JACOB SHAMBERG *v.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY.

Complaint filed July 7, 1890.—Answers filed July 26 and August 1, 1890.—Hearings had at Washington October 17, and at New York November 12, 1890.—Final hearing had at Washington January 8, 1891.—Briefs filed January 5-9, 1891.—Decided April 25, 1891.

A firm of cattle dealers in the city of New York, who procured their cattle on a large scale from Chicago and other western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers constituting a through line from Chicago to New York that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company ¾ of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this, the carriers pay this firm yardage at the rate of 8½ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm, owning the express company, to its yards at pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held*—

1. This is an unlawful preference to the firm owning these improved stock cars and a violation of the Act to regulate commerce.

2. It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

John D. Kernan, for complainant.

Wheeler H. Peckham and *J. D. Bedle*, for D., L. & W. R. R. Co.

S. E. Williamson, for N. Y., C. & St. L. R. R. Co.

Daniel P. Hays, for Lackawanna Live Stock Express Co.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The complaint of Jacob Shamberg sets forth in substance, that he "for some time has been and is actively engaged in the city of New York in the business of transporting from the west live stock and supplying both foreign and domestic demand for the same or the products thereof," and that this business requires large capital and experience, and is conducted by him in said city in competition with many persons and corporations; and that the defendant railroads are common carriers engaged in the transportation of live stock between Chicago and other western points and New York "under some common control or management for continuous carriage between said points," as part of a through line and under a joint tariff of rates for such transportation.

It is then charged in the complaint on information and belief,

1. That since about December 1, 1889, the defendants, in violation of the Act to regulate commerce, have been and are guilty of unjust discrimination in that, while charging complainant and many others their regular tariff rates for the transportation of live stock from Chicago to New York, they charge others who are competitors of complainant in said business lower rates "for like and contemporaneous service under substantially similar circumstances and conditions."

2. That the Lackawanna Live Stock Express Company, of which B. A. Hegeman, Jr., of Newark, N. J., is general manager, is a bureau or agency organized and controlled by defendants for the transaction of the live-stock transportation business over their lines from Chicago to New York and

the second part, or which may be consigned to them, or delivered to the party of the first part for shipment to the party of the second part. For and in consideration of the faithful performance of the above described service the party of the second part hereby agrees to deliver, or cause to be delivered, at the aforesaid western termini of the party of the first part, all live stock owned or controlled by them for transportation to Hoboken, Jersey City or the city of New York, for which service they hereby agree to pay, and the party of the first part hereby agrees to receive, the same net rates of transportation as are paid and received for like service by either of the other lines running in connection with roads from St. Louis or Chicago. The live stock to be moved over the road of the party of the first part as rapidly as is now being done, and to be transferred from Hoboken to the foot of Forty-fifth street, East River, as promptly after its arrival at the former place as the weather and ice will permit.

"This agreement to continue in full force for the term of five years from the day of the date hereof.

"It is understood and agreed between the parties, that the rate of transportation to New York includes the transfer charge from Hoboken to Forty-fifth Street, East River, which transfer is to be done without extra charge.

"In witness whereof, the parties hereto have affixed their signatures the day and date first above written."

This contract was signed on the part of "S. & S." by F. Sulzburger, Treasurer, and on the part of the Lackawanna Road by B. A. Hegeman, Traffic Manager.

Under this contract the Lackawanna Road made free deliveries to S. & S. of all live stock delivered to said road for shipment to said firm or in their care. This service was estimated to have cost 3½ cents per hundred pounds. Free lighterage of cattle within the lighterage limits of the harbor of New York was not made by the other Trunk Lines, and the Lackawanna Road had no contract to make free lighterage except with S. & S. Some of the Trunk Line carriers are

the active competitors of the Lackawanna Road for the carriage of live stock from the west. At a meeting of the Trunk Line committee held April 6, 1889, a statement was made of these facts and that, inasmuch as this free lighterage was made by the Lackawanna Road alone, it was equivalent to a reduction by that company of the tariff on live stock. Thereupon said B. A. Hegeman, traffic manager of the Lackawanna Road, being present, stated that said railroad company, having no live-stock terminals of its own, felt justified in making deliveries in New York City, the same as the New York Central Railroad, and that the Lackawanna Road had a contract to perform this service which had nearly three years to run, referring to the above contract of June 9, 1887. At the time of this meeting of the Trunk Line Committee, the rate from Chicago to New York was 22½ cents per hundred pounds, and after discussion the committee agreed to make it 26 cents, being a raise of 3½ cents, with the option of free delivery within the lighterage limits of New York. The following resolution to that effect was unanimously adopted:

"*Resolved*, That it is the sense of this meeting that the cattle rates should be advanced as soon as possible to a basis of 26 cents per hundred pounds from Chicago to New York, with the option of free delivery within the lighterage limits of New York harbor."

Since the above action of the Trunk Line Committee, the Lackawanna Road has continued to make free deliveries to S. & S. as before, and has also allowed them 3½ cents per hundred pounds for yardage. This allowance for yardage had not previously been made. It is deducted from the regular tariff rate and added to the proportion of the Lackawanna Road, and the balance of the rate is pro-rated between the connecting lines. The 3½ cents is allowed to S. & S. on their own shipments as well as on shipments to others in their care and delivered to their dock on Forty-fifth Street, East River. S. & S. settle with the Lackawanna Road both for their own freight and for that shipped in their care, and as to the allowance to them of yardage by the road, no distinction is made

between cases where yardage is furnished for some length of time and where the cattle are simply unloaded and driven across the dock of S. & S. to some other yard. This is the custom of the yardage companies, the yardage charge being made in the latter case to furnish the means to keep the docks in repair.

S. & S. do not charge shippers in their care anything for the use of their dock and unloading facilities, but receive yardage in such cases from the Lackawanna Road. S. & S. in settling with consignees in their care charge them the regular tariff rates.

Prior to the time that the Lackawanna Road inaugurated this system of paying yardage to S. & S. it had not been done by the other roads, but after that time it seems that the other roads went into doing business in the same way in order to meet this method of the Lackawanna. And it further appears now that other roads do business in this way as well as the Lackawanna. But none of their tariffs show it, nor do the tariffs of the Lackawanna show it. It lowers the rates to the extent of the yardage—3½ cents per hundred pounds—and there is no reference or allusion to it in the tariffs of any of these companies.

