LEGISLATIVE EVOLUTION OF THE INTERSTATE COMMERCE ACT

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Introduction

The Interstate Commerce Act is the most important single

document in the field of transportation The Act has been amended more than thirty times in permanent form since the enactment of the Act to Regulate Commerce of1887. In the words of Dean Knorst, "It is this document that serves as the expression of the people of the United States through the medium of Congress, as to what constitute their rights and privileges, as well as the duties and restrictions of the carriers, in connection with matters of interstate transportation."[1]

It is a traditional American philosophy toward its economy to foster individual initiative and enterprise, under a private ownership with such governmental regulation as would be necessary to fully protect the public interest from the evils that had therefore grown up, instead of adopting government ownership and operation. Government regulation is an eloquent expression of the national mind through Congress—of its legislative restrictions and of its helpful attitude. There has been much difference of opinion as to the proper amount of public regulation that should be exercised and as to what authorities shall be charged with this function to fit varying circumstances.

To study the evolution of the Interstate Commerce Act is indispensable for clarifying the whole picture of the present regulatory structure of American transportation. In this essay, I try to discuss the legislative evolution of the Interstate Commerce Act as well as important decisions of the Supreme Court.

Federal regulation of transportation falls into two periods: before and after 1920. Prior to 1920 the aim of the people and of Congress was directed principally at the prevention of specific abuses and discrimination, and the legislation which was enacted was purely of a restrictive character. After 1920 there began a new period of transportation legislation. The outstanding feature

1. Knorst, W. J. : Transportation and Traffic Management, Vol. IV, p. 1337

of the Transportation Act of 1920 and subsequent legislation had as a major objectives the building up of an adequate national transportation. [2]

Federal Railroad Legislation Before 1920

Background of the Act of 1887.

From 1860 to 1880, American industry grew rapidly, transforming what was mainly an agricultural country into an industrial country. The construction of railroads had proceeded for more than two decades at an unprecedented pace. Railroad construction and consolidation proceeded on every hand and millions of new capital were called into play. In the keen desire for additional business, with its resulting disproportionate increase in railway profits, rebates, special rates, secret privileges, the pass system, and other forms of pernicious descrimination wore born and dug their slimy tentacles deep into the commercial welfare of the nation, killing individual initiative and enterprise and fostering monopolistic control of American industries. The smaller shipper grew vehement in his denunciation of the secret rebates nad growing power of his large competitor; the early enthusiasm of investors in railroad securities was dispelled in the rude awakening of financial rashes and railroad reorganization; general suspicion and antogonism began to replace the former confidence and good will. In this mood of bitterness and anger toward the railroads the people turned to the legislative side. In the 70,s various western and southern states enacted the so-called

2. Dean Knorst of the College of Advanced Traffic divides the evolution of the Interstate Commerce Act into six distinct eras; the first era, the Golden Era of Unity and Enthusiasm (1828-1869); the second era of Transportation Evils (1869-1880); the third era, Era of Legislative Restrictions (1880-1916); the fourth era, Era of Government Operation (1916-1920); the fifth era, Era of Legislative Help(1920-1940); the sixth era, Era of Second World War(1940-1944). Ibid, pp. 1319-1336.

"Granger laws". which aroused the interest of Congress in the railroad question. [3]

Responding to the demands of the Grangers, the Senate appointed the Windom Committee to investigate the situation. This committee, reporting in 1874, stressed the principal complaint at the time as being exorbitant freight rates and suggested that the waterways be further inproved and that the federal government or the states construct one or more railroads to be owned by the government. No direct legislation was recommended nor did any follow from this report. [4]

In 1886 the Cullom Committee, a second body to investigate regulation, was appointed. Acting upon the report of the Cullom Committee, that the particular complaint at that time had changed from exorbitant rates to unjust discrimination and undue preference between persons, places and commodities. It was the report of the Cullom Committee, which formed the direct basis of 1887. It said:

> The evidence upon this point is so conclusive that the committee has no hesitation in declaring that prompt action by congress upon this important subject is almost unanimously demanded by public sentiment. This demand is occasioned by the existence of acknowledged evils incident to and growing out of the complicated business of transportation as now conducted, evils which the people believe can be checked and mitigated, if not wholly remedied, by appropriate legislition. The committes recognizes the justice of this demand, and believes that action by congress looking to the regulation of interstate transportation is necessary and expedient ....." [5]

Concurrent with the appointment of the Cullom Committee, the Supreme Court decided, in the case of Wabash St. Louis &

3. My essay: Legal Approach to Public Uitility Regulation, Economic Review, Vol. XXV, No. 1, 1952, Kagawa University.
4. Haney, L. H.; A Congressional History of Railways in the United States. Vol. II (1910), pp. 243-292.
5. Report of the Senate Select Committee on Interstate Commerce. Senate Report No. 46, 49th Cong., 1st Sess (1886).

