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REGULATION OF MOTOR CARRIERS

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The Interstate Commerce Commission has said that motor vehicle transportation supplies an agency which will permit the fullest development of the country's economic situation by permitting transportation and communication to reach remote communities through territories unable to support more costly railroad facilities.¹ Lower rates, frequency of arrivals and departures, and the ability to pick up and discharge passengers at almost any point along their routes suggest the causes for the increasing popularity of motor carriers.² Moreover motor trucks have the advantage of being equipped to pick up and deliver freight at store doors, thereby effecting great savings of time and eliminating terminal congestion.

Such motor carriers as were operated exclusively in intrastate operations were partially regulated by the states in which they operated. But the industry was in a deplorable condition—the regulations of the various states were not uniform, and so-called "wild-catters" worked considerable injury to regular and responsible bus and truck lines. These wild-catters cut rates, failed to pay loss and damage claims, failed to account for c. o. d. shipments, and failed to maintain their schedules if traffic was light. Their lack of financial responsibility often left the shipper, passenger or injured person without any available remedy. These conditions led the Interstate Commerce Commission to recommend national legislation which resulted in the enactment of the Motor Carrier Act in 1935.³

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1. Motor Bus and Motor Truck Operation (1928) 140 I. C. C. 685, 696, 718.

2. (1936) Annual Reports I. C. C.

3. (1935) 49 Stat. ch. 498, sec. 201-227, 49 U. S. C. A. sec. 301-327. Subsequent specific section references are to the Statutes at Large. With the

I. PURPOSE OF FEDERAL MOTOR CARRIER ACT

The Federal Motor Carrier Act applies, in all of its terms, to common and contract carriers by motor vehicle. Section 202 recites that it is

declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the Commerce of the United States and of the national defense.

This declared policy is referred to in several sections of the Act and becomes important in determining their application.⁴ Section 209 (b) provides that the Commission may issue a permit to contract carriers "if it appears * * * that the proposed operation * * * will be consistent with * * * the policy declared in section 202." In prescribing rates under section 216 (i) consideration should be given

to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by such carriers; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

constitutionality of the Federal Motor Carriers Act this article is not concerned. That regulation of interstate motor traffic is within the commerce power of Congress is unquestionable, for the most rigid interpretation of the scope of that clause would include the actual instrumentalities of interstate movement. No effort is made by Congress in the Act to impair state power over intrastate commerce. The Act is to apply "to the transportation of passengers or property by motor carriers engaged in interstate and foreign commerce," (sec. 202b) and it is provided explicitly that nothing in the Act shall be construed "to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce" (sec. 202c).

4. The Tap Line Cases (1913) 234 U. S. 1, 27, 34 S. Ct. 741, 58 L. ed. 1185.

Whenever any charge of any carrier contravenes the declared policy, the Commission is authorized by section 218(b) to make any change or alteration necessary to make the charge conform to said policy.

The Interstate Commerce Commission has asserted that the Act is designed to provide adequate and efficient motor carrier service in the public interest and to abolish cut-throat competition and its attendant evils.⁴

It might well be said of the Motor Carrier Act, as the Supreme Court said of the Interstate Commerce Act, that in its control of the motor carrier transportation system Congress "is seeking to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does"⁵ and to eliminate waste.⁶ To such extent it is viewed as a direct concern of the public.⁷

Although it is the policy of the Act "to improve the relations between and co-ordinate transportation by motor carriers and other carriers," particularly the railroads, the fact that a particular point has adequate rail service does not justify the refusal to issue a certificate to a motor common-carrier where there are inherent advantages in transportation by motor vehicle.⁸

II. STATE TAXATION

The Federal Motor Carrier Act provides, *inter alia*, that nothing in the Act "shall be construed to affect the powers of taxation of the several states."⁹

A state may impose a license or occupation tax on one engaged in both interstate and intrastate commerce within its borders, but the tax must be imposed *solely* on the basis of the intrastate business done.¹⁰ It must appear that one engaged exclusively in interstate commerce would not be subject to the imposition and

4a. Contracts of Contract Carriers (1937) 1 M. C. C. 628.

5. Railroad Commission v. Chicago, B. & Q. Ry. Co. (1921) 257 U. S. 563, 589, 42 S. Ct. 232, 66 L. ed. 371.

6. State of Texas v. United States (1934) 292 U. S. 522, 532, 54 S. Ct. 819, 78 L. ed. 1402.

7. Ibid.

8. Edwin A. Bowles application (1937) 1 M. C. C. 589.

9. Sec. 202(c).

10. Pacific T. & T. Co. v. Tax Comm. (1936) 297 U. S. 403, 56 S. Ct. 522, 80 L. ed. 76; Cooney v. Mountain States T. & T. Co. (1934) 294 U. S. 384, 55 S. Ct. 477, 79 L. ed. 934; East Ohio Gas Co. v. Tax Comm. (1930) 283 U. S. 465, 51 S. Ct. 449, 75 L. ed. 1171; Sprout v. City of South Bend (1927) 277 U. S. 163, 48 S. Ct. 502, 72 L. ed. 833.

that one doing both an intra- and interstate business could discontinue the former without withdrawing from the interstate business.¹¹

In the exercise of its police powers a state may rightfully require the registration of motor vehicles and the licensing of their drivers, charging reasonable fees therefor.¹² It may also exact reasonable compensation from both intra- and interstate carriers for the use and maintenance of state highways and the regulation of traffic thereover.¹³

But such a tax cannot be sustained unless it appears affirmatively that it is levied only as compensation for the use or upkeep of the highways or to defray the expense of regulating motor traffic thereover.¹⁴

A state may, of course, lay a property tax on all property located within its borders, whether used in intra- or interstate commerce.¹⁵ But a state may not tax property neither located nor used within its confines.¹⁶ However, if intrastate property is part of an interstate system, it may be taxed according to its enhanced value as part of the system.¹⁷

But no state can tax interstate commerce. Therefore, it cannot place duties on "the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on."¹⁸

The cases involving railroads furnish appropriate analogies in this connection, for it is probable that the same law will be

11. *Sprout v. City of South Bend*, *supra*.

12. *Hendrick v. Maryland* (1914) 235 U. S. 610, 35 S. Ct. 140, 59 L. ed. 385.

13. *Interstate Transit Co. v. Lindsey* (1930) 283 U. S. 183, 51 S. Ct. 380, 75 L. ed. 953; *Sprout v. City of South Bend* (1927) 277 U. S. 163, 48 S. Ct. 502, 72 L. ed. 833; *Interstate Busses Corp. v. Blodgett* (1927) 276 U. S. 245, 48 S. Ct. 230, 72 L. ed. 551; *Michigan P. U. Comm. v. Duke* (1924) 266 U. S. 570, 45 S. Ct. 191, 69 L. ed. 445; *Kane v. New Jersey* (1916) 242 U. S. 160, 37 S. Ct. 30, 61 L. ed. 222; *Hendrick v. Maryland*, *supra*.

14. *Sprout v. City of South Bend*, *supra*; *Interstate Transit Co. v. Lindsey*, *supra*.

15. *International P. Co. v. Massachusetts* (1918) 246 U. S. 135, 38 S. Ct. 292, 62 L. ed. 624; *St. Louis S. W. Ry. Co. v. Arkansas* (1914) 235 U. S. 350, 35 S. Ct. 99, 59 L. ed. 265; *Postal T. C. Co. v. Adams* (1895) 155 U. S. 688, 15 S. Ct. 268, 37 L. ed. 311.

16. *Ibid*.

17. *Pullman Co. v. Richardson* (1923) 261 U. S. 330, 43 S. Ct. 366, 67 L. ed. 632.

18. *Lyng v. Michigan* (1889) 135 U. S. 161, 10 S. Ct. 725, 34 L. ed. 150; *Leloup v. Mobile* (1888) 127 U. S. 640, 646, 8 S. Ct. 1380, 32 L. ed. 311.

applied to motor carriers. Thus, a tax on the gross receipts of an intrastate and interstate railroad was held void,¹⁹ as was a tax upon the receipts from interstate commerce.²⁰ A tax on the entire capital stock of a foreign corporation, or a given percentage thereof, was declared void,²¹ but an *ad valorem* tax based on the value of such proportion of the capital stock as the mileage within the state bears to the total mileage is valid.²² A tax could not be validly levied upon freight or messages transported or transmitted in interstate commerce.²³

III. STATE REGULATION

The Federal Act also provides that the provisions of the Act shall not be so construed as to "interfere with the exclusive exercise by each state of the power of regulation of intrastate commerce by motor carriers on the highways thereof."²⁴

A motor carrier cannot evade state regulation "by the mere linking of its intrastate transportation to its interstate or by the unnecessary transportation of both classes by means of the same instrumentalities and employees."²⁵

What of the situation in which intra- and interstate commerce are inextricably intermingled? The problem has not as yet been decided under the Motor Carrier Act. In all probability, the decision in *Railroad Commission v. Chicago, B. & Q. Ry. Co.*²⁶ will be followed, which would permit Congress to impose any reasonable condition on a state's regulation of interstate carriers for intrastate commerce as it deems necessary or desirable.

19. *Fisher's Blend Station v. Tax Comm.* (1936) 231 U. S. 68, 34 S. Ct. 15, 58 L. ed. 127; *Oklahoma v. Wells, Fargo & Co.* (1911) 223 U. S. 298, 32 S. Ct. 218, 56 L. ed. 445; *Galveston H. & S. H. Ry. Co. v. Texas* (1907) 210 U. S. 217, 28 S. Ct. 638, 52 L. ed. 1031.

20. *East Ohio Gas Co. v. Tax Comm.* (1930) 283 U. S. 465, 51 S. Ct. 449, 75 L. ed. 1171; *Baltic M. Co. v. Massachusetts* (1913) 231 U. S. 68, 34 S. Ct. 15, 58 L. ed. 127.

21. *Air-Way E. A. Corp. v. Day* (1924) 266 U. S. 71, 45 S. Ct. 12, 69 L. ed. 169; *International P. Co. v. Massachusetts* (1918) 246 U. S. 135, 38 S. Ct. 292, 62 L. ed. 624; *Western U. T. Co. v. Kansas* (1909) 216 U. S. 1, 30 S. Ct. 190, 54 L. ed. 355.

22. *St. Louis S. W. Ry. Co. v. Arkansas* (1914) 235 U. S. 350, 35 S. Ct. 99, 59 L. ed. 265; *Western U. T. Co. v. Massachusetts* (1887) 125 U. S. 530, 8 S. Ct. 961, 31 L. ed. 790.

23. *Western U. T. Co. v. Texas* (1882) 105 U. S. 460, 26 L. ed. 1067; *Railroad Co. v. Pennsylvania* (1873) 15 Wall. 232, 21 L. ed. 146.

24. Sec. 202(c).

25. *Interstate Busses Corp. v. Holyoke St. Ry. Co.* (1927) 273 U. S. 45, 47 S. Ct. 298, 71 L. ed. 530.

26. (1921) 257 U. S. 563, 42 S. Ct. 232, 66 L. ed. 371.

The language of the Act refers to the exclusively intrastate traffic and strictly domestic commerce.²⁷ When intra- and interstate commerce are so mingled together that the federal government cannot "exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso."²⁸

In the railroad cases the Supreme Court held that when the Interstate Commerce Commission found that intrastate rates discriminated against interstate commerce it might order the discrimination removed by increasing the intrastate rates.²⁹ In the Motor Carrier Act, however, Congress has expressly provided that nothing therein "shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."³⁰

IV. THE FEDERAL ACT: WHAT MOTOR CARRIERS REGULATED

The Act applies to common, contract, and private carriers. A *common* carrier is defined in the Act as one who undertakes "to transport passengers or property * * * for the general public * * * whether over regular or irregular routes."³¹ A *contract* carrier is defined as one who "under special and individual contracts or agreements * * * transports passengers or property in interstate or foreign commerce."³² A *private* carrier is defined as one "not included in the terms 'common carrier' * * * or 'contract carrier' * * *, who or which transports in interstate or foreign commerce by motor vehicle property of which such

27. *Houston, E. & W. T. Ry. Co. v. United States* (1913) 234 U. S. 342, 34 S. Ct. 833, 839, 58 L. ed. 1341.

28. *Railroad Comm. v. Chicago, B. & Q. Ry. Co.* (1921) 257 U. S. 563, 42 S. Ct. 232, 66 L. ed. 371.

29. *State of Florida v. United States* (1931) 282 U. S. 194, 51 S. Ct. 119, 75 L. ed. 291; *Board of R. R. Comm. v. Great N. Ry. Co.* (1930) 281 U. S. 412, 50 S. Ct. 391, 74 L. ed. 936; *Railroad Commission v. Chicago, B. & Q. Ry. Co.* (1921) 257 U. S. 563, 42 S. Ct. 232, 66 L. ed. 371; *Illinois C. Ry. Co. v. Public Utilities Comm.* (1918) 245 U. S. 493, 38 S. Ct. 170, 62 L. ed. 425; *Houston E. & W. T. Ry. Co. v. United States* (1913) 234 U. S. 342, 34 S. Ct. 833, 58 L. ed. 1341.

30. Sec. 216(f).

31. Sec. 203(a)(14). The above mentioned definition of a common carrier is in consonance with the general legal definition. *Michigan P. U. Comm. v. Duke* (1925) 266 U. S. 570, 45 S. Ct. 191, 69 L. ed. 445.