It seems that prior to April 6, 1889, the rail carriers at New York made free delivery of certain other property, but did not make free delivery of cattle, and that the free delivery of cattle was brought about by the fact that the New York Central Railroad Company had stock yards in the city of New York; other roads terminating in Jersey City had stock yards there; but the Delaware, Lackawanna & Western had no stock yards, and under their arrangement with S. & S. they contracted to make free delivery of cattle at Pier 45, East River; and when this was brought to the attention of the Trunk Line Committee, it resulted in the adoption of the resolution above stated, that the rate from Chicago would be advanced 3½ cents per hundred pounds so as to cover free delivery of cattle. At that time none of the Trunk Line carriers at New York City paid yardage, but, as above stated, they resorted to this to meet the method of paying yardage by the Lackawanna.

Since May 2, 1889, by order of the Trunk Line presidents, all the Trunk Lines pay the charge of 3½ cents for yardage; formerly the charge for yardage was made by the yardage companies independently of the railroads, and was paid by the shipper. The shipper could not get his cattle except through the yards, as the railroads would not land them elsewhere, and if the cattle put their feet in the yards, yardage had to be paid. The Lackawanna Road pays yardage to others besides S. & S., but 75 per cent. or more of the yardage paid by said road is paid to S. & S.

While, as above stated, the cost of free lighterage by the Lackawanna Road to S. & S. was estimated at 3½ cents per hundred pounds, it is claimed that it in fact costs about 2 cents per hundred pounds. On the hearing the road refused to produce the contract between the road and the party (John H. Starin) who performed the service of delivery to S. & S. for the road. The above contract between the road and S. & S. was filed with the Interstate Commerce Commission September 17, 1890, after the date of July 7, 1890, when proceedings in this case were begun. The Lackawanna Road has no stock yards or live-stock terminals of its own, and cattle consigned to S. & S. or in their care are taken in the floats from the terminus of the road around the Battery to the dock and yards of S. & S., at Forty-fifth Street, East River.

The defendant, the New York, Chicago & St. Louis Railroad (known as the Nickel Plate Road) has no contract with S. & S. for free delivery to them, but since April 26, 1889, has paid its proportion of the 3½ cents, as per the following circular issued by its general freight agent, dated April 26, 1889:

"CIRCULAR No. 89—41.

"The New York, Chicago & St. Louis R. R. Co.,
"Office of the General Freight Agent.
"CLEVELAND, O., April 26, 1889.

"*To Agents and Connections:*

"The advanced rates on cattle to New York and Jersey City, effective May 1, 1889, cover a lighterage charge of three and one-half (3½) cents per 100 pounds, which please deduct before pro-rating, and add to proportion of the road east of Buffalo, by which the cattle are consigned.

"G. B. SPRIGGS,
"General Freight Agent."

The Nickel Plate Road, according to the testimony of said Spriggs, pays no part of any other terminal charges at New York and has nothing to do with the yardage allowance of the Lackawanna Road to S. & S. B. A. Hegeman, traffic manager of the Lackawanna Road, testified that 3½ cents yardage was deducted from the through tariff rates and added to the proportion of the Lackawanna Road, and that the balance of the tariff rate was pro-rated with connecting lines.

The firm of S. & S. was composed of Joseph Schwarzschild and F. Sulzberger, and also, for a time, of Samuel Weil, who was a brother-in-law of Sulzberger. About May, 1890, Schwarzschild sold his interest to Sulzberger and retired from the firm. Prior to his withdrawal he had nothing to do with the transportation business of the firm or with the Lackawanna Live Stock Express Company. About the middle of August, 1890, two months before the hearing, Weil also sold his interest to Sulzberger, thus leaving the latter the sole owner at the time of the hearing of the assets of S. & S. At the time of the hearing, and when Weil sold to Sulzberger, Sulzberger was in Germany and Weil was engaged under power of attorney from Sulzberger as manager of the business of S. & S. in this country. He was still acting in that capacity when the hearing was had.

As appears from the certificate of organization, duly recorded and filed in the State of New Jersey, the Lackawanna Live Stock Express Company was organized as a corporation under the laws of said State, with James Cavanagh, John M. Cavanagh and John Keim, all of Brooklyn, N. Y., as incorporators.

The incorporators named in the certificate of organization of the Express Company, the two Cavanaghs (father and son) and Keim, were friends of Weil and allowed their names to be used as incorporators at his request. Prior to the organization of said company, Sulzberger had interviews in reference to it with Weil, and also with Hegeman, traffic manager of the Lackawanna Road. At the time the Lackawanna Road was carrying stock shipped by S. & S. from Chicago to New York in ordinary cattle cars; and Sulz-

berger, calling Hegeman's attention to the fact that during hot weather the low tin roofs of these cars and the heat from the bodies of the animals caused them to perish, and that he (Hegeman) must get up a live-stock car that would prevent this loss. Hegeman thereupon secured patents from Washington and had a model car built in Buffalo, which was submitted to Sulzberger and the proper officials of the Lackawanna Road and the Nickel Plate, and approved. The Lackawanna Live Stock Express Company was then organized, January 6, 1888, as above stated; and January 27, 1888, about three weeks after its organization, the said Express Company and the defendants the Lackawanna and Nickel Plate Roads made the following agreement:

"Agreement made and entered into this 27th day of January, 1888, by and between the Delaware, Lackawanna & Western Railroad Company and the New York, Chicago & St. Louis Railroad Company, parties of the first part, and the Lackawanna Live Stock Express Company, party of the second part.

"1st. The party of the second part hereby agrees to supply the parties of the first part with not less than two hundred (200) or over four hundred (400) live-stock cars, constructed with suitable feeding racks, ventilated roofs and Bain's truck, to be of such quality and construction as the transportation of live stock requires, and in every way suitable for the purpose for which they are intended. Plans, or a model car, to be submitted to the parties to this agreement for their approval.

"2d. The parties of the first part, each for itself, hereby agree to use the cars of the Lackawanna Live Stock Express Company for the purpose of transporting such live stock over their respective roads from Chicago and other western points to the city of New York or its vicinity as may be furnished by the party of the second part.

