

ALANSON S. PAGE, CADWELL B. BENSON and CHARLES TREMAIN, Complainants,
v.
 THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, THE
 NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE MICHIGAN CENTRAL
 RAILROAD COMPANY, Defendants.

1. Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto.
2. Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity, *Held*, That the classification of window shades as first class in the Official Classification has become unjust, and that the legal duty of defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, requires them to reduce their classification of window shades to the class which, under the Official Classification, is now applied to "window hollands and shade cloth, plain, uncut and undecorated."

Complaint filed March 3, 1893.—Answers filed March 24 to April 11, 1893.—Depositions filed May 24, 1893.—Heard May 25, 1893.—Briefs filed June 7, to September 8, 1893.—Decided March 23, 1894.

UNJUST classification of window shades.

Mr. John D. Kernan, for Complainants.
Mr. Frank Loomis, for New York Central & Hudson River Railroad Company; *Messrs. Henry Russel and Ashley Pond*, for Michigan Central Railroad Company; *Mr. C. E. Gill*, for Delaware, Lackawanna & Western Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

Veazey, *Commissioner*.

In the complaint it is averred that the complainants are copartners doing business at Minetto, New York, under the copartnership name of the Minetto Shade Cloth Company, and are engaged in the manufacture, sale and shipment of the articles hereinafter men-

tioned; that the defendants have been and are railroad corporations engaged as common carriers in the transportation of property, by the lines of the defendant, the Lackawanna Company, between Minetto and New York city, and together between Minetto and Chicago and other western points, under some common

4 INTER S.

control, management or arrangement for continuous carriage between the points aforesaid, so that each of the defendants constitutes a part or portion of the same through and continuous line of transportation, and are respectively within the provisions of the Act to Regulate Commerce; that the articles in respect of which the complaint is made consist of window shades; that since April 4, 1887, the defendants, in violation of said Act, have been and are guilty of unjust discrimination in that they have been and are in the habit of classifying the articles, manufactured and delivered to them for transportation by the complainants, in a classification which is unjust, unreasonable, and relatively higher than the classification of other similar kinds of property and merchandise in the elements of value, risk, compactness and cost of service; that as a result of such unjust and relatively higher classification they have been and are in the habit of charging other persons rates much lower for like and contemporaneous service, under substantially similar circumstances and conditions, by reason of the unjustly discriminating lower classification made by the defendants of the goods and merchandise so transported for such other persons; and the complainants specify the wrongs thus in general terms charged, and further allege that, by reason thereof, defendants have made and given, and do make and give undue and unreasonable preferences and advantages to some persons, firms, companies and corporations in transportation over their respective lines, and have subjected and do subject complainants thereby to undue and unreasonable prejudice and disadvantage; that the classification complained of is that which places window shades N. O. S. boxed, any quantity, in the first class; and window shades plain, undecorated, mounted on rollers, boxed, any quantity, in the second class; and that to be free from unjust discrimination all window shades should be in the third class for less than carloads and in the fourth class for carloads; and the complainants make appropriate prayer for relief.

The defendants respectively answer the complaint, but finally put their defense in their brief and argument upon two grounds: (1) That the complainants, by intentional and persistent misdescription of their shipments, and by violation of the law in so doing, preclude themselves from applying to the Commission and asking the exercise of its jurisdiction upon the merits of the controversy. (2) That the classification complained of is not unjust and in violation of the statute.

Facts.

1. The complainants are co-partners, doing business at Minetto, New York, under the firm name and style of "The Minetto Shade Cloth
4 INTER S.

Company," and are engaged in the manufacture and sale of shade cloth and of window shades, decorated and undecorated, and the shipment thereof to New York city, and to Chicago and other western points. Their establishment is located about one half a mile from the railroad track at Minetto, a point about four miles southeast of Oswego, N. Y. The cars for the shipment of complainants' goods are brought up from Syracuse in the local freight train, switched to the siding and left there to be loaded. The complainants haul their goods to the cars. Their teamsters give the shipping slips to a tallyman employed by the Lackawanna road who tallies the goods and aids the teamsters in loading the cars. These slips or receipts are made out in duplicate by the complainants, and after the freight has been checked into the cars, they are signed by the agent of the defendant, the Lackawanna Company. The original is returned to the complainants and from the duplicate, kept by the railroad company, the way bill is made. The initial road does not weigh the property described in the receipts, nor does it make any examination to see if the package contains what is set forth in the receipts; but it is the duty of its agents to understand the classification of freight shipped and to bill the goods so shipped accordingly. Trains made up in Oswego pick up these cars and haul them to Syracuse or New York city.

The establishment of the complainants covers two or three acres. During the spring and summer months they employ about two hundred and fifty persons, which number is increased in the busier seasons of fall and winter to about four hundred.

The complainants have been in business since 1879. Prior to 1886, they manufactured window shading and shade cloth used for window shades, and sold it entirely by the yard or by the piece. Their goods were known as the Minetto window shading, and were shipped by the complainants as window hollands. In 1886, the complainants commenced decorating the cloth by machinery, cutting it up into shades, placing them on the market, and shipping them in pairs. Prior to that time the decoration had all been done by hand. The complainants began making and selling mounted shades, ready for hanging, in the fall of 1887. This was then a new article commercially. They continued to ship the incomplete shades for about a year after this; then the trade began calling for the completed article, and their shipments of shades in packages or cases grew rapidly, so that the total volume of their consignments now amounts to something like four hundred carloads a year. It does not appear, however, that a majority of the complainants' shipments are in carload lots. Some indication of the proportion of carload

to less than carload quantities shipped by them is given in tables hereinafter set forth; also the different sizes of packages and cases which they use.

Prior to 1886, when shade manufacture was conducted entirely by hand, and the stamping or decoration was done by wood block printing, the value of the cheapest grade was about seventy-five cents a pair, while the higher grades ranged from five to seven dollars a pair. The commercial value of machine decorated shades, mounted and ready to put up, is from twenty-five cents to seventy-five cents a pair. The old hand decorated shade was not mounted. The complainants admit that lowering the classification, as here asked for, would not be likely to increase the number or the tonnage of their shipments. They do not prepay freight charges nor do they make allowance therefor in settling with their customers.