Pacific Ry. Co. v. State of Illinois, [6] that the state power of regulation of railway traffic did not and could not extend to interstate traffic in any form; that such shipments were national in character, and that their regulation was confined to Congress exclusively. This decision necessitated federal legislation.

The Enactment of the Act to Regulate Commerce, 1887.

Congress enacted the Act to Regulate Commerce, which was approved February 4, 1887, and became effective April 5 of the same year. The Act to Regulate Commerce was nothing more or less than a formulation of the common law, the purpose of the United States Congress being to provide a speedy and definite means for the adjustment of differences between interstate carriers and their patrons. The primary objective of all the 24 sections was of course to prevent the charging of unreasonable or discrimination rates.

(1) Scope

The Act was to be applied to common carriers engaged in the transportation of passengers or goods in interstate or foreign commerce wholly by railroad and partly by railroad and partly by water. This meant practically all railroads, as virtually every railway was a common carrier in interstate commerce. But it did not mean any railroad limited to one state or carriers merely by water.

(2) Reasonable and Just Rates.

The rule began with the express adoption of one of the principles of the common law that "all charges ····· , shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful". [7] It is significant that Congress put this requirement in general terms,

6. 118 U. S. 224, 247 (1886).
7. The Act to Regulate Commerce (1887). Sec. 1.

thereby leaving the actual determination of reasonableness to the Commission. However, the Commission was not specifically empowered to prescribe schedules of rates, or to order a named rate to be put into effect.

(3) Discrimination.

Three sections, the core of the act, related to discriminations. The second section was modeled upon a part of an English railroad regulatory law of 1845. It provided that "if any common carrier ... shall ..... by any special rate, rebate, drawback, on other device ... receive from any person a greater or less compensation for any service ..... than it receives from any other person... ... for doing ..... a like and contemporary service ... under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful"[8] The third section made it "unlawful for any common carrier ..... to make or give any undue or unreasonable preference or advantage to any particular person, ... or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage".[9] Section four, the Long-and Short-haul Clause made it "unlawful for any common carrier ..... to charge or receive any greater compensation ... for the transportation..... under substantially similar circumstances and conditions, for a shorter than for a long distance over the same line, in the same direction, the shorter being included within the longer distance: ..... Provided, however, That upon application to the Commission ..... such carrier may, in special cases, ... be authorized to charge less for long than for shorter distances... "[10]

8. Ibid., Sec. 2
9. Ibid., Sec. 3
10. Ibid., Sec. 4

(4) Service.

All carriers were directed to provide facilities for the receipt and delivery of passengers or property and for the interchange of traffic between diffent lines and it was unlawful to prevent the continuous movement of traffic from origin to destination.

(5) Monopoly Devices.

The pooling of freight, or the division among the carriers of their aggregate or net earning or other monopoly devices was forbidden altogether.

(6) Publicity Requirements.

Schedules of rates and fares were to be printed, made available for public inspection and filed with the Commission. It was made unlawful to charge more or less than specified in the published schedules, and 10 days' public notice was required before rates could be advanced.

(7) The Commission.

The Interstate Commerce Commission was to consist of five members, appointed by the President and approved by the Senate for terms of 6 years at salaries of $7,500 per annum. The Act of 1877 required the Commission to report to the Secretary of the Interior (The amendment of 1889 directed it to report directly to Congress, thereby giving the commission an independent status.)

(8) Investigation and Reports.

The Commission was given certain investigatory powers to order to enable it to carry out its duties. It was authorized (a) to inquire into the management of the business of the carriers (b) and to keep itself informed as to the manner in which the business was conducted. The power to require the attendance and testimony of witnesses and the production of documentary evidence

were authorized.

