

she will come back and make the round trip. Now, if that car starting from the East loaded with locomotives—these locomotives are not set up and hauled on the track; they are knocked down and packed in cars—goes to Puget Sound and comes back with a load, we have to take the total revenue it gets for the entire distance, you see. We know that we do not send it out there to throw it into the sea; we are going to bring it back; and you have to figure the entire load. And if we did not know before we started with that cargo of locomotives that we had a carload of lumber there to bring back as soon as the car was ready for it we could not make the rate we did.

Senator FORAKER. No; so I understand. In other words, conditions have everything to do with the fixing of a rate?

Mr. HILL. Everything to do with the fixing of a rate.

Senator FORAKER. Did they in that case?

Mr. HILL. Yes, sir.

Senator FORAKER. I understood you to say that rates in this country, generally speaking, are not high, but low?

Mr. HILL. Very.

Senator FORAKER. There may be exceptions, I suppose, to that rule?

Mr. HILL. The average rate is so much lower than it is anywhere else that it is a wonder how it is done, paying the rates that we do. Relatively, railroad transportation is the lowest thing that is furnished in the United States.

Senator FORAKER. Lower than any other commodity?

Mr. HILL. Lower than any other commodity; yes, sir.

Senator FORAKER. As to terminal charges, I understood you to say that that is another way of exacting discriminations, or whatever you may see fit to call it?

Mr. HILL. They ought to be all eliminated.

Senator FORAKER. Yes. The Cullom law, as originally passed, contained a provision in the first section about the publication of the schedules; and one requirement as to those schedules was that they should state separately the terminal charges and all rules, regulations, etc. So that on every schedule that is approved by the Interstate Commerce Commission and published, I suppose, all of these terminal charges are set forth?

Mr. HILL. I never saw a schedule where they were set forth at all.

Senator FORAKER. You never did?

Mr. HILL. No, sir.

Senator FORAKER. That has been in the law ever since the day it was passed.

Mr. HILL. But the law itself has been admirable, and the present law covers the ground with the most rigid care in every possible condition.

Senator FORAKER. Yes.

Mr. HILL. But it is one thing to have the law on the statute books and another to have it enforced.

Senator FORAKER. Well, terminal charges are thus recognized in this original statute?

Mr. HILL. Yes.

Senator FORAKER. And a way is provided for publishing them so that everybody may know whether they are fair or otherwise?

Mr. HILL. If there is a terminal charge; but, as a rule, the rate includes the terminal charge.

Senator FORAKER. I understand; but they say that the terminal charge shall be stated separately in the schedules—that is the language of the law—in the classification of freight.

Mr. HILL. Yes, sir. Now, Senator, I am glad you mentioned the classification, because there is a great deal of clamor for what is called a uniform classification; and it would be the most unfair and iniquitous thing that could be put in effect, for this reason: A cotton planter in the South does not care two straws in what classification you put cattle coming from the ranches or cattle coming from the feeding yards to the slaughterhouse. He cares for his cotton. Take the case of a lumberman, up in our locality: He is interested in a low rate for his lumber, and whether it goes in fourth class or fifth class or sixth class or class A, B, C, or D cuts no figure with him. It is the rate that you make on his lumber that affects him.

Take a farmer in Minnesota or in North Dakota: He is interested in a low rate on his wheat. He does not care what the classification is. He wants a low rate. If conditions were equal throughout the country, then you might make equal conditions in the classification; but the natural conditions vary, and the classification that would be fair in one section would be manifestly unfair in another. My contention always is that the low rate ought to be made to favor the natural products of the particular section that you are serving. If you get into a section of country where there is coal, for instance, develop your coal trade; if it is a corn country, develop your corn by making a low rate, and all the rest of the business will follow; and it will not follow if you do not.

Senator FORAKER. Under the head of "Discriminations" in this same law are mentioned "special rates, rebates, drawbacks, or other devices," which would seem to be very broad language—broad enough to cover everything that has been suggested to us.

Mr. HILL. It does cover everything, Senator.

