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THE DUAL REGULATION OF COMMERCE UNDER THE AMENDED THIRTEENTH SECTION OF THE ACT TO REGULATE COMMERCE.

The regulation of railroad rates by the various states began with railroad transportation. At the outset the railroads were granted charters by the states, and in many instances these charters prescribed maximum rates for freight or passenger transportation, or both. The general practice was to allow the board of directors to fix certain rates within their discretion, tho in many instances this discretion was made subject to a limitation upon the amount of net earnings. Some of the states enacted laws setting out maximum rates and reserving, to the state, the power to alter rates. Even tho the legislation first imposed by the states upon the railroads was not, as a general rule, burdensome or unreasonable yet it was significant of the state's right to control.

Pursuant to the authority conferred upon a committee by the United States Senate, to make a thorough investigation of railroad regulation, an elaborate report was filed and thus Congress, thru the activities of this committee, became more intimately acquainted with the development of railroad transportation, and with the exercise of the ratemaking power of the states; the result was the Act to Regulate Commerce enacted in 1887.

The fact that beyond the bounds of state control there was a vast field of unregulated activity lay the principal demand for


3Ill Laws 1849 p. 15, sec. 21, 32; Mass. Laws 1846 chapt. 191, sec. 2, 1860 chapt. 201, sec. 2; N. Y. Laws 1850 chapt. 140, sec. 33; Cal. Laws. 1850 chapt. 128, sec. 77, 1861 chapt. 533, sec. 51; Iowa Code 1873 sec. 305; Iowa Laws 1874 chapt. 68, sec. 1-5; Report of Industrial Commission 1901 vol. 9, p. 903-905, 911-915.

Federal action. Congress carefully defined the scope of its regulation, and expressly provided that it was not to extend into intrastate commerce. Thus Congress, under the dominant operation of the Constitution, entered the field of commerce in the regulation of interstate traffic, and the establishment of the Interstate Commerce Commission.

It is my intention to discuss the regulation of the transportation of persons and property, or both, by the various states and the Interstate Commerce Commission under the amended 13th section of the Act to Regulate Commerce, supra, in those instances where a discrimination has been found to result from the disparity between Federal and state rates. To promote a more thorough understanding, the subject will be divided into three parts:

1. Dual regulation of commerce prior to the Transportation Act of 1920.
2. That part of the Transportation Act of 1920 amending section 13 of the Act to Regulate Commerce.

1. Dual Regulation of Commerce Prior to the Transportation Act of 1920.

The dual regulation of commerce affords a very interesting and novel question, as well as one of the most complex in the field of transportation today. The United States Supreme Court has firmly established the principle that where the inevitable effect of the state's requirements for intrastate transportation is to create an unjust discrimination between points in the same and those in adjoining states, the intrastate rate must yield to the paramount power of the Federal government over interstate commerce to the extent that it amounts to a discrimination against such commerce. A forerunner of this principle appeared in the case of Simpson v. Shepard, styled the Minnesota Rate Cases,5 which arose prior to the Transportation Act, and involved the question as to whether or not certain intrastate rates were discriminatory. There the state of Minnesota had established rates for intrastate transportation, throughout the state, and the complaining carriers insisted that by reason of the passage of the Act to Regulate Commerce the state could no

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longer exercise the statewide authority that it had formerly enjoyed in prescribing reasonable intrastate rates, and that the scheme of rates which Minnesota had prescribed, otherwise validly established, was null and void because of their injurious effect on interstate commerce. Thus the question under discussion was presented, but was reserved because there had been no finding of unjust discrimination by the Interstate Commerce Commission. The Supreme Court, speaking thru Justice Hughes, stated:

"... and the question whether the carrier, in such a case, was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting one locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission. The dominating purpose of the statute was to secure conformity to the prescribed standards thru the examination and appreciation of the complex facts of transportation by the body created for that purpose; and, as this Court has repeatedly held, it would be destructive of the system of regulation defined by the statute if the Court, without the preliminary action of the Commission, were to undertake to pass upon the administrative questions which the statute has primarily confided to it. ... In the present case there has been no finding by the Interstate Commerce Commission of unjust discrimination violative of the Act; and no action of that body is before us for review."