The Nullification of the Act of 1887

In administering the Act of 1887. the Interstate Commerce Commission was seriously hampered almost from the beginning, due to basic weakness in the law of 1887, a series of decisions by unsympathetic courts and changing conditions of transportation[11]. Within a few years the railroads launched a broadside legal attack on the regulatory authority of the Commission. One by one its power were trimmed by the courts. Typical of this situation was the court's broad warning in the so-called the Import Rate Cases, that "The Commission ..... should consider the legitimate interests as well of the carrying companies as of the traders and shippers."[12]

One of the other obstacles encountered involved the taking of evidence, without which the Commission could not bring to light violations of the laws. Notwithstanding the investigatory authority of the Commission, various persons refused to give evidence, attempting to justify their refusal on the ground that their testimony would tend to incriminate them and that this would be an abrogation of their constitutional rights as contained in the fifth amendment to the Constitution of the United States.[13] This question came before the Supreme Court in the case of Conselman v. Hitchcock[14] and it occurred in this interpretation. This led Congress to pass the Compulsory Testimony Act of 1893,[15] which gave witnesses testifying under the Act to Regulate

11. See Meyer, B. H., Railway Legislation in the United States. Part 3. Chap. 3 (1903).
12. Texas and Pacific Ry. Co. v. I. C. C., 162 I. C. C., 197, 233 (1896), the so-called Import Rate Cases.
13. The Fifth Amendment to the Constitution provided that "No person ..... shall be compelled in any criminal case to be a witness against himself."
14. 142 U. S. 547. In this case, the lower court ordered the witness to testify; but he declined, causing the case to be appealed to the Supreme Court. Thereupon (1892) the higher court decided in favor of the witness.

Commerce complete immunity with respect to their testimony.

Notwithstanding the Compulsory Testimony Act and the Brimson Case 1894,[16] the right of the Commission to elicit incriminating evidence was not fully established until the constitutionality of the Compulsory Testimony Act itself was determined. This finally occurred in the Brown Case in 1896,[17] the Supreme Court upholding its constitutionality.

As Professor Bigham points out, "Another early obstruction to effective regulation arose out of the failure of the Act of 1887 to make the Commission's orders binding in and of themselves. ..... To secure obedience the Commission was forced to bring action in the courts—initially in a lower court ... The Act of 1887 had provided that the findings of the Commission were to be taken as prima-facie evidence of the matter therein stated, ... but the courts asserted their right to review the facts as well as the law of a case, and to allow the introduction of new evidence"[18]

This procedure not only took many years before the highest court rendered a decision but increased the work of the Commission. In 1897 the Commission stated that the average duration of cases actually prosecuted in the enforcement of the act was about 4 years.[19] The Georgia Railroad Commission Gases

15. The Compulsory Testimony Act of 1893 provided that while persons may be compelled to testify "No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, discriminatory or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any case or proceeding."

16. 154 U. S. 447. In this case, the lower court sustained the witness; but the commission appealed to the Supreme Court, which fortunately reversed the decision.

17. 161 U. S. 591. In this case, the Supreme Court upheld the constitutionality of the Compulsory Testimony Act.

18. Bigham, T. C., Transportation: Principles and Problems, pp. 155-156.

19. Annual Report of the Interstate Commerce Commission, 1897, p. 32

were not settled for 9 years.[20] This nullified the advantages of administrative control and discredited the Commission.

Professor Bigham further states, "More serious than the procedural stumbling blocks was the curtailment by the courts of the Commission's basic authority. One of its essential powers was the prescription of reasonable rates. The Act of 1887 had not expressly delegated rate-making power to the Commission; but it had declared that rates should be just and reasonable and had directed the Commission to administer the act. The Commission therefore naturally assumed that it had authority to pass judgment upon rates in effect, to set them aside if found to be unreasonable, and to prescribe the maximum rates to be substituted."[21] But in 1897 in the Cincinnati Freight Bureau Rate Case known as the Maximum Freight Rate Case, the Supreme Court ruled that "The power to prescribe of rates ..... is a legislative and not an administrative or judicial function ..... Congress has not conferred upon the commission the legislative power of prescribing rates either maximum or minimum or absolute."[22]

The final blow to the Commission's basic authority was the decision of the Supreme Court in the Alabama Midland Case in 1897. It dealt with the power of the Commission over violations of the Long-and Short-haul Clause. This decision practically destroyed the Long-and Short-haul Clause.[23]

