

JAMES C. SAVERY & COMPANY, DOING BUSINESS UNDER THE NAME OF THE AMERICAN EMIGRANT COMPANY v. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE NEW YORK, WEST SHORE AND BUFFALO RAILWAY COMPANY; THE NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY; THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY; THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY, AND THE BALTIMORE AND OHIO RAILROAD COMPANY.

Heard at New York, February 28 to March 2, 1888: at Elberon, N. J., July 11 and 12, 1888.—Decided November 9, 1888.

The matter of the reception of immigrants at the port of New York having been put by the laws of the State under the control of a Board of Commissioners of Emigration, and that Board having made such regulations as it has deemed desirable for the protection of the immigrants until they are ticketed and put on board railroad trains for their respective ultimate destinations, and the Federal Government, through its legislative and executive departments, having sanctioned the control by the Commissioners of Emigration, the Interstate Commerce Commission has no authority to interfere with their regulations.

Not having the authority to interfere directly and control the Commissioners of Emigration, it cannot do so indirectly by inhibiting the railroad companies from carrying out the arrangements made by the Commissioners with them.

There is nothing illegal or wrongful in a railroad company making a rate for immigrants as a class, and declining to give the same rate to others for whom different accommodations are furnished.

A railroad company which transports immigrants in unfit cars will be required to provide better accommodations, and to ascertain their fitness the Commission will make its own inspection.

The rates complained of in this case as excessive were voluntarily reduced pending the proceedings.

Blair & Rudd, for complainants.

Frank Loomis, for New York Central & Hudson River Railroad Company.

Ashbel Green, for New York, West Shore & Buffalo Railway Company.

J. B. Kerr, for New York, Ontario & Western Railway Company.

J. A. Buchanan, for New York, Lake Erie & Western Railroad Company.

M. Taylor Pyne, for Delaware, Lackawanna & Western Railroad Company.

John Scott, James A. Logan, E. Randolph Robinson and Osborne E. Bright, for Pennsylvania Railroad Company.

J. K. Cowen, for Baltimore & Ohio Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman* :

The complaint in this case is by "James C. Savery & Company, citizens of the United States, doing business in the city of New York, under the name of the American Emigrant Company, and as successors of the American Emigrant Company of Hartford, Conn.," and is against the New York Central and Hudson River Railroad Company; the New York, West Shore and Buffalo Railway Company; the New York, Ontario and Western Railway Company; the New York, Lake Erie and Western Railroad Company; the Delaware, Lackawanna and Western Railroad Company; the Pennsylvania Railroad Company, and the Baltimore and Ohio Railroad Company.

The complaint charges that the defendants, being common carriers of passengers subject to the Act to regulate commerce, have been and are guilty of violating the provisions of the last clause of the first section of said act in that each of them has continuously since the first day of April, 1887, exacted unjust and unreasonable charges for the carriage of emigrants and their baggage from the said city of New York to the said city of Chicago, and to other points and places in the States and Territories west, northwest and southwest of the State of New York.

And for the particular grounds and specifications of this charge your petitioners show :

First Specification.—That continuously, since the first day

of April, 1887, said several railroad companies have exacted the sum of \$13 for the carriage of each adult emigrant carried by them from New York to Chicago, and a proportionate sum for each adult emigrant carried a less distance, while for each adult emigrant carried beyond Chicago the charge has been increased according to the local second-class rate of the railroads running beyond that point; such exaction being made in pursuance of an agreement or compact existing between all of said railroad companies establishing rates for the carriage of emigrants and their baggage, which rates are unjust and unreasonable because of the character of the accommodations furnished for the transportation of emigrant passengers, said passengers being usually carried by said railroad companies in an inferior kind of cars called "emigrant cars," or in cars fitted with uncomfortable wooden seats, such cars being run sometimes in connection with passenger trains and sometimes in connection with freight trains, according to the convenience of the carrier, and not on any schedule time, and sixty hours being sometimes occupied in making the trip from New York to Chicago, and which rates are unjust and unreasonable because the number of emigrants carried by said railroad companies from New York to Chicago and to other points west of the State of New York is so great (amounting to between two and three hundred thousand annually) as to warrant their being carried at much lower rates, and which rates are unjust and unreasonable because they are largely in excess of the rates at which the said railroad companies have heretofore carried emigrants and their baggage from New York to Chicago and other points west of the State of New York, which former rates the complaint sets out in detail.