32. Sec. 203(a)(15).

person is the owner, lessee or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of any commercial purpose."³³

The Interstate Commerce Commission has held that one who holds himself out as ready to enter into a contract of haulage for any or all may thereby become a common carrier. Thus, where the testimony showed that one had verbal contracts with eight persons or concerns, that he proposed to hold himself out as being ready to serve anyone who called him to transport commodities at his tariff rates, and that he intended actively to solicit business, such a person was held to be a common carrier.³⁴

The Commission has ordered that

all contract carriers of property by motor vehicle * * * shall transport under contracts or agreements which shall be in writing, which shall provide for transportation for a particular shipper or shippers, which shall be bilateral and impose specific obligations upon both carrier and shipper or shippers, which shall cover a series of shipments during a stated period of time in contrast to contracts of carriage governing individual shipments, and copies of which shall be preserved by the carriers parties thereto so long as the contracts or agreements are in force and for at least one year thereafter.³⁵

Contract carriers are regulated because

a contract carrier has certain inherent advantages in competition over a common carrier. * * * The common carrier holding itself out to carry traffic of a certain description must serve all who seek its services, and under the act it must serve them without unjust discrimination and adhere to published rates. The contract carrier, on the other hand, is free to pick and choose among shippers, and under the act it may discriminate in its service to them and its charges may be called in question only if they are found to fall below a reasonable minimum level.³⁶

33. Sec. 203(a) (17).

34. Paul Beatty application (1936) 1 M. C. C. 141; W. R. Whitman application (1937) 1 M. C. C. 527.

35. Contracts of Contract Carriers (1937) 1 M. C. C. 628, 632.

36. Ibid. "Under such conditions, shippers, especially those who have a large volume of traffic to offer, may play the contract carrier against the common carrier and contract carriers against each other, with the result that the unfair and destructive competition which Congress sought in the act to abate is instead intensified, particularly in view of the fact that the publication of their specific rates, as required by the act, makes the common carriers open targets. Ultimately, also, such conditions prove detrimental, not only to the carriers, both common and contract, but to the shippers, the public safety, and the welfare of employees."

Whether one is a common carrier or a contract carrier is a question which may result in much litigation. Construing the language of the Act, the Interstate Commerce Commission has said that

the absence of the words "for the general public" from the definition of a contract carrier, and their inclusion in the definition of a common carrier, reflect the fundamental distinction between the two.³⁷

Section 219 requires all common carriers to execute contracts covering each shipment transported. Thus it would seem that the existence of a contract is of little significance in determining the "common" or "contract" status of a carrier. The Commission has held that if any meaning is to be ascribed to the words "special and individual contracts or agreements" in the definition of a contract carrier³⁸ "they must be taken as requiring that a contract carrier be a party to a contract or agreement differing from the contract of a common carrier."³⁹ As to this contract, the Commission has said that it

must be one that has mutuality, that is, a contract whereby the shipper is obligated to furnish some definite or easily ascertainable minimum amount of freight during the term of the contract, or for a given period, and the carrier is bound to transport the freight agreed to be shipped, for the consideration specified in the contract or agreement. The rights, duties, and obligations of carrier and shipper must be well defined.⁴⁰

The following language of the Commission is significant

In determining the status of a carrier, the essential consideration is the general character of his business and of his holding out to shippers. Does he confine his services to specially selected shippers, or does he, in substance and effect, offer his services, within the limits of his capacity, to shippers generally who desire such transportation as he undertakes to furnish? The number of shippers for whom a carrier performs transportation has a bearing on this matter, as has the character of the contracts under which the service is furnished. Neither is controlling, but both are to be considered, along with other evidentiary facts, in deter-

37. Earl W. Slagle application (1937) 2 M. C. C. 127.

38. Sec. 203(a) (15).

39. Earl W. Slagle application (1937) 2 M. C. C. 127.

40. Western Transport application (1937) 2 M. C. C. 107; Contracts of Contract Carriers (1937) 1 M. C. C. 628, 632.

mining the general character of the business and nature of the undertaking.⁴¹

Some nice distinctions are required in determining whether one is a common, contract or private carrier. In one case the carrier was engaged primarily in transporting milk from farm to creamery. If this had been all he had done, he would have come within the exempted class,^{41a} but upon completion of his milk deliveries he would (if he had an order) proceed to a coal mine, purchase coal with his own funds, transport it to his customer at a price from four to five dollars per ton in excess of the cost of the coal to him and thus obtain his compensation for the haul. He performed this service for anyone upon request and at the time of the hearing had about twenty-five customers, principally farmers served on his milk route. The Commission held that "essentially he undertakes through a special arrangement to transport coal for the general public for compensation and therefore comes within the statutory definition of a common carrier."⁴²

Another carrier was engaged primarily in transporting cheese for Armour & Company. On his return trips he purchased various commodities on orders of customers, transported and sold them to his customers at a price approximating their cost to him plus the cost of transportation. It was contended that he was a private carrier transporting for sale property of which he was the owner, but the Commission held that the back haul transportation was "in reality for compensation as a common carrier."⁴³

A case of interest is that of E. A. Carroll, who entered into a contract with a wholesaler under the terms of which the contractor furnished two four-ton trucks for the wholesaler's regular service and had available a two-ton truck for the transportation of the wholesaler's shipments when required. The trucks were painted and lettered according to the wholesaler's specifications but bore small signs: "This truck owned and operated by E. A. Carroll Trucking Company." The contractor received a stated amount each week for the use of the two trucks used in regular service and a stated amount per day for the smaller

41. Earl W. Slagle application (1937) 2 M. C. C. 127.

41a. See sec. 203 (b).

42. Lyle H. Carpenter application (1937) 2 M. C. C. 85.

43. T. J. McBroom application (1937) 1 M. C. C. 425.

truck when used. The contractor furnished the drivers and the wholesaler provided helpers. The drivers were paid by the contractor and were under his control. Each morning the trucks were placed at the wholesaler's loading platform and the drivers were instructed by the wholesaler concerning the routes to be taken and what shipments were to be picked up and delivered. The Commission decided that the owner was a contract carrier, as against the contention that the wholesaler was acting as a private carrier.⁴⁴

The Act makes it the duty of the Interstate Commerce Commission to "regulate" common carriers and contract carriers.⁴⁵ The various phases of regulation of these two types of carriers, as well as the provisions applicable to private carriers, are set out in the footnote.⁴⁶ Certain types of regulation will be discussed in another part of the article.

V. EXEMPTIONS

Certain types of motor carriers are expressly exempted from the terms of the Act.⁴⁷ These exemptions are significant. The validity of certain of these exemptions has already been questioned under the Motor Carrier Act. In other instances, it is possible to predict to some extent their validity by reviewing decisions in state courts rendered under similar provisions of state statutes.

The following are the exemptions:

1. Motor vehicles employed solely in transporting school children and teachers to and from school.

44. (1937) 1 M. C. C. 788.

45. Sec. 204.

46. In the regulation of common carriers it is authorized to (1) establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express; (2) establish uniform systems of accounts, records and reports and preservation of records; (3) establish qualifications of employees; (4) establish maximum hours of service of employees; (5) provide rules of safety and operation of equipment; (6) inquire into their organization; (7) inquire into the management of their business; (8) keep itself informed as to the manner and method in which the same is conducted; and (9) transmit to Congress, from time to time, recommendations as to such additional legislation as the Commission may deem necessary.

The provisions of (2), (3), (4), and (5) are also applicable to contract carriers.

As to private carriers the Commission is authorized "if need therefor be found," to establish reasonable requirements to promote safety of operation, and to that end prescribe (1) qualifications of employees, (2) maximum hours of employees, and (3) standards of equipment.

47. Sec. 203(b).

The Supreme Court, passing upon the validity of such an exemption in a state statute, has held that the distinct public interest in this type of carrier justifies the classification.⁴⁸ The supreme courts of Idaho,⁴⁹ California,⁵⁰ and Minnesota⁵¹ have ruled to the same effect.

2. Taxicabs or other motor vehicles performing a *bona fide* taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini.

3. Motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations.

4. Motor vehicles operated under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments.

5. Motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm.

It has been held by a state court that such an exemption does not constitute an arbitrary discrimination.⁵²

6. Motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act.

7. Trolley busses operated by electrical power driven from a fixed overhead wire, furnishing local passenger transportation similar to street railway service.

8. Motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof).

The Supreme Court has held a similar exemption to be discriminatory in so far as it relieves the carrier from securing certificates of convenience and giving bond to secure the payment of any judgment for injuries resulting from operation, asserting that there is no distinction between those carriers which carry farm commodities and those which carry such other food com-

48. *Continental Baking Co. v. Woodring* (1932) 286 U. S. 352, 52 S. Ct. 595, 76 L. ed. 1155.

49. *Smallwood v. Jeter* (1926) 42 Idaho 169, 244 Pac. 149.

50. *Bacon Serv. Corp. v. Huss* (1926) 199 Cal. 21, 248 Pac. 235.

51. *State v. La Febvre* (1928) 174 Minn. 3, 219 N. W. 167.

52. *State v. King* (Me. 1936) 188 Atl. 775, 778.

modities as groceries and bakery products. There is no reason why the one should be required to give security for possible accidents and the other relieved of such obligations.⁵³

In its latest decision on the matter the Supreme Court, referring to an exemption in favor of "vehicles engaged exclusively in the transportation of agricultural or dairy products, whether the vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer," considered the fact that "many of the farm products must be brought from remote sections unaccommodated by the better system of roads * * * in some cases not even by a public road." This necessitates offering some inducement to carriers "in order to insure adequate service in the transportation of such commodities. * * * A classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment."⁵⁴

It will be noted that the Federal Motor Carrier Act exempts motor vehicles transporting agricultural commodities, etc., "not including manufactured products thereof." Construing this language the Interstate Commerce Commission has held that "one who has been engaged solely in the transportation of grain and an occasional load of coal which he purchased at the mine and transported as his own property," is not subject to the Act;⁵⁵ but if one who is exempt should, on his return trip, transport for hire property that is not exempt, he is subject to all the provisions of the Act.⁵⁶ It has also been held that milk and cream are neither processed nor manufactured and the haulers thereof are exempt, but that cottage cheese is processed and therefore not an exempted commodity.⁵⁷

9. Motor vehicles used exclusively in the distribution of newspapers.

The Supreme Court of Maine has reasoned that inasmuch as the newspaper, with its timely news, legal notices, financial reports, weather forecasts, and other essential information has no

53. *Smith v. Cahoon* (1931) 283 U. S. 553, 51 S. Ct. 582, 75 L. ed. 1264.

54. *Aero-Mayflower Transit Co. v. Georgia P. S. Co.* (1935) 295 U. S. 285, 55 S. Ct. 709, 79 L. ed. 1439.

55. *Frank Janesofsky application* (1937) 1 M. C. C. 799.

56. *State v. Whitaker* (Fla. 1937) 171 So. 521.

57. *Joseph Pohl application* (1937) 1 M. C. C. 707.

substitute, an exemption which permits its unlicensed conveyance by motor vehicles to places in many instances not served by common, nor even by contract carriers, is justified.⁵⁸

Nor (unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress) shall the provisions of the Act, other than those regulating employees and safety of equipment apply to:

10. The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any municipality or municipalities except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction.

Generally laws exempting carriers who transport wholly within municipalities have been upheld. Thus an exemption of carriers who operate wholly within any city or village, or within a radius of twenty-five miles beyond the corporate limits of such, was held valid.⁵⁹

The Federal Motor Carrier Act, of course, does not apply to purely local intrastate traffic. By this provision it is also made inapplicable to transportation between such points as St. Louis, Missouri, and East St. Louis, Illinois. Such transportation, although interstate, is between two municipalities which are contiguous and commercially one. Construing the language of the Act, "between contiguous municipalities or within a zone adjacent to and commercially a part of such municipality or municipalities," the Interstate Commerce Commission has said

The generally accepted meanings of these respective terms are that a municipality is a town, city or other similar dis-

58. *State v. King* (Me. 1936) 188 Atl. 775, 778.

59. *State v. Goeson* (N. D. 1935) 262 N. W. 70; *Hoover Motor Exp. Co. v. Fort* (Tenn. 1934) 72 S. W. (2d) 1052; *Continental Baking Co. v. Woodring* (1932) 286 U. S. 352, 52 S. Ct. 595, 76 L. ed. 1155; *State v. Le Febvre* (Minn. 1928) 219 N. W. 167.

tract having powers of local self-government and that "contiguous municipalities" are municipalities which touch or adjoin at the edge or boundary or are in close proximity to one another. * * * To be "contiguous" for the purpose of this act we are of the opinion that there must be direct communication by motor vehicle between the municipalities.

Referring to the situation at St. Louis, it has held that certain municipalities which lie across the Mississippi River from St. Louis are not contiguous "because there are no means of communication by motor vehicles between them and St. Louis except through other municipalities."⁶⁰ The Commission has held that there should be no exemption in cases where "two cities are contiguous in the sense that their boundaries join at some place but are not part of a single terminal";^{60a} that the commercial zone of a municipality cannot be found to include all of the territory within the commercial influence of a municipality; but that it includes only those areas which are "commercially a part" of the municipalities and are adjacent thereto.

