

**THE NEW
INTERSTATE
COMMERCE LAW**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649330980

The New Interstate Commerce Law 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 NEW
INTERSTATE
COMMERCE LAW**

15-p

THE NEW INTERSTATE COMMERCE LAW

By

^{Harry}
H. T. NEWCOMB

Of the Bar of the District of Columbia.
Author of "Railway Economics," "The Postal
Deficit," "Some Consequences of the Trust Movement,"
"Recent Phases of the Labor Problem," "Public Ownership and the
Wage-Earner," "The Federal Courts and the Orders of the
Interstate Commerce Commission," "Theory and Practice
of the Spoils System," "A Conservative Trust Policy,"
"The Facts About Railroad Rates," Etc., Etc.

*Reprinted from "The Railway Age" of July 6,
July 13 and July 20, 1906*

PRESS OF GEORGE E. HOWARD
WASHINGTON, D. C.
1906

026015-6.5.

CONTENTS

	PAGE
NEW REQUIREMENTS.....	5
Strength of the Old Law.....	6
Old Principles and Purposes Preserved.....	8
Railways Still Free to Adjust Rates to Commercial Needs....	9
A Private Business Charged With a Public Interest.....	10
This Freedom of Commerce Not Impaired.....	12
Methods of Enforcing Standards Not Changed.....	13
Distinguishable Parts of Charges Must be Reasonable.....	13
Obligation to Supply Services.....	15
Effect of Bill of Lading Clause.....	16
Carriers Engaging in Production and Trade.....	17
Commission Control of Accounts.....	18
Free Transportation of Passengers.....	21
Publishing and Filing Tariffs.....	22
Notice of Changes in Rates.....	24
Additional Dispensing Power of the Commission.....	25
Imprisonment Penalty and Forfeitures.....	25
Effect of Orders of the Commission.....	26
Penalty Attaches at Once if Order is Lawful.....	27
Judicial Interpretation Necessary.....	28
JUDICIAL REVIEW.....	29
Carriers' Obligation to Obey Orders.....	30
How Judicial Review May Be Obtained.....	32
Orders must be in Strict Compliance with the Grant of Power.	33
Constitutional Restrictions.....	38
What is Confiscation?.....	39
Sanctity of Statutory Rights.....	41
Suspension of Orders Pending Review.....	44
No Findings of Fact as Prima Facie Evidence.....	45
Value of the Commission's Views.....	47
Orders for Payment of Money.....	49

Recl. 122, B-6-30 A.V.M.

	PAGE
CONSTITUTIONALITY	49
Limitations Upon Congressional Regulation.....	51
Preferences Among Ports.....	55
Rights of Liberty and Property.....	56
Right of Trial by Jury.....	56
Are the Penalties Excessive?.....	58
Is there An Attempt To Delegate Legislative Power?	60
Field v. Clark	62
Michigan Tax Case	63
Application of Principles to the New Law	64
Commissioner Prouty Regards the New Powers as Legislative	67
If the Delegation is Invalid.....	70

The New Interstate Commerce Law

By H. T. NEWCOMB

I. NEW REQUIREMENTS.

Years of agitation and controversy, involving principles of fundamental importance to any free people, have now terminated in the enactment of a new Interstate Commerce law which has so nearly the unanimous endorsement of the Congress that in both houses but ten votes were registered against its passage. The period of controversy just terminated with such apparent harmony was fruitful of instruction and enlightenment. At its close the advocates of drastic legislation had tacitly withdrawn part of their original demands, while those once opposed to the legislative suggestions so persistently advanced had made at least equally extensive concessions. Thus, in conciliatory mood, each side finds itself better acquainted with the real principles and purposes of the other and more ready to recognize in them the pervasive spirit of patriotism by which both believe themselves to be animated. A law so sanctioned

at its passage, if consistent with the Constitution which defines and limits the law-making power and not vitiated by the discovery of unexpected and serious defects, ought long to control the reciprocal rights and obligations of the parties affected and the reasonable expectation of the people that it will be permitted to do so ought not to be denied. Whoever needlessly obtrudes any fresh source of conflict or seeks unnecessarily to modify, before it has been thoroughly tested, the regulative plan just adopted, will be guilty of a wanton attack upon the industrial stability that lies at the foundation of material prosperity and the general welfare of the American public.

STRENGTH OF THE OLD LAW.

The new statute, which was approved by the President on June 29 and will take effect in accordance with a joint resolution which he has also signed, on August 28, 1906, does not depart as far as at one time seemed possible from the scheme of regulation decided upon in the year 1887. Indeed it is most significant that the deliberations of Congress and of the several committees concerned in the new legislation so thoroughly refute the charge, commonly made and somewhat generally accepted, that the old statute has been ineffective and the Interstate Commerce Commission powerless. They dis-

close the fact that the Commission has, from the beginning, settled approximately thirty-nine out of every forty complaints presented for its consideration and that in only forty-five instances in nineteen years and out of more than four thousand formal and informal complaints, have its requirements been contested in the courts. The honored chairman of the Commission said, before the Committee on Interstate Commerce of the Senate:—

“There appears to be a disposition in some quarters to discredit the present law and belittle the result of its operations. It has been described as a crude and ill-considered measure which has made little advance toward the accomplishment of its intended purpose. I am very far from having any sympathy with that erroneous view. On the contrary, I regard the Act to regulate commerce as one of the most important and beneficent statutes ever enacted by the Congress of the United States. . . . Only when you compare the conditions which were characteristic and universal in 1887, with the conditions which generally prevail today, can you understand what great progress has been made in the conduct of these great highways of commerce. And I say that, if the men who were instrumental in procuring the passage of the Act to regulate commerce have their names connected with no other measure, they deserve to rank high in the list of constructive statesmen. And I say this for the reason, gentlemen, that I do not myself favor any radical departure from the theories and plans and purposes of the present law. And I believe that the immediate legislation needed is that which shall be

built upon the foundations so wisely laid in this law, and which is directed to correcting its defects, strengthening its weak places, and augmenting its authority.”*

OLD PRINCIPLES AND PURPOSES PRESERVED.

The view held by Mr. Knapp is clearly that which has found expression in legislation. Although it is probable that most of those whose information has been derived principally from the daily press are convinced that the new law is radically different from the old, the fact is, that its essential purposes are the same. The fundamental standards of obligation imposed upon the railways in 1887 have, during the debates in Congress and elsewhere, been subject to most rigid, critical scrutiny and the result is their re-approval and re-enactment by the Congress. In consequence their application has been extended to express companies, sleeping-car companies and pipe lines carrying oil, but they have neither been diminished nor increased. Ever since 1887 these standards have been the subject of judicial definition and those definitions, as established by the decisions of the Courts of the United States, were also closely examined, yet there is nowhere, in the new statute, a word

*Testimony of Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, May, 1905; Hearings Before the Committee on Interstate Commerce, United States Senate, Vol. IV, pp. 3292-3293.