

F. B. THURBER, M. N. DAY, E. A. DOTY, H. K. MILLER, W. B. TIMMS, B. F. SHORES, COMMITTEE OF THE NEW YORK BOARD OF TRADE AND TRANSPORTATION, v. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, AND THE BALTIMORE AND OHIO RAILROAD COMPANY.

THOMAS L. GREENE, AS MANAGER OF THE MERCHANTS' FREIGHT BUREAU AND AS REPRESENTING TWO HUNDRED AND EIGHTY-ONE RETAIL MERCHANTS IN SIX DIFFERENT STATES, v. THE SAME DEFENDANTS.

FRANCIS H. LEGGETT & CO. v. THE SAME DEFENDANTS.

Hearings at Washington for taking testimony, January 24 to January 28, 1888, inclusive.—Briefs filed in behalf of the different parties, at various times down to February 4, 1889.—Decision filed March 14, 1890.

Classification of freight for transportation purposes is in terms recognized by the Act to regulate commerce and is therefore lawful. It is also a valuable convenience both to shippers and carriers.

A classification of freight designating different classes for car-load quantities and for less than car-load quantities for transportation at a lower rate in car-loads than in less than car-loads is not in contravention of the Act to regulate commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by car-load classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.

Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes.

Cost of service is an important element in fixing transportation charges and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essential factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic.

A difference in rates upon car-loads and less than car-loads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the Act.

A difference in rate for a solid car-load of one kind of freight from one consignor to one consignee, and a car-load quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee or from one consignor to more than one consignee, is not justified by the difference in cost of handling.

Under the Official Classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between car-loads and less than car-loads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary, and is so ordered.

Simon Sterne, Charles F. Beach, Jr., and Thomas L. Greene,
for the complainants.

Frank Loomis, for N. Y. C. & H. R. R. R. Co.

James A. Buchanan, for N. Y., L. E. & W. R. B. Co.

M. Taylor Pyne, for D., L. & W. B. R. Co.

James A. Logan, for Penna. R. R. Co.

John K. Cowen and Hugh L. Bond, Jr., for B. & O. R. R. Co.

J. H. McGowan, for Mississippi and Missouri Rivers
Jobbers' Association; also for Hoe & Fork Manufacturing
Association of the United States, west of the Allegheny
Mountains.

S. E. Payne, for Hoe & Fork Makers' Union.

J. W. Walker, for St. Joseph, Mo., Board of Trade.

D. B. Henderson, for Iowa State Jobbers' & Manufacturers' Association, and citizens of Iowa, and signers of petitions of 1,300 retail grocery houses of Iowa.

Peter A. Dey, for the Executive of the State of Iowa.

Newton Dexter, for Retail Merchants' Association of New York.

William K. Gillispie, for Association of Wholesale Grocers of Pittsburgh, Pa.

J. C. O'Donnell, for Retail Grocers' Association of Pittsburgh, Pa.

Robert A. Stevenson, for Pennsylvania Retail Grocers' Association.

John Henry Keene, Jr., for signers of four petitions of Baltimore, Md., merchants.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner* :

The complaints in these cases all relate to the same subject-matter, the classification of certain freight in car-loads, and in less than car-loads, but present it in somewhat different aspects.

In the case of Thurber and others the complaint is as follows :

"The undersigned, representing the New York Board of Trade and Transportation, comprising in its membership upwards of one thousand firms and individuals, respectfully submit the following complaint against the New York Central and Hudson River R. R.; New York, Lake Erie and Western R. R.; Delaware, Lackawanna and Western R. R.; Pennsylvania R. R., and Baltimore and Ohio R. R., for unjustly discriminating against small shippers of some varieties of goods, by placing less than car-load quantities in a higher class than car-loads, by which small shippers are forced to pay from 16 per cent. to 60 per cent. more for their transportation than large shippers who ship the same goods

in car-loads. We claim that this action violates provisions in sections one and three of the Interstate Commerce law, and virtually continues under the guise of classification the unjust discriminations against both localities and individuals, formerly practiced by means of rebates and drawbacks, which the Interstate Commerce law designs to prevent. This question, as affecting the Eastern Trunk lines, embodies important points not heretofore presented to your honorable body, by the complaint of the merchants of St. Louis against the Missouri Pacific road. The west-bound classification of the Eastern Trunk lines, in force prior to the enactment of the Interstate Commerce law, made but few and unimportant car-load differentials (about one hundred and seven) but the new classification adds about one thousand articles to this number, some of which are very important, and the differences in rates made between small and large quantities are excessive. This was the more unnecessary and unreasonable on the part of the Eastern Trunk lines, because more than half of their west-bound cars go empty, and the volume of miscellaneous freight transported by them being large, it enables them to a very great extent, if they so desire, to fill their cars with full loads of assorted freight. The principle is the same as in the coal cases which have been brought to your attention, and which, if carried to its logical end, would concentrate the business of the roads in the hands of but one shipper or a few shippers in every place. If this principle is to be tolerated, it should be made as uniform as possible. At present it is not applied to some of the most important branches of the trade, the others thus being discriminated against, as well as individuals. The classification of freight touches the principles upon which rates of transportation are based at almost every point, and is worthy of your fullest and most careful consideration. As at present practiced, although there are two parties in interest, shippers and carriers, the latter dictates absolutely to the former in secret session, no publicity being allowed to their deliberations, and no opportunity being allowed the other party in interest to be heard. We believe a full investigation of this question will show that the present classifica-

tion of the trunk lines is unjust, against public policy, and against even the interests of the railroads themselves, which, although generally taking the position that their business is an intricate one, beyond the comprehension of the ordinary business man or citizen, and that their methods should not be questioned or interfered with by law-makers, have frequently admitted that regulations imposed upon them by law in the interest of the public were not only right but unexpectedly beneficial.

“We respectfully petition for a hearing upon this complaint against the before-mentioned lines at such time as will be convenient to your honorable board, and such relief as may appear after investigation to be reasonable and just.”

In the case of Greene, Manager, &c., the complaint is as follows:

“The undersigned, on behalf of 281 merchants in the States of Michigan, Illinois, Indiana, Ohio, Pennsylvania and Delaware, begs leave respectfully to present to your favorable consideration the accompanying petitions. On behalf of petitioners I make complaint to your honorable body that the present classification (copy herewith) in use on west-bound traffic by the railroads known as the Trunk Lines, viz., the New York Central and Hudson River, The Delaware, Lackawanna & Western, The Pennsylvania, The Baltimore & Ohio and The New York, Lake Erie & Western, as regards the unjust differences now made in classification and freight charges between car-loads and less than car-loads on the same articles between the same points, is in violation of the sections of the Interstate Commerce law forbidding undue preferences to individuals or localities. On behalf of petitioners I pray your honorable body to order a restoration to the west-bound tariffs of the principle of uniform rates without regard to quantity of freight, which has been in force from the seaboard for twenty years previous to April, 1887. If a hearing is desired upon the matter, I respectfully ask on behalf of petitioners that we be made parties thereto in connection with the N. Y. Board

of Trade and Transportation and any other boards or individuals interested."

In the case of Leggett and others the complaint is as follows:

"First. That the railroad companies commonly known as the "Trunk Lines," which have their eastern termini at the city of New York, namely, the Baltimore & Ohio, the Pennsylvania, the Delaware, Lackawanna & Western, the New York, Lake Erie & Western, and the New York Central & Hudson River Railroads, and their connections, have violated the provisions of the Interstate Commerce Act, as follows:

"Second. That the said railroad companies have published, established and issued a classification of property in common use amongst them. Said classification is annexed hereto, and forms a part of this complaint.

"Said classification declares their intention and purpose to transport property in full car-loads with a minimum weight of 20,000 pounds upon the first three classes, and a minimum of 24,000 pounds for the last three classes. That property in a less quantity than said minimum weights is to be charged for in a class higher and at a higher rate of charges than property in car-loads of their respective minimum weights.

"Your petitioners complain that the said railroad companies, by reason of affixing charges by the said classification, discriminate in favor of shippers who forward a minimum car-load against a smaller shipper; that by so doing they give an undue preference, and that, therefore, the said railroad companies are acting in violation of section two of the Interstate Commerce Act, which is, 'that if any common carrier . . . shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any services rendered or to be rendered for the transportation of property than it charges any other person or persons for doing for him or them a like and contem-

poraneous service . . . under substantially similar circumstances and conditions, &c.;" and in violation of section three, namely, 'that it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.'

