THE NEW YORK BOARD OF TRADE AND TRANSPORTATION, THE COMMERCIAL EXCHANGE OF PHILADELPHIA AND THE SAN FRANCISCO CHAMBER OF COMMERCE *v.* THE PENNSYLVANIA RAILROAD COMPANY, THE PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY, THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE CHICAGO & GRAND TRUNK RAILWAY COMPANY, THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, THE CHICAGO & ATLANTIC RAILWAY COMPANY, THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY, THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY, THE WEST SHORE RAILROAD COMPANY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, THE GRAND TRUNK RAILWAY COMPANY OF CANADA, THE WABASH RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE PHILADELPHIA & READING RAILROAD COMPANY, THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE BOSTON & MAINE RAILROAD COMPANY, THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE SOUTHERN PACIFIC COMPANY, THE UNION PACIFIC RAILWAY COMPANY, THE NORTHERN PACIFIC

RAILROAD COMPANY, THE CANADIAN PACIFIC RAILWAY COMPANY, THE TEXAS & PACIFIC RAILWAY COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, THE LEHIGH VALLEY RAILROAD COMPANY.

Complaint filed December 3, 1889.—Joint answer of original defendants filed January 9, 1890.—Additional parties defendant added February 8, 1890.—Answers of new defendants filed February 24-March 21, 1890.—Other carriers cited in and ordered to file verified statements April 21, 1890.—Leave to intervene in behalf of complainant granted to the Commercial Exchange of Philadelphia April 22, 1890.—Appearance of San Francisco Chamber of Commerce on behalf of complainant entered June 10, 1890.—Hearings had June 10, 11 and 17, 1890.—Briefs filed August 7 to October 16, 1890.—Decided January 29, 1891.

---

1. The Act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United State and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.

2. The regulation thus provided is such as regulates the rates, charges, facilities afforded and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States, or to the port of entry in a foreign country adjacent to the United States.

3. With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States, the rule of the Statute is that it is entitled to no preference in rates, charges, facilities afforded and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded and treatment, and must be carried upon this

part of its journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage as to weight, bulk, value, expenses of carriage, and all such other circumstances and conditions as enter into the making of just and reasonable rates, and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the Statute.

4. The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States, it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage.

5. The publication of such inland joint tariffs for the transportation of such foreign merchandise under the Statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States, by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry, and where it is delivered at the place of destination in the United States.

6. The term "a like kind of traffic," as it occurs in section 2 of the Act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference.

7. Commodity class rates described and discussed.

8. The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined.

John D. Kernan, for New York Board of Trade and Transporation.

Read & Pettit, for Commercial Exchange of Philadelphia.

S. W. Sears, for San Francisco Chamber of Commerce.

James A. Logan and *Wayne Mac Veagh*, for Penn. R. R. Co.

James A. Logan and *A. H. Wintersteen*, for Pittsburgh, Ft. Wayne & Chicago Ry. Co. and Pittsburgh, Cincinnati & St. Louis Ry. Co.

Frank Loomis, for N. Y. C. & H. R. R. R. Co.
Ashley Pond, for Mich. Cent. R. R. Co.
G. C. Greene, for L. S. & M. S. Ry. Co.
W. A. Day, for Grand Trunk Ry. Co. of Canada and C. & G. T. Ry. Co.
J. A. Buchanan, for N. Y., L. E. & W. R. R. Co. and N. Y., P. & O. R. R. Co.
Baker & Daniels and *John P. Henry*, for Receiver of Chicago & Atlantic Ry. Co.
S. E. Williamson, for N. Y., C. & St. L. Ry. Co.
Ashbel Green, for West Shore R. R. Co.
W. H. Blodgett, for Wabash R. R. Co.
John K. Cowen and *Hugh L. Bond, Jr.*, for B. & O. R. R. Co.
G. R. Kaercher, for P. & R. R. R. Co.
R. W. De Forest, for Cent. R. R. Co. of New Jersey.
Sigourney Butler, for B. & M. R. R. Co.
Holmes Cummins, for L., N. O. &. T. Ry. Co.
J. M. Wilson, for Union Pacific Ry. Co.
John S. Blair, for St. L., I. M. & S. Ry. Co., Union Pacific Ry. Co. and Texas & Pacific Ry. Co.
C. H. Tweed and *J. C. Martin*, for Southern Pacific Co.
Garland & May and *J. C. Bullitt, Jr.*, for Northern Pacific R. R. Co.
A. C. Raymond, for Canadian Pacific Ry. Co.
F. I. Gowen, forLehigh Valley R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The complaint in this case was originally filed by the New York Board of Trade and Transportation against the Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company, and the Pittsburgh, Cincinnati & St. Louis Railway Company. Subsequently, by intervention, the Commercial Exchange of Philadelphia and the San Francisco Chamber of Commerce became parties complainant also, and in consequence of facts set up in the answers of the defendants it was found necessary to make quite a

number of other carriers defendant, as will be hereinafter explained.

The complaint charges in substance that the defendants, being common carriers engaged in the transportation of property between New York, Philadelphia and Chicago, and other western points, have, since April 4, 1887, in violation of the Act to regulate commerce, been and are guilty of unjust discriminations, in that they have been and are in the habit of charging the regular tariff rates upon property when delivered to them at New York and Philadelphia for transportation to Chicago and other western points, while charging other persons rates which are lower, and even fifty per cent. thereof, for a like and contemporaneous service under substantially similar circumstances and conditions when the property was or is delivered to them at New York or Philadelphia by vessel and steamship lines under through bills of lading from foreign ports and foreign interior points issued under an arrangement between the defendants and such vessels and steamship lines and foreign railroads for the continuous carriage at joint rates from the point or port of shipment to Chicago and other western points, the defendants' share of such through rate being, as aforesaid, lower than their regular tariff rates.

As an illustration of this there is a table in the complaint showing alleged rates on shipments from Dumferline, Scotland, to Chicago, Illinois, and from Liverpool, England, to Chicago, Illinois, as follows:

Rates charged per 100 *lbs., etc., in cases where imports were carried by the American Line to Philadelphia:*

Date.—Bill. 1888.	Points.	Goods.	Through Rate.	Rail and Ocean to Phila.	Inland, Phila. to Chicago.	Tariff, Phila. to Chicago.
June 25.	Dumferline, Scotland, to Chicago.	Linens..	76.40 cts.	44.50 cts.	31.90 cts.	69 cts.
1889.						
March 4.	" " "	"	88 "	42 "	46 "	69 "
July 1...	" " "	"	80 "	40.91 "	39.09 "	69 "
June 25..	Liverpool to Chicago.....	Anvils..	39.47 "	8.42 "	21.05 "	33 "
Feb. 27..	" "	"	26.79 "	8.42 "	18.37 "	33 "
April 15.	" "	Tin Plate				
June 17..	" "	Tin Plate C. L.	.24 "	8 "	16 "	28 "

That by said alleged discriminations the defendants have

made and given and do make and give undue and unreasonable preferences and advantages to persons, firms, companies, corporations and localities interested in the transportation of imported traffic from the seaboard under such through bills of lading, and have subjected and do subject persons, companies, firms and corporations in and about New York and Philadelphia and those localities to undue and unreasonable prejudice and disadvantage.

That the charge as aforesaid, the lower rate on imported traffic than the regular tariff rates, constitutes a violation of section four of the Act to regulate commerce as amended, in that the defendants thereby have charged and received and do charge and receive a greater compensation for the transportation from the seaboard to interior points than under such through bills of lading they receive upon imported traffic carried to more distant interior points.

That in order to prevent the ascertainment of the actual inland rates, the defendants have failed and do fail to state in their published tariffs or in such bills of lading the inland charge separately from the ocean and other charges. That the Pennsylvania Railroad Company is an owner of or interested in the management and operation of the steamship lines running from New York and Philadelphia to foreign ports, and under the opportunity thus afforded it of fixing their through rates from the foreign ports and points it is enabled to and does practice the unjust discriminations complained of in connection with the other defendants in such a way as to make full ascertainment of the facts involved very difficult. And in connection with this last averment complainant prays that the Commission may cause a full discovery of said through rates to be made.

Full relief and all such orders and proceedings as may be necessary to prevent the continuance of the alleged violations of law are prayed for.

The defendants, the Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company and the Pittsburgh, Cincinnati & St. Louis Railway Company filed a joint and several answer, in which they deny that they are guilty of unjust discrimination, or have violated section

four of the Act to regulate commerce as amended, according to its true spirit and purpose, or that either of them is interested in the management and operation of the steamship lines running from New York and Philadelphia to foreign ports.

That the Pennsylvania Railroad Company owns capital stock and bonded indebtedness of the International Navigation Company to the extent of less than one-sixth of the aggregate of such stock and indebtedness, but takes no part in, and does not assume, the control or supervision of the ships of said International Navigation Company, and does not claim or exercise any exceptional facilities with reference thereto by reason of its said stock and bond ownership.

They admit that it had been their practice for a considerable period prior to October 1, 1889, to charge less than their inland tariff rates upon import traffic under through bills of lading issued at foreign points to Chicago and other western points *via* New York and Philadelphia, but not as much less as is stated in the statement on page 3 of the complaint. They further allege that the arrangement between them and certain steamship lines, under which this practice prevailed, expired on the first day of October, 1889. They aver, however, that they are advised that said practice was necessary and may be justified.

First. The principle that a less sum may be received for a continuous passage over several lines than the sum of the local rates of all the parties to the carriage, had equal application whether all the lines forming such through route be within the limits of the United States, or whether a portion of that route, or some parties to the carriage, be beyond those limits.

Second. In competition with the route of defendants and said steamship lines from foreign points to Chicago there existed and exists a route *via* Montreal which has a complete and independent water as well as rail route from Montreal to Chicago, both of which are open to shippers by said competing line, and the reductions in the through rate, which resulted in bringing the inland rate accepted by the defend-

ants below their regular tariff rate, have been rendered necessary in order to enable them to obtain traffic *via* New York and Philadelphia, as against the competition of said Montreal line.

Third. As showing that the water and Canadian competition referred to affected other carriers as it did defendants, said defendants aver that the competing lines of railroad from the seaboard to interior points have constantly through the agents of the connecting water lines to Europe bid as low and sometimes lower rates on the same character of freight than those accepted by defendants; and on information and belief defendants charge that said lines accepted and accept a less amount as their proportion for the inland carriage for import traffic than they charge and receive on inland traffic between the same points.

It appearing from the complaint and answer of defendants that carriers other than those named in the complaint were necessary and proper parties defendant, the Commission by order of February 8, 1890, made the following carriers parties defendant, directing that they be notified to satisfy the complaint or answer the charges embraced in the complaint, and of that portion of the answer of the defendants which referred to their practices in this behalf, within twenty days from said date:

The New York Central & Hudson River Railroad Company.
The Michigan Central Railroad Company.
The Lake Shore & Michigan Southern Railway Company.
The Chicago & Grand Trunk Railway Company.
The Great Western Railway Company of Canada.
The New York, Lake Erie & Western Railroad Company.
The Chicago & Atlantic Railway Company.
The New York, Pennsylvania & Ohio Railroad Company.
The New York, Chicago & St. Louis Railroad Company.
The West Shore Railroad Company.
The Delaware, Lackawanna & Western Railroad Company.
The Grand Trunk Railway Company of Canada.

The Wabash Railroad Company.
The Baltimore & Ohio Railroad Company.
The Philadelphia & Reading Railroad Company.
The Central Railroad Company of New Jersey.
The Boston & Maine Railroad Company.
The Louisville, New Orleans & Texas Railway Company.
The St. Louis, Iron Mountain & Southern Railway Company.

By a further order in this case of date April 21, 1890, the following additional railroads were made parties defendant and each required to file with the Commission a verified statement setting forth whether it now carries, or at any time since the date of an order made by the Commission of March 23, 1889, has carried, imported traffic, whether on a through bill or otherwise, at lower rates than it contemporaneously charged for the like traffic not imported or not shipped on through bills, and the reasons for such lower rates, if charged:

The Southern Pacific Company.
The Union Pacific Railway Company.
The Northern Pacific Railroad Company.
The Canadian Pacific Railway Company.
The Texas & Pacific Railway Company.
The Illinois Central Railroad Company.
The Lehigh Valley Railroad Company.

The order of the Commission of date March 23, 1889, here referred to, among other things provided that, "imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights."

The following of said roads, made parties defendant as aforesaid, filed answers alleging conformity with said order of the Commission of date March 23, 1889, and that their inland rates are the same for traffic whether domestic or imported, and it is admitted by counsel for complainant "that there is no proof to the contrary;" to wit:

The New York, Lake Erie & Western Railroad Company.
The Lake Shore & Michigan Southern Railway Company.
The New York, Pennsylvania & Ohio Railroad Company.
The West Shore Railroad Company.
The Boston & Maine Railroad Company.
The New York, Chicago & St. Louis Railroad Company.
The Central Railroad Company of New Jersey.
The Philadelphia & Reading Railroad Company.
The Chicago & Atlantic Railway Company.
The Michigan Central Railroad Company.
The New York Central & Hudson River Railroad Company.
The Delaware, Lackawanna & Western Railroad Company and
The Chicago & Grand Trunk Railway Company.

Answers have been filed by all the remaining defendants. The following of these expressly or impliedly admit that since the order of March 23, 1889, they have accepted as their share of the through rate on traffic imported from a foreign country to interior points in the United States a less sum than they have contemporaneously charged for like traffic originating in the United States, to wit:

The Texas & Pacific Railway Company.
The St. Louis, Iron Mountain & Southern Railway Company.
The Louisville, New Orleans & Texas Railway Company.
The Illinois Central Railroad Company.
The Wabash Railroad Company.
The Southern Pacific Company.
The Union Pacific Railway Company.
The Northern Pacific Railroad Company.
The Baltimore & Ohio Railroad Company.
The Lehigh Valley Railroad Company and
The Canadian Pacific Railway Company.

As showing the grounds upon which these different carriers justify their action in this respect, which grounds are in some

respects different from each other, a brief outline is here given of their answers.

The Texas & Pacific Railway Company avers that one of its termini is the city of New Orleans and that the circumstances and conditions surrounding its import traffic are substantially dissimilar from those affecting its domestic traffic, and that the controlling forces which make its rate on the former less than on the latter are the water lines from Europe around Cape Horn to the Pacific coast; the water lines directly to Mexican seaports; the water lines *via* the Isthmus of Panama to the Pacific coast; the water lines to the Atlantic seaboard, together with the rail lines into the interior; water lines to the ports of New England, which connect by a through rail connection with the Canadian roads and then *via* those lines to the interior; the water lines to Montreal or Quebec, thence by the Great Lakes to Chicago or Duluth, and thence by the rail lines to the interior; the water lines to Quebec, thence by the Canadian Pacific to the ports of entry on the Canadian border, and the water line *via* New Orleans and the Mississippi river, St. Louis and other points reached by the inland carriers. A number of tariff sheets alleged to be on file with the Commission are cited in the answer of this carrier for the purpose of showing the extent of the area by which it, by means of its rail connections, distributes imports.

The St. Louis, Iron Mountain & Southern Railway Company, in justification of its rates on import traffic, alleges that shipments of such property reach the United States by way of New Orleans, and thence are brought to its terminus by the Louisville, New Orleans & Texas Railway Company and the Texas & Pacific Railway Company; and the interior ports of entry both of its own line and the lines beyond are reached by the Pennsylvania Railroad Company and its connections, and also by the Canadian Pacific and the Great Lakes operating the other railroad connections; and the rates received by the Texas & Pacific and ocean-line steamers are influenced and controlled by the said two routes and by all the routes between New York and Chicago which are in direct competition with the Pennsylvania Railroad and its connections.

The Louisville, New Orleans & Texas Railway Company avers that in order to get a share of the import traffic it accepts the same as contracted for by the ship agents at foreign ports, the through rate being usually divided between the ship and rail line, and that this is forced upon it by competitors by water—steamboats on the Mississippi river and its confluents; and also that the Illinois Central Railroad Company is a competitor with it for the import traffic for all leading points from New Orleans and pursues the same course as to import rates in order to secure such traffic. It further alleges that neither the letter nor the spirit of the Act to regulate commerce interdicts the acceptance by a carrier of a lower rate as its proportion of a through import rate than it charges for the like service for inland or local haul, the aggregate import rate being as large or larger than the local or inland rate.

The Illinois Central Railroad Company avers that while its proportion of the through rate from foreign to interior points on imported traffic carried by it has not been as great as the rate on the like domestic traffic, yet said entire through rate has in no case been less than the rate on the domestic traffic; that from the best advice it could receive on the subject this Commission, by its order of March 23, 1889, did not contemplate that the inland proportion of such through rate must necessarily be the same as the local inland rate, and that any other view of the case would have obliged it to relinquish the traffic, as competing rail carriers had tariffs in effect on this basis and thereby controlled the traffic prior to the establishment by it of the through rates; but that since March 18, 1890, it has not taken for shipment any import traffic, and to its great detriment has refrained from the business, for the reason that to meet the action of the competing lines it would have to make a less rate on the import than on the domestic traffic. This lets the Illinois Central Railway Company out.