It was also urged that the questions presented would permit section 3 of the Act to Regulate Commerce, prohibiting carriers from giving an undue or unreasonable preference or advantage to any locality, to apply to an unreasonable discrimination between localities in different states, as well when arising from an intrastate rate as compared with an interstate rate as when due to interstate rates exclusively. The Court ruled that even if the statute should be so construed, there should first be an investigation by the Interstate Commerce Commission as to whether or not a discrimination existed and the absence of such an investigation precluded the Court from placing any construction on that phase of section 3.

The extent of Federal control over intrastate rates, established by the United States Supreme Court, can best be understood from the discussion, by that Court, in what is known as the Shreveport Case.6

What was lacking in the Minnesota Rate Cases, supra, was

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here supplied for the Interstate Commission had found that an unjust discrimination had arisen out of the relation of interstate and intrastate rates. The case was one brought by certain railway companies seeking to set aside the order of the Interstate Commerce Commission, fixing a reasonable interstate rate and ordering the carriers to desist from charging any higher rates for the interstate haul than were charged for intrastate hauls. The validity of this order was challenged upon two grounds: (1) that Congress is impotent to control the intrastate rates of an interstate carrier, even to the extent necessary to prevent injurious discrimination to interstate traffic, and (2) that if it be assumed that Congress had this power, it had not been exercised and hence the commission exceeded the limits of the authority conferred upon it. In answer to the aforesaid objections, and in as few words as possible, the Shreveport case held that under the Commerce Clause of the Constitution, Congress had sufficient power to prevent the common instrumentalities of interstate and intrastate commerce from being used in their intrastate operation in such a manner as to injuriously affect interstate commerce; where an unjust discrimination against interstate commerce arises out of the relation of interstate to intrastate rates the power of Congress may be exerted to remove the discrimination. In correcting such discrimination Congress is not restricted to an adjustment of the interstate rates, but may prescribe a reasonable standard to which they shall conform and require the carrier to adjust the intrastate rates in such a manner as to remove the discrimination, for where there is a disparity it is for Congress and not the State to prescribe the dominant rule. It is permissible for Congress to provide for the execution of this power thru a subordinate body, such as the Interstate Commerce Commission, and this has been done by the Act to Regulate Commerce. Finally, if the Interstate Commerce Commission, in the exercise of its delegated authority, finds a discrimination resulting from an inequality in the two classes of rates, it may determine what are reasonable rates, and the carrier may not only put the interstate rates, found to be reasonable, into effect, but may remove the discrimination by bringing the intrastate rates to the same level.
The second contention was answered by the Court as follows:

"The remaining question is with regard to the scope of the power which Congress has granted to the Commission. Section 3 of the Act to Regulate Commerce provides (24 Stat. at L. 379, 380, Chapt. 104; Comp. Stat. sections 8563, 8565; 4 Fed. Stat. Anno. 2nd Ed. pp. 337, 379): 'Section 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give an undue or unreasonable preference or advantage to any particular person, firm, company, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, firm, company, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.' This language is certainly sweeping enough to embrace all the discriminations of the sort described, which is within the power of Congress to condemn. There is no exception or qualification with respect to an unreasonable discrimination against interstate traffic, produced by the relation of intrastate to interstate rates as maintained by the carrier. It is apparent from the legislative history of the act that the evil of discrimination was the principle thing aimed at, and there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. The purpose of the measure was thus emphatically stated in the elaborate report of the Senate Committee on Interstate Commerce which accompanied it: 'The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations.' (Senate Report No. 46, 49th Cong. 1st Sess. p. 215)."

Thus the Shreveport case held that the Interstate Commerce Commission, as the agent of Congress, had not only the power to determine whether or not a discrimination existed, but could remove the discrimination by providing a reasonable interstate rate and allowing the carrier to bring the intrastate rate to the one prescribed by the Commission.

