THE NEW YORK PRODUCE EXCHANGE *v.* THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE CHICAGO & GRAND TRUNK RAILWAY COMPANY, THE GREAT WESTERN RAILWAY COMPANY OF CANADA, THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, THE CHICAGO & ATLANTIC RAILWAY COMPANY, THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY, THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY, THE WEST SHORE RAILROAD COMPANY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, THE GRAND TRUNK RAILWAY COMPANY OF CANADA, THE PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE WABASH WESTERN RAILWAY COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE PHILADELPHIA & READING RAILROAD COMPANY, AND THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Heard at New York, June 13 and 14, 1888. Briefs submitted July 31, 1888. Decision filed June 19, 1889.

From November 4, 1887, to February 20, 1888, the Trunk Lines, so called, under resolutions of their Association, made through export rates of which the inland proportion accepted by them was, at the port of New York, often ten cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port.

Held, that the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the

same inland carriage, is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port.

It is essential that any method for making rates should be practicable, and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates.

Under the amendments of March 2, 1889, to the statute, requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates.

Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by addition of the ocean rate from time to time prevailing, or how otherwise.

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REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner:*

On March 8, 1888, the Commission, having the subject of

tariffs on export freight from the United States under consideration, issued the following order:

"Every tariff of rates and charges which a common carrier subject to the provisions of the Act to regulate commerce, by itself or jointly with one or more other carriers, whether such carriers are or are not subject to such Act, shall establish for the transportation of grain, flour, meal, meats, provisions, lard, tallow, canned goods, cotton, tobacco, live stock, or other articles of customary export, from any point within the United States to a seaport thereof, or to any point in or on the boundary of an adjacent country, or to any foreign port or place, is required to be filed with the Commission and shall be made public.

"In all cases where a tariff is established for such merchandise billed or intended for export by sea, and ocean rates are not specified, either because of their fluctuation or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public shall show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges or expenses, and shall also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean rate from time to time prevailing, or how otherwise. When the rate is a gross sum for the transportation of freight from a point within the United States to a port or place in a foreign country, the tariff as filed and made public shall in every case show what part of the whole is allowed to the carrier or carriers for inland transportation to the point of export by sea, including all terminal expenses or charges; and if such part is subject to be increased or diminished, contingently or otherwise, or if in any other case the charge for inland transportation is subject to any change or modification in case the property carried is exported, the fact and the manner in which the increase, diminution, or change is to be determined, and the extent thereof, shall be stated.

"Every such tariff of rates and charges shall be published by plainly printing the same in large type of at least the size

of ordinary pica, and copies thereof shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station of any carrier making or issuing the same at which any traffic to which it relates is received or delivered.

"This order shall become operative on March 20, 1888."

On April 18, 1888, the New York Produce Exchange, a corporation existing under the laws of the State of New York and located in the city of New York, composed largely of merchants engaged in foreign and domestic commerce, filed with the Commission its petition, charging therein on information and belief,

"First. That since about April 4, 1887, the defendants have been railroads and corporations engaged as common carriers in the transportation of property shipped from Chicago and other western points to New York city and other Atlantic points and to European ports, such transportation being made to New York city and other Atlantic points wholly by rail; or to New York city and such other points and European ports partly by rail and partly by water, and such transportation being in all cases under some common control, management or arrangement for continuous carriage between the points aforesaid, so that each of the defendants constituted a part or portion of some through and continuous line of transportation so engaged as aforesaid under an established joint tariff, and is as to the said transportation within the provisions of said Act. That the Trunk Line Association; the Central Traffic Association; the Joint Committee, so called, and all of the fast freight lines operating over one or more of said railroads, are agents of some or all of said railroads so engaged as aforesaid, and the rates, classifications, rules and regulations which they make and enforce are those of said railroads and are those which regulate and substantially govern and control all such through and continuous transportation between the points aforesaid. That since about April 4th, 1887, the defendants have professed to maintain joint rates and classifications between Chicago and

New York for their said continuous lines and routes, as follows:

	Class.	Rate.
Flour, grain, in car-load lots	6	25 cts.
Flour, grain, in less than car-load lots	5	30 "
Provisions, as salted meats, etc., in car-load lots	5	30 "
Provisions, as salted meats, etc., in less than car-load lots	4	35 "

"That the joint rates for the transportation of like property from a number of western points are based upon the Chicago rate, and are either the Chicago rate or a certain agreed amount or percentage added to or deducted therefrom.

"That the defendants, since April 4th, 1887, in violation of said Act have been guilty of unjust discriminations, in that they have notoriously allowed to a large number of persons special rates, rebates and drawbacks, either given directly or indirectly, by means of such devices as under-billing or under-weighing property transported, and have also been in the habit of charging a large number of persons for transportation from Chicago and other western points, taking Chicago rates as aforesaid to New York city, the foregoing schedule rates upon flour, grain, provisions and property covered by classes 4, 5, and 6, when such property was delivered to consignees at New York city for domestic consumption or was subsequently exported, while charging other persons rates much lower and even as low as fifty per cent. thereof for a like and contemporaneous service under substantially similar circumstances and conditions when the property was delivered to vessels and steamship lines for shipment to foreign ports under through bills of lading, issued by the defendants under common arrangement with such vessels and steamship lines for continuous carriage at joint rates from the point of shipment to Europe; that, for example, while charging and receiving 33 and 35 cents per 100 lbs. for transporting goods of class 5 in less than car-load lots from Chicago to New York, they at the same time have charged and received but 19 cents for the

same transportation of like goods when the same were delivered to steamship companies for export, which charge of 19 cents included a charge of 3 cents per 100 lbs. for lighterage in New York which the defendants paid out of said 19 cents; that by the first of March last the foregoing unjust discriminations had become notorious and matter of common report, and were carried to such an extent through the payment of rebates by railroads and steamship companies to some shippers and localities that the net rates to foreign ports were lower than to New York; that on March 8th, 1888, your honorable Commission issued an order to take effect on March 20th, 1888, requiring the defendants, among others, to prepare and file and publish their rates to the seaboard with the ocean rates, if any given, separately stated; that the defendants have failed and neglected to file and publish rates as required by said order except in a few instances where there has been a partial compliance; that said defendants also fail to state in each bill of lading issued by either of them to foreign ports the inland charge and the ocean charge separately, and thus prevent ascertainment of the actual inland rate.

"Second. That by reason of the difference in their rates for transportation hereinbefore referred to the said defendants since April 4th, 1887, have thereby made and given undue and unreasonable preferences and advantages to persons, firms, companies, corporations and localities engaged in the shipment under such through bills of lading, or in the handling and consumption of such goods abroad, and have subjected persons, companies, firms and corporations and consignees in and about the city of New York to undue and unreasonable prejudice and disadvantage by reason of the higher rates charged to them for like and contemporaneous service under substantially similar conditions and circumstances; that there are no conditions or circumstances relating to or bearing upon the transportation in question that justify any such differences in rates as have existed and do exist between the rates to New York city for export under through bills of lading and the rates upon consignment to New York city; that the complainants insist that the said Act

requires that the rates to New York city shall be the same upon the said classes of property whether the same are carried to New York and there delivered to consignees or through New York and delivered to consignees abroad.

"Third. That the said defendants, in violation of said Act, since April 4th, 1887, have charged and received, and do now charge and receive, a greater compensation for transporting property as hereinbefore described from Chicago and said western points to New York city, than they charged and received for like service under substantially similar circumstances and conditions for transporting like property from said Chicago and western points through New York city to European ports under common arrangement for joint rates with vessels and steamships, the shorter being included within the longer distance; that rates to foreign ports can now be obtained from Chicago through New York at about 3 cents per 100 lbs. less than to New York city.

"Wherefore, the complainants respectfully ask that the honorable Interstate Commerce Commission shall investigate the matters herein complained of, and shall obtain from the defendants full and complete information in regard thereto, and shall then adjudge and determine:

"1. That in the particulars in this petition alleged the defendants have violated and are violating the 'Act to regulate commerce,' approved February 4, 1887.

"2. That all rates for transportation from Chicago to or through New York city to foreign ports shall be the same for the transportation to New York.

"3. That compliance with the law and with the order of March 8th, 1888, as to filing joint tariffs, be compelled by the methods and under the penalties provided, and that all such tariffs be likewise posted and published by order, to be issued under the discretion given to the Commission in that regard, and that in every bill of lading issued to a foreign port the inland rate and the ocean rate be stated separately.

"4. That, in reference to all of the matters complained of,

your petitioners may have such other or further relief as to your honorable Commission may seem just and proper."

The complaint was served on the several defendants, and answers made thereto.

It is not important to give these answers, or even their substance, further than to state that some denied the alleged violations of the statute charged in the complaint, and others admitted that differences had been made in rates on export freight and domestic freight between November 4th, 1887, and February 20th, 1888, but justified those differences under their interpretation of the statute, and all denied that such differences had been made subsequent to February 20th, 1888. At the hearing certain facts bearing upon the questions involved were given in evidence, but the case turned mainly upon questions of general policy and of law, with the view to a decision upon them, the facts being important only to have the questions presented.