Second Specification.—That continuously since the first day of April, 1887, said several railroad companies have exacted from each emigrant carried from New York to Chicago whose baggage weighed more than one hundred pounds, compensation for extra baggage at the rate of two dollars and sixty cents (\$2.60) per one hundred pounds for the excess over one hundred pounds, which charge for extra baggage is unreason-

able and unjust because it is greater than the charge made by the same carriers for the carriage, between the same points, of extra baggage for first-class passengers, which is carried on express passenger trains, such last-mentioned charge being at the rate of only \$2.40 per one hundred pounds.

The complaint further alleges that each of the said railroad companies is guilty of unjust discrimination, in violation of the second section of said Act of Congress, in this, to wit:

First Specification.—That each of said railroad companies in pursuance of said compact between them, sells, at the price of \$13, to recently arrived emigrants who are landed at Castle Garden, New York, tickets entitling the holders to transportation by rail from New York to Chicago, but refuses to sell the same grade of tickets for the same trains to any other person or persons at the same price, or at any price; and also refuses to sell the same grade or kind of tickets at any other place or office than at Castle Garden, New York; and all persons other than recently arrived emigrants who are carried in the same cars with emigrants from New York to Chicago are compelled by each of said carriers to pay for such carriage the sum of \$17, the price of a second-class ticket between said points.

Second Specification.—That each of said railroad companies, in pursuance of the said compact between them, has continuously since April 1, 1887, discriminated against emigrants carried by it from New York to Chicago by exacting from them \$2.60 each one hundred pounds of extra baggage carried for them, while it has charged first-class passengers for extra baggage carried for them upon express trains only \$2.40 per one hundred pounds.

The complaint further alleges that said railroad companies have been and are guilty of violating section 5 of said Act of Congress in this, that since April 1, 1887, they have been, and they still are, dividing between them a portion of the aggregate earnings of said railroads, to wit, that portion derived from the carriage of emigrants and their baggage.

This charge was abandoned on the hearing, and the specifications under it are therefore omitted.

The complaint further shows that the said railroad companies have, by their combined action, subjected petitioners to undue and unreasonable prejudice and disadvantage in their business, hereinafter described, in violation of section 3 of said Act of Congress.

Specification.—The business of the American Emigrant Company of Hartford, Connecticut, to which company petitioners are successors, which was established twenty-three years ago, has consisted in the sale to emigrants and others of lands situate in the Western States and Territories, and in the establishment of numerous colonies upon such lands, and in disseminating among the common people of various countries of Europe, but especially among the Scandinavians, correct information regarding the newer and more sparsely settled portions of our country, and, in acting as the correspondent and agent of persons residing in foreign countries who were about to migrate hither, furnishing them specific information, purchasing their tickets, providing interpreters and agents to meet them upon their arrival, and rendering them whatever advice and assistance they might need; and in the course of said business the said American Emigrant Company has become favorably known to a great number of foreign-born people residing in every State and Territory of the United States, and a great number of such people have made it their financial agent, entrusting to it sums of money for a great variety of purposes, the chief of which has been the purchase of bills of exchange for transmission to relatives or friends in the old country and the purchase for relatives or friends coming to America of tickets for the journey from New York to their ultimate destination, and also entrusting to it sums of money to be handed to relatives or friends upon their arrival in New York; and have also solicited its advice for such relatives or friends as to the route by which they should travel, and its assistance in procuring for them transportation and whatever else they might need, either in New York or upon their journey; and petitioners in continuing the said business have become the financial agents of a very

great number of said foreign-born residents, who have entrusted to petitioners sums of money amounting, in the aggregate, to hundreds of thousands of dollars annually upon trusts, the performance of many of which is greatly hindered and impeded by the action of the said railway companies herein complained of, among which trusts are the meeting and assisting of emigrants upon their arrival; advising them as to the route to be traveled to reach their ultimate destination; acting for them in securing the most favorable rates possible and in purchasing their tickets; purchasing for them such articles of food or clothing as they might need for their journey, and delivering to them money supplied for their use; and, because of their said compact hereinbefore mentioned, and in pursuance thereof, said railroad companies have refused, and each of them has refused, and they and each of them still refuse, to sell to petitioners emigrant tickets for any purpose whatever, and they have caused the said Commissioners of Emigration to exclude, and to continue to exclude petitioners and their agents and interpreters from said Castle Garden, and have hindered and prevented, and still hinder and prevent petitioners and their agents and interpreters from communicating with or advising, or in any manner acting for or serving emigrants arriving at the port of New York, and have hindered and prevented and still hinder and prevent emigrants desiring to do so from seeing or communicating with petitioners, their agents, and interpreters; whereby petitioners are greatly annoyed, and are hindered and prevented from discharging the duties and obligations they have assumed towards many of their principals and depositors, by reason whereof their business standing and reputation are impaired, their credit is injured, and they are subjected to great prejudice and disadvantage.