"Your petitioners therefore pray that your honorable body issue a decree requiring said common carriers to cease and desist from such violation of said Act, and for such other and further relief as in your judgment may be just and proper."

The respondents in the three cases answered jointly, and their answers, which are substantially alike in each case, are as follows :

"1. The respondents are not advised that the petitioners represent the New York Board of Trade and Transportation, or that said board comprises in its membership upwards of one thousand firms and individuals, and therefore ask that the petitioners be held to due proof thereof.

"2. The respondents deny the other allegations of the petition and each and every of them, except as hereinafter stated. They say and allege that in March, 1887, the 'Joint Committee,' so called, being a committee composed of representatives of the 'Trunk Line Association,' so called; the 'Central Traffic Association,' so called, and certain other railroad companies, after careful consideration, adopted, to take effect April 1st, 1887, 'The New Official Classification,' superseding 'The Official Classification of East-Bound Freight,' 'The Official Classification of West-Bound Freight,' 'The Middle and Western States Classification of Freight,' and 'The Joint Merchandise Freight Classification' in force prior to April 1st, 1887, in different parts of the country and

upon various traffic, which classification was accepted by the respondent companies and other railroad companies and was used by all the railroad companies in the territory east of the Mississippi river and north of the Ohio river, embracing one-half of the railroad mileage and eighty per cent. of the railroad tonnage of the United States; that subsequently the said 'Joint Committee,' after careful consideration, the hearing of representatives of various commercial interests affected, and the consideration of their suggestions and all the facts known with respect to the operation of the said official classification adopted to take effect April 1st, 1887, adopted the 'Official classification No. 2,' to take effect July 15th, 1887, which Official Classification No. 2 was accepted by the respondent companies and the other railroad companies operating in the territory aforesaid, and is now in use; and the respondent companies allege that said 'Official Classification No. 2' is just and reasonable and, upon information and belief, satisfactory to the great majority of the commercial interests in the territory aforesaid.

"3. The respondents further allege and aver that 'the distinction in rates as between car-loads and smaller quantities is readily understood and appreciated.'

"That the difference in charge made as set out in said classification between car-loads and smaller quantities is based upon fair and equitable considerations, alike just to the shipper and carrier, the result of careful and intelligent thought and consideration by the officers of the respective companies respondents and of said joint committee, and is just and reasonable; that among the reasons which necessitated the distinction in rates as between car-loads and smaller quantities is the fact that the average cost to the carrier of handling small shipments is proportionally much greater than that of car-load lots, experience having shown that an average loading of mixed car-loads at New York does not exceed five tons per car having a capacity of not less than twelve and often fifteen or more tons; that to retain small packages until a quantity equivalent to a car-load for any given destination would be received, would involve an unrea-

sonable delay in shipment objectionable to the shipper, who would look to the company for damages, and impossible to the carrier because of want of storage facilities in the meantime; so that the railroads in transporting mixed car-loads must haul seventeen tons for every five tons of paying freight (the empty car itself weighing twelve tons), while in car-load freight the paying freight exceeds the dead weight. To this is to be added the loss of time and expense incident to stoppages of whole trains while small packages are being unloaded at many places, whereas cars containing full loads can be readily dropped from the train at their destination.

"4. The respondents further aver that at no season of the year, on any of the lines of the respondent companies, do more than twenty per cent. of their cars go west empty, while on the lines of some of the respondents the loaded cars west-bound are equal to the number east-bound, and at certain seasons of the year the west-bound traffic preponderates. An empty car leaving New York is often more valuable to the companies than one partially loaded to a western point, because of the opportunity to obtain a full load at an intermediate point.

"5. The respondents further say that if any incidental detriment may happen to a few individual shippers in the east as the result of this proper and necessary practice upon the part of the respondents (which these respondents deny), it is much more than overcome by the advantages accruing to jobbers in the cities and large towns in the interior of the country, who buy in the east in large quantities and transport to their respective cities for the purpose of distributing in small quantities within a territory naturally tributary to their interior cities.

"6. Your respondents further answer that they have caused to be constituted a special committee of railroad officers, whose duty it is to consider all communications from shippers suggesting changes in classification and to accord them ample hearings and to submit its recommendations thereafter as to such matters to the railroads interested, as to

which fact the public has been duly informed; that at the last meeting of said committee over thirteen hundred communications of this character received consideration, and that many reductions in classifications were made in accordance therewith.

“Wherefore these respondents pray that the said petition may be dismissed.”

After the service of the answers the following amendment to the complaints was filed:

“The several petitioners in the above-entitled proceedings, pursuant to rule 10 of the Rules of Practice, leave having been first duly obtained by this amendment to be incorporated in and to be regarded as a part of their original petitions, respectfully and severally allege that the respondent railway companies, by making and enforcing the car-load rates of which complaint is made in their original petitions, and which operate to grant a lower rate for shipments of or in excess of twenty thousand or twenty-four thousand pounds weight, than is exacted for shipments of lesser quantities, make an unlawful discrimination of great magnitude in favor of larger centres of population, trade and business in Pennsylvania, Ohio, Illinois, Missouri, Indiana and Minnesota, which take of the staples set forth in the petition herein by the car-load from single consignors to single consignees as against towns and cities nearer to New York from which the shipments are made, and which contain few or no individual consignees to whom car-load shipments are made, which lesser shipments are made at such higher price to the shorter distance under substantially similar circumstances and conditions than those shipped for the longer distance, thus violating so much of the fourth section of the Act to regulate commerce as provides ‘that it shall be unlawful for any common carrier, subject to the provisions of this Act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in

the same direction, the shorter being included within the longer distance.'"

The complaints as filed apparently assailed the lawfulness and justice of any difference in rates founded upon a classification for car-loads and less than car-loads. Upon the hearing, however, this broad ground was not taken, and it was conceded that as to certain staples that move from the east to the west, or from the west to the east, or from the south to the north, like coke, coal, lumber, grain of every kind, tobacco, or cotton, it is proper that discrimination should be made between car-loads and less than car-loads, because these stuffs move in car-loads, and the natural, normal shipment is the car-load, and they have from the first been shipped in the larger rather than the smaller quantity.

The controversy was therefore limited in its immediate objects to certain specified articles of merchandise described by the complainants as staple groceries, and which are as follows: Cider in glass; cider in wood; iron nuts, bolts and nails; sugar; paint in barrels; liquors at valuation; prunes in boxes, kegs or bags; prunes in barrels or casks; crockery; fish, salted or pickled; canned goods; cement in barrels or casks; soda and saleratus; pickles in barrels or casks; pins; salt in barrels or sacks; molasses, and wine.

In respect to these articles the contention of the complainants is that their normal mode of shipment is not in car-loads, but in smaller quantities called commercial packages, and that either no discrimination should be made in rates between car-loads and less than car-loads, or that if any difference is permissible on account of greater cost of handling and of transportation in the case of the smaller quantities, it should be so small as not to consume the commercial profit on the goods. It is also contended that no difference should be made between a car-load from one consignor to one consignee, and a car-load from several consignors to several consignees from the same point of origin to the same point of destination.

The testimony taken is very voluminous, and covers generally the whole field of transportation in the territory of the

Official Classification in car-load and less than car-load quantities. Only such portions of this testimony need be referred to as seem necessary to the disposition of these cases. The general facts deemed material and important are as follows :

Car-load classification for west-bound business from the seaboard was about a dozen years ago limited to a few articles, but has been extended to other articles from time to time, until the number so classified is large. In 1877 about twenty-four articles had a car-load classification ; in 1880 about fifty articles : in 1884 about one hundred and forty articles ; in 1887, immediately prior to the taking effect of the Act to regulate commerce, about one hundred and sixty articles. The new classification under the Act to regulate commerce embraced about nine hundred articles that might be carried in car-load quantities at lower rates than less quantities. The car-load classification in existence prior to the Official Classification, which took effect April 1, 1887, did not include the articles in contention in these cases, and hereinbefore specified. There was nominally no distinction, therefore, in rates on these articles for car-load and less than car-load quantities, although the evidence shows, and the fact is notorious, that rebates, special rates, and disregard of tariff schedules were so common that the published tariffs were scarcely *prima facie* evidence of the actual rates charged.