On April 24, 1888, the Pennsylvania Railroad Company presented the following petition:

"*To the Honorable the Interstate Commerce Commission:*

"The petition of the Pennsylvania Railroad Company on behalf of itself and the different lines operated, controlled and affiliated in interest with it, respectfully represents:

"That after the Act to regulate commerce had gone into effect the company entered into an arrangement with connecting carriers for the establishment of a continuous line or route for the carriage of freight from the cities of Chicago, State of Illinois, and Milwaukee, State of Wisconsin, and intermediate points, to Liverpool, London, Glasgow, and other European points, thus constituting a continuous carriage and shipment under a common arrangement, from a point in one of the States of the United States to a point or place in a foreign country;

"That by virtue of said arrangement a joint tariff of rates in a gross sum for such line or route was made and duly filed with this honorable Commission, as is required by the fifth paragraph of section six of said Act;

"That this arrangement was continued until the twentieth day of February, 1888, when, pursuant to a resolution adopted by the Trunk Line Executive Committee, which had resolved, at a meeting held on the eleventh day of February, 1888, that 'the system now in operation of making through export tariffs be discontinued, and that thereafter the rates on export traffic be the same as the inland tariffs plus the ocean rates current from time to time,' the same was discontinued and inland rates alone filed, accompanied with a written statement that through export freights were made by adding such inland rates to the rates of connecting ocean carriers;

"That although the resolutions above referred to were passed unanimously, yet they were accompanied by the statement on the part of the Pennsylvania Railroad Company that the acquiescence of the officers of that company was only occasioned by their deference to the desire of the other companies in the Trunk Line Association; and with the further statement that the officers of that company had not altered their opinion as to the justice and legality of the through billing system, and that they believed the results from its abandonment would be injurious. Experience since the twentieth of February, 1888, has sustained the correctness of the view of your petitioner thus stated, and your petitioner apprehends that it will be its duty at an early period to make a new arrangement for carriage from points within the United States to points in a foreign country for a gross sum.

"Pending the considering of this matter your petitioner received the order made by this honorable Commission at its meeting held in the city of Washington on the eighth day of March, 1888; copy of which order is hereto attached and marked 'Exhibit A.' This order, if within the meaning of the law and enforced by this honorable Commission primarily and ultimately by the courts, would prevent the doing of that which, as your petitioner is advised, under said Act parties to such common arrangements for a continuous carriage are permitted to do, namely, filing the joint tariff of rates established for such route by such carriers, subject only to the

requirements of publicity in such manner as might be deemed practicable by this honorable Commission.

"Your petitioner most respectfully submits, that by the sixth section of said Act the power of the Commission is limited to requiring that the tariffs for joint through rates shall be filed, and to the direction as to the manner and measure of publicity.

"That nowhere in said Act can warrant be found for requiring any one of said joint carriers to show in their tariff or to make public, either the manner in which the through rates to the points of ultimate destination is to be determined when only the inland rate is definitely fixed, or, when a gross sum for the transportation is given from a point within the United States to a port or place in a foreign country, show what part of the whole is allowed to the inland carrier.

"Your petitioner further represents, that if the power of this honorable Commission to make said order is vested in your Commission, the making thereof, under the circumstances, does not tend to subserve the purposes contemplated by said Act to regulate commerce, but on the contrary works to the prejudice both of the shipper and the carriers, as this petitioner believes could be established to the satisfaction of this honorable Commission were opportunity afforded.

"This petitioner, therefore, most respectfully prays that it may be accorded a hearing, and that an order may be made modifying said order of the 8th of March, 1888."

On June 13th, 1888, the case was brought to a hearing upon the complaint and answers, and upon the petition, and the testimony taken.

The following facts appeared in evidence:

The New York Produce Exchange is a corporation duly created and existing under the laws of the State of New York, and located in the city of New York, composed largely of merchants engaged in foreign and domestic commerce.

Since April 4th, 1887, the respondent companies named in the petition have been railroad corporations, as therein alleged, engaged in the transportation of property shipped from Chicago, and other western points, to New York city

and other Atlantic seaports, wholly by rail, a large proportion of the property so carried being trans-shipped to European ports by water. A part of such transportation was under contracts for a through rate to the foreign destination, and was carried under some arrangement for continuous carriage between the points of origin and the European port to which it was destined. Each of said respondent roads constituted a part or portion of some through and continuous line of transportation under established joint tariffs; and the respondents are, as to such transportation to New York city and other Atlantic seaports, within the provisions of the Act to regulate commerce.

The Trunk Line Association, the Central Traffic Association, the Joint Committee (respectively so-called), and such fast freight lines as are operated over any of the respondents' roads are, to a qualified and limited extent, agents of the respondents or certain of them, and connecting lines with which repondents have established joint tariffs.

The Trunk Line Association, the Central Traffic Association and the Joint Committee, aforesaid, make rates, classifications, rules and regulations which are accepted by the railroads mentioned in the petition, and the fast freight lines operated over certain of them, which rates, classifications, rules and regulations are those which regulate, govern and control such through and continuous transportation between the points aforesaid as to classification and joint rates.

Since April 4th, 1887, the joint rates and classifications, *via* all rail, established, published, filed and maintained, have been as follows:

CHICAGO TO NEW YORK.

Commodities.	Apr. 4, '87, to Jan. 2, '88.	Jan. 2. '88, to Mch. 5, '88.	Since Mch. 5, '88.
Flour and grain in car-load lots	25c.	27½c.	25c.
Flour and grain in less than car-load lots	30	33	30
Provisions, as salted meats, in car-load lots	30	33	30
Provisions, as salted meats, in less than car-load lots	35	38½	35

The joint rates for transportation of like property from a number of Western points to New York are based upon the Chicago rate, and have been and are either the same as the Chicago rate or a certain percentage thereof, greater or less than the Chicago rate.

The membership of the New York Produce Exchange comprises a large number of merchants, who represent a capital of many millions of dollars, and are actively engaged in foreign and domestic commerce and in purchasing, transporting, storing, grading, inspecting, exporting and selling, for foreign and domestic use, the ,flour, grain, and provision products of the west and southwest portion of the United States which are offered for sale in Chicago and other western points, and for the handling of which there is active competition between the merchants of the East and of the West.

The facilities in and about the port of New York for handling the business aforesaid are large.

On November 4th, 1887, the Joint Committee, aforesaid, adopted the following rules with reference to export rates, viz:

"That substantially the basis for making through export freight rates from Chicago be: To add to the actual inland all rail tariff rates to each and all the different seaboard export cities, the different ocean steam quotations thence to the foreign ports to which it may be from time to time agreed to issue through rates upon the leading articles agreed to be specified in the tariff. The average result thus obtained, barring fractions, to determine the uniform through rates in cents per hundred pounds, *via* all ports, to each foreign destination." (For example, to take the New York and Philadelphia rates and add them together, and then add the ocean quotations to those ports, and then to ascertain the average of all and make that a uniform rate from Chicago to the foreign ports.)

On February 10th, 1888, said Joint Committee adopted the following:

"*Resolved*, That, taking effect Monday, February 20th,

1888, the system now in operation of making through export tariffs be discontinued; and that thereafter the rates on export traffic be the sum of the inland tariffs plus the ocean rates current from time to time, except that the inland rate to Boston on export traffic may be the same as to New York; it being understood that on grain shipments the elevator charges at point of export shall be also added.

"*Resolved*, That the inland rates be filed with the Interstate Commerce Commission, with a written statement that the through export rates are made by adding such inland rates and elevator charges to the rates of connecting ocean carriers.

"*Resolved*, That from this date to February 20th, the published tariff rates to foreign ports will be used in giving rates to foreign ports named therein, but nothing to be contracted that can not be forwarded by the 20th. For foreign points not named in the export tariff, full domestic rates are to be used as the proportion of the through rates, except that New York rates may be made to Boston on export traffic.

"*Resolved*, That export traffic contracted, way-billed and actually forwarded from points west of Chicago, St. Louis, &c., prior to February 20th, will be passed at the present export tariff rates or the authorized export basis, to and including February 25th, at Chicago, St. Louis, &c., and thereafter the way-bills shall be corrected."

Between November 4th, 1887, and February 20th, 1888, the inland proportion of the rate for the transportation of merchandise through to foreign ports was frequently less than the rate for the transportation of the same kind of merchandise from the same point of shipment for delivery to the consignee at the seaboard; and the share of such through rate to the foreign port of each defendant line was in like manner less in one case than in the other.

The cost of transportation of freight from Chicago to New York and of delivery by lighter in New York harbor, is no greater on freight for New York consignees than on freight delivered to steamships for immediate export.

The method of making a uniform rate from Chicago and other western points to the seaboard, whether for export or for domestic consumption, except at Boston, has prevailed since July 1st, 1877, when an agreement as to rates was entered into by all the lines, until the Trunk Line resolution for a different method took effect, November 4th, 1887.

