

rate, fare and charge of seven dollars (\$7), and that they, the said Egan and the said Holdridge, acting as said officers, agents and persons acting for and employed by said common carrier and railway company as aforesaid, did then and there willfully, knowingly and unlawfully charge, demand, collect and receive a less rate, fare and charge for transportation from said City of Saint Paul in the State of Minnesota to said City of Chicago in the State of Illinois, a less rate, fare and charge from each of said passengers, whose names are to said grand jurors unknown as aforesaid, than eleven dollars and fifty cents (\$11.50), to wit, seven dollars (\$7), for the transportation of each of said passengers from said City of Saint Paul to the said City of Chicago, which said charge of

seven dollars (\$7), then and there demanded, collected and received as aforesaid by the said Egan and the said Holdridge, as aforesaid, was less than the compensation specified as afore- in the said schedule of rate, fare and charge established by said railway company and in force on the said 12th day of March, A. D. 1890, for first-class unlimited transportation from said City of Saint Paul to said City of Chicago and filed with the Interstate Commerce Commission as aforesaid, which is against the peace and dignity of the United States and contrary to the form of the Statute in such cases made and provided.

[The indictment contains three more counts similar in substance to the foregoing.—Ed.]

INTERSTATE COMMERCE COMMISSION.

COXE BROTHERS & COMPANY

THE LEHIGH VALLEY R. CO.

(No. 150.)

1. Classification of freight.—Freight classification is deemed by the railroads convenient and essential to any practical system of rate-making, and is so recognized though not enjoined by the Act to Regulate Commerce.

2. Same.—When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the Statute, the Act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.

3. Lower rates for longer hauls.—Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.

4. Through carriage over connecting lines.—Through transportation over connecting lines is favored by the Statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.

5. Same.—Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, That this was no undue preference in favor of the bituminous coal traffic, and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.

6. Practicable regulation.—A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, Where such conditions result in violations of the Act to Regulate Commerce, the only

regulation practicable is the enforcement of the provision of the Act requiring rates to be reasonable.

7. Group rates.—It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west.

8. Unreasonable rates.—A railroad company had in force for a period of more than two years next before the Act to Regulate Commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron and other low-grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, That such higher rates on coal are unreasonable.

9. Commission to determine rates.—The Act to Regulate Commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty, of determining what are reasonable rates, as well as what are unreasonable.

10. Reasonable rates.—A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years, immediately after the Act to Regulate Commerce took effect, a scale of charges largely in excess of that maintained for two years next before the Act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment,—*Held*, The higher rate should be reduced.

Complaint filed October 19, 1888.—Answer filed November 13, 1888.—On memorandum filed by complainants order was entered January 18, 1889, granting leave to the Pennsylvania Railroad Company and certain other interested carriers, and any member of the Trunk Line Association, to appear and join in the defense should they or either of them so desire.—Hearing called January 18, 1889, and on motion of complainants adjourned to February 7, 1889.—Hearing of testimony February 7–12, 1889.—Hearing of argument March 19, 20, 1889.—Briefs and printed arguments filed April 4–12, 1889.—Decided March 13, 1891.

ANTHRACITE Coal Rates.

See complaint, 2 Inters. Com. Rep. 195; answer, Id. 229.

Mr. Franklin B. Gowen for complainants.

Messrs. John G. Johnson, J. Vaughn Darling and Henry S. Drinker for defendant.

REPORT AND OPINION OF THE COMMISSION.

Morrison, Commissioner:

The complainants in this case, Eckley B. Coxe, Alexander B. Coxe, Henry B. Coxe, and the said Eckley B. Coxe and Alexander B. Coxe, executors of Charles B. Coxe, deceased, partners, composing the firm of Coxe Brothers & Company, of Drifton, Luzerne County, Pennsylvania, represent:

That the rates of charges of the Lehigh Valley Railroad Company for transporting anthracite coal from the anthracite coal regions in the State of Pennsylvania to tidewater at Perth Amboy, New Jersey, to the Lake at Buffalo, New York, and to other points in the States of New Jersey and New York are unreasonable and unjust.

That the Lehigh Valley Coal Company, a corporation of the State of Pennsylvania, is an owner and lessee of anthracite coal land in said Pennsylvania anthracite coal regions, "an owner or lessee of bituminous coal property in the Snow Shoe district of Centre County, Pennsylvania, a miner, shipper, purchaser and seller of anthracite coal in said anthracite coal regions, and also a miner, shipper and seller of bituminous coal in the said Snow Shoe district, and that large quantities of the anthracite coal mined and purchased, and also of the bituminous coal mined, by the said Lehigh Valley Coal Company" are shipped from the State of Pennsylvania to various points in the States of New Jersey and New York over the railroads operated by said Lehigh Valley Railroad Company, which is owner of the capital stock of said Lehigh Valley Coal Company; that bituminous and anthracite coal are like kinds of traffic; and the defendant is now and has been for some time carrying bituminous coal from said Snow Shoe district to various points in the States of New Jersey and New York at less than one half the rate per ton per mile charged by the defendant for the transportation of anthracite coal carried contemporaneously with the bituminous under substantially similar circumstances and conditions, over the same line and in the same direction.

3 INTER S.

"That the said Lehigh Valley Railroad Company is thus charging the complainants more upon anthracite coal than it charges others upon bituminous coal, which is a like kind of traffic as anthracite coal, and is carried contemporaneously with anthracite coal, and substantially under similar circumstances and conditions as anthracite coal is carried."

That the anthracite coal districts are much nearer to the Atlantic tidewater and other markets out of the State of Pennsylvania to which the defendant carries anthracite coal than is the Snow Shoe district from which the defendant carries bituminous coal to the same markets, and that your complainants and other shippers of anthracite coal in the anthracite coal regions are entitled to such reduced charges on anthracite coal, as compared with those on bituminous coal, as the proximity in distance of the anthracite regions compared with that of the Snow Shoe bituminous region justifies.

That by reason of the discrimination in charges made by the defendant in favor of bituminous coal and against anthracite the complainants and other shippers are excluded from market for certain sizes and qualities of their anthracite coal and the said markets are taken away from them by the shippers of bituminous coal, and the complainants are now and for some time have been obliged to throw away or store at the mines as refuse, large quantities of said sizes and qualities of anthracite coal, to their great loss and damage.

That the said Lehigh Valley Railroad Company, by the charges aforesaid, is giving an undue and unreasonable preference and advantage to the bituminous coal traffic, and is subjecting the anthracite coal traffic to undue and unreasonable prejudice and disadvantage, in respect to charges for transportation aforesaid, as compared with the bituminous coal traffic.

And the said complainants further aver:

"That the said Lehigh Valley Railroad Company, either directly in its own name or indirectly in the name of the Lehigh Valley

Coal Company aforesaid, is now, and has been for some time past, purchasing anthracite coal in the anthracite regions of Pennsylvania and transporting the same as interstate commerce to tidewater on the coast of New Jersey, over the same lines as those over which the complainants are shipping anthracite coal, and selling the said coal so purchased at tidewater at such prices that, after deducting therefrom the price at which the said coal was purchased, and a reasonable and proper allowance for shipping and selling expenses, there remains as the revenue or receipts for transporting a much less sum than that charged by the Lehigh Valley Railroad Company to the petitioners and public generally for a like and contemporaneous service in the transportation of anthracite coal transported under substantially similar circumstances and conditions."

"That the said Lehigh Valley Coal Company is now, and has been for some years, engaged in mining anthracite coal in the said anthracite regions of Pennsylvania, and shipping the same as interstate traffic over the lines of the Lehigh Valley Railroad Company aforesaid, and selling the same at tidewater, in the Bay of New York and elsewhere, at such prices that, after deducting the public tariff charges of the said Lehigh Valley Railroad Company for the transportation of such coal, there remains to the Lehigh Valley Coal Company, as representing the value of the coal at the mines, much less than the said coal cost to mine, and also much less than the current market price of similar anthracite coal at the said mines. That the Lehigh Valley Coal Company would be unable to transact its business in the manner above mentioned except for the fact that its capital stock is owned by the said Lehigh Valley Railroad Company, which furnishes and supplies the said Lehigh Valley Coal Company with capital and means to make good the losses which necessarily must result to it from the system of doing business as aforesaid, provided the said Lehigh Valley Coal Company paid to the Lehigh Valley Railroad Company the same charges for the transportation of coal so sold as aforesaid as are paid at the same time by other shippers of anthracite coal for similar service under like conditions. And the petitioners aver that the market price of anthracite coal in the Bay of New York is dependent upon and established by the public charges of the Lehigh Valley Railroad Company for the transportation of coal to said Bay of New York, and that by reason of the facts herein stated the said Lehigh Valley Coal Company is enabled to take contracts at much lower than market prices and to undersell all competitors who pay the regular tariff rates and to secure a certain market for its product beyond the reach of competition, which it could not do if it was treated in charges for transportation upon said anthracite coal the same as the petitioners and the public generally are treated by the said Lehigh Valley Railroad Company. The petitioners do not know, and therefore cannot state, when, and in what manner, the charges for transportation of anthracite coal sold as aforesaid by the Lehigh Valley Coal Company are paid in the first instance to the Lehigh Valley Railroad Company, nor what such charges ac-

tually are; but the petitioners charge and aver that if the said Lehigh Valley Coal Company does in the first instance or at any time pay the fixed and regular charges aforesaid for the transportation on the coal so sold as aforesaid, it, the said Lehigh Valley Coal Company, suffers a loss in the business of selling the coal so sold as aforesaid, and that such loss is made up by and is borne by the Lehigh Valley Railroad Company; and the petitioners aver and charge that, as the result of the transaction, the Lehigh Valley Railroad Company actually does receive from the said Lehigh Valley Coal Company much less for the transportation of the said coal so sold as aforesaid than at the same time is charged by the said Lehigh Valley Railroad Company to the petitioners and the public generally for a like and contemporaneous service in the transportation of anthracite coal transported under substantially similar circumstances and conditions."

"That there are many large and important customers of anthracite coal in the Atlantic seaboard and other markets in the States of New Jersey and New York reached by the lines of the said Lehigh Valley Railroad Company who prefer to contract for their coal by yearly or season contracts at a fixed price, delivered to the customers for the year or season. That in order to secure such contracts the petitioners and others shipping anthracite coal as interstate traffic over the lines of the Lehigh Valley Railroad Company must know what the charges for transportation will be for the period over which such contracts extend. That the said charges for transportation on the Lehigh Valley Railroad are not fixed or established for any definite period, but are subject to variation and change from month to month, or at any time, at the will of the said Lehigh Valley Railroad Company, and that, therefore, your petitioners cannot bid for and secure yearly contracts without taking the risk of an advance of charges for transportation by the Lehigh Valley Railroad Company absorbing their profits or entailing actual loss by reason of such contracts. And your petitioners aver and charge that the said Lehigh Valley Coal Company is now, and has been for some time, engaged in delivering coal as interstate traffic over the lines of the said Lehigh Valley Railroad, which has been sold at a fixed price delivered to the customer for a term embracing the season or the year. And that the said Lehigh Valley Coal Company, if treated in the establishment and maintenance of rates as the petitioners and the public generally are treated by the Lehigh Valley Railroad Company, could not obtain or secure the said contracts without taking a risk such as no prudent business man would take. And your petitioners charge and aver that the said Lehigh Valley Railroad Company discriminates in favor of the said Lehigh Valley Coal Company, either by agreeing to transport the said contract coal at a fixed rate during the existence of the contract, which it does not do in the case of the petitioners or other shippers generally, or else by paying over to the said Lehigh Valley Coal Company, either as an advance or as a gift or other allowance, or by bearing itself, the amount lost by the said Lehigh Valley Coal Company, in the business of such con-

tracts. And your petitioners aver and charge that all losses incurred by the said Lehigh Valley Coal Company for the filling of such contracts aforesaid are borne by the Lehigh Valley Railroad Company, and that as a fact resulting therefrom the said Lehigh Valley Railroad Company receives less money per ton for the transportation of the coal of the Lehigh Valley Coal Company so sold as aforesaid, than it receives per ton for the transportation of other anthracite coal of your petitioners and others carried contemporaneously with the coal of the Lehigh Valley Coal Company and transported substantially under similar circumstances and conditions as the said coal of the Lehigh Valley Coal Company is transported."