All of the defendants answered, but for the purposes of a presentation of the issues, it will be sufficient to state the substance of the answer made by the New York Central and Hudson River Railroad Company. That company by way of challenging the right of James C. Savery & Company to make the complaint, averred that the American Emigrant and Trust Company of Hartford, Connecticut, after an existence of sev-

eral years became insolvent in 1886, and its assets were transferred to the petitioner, James C. Savery, and one Callahan, whereby and not otherwise is the former enabled to describe himself and "Company" as "successors of the American Emigrant Company of Hartford, Connecticut." The defendant denies that there is now any such corporation or joint stock association as the American Emigrant Company, and avers ignorance who the petitioners are, except Savery, and asks that he be required to disclose the names, if any, constituting the "company."

The defendant admits that it is engaged in the transportation of emigrants from the city of New York to the West; avers that its own charges are within limits prescribed by statute in the State of New York, and the aggregate charge made by itself and its connections is reasonable and such as is warranted by law.

It proceeds to state that the subject of the proper care of emigrants landing at the city of New York and at other points of the State of New York and their protection against frauds, impositions, and swindles has been frequently legislated upon in that State; that an act passed in 1847 provided for six Commissioners of Emigration, which Commissioners were authorized to acquire a place for the landing exclusively of emigrants and their baggage arriving at the port of New York, and they have acquired Castle Garden for that purpose, and it is not permitted by the laws of New York that emigrants and their baggage shall be landed elsewhere; that by the same laws said Commissioners are required to designate a place or places in the city of New York for the sale of railroad tickets to emigrants, and to allow every railroad company desiring it to have an agent at the place or places designated, and it is made a misdemeanor to sell or offer for sale such tickets elsewhere, except that any railroad company may sell tickets to any persons at the rates charged to first-class passengers, and may sell tickets at its principal ticket offices to emigrants and other second-class passengers, provided it has at the same time an agent for the sale of tickets at the place or places so designated by the Commissioners.

The answer proceeds to state certain other provisions of

the statute in the State of New York designed for the protection of emigrants, among which is that no person other than an agent of a railroad company, duly authorized in writing therefor, may sell any railroad passage ticket, and such authorized person may not sell any railroad passage ticket excepting at the office designated in his appointment, and the unauthorized sale of a railroad passage ticket is punishable by fine or imprisonment. It states, further, that the said Commissioners of Emigration of the State of New York, by virtue of the authority conferred upon and possessed by them, heretofore designated Castle Garden as the place in the city of New York for the sale of railroad tickets, and that the railroad companies mentioned in the petition, other than the New York, West Shore and Buffalo Railway Company, provided for the sale of railroad tickets at Castle Garden by a joint agent of said railroad companies, and that this respondent, with respect to the carriage of emigrants and their baggage, has and does in all respects conform to, obey, and comply with the laws of the State of New York, and that the other railroad companies named in the petition in like manner conform to, comply with, and obey the laws of the State of New York so far as they are applicable to them respectively.

The answer then sets forth reasons to justify such charges as are made in the transportation of emigrants and their baggage, and avers that the arrangement for such transportation and the service performed in respect thereto are in all respects suitable and adequate. It further says, "on information and belief, that the principal business and chief source of gain heretofore of the so-called 'American Emigrant Company'—the name under which the petitioners say they do business—has been in the vending of the transportation of emigrants to competing and rival transportation companies and obtaining 'commissions' from them, and that the only interest the petitioners have in the matter set forth in the petition and in the relief sought is to be able to resume the same business and to have access to the same sources of profit."

Other answers were equally specific, but did not present

further issues. That of the New York, Ontario and Western Railway Company says as to the complaint of excessive charge on extra baggage that "the cause of complaint, if any cause ever existed, has been removed by the increase of the amount of baggage allowed each adult passenger to 150 pounds, and the reduction of the rate for excess baggage from \$2.60 to \$1.95 for each 100 pounds; which reduction will go into effect on the first day of November, 1887."