Senator FORAKER. You think it does?

Mr. HILL. Yes, sir; but—

Senator FORAKER. So that, now, with the Elkins law following, providing that for any discrimination or any rebate or any excessive rate there shall be a summary proceeding upon complaint of the Commission in a United States court of competent jurisdiction, there would seem to be a sufficient remedy already.

Mr. HILL. Yes, sir; if it is followed up; and if it was followed up in one or two cases and the road was fined and had to pay the penalty, you would hear the last of that sort of business.

Senator FORAKER. I understand you to say, as other witnesses have, that not only is the rate reasonable, but that rebates have been practically abandoned; that they are practically a thing of the past?

Mr. HILL. They have been, I should say, since the passage of the Elkins bill. They almost faded out of sight at that time.

Senator FORAKER. Yes. And so far as elevator charges, and terminal charges, and private car charges, and refrigerator car charges are concerned, they are devices that you think are covered by this law, so that if they are to be broken up we have the law already on the statute books with which to do it?

Mr. HILL. You have the law. All you have to do is to put the law in motion.

Senator FORAKER. Then, except only to exempt foreign commerce from the application of the interstate-commerce act, there is not much for us to legislate about?

Mr. HILL. There is not anything, sir, as far as I am concerned. Now, when I said that, about eliminating foreign commerce, I was not speaking from our own premises.

Senator FORAKER. No; I understand that.

Mr. HILL. Because we will get along anyway, no matter what may be done.

Senator FORAKER. You have shown an ability and a willingness to "go it alone" somehow.

Mr. HILL. Yes, sir; we will get along anyway, but we can do better. The plainer the road is made the better it is for everyone. Nobody has a patent for doing well—everybody can do equally well if the conditions are equal.

Senator FORAKER. But it is your judgment that it is utterly impossible for us to be successful in building up a foreign commerce as long as you are handicapped in making through rates?

Mr. HILL. You might just as well, Senator, pass a statute to make the toothache a crime or to attempt to set a broken limb by statute.

Senator FORAKER. I came very near getting ruled out of the Senate and out of the Republican party for introducing a bill to do this very thing about a year ago.

Mr. HILL. I remember that. I saw the bill when it was introduced, and I thought you had courage. I knew, absolutely knew, at the time that that was a sound, sensible movement, but we were at the time on trial for conspiracy.

Senator FORAKER. And you did not dare even write a letter approving of that?

Mr. HILL. No; I did not.

Senator FORAKER. Well, we had a Presidential campaign coming on, and I did not think that was an opportune moment for me to get in any controversy about it.

Mr. HILL. It was not worth while.

Senator FORAKER. But I have not abandoned the opinion on which I based my action, that that kind of legislation would be very beneficial to the commercial interests of this country, and I hope, when I can revive my courage sufficiently, to try it again.

Mr. HILL. Your opinion was entirely right. Sometimes I think that we have dashed ourselves into a feeling or a fever that is epidemic. Perhaps it is like the "pink eye," or the grip, and it will have to have its run and run out. But there is not any possible question as to where it will land in the end; and the more obstructions and difficulties that are put in the way of doing this business the more you will obstruct the business of the country and prevent the reduction of rates—the very thing that you want to bring about.

Senator NEWLANDS. May I ask one question on that point you have just discussed before Mr. Hill leaves it? Mr. Hill, regarding this question of exports, is there not also a converse to that proposition? As I understand it, you contend for the ability to make rates to foreign countries without publication, with a view to stimulating the export of American products abroad?

Mr. HILL. Yes, sir.

Senator NEWLANDS. And that, of course, will be beneficial to this

country. But, on the other hand, will not that system enable you to import goods from foreign countries into this country and give the producers of those products an advantage over American producers who are perhaps nearer to the points of consumption than these foreign markets are?

Mr. HILL. I do not think that it would have that effect; but—now, take our own case; I know it would not have that effect. We do not encourage the import trade. We would just as soon bring our ships back in ballast as to have them loaded, because if we bring back a carload of merchandise it will displace a carload of lumber, and on the merchandise the carrier's risk is greater. We have to handle it at each end, whereas the lumber is loaded and unloaded by the shipper and we only have to haul it through and deliver it. The carriage rate is very much less, as well.