Under the resolution of November 4th, 1887, contracts were entered into by the carriers with shippers at the West for a through rate from point of shipment to the foreign port of destination, covering both the inland and the ocean transportation.

Under this system ocean rates largely advanced and inland carriers were not able to maintain uniform inland rates, but were sometimes required to pay fifty per cent. of the through rate to the ocean carrier, resulting in a discrepancy between the inland proportion of the export rate and the domestic rate of ten cents a hundred pounds at New York and eight cents at Philadelphia. The ocean rates are made by the ocean carriers, which are mostly owned abroad, and not under the control of inland carriers. And one effect of contracts for through rates to foreign ports had been to deprive inland carriers of the control of their own inland rates on export business.

The facilities in New York city for storing and holding the surplus grain from the West that accumulates there are in excess of the amount of such accumulations. Twenty millions of bushels are frequently in storage. The storage capacity is twenty-five millions of bushels.

Very full statistics were put in evidence showing the grain and flour transportation from the West to New York and other seaboard cities for a series of years, both for direct export and for consignment at the seaboard. These are too voluminous for the limits of this report, and only such selections will be made as relate to the points to be decided.

The number of tons of flour and grain respectively carried to the cities of New York, Boston, Philadelphia and Baltimore, consigned to those cities and exported, and compared with the tons of flour and grain carried by the Trunk Lines

through those cities on through bills of lading, consigned to foreign ports, during the periods below indicated, are as follows:

FLOUR.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883	April 30, 1884	314,353	146,748
Dec. 1, 1887	April 30, 1888	428,702	302,936

GRAIN.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883	April 30, 1884	869,526	74,049
Dec. 1, 1887	April 30, 1888	424,908	58,855

At New York city alone the comparison is as follows:

FLOUR.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883	April 30, 1884	189,629	77,090
Dec. 1, 1887	April 30, 1888	196,284	107,068

GRAIN.

FROM—	TO—	Seaboard consignments.	Foreign consignments.
Dec. 1, 1883	April 30, 1884	489,554	24,109
Dec. 1, 1887	April 30, 1888	251,109	12,038

Tables were put in evidence showing the inland tariffs on certain commodities from Chicago to Baltimore, Philadelphia and New York, from November 4, 1887, to February 20, 1888, and the proportion of the through tariffs to Liverpool to the same cities for the same time.

The table showing the rates and proportions to New York will be a sufficient illustration. The columns under "A" represent the rates on consignments to the seaboard, and the columns under "B" represent the inland proportions of the through rates to Liverpool.

From—	To—	Bacon, Pork and Beef.		Lard and canned goods.		Flour.	
		A.	B.	A.	B.	A.	B.
Nov. 4, 1887...	Nov. 14, 1887...	30	25.31	30	.....	25	20
Nov. 14, 1887...	Nov. 21, 1887...	30	23.875	30	22.875	25	19.375
Nov. 21, 1887...	Dec. 27, 1887...	30	21.875	30	21,375	25	18.375
Dec. 27, 1887...	Jan. 2, 1888..	30	25.375	30	24.875	25	19.855
Jan. 2, 1888...	Jan. 11, 1888...	33	25.375	33	24.875	27.5	19.875
Jan. 11, 1888...	Jan. 26, 1888...	33	23.375	33	22.875	27.5	18.875
Jan. 26, 1888...	Feb. 1, 1888...	33	21.875	33	20.875	27.5	18.125
Feb. 1, 1888...	Feb. 2, 1888...	33	20,875	33	19.375	27.5	16.875
Feb. 2, 1888 ..	Feb. 3, 1888...	33	20.875	33	18.875	27.5	16.875
Feb. 3, 1888...	Feb. 6, 1888...	33	19.875	33	18.375	27.5	16.375
Feb. 6, 1888...	Feb. 7, 1888...	33	18.875	33	18.125	27.5	15 625
Feb. 7, 1888...	Feb. 8, 1888...	33	18.875	33	18.125	27.5	15.375
Feb. 8, 1888...	Feb. 9, 1888...	33	17.875	33	17.875	27.5	14.875
Feb. 9, 1888...	Feb. 10, 1888...	33	17.875	33	17.375	27.5	14.625
Feb. 10, 1888...	Feb. 11, 1888...	33	17.375	33	17.375	27.5	14.625
Feb. 11, 1888...	Feb. 20, 1888...	33	18.375	33	18.375	27.5	15.625

In view of the importance of the questions involved in this case, and the earnestness of the parties evinced in the discussion, and also that the record may show the differences among carriers themselves in respect to the rules that ought to govern the making of export rates, it is deemed appropriate to set out somewhat fully the arguments presented.

The argument in behalf of the complainants was in substance as follows:

First. The Commission had jurisdiction to make the order of March 8, 1888.

Second. In charging less than inland tariff rates upon export business the defendants were guilty of unjust discrimination against New York consignees under section two of the Act to regulate commerce.

Third. Such lower rates upon export business violate the third section of said Act, which forbids undue and unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or the subjecting any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue

or unreasonable prejudice or disadvantage in any respect whatsoever.

Fourth. Under the law and the facts the preference and advantage given by an inland export rate which is lower than the inland tariff rate is undue and unreasonable as between competitors who can, and those who cannot, practically avail themselves of it, and as between export and domestic traffic.

Fifth. "The defendants violated the long and short haul clause, because they charged more for shorter distances than to the seaboard. The principal object of this fight is to knock out the long and short haul clause. If under section four a line can be projected to foreign ports, then rates from Chicago to shorter points than to the seaboard will not violate the Act, although they much exceed the sum received by the railroads to the seaboard, provided they are within the rate to Liverpool, or Constantinople, or Calcutta. This would be most disastrous to the efficiency of the Act as designed by Congress. There can be no longer line than to the seaboard under section four. To give to this section its clearly intended meaning we must fix the end of the long line at the seaboard, and must determine the extent of its application to interior point rates with reference to the seaboard competitive and other conditions."

Sixth. "*Public policy* forbids that inland export rates shall be lower than inland tariff rates, for many reasons, and hence there is no justification for them in this direction.

"(1) The ultimate result of the practice would be to destroy competition between the seaboard export points and interior storage centers in handling products, and to concentrate the control of both producer and consumer in fewer places and in fewer hands. No ultimate benefit can result therefrom. Public policy never favors this.

"(2) Competition in carrying to the seaboard would be lessened, because while the strong railroad lines could own, or control, or subsidize ocean lines or vessels, their com-

petitors could not. This, in turn, would operate to destroy ocean competition at the seaboard, and to concentrate all business in the hands of some strong railroad lines and their ocean lines and vessels. This would be against public policy.

"(3) This part of our contention is fully covered by the fact that the defendants themselves have always maintained that like inland rates for both inland and domestic consignments to New York with certain concessions and differentials to weaker competing ports, is the best practical method of meeting and solving all the conditions of the problem. Under this system a vast business has been built up and vast capital has been invested at the seaboard. Contentions and wars between railroads, and between competing ports, have been settled upon this basis and never could be on any other. In view of these facts is it wise, as a matter of public policy, to approve of a new method, which the experience of last winter shows will cripple the business and ocean carrying competition of the seaboards; which by reason of the situation of seaboard and interior competitors can only be practically available to those at interior points; which will demoralize all rates, and complicate the present difficult question of maintaining one set of inland rates, by adding in all their troublesome relations, another set of rates based on different and uncontrollable conditions; which will invite rate-cutting and strife among carriers, and open the door to new devices for favoring individuals, localities, &c? Is it good public policy to thus disturb all business and defeat the intent of the long and short haul clause by extending lines beyond the seaboard; especially when the result will be to make American products much dearer in America than Europe, without benefit to the producer?

"(4) Export and import ports are fixtures—they are the natural centers of exchange with foreign countries. The conditions of all markets are there most quickly felt and responded to, and it is from those places that advantage can be most readily taken of foreign market demand and compe-

tition in ocean carrying. While they, for these reasons, can not demand that their dealings with foreign countries *shall be favored by interior rates, so as to prevent billing between the interior and foreign market direct*, yet they only urge a sound public policy when they insist that railroads shall favor neither through billing nor seaboard consignment in their rates, but that the inland tariff, founded upon competitive conditions to and at the seaboard, shall be the basis of all rates.

"The theory that the inland export rate ought to be more flexible than the inland tariff rate, in order to place our surplus crops abroad is all a misconception.

