# RAILWAY TARIFFS AND THE INTERSTATE COMMERCE LAW

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Railway Tariffs and the Interstate Commerce Law by Edwin R. A. Seligman

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### **EDWIN R. A. SELIGMAN**

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AND THE

## INTERSTATE COMMERCE LAW

BY

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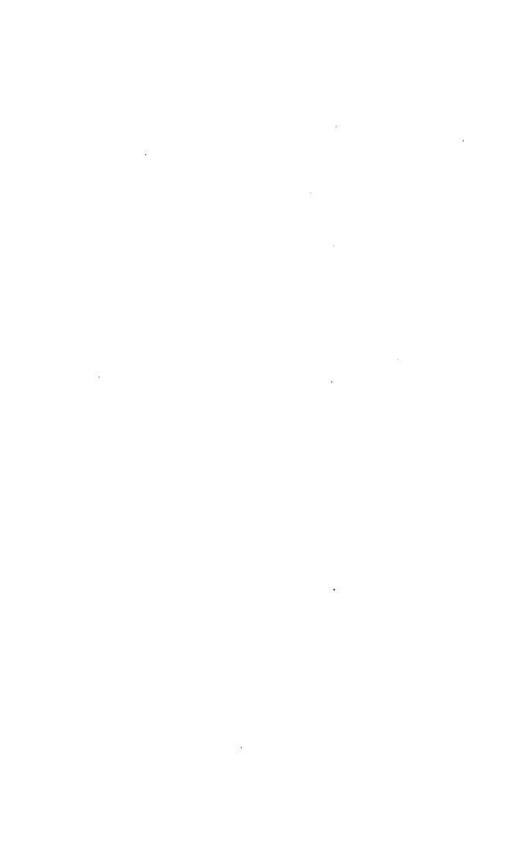
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## RAILWAY TARIFFS AND THE INTERSTATE COMMERCE LAW.

WHEN Solomon de Cause first advanced the idea of employing steam as a propelling power, in 1615, he was shut up in the mad-house as a hopeless maniac. Two centuries later, in 1812, when Colonel Stevens of Hoboken proposed to build a steam railway at far less cost than the projected Erie canal, he was regarded as absurdly visionary and somewhat demented. And yet to-day, within the short span of a human life, we have the vast network of over three hundred thousand miles of iron roads covering the civilized world. It is the central factor of recent economic development. Little wonder, then, that the weighty problems of railway management in its relations to the owners, the employees, and the public, should engross the earnest attention of legislators and publicists throughout the world.

The Interstate Commerce law of 1887 is the first serious attempt at governmental regulation for the whole of the United States. It may be well, therefore, to discuss the provisions of the act in the light of general principles. We shall confine ourselves primarily to a consideration of the railway tariffs, and attempt to ascertain the underlying doctrines and their limitations.

Railway tariffs may be regarded from two essentially different standpoints,—the private and the public. In so far as a railway is a business corporation, it is a private matter. It may fix its prices in accordance with general business principles. It will endeavor to subserve primarily the interests of its owners. It will strive for the greatest possible profits. Its course is legitimate and praiseworthy. But in so far as the railway forms our public highway, it is a public matter. The objective point now is the general welfare, the interests of the community. It

aims not at the greatest possible profits, but at the greatest possible benefits. It looks not at the interests of its owners, but at the interests of the public. The one point of view is individual, the other is social. The modern railway corporation shares both these characteristics. Its nature is hybrid. To subordinate the public to the private element is plainly inadmissible. To entirely engulf the private in the public element is equally unfair, as long as the railway is not owned by the state. Given the private corporation, the question is: How shall the two elements be reconciled? It is the problem of railway legislation and corporate regulation.

The inequality of railroad charges forms the pith of the complaints usually made. It is the crucial point of corporate management. On the one hand we have the anti-monopolists, who liken the common carriers to the feudal barons of old, using the mediaval weapons of unjust privilege and ill-gotten power to carry out their ends of rapacity and favoritism. On the other side we have the railway managers, who exultingly exclaim, in so far as charges are concerned: All that is, is just. Where now is the truth of the matter?

The principle commonly advanced by the antagonists of the railways, as well as by the would-be reformers, is that of cost of service. Charges should be regulated in accordance with the cost of the particular transaction to the company. This is certainly not the actual method. Is it the correct method? Let us see.

Railway expenses are divided into two great classes,—fixed charges and operating expenses. By fixed charges is simply meant the interest account, the sum necessary to meet the periodically recurring interest on the mortgage debt.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> In Europe, not only the interest on the funded debt, but also the dividends on the capital stock are sometimes included in the "fixed charges." This is manifestly fallacious, as it is not legitimate to class as expenses what are really profits. Rates are nowhere determined by the prospective profits, but vice versa. Cf. Nördling, Die Selbstkosten des Eisenbahntransports und die Wasserstrassenfrage, (Vienna, 1885,) S. 206-210. The matter is, however, of less importance from the fact that with us railways are generally constructed on the proceeds of the mortgage bonds, not of the capital stock, as in Europe. The interest, hence, far exceeds the dividends. In 1885,