These decisions of the Courts made the Commission report

20. Ripley, W. Z., Railroads: Rates and Regulation, p. 461.
21. Bigham, Ibid., pp. 156-157.
22. I. C. C. v. Cincinnati N. O. &T. P. Ry. Co., 167 U. S. 479, 505 511 (1897). the so-called Maximum Rate Cases.
23. Interstate Commerce Commission v. Alabama Midland Railway Company, 168 U. S. 144. In this case, the Court held that competition had to be considered and might make the circumstances and conditions so dissimilar that the long- and short-haul rule did not apply, but there were relatively few instances in which the carriers quoted lower rates to more distant points unless compelled to do so by competition.

that "by virtue of juridical decision, it had ceased to be a body for the regulation of interstate carriers. ..... The people should no longer look to this Commission for protection which it is powerless to extend."[24]

Perfected Commission Control up to the Great War.

The Elkins Act, 1903.

The Elkins Act, titled "An Act to further regulate commerce with foreign nations and among the States, enacted February 19, 1903, in fact, although not in terms, was the first important act subsquent to 1889, grew out of the difficulties encountered in enforcing provisions of the Act to Regulate Commerce. The latter act required publication of and adherence to interstate rates, made unjust discrimination by rebating and other devices unlowful, and provided for fine and imprisonment of those violating the provisions of the Act. In spite of this provision, departure from the tariff rate usually went unpublished, except possibly by a nominal fine unless there was actual discrimination between shippers.

The Elkins Act corrected serious defects in the original law and greatly aided the attainment of some of the purposes for which the law was enacted.

The outstanding feature of the Elkins Act was that it made the published rate the standard of lawfulness and provided that any departure should be considered a violation of law. The Circuit Court of Appeals in the case of C. & A. Ry. Co. v. United States, 156 Fed. 558, 562, stated:

"Under the Cullom Act (Act to Regulate Commerce), the standard of comparison was the treatment of other shippers. It was necessary to prove not only that the favored shipper paid less than the published rate, but also that other shippers

24. Annual Report of the Interstate Commerce Commission (1897), p. 51.

paid the full rate or a greater rate than that of the favored shipper. Under the Elkins Act the standard of comparison is the published rate. It is only necersary to prove that the favored shipper has had his property transported at a less rate than that published and filed.

The Hepburn Act, 1906

The authority of the Interstate Commerce Commission was increased by the the passage of the Hepburn Act of 1906. This amended both the original Act and the Elkins Act in many important respects: (a) It enlarged the scope of the Act to regulate Commerce so that its provisions applied not only to the railroads but to express companies, sleeping car companies and pipe lines (except pipe lines conveying water and gas). The term "Transportation," as regulated by the Act and which the carriers are duty bound to furnish was defined so as to include refrigeration, ventilation, and other similar special services which had not previously been regarded as part of transportation subject to regulation. The term "railroad" was likewise enlarged to include switches, spurs, tracks and terminal facilities; (b) Most important of all was to give mandatory to the commission to prescribe a fair and reasonable rate practice or charge for the future; (c) Under the Hepburn Act, public notice of trariffs was changed to the present period of 30 days in advance rather than the old 10 days; (d) The Hepburn amendment authorized the commission to prescribe a uniform system of accounting to be used by the carriers; (e) The number of the commissioners was increased to seven, the term of office to seven years and the annnual salary of each member to $10,000,000.

In the words of Prof. Bigham, the Supreme Court took a position different from that originally assumed. (a) The court refused

to pass upon the wisdom of the Interstate Commerce Commission. It set aside orders only when the Commission had violated the constitution, had acted arbitrarily or had gone beyond the power specifically conferred upon it by the Act to Regulate Commerce. (b) The court ruled that the primary jurisdiction in matters of regulation lay in the hands of the Commission, that cases could not be carried to the courts until the commission had first made a finding. [25] These holdings of the Supreme Court, which have generally been maintained. down to the present were based upon the obvious intent of Congress to make commission regulation effective. [26]

The Mann-Elkins Act of 1916.