"Our exportable surplus of wheat, for example, is about one hundred millions of bushels. Of this quantity Great Britain absorbs about four-fifths, or eighty millions. That the market value of the exportable surplus product of any country fixes the value of the whole crop, is a well known and established fact. Prices would advance in England if our surplus was withheld, or its exportation merely checked. The attempt of the railroad companies, therefore, to meet markets or Indian competition, &c., is a direct and positive injury to the producer, because thereby the surplus is hurried to market, and prices depressed, not only on the quantity thus prematurely marketed, but of the entire crop, far below the nominal or actual value, if the regular course of supply and demand is allowed to prevail. Therefore, instead of helping the farmer, they create a new and uncertain commercial factor, which, while it injures every producer, by artificially depressing prices, at the same time reduces the legitimate earnings of the railroad companies, *cui bono?*

"The inland tariff rate has always readily marketed our surplus crops abroad. This tariff rate is fixed by seaboard competitive conditions, and always prominent among those conditions are the very foreign market demands and requirements which a special low inland export rate is to be devised to meet. These are, and always must be, sufficiently met by the inland rate to the ocean.

"(5) Public policy demands *steadiness* in rates more than

extreme cheapness. A divorce between inland tariff and inland export rates is a premium for strife over export business. The present penalty of disturbing all inland tariff rates by cutting the inland export rate is a wise and efficient restraint.

"American products for export are raised in all States from New York to San Francisco. To have two rates from each trade and producing centre to each port would introduce chaos into inland rates, because of the ocean competition at each and all ports. It would be directly against the policy of the Interstate Commerce Act, which is to equalize rates, and not to encourage further inequalities.

"(6) Combinations with and ownership in ocean lines by railroads is advocated as wise, and is the necessary result of through billing with a special inland export rate.

"To encourage this is not good public policy, but would tend to dangerous and uncontrollable monopoly.

"(7) Without the capital, facilities and energy of the so-called middle-man in gathering together and finding markets therefor, American products could not reach consumers, advantageously to the producer. Is it good public policy to wipe out those of them at the seaboard?

"Is it permissible under any view of what public policy requires to allow these servants, railroads, to engage in their partial destruction? We submit not."

Seventh. "The theory which was advanced on the hearing that the inland export rate ought to be as much lower than the inland tariff as is needed from time to time to market our surplus products abroad, however good and desirable, is utterly impracticable."

The Commission was asked to hold:

I. "That in charging a lower inland rate for export business to New York than the inland tariff rate, the defendants violated sections two, three and four of the Act to regulate commerce.

II. "That through rates to foreign ports through seaboard ports shall hereafter be made by adding the going, or agreed ocean rate, to the inland tariff rate, except that the New York rate shall be given to Boston on exports as heretofore.

III. "That in each through bill issued, the inland and ocean rate shall be separately stated.

IV. "That the order of March 8th be amended so as to require compliance with these requirements, and then be enforced."

The argument on behalf of complainant was strongly supported by the New York Central & Hudson River Railroad Company and its western affiliations, and by the Commercial Exchange of Philadelphia. The railroad companies mentioned contended that the evidence tended to establish, and that the contrary cannot be maintained:

"1st. That the seaboard exporter has long held and holds a legitimate place in connection with the traffic of the country and should not suffer from unjust or even impolitic discrimination.

"2d. That, with the exception of a very limited amount, comparatively, of freight delivered directly to ocean steamers from railroad piers—conditions applying as well to local exports as to those upon through bills of lading—the expense to the railroad companies in transportation and in terminal service at the seaboard is practically no more upon domestic traffic than upon export traffic.

"3d. That it is of the greatest advantage to the commerce of the country that the extensive store-houses and storage facilities, long established at the seaboard, should be maintained and utilized, so that American products there accumulated should be always ready for vessels seeking cargo, and for prompt and sure forwarding and delivery to foreign markets.

"4th. That, without increased cost to the railroad company, the western exporter, if he so desires, should be permitted, in accordance with established custom, to handle his own products at the seaboard, making his ocean contracts and inspecting and properly preparing his shipments before delivery to the ocean carrier, instead of losing all charge of his property after delivery to the carrier in the far West.

"5th. That the commerce of any port is best created and fostered by the certainty of 'spot freight,' rather than by a dependence upon freight contracted through to foreign countries at the West, with the uncertainties of inland transportation, and the consequent necessity for contracts long in advance of sailings.

"6th. That, the expense to the railroad companies being practically the same on both classes of export traffic, any difference in rate in favor of the through bill of lading—unless justifiable by dissimilar circumstances and conditions—is a discrimination against the seaboard exporters, and of bad policy.

"7th. That the seaboard exporter, making his own ocean rates with the steamship companies, and entitled to the same inland rate as that which the interior exporter receives on a through bill of lading, must necessarily be advised as to that inland rate, in order to be placed on an equality with the interior exporter, who secures both ocean and inland rates by his bill of lading; and this can not be effected by subsequent and uncertain rebates to conform to fluctuations in the inland share of the *through* bill of lading rate, but necessitates a *fixed* inland rate, not subject to change without notice.

"8th. That, under ordinary circumstances, the New York tariff rate, at New York and Boston, with the agreed differences at Montreal, Philadelphia and Baltimore, has practically served well as this *fixed* inland rate for both classes of export traffic.

"9th. That in the past, the necessity for making export

rates 'to meet the markets abroad,' has seldom, if ever, existed without at the same time such conditions of limited movement of freight and competition to the seaboard, as to cause a reduction in seaboard rates on domestic business without reference to or thought of prices abroad.

"But conditions may exist, and are easily possible, which would justify, as was contended in the Boston case, different rates on export and domestic business—differences which when capable of justification, obviously promote the business interests of localities and of the country, and are approved by public policy.

"10th. That ocean rates do fluctuate, and always have fluctuated, weekly, daily and hourly, even for the same sailing, and evidently from conditions not affecting rail carriers or affecting them in a less degree; and that it is not to the interest of rail carriers (or indeed of steamship companies) to combine inland and ocean rates as a through rate by any system which will thus extend this fluctuation to the rail proportion, which could otherwise be free from it.

"The power to quote through rates at pleasure might give a temporary advantage to any one line alone adopting that system, but considering the system in view of its general adoption—a necessary result so soon as the amount of traffic secured under it by one or more railroad companies was deemed excessive by the other companies—the constant changing of the inland proportion of through rates, in addition to the necessary loss of revenue to the rail, would make any protection to the seaboard exporter impossible.

"Especial attention to, and examination of this matter of fluctuation in ocean rates is asked, as distinguished from any fluctuation in inland rates, because of its great weight and importance in the question at issue, the ocean rates being beyond the control of the Commission, and attention is called to one reason for this fluctuation, not requiring proof, but obvious, viz.: the regular lines of steamers have their fixed dates of sailing, and must secure cargoes regardless of rate; or, having secured a part, must complete the cargo with the particular class of freight, between decks or

ballast, required; while all irregular steamers or "tramps" must secure the earliest possible sailing, delay being often more expensive than a considerable concession of rates.

"11th. We believe, also, that while a system of through rates to foreign ports, the same *via* all American ports and based upon percentage or other divisions between rail and ocean, might be theoretically a perfect system, it would drive away some of our regular steamship lines, would make our ports most undesirable to outside vessels, would cripple if not destroy our seaboard exporters, would demoralize export and domestic rail rates, and in fact, is wholly impracticable.

The summary of conclusions by these parties was:

I. "The seaboard exporter and the interior exporter should have the same inland rate.

II. "This equality of rate is best secured by making through rates to foreign ports, by the addition of current ocean rates to the fixed inland rate, which latter is charged to the seaboard exporter.

III. "This inland rate on export freight can, under exceptional and justifiable conditions, differ from the domestic tariff rate to the seaboard.

IV. "The separation of 'through rates' to foreign ports from the inland rates to the seaboard, by combination with ocean lines, tends to demoralization and to unjust discrimination; as a system, is wholly impracticable, and, if adopted generally, would bring great injury to our foreign commerce.

V. "If the inland domestic tariff, or at least the inland rate charged to the seabord exporter, forms the basis of through export rates, the publicity required by the Commissioners' export circular of March 8th, 1888, will enable the seaboard interests to know just what the inland rate or proportion is, to discover any discrimination, and to demand justification or correction."

For the Pennsylvania Railroad Company it was contended that a fair reading of the Act to regulate commerce does not contemplate a division of through export rates, and certainly not a publication of them as part of the publication of the rate itself. But if the power exists to require this it ought not to be exercised for the following among other reasons:

"(*a*) The action of the Canada lines, prevailing for years previous to the passage of the Interstate Law, in making through rates to Europe from points in the interior of the United States, *via* the ports of Boston, Portland, Montreal and Quebec, which were, as we understand it, treated independently of their domestic rates from western points to the seaboards proper, and divided with the ocean carriers upon a percentage basis.

"(*b*) The fact that the city of Boston was the only eastern port having the advantage of two rates upon lines traversing a portion of the United States, one domestic, the other export.

"(*c*) The export traffic, whilst being a very small portion of the whole to be moved by the lines running through the territory of the West and South, involves the movement of the surplus production of grain, provisions, oil cake, tobacco, cotton and flour—the six articles that cover about all the export trade.

"(*d*) The fact that under the principle now prevailing, and which has prevailed except during the short period between November, 1887, and February, 1888, the ports of Philadelphia and Baltimore are placed at a disadvantage in the fact that they do not enjoy as much and as spirited ocean competition as the city of New York.