The Wabash Railroad Company alleges that while it has in some instances accepted a less amount as its proportion of the through rate on import traffic than it has for the regular domestic rate between the same points, yet it has not at any

time received from any person or persons less compensation for the transportation of property from one State into or through another State than it received from other persons for doing for them a like and contemporaneous service in the transportation of a like kind of property under substantially similar circumstances and conditions.

The Southern Pacific Company avers that its import business is carried on as a connecting and constituent carrier in through freight lines under joint through rates from China and Japan and from England and Europe to interior points in the United States, said through freight lines being composed of ocean carriers from China and Japan to San Francisco and across the continent to the Atlantic coast, and of ocean carriers from England and Europe to New Orleans and connecting railroad lines across the continent to the Pacific coast. That its reasons for accepting proportions of such through rates less than its rates on domestic traffic are that the circumstances and conditions of the transportation are substantially dissimilar because of the competition of controlling force in each of the following particulars and respects:

First. By steamers passing from ports in Japan and China through the Suez Canal direct to the Atlantic seaboard of the United States, and by vessels sailing direct from said ports to the said Atlantic seaboard, and by steamers from said ports to Vancouver with connecting lines across the continent on British territory.

Second. By steamship lines running from the ports of England and Europe in connection with rail lines across the Isthmus of Panama to the Pacific coast, but to a greater extent by ships, principally foreign, sailing from English and European ports direct to the Pacific coast generally for a return cargo of wheat and other products of California and adjoining States and Territories; that by said joint through rates from China and Japan and England and Europe it has been able to receive some traffic important in amount and earned something over the actual cost of transportation, which it could not have secured and earned except by par-

ticipating as a constituent carrier in through lines and by accepting a proportional share of through rates.

Third. That the traffic from China and Japan is in teas; said teas are received by it at previously appointed days and in very large quantities, so that such traffic can be transported in special unmixed trains, and on this account can be carried at less cost than other like traffic not so received and shipped.

The Union Pacific Railway Company alleges that it is engaged in the import traffic between Asiatic ports and points in the United States, and also between European ports and points in the United States; that its lines are intermediate lines and on Asiatic business *via* San Francisco the Southern Pacific Company, and on European business *via* New Orleans and Forth Worth the Southern Pacific Company and the Houston & Texas Railroad Company, and *via* New Orleans and Kansas City the Louisville, New Orleans & Texas Railroad and the Kansas City, Fort Scott & Memphis Railroad; that the proportion of the through rate it receives on import traffic, though less than its domestic rate, yields in the aggregate a margin of profit; and the lines of which it forms a part are unable to obtain any greater compensation than is charged, on account of the competition of other carriers not subject to the provisions of the Act to regulate commerce, and that if not allowed to continue to handle this traffic as at present it will be wholly diverted to lines of transportation beyond the control of this country, to the serious loss of the respondent.

The Northern Pacific Railroad Company alleges that it is a connecting and constituent carrier of import traffic in through freight lines under joint through rates from Japan on ocean steamers to Tacoma, Washington, and thence with connecting railroad lines across the continent to the Atlantic coast, and also carries under through rates a small amount of such traffic from St. Paul, Minnesota, to points on the Pacific coast, said traffic coming on ocean steamers from English and European ports to Montreal, Canada, and thence *via* the

Canadian Railways to Sault Ste. Marie and thence *via* the Minneapolis, St. Paul & Sault Ste. Marie Railway to the respondent at St. Paul. That it is compelled to accept as its proportion of the said through rates a less amount (but yielding more than the actual cost of movement) than its rate for a like service on domestic traffic by active competition of controlling force, in one case by vessels plying between English and European and Pacific coast points *via* Cape Horn, and in the other case by steamers passing from the ports of China and Japan through the Suez Canal direct to the Atlantic seaboard of the United States, by vessels sailing directly from said ports to places on the said seaboard, and by steamers from said ports to Vancouver, then by connecting railroads across the continent on British territory, none of said carriers being subject to the Act to regulate commerce. It further alleges that the traffic from Japan is in teas and is received at previously appointed days and comes in very large quantities, so that it can be transported in special unmixed trains at less cost than other like traffic not so received and shipped.

The Baltimore & Ohio Railroad Company avers that its acceptance as its proportion of the through rates on imported traffic from England *via* Batlimore to points in the United States at somewhat less than its inland tariff rate violates none of the provisions of the Act to regulate commerce, because the rates that can be obtained for the carriage of such through business to Chicago and other competitive points are fixed and limited by the rates made by the ocean lines plying to Montreal, Portland and Boston in connection with the Canadian lines of railroad, and in order to get any of said business at all, it is necessary to meet said rates made by said competing lines.

The Lehigh Valley Railroad Company avers that the circumstances and conditions attending the transportation of import traffic are in many respects dissimilar from those attending ordinary inland traffic, but that the rates charged by it on import traffic since March 23, 1889, have been and are the same as the rates contemporaneously charged for domestic traffic, except—

First. In the case of contracts outstanding for a certain through import rate during a fixed unexpired period.

Second. In cases where the import rates are, as is usual, called for by the importer in advance of shipments and it happens that, after such rate has been fixed upon, the steamship rates were unexpectedly raised, or errors occurred in making the estimates for the through rate, they fall upon the foreign ocean and inland transportation and said through rate has proved to be less than the sum of the several tariff rates at the time of the shipment.

The Canadian Pacific Railway Company avers that its lines do not extend to any of the Atlantic ports and that it has no traffic or other agreement with connecting American lines reaching said ports, or with any Atlantic steamship lines with ports in connection with any American railway lines by which imported goods are received at rates less than those charged on domestic or local freight; and that goods imported from foreign countries *via* Montreal for interior points in the United States are carried by it and charged the same rates as are charged on like goods shipped by the local merchants of Montreal. Tariff No. 117, dated May 1, 1890, is attached to the answer of this company, under which, it is alleged, import and local shipments are carried.

The Grand Trunk Railway Company of Canada avers that in response to an order of this Commission it made a tariff of its full inland west-bound rates and added such tariff charges to those of its ocean steamship connections, with the result that for traffic for the United States *via* the St. Lawrence route said steamship connections reported that on that basis they could literally obtain none in competition with the lower rates charged *via* United States ports. The defendant then made a special commodity tariff for its inland charges on certain articles therein named, but secured only a small share of the United States business. That during the winter season its ocean steamship traffic is done *via* Portland, but it is advised by its steamship connections that the rates are still not low enough to secure sufficient cargoes of United States and Canadian traffic, and the steamships on their outward voyage from Liverpool are compelled to ballast partly

with coal; and that this difficulty in obtaining traffic lies, as it is advised by its steamship connections, exclusively in the severe competition *via* United States ports. And it denies the allegation that the low rates *via* Philadelphia are necessitated by the action of its ocean steamship connections. It admits that there is a complete and independent water route from Montreal to Chicago by canal, river and lake, and says that it is advised by its steamship connections that they give consignors the option of shipping by water or by rail from Montreal. As evidence that it has filed tariffs in respect to said traffic in pursuance with the rules of the Commission, it refers to its interstate tariffs No. $\frac{D}{G10}$ and $\frac{F}{G4}$, effective July 27, 1889, and November 25, 1889, respectively.

THE MATERIAL FACTS FOUND.

The material facts as found in this proceeding are that complainant is a corporation composed of merchants and traders in and about New York City. The merchants and business men composing the New York Board of Trade and Transportation in the business of reaching and supplying the consumers of the United States with imported luxuries, necessities and manufactured goods generally, are active competitors with the merchants at Boston, Montreal, Philadelphia, New Orleans, San Francisco, Chicago and merchants in foreign countries who import direct on through bills of lading issued abroad.

The intervening petitioner, the Commercial Exchange of Philadelphia, is a corporation duly incorporated by the State of Pennsylvania for the purpose of the advancement of trade and the improvement of facilities for transacting trade in Philadelphia, and is composed of merchants and traders in and about that city engaged in the business as above stated.

The San Francisco Chamber of Commerce, also an intervening complainant, is a body similarly composed of merchants and traders in and about that city, and is duly incorporated under the laws of the State of California; a number of its merchants are importers and merchants handling teas imported at San Francisco for supplying the American market.

After the proceeding had been commenced the Commercial Exchange of Philadelphia and the San Francisco Chamber of Commerce were permitted to intevene as parties complainant, inasmuch as the charges made by them against some of the defendant railroads were similar in character to those made by the New York Board of Trade and Transportation.

Since April 4, 1887, the respondents have been railroads and corporations engaged as common carriers in the transportation of property from some one or more seaboard points in the United States or Canada to interior American points; such transportation being in all cases under some common control, management or arrangement for the continuous carriage, so that each of the respondents constitutes the whole or a part of some through or continuous lines of transportation so engaged as aforesaid, under either its own or an established joint tariff, and each of the respondents is as to the said inland transportation within the provisions of the Act to regulate commerce, approved February 4, 1887, as amended.

The respondents are common carriers who furnish transportation for all competitors at home and abroad who seek to reach interior markets lying between the seaboard and the interior. Each of the respondents is practically the whole or a part of some vast railroad system which reaches every important interior market.

Many American manufacturers and dealers in almost every line of manufacturing and business are the competitors of foreign manufacturers for supplying the wants of interior American consumers, and under domestic bills of lading seek to require from respondents like service as their foreign competitors in order to place their manufactures with interior consumers.

On March 23, 1889, the Commission made an order, wherein, amongst other things, it was provided as follows:

"Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights."

The following roads allege conformity with the said order of March 23, 1889, and insist that their inland rates are the same for all traffic, whether domestic or imported; and there is no proof to the contrary:

The Lake Shore & Michigan Southern Railway Co.
The New York, Lake Erie & Western Railroad Co.
The New York, Pennsylvania & Ohio Railroad Co.
The West Shore Railroad Co.
The Boston & Maine Railroad Co.
The New York, Chicago & St. Louis Railroad Co.
The Central Railroad Company of New Jersey.
The Philadelphia & Reading Railroad Co.
The Chicago & Atlantic Railway Co.
The Michigan Central Railroad Co.
The New York Central & Hudson River Railroad Co.
The Delaware, Lackawanna & Western Railroad Co.
The Chicago & Grand Trunk Railway Co.

Since March 23, 1889, it has been and is the practice of the following railroads to charge less than their inland tariff rates upon import traffic carried by them under through bills of lading issued at foreign ports by steamship lines running to American or Canadian ports at which the respondents' lines respectively terminate:

The Canadian Pacific Railway Company.
The Baltimore & Ohio Railroad Company.
The Wabash Railroad Company.
The Southern Pacific Company.
The Union Pacific Railway Company.
The Texas & Pacific Railway Company.
The Louisville, New Orleans & Texas Railway Company.
The St. Louis, Iron Mountain & Southern Railway Company.
The Illinois Central Railroad Company.

The Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company and the Pittsburgh, Cincinnati & St. Louis Railway Company ceased this practice

on the 30th day of September, 1889, as they allege, and there is no proof to the contrary.

The following table shows rates charged by the Pennsylvania lines for inland transportation under through bills issued abroad in cases where imports were carried by the American line to Philadelphia and thence by rail to Chicago:

Date—Bill.	Points.	Goods.	Through Rate.	Rail and Ocean to Phila.	Inland, Phila. to Chicago.	Tariff—Philadel. to Chicago.
1888. June 25.	Dumferline, Scotland, to Chicago,	Linens.	76.40 cts.	38.20 cts.	38.20 cts.	69 cts.
1889. March 4.	" "	"	88 "	44 "	44 "	69 "
July 1.	" "	"	80 "	40 "	40 "	69 "
June 25.	Liverpool to Chicago,	Anvils.	29.47 "	14.73½	14.73½ "	33 "
Feb. 27.	" "	"	26.79 "	13.39½	13.39½ "	33 "
April 15.	" "	Tin Plate,				
June 17.	" "	Tin Plate, L. C.	24 "	12 "	12 "	33 "

The following table, compiled from data in the office of the Interstate Commerce Commission in regard to the tariff rates in evidence, shows through rates and divisions of through rates for the ocean and inland carriage on freights destined to the Pacific coast and imported from Liverpool through the port of New Orleans; and also freight rates on domestic shipments of like traffic originating at New Orleans, New York and Chicago:

Freight Rates in Cents per Hundred Pounds, to San Francisco, Sacramento, Marysville, Stockton, San Jose, Oakland (Sixteenth Street) and Los Angeles, Cal.

Commodities.	From Liverpool, Eng., *via* N. Orleans. Ship's proport'n	Inl'nd proport'n	Through	From New Orleans. La.	From New York, N. Y.	From Chicago, Ill.
Agricultural implements	19	70	89	114	130	119
Blacking	19	70	89	106	120	110
Books	27	80	107	264	300	275
Boots and Shoes	27	80	107	370	420	390
Burlaps	19	70	89	180	200	185
Buttons	27	80	107	374	420	390
Candles	19	70	89	125	150	130
Canned Fish	19	70	89	106	120	110
Carpets	27	80	107	288	330	300
Cashmeres	27	80	107	....	....	....
Cement	19	70	89	106	120	110

Chinaware	27	80	107	163	190	170
Chocolate	27	80	107	125	150	130
Cigars	27	80	107	370	420	390
Clothing	27	80	107	374	420	390
Confectionery	27	80	107	187	215	195
Cordage	19	70	89	125	215	130
Crayons and Chalks	27	80	107	125	150	130
Crockery	19	70	89	125	150	130
Cutlery	27	80	107	326	370	340
Drugs, Common	19	70	89	187	215	195
Dry Goods	27	80	107	374	420	390
Earthenware	19	70	89	106	120	110
Feathers	27	80	107	374	420	390
Glassware, Common	19	70	89	125	150	130
Gloves	27	80	107	....	....	....
Glycerine	27	80	107	106	120	110
Groceries, N. O. S	19	70	89	370	420	390
Hair Goods	27	80	107	....	....	....
Hardware	27	80	107	187	215	195
Hats and Caps	27	80	107	370	420	390
Hosiery	27	80	107	374	420	390
Lace	27	80	107	....	....	....
Leather	27	80	107	326	370	340
Linen	27	80	107	....	....	....
Linen Goods	27	80	107	....	....	....
Milk, Condensed	19	70	89	106	120	110
Nails	19	70	89	106	120	110
Optical Goods	27	80	107	....	....	....
Pins	27	80	107	264	300	275
Saddlers' Goods	27	80	107	370	420	390
Soap	19	70	89	106	120	110
Soda, Caustic, 2,480,162 lbs.	19	70	89	106	120	110
Tallow	19	70	89	106	120	110
Woolen Goods	27	80	107	....	....	....

This table does not reduce articles carried by "measurement" to "weight," because carriers furnished no data by which this could be done, but, taking this table as a basis and making allowance for the difference between "measurement" and "weight" of 53 to 54 per cent. as claimed in evidence, it shows approximately the difference between import rates and rates on other articles.

There is in every case of imported traffic a through bill of lading. Inland through bills of lading began quite early in the transportation business. As to the ocean it is a more modern method of business and has been more difficult to

introduce. The amount of the through rate is substantially governed by the competition of other carriers. The through rate is a variable one. At Chicago it will frequently fluctuate every hour according to the supply of boats. The ocean rate does not fluctuate with such rapidity. The rail rate does not necessarily vary with the through rate unless the ocean line has some agreement with the railroad line to share the ups and downs. This fluctuation makes it more difficult to lay out business and gives advantage to favored shippers, if the rates are not published. It is very difficult to give publicity to frequently fluctuating rates.

The through bill of lading furnishes a collateral for the transaction of business; takes from the shipper and consignee both the care as to intermediate charges, elevators, wharves and costs of handling (which are fluctuating), and puts it on the carrier; it reduces the intermediate charges and very much facilitates the transaction of business and helps to swell its volume. The tendency of the through bill of lading is to eliminate the obstacles between the producer and consumer, and it has done much in that direction.

Imports are different to some extent in the case of different carriers; the rates are different as between the rail carrier and the vessel; in regard to some kinds of freight the methods of arriving at the rail rate are different in the case of some rail carriers to what they are with others; and it therefore becomes necessary to find the facts in a brief way, in regard to each of the leading rail carriers of imported traffic.

The imports handled by the Louisville, New Orleans & Texas Railway are heavy and bulky, consisting of tin plate, cement, soda ash and occasionally cotton ties. The proportion of the import rate received by this road is a paying rate Between Memphis and St. Louis and to Kansas City the rail line gets sixty per cent. and the ship line forty per cent. of the through rate. To other Missouri River points the percentage is the same. The percentage of the through rate on the division between the steamers and the rail lines remains the same notwithstanding fluctuations in the through rate. The arrangement for such division is made by the railroad

with lines running from Bremen, Antwerp, Havre, Liverpool and London. The rates are made by the shipping agents in Europe in competition with lines from said ports to all American ports other than New Orleans. The rate varies from steamer to steamer, and the rates do not reach any interior foreign point, but are only to and from the ports.

The through import rate bears no fixed relation to the inland tariff rate for the local service. There is only one restriction upon the percentage of the through rate as compared with the inland rail line from the port of entry to the interior destination, and that is that the through rate from the European ports to the place of destination in the United States shall not be less than the rate from New Orleans proper to the place of destination on freight originating at New Orleans.

The tariffs on this import business are filed after the contract is made as soon as the road gets the proper showing that the goods are consigned.