Senator NEWLANDS. You would be willing, then, that this should apply only to exports?

Mr. HILL. I was going to say that, as far as I am concerned, we do not care anything about the imports; but if there was any fear that that might introduce foreign goods into this country, why, make the law so that it will not apply to imports. I care simply as far as our exports go. I am thinking of the man who produces the stuff out of the ground, either on the field or in the forest or the mines, or wherever it comes from. I am thinking of him, because he is the man that we are interested in.

Senator FORAKER. The other question I was going to ask you was about the growth of these Gulf ports in the matter of export business. Are you familiar with that, Mr. Hill? Have you given any attention to it?

Mr. HILL. Yes, sir; I have given a good deal.

Senator FORAKER. To what is it due; and to what extent have the ports of New Orleans and Galveston, for instance, overcome the disadvantages that were regarded as a justification for differentials in their favor some years ago?

Mr. HILL. To begin with, their conditions are entirely different. Take Kansas City, St. Louis, and all those points, and the export business would naturally go to the Gulf. Ship charters—take grain, for instance—are a cent to a cent and a half a bushel higher from the Gulf than they are from the Atlantic. Coal is higher there, and there are other reasons. The shipper must guarantee the quality of the corn on delivery after the 1st of April, on account of the climate. There are conditions that run against them. They have the advantage, however, of a very short haul, and they have the advantage that if the roads are built as they are now building them, with very low grades, they can carry at prices that the trunk lines will not care to make or meet. With us in the West that is an important outlet, and one to which we must look, because the trunk lines east of Chicago for a part of the year are totally unable to move the present volume of business.

Is there anything further, Senator?

Senator FORAKER. I think that is all.

Senator CLAPP. Mr. Hill, there are one or two questions I would like to ask. I understand you to say that you would favor a law whereby a limit should be placed on the rate of charge. What would be your opinion as to the same proceeding also designating, by the

legal effect, a rate above which the carrier could not go in reducing from the rate that is condemned? Do I make that plain?

Mr. HILL. I think so; my answer will show if I understand it. A rate that is on trial as to whether it is reasonable or unreasonable, disregarding, for the moment, whether it is on trial before the Interstate Commerce Commission or before a court, or whatever tribunal, of itself depends upon the conditions under which it is made. Suppose you come to me and say: "I want to build a mill at Cass Lake"—the Senator knows all about the situation in Minnesota, and he knows all about Cass Lake, so I will take him where he is entirely familiar—"and I will ship 100,000,000 feet of lumber a year." That is probably four or five times the amount of lumber that we now carry from Cass Lake. And suppose you say, "I want such and such a rate." Now, that will give us four or five times the amount of business we now have. Remember that the density of traffic—the number of tons to move—is one of the principal elements in fixing the rate; and if you increase the tonnage we can decrease the rate. There is a new condition that would arise between you and the railway company in as short a time as it took you to state the case; and if a rate was made and called a reasonable rate by law, why, you would be turned back.

In other words, I do not care whether it is the court, or the Commission, or any tribunal or arbitration, or any device that can be worked out, to whom you give the right to make a future rate; you will simply make that the minimum rate. The maximum rate will become the minimum rate. The company will charge that, and fall back and say, "That is the legal rate, and that is what you can pay."

Senator CLAPP. Under the existing law, of course, the Commission simply condemns the existing rate. We will assume that that is sustained in the courts. Now, the carrier, in obeying the order to discontinue that rate, would make necessarily, from a practical standpoint, at least, a practical reduction, to meet the suggestion that if it was not a practical reduction, a substantial reduction, the new rate would be again challenged?

Mr. HILL. Certainly, sir.

Senator CLAPP. So that practically the carrier is compelled to make a substantial reduction?

Mr. HILL. He has to meet the conditions that made it an unreasonable rate.