A much larger proportion of the articles in question is understood to be shipped under the present classification in less than car-loads than in car-loads. One jobber states the car-load shipments to be one-eighth. Sometimes full car-loads are carried made up of consignments from one or more consignors to one or more consignees at the same destination, and these are usually taken at car-load rates. Such shipments are made to Pittsburgh, Columbus, Cleveland, Fort Wayne, Indianapolis, Chicago, St. Louis, and several other western cities.

The classification and rates for the articles in question before April, 1887, and since that date, are shown by the following table :

Table of Comparisons of Freight Rates on West-bound Traffic before and after April 1st, 1887. On basis New York to Chicago.

| Articles. | Before April, 1887. | | After April, 1887. | | Rate. | Am't of increase in rates for small lots since April, in c'ta. per one hund'd lbs. | Am't of present increase for small lots over car loads, in cents, per one hundred lbs. | Percentage of advance in rates for small lots over car loads at present. |
|------------------------------|-------------------------------|-----------------------|--------------------------|-----------------------|-------|--|--|--|
| | Class regardless of quantity. | Rate p'r hundred lbs. | Class when in car loads. | Rate per hundred lbs. | | | | |
| Cider in glass.. .. . | 2 | 60 | 5 | 30 | 3 | 30 | 5 | 116% |
| Cider in wood..... | 4 | 35 | 5 | 30 | 3 | 50 | 15 | 80 |
| Iron nuts, bolts and nails.. | 4 | 35 | 5 | 30 | 4 | 35 | — | 5 |
| Sugar..... | 5 | 25 | 6 | 25 | 4 | 35 | 10 | 10 |
| Paint in barrels..... | 4 | 35 | 5 | 30 | 4 | 35 | — | 5 |
| Liquors at valuation..... | 4 | 35 | 4 | 35 | 3 | 50 | 15 | 15 |
| Prunes in bx's, k'gs or b'gs | 3 | 60 | 5 | 30 | 2 | 65 | 5 | 35 |
| Prunes in barrels or casks. | 4 | 35 | 5 | 30 | 3 | 50 | 15 | 30 |
| Crockery..... | 4 | 35 | 5 | 30 | 4 | 35 | — | 5 |
| Fish, salted or pickled..... | 5 | 25 | 6 | 25 | 5 | 30 | 5 | 5 |
| Canned goods..... | 4 | 35 | 5 | 30 | 4 | 35 | — | 5 |
| Cement, barrels or casks.. | 5 | 35 | 6 | 25 | 4 | 35 | 10 | 10 |
| Soda and saleratus..... | 4 | 35 | 4 | 35 | 3 | 50 | 15 | 15 |
| Pickles in barrels or casks | 4 | 35 | 5 | 30 | 3 | 50 | 15 | 30 |
| Pins..... | 3 | 60 | 3 | 50 | 1 | 75 | 15 | 35 |
| Salt in barrels..... | 5 | 35 | 6 | 25 | 5 | 30 | 5 | 5 |
| Salt in sacks..... | 5 | 35 | 6 | 25 | 4 | 35 | 10 | 10 |
| Molasses..... | 5 | 35 | 5 | 30 | 4 | 35 | 10 | 5 |
| Wine..... | 4 | 35 | 6 | 25 | 4 | 35 | — | 10 |

Testimony was given to show the cost of many of the articles in question to the seaboard jobber, and the profit arising from the business. This testimony tended to show that the average cost of handling the business, including rents and all direct and incidental expenses, is five per cent. on the price paid by the jobber for his goods, and that the commercial profit on many articles is very small, and on some no profit but sometimes a loss. For example, according to some witnesses, the values, gross profits, and net profits per hundred pounds on certain articles are stated as follows :

| Articles. | Value. | Gross profit. | Net profit. | Difference in rate, C. L. & L. C. L. |
|--------------------------|---------|---------------|-------------|--------------------------------------|
| Coffee..... | \$20 00 | \$1 00 | \$0 00 | \$0 10 |
| Sugar..... | 6 50 | 13 | 00 | 10 |
| Prunes in casks..... | 4 00 | 20 | | 20 |
| Prunes in boxes..... | 11 00 | 1 10 | 55 | 35 |
| Standard canned tomatoes | 3 00 | 15 | | 05 |
| Molasses..... | 3 75 | 37½ | 19 | 05 |
| Salted fish..... | 7 00 | 70 | 35 | 05 |

These are admitted to be approximations and averages, and, as the testimony of the witnesses varied considerably, and the market prices fluctuate, exact statistics cannot be deduced from the evidence.

Facts presented on behalf of the respondents are found as follows :

Prior to April, 1887, when the Act to regulate commerce took effect, the principal classifications in use in the territory now covered by the Official Classification were as follows :

1. The distinctive local classifications of the several railroad companies, differing in many respects from each other.

2. The through west-bound classification, generally known as the Trunk Line West-bound Classification, for through traffic originating at seaboard cities and destined to western termini, Buffalo, Erie, Pittsburgh, Parkersburgh, &c., and to a number of competitive points, trade centres, or railroad junctions west of those terminals.

3. The East-bound Classification, which alone applied to east-bound traffic originating in the territory east of Chicago and the Mississippi river, west of the western termini of the Trunk Lines, and north of the Ohio river, destined to the western termini of the Trunk Lines and to the points east of those termini.

4. Traffic between competitive interior points in the States of New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and West Virginia, interchanged between the several Trunk Lines and connecting roads, was governed by the Joint Merchandise Freight Classification, which also applied to the local traffic of certain roads.

5. The Middle and Western States Classification applied to traffic between competitive interior points west of the western termini of the Trunk Lines, east of the Mississippi, and north of the Ohio river.

6. Traffic between certain points in the western States

east of the Mississippi river and certain southern competitive points, was governed by a separate classification.

These several classifications were superseded on the 1st day of April, 1887, by what has since been known as the Official Classification. This classification was made to meet the requirements of the Act to regulate commerce with regard to rates. It covers all the territory lying east of the Mississippi river and north of the Ohio river, extending to the Atlantic ocean. It is the same for both east-bound and west-bound traffic, and from one station to another. The territory includes about ten thousand stations, and about forty-seven thousand miles of railroad, and applies on 131 railroads.

The present classification applies from New York City alone to an average of 3,015 points on the five principal lines of road leading from that city, being in detail as follows: New York Central & Hudson River Railroad, 3,157; New York, Lake Erie & Western Railroad, 3,200; Pennsylvania Railroad, 3,100; Delaware, Lackawanna & Western Railroad, 2,874; Baltimore & Ohio Railroad, 2,742. Through rates are published to these points by the chief roads named. Under the old classifications in force to April 1st, 1887, the average number of points to which through rates were published by the same roads was 713.

The number of articles classified in car-loads and less than car-loads in the several classifications in use prior to April 1st, 1887, was:

| Classification. | Number of articles classified. | Car load classes. | Percentage of C. L. to total. |
|-------------------------------|--------------------------------|-------------------|-------------------------------|
| East-bound trunk line..... | 1,768 | 713 | 44 |
| West-bound trunk line..... | 1,021 | 137 | 14 |
| Middle and Western States.... | 1,689 | 905 | 54 |

In the Official Classification No. 2, of July 15th, 1887, there are 2,178 classified articles, 996 of which have car-load rates, being 46 per cent.

Changes or modifications have been made in the Official Classification, as follows: The first took effect April 1st, 1887;

the second July 15th, 1887; the third February 1st, 1888; the fourth August 15th, 1888; the fifth February 18th, 1889; and the sixth August 15th, 1889. Other changes, relating to a few articles, have also been made by supplement from time to time. In the Official Classification No. 6, August 15th, 1889, and now in effect, there are 4,018 classifications.

It contains 3,536 less than car-load and 2,044 car-load classifications, many articles being in both. Of car-load classifications only, there are 482; of less than car-loads only, 1,974; and of less than car-loads with lower rate when in car-loads, 1,562.

