a maximum reasonable rate, because that power was not specifically granted. This decision cannot be doubted nor can it be doubted that the majority of Congressmen were intending to give it this power, they perhaps had not thought upon the question

either way, but after following the arguments of the real engineers of the bill, one cannot help but conclude that they intended for the Commission to have this power, if occasion to use it should arise.

References by Chapters

Chapter I

1. Ripley, William Z., Railroads: Rates and Regulations, New York: Longmans, Green and Company, 1923, p.449.
2. Lingley, Charles R., Since the Civil War. New York: The Century Company, 1921, p.209.
3. Congressional Record, 48 Congress, 1 session, Vol.XV. p.6045-6047.
4. Ibid., 6046.
5. Ibid., p.1-6182.
6. Ibid., 3386.
7. Ibid., 4655.
8. Ibid., 649.
9. Ibid., 707.
10. Ibid., 1525.
11. Ibid., 1995.
12. Ibid., 3514.
13. Ibid., 5170.
14. Congressional Record, 48 Congress, 2 session, Vol XVI., p.26-27.
15. Ibid., 31.
16. Ibid.
17. Ibid., 535.
18. Ibid., 32.
19. Ibid., 1253.
20. Ibid., 10.

21. Ibid., 300.
22. Ibid., 348.
23. Ibid., 620.
24. Ibid., 621.
25. Ibid., 823.
26. Ibid., 979.
27. Ibid., 1072 .
28. Ibid., 1192.
29. Ibid., 1314.
30. Ibid., 1447.
31. Ibid., 2060.
32. Ibid., 2115.

Chapter II

1. Congressional Record, 49 Congress, 1 session, Vol. XVII, 52.
2. Ibid., 72.
3. Senate Reports 46, Vol. II, Part 1, 2.
4. Ibid., Vol. III, Part II, 1-3.
5. Ibid., 532.
6. Ibid., 1208.
7. Ibid., 801.
8. Ibid., 1292.
9. Ibid., 232.
10. Ibid., 263-264.
- 1 1. Ibid., 980.

12. Ibid., 980.
13. Ibid., 499.
14. Ibid., 694.
15. Ibid., Appendix, 122.
16. Ibid., Vol. II, Part I, 213-215.
17. Ibid., Vol. III, Part II, 437.
18. Ebid., 207.
19. Ibid., 249.
20. Ibid., 162.
21. Ibid., 1205.
22. Ibid., Vol. II, Part I, 182-215.
23. Ibid., Vol. III, Part II, 185.
24. Ibid., 123.
25. Ibid., Vol. II, Part I, 198-208.
26. Ibid., Vol. III, Part II, 92.
27. Ibid., 268.
28. Ibid., 70.
29. Ibid., 1245.
30. Ibid., 441.
31. Ibid., 279.
32. Ibid., Vol. II, Part I, 195-198.
33. Ibid., Vol. III, Part II, 149.
34. Ibid., 29.
35. Ibid., 123.
36. Ibid., 109.
37. Ibid., 208;
38. Ibid., 335.
39. Ibid., 248.

40. Ibid., 1206.
41. Ibid., 904.
42. Ibid., Vol. II, Part I, 200-201.
43. Ibid., Vol. III, Part II, 43.
44. Ibid., 767.
45. Ibid., 800.
46. Ibid., Vol. II, Part I, 182-208.
47. Ibid., 215-216.

Chapter III

1. Congressional Record, 49 Congress, 1 session VolXVII,
3472.
2. Ibid.
3. Ibid., 3473.
4. United States Statutes at Large, Vol.XXIV, 379-287.
5. Congressional Record, 49Congress, 2 session, Vol.XVIII,
661.
6. Ibid., 666.
7. Ibid., 870
8. Ibid., 3472.
9. Ibid., Vol. XVII, 1202.
10. Ibid., 529.
11. Ibid., 1253.