"(*e*) The desire to create continuous lines from points in the United States to points in Europe, partly by rail and partly by water, which would place the whole rate, ocean as well as rail, under the jurisdiction of the Commission, and would guarantee to a shipper in the West or South the

advantages of such continuous lines, without subjecting his property to assessment or delay of any kind *en route*.

"(*f*) The belief that it would be impossible for the Commission to legislate upon the inland proportion of such through rates, for the reason that the ocean charges from all ports fluctuate so suddenly and so widely, owing to the abundance or scarcity of unoccupied ships at the various ports at the same time, thus causing the inland proportions of the through rates to suddenly and violently fluctuate also.

"(*g*) The belief that the failure of the rail transportation companies between the West, South and East to make a different rate per mile upon export business than that made upon domestic business would result either in an absolute loss of the surplus production or the shipment of it by other routes; it being understood, of course, that this surplus has to meet the competition of the world in foreign ports.

"(*h*) The present rate on grain from Chicago to New York is 25 cents per hundred pounds, five dollars per ton for one thousand miles, or about five mills per ton per mile. It is urged that the Commission should first decide as to whether that rate is in itself fair and reasonable, in consideration of the service performed. If, in its judgment, it is fair and equitable, then the surplus production of the western and southern States should be allowed to seek the markets of the world, always providing that the aggregate charge for the long haul should not be less than the charge for the short, over any portion of the same route, in the same direction."

Briefs in support of the same positions were also filed in behalf of the Associated Millers and the Chamber of Commerce of Minneapolis, and the Indianapolis Millers' Association.

The arguments of the leading contestants have been set forth at large to give the advocates of the rival plans urged for approval the benefit of their own forms of statement. Both carriers and shippers are to some extent divided as well

in respect to the intent of the law as to the principles of transportation that should govern, and the pronounced discordance of views as regards the law indicates the difficulties that surround the subject.

Two distinct theories, as is seen, are advanced, involving radically different interpretations of the statute and dissimilar systems of rates for home traffic and for foreign traffic, or, more precisely, for inter-territorial traffic from an interior point to the seaboard, even though subsequently exported, and like traffic consigned directly to a foreign country beyond the ocean.

The contention of the complainants and of the carriers and others who are in general accord with them, is that for all the purposes of rate-making by inland carriers a seaport of transshipment of property transported from an interior point must be deemed the terminus of carriage, and that the inland rate upon such property consigned abroad and requiring ocean carriage must be identical with the rate charged contemporaneously for the transportation of like property to consignees at the same seaport for either local sale or for subsequent export, and therefore, when the inland proportion of a through rate to a foreign country is less than the rate from the same point of origin to the port of transshipment upon like property, the proportion of the export rate for inland carriage to the extent of such difference is unjustly discriminating and illegal.

The converse of this position is urged as the other theory and it is insisted that if the aggregate through rate to a foreign country is fair and equitable a disparity between the domestic rate and the inland proportion of such through rate is not unlawful, provided the total through rate is not less than the charge for a part of the distance over the same route in the same direction; that the domestic dealer or consumer is not harmed, and that on grounds of public policy these dual methods are valuable if not essential to the commerce of the country.

A wide field of inquiry and discussion is opened up in the consideration of these questions. They affect in a greater or less degree the whole interstate and foreign traffic of the

country, and are invested, therefore, with a measure of national importance.

Doubtless more than common and perhaps exaggerated importance is attached to them by particular transportation lines and particular localities for reasons supposed to be peculiar and to have controlling weight, but the questions have broader scope than the assumed special interests of towns, whether at the seaboard or in the interior, or the exceptional advantages of a transportation line, and they can only be justly determined with reference to carriers as a body, and to the rights and interests of producers, dealers and transporters wherever located. The regulations of commerce are intended by the Act to be general and for the common and equal benefit of all the interests to which they relate wherever the jurisdiction of the Government extends. Injustice in various forms is specifically defined and carriers are forbiddon to practice it. They are also required to make public their rates and charges that the information they furnish may be general and impartial, and to carry all traffic at the published rates. These provisions, it is contended, are not inconsistent with two simultaneous sets of rates for the same carrier, one a fixed and public rate from an interior point to a seaport for the transportation of property to be sold at the seaport or subsequently exported, and the other an unspecified and unpublished lower rate, changing perhaps daily, or with the successive hours of the same day, for the contemporaneous transportation of like property, possibly in the same train, over exactly the same line, charged with the same terminal expenses, when the property is destined for immediate shipment across the ocean.

This discrimination is claimed to be justified by considerations of public policy. The surplus products of the country must seek foreign markets, and it is said that carriers should be at liberty to make and modify rates to enable these products to reach the markets of Europe in successful competition with like products of other countries. No proof was given in support of the assumption that conditions exist requiring the discriminations claimed to be necessary for these purposes.

Low general rates are not the subject of complaint. Carriers are not forbidden, but are expected, to make their rates as low as they can afford to serve the public without injury to themselves. Every legitimate reduction of charges is in the interest of the public. Apart from the law equitable business considerations would seem to have force, that while carriers may make their through export rates as low as they think the exigencies of the markets and of competition through Canadian channels may require, they should give the same inland rates to the exporter who handles his own traffic at the seaboard at no additional expense to the carrier.

The complaint is against a reduction on a part of the traffic to the seaboard which is claimed to be prejudicial to the other and greater part, and without facts to justify it.

With regard to competition in foreign markets other things are of importance besides rates, and perhaps of equal importance. Among these are the abundance of diminution of supply—the quality of the products, and the operations of dealers or combinations of dealers in acquiring control of commodities and withholding or hastening their shipment. The other conditions are more or less influential, and rates, though of obvious and conceded importance, are not alone controlling.

The contention that a more flexible and lower rate to the seaboard for direct exports is needed for the surplus of the country, in order to stimulate the prosperity of its newer portions, is opposed by the historical facts of transportation and the progress of the development and growth of the country generally. Through many years of unexampled and substantially corresponding advancement in population, wealth and general prosperity at the seaboard and in other portions, the productions that enter into commerce have been generally moved on rates that made no distinction between consignments to the seaboard and abroad, without apparent advantages or disadvantages to geographical location. Cities at the seaboard, as the natural outlets and inlets of commerce, have advanced with amazing pace, while at the same time what was once the frontier a thousand or two thousand miles

from the coast has disappeared, and wilderness and waste places have been transformed into fruitful fields and populous towns that are great centers of varied business activities and abreast with the elder towns in the features of progressive civilization.

The theory of a necessary disparity between rates on transportation terminating at the seaboard and like transportation extended across the ocean is not supported, therefore, by the evidence in the case or by the general facts of experience.

The legal question whether under the statute a difference in rates for the contemporaneous inland carriage from an interior point to the seaboard can be justified by the circumstance of direct destination across the ocean, is one of vital importance. A decision of that question, declaring a rule applicable to all ports, is, however, not imperative in the present case. The practicability of an exceptional rule for through exports, both as a feasible method for inland carriers generally, and for purposes of regulation under the Act, as well as its justice, are obviously at the foundation of the question, and in these respects the objections to its use at the port of New York are too serious to be disregarded.

The law applicable to the question under consideration was little discussed before the Commission on the part of the defendants, but the case was treated on their part almost exclusively as one of practical policy in making transportation rates involving ocean carriage, and as the carriers have been mainly concerned with its practical difficulties it is natural that they should present that phase of it most prominently. It is not a matter of dispute whether through foreign rates should be made. Substantially no difference of opinion exists on that point. Carriers and dealers concur that they are desirable, and that the export business from the interior is simplified and subserved by a system of through rates that is practicable and affords some guaranty of uniformity and stability. Through rates have been made for a score of years and more, and various plans have been tried to find a satisfactory method and prevent frequent disturbances and confusion. The general rule, and the one to which a return has been made after every other experiment,

has been to make the through rate by adding to the inland tariff rate to the seaboard the current ocean rate at the time. This rule preserves to the inland carrier its published rate, and makes no discrimination between shippers, and has therefore been found better for the interests of both.

The case presented and necessary to be decided relates to the business at and through the port of New York. It involves, however, necessarily the business at the various Atlantic seaports from Baltimore, Maryland, to Portland, Maine, and Montreal, Canada. The conditions at these various ports, though not identical, are so similar that the various competing rail lines, all deriving their traffic, mostly of the same character, from the same general territory, have found it expedient for a long time to equalize their rates to these different seaports by mutual agreement upon a system of concessions or differentials at certain ports, that were thought to be equitable in view of the conditions at those ports. This adjustment the carriers interested have professed to respect, and claim to have nominally, at least, maintained. The importance of adhering to some proper and lawful arrangements in order to maintain fair rates and to prevent demoralization of business, is obvious enough to all, and fully understood by the carriers. The provisions of the Act requiring carriers to publish their tariffs, and to adhere to established schedule rates, added the obligation of legal duty to the voluntary agreements previously relied on. The stability intended to be given by the law to all inland rates, and which is deemed of such importance that advances or reductions are prohibited under severe penalties except in compliance with specified conditions, is no less important and desirable upon export traffic, as well to producers and dealers, as to the carriers themselves. But this involves conditions of ocean carriage that the rail carriers have struggled with in vain for years, and which are practically beyond the reach of legislation, if attempted to be regulated at all. Experience has shown that the only practical control over ocean carriage results from stable inland rates, and that ocean rates, like all other incidents of commerce, adjust themselves to fixed conditions. Ocean carriers, like inland

carriers, when they can not arbitrarily determine the rates they will charge, are likely to act on the ordinary principle of accepting the best obtainable rates, if the business is regarded as desirable.