Senator CLAPP. Yes. Now, would you have in this proceeding anything to indicate legally, for the time being (subject again to the initiation of another rate by the carrier and review by the Commission) a substituted rate—that is, the rate which should take the place of the one that is condemned?

Mr. HILL. You can not substitute a rate for the future, for tomorrow or next week, any more than you can define what is going to occur next week. The rate is based upon conditions, and I think that the public has direct protection in this, that if the rate is found to be unreasonable, and the road varies it a little, enough to take the curse off, and is hauled back into court, the second or third time it came into court its standing would be unenviable, would it not?

Senator CLAPP. It certainly would.

Mr. HILL. And you must give the railroads credit for at least some common sense. They would want to go into court with clean hands,

else they would stand a very poor show. I think the public is well protected. Just think what has occurred in twenty years. Why, when Thomas Scott died the cost on the Pennsylvania road was about $8\frac{1}{4}$ mills a ton a mile. I think he died about 1882 or 1883. To-day the Pennsylvania road is receiving from the public 6 mills. The reduction that has been made in railroad transportation in the United States is greater than that that has been made in anything else. Wages in ten years have advanced 47 per cent on our line. Rates have gone in that time from a cent and a quarter to .85 of a cent. So that the rates of ten years ago were 50 per cent higher, and our rates of wages are 47 per cent higher than they were then.

How did we do it? Twenty-one years ago our average trainload was 117 tons. This year I think we will show for the year 500 tons, and the expense of hauling that train as against the other train has not increased in anything like the same proportion. In other words, we get more for the money, and we work it out. And that has been done without the aid and, I might almost say, in spite of all the legislative obstructions that have been placed in our way; because we have had our troubles to meet at home, and we have met them, and I think the people have rather looked for us to lead in reduction of rates. I think they do, and I think we have led.

Senator CLAPP. Then your idea is that the examination and determination should be limited to the condemnation of the existing rate?

Mr. HILL. You can not do otherwise. If you go beyond that you are getting into a realm of uncertainty, and you fix what is meant to be the maximum rate as the minimum rate, and reductions will cease until they are compelled by law. Now, take our case. There has been no compulsion of any kind, but our rates in twenty-one years have been reduced to one-third of what they were.

Senator CLAPP. Your position that what would be a reasonable rate upon one line would be fixed absolutely with reference to that line, without regard to the effect of that as a competitive rate on another line, was sustained by the court in Minnesota in a controversy involving your road and the Northern Pacific, was it not—the Steenerson case?

Mr. HILL. Yes.

Senator CLAPP. The court held there that the rate could be fixed upon one road without reference to its effect upon a competitive road?

Mr. HILL. Ours was the short line.

Senator CLAPP. Yours was the short line?

Mr. HILL. And we made the rate, and they had the privilege of carrying out that rate if they wanted to.

Senator CLAPP. And the court sustained your position in that matter?

Mr. HILL. Certainly.

Senator CLAPP. Mr. Hill, it may be broadening the inquiry a little, but I would like to ask you your opinion of the effect of the Panama Canal upon the railroad rates of the country?

Mr. HILL. I can understand how the building of that canal will be to the advantage of ports on the Gulf and along the Atlantic sea-coast, say for a distance of a hundred or a hundred and fifty miles inland.

Senator CLAPP. Why do you put that limit on your statement?