And the complainants aver and charge that the transactions and methods of business stated in the last above three paragraphs and in each of them are in contravention of the provisions of the "Act to Regulate Commerce," in this,—

"That the said Lehigh Valley Railroad Company is thus charging the petitioners more for the transportation of anthracite coal as interstate traffic than is charged to the Lehigh Valley Coal Company on anthracite coal transported as interstate traffic and carried contemporaneously with that of the petitioners and under substantially similar circumstances and conditions.

"That the said Lehigh Valley Railroad Company is giving an undue and unreasonable preference and advantage to the Lehigh Valley Coal Company, in the matter and regulation of charges for the transportation of anthracite coal as interstate traffic over the petitioners and other shippers.

"That the Lehigh Valley Railroad Company is subjecting the petitioners and other shippers, who pay the public and fixed tariff charges, to an undue and unreasonable prejudice and disadvantage in the matter and regulation of charges for the transportation of anthracite coal as interstate traffic aforesaid as compared with the Lehigh Valley Coal Company."

The defendant Railroad Company, answering, denies that its charges are unreasonable and unjust, that it is giving undue and unreasonable preference and advantage to the bituminous coal traffic, is subjecting the anthracite coal traffic to undue and unreasonable prejudice and disadvantage, or is unjustly discriminating against the complainants in respect of its transportation charges, or in any respect. It admits its charges are higher on anthracite coal than on bituminous, but denies that on bituminous they are less than one half the rate per ton per mile charged on anthracite to interstate points in New York and New Jersey, or that the complainants and other shippers of certain sizes and qualities of anthracite coal as interstate traffic are excluded from interstate markets by reason of the discrimination in charges in favor of bituminous coal.

The defendant Company further denies that large quantities of bituminous coal are shipped as interstate traffic by the Lehigh Valley Coal

Company over the railroads operated by defendant; denies that shippers of anthracite coal from said anthracite coal regions "are entitled to such reduced charges on anthracite coal, as compared with those on bituminous coal, as the proximity in distance of the anthracite regions compared with that of the Snow Shoe bituminous region justifies;" and the defendant denies that bituminous is a like kind of traffic with anthracite, or that both are carried by defendant under substantially similar circumstances and conditions, and avers that bituminous coal is found in different localities from anthracite; is mined in a different way, at very much less cost; is used mainly for manufacturing, and anthracite for domestic purposes, and the extent of the competition between them is comparatively slight.

The defendant, further answering, denies that it has transported coal for the Lehigh Valley Coal Company at less rates than the rates charged complainants for a like and contemporaneous service under substantially similar circumstances and conditions; denies that either directly in its own name or indirectly in the name of said coal company, or any other name, it has purchased anthracite coal, transported the same as interstate commerce and sold the same at tidewater or elsewhere; and denies that any advantage, direct or indirect, is given to said coal company in the transportation of anthracite coal or other commodity. The defendant avers that said coal company pays the same regular transportation rates as other shippers, and at the same time and in the same manner as do other shippers; that said coal company bears its own business losses, receives reimbursements, rebates or privileges in no way, directly or indirectly; contracts at its own risk, subject to all the chances of changes in rates of transportation taken by other shippers, and is treated by defendant with absolute impartiality; and that the market price of anthracite coal in the Bay of New York is not dependent upon, nor established by, the defendant's charges.

And, further, the defendant denies that its transactions and methods of business, in respect of its relations to and with said coal company, or otherwise, are in contravention of the provisions of the Act to Regulate Commerce.

Reasonable ground appearing therefor, investigation of the matters complained of was made; and upon consideration of the evidence, proofs and the argument of counsel, the Commission finds the following facts:

Coxe Brothers & Company, complainants, are, and for many years have been, miners and shippers of anthracite coal. Their mines are situated in the Lehigh (Pennsylvania) coal region, and have a present annual capacity exceeding one and a half million tons. Their shipments last year (1888) were 1,128,077 tons.

In addition to the complainants there are other individual miners and shippers of anthracite coal from the anthracite coal regions to points in New Jersey and New York. The railroad companies engaged in carrying coal from said anthracite regions are also miners and shippers, and either directly, or through subsidiary companies in which they own the capital stock, said railroad companies mine and control three fourths of all the coal produced in the anthracite regions.

The complainants' shipments of anthracite coal are mainly over the roads of the Lehigh Valley Railroad Company. The principal port on tide water to which such coal of the complainants is transported over the road of the defendant for shipment in vessels to Atlantic ports is Perth Amboy. The chief lake port to which such coal is transported by said Lehigh Valley Railroad Company for shipments by rail or in vessels to other lake ports is Buffalo, which is reached by said Lehigh Valley Railroad Company over its own lines and the lines of the New York, Lake Erie & Western Railroad Company, over which the Lehigh Valley Railroad Company is a transporter and common carrier to Buffalo, and for which it allows and pays a trackage charge of one half its mileage rate for the distance over the lines of the New York, Lake Erie & Western Railroad Co.

The Lehigh Valley Railroad Company, defendant, is a common carrier, engaged in interstate transportation, and a common carrier of coal as well from the Lehigh and Mahanoy as from the Wyoming (Pennsylvania) anthracite coal region to Perth Amboy, New Jersey, Buffalo, New York, and to various other places in said States of New Jersey and New York.

The main line of the Lehigh Valley Railroad reaches the Lehigh anthracite region at a distance of little over a hundred miles from Perth Amboy. The coal is gathered or collected from the mines and carried to the main line over lateral or branch roads of various lengths. The branch lines or roads run through a populous country and large manufacturing interests have grown up along them. The coal which is collected over the branches where grades are steep is in loads less than the full train loads carried to tide, and is made up, weighed and forwarded from Packerton in through train loads. At Perth Amboy, by means of extensive yards, docks and trackage, the coal is unloaded through chutes, by gravity, directly into vessels. The terminal expenses in the coal regions for collecting, weighing and forwarding is variously stated in the testimony to be 8 to 25 cents per ton, and the expense for receiving and delivering at Perth Amboy is also stated to be 8 to 25 cents, or for the two terminals 16 to 50 cents. These expenses amount to about 30 cents.

The shortest distance from any of complainants' mines to Perth Amboy is 128 miles; the

longest 145 miles; the average distance from all about 135 miles. The average distance from all mines in the Lehigh and Mahanoy regions is to Perth Amboy 149 miles; to Buffalo 330 miles. From the Wyoming region, the average distance to Perth Amboy is 171 miles; to Buffalo 268.

In addition to the defendant Company there are several other railroad companies engaged in transporting anthracite coal from the anthracite regions to the lake at Buffalo and to tide-water at or near Perth Amboy, all of which companies publish substantially the same rate of charges as the defendant.

The published rates on anthracite coal from the Lehigh and Mahanoy regions over the Lehigh Valley road to Perth Amboy for reshipment on sizes larger than pea and buckwheat were, for the fifteen months between June, 1875, and September, 1876, the highest \$2.60, the lowest \$2.30. In the seventeen months from September 1st, 1876, to February 1st, 1878, the rate was changed six times and the highest was \$1.62, the lowest \$1.36. In 1878 there were four changes; the highest rate was \$1.75, the lowest \$1.62. In 1879 there were nine changes; the highest rate in that year was \$1.62, the lowest \$1. In 1880 the highest was \$1.90, the lowest \$1.40. In the nearly four and a half years from September, 1880, to February, 1885, there were few changes and the rate was a part of the time \$1.75 and \$1.77, but for the greater part \$1.90.

A lower rate on pea buckwheat and culm than on the prepared or larger sizes was first published April 1st, 1884.

Between February 2, 1885, and April 4, 1887, the rates were:

	On larger sizes.	On pea and buckwheat.	On culm.
Feb. 2, 1885, to Aug. 27, 1885	\$1.57	\$1.37	\$1.37
Aug. 27, 1885, to Oct. 1, 1886	1.37	1.17	1.17
Oct. 1, 1886, to April 4, 1887	1.47	1.27	1.27
Average	\$1.445	\$1.245	\$1.24 5

The average rate on all sizes for year ending Nov. 30, 1886, was \$1.34. Since the Act to Regulate Commerce the rates have been:

	On larger sizes.	On pea and buckwheat.	On culm.
April 4, 1887, to Nov. 21, 1887	\$1.56	\$1.41	\$1.41
Nov. 21, 1887, to Dec. 12, 1887	1.81	1.66	1.66
Dec. 12, 1887, to Mar. 12, 1888	1.90	1.75	1.75
March 12, 1888, to April 2, 1888	1.70	1.55	1.55
April 2, 1888, to May 1, 1888	1.70	1.45	1.45
May 1, 1888, to Sept. 1, 1888	1.70	1.40	1.20
Average for the year ending Nov. 30, 1887	\$1.54	\$1.36	\$1.36
Average for the year ending Nov. 30, 1888	1.77		

The rates on anthracite coal, per gross ton, over the Lehigh Valley road as established September 1st, 1888, and in force when this complaint was made and heard were:

Rates on Anthracite Coal to Perth Amboy.

Per ton.	Larger or prepared sizes.	Pea.	Buckwheat.	Culm.
From Lehigh and Mahanoy regions....	\$1.80	\$1.40	\$1.40	\$1.20
From Wyoming.....	\$1.90	\$1.50	\$1.50	\$1.30

To Buffalo from all regions on all sizes—\$2.25 per ton.

The above rates from the Lehigh and Mahanoy regions to Perth Amboy average on all sizes \$1.69 per ton.

Lower rates are made to intermediate points than to Perth Amboy. From such lower rates on the larger sizes to such intermediate points 40 cents on pea and buckwheat and 60 cents on culm are deducted where such deduction does not reduce the rate on such smaller sizes and culm below \$1.15 per gross ton.

At the time of making and hearing this complaint the defendant and other carriers of anthracite coal charged by their public tariff all shippers from the Lehigh and Mahanoy regions to Perth Amboy and other points in New Jersey the same amount per ton for the same sizes of coal, and all shippers from the Wyoming region to Perth Amboy and other points in New Jersey 10 cents per ton more than from the Lehigh and Mahanoy region, and all shippers from all three regions the same amount per ton on coal shipped to Buffalo, and such charges were severally made irrespective of the distance the coal was so carried from each mine to the place of destination.