The classes and the rates (New York to Chicago) of several of the articles in question at the present time are as follows:

| Articles. | C. L. | | L. C. L. | |
|----------------------------------|--------|-------|----------|-------|
| | Class. | Rate. | Class. | Rate. |
| Sugar | 6 | .25 | 4 | .35 |
| Molasses | 5 | .30 | 4 | .35 |
| Canned goods | 5 | .30 | 4 | .35 |
| Prunes, in boxes and casks | 4 | .35 | 3 | .50 |
| Salt fish | 6 | .25 | 5 | .30 |
| Salt | 6 | .25 | 5 | .30 |
| Rice | 6 | .25 | 4 | .35 |
| Coffee | 6 | .25 | 4 | .35 |

The rates upon the same articles (New York to Chicago) immediately prior to April 1st, 1887, were as follows:

Sugar and molasses, without distinction as to quantity, 18 cents per hundred pounds; canned goods, in any quantity, 35 cents; prunes in boxes, any quantity, 60 cents; prunes in casks, any quantity, 35 cents; salt, any quantity, 25 cents; rice, any quantity, 35 cents; coffee, car-loads 25 cents, less than car-loads 35 cents. Upon sugar the car-load rate has been advanced 7 cents, the less than car-load rate 17 cents. On molasses the car-load rate advance is 12 cents, and on the less than car-load rate the advance is 17 cents. On canned goods there is 5 cents reduction in the car-load rate, and the less than car-load rate remains the same. On prunes in boxes the car-load rate is 35 cents, being 25 cents lower, and the less than car-load rate is 50 cents, being 10 cents lower. On prunes in casks the car-load rate is un-

changed, and the less than car-load rate is advanced 15 cents. On salt fish the car-load rate is unchanged, and the less than car-load rate advanced 5 cents. On salt the only change is an advance of 5 cents on the less than car-load rate. On rice the only change is a reduction of 10 cents on car-loads. On coffee there is no change.

In the official classification there are only six classes, and the difference in rates between the first and second classes is ten cents per hundred pounds, between the second and third and third and fourth fifteen cents per hundred pounds, and between the last three five cents each per hundred pounds.

In the two other classifications at present in force, the Western, and that of the Southern Railway and Steamship Association, there are, respectively, ten classes, with less difference in rates between them. Both car-load quantities and less quantities have frequently a special class in this classification. The rates per hundred pounds on the articles in question, in this classification, from Chicago to Kansas City, 488 miles, or about half the distance from New York to Chicago, are as follows:

| Articles. | Car loads. | Less than car loads. |
|-----------------------|------------|----------------------|
| Sugar..... | .25 | .28½ |
| Molasses..... | .25 | .28½ |
| Canned goods..... | .25 | .28½ |
| Prunes, in boxes..... | .30 | .40 |
| Prunes, in casks..... | .30 | .30 |
| Salt fish..... | .25 | .28½ |
| Salt..... | .15 | .30 |
| Rice..... | .25 | .28½ |
| Coffee..... | .25 | .28½ |

These rates are proportionately higher than under the Official Classification, but the differences between car-loads and less quantities, with the exception of salt, are less.

A large amount of testimony was given to show the relative average cost of handling and loading freight in car-loads and less than car-loads, of its transportation and unloading, of the average loads in cars carried respectively, of the relative earnings from car-loads and less than car-loads, and of

the movement of empty cars. The testimony is too voluminous to set forth more than some of the results shown.

The cost of loading 1,769 cars of which six per cent. was car-load freight, at Duane Street, New York, was shown to be 62.1 cents per ton. At Dock No. 6, Jersey City, the cost of loading miscellaneous freight was 58.3 cents per ton. At Dock No. 5, Jersey City, the cost of loading car-load freight, exclusive of lighterage and only for receiving, sorting, loading in cars, and billing the freight, was 16.3 cents per ton. On this basis the cost of loading miscellaneous freight is from 42 to 46 cents per ton, or from 2.1 cents to 2.3 cents per hundred pounds, greater than loading car-load freight.

The relative cost of unloading and delivering car-load and less than car-load freight at Chicago was shown to be 23 cents a ton for less than car-loads and 9 cents per ton for car-loads, or seven-tenths cents per hundred pounds.

With reference to transportation alone, exclusive of loading and unloading, the following results appeared respecting west-bound shipments over six of the Trunk Lines for a period of fifteen days each in six different months from June to August, 1887, inclusive, in car-loads and less than car-loads: Less than car-loads—whole number of cars, 5,307; number of consignments, 72,678; total weight, 52,513,313 pounds; average weight per car, 9,895 pounds; average weight of consignment, 723 pounds. Solid car-loads—whole number of cars, 1,776; total consignments, 1,963; total weight, 52,577,398 pounds; average weight per car, 29,604 pounds; average weight of consignment, 26,784 pounds.

Six hundred and forty-one cars carried less than one ton each, with 1,538 total consignments and an average weight per car of 756 pounds, and an average weight per consignment of 315 pounds.

The average work for a single day during this period was 274 cars of miscellaneous freight, containing 1,524 tons in consignments averaging 648 pounds to 4,713 consignees at 1,452 places; and 111 cars of car-load freight, containing 1,638 tons, each car to one consignee and a single destination, and averaging 29,514 pounds per car.

During certain days in October, 1887, in which 11 cars

were sent west from New York over some of the Trunk Lines, with miscellaneous freight to certain large cities, averaging 30,419 pounds to a car, there were sent on the same days over the same lines 768 cars with miscellaneous freight consisting of 15,217 consignments, and averaging 11,615 pounds to a car; 69 cars with one consignment only, 10,596 pounds to a car, and 98 cars with 235 consignments, averaging 779 pounds to a car.

The general average of car-load shipments from the tables in evidence was nearly 15 tons for car-loads and about 5.8 tons for less than car-loads or miscellaneous freight.

The evidence gives an illustration of two trains hauling the same number of gross tons, including weight of cars and load, the cars weighing 11 tons each. One train of 25 cars, loaded with $14\frac{1}{2}$ tons each, carries $362\frac{1}{2}$ tons of paying freight. The other train of 38.6 cars, loaded with $5\frac{1}{2}$ tons each, carries 212.3 tons of paying freight. The cost of hauling the freight in the first case would be 0.276 cents per ton per mile, and in the latter 0.471 cents per ton per mile.

The relative earnings from miscellaneous and car-load freight, based on average loadings, and the miscellaneous freight made up of different classes, as usually shipped west from New York, of $5\frac{1}{2}$ tons to a car, and a car-load of 19 tons of freight of fifth class, was shown, on a division of the Pennsylvania railroad, to be \$22.03 from the miscellaneous, and \$49.40 from the car-load. On the Lake Shore, from Buffalo to Toledo, from average loadings of 4.79 tons miscellaneous, and $13\frac{1}{2}$ tons sixth-class car-load freight, the earnings from miscellaneous were \$17.07 and from car-load \$27.00 per car. From Cleveland to Chicago, on the same road, the earnings, based on average loadings of miscellaneous freight of different classes, and sixth-class car-load freight, were shown at tariff rates to be \$10.40 from miscellaneous and \$30.85 from car-load.

The local rates, or rates for short distances, under the official classification, are low, and differ less between the classes than for long hauls like that from New York to Chicago. For example, the rates on the Pennsylvania railroad, on the six different classes, for a distance of thirty miles are, respec-

tively, in cents : 12, 10, 9, 7, 6, $5\frac{1}{2}$; for fifty miles, 18, 14, 12, 8, 7, 6 ; for ninety miles, 24, 19, 16, $12\frac{1}{2}$, $10\frac{1}{2}$, 9. On the Lake Shore railroad, for thirty miles : $8\frac{1}{2}$, 8, 8, 7, 6, $4\frac{1}{2}$; for fifty miles, 12, 11, 10, $8\frac{1}{2}$, 7, 6 ; for one hundred miles, 21, 19, 15, 12, 10, 8

With regard to empty cars, there is no doubt that a considerably greater proportion of empty (box) freight cars goes west than east over the Trunk Lines, and that a much greater number of only partially loaded cars goes west than east ; although the evidence shows that at times large numbers of empty cars have been brought from different points on the Trunk Lines to New York to carry west-bound traffic. The east-bound tonnage is much larger in volume than the west-bound, though the latter is mostly of higher classifications. In 1887 the east-bound Trunk Line tonnage was, in round numbers, 11,000,000 tons, and the west-bound 2,000,000 tons. For a period of four months in 1887 the number of box cars forwarded west from Buffalo on the Lake Shore road, loaded and empty, was in the proportion of one empty to about 46 loaded.