2. Up to January 24, 1893, the complainants described all their shipments of shades simply as "window hollands," except when they shipped shades in pairs; in that case the shipment was, in continuation of the old practice, billed by them as window shades; and the complainants still bill window shades under that name when they ship them in pairs, but the number of such shipments is very small.

The carriers have established inspection bureaus located at junctions or transfer stations within the territory covered by the "Official Classification." The revising clerk at a transfer station gives the way bill to an inspector, who thereupon examines the contents of a car to see whether they differ in description, either in character or weight, from that mentioned in the way bill. When there is no difference he marks the way bill "O. K." But if there is a difference, the inspector notes the fact on the way bill and hands it over to the revising clerk who makes the necessary corrections in the way bill. The expense bill of the delivering carrier shows the increase of weight or correction of classification, and the consignee pays the additional charges. When necessary, the inspector opens the packages in order to make an examination of their contents, and also reweighs some or all the packages if he has reason to believe that the weight has been underbilled. It appears from a statement put in evidence and covering the period from September 1, 1892, to February 28, 1893, that about ninety per cent of the complainants' shipments were described by them as "window hollands," a little over nine per cent as "mounted window hollands," and less than one per cent as "window shades." Another exhibit in testimony shows that very many shipments by complainants were described as window hollands, when in fact they consisted of window shades. If the complainants' shipments billed as window hollands and given third class rating

4 INTER S.

had been billed as window shades, they would have taken first class rates.

On January 24, 1893, the agent of the Lackawanna Company, under instruction from the Assistant General Freight Agent of that company, requested the complainants to discontinue the practice of billing window shades as window hollands. The complainants assured him that the request would be complied with. After that time their shipments of shades were described as "plain mounted" or as "decorated" hollands, a pencil being used to write it on a printed shipping slip over or through the words "window hollands," the words "plain mounted" or "decorated." But a considerable number of shipping slips, or tickets, were put in evidence showing that this pencil notation had been omitted by complainants' employés, after the date above mentioned; and the weights of some of these shipments were underbilled. The complainants claim that these misdescriptions were the result of oversight. For two days, in the month of May, 1893, the 12th and 13th, the complainants' shipping clerk did, as instructed by complainant Benson, describe all shade shipments as "shades." This was after the taking of depositions had been commenced in New York city. This instruction was then countermanded by the complainants, and the description of the shades as hollands was resumed. The complainants did not conceal their method of billing shades as window hollands.

3. The complainants appear to have relied for justification of their course upon the following grounds: The old practice of shipping under the title of shades only when the shades were sent in pairs; the statements made to them in 1887 by the agent of the receiving road, and in 1888 by a representative of the "Merchants' Despatch," a fast freight line operated over the New York Central System, that the billing of shades as window hollands would not be improper; and the fact that under the provisions of the classification goods specified simply as "window hollands," without any specification as to their being plain, uncut and undecorated, would take first class rates, if the receiving road insisted upon billing exactly in accordance with the terms of the classification, and, therefore, even if the meaning of the classification contended for by the defendants should be correct, that there was no misdescription upon which the roads could base a charge of fraudulent billing. The defendants' principal witness (Mr. Gill) also testified that a shipment billed simply as window hollands should, under the classification, take first class rates.

When the Lackawanna agent stated to complainants in 1887, that the billing of window shades as hollands would not be incorrect, he also said that if any change should become ne-

cessary the complainants would be advised. In 1890, the agent of that road notified the complainants verbally that some inspectors of the railroads in the west said that they (the complainants) were not complying with the classification, but the complainants declare that they did not understand this to be "advice" that a change in their methods was necessary. Complainants' practice of shipping shades as hollands has also been the subject of conversations held at different times prior to 1893 between one or more of the complainants and representatives of the carriers in New York. It appears from the testimony of complainants' shipping clerk (Snavely) that an order for window shades would not be understood to call for window hollands, nor would an order for the latter commodity be taken to require the shipment of any window shades. Window shades, window hollands and shade cloth are not synonymous terms. The first is well known as an article used in house furnishing; the other terms are applied to material used in the manufacture of shades. There is no ambiguity in the classification of these articles. As will appear by the statement of the classification hereinafter contained, a shipper desiring to ascertain rates in force on window hollands or shade cloth would have no difficulty in determining from the classification in force that window hollands and shade cloth, if plain, uncut and undecorated, take third-class rates, and that if otherwise, they are subject to first class charges. So with window shades: if plain and unmounted they would, under Classification No. 11, be in the second class; otherwise in the first class. Complainants have described their shipments of window shades as window hollands for the evident purpose of thereby obtaining lower rates than could lawfully have been charged if the proper description had been given; and, except when corrections were made by the carriers' inspection bureaus, this purpose was accomplished by the acceptance of such shipments as window hollands by the receiving road and the improper billing thereof by the local agent at third class instead of first class rates. It is indicated by the evidence that representatives of the carriers had knowledge of complainants' practice of billing shades as hollands, and the practice finally resulted in the remonstrance on the part of the carriers on January 24, 1893. There is no showing that the carriers have taken steps to prosecute the complainants or any person in their employ for false billing or false report of weights under section 10 of the Act to Regulate Commerce.

4. The defendants are common carriers engaged in the transportation by continuous carriage and shipment of passengers and property between Minetto and New York city, and Minetto and Chicago and other western points.

4 INTER S.

The road of the Lackawanna Company connects Minetto with New York city, passing through the states of New York, Pennsylvania and New Jersey; the Lackawanna takes on the freight at Minetto, and carries New York city freight direct to that point. Freight destined west of Buffalo is carried by it to Syracuse, N. Y., thirty-one miles southeast of Minetto, where it is delivered to the New York Central Company, which takes it to East Buffalo, N. Y., and from there it is transported by the Michigan Central to Chicago and other points. The "Official Classification" is in use on the defendant lines, and these carriers have established and published schedules of rates for the transportation of property described in said classification.