Ordinarily, only that transportation which is performed over city streets may be considered intraterminal in character. However, it may be necessary frequently to pass through small areas of unimproved land, or land devoted to agriculture, in order to transport passengers and property between points within a commercial zone.⁶¹

The exemption does not apply where the transportation, although otherwise within the exemption, "is under a common control, management or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone." Thus the meaning of "common control, management or arrangement" must be considered.

The Commission has held that a carrier is not exempt even though its entire operations are performed within a municipal area, if it operates under specific contract with a line-haul carrier, as this constitutes transportation under a common arrangement for a continuous carriage or shipment to or from a point without such municipal area.⁶²

11. Nor to the casual, occasional or reciprocal transportation of passengers or property in interstate or foreign commerce for

60. St. Louis-East St. Louis Commercial Zone (1937) 1 M. C. C. 656.

60a. *Ibid.*

61. *Ibid.*

62. Scott Bros. Application, M. C. 2744 (not yet reported).

compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business.

In the deliberation in Congress, the word "reciprocal" was thus explained

If you and I are neighbors owning adjoining farms, and you go to market and bring back something for me and I pay you for it, and then six months later I go to market and bring back something for you and you pay me for it, that is a reciprocal transaction and would not come within this legislation.⁶³

VI. THE POWER TO REGULATE

The Act empowers the Commission "to regulate" common and contract carriers.

The Supreme Court of the United States has said

To regulate in the sense intended, is to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety.⁶⁴

To this we might add "and carry out the policy expressed by Congress."

In regard to regulation of railroads, the Supreme Court has said that the investigatory and supervisory powers of the Commission extend to all of the activities of carriers which could in any way affect their benefits or burden as agents of the public.⁶⁵ However, it has also been said that although the public has the power to prescribe rules for securing faithful and efficient service and equality among shippers, yet the carrier is the private property of its owner and therefore the owner has the right "generally to manage the important interests upon the same principles which are recognized as sound, and adopted in other trades and pursuits."⁶⁶ In no proper sense is the public a general manager.⁷⁰

63. (1935) 79 Cong. Rec. 12209.

64. *Dayton-Goose Creek Ry. v. United States* (1924) 263 U. S. 456, 44 S. Ct. 169, 68 L. ed. 383; *Second Employers' Liability Cases* (1911) 223 U. S. 1, 47, 32 S. Ct. 169, 56 L. ed. 327.

65-67. Omitted.

68. *Smith v. Interstate Comm. Comm.* (1917) 245 U. S. 33, 38 S. Ct. 30, 62 L. ed. 135.

69. *Cincinnati, N. O. & T. P. Ry. Co. v. Interstate Comm. Comm.* (1895) 162 U. S. 184, 16 S. Ct. 700, 40 L. ed. 935.

70. *Interstate Comm. Comm. v. Chicago, B. & Q. Ry. Co.* (1908) 209 U. S. 108, 28 S. Ct. 493, 52 L. ed. 705.

The following discussion is concerned with the various phases of regulation^{70a} to which motor carriers may be subjected by the Interstate Commerce Commission under the terms of the Act.

Continuous and Adequate Service—In furtherance of its power to regulate common (but not contract or private) carriers, the Commission is authorized to “establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express.”⁷¹

A common carrier is by law obliged to transport all goods of the kind it undertakes or assumes to transport, and which are properly offered, to the extent of its capacity; but it is not liable if its failure to furnish service is the result of sudden and great demands which it had no reason to apprehend would be made.⁷²

Accounts—It is made the duty of the Commission to establish reasonable requirements with respect to “uniform systems of accounts, records, and reports, preservation of records” for both common and contract carriers.⁷³ *Query*: Is the Commission’s authority over the accounts of interstate motor carriers exclusive, or may the states prescribe a system of accounts to record the movement of intrastate commerce of carriers who are engaged in both intra- and interstate commerce? This is a question which may lead to considerable litigation, although it is possible the states may adopt the accounting rules promulgated by the Interstate Commerce Commission.

On the one hand, it may be argued that the state alone has jurisdiction over the accounts relating to intrastate commerce, at least until Congress expressly evidences an intent to assume control of both the intra- and interstate business of carriers who are engaged in interstate commerce. This position is in harmony with the general rule that it should never be held that Congress intends to supersede state powers even where it has the power to do so unless it clearly manifests such purpose.⁷⁴

In this connection it is significant that section 20 (5) of the

70a. See note 46, supra.

71. Sec. 204(a) (1).

72. *Midland V. Ry. Co. v. Barkley* (1927) 276 U. S. 482, 48 S. Ct. 342, 72 L. ed. 664; *Pennsylvania Ry. Co. v. Puritan C. M. Co.* (1914) 237 U. S. 121, 35 S. Ct. 484, 59 L. ed. 867.

73. Sec. 204(a) (1 & 2).

74. *Illinois Central R. Co. v. Public Util. Com.* (1918) 245 U. S. 493, 38 S. Ct. 170, 62 L. ed. 425; *Gilroy v. Cuyahoga R. Co.* (1934) 292 U. S. 57, 54 S. Ct. 573, 78 L. ed. 1123.

Interstate Commerce Act, applicable to railroads, authorizes the Commission to "prescribe the forms of any and all accounts" and expressly provides that "it shall be unlawful for such carriers to keep any other accounts * * *."⁷⁵ No such prohibition appears in the Federal Motor Carrier Act, from which it might be inferred that Congress intended not to interfere with the power of the states to prescribe the accounting systems covering intrastate traffic.

On the other hand, it may be argued that to require motor carriers to keep duplicate systems of accounts, one according to the state regulations covering intrastate shipments and another according to the interstate formula covering interstate shipments, is hardly in harmony with the purpose of Congress to establish and maintain "economical and efficient service by motor carriers" in the interest of the "needs of the commerce of the United States and of the national defense," and that where intrastate commerce and interstate commerce are so interwoven that the regulation of one "involves the control of the other, it is Congress and not the state, that is entitled to prescribe the final and dominant rule."⁷⁶

In construing section 20 (5) of the Interstate Commerce Act the Supreme Court, in answer to the contention that, if upheld, the Act would enable the Commission to regulate the intra- as well as interstate business of a carrier, said that such regulations of the Interstate Commerce Commission are not regulations of intrastate commerce. The Court's rationale is that the Commission must have the information supplied by the all-inclusive uniform accounting system in order to successfully perform its duties. Otherwise, forbidden practices could be concealed. The object is to supply the Commission with information so that it may "properly regulate such matters as are really within its jurisdiction" and is "not to enable it to regulate affairs of the corporation not within its jurisdiction."⁷⁷

Qualifications of Employees—The Commission is also required to establish "qualifications" of employees of common and con-

75. (1920) 41 Stat. 493, 49 U. S. C. A. sec. 20 (5).

76. *Houston E. & W. T. R. Co. v. United States* (1914) 234 U. S. 342, 34 S. Ct. 833, 58 L. ed. 1341; *United States v. New York C. R. Co.* (1926) 272 U. S. 457, 47 S. Ct. 130, 71 L. ed. 350.

77. *Interstate Commerce Com. v. Goodrich Transit Co.* (1912) 224 U. S. 194, 32 S. Ct. 436, 56 L. ed. 729.

tract carriers, and "if need therefor is found," for private carriers and carriers otherwise exempted.⁷⁸

The power of the states to enact legislation prescribing the qualifications of employees of interstate carriers until Congress acts, and the exclusiveness of Congressional action on the same subject, is settled law.⁷⁹

Of course, Congress cannot, either directly or through the Commission, prescribe the qualifications of those employees of an interstate carrier who engage only in intrastate commerce;⁸⁰ but if an employee is engaged in the transportation of both intra- and interstate commerce he is subject to the provisions of the Federal Act, notwithstanding "that the interstate and intrastate operations * * * are so interwoven that it is utterly impracticable for them to divide their employees in such manner that the duties of those who are engaged in connection with interstate commerce shall be confined to that commerce exclusively."⁸¹

Hours of Service—The Act also makes it the duty of the Interstate Commerce Commission to regulate the "maximum hours of service of employees" of common carriers, contract carriers, motor carriers otherwise exempted by its provisions, and "if need therefor is found," private carriers as well.⁸²

It has long been the law that it is the duty of the law-making bodies to advance the safety, happiness, and prosperity of the people and to provide for their general welfare.⁸³ "The length of hours of service has direct relation to the efficiency of the human agency upon which protection to life and property necessarily depends," and it is therefore competent for Congress "to consider and endeavor to reduce the dangers incident to the strain of excessive hours of duty" on the part of employees of interstate carriers.⁸⁴

Although the states may have, by legislation, regulated the

78. Sec. 225.

79. *Nashville C. & St. L. Ry. Co. v. Alabama* (1888) 128 U. S. 96, 9 S. Ct. 28, 32 L. ed. 352; *Smith v. Alabama* (1888) 124 U. S. 465, 482, 8 S. Ct. 564, 31 L. ed. 508.

80. *Howard v. Illinois C. R. Co.* (1908) 207 U. S. 463, 28 S. Ct. 141, 52 L. ed. 297.

81. *Baltimore & O. R. Co. v. Interstate Commerce Com.* (1911) 221 U. S. 612, 31 S. Ct. 621, 55 L. ed. 878.

82. Sec. 225.

83. *State v. Miln* (1837) 11 Pet. 102, 9 L. ed. 648.

84. *Baltimore & O. R. Co. v. Interstate Commerce Com.* (1911) 221 U. S. 612, 31 S. Ct. 621, 55 L. ed. 878.

hours of service within their respective borders, such legislation does not prohibit Congress from regulating the hours of those employees engaged in interstate commerce.⁸⁵ Where there is a conflict between state and federal legislation or regulation, the state legislation must yield.⁸⁶

As was said in the preceding section, Congress cannot, either directly or indirectly through the Commission, prescribe the hours of service of those employees of an interstate carrier who engage only in intrastate commerce; but if any employee is engaged in the transportation of both intra- and interstate commerce, he is subject to the provisions of the federal Act.

Safety of Equipment—Congress has also directed the Interstate Commerce Commission to establish reasonable requirements with reference to the “safety of operation and equipment.”⁸⁷ This provision also applies to common carriers, contract carriers, the carriers otherwise exempted, and “if need therefor is found,” to private carriers as well.

It has long been settled that the law-making bodies may enact legislation affecting a carrier’s equipment, which legislation is conducive to safety or relates to a new method of affording greater protection.⁸⁸

The Interstate Commerce Commission has issued regulations governing the equipment of motor vehicles, which specify the number, character and location of head lamps, tail lamps, clearance lamps, side-marker lamps, brakes, safety glass, windshield wiper, rear-vision mirror, horn, fuel intake pipe, gasoline tank, couplers for trailers, fire extinguisher, red lantern, red flag, tire chains, flares, fuses, first-aid kit, hand axe, etc., and also provides the qualifications of drivers, the manner in and speed at which they must drive, the manner of stopping, parking, fueling, etc.⁸⁹

Management—The Commission is also authorized “to inquire

85. Second Employers’ Liability Cases (1912) 223 U. S. 1, 32 S. Ct. 169, 56 L. ed. 327.

86. Erie Ry. Co. v. New York (1914) 233 U. S. 671, 34 S. Ct. 756, 58 L. ed. 1149.

87. Sec. 204 (a) (1-3).

88. Napier v. Atlantic C. L. Ry. Co. (1926) 272 U. S. 605, 47 S. Ct. 207, 71 L. ed. 432 (automatic fire-door and cab curtains); Pennsylvania Ry. Co. v. Public Service Commission (1919) 250 U. S. 566, 40 S. Ct. 36, 63 L. ed. 1142 (caboose cars); Atlantic C. L. Ry. Co. v. Georgia (1914) 234 U. S. 280, 34 S. Ct. 829, 58 L. ed. 1312; New York, N. H., & H. Ry. Co. v. New York (1897) 165 U. S. 628, 17 S. Ct. 418, 41 L. ed. 853.

89. Motor Carrier Safety Regulations (1936) 1 M. C. C. 1.

into the organization of motor carriers * * * and into the management of their business, to keep itself informed as to the manner and method in which the same is conducted."⁹⁰ This language is almost identical with that used in section 12(1) of the Interstate Commerce Act relating to railroads.⁹¹ Construing that act the Supreme Court has held that the utility generally has the right to manage its "important interests upon the same principles which are recognized as sound, and adopted in other trades and pursuits;"⁹² that this section was enacted "in order that the Commission may know just how the business is carried on, with a view to regulating that which is confessedly within its power;"⁹³ "that the investigating and supervising powers of the Commission extend to all of the activities of carriers and to all sums expended by them which could affect in any way their benefit or burden as agents of the public;"⁹⁴ but that the Commission is in no sense a general manager.⁹⁵

VII. ISSUANCE OF THE CERTIFICATE OR PERMIT

The Federal Motor Carrier Act provides that no common carrier by motor vehicle shall engage in interstate commerce on any highway without first procuring from the Interstate Commerce Commission a certificate of public convenience and necessity;⁹⁶ nor shall any contract carrier so engage without first procuring a permit from the Commission.⁹⁷

Both of these sections contain "grandfather" clauses, *i. e.*, clauses providing that if a common carrier applicant or its predecessor in interest was in *bona fide* operation on June 1, 1935, and has operated continuously since that time,⁹⁸ except as to interruptions of service over which it or its predecessor had

90. Sec. 204 (a) (7).

91. (1887) 24 Stat. 383, 49 U. S. C. A. sec. 12(1).

