

**THE FEDERAL COURTS
AND THE ORDERS OF THE
INTERSTATE COMMERCE
COMMISSION**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649582075

The Federal Courts and the Orders of the Interstate Commerce Commission by H. T. Newcomb

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

H. T. NEWCOMB

**THE FEDERAL COURTS
AND THE ORDERS OF THE
INTERSTATE COMMERCE
COMMISSION**

123

16

E. L. Thompson

ct

THE FEDERAL COURTS
AND THE
ORDERS
OF THE
Interstate Commerce Commission.

By H. T. NEWCOMB,

Of the Bar of the District of Columbia.
Author of "Railway Economics," "The Postal Deficit,"
"Some Consequences of the Trust Movement," "A Study in
Municipal Socialism," "Some Recent Phases of the Labor Problem."
"The Work of the Interstate Commerce Commission," "Who Own the Railroads,"
"The Regulation of Interstate Railways," etc., etc.

"My own judgment is that the Interstate Commerce Commission, notwithstanding my great respect for that body—a respect which I share with many lawyers and nearly all the judges of this country—has failed in its part of the administrative work of putting into execution the Interstate Commerce act. I think the Commission has looked at it from a wrong attitude of mind. I think it has put itself rather in the position of a court than that of an inquisitor. I think it has deserted the inquisition, which is the Commission's part of the work, and has been trying to climb upon the tribune, which is another part of the work. I think it has put on the robes, when perhaps it ought to have worn the overalls."
—JUDGE GROSSCUP, March 11, 1905.

Washington

PRESS OF GIBSON BROTHERS.
WASHINGTON, D. C.
1905.

22* Wash

5)
5)
9361
11510

N TX
538

MAY 3 1915

CONTENTS.

	PAGE.
The Federal Courts and the Orders of the Interstate Commerce Commission	5
Few Cases have gone to the Courts.....	7
Passenger Traffic Cases.....	9
Carriers' Methods.....	10
Long and Short-haul Cases.....	11
A Peculiar View.....	13
Attempts at Rate Making.....	15
Powers of the Commission.....	16
Memorandum <i>In re</i> Refusals of Federal Courts to Enforce the Orders of the Interstate Commerce Commission	21
Kentucky and Indiana Bridge Company Case.....	21
Party Rate Case.....	29
San Bernardino Case.....	34
Coxe Case.....	37
Social Circle Case.....	42
Cartage Case.....	47
Orange Rates Case.....	57
Import Rates Case.....	58
Delaware Grange Case.....	67
Nashville Coal Case	68
Chattanooga Case.....	78
Georgia Commission Cases.....	87
Troy Case.....	97
Window Shades Case.....	106
Freight Bureau Case.....	111
Summerville Hay Case.....	123
Truck Farmers' Case.....	130
Iron Rates Case.....	132
Piedmont Cases.....	138
Lagrange Case.....	142
Griffin Case.....	148

CONTENTS.

Spokane Falls Case.....	155
Cattle Raisers' Association Case.....	160
Danville Case.....	169
Savannah Naval Stores Case.....	176
Wilmington Case.....	176
Hampton Case.....	179
Orange Routing Case.....	182
Kearney Case.....	189
Hay Case.....	191
Appendix: Extracts from the Act to Regulate Commerce.....	199
First Section.....	199
Second Section.....	200
Third Section.....	200
Fourth Section.....	201
Thirteenth Section.....	202
Sixteenth Section.....	203

**THE FEDERAL COURTS AND THE ORDERS
OF THE INTERSTATE COMMERCE COM-
MISSION.**

By H. T. NEWCOMB.

The annual report of the Interstate Commerce Commission submitted to Congress in December, 1904, shows that at that time there had been received by the Commission 789 formal and 3,223 informal complaints. On October 9, 1904, the Commission had rendered 297 formal decisions, but as two or more cases were often considered and decided together, the total number of cases decided amounted to 359. Of the cases decided, 194 were decided in favor of the complainants; that is, there were 194 cases in which, if the action recommended by the Commission had been taken by the defendants, some benefit would have accrued to those who prompted the complaints. A report submitted to the United States Senate, by the Commission, on December 21, 1896 (Senate Document No. 30, Fifty-fourth Congress, Second Session), shows the action taken by the defendants in 107 instances in which the decision of the Commission was more or less favorable to the complainants. From this report it appears that in 58 of the 107 cases included, there was complete, voluntary obedience

to the Commission's order. In 11 more there was voluntary, partial obedience, while in another case the Commission reports that "some changes" were made. It is to be observed, concerning these twelve cases, that the degree of obedience was at least sufficient to prevent further action on the part of the Commission or the complainants. It appears, therefore, that in 107 cases there were only 37 in which the defendants declined substantially to comply with the Commission's recommendations.

The informal complaints considered by the Commission are settled without formal reports or orders. As the Commission has decided but 359 out of 789 formal complaints and as it has never been charged that its docket is clogged by an excessive number of undecided cases, the inference is warranted that more than half of the cases formally submitted are settled while pending. It follows that 90 per cent of the matters submitted to the Commission are settled satisfactorily to both parties without formal orders. Of the 10 per cent not settled in that way it appears that, up to the present time, in almost one-half the defendants have been justified in their refusal to make the desired changes in rates or methods by the final conclusions of the Commission. As already noted, in only 194 out of more than 4,000 cases submitted, has the Commission seen fit to order changes in rates or in methods or practices which affect or control rates. But when the Commission has

issued formal orders requiring affirmative action on the part of the railways, they have usually been obeyed. The best available record, quoted above, shows that they have been obeyed in nearly 70 per cent of the cases.

FEW CASES HAVE GONE TO THE COURTS.

When obedience to an order of the Commission is refused, that body, or any one interested, has the right to appeal to a Circuit Court of the United States, sitting in equity, for a decree requiring obedience. Up to the present date (April 10, 1905), 45 cases of this sort have gone to the courts. Eleven of these cases have either been withdrawn, or have not been actively prosecuted, or there has not yet been time for judicial action. Sixteen of them have been carried to the Supreme Court of the United States, and in no case has that body decided in favor of the enforcement of the Commission's order; in one case, only, its decree required the enforcement of a portion of the order. Of the remaining 28 cases the Commission has lost 26. Appeals are now pending from three of these cases in which the decision was adverse to the Commission, and from one in which it was adverse to the railway defendant.

Had the Interstate Commerce law from the beginning been in the form which the Commission now desires shall be substituted for the present statute, the only cases, out of the more than 4,000 which have been submitted to the