Chapter IV

1. Ripley, Railroads: Rates and Regulations, 456.
2. Ibid., 459.
3. First Annual Report of the Interstate Commerce Commission, Washington: Government Printing Office, 1887, 12-15.
4. Reports and Decisions of the Interstate Commerce Commission of the United States, New York: L.K. Strouse and Company, Law Publishers, 1888, Vol.I. 356.
5. Ibid., 360.
6. Second Annual Report of the Interstate Commerce Commission, 1888, p.7.
7. United States Reports, Vol. 167, 493-499.
8. Ibid., 505.
9. Ibid., 505-506.
10. Ibid., 506-507.
11. Ripley, Railroads: Rates and Regulations, 472.
12. Eleventh Annual Report of the Interstate Commerce Commission, 1897, p.16.
13. Senate Reports: 46, Vol. III, Part II, 949.

Bibliography

Documents

Congressional Record, Vols. XV, XVI, XVII, XVIII,
48 Congress, 2 sessions; 49 Congress, 2 sessions,
1883-1887.

Senate Reports 46, 49 Congress, 1 session, Vol. II,
part 1, Vol. III, part 2, 1885-1886. (2356 and 2357).

United States Statutes at Large, Vols. XIV, XVII, XXIV.

Annual Reports of the Interstate Commerce Commission,
2 volumes, 1887 and 1888, Government Printing
Office.

United States Reports, Vols. 94, 118, 167.

Reports and Decisions of the Interstate Commerce
Commission of the United States, New York: L. K.
Strouse and Company, Law Publishers, 1888.

Printed Books

Adams, Charles F., Railroads: their Origin and Problems.
New York: G. P. Putnam's Sons. Rev. ed., 1886.

Coolidge, Louis A., An Old Fashioned Senator: Orville H.
Platt of Connecticut. New York: G.P. Putnam's Sons.
1910.

Cullom, Shelby M., Fifty Years of Public Service,
Chicago: A. C. McClurg and Company, 1911.

Dabney, W. D., The Public Regulation of Railways, New
York: G. P. Putnam's Sons, 1889.

Dos Passos, John R., The Interstate Commerce Act: An
Analysis of its Provisions, New York: G. P. Putnam's
Sons, 1887.

Hadley, Arthur, T., Railroad Transportation: its History
and its Laws. New York: G. P. Putnam's Sons, 1885.

- Hendrick, Frank, Railroad Control by Commissions,
New York: G. P. Putnam's Sons, 1900.
- Johnson, Emory R., American Railroad Transportation,
New York: D. Appleton and Company, 2d. rev. ed. 1908.
- Jones, Eliot, Principles of Railroad Transportation,
New York: The MacMillan Company, 1924.
- Lingley, Charles R., Since the Civil War, New York:
The Century Company, 1926.
- Malin, James C., An Interpretation of Recent American
History, New York: The Century Company, 1926.
- McPherson, Logan, Railroad Freight Rates, New York:
H. Holt and Company, 1909.
- Meritt, Albert N., Federal Regulation of Railroad Rates.
Houghton, Mifflin and Company, 1907.
- Meyer, Balthasar Henry, Railway Legislation in the
United States. New York: The MacMillan Company, 1903.
- Miller, Sidney L., Railroad Transportation, Chicago:
A. W. Shaw, Company, 1924.
- Moody, John, The Railroad Builders, Yale University Press,
(The Chronicles of America Series, Allen Johnson,
editor, 1921.)
- Noyes, Walter Chadwick, American Railroad Rates, Boston:
Little, Brown and Company, 1906.
- Parsons, Frank, The Heart of the Railroad Problem,
Boston: Little, Brown and Company, 1906.
- Ringwolt, J. L., Development of Transportation Systems
in the United States. Philadelphia: Railway World
Office, 420 Library St., 1888.
- Ripley, William Z., Railway Problems, New York: Ginn
and Company, rev. ed. 1913.
- Ripley, William Z., Railroads: Rates and Regulations,
New York: Longmans, Green and Company, 1923.
- Sanborn, John Bell, Congressional Grants of Land to
Aid Railways, Bulletin of the University of Wis-
consin Economics, Political Science and History
Series, Vol. II, 1897-9.

- Sharfman, I. Leo, Railway Regulation, Chicago: La Salle Extension, University, 1915.
- Stickney, A. B., The Railroad Problem, St. Paul: D. D. Merrill Company, 1891.
- Swann, John, An Investor's Notes on American Railroads, New York: G. P. Putnam's Sons, 1887.
- Thompson, Slason, A Short History of the Railroads, Chicago: Bureau of Railway News and Statistics, 1925.