The competition by the Mississippi River fixes the road's inland domestic rate north, and this competition practically bears the same relation to the inland domestic carriage as to fixing the rate that it bears to the import rates, but that which reduces the road's proportion of the through rate below the regular inland tariff rate is competing conditions existing in foreign ports—the through rate at North Atlantic ports. On a shipment from Liverpool to St. Louis the road and its through line connection would have to compete with the Cunard Line, the International Line and other lines running from New York, and with the Trunk Lines and others, and particularly the Baltimore & Ohio Railroad, on tin plate.

The objects of this carrier in taking import traffic at the reduced rate it is compelled to take it, are to build up the city of New Orleans and to secure the income from it for paying hands and operating expenses. The import traffic of the road has been growing largely in the last three years and the income from it amounts, as is estimated by a witness who occupies one of the chief offices of the road and is in a position to be familiar with its revenue, from fifty to sixty thousand dollars a year, and perhaps more.

The through rate on tin plate from Swansea, Wales, to Memphis would be about 27.5 cents per hundred pounds, and the rate or the railroad's proportion of this from New Orleans to Memphis, a distance of 450 miles, would be about 12.54 cents per hundred pounds. There are no local shipments of tin plate from New Orleans to Memphis and no inland tariff on it.

The competition of the Mississippi river with the defendant rail carrier on import traffic is indicated by the following figures:

For the year ending February 28, 1890, the imports through New Orleans were:

By river, 6,866 tons; value, $271,067.
By rail, 1,622 " " 85,288.

About forty per cent. of the northbound cars of the Louisville, New Orleans & Texas Railway go empty. The tendency of the river competition is to keep import rates to the west very low, so low that the company does not undertake to compete with them, except at intervals, for the St. Louis business.

In 1889 the importations of the Texas & Pacific Railway Company were about five millions of pounds of import business, of which about 2,500,000 pounds went to Missouri River points, about 2,000,000 pounds to the Pacific Slope, California terminals and Oregon points, and the remainder was distributed in Colorado, Utah, and a little of it in Texas.

The St. Louis, Iron Mountain & Southern Railway is a connection of the Texas & Pacific Railway in the business to Missouri River points. The Texas & Pacific reaches the California terminals over the Southern Pacific and Oregon points over the Southern Pacific and over the Denver, Texas & Fort Worth Railroad, in connection with the Union Pacific Railway and the Oregon Railway & Navigation Company. It reaches Montana over the Denver, Texas & Fort Worth Railroad and over the Union Pacific Railway.

The rate of the Texas & Pacific Railway to Montana points is the sum of the locals, and also to Denver, on caustic soda

and soda ash. In instances of other freight it takes its share of the through rate. In the case of Missouri River business the rate is usually made by the agents of the Texas & Pacific Company and by the steamship agents. There is some cement, but tin plate and earthenware constitute ninety per cent. of the freight carried to Missouri River points.

The proportion the Texas & Pacific Railway receives of the through rate is remunerative. The preponderance of its empty cars go north during eight months of the year, and if something can be obtained to load, it is that much found, and anything is regarded as remunerative that can be obtained to put in its cars to pay mileage.

Freight pays the Texas & Pacific Railway about an average of one-half a cent a ton a mile. That road carries about 200,000 bales of cotton to New Orleans, and there is but little sugar and molasses to load back.

The St. Louis, Iron Mountain & Southern road gives the Texas & Pacific Railway sixty per cent. more loads than the latter returns to the former. Generally the cars are handed back to the former empty.

There is a sugar refining business and some cotton mills at New Orleans, but there can not be said to be any manufactories there to any considerable extent.

The competition which controls the making of rates to the Pacific coast (California rates) and any Oregon business is steamship through the Isthmus, and there is some little competition in cheap heavy goods around Cape Horn. The competition to interior points, such as Missouri River points and Denver, is from the Trunk Lines direct from the Atlantic seaboard.

The through rate from foreign points *via* New Orleans to the Pacific coast is $1.07 per hundred pounds, of which the rail line's proportion is 80 cents, and the return ocean rate from New Orleans is about the same as the ocean rate to New Orleans, namely, 27 cents.

The European railroad competition between the places of origin and the seaboard does not cut any figure in fixing the through rate, because the rate from the interior to the ports of Europe is very much the same by all lines; it is the com-

petition between the ports of Europe and this country that makes the rates.

The tariff of the Texas & Pacific Railway to California and Pacific coast terminals is published and has been at that figure for a long time. The road has made that rate, and said to its steamboat connections they can go no lower. The road loses business frequently on that account. That is the difference between the California and the Missouri River business.

The steamship agents in Europe agree upon the through rate on Missouri River business and the road gets its agreed percentage. This road gets its full local rate to Dallas every time, and carries import traffic at the reduced import rate to Missouri River points and California terminals only. The regular local rate is charged on everything to Denver except earthenware; the import rate on that is 93 cents, while the regular local rate is $1. The Texas & Pacific Railway has an agent in England watching these rates all the time.

Over the line of the Southern Pacific Company merchandise from the ports of the United Kingdom and Europe by steamer to New Orleans and thence by rail to the Pacific coast on entire through rates is divided as follows:

Iron, cement, and tin plate, about 33 to 36 per cent.
Wines and liquors, about 10 per cent.
Dry goods and linens, about 15 or 16 per cent.
Groceries, about 10 per cent.
Mineral water, about 7 per cent., and the balance sundries.

Of this entire through rate the railroads received on the first and second classes above 75 per cent., and on the third class about 78.3 per cent. The balance of the through rate goes to the steamer. The Southern Pacific Company carries with three or four connecting steamer lines, on the through-rate system, and has tariffs fixed with these routes to California terminals and on file with the Commission. In comparing the railroad's proportion of the through rate with the regular local rate it is to be noted that fully thirty or forty per cent. of the import business of the road is what is called "measurement" freight. All tariffs from Europe are printed

"either weight or measure at ship's option." The charging by measurement makes the road's import rate from 2½ to 2⅞ times larger than it would be in charging by actual weight, and this greatly reduces the apparent difference between the import rate and the low inland rate on about 45 or 48 per cent. of the business carried. This would make an increase of the apparent rate of the whole business carried of 53 or 54 per cent.

The road ships a different class of goods by the regular domestic inland rate to those brought under the import rates. The proportion of the through rate received by the railroad on import traffic does not pay a full and fair return for the service rendered, but it is taken because, on account of competition by the Atlantic lines, no higher rate can be had. This competition arises in the ports of Europe and the United Kingdom and seaports where the through-rate shipments are entered. Of the freight carried from the ports of Europe and the United Kingdom to Pacific coast terminals by all lines around Cape Horn, across the Isthmus, and over the railroad by way of Aspinwall, the Southern Pacific estimates that it carries about nine per cent.

The interior through rates of the road are somewhat higher on third-class goods than the rates by way of the Isthmus of Panama, and are about fifteen shillings lower on first class and about ten shillings higher on second class than the rates around Cape Horn. The import tonnage carried by the road in 1890 was about 14,000,000 pounds.

The interior and import rate does not apply to any part of the road's line except California terminals, for the reason, as is alleged, that the competition does not reach the interior points. On one portion of the import traffic carried by the road, namely, that carried by measurement, being about 45 per cent. of all, the road gets 2½ times as much as the tariff printed and filed shows, and on the remaining 55 per cent. the road gets the rate shown, and both are for the same service.

The term "ship's option, weight or measurement" does not mean that it is an option, but that whenever the bulk is lighter than the weight it must be taken by measurement.

The Southern Pacific Company engages in traffic from the United Kingdom and European points *via* New Orleans, and

from Asiatic points to all points in the United States west of the Missouri River. As a rule, the proportion of the entire through rate received by said company is less than the rate charged on the domestic traffic.

The business of the road on through freight from the United Kingdom and Europe is very small. The principal commodity is tin plate, being about one-third of the total. The rest is made up of mineral waters, liquors, a few dry goods, and a small quantity of wine and a little machinery. Sixteen per cent. would cover the dry goods and 10 per cent. the liquors. Tin plate goes to the Pacific coast for canning fruit and fish.

These through rates from Europe and the United Kingdom apply only to California terminals; to all intermediate points the regular inland locals are charged. The reason of this distinction is that at the Pacific coast terminals there is water competition by sailing vessels by the Cape Horn route, and steamships connecting with the Panama Railroad at Colon, which connects with the Pacific Mail Steamship Company at Panama.

The largest share of the tonnage is carried by sailing vessels around Cape Horn at nominal rates; the reason being that British vessels largely seek the port of San Francisco for return cargoes of grain. These vessels take a general cargo to San Francisco, the bulk of it being coal and cement, for which the Southern Pacific cannot compete. But they also carry case goods, general merchandise, liquors in a variety of packages, and in fact run through the whole category of traffic. It is not an infrequent thing for the vessels to come from Europe to San Francisco in ballast. The coal that comes by these vessels from Liverpool and other ports in the United Kingdom competes with the production of the Pacific coast.

The Pacific Mail Steamship rates are considerably higher than the rates by sailing vessels. The sailing vessel rates vary a great deal, ranging on general merchandise from 15 shillings, 6 pence, to 35 shillings, 6 pence, and on tin plate from 17 shillings, 6 pence, to 32 shillings, 6 pence, per ton of 40 cubic feet, or 2,240 pounds, ship's option.

The rates of the Pacific Mail Line range from 57 shillings, 6 pence, to 95 shillings per ton of 40 cubic feet. The rates of the Southern Pacific Company range from 100 shillings to 83 shillings per ton of 40 cubic feet, or 2,240 pounds, ship's option.

The canners on the Pacific coast are not able to determine in advance how much tin plate they will require; after their wants are known, depending on the prospect of the year's crop or salmon pack, they order. There is, therefore, a necessity for quick passage of tin plate, and this, together with the fact that tin plate is very valuable, and interest and insurance mount up rapidly, accounts for the road's being able to get such a large share of the tin plate traffic. Tin plate is forwarded from New Orleans under the company's general bond, and the duty is paid in San Francisco, but it has to be appraised at the first port of entry.

The ships engaged in carrying to San Francisco around Cape Horn are almost wholly British bottoms.

The road's proportion of the through rate would not, in the absence of competition, be a full and fair return for the transportation service rendered. It is justified on the ground that it gives to the road something more than the actual cost of movement of the freight. The theory is that whatever the road gets above the actual cost of movement of this traffic is so much gained, and it is thereby better able to discharge its fixed obligations, such as interest and those items of the general expense which do not vary with the amount of tonnage or traffic.

The road's import traffic is increasing and has about doubled, comparing 1885 with 1889. All this traffic went by sailing vessels and steamship lines *via* Panama until the Southern Pacific Company opened the New Orleans line. The claim of the company now is that not one-tenth of it is carried by its line, and that without the reduced through rate and the through line the road would get none of it.

So far as Europe is concerned the Southern Pacific Company does not regard the Canada lines as being serious competitors with it. The Northern Pacific Railroad Company carries little, if any, of this particular traffic. The nine-

tenths of the traffic not carried by the Southern Pacific Company, it is estimated, is carried by sailing vessels *via* Cape Horn and steamships *via* Panama.

The principal article of import from Asiatic ports about which there is serious competition between the American and the Canadian lines and sailing vessels is tea.

About ninety million pounds of tea are annually imported into the United States and Canada from China and Japan, by the following routes:

Steamship *via* San Francisco and rail.
Sail *via* Tacoma and rail.
Steamer *via* Vancouver and rail.
Steamer *via* Suez.
Sail *via* Cape of Good Hope.
Sail direct to San Francisco for local use.

About fifty or sixty per cent. comes by Suez or the Cape of Good Hope. These teas reach the Atlantic seaboard by all the said routes, except the teas which come by sailing vessel to San Francisco direct for local consumption. The Suez rate is generally small—the cheapest. Shipments by way of the Suez Canal to the Atlantic seaboard require fifty or sixty days from Japan and forty or fifty days from China.

The voyage by sea around the Cape of Good Hope is from four to six months from Japan and from three to four months from China. The prevailing rate on teas from Japan *via* the Suez Canal to New York is about seventy cents per hundred-weight. The tea is taken only to New York, because that city is the center of the tea trade. On tea consigned from Japan to San Francisco the rate is generally $1 per hundred-weight. The rate from Japan *via* San Francisco and thence by rail to New York is $1.50 per hundred-weight, and the through rate *via* Vancouver over the Canadian Pacific is the same; but sometimes there is a differential of 25 per cent. The Canadian Pacific can reach Chicago by lake carriers from Port Arthur, and has done so with regard to other freights than tea, but there is no evidence that it has ever done so in the case of tea.

The steamers passing through the Suez Canal are British;

the sailing vessels mostly fly the American flag and are generally kerosene oil vessels. These oil vessels are considered the best to charter for cargoes of tea. The rate on tea to the Pacific coast is controlled by the rate made by the Suez steamers. The San Francisco merchant is charged three dollars for the transportation from San Francisco to New York. The tea merchant in Japan has an advantage over him in the through rate of $1.20 from Japan *via* San Francisco and thence by rail to New York, if he desires to enter the New York market, but there is nothing to prevent his shipping to New York direct.

Before the practice of shipping on through bills through San Francisco was adopted (about 1867) shipments were made to New York entirely. New York now gets about 50 or 60 per cent. of the tea imported into this country. Some tea goes to New York, some to Chicago, some to Montreal and other places. When it comes by through bills over an American road it costs the same to take it to Chicago as to New York. New York and Chicago are practically the two American tea markets.

The teas brought into the United States and Canada by rail carriers are from Japan. The following table will show the teas imported into the United States and Canada from Japan from the year 1875 to 1889 inclusive:

Season.	*Via* San Francisco.	*Via* Vancouver.	*Via* Suez.	Sailed to New York.	*Via* Tacoma.	Total.
1875-6	13,323,946	.....	1,906,235	9,980,621	.....	25,210,802
1876-7	11,110,057	.....	5,337,980	5,982,300	.....	22,430,337
1877-8	14,448,229	.....	5,590,647	8,232,708	.....	28,271,584
1878-9	12,209,728	.....	12,028,604	1,262,248	.....	25,500,580
1879-80	17,222,299	.....	15,092,653	2,334,527	.....	34,649,479
1880-1	18,317,027	.....	20,167,157	1,013,776	.....	39,497,960
1881-2	19,718,806	.....	14,549,262	.....	.....	34,268,068
1882-3	12,333,987	.....	21,668,376	532,422	.....	34,534,785
1883-4	16,217,369	.....	18,017,876	22,538	.....	34,257,783
1884-5	15,589,961	.....	19,818,428	.....	.....	35,408,389
1885-6	19,048,022	.....	16,730,911	315,951	2,998,517	39,093,401
1886-7	21,972,555	10,323,368	12,994,502	.....	.....	45,289,425
1887-8	17,414,589	10,063,766	8,779,827	.....	6,840,971	43,099,253
1888-9	11,908,314	9,576,580	8,848,056	248,693	9,243,404	39,820,047
1889*	14,242,700	5,175,557	11,559,994	103,981	6,862,537	37,924,769

(* Up to November 23, 1889, from Yokohoma.) New York, January 13, 1890.

The following table shows the percentage of total imports of tea into the United States and Canada carried by the various routes at the dates named below:

Season.	*Via* San Francisco, Union Pacific and S. Pacific.	*Via* Tacoma, Northern Pacific.	Total *via* American Lines.	*Via* Steam, Suez Route.	*Via* Sail Vessels.	*Via* Vancouver, Canadian Pac.	Total.
1875–6	52¾ pc.	.....	52¾ pc.	7½ pc.	39¾ pc.	.....	100
1882–3	35¾ "	.....	35¾ "	62 "	2¼ "	.....	100
1885 6	48½ "	7¾ p c.	56¼ "	42¾ "	1 "	.....	100
1886–7	48½ "	.....	48½ "	28½ "	.....	23 p c.	100
1887–8	40½ "	15¾ "	56¼ "	20¼ "	.....	23½ "	100
1888–9	30 "	23¼ "	53¼ "	22¼ "	.....	24½ "	100
To Nov. 23, 1889	37½ "	17¾ "	55¼ "	30 "	.....	14¾ "	100

The Southern Pacific Company carry it under a through rate with the Pacific Mail Steamship Company and the Occidental and Oriental lines, which serve all the ports of China and Japan and connect with the Southern Pacific Company at San Francisco. The tea rates are made by the agents of connecting lines. Whatever the rate is the road takes fifty per cent. subject to one cent per pound minimum to the road—that is, the road's proportion of the through rate is in no case to be less than one cent per pound; as, for example, if the through rate be one and one-half cents the road's share would be one cent and the steamer connecting lines would take the one-half cent. In any other case the through rate is divided equally between the road and the ship.

The bulk of the teas comes *via* Suez. From 75 to 80 per cent. of the total importations of teas into the United States and Canada goes to New York; 60 per cent. of that total comes *via* Suez; the remaining 20 or 25 per cent. comes to the interior, chiefly to Chicago and Canada points.

Opportunities are frequent for the Chicago importers to use the Suez Canal and either pay the all-rail rate or the lake and rail rate. It is estimated by the general traffic manager of the Southern Pacific Company that during the season of 1889–90, beginning with May, 1889, the Southern Pacific Company carried *via* San Francisco gross about 22,000,000 pounds of teas, the Canadian Pacific about 12,000,000 pounds gross and the Northern Pacific about 7,000,000 pounds gross,

making a total of about 41,000,000 pounds carried across the continent, either over Canadian or United States territory. The quantity that was taken by way of Suez or the Cape of Good Hope approximated 48,000,000 pounds gross.