The practice of grouping and maintaining the same rates on shipments to Buffalo and points west from all the anthracite regions, and of maintaining one rate on shipments from all mines in the Wyoming region and another rate on shipments from all mines in the Lehigh and Mahanoy regions to Perth Amboy has been long in use.

On April 15, 1889, after this case was heard, the defendant and other carriers put in force a schedule making some reductions in the rates from said anthracite coal regions to Perth Amboy and to Buffalo, which rates are still in force and are as follows:

Anthracite Coal to Perth Amboy, April 15, 1889.

Per ton.	Prepared sizes.	Pea.	Buckwheat.	Culm.
From Lehigh and Mahanoy regions	\$1.70	\$1.40	\$1.20	\$1.20
From Wyoming region.....	\$1.75	\$1.45	\$1.25	\$1.25

To Buffalo from all regions on all sizes—\$2.00.

The above rates from the Lehigh and Mahanoy regions to Perth Amboy average on all sizes \$1.60 per ton—9 cents less than the average when the case was begun and heard. The operators sell their coal at all the principal markets through agencies or sales agents who establish circular prices. The cost of selling varies from 7 to 15 cents or more, depending on the quantity sold. The cost of selling may average about 12 cents. It was stated in argument by counsel for complainant without question, but assented to by counsel for the Lehigh Road, that after the testimony in this case had been closed a reduction of 40 cents per ton in the selling price of coal in New York market had been agreed upon by the sales agents, the carriers owning directly or indirectly a majority of the coal interests represented by such agents.

The area of the Pennsylvania anthracite coal fields is about 470 square miles. The annual product for 1888 was about 38,000,000 tons. The annual average since 1880 has been about 32,000,000, and the average annual product for the ten years ending in 1880 was about 20,000,000 tons.

The coal as mined is of different sizes, and the sizes have different values. One fourth is of the largest sizes, known as lump, steamboat and broken coal; one half is egg, stove and nut coal, used for "domestic purposes." Twenty per cent (10 pea, 10 buckwheat) is pea and buckwheat, and 5 per cent culm. The per cent of sizes produced at different mines is not uniform, but the complainants and defendants concede the above to be a fair average.

The royalty or value of the coal before mining is about 40 cents per ton of the lump, steamboat, broken, egg, stove and nut, about 10 cents for the pea and buckwheat and 5 cents for the culm.

The cost of mining coal includes its preparation for market, depreciation of plant and loading, and is different at different mines. The average cost of mining all sizes is variously stated in the testimony to be \$1.25 to \$1.55, and as much as \$1.55 is sometimes paid exclusive of depreciation. The testimony puts the royalty at 30 to 45 cents. We find the cost of mining with royalty added to be about \$1.85.

The value of the sizes larger than pea and buckwheat at the mine is approximately the same—about \$2.20; pea, 80; buckwheat, 30 to 60 cents. Culm at the mine has only a nominal value.

Carriers by rail classify all freight with few exceptions and fix the same rate on all of the same class. The classifications are not uniform, and those adopted by the roads in some parts of the country are not in use in others. The Official Classification is in force in part of Illinois and in all the country east of that State and north of the Ohio and Potomac Rivers, including the anthracite or hard coal region.

Coal, hard and soft, is excepted in the Official and other Classifications, and is rated on all roads as a commodity.

Most New England roads make the same charges on anthracite and bituminous. The principal roads from Buffalo west to some points in Indiana, Illinois and Iowa, and some of the roads forming lines from the anthracite region to the same western points, charge less on anthracite than on bituminous, but the rates generally prevailing throughout the country are higher on anthracite.

Bituminous coal is carried from the Snow Shoe mines, Centre County, Pennsylvania, over the Pennsylvania Railroad to Mt. Carmel, Pennsylvania, and thence over the Lehigh Valley Railroad to Phillipsburg, Bound Brook, Elizabeth, Perth Amboy and other points in New Jersey for \$2.25 per gross ton, each road receiving a mileage *pro rata* share of the entire charge.

The total distance over both roads, the distance over the Lehigh Valley Road and its *pro rata* share of the rate on bituminous coal are as follows:

From Snow Shoe District.

	Total distance.	Lehigh Valley R. R. Mileage.	Lehigh Valley R. R. share of rate.
To Phillipsburg	...237....	...101....	...\$0.958
To Bound Brook	...280....	...144....	...1.157
To Elizabeth	...303....	...155....	...1.151
To Perth Amboy	...295....	...159....	...1.213

Other bituminous mines in the Counties of Clearfield, Jefferson and Cambria, Pennsylvania, some of which are 375 miles from tidewater at New York, are grouped with the Snow Shoe mines, and have the same rate to Perth Amboy and other tidewater points, and the Pennsylvania Road with its connections maintains the same rate, \$2.25, to tidewater or New York Harbor from the Cumberland (Maryland) region, and from stations on the West Virginia Central Road, some of which are distant from New York 450 miles and more.

New England, New York, New Jersey and Eastern Pennsylvania draw their supply of bituminous coal largely from the Cumberland and Snow Shoe regions and from other mines in Pennsylvania and West Virginia, from which the rate of \$2.25 by rail to tidewater at New York is maintained.

These eastern markets receive supplies from the Cumberland region, which reach tidewater at Baltimore, and bituminous coal also for these markets is produced at low cost in Virginia, and shipped through the ports of the same State. The all-rail rate from these Pennsylvania, Maryland and West Virginia mines

to New York Harbor is from 7½ to 5 mills or less per ton per mile.

The Lehigh Road carries iron ore from Perth Amboy to Bethlehem, Pa., 72 miles, at 8 mills per ton per mile. At the same rate the charge for 149 miles to the Lehigh region would be \$1 20 per ton. On foreign ores the rate from Perth Amboy to furnaces in the Lehigh region is 6 mills per ton per mile. East from Buffalo to furnaces, 300 to 400 miles, the ore rate is 5 mills per ton per mile. On pig iron the Lehigh Road's rates for the same distances and localities are substantially the same as on ores.

The royalty or value of the bituminous coal before mining in these Pennsylvania, West Virginia and Maryland mines is about 10 cents. Its value at the mine on the cars is about 80 cents. The difference in the cost of mining at different mines is very considerable, and at some mines it is estimated at less than 50 cents per gross ton; at others considerably more.

The two coals, anthracite and bituminous, are loaded and unloaded by gravity. The anthracite is generally heavier and fills less space. It is harder, smoother and slides easier in loading and unloading, but in consequence of greater value the larger sizes are transported at greater risk. But in these respects the difference is slight and the expense of handling and transporting the two coals under the same circumstances is nearly the same. The heating and steam-producing power of bituminous is appreciably greater. But the anthracite, of prepared sizes for domestic use, is greatly preferred wherever obtainable, because of its greater freedom from smoke and dust, and because of these same qualities its use is deemed essential in certain lines of manufacture.

The average price per ton of bituminous and of anthracite coal, larger sizes, at New York, f. o. b., for several years have been:

Year.	Bituminous.	Anthracite.
1880	\$4.50	\$3.90
1881	4.25	4.15
1882	4.25	4.20
1883	4.00	4.20
1884	3.25	3.92
1885	3.00	3.41
1886	3.00	3.34
1887	3.00	3.72
1888	3.00	3.93

The price at New York of the smaller sizes is for pea \$2.00 to \$2.50; for buckwheat \$1.50 to \$2.00; the average price for pea and buckwheat about \$2.00.

The consumption of anthracite has about doubled and bituminous quadrupled in the last ten years. The displacement of the larger sizes of anthracite by bituminous for steam purposes in the last ten years, especially in New England, has been very considerable.

The Lehigh Valley Coal Company is a corporation, and is owner and lessee of anthracite and bituminous coal land, miner, shipper, pur-

chaser and seller of anthracite and bituminous coal, large quantities of which coals are shipped over the roads of the Lehigh Valley Railroad Company from Pennsylvania to various points in New Jersey and New York, as alleged by complainants, but the quantity of bituminous coal thus shipped over the defendant's roads is very small in comparison with the anthracite so shipped.

The Lehigh Valley Railroad Company is the owner of the capital stock (\$650,000) of the Lehigh Valley Coal Company, and has invested in it \$7,500,000, and furnishes it, free of interest, with money to do its business. Five of the six directors of the coal company are directors of the Railroad Company and both corporations have the same president and secretary.

The total coal production of said coal company, or anthracite mined from its beginning in 1874 to 1886, inclusive, was 13,000,000 tons, the admitted profits on which were \$1,073,567.45. In 1887 it mined 1,201,416 tons, from which it derived net profits \$337,588.42. In the same year it bought and sold 1,404,944 tons at a profit of \$60,524.45. In 1888 it mined 1,455,104 tons at a profit of \$431,465.83, and bought and sold 1,346,161 tons at a profit of \$12,495.28.

In ascertaining and stating mining profits for years 1887 and 1888 no interest was taken into account or charged, but usual allowance was made for depreciation. Royalty was charged at 25 cents on larger sizes, 12½ on pea and 6¼ on buckwheat; average, 22 cents. In 1887 the expense of selling charged was 6.35 cents; in 1888, 6.47 cents. No data are given as to basis on which admitted profits previous to 1887 were obtained, or whether or not depreciation and royalty were charged.

Under a yearly or season contract between the coal company and the Manhattan Railway Company of New York City the coal company delivered to said Manhattan Railway Company at its docks in New York City 13,000 tons monthly during the years 1887 and 1888 of best anthracite broken coal at \$3.45 per ton.

On January 1, 1889, said contract was renewed for one year and the price increased to \$3.65 per ton. The coal company paid 20 cents per ton lighterage, reducing the price received at Perth Amboy to \$3.25 and \$3.45, which was less than the cost of delivery or the selling price.

Of its operations in buying, shipping and selling, some were profitable; in others it incurred losses and sold for less than the amount necessary to reimburse it. Its transactions were daily and its monthly statements of profit and loss show some losing transactions each month.

It sold coal in Pennsylvania, New York and other States and the several sales and transactions were so intermingled that it is not practicable to determine all the sales made at a profit or at a loss as between state and interstate traffic.

The balance sheet of Lehigh Valley Railroad Company for the year ending June 30, 1888, reported to the Commission, shows:

Cost of road	\$14,663,280.78
Cost of equipment	13,451,133.78
Bonds of other companies owned	4,084,104.69
Stocks of other companies owned	16,927,653.73
Other permanent investments ..	6,861,852.10
Lands owned	2,535,290.09
Cash items.....	3,179,490.74
Sundries	5,805,322.57
	<hr/>
	\$67,008,128.48
Capital stock	\$39,057,000.00
Scrip	172,210.00
Funded debt	25,067,000.00
Mortgage, real estate	45,000.00
Uncollected dividend and interest	86,481.84
Sundries	549,370.63
Profit and loss	2,030,516.01
	<hr/>
	\$67,008,128.48

The Lehigh Railroad has guaranteed the debt of the Easton and Amboy Railroad, \$6,000,000, and "the stock and bonded debt" of the Morris Canal and Banking Company, \$2,273,000, aggregating \$8,273,000.

Balance sheet Lehigh Valley Railroad Company reported to stockholders for year ending Nov. 30th, 1886.