Though the original Act as amended had accomplished to a great extent the intentions of the framers, it was considered advisable to strengthen federal regulation. This was done on June 18, 1910 by the Mann-Elkins Act. (a) The jurisdiction of the commission was extended over telegraph, telephone and cable lines. (b) The Mann-Elkins Act authorized the commission to suspend rates for a period not exceeding six months, pending investigation. This power introduced the procedure technically known as "Investigation and Suspension" or "I & S."
(c) This act restrengthened the Long-and short-haul clause by eliminating the phrase "under substantially similar circumstances and conditions" from the long-and-short-clause of the fourth section. (d) The Act also created the commerce court which was designated by congress to review the decisions rendered by the Interstate Commerce Commission. [27]

25. Texas and Pacific Railway Company v. Abilence Cothon Oil Company, 204 U. S. 426 (1907).
26. Bigham, Ibid p. 163

The Panama Canal Act, 1912.

The Panama Canal Act was approved August 24, 1912. The primary purpose of this legislation was to prevent railroad from using the canal as a means of operating vessels over routes with which they would otherwise be in competition, or in strifling other water craft competition by controlling separate water carriers. It therefore provided that no common carrier subject to the Act to Regulate Commerce is permitted to own, lease, operate, control or have any interest whatsoever in any common carrier by water operated through the Panama Canal. The Act also gave the commission additional jurisdiction over joint rail-water routes and rates.

The Physical Valuation Act, 1913.

The Interstate Commerce Commission under this Act was required to "investigate ascertain, and report the value of every piece of property owned or used by all common carriers subject to the Interstate Commerce Act." The primary purpose of this Act was to prevent the "watering" of railroad stock which had been worked up into enough of a political issue.

The Carmack Amendment, 1906 and the Cummins Amendments, 1915, 1916

The Carmack Amendment, 1906 required (a) that comman carriers engaged in interstate commerce should issue a receipt in the form of a bill of lading for any and all traffic, (b) and that they should be held liable for loss or damage. This Act was later amended by the Cummins Amendment. The first Cummins Amendment, 1915, imposed upon the carriers full common law liability for the actual loss of or damage, to

27. Many of the decisions of the commerce court were appealed to the supreme court. It was not looked upon with favor by the public and was abolished in 1913 by the District Court Jurisdiction Act.

shipments while in their possession, notwithstanding any contract or provision in the bill of lading or other document limiting the carriers liability. The second Cummins Amendment, 1916, specified that, except in the case of ordinary live stock, agreed or released value rates could be made only upon specific approval of the Commission.

The Clayton Anti-Trust Act, 1914.

Although the Supreme Court had already decided that the railroads were subject to the anti-trust provisions of the Sherman Act of 1890, section seven of the Clayton Act reaffirmed the intention of congress to promote competition. It provided that no corporation engaged in interstate commerce could directly or indirectly acquire stock in another such corporation where the effect would be substantially to lessen competition between the carriers, restrain trade or create a monopoly of a line of commerce.

The Esch Car Service Act, 1917.

The Interstate Commerce Commission investigated the car supply of the railroad in 1907 and again 1916 and recommended that it be given specific authority to prescribe regulations govering interchange of cars, return of car to owing roads, conditions for loading on foreign roads, and compensation which carriers should pay each other for the use of cars. In response of these recommendations, Congress in 1917 passed the Esch Car Service Act which made it the duty of carriers to establish and enforce just and reasonable rules in respect to car service.

Reorganization of the Commission, 1917.

For relief from an excessive burden of work, Congress in 1917 increased the number of commissioners from seven to nine and allowed the commission to act through subdivisions, subject to rehearing when necessary.

The Federal Possession and Control Act, 1916.

Under this Act, the President of the United States was empowered, as a war measure, to take possession and to assure control of any and all systems of transportation and utilize them in the most effective manner to successfully prosecute the war. On December 26, 1917, the President issued a proclamation assuming control of all system of transportation. The Federal Control Act, 1819 provided for federal control and operation of transportation lines during the war and for a reasonable time hereafter, but not beyond twenty-one months from the date of the president's proclamation of the ratification of a treaty of peace. During this period net railway operating income was guranteed by the govermment.

The Transportation Act of 1920 and Subsequent Legislation

Out of the intensive experience gained during the federal operation of carriers during the war there emerged a new sentiment in federal legislation. The people fully realized that railroad transportation is embeded in the very foundation of the American economic and social structure and that a weakening of that part will undermine the whole. Therefore, the legislation of 1920 and much of that subsequent thereto had as a major objective the building up of an adequate transportation industries.