"3d. It is understood and agreed that said cars are intended for regular and constant use over the railroads of the said parties of the first part, and that said parties of the first part are to be under no obligation to furnish stock for loading said cars, and are not to be required to take the same unless the live stock for transportation therein is furnished by said party of the second part.

"4th. Car repairs to be made on the same terms as are made to cars exchanged with other railroads under the rules of the Master Car Builders' Association.

"5th. The rate of mileage to be paid by the parties of the first part to the party of the second part for the use of its cars, whether loaded or empty, shall be three-quarters of a cent (¾) for each and every mile run. The mileage of the said cars shall be reported monthly by each of the parties of the first part to the said Lackawanna Live Stock Express Company, and mileage to be paid within thirty (30) days after such report shall be rendered.

"6th. The parties of the first part shall have the privilege of loading the cars with westbound freight, but not for points west of Chicago unless such freight is transferred at Chicago.

"7th. The railroad companies herein referred to, parties of the first part, shall not be liable for mileage, except for such as is earned on its own line.

"8th. This agreement shall be in force for a period of five (5) years from the fifteenth day of February, 1888."

This agreement was executed in triplicate and signed by James Cavanagh, President of the Lackawanna Live Stock Express Company; B. A. Hegeman, Traffic Manager of the Lackawanna Road, and G. B. Spriggs, General Freight Agent of the Nickel Plate Road.

No cars were supplied by the Express Company under this contract until about September 1, 1888. At that date 150 were put on; in October, 1888, the number was increased to 180; in November, 1888, to 200, and in June, 1889, to 250, the present equipment. The maximum number of cars, 400, specified in the contract has never been furnished by the Express Company, and though the live-stock business of the defendant roads has been and is sufficient to require them, they have never called for them or taken any steps to have them furnished. The number to be supplied over the minimum has been left to the discretion of the Express Company. Two hundred of these cars were built by the Railroad Equipment Company of New York and the remaining fifty by the Buffalo Car Manufacturing Company of Buffalo, under contracts with the Express Company, dated respectively April 24, 1888, and February 21, 1889.

In the contract with the Railroad Equipment Company for 200 cars, their agreed value was stated to be $630 each, and it was stipulated that 30 per cent. of the total agreed value, $37,800, was to be paid on delivery September 1, 1888, and from October 1, 1888, to September 1, 1893, both inclusive,

sixty consecutive monthly payments of $1,904.70 were to be made, amounting to $114,282. This amount added to the cash payment would make the sum of $152,082, which would be at the rate of $760.41 for each of those cars.

In the contract with the Buffalo Manufacturing Company for the fifty cars, their agreed value was put at $610 each, and thirty per cent. of the agreed value was to be paid on delivery of each twenty-five cars, making an aggregate payment on delivery of $9,150. The delivery was to commence and be completed in April, 1889, and from the date of average delivery twenty-four consecutive monthly payments of $945.21 each were to be made, aggregating $22,685. Adding this amount to the payments on delivery, the sum would be $31,835, and this would make the cost of each of the fifty cars $636.70. The total ultimate cost of the 250 cars would be $183,917, and the total cash and agreed price, $156,500.

The cash payments on delivery and subsequent installments have been paid by Weil as they fell due. The total other expenditures of the Express Company, consisting of car repairs and salaries of officers from September, 1888, to August, 1890, both inclusive, amount to $34,050.48.

The railroad companies have paid the Express Company car rental or mileage of $\frac{3}{4}$ of a cent from September 1, 1888, to September 1, 1890, the sum of $205,582.68. (About .54 of this was paid by the Nickel Plate Road and the balance, .46 by the Lackawanna Road. Deducting from this amount the expenditures for repairs and salaries, $34,050.48, there is left $171,532.20 as the amount earned by the Express Company in two years above current expenses. The life of a car is ten or twelve years; its depreciation in value and the amount of repairs required is much greater in its latter years, but such depreciation does not average over 10 per cent. per annum.

The live-stock transportation rate from Chicago to New York at the date of contract between the railroad companies and the Live Stock Express Company was 35 cents per hundred pounds. This had been the rate for over six months prior to the contract and continued until May 14, 1888. The following were the rates from July 1, 1887, to October 14, 1890:

Rates of Transportation on Live Stock from Chicago to New York.

July 1, 1887.....	35	cents	per cwt.....	to May 14, 1888
May 14, 1888.....	25	"	"	to June 25, 1888
June 25, 1888.....	16½	"	"	to July 4, 1888
July 4, 1888.....	14½	"	"	to July 5, 1888
July 5, 1888	12½	"	"	to July 7, 1888
July 7, 1888.....	11	"	"	to July 8, 1888
July 8, 1888.....	9½	"	"	to July 9, 1888
July 9, 1888.....	8½	"	"	to July 11, 1888
July 11, 1888.....	7½	"	"	to July 12, 1888
July 12, 1888.....	6½	"	"	to July 13, 1888
July 13, 1888.....	5½	"	"	to Aug. 31, 1888
Aug. 31, 1888.....	10	"	"	to Sept. 27, 1888
Sept. 27, 1888.....	15	"	"	to Dec. 19, 1888
Dec. 19, 1888.....	22½	"	"	to May 2, 1889
May 2, 1889.....	26	"	"	to June 16, 1890
June 16, 1890.....	24	"	"	to June 20, 1890
June 20, 1890.....	22½	"	"	to June 26, 1890
June 26, 1890.....	21	"	"	to June 30, 1890
June 30, 1890.....	19½	"	"	to July 3, 1890
July 3, 1890.....	18	"	"	to Oct. 14, 1890

The distance from Chicago to New York is 914 miles. The railroad companies pay the Express Company a mileage of ¾ of a cent both ways, loaded or empty, and the cars of the Express Company as a rule are sent directly back from New York without stopping them to take up traffic. The railroad companies, in addition to the mileage paid to the Express Company, pay, as before stated, 3½ cents per hundred pounds yardage to S. & S., and also 50 cents per car for loading to the Union Stock Yards at Chicago. The free delivery to S. & S. costs about 2 cents per hundred weight. The Express Company's cars carry 11 tons, and the cost of transportation is at least 3 mills per ton per mile.