Our income from all sources, including interest received from investments, etc., amounted to	\$9,395,802.06
Operating expenses of the road	5,293,816.56
Leaving	\$4,101,985.50
Against which there has been charged:	
Interest on bonds (including interest on guaranteed bonds and stocks) ..	\$2,048,201.50
Dividends on preferred and common stock	1,331,531.00
General expenses, interest on floating debt, Pennsylvania and New Jersey state taxes, loss on Morris Canal, estimated depreciations, etc.,	682,002.96
	<hr/>
Leaving	\$ 40,250.04

to be carried to the credit of the profit and loss account.

Our capital account at the close of the fiscal year was as follows:		
Preferred stock	-----\$	106,300
Common stock (including scrip not yet converted)	-----	33,112,800 33,219,100
First-mortgage six per cent bonds due in 1898 (coupon and registered)	-----	5,000,000
Second-mortgage seven per cent bonds due in 1910 (registered)	-----	6,000,000
Consolidated-mortgage six per cent bonds, due, except sterling and annuity bonds, in 1923:		
Sterling	-----\$	3,318,000
Coupon	-----	1,787,000
Registered	-----	8,210,000
Annuity	-----	1,143,000 14,458,000
Floating debt, less cash on hand	-----	None.
		\$58,677,100

Balance sheet Lehigh Valley Railroad Company reported to stockholders for year ending Nov. 30th, 1887.

Our income from all sources, including interest received from investments, etc., amounted to	-----	\$11,197,167.72
Operating expenses of the road	-----	6,142,396.25
Leaving	-----	5,054,771.47
Against which there has been charged:		
Interest on bonds (including interest on guaranteed bonds and stocks)	-----\$	2,041,171.50
Dividends on preferred and common stocks	-----	1,584,081.11
General expenses, interest on floating debt, Pennsylvania and New Jersey state taxes, loss on Morris Canal, estimated depreciations, etc.	-----	1,018,747.31 4,643,999.92
Leaving	-----	\$ 410,771.55
to be carried to the credit of the profit and loss account, to which is to be added premium realized from the sale of bonds.		\$114,700

Our capital account at the close of the fiscal year stood as follows:		
Preferred stock	-----\$	106,300
Common stock (including scrip not yet converted)	-----	33,128,700 33,235,000
First-mortgage six per cent bonds due in 1898 (coupon and registered)	-----	5,000,000
Second-mortgage seven per cent bonds due in 1910 (registered)	-----	6,000,000
Consolidated-mortgage six per cent bonds, due, except sterling and annuity bonds, in 1923:		
Sterling	-----	\$3,117,000
Coupon	-----	1,775,000
Registered	-----	8,122,000
Annuity	-----	1,243,000 14,257,000
Floating debt, less cash on hand	-----	None.
		\$58,492,000

Balance Sheet Lehigh Valley Railroad Company reported to stockholders for year ending Nov. 30th, 1888.

Our income from all sources, including interest received from investments, etc., amounted to	-----	\$12,353,739.29
Operating expenses of the road	-----	7,128,234.73
Leaving	-----	\$5,225,504.56
Against which there has been charged:		
Interest on bonds (including interest on guaranteed bonds and stocks)	-----\$	2,081,284.66
Dividends on preferred and common stocks	-----	1,890,876.23
General expenses, interest on floating debt, Pennsylvania and New Jersey state taxes, loss on Morris Canal, estimated depreciations, etc.	-----	967,873.54 4,940,034.43
Leaving	-----	\$285,470.13
to be carried to the credit of the profit and loss account		

Our capital account at the close of the fiscal year stood as follows:

Preferred stock	-----	\$	106,300	
Common stock (including scrip not yet converted)	-----		39,601,250	\$39,707,550
First-mortgage six per cent bonds, due in 1898 (coupon and registered)	-----			000,000
Second-mortgage seven per cent bonds, due in 1910 (registered)	-----			6,000,000
Consolidated-mortgage six per cent bonds, due, except sterling and annuity bonds, in 1923:				
Sterling	-----	\$2,904,000		
Coupon	-----	1,725,000		
Registered	-----	8,060,000		
Annuity	-----	1,355,000		14,044,000
Floating debt, less cash on hand	-----	None.		
				\$64,751,550

The business; receipts, with sources from which derived; expenses, and on what account incurred, for year ending Nov. 30, 1887, as appears from the annual report of said Railroad Company, were:

	Carried one mile	Gross receipts	Expenses	Net receipts
Coal, tons	513,889.171.02	\$6,165,411.29	\$3,431,609.83	\$2,733,801.46
Other freight, tons	253,564.921.56	2,430,761.13	1,902,595.93	528,165.20
Passenger, express and mail	44,512.264.00	1,122,883.65	808,190.49	314,693.16
Totals		\$9,719,056.07	\$6,142,396.25	\$3,576,659.82

The annual report of said Railroad Company to its board of directors for the year ending Nov. 30, 1888, does not state the facts shown above for the year 1887.

From the above-reported facts it appears that the ton-mile receipts, expenses and profits or net receipts for the year 1887 were on:

	Gross receipts per ton per mile Mills	Expenses per ton per mile Mills	Net receipts per ton per mile Mills
Coal	12.00	6.67	5.32
General freight	9.58	7.50	2.08

The operating expenses for the transportation of all freight are 63 per cent of the reported operating income, while the cost of transporting coal is but 56 per cent of the income from coal, as appears from the said annual report of 1887.

The estimated cost of carrying coal from the Lehigh and Mahanoy regions to Perth Amboy based on said report is 85 cents per ton, which for the group or average distance of 149 miles is nearly six mills per ton per mile, taking tide coal as an average, some being carried to other points at lower and some at higher rates.

The operating expenses for all the railroads of the United States reported to the Commission for the year ending June 30th, 1888, was 65.34 per cent of operating income.

The Lehigh Valley Railroad Company has declared dividends on its capital stock since January 1st, 1887, at the rate of five per cent. In the years previous to 1887 dividends had been declared as high as ten per cent, and as low as four per cent.

The total coal tonnage for said Railroad Company was, for the year 1886, 6,701,736 tons; for 1887, 6,883,957 tons, and for 1888 was 8,025,334 tons.

The above are the facts upon which the conclusions in this proceeding are based.

The questions presented for determination are the alleged undue preferences, unjust discriminations and unreasonable rates pertinent to which the complainants submit for the consideration of the Commission proposed findings of fact in substance as follows:

1. That the Lehigh Valley Railroad Company carries anthracite and bituminous coals over the same distance in the same direction under different classifications, that the tariff sheets and rates applicable to anthracite do not apply to bituminous and that the two coals are a like kind of freight and should be classed together as one class of freight.

2. That the acts done by the Lehigh Valley Coal Company connected with the buying and selling of coal and the transportation of the same over the road of the Lehigh Valley Railroad Company are the same as if done by said Railroad Company, and as done constitute illegal and unjust discrimination against the complainants and the public generally; and that the proper rate to be paid by all shippers over said road between the same points at the same time is ascertained by deducting from the established rate the loss sustained by said coal company as a buyer of coal for shipment over said railroad.

3. That the average rates per ton per mile charged by the Lehigh Valley Railroad Company on anthracite coal are higher than on general freight, and that the rate of \$1.80 per ton of 2,240 pounds to Perth Amboy from the Lehigh coal region, a distance of about 135 miles, is excessive and unreasonable, "and should be reduced to what the Commission may decide to be a reasonable rate."

It is conceded that the bituminous coal mine

are twice or more than twice as distant as the anthracite mines from New York Harbor or Perth Amboy, while the transportation charges on bituminous were and are greater in the aggregate, but less in proportion to distance, or per ton per mile; it is shown that in the last ten years the price of anthracite in eastern markets has been maintained and the price of bituminous considerably reduced; and that many manufacturers and consumers discontinued the use of anthracite and substituted bituminous while the complainant and other producers failed to find profitable markets for anthracite they produced and were prepared to produce.

The complainants insist that the displacement of anthracite by bituminous has deprived them and other miners of hard coal of profitable markets, and that this condition is the result of excessive rates on anthracite and of inequality and discrimination in favor of bituminous; that a readjustment of rates on a basis of the relative distances of the fields of production would re-instate the anthracite in eastern markets; and that the classification of the two coals as one freight would remove the inequality and discrimination in favor of bituminous and establish all coal charges on a mileage basis, except to the extent that terminal expenses might modify the rate per ton per mile for longer distances.

For convenience in making transportation rates and charges, freight is arranged and put into different classes according to expense of carriage, bulk, value, risk, competition and other considerations affecting the cost and value of the transportation service. Different classifications have been and are still maintained in various sections of the country, and it frequently occurs that articles classed together in one section of the country are placed in separate classes in another section. The number of separate classifications has been so reduced and such as are still in force so revised in the past few years as to give assurance that one uniform classification applicable to all the roads of the country is entirely practicable. By the arrangement of the various articles or subjects of freight into classes many hundreds of such articles are given one and the same rate. Without such arrangement railroad companies, would necessarily be required to fix a rate on each one of the several thousands of articles carried by them.

What is known as the "Official Classification" is in force in a large part of Illinois and in all the district of country east of that State and north of the Ohio and Potomac Rivers, including the anthracite coal fields. Under this classification, freight, with few excepted articles, is collected, arranged and numbered into six classes and given as many separate rates. The freight not included in any of the six classes is mostly coal and other min-

erals, and articles of great weight as compared with their value. These are classed or rated by name as a commodity. Anthracite and bituminous coals are so named and rated respectively as such, or as hard and soft coal, and as a rule a higher rate is charged on the hard or anthracite. Again, the anthracite is arranged, classed and rated in more minute divisions, according to sizes, uses and the different value resulting from such sizes and uses.

One complaint we are to consider and which we are asked to remedy is this separate classification or rating of hard and soft or anthracite and bituminous coals. We are asked to find that the two are the same freight, a like kind of traffic, the result of which would be to subject them to the same charge, when carried under like circumstances.

In the present state of the law classification or the arrangement of articles together for convenience in rating them is not obligatory on the roads. They might legally fix a rate on every article of freight by name without other arrangement or classification. Such a system has proven to be so cumbersome and inconvenient that the arrangement of freight into classes is deemed by the roads an essential part of rate-making and it is so treated by the Act to Regulate Commerce, which requires that the schedule of charges which every common carrier must keep open to the public "shall contain the classification in force."

Under the Official Classification the charge per hundred pounds between New York and Chicago is:

Class	1	2	3	4	5	6
Cents	75	65	50	45	30	25

The charges on grain, salt or other freight in the sixth class is 25 cents. The rate may be doubled by changing the classification from the sixth class to the third; and classification may be used as a device to effect unjust discrimination or as a means of violating the most essential provisions of the Statute. When so used it is the duty of the Commission to so revise such arrangement as to correct the abuse.

The grounds upon which we are asked to find these two coals to be the same freight, a like kind of traffic, is that they are loaded, unloaded and transported in the same way and substantially at the same expense to the carrier, and are largely used for the same purposes, though one half or more of the anthracite is used for domestic purposes.

Ordinarily there is no better criterion for reasonable charges than that which is in proportion to the service rendered; and if the cost and expense of the carrier was the only test of a reasonable charge the claim might well be made that all coals should be classed together as one freight and be subject to the same transportation charges.

