ALANSON S. PAGE, CADWELL B. BENSON AND CHARLES TREMAIN *V.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY.

Decided March 4, 1896.

1. Under the "Act to Regulate Commerce" the Commission has continuing jurisdiction over the rates and practices of carriers subject to its provisions, and is not precluded from rehearing a particular case, and amending or modifying its original order therein, by the refusal of a Circuit Court of the United States to enforce such order against the carriers affected thereby,—especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order.

2. The Commission is authorized and required in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful, and, if so, to what extent; and to require such carriers by suitable order to cease and desist, not only from doing what is ascertained to be unlawful, but from omitting to do what is found to be lawful.

3. In proceedings before the Commission complaining parties are not bound to include as defendants all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier or carriers whose lines are used or required by the complainants; nor can such carriers excuse disobedience of a lawful order of the Commission because other carriers, members of an association with them, were not made parties to the proceeding and have failed or refused to take action in conformity with such order.

4. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the statute, imply comparison, and rates to be lawful must bear just relation to each other as well as be reasonable *per se*.

5. The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification.

6. When carriers have uniformly placed in the same class all grades of a particular commodity, for example, window shades, regardless of the difference in value between different grades or the size of cases used for shipment, such carriers will not incur greater risks than they have thus voluntarily assumed, if the same practice is continued under a decision and order requiring a lower classification and rating for the great bulk of shipments of that commodity which are actually transported.

7. An order having been issued in this case on March 23, 1894, requiring the defendants to cease and desist from charging more than third-class rates for the transportation of window shades, and the circuit court of the United States having declined to enforce such order on the sole ground that it applied to shades having very high value as well as to the cheaper varieties,—*Held*, upon rehearing before the Commission, that said order of March 23, 1894, should be vacated, and a new order entered containing the same general requirement, but with a proviso permitting the defendants to restrict their transportation of window shades at third-class rates to those limited to a specified maximum valuation at the time of shipment, and to prevent excessive undervaluation for transportation purposes of the much more expensive grades by such regulations as they may be advised are just and lawful.

John D. Kernan for complainants.

Frank Loomis for defendants.

REPORT AND OPINION ON REHEARING.

BY THE COMMISSION:

This case, which involves the classification of window shades by the defendant carriers, was decided by the Commission in a report and opinion issued on March 23, 1894, and an order bearing that date was entered and served directing the defendants to cease and desist from charging more for the transportation of "window shades, plain or decorated, mounted or unmounted, when packed in boxes," than they contemporaneously charge for like service rendered in the transportation of commodities enumerated as third-class articles in the freight classification in force over their roads.

On April 30, 1894, one of the defendants, the New York Central & Hudson River Railroad Company, attempted to comply with our decision by issuing circular No. 632 to take effect May 1, 1894, whereby it established a third-class rating for the interstate transportation of window shades. The third-class rates established by this circular remained in force for one month, when another

New York Central circular—No. 1096, dated May 17, and made effective June 1—was put in force by which the third-class rating of shades was limited to west-bound shipments to Chicago, Ill., over the Michigan Central Railroad and to intermediate stations on the Michigan Central Railroad. This second circular, No. 1096, was in effect only ten days. On May 31, 1894 (one day before circular No. 1096 took effect), the New York Central issued a third circular, No. 1106, to take effect June 11, whereby its second circular, No. 1096, was revoked and direction given that window-shade shipments should be governed by the official classification; in other words, that they should take the old and higher first-class rates in force prior to the issuance of our order.

The Rome, Watertown & Ogdensburg Railroad, of which the New York Central is lessee, also established third-class rates on shades from Oswego to Chicago and intermediate points *via* Suspension Bridge and the Michigan Central Railroad; but such rates, like those on the New York Central proper, were canceled by a circular dated June 1, to take effect June 11, 1894.

