

then sold the business to one of the existing express companies. Some of the Western railroads combine for the purpose, and, for convenience, create a nominal corporation to do the business over their several lines and divide the net proceeds. In organization and general methods this corporation resembles some of the fast freight lines of the country, the railroad companies being the nominal corporators, and the business done being in every sense railroad business, though, for convenience, carried on by the several companies through a common agency.

There is no recognised distinction between what shall be considered express freight and what not, except that which concerns the method of transportation. Express freight is commonly but not always taken in cars attached to passenger trains, and, however taken, it is expedited beyond what is possible with freight in general, and any freight is taken express for which the owner consents to pay the charges. These charges are much greater than are made upon ordinary freight of like or similar kind.

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 in its office. If they came within the enumeration of carriers in the 1st section of the Act the obligation was upon them, but not if that enumeration failed to include them. The Commission deemed it prudent to rule, until satisfied to the contrary, that they were included, inasmuch as that ruling could harm no one and was in the direction of safety. The Canadian, the Northern Pacific, and the Dominion Express Companies acquiesced in this ruling and filed tariffs, but the companies, for the most part, objected, and it was deemed advisable to offer them an opportunity to present their views. This was accordingly done; able counsel appeared to argue the question, and it was very fully and carefully considered. Many arguments were urged on the part of the companies which are admitted to be forcible. The Act was examined in detail, and it was contended that, on a fair construction of the terms made use of, the express companies could not be embraced. The history of the legislation was also discussed; and it was urged that the public demand for legislative regulation of railroad traffic had been made upon grounds which did not apply to the express traffic. The express companies had not practised secret debates; they had not so frequently made the greater charges for the shorter hauls; they had not made unjust discriminations between persons or places. The argument *ab inconvenienti* was also pressed with great earnestness; it was said to be practically impossible for the express companies to print and publish their tariffs, so numerous are the points to which their business extends; and it was even said that so voluminous would they be that no public building at the national capital could contain them.

The Commission has felt the force of the considerations urged so far as they are drawn from the phraseology of the law, but the other arguments have not appeared to be so weighty. The Commission cannot agree that any serious difficulty would be found in the making and filing of the express tariffs. The companies have no difficulty now in putting into the hands of their agents a tariff which the agents can understand and work by, and which, at the same time, is neither great in bulk nor cumbrous in use. What the express agent can understand it is fair to assume other people can understand also, and it would impose no hardship upon the express company to require that it be kept where the public can inspect it at pleasure. The objection made to this publication is precisely the same that was made by some railroad companies to the publication of their tariffs, and the language employed is no more extravagant; and yet the railroad companies, when compliance has been undertaken, have found the difficulties dwindling into insignificance; and the several express companies which actually filed their tariffs did not, when forwarding them to the Commission, even suggest that any difficulty had been encountered in preparing them.

The arguments from the history of the Act have plausibility. It may be conceded that the evils at which the Act was aimed have not existed to any great extent in the express business. One reason—perhaps the principal reason—for this is that, as each of the several express companies has had a practical monopoly on the lines on which it operates, the inducement to secret rebates and to the unjust discrimination which springs from severe competition has been wanting. It has been easier, also, to make and maintain rates which are proportioned to distance. Water competition, which so seriously affects the ordinary freight traffic of railroads, would scarcely affect at all the traffic for which shippers are willing to pay high rates in order to have great speed. But the complaint of excessive charges upon express traffic has been common, and that of greater charges on shorter hauls is sometimes heard; and if it shall be held that express companies are not controlled by the rules of fairness and equality which the Act prescribes it is easy to see that the mischief against which the Act is aimed may reappear and be enacted with impunity.

It has already been said that no clear line of distinction exists between the express business and some branches of what is exclusively railroad service; and the express business may easily be enlarged at the expense of the other. Those roads which now do their express business through a nominal corporation might hand over to this shadow of their corporate existence the dressed meat, or live-stock business, or the fruit transportation, or any other business in respect to which speed was specially important; and they might continue this process of paring off their proper functions as carriers until they should be little more than the owners of lines of road over which other organizations should be the carriers of freight, and on terms by themselves arbitrarily determined.

The Commission, after a hearing of all the arguments advanced by those who appeared for the express companies, is of opinion that the express business, as far as it is done by the railroad companies themselves, whether directly and by their managing officers, or indirectly and through nominal corporations created for the purpose, is within the Act, and that such companies are under obligation to see that the tariffs are filed, and that the rules of fairness and equality which the Act prescribes are observed. Whether the express companies which are independent of the railroads are within the contemplation of the Act is more doubtful.

The Commission is of opinion that the question is one which Congress ought to put beyond question by either expressly and by designation including the express companies or by excluding