Carriers in making separate classifications, or rates for different coals, take into consideration, not only the expense of transportation, but the value of the freight and worth of the transportation to the shipper; the exceptional qualities which fit the more valuable anthracite for domestic and special uses and cause its large consumption in less distant markets; the shorter distance from the mines to the principal markets rendering the transportation proportionally more expensive, and the necessity for so apportioning the transportation charges between the anthracite of different sizes and values that the more valuable may bear the greater charge.

Transportation is sought by the shipper for the profit it yields and will cease when it becomes unprofitable. In the ordinary course of business, income or profits are proportioned to the investment and a carload of ten tons of anthracite coal worth fifty dollars affords larger profits and can better bear full transportation charges than a like quantity or carload of bituminous worth twenty dollars, and the value of the freight with the worth of the transportation service to the shipper are taken into account in determining classification.

The rule insisted upon, and claimed to be especially applicable to coal, that the cost of the service alone should determine freight classification and freight charges, will apply as well to different sizes and values of anthracite as to bituminous and anthracite. Under such a rule the different sizes of anthracite now carried at different rates would be one freight and take the same rate, while a difference is now made of 30 to 50 cents per ton between the larger and smaller sizes. Let it be assumed that \$1.70, the average anthracite rates to Perth Amboy complained of, was 30 cents too high, and that \$1.40 was the reasonable rate for all anthracite. This is now the rate on pea, the best of the lower grades of anthracite, while on buckwheat and culm it is but \$1.20. Classification of anthracite in disregard of sizes and values would add 20 cents per ton to the charges on some and reduce them on none of these lower grades of coal. The undue preference complained of is chiefly the alleged exclusion of these certain grades of anthracite from market by discrimination in rates. The result of classifying and rating all coal, including these lower grades or smaller sizes, as one freight would be that the smaller anthracite coals at the increased rate would be at still greater disadvantage than they now are, and for ordinary steaming would be cut out by bituminous, while for the uses in which anthracite is indispensable the larger sizes at the same rate would displace the smaller. The consequence would be that 25 per cent in quantity, or about 16 per cent in present value, of all anthracite mined would be unable to bear the burden of transportation

and would be waste until such time as it could be locally converted into power and the power transmitted. There is therefore, for the present, no hardship, but economy, in making the best bear some of the burden of the inferior, which is not a voluntary but a resulting production. To determine otherwise and make waste of lower grades is to impose on the higher grades the entire cost of producing both. The result would be to largely increase the cost of production and the price of merchantable anthracite, and make waste of about one fourth of all that is mined.

Insisting that they are deprived of markets by charges which are both excessive and disproportionate, the complainants ask that the rates may be adjusted in proportion to distance, making due allowance for difference in the cost of collecting, loading, unloading and other terminal expenses.

If, as complainants assert, they are deprived of markets by excessive and disproportionate charges, and the adjustment of coal rates in proportion to distance would remedy the evil, still this could not be accomplished by classifying hard and soft coal together. Such classification would have some bearing on the general question of relative rates on the two coals carried between the same places, or between different places under similar circumstances, but could not much affect the rates in question on anthracite carried 125 to 185 miles and bituminous carried all-rail three hundred to five hundred miles, nearly, and at aggregate rates 55 cents to \$1.05 per ton greater than the aggregate on anthracite.

The defendant Company claims for terminal expenses, in taking up coal at the Lehigh and Mahanoy region, and delivering it at Perth Amboy, an average distance of one hundred and forty-nine miles, 50 cents, or one third of a cent per ton per mile. The same terminal expenses on bituminous carried from the Snow Shoe to Perth Amboy 300 miles would be but one sixth of a cent per ton per mile. But there are considerations apart from terminal expenses which make transportation for long distances proportionally less expensive and more advantageous to the roads than for short distances. Many items of expense and much of the cost of operating a road are the same whether the business of the road is large or small, and therefore as the volume of business increases the expense apportioned to it is less, and as the distance is extended the volume is increased. The best managed roads do not always have full trains and full cars, and are subject to expensive delays and loss of time while securing freight. The opportunity for back-loading increases with the distance, while delays and losses are as applicable to long as to short distance freight, and, as in case of terminal expenses or other aggregate charges, the cost of such delays

and losses are less per mile when apportioned to longer carriage and to increased volume of business.

There are several lines other than that of which the defendant's line is part over which coal is carried from the Snow Shoe district to New York Harbor, and these lines are of different lengths. On the basis of equal mileage there could be no competition between the roads. The shortest having the least mileage and lowest rate would get the business. *The New Orleans Cotton Exchange Case*, 2 Inters. Com. Rep. 289, 2 I. C. C. Rep. 375.

The undue preference of which complaint is made of the Lehigh Valley Road in respect to the bituminous coal traffic is that it participates in the carriage of coal as part of a through line, and receives, for the distance over its line, less in the aggregate and proportionally than it charges on anthracite carried over its same line the same distance in the same direction.

What it accepts on freight received from another road may indicate the rate at which coal may be profitably transported over its road the same distances in the same direction. But the Law favors through carriage and treats the carriage by arrangement over connecting lines the same as if done by a separate line. The carriage was one through carriage from the Snow Shoe to Perth Amboy at through rates and for reasons already stated the defendant road gave no undue preference to the bituminous traffic by participating in carrying it lower proportionally for the longer distance except as its charges on anthracite may be excessive.

Having shown that bituminous coal is and for ten or more years last past has been gradually supplanting and taking the place of anthracite in Atlantic coast markets, that the price of anthracite has been maintained and the price of bituminous has declined one third, the complainants assume that this substitution of bituminous for anthracite in other than domestic uses is "due to the difference in freight rates."

It will hardly be questioned that the substitution of bituminous for anthracite is dictated by reasons of economy effected through the reduction in the price of soft coal. But it is not proven nor does it otherwise appear that this reduction in the price has been effected by or is the result of a like and contemporaneous reduction of freight rates, or that any change has occurred in the relative transportation charges on the two coals.

The traffic and business of the defendant road is mainly anthracite coal. Its main line does not reach bituminous mines, but is laid from tidewater to the anthracite regions, its several branches extending to the different anthracite mines. It is a carrier of bituminous coal incidentally and in connection with other roads with lines extending from the bitumi-

nous to the anthracite region. The quantity of bituminous carried by it is so insignificant in comparison with its anthracite business we cannot suppose it establishes or maintains rates on the two coals for the purpose of depriving its customers of their markets for anthracite, which is its chief business and support. Nor is it to be presumed that by carrying in connection with other lines a few thousand tons of coal which would find its way to the same markets at the same rates over other lines, some of which reach tidewater in the same State where the coal is produced, the defendant intended to or did deprive complainant of a market for their coal of any sizes.

Eleven tons of anthracite no more than equal ten of bituminous in heating and steam producing power and there is economy in the use of the soft coal for all purposes to which it is suited. In the last ten years new bituminous mines have been opened and old ones largely extended in the territory from which Atlantic coast markets are supplied. The discovery and use of gas as fuel has to some extent superseded bituminous in markets farther west and increased competitors for the markets to the east. Multiplying and increasing competitors and sources of supply compel acceptance of lower profits. Nothing connected with bituminous coal mining has made it more expensive than it was formerly, while new inventions and improved appliances have all been favorable to lower cost of bituminous coal producing. These and possibly other causes have contributed to the reduction of the price of bituminous coal in eastern seaboard markets.

While the tendency of railway transportation is towards lower charges, it has not been very considerable anywhere east of the Alleghamies in the past few years. Except in the increase of business the change in the conditions on which railway charges are based have not been so marked since 1880 as to justify the assumption of any considerable reduction in rates which were then reasonable. Still conceding that the use of anthracite for steam and manufacturing purposes has given place to bituminous in consequence of the difference in price, and assuming that the decline in price is in some part the result of reduced rates on bituminous coal, this would not justify any change in the classification or system of rating which would have the effect of raising the rates and increasing the price of bituminous coal to consumers. The lower rates on grain from more distant fields have compelled the acceptance of reduced prices by the grain growers nearer the seaboard. They could retain their markets at a better price if the roads would maintain the rates proportioned to distance, but this would turn fields of the west into waste lands and deprive the east of some part of its daily bread.

On grain, roads accept higher aggregate rates, but, measured by distance or may be by the service rendered, more moderate profits, and the wants of one distant part of the country are thus supplied from the abundance of another. We find nothing of injustice or that is unlawful in this rule nor any reason why it should not apply as well to the product of the mine as to the product of the field.

The rate from the sources of supply to Perth Amboy being \$2.25 per ton on bituminous, the aggregate difference in the rates on the two coals from the respective places of production to Perth Amboy is 65 cents, taking the average on all sizes of anthracite, the aggregate on bituminous being higher by \$1.05 on buckwheat, 85 cents on pea, and 55 cents on large sizes. The complaint is that this difference is too small; that compared with the charges on bituminous the anthracite charges are too high,—and what the complainants seek in this branch of their case is to obtain such an adjustment of the charges on the two coals as will leave these aggregate differences greater than they are.

Supposing it to be legally determined that the defendant and other carriers of the two descriptions of coals should carry them at the equal rates for the same distances, or per ton per mile. This would hardly accomplish the purpose aimed at by the complainants. Some of these all-rail carriers of bituminous to eastern markets are not carriers of anthracite and their charges on bituminous could be made without regard to the charges on anthracite to the same markets. Then, again, these markets get some coal through the Port of Philadelphia, and are supplied with bituminous through the ports of Maryland and Virginia in sufficient quantities to determine the rates on bituminous to Atlantic coast markets independent of the transportation charges on anthracite over other routes.

The difference in the aggregate cost of transportation to Perth Amboy and through that port to eastern markets as between the competing coals might be increased through higher charges on the bituminous as readily as by means of lower charges on anthracite. The complainants ask relief through lower charges on anthracite, at the same time insisting that the charge on the two coals shall be in proportion to the distance of carriage.

The effect of such a rule, as already shown, is to require increased bituminous rates or to make them higher than they would otherwise be over the longer distances, and thus shut the cheaper coal out of New England and Atlantic coast markets. The effect of any regulation resulting in the increase of rates on bituminous is to close the markets farther east against it and give them to the more expensive anthracite, confined to the limited territory of Eastern Pennsylvania, already monopolized. An im-

post duty has been laid on foreign coal, in part at least to the end that these markets might be supplied from the abundance of Pennsylvania, Maryland and the Virginias, and any regulation imposing additional transportation or other burdens on bituminous coal to keep it out of eastern markets would seem to challenge the wisdom which deposited an abundance of cheap fuel in the east side of the Alleghany Mountains.

The ruling price of the steaming or smaller sizes of anthracite is \$1 per ton less than the price of bituminous at Perth Amboy and in the markets from which complainants aver they have been excluded. The charges over the Lehigh road in connection with the Pennsylvania Road from the Snow Shoe region to Perth Amboy are as high either in the aggregate or per ton per mile as are paid on any bituminous coal mined east of the mountains and carried by rail to New York Harbor. They are duly authorized and established, and the said Lehigh Valley Railroad Company by the charges aforesaid is giving no undue preference to the bituminous coal traffic. Nor was the anthracite coal traffic subjected to unreasonable disadvantage in respect to the transportation charges on bituminous from the Snow Shoe region or elsewhere by the Lehigh Road, except as its charges on anthracite may be excessive and unreasonable.