The case of Illinois Central Railway Co. v. Public Utilities Commission, likewise presented a controversy over the validity, scope, and effect of an order of the Interstate Commerce Commission dealing with discriminations found to result from a disparity in interstate and intrastate rates. Here the order of the Commission was held invalid on the ground of uncertainty because the rates prescribed stated no definite field of operation. This uncertainty arose out of a failure to designate with appropriate decision the points to and from which the interstate rates

must or may be adjusted. However the same principles that have been set out in the foregoing cases were reiterated and sustained, the Court holding that Congress could and did invest the Interstate Commerce Commission with power to remove an existing discrimination against interstate commerce by directing a change in intrastate rates. Also see American Express Co. v. South Dakota.\(^6\)

It should be remembered that those principles set out in the foregoing cases were established prior to the enactment of the Transportation Act of 1920. By this Act Congress legislated on the foregoing principles and, with one exception, directly conferred upon the Interstate Commerce Commission that authority already reposed in it under the decisions of the Supreme Court. The exception was the added power to directly remove a discrimination when established in a proper proceeding before the Commission.

2. That part of the Transportation Act of 1920 amending section 13 of the Act to Regulate Commerce.

That part of the Transportation Act of 1920 (41 Stat. at L. 456) amending section 13 of the Act to Regulate Commerce (24 Stat. at L. 383, Chapt. 104; Comp. Stat. sec. 8581; 4 Fed. Stat. Anno. 2nd Ed. page 453) is, as I have stated, the application of those principles set out in the foregoing cases. This Act gives to the Interstate Commerce Commission additional power that it did not have under those decisions of the Supreme Court: mainly, under those decisions previously set out, the only power the Commission had, in fixing intrastate rates, was to condemn and enjoin the state rates from time to time until they finally reached the level which, in the judgment of the Commission, afforded no discrimination. Under the Transportation Act this power was extended, and authority was conferred upon the Commission to directly remove any discrimination in a proper proceeding before that body. Thus Congress enacted express provisions in respect to intrastate rates, regulations, and practices.

There is need to discuss only those two amendments to section 13, which, for the first time, authorized the Commission to deal directly with intrastate rates where they were unduly discriminatory against interstate commerce. However to make

more fully understood the two amendments under consideration I might add that another, and an important, feature of the Act requires the Commission to so prescribe rates as to enable the carriers as a whole, or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation. This amendment was styled section 15a (U. S. C. A. Title 49 sec. 15a). The "dovetail relation" between the amendments to section 13 and section 15a can easily be seen. If the purpose of section 15a is interfered with by a disparity in the two classes of rates, then the Commission under the amendments to section 13 is authorized to remove it by removing the disparity. Thus the authority granted by amendment styled 4 to section 13 is to be considered in the light of the affirmative duty of the Commission to fix rates, and to maintain an adequate system of national railways. As intrastate rates, and the income from them, must play an important part in maintaining such a system, the effective operation of the Act requires that intrastate rates should pay "a fair proportionate share of the cost of maintenance." If there is interference with the accomplishment of the purpose of Congress because of a disparity between intrastate rates and interstate rates, the Commission is authorized to remove it.

Under the amendments to section 13, paragraphs 3 and 4, Congress authorized the Interstate Commerce Commission to "cause the state or states interested to be notified of the proceedings," and to confer with state regulatory bodies with respect to "the relationship between rates, structures, and practices of carriers subject to the jurisdiction of such state bodies, and of the Commission," and to hold joint hearings. It was further provided that if, in any such investigation, after full hearing, the Commission finds that "any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, "the Commission shall prescribe the rate, regulation, or practice" thereafter to be observed, in such manner as, in its judg-
ment, will remove "the discrimination." The orders of the Commission are to bind the carriers, parties to the proceeding, "the law of any state or the decision or order of any state authority to the contrary notwithstanding."

There can be no doubt but that Congress intended to recognize and incorporate in legislative enactment the rule laid down in the Shreveport case, supra. This is emphatically true in the light of the presentment of the amendments to the House and to the Senate. Mr. Esch, Chairman of the Committee on Interstate and Foreign Commerce, introduced the amendments to the House, and said:

"We also provide for the enactment into law of what is properly known as the decision of the Supreme Court in the Shreveport case."