5. The classification made by the "Official Classification" Committee, of which the defendant carriers are members, on window shades and plain uncut shade cloth, prior to 1891, was as follows: window shades, first class; shade cloth, third class. In 1891, the complainants asked the "Official Classification" Committee for the classification which they petition for in this case, to wit: window shades, L. C. L., third class; C. L., fourth class. The request was refused. But the committee did then adopt the classification of those articles, which continued in effect until January 1, 1894, viz: window shades, boxed, N. O. S., first class L. C. L. and C. L.; window shades, plain, undecorated, mounted on rollers, boxed, second class, L. C. L. and C. L.; window hollands and shade cloth, plain, uncut and undecorated, third class, L. C. L. and C. L. Official Classification No. 11, which was in effect at the time this proceeding was instituted, classified the goods involved in this case as follows:

	L. C. L.	C. L.
Dry goods, N. O. S. in bales,		
O. R. C., or in boxes	1	
Dry goods, as follows: Any of the following named articles (and remnants thereof) made wholly of cotton, when specific name of articles and name of shipper are plainly marked on outside of packages and stated in shipping receipts and bill of lading (marking or describing packages as containing "Cotton Piece Goods" will not be sufficient), viz.: Awning Stripes, Calicoes (64 square and under, only); Canton or Cotton Flannels, plain or dyed (not figured); Canvas; Cheese Cloth; Corset Jeans; Cottonades; Cotton Warp; Cotton Yarn; Crash (Cotton); Domestic Checks; Stripes (Hickory Shirting Stripes) and Cheviots (plain or napped on one side); Cotton Duck; Denims; Drills, Domestic Gingham; Glazed Cambrics;		

Osnaburgs; Sheetings, bleached and brown; Tickings; *Window Hollands and Shade Cloth, plain, uncut and undecorated*; in bales O. R. C., or in boxes 3

All Dry Goods, except the articles above specifically named, will be classed as "Dry Goods, N. O. S.," unless the above conditions are complied with. Any package containing articles of more than one class will be charged at the tariff rate for the highest classed article contained therein.

Window Shades, N. O. S., bored 1

Window Shades, plain, undecorated, mounted on rollers, bored 2

By Official Classification No. 12, effective January 1st, 1894, the second-class rating for plain mounted shades was abolished, and all window shades were again placed in the first-class.

The following table shows the classification changes that have taken place in window shades, shade cloth, and window hollands since April 1st, 1887:

Changes in Official Classifications.

COMMODITY:	Number of Classification.	DATE OF CHANGE.	Class.
Window shades	1	Apr. 1, '87.	1
Window shades N.O.S., boxed.	8	Feb. 2, '91.	1

(COMMODITY:	Number of Classification.	DATE OF CHANGE.	Class.
Window shades plain, undecorated, mounted on rollers, boxed.....	8	Feb. 2, 91.	2
Window shades boxed.....	12	Jan. 1, 94.	1
Shade cloth, boxed.....	1	Apr. 1, '87.	1
Shade cloth, N.O.S., boxed.	4	Aug. 15, '88.	1
Shade cloth, uncut and undecorated.....	5	Feb. 18, '89.	3
Window hollands and shade cloth, plain, uncut, and undecorated.....	8	Feb. 2, '91.	3

The following class rates are in effect:

Between Minnetto and Chicago,—
 Class 1 2 3 4 5 6
 Rates 60 52 40 28 24 20 (Oswego rate.)

Between Minnetto and New York city,—
 Class 1 2 3 4 5 6
 Rates 35 30 25 18 15 13 (Oswego rate.)

Between New York City and Chicago,—
 Class 1 2 3 4 5 6
 Rates 75 65 50 35 30 25

(These rates between New York and Chicago were also in effect on April 1, 1887.)

6. The classification and the comparative bulk, weight and value of a number of articles known as dry goods are shown in the following table:

Article.	Size of Case or Bale.	Weight.	Contents.	Value, Case or Bale.	Cubic Feet in Case.	Weight per Cubic Foot.	Value per Cubic Foot.	Classification.
<i>Cotton</i>		<i>Pounds</i>	<i>Yards</i>	<i>Dollars</i>		<i>Pounds</i>	<i>Dollars</i>	<i>Class</i>
Flannels.....	33" x 32" x 48"	400	1000	80.00	29.33	13.63	2.72	3
Cheviots.....	40" x 30" x 34"	800	1800	135.00	23.61	33.88	5.72	3
Checks.....	40" x 40" x 40"	450	1000	80.00	37.03	12.15	2.16	3
Denims.....	33" x 34" x 27"	425	1000	100.00	17.53	24.24	5.07	3
Tickings.....	33" x 34" x 27"	404	1000	100.00	17.53	23.38	5.70	3
Corset Jeans.....	25" x 25" x 23"	300	1500	90.00	8.33	36.01	10.80	3
Cottonade.....	40" x 48" x 30"	900	1000	150.00	33.33	27.00	4.50	3
Prints.....	30" x 30" x 36"	450	2500	150.00	18.75	24.00	6.25	3
Calicos.....	30" x 30" x 36"	450	2500	150.00	18.75	24.00	6.25	3
Canvas.....	33" x 34" x 27"	425	1000	100.00	17.75	23.94	5.63	3
Cambric.....	24" x 30" x 46"	500	3000	142.50	17.50	28.57	8.10	3
Duck.....	33" x 34" x 27"	500	1000	100.00	17.75	28.16	6.63	3
Gingham.....	30" x 30" x 27"	400	2000	140.00	14.40	27.70	6.94	3
Drills.....	24" x 29" x 18"	210	600	42.00	7.72	27.21	5.54	3
Drills.....	22" x 36" x 36"	500	2400	290.00	16.55	30.21	17.52	3
Bleached								
Sheeting.....	40" x 40" x 14"	500	1676	167.60	12.90	33.76	12.99	3
Lace Curtains.....	36" x 26" x 48"	500	150	600.00	26.00	19.23	23.05	1
Lace Curtains.....	29" x 19½" x 29½"	110	60	260.00	9.72	11.31	24.77	1
Curtain Fringe.....	23" x 33" x 48"	265	2802	233.50	20.16	13.14	11.57	1
Linen.....	40" x 28" x 27"	666	2697	950.00	17.75	37.50	53.52	1
Linen.....	40" x 28" x 27"	561	2168	1548.00	17.75	31.60	87.21	1