All of the answers call attention to the fact that defendants have no authority whatever over the Commissioners of Emigration for the State of New York; that on the contrary their agencies are established in Castle Garden at the request of the said Commissioners, and entirely subject to their direction in all matters pertaining to railroad business; and that in all other matters defendants have no right to control whatsoever.

The answer of the New York, West Shore and Buffalo Railway Company was in the nature of a disclaimer, its road being operated by the New York Central and Hudson River Railroad Company.

When the case came to a hearing it appeared that Mr. Savery was in fact the sole complainant, though he seemed to be doing business under a partnership or corporate name, but as the fact does not affect the merits of the case it is not noticed in what follows.

Upon the issues so made a large amount of evidence was taken by the Commission. The manner in which the emigrant business is conducted by the Commissioners appointed by the State of New York for the purpose was explained by the Commissioners and by such other witnesses as the parties offered for the purpose. It was shown that the circumstances surrounding immigration afforded abundant opportunity for fraud and rapacity of every sort, and that there was not wanting a horde of rapacious persons eager to make the emigrant their prey. As was no doubt truly said by one of the early Commissioners, "their extortions and frauds in all the forms that rapacity could invent or suggest, finally assumed such fearful proportions and became the object of such general abhorrence that legislation for the protection of emi-

grants seemed the only possible remedy. The community finally began to understand that it had to suffer in the same if not in a greater proportion than the emigrants themselves if the latter were not secured from the cupidity of runners and the mercenary attempts of agents."

To remedy the evils the Legislature of New York in 1847 passed an act creating a Board of Emigrant Commissioners, whose duty it should be to supervise emigration and protect the immigrants. The creation of such a body probably had some influence in affording protection, but it was far from being effectual. Most of the immigrants had no knowledge of the English language, and if when they landed in New York they had any definite notions of further destination, they were utterly ignorant of routes and of means of transportation. They were therefore easy prey for any unscrupulous persons who might secure control of their movements while in the city, and for the runners for steamboats and railroads, and it was essential to their protection that all such classes of persons should be kept from them until their transportation was secured.

In 1855 the New York Commissioners of Emigration took possession of Castle Garden as an immigrant landing depot, and under an act passed by the Legislature of New York the same year, all vessels bringing immigrants into the port of New York were required to land them there. The Commissioners also induced the principal railroad and steamboat lines from New York to the interior to organize in Castle Garden a central and joint ticket office for sale at regular public prices, of passage tickets for emigrants to their respective places of destination, and to place such office and the entire business of forwarding the persons and property of emigrants under the immediate supervision of the Commissioners. Having done this, they deemed it necessary to a complete reform that the system of through booking from points in Europe to points of final destination in America should be abolished, it being found that the agents engaged in that business were chargeable with enormous extortions. And they issued a circular to the governments of foreign States,

inviting their co-operation in the measures taken by them for the protection of emigrants.

In 1868 the Legislature of New York passed an act which provided that "it shall not be lawful for any agent, employee or other officer of any railroad company, or for any other person, to sell, offer for sale or otherwise to dispose of any ticket or tickets, or written or printed instrument, or instrument partly written and partly printed for the transportation or conveyance on or by any railroad or steamboat, of any immigrant or deck or steerage passenger, or second-class passenger, arriving at the port of New York from a foreign country at any place or places in the city of New York except such as may be designated by the Commissioners of Emigration, which place or places may from time to time, as they may deem best, be changed by the said Commissioners; *Provided, however,* That nothing herein contained shall prevent any railroad company from selling tickets to any person at the rates of fare charged for first-class passengers, nor from selling tickets at the principal ticket offices of such company, to immigrant and other second-class passengers, provided that such company has at the same time an agent who shall sell tickets at the place designated by the said Commissioners for selling tickets to immigrants."

The State of New York had at an early day passed an act for the levy upon every master of a vessel bringing immigrants to the ports of the State of a tax of one dollar and fifty cents in respect to each cabin passenger, and one dollar for each steerage passenger, for hospital purposes. The act was declared by the Federal Supreme Court in the *Passenger Cases*, 7 Howard, 283, to be unconstitutional, but in 1882 Congress passed an act for the levy of the sum of fifty cents for each and every passenger not a citizen of the United States who shall come by vessel from a foreign port to any port within the United States. The money collected was directed to be paid into the Treasury of the United States as an Immigrant Fund and to be used under the direction of the Secretary of the Treasury to defray the expense of regulating immigration, and for the care of immigrants, the relief of such as are in distress, and for the general purpose of carry-

ing the act into effect. The act allowed no more to be expended at any port than had been collected thereat. The Secretary of the Treasury was authorized by the act to enter into contracts with State boards for carrying into effect the objects which the act had in view.