Originally the Southern Pacific Company began with a rate of five cents per pound, the tea being high priced as new tea and quick transit being desirable. Then as the desire for quick transit ceased the rate dropped during the season to four, three and two and one-half cents; but since the Canadian Pacific laid on their line the Southern Pacific Company had to be in with a lower rate. For example, in 1889 it began with four cents and got a half a cargo and soon got down to three and two and closed with a 1½ rate; and this year, 1890, had to begin with a rate of two cents and have notice from the steamship manager that the rate will go to one cent before the close of the season.

The rates *via* Suez to New York are always lower, ranging from .8 cents per pound to about 1.8 cents per pound. A comparison should be made between the rate *via* Suez and New York of 1.8 cents with the road's rate of three or four cents, and the Suez rate of .8 cents with the road's rate of one and a half cents. The Suez route has heretofore dictated the rate, though three cargoes carried from China *via* the Cape of Good Hope as shown by the evidence were carried at the rate of 25 cents per hundred pounds, or one quarter of a cent a pound; and according to the same evidence the highest rate known by that route was 60 cents per hundred pounds.

The rate of the Southern Pacific Company on tea, a shipment which originates at San Francisco, is in carloads $1.55 per hundred pounds and in less than carloads $3 per hundred pounds, a flat rate extending from the Missouri River to the Atlantic seacoast. The difference between the import rate and that from San Francisco grows out of the competition at the ports of China and Japan which does not exist at San Francisco.

The ground upon which said rate on tea from San Francisco is justified by the Southern Pacific Company as being reasonable in itself as compared with that of other like com-

modities is that tea is ordinarily first-class freight, being a valuable article, bulky in its nature and sensitive to damage, and must bear its proportion of the fixed charges.

The tea traffic originating at San Francisco is very small because the tea traffic is controlled in the east, originally in New York and now in New York and Chicago. Before the transcontinental lines were completed San Francisco shipped no tea. It is estimated that last year San Francisco shipped in carloads and less quantities about a million pounds of tea. San Francisco supplies altogether the country adjacent; it supplies Salt Lake and also Denver.

There is a slight difference in the cost to the railroads in the transportation of tea on the through line, the transportation which originates at China and Japan, and the cost of shipping teas, the origin of shipment being in San Francisco; and the difference is in favor of the through bill; but this difference is not regarded as one of any importance.

The through rates are not restricted to consignments of carloads, but apply to consignments of less than carloads. The bills of lading which the San Francisco merchants have presented show rates for shipments locally from San Francisco on one or two packages compared with shipments of twenty or more packages of through rates. In reply to this it is said by the company that such a comparison is not fair because when it gets down to two or three packages there is an arbitrary rate charged by the steamer which is not the case in larger quanties.

The average of the road's percentage of the through rate is much more than two cents a pound. That is, it averages more on teas from China and Japan for the service than on its carload rate from San Francisco. But how long this will continue is considered doubtful. Prior to the establishment of the Canadian line, the wide distinction that now exists between the local rates from San Francisco, and the through rates from China and Japan did not exist. It is claimed by the Southern Pacific Company that the Canadian Pacific Company forces this result. One reason why it is said the Canadian Pacific Railway has been able to force this result is that it reaches New York on shorter time, as it saves

quite a considerable distance—600 miles—in the steamship runs.

The proportion that the Southern Pacific Company receives of the through rates on teas with the reservation of not less than $1 per hundred minimum to the road, or one cent per pound, pays something over the cost of movement. The actual cost of movement of freight eastbound from San Francisco will not exceed three-eighths of a cent a ton a mile. Whatever the road gets above that is something over and above what it costs to handle it. It appears that this company does not carry any of this tea for less than half a cent a ton a mile, and hence it secures at even that rate a profit of one-eighth of a cent a ton a mile.

The general manager of the Southern Pacific Company testified that he had endeavored to bring the steamers that are operating in connection with the Canadian Pacific and Occidental and Oriental and Pacific Mail Lines together and to get the Canadian Pacific and the Northern Pacific and his own line, the Southern Pacific, to agree that they will fix arbitrary rates from the ports of entry only with provisions that they can charge them regardless of what the fluctuations are, and say they will continue to do so until the steamer lines stop their quarreling and get things back to a reasonable basis. The Northern Pacific Company was eager for this but the Canadian Pacific answered that they could not do it.

The evidence in behalf of the Southern Pacific Company further showed that the effect of any attempt of that company to increase the through rate upon traffic would be to cause it to leave that road and to leave the port of San Francisco, and under the present policy to go *via* Vancouver and the Canadian Pacific; that it would be an absolute disadvantage to the Board of Trade and Transportation of New York and Philadelphia to take away tea from the American lines and to give it to the British lines; that the Southern Pacific Company has no quarrel with San Francisco in this matter, but cannot do what San Francisco wants, because the law forbids it; and that the through rate is a rate which the Southern Pacific is forced to take by the circumstances and

conditions which are not within its control, and which exist at the ports of China and Japan and do not exist at the port of San Francisco.

There is also testimony to the effect that the Canadian Pacific Railway Company is now completing vessels which, under the Admiralty Laws of England, will obtain a subsidy of 60,000 pounds sterling ($300,000) per annum, and it will put these vessels on early in 1891, and that it is expected when this is done that these vessels will make the time between Yokohama and Vancouver in ten days.

Over fifty per cent. of the teas imported into the United States by all the lines is China tea. But the proportion that comes overland is greater of Japan teas than of China teas. Three-fourths of that portion which comes *via* the Pacific coast to the ports of the United States is Japan tea; not more than one-fourth is China tea.

All of the official publications as to export rates, etc., of teas, deal with the contents of the package and not the gross. The percentages of the totals received on the Pacific coast at San Francisco and Tacoma together have, relatively to the total receipts on that coast, increased during the last three years, and the American lines have increased their tonnage, but the percentage of that increase is not shown by the evidence.

Before the opening of the Vancouver route no teas of any consequence went that way; the teas then went *via* San Francisco and at higher rates than to-day; and the percentage of the tea traffic which has gone through the Suez Canal during the last two or three years has been about 60 per cent.

The vessels used from Port Arthur across the lake to Chicago, it is claimed, are American vessels, for the reason that none but American vessels can participate in the coastwise trade.

It appears that the steamer classification of the different kinds of goods under which the steamer ships on through bills is different from the railroad classification under which such freight is shipped over the railroad; consequently under these through bills articles would be carried in a different

classification from that which prevails if they are shipped from the seaport to the interior.

The earnings of the Southern Pacific on tin importations are five-eighths mills per ton per mile, and the tariff on tin plate from New Orleans would probably take a rate of a cent a pound, which would be four-fifths of a cent per ton per mile.

The average time of a sailing vessel from Liverpool to San Francisco is four months, frequently 95 days, and sometimes, in distress, six months. The time of the Southern Pacific and its connections from Liverpool to San Francisco is 25 or 26 days.

If the through rate should go considerably below 1½ cents a pound on tea the Southern Pacific Company necessarily would have to abate its minimum one cent or the steamers could not run. Any rate that is made by the Canadian lines or their steamship connections under the policy they now adopt would have to be made by the Southern Pacific, or else it would have to go out of the business. The general manager of the Southern Pacific Company testifies that, as he understands the Canadian contract, the Canadian Pacific has no control over the through rates or over their proportion of these rates; that the difference between the Canadian Pacific and the Southern Pacific is this: while the Southern Pacific agrees that, subject to its one cent minimum, it will take 50 per cent. of the rates, it is not tied up in a contract that would prevent it any day from changing these provisions, while the Canadian Pacific is tied up by such a contract. This matter will be found explained by the testimony offered in behalf of the Canadian Pacific Railway Company, which will be noticed hereafter in this report.

The one cent a pound that the Southern Pacific Company gets is for carloads and less than carloads, subject to the exception where the steamer makes a difference on one or two packages given it alone; and also subject to the exception as to how this business came to the Southern Pacific Company. The difference which the road gets in a small consignment of two or three packages of tea under the through bill is determined by the steamer, but at any time that the road wants to change this it can do so.

Whatever the steamships get higher than the one cent minimum rate is for them to determine, in one sense; but, as before said, the road can change these provisions and its relations to the steamship companies any day it chooses. It is admitted by the Southern Pacific Company as being possible, but extremely improbable, that on these through bills, under the arrangement between the steamships and the Southern Pacific Company, less than carloads will be carried at a cent a pound, while the San Francisco merchant desiring to ship a carload to the east would have to pay $1.55 per hundred pounds. The San Francisco shipper would have to pay $1.55 per hundred pounds in carloads, and in less than carloads $3.00; whereas the through shipper pays one cent a pound for the same transportation.

The difference that is made is not based on the cost, for it is admitted by the Southern Pacific Company that the difference would be unappreciable in the cost of handling like quantities of tea as between San Francisco local shipments and a cargo from the ship. No evidence has been introduced that there has ever been such a thing as the diversion at San Francisco of freight on these through bills from its destination to a local consignee.

It is further admitted by the Southern Pacific Company that if all the competitive difficulties in the foreign ports were eliminated, there would be no reason why the inland tariff should not be a rate for all the business, whether carried under a through bill or a local bill.

On shipments from New Orleans the rates are not fixed by the Southern Pacific Company's agent in Europe, but the rates are the published tariff rates, which are the subject of agreement between the traffic manager of this company's Atlantic system and the representative of the steamship lines, whose headquarters are at New Orleans, and whose action is subject to the approval of his home office. The steamship agents have no authority to depart from the rate in the tariff without the road's consent. That consent is obtained from Mr. Schriever, traffic manager of the Atlantic system of the Southern Pacific Company. The rates are not fixed from shipment to shipment.

If an occasion should arise where, in respect to a very important class of freight, a modification of that tariff was necessary, a communication would probably come from the home office in the European port to their representative in New Orleans, and he would confer with Mr. Schriever, and Mr. Schriever would approve or disapprove of that change. If Mr. Schriever approved of it, the rate would be put into effect, but not before, and it would then go into effect immediately; there would be no ten or three days notice.

The foregoing is admitted by the Southern Pacific Company to be its practice and method of procedure in regard to this class of freight.

Of the 14,000,000 pounds of freight reported in 1889, about forty per cent. was taken at an estimated weight; or, in other words, that 14,000,000 pounds represents a tonnage of 36 per cent. more than the actual tonnage carried. About 33⅓ per cent. of that tonnage, which is tin plate, goes by the actual weight, and is figured at 3,507,000 pounds on that 14,000,000 pounds. It would really be a greater proportion of the whole if the exact weight of all was given. Witnesses for the Southern Pacific Company testified that they have never known of a case of tin plate being taken on a through bill to local points on that road's line. They further testified that there is no appreciable difference in the circumstances and conditions which affect the expense to the road at New Orleans in handling import goods and in handling local goods.

In explanation of its calculations the general manager of the Southern Pacific Company testified before the Commission that when he said the road's rate paid the cost of the train men, he included in that case the pay of the crew, the cost of fuel, the proportion of the contract repairs based on the ton miles made in the ratio of the ton miles that the car or train would make to the total ton miles of the road—the expense of loss and damage figured on the same basis; these are the principal, and it may be said the total, charges against the actual cost of movement—the only charges which may be said to be influenced by the varying conditions of the traffic, whether it is more or less. He further testified

that when he speaks about the cost of transportation as being 1¼ cents he includes everything—fixed charges, general expenses, taxes, and repairs.

It appears that the Southern Pacific Company has retained its proportion of the traffic at the lower rates forced by the Canadian Pacific, and that the latter took what traffic it obtained from other competitors. It further appears that the present condition of the east-bound rates has been caused by the competition of the Canadian Pacific Railway Company and the American transcontinental lines with each other. The difference in the tea trade between the gross and net weight is about 25 per cent.

Evidence was offered at length by the Canadian Pacific Railway Company, from which the following appears:

That the through rates of this company *via* Montreal to American interior points are generally made by the steamship companies. The road connects through the regular lines, the Allan, the Dominion, the Beaver, the Thompson, and the Donaldson Lines, and they generally make the through rate. When the road makes the rate it is made on the rate ascertained from the ocean carriers, to which are added the road's inland rates from Montreal to destination. These local inland rates are published and the tariff is sent to the Interstate Commerce Commission, and applies to any line of steamers bringing traffic to Montreal. The tariffs No. 1021, of May 1, 1890, and No. 6, dated May 10, 1889, show the inland proportion on all import traffic the road brings from Europe *via* Montreal. Montreal is the only port at which the road receives imports. It has no connection to Portland.

The road does not make import rates from Montreal to points in the United States in connection with any American lines of steamers. These import rates *via* Montreal have been in effect two years. There was great difficulty in getting the steamship companies to agree to these rates, because, as they said, of the terms and rates which they had been in the habit of receiving from the American lines run-

ning to the ports of Baltimore, Philadelphia and New York. The Allan Line is probably one of the largest steamship lines in the world, running between 45 and 50 steamers, and to almost every point.

As to Asiatic trade, three years ago the Canadian Pacific Railway Company in connection with a line of steamers owned by parties in England became a competitor for that traffic, finding it advantageous to do so on the propositions made to the company by the connecting steamships. This is the fourth season the road has been in that traffic. It was taken in connection with the steamships on a division arrangement of through rates. The service that is now running is temporary and will be displaced in the course of four or five months by the railway company's own new vessels. The arrangement of the company with these steamship lines was similar to that of the American lines, but in October last the steamship companies notified the road that they would cease to connect further unless it changed the terms under which they were connecting. The steamship companies wanted a larger division of the rates and more power to control the business. The Canadian Pacific Railway Company had to concede to some extent these demands of the steamship lines or accept the alternative of closing the line pending the completion of its vessels, which will not be until March 1, 1891. The road could not afford to retire from the business and leave a gap of six or seven months.

The English line of boats now running in connection with the road's line is inferior in passenger accommodations and runs at a disadvantage on that account.

Statistics kept on the subject show the traffic taken by the Canadian Pacific Railway Company has been nearly all diverted from the Suez Canal. The general manager of the Canadian Pacific Railway Company testified before the Commission that in his opinion the American lines have lost none of that traffic.

From May 30, 1887, to April 25, 1888, the Canadian Pacific carried Chinese and Japanese teas 18,584,353 pounds; nothing is credited to the Northern Pacific that year. From May 18, 1888, to April 18, 1889, 21,840,337 pounds were carried

by the Canadian Pacific; nothing is credited to the Northern Pacific that year. From May 9, 1889, to April 15, 1890, the Canadian Pacific carried 14,606,140 pounds, and during the period last mentioned the Northern Pacific carried in sailing vessels 7,618,018 pounds.

The Canadian Pacific Railway Company has not made any import rates *via* American seaports to interior points in America from Europe.

The special class upon which a rate of 13 cents per hundred pounds is made by the road covers a species of articles not produced in Canada, such as tin plate and such things; in other words, articles of imports.

The road has tariffs from Montreal west. These tariffs are issued at the opening of navigation every year. At the close of navigation the rates are somewhat higher, as in the summer the road has the River St. Lawrence and lake competition; the winter tariffs take effect about November. In summer they are changed for what are called summer tariffs. The road has never done any business in winter to United States points, but may do some hereafter. This refers to lines to Chicago and west of Chicago, to which the road has heretofore had no connection for that particular business. In the winter time the road is obliged to do that business through American connections, and they, being the initial lines, take the responsibility to the government for adherence to the law.

The general manager of the Canadian Pacific Railway Company testified before the Commission that he knew only one Anderson line of steamers, and that is the line plying between London and Australian points; that there is no such line in connection with the Canadian ports; and the seaport connections of the witness' road in the east are Montreal and St. John. The road has issued some, but not many, through bills of lading by way of American ports to points in the United States.

The road generally makes through rates from China and Japan on tea to all points in the United States on a line drawn east and west through Chicago. Not much of this is south of Chicago. The road's operations are generally con-

fined to Chicago and points north in the United States. The road makes through rates to New York City and all the way through to the Atlantic coast. The division between the road and its connecting lines is not the same to Chicago and New York, because the road's division and that of the steamers vary as the road has to pay out arbitraries to connecting lines.

The arrangements with steamship connections of this carrier as to its Asiatic traffic with steamship connections and rates are similar to those of the Southern Pacific Company.

Up to the time that the evidence showed that the steamship connections made demands for more liberal terms the road took out the arbitraries which accrued to connecting lines, and the balance of the through rate was divided equally between the Canadian Pacific and the steamship companies. At that time, which was the fall of 1889, the road had to increase the proportion of the steamers, and the road then gave the steamers greater powers as to rates. The arrangement between the railroad and the steamship lines is a part of the records of the company. But the general manager of the company testified that he did not know whether a copy of it had been filed with the auditor of the Interstate Commerce Commission. At the time when the railroad divided equally between itself and the steamships after taking out arbitraries for connecting lines there was a general understanding that the steamship companies in making rates should not go below 1½ cents a pound. If they did go below that rate they would have to stand it themselves.