7. A very frequent shipment by the complainants is a box containing one dozen complete window shades, and usually weighing from twenty to twenty-one pounds. The Minetto shades, which are the best quality, will weigh twenty-three or twenty-four pounds, and if they are seven foot shades, the box containing one dozen, will weigh twenty-five pounds. The complainants also ship shades in what they call a "standard case," containing twenty-three dozen and averaging, in weight, four hundred and ninety-five pounds, and in value \$54.74. A table in evidence and below set forth shows the value of the different grades of complainants' shades, their weight, bulk and value when packed in "standard cases," and the relative cost of labor to manufacture:

thing else. About forty per cent of the complainants' shade cloth is decorated. This decoration consists of a design printed, or stamped, upon the shade and finished in bronze, and is done by machinery. Only a few shades, less than one per cent, of the complainants' manufacture, are decorated subsequent to the cutting of the shades, the decoration prior to the cutting being the single print. The complainants have ceased altogether from decorating shades by hand, but some other manufacturers still continue hand decorations. There are four grades of decoration, called respectively, one print, two print, three print, and four print shades. It costs the complainants twenty cents a dozen for one print, and twenty five cents a dozen for each additional print. The four prints cost ninety-five cents a dozen.

Table Showing Weights, Contents, Value, Cubic Measurements, etc., of the Twenty-three Dozen Case of Shades.

	Size of Case.	Weight.	Contents	Value.	Cubic feet in case.	Weight per cubic foot.	Value per cubic foot.	Per ct. of labor.
Minetto shades	20½ x 25½ x 42½	538 lb.	23 doz.	\$69.00	12.70	42.36 lb.	\$5.43	.0296%
Seneca "	" " "	542 "	23 "	63.25	12.70	41.10 "	5.06	.0323%
Ontario "	" " "	495 "	23 "	55.20	12.70	38.79 "	4.37	.0375%
Holland "	" " "	463 "	23 "	51.75	12.70	36.45 "	4.07	.0395%
Felt "	" " "	439 "	23 "	34.50	12.70	34.56 "	2.71	.0593%
	Average	495		\$54.74		38.65	\$4.33	.0396%

8. The classification of the different raw materials, used in the manufacture of shades, in carloads and in less than carloads, is stated in a table put in evidence, as follows:

Cloth	3rd Class C. L.	3rd Class L. C. L.
Steel	6th	
Paper	6th	
Lead	5th	
Colors	5th	4th
Iron Castings	6th	4th
Starch	6th	4th
Clay	6th	4th
Flour	6th	4th
Lumber	6th	
Dyes Aniline	4th	2nd
Dyes-Wood	5th	3rd
Glue	5th	4th
Nails and Tacks	5th	4th
Shade Rollers	5th	3rd
Shade Slats	5th	3rd

Comparison with classifications 11 and 12 show some variation from the foregoing table as to two or three articles. The table is, however, correct in the main.

9. There are thirty-five different colors of the Minetto shading; 8 colors in Senecas and Ontarios; perhaps 12 colors in the shades called Hollands; and about six colors in Felt. The Felt shade is paper. These colors are spread over the entire shade, and are put on before the cloth is cut up. The decoration is some

Twenty cents a dozen for decorating would cover all the shades made, except about one per cent. The Senecas are printed. The Ontarios are finished when they are filled. The completed shade consists of the shade cloth cut in the proper length, usually six feet in length by thirty-eight inches in width, one end of which is attached to a roller by tacks and the other end is hemmed up and a slat run in. There may be also a fringe attached to the bottom of the shade. The roller also has brackets fastened to the ends. The market price of this finished shade is from \$1.50 to about \$3.00 per dozen. About seventy per cent of the wood used by the complainants in the manufacture of their shades comes by water from Michigan, Wisconsin and Canada.

The largest number of shades are sold from the lower grades as in shown by the following statement in evidence:

Per Cent of Shades Made by the Minetto Shade Company from Sept. 1st to March 1st, 1893.

Minetto	18.7 %
Seneca	16.4 %
Ontario	34.6 %
Holland	15.2 %
Felt	14.8 %
	99.7 %

And the following shows the average weight of Cloth and of Rollers:

		<i>Cloth.</i>	<i>Rollers.</i>
Minetto ----	1200 yds.	635	520
Seneca ----	1200 "	623	520
Ontario ----	1200 "	514	520
Holland ----	1200 "	478	520
Felts ----	1200 "	416	520
Average		533	520

Window Hollands, or shade cloth, the principal constituent of the window shade, is made from a loosely woven cotton fabric obtained from New England mills. That used by the complainants is sent in bales to a bleachery at Norwalk, Conn., where the bleaching is done. Complainants first grade of shading is also filled with clay and flour at Norwalk, but the lower grades are, except bleaching, treated at Minetto.

10. The standard commercial package of window hollands, or shade cloth, as manufactured and sold by the complainants, is a case of 1200 yards and weighing, with the box containing it, from 416 to 635 pounds, the box measuring 25x25x42 inches. The value of the contents ranges according to quality from \$48.00 to \$144.00. This case holds twenty pieces of hollands, containing sixty yards in each piece. This shade cloth, or hollands, constitutes about ten per cent of the total shipments of the complainants.