Under the authority conferred by this act the Secretary of the Treasury entered into a contract with the Commissioners of Emigration of the State of New York whereby the Commissioners undertook to receive all immigrant passengers at Castle Garden, or at some other suitable place under their control, and there provide means for their accommodation, including interpreters, and suitable accommodations for such as shall become sick or in distress, or idiots, or lunatics, or a public charge, for a period not exceeding a year. The Board also undertook to carry out such regulation as might be established by the Secretary, to employ all necessary persons to effectuate the purposes of the contract and to render monthly account of expenses, which were to be paid from the Treasury.

To give complete effect to the intent of the act of Congress the Commissioners of Emigration invited the co-operation of the railroad companies whose lines enter New York city, and assigned to them suitable and sufficient space within Castle Garden for their immigrant ticket and luggage departments, and wharf accommodations abreast the Garden for their immigrant transfer barges. In accepting these accommodations the railroad companies requested that arrangements be made under which all details of the receiving of emigrants, furnishing them with the desired information respecting rates and charges, selling them tickets, trucking, weighing, and checking their luggage should be placed under the immediate supervision of a joint agent to be appointed with the approval of the Board, and that all the expenses of such joint agency should be shared by the railroad companies in proportion to the number of immigrants ticketed over their respective lines. The suggestions of the railroad companies were accepted by the Board and the joint agent was appointed, who made his office in Castle Garden, and sold tickets, weighed baggage, and transacted other incidental business for all the roads.

Notwithstanding this joint arrangement the several railroads did not co-operate in entire harmony, and the volume of immigration was sufficient to tempt them to underhanded and secret arrangements under which the rates for transportation of immigrants from New York to Chicago were reduced from the normal rate of \$13 to \$7.50, and were finally for a time reduced to \$1.00. In this great cutting of rates the benefits of the reduction were not, as a rule, received by the immigrant, but were monopolized by agents and other middlemen, who were thus enabled to reap enormous profits. In January, 1886, eleven railroad companies united to form an immigrant clearing house, having for its purpose the adjustment of accounts with steamboat agencies, the enforcement of uniform rules for the conduct of the immigrant business at the various receiving points on the Atlantic seaboard, the sale of tickets at uniform published prices, and the abolition of secret contracts between railroad and steamship companies, booking companies or private forwarding firms. The companies uniting to form the Clearing House were the Grand Trunk Railway of Canada; the New York Central and Hudson River Railroad Company; the New York, West Shore and Buffalo Railway Company; the New York, Lake Erie and Western Railroad Company; the Pennsylvania Railroad Company; the Boston and Lowell Railroad Company; the Central Vermont Railroad Company; the Fitchburg Railroad Company; the Boston and Albany Railroad Company; and the New York and New England Railroad Company. Afterwards the New York, Ontario and Western Railway Company and the Baltimore and Ohio Railroad Company joined them.

A joint agent was placed in Castle Garden by these companies who was supplied with tickets over all their lines. The emigrants when brought into the Garden were registered before outsiders were permitted to have any communication with them, and if they saw fit to remain in the Garden until they took train for their final destination they were supplied with provisions by licensed dealers at prices which were fixed by the Emigrant Commissioners and posted on the walls in different European languages to prevent deception

and extortion. If any emigrant desired to stay in New York temporarily or permanently his luggage was transferred for him, as directed, by a local express company at a charge named by the Commissioners; if his destination was to some interior point he was routed by the joint agent, who endeavored to apportion the transportation in such manner as to give to each road the share which had been agreed upon by all as its fair proportion.

In their dealings with the immigrants the inland railroad fare has been regulated and treated by the railroad companies as part of a through fare from Europe to the destination in this country. When the steamer fare from Liverpool to New York was \$20 and the fare from New York to Chicago was \$13, the whole fare from Liverpool to Chicago, being \$33, could be paid in a round sum in Liverpool, and the passenger so paying would receive a contract for transportation the whole distance, which would be honored by the Clearing House, and a railroad ticket furnished by it for the inland passage, for the price of which the railroad company would look to the carrier by water to whom the fare was paid. But instead of paying to Chicago the immigrant might want to pay to New York only, and when that was done the ticket for the inland transportation would be sold in Castle Garden.