The expenses per trip from Chicago to New York, on a car of the Express Company carrying 11 tons, paid by the railroad companies on shipments to or in care of S. & S., are:

1. Mileage for 914 miles to New York, at ¾ cts. per mile	$6.85½
2. Same on return empty	6.85½
3. Cost of free delivery at 45th Street, at 2 cts. per cwt.	4.40
4. Yardage at 3½ cts. per cwt. paid to S. & S.....	7.70

5. Stock-yard charge at Chicago for loading, paid by roads	$ .50
6. Cost of hauling car 914 miles, at 3 mills per ton per mile	30.16
Total	$56.47
Earnings per trip on car carrying 11 tons at the rate of 26 cts. per cwt.	$57.20
Excluding the cost of hauling the car empty on the return trip, the profit per car would be	.73

The rate at the time the express cars commenced running was 10 cents per hundred pounds, and from that time up to October 14, 1890 (which is as far as the evidence extends), has been as high as 26 cents only from May 2, 1889, to June 16, 1890. The remainder of the time the rate has been much lower and the business has been done by the roads at rates considerably below the actual cost of transportation. It is admitted by the officials of the railroads who were examined at the hearing that under the rates prevailing since operations under the contract between the roads and the Express Company were commenced, the business has been unremunerative to the roads and has been conducted for a large portion of the time at less than the actual cost of transportation. As before stated, however, at the time the contract was made, and for over six months previous thereto, the rate had been, and for some time subsequent continued to be, 35 cents per hundred pounds, and these officials claim that no such cut in rates as has occurred was anticipated, and further that the contract has been beneficial to the roads, inasmuch as the rates would have been the same any how, and it has enabled them not only to retain business which would have gone elsewhere, but also, by the improved service, to increase what they had, and that this business so retained and acquired, while not presently remunerative, is prospectively so, on a probable advance in rates.

As appears from the figures hereinbefore given relating thereto, the earnings of the Express Company have been over 50 per cent. per annum on the capital invested, after

deducting the amount paid for car repairs and salaries, and not taking into consideration the depreciation in the value of the cars.

The mileage made by the cars of the Express Company is over twice that made by the ordinary live-stock cars. This is due to the following facts: *First*, that they are run exclusively on through trips from Chicago to New York, and not from intermediate local stations as the common cars are; *second*, they are sent directly back west without being detained for traffic west as the common cars are; and, *third*, the cattle can be fed and watered on board the express cars, without unloading for that purpose at Buffalo or elsewhere as is the case with common cars.

The mileage of ¾ of a cent, stipulated for in the contract, is the usual rate on exchange of cars, and with the mileage made by ordinary freight cars may not be too high, but on private cars so run as to make regularly a large mileage, would seem to be excessive.

The officers of the Lackawanna Live Stock Express Company are James Cavanagh, president, and his son, John M. Cavanagh, treasurer, and B. A. Hegeman, Jr., general manager. John Keim is a director, and acts as secretary. The Cavanaghs and Keim, as before stated, are the incorporators, and friends of Weil, and their connection with the Express Company was at the request of Weil. There are no other officers or directors. B. A. Hegeman, Jr., is a young man, the son of B. A. Hegeman, Sr., traffic manager of the Lackawanna Road; and before his appointment as general manager of the Express Company had been connected with the freight department of the Lackawanna Road. His salary is $3,500 per annum. At first it was $3,000 per annum. He received his appointment through or from Sulzberger, of the firm of S. & S. The Express Company has an office at Newark, New Jersey, in a building belonging to the Lackawanna Road, for which it pays the road no rent. This office is in charge of B. A. Hegeman, Jr., whose duty is to keep posted as to the position and repairs of the cars of the Express Company, and receive applications from shippers for their use. The Express Company has no president's or treasurer's

office, and no other office whatever, except that in charge of B. A. Hegeman, Jr., at Newark, and has no agent or representative at Chicago.

Through bills are not issued by the Express Company, but by the railroad company, and the latter fixes the rates of transportation and collects the freight charges. No account of the mileage earned by the express cars is kept by the Express Company, but it is kept by the mileage departments of the railroad companies. The Express Company has no yards or tracks of its own for its cars, but uses those of the roads. The express cars are treated in this respect in the same manner as the cars of the roads.

About June, 1890, the Trunk Line presidents agreed that they would not carry private cars over their lines. The president of the Lackawanna Road was present and voted for this, but reserved the right to run the cars of the Lackawanna Express Company. Since that time no other patent cars except those of the Express Company have been allowed to run on the Lackawanna Road for the cattle business. The Nickel Plate road receives and transports over its line all roadworthy patent cars that are offered.

The capital stock of the Express Company is put in the certificate of incorporation at $150,000, and divided into six thousand shares of $25 each. The cash capital on which the company is to commence business is $2,000, representing eighty of these shares, and they are assigned in the certificate of incorporation as follows: 70 to James Cavanagh, 5 to John M. Cavanagh, and 5 to John Keim. It appears that some of these shares of stock may be owned by these parties, but Weil is unable to say how many. There is no proof that any stock has been actually issued.

B. A. Hegeman, the traffic manager of the Lackawanna Road, having expended a great deal of time and labor in getting up designs for the express cars and a model car, was promised some of the stock by Sulzberger. The amount was not specified, and the stock has never been received by Hegeman. He has never directly asked for the stock, but about two months before, he testified, reminded Weil that it had

been promised him, and Weil told him it would be attended to after awhile. Hegeman testifies that he thought Weil's reason for postponing the matter was because a change was about to be made in the firm of S. & S., which firm, he supposed, owned a controlling interest in the Express Company. He concludes his testimony by saying that he looked upon the promise of stock as a "joke," that he did not intend to take it in consideration of his services, and that what he did was for the benefit of the Lackawanna Road.

Weil, the brother-in-law of Sulzberger, and manager of the business of S. & S., and who was a member of said firm to within two months of the time he testified—when he sold out to Sulzberger, leaving the latter sole owner of the business—was the main actor, in connection with Sulzberger, in organizing the Express Company, and claims to own a controlling interest in its capital stock. The stock has never been issued to him, although he made the cash or delivery payments on the express cars, and has also paid the subsequent installments of purchase money as they fell due. He claims that the stock will be issued to him when he desires it and testifies that the mileage earnings of the express cars are paid over to him by the treasurer of the Express Company.