Taking the Minetto shade for illustration, a case of hollands measuring 25x25x42, weighing 635 pounds, and having a market value of \$144.00, with the other materials added, when made into complete shades, more than fill two cases with Minetto shades, each case containing 23 dozen shades, meas-

4 INTER S.

uring 20½x25½x42½ inches, weighing 538 pounds, and having a market value of \$69.00; and the two cases together weigh 1076 pounds, and are worth \$138. On the basis of 50 dozen shades from each case of hollands the shades made from a case of hollands worth \$144.00, would at complainants' stated price of \$3.00 per dozen be worth \$150. Under this calculation only \$6.00, or 12 cents per dozen, remains to cover the value of rollers, slats, attachments and some labor. While this margin may possibly be sufficient, the inference is rather plain that placing the value of the case of hollands at \$144.00 is probably an overstatement, and that it is likely to be somewhere between that figure and \$132.00, the value stated in the testimony for the defense.

It is clear, however, that of two cases, one containing hollands or shade cloth and the other finished shades, both being of similar bulk and weight, the case containing the shades has less market value; and that complainants' standard case of 20½x25½x42½ inches, filled with Minetto shades, is worth only about half as much as a case of window hollands or shade cloth measuring 25x25x42 inches. The average weight of a case of complainants' shades is 495 pounds and the average weight of the shade cloth case is about 533 pounds, a difference of only 38 pounds.

11. Complainants employ at least three sizes of cases in which to ship shades:

The one dozen case, measuring 6x7x41 inches and weighing 20 to 25 pounds.

The ten dozen case measuring 12x15x43 inches and weighing about 200 pounds.

The twenty-three dozen case measuring 20½x25½x42 inches and weighing an average of 495 pounds.

The following table, put in evidence by the defense, shows the weight and sizes and the number of these shipments for six months:

Month.	Total Weight of all shipments described as "window hollands" or "window shades".	Total Number and Weight of Cases weighing 25 lbs. each or less.		Average Weight.	Per Cent of Total Weight.	Total Number and Weight of Cases weighing from 25 to 200 lbs. each.		Average Weight.	Per Cent of Total Weight.	Total Number and Weight of Cases weighing more than 200 lbs. each.		Average Weight.	Per Cent of Total Weight.
		Number.	Weight.			Number.	Weight.			Number.	Weight.		
1892													
Sept.	Pounds. 273,960	3,057	Pounds. 62,975	20.60	22.98	552	Pounds. 89,160	161.52	32.54	272	Pounds. 121,825	447.88	44.48
Oct.	187,670	1,939	39,250	20.24	20.91	248	36,065	145.42	19.21	246	112,355	456.72	59.88
Nov.	206,135	1,746	35,300	20.31	18.26	225	28,010	124.49	10.52	439	202,825	464.01	76.22
Dec.	514,515	8,390	166,150	19.80	32.29	710	110,615	155.79	21.50	519	237,750	458.09	46.21
Jan.	902,805	23,506	463,700	19.72	51.36	1,279	163,530	127.85	18.11	573	275,575	480.93	30.58
Feb.	534,625	11,692	242,025	20.70	45.27	845	112,675	133.34	21.08	388	179,925	463.72	33.65
Totals.	2,679,710	50,330	1,009,400	20.05	37.67	3,859	540,055	139.94	20.15	2,437	1,130,255	463.78	42.18

Statement Compiled from the Duplicate Shipping Receipts of the Minnetto Shade Cloth Co., for the Period September 1st, 1892, to February 28th, 1893, inclusive.

Using the month of November, 1892, for illustration, the number of cases shipped by complainants weighing 25 pounds or less was 1746; the number weighing from 25 pounds to 200 pounds was 225; and the number of those weighing more than 200 pounds was 439. In the other months the proportion of 25-pound shipments was much greater.

12. The roads have more weight to carry when shades are shipped in one dozen packages than they would have in transporting the same number of shades packed in a 23-dozen case. It is estimated that 23 of the one dozen packages will exceed the 23 dozen case in weight by from 70 to 80 pounds. But when the smaller cases are shipped to different consignees there must be as many different sets of bills and as many deliveries; while with the large case there is less handling, but one billing and one delivery. As hereinbefore mentioned, the complainants practically do their own loading. The "Official Classification" contains a rule (Subdivision B of rule 16) which reads as follows: "No single package or small lot of freight of one class, classified 1st-class or lower, will be taken at less than 100 lbs. at the class to which it belongs."

13. No carload rating is allowed in the "Official Classification" for articles of dry goods. Between Nov. 1, 1892, and Feb. 25, 1893, the number of carloads of 20,000 lbs. or more, shipped by complainants, was nineteen. The total weight of these shipments amounted to 502,400 pounds. For the same period complainants' total shipments were 2,218,080 pounds. It is claimed for the defense that a carload classification for window shades would result in driving small manufacturers from the business and centralize the trade in the hands of the larger manufacturers. Beyond this, and the fact that a firm in Meriden, Conn., had applied for a reduction of the classification, including a carload rate, and been refused, there is no evidence sufficient to constitute the basis of a finding upon this point.

14. Complainants' principal competitors in the manufacture and sale of shades are located in New York; Oswego, N. Y.; Chicago, Ill.; St. Paul and Minneapolis; Meriden, Conn.; Providence, R. I.; Jersey City, N. J. There are also Hand Manufacturers in Chicago, St. Louis, Cincinnati and Cleveland. A reduction of the less than carload classification on shades would confer equal benefit upon complainants' competitors in the east in reaching the Chicago market, and such reduction will also give cheaper rates to New York and other eastern points to shade manufacturers at Chicago and other points in the West.

Upon the point as to whether a reduction of the classification of shades to that of hollands and shade cloth would injure the business of the western manufacturer, the evidence shows that he is not obliged to purchase any raw ma-

materials in the east, except hollands or shade cloth, which he can also obtain from points in the south. The complainants, located at an interior point in the state of New York, must bring all the raw material used in their manufactory by boat to Oswego, or rail to Minetto. The Chicago manufacturer has the same and apparently even greater advantages in the matter of transportation of raw materials, except hollands or shade cloth, both in respect of distance from points of supply and of rates of freight. The Chicago manufactory is, moreover, located at the complainants' principal point of distribution, and also competes for the sale of shades at various points west of Buffalo.