While the operations of the Clearing House were continued without interruption and with the co-operation of all the carriers represented in it, the immigrant business was apportioned them on percentages agreed upon. It was a part of the agreement under which this apportionment was made that "in this distribution of business the convenience of passengers will of course be considered," and the joint agent was instructed to "take all reasonable care to prevent the separation of families or parties of friends traveling together."

It is not necessary for the purposes of this case to enter upon the statement of the various devices resorted to for the purpose of circumventing the Commissioners of Emigration and the measures taken by them for the protection of emigrants. Such devices had for their object the making of money out of the emigrant business by unscrupulous parties

in New York or by parties who made it a business to direct and control the route of the emigrant, and who received commissions therefor from the roads over which they were sent, and then, except as the regulations of the Commissioners prevented it, the emigrants were in effect sold to persons who controlled the direction of the route without the emigrants themselves receiving any benefit therefrom. The commissions paid were sometimes very large, reaching in some cases \$11 and even \$14 on emigrants for the Pacific slope. While the arrangement between the Commissioners and the roads represented in the Clearing House continued to be observed, the efforts of outside parties were, to a large extent, rendered ineffectual, though there were evasions sometimes, and probably with the connivance of one or more of the railroad companies.

In the spring of the present year the fact that the arrangement with the Commissioners was being disregarded by some of the roads was brought very plainly to the attention of the Board. Mr. Stevenson, who has for some time been a leading member of the Commission, in testimony given in this case states that in the latter part of April his attention was called one afternoon to the fact of a suspension of business in Castle Garden and of the emigrants being taken out of Castle Garden across the Battery to the various railroad offices and ticketed there. He made inquiry why this was being done in violation of the contract entered into between the Commissioners and the railroads whereby they agreed that all the business should be done in the Garden and none of it outside. He ascertained they were not selling emigrant tickets outside, but were selling to the emigrants second-class tickets; that the second-class tickets were not kept in the Garden, and consequently they had to go over to the offices of the roads and be ticketed there. He says: "I found in two of the offices a scene which made me angry. I found emigrants crowded in, women with children in their arms and bundles in their hands, trying to get their tickets changed, and then stopped to investigate the cause of it. I found that the West Shore road was the first line that did this business of taking the emigrants out of the Garden. The next day I

learned that the Erie road had chartered a tug, gone down the bay and changed the order for tickets on the Clearing House for orders on the Erie road before the vessel got to the dock; and those emigrants were compelled to go outside of Castle Garden, and the entire business was taken from under the control and jurisdiction of the Commissioners. I immediately asked two of the Commissioners to join with me and call a special meeting of the Board, which was done two days after this occurrence." At this meeting a preamble and resolutions were adopted reciting that the Board has positive knowledge that the trunk lines of railroad and other lines since admitted to Castle Garden, without their concurrence are now taking emigrants outside of Castle Garden to their offices, in violation of their agreement and greatly to the discomfort and detriment of the emigrants, exposing them to imposition and injury and removing them from the protection and care of the Board. It was therefore resolved that the existing agreement between the Commissioners and the Trunk Lines of railroad cease and determine; that a new agreement be made with each trunk line of railroad desirous of doing business in Castle Garden, said agreement to provide that all emigrants arriving at the port and going over said trunk lines shall be ticketed in Castle Garden and at no other office or place, and that the weighing and checking of emigrants' baggage shall be done in Castle Garden. Also that no higher price shall be charged emigrants thus ticketed in Castle Garden for their inland transportation or for their overweight of baggage than is charged for similar service at any railroad office in New York city or vicinity; also that said trunk lines shall agree to convey all parties of emigrants numbering fifty or over by barge or steamer from Castle Garden to the railroad depot. Also that each trunk line pay a rental to be agreed upon for such necessary desk room and space as may be allowed to it by the Commissioners, and to pay for the handling, trucking and checking of the baggage of the emigrants and its transfer to the depot, the said agreement to provide fully for the general supervision by the Board of the ticketing and forwarding of emigrants, and any violation of its provisions by the railroad company to be