Mr. HILL. Well, if we have a fair and an open field on land trans-

portation—take a pair of dividers and put one leg at Cleveland and the other at Cincinnati and swing it around toward Chicago and swing it around toward the East, and you will have included in the line it will inscribe the bulk of the manufacturing in the United States. You take in Chicago, and you take in South Toledo, Findlay, Ohio, and all that territory, and around, say, to Bethlehem or Scranton. In order for a manufacturer to avail himself of the canal he has to get to some Atlantic or Gulf port. I will go right to the map, Senator, if I may. Now, here he is, in here. [At this point Mr. Hill illustrated his remarks by reference to a large map in the committee room.] He has to send his product down here to some port where land is expensive, where the dock is expensive, where the land is high, and he has to get to the seaboard where a ship drawing 30 feet of water can get in. (We can not go out of Fortress Monroe or out of New York with more than three-fourths of a load on our big ships, whereas if we go around to Seattle we can load them in 37 feet now.) He has to start here and come down here and go down, and then if he is going to the Orient he gets out to the west, and by the time he starts to go west he is more than 300 miles from the Straits of Fuca. You see where he has had to go; and by the time that he gets the product around there we would have had it laid down, or would take it from here by rail or by water and get it up here and whip it across, and we will meet all the rates that they ever make from there back [indicating]. There may be a little strip along here that that will affect, but all the rest of the country we will take care of.

Senator CLAPP. You own practically all your own refrigerator cars?

Mr. HILL. Entirely.

Senator CLAPP. As touching upon the subject of the private car, what is your opinion of the ownership of the carrier united in the same person in the production and distribution of the product? Ought that to be prohibited?

Mr. HILL. Senator, you are coming on tender ground, but I will answer that question.

Senator CLAPP. I thought I might be.

Mr. HILL. We are here to speak out in meeting. I think that every railway officer in this country should be disqualified from having any interest, directly or indirectly, in any large producer of traffic, whether it is a coal mine or a factory or a mill or anything else, on a line of railway where he is on the pay roll.

Senator CLAPP. And the reason for that suggestion is what?

Mr. HILL. That he can not be fair to the other fellow and punish himself.

Senator CLAPP. And the opportunity is such that it can not be detected and prevented?

Mr. HILL. It is so easy, if there is a great demand for coal in one direction, or for some commodity in one place, for him to help one fellow and forget the other. We have made it a rule (and it never can be done for a moment on our road, and I have always been very glad that that rule is in effect) that if a man wants to work for himself in any particular at any point on the line of the road, he must first sever his connection with the company; and it saves us a lot of trouble. And I think that in some cases it might help to reduce

rates on natural products like coal very, very materially if there was a fair field, or a square deal, or whatever you like to call it.

Senator NEWLANDS. Mr. Hill, under the laws of what State is the Great Northern Railroad Company incorporated.

Mr. HILL. Under the laws of the State of Minnesota.

Senator NEWLANDS. And in how many States does it operate?

Mr. HILL. Eight or nine.

Senator NEWLANDS. And it operates in those States through the comity of those States?

Mr. HILL. Yes, sir.

Senator NEWLANDS. Would you have found it more convenient and simple if you could have done it, all other things being equal, to have operated under a national charter? All other things being equal, I say.

Mr. HILL. A national charter would have some advantages.

Senator NEWLANDS. Advantage both for the railroad and for the public, or only for the railroad?

Mr. HILL. For both.

Senator NEWLANDS. For both?

Mr. HILL. Yes, sir.

Senator NEWLANDS. The systems of taxation vary in all these States, do they not?

Mr. HILL. Very widely.

Senator NEWLANDS. Would you regard it as conducing to the simplicity of the operation of the railways and to the advantage both of the railways and of the public if a simple tax could be mathematically ascertained?

Mr. HILL. And make it uniform?

Senator NEWLANDS. Making it uniform?

Mr. HILL. That certainly would be a great advantage; and I will illustrate it in a moment.

In one State in which we have lines of railroad we have what we call a local line—the best local line in the State. In fourteen years it has paid six or seven dividends; I suppose in fourteen years it has paid an average of $2\frac{1}{2}$ per cent a year; and our taxes on a single track there are nearly as much per mile as the tax on the Pennsylvania road between Philadelphia and Pittsburg. The people there come to me and say: "Why, Mr. Hill, will you not build more roads for us?" I tell them that I have not the cheek to go and ask our shareholders to put in more money where we are paying a penalty of that kind.

Senator NEWLANDS. Then you find the laws being changed from time to time, do you not?

Mr. HILL. Oh, we do. I think it was Chief Justice Marshall who said that the power to tax is the power to destroy.

Senator NEWLANDS. Yes.