One dollar and fifty cents a hundred or a cent and a half a pound, one-half going to the steamship lines and one-half to the railroad, if the distance were 3,000 miles, would be exactly a half a cent a ton a mile. The road does not carry any other class of freight at that rate from the Pacific coast. Tea generally bears the lowest rate.

There have not been more than two or three cases in the last three years where tea that came across the Pacific was taken off and stored at the road's Pacific terminal and the journey afterwards resumed. In such cases the road has agreed that, if the journey was resumed in thirty days, it

would take the traffic at the through rate. This related only to Canadian teas. The tea to American ports must go direct. None of that has ever been held over at all.

While the route *via* Port Arthur to Chicago by water is a possible one it is altogether improbable. The frequency of handling would prevent the adoption of such a route and in addition thereto time would be against it. The loss resulting from such a route would be far greater than any advantage gained, and no tea has been shipped by the Canadian Pacific Railway Company by this route.

Tea is not, as is generally supposed, of great value, nor is it exceedingly difficult and risky to transport. The facts are the opposite of that.

Under the present arrangement between the road and the steamship lines, if the rate of $1.50 from Yokohama to eastern points was reduced, the road would have to share the loss; under the former arrangement the steamship lines would have to bear the whole reduction. This latter arrangement was made some time in the latter part of October, 1889.

There is a general understanding among steamship companies that they will reduce rates to the extent necessary to fill their vessels, and will accept rates that are offered by sailing vessels. While no tea has gone over the road's line by the route from Port Arthur to Chicago, the general manager of the Canadian Pacific Railway Company thinks there has been a little consignment of some other traffic, and mentions a small consignment of rice, but says the road had nothing to do with it. The road never uses the lake route in shipping merchandise from Asiatic points to lake ports in the United States. It has never used water transportation west of Montreal to the United States for American business.

The road in summer, by way of Montreal, takes flour originating at Minneapolis or St. Paul to points in England; but in the winter time that business goes by way of New York and Boston. There are no through rates made to interior inland points in Great Britain within the knowledge of the general manager of the Canadian Pacific Railway Company and as he testified before the Commission.

The ocean voyage from Yokohama to Vancouver is some six or seven hundred miles shorter than to other points. Vancouver is about eight hundred miles north of San Francisco. The advantage in summer by that route is about seven hundred and fifty miles and in winter about four or five hundred miles.

The rail rate from Vancouver to New York is sometimes one dollar per hundred pounds on tea and sometimes more and sometimes less than that rate. The highest rate ever known on tea was five cents a pound. The advent of the Canadian Pacific in connection with the steamer lines necessarily affected the business. The improved methods and new lines doing business were bound to cheapen the rates. The rates are uniform from Asiatic ports. The five-cent rate spoken of was before the Canadian Pacific was completed. The rail part of the through rate from Yokohama is the same without regard to the distance. The rate from Yokohama to Winnipeg, practically half way across the continent, would be just the same as from Yokohama to Montreal; and similarly the rates are just the same from Yokohama to Chicago as from Yokohama to New York by way of Chicago.

The general freight agent of the Pennsylvania Railroad Company testified in regard to this business in substance as follows:

The Pennsylvania Railroad Company makes through bills from foreign ports to interior American ports in connection with the Red Star Line, the International Line, the Inman Line that sails from Liverpool to New York and Philadelphia, and through the lines of the Baltimore Storage and Lighterage Company through Baltimore. The lines are from London, Swansea, Glasgow, Leith, etc.

Since the Act to regulate commerce went into effect the Pennsylvania Railroad Company has had a percentage arrangement with all these steamship lines. The railroad took four miles for the ocean carriage and gave one mile for that. For example, the distance from Liverpool to Philadelphia is 3,680 miles. The road calls that 920 miles for the ocean carriage. The road's distance from Philadelphia to

Chicago is 833 miles, so the ocean line received $\frac{930}{1758}$ while the railroad received $\frac{833}{1758}$.

The basis for establishing that percentage was the business for five years. It was found that if during these five years these percentages had been used in lieu of giving the ocean lines just what they did receive the result would have been substantially the same. The actual operations for the five years preceding were taken and formulated into an agreement percentage. This arrangement in reference to percentages continued up to September 30, 1889. Since that date the road has charged its full inland rates upon this import traffic. The effect on the road's business has been, as the steamship agents state, that it has considerably fallen off. The steamship lines have gone on to protect their customers against outside competition, but the railroad has stated to them positively that it would charge the full inland rate on the traffic and has done so. The steamship lines are now standing the competition at the foreign port notwithstanding this, and the railroad has not participated in said foreign competition.

The railroad only knows the rates as they apply from the seaport on the other side. The ocean lines take care of the interior rates on the other side. The steamship lines can hold on in meeting this competition at foreign ports only for a certain length of time, while the road maintains its full inland rates. It is only a question of time when they will be forced out.

The steamship lines have never assented to the road's charging its full inland rates, and have been making demands on the road for a proper division of the through rate. If it were definitely determined that the road was not at liberty to charge less than the full inland rate, the result would be that it would effectually close every steamship line sailing to and from Baltimore and Philadelphia.

The Canadian competition has been the most effective and vigorous this road has had from any of the lines. It is a fact, however, that the Baltimore & Ohio took freight on these through rates in addition to the Canadian lines. Some of

the other trunk-line roads got some of this import traffic, but they all claim they charged the full inland rate upon it.

While the steamship lines running to New Orleans must have some effect upon the road's rates to interior points, yet the road has never regarded that as serious competition. The rates to Chicago *via* New Orleans by the Harrison steamship lines are about the same as the Pennsylvania Railroad's rate *via* Philadelphia, and that is competition with the Pennsylvania Railroad. All the steamship lines running to New Orleans connecting with railroads for shipments to interior points are competitors of the Pennsylvania Railroad. The Pennsylvania Railroad Company gets very little import traffic through the port of New York, and all the import traffic that comes through the port of New York for other lines is in direct competition with the road's Philadelphia rate.

The Pennsylvania system has been carrying import traffic on through rates from foreign countries about seven or eight years, and those rates were not, when they originated, affected by any competition of the Canadian Pacific Railway.

If the inland rates were maintained from all ports there would not be any difficulty in holding such inland rates and in the ports respectively holding their business.

The reduced through rates by the Pennsylvania Railroad were made by the steamship agent in Liverpool to points as far west as the Missouri River, to points in the western country east of the Mississippi River, in Ohio, Indiana, etc. This through rate was made by the steamship's agents in Liverpool, because, being on the ground, they were familiar with the competition and with the requirements of the traffic and the road authorized them to make these through rates in competition with these conditions.

About forty or fifty million tons of tin plate are brought into the country by the lines of the Pennsylvania Railroad Company through the three ports of New York, Philadelphia, and Baltimore, and carried annually to the interior.

The Pennsylvania Railroad does not take this import traffic on the steamer classification, but takes it on rates per hundred pounds. The road has a classification—the regular trunk-line classification, the Official Classification. Pitts-

burgh, Erie and Harrisburg were not regarded as competitive points, and the authority given to the steamship agents to make rates to these points was not entirely called for by the competition with the Canadian route. Through the central and trunk-line territory there is one uniform classification, and that is the classification upon which the Pennsylvania Railroad has been uniformly carrying.

The Pennsylvania Railroad takes traffic from other lines than the ones which it has been heretofore operating with on the percentage basis. It gets freight from all lines in New York. Long before the enactment of the Interstate Commerce Law the great difficulty in the experience of this road in getting steamship lines to import freight to Baltimore was that these steamship lines were sailing in connection with Canadian lines—the Grand Trunk Roads—with which they could make arrangements for a reduction in the import rates on the business they gave to the Canadian roads. When the rates have been cut on import business it has been the experience of this company that the cuts have been inaugurated by the Canadian lines as a rule, as evidenced by the bills of lading under which the Old Dominion Line and other lines are taking freight by the Canadian railroads as well as general statements of steamship agents on the other side. The majority of the reduced rates have always been inaugurated by the Canadian lines for the last three or four years. The same condition of things pertains also to export business generally.

Among the bills of lading set out in the complaint is one dated June 17, 1889, on tin plate from Liverpool to Chicago, with a through rate of 24 cents, and the division would be about 12 for the rail and 12 for the ocean. The regular inland rate at that time was 28 cents from Philadelphia. Eleven cents from Philadelphia is a little less than three mills per ton per mile, and $33 per car. There is no money in carrying freight at less than three mills per ton per mile. No traffic, however, which the road carries can be considered alone by itself. Taking this traffic alone and by itself $2.20 per ton certainly did not pay the road, but furnished loading for empty cars. Separately by itself that rate hardly paid the cost of

transportation. During the time that the road carried import traffic at the reduced inland rate the rule was that so far as the traffic itself was concerned, and not considering it in relation to other things, it was carried at less than the cost of transportation.

The general freight agent of the Pennsylvania Railroad Company testified that in his opinion a fair fixed relation can be maintained between the inland tariff rate and the inland proportion of the through rate if the agents of the steamship lines in Liverpool would do substantially what the railroads had to do in New York, namely, get together and agree upon what are fair rates considering the competition, and every element that enters into the making of rates. But if the agents in Liverpool should not do this, but should remain engaged in active strife and competition by all the different shippers to get traffic for the interior lines of the United States to interior points, the rule would be that all lines running from the seaports to the interior would have to carry at low rates, scarcely paying, as above stated, the cost of transportation. In making these through rates, originally there was a differenee between carloads and less than carloads. The difference was the same as that made on the inland traffic and about approximately in the same proportion.

On these through rates which were in force prior to September, 1889, the ship did not have the option between space and weight on the Pennsylvania line. The Pennsylvania Railroad shipped entirely by weight. The steamship may take the traffic at measurement rates or weight, but when it reaches the Pennsylvania Railroad it is invariably reduced to cents per hundred.

The through import rates, in order to give information to shippers as well as to the general public interested in them, should be posted where the ship loads, say at Liverpool, for instance, for Liverpool traffic.

The general freight agent of the Pennsylvania Railroad further testified before the Commission that in his opinion the basis on which this business was conducted by the Penn-

sylvania Railroad, with the steamship lines was reasonable as between the shippers. He knew of no more equitable or reasonable adjustment as between the ocean and land carriers than that stipulated in the agreements on file with the Commission, and if this agreement were in force as to Atlantic ports there would be no difficulty in maintaining the rule of the fourth section of the Interstate Commerce Law, the long-and-short-haul clause. In other words, the through rate from the foreign port to the interior points of the United States could always be kept higher than to the interior shorter haul. The Liverpool rate could be kept higher than the rates from Philadelphia which is as it is now under the long-and-short-haul clause between Philadelphia and all interior points in the west.

Freight is taken from Savannah, Georgia, by boat to Baltimore for the west, say to Chicago. The Pennsylvania Railroad does not charge on that business from Baltimore to Chicago the same that it charges locally from Baltimore.

Since the order made by the Commission of March 23, 1889, the steamship connections of the Grand Trunk Railway have reduced the rate on imported traffic.

The same witness last mentioned gave this illustration of his view in regard to this through rate: Suppose we had a shipment from Trenton to Chicago at 30 cents per hundred pounds for queen's ware; say the ocean rate from the other side is 20 cents—that would make the through rate 50 cents as against 30 cents from Trenton. Now if the railroad company and the steamship lines should make a rate of 45 cents through it would not be a discrimination as against Trenton under these circumstances.

The practice of the Baltimore & Ohio Railroad Company, so far as import traffic from Europe is concerned, has been to bring enough heavy traffic in the steamers from Europe to get them into Baltimore for export business from Baltimore. The road, however, takes import business from New York and also from Philadelphia. The road gets 95 per cent. of its import business *via* Baltimore, and connects with five or six

regular lines of steamers plying to that port, namely: the Allan line from Liverpool, the Johnston from Liverpool, the Johnston Line from London, the Furness Lines from Antwerp, and what is known as the Dreassle Line from Rotterdam and Amsterdam.

The import freight carried by the road is very heavy, coarse goods from Liverpool, London and Glasgow. It is principally cement, crockery, earth paints and chemicals, and some iron ore. From the continent there is considerable of what is called "measurement goods;" that is, high-class goods. From 80 to 85 per cent. of this freight comes on through bills of lading. The arrangement the road has made with the steamship lines for the division of the through rate is as follows: The road demands an arbitrary on the business, as a rule, that will not give it less than 15 cents per hundred pounds to Chicago. It is at times prorated with the steamships, but the best prorate that it has ever given to the vessels is on the basis of 60 per cent. for the inland and 40 per cent. for the ocean rate. The competition which this road meets, especially on Liverpool business—which is the great point of competition in Europe—to interior points is by the Canadian lines, by the Erie Canal and by the Mississippi River. The general traffic manager of the Baltimore & Ohio Railroad Company testified before the Commission that, in his opinion, the rate by canal and lake from New York to Chicago given on this heavy traffic is the yard-stick by which all rates are measured and must be measured, between the seaboard and Chicago. The route the road comes in competition with at St. Louis and Kansas City is the route made up the Mississippi River by what is known as the barge line. The Canadian lines are the factors in making rates out of Liverpool. They have the largest number of competing lines.

From the Treasury Department Reports of Commerce and Navigation of the United States it appears that all the imports amount to $745,000,000, and the exports, $743,000,000. The tonnage cannot be arrived at unless by going through and compiling it on every article, which would be an interminable job. At Baltimore the exports are very much

heavier than the imports—probably quadruple. In money, Baltimore imports are about $15,000,000 worth; her exports are about $51,000,000 worth. New York imports are 63 per cent. of all the traffic that comes into the United States, and its exports are only about 43 per cent. In percentage, based on dollars, Baltimore brings in imports about 2 per cent.; its exports are about 8 per cent. of the total of the United States.

New York is above every other point for shipping. In the first place, the balance of exchange, the affiliations of the owners of vessels with branch houses in New York, the rapidity with which they can obtain a cargo, and the fact that so much traffic is bound to go to New York—this all makes New York the prime point for vessel tonnage from foreign ports. A vessel comes into New York with a lot of traffic to go through to Chicago; the canal boat comes alongside the vessel and takes in that traffic; then it goes to Buffalo and discharges into an Erie or New York Central steamship owned and controlled by one of those lines, and it goes through to Canada, beating the all-rail rate or the lake and rail anywhere from one to three dollars per ton, according to the sworn testimony of the general traffic manager of the Baltimore & Ohio Railroad.

The same witness testified that out of an invoice of three or four hundred cases of imported goods to New York only 25 or 30 cases were carried on to Chicago; the rest were jobbed in New York. The importers always want the option of the New York market, and there is hardly any inducement that can be offered them that can carry dry goods through any other port than the port of New York.

The Baltimore & Ohio Railroad Company, as a general rule, makes divisions as above stated with the steamship lines on the basis of 60 per cent. for the road and 40 per cent. for the steamer. But if that division carried the road below what it thought was a fair minimum rate for the road, and it can bring the steamship down lower, it would not prorate.

The rates of the Baltimore & Ohio Railroad are about the same with all steamer lines, but there are regular lines of

steamers that the road confers with and works with closer than outsiders. Those regular lines are the Bremen Line, the Allan Line, and the Johnston Line. They are all authorized to make through rates and give through bills of lading, provided they agree to the minimum charged by the road. If the road were required to charge the full inland rate on everything coming to the port of Baltimore it would simply have to go out of the import business.

The most interior points to which the Baltimore & Ohio Railroad makes through rates are St. Louis and points between St. Louis and Chicago, though very little to any of the latter points. The export and import business at Missouri River points is not a subject of competition between the ports of Baltimore and New Orleans. That business goes to New Orleans whenever the river wants it. It takes it upon a set of barges that brings that traffic up the river at an exceedingly low rate. The steamers take goods frequently on what they call "measurement," because they can make more money out of it than by taking by weight. But the inland proportion of the road is calculated on the weight.

The road gets on through rates on imported goods from Baltimore to Chicago 15 cents per hundred pounds, and where the road gets this 15 cents the through rate runs from 20 to 24 cents per hundred pounds.

The relative distances to New York, Philadelphia, Baltimore and New Orleans from French, German and English ports are as follows: Boston has the shortest line, there is very little difference between New York and Philadelphia; Baltimore is about a day or a day and a half longer; and New Orleans is the longest route of all.

The general traffic manager of the Baltimore & Ohio Railroad Company further testified before the Commission that since the Interstate Commerce law went into effect the import traffic through the different ports has been maintained as he thinks with better through rates from Europe than before. The rate from Liverpool to Chicago is certainly as high, if not higher, than before the Interstate Commerce law was enacted. Since said law went into effect Baltimore has hardly held her own as to imports; certainly they have not increased; but

she may have increased in exports. The regular inland tariff rates from New York, Baltimore and Philadelphia to interior centers like Chicago are at all times on the lower classes of goods as low as they can be carried at a profit; and take the average of the medium and high class goods the same is the case. On that class of goods on which the Baltimore & Ohio Railroad gets 15 cents out of the through rate to Chicago, the inland tariff rate is 22 cents. The through rates are made to Chicago, St. Louis and interior points, and, if necessary, to intermediate points. All the traffic the road handles on through bills of lading is in carload lots. The road seldom has a through bill of lading for less than fifty tons. Usually the joint tariffs between the road and the steamship lines are made verbally from day to day. There are no lists filed with the Commission.