cancellation of the whole agreement and to be a sufficient cause for the immediate exclusion of the railroad company and its agents from Castle Garden. The several railroad companies on being notified of these resolutions entered into the contract required by it, and each of them severally appointed an agent in Castle Garden, all of them, however, with one exception appointing the same one, Mr. Chillion F. Doane. The Delaware, Lackawanna and Western appointed its agent, Mr. Nicholas Muller. This change in arrangement was attended by no change in rate, the emigrant rate to Chicago remaining \$13 as before. And it seems proper to state that those roads which were first found to be selling second-class tickets to emigrants outside of Castle Garden claimed to justify their action upon the discovery of similar conduct on the part of other roads, and which road was in fact the party chiefly responsible the Commission cannot undertake to say. The question is not one important to a decision of this case. Upon the reasonableness of the \$13 rate Commissioner Stevenson testified that in his opinion the rate was low enough, but thought it ought to carry with it an improvement of the service as well in time as in the vehicles of conveyance. The schedule time he thought was as short as could reasonably be expected or asked, but emigrant trains were often four, five and even six hours behind time to the great inconvenience of the friends who were waiting to meet the immigrants at the place of destination. Complainants contend that the rate ought to be reduced to ten dollars.

The first and most obvious fact apparent upon the face of the record is that the arrangements for the reception of emigrants arriving at the port of New York, for their care before their transportation is secured, and for the sale of railroad tickets to them, are entirely under the control of official authorities other than this Commission. The State of New York has, by statute, so far as it has the power to do so, vested complete control in the Board of Emigrant Commissioners, and its legislation for that purpose is so far recognized and sanctioned by federal legislation and by the action of the Treasury Department, that this Commission is without power to interfere. Even if the Commission was of opinion

that the action of the Commissioners of Emigration was unwise and unjust, it would still remain true that this Commission cannot set aside or modify it.

This is in effect conceded by counsel for the complainants who admit that as against arbitrary action by the Commissioners of Emigration this Commission can give no relief. It is insisted, however, that as against the respondents this Commission may issue its order requiring them to desist from interfering in any way with the access of complainants' agents to the presence of the immigrants before they have been required to procure their railroad tickets and with interfering with complainants' receiving those consigned to their care, and advising them as to the choice of routes, or performing for them any other service which complainants may have undertaken to perform. It is also contended that the Commission may by its order require each of the respondents to sell to complainants such tickets as they may desire to purchase for immigrants coming to their care at the same price at which they sell like tickets to others.

It is very obvious, however, that an order to that effect, if it could be enforced, would very seriously interfere with the regulations of the Commissioners of Emigration, and would distinctly antagonize their general policy. What the respondents now do which the complainants deem to their prejudice is done by concert with the Commissioners of Emigration, who could not otherwise give effect to their general views as to what is necessary for the protection of the immigrants, and the orders suggested would hamper the action of the Commissioners of Emigration quite as much as it would restrain or compel the action of the respondents, and it would open the door to all the abuses which those Commissioners are appointed to prevent.

It is but just to the complainants to say that nothing in the evidence fairly tends to show that the American Emigrant Company while it continued in business, or complainants as its successors, were ever guilty of the wrongs and frauds which the Commissioners of Emigration are appointed to prevent. Conceding this to the fullest extent, and that the privileges they seek to establish in this proceeding would not

be abused in their hands, it still remains true that we cannot give them the relief they desire. And it may be added that if the Commissioners of Emigration were to open the doors to complainants they must do the same thing for others, and the old condition of things would soon be restored. Such at least would seem to be the inevitable result.

No part of the relief which complainants seek on their own behalf can therefore be granted.

In so far as complainants ask an order for the benefit of the immigrants themselves, it is based on three grounds, namely:

- I. Excessive charge for transportation.
- II. Excessive charge for baggage.
- III. Unsuitable transportation.

Emigrant fare, when the complaint was filed, was thirteen dollars from New York to Chicago. The evidence which was given to establish the fact that this charge was unreasonable consisted largely of proofs that the charge had formerly been much lower. Not much can be predicated of this fact. There is scarcely a road in the country that has not at some time carried passengers or freight at a compensation that would bankrupt it if long persisted in. This fact is very well known and understood. The other evidence brought forward on the hearing did not so much tend to establish the fact that the charge made was unreasonable, as that the immigrants were not given suitable transportation. Since this case was heard, however, that rate has been reduced five dollars, at which figure it now stands. The reduction is the result of a rate war, brought about, as there is reason to believe, by the payment of commissions to secure the routing of the immigrants. While the war continues the carriers will doubtless do what they can to injure each other in respect to this branch of their business, and in doing so they will at the same time to a greater or less extent break down or weaken the protections devised for the immigrants. Meantime there is no occasion for an expression of an opinion upon the reasonableness of the former rate.

