

company or companies from exchanging passes or tickets with other railroad companies for their officers and employés; and nothing in this Act contained shall in any way abridge or alter the remedies existing at common law or by statute, but the provisions of this Act are in addition to such remedies."

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

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

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

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

I.—THE CARRIERS SUBJECT TO ITS JURISDICTION.

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

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

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

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

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