The argument in behalf of the complainants is, in substance, as follows : That the difference between car-load and less than car-load quantities is *prima facie* unjust discrimination against the latter, to be justified by the respondents both as to rates and classification. That a lower rate for a car-load than for less than a car-load upon the same article, transported over the same line, in the same direction, and for the same distance, violates the provision of the first section of the Act that all transportation charges shall be reasonable and just. That the differences in rates also violate the third section forbidding unreasonable preference and advantage. That they are also in violation of the fourth section of the Act. That the discrimination complained of cannot be justified upon the ground that the higher charge is upon way or local traffic ; or that local business is more expensive to the carrier ; or that the lower charge inures to the benefit of certain classes or communities ; or that the present rates and classification merely continue the former order of business in reference to through and local traffic ; or that the shipper

who gets the lower rates loads and unloads the freight; or that the matter is adjusted upon what is known as the principle of wholesale and retail. That if any discrimination is permissible in rates between car-loads and less than car-loads on the freight in question, there is no justification for the wide discrimination in the present tariffs and classifications as between one consignor to one consignee and many consignors to many consignees, or, particularly, one consignor to many consignees. That the contention of the respondents for large differences in freight rates for quantity, deduced from alleged difference in cost of service, is one not regarded in the actual practice of the railroads, and therefore should not be accepted in argument when the tariffs are challenged. That the extreme limit of difference in freight rates for differing quantities is the net commercial profit. That a reduction if discriminating differences for quantities to the basis of net commercial profit would work no injustice to the jobbing interests of the interior cities.

The complainants therefore ask the Commission to order that car-load rates upon all articles of commerce complained of in these proceedings be discontinued by the respondents, or made so close to each other that they do not prevent shipments of the commercial package. That all rates upon any quantity of any of these articles be by the hundred-weight. That the respondents cease and desist from any species of discrimination whatsoever for quantities shipped of any of these articles so long as the same is contained in the commercial package; and from any discrimination whatever by car-load rates which depends upon the number of consignors or consignees. And that such rates and such classification in respect thereto be adopted as will in no degree oppress or discriminate against the smaller jobber in the smaller localities.

The complainants' argument in effect is that a lower rate for car-loads than for less than car-loads upon traffic for which, in existing conditions of commerce, a large demand exists in less than car-load quantities is unreasonable and unjust because it subjects small dealers dispersed throughout the country who may wish to purchase from seaboard or

distant jobbers to a disadvantage in choice of markets, and compels them to purchase from near jobbers, and that to enable seaboard jobbers to continue their business and compete with interior jobbers what is called the commercial package, and not a car-load, should be the unit of classification and rate.

On the part of the respondents it is claimed that cost of service is an important and acknowledged element in rate making, and the argument to sustain the present classification is based almost entirely upon the difference in cost of service shown by the evidence between car-loads usually hauled long distances to one consignee, and smaller quantities from different consignors to different consignees to be delivered at many stations.

Mr. Dey, one of the Railroad Commissioners of the State of Iowa, who appeared generally in behalf of the States west of the Mississippi river, made an elaborate argument against the contention of the complainants. Among other considerations he presented the following :

“The car-load rate in States west of the Mississippi has, ever since the advent of the railway, been the unit of measurement in all classes of goods and all manufactured articles, as well as in the products of the soil ; in fact, in everything that is or can be dealt in largely enough to require the full capacity of a car. The law was not intended to interfere with the classifications of freight, or the reasonable difference between car-load and less than car-load rates ; provided the same classification applies alike to all shippers, and that all shippers are on equal terms entitled to car-load rates in everything they desire to ship. The Western Classification, that took effect December 19, 1887, and was adopted by sixty-four different railway companies, representing 77,000 miles of railroad, contains 660 articles in the car-load classification in which the rates per hundred pounds are less than in small lots. This classification is but a continuation of that in use when railways were new, representing the growth of business, and varied from time to time as experience dictated ; but the car-load has always been recognized as entitled to a lower rate than the less than car-load.

“The reasons for the car-load rate are: First, the cost of service is less; second, the risk to the carrier is less; third, the time the cars are in use is less; fourth, the unloading is usually done by the consignee.

“The reduction in the differences between car-loads and less than car-loads on the part of the lines west of Chicago, was not made on any principle announced by the railroad managers of these lines, but was in the nature of a compromise between the Chicago jobbers and the interior jobbers west of the Mississippi river, and all subsequent changes made in the Western Classification have been in the direction of restoring it to its old status. Neither Chicago nor New York is the initial or starting point of all freight shipments. The car-load rate is essentially a manufacturers’ rate, and originated from the necessities of manufacturers. The articles showing the smallest percentage of difference between car-load and less than car-load rates compose ninety to ninety-five per cent. of the whole tonnage, while all the other articles combined compose the other five to ten per cent.

“Under the old system of making rates, the rates from manufacturing points to a few of the large distributing centres of the country were ridiculously low as compared with the rates to the smaller distributive centres, and the real ground of the complaining parties is that they are no longer able, as jobbers, to distribute traffic over territory which they were able to do under the old system of rates.

“Such articles as plows, wagons, general agricultural implements, starch, paper, axle grease, vinegar, soap, western packed canned goods, tubs, pails and washboards, corn, syrups and pickles, are manufactured not only at Chicago and New York, but at a number of points in the West widely scattered; and what right has the jobber of the former cities to complain if, by reason of the nearness of the manufacturers, the jobbers of the latter cities are enabled to obtain these manufactured goods at as cheap or cheaper freight than they? The articles of wooden ware, under which is comprised tubs, pails and washboards, plows and wagons, on which the largest percentage of difference between car-load and less than car-load rates exist, are first class in less than

car-loads, and fourth class and class A in car-loads. These articles can only be loaded into cars in anything like car weights by experts in loading and packing, at considerable pains and in extra-size cars. Fifteen to twenty thousand pounds may thus be loaded in a car. Of the same class of goods in the ordinary course of delivery, in broken and assorted lots at the freight station, not more than one-third of the above amount of weight can be loaded in a car by the ordinary warehouseman.

“In respect to the following items from the seaboard: Sugar, sugar syrups, raisins, rice, coffee, Baltimore packed canned goods, and salt fish, all of which, except raisins, show the smallest percentage of difference between car-load and less than car-load rates, the ground is taken that the difference in rates between car-loads and less than car-loads is not unjust or excessive. As an illustration, ten cars of miscellaneous freight billed from Chicago to Ottumwa, in September, 1885, contained on an average 7,920 pounds per car. Ten straight car-loads of groceries taken from the same month contained on an average 24,237 pounds per car.

“There is nothing in the claim that the small shipper or retailer is oppressed in the discrimination of rates. If the retailer is charged the full difference between less than car-load and car-load rates by the local jobber, then the New York jobber is not shut out of competition. If the difference in freight is allowed to the small buyer or retailer, he can not complain that he is oppressed.

“The fact that the less than car-load lots take nearly four times as many cars to carry the tonnage is not answered by the claim that cars go empty for the return produce, and the railway may as cheaply haul the partially loaded car as the empty car. For the year ending June 30, 1886, the tonnage crossing the Mississippi river into Iowa by rail was, east-bound, 4,216,878 tons; west-bound, 3,263,228 tons. The freight crossing the Missouri river by rail from and to the State of Iowa was, east-bound, 1,215,433 tons; west-bound, 1,426,292 tons. For the year ending June 30, 1887, the tonnage crossing the Mississippi river into Iowa was, east-bound 4,411,544 tons; west-bound, 3,601,566 tons. Missouri

river, east-bound, tons, 1,286,831; west-bound, tons, 2,015,147.

“The method of arranging freight tariffs is to follow the law that governs the cost of service, to decrease the rate per mile with distance. This decrease in long distances is very great. For example: Des Moines, a large jobbing centre, is 350 miles from Chicago. On a consignment from Des Moines to a point 40 miles west of Des Moines, in less than car-load lots of fourth-class goods, the rate is about the same as from Chicago for the same distance west of that city—about 12 cents per hundred pounds—while the difference from Chicago to Des Moines and from Chicago to the point 40 miles west of Des Moines, on the same shipment, is but two cents per hundred pounds. The whole merit of this controversy lies in the effort of the eastern jobbers to require their Des Moines competitors to pay the 10 cents per hundred more than they, to place the same goods in the hands of their customers 40 miles west of Des Moines.”