It is claimed by all the lines made defendants in this proceeding that, since the promulgation of the order of the Commission of March 8th, 1888, they have complied with that order both as to the publication of their export tariffs and the observance of the inland rates upon the traffic. Their testimony is also uniform that there are no inherent or practical difficulties in complying with that order. The propriety of the order is not questioned, but it has been supposed, and circumstances give color to the supposition, that the order has not been fully respected at all times, but that some of the lines, for purposes of their own, have made use of practices to give secret reductions from their established rates. Whatever traffic disturbances have occurred have arisen from causes extraneous to the order, and came from breaches of its requirements. They are traceable to wrongful acts of carriers themselves impelled by a desire for business, and impatient of the restraints of law.

The export commerce at the port of New York and the related ports whose inland rates are based on New York, for the calendar year 1888, as shown by the statistics officially furnished by the Government, was as follows:

Ports.	Value of Exports.
Baltimore	$45,114,613
Boston	59,379,375
New York	299,895,853
Philadelphia	28,028,798
Portland	1,482,133

The flour and grain exported through the North Atlantic seaports, including Montreal, during the calendar year 1888, expressed in bushels, was 91,077,038; for the two preceding years the exports of the same products from the same ports were: In 1886, 150,383,499 bushels, and in 1887, 154,209,915. The percentages exported through Montreal during these three years were as follows: In 1886, 13.7 per cent.; in 1887,

11.9, and in 1888, 11.01. For the ten years preceding 1886 the variation in the percentage of exports through Montreal averaged about one per cent.

The total exports of American merchandise from the same ports during the fiscal year ending June 30th, 1888, show a much smaller percentage exported through Montreal. The value of such products, as appears from figures furnished by the United States and Canadian Governments, was $444,428,189, and of this amount only $12,713,290, or 2.8 per cent., went through Montreal. The statistics for previous years show even smaller percentages.

The statistics quoted convey only an indefinite idea of the traffic carried to the different seaports by common carriers subject to regulation under the statute. They represent aggregate exports of merchandise to foreign countries from the respective ports, and include that produced at the ports, that brought wholly by water, that brought by rail, and all varieties of traffic. The exports on through bills from interior points embrace only comparatively few leading articles. These are chiefly grain, flour, meal, meats, provisions, lard, tallow, canned goods, cotton, tobacco, oil cake and live stock. Exact proportions of the property carried by rail consigned locally to the ports and subsequently exported, and that which passes through the ports on direct foreign consignments are not at hand in any complete form, but only to a partial extent. Approximately, however, the through consignments are much the smaller in amount, and do not exceed one-third of the rail carriage, in some instances being more and in others much less. It is on this limited portion of the export traffic that the claim is founded for a method of making rates that affects the transportation and the market value of much the greater volume of like property, and prejudices the investments and business interests of large bodies of citizens.

In view of the very large export business of the country, and the various interests engaged in it, the questions that naturally arise, are: Is it the intention of the law to regulate equally the inland carriage of property whether consigned to the seaboard or across the ocean? Or is its intention that

the fact of a foreign consignment shall exempt inland transportation from the operation of the Act, except only that the charge for a haul of a thousand miles from Chicago to New York shall not be greater than a charge for the same haul with three thousand miles of ocean carriage added, when no difference in cost of inland service or terminal expense exists in either case? Practically, can two distinct methods co-exist and be enforced without friction and disorder, by one of which tariff schedules must be published and adhered to by the carriers, and by the other of which schedules, if published at all, need not show the inland rate, but only the aggregate through rate?

Generalizations applicable to domestic transportation, such as decrease of charge per mile in the ratio of distance, competition of carriers not subject to the law, and even broader considerations relating to competition in foreign markets or what are called the markets of the world, do not aid the interpretation of a domestic statute, nor so enlarge its application as to make it affective upon the ocean, and, by reflex influence, authorize different standards for internal rates.

The essential physical fact can not be changed that inland transportation and ocean transportation are distinct in their nature, and though a common charge may be made for both they are none the less separate in character, and where one gross rate is charged for both it will as a rule, usually be found to involve percentages or estimated proportions for each.

Nor is the carriage always continuous in the matter of time. It is not uncommon for a through consignment to wait several days or a month or more at the port of New York for ocean carriage.

The general facts relating to the business at New York, and that preceded this complaint, are as follows:

On November 4th, 1887, the Trunk Line Joint Committee, so-called, adopted the following rules with reference to export rates:

"That substantially the basis for making through export freight rates from Chicago be : To add to the actual inland

all rail tariff rates to each and all the different seaboard export cities the different ocean steam quotations thence to the foreign ports to which it may be from time to time agreed to issue through rates upon the leading articles agreed to be specified in the tariff.

"The average result thus obtained, barring fractions, to determine the uniform through rates in cents per hundred pounds *via* all ports to each foreign destination."

These rules were in force until February 20th, 1888, when they were abrogated and the former method restored.

It was shown that while the rules referred to prevailed contracts were made by the rail carriers with shippers in the interior for a through rate from the point of shipment to the point of destination covering both the inland and ocean transportation, and that this rate was sometimes less than the established inland rate to the seaboard.

It was also shown that under this system ocean rates largely advanced, that inland carriers were not able to maintain uniform inland rates, but were sometimes required to pay fifty per cent. of the through rate to the ocean carrier, and that usually there was a discrepancy between their proportion of the export rate and their domestic rate of ten cents a hundred pounds at New York and eight cents at Philadelphia. The vessels used for ocean carriage, being principally and most of them wholly owned abroad, are independent of the inland carriers, and under such a system, fix their own charges. One effect of contracts for through rates was to deprive inland carriers of the control of their own inland rates on export business.

Other effects of the system in respect to rebates to shippers were indicated, but rather as probabilities or inferences than as ascertained facts.

The irregularities and discriminations in the export rates under the rules put in force November 4th, 1887, and the complaints to which they gave rise, were the occasion for the order made by the Commission on the 8th of March, 1888, requiring export tariffs to be made public and to show the charge for inland transportation to the seaboard when defi-

nitely fixed, and when the export rate is a gross sum to show what part is allowed to the carrier for inland transportation to the point of export by sea.

The object of this order was to check the unjust discriminations of which general complaint had been made.

Prior to this order, however, on the 11th of February, 1888, the Trunk Line Executive Committee resolved that the system in operation from the 4th of November preceding, of making through export tariffs, be discontinued, and that thereafter the rates on export traffic be the same as the inland tariffs plus the ocean rates current from time to time; and this resolution became operative on the 20th of February.

The carriers of the Trunk Line Association were influenced to abandon the system under which the export business had been governed from November 4th by a conviction on the part of most of them of its impracticability and a sense of the unjust discriminations for which it was a cover. This experiment was, however, only a repetition of two preceding trials and rejections of substantially the same expedient. It had a trial of several months' duration in 1877, and, according to the testimony taken before the Hepburn Committee of the New York Legislature in 1879, the demoralization was so extensive that in July, 1877, it was abandoned and the normal method of adding the current ocean rate to the fixed inland rate resumed.

In January, 1880, another attempt was made to put in force a system of through export rates, and a Rate Committee was organized for the purpose. The scheme was, in substance, that the committee should have power to make through rates from common interior points of shipment to foreign ports, which rates should become the uniform and established rates *via* all the seaboard ports of the Trunk Lines; the rates to be quoted daily, or as often as necessary, to the agent at common points, and given to all the roads; the committee to have power to adopt uniform through bills of lading so framed as to give the carriers the right to forward the freight by any road, line, route or port. Notice was given that the plan would be enforced, but strenuous objections were made

to it by western shippers, and it was abandoned before it was put in execution.

However plausible the theory of through export rates not founded on a fixed inland rate may appear, in practice it has been found impracticable. The troublesome factor in every instance, the element of confusion and demoralization, is the ocean carriage. If the domestic carriers were generally owners of the vessels that carry the freight, with no independent competitors on the ocean, a very different condition might exist. But they are not. Our exports are mainly carried in vessels owned abroad and sailing under foreign flags. They are not within the jurisdiction of our laws, like our inland carriers, and there are difficulties in applying to them the provisions of the Act to regulate commerce. They have power, therefore, and exercise it, as the testimony abundantly shows, to dictate their own terms in making a through rate, and among the results that follow are higher divisions of the through rate for ocean carriage, fluctuating inland rates, discriminations between the inland and export charges, and the effect on prices in foreign markets of lower through rates.