In addition to the alleged undue preference in favor of the bituminous coal traffic to the disadvantage of the traffic in anthracite, the complainants aver that the defendant Railroad Company is giving undue preference to the Lehigh Valley Coal Company, by charging complainants more for the transportation of anthracite coal than is charged to said coal company.

In support of this averment of illegal preference in favor of the Lehigh Valley Coal Company, it is shown that the Railroad Company owns the capital stock, property and franchises of the coal company. The same persons are officers of both companies. The Railroad Company advances and furnishes to the coal company, without interest, large sums of money necessary to the transaction of its business as a miner, purchaser, shipper and seller of coal. The coal so mined or purchased by said coal company is shipped over said railroad. The complainants and the said coal company send their coal to, and sell it in, the same markets. Some of the transactions of the said coal company as a buyer, shipper and seller of coal are profitable, others unprofitable.

Both the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company are corporations of the State of Pennsylvania, the Constitution of which State, adopted after the incorporation of these companies, contains the following provision relating to common carriers

engaging directly or indirectly in mining or manufacturing articles for transportation over their roads :

"No incorporated company doing the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length."

A provision in said Constitution in relation to officers and agents of roads being interested as carriers, over the roads of the companies represented by such officers and agents is as follows:

"No president, director, officer, agent or employé of any railroad or canal company shall be interested directly or indirectly in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company."

The tendency of all such interested management as is indicated by the above constitutional provisions is towards the destruction of legitimate competition, whether the interest is in the carrier or in its officers and those who direct and control it. If railroad companies and those who direct and control their roads were limited to the business of transportation it would take away from both the opportunity to unlawfully prefer themselves as shippers. Disinterested and impartial control is essential to prevent illegal favoritism, and abuse of the privileges with which carriers are invested for the benefit of the public.

The railroad companies, including the defendant, produce or control, directly or indirectly, three fourths of the coal carried by them; by agreement they fix the rate of transportation, and by nominal association with the individual operators, who represent less than one fourth of the anthracite output fix, the selling price in the principal market. In the eight years beginning 1880 the prices and rates of transportation of coal delivered free on board in New York Harbor have varied nearly in the same proportion. In 1885 and 1886 the price was about \$3.40 and the rate \$1.40; in 1880 and 1888 the price was about \$3.90 and the rate \$1.90 and \$1.80. For the most part the increased price to the consumer has gone in payment of the increased rate to the carrier, leaving to the operator about the same earnings whether the price of coal is high or low.

Where the carrier is both carrier and producer or operator, as is true of some of the

railroad companies, which in their own corporate name are miners, buyers and sellers as well as carriers of anthracite, it matters little so far as relates to its gains and profits how much such a carrier charges itself for carrying its own coal. Nor is it essential to the pecuniary interest of the Lehigh Valley Railroad Company whether it charges its coal company as a miner and shipper very high or very low transportation rates, entitled as the Railroad Company is to the earnings of both. The case is different with the complainants, who have only so much of the market price as remains after paying for transportation, and suffer the loss of any excessive charges. Besides being competitors, as they are, for the same markets, any excessive charges made or burdens imposed on complainants, and not made and imposed on said coal company, give it unlawful preference and subject complainants to the unreasonable disadvantage of paying more to reach a common market from the same places of production.

It can hardly be questioned that the methods of business might be such, transactions might be so conducted and charges made excessive or otherwise, as between said railroad and said coal company, which would be immaterial to the actual revenues and income of the Railroad Company, but which would unjustly discriminate against complainants and other shippers.

Whatever opportunity for oppression and abuse may be afforded, or whatever possible injury might result to the public interest, from the corporate ownership and control, or corporate relations existing between the Lehigh Valley Railroad Company and Lehigh Valley Coal Company, the authority of this Commission extends to such abuses only as are in conflict with the Act to Regulate Commerce, or some of its provisions. The history of mining operations, and their relation to transportation, in the anthracite regions, as disclosed in the testimony, shows that the carriers, directly in their own corporate names, or indirectly through other corporations, in which the carriers owned the capital stock, became coal miners and dealers as a means of securing the freight. Said Lehigh Valley Coal Company was able to control for the Railroad Company the transportation of the coal mined from the lands of the coal company and lands leased to it whether such coal was mined by itself or others, as well as large quantities of coal it purchased. That such was the legitimate purpose for which the Railroad Company organized the coal company was confirmed by the exceptional readiness of the Railroad Company to disclose the business transactions and methods of the Coal Company as a miner, dealer and shipper. But the legality of the acts of the Railroad Company is not determined by its purpose, but depends upon their effect. However well intended the transactions may be, as between said

railroad and said coal company, they are unlawful if they effect undue preference or unjust discrimination.

The Railroad Company, by counsel, insists that the coal company, in pursuance of its chartered rights, may mine, buy, sell and ship coal over said road, as complainants and others engaged in the coal business may lawfully do, and upon the same equal terms and advantages, and none other.

The Railroad Company advances to the coal company nearly seven millions of dollars with which to transact its business, and for the use of which the Railroad Company receives no advantage other than such advantages as it gets from carrying the freight of the coal company. The value of the annual use of such advances at five per cent interest amounts to three hundred and fifty thousand dollars, nearly. This sum exceeds ten cents per ton on all the coal shipped by the coal company over the lines of the Railroad Company, and is to that extent an undue preference given to said coal company, to the disadvantage of Coxe Brothers & Co. and other shippers who receive no advances. The advantage of like advances if made to complainants, estimated on their annual shipments, would exceed one hundred thousand dollars. Had the Lehigh Valley Road as a means of securing freight made like advances to any other competitor of complainants, whether an individual operator, or a coal company in which the Railroad Company had no interest, it would hardly be contended that such act did not amount to undue preference and unjust discrimination. The fact that the road was interested in the coal company, as the owner of its capital stock, does not make lawful what would be unlawful without such interest.

The Railroad Company states its outlay, including funded debt, capital stock and other liabilities, at about \$73,000,000, on which it claims the right to earn a reasonable income. Conceding that the amount lawfully and properly invested, fixed charges and operating expenses, are important elements in determining the reasonableness of rates, the large sums advanced to its coal company by the Railroad Company, applied to the reduction of its bonded debt, would so reduce the obligations of the road that lower rates would provide for them.

The cost of producing and delivering coal at New York Harbor includes the cost of production and transportation. The cost to the dealer and shipper is the price paid for the coal, and for its transportation. Either miner or dealer, who sells his coal for less than will pay the cost of the coal, after deducting transportation charges, loses in the transaction. Should a railroad company, to secure freight, or for any other purpose, purchase coal at the anthracite mines, carry it to market and sell it

at such a price that, after deducting the price paid and expense of selling, would leave the road, as a purchaser, less than would pay its transportation charges, the result or effect of the transaction would be that the road had given itself a lower rate as a dealer than it gave to other dealers and shippers. The road would be thus giving itself undue preference, and the legal effect must be the same whether this is done directly by the road in its own name, or indirectly in the name of another corporation, of which this railroad company is proprietor. The transactions are frequent in which the coal company, as buyer, shipper and seller of coal, incurs losses after paying to the Railroad Company the published rate. Every such transaction being in effect the same as if done directly by the road in its own name, is an undue preference to the disadvantage of its customers who sell in the same markets in competition with the coal company. One such transaction was the contract with the Manhattan Railroad Company, which was to continue for two years, and might be and was renewed. By this contract, the coal company was to and did deliver to the Manhattan Company at stated periods, in the years 1887 and 1888, large quantities of coal, upon such terms and at such prices that, after deducting the price paid and expense of marketing the coal, there was left to the coal company a less sum than would pay the published legal rates of transportation.

If we consider this Manhattan sale and delivery as done by the Railroad Company, then it lost a part of its freight as a rebate to the coal company. Considered as done by the coal company, then the Railroad Company was a loser to the same extent as the sole stockholder of the coal company. Viewed either way, the Railroad Company realized less than the full transportation rates paid by the complainants. The dealer, whether the coal or railroad company, that reached the market at the lower rates would have the advantage, and could take the market from, and drive out those who were unjustly discriminated against, and made to pay excessive or higher charges.

When it is made to appear on investigation that any common carrier is unjustly discriminating against any person, company or firm, subjecting them to unreasonable disadvantage, or doing anything in violation of the Act to Regulate Commerce, the remedy which the Act provides is that such carrier be required to cease and desist from such violations. Is this remedy practicable in the case under consideration?

The legal right of the Lehigh Valley Railroad Company to take and hold the capital stock of the Lehigh Valley Coal Company, and the right of said coal company to mine, buy, ship and sell coal is not raised in this proceeding, and if such right were raised and chal-

lenged this Commission has no authority to determine it. While the coal company may, in the exercise of its chartered rights, buy and sell coal, certainly this Commission cannot determine the prices at which it may buy and sell, so that the Railroad Company may realize its established freight rates as carrier and suffer no loss as stockholder. The Commission would be incapable of any such determination if it had any authority to make it. With the market fluctuations in coal as well as other products which may rise and fall from day to day, it is not practicable to determine in advance at what price the coal company must buy that it may sell at such profits as to pay full freight charges.

And while the coal company in the exercise of its chartered rights may acquire and hold mineral and other lands, at its own pleasure, mine or buy coal without restraint as to cost, and sell it at whatever price it may be willing to accept, and is able to obtain, it is impracticable to regulate or cause the discontinuance of the conditions and methods of business, which result in the undue preference and discriminations complained of in this branch of the case.

One allegation of the complainant is that the coal company so conducted its operations as a miner and shipper that its net income from a large mining business was not sufficient to pay freight charges, and that as a result the Railroad Company, through the operations of the coal company as miner, shipper and seller, as well as through its transactions as dealer, was giving to the coal company undue preference. The cost of mining anthracite coal so varies with different conditions and is so difficult of ascertainment under any conditions, that it is even more difficult to fix and so adjust the operations of the coal company as miner, shipper and seller than it is as buyer, shipper and seller without subjecting individual shippers to disadvantage, and thus allegation of the complainant was not insisted upon in the argument.

The relief asked by the complainant for the injustice alleged to result from the relations of the Railroad Company to the coal company, and its methods of business as buyer, seller and shipper of coal, is not that defendants shall cease and desist from mining, buying, shipping and selling coal, but that complainants, together with others similarly situated, shall have the benefit of a rate ascertained by deducting from the established rate the loss incurred by said coal company in its transactions as a buyer and seller of coal shipped to market over the Lehigh Valley Road.

From the time of the enactment of the Law to Regulate Commerce, the business of the Lehigh Valley Coal Company as a buyer, shipper and seller of anthracite coal has been profitable as a whole, though said company

has in that time, on various and frequent occasions, suffered losses. Its business is not limited to interstate traffic, but extends to other traffic as well. No separate account is kept, and the business is not so conducted as to render any reliable estimate of the loss on interstate business practicable. In every month some transactions are profitable; others are not. In many months the losses exceed profits, and the amount of loss is different in different months. At times it is different from day to day. Conditions so variable can form no basis for determining rates which must be reasonable, and afford no standard by which to measure the extent to which charges may be excessive. Yet the fact that the Railroad Company, directly as a carrier and indirectly through its coal company as an operator, so conducts the business of buying, shipping, carrying and selling coal that the road realizes less for transportation than its established rates, affords evidence of the defendant's readiness to take the freight at less than full charges, and justifies the conclusion that the charges to others are to some extent excessive.