The questions involved in these cases, like most transportation questions, are complicated by conflicting interests on the part of persons engaged in trade and commerce, and of localities in different portions of the country. They can not be disposed of with sole reference to the interests of any one class of persons or one part of the country, but must be determined with due consideration of all interests, but more especially those of the general public, embracing, in their greatly preponderating number, the producers and consumers of the traffic, but without injustice to the transportation agencies. A general rule that shall be equitable to all is exceedingly desirable, but, in the conflict of interests, is difficult, if not impossible, to apply; and in the frequently changing conditions of commerce no rule of classification or rates can have an assurance of permanence or absolute equity. Classification is not yet an applied science founded on correct principles and governed by just and consistent rules. It is still in process of growth and development, and the best traffic experts, uninfluenced by exceptional conditions of roads or of special interests, are required to elabo-

rate a system that shall be simple and just, and fairly adapted to the wants of the country. The numerous classifications prior to the Act to regulate commerce were mostly irregular expedients, framed with little regard to principles of equity, and lacking greatly as they did in uniformity were confusing to the public. Some, for long distance transportation, had been constructed with more care and upon more reasonable principles regarding character of traffic and value of service.

The provisions of the Act to regulate commerce, operating directly upon the greater part of the commerce of the country, and, by necessary consequence, indirectly upon the whole internal commerce, rendered the multitudinous antecedent classifications impracticable, and made a new and improved general classification, or at least classifications suited to territorial areas substantially similar in conditions and traversed by the same traffic, necessary in order to establish rates over connecting roads in conformity to the requirements of the law. The Official Classification for the business of a very large territory and for a great number of roads thus came into existence. But, being hastily prepared, and in many respects a compromise of diverse and rival interests, especially on the part of roads, it inevitably had imperfections and inconsistencies. Some of these have been corrected by subsequent issues, and, except for the rigid methods of classification committees and the lack of lawful authority, more numerous and more rapid improvements would doubtless have been made. But, as all action in classification in the first instance, is voluntary on the part of carriers, both in recommending changes and their adoption by different roads, the difficulties in making material alterations are serious. Common consent is the only mode until complaint is made concerning rates.

The present contention has arisen out of this condition. The railroad managers made a classification of the varied and numerous articles of commerce, including those in controversy, which was a compromise between the roads in the eastern and western portions of the territory intended to be governed by the classification. The reasons that originally

controlled, whether rightly or wrongly, are still supposed by some of the constituent roads to be influential. And more thorough investigation of the subject has led all the roads, or at least the principal lines and the governing committees, to make a stand against the changes demanded. And in this they are earnestly supported, as shown by the argument of Mr. Dey, by the important interests west of the Mississippi river. The general question remains, therefore, in most respects in a similar condition to that in which it was first presented to the framers of the Official Classification.

In another case before the Commission the principles or considerations that mainly govern committees charged with the preparation of a classification were stated in evidence by a prominent official to be as follows :

“The competitive element, or the rates made necessary by competition; volume of the business, or tonnage; the direction in which the freight moves, whether that in which most of the freight is transported, or the reverse direction, in which the empty cars move; the value of the article to some extent; its bulk; its weight; and the risks attending transportation; the facilities required for particular or unusual transportation; the conditions attending transportation, embracing many things, such as the necessity for furnishing special equipment, as in the case of cars for dressed beef or cars specially adapted for freight of a perishable nature, large cars for freight of extraordinary bulk, &c.; also the analogy which the article classed bears to other articles in the classification; the conditions under which different railroad companies can afford to transport traffic have a large influence; the volume of a particular traffic upon a line of road, and the nature of the competition that it has to meet.”

It will be observed that these considerations have reference almost exclusively to the relation of carriers to the traffic, and that no prominence is given to any duty carriers owe to the public, or to any limitations upon the interests of carriers. The public character of carriers, and the public interests affected beneficially or injuriously by the conditions of the service rendered, require a just degree of consideration

for those interests, and in general it is believed they are not disregarded, though in some and perhaps many instances injustice may be done by too much concern for the carrier and too little for the public. As was said in the second annual report (page 9), the Commission has laid down the principle "that carriers in making rates cannot arrange them from an exclusive regard to their own interest, but that they must respect the interests of those who may have occasion to employ their services, and subordinate their own interests to the rules of relative equality and justice which the Act prescribes."

How to reconcile rival or competing interests and comply with the law by reasonable rates and impartial service, with just compensation for the work of the carrier, is a problem of no less difficulty than it has been heretofore. Every special interest is willing to have itself favored at the expense of others, but the purpose of the law is that burdens and benefits shall be equitably distributed, and average reasonable results can be reached in no other way, and are all that can justly be demanded.

The complainants insist that by the present classification unjust burdens are imposed upon miscellaneous shipments in small quantities as compared with car-load shipments, and they ask a return to the former method of no distinction in rates between car-loads and less than car-loads and still in use by the roads in the Southern Railway and Steamship Association. They urge that a discrimination in charges between car-loads and less than car-loads is unjust and in violation of the first four sections of the Act to regulate commerce. This contention leaves out of view the dissimilar circumstances and conditions of the two methods of shipment and the material element of greater cost to the carrier in the one case than the other. The supposed illegality of a discrimination in charges for car-loads and less quantities with varying destinations cannot be maintained under any of the provisions of the Act. The law itself must have a reasonable interpretation, and its provisions are ample to warrant differences in rates founded upon the character of the traffic and the dissimilar conditions of shipment and carriage. The

first section requires all rates to be reasonable, and this necessarily means under the circumstances of the traffic and transportation. The second, third and fourth sections no more require an equal rate for different kinds of traffic and different modes of transportation than they require the same charge between stations, however near or however remote. The elements of distance, of difference in character of traffic, and of dissimilar transportation conditions as grounds for distinction in rates are as clearly recognized as the right of a carrier to compensation for its services. Some discrimination for adequate cause is therefore lawful. The discrimination must not be unjust nor the advantage undue, and the respective rates must not be relatively unreasonable. It is the extent of the discrimination that may be unreasonable and unjust, and not always the mere fact of a difference.

The compulsory restoration of equal rates for car-loads and less than car-loads in respect of goods properly so classified because naturally and legitimately carried in both modes to meet the demands of commerce, is altogether impracticable, and would seriously demoralize classification and business. It would be a retrograde movement, detrimental in many respects to the public interests. A lower less than car-load rate might follow in some instances, but the car-load rate would necessarily advance in most cases to make an average remunerative rate, and the interior jobber would lose his vocation unless the cost to the consumer were generally increased. It is a sound rule for carriers to adapt their classifications to the laws of trade. If an article moves in sufficient volume, and the demands of commerce will be better served, it is reasonable to give it a car-load classification and rate. The car-load is probably the only practicable unit of quantity. And the fact of an antecedent condition when no such distinction existed, and perhaps was not required, furnishes no argument for a return to a mode no longer suited to the requirements of business.

The important question in these cases is therefore whether the classifications of the articles under consideration mark too wide a difference in rates with reference to quantity carried. The complainants concede that difference in cost of

service is a proper element to be taken into account, but deny that this difference is equal to the disparity in rates. The complainants insist that the difference in rates for car-loads and less quantities should be measured by the commercial profit on the goods of the jobber who ships in small quantities or commercial packages to retailers throughout the country. And it was urged that a retailer who buys directly from a seaboard jobber or manufacturer instead of an interior jobber, saves an intermediate profit which may inure to the benefit of the consumer.

The theory of an adjustment of rates to preserve a commercial profit to manufacturers and jobbers in all cases, if accepted as a necessary rule under the law, and generally applied, would be far reaching in its consequences, and clothe the common carriers with a new function, to equalize at their own expense the net results of business operations, without regard to location or the conditions of handling and carriage. In many instances the work of the carrier would have to be done at less than cost, and in some for nothing. Such a rule is not admissible, therefore, as one of general application, and is not essential to the case of the complainants.

And the question at issue is not restricted to jobbers and manufacturers in any one locality or district of country. These are dispersed widely, and traffic is drawn from various quarters and all sources of supply. As classifications and rates must be general an injurious effect in some cases and to some interests is unavoidable, but so long as in the main they are satisfactory the rule applies that the good of the greater number is paramount.