The Transportation Act of 1920

The Transportation Act was passed in February, 1920[28]. The outstanding feature of the Transportation Act of 1920 is the definite recognition by the government that the railroads are a national necessity; that they have been created and developed

28. 41 Statues et Large, partI, pp. 456-499. The Act was in the form of an amendment to the Act to Regulate Commerce. After 1920 the Act to Regulate Commerce was called the Interstate Commerce Act.

by the enterprise and money investment of individuals; and that in order to attract additional capital and provide for necessary expansion in properly meeting the transportation needs of the nation, the carriers are entitled to a ''fair return'' on their investment.

The most significant clauses of this Act related to rates, combination, securities, and labor disputes.

(1) Rates: The provision of section 15*a*,[29] which is known as the "recapture clause", whereby the commission is directed to prescribe a basis of valuation and fix rates as a whole to yield a fair return of 6% on the investments of the carriers. (In May, 1922 the Interstate Commerce Commission reduced the "fair return" to 5¾%.)

(2) Combination: The provisions for consolidation of railways into a limited number of system. It legalized combinations approved by the commission and set aside federal and state antitrust laws to the extent necessary in effectuating the unifications.

(3) Service: The provisions for securing adequate car service; for joint use of terminals; for routing; interchange of traffic between railroads, and between a rail carrier and a water carrier; to authorize abandonment of unprofitable and unnecessary lines.

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29 Section 15*a* of the Interstate Commerce Act read as follows: "In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish or adjust such rates so that the carriers as a whole (or as a whole in each of such rate groups or territory as the commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of law, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the Commission shall have reasonable latitude to modify or adjust any particular different rates for different portions of the country."

(4) Securities: The provision for regulating securities. Sec. 20*a* provided regulation of securities. This section made it "unlawful for a carrier to issue securities or assume financial obligations until investigated and approved by the Interstate Commerce Commission and it finds the issue is lawful, compatible with public interest & reasonably necessary".

(5) Miscellaneous changes: Section 13 gave the Interstate Commerce Commission the positive power which it had not had before, to prescribe intrastate rates, after due investigation, which would remove undue discrimination against interstate commerce, and would be "observed……by carriers, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Judicial Review of the Provisions of the 1920 Act.

The Supreme Court upheld the new phases of the essential provisions of the Act of 1920. It upheld the recapture clause in 1924;[30] the commission's power over intrastate rates in 1922;[31] the new policy in dividing the revenue from joint rates in 1923;[32] the car-service clause in 1927;[33] and the regulation of securities in 1932.[34]

Changes in Regulation Following the 1920 Act.

The Inland Waterways Corporation Act, 1924.

Congress passed this Act in June, 1924, which created a corporation to be known as the Inland Waterways Corporation, with the Secretary of War appointed to govern and direct its functions. Its primary purpose was to carry on the operations of

30. Dayton-Goose Creek Ry. Co, v. U. S., 263 U, S. 456 (1924)
31. R. R. Comm. of Wis. v. C. B. & R. Co., 257 U. S. 563(1922), the so-called Wisconsin Rate Case.
32. Akron, C. & Y. Ry. Co. v. U. S., 261 U. S. 184 (1923). the so-called New England Division Case.
33. Assigned Car Case, 274 U. S. 564 (1927)
34. 287 U. S. 12 (1932).

the government owned inland canal and coastwise waterways to the point where it could be transferred to private operation.

The Hoch-Smith Resolution, 1925.

Though the Transportation Act of 1920 stood without basic change for 13 years, there was an attempt, known as the Hoch-Smith Resolution, at legislative rate making by a politically strong farmers' group. The resolution declared that the ''true policy'' to de pursued by the commission in fixing freight rates requires consideration of the conditions which at any time prevail in our several industries, to the end that commodities may move freely.[35] The Interstate Commerce Commission was directed by Congress to make a thorough investigation of the rate structure of common carriers subject to the Act and the commission was given authority to make any changes or adjustments found necessary in order to correct any defects found to exist questions arose as to whether this legislation modified rules of rate making already established. However, the Supréme Court pointed out in the Ann Arbor Case, that the resolution, because of its reference to "lawful rates", did "not purport to make any change in the existing law" and that it was not in "the nature of a rule intended to control rate making,"[36] so that the effect of the resolution cannot be considered basic. Thus it is generally believed that the Ann Arbor decision nullified the Hock-Smith Resolution.