Weil, having stated that he paid for the cars, was asked whether he made the payments with his individual money. In reply he said that he did not think this was any of the questioner's (Mr. Kernan's) business, but stated that the cars were not paid for with the funds of the railroads or of S. & S. Being then asked whether any portion of the money was furnished by Sulzberger, he said: "We" (Weil and Sulzberger) "are in business together in a good many things. Before that we went into a great many speculations, and I might have owed him something and I might not. But the money was paid by me." He was positive that Schwarzchild furnished none of the money, but could not be more positive as to Sulzberger than to say that he did not think Sulzberger had. He could not remember whether Sulzberger furnished him any money about the time of the payments as a loan or otherwise, or whether he had any of Sulzberger's money in his hands, and stated he had no books which would show. In

answer to the question whether there was any understanding between him and Sulzberger that Sulzberger should have an interest in the earnings of the Express Company, he replied: "He has not yet." Being further questioned he stated that he did not know what was in the future, not being "a prophet nor a prophet's son." On the question being repeatedly put whether Schwarzchild & Sulzberger had any interest with him in the Express Company, directly or indirectly, he each time replied: "They have no interest." Finally, being asked whether he meant indirectly, he said: "I mean they have no interest."

The cars of the Express Company are not used for the accommodation of shippers in general, but only for those whose names are furnished through B. A. Hegeman, Jr. Applications for the cars are required to be made through him at Newark, New Jersey, and are transmitted by him to the general freight agent of the Nickel Plate Road at Chicago, who then notifies the live-stock agent of the road at that point; but the railroad employees and commission men at Chicago make the contracts for shipments.

The complainant, Shamberg, about January 1, 1890, made application to the officials of the Nickel Plate Road at Chicago for shipment to New York of cattle then in the yards used by the road. His application was denied, on the ground, as he states, that the road would take no other cars but its own express cars, and was short of them, and had to protect their regular customers first, but, as claimed by the road, because of an unusual pressure of business, which caused the cars to run short. He claims that, pending said application, shipments were being made in the express cars for S. & S. of cattle that came to the road after his. When told that the road did not have the cars, he offered to get cars elsewhere, about four or five blocks from the yards used by the road, but the road refused to send for them, alleging that its locomotives were otherwise engaged. Shamberg, both before and since that time, has made shipments on the express cars, and those cars are ostensibly open to all who make application for them through B. A. Hegeman, Jr., at Newark, New Jersey, but practically they are withheld from

shippers in general, and limited in their use to a few. Ninety per cent., or substantially all, of the business done by the express cars is that of S. & S. and shippers in their care at Forty-fifth Street, East River.

Before instituting this proceeding Shamberg had interviews in reference thereto with Sterne and Eastman, who are operators in cattle in New York, and who agreed with Shamberg to pay a portion of the expense. He testifies that under existing circumstances they are doing business at a loss in competition with S. & S. and consignees in their care, and that since he discovered his losses he has discontinued the shipment of cattle from Chicago except for export. He has recently shipped cattle from Chicago over the Lake Shore and West Shore roads. The Pennsylvania and the Erie Railroads connect with the abattoir in Jersey City, which is his regular place of business; there is no such connection between the Lackawanna Road and that abattoir, and he can not get his cattle from the terminus of the Lackawanna Road at Hoboken without driving them through Jersey City to the abattoir.

On the facts shown the conclusions and opinion of the Commission remain to be stated. These are too plain to be the subject of any difficulty in this proceeding. The dock and stock yards of S. & S. at Forty-fifth Street are some distance from the terminus of the Lackawanna Road, and when the cattle of S. & S. are carried over by the road and unloaded on their dock the delivery to S. & S. is complete. If it be incumbent upon a common carrier of live stock under certain circumstances to furnish yardage, it is certainly not after delivery to consignee on his dock and in his own yard. The allowance of yardage on such a state of facts would seem to be a mere gratuity. We are of opinion and so find that the yardage allowance to S. & S. of 3½ cents per hundred pounds on their shipments of cattle is a reduction or rebate from the regular tariff rate, and as such forbidden by the Act to regulate commerce.

The rule seems to have been that this yardage charge, prior to the introduction of a different custom by "S. & S.," was made by the yardage companies independently of the rail-

roads, and was paid by the shipper. This yardage is now retained by S. & S., and none of it is paid to the shippers in their care. The railroad, in making the payment or allowance to S. & S. on shipments to others in their care, is paying a claim that these consignees, if any one, owe to S. & S., and which, in the absence of this payment by the road, they would have to pay S. & S. unless the latter relinquished it. The railroad is assuming and paying a yardage claim which accrues after it has made delivery of the cattle at some distance from its terminus, and for which the shipper alone is liable. This must be held to be a rebate or reduction from the tariff rates in favor of shippers in care of S. & S., and a violation of the Act to regulate commerce.

The Lackawanna Live Stock Express Company, if it be anything more than a nominal company or corporation, is not in fact an express company. It does no express business whatever. It is, at most, a car-furnishing company, and its sole revenue is from the rental of its cars. It has nothing to do with the making or collection of rates, issues no through bills, and has no employees in charge of its cars when in use. All these matters are in the hands of the defendant railroads, and the employees of the latter have charge of and run the express cars as cars of the road. They are, in fact, the cars of the road during the term of the lease.

The first person, according to the evidence, who broached the subject of procuring express cars, if not the formation of the Express Company, was Sulzberger, of the firm of S. & S., and he interviewed B. A. Hegeman, traffic manager of the Lackawanna Road, on that subject solely in the interest of S. & S. At the time of the hearing, Sulzberger was the sole owner of the business of S. & S., and he and S. & S. were practically one. He appears to have been the active and leading member of the firm prior to the retirement of Schwarzchild. And for some time, and within two months of the hearing, Weil, a brother-in-law of Sulzberger, had been a member of the firm of S. & S. After this proceeding had been instituted and about two months before the hearing Weil sold out his interest to Sulzberger, then and at the

time of the hearing in Germany. No reason or explanation is given of this sale.