92. Southern Pac. Ry. Co. v. Interstate Commerce Commission (1906) 200 U. S. 536, 26 S. Ct. 330, 50 L. ed. 585; Cincinnati, N. O. & T. P. Ry. Co. v. Interstate Commerce Commission (1896) 162 U. S. 184, 16 S. Ct. 700, 40 L. ed. 935.

93. Interstate Commerce Commission v. Goodrich Transit Co. (1912) 224 U. S. 194, 32 S. Ct. 436, 56 L. ed. 729.

94. Smith v. Interstate Commerce Commission (1917) 245 U. S. 33, 38 S. Ct. 30, 32, 62 L. ed. 135.

95. Interstate Commerce Commission v. Chicago G. W. Ry. Co. (1908) 209 U. S. 108, 28 S. Ct. 493, 52 L. ed. 705.

96. Sec. 206 (a).

97. Sec. 209 (a).

98. Henry R. Butcher application (1937) 1 M. C. C. 485.

no control,⁹⁹ the Commission shall issue such certificate without further proof that public convenience and necessity will be served by such operation; the same is true of the issuance of permits to contract carriers, except that the date is July 1, 1935. In both instances, however, the common or contract carrier lost its "grandfather" rights unless it applied for a certificate or permit within 120 days after the Act became effective.¹⁰⁰

Congress intended to provide for a rather summary disposition of applications under the "grandfather" clauses.¹ If operations were discontinued for a period of time because of lack of traffic, the applicant lost his "grandfather" rights.² Where the fact of actual operations was shown, the Commission assumed that they were *bona fide* unless the contrary was shown;³ however, where the character and scope of the applicant's operations were questioned, the allegations of the application or self-serving statements of the applicant were not alone accepted as proof, but documentary evidence, such as bills of lading, receipts or supporting testimony of witnesses familiar with the applicant's operations, were necessary,⁴ the burden being upon the applicant.⁵ But it was not necessary for the applicant to show that it actually had transported a shipment to each point involved in its application on the statutory date, if it had been and was engaged in transporting to those points before and after the statutory date. As the Commission has put it, the question was "What was the extent of the transportation business honestly and openly carried on by the carrier as of that date?"⁶ On the other hand a mere holding out, or an offer, to operate on the statutory date was held not to be the equivalent of *bona fide* operation.⁷ So, one whose actual operations were confined to the transportation of a particular commodity was not entitled to "grandfather" rights as to all commodities merely because he held himself out to carry all freight offered, such holding out not being equivalent to *bona fide* opera-

99. Benjamin Franklin application (1936) 1 M. C. C. 97.

100. Godfrey F. Wooten application (1937) 1 M. C. C. 489.

1. Earl W. Slagle application (1937) 2 M. C. C. 127; H. E. Stuck application (1937) 2 M. C. C. 459.

2. Pennsylvania Bus Company application (1937) 2 M. C. C. 278.

3. Earl W. Slagle application (1937) 2 M. C. C. 127, 142.

4. Morris B. Bernstein application (1937) 2 M. C. C. 95.

5. Old Colony Coach Lines (1937) 2 M. C. C. 205, 208.

6. George Cassens & Sons application (1937) 1 M. C. C. 771.

7. Morris S. Bernstein application (1937) 2 M. C. C. 95; Crescent Transfer Company application (1937) 2 M. C. C. 313.

ation;⁸ and where a carrier operated daily service for the transportation of certain commodities, the handling of one or two shipments a month of other commodities was not considered continuous operation as to the latter.⁹ The carriage of freight in truck loads was insufficient to support an application to transport less than truck loads.¹⁰ Nor did the fact that the applicant had operated in intrastate commerce entitle it to interstate rights under the "grandfather" clause.¹¹

The Act contains a proviso that its provisions shall not be construed to require a carrier engaged in operations solely within a state to obtain a certificate to continue transportation of interstate commerce between places within such state if the state board has granted it a certificate to do so.¹² The purpose of this proviso was to relieve such carriers of the burden of obtaining duplicate certificates.¹³

It is expressly stated that no certificate shall confer any proprietary or property rights in the use of the public highways.¹⁴ This means that all carriers must observe all valid regulations and restrictions of the states respecting the use of the highways and the granting of a certificate or permit does not relieve them of the obligation.¹⁵

All common and contract carriers who do not come under the provisions of the "grandfather" clause, must, in order to obtain a certificate or permit, prove to the satisfaction of the Commission that he or it "is fit, willing, and able properly to perform the service" proposed "and to conform to the provisions" of the Act and the requirements, rules and regulations specified thereunder.^{15a} In the case of common carriers it must further be shown that the proposed service "is or will be required by the present or future public convenience and necessity";¹⁶ in the case of contract carriers it need only be shown that the proposed

8. Great Lakes Cart. Co. application (1937) 2 M. C. C. 119; Crescent Transfer Company application (1937) 2 M. C. C. 313.

9. Old Colony Coach Lines (1937) 2 M. C. C. 205, 208.

10. S. C. Dunbar application (1937) 2 M. C. C. 577, 580.

11. J. B. Nelson application (1936) 1 M. C. C. 285.

12. Sec. 206(a).

13. Motor Carrier Insurance (1936) 1 M. C. C. 45.

14. Sec. 207.

15. Jason W. House application (1936) 1 M. C. C. 125.

15a. Sec. 209(b).

16. Sec. 207(a). Pan-American Bus Lines application (1936) 1 M. C. C. 190, 201.

service "will be consistent with the public interest and the policy declared in Section 202."¹⁷

The Commission has held that a lack of knowledge of the law or violations of the law must be considered in determining the fitness of an applicant, but such lack of knowledge or violations is not an absolute bar to the granting of a certificate or permit.¹⁸ Other matters to be considered are the applicant's experience as an operator of a public transportation service,¹⁹ and his financial ability to conduct the operations.²⁰

As has been stated—common carriers must also show that their proposed service is or will be required by the present or future public convenience and necessity. A finding to that effect by the Commission is a prerequisite to the issuance of a certificate.²¹ "Necessity" does not mean an absolute necessity; the question is whether the new operation will serve a useful public demand or need, whether the need can be supplied as well by existing carriers, and whether the proposed service will endanger the operations of existing carriers contrary to the public interest.²² The evidence must show that there is a definite need for the proposed operation, or that the service proposed is of a special character peculiarly adapted to the transportation of certain commodities and that similar service is not offered by other carriers operating between the same points.²³ Where the evidence is that the existing facilities and service of rail and other motor carriers amply provide for the public convenience and necessity a certificate will not be granted.²⁴ The burden is on the applicant

17. Sec. 209(b). Basetti & Lawson application (1936) 1 M. C. C. 187, 189; Jason W. House application (1937) 1 M. C. C. 727.

18. Garritson & Gulerr application (1937) 1 M. C. C. 751; Frank C. Dehl application (1936) 1 M. C. C. 151; A. P. Shipwash application (1937) 1 M. C. C. 710; Leatham Bros. application (1937) 2 M. C. C. 639; Harry Podolsky application (1937) 2 M. C. C. 653.

19. A. P. Shipwash application (1937) 1 M. C. C. 710; Ohio Valley Bus Co. (1936) 1 M. C. C. 39; Joseph A. O'Neal application (1936) 1 M. C. C. 71.

20. Ritz Arrow Lines (1936) 1 M. C. C. 339; Edward M. Masher application (1937) 1 M. C. C. 483; Crozier Bros. application (1936) 1 M. C. C. 301; T. J. McBroom application (1937) 1 M. C. C. 425.

21. Paul Beatty application (1936) 1 M. C. C. 141, 145; Basetti & Larson application (1936) 1 M. C. C. 187, 189; Godfrey F. Wooten application (1937) 1 M. C. C. 489.

22. Pan-American Bus Lines (1936) 1 M. C. C. 199, 202.

23. Fenton C. Whipple application (1937) 2 M. C. C. 59.

24. Albert J. Hebert application (1936) 1 M. C. C. 121; Clarence L. Davis application (1936) 1 M. C. C. 68; Ritz Arrow Lines (1937) 1 M. C. C. 839.

to prove that the existing service does not satisfy the public necessity and convenience and that that proposed will improve the condition.²⁵

Similarly, contract carriers must establish that the granting of a permit to them "will be consistent with the public interest and the policy declared" in the Act.^{25a} In the absence of evidence that the proposed operation will adversely affect other carriers, a permit will be issued.²⁶ "Consistent with the public interest" has been construed to mean "not contradictory or hostile to the public interest."^{26a}

Section 210 of the Act provides that no carrier shall at the same time hold a certificate as a common carrier and a permit as a contract carrier over the same route or within the same territory unless the Commission finds that such certificate and permit may be held consistently with the policy declared in the Act. The Commission construes this to mean that where the two services are not competitive and each is for a different class of shippers, dual operation is consistent with the policy of the Act.²⁷

VIII. CONSOLIDATION AND MERGER

Section 213 makes it unlawful (a) for two or more motor carriers to consolidate or merge their properties into one corporation for ownership, management or operation, or (b) for one or more to purchase, lease or contract to operate the properties of another, or (c) for one or more to acquire control of another through purchase of its stock, or (d) for any person to acquire control of two or more through ownership of their stock, or (e) for any person who has control of one or more to acquire control of another through ownership of its stock, or (f) for a carrier by railroad, express or water to consolidate or merge with or acquire control of any motor carrier or to contract to operate its properties, unless, after application filed and hearing thereon, the Commission shall find that to do so "will be consistent with the public interest." There is a proviso that if a carrier other than a motor carrier makes such an application the Commission shall not enter an order of approval "unless it finds that the

25. John J. Norton application (1936) 1 M. C. C. 114.

25a. Sec. 209(b).

26. Jason W. House application (1937) 1 M. C. C. 727.

26a. Scott Bros. application (1937) 2 M. C. C. 155, 164.

27. J. F. Nelson application (1936) 1 M. C. C. 285, 290.

transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use such motor carrier service to public advantage in its operations and will not unduly restrain competition."

These provisions of the Motor Carrier Act have not been construed by the Commission or the courts; but in construing similar provisions of the Interstate Commerce Act relating to railroads, it has been held that "Congress intended to permit unified operation, even if involving the elimination of competition, where this would be in the public interest."²⁸ It was further held that the burden is upon the applicant to make an affirmative showing that the terms, conditions and considerations of acquisition and control are just and reasonable.²⁹ The intention of Congress was to make possible the consolidation of carrier properties for the primary purpose of reducing the cost of operation by removing waste, from which in turn the public would profit through rate reductions and more efficient service.³⁰

In construing a provision similar to (b), above, the Supreme Court has held it to be within the power of the Commission to make a condition of its order that certain through rates be maintained in order that competition be preserved.³¹ It is the duty of the Commission to protect both the public and private interests. Thus, although it finds the acquisition will be in the public interest, it may not approve the lease unless it further finds that the consideration, terms and conditions thereof are just and reasonable.³²

Clause (c) above has been interpreted to require the Commission to consider the terms and conditions of the proposed purchase and their effect upon the ability of the carrier to serve the public.³³

In enacting the afore-mentioned proviso Congress, no doubt, had railroads in mind. In such cases the evidence must show, not only that what is proposed is consistent with the public interest,

28. *In re Valley Terminal Railroad* (1920) 65 I. C. C. 105, 109.

29. *Nickel Plate Unification* (1926) 105 I. C. C. 425, 442.

30. *State of Texas v. United States* (D. C. W. D. Mo. 1934) 6 F. Supp. 63, 65.

31. *Atlantic C. L. R. Co. v. United States* (1932) 284 U. S. 288, 52 S. Ct. 171, 76 L. ed. 278.

32. *Cleveland C. C. & St. L. Ry. v. Jackson* (C. C. A. 6, 1927) 22 F. (2d) 509.

33. *Control of Big Four by New York Central* (1922) 72 I. C. C. 96.

but that it will actively promote public interest by enabling the acquiring carrier to use motor service to public advantage in its operations.³⁴

In paragraph (e) of section 213 it is provided that where the total number of motor vehicles involved is not more than twenty, authority of the commission is not required to consolidate, merge, purchase, lease or acquire control, unless the applicant is a carrier other than a motor carrier or a person who is controlled by a railroad company. This paragraph was enacted to enable small operators to get together "without the necessity of going through a great deal of red tape with the Commission."³⁵

Paragraph (b) of the same section provides that "the carriers and any person affected by any order made under" section 213 shall be "relieved from the operation of the 'anti-trust laws'."

IX. SECURITIES, INDEBTEDNESS, AND FINANCIAL RESPONSIBILITY

Section 214 of the Act provides that common and contract carriers and those authorized to acquire control of any such, shall be subject to the security provisions of the Interstate Commerce Act, except where the par value of the securities to be issued, together with the par value of the securities then outstanding, does not exceed \$500,000. The security provisions of the Interstate Commerce Act make it unlawful to issue shares of capital stock, bonds or other evidences of indebtedness or to assume liability as lessor, lessee, guarantor, indorser, surety or otherwise, even though permitted by the authority creating the carrier, unless and until approved by the Interstate Commerce Commission.^{35a} The Commission is directed to make such authorization only if it finds that it "is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public—and which will not impair its ability to perform that service and is reasonably necessary and appropriate for such purpose."