Senator Cummins of the Committee on Interstate Commerce, in the Senate, went into a more detailed discussion:

"The Committee has attempted simply to express the decisions of the Supreme Court. (Shreveport case) We have not attempted to carry the authority of Congress beyond the exact point ruled by the Supreme Court in the cases in which I refer; and the only thing we have done in the matter has been to confer upon the Interstate Commerce Commission the authority to remove the discrimination when established in a proper proceeding before that body—an authority which it does not now have . . . ."

"The Supreme Court held that Congress had not conferred upon the Interstate Commerce Commission the right to prescribe a rate in the stead of one which had been condemned; but so far as the condemnation of the rates is concerned, the power of the Interstate Commerce Commission is already ample, and it has succeeded in one way or another in removing the discriminations which have come under its notice without the statute which we now produce." 10

The preceding older sections of section 13 deal with investigation initiated by any person, firm, or corporation, or by a railroad commission, or the Interstate Commerce Commission itself. Under amendment 3 of section 13 the carriers are authorized to invoke an investigation by the Commission by bringing into issue any intrastate rates made or imposed by the authority of any state, and the Commission was authorized to confer with the interested regulatory bodies, and to hold joint hearings. 11

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In every exercise of interference by the Interstate Commerce Commission with state functions the procedure required by amendment 4, to section 13, must be followed. One of the things required is that there be a “full hearing.” If discrimination in state rates be found substantial enough to require removal, the question must then always arise whether the state rate or the interstate rate is unreasonable and should be altered. A previous establishing of interstate rate as reasonable will not settle the question because the representatives of the state, or states, interested are entitled to a “full hearing” on the question relative to reasonableness. The section (4) contemplates particular situations under conditions then existing, under a full, formal hearing, and authorized interference with state rates only where there is disclosed a present, real, and substantial discrimination, or other specific detriment, against interstate commerce. If the Commission finds a discrimination to exist, then there is one of four things to be done: (1) To make a fixed rate, (2) to make a maximum rate, (3) to make a minimum rate, and (4) to fix both a minimum and a maximum rate. The Interstate Commerce Commission is authorized to do any one of these four things in order to remove the discrimination.  


The first case to arise subsequent to the enactment of the Transportation Act, amending section 13, was that of Railroad Commission of Wisconsin v. Chicago, Burlington, and Quincy Railroad Co. The proceedings in that case grew out of what is known as the Wisconsin Passenger Fares, begun in an investigation by the Interstate Commerce Commission under paragraphs 3 and 4 of section 13 of the Interstate Commerce Act, as amended by the Transportation Act, into an alleged undue and unreasonable discrimination against interstate commerce arising out of intrastate rates in Wisconsin.

The Supreme Court ruled that Congress, in the exercise of its control over interstate commerce, could empower the Interstate Commerce Commission to remove a discrimination against interstate commerce involved in a general disparity between in-

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12 Reported in 257 U. S. 563; 63 L. Ed. 371.
terstate and intrastate passenger rates by ordering a statewide increase of intrastate rates to correspond with the interstate rates; however the action of the Commission should be directed to a substantial disparity against, and destruction of, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates, as between themselves, on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce. The "dovetail relation" of the amended section 13 to section 15a is also recognized:

"When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of 15a."

The Court made further statements in its decision which, in my opinion, are so closely related to the subject under discussion that they bear quoting:

"Theretofore the control which Congress, thru the Interstate Commerce Commission, exercised, was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers was the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered, and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States."

"Congress in its control of its interstate commerce system is seeking in the Transportation Act 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. The states are seeking to use the same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress, as the dominant controller of interstate commerce, may, therefore, restrain undue limitations of the earning power of the interstate commerce system in doing state work."

"It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to a substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce."
On the decisions of those cases previous to the Transportation Act, and under the supreme authority of Congress over interstate commerce the amendments to section 13 were held valid, and constitutional.