The Delaware, Lackawanna & Western Railroad Company also directed compliance with the provisions of said order, but this defendant subsequently modified this direction by limiting such compliance to points on the Delaware, Lackawanna & Western, New York Central & Hudson River, and Michigan Central Railroads, and afterwards, on or about the 1st of June, 1894, canceled this limited compliance with our order, and directed that window shades should thereafter be governed by the terms of the official classification.

The defendants' intention to comply with our order is further indicated by the following letter from the traffic manager of the New York Central & Hudson River Railroad to our Auditor:

"New York, N. Y., June 1, 1894.

"C. C. McCain, Esq.,

"*Auditor, Interstate Commerce Commission.*

"Dear Sir:

"In explanation of circular No. 1106, filed this date, allow me to say that, on receipt of the Commission's order in the 'window shade' case, we issued instructions to our agents to comply therewith, as far as traffic over the defendant roads was concerned; and we laid the matter before the classification committee for its action.

"We have, however, been advised that the classification committee does not feel justified in making such a reduction at this time, and has decided that the carriers should avail themselves of their right to have the question passed upon by the courts.

"Under these circumstances, and as it is represented that our compliance with the order of the Honorable Commission would injuriously affect important interests of other companies, whose traffic is governed by the official classification, we have felt it only just for us to cancel our circular, above referred to, and return to the official classification, and await the final determination of the question.

"Yours truly,
"NATHAN GUILFORD,
"G. T. M."

Compliance with our order in this case appears, therefore, to have been revoked by the defendants upon the representations and request of carriers against whom no order had been issued, and not upon any manifested unwillingness to obey the order or upon any belief then expressed or indicated by the defendants that its requirements were unlawful.

On June 21, 1894, a petition was filed by the Commission, in the circuit court of the United States for the northern district of New York, under section 16 of the Act to Regulate Commerce, as amended March 2, 1889, against the above-named defendants for enforcement of our said order of March 23, 1894. The case was duly argued and submitted, and the decision of the circuit court, filed on October 29, 1894, reads as follows:

"The order of the Interstate Commerce Commission, which the court is now asked to enforce, prohibits the railway carriers, the parties respondent, from charging any greater compensation for the transportation of window shades of any description, whether the cheap article, worth $3 per dozen, or the hand-decorated article, worth $10 per pair, than the third-class rate, the rate charged for the transportation of the materials used in making window shades. Such an order, in my judgment, ignores the element of the value of the service in fixing the reasonable compensation of the carrier, and denies him any remuneration for additional risk. I cannot regard it as justifiable upon principle, and must refuse to enforce it.

"The petition is dismissed."

A formal order was thereupon entered dismissing the petition, "but without prejudice to any right the said Interstate Com-

merce Commission may have to proceed further and to amend its said order or to further proceed to enforce the said order as so amended." An application to the court for reargument was denied. On or about December 29, 1894, counsel for the complainants served upon the defendants, under rule 15 of our rules of practice, a copy of a petition to the Commission for rehearing, which contains the following:

"That upon such rehearing the complainants desire that the proceedings before the said United States circuit court may be considered and also to present evidence to meet any evidence offered to sustain the allegations contained in the affidavits presented by the defendants to the United States circuit court upon the hearing before the said court, and the petitioners will respectfully ask that the said order of the Commission herein be modified so as to exclude therefrom hand-made and hand-decorated window shades, or that the Commission shall make a new order and decision based upon the evidence heretofore or hereafter offered herein."

Defendants' answer to the petition for rehearing alleged that complainants had no right or capacity to apply for, and this Commission had no right or capacity to order, a rehearing in this case. This plea was overruled by the issuance on January 11, 1895, after presentation of arguments for and against the petition, of an order granting the rehearing; and such hearing was held in New York city on February 18 and 19, 1895. At the rehearing this objection to jurisdiction was again raised by counsel for the defense, and it was claimed in support thereof that the petition to the court for enforcement of the order of the Commission and the subsequent trial in court and decision dismissing the petition precluded the complainants from applying for, and the Commission from granting, any further hearing in this proceeding; that no such authority is granted to the Commission in the Act to Regulate Commerce; that this lack of power in the Commission to grant a rehearing after institution of proceedings in court to enforce its order was recognized in a bill then pending in Congress, and containing, among other amendments, a provision for rehearing by the Commission in cases of this character; and that presumably such amendment had been suggested by the Commission. The measure referred to embraced, among other provisions, an amendment providing a procedure in the