15. Manufactured goods are, as a rule, classified higher than the raw materials out of which they are made, because generally the process of manufacture converts the raw materials into less weight, and increases the bulk and value. But the condition of the manufacturing industry and the competition of different producing markets are also matters which have considerable weight with the Classification Committee. The classification principle of a higher class for the finished article than for the raw material of which it is composed has, however, certain exceptions. For instance, woolen cloth is in the first class and is still in the first class when converted into woolen clothing, although the process of manufacture greatly enhances the value and possibly increases the bulk. Again, some of the ingredients used in the manufacture of soap are worth considerably more than the soap itself; but soap is in the fourth class, L. C. L., and the sixth class, C. L., while some of the ingredients used in the production of soap take higher rating.

CONCLUSIONS.

The Preliminary Question.

We have first to determine what effect the complainants' admitted practice of shipping shades as hollands shall have upon our action in this case. The classification as regards these two articles was and is in no wise ambiguous, and we find that complainants did persist in designating their shade shipments as hollands with a view of securing third instead of first class rates thereon. We are not moved from this conclusion by the fact that complainants did not prepay shipments nor allow for freight charges in settling with their customers. That freight charges enter largely into all or nearly all commercial transactions involving the transportation of property, is too well known to require discussion. That they do enter into complainants' calculations is demonstrated by their having brought this case and having at various times requested the classification committee to change the rating on

window shades. Moreover, if we are to regard them as having no interest in the amount of freight charged upon their shipments, then we must look upon their attitude in insisting upon describing shades as hollands for transportation purposes, while they regard shades and hollands as different articles in dealing with their customers, as absurd. Such a view is, therefore, altogether untenable. Complainants admit that the reductions asked for in the complaint will not be likely to increase the number of their shipments or add to their shipping tonnage. We think this is explained, in part at least, by the fact that under their practice of shipping shades as hollands their business has become adjusted to a third class rating on shades, and that, so far as complainants are concerned, the granting of a third class rating as prayed for here, will merely enable them to maintain that adjustment. Complainants' motive in endeavoring to secure a third class rating for shades as far back as 1890 and since must have been with a view of changing their practice of describing shades as hollands without submitting to higher rates. We think they were keenly alive to the impropriety of shipping shades under the name of hollands; otherwise their efforts would have been directed towards securing such a reduction in the classification as would place all hollands, decorated or undecorated, cut or uncut, in the third class.

We are also forced by the facts in this case to find that complainants' practice of misdescribing their shade shipments as window hollands would have availed them nothing if the agent of the receiving road had correctly applied first class charges to shipments described simply as "window hollands." Billing and carrying such shipments at third class rates was not warranted by the classification, which did and does limit third class rating for window hollands and shade cloth to such as are plain, uncut, and undecorated. This method of billing and forwarding complainants' shades as window hollands under third class rates was practically acquiesced in by the defendants during a period of years. Moreover, complainants did not attempt to conceal their practice of thus describing goods offered for carriage to the defendants. It was known to a local agent of the receiving road; it was known to a representative of the "Merchants' Despatch," a freight line operating over the New York Central system; it was known to freight inspectors in the service of the Carrier's Inspection Bureau as far back as 1890; it was the subject of conversation at different times during recent years between a member of the complaining firm and officers connected with the committee charged by the carriers with duties pertaining to classification; it was presumably a matter of some notoriety, and the

subject of more or less frequent consideration by the carriers' representatives. We find further, that the receiving carrier, if not the others, was chargeable with knowledge of this practice of its agent in erroneously billing this freight, described simply as "window hold-lands," at third class rates.

The amendment of March 2, 1889, subjecting shippers, as well as individuals in railroad service, to fine and imprisonment for the offense of false billing, false classification, false weighing, or false report of weight, or any other device or means by which unjust discrimination may be secured, was designed to protect carriers as well as innocent shippers. The absence of that provision against shippers was made the basis of vehement protests by carriers in every section of the country, and its passage was hailed as a just recognition by Congress of the right of carriers to be protected from the fraudulent acts of their customers. But notwithstanding the presence of this provision in the statute, carriers and their representatives have almost invariably withheld from the prosecuting officers of the Government the evidence of violations by shippers which they alone could furnish. They have seemed to prefer that the people should regard them as accomplices in the illegal transactions rather than as the victims of law breaking shippers, and even when called upon to testify before a grand jury, many railway officials have deliberately assumed the role before the public of participants in the offense, by refusing to give evidence concerning alleged violations of the law on the ground that their testimony might tend to criminate themselves. These considerations, pertinent in a general sense, may or may not be applicable to the attitude of the defendants with reference to the continued misdescription and improper rating of complainants' freight. Upon this point we go no farther than to say that the carriers have shown great lack of vigilance. Apart from being able to invoke the whole power of the law and the aid of the prosecuting officers of the Government, the exercise of ordinary care on their part in the reception and billing of complainants' freight would have rendered it impossible for complainants to derive any advantage from the misdescription in which they indulged.

It is not within our province to adjudicate whether any person has or has not so demeaned himself as to violate the penal provisions of the Act to Regulate Commerce; that is matter for determination by a court of competent jurisdiction in a proceeding where the accused may avail himself of his constitutional right of trial by jury, and nothing said herein should be construed as assuming to decide any such question. But this Commission has authority

to determine what effect the admitted or proven acts of parties shall have upon the standing of such parties in cases before it. We took this view in the case of Ottinger, a ticket broker (*Ottinger v. Southern Pac. R. Co.* 1 Inters. Com. Rep. 607, 1 I. C. C. Rep. 144); and in the case of Slater, a disappointed applicant for an annual pass (*Slater v. Northern Pac. R. Co.* 2 Inters. Com. Rep. 243, 2 I. C. C. Rep. 359). The Commission refused to entertain the complaint of the ticket broker, and declined to assist complainant Slater in retaliating upon the carrier for revoking his annual pass; but the Commission did, nevertheless, for the guidance of the carrier and in the interest of the general traveling public, consider and rule upon the question presented by the facts in that case. We think this indicates the rule which should be followed in this case: Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is our duty to execute and enforce the statutory provisions applicable thereto.