The state of New York attempted to annul and enjoin an order of the Interstate Commerce Commission which required the interstate railroads operating in intrastate commerce in the state of New York to increase the intrastate rates for the purpose of bringing them to the level of the interstate rates previously fixed by the Commission. The Court ruled that to allow the intrastate rates to be maintained would discriminate against interstate commerce because higher rates in the interstate commerce of the state would have to be charged to secure the income provided by section 15a, of the Interstate Commerce Act, in carrying out the declared Congressional purpose "to provide the people of the United States with adequate transportation." This was said to be an "undue, unreasonable, and unjust discrimination against interstate commerce," which is prohibited by paragraph 4 of section 13 of the Interstate Commerce Act, and which the Interstate Commerce Commission is authorized to remove by fixing intrastate rates for that purpose.\(^4\)

Although the authority of the Interstate Commerce Commission was recognized in *Arkansas Railroad Commission v. Chicago, Rock Island and Pacific Railroad Co.*,\(^5\) yet a new phase of the subject was portrayed. The ruling of the Court can best be expressed in its own language.

"The intention to interfere with the state function of regulating intrastate rates is not to be presumed. Where there is a serious doubt whether an order of the Interstate Commerce Commission extends to intrastate rates, the doubt should be resolved in favor of the state power. If, as the railroads believed, the Federal Commission intended to include the intrastate Arkansas rates, it should have taken action, thru appropriate application, to remove the doubt by securing an expression by the Commission of the intention to do so."

See also *State of Alabama v. United States.*\(^6\)

In *Board of Railroad Commissioners of North Dakota v. Great Northern Railway Company*,\(^7\) the question involved was

\(^5\) 274 U. S. 597; 71 L. Ed. 1224.
\(^6\) *279 U. S. 229—73 L. Ed. 675.*
\(^7\) *281 U. S. 412—74 L. Ed. 936.*
the necessity of a preliminary finding of unjust discrimination, under section 13, by the Interstate Commerce Commission before a ruling on the discrimination by the Court. There the carrier brought a suit in a district Federal Court to enjoin the enforcement of an order of the Railroad Commission pending determination before the Interstate Commerce Commission as to whether the intrastate rates so prescribed caused an undue or unreasonable discrimination against interstate commerce in violation of section 13 of the Interstate Commerce Act. The injunction was granted by the Federal Court, and on appeal to the Supreme Court, by the Railroad Commission, the Court unequivocally stated that the Courts will not enjoin the enforcement of an order of a state railroad commission, prescribing intrastate rates, on the ground that such rates afford an unjust discrimination until there has been a prior finding of unjust discrimination by the Federal Commission. The Court said:

"We find no basis for the conclusion that it was the purpose of Congress to interdict a state rate, otherwise lawfully established for transportation exclusively intrastate, before appropriate action by the Interstate Commerce Commission. On the contrary, Congress sought to provide a more satisfactory administrative procedure which would elicit the co-operation of the state regulatory bodies, and insure a full examination of all the questions of fact which such bodies might raise, before any finding was made in such a case as to unjust discrimination against interstate commerce or any order was entered superseding the rate authorized by the state."

"A judicial restraint of the enforcement of intrastate rates, altho, limited to the pendency of proceedings before the Interstate Commerce Commission, is none the less essentially a restraint upon the power of the state to establish rates for its internal commerce, a power the exercising of which in prescribing rates otherwise valid is not subject to interference upon the sole ground of injury to interstate commerce, save as Congress has validly provided. Congress has so provided only in the event that, after full hearing in which the state authorities may participate, the Interstate Commerce Commission finds that unjust discrimination is created. Congress forbids the unjust discrimination thru the fixing of intrastate rates, but entrusts the appropriate enforcement primarily to its administrative agency."

The case of Florida, et al v. United States, decided January 5, 1931,18 arose when the state of Florida, and others, instituted action in the district Federal Court to restrain that part of an order of the Interstate Commerce Commission which dealt with certain intrastate rates; the order required the carriers to establish rates in intrastate commerce on a level with those prescribed

18 232 U. S. 212—75 L. Ed. .........
by the Interstate Commerce Commission. The question really presented before the Court was whether the finding, supported by the evidence, of the Commission were sufficient to sustain its order. The Court held that the evidence did not support the findings, and that the order of the Commission could not be sustained for that reason. In a discussion of the amendments to section 13, it was said:

"But it is clear that the fundamental purpose of the Congress in enacting section 13, subdivisions 3 and 4, was to reach intrastate rates that were found to result in unjust discrimination against interstate commerce. It was not the fact that the rate was affirmatively prescribed by the state, but that it was maintained, by the state, as an intrastate rate, and as such was inimicable to the proper interests of interstate commerce, that led the Congress to give to the Interstate Commerce Commission express authority to take cognizance of that rate, and to prescribe the intrastate rate that should be charged thereafter to remove the discrimination. See Board of Railroad Commissioners v. Great Northern Railway Company, 281 U. S. 412. The provisions of section 13, 3 for notice to, and conference with, the authorities of the state, is important not only where the rates have been prescribed by the state, but also where they are in force with the permission of the state and, as intrastate rates, would otherwise be subject to the jurisdiction of the state."

The Court reached its conclusion in the following language:

"The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates."

"But to justify the Commission in the alteration of intrastate rates, it was not enough for the Commission merely to find that the existing intrastate rates on the particular traffic were not remunerative or reasonably compensatory. The authority to determine the reasonableness per se of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission. In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other. In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carriers' revenue, the question is that of the relation of rates to income. The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

"The question is not merely one of the absence of elaboration or of a suitable complete statement of the grounds of the Commission's determination to the importance of which this Court has recently adverted ... but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact finding body and the Court examines the evidence not to make
findings for the Commission but to ascertain whether its findings are properly supported."

"We conclude that the order of the Commission . . . is not supported by the findings . . . and must be set aside."

From the foregoing discussion, the increased power of the Interstate Commerce Commission, under the amended section 13, over interstate rates can be seen and followed. Up to the present time it is apparent that Congress has not exceeded its authority over interstate commerce in the regulation of intrastate rates. Congress has acted on the principle that the states cannot, under any guise, impose a direct burden upon interstate commerce. This is but to say that the states are not permitted directly to regulate or restrain that which, from its nature, should be under the control of one authority, and be free from restriction save as it is governed in the manner that Congress ordains.

This legislation by Congress will, no doubt, prove beneficial in lessening the number of conflicts between state and Federal control, and to secure a more uniform system of national commerce for one of the paramount purposes of the Commerce Act was to secure uniformity. However, it should be remembered that the attainment of uniformity does not require that in every case where the construction of a tariff is in dispute, there shall be a preliminary resort to the Commission; it is only in that type of case where a rate, rule, or practice is attacked as unreasonable or unjustly discriminatory that there must be a preliminary resort to the Commission.

Pursuant to the foregoing decisions of the Supreme Court, construing paragraphs 3 and 4 of section 13, it seems that it is mandatory for the Commission to hold a "full hearing" and to thoroughly investigate the rate, or rates, alleged to be discriminatory. Any change of rates by the Commission would affect a great many persons; the Commissions' action would change the price of commodities, affect transportation costs, enhance or decrease production, etc. The seriousness and demand for a careful investigation should be considered in the light of the effect any change in rates will cause. Also the Commission should carefully examine the facts, and give reasons on which its findings are concluded; this should be done in order to cause the court no unnecessary work in construing the Commission's
orders, and will leave the parties in no doubt as to any matter essential to the case.

"Complete statements by the Commission upon which its determinations rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their conclusions."3

To this end it is important that the Federal power be not exerted unnecessarily, hastily, or harshly. It is important also that the demands of comity and courtesy, as well as of the law, be deferred to. The Supreme Court has emphasized this duty in several recent cases: Florida, et al v. United States, 282 U. S. 212, 75 L. Ed. —; Lawrence v. St. Louis, San Francisco R. Co., 274 U. S. 588, 71 L. Ed. 1219; Baltimore, B. and O. R. Co. v. United States, 279 U. S. 781, 73 L. Ed. 954.

At this stage it is hard to point out the line of demarcation between the rights of the various states and the power of the Interstate Commerce Commission. However, if the Commission carries out paragraphs 3 and 4, of section 13, in the spirit in which they were enacted, and pursuant to those principles set out by the Supreme Court, there will, no doubt, be a more unified system of national railways without a serious invasion of state rights.

LOUIS COX

Frankfort, Kentucky.

3 Beaumont, S. L. and W. R. Co. v. United States, 282 U. S. 74—75 L. Ed. .........