

## THE CULLOM BILL.

Aldace F. Walker wrote the following able article in answer to the resolution presented in congress asking for the amendment of the interstate commerce law on the ground that "Certain court decisions have practically made the interstate commerce law nugatory, and relegated the interstate commerce commission to a position where it has no real power."

The three important sections of the act are:

Section 1. Charges shall be reasonable and just.

Section 2. Unjust discrimination between individuals (rebates, drawbacks, etc.) prohibited.

Section 3. Undue preferences and advantages to particular persons, localities or descriptions of traffic prohibited.

"Those three sections formulate the broad charter of a new federal jurisprudence. It will be observed that neither charges, discriminations nor preferences are prohibited. The inhibition applies when, and only when, charges, discriminations or preferences are unreasonable and unjust.

"The sections above referred to as being rules of evidence are Sec. 4, prohibiting a greater charge for a shorter than for a longer haul over the same line when the circumstances and conditions are substantially similar, and Sec. 7, forbidding devices to prevent the carriage of freight being continuous from the place of shipment to the place of destination. In both of these cases, when the forbidden facts exist, an undue preference is *prima facie* made out, subject to exculpation by proof of countervailing conditions.

"Under the three declaratory sections (aside from the two special cases last mentioned) the burden of proof is upon the complainant to show that the charge, discrimination or preference attacked is actually unreasonable and unjust. Every such case presents a judicial question, cognizance of which appertains to the federal courts and not to the president, the secretary of the interior or any other administrative official.

"The foregoing is an accurate statement of the scope of the interstate commerce law, as explained by its framers in the report of the senate committee which introduced the bill, and as deduced from an inspection of the language of the statute. Is it now nugatory? Let us examine its declaratory features in detail, with reference to the charge that 'the law as it stands is inoperative.'

"Section 1 certainly is not inoperative or nugatory. Charges made by common carriers upon interstate commerce are not often unreasonable or unjust. Such complaints are very rarely made except by comparing one rate with another, which removes the ground of complaint from the first section to the third. Look-

ing at railway rates each by itself, under the general requirement of Section 1, it requires a daring spirit to allege them to be unreasonable, as a whole or in detail. Unreasonably low they often are; unreasonably high they are not. Possibly a rare case exists here and there as to which some reduction may be thought to be appropriate, but the cases are too few to warrant consuming time in formulating new remedies. A speaker at the last public hearing of the committee attempted to specify three such cases (p. 381), but all of them were relative; that is, the complaint in each was something more than a violation of Section 1. The phenomenally low transportation charge of American railways are the world's wonder."

"Railroad companies, like other citizens, do not litigate for fun, nor do they seek occasion to trifle with the courts. Section 1 of the law, requiring rates to be reasonable, is not nugatory: first, because rates in fact are almost universally reasonable, and second, because it could easily be enforced if any occasion should arise.

"Section 2 is the one chiefly talked about when the law is called nugatory. But even here a little discrimination in the use of epithets would be wise. Before the law was passed special rates were the rule. Now they are the exception. Look into the evidence given to the senate committee in 1885 and 1886 and see what a debauch of universal private deals composed the then effective railway tariffs. On many roads almost the only tariffs were figures found in the private memoranda of the freight agents who arranged separate contracts with each shipper.

"To correct this state of affairs the law did four things: first, it forbade it (Sec. 2), which was useful, for railroad officials, like other men, do not like to be law-breakers; second, it prescribed publicity of tariffs (Sec. 6), which established a standard basis of rates known to all shippers, and which section has been at all times scrupulously observed by the roads; third, it provided penalties for violations (Sec. 10), a section which has not worked very well because the corporations themselves could not be prosecuted, and which undoubtedly should be amended in this and other respects; fourth, it opened the door for an injunction to restrain carriers from charging more to one shipper than to another, a remedy which no one has ever attempted to employ, although it was afterwards strengthened by an amendment conferring jurisdiction upon the courts to issue a writ of peremptory mandamus commanding the carrier to carry traffic for one shipper on the same terms as for any other.

"Those four provisions of the law have done a great deal in the direction of suppressing unjust discrimination between shippers. The situation in this

respect is infinitely better than it was before the passage of the law. There are vast sections of the country where discriminations of this character are never heard of. No complaints of secret rate-cutting are now heard in the southern states; few such cases arise in New England, in the middle states or west of the Missouri river. There are many important classes of traffic which move regularly at tariff rates in every part of the land. It is not true to say that Section 2 of the law is nugatory.

"But it must be admitted that in other sections of the country and as applied to other classes of traffic, rebates, drawbacks, and other devices for favoring special shippers are still extant. Outbreaks of rate-cutting more or less spasmodic not infrequently occur. These affairs seem to be temporary in their nature: the complaints cease after a time. The accounts of them given in the newspapers are usually grossly exaggerated. But the actual facts are bad enough, and the conditions thus from time to time created are wrong in every way. There are certain parts of the country where these outbreaks seem to be recurrent, and certain kinds of business, such as grain and packing-house products, are peculiarly susceptible thereto. Probably more than nine-tenths of the railroad freight traffic of the country is free from rate-cutting, and something should be done to stop it altogether.

"The proposals to this end in the pending bill are two only: first, the amendment of the penalty section (10), which is in the right direction; second, the appointment of special agents to examine railroad books (query, why not shippers' books also), which might help the detective work of the commission a little, but is of doubtful expediency. At the last session of the committee (page 389) a new theory was broached, the speaker for the first time claiming that the power to name maximum rates would be efficacious in the stopping of rebates. 'Now, if that railway should be compelled, when it grants a special rate to Mr. A, to give that same rate to everybody else and to apply that rate to all its intermediate territory, the consequence of granting the rebate would be such that it would not be longer for its interest to allow it.' (Very well; the power to do this by injunction and mandamus has been specially conferred as above shown, but never attempted to be exercised; the speaker continues:) 'You cannot compel a railway to adhere to its published rates, but you can compel it to reduce its published rates to a point where a secret rate is no longer an object. That is the only thing which has ever stopped the payment of rebates' (a wild and untrue assertion), 'and it is in my judgment the only thing which ever will effectually stop it.' This statement lets the cat out of the