Cincinnati is the southern outlet of the Baltimore & Ohio Railroad, and this road does no work on a through bill of lading south of the Ohio River; it has traffic south of that river, but gives a bill of lading only to Cincinnati. The witness knows no manufacturers who complain of being discriminated against by this through bill of lading. As a rule the road brings mostly raw material, which really goes to the manufacturers.

The Chicago & Grand Trunk Railway is an affiliated line practically controlled by the Grand Trunk Railway Company. It has a separate organization, separate capital and separate management, but is still under the same control, officered by the same persons, except the president and vice-president.

The Grand Trunk Railway of Canada extends to Portland, in Maine, as well as to Montreal, in Canada. Portland is entirely dependent upon the Grand Trunk for its ocean steamship service. It has no other, and that only during the winter season. Montreal business opens in the summer season from May to November.

The Grand Trunk Railway of Canada has had relations with Messrs. Allan since 1857 and they have been based upon the percentage principle. The road takes the ups and downs upon that principle and experience has shown it to be a fair

method of doing the business. But when the Interstate Commerce law came into operation the road ceased to apply the percentage principle in respect to United States traffic, and after the last ruling of the Interstate Commerce Commission made it necessary to charge the same rate from the seaport upon European as upon all other traffic, the road issued a tariff which is applicable to everybody. The latest tariff is that of May, 1890, and is called No. D. G. 13 Interstate Tariff, and it took effect May 1, 1890. In 1889 the road commenced a tariff based upon 22 cents, sixth class, without any special commodity tariff attached to it. The ocean steamship connections stated they could get no traffic on that basis. The second tariff was on the basis of 20 cents per hundred pounds. Still the road was told no traffic could be obtained. The road then came down to a 13-cent tariff and that is the present basis for sixth class—for the coarser kinds of goods. Special commodity rates are made upon both domestic and import traffic to enable our steamers to carry a portion of the traffic.

The Grand Trunk Railway of Canada is a member of the Trunk Line Association, and there is a uniform classification of the Trunk Line Association and the Central Traffic Association, and these special commodity classifications in the tariff of May, 1890, are excepted articles from said classification. It appears that these commodity tariffs have never been submitted to the commissioner of the Trunk Line Association for his action.

The general freight traffic manager of the Grand Trunk Railway of Canada testified before the Commission that the articles in said special commodity classification are substantially sixth-class articles of the Trunk Line Classification, and if the principles of the classification were adhered to it would necessitate the introduction of all articles of substantially similar character. On articles embraced in said commodity tariff shipments have been mostly through. To a comparatively small extent the shipments have been made through Portland and Montreal to United States points. The steamship connections of the Grand Trunk Railway Company of Canada carried traffic mainly for Canadian

points, although Canadian traffic comes through American ports to a large extent. The Grand Trunk Railway Company of Canada carries some American traffic. During the last season about 2,500 tons of tin plate from Portland were carried by it. There are thirty points in the United States running from Chicago to St. Louis, Louisville, Indianapolis and Pittsburgh to which the reduced commodity tariff applies. On articles outside of the commodity tariff the rates are applied on a basis of 65 cents a hundred for first class. Thirteen cents on sixth class is the rate the road has now got down to under this commodity tariff. Before that rate, the rate on sixth class was 22 cents.

THE CONCLUSIONS AND OPINION OF THE COMMISSION.

The language of section 1 of the Act to regulate commerce provides for a specific regulation of the subject involved in this controversy that cannot be more clearly and intelligibly stated than by quoting the section itself. That section is as follows:

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transhipment, *or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however*, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

So much of that portion of this section above quoted as refers to the subject of foreign commerce brought through a port of entry in the United States, or through a port of entry in a foreign country adjacent to the United States, in either

event destined to a place in the United States upon through bills of lading from the foreign port of shipment to the place of destination in the United States, is perhaps more readily comprehended if separately stated:

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment, . . . *or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.*"

In opening the debate on the 14th day of April, 1886, and explaining the bill for the information of the United States Senate, the chairman of the Senate Select Committee, in discussing this subject, said:

"While the provisions of the bill are made to apply mainly to the regulation of interstate commerce, in order to regulate such commerce fairly and effectively it has been deemed necessary to extend its application also to certain classes of foreign commerce which are intimately intermingled with interstate commerce, such as shipments between the United States and adjacent countries by railroad, and the transportation by railroad of shipments between points in the United States and ports of transshipment or of entry, when such shipments are destined to or received from a foreign country on through bills of lading. To avoid any uncertainty as to the meaning of these provisions in regard to what may be at the same time, in some instances, state and foreign commerce, it is expressly provided that the bill shall not apply to the transportation of property wholly within one State and not destined to or received from a foreign country."

As bearing upon the construction of these provisions of the first section of the Act to regulate commerce relating to foreign commerce, it is significant that, after this explanation of this section thus made by the chairman of the Senate Select Committee, in all the subsequent debates that followed there seems to have been no difference of opinion in regard to it in either House of Congress, and it was enacted literally as reported by the Senate Select Committee. Congress was here in clear, intelligible and terse language defining the field of transportation to be regulated, as well as the carriers who were to be supervised in the administration of the statute. That part of this field relating to foreign commerce was the

transportation of this commerce between the port of entry and place of destination upon the through bill of lading, such place of destination being in the United States, and such port of entry being either in the United States or in a foreign country adjacent to the United States.

Congress did not undertake to regulate its transportation on the high seas, nor at the foreign ports of shipment, nor in the foreign country adjacent to the United States. But in the one instance, as soon as that commerce is brought through a port of entry in the United States upon a through bill of lading destined to a place in the United States, and is taken into the United States by a rail carrier or by a carrier part rail and part water, for transportation to its place of destination, it then comes within the jurisdiction of the Act to regulate commerce. And, in the other instance, when that commerce upon a through bill of lading destined to a place within the United States, comes through a port of entry in an adjacent foreign country, and is brought within the territorial jurisdiction of the United States, it then becomes subject to the regulation of the Act to regulate commerce. Several reasons are obviously manifest why this regulation was so provided by Congress in each of these instances. In the first place, it is the purpose of the Act that the carriage of such foreign freight from a port of entry in the United States to a place within the United States upon a through bill of lading shall not be left open and free from regulation, so that it may be given a preference in transportation over other traffic originating in the United States and destined for carriage to a place within the United States, or that one shipper or dealer may have a preference in rates or facilities in the carriage of such foreign merchandise over other dealers, in the carriage of their freight originating in the United States and carried to a place within the United States. In the next place, it is a purpose of the statute, equally clear as to the other class of foreign freight, that carriers bringing it from a port of entry in an adjacent foreign country to a place within the United States shall not be permitted to violate the provisions of the Act to regulate commerce as against consignees, dealers, and localities in the United States, nor as

against competing American carriers engaged in like business of transporting freight from a port of entry in the United States to a place of destination in the United States upon a through bill of lading. Other reasons might be named, but these are deemed sufficient for the purposes of this report and opinion. But in every such case the jurisdiction conferred by the statute, whether in the one or the other of these instances, legitimately extends the inquiry and scope of investigation to every device, way, or means by which any such violation is attempted or done.

The power of Congress to enact such legislation has always been deemed plenary, under the grant contained in section 8 of article I. of the Constitution of the United States, and requires no discussion now. Between the parties to this contention there is no difference of opinion that the importation of traffic on through bills of lading by continuous carriage—ship and rail—from the ports of Europe or other foreign countries to points within the United States is a transportation the regulation of which is provided for by the Act to regulate commerce. The differences between them indicated in this contention relate to the methods of such regulation, the extent of that regulation and the operation of the statute in regard to it.

There are various features of this business as done that place it upon very peculiar grounds. It appears that the business itself has been done by the carriers engaged in it for a period of about eight years. The principal articles imported are teas, tin plate, soda caustic, wines and liquors, and a list of general merchandise which in itself is not large. The business itself is not a very large one, though it has increased considerably during the period since it commenced, and is of sufficient amount to make it an object to American rail carriers to obtain the revenue from it if they can.

On the 23d of March, 1889, the Commission, by a general order of that date, issued to the carriers engaged in interstate commerce and subject to the provisions of the statute, which, amongst other things, directed that—

"Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff covering other freights."

The statement of the pleadings and the material facts found in the present proceeding show by what carriers this order has been obeyed and by which of them it has not been obeyed, and upon what grounds these last justify their action in this respect. A repetition of the names of these carriers in each instance is unnecessary, as this has been shown in a foregoing part of this report. That general order was not made upon any contention of parties, in which the Commission had the benefit of all the evidence now adduced in this controversy, or of the light thrown upon the subject by the discussions of able and experienced counsel, but the Commission, from serious consideration then and before that time given to this subject, was informed that there were a few of the interstate carriers who did this kind of business, though upon a very small scale compared to their whole business. That order also embraced other important subjects besides this of import rates. After that order was made and published by the Commission for the information and guidance of the carriers, shippers and dealers, it was supposed by the Commission that if any of the carriers found that the order was one which injured them in that business, or that it operated to the detriment of importers, or that, on the other hand, it was not observed by the carriers, to the injury of domestic producers and dealers, in either event complaint would be made to the Commission by the one or the other of these several classes for a modification of the order. But no such complaint has been made until that which is presented in this proceeding.

In consequence of the constant and frequent fluctuation of ocean rates, and the fact that shipments of this kind are neither large nor regular from foreign countries, except it be teas from Japan and China, and tin plate, it has been found to be the experience of carriers engaged in it that joint tariffs between the steamships and the rail carriers, framed, published, and maintained as required by the provisions of the

Act to regulate commerce, have, up to this time, been found to be impossible in the nature of things. The port of entry at which the nearest approach in some respects to a tariff meeting the requirements of the Act to regulate commerce has been in force, has been at New Orleans between the rail line of the Southern Pacific Company and its steamship connections. We refer here, of course, to those carriers not complying with the Act. But even in this instance, the general traffic manager of that company candidly admitted in testifying before the Commission that if it was discovered that any important change was rendered necessary in the joint tariff of that company and its steamship connections in regard to the rates for freight upon any articles, that the change was made at once by the general freight agent of his company at New Orleans and the agent of the steamship company at that port, and put into immediate effect without giving the notice required by the statute, and that they could not do the business any other way. The Southern Pacific Company filed the joint tariffs of that company and its steamship connections engaged in this carrying trade with the Interstate Commerce Commission, but changes in these joint tariffs were made in the manner above indicated and then reported to the Commission. Besides, greatly lower rates are charged by this company on foreign merchandise from the port of entry to the point of destination in the United States than upon like traffic under its inland tariff between these same points. In the case of the Louisville, New Orleans & Texas Railway Company the tariffs are not made up except upon each consignment and not reported to the Commission until after the consignment has become known to the railroad company. Joint tarfffs of other railway companies engaged in this business, if such exist, have not been filed with the Commission as provided by the statute. The excuse made for this has been, as already stated, the impracticability of making and maintaining and publishing joint tariffs as is required by the statute in the publication, maintenance and filing of these with the Commission. It seems that the method adopted by rail carriers engaged in this business has been, with the exception of the Southern

Pacific Company, that the rates are made absolutely by the agents of the steamship company in foreign countries, and the railway carriers accept them, whatever they may be. The entire transportation rate between vessel and rail carriers is divided between them upon certain agreed proportions in all this business.

One of the most important features of the Act to regulate commerce is the provisions of that statute for the publicity of rates and the maintenance of them as required by it. In the case of imported traffic it appears that these features of the statute would, as to the business shown to be done in this case, be in many vital respects impossible of application. A place at which it would seem that joint rates made under the requirements of the Act to regulate commerce should always be published for the information of shippers, would be at the place of origin of the freight, in order that shippers might know what the rates were. It appears from the evidence in this case that this can not be done in the foreign ports on account of the rapid fluctuation of rates, and that it would be destructive of the competition which prevails in making them at those ports. And, besides, there is no law that requires it at such foreign ports.

The provisions of the statute relating to the carriage of passengers or freight over continuous lines or routes operated by more than one common carrier require that copies of joint tariffs of rates or fares, or charges for such continuous routes, shall be filed with the Commission. The Commission has no power to suspend the provisions of the statute relating to this or to the manner in which advances and reductions shall be made in them and reported to the Commission. In these respects the statute is inexorable. In section 6, amongst other things, it is provided that—

"Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases

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

And further that—

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

And in addition to this, that—

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

And again that—

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of *mandamus*, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and, if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the

provisions of this Act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, *or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.*"

The power with which the Commission is clothed by this section "from time to time to prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published," was first exercised by the Commission in a general order directed to the carriers dated June 21st, 1887, as follows:

"Joint tariffs of rates, fares or charges, established by two or more common carriers for the transportation of passengers or freight passing over continuous lines or routes, copies of which are required by the sixth section of the 'Act to regulate commerce' to be filed with the Commission, shall be made public so far as the same relate to business between points which are connected by the line of any single common carrier required by the first paragraph of said section to make public schedules of its rates, fares and charges. Such joint tariffs shall be so published by plainly printing the same in large type of at least the size of ordinary 'pica,' copies of which shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station upon the line of the carriers uniting in such joint tariff where any business is transacted in competition with the business of a carrier whose schedules are required by law to be made public as aforesaid."

And subsequently, as to the publication of such joint tariffs and of advances and reductions in such joint tariffs, the Commission made an order as recited in its order of March 23, 1889, to the effect that—

"All advances and reductions in joint rates, fares and charges shown upon joint tariffs established by common carriers subject to the provisions of the Act to regulate commerce shall be made public.

"Every such advance or reduction shall be so published by plainly printing the same in large type, two copies of which shall be posted for the use

of the public in two public and conspicuous places in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation under such schedules, in such form that they shall be accessible to the public and can be conveniently inspected. Such schedules shall be so posted ten days prior to the taking effect of any such advance and three days prior to the taking effect of any such reduction in joint rates, fares and charges."

The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.

In the case of all the various articles that are the subject of import, the basis of division between the rail and water carriers, which will be seen in some respects to vary between the different carriers, will be found stated in the preceding part of this report and opinion, and it is not necessary nor material to repeat them here.

In every instance of those carriers not complying with the order of the Commission of March 23d, 1889, it will be observed that the inland proportion of the through rate charged by the rail carrier on this imported traffic is largely less than the rate charged by it on other freight carried by it under the inland tariff over the same line from the port of entry to the place of destination in the United States. The rail carriers defend this on the ground that the rates are made in foreign countries under circumstances and conditions of competition that are wholly dissimilar to those surrounding the rates upon articles of domestic manufacture in the United States; and further, that in this case, as in the case of other through rates upon property, if transported from one place in the United States to another, the percentages of the through rates between points along the line may well be justly lower than the local rates between the same points, and therefore that this principle should govern as to the inland or rail proportion of the through transportation rate on imported traffic between the port of entry and the

place to which the freight is carried by the rail carrier in the United States. But the statute has made the two cases clearly distinguishable.

The Statute has provided for the regulation of interstate traffic by interstate carriers, partly by rail and partly by water or all rail, shipped from one point in the United States to another destination within the United States, or from a point of shipment in the United States to a port of entry within the United States or an adjacent foreign country, or from a port of entry either within the United States or in an adjacent foreign country, on import traffic brought to such port of entry, from a foreign port of shipment and destined to a place within the United States. In providing for this regulation the Statute has also provided for the methods of such regulation by publication of tariffs of rates and charges at points where the freight is received and at which it is delivered, and also for taking into consideration the circumstances and conditions surrounding the transportation of the property. The Statute has undertaken no such regulation from foreign ports of shipment to ports of entry either within the United States or to ports of entry in an adjacent foreign country, and as between these ports has provided for no publication of tariffs of rates and charges, but has left it to the unrestrained competition of ocean carriers and all the circumstances and conditions surrounding it. These circumstances and conditions are indeed widely different in many respects from the circumstances and conditions surrounding the carriage of domestic interstate traffic between the States of the American Union by rail carriers; but as the regulation provided for by the Act to regulate commerce does not undertake to regulate or govern them, they cannot be held to constitute reasons in themselves why imported freight brought to a port of entry of the United States or a port of entry of an adjacent foreign country destined to a place within the United States should be carried at a lower rate than domestic traffic from such ports of entry respectively to the places of destination in the United States over the same line and in the same direction. To hold otherwise would be for the Commission to create exceptions to the operation of the

Statute not found in the Statute; and no other power but Congress can create such exceptions in the exercise of legislative authority.

In the one case the freight is transported from a point of origin in the United States to a destination within the United States, or port of transshipment, if it be intended for export, upon open published rates, which must be reasonable and just, not unjustly preferential to one kind of traffic over another, and relatively fair and just as between localities; and the circumstances and conditions surrounding and involved in the transportation of the freight are in a very high degree material. In the other case the freight originates in a foreign country, its carriage is commenced from a foreign port, it is carried upon rates that are not open and published, but are secret, and in making these rates it is wholly immaterial to the parties making them whether they are reasonable and just or not, so they take the freight and beat a rival, and it is equally immaterial to them whether they unjustly discriminate against surrounding or rival localities in such foreign country or not. Imported foreign merchandise has all the benefit and advantage of rates thus made in the foreign ports; it also has all the benefit and advantage of the low rates made in the ocean carriage arising from the peculiar circumstances and conditions under which that is done; but when it reaches a port of entry of the United States, or a port of entry of a foreign country adjacent to the United States, in either event upon a through bill of lading, destined to a place in the United States, then its carriage from such port of entry to its place of destination in the United States under the operation of the Act to regulate commerce must be under the inland tariff from such port of entry to such place of destination covering other like kind of traffic in the elements of bulk, weight, value, and of carriage; and no unjust preference must be given to it in carriage or facilities of carriage over other freight. In such case all the circumstances and conditions that have surrounded its rates and carriage from the foreign port to the port of entry have had their full weight and operation, and in its carriage from the port of entry to the place of its destination in the United States, the

mere fact that it is foreign merchandise thus brought from a foreign port is not a circumstance or condition under the operation of the Act to regulate commerce which entitles it to lower rates or any other preference in facilities and carriage over home merchandise or other traffic of a like kind carried by the inland carrier from the port of entry to the place of destination in the United States for the same distance and over the same line.