As to whether Sulzberger, who is practically S. & S., has an interest, and if so, what, in the Express Company, Weil's testimony, to say the least, is very unsatisfactory. He (Weil) made the cash payments, one of $37,800, for the cars, and has paid the subsequent installments of purchase money as they became due, but is unable to state positively whether any part of these large sums were paid with the money of Sulzberger, and in effect says that such may or may not have been the case. The source from which a party using money gets it must be held to lie peculiarly within his own knowledge, and it is a legitimate, if not irresistible, inference from Weil's evasive and inexplicit statements, that in part, at least, Sulzberger's money was used. That Sulzberger had an interest in, if not a control of, the Express Company, is indicated by many facts and circumstances. Among others we note the facts that it was formed on his application for improved cars for the service of S. & S., and the only acting officer of the Express Company, B. A. Hegeman, Jr., son of the traffic manager of the Lackawanna Road, was appointed and his salary fixed by Sulzberger. B. A. Hegeman, Jr., knew of no one else in connection with his appointment, and applied to Sulzberger for a certain additional amount of salary and got it. Furthermore, B. A. Hegeman, traffic manager of the Lackawanna Road, testified that for his services in get ting up designs and the model for the express cars it was promised him that Sulzberger would pay him in stock of the Express Company; he also states that it was said that Sulzberger would organize the Express Company, and that it was supposed that S. & S. owned a controlling interest in the Express Company's stock.

While Weil is the main actor in the formation of the Express Company, his name does not appear as an incorporator, officer or stockholder. He procured three friends, the Cavanaghs and Keim, to act as incorporators. They are also, respectively treasurer and secretary. Keim is the only director. There is no office of president, treasurer or secretary, and it does not appear that any are needed, as no duties seem to be attached to these

offices. No account of the mileage earnings of the Express Company is kept by the Express Company; that is left entirely to the railroads. B. A. Hegeman, Jr., who is styled the general manager of the Express Company, occupies as an office, free of rent, a room in a building of the Lackawanna Road in Newark, New Jersey. The real or most important business of the Express Company is done by Weil, who is not an officer, director or stockholder. He pays for the cars of the Company—its only property—and receives the earnings from their rental. The earnings of the Express Company have been over 50 per cent. per annum of its invested capital, on a cash basis, and it would seem that its stock would be valuable and much sought after; but there is no proof of the fact that it has been actually issued. Weil testified that the Cavanaghs did own some stock in the Express Company, more than five or ten shares each, but could not remember how much.

B. A. Hegeman, the traffic manager of the Lackawanna Road, devoted time and labor and rendered valuable service getting up designs and building a model of the express cars, and was promised that Sulzburger would pay him in stock. He has never got the stock, but about two months before the hearing reminded Weil that it had been promised him, and Weil told him that it would be attended to after a while. Hegeman concluded his testimony on this point by saying that he considered the promise as "a joke," that his conversation with Weil about it was "in jest," that what he did in getting up the express cars was for the benefit of the Lackawanna Road and that he did not intend to take the stock in consideration of said services.

Weil, although he claims to have a controlling interest in the Express Company, has never received any stock, but says he can get it when he desires it. His apparent indifference about the matter is readily understood in the light of the fact that, though not an officer, director or stockholder, yet the treasurer pays over to him the whole of the very large mileage earnings of the company.

The material evidence in reference to the Express Company,

and the relation of S. & S. and the defendants to it and to each other, had to be obtained from the employees of the defendants and from Weil. These matters were or ought to have been within the knowledge of these witnesses and susceptible of positive and clear proof exculpating the defendants if the facts were consistent with their innocence of the charges preferred by the complainant; but from all the facts and circumstances disclosed by the testimony of these evidently unwilling, if not hostile, witnesses, we are unable to resist the conclusion that the Lackawanna Live Stock Express Company is an independent company or corporation only in name; that it is in fact owned and controlled by Weil and Sulzburger, or S. & S., and that by the aid and co-operation of the railroad defendants it is operated in the interest of S. & S., and that it is a device gotten up by S. & S. and said defendants with the intent to evade the Act to regulate commerce by giving an undue and unreasonable preference or advantage to S. & S. and consignees in their care, and subject the complainant and other competitors of S. & S. to undue and unreasonable prejudice or disadvantage. The Express Company being practically S. & S., the contract between the railroads and S. & S., of January 27, 1888, is in effect a contract between the railroads and S. & S., and is in furtherance of said mutual design of the roads and S. & S. to evade the law.

By the action of the Lackawanna Road in refusing to take private or any other express cars on its line, the cars of the Express Company—in other words, of S. & S.—are the only improved cattle cars allowed to make through rates and trips over the lines of the defendants from Chicago to New York. The number of cars furnished under the contract is left to the discretion of the Express Company, or S. & S., and are not more than sufficient to do the business of S. & S. and consignees in their care, and as, under the contract, the Express Company—or S. & S.—are to furnish loads for the express cars, S. & S. are thus given a practical monopoly of the only improved through cars on the line of defendants. Notwithstanding the large profits made by the Express Company on mileage both ways, loaded and empty, paid by the roads under the contract, and the unremunerative if not ruinous

result of the business, under the contract, to the roads, they also furnish an office free of rent to B. A. Hegeman, Jr., the manager of the Express Company, at Newark, New Jersey, pay the loading charge of the stock yards at Chicago, pay S. & S. yardage on their own cattle and cattle shipped to others in their care, and through their employees transact free of charge most of the business of the Express Company. When it is considered that the Express Company is practically S. & S., the enormous amount of rebate allowed them under the contract, and the extraordinary advantages given them over their competitors, will be apparent.

This case illustrates in a marked degree some of the serious abuses and evils the Act to regulate commerce was intended to prevent. These abuses and evils are preferences in rates and facilities given by common carriers to large dealers in order to get their business. The rates of the large dealer are reduced by the carriers paying him yardage for his cattle and the cattle of others shipped to his care. The large dealer under the guise of an express company furnishes the carrier a large number of improved live-stock cars, being the only improved live-stock cars on the line of the carrier, for which the carrier pays a very high rental, and the large dealer determines as part of the arrangement who shall ship cattle in these cars, and who shall not, and of course it is determined the competitor of the large dealer shall not.