The differences in classification of car-loads of one kind of freight to one destination, and less quantities of different kinds to various destinations, are based on the well-known fact of a difference in the cost of service by the carrier. This fact, and the extent of the difference, were probably never so fully demonstrated by tests on different roads, and at different points, as in these cases. Exact average differences, or the difference upon any particular kind of traffic, have not been shown, and perhaps are not possible, but approximately the difference in cost of transportation as shown by testi-

mony ranges from 47 per cent. to 100 per cent., exclusive of handling, loading and delivering, less than car-load freights and transfers en route, and the average difference in earnings per car from an average load of car-load freight and an average load of less than car-load freight is not far from 100 per cent. These averages are varied in both directions by differing conditions and volume of business at different points, but the facts show in a general way substantial grounds for a difference in classification.

In the German classification, of which evidence was given, freight is classified in two principal classes, car-loads and less than car-loads. Different rates are charged on goods of different values shipped in car-loads of 20,000 pounds, of which there are three general classes, and a lower charge is made on goods of the third class carried over 60 miles. There are also special car-load rates for goods not belonging in the first, second and third car-load classes for quantities of 10,000 pounds, and a rate three mills lower per ton per mile for quantities of 20,000 pounds. Articles embraced in the first three car-load classes, when carried in quantities of 10,000 pounds, are charged a higher rate per ton per mile, the differences being 2 mills for the first class, 6 mills for the second class and 1 cent for the third. In the less than car-load class all goods are comprised without distinction as to value (except that bulky articles have an extra charge), and for this class the highest rate per ton per mile is charged, being 4.5 cents. The difference between the highest rate of car-load freight and the rate on all articles of less than car-load freight is 2 cents per ton per mile, or 80 per cent., and the lowest car-load class is one-fifth of the rate for less than car-loads.

The rates under the German classification are very much higher than under the official classification in question. For example, on an assumed basis of 1,000 miles, the highest German rate (less than car-loads) is 4.5 cents per ton per mile, or \$2.25 per hundred pounds. The highest official classification rate (some articles, however, taking higher percentages of that rate) is 1.5 cents per ton per mile, or 75 cents per hundred pounds. The lowest German car-load

rate is 1.9 cents per ton per mile, or 95 cents per hundred pounds, and the lowest official classification rate is 0.5 cents per ton per mile, or 25 cents per hundred pounds. The average earnings on all classes under the official classification, for a period of eight months in 1887, were 41.5 cents per hundred pounds on west-bound traffic, and 30 cents on east-bound traffic.

The actual class rates, in cents per hundred pounds and per ton per mile, in effect in 1889 under the three classifications in the United States, are as follows:

Official Classification.—New York to Chicago, 912 Miles.

| Class. | 1 | 2 | 3 | 4 | 5 | 6 |
|-----------------------|------|------|------|-----|-----|-----|
| Class rate..... | 75 | 65 | 50 | 35 | 30 | 25 |
| Per ton per mile..... | 1.64 | 1.43 | 1.10 | .77 | .66 | .55 |

Western Classification.—Chicago to Omaha, 490 Miles.

| Class. | 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
|--------------------|------|------|------|------|------|------|------|-----|-----|-----|
| Class rate..... | 75 | 60 | 40 | 30 | 25 | 30 | 25 | 20 | 17½ | 16 |
| Per ton per mile.. | 3.06 | 2.45 | 1.63 | 1.22 | 1.02 | 1.22 | 1.02 | .82 | .71 | .65 |

Southern Railway and Steamship Classification.—Louisville to Selma, 490 Miles.

| Class | 1 | 2 | 3 | 4 | 5 | 6 | A | B | C | D | E* |
|------------------|------|------|------|------|------|------|------|------|------|-----|------|
| Class rate..... | 98 | 92 | 78 | 63 | 52 | 41 | 28 | 31 | 28 | 24 | 48 |
| Per ton per mile | 4.00 | 3.78 | 3.18 | 2.57 | 2.12 | 1.67 | 1.14 | 1.27 | 1.14 | .98 | 1.96 |

The classes with the rates per hundred pounds and per ton-mile, some of which are special and not class rates, on a few of the leading grocery articles, under the three classifications, are shown by the following comparative table:

* There are two other classes, H & F, which are special, for particular articles not in question in these cases.

| ARTICLES. | Official Classification. New York to Chicago, 812 miles. | | | Western Classification. Chicago to Omaha, 490 miles. | | | So. Ry. S.S. Assoc. Classification. Louisville to Selma, Ala. 490 miles. | | |
|-----------------------------|---|-------------------|---|---|-------------------|---|---|-------------------|---|
| | Class. | Rate per 100 lbs. | Rate per ton per mile in cents and Fractions. | Class. | Rate per 100 lbs. | Rate per ton per mile in cents and fractions. | Class. | Rate per 100 lbs. | Rate per ton per mile in cents and fractions. |
| Cider in wood..... | L. C. L. | 3 50 | 1.10 | 4 30 | 1.22 | 6 41 | 1.67 | | |
| " " | C. L. | 5 30 | .66 | 5 25 | 1.02 | 6 41 | 1.67 | | |
| Sugar in bbls..... | L. C. L. | 4 35 | .77 | spl. 28½ | 1.16 | 6 41 | 1.67 | | |
| " " | C. L. | 6 25 | .55 | 5 25 | 1.02 | 6 41 | 1.67 | | |
| Prunes, bbls. or casks..... | L. C. L. | 3 50 | 1.10 | 4 30 | 1.22 | 3 78 | 2.18 | | |
| " " | C. L. | 4 35 | .77 | 4 30 | 1.22 | 3 78 | 2.18 | | |
| Fish, salted, pick'd..... | L. C. L. | 5 30 | .66 | spl. 28½ | 1.16 | 5 52 | 2.12 | | |
| " " | C. L. | 6 25 | .55 | 5 25 | 1.02 | 5 52 | 2.12 | | |
| Canned goods, N. O. S..... | L. C. L. | 2 65 | 1.43 | spl. 28½ | 1.16 | 4 63 | 2.57 | | |
| " " | C. L. | 5 30 | .66 | 5 25 | 1.02 | 5 52 | 2.12 | | |
| Salt in bbls..... | L. C. L. | 5 30 | .66 | 4 30 | 1.22 | | | | |
| " sacks..... | L. C. L. | 4 35 | .77 | 4 30 | 1.22 | 6 41 | 1.67 | | |
| " " | C. L. | 6 25 | .55 | spl. 15 | .61 | spl. 17 | .69 | | |
| Molasses in bbls..... | L. C. L. | 4 35 | .77 | spl. 28½ | 1.16 | 6 41 | 1.67 | | |
| " " | C. L. | 5 30 | .66 | 5 25 | 1.02 | 6 41 | 1.67 | | |

These are perhaps sufficient for illustration. The rates, as is seen, are much higher in both the Western and Southern Classifications than in the Official. And in the Southern the rate for car-loads and less than car-loads, when uniform, is higher than the less than car-load rate in the Official. Salt has a low special classification in both the Western and Southern. In the Western Classification when a difference is made between car-loads and less than car-loads the difference is usually one class, or five cents per hundred pounds, but some of the less than car-load rates are special, with a difference of three and a half cents per hundred pounds. In the Official on some articles the differences are much greater, for example on cider in wood 20 cents, sugar 10 cents, prunes in barrels or casks 15 cents, standard canned goods 35 cents and salt in sacks 10 cents.

These differences, which might be further illustrated, present the exact question in controversy. The complainants say they are substantially prohibitory upon less than car-load shipments, and are not warranted by difference in cost of service, or any principles that should govern rate-making.

The cost of service, while recognized as an important ele-

ment in classification and rates, is not alone controlling. On that basis some articles, on account of relation of commercial value to cost of service, though furnishing a large volume of traffic, would not be carried at all, and others of high commercial value would have a very low rate without increasing tonnage.

Another element of the highest importance, and that can not be disregarded, is the value of the service to the article carried. This is a factor that largely determines the classification and rates the article will bear in the transactions of commerce and necessarily qualifies the influence of other factors in the distribution of charges with the view to average reasonable revenue.

Though rates under the Official Classification are for the most part lower on like traffic, the rates in the Western Classification show less differences between the classes, and the use of special rates makes less discrepancy even than class differences between car-loads and less than car-loads.