The Dennison Act, 1928.

To further the interests of inland waterways by "overcoming the reluctance of many of the ralroads to cooperate with the Inland Waterway Corporation,"[37] the Dennison Act passed in

35. See Malott, E. O., The Hosh-Smith Resolution. A Study of a Congressional Mandate on Transportation. (1942)

36. Ann Arbor R. R. Co. v. U. S. 281 U. S. 658, 668—669 (1930), the so-called Deciduous Fruit Case.

37. 70th Congress, 1st., House Rep. No. 1537, pp, 5—6

1928 and directed the commission to order "connecting common carriers……to join with certified water carriers in through routes and joint rates and to fix reasonable minimum differentials between all rail rates and joint (water-rail) rates."[38]

The Emergency Transportation Act, 1933.

The Transportation Act of 1920 did not have the results anticipated.[39] The commission requested that it be relieved from the requirement of adopting a complete plan of consolidation and that consolidations or acquisitions be expedited by the commission if against no public interest or if overcapitalization would result.[40] The commission also pointed out that the orderly unification of railroad was likely to be defeated by holding company control and that legislation should be passed to protect the public interest against this.[41] As to the recapture clause, the Commission stated that it proved unworkable in practice. Upon these recommendations of the Interstate Commerce Commission, Congress passed the Emergency Transporation Act in 1933. It was in two parts, one to apply temporarily during the emergency, the other in the form of permanent amendments to the Interstate Commerce Act.

The emergency sections provided for: (a) the creation of the Federal Coordinator of Transportation and three regional coordinating committee; (b) voluntary coordination, under suspension of the anti-trust laws, of railroad operation so far as it could be done without decreasing employment below the level of May, 1933 except in the normal course of death, retirement, etc.; (c) various studies of the railroad situation. These emergency sections of the Act lasted but three years. In 1936 Congress allowed this part of the Act to elapse without even

38. 148 I. C. C. 129, 130 (1928).
39. For a detailed information about this respect see Bigham, Ibid., p. 183.
40. I. C. C., Annual Report (1921), pp. 58—59.
41. Ibid. (1925), pp. 13—14

bothering about hearings.

The permanent sections: The important permanent amendments by the Emergency Act related to railroad combinations and to the rule of rate making.

(1) Combination: The combination clause of the 1920 Act had three defects. To remedy these defects, the Act of 1933 (a) eliminated the distinction between consolidations and acquisition of control, (b) brought holding companines definitely under the jurisdiction of the commission with respect to accounts, reports, and securities, (c) removed the requirment as to the capitalization of a consolidated corporation, (d) set up a single standard of decision for all types of combination.

(2) Rates: The provisions relating to rates made the rule of rate making more flexible. Section 15*a* was criticized on several grounds. The revised rule read as follows: "In the excercise of its power to prescribe just and reasonable rates the commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic, to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical and efficient management, to provide such service."

(3) Miscellaneous: Another amendment repealed the recapture clause retroactively. Still another modified the Valuation Act by permitting the Commission merely to collect the data from which valuation could be made current when necessary. Finally the Act prohibited the commission from approving loans to a carrier under the Reconstruction Finance Corporation Act, if in the opinion of the commission the borrower in the need of financial reconstruction.

The Amendment to the Bankruptcy Act, 1933, 1935

By 1933 a number of railroads had failed and reorganization under equity procedure had been unsatisfactory in several respects, owing to delays in formulating reorganization plans[42] and excessive reorganization expenses[43]. Section 77 of the Bankruptcy Act passed in 1933, amended in 1935, provided (a) that the one court within which a petition of the failing company should have exclusive jurisdiction; (b) that the property of the failing company should be operated by trustees instead of receivers, such trustees to be ratified by the Interstate Commerce Commission; (b) that the commission might participate in the formulation of reorganization plans prior to their final stages; (d) that under certain conditions plans could be put into effect against the wishes of minorities; (e) and that the commission could fix limits to the expenses of reorganization, which were to be paid out of the debtor's estate.

The Motor Carrier Act, 1935.