Mr. HILL. And the matter of taxation always shows a steady increase. I think the tax that we pay in the State of Minnesota is equal to about half what we get for carrying the wheat crop of the State.

Senator NEWLANDS. In Minnesota you pay a certain percentage upon your receipts?

Mr. HILL. Three per cent on our gross earnings in the State; but we include in that the interstate earnings as well.

Senator NEWLANDS. You do? Now, how many different and separate railroads have you in your Great Northern system? I mean, as

to corporations. Are they all owned by one corporation, or does your corporation own the stock of other corporations, or own the local railroads?

Mr. HILL. We have made it a rule that the parent company should build them; but there are times where they would eat the parent company up if they could, and we would rather that they only ate up the little fellow, if they are going to do any harm.

Senator NEWLANDS. Yes. So that means the incorporation of a road—

Mr. HILL. Built by a local company, and the railway company furnishing the money.

Senator NEWLANDS. The stock of which is held by the Great Northern?

Mr. HILL. Yes, sir.

Senator NEWLANDS. Is the Great Northern a part of a general system of route bound together by any community of interest?

Mr. HILL. No; the Great Northern bought out the Manitoba, because the Manitoba had outgrown its clothes. It was limited to a capital of \$20,000,000, and we preferred to build with stock rather than with bonds. Latterly, for the last four years, we have not issued either stock or bonds, and we have built about 1,500 miles of road.

Senator NEWLANDS. Do you think the consolidation of railroads is beneficial to the country, or otherwise?

Mr. HILL. If you will make a condition whereunder you will make the railway perform the service at a reasonable rate, one at which it can perform it, you can go on and consolidate them all into one if you like.

Senator NEWLANDS. And you would have a more efficient service?

Mr. HILL. You certainly would; you would have only one to deal with; but in that case that one would be charged with the burden of proof that it was on its good behavior all the time.

Senator NEWLANDS. Yes.

Mr. HILL. But that is not likely to occur. You have illustrations of that kind in some parts of the country, I think, some very important divisions of the country, where the railways are practically all under one control by State law.

Senator NEWLANDS. Yes.

Mr. HILL. But if you go there you will find that the rates are relatively very high.

Senator NEWLANDS. You think they are higher under those conditions, where there is consolidation?

Mr. HILL. Either they are too high, or the rates in some other places are too low.

Senator NEWLANDS. Yes. I would like to have questioned you, Mr. Hill, upon some views that I have regarding national incorporation, simplification of the tax system, and unification.

Mr. HILL. There are other advantages besides the tax system.

Senator NEWLANDS. But you have been before the committee so long that I think it is rather unfair to hold you longer. I may ask you to communicate hereafter your views to the committee in a letter on the subject.

Mr. HILL. I will be very glad to do so. There is just one thing I would like to add now: The protection of life and property in inter-

state transportation could be worked out under the Federal law so as to remove nine-tenths of the losses of life or injuries.

Senator NEWLANDS. Under a national incorporation act?

Mr. HILL. Yes, sir; that is a pretty serious matter, you know. We are helpless as it is. We can discharge the man and he will get a job somewhere else, changing his name, and so on.

The ACTING CHAIRMAN (Senator KEAN). Mr. Hill, we are very much obliged to you for your attendance, and I desire to express to you the thanks of the committee.

Senator CLAPP. Some question has arisen as to rebates under Government contracts. I desire to submit the following papers, being the opinion of Judge Campbell, solicitor for the Department of the Interior, and Attorney-General Moody, sustaining the action of the Department in this matter.

The papers above referred to, which were directed by the committee to be made part of to-day's proceedings, are as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 20, 1905.

The SECRETARY OF THE INTERIOR.

SIR: By your reference of the 3d instant I am asked for opinion whether a proposed agreement between the Maricopa and Phoenix and Salt River Valley Railroad Company, party of the first part, and the United States of America, party of the second part, which has been signed by the president of said company, "can be approved by the Secretary of the Interior."