Decision on the Merits.

Prior to February 2, 1891, all window shades were in the first class of the Official Classification. At that date the carriers determined that plain mounted shades were entitled to a lower classification and placed them in the second class, leaving all other kinds of shades in class 1. This first and second class rating for window shades remained undisturbed by the carriers until January 1st of the present year, when they abolished the second class rating for plain-mounted shades, and returned to the practice in force prior to February, 1891, of charging first class rates on all window shades. The defendants participated in this action, and the new classification is in force upon their roads. The action of the carriers, in so far as it resulted in consolidating the classification of window shades into one class, should be approved. Under Classification No. 11, in force prior to January 1, 1894, while plain-mounted shades were given second class rates, the unmounted or otherwise unfinished

article, so long as it came properly under the designation of window shade, was chargeable at first class rates—more than the plain, finished article. Again, the above findings indicate that through the employment of machinery in shade decoration the difference in value between nine-tenths of the decorated shades and those which are left plain, without any decoration, is only about 20 cents a dozen. For the purposes of transportation rating this difference, or any approximate sum, is trifling, and the carriers were not justified in placing plain and machine decorated shades in different classes. On both of these grounds, therefore, the action of the carriers in putting all shades in a single class is to be commended. But we have searched the evidence in vain to find any justification for the carriers' course in placing all shades in the first instead of a lower class. We think that in this respect their action was arbitrary, and that the facts point to the necessity of a reduction rather than an increase in the rating of this article for transportation purposes. The evidence is undisputed that economies introduced in the manufacture of window shades since 1887 have reduced the value of the cheaper grades fully two thirds and effected a still more marked decrease in the value of the higher grades. This extraordinary reduction of values carries with it a corresponding diminution in the risk which carriers assume in contracting to safely transport the freight to destination.

All of the materials used in shade making are, as shown in the eighth finding, classified by the carriers in the third class or lower, with the single exception of a second class rating for less than carload shipments of aniline dyes; but these dyes are in the fourth class when shipped in carloads. Curtain fringe, in the first class, might be regarded as another exception, but it is only attached to the better grades, and those constitute but a small proportion of the volume of shade traffic. The value of the roller, slat, and fixtures, and cost of labor required to manufacture, are insignificant in comparison with the value of the cloth or hollands which form the body of the shade. The excess in value of this single article over the combined value of all other material used in the construction of a complete window shade is so great that of two cases similar in bulk and weight, one containing plain window hollands and the other complete shades, the case containing hollands has, as shown in the tenth finding, very much greater, and sometimes double, market value. Yet the carriers have carried for several years, and still continue to carry, plain cloth or hollands at third class rates, and it must be presumed that such rating for the cloth or hollands is neither unreasonably low nor unprofitable to the carriers. Moreover, practically all the other materials

4 INTER S.

used in the production of chades are transported by them at the same or lower rates.

As to the volume of shade traffic offered for transportation, we have it on defendants' own showing, by the table in the eleventh finding, that complainants' shipments amounted to considerably more than two and a half million pounds during a period of six months in 1892-93, and there is no proof or suggestion that the complainants have anything like a monopoly of the manufacture of shades. They are large producers; but the manufacturers at New York, Oswego, Meriden, Providence, and Jersey City, in the east, and at Chicago, St. Paul, and perhaps at other points in the west, also produce largely, and actively compete for the trade of various markets reached by the defendant and other lines.

In the elements of bulk, weight and value, several of the dry-goods articles described in the table set out in the sixth finding as taking third class rates have greater similarity to a 23-dozen case of finished shades than exists between such a case of shades and the first-class articles mentioned in that table. There is, however, little analogy in uses or character between window shades and the dry-goods articles referred to. With the exception of lace curtains, these articles are dry-goods in the piece; and lace curtains are in the category of ornamental house furnishings, while the window shade is regarded as a household necessity. But the fact that both shades and lace curtains are in the first class, the latter many times more valuable, is an element to be noted, though against this it must be considered that many incongruities are unavoidable when the carriers undertake, as they do by the Official Classification, to divide the great mass of freight articles into practically six classes; and the desirability of simplicity in the classification is a feature which should not be overlooked. The items of similar bulk and weight, less value and risk of carriage, and important volume of traffic, are all in the direction of giving to window shades a classification as low as that which is provided for window hollands.

So far, we have considered this question without reference to the rates themselves. Rates between New York and Chicago constitute the basis upon which rates to other points in eastern territory are adjusted. These rates between New York and Chicago are to-day exactly what they were on April 1, 1887, to wit: 75, 65, 50, 35, 30 and 25 cents, respectively, on the classes 1 to 6, inclusive. Thus, while through economy in manufacture the value of shades has been enormously reduced since April, 1887, as herein shown, the rate between the points named remains the same, that is, the first class rate of 75 cents per hundred pounds. This fact, standing alone, would perhaps indicate little, for the introduction of

great economies in manufacture has been common to very many articles of commerce; but it becomes matter of some significance when considered in connection with the other facts that the relation in point of value of window shades and window hollands, the constituent commodity, has been reversed in the intervening time, so that now a similar case of the latter is the more valuable commodity, and that since 1887 the carriers have reduced the classification of hollands to third-class, while they have recently raised the classification of plain shades to first class, where other shades have been continuously.