The reasonableness of the rates in question, independently of their relations to each other, is not complained of, but they are challenged on the ground of relative unreasonableness as applied to quantity. The other classifications, say the complainants, make either no discrimination between car-loads and minor quantities, or so much less discrimination that the smaller shipper is not unduly prejudiced. At the rates charged, they aver, the service in respect of less than car-loads is disproportionately remunerative to the carrier, but substantially valueless to the shipper, because the competition of the car-load shipments of the same kind of traffic leaves no margin of commercial profit on the goods, and therefore the transportation is not worth the charges imposed for the service. They also say that large differences in rates for quantity is a rule not uniformly adhered to in the actual practice of carriers, and therefore should not be recognized as a general rule, nor applied to the articles in question, which are mostly household goods of universal use and everywhere handled in the retail trade. Reference is made to a large number of articles, forming a considerable part of the traffic carried by railroads, for which no separate car-

load rates are made, such as dry goods, cotton piece goods, boots and shoes, tobacco, clothing, candy, caps and hats, blankets, hardware, wool, eggs, tea, &c.

The testimony tends strongly to support these contentions of the complainants, and they have not been met by any evidence other than the average difference in cost of service for car-load and less than car-load traffic and average revenue therefrom. These averages are deduced from the carriage of every variety of goods, and embrace the freight that has no car-load classification. A general average is not an absolute criterion for a particular class of traffic that supplies a large tonnage, carried under favorable transportation conditions.

Moreover, evidence intended to show relative cost of service and relative earnings from traffic differently handled, is not always as fully trustworthy as might be desired. Analysis of such evidence often discloses factors that are given undue weight, or discovers that other material factors may be omitted. So much depends upon the use of strictly legitimate items, and the manner in which figures are handled in reaching results, that caution is generally necessary in accepting arithmetical conclusions. All such evidence is to be considered, therefore, with some degree of reservation as to its weight.

The claim made by complainants that shipments of the grocery articles in question are chiefly made in less than car-loads, has not been controverted. The evidence shows that one of the complainant firms shipped annually over the respondent lines about 20,000 tons of freight, of which only about 120 tons, or three-fifths of one per cent. was in car-loads, and that another firm shipped over the same lines about 25,000 tons, of which about one-eighth of one per cent. or 31 tons, was in car-load quantities to one consignee.

One of the witnesses for the respondents, and of the highest authority on transportation subjects, conceded that there are features of hardship in the present classification, as, for example, where one consignor forwards to one consignee 20,000 pounds of miscellaneous freight in one shipment, and is charged the less than car-load rate, although the shipment amounts to a full car-load. This manifest

anomaly was imputed to the fact that in the present classification the line had been drawn at car-load shipments of 20,000 pounds or 24,000 pounds of one class of goods from one consignor to one consignee. And the witness gave it as his judgment, that when a car is loaded to its full capacity with miscellaneous freight, it would seem fair to make a reduction in rates, and that this rule should apply to any number of shippers who might make up a full car-load. The feature of the German Classification allowing a reduced rate for shipments of miscellaneous freight in quantities of 10,000 pounds, but not as low as for full car-loads of 20,000 pounds, he thought, if adopted, would remedy to some extent the complaints against the present classification, which limits the minimum car-load weight to 20,000 or 24,000 pounds. These cautious utterances are significant upon the questions at issue. Other able and experienced traffic managers, not called as witnesses, deprecate the differences in rates based on quantity, and favor a uniform rate regardless of quantity. The differences in the other classifications referred to are also suggestive. There is division of opinion, therefore, among experts in transportation, with reference to the justice and propriety of the present classification.

The Providence Coal Case (1 I. C. C. Rep. 107) involved a principle similar to the one in this case, and considerations were urged by the defendant not essentially different from the contention of these respondents. That case was not an issue between car-loads and less quantities, but between total annual consignments to one dealer, at any one station on the line of road, of 30,000 tons or upwards, and consignments of less amounts, a lower rate of ten per cent., equal to ten cents per ton in that case, being allowed to the consignee of the specified quantity. It was said by the Commission (pp. 117, 118) :

“A discrimination such as the offer and its acceptance by one or more dealers would create, must have necessary tendency to destroy the business of small dealers. Under the evidence in the case it appears almost certain that this destruction must result; the margin for profit on wholesale

dealings in coal being very small. The discrimination is, therefore, necessarily unjust, within the meaning of the law. It can not be supported by the circumstance that the offer is open to all; for, though made to all, it is not possible that all should accept. Moreover, in testing such a discrimination we must consider the principle by which it must be supported; and the principle which would support a 30,000-ton limitation would support one of 50,000 or 100,000 equally well; the quantity named would be arbitrary in any case. It might easily be made so high as practically to be open to the largest dealer only. A railroad company, if allowed to do so might in this way hand over the whole trade on its road in some necessary article of commerce to a single dealer, for it might at will make the discount equal to or greater than the ordinary profit in the trade; and competition by those who could not get the discount would obviously be then out of the question. So extreme a case would not, however, be needful to show the inadmissibility of such a discount as is here offered; the injustice would be equally manifest if several dealers instead of one were able to accept the offer. A railroad company has no right, by any discrimination not grounded in reason, to put any single dealer—whether a large dealer or a small dealer—to any such destructive disadvantage.”

Upon all the evidence, and upon principles that should govern rate making, a *prima facie* case has been made against the present classification, which has not been justified by the respondents. Rates should be adjusted to correspond, within reasonable limits, to the existing business of the country in which the public generally is interested. It is not the province of carriers to regulate business, or to build up or destroy markets, but it is their duty to serve business interests equitably and impartially. The evidence shows that the public is far more largely interested in miscellaneous shipments than in solid car-load shipments of one kind of traffic. While this condition exists the carriers have a duty to perform to make their service equitable and as reasonable as just compensation for their work

will permit. All rates must be reasonable and just. Differences ranging from 40 per cent. to upwards of 100 per cent. upon the same goods to the same destination, in substantially like quantities as well as in less, in the same kind of cars, and perhaps hauled in the same train, are manifestly neither reasonable nor just, and work undue prejudice and disadvantage to shippers and consignees of miscellaneous freight, both in full car-loads and in smaller quantities. The circumstance of many consignors to many consignees of a full car-load to the same destination is too unimportant in the item of cost of handling to demand a difference in the rate. Fractional differences exist in all business, as they do under all laws imposing burdens, and in business are supposed to be equalized by average charges. For illustration, in the passenger service quantity is not considered, and passengers weighing three times as much, and with the full limit of baggage, are charged the same rate for the same journey as the lighter passengers without baggage; and a few passengers in a car pay no higher rate than the passengers in a full car, though the earnings of the two cars and the cost of service per passenger differ widely.

In the case of smaller shipments to many consignees at many destinations, there is such material difference in the cost of service, in the earnings of cars, and in car detention, as to justify a higher charge. A reasonable amount of difference is difficult to adjust, but it should not be prohibitory upon the business, nor unjustly disproportionate.

The difficulties that have led to these complaints doubtless arise in most part from the small number of classes in the Official Classification, and the effort to compress a vast number of articles of commerce in so few classes. If special rates were made, as in the Western Classification, and a lower intermediate car-load classification established, as in Germany, at a corresponding rate, many of the hardships of the present classification might perhaps be satisfactorily remedied. A classification is not a fixed condition to which other interests must necessarily yield. It is the creation of carriers for their own and the public convenience, and may be changed by its creators. If not compatible with the public

interests it should be modified to subserve those interests. Changes ought to be made, but changes under an order of the Commission may not be final. In the nature of things they must in a measure be experimental. And corrections, however made, may require further revision. In the contemplation of the statute, classifications are to be made and rates established by the carriers subject to review by the Commission and such orders in the premises as justice may require under the provisions of the Act.

In these cases the Commission finds that no adequate reason has been shown for a difference in rates for a car-load quantity of like traffic to the same destination, whether from one consignor to one consignee or from several consignors to several consignees, and the discrepancy between the rates for car-loads and less than car-loads upon the grocery articles in question is unreasonable when both go to one destination, and seems in a lesser degree to be unreasonable when less than car-loads go to different destinations. Under these findings the respondents are required to revise their classification and rates, and reduce the unreasonable differences to a basis more in conformity to the statute.

The Commission orders that the respondents proceed forthwith to make the corrections indicated, and that they complete and put the same in effect within thirty days from the service of this order with a copy of the report and opinion.