In the progress of the investigation, the complaint as to the rate from the anthracite regions west to Buffalo was abandoned, and the reasonableness of the charges from complainant's mines east to Perth Amboy is yet in dispute. These charges as complained of were \$1.80, \$1.40 and \$1.20, according to sizes, averaging on all \$1.70 per ton. As reduced, pending the investigation, they are \$1.70, \$1.40 and \$1.20, and the average is \$1.60. It is the question of the alleged unreasonableness of these lower rates that we are to determine.

In the closing argument on behalf of the road, counsel said the railroad companies, without the interference of the Commission, "will make a reduction in their rates of freight. Such a reduction will show a rate per ton per mile which will compare favorably with the lowest charged according to the tables the petitioners have produced." Since this assurance was given, the railroad companies, including the defendant, have made an average reduction of ten cents per ton. The tables produced in evidence by the petitioners show that, as reduced, the rates are yet twenty-five cents per ton on the larger sizes, and twenty cents per ton in the average on all sizes, higher than the rates which were in force for the two years and more next before the Act to Regulate Commerce took effect, and that at various times previous to 1881 the rates were lower than the average for the two years next before the Act was in force.

In the last ten years, the market price of coal has not increased. The cost of production has been maintained or increased, and the cost of railroad service from the anthracite region to New York Harbor has declined, as the

result of the increased volume of business.

The aggregate charges of the defendant Company on other heavy and low-grade freight, including iron ore, pig and other iron, of greater value, carried the same distances, and its proportionate charges for such heavy and low-grade freight, for shorter distances, are less than its charges on coal.

The defendant Company estimates and reports its expense, or cost of service, to be eighty-eight cents for every dollar earned, in carrying all other freight, and fifty-six cents expense per dollar earned in carrying coal.

Under the rules of classification generally prevailing miscellaneous or general merchandise is rated considerably higher than coal,—while the charges of the defendant are considerably more on coal, the least expensive freight, than on its more costly general freight.

These facts lead us to the conclusion that the rates in question are unreasonable.

After submitting the proposed findings of fact for the consideration of the Commission, counsel for complainants in his concluding argument said:

“As to the unreasonableness of the charge, we ask the Commission to find that the rate of \$1.80 is unreasonable within the Statute. We do not ask or care about your Honor’s establishing any particular rate.” . . . “There are a great many ways in which these coal rates can be determined without fixing any arbitrary or inflexible standard. It could be by a sliding scale depending upon the price of coal. You could determine first the cost of mining coal and then the cost of railroad transportation. . . . Another way to establish the rate would be at some fixed proportion of the average of the selling price of coal at tidewater. . . . If they (the carriers) are informed that their present rate is unreasonable they will then meet the individual operators of their districts in consultation and I am sure some amicable arrangement will be reached by which both parties can make money.”

Complainants’ counsel here expressed the belief that the coal traffic afforded a fair profit to both producer and carrier; that to secure an equitable division of the profits it was only necessary to declare the charge made to be unreasonable and the parties would come together and fix the proper rate themselves.

Counsel for the road said in reply:

“That will not do. If this Commission says that the present rates are unreasonable they must say so because there is a different rate they have determined to be a proper one. It will not do for you to make a general finding and to say: ‘The present rates are unreasonable, but we do not know what they ought to be. We cannot fix them for you. You must agree upon them amongst yourselves.’ If unreasonable, say to what extent they are unreasonable; whether to the extent of a cent, or of many cents, or of a dollar, a

ton. Would it be proper for you to lay down an abstract principle that would lead to endless confusion in the application? That would put all at chaos. For Heaven’s sake do not ever make the matter of the proper rates for carrying coal one to be regulated in a conference between the carrier and the shipper. If you have been convinced by these petitioners that the present rates are unreasonable and unjust, then say what the rates ought to be. This will be your duty. I do not wonder that Mr. Gowen shrinks from asking you, with the imperfect materials he has presented, and with the information he has failed to furnish, to say what these rates shall be.”

Having declared the rates in question to be unreasonable, if we should act upon the suggestion of counsel for complainants and fix upon none which may be properly charged, the case before the Commission would be at an end when the Railroad Company was notified that its rates were found to be excessive and must be modified. The Commission having prescribed no measure of reduction, any modification made in good faith would be a compliance with the required modification, yet it might be unsatisfactory to complainants and other operators and fall short of what the Law requires. Then the occasion would be presented when the operators and carriers might meet and amicably arrange what the charges should be in accordance with the suggestion of complainants’ counsel.

In such a meeting or conference of operators and carriers, where possible conflict of interest and opinion could arise, it might and most likely would occur that no satisfactory arrangement would be reached, and another application to the Commission would be necessary to declare the reduced rates still unreasonable. This process would need to be repeated until the legal rate was established by successive reductions, made in compliance with a series of determinations of the Commission that the rates were unreasonable.

In the case under consideration suppose the facts to be as claimed, that the charges are excessive, as much or more than 50 cents. Under the rule suggested by complainants’ counsel, when the rate was ascertained to be unreasonable it would be so declared and left with the shipper and carrier for amicable arrangement. If for any reason no scale of charges was agreed upon the rate would remain for determination by the carrier whose rate is challenged. Under such a rule applied to the subject of this complaint five several proceedings would be necessary to establish the reasonable rate if in each proceeding the carrier deemed a 10-cent reduction sufficient. If, impressed with the belief that the existing rates were not exorbitant, the carrier should attempt compliance with the Commission’s conclusion that they were excessive by making the least

possible reductions, repeated and continual applications would be necessary to correct a single abuse. Certainly Congress intended no such absurdity as this, but, as insisted upon by counsel for the road, when we have been convinced that rates are unjust it will be our duty to say what they ought to be, or at least to determine upon some rate, any charge in excess of which would be unreasonable. If the duty of the Commission in respect to unjust and unlawful rates ends when it has been convinced that rates are unreasonable, and so decided them to be, and for any reason the Commission may not determine what are, as well as what are not, reasonable, the regulation provided by the Statute begins with complaint and ends in confusion.

The Act to Regulate Commerce, which declares every unjust and unreasonable charge to be unlawful, and requires its provision to be enforced by the Commission, confers the power to determine, and imposes on the Commission the duty of determining, what are the reasonable rates which the charges may not exceed, as well as what are unreasonable.

There is, as we believe, no unbending rule by which to determine what common carriers may reasonably charge for their services, and the reasonable rate must be ascertained from the facts of the particular case. To be reasonable, rates must be just, both to the parties immediately interested and to the public. Conceding that counsel correctly indicates the object of railroad traffic to be the profits derived from it, the lowest compensation of the road cannot be less than will enable it to render the service; otherwise the freight will not and cannot be carried. The highest must not be more than the shipper can afford to pay; otherwise the freight will not be shipped. Reasonable rates are within these minimum and maximum limits, and must be determined upon the circumstances of each particular case.

Complainants' counsel says they may be rightly determined upon a sliding scale depending upon the price of coal, or established at some fixed proportion of the average of the selling price of coal at tidewater—the cost of mining coal having first been determined and then the cost of railroad transportation.

The roads have the same anthracite rates eastward and own or control much the larger part of the coal they carry. The operators or their sales agents establish the same circular prices and the roads having the majority interest represented by such operators or agents could establish the rates by determining the price on which they were to be apportioned.

The suggestion of counsel that the cost of mining and of transportation be separately ascertained is based on the assumption that the coal business is profitable and is evidently made with a view to an equitable division of

the profits of the coal traffic between the producer and carrier. It would seem that the defendant road can offer no reasonable objection to such a division provided the share of profit apportioned to it added to the expense of transportation affords a fair compensation for the service rendered. The average price of coal delivered at New York Harbor for the years 1880 to 1888 inclusive was about \$3.86 per ton. The cost of mining including depreciation and royalty was and is about \$1.85. The cost of transporting coal ascertained from the report of the defendant Company for the year 1887 was about eighty-five cents; the cost of selling 12 cents. Deducting these several items of cost amounting to \$2.82 from the price, \$3.86, and a profit is shown of \$1.04 on the ton to be apportioned between the miner or operator and the carrier. One half of this profit added to the cost of carriage would fix the aggregate earnings at more than half as much more, or about 60 per cent above the amount required to pay operating expenses for coal carriage, and would establish the transportation rate at \$1.37 per ton, leaving to the miner a profit of 52 cents on the basis of the average prices since 1880. This profit of the miner is dependent upon, and will fall off with, the market price of the coal, which will decline with the reduction in rates, a fact established by the testimony of the president of Lehigh Valley Railroad Company and the president and general manager of the Lehigh Valley Coal Company, and confirmed by the result of previous changes in transportation rates. Such a division of profits or proceeds, after deducting cost of mining, selling and transportation, would be mainly arbitrary, and the rate thus established would exceed the cost of transportation much more than the average of such excess of transportation cost over all other roads on all classes of business. But the rate on whatever basis determined must be fairly remunerative to be lawful, and any division of the profits or net proceeds of coal after deducting costs including transportation, as a means of ascertaining reasonable rates, needs the justification of supporting facts.

The net earnings of all the roads are from 30 to 35 per cent of the gross earnings; that is to say, of all the earnings of all the roads about \$65 of every \$100 is required to pay the expenses of earning it, and the average rates on all the roads are 50 per cent higher than would be required to earn operating expenses only. Why a rate of 50 per cent in excess of the requirements of operating expenses, the average for all other roads, is not sufficiently compensatory for the Lehigh Valley is not explained in the testimony or argument.

The rate established on this basis of adding 50 per cent to 85 cents, the expense of carriage of coal, would be \$1.28, and in comparison

with the rates made on this basis the rate of \$1.37 established by adding one-half of the coal profit to the cost of service or operating expenses would still be above the reasonable rate. The rate of \$1.28 is estimated on the average for coal of different sizes and values, while the rate of \$1.37 is estimated on that which pays the highest rate and sells at the best market price. If for any reason it be assumed that coal charges should be based on the expense of transportation of all the business of said road, which is 63 per cent of the earnings from such business, and not on the expense of coal transportation, which is 56 per cent of coal earnings, the rate would be about \$1.40 per ton, or 93 cents per ton expense and 47 profit on income on the investment. But the fact is not overlooked that there are too many elements of uncertainty in any estimate of the cost of service and of mining to justify their unqualified use as controlling facts in determining reasonable transportation charges.

One of the complainants, as a witness, said in answer to questions:

"I began going in the mines when I was nine years old, and ever since that time I have given my attention to it. I graduated in the University of Pennsylvania, and after that I studied mineralogy, etc. I was six months with Professor Leslie, State Geologist on the Geological Survey. I then spent between four and five years in Europe, partly in the mining school at Paris and partly in a mining school in Germany, and I visited all the principal mines of Germany, France, Belgium and England, and since my return I have been engaged in mining coal in and around Drifton, Pa. . . since 1865."

"I was two years President of that Society." (Mining Engineers.)

"I would like to have the right to state before the Commission that in giving this, the cost of mining coal in the Lehigh regions I am undertaking the most difficult problem in the anthracite business. I mean this question of determining the cost of coal, and if you gentlemen will excuse me I would like to make a preliminary statement. . . . For the last twenty years I have been trying to find out, and I cannot honestly say to-day what it does cost. . . . I don't think you would get any two to agree." (Of a dozen experts in coal mining put to calculate the cost per ton at the breaker.)