It has been held that under these provisions the Commission has authority to determine the equity over underlying bonds, to

34. *Pennsylvania Truck Lines* (1936) 1 M. C. C. 101, 109; *Greyhound Mergers* (1936) 1 M. C. C. 342, 351.

35. (1935) 79 Cong. Rec. 5655.

35a. (1887) 41 Stat. 494, 49 U. S. C. A. sec. 20(a).

examine the cash consideration going into the same, and to pass upon the reasonableness of the items of expense deductible therefrom;³⁶ that the conservation of the credit of carriers is a matter of public interest and therefore it is proper to require that bonds issued be used only in connection with the provision of funds for keeping carrier properties in operation, meeting fixed charges, and otherwise maintaining credit;³⁷ and that a carrier should be permitted to capitalize only those assets that have been provided and are intended for continued productive use in the service of transportation and that a substantial surplus should remain uncapitalized as a support for credit and other purposes.³⁸ It has also been held that the fact that the carrier has capitalizable assets in sufficient amount to support an increase in securities, does not, of itself justify such increase, that the prospect of increased earnings and the improvement in ratio of stock to funded debt, are not to be taken as controlling factors; but that the necessity for the proposed issue must be demonstrated and the terms upon which it is to be sold must be found reasonable.³⁹

Another portion of the same section^{39a} provides that the above mentioned provisions shall not apply to notes maturing not more than two years after the date and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than five per cent of the par value of its securities then outstanding; but within ten days after the making of such notes a certificate of notification must be filed with the Commission setting forth the same matters as are required in respect of applications for authority to issue other securities. This provision is a recognition of the necessity of leaving to carriers a certain leeway to enable them to quickly and easily meet current financial exigencies.⁴⁰

The jurisdiction of the Commission over the issuance of securi-

36. *Chicago M., St. P. & P. R. Co. v. United States* (D. C. N. D. Ill. 1929) 33 F. (2d) 583, 587.

37. *Chesapeake & Ohio R. R. notes* (1931) 180 I. C. C. 699.

38. *Roscoe S. & P. R. R.* (1931) 170 I. C. C. 403, 405; *Securities of Louisville & N. R. R.* (1923) 76 I. C. C. 718, 720; *Missouri Pacific R. R. bonds* (1932) 180 I. C. C. 352, 354.

39. *Control of Erie R. R.* (1928) 138 I. C. C. 517, 530.

39a. Sec. 214(9).

40. *Bonds of Baltimore & O. R. R.* (1921) 67 I. C. C. 10; *Notes of New York C. & St. L. R. R.* (1927) 131 I. C. C. 579.

ties is exclusive and plenary and a carrier may issue securities and assume obligations, when authorized by the Commission without securing approval of any other body and without being hampered by state action or restriction.⁴¹ But any security issued or any obligation or liability assumed without the authorization of the Commission is declared by the Act to be void.^{41*} Under this paragraph qualifying shares issued to comply with state laws relating to directors, are void if not authorized by the Commission.⁴²

Section 215 of the Act provides that no certificate or permit shall be issued to a common or a contract carrier until the carrier shall comply with such reasonable rules and regulations as the Commission may prescribe governing the filing of surety bonds, policies of insurance or qualifications as a self-insurer conditioned to pay any final judgment for bodily injuries or death of any person resulting from the negligent operation of their motor vehicles and for loss and damage to property. And it provides that the Commission may also, in its discretion, require a surety bond, policy of insurance or qualifications as a self-insurer conditioned upon the making of compensation to shippers for loss or damage to freight transported. The Commission has prescribed rules and regulations on the subject specifying a minimum of \$5000 per vehicle for bodily injuries to one person and a maximum varying with the capacity of the busses, and also a minimum of \$1000 for loss of or damages to property. As to common carriers it also requires security to cover the cargo. In case of a surety company bond it is required that the surety company be one approved by the United States Treasury Department. To qualify as a self-insurer, the carrier must show its ability to satisfy obligations of the character covered by the Act, without affecting the stability or permanency of its business.⁴³ It has been held that the enactment of this section supercedes all state laws on the subject.⁴⁴

41. Sec. 214(7). See in this connection, *New York Central Sec. Corp. v. United States* (D. C. S. D. N. Y. 1931) 54 F. (2d) 122, 126.

41a. Sec. 214(11).

42. *Gulf M. & N. R. R.* (1932) 189 I. C. C. 143, 145.

43. *North Side Bus Company* (1937) 1 M. C. C. 619; *H. B. Church Truck Service Co.* (1936) 1 M. C. C. 265, 267; *Consolidated Motor Lines Inc.* (1937) 1 M. C. C. 643, 646.

44. *University Overland Exp. v. Alsop* (1937) 122 Conn. 275, 189 Atl. 458.

It is settled that legislation of this character, to protect the public against injuries through the operation of motor vehicles by common, contract and even private carriers, is valid.⁴⁵

X. RATES, PREFERENCES AND DISCRIMINATIONS

Section 216 (a) of the Act provides that every motor common carrier shall establish reasonable through routes and joint rates, fares and charges with other motor common carriers for the transportation of passengers; that in connection with such joint fares they shall establish equitable divisions thereof. It also requires them to provide safe and adequate service, equipment and facilities. It also requires them to establish just and reasonable regulations and practices relating to such joint rates and to the carriage of baggage.

Sub-paragraph (c) of the same section provides that motor common carriers may,—but are not required to—establish through routes and joint fares with common carriers by railroad or water. They may also—but are not required to—establish through routes and joint rates with one another and with carriers by railroad, express or water for the transportation of property; if such through routes and joint rates are established they are required to establish equitable divisions thereof.

The Supreme Court has held that Congress has power to authorize the Commission to require common carriers to establish through routes^{45a} but that a finding that through routes “are necessary in the public interest” is essential to the validity of such an order.^{45b}

The public is only entitled to “reasonable” service^{45c} and has no right to insist upon wasteful or expensive service.⁴⁶ It is the general duty of a common carrier to receive and carry, by suitable means, goods which it holds itself out to carry, but where

45. *Smith v. Cahoon* (1931) 283 U. S. 553, 51 S. Ct. 582, 75 L. ed. 1264; *Continental Baking Co. v. Woodring* (1932) 286 U. S. 352, 52 S. Ct. 595, 76 L. ed. 1155; *Sprout v. South Bend* (1928) 277 U. S. 163, 48 S. Ct. 502, 505, 72 L. ed. 833.

45a. *St. Louis S. W. R. R. v. United States* (1917) 245 U. S. 136, 38 S. Ct. 49, 62 L. ed. 199.

45b. *Virginian R. R. v. United States* (1926) 272 U. S. 658, 47 S. Ct. 222, 225, 70 L. ed. 242.

45c. *Alexander Sprunt & Son v. United States* (1930) 281 U. S. 249, 50 S. Ct. 315, 74 L. ed. 832.

46. *Atchison T. & S. F. R. R. v. United States* (1914) 232 U. S. 199, 34 S. Ct. 290, 58 L. ed. 568.

articles of an extraordinary character are offered it is not bound to provide facilities or equipment of a kind different from those in general use.⁴⁷

What is a reasonable rate requires the consideration of a number of elements, such as the type and amount of business,⁴⁸ the care required and risk assumed in transporting particular traffic, and the value of the service;⁴⁹ it shall not be greater than the value of the service rendered.

The Act makes it unlawful for any motor common carrier to give or cause any undue or unreasonable preference or advantage or to subject any person, locality or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage. It does not prohibit all apparent discriminations but only such as are unjust or unreasonable.⁵⁰ The prohibition is directed against undue discrimination or undue preference arising from the voluntary and wrongful act of a carrier—not such as are the result of conditions wholly beyond the control of the carrier.⁵¹ A difference in rates cannot be held illegal unless it is shown that it is not justified by a difference in the cost of the respective services, by their value, or by other transportation conditions.⁵² The Act does not require that the rates of all carriers or over all routes shall be the same.⁵³ But an advantage accorded by special agreement which affects the value of the service to the shipper or the cost to the carrier is unlawful.⁵⁴ In establishing their rates the carriers may take into considera-

47. *Chicago, R. I. & P. R. R. Co. v. Lawton Ref. Co.* (C. C. A. 8, 1918) 253 Fed. 705; *United States v. Pennsylvania R. R. Co.* (1916) 242 U. S. 208, 37 S. Ct. 95, 61 L. ed. 251.

48. *Smyth v. Ames* (1898) 169 U. S. 466, 540, 18 S. Ct. 418, 42 L. ed. 819.

49. *Northern Pacific R. R. Co. v. North Dakota* (1915) 236 U. S. 585, 35 S. Ct. 429, 59 L. ed. 735.

50. *Interstate Commerce Commission v. Baltimore & O. R. R. Co.* (1892) 145 U. S. 263, 276, 12 S. Ct. 844, 36 L. ed. 699; *Nashville, C. & St. L. R. R. Co. v. State* (1923) 262 U. S. 318, 43 S. Ct. 583, 67 L. ed. 999; *United States v. Illinois C. R. R. Co.* (1924) 263 U. S. 515, 44 S. Ct. 189, 68 L. ed. 417.

51. *Eastern Tenn. R. Co. v. Interstate Commerce Commission* (1901) 181 U. S. 1, 18, 21 S. Ct. 516, 45 L. ed. 719.

52. *United States v. Illinois C. R. R. Co.* (1924) 263 U. S. 515, 44 S. Ct. 189, 68 L. ed. 417.

53. *W. P. Brown v. Louisville & N. R. R. Co.* (1937) 299 U. S. 393, 57 S. Ct. 265, 81 L. ed. 198.

54. *Chicago & A. R. R. Co. v. Kirby* (1912) 225 U. S. 155, 165, 32 S. Ct. 648, 56 L. ed. 1033; *Chesapeake & O. R. R. v. Westinghouse* (1926) 270 U. S. 260, 46 S. Ct. 220, 70 L. ed. 576.

tion competition with other carriers;⁵⁵ but if by agreement among carriers competition is suppressed at a given point, that fact would be proper to consider in determining the question of undue discrimination;⁵⁶ they may not adjust their rates with the motive of injuring or aiding a shipper, a particular kind of traffic, or a locality.⁵⁷

The law does not attempt to equalize fortune, opportunity, abilities⁵⁸ or location.⁵⁹ Whether, in a particular instance, undue or unreasonable prejudice, preference or advantage exists, is a question of fact within the primary and original jurisdiction of the Commission;⁶⁰ no jurisdiction to pass upon such questions has been conferred upon the courts.⁶¹ Under the Interstate Commerce Act relating to railroads the Commission has power to order the removal of discrimination caused by low intrastate rates—even though state-made; but the Motor Carrier Act expressly provides that it does not empower the Commission to prescribe or regulate intrastate charges “for the purpose of removing discrimination or for any other purpose whatever.”^{61a}

XI. COMMISSION HEARINGS AND INVESTIGATIONS

The Act provides that any person, state board, organization or body politic may file a complaint with the Commission attacking any rate, fare, charge, classification, rule, regulation or practice as being in violation of the law.^{61b} When the interests of a

55. *Interstate Commerce Commission v. Chicago G. W. R. R. Co.* (1908) 209 U. S. 108, 119, 28 S. Ct. 493, 52 L. ed. 705; *Texas & P. R. R. Co. v. United States* (1933) 289 U. S. 627, 53 S. Ct. 768, 77 L. ed. 1410.

56. *Interstate Com. Com. v. Louisville & N. R. R. Co.* (1903) 190 U. S. 273, 23 S. Ct. 687, 47 L. ed. 1047.

57. *Interstate Com. Com. v. Chicago G. W. R. R. Co.* (1908) 209 U. S. 108, 28 S. Ct. 493, 52 L. ed. 705.

58. *Interstate Com. Com. v. Diffenbaugh* (1911) 222 U. S. 42, 46, 32 S. Ct. 22, 56 L. ed. 83.

59. *United States v. Baltimore & O. R. R. Co.* (1913) 231 U. S. 274, 34 S. Ct. 75, 58 L. ed. 218; *United States v. Illinois C. R. Co.* (1924) 263 U. S. 515, 44 S. Ct. 189, 68 L. ed. 417.

60. *Cincinnati N. O. & T. P. R. R. Co. v. Interstate Com. Com.* (1896) 162 U. S. 184, 16 S. Ct. 700, 40 L. ed. 935; *Interstate Com. Com. v. Alabama M. R. Co.* (1897) 168 U. S. 144, 18 S. Ct. 45, 42 L. ed. 414; *Simpson v. Shepard* (1913) 230 U. S. 352, 33 S. Ct. 729, 57 L. ed. 1511; *Manufacturers Ry. v. United States* (1918) 246 U. S. 457, 38 S. Ct. 383, 62 L. ed. 831; *Nashville C. St. L. Ry. v. State* (1923) 262 U. S. 318, 43 S. Ct. 583, 67 L. ed. 999.

61. *Pennsylvania Ry. Co. v. International C. M. Co.* (1913) 230 U. S. 184, 33 S. Ct. 893, 57 L. ed. 1446.

61a. Sec. 216(f).