courts to enforce orders of the Commission which, while preserving to the court all necessary functions and authority, would give due effect and value to proceedings before and by the Commission. In attempting to amend section 16 by substituting therefor a new and more satisfactory method of court procedure in cases originating before the Commission, it was necessary to specifically provide therein for all proceedings that justice might require, without regard to the presence or absence in the present statute of authorization for any particular legal step or proceeding before the Court or Commission. This amendment, with some changes, is recommended to Congress in our last annual report, and by one of its provisions the Commission is authorized to rehear cases at any time; but the fact that such amendment contains a rehearing provision which, in comparison with the object sought to be obtained by the whole amendment, is merely a detail, is no warrant for a conclusion that the present statute fails to authorize the Commission to grant a rehearing in this proceeding or in cases generally. The Commission is empowered by the statute to "execute and enforce the provisions of this act;" to investigate complaints against carriers, when there shall appear reasonable grounds for investigation, "in such manner and by such means as it shall deem proper;" to "conduct its proceedings in such manner as will best conduce to the proper despatch of business and to the ends of justice;" and "from time to time make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it." Under this ample authority of the statute the Commission has established rules of practice, and rule 15 thereof permits any party to apply to the Commission at any time for a rehearing, either upon the ground of error in the order or decision, or of subsequent changes in conditions or circumstances, or of consequences resulting from the carriers' compliance with its order. The Commission is not a court; it is a special tribunal continually engaged in an administrative and semi-judicial capacity in investigating railway rates and practices, the propriety of which may be and often is affected by changes in commercial and transportation conditions; and it is not precluded from rehearing a particular case and amending or modifying its original order therein by the refusal of a circuit court of the United States to enforce such order against

the carriers affected thereby,—especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order. The decree of the court in this case provides that it shall be without prejudice to any right the Commission may have to amend the order sought to be enforced. Defendants' objection to our jurisdiction to grant a rehearing in this case was properly overruled by the order granting the rehearing.

A question arose in court as to whether the Commission "has any power to make rates," and this was made the basis of some argument on behalf of the defendants at the rehearing. The Act to Regulate Commerce authorizes and directs the Commission in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful and to what extent they are unlawful, and to require the carriers by suitable order to *cease and desist*, not only from charging or doing what is ascertained to be unlawful, but *from omitting to do what is found to be lawful. Coxe Bros. & Co.* v. *Lehigh Valley R. Co.* 3 Inters. Com. Rep. 460, 4 I. C. C. Rep. 535; *Perry* v. *Florida C. & P. R. Co.* 3 Inters. Com. Rep. 740, 5 I. C. C. Rep. 97; *Murphy, Wasey & Co.* v. *Wabash R. Co.* 3 Inters. Com. Rep. 725, 5 I. C. C. Rep. 122.

The defendants alleged in their answers filed in court that the original proceeding before the Commission was irregular because some 128 other railroad companies using the official classification were not notified of the pendency of the proceedings and had no opportunity to uphold before this Commission the classification of shades against which complaint was made. In support of this it was asserted in the testimony that enforcement of our order against the defendants only would tend to break up the harmony in classification and rating accomplished by the railroads in eastern territory through their joint acceptance and use of the official classification, as made by representatives of such railroads, and that it would also necessarily result in the rebilling of through shipments and the charge of higher rates from junction points where the defendant railroads connect with those of carriers not parties to the case. It appears, however, that the more important roads using the classification,—about 60 in number,—and directly