In comparing window shades and hollands for the purposes of this case we have based our considerations upon the 1200-yard case of hollands and a case of similar size containing shades. But finished shades are frequently shipped in smaller packages, many of which contain only one dozen shades. If a shipment consisting of one dozen shades and weighing not above 25 pounds were charged for carriage by defendants at one fourth of the hundred pound rate, this would be a very material element in this case. But this is not the fact. A 25-pound shipment pays as much as a hundred pound shipment; and so does a shipment weighing seventy-five pounds. This, we think, affords the carriers a sufficient margin for any extra expense involved in billing, handling and delivering consignments of less than one hundred pounds. A case similar in size to that which holds 1200 yards of hollands holds about 23 dozen shades. If these shades should be sent in 23 different packages to one consignee, it is possible that their transportation would involve some additional labor and time in handling than is involved in the transportation of a 23-dozen case of shades. But we are not altogether assured of this; the comparatively light 25-pound package may be easily and quickly handled, while a case weighing approximately 500 pounds is a heavy and cumbersome article. It should also be noted in this connection that the carriers, who make the classification, have not attempted to prescribe different classes for different sizes of packages containing either window shades or hollands. Any quantity of shades can be shipped at first class rates and any quantity of plain, uncut hollands at third class rates. It may be that hollands are very seldom shipped in small packages, while shades frequently are so shipped. But considering the rule of charging for one hundred pounds on shipments of less weight, the ease with which small packages containing nonbreakable material can be handled, the fact that the carriers do not make a distinction in classification between small and larger packages, and that mathematical exactness in rating is impracticable, we do not think that the single circumstance of fre-

quent shipment in small packages should outweigh the other weighty reasons herein set forth for a change in window shade classification to third class; especially, when the article with which shades are mainly compared may, whatever the actual custom is, be freely shipped under the classification at third class in any quantity, weight, or size of case, and when it may be inferred from the evidence, as shown by the table in the eleventh finding, that in point of tonnage the greater number of pounds of shades shipped is represented by shipments in large cases.

From a 1200-yard case of hollands and the other necessary and comparatively very cheap materials, fifty dozen shades can be made, and these will more than fill two cases, each similar in size and weight to the average case filled with hollands. If the western manufacturer who buys his case of hollands in the east and pays third class rates thereon to the factory should be enabled to ship shades at the same rates, he will enjoy much greater advantage than he has under the present adjustment of third class for hollands and first class for shades, so far as shipping out from his factory is concerned. As to the trade of Chicago, the manufacturer at that point must pay the rate on hollands from the east, but shades which he manufactures therefrom are already in that market; while the eastern manufacturer must pay a rate on shades to Chicago in addition to the cost of getting material to his factory. Moreover, the Chicago maker is at least as favorably situated as the eastern manufacturer in the matter of obtaining raw materials other than hollands. Neither, in view of the fact that the 50 dozen shades which can be made from a case of hollands must pay greater total transportation charges than the case of hollands even at the same rate per hundred pounds, are we able to see how makers or dealers in hollands or shade cloth can suffer disadvantage from a reduction of the rate on shades. This brings us to notice the theory of comparison advanced in behalf of the defense that as 1200 yards of hollands will make 50 dozen shades, the whole 50 dozen must, on account of cost of other material and of manufacture, be worth more than the 1200-yard case of hollands, and therefore shades should pay higher rates than hollands. 50 dozen shades are worth more than a case of hollands, and it is not contended in this case that such a quantity of shades should be carried for a *total charge* to the shipper as low, or anything like as low, as is paid by the shipper on a case of hollands. On the contrary, the whole 50 dozen shades do now, and will under third class rates, pay the carriers very much greater total transportation charges than those afforded by third class rates on a case of hollands. For example: An average case of hollands weighs 533 lbs., and the

third class rate New York to Chicago of 50 cents will amount to a total transportation charge of \$2.67; while sending the 50 dozen shades in one dozen packages of 25 lbs. each, or a total of 1250 lbs. at the third class rate, will give the carriers an aggregate sum for transportation of \$6.25; and even when the shades are sent in two 23 dozen cases, each weighing 495 lbs., or together 990 lbs., the third class rate will amount to a total of \$4.95, and 4 dozen out of the 50 dozen shades have been left out of calculation. It is thus demonstrated, even on the theory of comparison insisted upon by the defense, that under third class rates for both hollands and shades the carriers will receive full and proportionate compensation for carrying the greater bulk and weight of the entire 50 dozen shades over the bulk and weight represented by the case of hollands from which that quantity of shades can be made, while the difference in value and risk of carriage between a case of hollands and that quantity of shades is very small.

We can see no shipping or manufacturing interests which will be unjustly affected by reducing the rating on shades to third class. On the contrary, we are convinced, from the great reduction in value which has taken place since April, 1887, and the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and upon all the other facts and considerations herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity, that the classification of window shades as first class in the Official Classification has become unjust; and

that the legal duty of defendants under the statute to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, requires them to classify window shades not higher than they class window hollands. This latter commodity having been in the third class for several years, such classification is, as before stated, presumably proper. The classification of shades should be reduced to that of "window hollands and shade cloth, plain, uncut and undecorated," and order will be issued directing defendants to base charges for the transportation of window shades accordingly.

In stating facts and deciding the questions herein we have been compelled, of course, to base calculations upon figures which appear in evidence; these figures may vary somewhat from those which pertain to the business of shade manufacturers other than complainants, but it is not believed that such variation, if in evidence, would materially affect the findings and conclusions set forth in this report.

None of the reasons which induce us to order a reduction of the less than carload rating for window shades apply to the question of a lower carload classification for that commodity. Neither window hollands, shade cloth, nor any of the other articles with which window shades have been compared in this case, and which are included under the head of dry goods in the Official Classification, are given carload rates. In view of this fact and the different aspect put upon this case by our decision of the preliminary question, we do not feel called upon to pass upon the carload question in this report.

UNITED STATES CIRCUIT COURT, WESTERN DISTRICT OF ARKANSAS.

LITTLE ROCK & MEMPHIS R. CO.

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN R. CO.

(Two cases.)

SAME

v.

ST. LOUIS SOUTHWESTERN R. CO

(Two cases.)

SAME

v.

LITTLE ROCK & FT. SMITH R. CO.

(Two cases.)

(69 Fed. Rep. 400.)

1. Refusal to permit a forwarding company to perform an act involving the use of the tracks and terminal facilities of a receiving company is not a discrimination or denial of equal facilities by

4 INTER S.

one carrier to a connecting carrier within the prohibition of the Interstate Commerce Act.

2. The tracks and terminal facilities of a railroad company can be used by a connecting company