61b. Sec. 304(d).

state are concerned, it, as well as a private individual, may file a complaint with the commission;⁶² as may also a voluntary association of merchants organized for their mutual benefit.⁶³ If, after hearing upon a complaint or in an investigation on its own initiative, the Commission find that any rate, fare or charge, or any classification, rule, regulation or practice is or will be unjust, discriminatory or unduly preferential it shall prescribe the lawful rate, fare or charge, or the maximum or minimum rate, fare, or charge or the lawful classification, rule, regulation or practice thereafter to be made effective and observed and may, when deemed by it to be necessary or desirable in the public interest, establish through routes and joint rates, fares, charges, regulations or practices.

The Commission is an administrative body and is not hampered by the hard and fast rules of pleading and practice which prevail in courts of law.⁶⁴

The simplest of pleadings is sufficient to invoke its action.⁶⁵ Where one applied for a permit as a contract carrier but the Commission found the service rendered by it to be a common carrier service, it granted a certificate of convenience and necessity rather than deny the application, require the filing of a new application and put him and the other parties to the expense and vexation of another hearing.⁶⁶ There is nothing in the Act to justify limiting the power of the Commission to either a grant or denial in toto of the precise relief applied for.⁶⁷

Nor is the Commission hampered by the strict and narrow rules of evidence that prevail in courts.⁶⁸ The admission of evidence which, under the rules applicable to judicial hearings, would be deemed incompetent, does not invalidate an order of

62. *United States v. New York C. R. R. Co.* (1926) 272 U. S. 457, 47 S. Ct. 130, 71 L. ed. 350; *State Highway Dept. v. Director General* (1922) 69 I. C. C. 220.

63. *California C. Ass'n v. Wells Fargo & Co.* (1921) 16 I. C. C. 458, 462.

64. *United States v. Delaware & H. R. Corp.* (App. D. C. 1931) 51 F. (2d) 429; *Akron, C. & Y. R. Co. v. United States* (D. C. W. D. N. Y. 1927) 22 F. (2d) 199, 202.

65. *Arcadia Mills v. Carolina, C. & O. R. Co.* (D. C. W. D. S. C. 1922) 293 Fed. 639.

66. *Drexel C. Tucker application* (1937) 2 M. C. C. 335.

67. *United States v. Merchants & M. T. Ass'n* (1916) 242 U. S. 178, 37 S. Ct. 24, 61 L. ed. 233.

68. *Interstate Commerce Commission v. Baird* (1904) 194 U. S. 25, 44, 24 S. Ct. 563, 48 L. ed. 860.

the Commission;⁶⁹ but the Commission cannot disregard all rules of evidence and capriciously make findings by administrative fiat.⁷⁰ All parties must be afforded a full and fair hearing, with opportunity to introduce evidence, cross examine witnesses and inspect documents offered in evidence.⁷¹ A finding without evidence is arbitrary and baseless, and orders of the Commission are void if a hearing was denied, if that granted was inadequate or manifestly unfair, if the finding was contrary to the undisputable character of the evidence or if the facts do not, as a matter of law, support the order made.⁷² Where an existing rate is attacked the burden is on the complainant to establish that it is unreasonable in fact;⁷³ this burden cannot be sustained by categorical answers, where a witness may, in terms, testify that the goods were worth so much per pound, or the services worth so much per day.⁷⁴

The Act gives the Commission power to prescribe just, reasonable and equitable divisions of through rates as between the carriers parties thereto, if, after a hearing, it is of the opinion that the existing divisions are or will be unjust, unreasonable, inequitable or prejudicial.⁷⁵ A carrier may have joined in a through rate because of the divisions accorded to it. To permit the commission to change this arrangement as to past shipments would be harsh if not unreasonable, and the Commission has been given no such power.⁷⁶ The Commission can prescribe future divisions

69. *Western P. M. C. Co. v. United States* (1926) 271 U. S. 268, 46 S. Ct. 500, 70 L. ed. 941; *Beaumont S. L. & W. R. R. Co. v. United States* (D. C. W. D. Mo. 1929) 36 F. (2d) 789, 793.

70. *Interstate Commerce Commission v. Louisville & N. R. R. Co.* (1913) 227 U. S. 88, 33 S. Ct. 185, 57 L. ed. 431.

71. *Interstate Commerce Commission v. Louisville & N. R. R. Co.*, (1913) 227 U. S. 88, 33 S. Ct. 185, 57 L. ed. 431; *Akron C. & Y. R. Co. v. United States* (D. C. W. D. N. Y. 1927) 22 F. (2d) 199; *Atchison T. & S. F. R. R. Co. v. United States* (1932) 284 U. S. 248, 52 S. Ct. 146, 76 L. ed. 1397.

72. *Interstate Commerce Commission v. Louisville & N. R. R.* (1913) 227 U. S. 88, 33 S. Ct. 185, 57 L. ed. 431.

73. *Louisville & N. R. R. Co. v. United States* (1915) 238 U. S. 1, 35 S. Ct. 697, 59 L. ed. 1177.

74. *Interstate Commerce Commission v. Union P. R. R. Co.* (1911) 222 U. S. 506, 549, 32 S. Ct. 114, 56 L. ed. 288.

75. Sec. 218(f).

76. *Brimstone R. & C. Co. v. United States* (1928) 276 U. S. 104, 48 S. Ct. 282, 72 L. ed. 487.

only upon a finding, after a full hearing, that the divisions in effect are unjust or unreasonable.⁷⁷

The question of the reasonableness of divisions, like the question of the reasonableness of rates, is one originally for the Commission—and a determination by the Commission is a prerequisite to the right to court relief.⁷⁸ In passing on the question of divisions the Commission must consider whether a particular carrier is an originating, intermediate or delivering carrier. It must also take into account the efficiency with which the several carriers are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their respective investments,⁷⁹ and the importance to the public of their respective transportation service.⁸⁰

XII. TARIFFS

Section 217 of the Act requires all motor common carriers to file with the Commission and print, and keep open to public inspection, tariffs showing all the rates, fares and charges, and all services in connection therewith, between points on its own route, and between points on its route and points on the routes of other carriers with whom through routes and joint rates have been established. Interstate transportation cannot be engaged in until tariffs covering the service have been filed.^{80a} All services to be rendered must be provided for in the tariffs. Thus if a motor carrier furnished C. O. D. service, he must provide for its rendition by a rule in the tariff.⁸¹ Posting is not a condition to making a tariff legally operative.⁸² Such tariffs, when filed, have the

77. *Beaumont S. L. & W. R. Co. v. United States* (1930) 282 U. S. 74, 51 S. Ct. 1, 75 L. ed. 221; *Baltimore & O. R. R. Co. v. United States* (1936) 298 U. S. 349, 56 S. Ct. 797, 80 L. ed. 1209.

78. *Terminal R. R. Ass'n v. United States* (1924) 366 U. S. 17, 45 S. Ct. 5, 69 L. ed. 150; *Backus-Brooks Co. v. Northern P. R. R. Co.* (C. C. A. 8, 1927) 21 F. (2d) 4, 16.

79. *United States v. Abilene & So. R. R.* (1924) 265 U. S. 274, 44 S. Ct. 565, 68 L. ed. 1016.

80. *Akron C. & Y. R. R. v. United States* (1923) 261 U. S. 184, 43 S. Ct. 270, 67 L. ed. 605.

80a. *Southern R. R. v. Reed* (1911) 222 U. S. 424, 32 S. Ct. 140, 56 L. ed. 257; *Southern R. R. v. Burlington Lbr. Co.* (1911) 225 U. S. 99, 32 S. Ct. 657, 56 L. ed. 1001.

81. *Motor Carrier Insurance* (1936) 1 M. C. C. 45, 52.

82. *Texas & P. R. R. Co. v. Cisco Oil Mills* (1906) 204 U. S. 449, 451, 27 S. Ct. 358, 51 L. ed. 562; *Kansas City S. R. R. v. Albers* (1911) 223 U. S. 573, 594, 32 S. Ct. 316, 56 L. ed. 556; *United States v. Miller* (1911) 223 U. S. 599, 604, 32 S. Ct. 323, 56 L. ed. 568; *Kansas City S. R. R. v. Carl* (1912) 227 U. S. 639, 33 S. Ct. 391, 57 L. ed. 683; *American Exp. Co. v. U. S. Horse S. Co.* (1917) 244 U. S. 58, 63, 37 S. Ct. 595, 61 L. ed. 990.

force and effect of a statute and as such are binding upon shipper and carrier alike.⁸³ Their provisions may not be avoided, enlarged or varied by contract.⁸⁴

All shippers are conclusively presumed to have knowledge of the provisions of the tariffs.⁸⁵ Therefore neither the intentioned nor accidental misstatement or misquotation of the applicable published rate will bind the carrier or shipper.⁸⁶ What construction or interpretation shall be given a tariff is a question of law.⁸⁷ In case of ambiguity they should be construed most liberally in favor of the shipper.⁸⁸ Effect is to be given, if possible, to every word, clause and sentence,⁸⁹ and in determining the meaning of a part, resort may be had to other parts in order that the whole may stand.⁹⁰ The language must be construed fairly and reason-

83. *Penn. R. R. v. International C. M. Co.* (1902) 230 U. S. 184, 23 S. Ct. 893, 896, 57 L. ed. 1446; *Chicago R. I. & P. R. R. Co. v. O'Connor* (1913) 232 U. S. 508, 34 S. Ct. 380, 383, 58 L. ed. 703; *Pillsbury F. M. Co. v. Great N. R. R. Co.* (C. C. A. 8, 1928) 25 F. (2d) 66, 68; *Udike Grain Co. v. Chicago & N. W. R. R.* (C. C. A. 8, 1929) 35 F. (2d) 486, 487; *Union W. R. Co. v. Atchison T. & S. F. R. R.* (C. C. A. 8, 1933) 66 F. (2d) 965, 967; *Eagle C. O. Co. v. Southern R. R.* (D. C. S. D. Miss. 1931) 46 F. (2d) 1006, 1008; *Chicago I. & L. R. R. v. International M. Co.* (C. C. A. 8, 1930) 43 F. (2d) 93, 95.

84. *Armour P. Co. v. United States* (1907) 209 U. S. 56, 80, 28 S. Ct. 28, 52 L. ed. 681; *Central R. R. Co. v. U. S. Pl. Co.* (C. C. A. 3, 1924) 1 F. (2d) 866, 868; *Dare v. New York C. R. Co.* (C. C. A. 9, 1927) 20 F. (2d) 16, 18.

85. *Chicago & A. R. R. Co. v. Kirby* (1911) 225 U. S. 155, 166, 32 S. Ct. 648, 56 L. ed. 1033; *Pittsburgh C. C. & St. L. R. R. v. Fink* (1919) 250 U. S. 577, 40 S. Ct. 27, 63 L. ed. 1151; *Kansas City S. R. v. Carl* (1912) 227 U. S. 639, 33 S. Ct. 391, 57 L. ed. 683; *Boston & Me. R. R. v. Hooker* (1913) 233 U. S. 97, 34 S. Ct. 526, 58 L. ed. 868; *Louisville & N. R. R. v. Maxwell* (1914) 237 U. S. 94, 35 S. Ct. 494, 59 L. ed. 853; *Atchison T. & S. F. R. R. v. Robinson* (1913) 233 U. S. 173, 180, 34 S. Ct. 556, 58 L. ed. 901.

86. *Illinois C. R. Co. v. Henderson* (1914) 237 U. S. 94, 35 S. Ct. 494, 59 L. ed. 853; *Kansas City S. R. v. Carl* (1912) 227 U. S. 639, 33 S. Ct. 391, 57 L. ed. 683; *Boston & Me. R. R. v. Hooker* (1913) 233 U. S. 97, 34 S. Ct. 526, 58 L. ed. 868; *Louisville & N. R. R. v. Maxwell* (1914) 237 U. S. 94, 35 S. Ct. 494, 59 L. ed. 853.

87. *Great N. R. R. v. Merchants Elev. Co.* (1921) 259 U. S. 285, 42 S. Ct. 477, 66 L. ed. 943.

88. *Lothrop v. Spokane P. S. R. R.* (D. C. D. Ore. 1926) 10 F. (2d) 225, 228; *Udike Grain Co. v. Chicago N. W. Ry.* (C. C. A. 8, 1929) 35 F. (2d) 486; *Atlantic B. Co. v. Atlantic C. L. R. R.* (D. C. S. D. Fla. 1932) 56 F. (2d) 163, 165; *Southern P. R. R. v. Lathrop* (C. C. A. 9, 1926) 15 F. (2d) 486.

89. *Pillsbury F. M. Co. v. Great N. R. R.* (C. C. A. 8, 1928) 25 F. (2d) 66, 69; *Van Dusen Harrington Co. v. Northern P. R. R.* (C. C. A. 8, 1929) 32 F. (2d) 466, 468; *Chicago G. W. R. R. v. Farmers' S. Ass'n* (C. C. A. 10, 1932) 59 F. (2d) 657, 659.