The Motor Carrier Act of 1935(slightly amended in 1938 and 1940) added Part II to the Interstate Commerce Act, while the original act became Part I. The Act of 1935 began with a declaration of Congressional policy. The principle contained in this Act was to preserve the inherent advantages of motor transportation, foster sound conditions in the motor-carrier industry, promote an adequate motor-carrier service at reasonable rates, encourage coordination among the different agencies of transportation, and facilitate cooperation between federal and state authorities. The Commission was given general jurisdiction over motor-vehicle carriers engaged in transporting persons or property

42. The average duration of receiverships between 1898 and 1931 was 4 years and 5 months

43. The Milwaukee railroad set aside $3,500,000 for reorganization.

in interstate or foreign commerce. The provisions of the act relating to the rates accounts and combination were similar to the provisions of the Interstate Commerce Commission covering railroad charges.

The Transportation Act of 1940.

The Transportation Act of 1940. added part Ⅲ to the Interstate Commerce Act, and provided for the regulation of coastwise, intercoastal, inland and Great Lakes common and contract carriers by water engaged in interstate or foreign commerce. In addition to the regulation of water carriers, this Act amends various sections of part Ⅰ and Ⅱ and also places a national transportation policy which is to be followed by the Commission at the head of the Interstate Commerce Act.

(1) The Declaration of a National Transportation Policy. One of the most important amendments was the declaration of "National Transportation Policy," which reads:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions ·····all to the end of developing, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.[44]

Essential points in the policy, as Prof. Bigham summ-

arized,[15] (a) impartial regulation of all modes of transportation, (b) preservation of the inherent advantages of each type of transportation, (c) promotion of sound conditions in the transportation industries, (d) codemnation of destructive competitive practices, (e) and encouragement of fair wages and working conditions.

(2) Board of Investigation and Research.

The Act provides for a Board of Investigation and Research to study the over-all transportation situation.

(3) The Federal Regulation of Transportation by Water.

Prior to 1940 the principal regulatory laws were the Act to Regulate Commerce, the Shipping Act of 1916, and the Intercoastal Shipping Act of 1933, as amended in 1938. These federal regulation of water transportation had major defects. It was largely to meet these defects in regulation that the Transportation Act of 1940 was passed. This Act extended federal regulation to all interstate transportation on the inland waters and the ocean with some exceptions.[16]

Era of Second World War

Under the Federal Possession and Controll Act of August, 1916, the President, in time of war, is empowered to take possession and assume control of any system or systems of transportation. He is also given certain emergency powers over transportatin under several section of the Interstate Commerce Act.

The creation of the Office of Defense Transportation.

The President created the Office of Defense Transportation by executive order No. 8989, approved December 18, 1941, and appointed Joselph B. Eastman, chairman of the Interstate

44. Public Law No. 785, 76th Congress., 3d Sess., pp 2—3 (1940).
45. Bigham, Ibid., P.190.
46. Healy, Kent T., The Economics of Transportation in America, PP.440—443.

Commerce Commission, director of the new transportation organization. The objective of the Office was to assure the maximum utilization of the domestic transportation facilities of the nation for the successful prosecution of the war

The Second War Power Act, 1942

This Act amended part Ⅱ of the Interstate Commerce Act, giving the Interstate Commerce Commission the same emergency powers over motor carriers that it has over rail carriers subject to Part I of the Act.

The Act of May 16, 1942

This Act amended the Interstate Commerce Act by adding Part IV, providing regulation of freight forwarders by the Interstate Commerce Commission. It applies to any person or company who hold itself out to ohe general public to transport or provide transportation of proverty for compensation in interstate commerce, and which in the usual course of its undertaking assembles and consolidates shipments of such property.

Present Construction of the Interstate Commerce Act.

The Interstate Commerce Act is the most important document in the field of tranportation. There are four distinct parts to the Interstate Commeree Act. Part I, containing thirty sections numbered 1 through 26, including sections 5*a*. 15*a*, 19*a* and 20*a*, deals with carriers by railroad, by water and by pipe line; Part Ⅱ, containing twenty-eight sections numbered from 201 through 228 (section 213 eliminated but including 210*a*,) deals with carriers by motor vehicle; Part Ⅲ, containing twenty-three sections numbered from 301 through 323, deals with carriers by water; and Part IV, containing twenty-two sections numbered from section 401 through 422, deals with freight forwarders.