represented in the classification committee, have, in fact, been represented before the Commission and in the court by the chairman of the official classification committee. However this may be, we think the proceedings in this case have been properly against the carriers named as defendants in the complaint. Complaining parties are not bound to bring or maintain cases before the Commission against railway associations or against all the carriers who, by reason of association or mutual assent, indulge in practices complained of. Neither can compliance by one or more carriers with a just order of the Commission lawfully depend upon the corresponding action or the consent of carriers not parties to the proceeding. While the interest of a carrier using the official classification, but not a party to the case, would ordinarily entitle it to appear and be heard in that proceeding upon application, the interest of such carrier is nevertheless indirect, is in the question involved rather than in the particular controversy, and not such an interest as in judicial proceedings would make it a necessary party to a suit. *Hurlburt* v. *Lake Shore & M. S. R. Co.* 2 Inters. Com. Rep. 81, 2 I. C. C. Rep. 122.

It is true that in some cases the principal carriers using the classification have been cited in or notified of the complaint, as prayed for by complainants or upon special application, but notice to or the bringing in of all such carriers in a case involving classification has never been considered requisite to the maintenance of such a proceeding, and to hold that such practice is necessary would place onerous and unjust burdens upon shippers seeking redress under the law. It is not a violent assumption that carriers in official classification territory, not parties hereto, would, upon continuance by the defendants of their compliance with our order in this case, or upon enforcement of such order by the court, have taken action in harmony therewith, but in case of contrary action by such carriers the law and the practice before the Commission and the courts authorize proceedings to require such carriers to justify their course. There is nothing in the suggestion that obedience by the defendants to the decision of the Commission would have tended to destroy any of the uniformity in classification which has been attained and which this Commission has always endeavored to promote.

In our report of this case, filed March 23, 1894, we discussed the misdescription of shipments by complainants and the apparent acquiescence therein by the defendants, and, while we declined to permit the defendants to plead such seeming violations of the law by complainants in bar of a decision on the merits, we also ruled that the individual interests of the complainants should not be taken into consideration in arriving at such decision. Though the complaint herein was filed about three years ago, and nearly two years have elapsed since the case was decided by the Commission, no prosecution of either of the complainants, or any person in their employ, on account of alleged improper billing of interstate shipments by or for them, has been instituted, nor, so far as appears on the record, has such a proceeding been requested by any carrier or person; and it must be presumed that such shipments of complainants, since the filing of our decision herein, have been properly described for the purpose of transportation. A ruling of the character above referred to is not to be held as continuing indefinitely against the complaining shippers, and where, after the lapse of a considerable time, repetition of the conduct held improper has not been shown, such a rule is justly to be regarded as having had its full effect at the time of its application. The circumstance that the present investigation and this report result from an order granting a rehearing ought not to call for reapplication of the ruling, if it would not be held applicable in a new proceeding involving the same subject-matter. The standing of complainants in this proceeding is now unaffected by the fact of the misdescription of freights found in our former report of the case, and that such misdescription and the practical acquiescence therein by defendants have become immaterial in this inquiry.

Another claim insisted upon by the defense is substantially that if the rates involved in the complaint against the classification of window shades are not shown to be unjust and unreasonable in themselves,—that is, practically without reference to rates charged by the roads on other commodities,—they ought not to be reduced. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the statute, imply comparison, and rates must bear just relation to each other as well