90. *Pillsbury F. M. Co. v. Great N. R. R.* (C. C. A. 8, 1928) 25 F. (2d) 66; *Udike Grain Co. v. Chicago N. W. R. R.* (C. C. A. 8, 1929) 35 F. (2d) 486.

ably in accordance with the meaning of the words used and not distorted or extended by strained construction.⁹¹ The intention of the framers is competent only in so far as it is fairly expressed in the language of the printed rates.⁹² Tariffs must not be made cunningly devised nets in which to entangle unsuspecting or inexperienced shippers.⁹³ Where conflicting rates of equally specific description are published, the shipper is entitled to the lower,⁹⁴ but where the commodity is listed in more than one tariff designation that which is more specific is applicable.⁹⁵

The Act also provides that no change shall be made in any rate, fare, charge or classification, or any rule, regulation or practice affecting such, or the value of the service thereunder until thirty days' notice of such change shall be published in a tariff filed and posted pursuant to law, unless the commission, in its discretion, for good cause shown, authorizes a shorter notice.^{95a} Rates cannot be lawfully changed without the formalities expressly enjoined by the Act.⁹⁶ The power of the Commission to shorten the length of notice will not be exercised to aid a carrier in any strategic endeavor, nor to aid shippers in any ordinary commercial exigency.⁹⁷

The Act also provides that whenever a motor common carrier files a new individual or joint rate, fare, charge or classification or any rule, regulation or practice affecting such rate, fare or charge or the value of the service to be rendered, the Commission may enter upon a hearing concerning the lawfulness thereof, and pending such hearing may suspend the operation for a designated period. A carrier is not to be denied the right to increase

91. *Union W. R. Co. v. Atchinson T. & S. F. R. R.* (C. C. A. 8, 1933) 66 F. (2d) 965, 967; *Atlantic B. Co. v. Atlantic C. L. Ry. Co.* (D. C. S. D. Fla. 1932) 56 F. (2d) 163.

92. *Great N. R. R. v. Delmar Co.* (C. C. A. 8, 1930) 43 F. (2d) 780, 782.

93. *Norfolk & S. R. R. v. Chatman* (1916) 244 U. S. 276, 37 S. Ct. 499, 61 L. ed. 1131.

94. *Commodity Rates*, 1 M. M. C. 457, 460.

95. *United States v. Gulf Ref. Co.* (1924) 268 U. S. 542, 45 S. Ct. 597, 69 L. ed. 1082; *American Ry. Exp. v. Price* (C. C. A. 5, 1932) 54 F. (2d) 67.

95a. Sec. 217(c).

96. *United States v. Standard Oil Co.* (D. C. N. D. Ill. 1907) 148 Fed. 719, 721; *American S. F. Co. v. Delaware L. & W. R. R.* (C. C. A. 3, 1913) 207 Fed. 733, 741.

97. *Acme Q. & P. R. R. v. St. Louis & S. F. R. R.* (1912) 22 I. C. C. 283; *Changes in Schedules* (1931) 176 I. C. C. 217, 221.

an unreasonably low rate merely because of the injurious consequences which would arise to shippers from a change in the rate.⁹⁸ The mere fact that a rate has been increased carries with it no presumption that it was not rightfully done.⁹⁹ The Interstate Commerce Act, applicable to railroads, specifically imposes upon the carrier the burden of justifying increased rates¹⁰⁰ and the courts hold that the burden is on them.¹ While there is no similar provision in the Motor Carrier Act, it will likely be held that the carrier also has the burden under that Act. On the other hand, where a rate is reduced, the burden is on those who oppose the reduction to show why it should not be permitted.²

In determining the reasonableness of any rate, fare or charge, good will, earning power or the certificate under which the carrier is operating are not to be considered as elements of the value of the property of the carrier, and in applying for and accepting a certificate the carrier is deemed to have assented to this provision.^{2a} The Act specifically provides³ that in prescribing just and reasonable rates for motor common carriers, the Commission shall give due consideration

to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by such carriers; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such services; and to the need of revenues sufficient to enable such carriers, under honest, economical and efficient management, to provide such service.

Since common carriers undertake to serve the general public they should be protected from contract carriers who take the cream of the traffic and thus make it difficult for common carriers to continue their broader operations.⁴

98. *McLean Lumber Co. v. United States* (D. C. S. D. Tenn. 1916) 237 Fed. 460, 470.

99. *Interstate Commerce Commission v. Chicago G. W. R. R.* (1907) 209 U. S. 108, 28 S. Ct. 493, 52 L. ed. 705.

100. Section 15(7).

1. *Anchor Coal Co. v. United States* (D. C. S. D. W. Va. 1928) 25 F. (2d) 462, 474; *Interstate Commerce Commission v. Chicago G. W. R. R. Co.* (1907) 209 U. S. 108, 28 S. Ct. 493, 52 L. ed. 705.

2. *Anchor Coal Co. v. United States* (D. C. S. D. W. Va. 1928) 25 F. (2d) 462.

2a. Sec. 216(h).

3. Sec. 216(i).

4. *Gollock application* (1936) 1 M. C. C. 161, 165.

The Act also specifically prohibits motor common carriers from charging or collecting a larger, smaller or different compensation for transportation than those specified in their tariffs, prohibits them from refunding or remitting, in any manner or by any device, directly or indirectly, any portion thereof, and prohibits them from extending any privileges or facilities except such as are specified in their tariffs.^{4*} The purpose of these provisions of the Act was to prohibit every method of dealing by which the forbidden result could be brought about.⁵ Carriers may not accept services, advertising, property or a release of claim for damages, or anything but cash in payment for their transportation charges.⁶ Nor can a carrier render any other or different service nor extend any privileges or facilities save those provided for in its tariffs.⁷ Commissions cannot be paid to a forwarder who is both consignor and consignee.⁸

When the consignee accepts a shipment he is liable for the lawful charges⁹ although he acted only as agent of the shipper and has accounted to the latter for the proceeds of the sale of the shipment.¹⁰ This is true even though the consignor has since become insolvent.¹¹

The Act also prohibits the issuance of free tickets, free passes or free transportation for passengers, except to its employees and those of other carriers, and for specified charitable pur-

4a. Sec. 217(b).

5. *New York N. H. & H. R. R. Co. v. Interstate Commerce Commission* (1905) 200 U. S. 361, 26 S. Ct. 272, 50 L. ed. 515; *Armour P. Co. v. United States* (1907) 209 U. S. 56, 72, 28 S. Ct. 428, 52 L. ed. 681.

6. *Chicago N. W. R. R. Co. v. Lindell* (1929) 281 U. S. 14, 50 S. Ct. 200, 74 L. ed. 670; *Fullerton Lbr. Co. v. Chicago M. & St. P. R. R.* (1930) 282 U. S. 520, 51 S. Ct. 227, 75 L. ed. 502; *Louisville & N. R. R. Co. v. Mottley* (1910) 219 U. S. 467, 477, 31 S. Ct. 265, 55 L. ed. 297; *Chicago I. & L. R. R. v. United States* (1910) 219 U. S. 486, 496, 31 S. Ct. 272, 55 L. ed. 305; *New York C. & H. R. R. v. Gray* (1915) 239 U. S. 583, 36 S. Ct. 176, 60 L. ed. 451.

7. *Southern R. R. v. Prescott* (1915) 240 U. S. 632, 638, 36 S. Ct. 469, 60 L. ed. 836; *Davis v. Henderson* (1924) 266 U. S. 92, 45 S. Ct. 24, 69 L. ed. 182.

8. *Lehigh V. R. R. v. United States* (1916) 243 U. S. 444, 37 S. Ct. 434, 61 L. ed. 839.

9. *Pittsburgh C. C. & St. L. R. R. v. Fink* (1919) 250 U. S. 577, 40 S. Ct. 27, 63 L. ed. 1151; *Louisville & N. R. R. v. Central I. & C. Co.* (1923) 265 U. S. 59, 44 S. Ct. 441, 68 L. ed. 900.

10. *New York C. & H. R. R. v. York & Whitney* (1920) 256 U. S. 406, 41 S. Ct. 509, 65 L. ed. 1016; *Central W. C. v. Chicago R. & P. R. R.* (C. C. A. 8, 1927) 20 F. (2d) 828.

11. *Callaway v. Atchison T. & S. F. R. R.* (C. C. A. 9, 1927) 35 F. (2d) 319.

poses.^{11a} It has been held that one riding on a vehicle at the invitation of the person in charge, was doing so contrary to law.¹²

Contract carriers must file with the Commission, publish and keep open for public inspection schedules, or, in the discretion of the Commission, copies of their contracts, containing the minimum, but not maximum charges for their services, and any rule, regulation or practice affecting such charges or the value of their services. No contract carrier shall demand, charge or collect less compensation for its service than the schedule charges; no reduction shall be made in any charge except after thirty days' notice, unless the Commission authorize a shorter notice. The Commission has power to suspend such reduced rates for a designated period, pending a hearing and determination as to the lawfulness of the proposed change.^{12a} The prescription of minimum rates is lawful as it has a definite tendency to relieve the highways¹³ and to promote and protect adequate and efficient motor carrier service in the public interest by eliminating cut-throat competition.¹⁴

XIII. BILLS OF LADING

The Act makes all motor common carriers subject to the provisions of section 20(11) of the Interstate Commerce Act,^{14a} which are: (a) Every common carrier shall issue a receipt or bill of lading for freight transported and (b) where such property is transported over connecting lines on a through bill of lading, the issuing carrier shall be liable for all loss, damage or injury to such property caused by it or any such connecting carrier; (c) no bill of lading, rule, regulation or contract of any character shall exempt any carrier from this liability; (d) any such carrier so receiving property for transportation shall be liable, whether a bill of lading has been issued or not, for the full actual loss, damage or injury caused by it or any connecting carrier, notwithstanding any limitation of liability or limitation

11a. Sec. 222(c).

12. *Illinois C. R. R. v. Messina* (1915) 240 U. S. 395, 36 S. Ct. 368, 60 L. ed. 709.

12a. Sec. 216(g).

13. *Stephenson & Binford* (1932) 287 U. S. 251, 53 S. Ct. 181, 77 L. ed. 288.

14. *Contracts of Contract Carriers* (1937) 1 M. C. C. 628.

14a. (1887) 24 Stat. 379, 49 U. S. C. A. sec. 1 & 2.

of the amount of recovery or agreement as to value in any bill of lading, contract, rule, regulation or tariff. (e) The above provisions do not apply to property concerning which the carrier shall be expressly authorized by the commission to establish rates upon a value declared in writing as the released value of the property. (f) All actions instituted against a delivering carrier shall be instituted only on a District or a State through which the carrier operates; (g) no carrier shall provide, by rule, contract, regulation or otherwise that claims shall be filed within a shorter period than nine months or that suits shall be instituted within a shorter period than two years, such a period of two years to be computed from the day when notice is given in writing by the carrier to the claimant that the claim has been disallowed.

The enactment of this law was an assertion of the power of Congress over interstate shipments, the duty to issue bills of lading, and the responsibilities thereunder which excludes state action on the subject.¹⁵ Congress has said that the initial carrier shall be deemed to have adopted the connecting carrier or carriers as its agent or agents and is liable throughout the entire movement, and the through movement is to be governed by the same rules of pleading, practice and presumption as would have applied had the shipment moved wholly between stations on the route of the initial carrier.¹⁶ The bill of lading issued by the initial carrier governs the entire transportation and fixes the obligations of all participating carriers.¹⁷ Each connecting carrier, however, is bound only to safely carry over its own line and deliver to the next connecting carrier or the consignee; its liability commences when it receives the shipment and ends when it delivers safely to the next connecting carrier or to the consignee.¹⁸

15. *Atchison T. & S. F. R. R. v. Harold* (1915) 241 U. S. 371, 36 S. Ct. 665, 60 L. ed. 1050.

16. *Atlantic C. L. R. R. v. Riverside Mills* (1911) 219 U. S. 186, 31 S. Ct. 164, 55 L. ed. 167; *Norfolk & W. R. R. v. Dixie Tob. Co.* (1912) 228 U. S. 593, 33 S. Ct. 609, 57 L. ed. 980; *Missouri K. & T. R. R. v. Ward* (1916) 244 U. S. 383, 37 S. Ct. 617, 61 L. ed. 1213; *Galveston H. & S. A. R. R. v. Wall* (1915) 241 U. S. 87, 36 S. Ct. 493, 60 L. ed. 905.

17. *Texas & P. R. R. v. Leatherwood* (1919) 250 U. S. 478, 39 S. Ct. 517, 63 L. ed. 1096; *Galveston Wh. Co. v. Galveston H. & S. A. R. R.* (1932) 285 U. S. 127, 52 S. Ct. 342, 76 L. ed. 659.

18. *Oregon-Washington R. & N. Co. v. McGinn* (1922) 258 U. S. 409, 42 S. Ct. 332, 66 L. ed. 689.

The constitutionality of this rule of liability has been upheld.¹⁹ The provisions of this act may be asserted in state as well as in federal courts.²⁰

The liability imposed by clause (d) above is limited to "any loss or damage caused by it" or any connecting carrier and plainly implies a liability for some default in the duty of a common carrier.²¹ The carrier's liability is not dependent upon the signing of a bill of lading by the shipper, as that is not essential.²² The burden of proving that the loss resulted from some cause for which the original carrier is not responsible in law, is upon the carrier.²³ Under clause (e) above, when a carrier files a tariff containing two rates based upon the value of the article shipped it is bound to apply that rate which corresponds to the valuation stated by the shipper and when a shipper presents freight and declares its value he is estopped from recovering any greater amount.²⁴

A carrier has the right to fix its charges somewhat in proportion to the value of the property and responsibility assumed.²⁵ This limitation of liability applies to actions for delay as well as actions for loss and damage.²⁶ Such limitations likewise rebound to the benefit of the connecting carriers.²⁷ It is not necessary that the tariffs be posted to give effect to the limitation of liability.²⁸ The publication of the rates and the limitation of

19. *Atlantic C. L. R. R. v. Riverside Mills* (1911) 219 U. S. 196, 31 S. Ct. 164, 55 L. ed. 167; *Galveston H. & S. A. R. R. v. Wallace* (1912) 223 U. S. 481, 32 S. Ct. 205, 56 L. ed. 516.