There are other incidental abuses that mostly have their origin in the desire to secure business, and involve to a greater or less degree infractions of law. Consignments of freight on through bills without an arrangement for ocean carriage, resulting in delay at the seaboard, or a higher ocean charge at the expense of the inland rate; or nominal foreign consignments and delivery of the property at the seaboard; or secret subsidies to ocean lines by the inland carriers; and other devices that lead to disorders, are not uncommon practices.

The delays that occur in the transshipment of freight at the seaboard consigned on through foreign bills illustrate the injustice of a through rate not founded on the inland rate. Can any valid or even plausible reason be assigned why shipments on a through rate billed to a foreign country that wait a month or more for ocean carriage at a seaport, should be carried at a less inland rate than a shipment of the same kind of property over the same line consigned at the sea-

board, that waits no longer, and perhaps a shorter time, to cross the ocean?

The work of the inland carrier is completed when he discharges his freight at the seaboard, whether in warehouses, elevators, or on board vessels. His service is identically the same whether the destination is the seaboard or a foreign port, and there is no reason founded on the character of the service for a difference in compensation, or why a fixed charge applicable to both should not exist. Peculiar circumstances may exist at some port why domestic dealers there as well as exporters may acquiesce in a concession to exports not at the same time given to the strictly domestic rate. But independently of such exceptional conditions a fixed inland rate would seem the fair and just rule.

A standard rate from Chicago to New York, uniform both for domestic and foreign consignments, has existed nominally at least for more than eleven years, and was the agreed result of experience and severe contention, as the only practical way by which all the interests involved would be adequately protected. It is in evidence that the recognized importance of reaching foreign markets was a very important element in fixing this rate, and except for this consideration, and water competition by the lakes and Erie Canal, the charge would likely be considerably higher. It is not claimed that the carriers have adhered with unswerving fidelity to the established rate, but, on the contrary, both before and since the Act to regulate commerce, departures, in the form of rebates and cuts, as is charged, have not been uncommon. But these have been willful and wanton violations of an agreed and established rule. There was no element of instability in the conditions beyond the control of the carriers.

The case is very different with ocean rates. There has not been, and can not be in the nature of existing conditions, fixed or permanent ocean rates. It is undoubtedly the fact that "ocean rates do fluctuate, and always have fluctuated, weekly, daily and hourly, even for the same sailing, and evidently from conditions not affecting rail carriers, or affecting them in a less degree."

The testimony illustrates the practical working of the contracts for through rates under the disadvantages of these fluctuations and the absence of any control over them. It shows in substance that when the railroad companies, under the plan of November 4th, 1887, fixed the through rate based on the average of inland and ocean rates, some of the steamship companies increased their rate and asked the railroad company more than the proportion they were to receive of the through rate. Thus, if the inland carriage were twenty-five cents a hundred, and the average ocean carriage ten cents a hundred, the through rate established would be thirty-five cents a hundred. This would be published as a through rate, and the next day, when the rail carrier wished to take any business to a steamship with which no previous understanding existed, the steamship company would demand fifteen cents a hundred for its part of the work, and the railroad company, having guaranteed a through rate of thirty-five cents a hundred, would have to carry the business for less than the average inland proportion on which the rate was originally based.

The extent to which inland rates were affected by the fluctuations in ocean rates is shown by tables in evidence. The established inland tariff from Chicago to New York from January 2d, 1888, to February 11th, on bacon, pork, beef, lard and canned goods, was 33 cents per hundred pounds, and on flour 27½ cents per hundred pounds. The inland proportion of the through rate to Liverpool *via* New York on January 2d was 25.375 cents on bacon, pork and beef, 24.875 on lard and canned goods, and 19.875 on flour. These proportions fluctuated until they fell on February 10th to 17.375 cents on all except flour, and on flour to 14.625, being about half the established rate on the same articles consigned to New York.

As the freight sent across the ocean on a through rate affects the price of all like freight stored or accumulated at the seaboard, the disadvantages of the seaboard exporter under such disparities in the inland rate are evident.

In the testimony statements were produced showing the quantities, in tons, of flour and grain respectively carried to

the cities of New York, Boston, Philadelphia and Baltimore, consigned to those cities and exported, and also the quantities carried through those cities on through bills of lading during certain periods, and are set out in the findings of facts. By these statements the proportions of flour and grain exported on through bills through the several cities named, in comparison with the amount carried to the same cities and subsequently exported were as follows:

From December 1st, 1883, to April 30th, 1884, 46.67 per cent. of flour; from December 1st, 1887, to April 30th, 1888, 70.50 per cent.

From December 1st, 1883, to April 30th, 1884, 8.51 per cent. of grain; and from December 1st, 1887, to April 30th, 1888, 13.85 per cent. of grain.

At the city of New York alone the comparisons were as follows:

From December 1st, 1883, to April 30th, 1884, the proportion of flour exported on through bills was 40.65 per cent.; and from December 1st, 1887, to April 30th, 1888, 54.56 per cent.

Of grain the proportion exported on through bills from December 1st, 1883, to April 30th, 1884, was 4.92 per cent.; and the proportion from December 1st, 1887, to April 30th, 1888, was 4.79 per cent.

More complete statements of the exports at New York on local consignments and on through bills show the following comparisons:

Total exports of flour for the year 1886 were 6,052,118 barrels, of which the percentage exported on through bills was 30.38. Total exports of flour for the year 1887 were 6,506,436 barrels, of which the percentage exported on through bill was 29.86.

It is a generally accepted conclusion among those who have given most attention to transportation, that the great fluctuations constantly taking place in ocean rates at different seasons of the year under the ever-changing conditions

of commerce, make it entirely impracticable to vary the inland rates as the ocean rates may vary, and that the plan of equalizing the through rates upon the average sum of ocean and inland rates can never be successfully carried out. But on the other hand the evidence furnished by the statistics of the movements of commerce prove that it is one of the laws of transportation that ocean rates adapt themselves with almost invariable precision to established inland rates. Whatever advantages may be urged in favor of a through foreign rate from interior points not founded on a fixed and public inland tariff rate manifestly can not accrue to the country at large, nor promote the territorial distribution and individuality of business pursuits that are generally regarded as desirable, and conducive tothe public welfare. But, on the contrary, the tendency under such a system is more likely to be towards concentrated control or combinations in commerce that may be productive of results prejudicial to individual enterprise and to the public interests.

It is not surprising that, in view of past experience, the great majority of those familiar with transportation questions and practically engaged in transporting products for export, substantially concur with the petitioners with regard to the method of making foreign rates. All the parties to this proceeding whose opinions have been expressed, with one exception, favor that mode, and it is also supported by the testimony. This general coincidence as the mature result of experience, study and practical knowledge of the subject of transportation and of the factors that must be considered in fixing a basis for rates, is a significant and important circumstance. Upon the practical aspects of the question of the proper method of making through foreign rates, the largely preponderating testimony of those directly interested in the business, both as shippers and transporters, is entitled to reasonable weight.

The questions that arise under the Act have to be determined under it as it stands, and the statute should not be impaired, or deprived of its efficiency, by artificial or fanciful construction. If there are any defects or errors in the existing law it is far better that they should be endured for a

time, until proper changes can be made by the legislative body, than that construction should be resorted to for the accomplishment of purposes only to be appropriately attained through legislation. It is certainly not to be expected that the first attempt to regulate by law the immense transportation interests of this country, with such endless diversities in the conditions of transportation, and such great variety in the character of products to be carried, should be complete in all its parts, or free from some provisions that may produce friction, or, to some extent, perhaps, injurious results. Indeed, the wonder is that a statute of such a character, and for such purposes, could have been framed, as a first experiment, with so comparatively few defects.

A general and careful survey of the export business of the country, and the conditions under which it is carried on, through the various ports, seems to warrant certain deductions which largely simplify the question under consideration. These deductions may be summarized as follows:

The proportion of the export trade to which the exceptional rate is sought to be applied is very small in cumparison with the general transportation business to the seaboard, and relatively small in proportion to the export business itself.

There is no reason to believe, founded upon any evidence in the case, that foreign markets cannot be profitably reached by our surplus products upon a fixed inland tariff rate to the seaboard with the current ocean rate added, but, on the other hand, there is affirmative evidence that no difficulty has been experienced in reaching those markets advantageously upon a rate so made.

The demand for an exceptional export rate is not shown to be founded upon any necessity of the business, but, as would seem, is urged argumentatively by certain railroads on their own account, and has for its object supposed advantages to particular lines rather than the general interest of the public.

The competition of like products through Canadian ports,

though important in amount, is not shown to involve conditions so peculiar and controlling in their character as to require an exceptional rule for the business in question,—the percentage of exports through Montreal for a period of thirteen years has been very nearly uniform, and whatever irregularities there may be in that competition they are susceptible of correction by appropriate legislation.