The proposed agreement recites that whereas the "United States reclamation service of the United States Geological Survey" proposes to construct certain public works incident to such service, and whereas any concession in freight rates to the contractors for material and machinery used in the construction of such works is, in fact, a concession to the United States, the party of the first part therefore agrees "to transport over its own lines the material and machinery used by the United States, or by the parties contracting with the United States Government for work on said irrigation systems, when originated at or passing through Maricopa, Ariz., at one-half regularly published class rates in force at the time of shipment."

The reference calls attention to an opinion of the Comptroller of the Treasury, February 20, 1905, in substance, that while the reclamation service may be carried on under the direction and control of the Geological Survey, yet "it is not made a part of said bureau."

I assume that the suggestion intended to be conveyed by this citation relates to that phrase in the proposed contract above quoted which seems to assume that the reclamation service is part of the Geological Survey, and this, in view of the Comptroller's said decision, naturally suggests the question whether that officer would allow the payment of a demand against the reclamation fund under such a contract.

If necessity exists for answering this question at all, I respectfully suggest that it be referred to the Attorney-General of the United States. The question is of no importance as to unexecuted contracts,

since the objectionable phrase might just as well be left out of these contracts.

The real question presented is whether this contract can be lawfully entered into between a railroad company (common carrier) and the United States in view of the provisions of the interstate-commerce act of February 4, 1887 (24 Stat. L., 379, 380, 387). Section 2 of that act provides:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carriers shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

If the United States were subject to this provision there can be no doubt that the proposed agreement would be prohibited. But section 22 of the same act provides:

That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States."

Whether the word "for" in this section relates to the carriage, storing, or handling of the property of the United States, or the carriage, storing, or handling of property for the ultimate and specific uses of the United States, is, to my mind, immaterial. The intention of this excepting clause was undoubtedly to permit common carriers, notwithstanding the provisions of section 2 of the act, to contract with the United States for the carriage, storing, or handling of property to be used by the United States in the discharge of proper governmental functions. If the United States were the absolute owner of the property when delivered to the common carrier, the right to make such contract would not be questioned, and I am unable to see, as respects the question presented, what difference it makes whether the title to the property passes to the United States then or ultimately. The statute not only authorizes the handling under special contract the property of the United States, but handling under such contract any property for the United States.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved, March 20, 1905.

E. A. HITCHCOCK, *Secretary.*

DEPARTMENT OF JUSTICE,
Washington, D. C., April 20, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge the receipt of your letter dated April 12, 1905, requesting my opinion as to whether the provisions of the act to regulate commerce which forbid common carriers

to grant rebates or concessions from their published rates hit certain agreements and proposed agreements between the United States and various railroad companies in which the latter promise to transport over their respective lines, at one-half of their published rates, materials and machinery used by the United States or by parties contracting with the United States for work upon the irrigation systems now being constructed in the arid regions of the West.

The material parts of the statute read as follows:

"SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

* * * * *

"SEC. 22 (as amended March 2, 1889, and February 8, 1895). That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments," etc.

I gather from the papers placed in my hands that most, if not all, of the railroad companies whose lines reach these arid regions, realizing that they will be among the chief beneficiaries of the reclamation project, and therefore desiring to promote its consummation, have signified to officers of the Government their willingness to transport the machinery and materials used in the construction of the irrigation systems at one-half of their regular rates, in order that that much more of the amount appropriated by Congress might be spent in the work of reclamation proper. Aside from the legal question presented, it is evident that such an arrangement would be of advantage to the Government and the railroads and a disadvantage to none. These reduced rates, you inform me, are advertised to all prospective bidders upon work and material, the theory being that their bids will be lowered by an amount equal to the reduction in freight rates, and that in that way the reduction in freights will inure to the benefit of the United States.

The principles governing this case are clear and simple.

It is perfectly plain, I think, that the intention of section 22 of the act to regulate commerce was to give express sanction to any arrangements between the United States, State, or municipal governments and railroad companies by which those governments might relieve themselves of the cost of transportation in whatever form it might assume, and the section should be construed to give effect to that intention. It is, therefore, immaterial whether the property transported belonged to the United States at the time of shipment or whether it ever subsequently became the property of the United States in the particular shape in which it was shipped. It is sufficient that it entered into the construction of a public work of the United States and that the cost of its transportation was a part of the final cost of that work to the United States.