20. *Galveston H. & S. A. R. R. v. Wallace*, *supra*.

21. *Adams Exp. Co. v. Croninger* (1913) 226 U. S. 491, 33 S. Ct. 148, 57 L. ed. 314.

22. *American R. R. Exp. v. Lindenburg* (1923) 260 U. S. 584, 43 S. Ct. 206, 67 L. ed. 414.

23. *Galveston H. & S. A. R. R. v. Wallace* (1912) 223 U. S. 481, 32 S. Ct. 205, 56 L. ed. 516; *Chicago R. I. & P. R. R. v. Collins* (1919) 249 U. S. 186, 39 S. Ct. 189, 63 L. ed. 552.

24. *Kansas City S. R. R. v. Carl* (1913) 227 U. S. 639, 33 S. Ct. 39, 57 L. ed. 683.

25. *Adams Exp. Co. v. Croninger* (1913) 226 U. S. 491, 33 S. Ct. 148, 57 L. ed. 314; *Wells, Fargo & Co. v. Neiman-Marcus Co.* (1913) 227 U. S. 469, 33 S. Ct. 267, 57 L. ed. 600; *American Railway Exp. Co. v. Daniel* (1925) 269 U. S. 41, 46 S. Ct. 15, 70 L. ed. 154.

26. *New York P. & N. R. R. v. Peninsula P. Exch. of Md.* (1925) 240 U. S. 34, 36 S. Ct. 230, 60 L. ed. 511.

27. *Kansas City So. R. R. v. Carl* (1913) 227 U. S. 639, 33 S. Ct. 39, 57 L. ed. 683.

28. *American Exp. Co. v. U. S. H. S. Co.* (1917) 244 U. S. 58, 37 S. Ct. 595, 61 L. ed. 990.

valuation applicable thereto is notice to the shipper, his knowledge is presumed and lack of actual knowledge is no excuse.²⁹ Nor will the intentional or accidental misstatement of the provisions of the tariff by the carrier's agent bind either the carrier or the shipper.³⁰ The Commission has, by general order, authorized the establishment of released rates on various articles, such as household goods, carpets and carpeting, ores, paintings and pictures, pottery and silk.

With reference to clause (f) above, it is well settled that notice of claim must be given in accordance with the provisions of the bill of lading.³¹ Notice must be given in case of misdelivery or conversion as well as in case of loss or damage.³² A provision of a bill of lading limiting the time within which to file a claim is valid.³³ This provision of the law is not itself a limitation and in the absence of a limitation in the bill of lading the state law applies;³⁴ a provision that suit be brought within two years and a day after delivery or after a reasonable time for delivery has expired, is valid.³⁵

XIV. REPORTS

By section 222(8) it is made unlawful for any motor carrier to willfully fail or refuse to make a report to the Commission or to refuse to keep accounts in the form and manner approved by the Commission or to willfully falsify, destroy, mutilate or alter any such report or accounts, or to file any false report or account,

29. *Kansas City So. R. R. v. Carl* (1913) 227 U. S. 639, 33 S. Ct. 39, 57 L. ed. 683; *Missouri, K. & T. R. R. v. Harriman* (1913) 227 U. S. 657, 33 S. Ct. 397, 57 L. ed. 690; *Atchison T. & S. F. R. R. v. Robinson* (1914) 233 U. S. 173, 34 S. Ct. 556, 58 L. ed. 901; *American R. R. Exp. v. Daniel* (1925) 269 U. S. 41, 46 S. Ct. 15, 70 L. ed. 154.

30. *Kansas City So. R. R. v. Carl*, *supra*.

31. *Chesapeake & O. Ry. Co. v. McLaughlin* (1916) 242 U. S. 142, 37 S. Ct. 40, 61 L. ed. 207; *St. Louis I. M. & S. R. R. v. Starbird* (1917) 243 U. S. 592, 37 S. Ct. 462, 61 L. ed. 917; *Southern P. Co. v. Stewart* (1919) 248 U. S. 446, 39 S. Ct. 139, 63 L. ed. 350; *Baltimore & O. R. R. v. Leach* (1919) 249 U. S. 217, 39 S. Ct. 254, 63 L. ed. 570; *Erie R. R. v. Stuart* (1919) 250 U. S. 465, 39 S. Ct. 519, 63 L. ed. 1088; *Barrett v. Van Pelt* (1925) 268 U. S. 85, 45 S. Ct. 437, 69 L. ed. 857; *Chesapeake & O. R. R. v. Martin* (1931) 283 U. S. 209, 51 S. Ct. 453, 75 L. ed. 983.

32. *Georgia F. & A. R. R. v. Blish M. Co.* (1916) 241 U. S. 190, 36 S. Ct. 541, 60 L. ed. 948.

33. *Chesapeake & O. R. R. v. Martin* (1931) 283 U. S. 209, 51 S. Ct. 453, 75 L. ed. 983.

34. *Louisiana & W. R. R. v. Gardiner* (1927) 273 U. S. 280, 47 S. Ct. 386, 71 L. ed. 644.

35. *Leigh Ellis & Co. v. Davis* (1923) 260 U. S. 682, 43 S. Ct. 423, 67 L. ed. 460.

subject to a penalty of not less than \$100 nor more than \$5000 for each offense. An omission honestly and inadvertently made from a report should not subject the carrier to the penalties.³⁶

The Commission is authorized to require annual, periodical or special reports from all motor carriers, common and contract.^{36a} In conformity with this provision the Commission requires that within ten days after the happening of an accident the carriers file a report with the District Director of the district of the domicile of the carrier and with the Commission, and that if a death occur thereafter, occasioned by such accident, such death be also reported.

Every motor carrier is required to file with the regulating body of each state through which it operates, and also with the Interstate Commerce Commission, the designation of a person upon whom service of notices or orders may be made.

All orders of the Commission take effect within such reasonable time as the Commission shall prescribe and remain in effect for such length of time as ordered or until further order. Where the Commission makes an order but subsequently dismisses the proceeding, the dismissal operates as a rescission of the order.³⁷ The Commission cannot make its orders retroactive, and where no future date was prescribed the order is inoperative and ineffective.³⁸

All motor carriers are also required to file with the regulatory body of each State through which it operates, a designation of an agent upon whom process can be served issuing out of any court having jurisdiction of the subject matter of any proceeding at law or in equity brought against such carrier.³⁹

XV. CRIMINAL SANCTIONS

Any person knowingly and willfully violating any provision of the Act, or any rule, regulation, requirement or order issued

36. *Oregon W. R. & N. Co. v. United States* (C. C. A. 9, 1915) 222 Fed. 887, 889; *Northern P. R. Co. v. United States* (C. C. A. 8, 1919) 213 Fed. 162, 167; *United States v. Northern P. R. R.* (1916) 242 U. S. 190, 37 S. Ct. 22, 61 L. ed. 240; *Elgin J. & E. R. R. v. United States* (C. C. A. 7, 1915) 227 Fed. 411, 413.

36a. Sec. 220.

37. *Minneapolis & St. L. R. R. v. Peoria & P. U. R. R.* (1926) 270 U. S. 580, 46 S. Ct. 402, 70 L. ed. 743.

38. *United States v. Baltimore & O. R. R.* (1931) 284 U. S. 195, 52 S. Ct. 109, 76 L. ed. 243.

39. Sec. 221(c).

thereunder, or any term or condition of any certificate, permit or license shall upon conviction be fined not more than \$100 for the first offense and not more than \$500 for any subsequent offense.^{39a} Each day of such violation constitutes a separate offense. Willfulness is an indispensable element.⁴⁰ A corporation is not chargeable with knowledge of facts which became known to its agent, unless the agent in the line of his duty ought or would reasonably be expected to communicate the knowledge to his principal.⁴¹

If any motor carrier operates in violation of the provisions of the Act or any rule, regulation, requirement or order issued thereunder, or of any term or condition of its certificate or permit, the Commission or its duly authorized agent may apply to the United States District Court of any district through which such carrier operates for the enforcement of the law, rule, regulation, etc., and the court may enforce obedience by injunction or other process, mandatory or otherwise, restraining further violation and commanding obedience.⁴²

Any carrier, shipper or consignee who shall knowingly offer, grant or give, solicit, accept or receive any rebate, concession or discrimination prohibited by the Act, or who by means of any false statement or representation, or by the use of any false or fictitious instrument or by any other means or advice, shall knowingly and willfully assist, suffer or permit anyone to obtain transportation for less than the applicable rate or seek to evade or defeat any provision of the Act, is guilty of a misdemeanor and subject to a fine of not more than \$500 for the first offense and not more than \$2000 for any subsequent offense.⁴³ An offer of a rebate, concession or discrimination is a violation of the Act⁴⁴ as well as the giving or receiving of such.⁴⁵ It is unlawful for a carrier to pay a shipper a commission as an inducement to

39a. Sec. 222(a).

40. *Laser Grain Co. v. United States* (C. C. A. 8, 1918) 250 Fed. 826, 830.

41. *Elgin J. & E. R. R. v. United States* (C. C. A. 7, 1918) 253 Fed. 907, 912.

42. Sec. 222(b).

43. Sec. 222(c).

44. *United States v. Lehigh Valley Ry. Co.* (D. C. S. D. N. Y. 1918) 254 Fed. 332, 334; *United States v. Lehigh V. Ry. Co.* (D. C. M. D. Pa. 1930) 43 F. (2d) 135, 140.

45. *New York C. R. R. v. United States* (1909) 212 U. S. 500, 505, 29 S. Ct. 309, 53 L. ed. 624.

ship his freight over its route;⁴⁶ to knowingly declare an undervaluation so as to get the benefit of a lower rate;⁴⁷ to lease to a shipper at an inadequate rental to induce him to ship over the carrier's route violates the statute;⁴⁸ to give one a greater length of time than another for the payment of freight charges;⁴⁹ and to disclose to any person other than the shipper or consignee of the particular shipment, any information concerning the nature, kind, quantity, destination, consignee, or routing of any shipment, which information may be used to the detriment or prejudice of the shipper or consignee or which may improperly disclose his business transactions to a competitor. It is likewise made unlawful for anyone to knowingly receive any such information.⁵⁰

No motor common carrier shall deliver freight at destination until all charges have been paid, except under such rules and regulations as the Commission may prescribe.^{50a} The Commission has ordered that after assuring themselves that the charges will be paid within the credit period, the carriers may extend credit for seven days, excluding Sundays and legal holidays other than Saturday half-holidays.⁵¹ A carrier has the option to demand its charges in advance or on delivery⁵² or within the extended period.

The Commission is also authorized to require the display, by motor carriers, of suitable identification plate or plates on each vehicle.^{52a} The Commission has prescribed that an identification plate, to be issued by it, shall be carried without obstruction on the rear of each motor vehicle.

46. *United States v. Milwaukee Ref. T. Co.* (C. C. E. D. Wis. 1906) 145 Fed. 1007; *United States v. Delaware L. & W. R. R.* (C. C. S. D. N. Y. 1907) 152 Fed. 269; *Lehigh V. R. R. v. United States* (1917) 243 U. S. 444, 37 S. Ct. 434, 61 L. ed. 839.

47. *Missouri K. & T. R. R. v. Harriman* (1913) 227 U. S. 657, 671, 33 S. Ct. 397, 57 L. ed. 690.

48. *Central of Ga. R. R. v. Blount* (C. C. A. 5, 1917) 238 Fed. 292; *Cleveland C. C. & St. L. R. R. v. Hirsch* (C. C. A. 6, 1913) 204 Fed. 849, 853.

49. *Hocking V. R. R. v. United States* (C. C. A. 6, 1914) 210 Fed. 735, 740.

50. Sec. 222(e).

50a. Sec. 223.

51. (1937) 2 M. C. C. 365.

52. *Wadley S. R. R. v. Georgia* (1915) 235 U. S. 651, 35 S. Ct. 214, 59 L. ed. 405; *Louisville & N. R. R. v. Central I. & C. Co.* (1924) 265 U. S. 59, 44 S. Ct. 441, 68 L. ed. 900.

52a. Sec. 224.

The Commission is vested with the power to investigate and report on the need of federal regulation of the sizes and weight of motor vehicles.^{52b} The Act does not provide that the Commission shall determine what sizes and weights of motor vehicles should be permitted to engage in interstate commerce⁵³ and until the Commission reports to Congress and the latter enacts legislation on the subject, the states may prescribe reasonable regulations limiting the size and weight on their respective highways.⁵⁴

By Section 233 of the criminal code it is provided that the Interstate Commerce Commission shall formulate regulations for the safe interstate transportation of explosives and other dangerous articles, including inflammable liquids, etc., and it is made unlawful to carry any such except in accordance with the regulations of the Commission. Motor common carriers are subject to these provisions.⁵⁵

52b. Sec. 225.

53. *L. & L. Frt. Lines v. Railroad Comm.* (D. C. S. D. Fla., 1936) 17 F. Supp. 13.

54. *Barnwell v. South Carolina* (D. C. E. D. S. C., 1937) 17 F. Supp. 803, 813.

55. *Motor Bus & Truck Operation* (1928) 140 I. C. C. 685.