as be reasonable *per se.* *Eau Claire Board of Trade* v. *Chicago, M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264; *James* v. *Canadian P. R. Co.* 4 Inters. Com. Rep. 274, 5 I. C. C. Rep. 612; *Raymond* v. *Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 627, 1 I. C. C. Rep. 230; *Boards of Trade Union* v. *Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 608, 1 I. C. C. Rep. 215; *Interstate Commerce Commission* v. *Texas & P. R. Co.* 4 Inters. Com. Rep. 408, 57 Fed. Rep. 948. Whether complainants or other shade shippers have been prospering under the existing classification does not determine the question whether the classification of window shades is lawful. The aim of investigations under the provisions of the Act to Regulate Commerce is not to ascertain how high classification or rates the affected industries will stand; the purpose of such investigations is to determine the duties of carriers and the rights of shippers and the public under the law. *James* v. *Canadian P. R. Co. supra.* Much reliance also appears to be placed by the defendants upon a calculation that the reduction ordered by the Commission amounts only to from one third to one half a cent per single shade, while such reduction would diminish defendants' revenues about $10,000 a year, and the earnings of all the roads using the classification would be decreased thereby to the extent of about $50,000 annually. Similar results can, on the same basis, be figured and advanced with equal force in opposition to any complaint against alleged unlawful classification or rating under the statute. The fallacy of a comparison between the amount of a required reduction per single shade, in this case, or per pound or bushel or box in others, with the estimated effect of such reduction upon the total annual revenues of the carriers, ought to be apparent.

Complainants' factory is located at Minetto, N. Y. The class rates stated in the fifth finding of our report of March 23, 1894, as in force between Minetto, N. Y. and Chicago, Ill., were those in effect over the longer route *via* the Delaware, Lackawanna & Western road to Buffalo and its connection west. The class rates established over the defendants' route from Minetto to Chicago are as follows:

Classes	*1*	*2*	*3*	*4*	*5*	*6*
Rates	53	40	35	25	21	18

The reduction from first to third class rates on window shades from Minetto to Chicago amounts, therefore, to 18 instead of 20 cents per hundred, as indicated in said finding.

We held in this case that it is the lawful duty of the defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, and that this requires a classification of window shades not higher than that of window hollands. Any material error appearing in the findings on which that conclusion is based should, of course, be corrected in this report. We shall not undertake, however, to find specifically whether each minor statement set forth in the findings of fact in that report and based upon the evidence in the first investigation is or is not affected by the additional testimony. The question for present consideration is whether, apart from the criticism contained in the decision of the court, the showing made upon rehearing calls for such modification of the findings or conclusions set forth in our report of March 23, 1894, which are hereby referred to and made a part hereof, as to require a change in the order of that date.

Just prior to January 1, 1895, the official classification committee placed shade cloth or hollands in class 2 of Official Classification No. 14, in force on that date, but this action was canceled by a circular before the change took effect. Besides complainants, one or two other shade manufacturers have at different times applied to the committee for a classification of shades lower than was then existing, but without success. Complainants claim that, on account of increased competition in the manufacture and sale of shades, they have been obliged, for some time past, to deduct freight charges from prices paid them for shades. Their total shipments for the year 1893 amounted to about 4,928,908 pounds. On the basis of 90 per cent having been shades, their shipments of the latter for that year may be estimated at 4,436,017 pounds, equal to 221 full car loads of 20,000 lbs. Complainants undertake to supply all the grades of shades in common use which the market will take. The best fringed shades made by them wholesale at about $6.00 per dozen. For the year ending August 1, 1894, shades exceeding $5.00 per dozen did not constitute 2 per cent of their sales.

It is stated in testimony that our decision in this case was un-

fair, because, "considering the classification of hollands in rolls as fair, after the hollands are cut into window-shade lengths, and rollers, slats, attachments, and decorations added, it must become more bulky and valuable, and the railroad companies should receive greater compensation for the transportation thereof." This assumes that all the shades which can be made from a 1200-yard case of hollands would, under our decision putting shades in the third class, be carried at no greater total charge than is earned from the carriage of a single case of hollands at third-class rates. But there is no foundation for such an assumption. As shown in our former findings and conclusions, the ordinary commercial shade complete, and even with some decoration, is worth much less (leaving the felt or paper shade out of consideration) than a case of similar size containing hollands or shade cloth. In such a shade the cloth or hollands forming the body of the shade far exceeds the other materials in value; and we demonstrated towards the end of our first report herein that the shades made from hollands would, under the third-class rates ordered for shades and the average weights shown, pay the carriers very much greater total transportation charges than those afforded by third-class rates on the quantity of hollands from which shades are made. As some changes have taken place in the average weights of shade cloth and shades since the first hearing of this case, a comparison based on evidence produced at the rehearing will be found further on in this report.

