

**THE COMMODITIES' CLAUSE: A TREATISE  
ON THE DEVELOPMENT AND  
ENACTMENT OF THE COMMODITIES'  
CLAUSE AND ITS CONSTRUCTION WHEN  
APPLIED TO INTER-STATE RAILROADS  
ENGAGED IN THE COAL INDUSTRY**

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The Commodities' Clause: A Treatise on the Development and Enactment of the Commodities' Clause and Its Construction When Applied to Inter-State Railroads Engaged in the Coal Industry by Thomas Latimer Kibler

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**THOMAS LATIMER KIBLER**

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## PREFACE.

In presenting this treatise to the public, the author wishes to acknowledge his indebtedness to the many, who, through aid in securing access to material, or suggestion, or criticism, have contributed to its preparation. He would make special mention of his obligation to Mr. Blackburn Esterline, Special Assistant to the Attorney General of the United States, for his invaluable assistance in the final work upon the manuscript. The lengthy discussions entered into developed points of view that had not occurred to the author, and the association contributed new interest and inspiration to the work. Mr. Esterline's searching criticisms and his keen insight into the broader questions of economic policy and legal propriety, have given a poise and consistency to the treatise that it must otherwise have lacked. In the initial consideration of subject matter, scope of the work, and method of approach, the author is indebted to Dr. Henry Parker Willis, at that time associated with the George Washington University and the New York Journal of Commerce, for valuable suggestion, broad-minded criticism, and a deeper conception of the function and responsibility of the investigator. Much appreciation is felt for the services rendered by Mr. Martin A. Knapp, the Presiding Judge of the United States Court of Commerce, Mr. John H. Marble, late member of the Interstate Commerce Commission, and Mr. Robert F. Broussard, United States Senator from Mississippi, for time given in conducting the public disputation in accord with the custom of the George Washington University in considering theses submitted in candidature for the Doctorate, and for their kind expressions in commendation of the work. Mention should also be made of the courtesies shown by Messrs. Edwin P. Grosvenor and George Carrol Todd, Assistants to the Attorney General of the United States; Dr. Frank Dixon, of the Bureau of Railway Economics; and Dr. Francis Walker, of the federal Bureau of Corporations. The author remembers with sincere appreciation the courteous assistance of the officials of the libraries of, Congress, the Interstate Commerce Commission, the Department of Commerce, the Geological Survey, the Department of Justice, and the Bureau of Railway Economics. He is especially indebted to Mr. L. S. Boyd, Librarian to the Interstate Commerce Commission, for his efficiency and unvarying courtesy and

patience in placing the resources of the library at the writer's disposal.

Since the completion of this work more than two years ago, a number of suits have been brought by the Department of Justice against the coal-carrying roads, several decisions have been rendered by the courts, and important investigations have been carried on, and reports made, by the Interstate Commerce Commission. This new material has received careful attention in the proper connection and has necessitated a number of changes in the original. The conclusions, however, have not been changed; on the other hand they have in many cases been materially strengthened as a result of the additional data developed by the Government and the Interstate Commerce Commission.

T. L. KIBLER.

*College Station, Texas, October 1, 1915.*

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# THE COMMODITIES' CLAUSE

## INTRODUCTION—THE PROBLEM STATED

The marvelous capitalistic growth of the last two decades in the United States, the accumulation of vast fortunes, and the many evidences of concerted action and common motive among the financial interests, have aroused a spirit of unrest and distrust of a governmental régime under which such an unequal distribution of the profits of industry could be effected. This situation is the inevitable result of our sudden and marvelous industrial development. Legislative bodies do not generally anticipate because their constituents do not: They do not enact remedial laws until they are confronted by a condition that is insistently burdensome to the public. Then the evil is rooted, and vested interests must sometimes be rudely disturbed in order to eradicate it.

One of the most serious forms of abuse has resulted from the entrance of certain transportation companies into the businesses of manufacturing, producing, buying and selling. This practice became very common among transportation companies operating in those regions where valuable mineral properties joined their lines. Such a practice could not have immediately serious results where the interests involved extended over such wide areas as to render the concerted action of carriers, looking to monopoly control, impossible. The timber interests furnish such an illustration. The reverse situation is presented in the bituminous and anthracite industries, especially the latter, owing to the restricted area of the deposits and the dependence of carriers upon this class of traffic for the larger part of their tonnage. Such a situation renders railway control of the output of mines extremely profitable, and any affiliation between carriers and adjoining coal mines invariably results to the disadvantage of mines not so related. The simple extension of special rates and services to affiliated mines has generally been sufficient to force independents out of the business. Partial railway control of coal mines thus leads to the gradual absorption of independents, and, ultimately, to a railway monopoly of the coal industry.