The transportation of property from the interior to the seaboard at the same inland rate for the interior exporter and the seaboard exporter produces no injustice to either, and gives neither any advantage over the other, and the competition between interior and seaboard exporters is left to the control of natural forces and natural laws, without artificial helps or hindrances to either, and enterprise and energy may contend on an equal footing for the success to which they are entitled.

To these must be added the general principle that a rule for making rates, like all general rules of business, should be founded upon and adapted to the main proportion or bulk of the business, and not upon an exceptional part of it; and especially should this be the case when a rule based upon the exceptional part would be likely to injuriously affect all the remainder and much greater proportion of the business; and if it be true (which is not conceded, however) that the smaller or exceptional part of the business might to some extent be injured by not giving it a free foot to run as it pleases, it is consistent with sound principles that, if evil results must follow from general rules, it is better that they should apply to the less and not to the greater proportion of the business.

There is much pronounced dissimilarity in the essential conditions of the export business that a general rule for making and publishing rates can not apply without serious injury to any important interest—at least until Congress shall see fit to authorize exceptions. Any practical difficulty in the application of the positive provisions of the law is not to be remedied by construction on the part of the Commission, but is properly a subject for legislative action.

The principle that inland charges to a port of transship-

ment shall be the same for like service though part of the traffic is booked to go beyond the port by sea has long been the rule in England, and is in terms provided for by statute.

A practice having grown up under the Act of 1854 of making through passenger rates by railway and steam vessel beyond the port of transshipment, of which the inland proportion of the railway company was less than the established rate of the same company to the seaport, the Regulation of Railways Act of 1868 enacted that the rate should be equal on the *railway* whether the passenger was destined to the seaport or beyond by steam vessel, and that the ticket should indicate the respective charges by steam vessel and by railway.

And in respect to imports the recent English Act (August 10, 1888) provides (section 27, sub. 2) "that no railway company shall make, nor shall the Court or the Commissioners sustain, any difference in the tolls, rates or charges made for, or any difference in the treatment of home and foreign merchandise in respect of the same or similar services."

Like charges for like inland service is therefore the established rule in England, and the fact that merchandise may be carried by rail to the seaboard for export, or be imported by sea to be carried inland by rail, is not allowed to create an exception to the rule.

The rule applied in England is not a tentative one, but is the result of discussion and experience. It agrees with the method approved by experience in this country. Although our statute does not contain the explicit enactments of the English acts, its general provisions permit the enforcement of a rule supported by so many considerations, and under which it is possible to regulate export rates with some assurance of stability and equality.

The Act to regulate commerce was designed to govern the transportation business of the whole country. Its operation was intended to be beneficial to the public, and its provisions as regards public interests are conservative. It does not attempt to revolutionize business pursuits, but its purpose is to aid legitimate business by requiring justice and impartiality on the part of the transportation agencies that

serve the public. Its chief provisions aim at the extirpation of known abuses, the prevention of an arbitrary use of the powers of carriers to give undue preferences to localities or individuals to the prejudice of others, and proper recognition of the principle that equality is the right of the citizen and the duty of the carrier. It lays down principles of national policy intended to be general in their application, and to secure the enjoyment of the equal rights to which all the citizens of a common country are entitled.

It is clearly essential that the mode of making through inland and ocean rates should be one that is practicable, and at the same time not a cover for discrimination and injustice. It is also reasonably evident that for these purposes, under existing conditions, the fixed inland tariff rate must be the basis of the through rate. No other feasible mode has as yet been devised that so fully assures conformity with the provisions of the law, and that furnishes any positive criterion by which unjust discriminations may be determined and dealt with on a consistent basis.

The Commission had in view these considerations when the order of March 8th, 1888, for the publication of such rates, was promulgated. The authority of the Commission to make such an order was clear and ample. The language of the Act is:

"And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares and charges on such continuous lines so filed as aforesaid, shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published."

By the amendments made to the Act March 2, 1889, the following provisions were added in respect to advances and reductions in joint rates, the publicity to be given to such advances and reductions, and the duty of observance by carriers of their established joint rates:

"No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time."

By the enactments quoted from the original Act the duty of carriers to file their joint tariffs of rates, fares or charges for continuous lines or routes over which freight passes, is imperative. The duty is no less imperative to make public such rates, fares and charges when directed by the Commission, and to such extent as the Commission—not the carriers—may deem practicable. The statute also provides that publicity may be required to be given to the whole or a part of such joint rates, fares and charges as in the judgment of the Commission may be deemed practicable. The duty both to file and to publish is imposed by the statute, but the per-

formance of the duty to publish, and the extent of the publicity, are left to the discretion of the Commission under a grant of power without qualifications. This power, like all other powers, is to be exercised reasonably and for the beneficial public purposes contemplated by the Act. The objects of the publication of tariff are to inform the public what rates and charges are made so that all may have the same knowledge for the purposes of their business, and to prevent discriminations and preferences. It is not questioned that internal tariffs for the transportation of property to the seaboard, whether for consumption and distribution there or for subsequent export under an independent arrangement with ocean carriers, should be made public. In these cases the jurisdiction of the Commission to require publication and to give effect to the Act admits of no doubt. When, however, property is consigned directly to a foreign port from an interior point upon a through rate for inland and ocean carriage, it is claimed that the part of such rate accepted by the inland carrier is not to be deemed a rate subject to the same requirements as in the other cases, but that the reasonableness of the aggregate through rate is alone to be dealt with by the Commission. The statute, however, makes no such exception, and the Commission has never intimated that a particular portion of a joint through rate received or participated in by one or more of the carriers forming a part of the line may not be called in question, and its justice or lawfulness determined under the provisions of the Act. There may be cases, as in the case of *The Boston Chamber of Commerce* v. *Boston & Albany Railroad Co. et al.* (1 I. C. C. Rep., 436), where the contention is with the through rate as an entirety, in which the divisions allotted to different roads are unimportant for the purpose of the case, but it is otherwise with the case in hand. The division of the through rate accepted by the inland carrier is for all practical purposes its rate to the seaboard, and is as fully subject to the provisions of the Act and the jurisdiction of the Commission as a rate terminating at the seaboard. If it were otherwise the law would be ineffectual for a large proportion of the commerce it was intended to regulate, and the immunity of only a fractional

part of the traffic would injuriously affect all of the residue though many times greater in amount. This is one of the considerations that led to the petition in this case.

By the amendments of March 2, 1889, the further duty of notification of advances and reductions, and the maintenance of joint tariffs, render the practice of changing every day, or several times a day, joint through rates, whether wholly inland or partly inland and partly ocean, an impossibility if these provisions of the statute are to be observed at all. The notification of advances and reductions is intended to precede the time when they take effect, and not to follow after the shipment of the property, when the notification is useless. And an advance upon ten days' notice, or a reduction upon three days' notice, is wholly inconsistent with daily or more frequent changes. These provisions are intended to secure stability in rates, and the Commission has no authority to absolve carriers from their observance.

The exact ground of complaint is the alleged discrimination by the inland carriers, who transport wheat, corn, flour, cotton, tobacco, live stock, dressed meats, and other productions of the interior, in favor of dealers who consign their shipments on through bills directly to foreign ports, and against the dealers in like traffic in the seaboard cities who purchase either for local sale or for subsequent export; the consequences being, as claimed, to give foreign purchasers advantages over home dealers, and to establish prices in foreign markets for the entire products exported, and, to some extent, for the domestic sales as well. The fact that discriminations of the nature charged were made during the period mentioned in the complaint, and the extent to which they were carried, appear in the testimony, and have been before noticed. Substantially the charge of the complaint in respect to discrimination is sustained by the evidence, and it was not justified by the circumstances and conditions shown to exist. The discrimination was actual; it was unjust, and therefore unlawful.

The necessary conclusion is that in making and publishing export tariffs, the rate to the seaboard should be specified and should not discriminate against the inland tariff rate

unless justifiable conditions exist for a difference. It is not shown that such conditions exist at New York, and very clearly they do not exist.

The decision of the Commission is that the order of March 8th, 1888, stand and continue in force as promulgated, and that the several defendants cease and desist from unjustly discriminating in their rates and charges for inland transportation, between traffic consigned on through bills to foreign ports from interior points, and like traffic consigned to the seaboard.

The disposition of this case is confined mainly to the practical aspects of the matters involved. It has not been considered necessary to critically discuss the question whether the Act may not be so interpreted as to apply its provisions to ocean carriage, and to authorize through rates to foreign countries independently of the established inland rate. In the judgment of the Commission the addition of current ocean rates to the fixed inland tariff rate is the only practicable method for the export business as a whole, and the only mode to which the regulations of the Act can be effectively applied, especially since the amendments of March 2, 1889.

The Commission believes the policy of this method of making export rates will best protect all interests, and leave no substantial ground upon which to base any complaint for injustice. The welfare of the great body of producers, dealers and carriers will, it is believed, be best promoted by an adherence to this policy, leaving to the wisdom of Congress the question whether the policy should be permanent, or to provide by changes in the statute for whatever exceptional or different methods may be deemed expedient or necessary.