The issue, then, narrows down to this: Does the United States, in point of fact, receive in the end the whole of the concession in freights granted under these contracts?

It can not, of course, be stated in advance, as a presumption of fact covering all cases which may arise under this arrangement between the United States and the railroad companies, that the United States will receive the whole of the concession and the contractor none; for that would be to presume not only that the contractor's bid will be less than it would have been if he had had to pay the published rates, but that it will be less by an amount equal to the freight reductions allowed him. On the other hand, however, it certainly can not be presumed that in no case will the United States receive the whole concession; that is to say, that in no case will the contractor make full allowance in his bid for the reduced freight rates. The strong probability is that he will, in order not to leave any advantage from that source in the hands of his competitors. In other words, then, whether or not the United States receives the whole of the concession and the contractor none is a question of fact which must be determined in each case separately, as the answer may be different in different cases. My conclusion upon the question you propound, therefore, is this: That in those cases where the fact is that the United States receives the whole of the concession and the contractors none, then neither the spirit nor the letter of the act to regulate commerce has been violated; but that in those cases, if any, where that is not the fact the operation of the agreements which have been drawn in question would result in the violation of section 2 of the act. Being a question of fact, and one that, if it shall ever properly arise at all, must arise in the administration of your Department, your determination of the question will be binding so far as the executive branch of the Government is concerned.

Respectfully,

WILLIAM H. MOODY,
Attorney-General.

Professor Myers thereupon took the stand, but before beginning his statement the committee adjourned until to-morrow, Thursday, May 4, 1905, at 11 o'clock a. m.

By direction of the committee, this information is printed in connection with the statement of Mr. James J. Hill:

The information given below has been compiled from the following sources:

For the year ended June 30, 1882, from the published report for that year of the railroad and warehouse commission of the State of Minnesota.

For the year ended June 30, 1892, partly from the report of the Great Northern Railway Company to its stockholders for that year and the balance especially prepared for this memorandum.

For the year ended June 30, 1903, from the Great Northern report to its stockholders for that year, as based on the figures given therein.

	For fiscal year ended June 30—		
	1882.	1892.	1903.
Length main line and branches.....miles..	1,007.8	3,417.98	5,598.89
Freight train cars owned.....number..	3,707	11,667	29,731
Freight hauled.....tons..	1,007,536	Not given.	16,148,673
Average revenue per ton per mile.....cents..	2.518	1.214	.857
Average per train.....tons..	117,278	216.23	446.785
Average per car, loaded and empty.....do.....	5.706	8.76	13.06

* Mileage for 1903 does not include 288.91 miles owned but operated separately.

Had the company received the same average rate per ton per mile in 1903 as in 1882, it would have collected \$90,820,109.73 as freight earnings, while actual collections were \$30,915,234.29, a decrease through reductions in freight rates of \$59,904,875.44.

The reduction in freight rates has been brought about by increasing the volume of traffic. That volume has been increased by making such rates as would enable shippers to develop new lines of traffic, and the building of additional mileage that would create traffic. To reduce the cost of transportation in face of continual increase in wages and advances in prices of material, the only way was to increase the amount of work done by each train and so to receive a large increase for the train mile.

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Freight Rates		Passenger Rates	
1882	1903	1882	1903
1.00	0.75	1.00	0.75
2.00	1.50	2.00	1.50
3.00	2.25	3.00	2.25
4.00	3.00	4.00	3.00
5.00	3.75	5.00	3.75
6.00	4.50	6.00	4.50
7.00	5.25	7.00	5.25
8.00	6.00	8.00	6.00
9.00	6.75	9.00	6.75
10.00	7.50	10.00	7.50

These rates are for freight and passenger traffic only. They do not include the cost of fuel, maintenance, and other expenses.