The large dealer selects a number of other cattle dealers, friends of his, whom he permits to ship cattle in his improved cars with him, and on their cattle he receives "yardage" from the carrier. Other cattle dealers are not permitted by the large dealer to enjoy with him this preference of quick transit, who suffer corresponding delays in the shipment of their cattle and losses in business resulting therefrom; but the large dealer has not these delays or the losses arising from them. The large dealer by this arrangement within two years is paid by the carrier a sum more than sufficient to pay for the entire cost of the improved stock cars and of their operation. A first-class gold mine would have to be valuable indeed to be more profitable than such an arrangement as this for the large dealer; and the value of it to him consists of the advantages

it gives him over other competitors, and the burdens it imposes in his favor on them and upon the carrier, no less than the fortune it gives him in money and property.

When the carrier is asked to explain and justify these anomalous results his reasons for it, as stated by himself, are that he needed improved stock cars and could better afford to obtain them from others at this rental than to furnish them himself; that while the arrangement has not been remunerative to him on account of the great reduction in cattle rates since it was made, yet that it has been beneficial to him in enabling him to develop his business, and that if he had not obtained this business by this method some other carrier would have done so. In other words, this purchase of the cattle-carrying trade of S. & S., by the Lackawanna Road, if rates had remained up, would have been all right for the carrier; though it failed to be profitable for the carrier as rates went down, yet that it enabled the carrier to increase and develop its unremunerative business.

The bare statement of facts found from the testimony of the witnesses in this case shows how extremely vicious and unlawful the whole scheme has been. But involving, as it does, property rights, we proceed to analyze these facts more particularly in the light of the statute, and in doing this the question to be determined as to whether the statute has been violated will be reached by considering the relation of one fact to another and the tendency of all the related facts to establish the conclusion. In the contemplation of the statute, any methods, however skilfully devised, by which an unlawful result is effected, become devices for the end attained. In a case of this kind the law deals with the results produced, and it is not material what means may be employed for the purpose. Whether the means be direct or indirect, open or covert, is of no importance if they in fact culminate in what the law forbids. The offense is fully seen in the final result, but, the result being unlawful, the condemnation of the statute falls alike upon the result itself and the means by which it is reached. When the ultimate thing done is unlawful, the steps for the purpose of its perpetration are equally unlawful, and the parties engaged in the transaction must be presumed to have

intended by their acts the breach of law that ensues as the necessary consequence.

The law in plainest terms forbids carriers to make or give undue preferences or advantages. This is a fundamental principle of transportation, and the equality of treatment intended by it is the underlying and paramount feature of the Act to regulate commerce. In fact, the notorious and general disregard of this principle by carriers led more than any other transportation abuse to the exercise by the Government of its constitutional power of regulation. The end in view is the public welfare, by enforcing an impartial service on the part of the chartered transportation agencies of the country, and preventing favoritism among competitors in business, that affords gain to one and subjects another to loss. If, under the ordinary rules of evidence, the facts in the present case make the conclusion reasonably satisfactory, that certain dealers have had exclusive advantages in business over their competitors through the action of the respondent carriers, an infraction of the law has been established.

The chief facts appearing on the record consist of certain transportation contracts, the acts of the parties under these contracts and the relation of certain dealers to the traffic carried under the contracts.

By the first contract, dated June 9th, 1887, the respondent, the Delaware, Lackawanna & Western Railroad Company, obligated itself to transport for a period of five years for the Schwarzchild & Sulzberger Refrigerating Company, from the western termini at Buffalo to Hoboken, N. J., and points within the limits of harbor lighterage of New York, all live stock owned or controlled by the contracting firm or which might be consigned to them or delivered to the railroad company for shipment to them, the transportation to be at the same net rates as charged by either of the other lines running in connection with roads from Chicago or St. Louis, and the stock to be transferred from Hoboken to the foot of 45th Street, East River, without extra charge.

In a little over seven months after the date of this contract, on January 27th, 1888, a new contract was entered into between the Lackawanna Live Stock Express Company and both the

respondent railroads, covering the transportation of live stock from Chicago and other western points to Hoboken for a period of five years, and the furnishing of cars for the purpose. The Express Company agreed to supply the contracting railroads with not less than 200 nor more than 400 live stock cars constructed in a specified manner. The railroads agreed to use these cars for the transportation of such live stock over their respective roads from Chicago and other western points to New York or its vicinity, as might be furnished by the Express Company. The cars, it was provided, were intended to be in regular and constant use over the roads of the respondents, but the railroad companies to be under no obligation to furnish stock for loading the cars, nor to be required to take them unless live stock for transportation should be furnished by the Express Company. It was further provided that the respondent roads should pay the Express Company for the use of the cars furnished at the rate of three-quarters of a cent a mile for every mile run, whether loaded or empty, but the railroads to be at liberty to haul freight back from New York in them as far as Chicago. This contract contained no provision in relation to lighterage in the harbor of New York, nor in respect to the payment of yardage for the live stock at New York.

There is no testimony showing that the first contract was cancelled or abandoned when the second was entered into, and the several parties to these contracts seem to have treated both as in effect and to have carried on business under them contemporaneously.

The acts of the several parties and their relations to the subject-matter of the contracts are now to be considered. Schwarzchild & Sulzberger (whether as a firm or as a refrigerating company does not appear and is not material) were, prior to and at the time of the making of both contracts, engaged in the live-stock business at New York and received their stock at Pier 45, East River. The first contract was made directly with them and covered the transportation of all live stock owned or controlled by them over the road of the Delaware, Lackawanna & Western Railroad Company from its western termini at Buffalo to Hoboken, and its free

lighterage delivery at Pier 45. There was in this contract no provision in respect to cars. There is some testimony in the case that Schwarzchild & Sulzberger desired better or improved cars for the transportation of their live stock, and some provision had been made by the Delaware, Lackawanna & Western Railroad Company for this purpose. Pursuant to some conversations or understanding between the railroad company and the said firm, steps were taken for supplying cars for the transportation of live stock. One Samuel Weil, a brother-in-law of Sulzberger, was, during all this time, interested in many speculations and business matters with Sulzberger, and their relations were so intimate that their money matters seem to have been common and no separate accounts to have been kept between them nor any settlements made.

Early in January, 1888, about seven months after the first contract was made, the Lackawanna Live Stock Express Company was organized nominally by Samuel Weil. It then had no property or assets, and only $2,000 of stock were subscribed for, and that by friends of Weil who acted as incorporators at his request. The new cars to be used under the contract were constructed through the agency of Weil. These were put in use as follows: by September 1st, 1888, 150; in October, 1888, 180; in November, 1888, 200. In July, 1889, the number was increased to 250, and there has been no increase since that time. The money for building the cars seems to have been furnished from the joint funds of Weil and Sulzberger, or the firm of which he was a member, though disbursed by Weil.