When the complaint was filed the allowance of free baggage to an immigrant was 100 pounds, and the charge for extra baggage was \$2.60 per hundred pounds. The allowance of free baggage was increased before the hearing to 150 pounds and the charges for extra baggage reduced to \$1.95 per hundred pounds. The charge does not seem to be excessive.

The transportation was supposed to be unsuitable because the vehicles of conveyance were unfit for the purpose, and also because the time made was unreasonably long. On the last point the evidence was not sufficiently specific to enable the Commission to say that there is clear failure in duty. It is no doubt true that in very many cases immigrant trains do not make the time intended, and that the immigrants and the friends who may be waiting for them at the points of destination are greatly inconvenienced thereby; but this in a great many cases happens with the first-class passenger trains also, and it is not possible at all times to prevent it. The schedule time between New York and Chicago over the different routes at the time of the hearing varied from about thirty-three hours to thirty-nine. This, if the trains were run to it, could hardly be deemed unreasonable for a distance averaging over the several lines about a thousand miles.

As regards the cars used for the transportation of emigrants the Commission deemed personal inspection better than the taking of evidence, and caused one to be made in the several yards at New York city and vicinity and on the routes of the several railroad carriers. The result of the inspection was in some cases satisfactory and in others not. The most unsatisfactory cars were found in use by the New York Central and Hudson River Railroad Company, those employed on the West Shore road being the worst of all. The attention of the executive officers of the company was at once called to the necessity of improvement in this regard, and assurances were given that the unfit cars then in use on the road should be put in proper condition or be replaced by such as were suitable as soon as it could well be done. Former deficiencies in respect to cleanliness it was also promised should not be discoverable hereafter.

It is suggested on the part of complainants that defendants are guilty of discrimination in refusing to sell tickets to other persons on the same rates that they make to immigrants. But we are not satisfied that this is unjust discrimination. The roads west of Chicago it seems have only first and second class rates; the respondents have an immigrant rate in addition. If they were to give immigrant rates to other persons the distinction on which the rates are made, and which limits them to a particular class of persons, would be done away with, and the second-class rates and the immigrant rates would almost necessarily become merged. We are not satisfied that this would be best, and in any view we might be inclined to take of it, we should not order it to be done in a case where the point is raised so indirectly as it is here, and not by parties interested in it.

The case of *Smith v. Northern Pacific Railroad Company* (1 Int. C. C. Rep., 208), is cited against the right to make the distinction between immigrant and second-class rates, but we do not think it applicable. In that case a distinction in charge was attempted to be made between classes of persons who could not by any practicable tests be distinguished and who were all to enjoy the same accommodations. In the case before us we have a class of persons readily distinguishable from the general public, and so far constituting a special class that up to the time when they are received upon the cars they are subject to exceptional regulations for reasons which, being accepted as a basis of legislation, must be deemed sufficient. This special class of persons are given accommodations essentially different to those provided for others, in cars specially set apart for their use, and which are commonly made up into trains by themselves, and returned to the seaboard empty. The service is thus seen to be special, and the rates charged correspond to it.

We cannot say that under such circumstances the classing them by themselves on the rate sheets is either illegal or wrongful. It harmonizes with the policy of legislation on the general subject so far as it has been expressed, and it wrongs nobody else to give them rates restricted to the particular class exclusively. There is no such danger of fraud through

other persons passing themselves off as immigrants as was pointed out in *Smith v. Northern Pacific Railroad Company* in the case of pretended land explorers.

The result of this opinion is that the complaint must be dismissed.

JAMES F. SLATER v. THE NORTHERN PACIFIC
RAILWAY COMPANY.

Complaint filed June 6, 1888. Answer filed June 27. Hearing at Dubuque, Iowa, July 27. Decided November 23, 1888.

A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for the revocation of complainant's pass, does not commend itself to the Commission.

A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violations of law in that respect which occurred before such ruling was made and under a construction of the law then approved by the carrier's counsel.

Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could, held to be illegal.

James F. Slater, complainant, *pro se*.

J. C. Bullitt, Jr., for defendant.

WALKER, *Commissioner* :

A complaint filed by James F. Slater, of Highland Park, Illinois, alleged that the defendant, about July, 1887, issued free transportation to one Frederick Fischer, from St. Paul, Minnesota, to Tacoma, Washington Territory, and return; that said Fischer was not a railway employee at the time, and that said transportation was used by him.

The answer admits that transportation was issued to said Fischer as alleged, but asserts that a justification therefor existed, consisting in the fact that it was furnished for the