The term "a like kind of traffic," as found in section 2 of the Act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference. The words "service rendered" and "a like and contemporaneous service," and "under substantially similar circumstances and conditions," as these occur in that section, together with the method of classification of freights as it is done by the railroads, which is recognized in the sixth section of the statute, all point to this construction. Each of these are controlling and important words of the Statute used in immediate connection with the subject of transportation and cannot be overlooked in arriving at the meaning of the Statute.

The first clause of the 3d section of the Act to regulate commerce also contains provisions bearing with more or less force upon the several questions involved in this proceeding. Its language is as follows:

"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."

One paramount purpose of the Act to regulate commerce, manifest in all its provisions, is to give to all dealers and shippers the same rates for similar services rendered by the carrier in transporting similar freight over its line. Now, it

is apparent from the evidence in this case, that many American manufacturers, dealers and localities, in almost every line of manufacture and business, are the competitors of foreign manufacturers, dealers and localities, for supplying the wants of American consumers at interior places in the United States, and that under domestic bills of lading they seek to require from American carriers like service as their foreign competitors in order to place their manufactured goods, property and merchandise with interior consumers. The Act to regulate commerce secures them this right. To deprive them of it by any course of transportation business or device is to violate the Statute. Such a deprivation would be so obviously unjust as to shock the general sense of justice of all the people of the country except the few who would receive the immediate and direct benefit of it.

On the 10th of August, 1888, the Parliament of Great Britain enacted a statute known as 51 and 52 Victoria, chapter 25, entitled "An Act for the Better Regulation of Railway and Canal Traffic, and for Other Purposes," in which, amongst other things, it was provided "that no railway company shall make, nor shall the court or the commissioners sanction any difference in the tolls, rates or charges made for, or any difference in the treatment of, home and foreign merchandise in respect to the same or similar service." The Act to regulate commerce will be examined in vain to find any intimation that there shall be any difference made in the tolls, rates, or charges for, or any difference in the treatment of home and foreign merchandise in respect to the same or similar service rendered in the transportation when this transportation is done under the operation of this statute. Certainly it would require a proviso or exception plainly engrafted upon the face of the Act to regulate commerce before any tribunal charged with its administration would be authorized to decide or hold that foreign merchandise was entitled to any preference in tolls, rates, or charges made for, or any difference in its treatment for, the same or similar service as against home merchandise. Foreign and home merchandise, therefore, under the operation of this statute,

when handled and transported by interstate carriers, engaged in carriage in the United States, stand exactly upon the same basis of equality as to tolls, rates, charges and treatment for similar services rendered.

The business complained of in this proceeding is done in the shipment of foreign merchandise from foreign ports through ports of entry of the United States, or through ports of entry in a foreign country adjacent to the United States, to points of destination in the United States, upon through bills of lading; and hence, in our construction of the Statute and discussion of the questions involved, we have endeavored to keep prominent the facts shown by the evidence, and in this way may have appeared to lay much stress upon the term "through bills of lading." But under our view of the Statute, the result would not be different if this business was done otherwise than upon through bills of lading.

There is a feature of this case relating to the original respondents, The Pennsylvania Railroad Company, The Pittsburgh, Fort Wayne & Chicago Railway Company, and the Pittsburgh, Cincinnati & St. Louis Railway Company, upon the facts, that is different from that of the other respondents and deserves to be separately noticed.

The contracts of the Pennsylvania Railroad Company and the International Navigation Company referred to in the complaint have been on file in the office of the Interstate Commerce Commission ever since the 14th day of April, 1887, and were so filed by the Pennsylvania Railroad Company. These were produced at the hearing of this proceeding and were put in evidence. The first of these is dated October 10, 1884, to continue in effect until January 1, 1891, after which it may be terminated upon one year's previous written notice by either party to the other of a desire that it shall end, at the expiration of which notice it shall cease and determine. The second of these is dated January 13, 1886, and is an amendment of the 3d and 9th sections of the original, and provides that it shall continue until July 1, 1891. The substance of this original and amended contract provides that the railroad company and the steamship company agree to "co-operate each with the other to secure and encourage

joint through traffic by issuing, at competitive rates, through bills of lading and through passenger tickets between Philadelphia and Liverpool and between New York and Liverpool, and between Philadelphia or New York and Antwerp, and by giving due publicity to said connection and facilities in their cards, handbills and advertisements; and each party shall in good faith exert itself through its agents to secure and promote such traffic. On all joint through freight and passenger traffic the parties hereto agree that they will charge and accept as low rates as they currently charge and obtain on like business between similar points, after deducting all rebates and allowances of every kind." It then provides for the establishment and use of piers, and for the loading, unloading and shifting of cars, and the prices that each is to receive for the services rendered in loading and unloading freight interchanged between them.

The 5th clause provides for what the railroad company shall receive for the transportation of freight and passengers transported by it to the steamship company or received by it from the steamship company, and is in these words:

"The railroad company agrees that in determining the railroad rates to and from Philadelphia which it shall receive on all interchanged freight traffic, they shall not exceed the aforesaid lowest rates currently charged and obtained to and from New York, after deducting from said lowest New York rates the current public agreed difference between New York and Philadelphia rates, which difference it is agreed under this contract shall not be rated less than the present difference of two cents per hundred pounds. In determining the rates on interchanged passenger business to and from Philadelphia which the railroad company shall receive, it is agreed they shall not exceed eighty per centum of the lowest rates currently received by the railroad company as its *pro rata* between Pittsburgh and New York on like business to and from New York."

The remaining provisions of the contract provide for the establishment of agencies to solicit business; how it shall be determined which is liable for loss or injury to property or passengers, the railroad company or the steamship company; that joint bills of lading shall be issued, mutually approved by the parties, and statements and particulars of joint traffic shall be submitted to each other, and the accounts thereof

settled by the agents of the parties, and the balances found to be due by the parties respectively to each other shall be paid monthly to the party entitled to receive the same; and that in case of doubt, question, difference, cause of suit, all such matters shall be settled by arbitration in the manner provided by the contract.

At the date of the contract the Pennsylvania Railroad Company had a line from Pittsburgh to Philadelphia; and hence the allusion in the fifth section of the contract to rates currently received by the railroad company as its *pro rata* between Pittsburgh and New York on like business to and from New York.

It was so obvious that this contract did not establish the matters involved in this complaint that it was not even alluded to in the briefs or arguments of any or either of the counsel of any of the complainants, or in the briefs and arguments of any of the counsel for the respondents, between some of which respondents and the Pennsylvania Railroad Company considerable feeling was evinced in the course of the hearing. This contract provided for no aggregate through rate; it provided for no division of such aggregate through rate stating what percentage should be received by the railroad company and what percentage should be received by the steamship company. And as the through bills, copies of which were set out in the complaint, were all issued during the year 1888 and prior to the order of this Commission of March 23, 1889, and upon freights brought by the American Line of steamships to Philadelphia, the course was then taken to prove by the general freight agent of the Pennsylvania Railroad Company what the joint through rates had been and the manner in which these had been divided between the Pennsylvania Railroad Company and the other lines composing its system and the steamship companies, and it was proven by his evidence that a practice had existed between them of making these through rates upon percentage divisions with steamship lines generally at New York and Philadelphia by which the railroad company carried and imported freight over its own lines from the port of entry to destination at largely less than its inland rates upon similar

freight originating at Philadelphia or other ports of entry, but that this practice had been abandoned on the 30th day of September, 1889, according to previous notice given by him to that effect in December, 1888, and that since the 30th of September, 1889, all import traffic had been carried by the company at the same rates on its inland tariff for all other similar traffic from ports of entry to place of destination.

After all this, when the counsel for the New York Board of Trade and Transportation in his brief and argument, in compliance with a rule of practice of the Interstate Commerce Commission, submitted to the Commission "the findings of fact" which he proposed the Commission should find in this case, and referring to the Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company and the Pittsburgh, Cincinnati & St. Louis Railway Company, he used this language: "The three latter roads ceased the practice on October 15, 1889, as they allege, and there is no proof to the contrary." It thus appeared in the proof without controversy that several months before this proceeding commenced these three defendants had abandoned this practice.

As a matter of fact it has been the well-known and established practice of this Commission in administering the provisions of the Act to regulate commerce, from the time of its organization, that, in cases where a carrier has abandoned a practice deemed unlawful or questionable prior to the commencement of proceedings against it, or at any time even before the hearing of such proceedings when commenced, and is obeying the law as construed by the Commission, the Commission will make no order against it to cease a practice which it had already abandoned, because such order would be vain and useless, and the Statute does not require it. In changing long-established methods of business, existing prior to the enactment of the Statute, in order to comply with its provisions on the part of carriers and their agents, it was seen by the Commission that things of this kind would occasionally occur, and the purpose of the Commission was to have the carriers in the course of administration conform their methods to the requirements of the Statute with as little

delay as possible, and work in harmony with its provisions for the welfare of the public as well as for their own good. See The Manufacturers and Jobbers Union of Mankato *v.* The Minneapolis & St. Louis Railway Company and others, 1 I. C. C. Rep. 227, 1 Inter. Com. Rep. 630; The Lincoln Board of Trade *v.* The Burlington & Missouri River Railroad Company in Nebraska and others, 2 I. C. C. Rep. 147, 2 Inters. Com. Rep. 95; Second Annual Report of the Interstate Commerce Commission; The Pennsylvania Company *v.* The Louisville, New Albany & Chicago Railway Company and others, 3 I. C. C. Rep. 223, 2 Inters. Com. Rep. 603; The Lincoln Board of Trade *v.* The Union Pacific Railway Company, 3 I. C. C. Rep. 221, 2 Inters. Com. Rep. 101; The American Wire Nail Company *v.* Queen and Crescent Fast Freight Line, 3 I. C. C. Rep. 224, 2 Inters. Com. Rep. 604; Rawson *v.* The Newport News & Mississippi Valley Company, 3 I. C. C. Rep. 266, 2 Inters. Com. Rep. 626; Holbrook *et al. v.* The St. Paul, Minneapolis & Manitoba R. R. Co., 1 I. C. C. Rep. 103, 1 Inters. Com. Rep. 323.

In such a case it has always been presumed by the Commission that the abandonment of the practice by the carrier was done in good faith and would be so considered until something to the contrary occurred. So well known were these rules of the Commission by the learned counsel for the complainants and respondents that, after the evidence was all in from which it appeared, amongst other things, that the Pennsylvania Railroad Company had abandoned this practice on the 30th of September, 1889, according to previous notice long given, and since that time had been complying with the order of the Commission of March 23, 1889, none of them insisted in any of their briefs and arguments that any order should now be made against it.

The method by which the Grand Trunk Railway Company of Canada complied with the order of the Commission above referred to of date March 23, 1889, was to select a few articles, all of which were imports, and to put them into what was called a "commodity class" at largely reduced rates, for example, from Montreal, Canada, and Portland, Maine, to Chicago, Illinois, and a large number of other United States points, over

their lines, and from Chicago and the same other United States points to Montreal and Portland. The following table will show a list of these articles, the classifications from which they were taken, the rates they bore in each of these classifications and the rates they now bear in the commodity class:

To Chicago.		From Montreal.		From Portland.	
Articles.	Official Class'n Class.	Class Rate.	Commodity Class Rate.	Class Rate.	Commodity Class Rate.
Bleach	6	22	13	22	13
Blooms	6	22	13	22	13
Billets	6	22	13	22	13
Brick	6	22	13	22	13
Cement	6	22	13	22	13
Clay	6	22	13	22	13
Galvanized iron	5	26	13	26	13
Granite, sandstone	5	26	13	26	13
Pig iron, scrap iron or steel, speigle iron	6	22	13	22	13
Puddled bars	6	22	13	22	13
Soda (ash and caustic)	6	22	13	22	13
Soda, silicate	6	22	13	22	13
Soda, bi-carbonate	4	31	13	31	13
Tin plate	5	26	13	26	13
Salt	6	22	13	22	13
Wire rods	5	26	13	26	13
Nail rods	5	26	13	26	13
Sheet lead	4	31	13	31	13
Whiting	6	22	13	22	13

The above table is made from the commodity tariff of the Grand Trunk Railway Company of Canada from Portland, taking effect November 25, 1889, and continuing in effect until May 26, 1890; and from tariff of the same company from Montreal, taking effect May 1, 1890, and continuing in effect until November 25, 1890.

The present classification of above articles has been practically in effect since April 1, 1887, except the commodity class rate, which was first put in effect by the Grand Trunk Railway Company of Canada in its tariff taking effect July 27, 1888, from Montreal to United States points. Afterwards, by the same company, it was put in effect from Portland to a large number of United States points, taking effect November 25, 1889. Again it was put into effect May 1, 1890, by the same company from Montreal to United States points hereinafter named. The Grand Trunk Railway Company has

been a member of the Trunk Line Association for more than ten years, and is still a member of that association. With the exception of the Grand Trunk Railway Company of Canada, the Trunk Line Association is made up exclusively of American rail carriers. In each of the above tariffs of the Grand Trunk Railway of Canada, and as part of each of them, the entire numbered classes, 1st, 2d, 3d, 4th, 5th, and 6th, of the current Trunk Line Classification and tariffs of rates to the United States points herein named, are also made parts of these tariffs, except as changed by the commodity class rates above stated.

The tariff of July 27, 1889, is made from Montreal to the following United States points:

Chicago, Ill.	Louisville, Ky.
Haskells, Ind.	Indianapolis, Ind.
Milwaukee, Wis.	Cincinnati, Ohio.
St. Paul, Minn.	Toledo, Ohio.
Minneapolis, Minn.	Jackson, Mich.
Grand Haven, Mich.	Detroit, Mich.
Grand Rapids, Mich.	Port Huron, Mich.
Ludington, Mich.	East Saginaw, Mich.
Muskegon, Mich.	Bay City, Mich.
East St. Louis, Ill.	Buffalo, N. Y.
St. Louis, Mo.	Pittsburgh, Pa.

The tariff of the Grand Trunk Railway Company of Canada taking effect November 25th, 1889, was from Portland to the following United States points:

Chicago, Ill.	Toledo, Ohio.
Haskells, Ind.	Jackson, Mich.
Milwaukee, Wis.	Detroit, Mich.
Grand Rapids, Mich.	Port Huron, Mich.
Grand Haven, Mich.	East Saginaw, Mich.
Ludington, Mich.	Bay City, Mich.
Muskegon, Mich.	Buffalo, N. Y.
East St. Louis, Ill.	Rouse's Point, N. Y.
St. Louis, Mo.	Fort Covington, N. Y.
Louisville, Ky.	Bombay, N. Y.
Indianapolis, Ind.	Helena, N. Y.
Cincinnati, Ohio.	Massena Springs, N. Y.

In order to appreciate how the tariffs are made and withdrawn and then made again, respectively from Portland, Maine, to United States points, and from Montreal, Canada, to United States points, it is necessary to remember that Portland, Maine, is the winter port at which the Grand Trunk Railway Company of Canada makes connection with the steamship lines, usually from during the month of November to during the month of May following; and Montreal, Canada, is the summer port at which the Grand Trunk Railway Company of Canada meets its steamship connecting lines, usually from during the month of May to during the month of November following.

This tariff of the Grand Trunk Railway Company of Canada, taking effect May 1, 1890, is upon shipments from Montreal to the following United States points:

Chicago, Ill.
Haskells, Ind.
South Bend, Ind.
Milwaukee, Wis., *via* Grand Haven.
Milwaukee, Wis., *via* Ludington.
Milwaukee, Wis., all rail.
St. Paul, Minn.
Minneapolis, Minn.
Grand Rapids, Mich.
Grand Haven, Mich.
Ludington, Mich.
Muskegon, Mich.
East St. Louis, Ill.
St. Louis, Mo.
Louisville, Ky.
Indianapolis, Ind.
Cincinnati, Ohio.
Toledo, Ohio.
Jackson, Mich.
Detroit, Mich.
Port Huron, Mich.
Battle Creek, Mich.
East Saginaw, Mich.
Bay City, Mich.
Buffalo, N. Y.
Black Rock, N. Y.
Suspension Bridge, N. Y.
Pittsburgh, Penn.