The business of the Express Company was all under the control of, and managed by, Weil, and the company had no office in New York City or at Chicago. It had an officer called a manager, a son of the traffic manager of the Delaware, Lackawanna & Western Railroad Company, who was furnished by the railroad company with a room for an office, free of rent, at Newark, N. J. His duties seem only to have been to fill orders for cars required at Chicago, and to keep a record of the cars. No stock has ever been issued by the Express Company, and no dividends declared. Nomi-

those for whose benefit it was created. The identity of interest of Samuel Weil, the nominal proprietor and controller of the Express Company, with the firm of S. & S. is apparent from the testimony. The facts of the case cannot be reconciled with any other hypothesis. The irresistible conclusion is, therefore, that the real beneficiaries of the arrangements and methods of business on the part of the railroads which have been described were the firm of S. & S., or those who were interested in that firm, and of these Mr. Weil was one; and furthermore, that the nominal Express Company and the contract made with it were only devices for the benefit of that firm, and by means of which, through the payments for car mileage and yardage, and the exclusive use of Express Company cars for S. & S., themselves and those consigning cattle to their care, that firm enjoyed preferences and advantages of very great pecuniary value, and which in the fullest sense were undue and unjust.

It is evident that questions of grave and far-reaching importance are involved in the disposition of this case, but they arise from the conduct of the carriers themselves, partly in failing to meet the reasonable demands of commerce in respect to improved and suitable vehicles of carriage, and partly in allowing shippers of certain traffic to supply their own vehicles on terms which almost invariably give large advantages to such shippers and subject other patrons of the road, who use the road's own equipment, to prejudice.

The manner in which a railroad may supply itself with equipment is not important. As has been said, in other cases, the law does not prescribe any mode, and it may be done by construction, by purchase or by hire, in its own discretion. A contract, therefore, to hire cars from a car-furnishing company, or to regulate the compensation by the mileage made, is not in itself unlawful, if it stopped there. It may be improvident and injurious to the road, as the contract in this case eventually proved to be, though evidently not foreseen when the contract was made. But improvident management of the road is primarily a matter of internal or corporate concern, to be dealt with by the corporators and its creditors among themselves. When, however, improvidence is

connected with undue and exclusive advantages given to certain shippers, it becomes a matter of affecting the public interests, and the law fastens responsibility upon the carrier for the consequences of its acts.

These public consequences bring the carrier within the domain of public regulation. In this case the offense of the carriers was not in supplying their roads with improved cars, but the vice of the transaction lay in making the arrangement with shippers and giving them a compensation for the use of cars that was excessive and amounted to a large rebate from the rate of transportation, and in confining the use of these cars to the favored shippers and those shipping to their care instead of supplying them equally to all who wished to ship in such cars. A carrier in its relations to the public acts within defined limitations. It must observe the rules of fair dealing, and not subject any part of the public with which it deals to undue prejudice. Its franchise is, in a sense, a trust to be used for the proper and impartial benefit of the public.

For this condition, the carriers themselves are responsible, and their acts and conduct are under investigation. The law does not require them to haul private cars of shippers, and least of all to divide their earnings with such shippers. If they haul such cars they do so voluntarily, and, as was said in Scofield *v.* Lake Shore & Michigan Southern Railway Company, 2 I. C. C. Rep. 90, 2 Inters. Com. Rep. 67, must be careful that their contracts do not become mere devices to evade the law. The purpose of the law is benign. It aims at justice, and is intolerant only of abuse, and, as cannot be too often said, impartiality, which is equality of treatment for those similarly situated with respect to the carrier, is the essence of justice.

It follows from what has been said that the respondent carriers have, by their conduct and the manner in which they have conducted their business, violated essential provisions of the law. They have, by the methods they have made use of, given undue and unreasonable preferences and advantages to some shippers of live stock, to the undue prejudice and disadvantage of the complainant and other shippers of like traffic, and whether this has been done by means of contracts

or obligations assumed is unimportant, as the agreements were subsequent to the Act to regulate commerce and subordinate to its provisions.

The unlawfulness of the acts of the respondents, as shown by the evidence, is the point determined. It is not necessary to consider whether any arrangement, or, if so, what arrangement can be made with a shipper for the use of his private cars for the carriage of his own traffic exclusively or of such traffic as he may control. These are questions to be met and considered when they arise. If the legitimate advantages of having traffic carried in improved cars are not deemed sufficient by the owner of the cars he cannot become a partner in the earnings of the carrier to make a profit on his car investment, and so acquire, by what is equivalent to a rebate in his rates, an advantage over other shippers of like traffic. And it is idle to say that a rule of this kind may check progress and prevent improvements of great value to commerce. The law does not check progress. It restrains abuses and leaves the whole field of progress open to the proper parties, the carriers themselves. If they fail to act, it is competent for the Government to require them to make such provision for moving any kind of traffic as may be deemed suitable.

The particular acts found in this case to produce the unlawful preference the statute condemns, are the payment by the railroads of the car mileage for the Express Company cars and the payment of yardage to S. & S. for their cattle. The lighterage of the cattle, without a specific charge therefor additional to the transportation rate, is a different matter. The geographical and physical condition of the port of New York are such that lighterage or transfers of cars by floats is indispensable. All roads are obliged to do it, more or less, and it is done for all kinds of traffic and for shippers generally. It is simply a necessity of the situation, and doubtless an inconvenience and expense that all would be glad to avoid if possible. The lighterage is part of the carrier's service, and the compensation for it is part of the rate charged. The discussion and rulings in this case, therefore, have no reference to lighterage in the harbor of New York.

The order of the Commission is that the respondent carriers cease and desist from giving unlawful preference and advantage to the firm of Schwarzchild & Sulzberger, or their successors in interest, in the transportation of live stock to New York City by the payment of car mileage for the use of Lackawanna Live Stock Express Company cars, or by the payment of yardage to the said firm of Schwarzchild & Sulzberger or their successors in interest, for the cattle transported for them.