This complainant, when testifying before a committee of Congress as to a table giving details of the cost of coal mining, said:

"Now while the above table gives an approximate idea of how these costs are divided, it is probably not true of any one mine. I have endeavored to make out, as nearly as I could, a table giving an average for a number of mines with which I am familiar, but you must understand that in no two mines would these two items of expense agree. In some mines little pumping is required, and in others the cost of pumping is very great. In some the cost of timbering is enormous; in others it is very small.

3 INTER S.

In some mines the cost of preparation is very great, owing to the impurities found in the vein; so that, although it is probable that there are some mines where the cost of producing is as low as \$1 per ton, there are others where it costs over \$2, and the increase in cost may be in any one of the items mentioned above." (In the tables, about which the witness was testifying.)

A trained, educated and conscientious expert in railroad transportation, if required to give the expense or cost of carrying coal or any single article of freight over a road doing a general business, such as is done by the Lehigh Valley Railroad, would find the same difficulty as said complainant did when asked to state the expense or cost of mining a ton of coal.

That the operating expenses on all freight was 63 per cent of the gross receipts, while the operating expense or cost of carrying coal for 1887 was 56 per cent of the gross receipts from the coal traffic, leaving to the road \$44 of every \$100 earned after deducting costs of carriage, appears from the annual report of defendant Railroad Company to its board of directors for that year. That the cost of carrying a ton of coal from the Lehigh and Mahanoy regions was 85 cents, being 56 per cent of the average rate for that year, is derived from the same report. The annual report of said Company for 1888, made since the commencement of this proceeding, and which is in evidence, does not contain these facts or the statement from which they may be derived for that year. No testimony was offered modifying the annual report of 1887, and it may fairly be assumed that, in respect to its earnings, expenses and other matters pertaining to the subject of this complaint, said report is as favorable to the Railroad Company as the facts will reasonably justify.

The lowest anthracite rate which has prevailed in the last 15 years was in 1879, when it was for seven months as low as \$1 per ton on all sizes. For the next five years, it was for a short time as low as \$1.40, and much of the time as high as \$1.90.

In the two and more years from February 1885, to April 4, 1887, the day next before the Act to Regulate Commerce took effect, the highest rate which was in force on the large sizes was \$1.57 per ton, and the lowest \$1.37, which prevailed without change a year and more. The average rate for this period, exceeding two years, on the highest and most valuable sizes, was \$1.45. On the lower grades the rate was for one half of the time as low as \$1.17, but part of the time as high as \$1.37, and the average rate on all sizes and descriptions during this period of two years and more next before the Act took effect was \$1.40 per ton.

The primary and legitimate purpose for which railroads are constructed and operated by their proprietors is the profits and gains

of the business. When, therefore, a railroad company voluntarily accepts and carries freight upon terms made by itself, it furnishes evidence tending to prove that such terms are profitable. When such terms or rates of charges are of long continuance, or are recurred to and adopted as often as necessary to secure business, the evidence is more convincing that the business, at such rate of charges, is remunerative. The rate of \$1 per ton, which was maintained seven months of the year 1879, on all anthracite from the Lehigh and Mahanoy regions, had not been in force before that year, nor has it been since. The coal is carried by the road at an expense of about 85 cents per ton, as ascertained from its own report, which is nearly 6 mills (5.7) per ton per mile for 149 miles, the average or group distance from the mining regions to the Jersey coast.

The full charges for operating expenses and profit or net earnings made by the Lehigh Road on ores and some iron, both ordinarily more expensive freights than coal, is 6 mills per ton per mile or less. Still, in view of the terminal costs included, the expense of transporting coal stated to be 85 cents per ton may be accepted as approximately accurate. The rate in force in 1879 is but 15 cents, or less than 18 per cent, in excess of this expense, as compared with about 50 per cent, the average difference between the expenses and earnings for all the roads of the country. We do not believe that charges yielding but 15 cent a ton, or less than 18 per cent, more than costs of moving the freight, will yield a fair return on the amount of investment in the road, or that the rate of \$1 in the average or on all sizes which prevailed in 1879 would be a reasonable rate under present conditions.

A rate established on the basis of the average relation between operating expenses, 66 per cent, and income, less operating expenses, 33 per cent, of earnings, would be 85 cents for expenses and 43 for income on capital invested, aggregating \$1.28, which is lower than any rate in force previous to or since 1879. The rate for the year 1886 averaged on all descriptions of anthracite \$1.34 per ton, and the average for a period exceeding two years immediately preceding the enactment of the Interstate Commerce Law was \$1.40. The acceptance of rates averaging for so long a time \$1.40, and even a lower rate for more than a year without change, affords strong presumption that it is fair compensation for the service rendered; and when as in this case an average scale of charges has prevailed more than two years and up to the day when the Law requiring rates to be reasonable became operative, and no evidence is produced to show why such rates would not be just, the only conclusion we can arrive at is that they were, when in force, and still are, sufficient and reasonable.

§ INTER 8.

This conclusion is fully warranted by the annual balance sheets of the Railroad Company, which show that in 1886, with an average rate 6 cents per ton less, said Company met all its obligations, including interest on its bonded debt and "guaranteed bonds and stocks," largely exceeding the whole cost of its road and equipment, and paid \$1,331,531 dividend on its capital stock, which also largely exceeds the whole cost of the road and equipment. In 1887, when its rates averaged \$1.49 after meeting all its obligations, said Company made a dividend of five per cent on its capital stock and could have increased its dividend to more than 6 per cent, but instead carried a surplus of \$410,791 to the profit and loss account. The coal tonnage of said Railroad Company in 1888 was more than a million of tons in excess of that of 1887. Its business and income were larger in 1888 than in any previous year. The increasing population and growing industries on its main line and branches and in the districts it serves secure to it a constantly increasing traffic and revenue. The transportation service is thus made less and less expensive and warrants more moderate charges.

In the more than two years immediately preceding the enactment of the Interstate Commerce Law, during which time the average rate on all descriptions of anthracite was \$1.40, it was on the larger sizes \$1.44½, and on all the smaller sizes \$1.24½. In 1888 the lower grades were divided and rated under two descriptions, thus making three different classes of anthracite, the prepared and sizes larger, the pea, and the buckwheat and culm. When the arrangement was in two classes the difference in charges on pea and lower grades was at times 15 cents, but usually 20 cents, less than on the grades above pea. After the division into three grades or classes the charges were for a time on the higher grades as much as 40 cents above pea, the best of the smaller sizes. As arranged by the reduction made subsequent to the hearing in the case the charges on pea are 30 cents less than on the more valuable, and 20 cents more than on the sizes less valuable, than pea, the difference between the highest and lowest being 50 cents per ton.

It thus appears that as the price of bituminous coal has declined and its use relatively increased in eastern markets, the carriers have found it more and more necessary to so adjust their rates on anthracite as to make them proportionally less on the steaming or smaller sizes. In so adjusting the proposed reduction to the average of \$1.40 it is only prudent to maintain, as far as may be, the relations in the charges on the several sizes or qualities of coal which the carriers with their growing experience found it necessary to establish. To maintain these relations approximately with the highest rate at about \$1.45 as it was when the

average was \$1.40, the lowest would be too nearly consumed in the expense to afford any reasonable profit. Still with the increasing supply of bituminous the smaller or ordinary steaming sizes of anthracite must reach the market at the lowest possible cost. The practicable and necessary adjustment of the rates on such east-bound, short-distance traffic, which we have determined upon as reasonable per ton of 2240 pounds from the collieries of complainants to Perth Amboy, is, on the prepared and larger sizes, \$1.50; on pea, \$1.25; on buckwheat and culm, \$1.05.

The charges so adjusted on the several grades or sizes of coal and applicable to complainants' shipments to Perth Amboy are not meant to affect or to establish the relation of the charges made or to be made on Buffalo and longer-distance shipments where lower anthracite rates are maintained than are or may be in force on tide shipments.

The rates now determined upon are believed to be liberal for freight so inexpensive as coal, and if, after trial, it is found that they are too high, we will not hesitate to require further reductions; but in view of interests so vast as the east-bound anthracite traffic which may be affected, we do not now feel justified in determining upon a lower scale of charges.

In their petition and proposed findings complainants assume that the charges they may be reasonably required to pay must be based on the average distance from their several collieries to Perth Amboy, 135 miles, and not on the average or group distance from the Lehigh and Mahanoy anthracite fields, 149 miles, in accordance with the practice long in use. It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market. That under such circumstances some grouping is not unreasonable, complainants concede by asking that they may be charged on the average distance from their seven collieries, no two of which are the same distance from Perth Amboy. One is as near as 128 miles, while another is as far as 145 miles. The reasons which make necessary and justify the same charges from the several collieries of complainants would seem to justify like charges from all the collieries in the same coal fields and practically the same locality. The objection which is frequently urged against the equal charges from collieries or places of production variously distant is that such charges occasionally deprive producers of their natural advantages resulting from proximity to markets. This objection can have no application to questions to be determined in this proceeding. The complainants' mines and collieries are situate in the Lehigh regions, the nearest to eastern markets, and the charges are less to the east than the

charges from the more distant Wyoming region, though not adjusted in proportion to distance. On western shipments all the anthracite fields are grouped together, and given the same rate, of which the complainants get the advantage, their collieries or some of them being among the most distant from western markets, and they suffer no undue disadvantage from the system of grouping in use under which their charges east are based, on a distance 14 miles in excess of the average from their collieries, while they have the advantage of the same rates on western shipments paid by their competitors located from 60 to 100 miles nearer to western markets.

Much stress was laid by defendant on the expense or cost of terminal service, incident to the transportation, as a justification of high rates. After most careful investigation we found it to be about 30 cents, or two mills per ton per mile, on shipments from the Lehigh and Mahanoy fields to Perth Amboy. This would leave to the road for the additional expense of transportation a trifle less than 4 mills per ton per mile if the entire terminal expense was included in the cost of transportation, a part of which terminal expense is included in the plant or investment. The charges of the Lehigh Valley Railroad Company under its reduced rates on anthracite coal from the Lehigh region to Buffalo are \$2, or 6 mills per ton per mile, and include the same terminal expenses at the mines as are incurred on Perth Amboy shipments. Said Lehigh Valley Railroad Company transports the coal carried by it to Buffalo over the lines and tracks of the New York, Lake Erie & Western Railway Company, for which said Erie Company receives one half of the freight charges. There is thus left to the defendant road but three mills per ton per mile for its transportation services, including terminal costs and profit or income on investment. When the operating expenses, which include the cost of collecting, weighing and making up into full train loads at Packerton, are compensated for, the haul thence to Perth Amboy is but one hundred and twenty-five miles, and its cost is considerably reduced. The scale of charges determined upon as reasonable are sufficient to meet all the expenses and obligations of the Railroad Company, including dividends on the capital stock, or a reasonable rate of income on the alleged investment. The terminal charges being thus provided for, their exact sum and apportionment, as between the expense and net profit account, is not essential to the ascertainment of the proper aggregate rates. An order will be issued requiring said Lehigh Valley Railroad Company to cease and desist from making any charges after April 20th, 1891, in excess of the rates determined upon.