This commodity rate class tariff, with the other classes from which the above table has been compiled, was issued by the Grand Trunk Railway of Canada, to take effect May 1, 1890, and is numbered $\frac{D}{G\ 18}$ from Montreal, Canada, to Chicago, Ill., and twenty-five other named points in the United States. It expressly provides that "these rates are subject

to the Official Classification, except where otherwise provided for, and to the rules and regulations of carriage of the Grand Trunk Railway Company of Canada." The only exception provided by this tariff from the Trunk Line Classification and rates is the commodity class rate. It thus adopts and enforces the Trunk Line Classification and rates as its own classification tariff rates on all other traffic to all the above-named United States points except that named in this commodity class. It further provides that the special commodity rates will apply on shipments of the articles named in the commodity class in carloads of 24,000 pounds or over. The rates are the same from Portland, Maine, for example, to Chicago that they are from Montreal, Canada, to Chicago. The rates named in class 6 of the Trunk Line Classification applying to all the articles in that class are also based upon carload quantities of 24,000 pounds or more.

The effect of this commodity class is that upon the fourteen articles selected by it out of the sixth class and placed in its commodity class, the rate upon these fourteen articles, for example, from Portland to Chicago or from Chicago to Portland, or from Montreal to Chicago, or from Chicago to Montreal, is 13 cents per hundred pounds, while the several hundred articles with which these have been classed in the sixth class prior to and since the order of the Commission of March 23, 1889, and now, are charged 22 cents per hundred pounds for the same service in carrying them. The reduction made as to the few articles taken out of the fifth class, and the two articles taken out of the fourth class, will sufficiently appear by the figures in the above table. To the other twenty-five United States points, the respective rates, sixth class and commodity class are, more or less as the case may be, according to distance, but the differences between them are proportionately about the same as to Chicago.

It appears that it has long been a standing rule of the Trunk Line Association, of which the Grand Trunk Railway Company of Canada is a member, that all commodity classes shall be submitted to the Commissioner of the Trunk Line Association before being put out; but from some cause it appears that this was not done in the case of this commodity

class in the three tariffs of the Grand Trunk Railway of Canada taking effect July 27, 1889, November 25, 1889, and May 1, 1890. This circumstance is referred to only as showing the history of this commodity class rate and how it originated. The Grand Trunk Railway Company of Canada is an actively competing line with the American railway carriers, members of the Trunk Line Association, for the carriage of these imported articles and other articles with which they are classed in sixth class, from ports of entry to Chicago and other United States points named, and from Chicago and other United States points named to such ports of entry respectively. It is insisted by the Grand Trunk Railway Company that, inasmuch as it has the right to make its own tariffs and charge its own rates, it is no violation of law for it to do this; and that it did this in order to comply with the order of the Commission of the 23d of March, 1889, and to hold its import traffic business to ports of entry; and that it is a compliance with that order.

A large latitude must undoubtedly be allowed a carrier in framing its classifications and rates to meet the peculiar exigencies of business along its own line; and when we say exigencies, we mean the circumstances and conditions surrounding such business. But assuming, as a matter of fact, for the purposes of this opinion, upon all the evidence in this case, that the rates upon the several hundred articles named, for example, in sixth class, are just and reasonable—and certainly the Grand Trunk Railway Company would seem to be committed to this proposition, because it charges these rates upon these articles and so publishes them in its tariffs alongside these commodity class rates—we are then confronted with the further fact that this company has selected from that class a few enumerated articles, placed them in what is called a "commodity class," and largely reduced the rates upon them, and then we find the further fact that the articles thus selected by it are each and all articles of import traffic, and we are brought to another fact, that the Grand Trunk Railway Company of Canada did this in order to hold its import traffic and to have the inland rates upon the few articles named in its commodity class the same upon its in-

land tariffs from ports of entry to destination, whether these were carried as imports or as other traffic—the fact being that these commodity rate articles carried by it are imported traffic, and there being no carriage by it of the same articles under its commodity class rates which are not import traffic.

The Act to regulate commerce, amongst other things, distinctly provides in the second section that a preference of one kind of traffic over another of a like kind, and transferred under substantially similar circumstances and conditions and between the same points, over the same line, must not be given. And, again, the third section of the Statute provides that it shall be unlawful to make or give any undue or unreasonable preference to any particular description of traffic or to subject any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. In the case of Martin *v.* The Southern Pacific Company and others, 2 I. C. C. Rep. 1, 2 Inters. Com. Rep. 1, this Commission held that a violation of the fourth section of the Act can be accomplished by differences in classification as well as by differences in tariff rates. The Commission is strongly committed in various cases to the doctrine that unjust discrimination may be perpetrated by differences in classification just as well as in any other way. And it is equally true that unlawful preference or unlawful prejudice to a particular class of traffic or to a locality or to a shipper may be reached or may be accomplished by differences in classification as well as by any other method.

Now, here, as a matter of fact, this carrier, as the proof shows, arranged a method of complying with the order of the Commission of March 23, 1889, to the effect that certain articles of import traffic should be carried to destination from the port of entry and *vice versa* at the same rates upon the inland tariff. And it does this, not by taking all traffic of a like class with the import traffic and carrying all at the same rate, or indeed a considerable number of articles of that class, but it selects out of a large number of articles of the same class, a few of which are peculiarly the subject of import, places these in what is called a commodity class, makes very large reductions upon them, while it holds all other articles

of the same class transported over the same line and between the same points at the regular class rate, which is much higher. It had previously long shown, and it does not deny now, as its traffic manager testified in this proceeding, that according to the strict principles of classification the rates should be the same upon the articles it had put in the commodity class, that they are upon the large number of other articles in the sixth class. It had for many years always admitted and acted upon the rule in its business methods, up to July 27, 1889, November 25, 1889, and May 1, 1890, that the few articles selected by it and placed in the commodity class are articles of "a like kind of traffic" with those in the regular numbered class, whether it be sixth class, fifth class or the fourth class.

Very manifestly the purpose of the general order of March 23, 1889, was to prevent a preference being given in rates or otherwise to a particular class of freight against other freight of the same class. But if the articles selected and put into a separate class and transported at lower rates are published in tariffs, then that becomes a class of itself which the carrier has made, and the question arises whether the carrier may do this without its being a violation of that order or of the Statute; and this would seem to be the exercise of a right under the Statute which the carrier may do. This right of the carrier is one that is very broad and general. The fact that its exercise may be productive of cutting or lowering rates does not prove that it is a method of business to which the carrier may not resort in the exigencies of its business. It is a right the denial of which would affect vitally every interstate carrier in the land, as well as the public they serve.

It is very true that articles classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden of sustaining it by satisfactory evidence. See McMorran *et al. v.* The Grand Trunk Railway Company of Canada *et al.*, 3 I. C. C. Rep. 252, 2 Inters. Com. Rep. 604. But that rule assumes that the articles are in the same class. Here the carrier has made two separate and distinct classes, and therefore that rule has no application.

It may well be said, for it is plainly apparent, that such a

method as has been here described is well calculated to precipitate "a war of rates" between the Grand Trunk Railway of Canada and its rival competing American lines, with all the frauds and injury to the carriers and the public which we have so often described as resulting from such "a war of rates." But this does not take away from the Grand Trunk Railway of Canada the right to make separate classes for its traffic as it has here done.

The manner in which the Canadian Pacific Railway Company complied with the order of the Commission above referred to of date March 23, 1889, was in substance the same as the method adopted by the Grand Trunk Railway Company of Canada, which has already been stated at length and need not be here repeated. The tariff of this company No. 6, taking effect May 10, 1889, shows the rates in effect from Montreal to certain United States points on the 3d day of December, 1889, when the complaint in this proceeding was filed. The tariff of this company taking effect May 1, 1890, shows the rates in effect from Montreal to certain United States points at the time this complaint was heard in the month of June, 1890. The following table will show these rates respectively at the dates named when the complaint was filed and the proceeding was heard under the special rate, which is the same as the commodity rate of the Grand Trunk Railway Company of Canada, and also the rate upon these articles as fourth, fifth and sixth class, respectively:

Canadian Pacific Company—Montreal to Chicago.

Articles.	Official Classification.	Rates in effect on Dec. 3, 1889. Tariff No. 6 of May 10, 1889.		Rates in effect June, 1890. Tariff No. 117, May 1, 1890.	
		Class Rate.	Spec'l Rate.	Class Rate.	Spec'l Rate.
Bleech	6	22	20	22	18
Blooms	6	22	20	22	18
Billets	6	22	20	22	18
Brick	6	22	20	22	18
Cement	6	22	20	22	18
Clay	6	22	20	22	18
Earthenware in crates	5	26	20	26	18
Galvanized iron	5	26	20	26	18
Granite and sandstone	5	26	20	26	18
Pig iron	6	22	20	22	18
Scrap iron	6	22	20	22	18

Steel iron	6	22	20	22	13
Speigle iron	6	22	20	22	13
Puddled bars	6	22	20	22	13
Soda ash, caustic, silicate	6	22	20	22	13
bicarb., crystals	4	31	20	31	13
Tin plate	5	26	20	26	13
Canada plate	5	26	20	26	13
Salt	6	22	20	22	13
Wire rods	5	26	20	26	13
Nail rods	5	26	20	26	13
Sheet lead	4	31	20	31	13
Whiting	6	22	20	22	13
Window glass, common	5	—	—	26	13

Each of these tariffs published also as part of such tariffs, respectively, the class rates numbered 1, 2, 3, 4, 5 and 6 of the Trunk Line Classification, applying to the same United States points, to which is added the "special" class rates above referred to.

On the tariff of May 1, 1889, there is the following notation:

"To apply on import traffic from European ports, delivered to the Canadian Pacific Railway by ocean vessels on the wharves at Montreal for furtherance to United States points as designated within. Freight received from steam or sailing ship lines at Montreal for United States points will be subject to the following conditions: Rates shown in this tariff are subject to the Official Classification No. 5 or subsequent issues, with the exceptions as noted, and to the rules and regulations of transportation adopted by the Canadian Pacific Railway Company."

At the bottom of this tariff and as part of it is the following notation:

"Above special column rates will apply only on the following commodities:

Bleach,
Blooms,
Billets,
Brick,
Cement,
Clay,
Earthenware in crates,
Galvanized iron,
Granite and sandstone,
Pig iron,
Scrap iron,
Steel iron,
Speigle iron,
Puddled bars,
Soda, ash, caustic, silicate,
bicarb., crystals,
Tin plate,
Canada plate,
Salt,
Wire rods,
Nail rods,
Sheet lead,
Whiting.

The exception noted to the Official Classification of the Trunk Line Association is the "special" class rate.

The following table will show the United States points to which this tariff relates on freight carried from Montreal, Canada:

Buffalo, New York.	Chicago, Illinois.
Detroit, Michigan.	Milwaukee, Wisconsin.
Toledo, Ohio.	Grand Rapids, Michigan.
Cleveland, Ohio.	East St. Louis, Illinois.
Cincinnati, Ohio.	St. Louis, Missouri.
Indianapolis, Indiana.	St. Paul and Minneapolis,
Bay City, Michigan.	Minnesota.
Louisville, Kentucky.	Duluth, Minnesota.

The tariff of this company, taking effect May 1, 1890, contains the following announcements:

"To apply on import traffic from European ports, delivered to the Canadian Pacific Railway by ocean vessels."

And again—

"Freights received from steam or sailing ship lines at Montreal for United States points will be transported subject to the following conditions:

"Rates shown in this tariff are subject to the current Official Classification, with exceptions as noted and to the rules and regulations of transportation adopted by the Canadian Pacific Railway Company.

Again the exception noted is the "special" class rate upon substantially the same articles and gotten up in substantially the same manner as in the tariff taking effect May 10, 1889. On this tariff taking effect May 1, 1890, is the following notation:

"During the season of navigation the within rates will govern on local business from Montreal and points west in a direct line."

The reference to "season of navigation" in this notation is understood to apply to navigation on the St. Lawrence River and by the canals and lakes during the season that these are open for navigation.

The following table will show the United States points to which this tariff taking effect May 1, 1890, applies:

Buffalo, New York.
Black Rock, New York.
Suspension Bridge, New York.
Detroit, Michigan.
Toledo, Ohio.
Cleveland, Ohio.
Cincinnati, Ohio.
Jackson, Michigan.
Indianapolis, Indiana.
Battle Creek, Michigan.
Chicago, Illinois.
Milwaukee, Wisconsin.
Grand Rapids, Michigan.
South Bend, Indiana.
Bay City, Michigan.
East Saginaw, Michigan.
Louisville, Kentucky.
St. Paul, Minnesota.
Minneapolis, Minnesota.
Duluth, Minnesota.
West Duluth and intermediate points on through line west of Sault Sainte Marie.
St. Louis, Missouri.
West Superior, Wisconsin.

This tariff taking effect May 1, 1890, sets out as part thereof rates embracing the first second, third, fourth, fifth and sixth numbered classes of the Trunk Line Official Classification, to which is added a column of special rates. By the tariffs of the Grand Trunk Railway Company of Canada these "special" rates are called "commodity" rates, and by the tariffs of the Canadian Pacific Railway Company they are called "special" rates.

All that has been said in reference to the Grand Trunk Railway Company of Canada in selecting a few enumerated articles which are the subject of import, putting them in a commodity class rate at greatly reduced rates, and leaving a very large number of other articles of the class from which these few articles were selected at much higher rates in the sixth class of the Canadian Pacific Railway Company, applies with equal force to the course pursued by the Canadian Pacific Railway Company in its efforts to comply with the order of the Commission of March 23, 1889, and is governed by the same principles which allow the carrier to make different classifications to meet the circumstances and conditions surrounding the transportation of its traffic.

It will be seen, from what has been here said, that the Commission is of the opinion that "commodity" or "special" rates are not in themselves violations of the Statute neces-

sarily. Like numbered class tariffs, they have to be scrutinized and considered with reference to the rates they charge, the traffic upon which it is charged and the relations they bear to the tariffs upon other similar articles, and the circumstances and conditions under which the "commodity" tariff rate or "special" rate is made. These "commodity" tariffs may be said to be always exceptional and "special." Carriers, as a rule, have a regular numbered classification in their tariffs for nearly all of the different articles of transportation. Commodity rates, as a rule, are lower than numbered class rates, and are made upon coarse, cheap articles, more usually than otherwise between interior points. For example, they are made upon iron articles; upon cheap articles, like peas from Norfolk to Chicago, or upon crushed oyster shells from Baltimore to Pittsburgh, and upon some other articles that are so coarse and cheap as not to be of sufficient value to bear the numbered class rates. Commodity rates are usually emergency rates and do not remain in force for any considerable length of time. They are sometimes made, also, to meet a cut in rates found to have been made upon similar articles by a competitor. Like other rates, they are lawful when they are just and reasonable and perform a lawful office. Like other rates, they are unlawful when they perform the office of an unjust discrimination against other similar traffic or an unlawful preference or prejudice against a shipper or a locality. The freight business of the United States is, comparatively speaking, carried to a small extent under commodity tariffs by interstate carriers, except in the case of the transcontinental lines. The business of the transcontinental lines, from considerations not necessary here to discuss, is carried largely upon commodity tariffs. But these last-named commodity rates cut no figure upon any question involved in this proceeding.

These being the conclusions of the Commission upon all the material facts found in this proceeding, it is therefore ordered by the Commission that the respondents, The Texas & Pacific Railway Company, The St. Louis, Iron Mountain & Southern Railway Company, The Louisville, New Orleans & Texas Railway Company, The Wabash Railroad Company,

The Southern Pacific Company, The Union Pacific Railway Company, The Northern Pacific Railroad Company, The Baltimore & Ohio Railroad Company, The Lehigh Valley Railroad Company, The Canadian Pacific Railway Company, and each of them, forthwith cease and desist from carrying any article of imported traffic shipped from any foreign port through any port of entry of the United States or any port of entry in a foreign country adjacent to the United States upon through bills of lading destined to any place within the United States, at any other than upon the inland tariff covering other freight from such port of entry to such place of destination, or at any other than the same rates established in such inland tariff, for the carriage of other like kind of traffic, in the elements of bulk, weight, value and expense of carriage.

As to these carriers it is ordered by the Commission that this order take effect on and after the fifth day of May, A. D. 1891.

And it is further ordered by the Commission that all the other defendants than those last above named must in the future comply with the rules and principles settled in this report and opinion in relation to the carriage of import traffic shipped from any foreign port to any port of entry of the United States, or any port of entry in a foreign country adjacent to the United States, upon through bills of lading destined to any place within the United States, by carrying the same upon their inland tariff covering other like kind of traffic in the elements of bulk, weight, value and expense of carriage between such ports of entry and place of destination within the United States.

And it is further ordered by the Commission that as to The Lake Shore & Michigan Southern Railway Company, The New York, Lake Erie & Western Railroad Company, The New York, Pennsylvania & Ohio Railroad Company, The West Shore Railroad Company, The Boston & Maine Railroad Company, The New York, Chicago & St. Louis Railroad Company, The Central Railroad Company of New Jersey, The Philadelphia & Reading Railroad Company, The Chicago & Atlantic Railway Company, The Michigan Central

Railroad Company, The New York Central & Hudson River Railroad Company, The Delaware, Lackawanna & Western Railroad Company, The Chicago & Grand Trunk Railway Company, The Grand Trunk Railway of Canada, The Pennsylvania Railroad Company, The Pittsburgh, Fort Wayne & Chicago Railway Company, The Pittsburgh, Cincinnati & St. Louis Railway Company and the Illinois Central Railroad Company, this proceeding be and the same is hereby dismissed.