The size of complainants' 23-dozen case of shades, or 1200-yard case of hollands or shade cloth, is about $42\frac{1}{4} \times 25\frac{1}{2} \times 20\frac{1}{4}$ inches, and the size of their 1-dozen case of shades is about $5 \times 7\frac{1}{2} \times 44$ inches. The dimensions of the cases vary, of course, with the quantity of shades packed, but as the 23-dozen case containing shades is about equal in size to the case containing 1200 yards of hollands or shade cloth, it furnishes a convenient package for purposes of comparison.

The weight of complainants' 23-dozen case of shades varies, on the main grades, from 411 pounds for felts to 539 pounds for Senecas, and the average weight is about 473 pounds. The weight of the 1200-yard case of shade cloth appears to be from 466 pounds for felts to 661 pounds for Minettos, the average being about 546 pounds. A witness connected with another

shade-cloth factory states the average to be about 535 pounds. The difference in average weight between the case of shades and the case of hollands appears, therefore, to be from 62 to 73 pounds. The amount of filling and quantity of coloring used affect the weight of shade cloth, and this, together with differences in the size of shades, may cause variation in the weight of different shipments of the same quantity and grade of shades.

Notwithstanding the showing in our first decision of the relative values and the great excess of total transportation charges resulting from the carriage of 50 dozen shades over the revenue derived from carrying a 1200-yard case of hollands or shade cloth, it is insisted upon in testimony for the defense, that the value and classification of the materials used in the manufacture of the shades, besides shade cloth, did not receive due consideration. It is claimed that the other necessary materials include spring shade rollers, with their interior fixtures and end adjustments, shade slats, metallic brackets, tacks, and threads, in the case of the plain shade; fringe for the fringed shade, and aniline dyes and other dye stuffs, bronze or metal powders, flocks, and perhaps other articles, for the decorated shade. The classification of "shade rollers with end fixtures for same," and "shade slats, bundles, or boxes," is third class, less than carloads, and fifth class, carloads. These and practically all the other articles used in shade manufacture, except fringe, bronze, thread, and flocks, were mentioned in finding 8 of our first decision in a table showing classification of shade materials. Such omitted articles are in the first class, except that flocks has a fourth-class rating for carloads. There has been some change in the classification of aniline dyes; when shipped in cases these goods are first class, less than carloads, and third class, carloads; in kegs or barrels, second-class, less than carloads, and third class, carloads. The quantity of aniline dyes used by complainants is comparatively small; such dyes are purchased by them in 3 or 4 pound packages, and they get them by express. Complainants used in their manufacturing operations for the year ending August 1, 1894, only 2,300 pounds of thread on spools, 1,950 pounds of bronze, and 13,600 pounds of flocks, a total of 17,850 pounds. The first-class rate from Minetto to Chicago applied on such total weight yield an aggregate of less than $95.00, and if

sent at the third-class rate between those points the total amount would be only about $33.00 less.

As before found in this case, from the 1200-yard case of hollands or shade cloth 50 dozen shades can be made, with the addition of slats, rollers, and attachments, etc. This number of shades will fill two 23-dozen cases similar in size to the case of hollands or cloth, and there will be 4 dozen shades left over. Complainants manufactured their main grades of shades during the year 1894 in the following percentages:

Minettos	16.59	per	cent.
Senecas	14.50	"	"
Ontarios	33.29	"	"
Hollands	11.02	"	"
Felts	24.60	"	"

Ontarios and felts, therefore, constituted about 58 per cent of their shipments of these grades.

The following table shows the weights and values in evidence of complainants' 1200-yard case of each grade of hollands or shade cloth (size about 42¼x25½x20¼ inches); of their case of similar size containing 23 dozen shades, each grade; of two such cases, containing together 46 dozen shades, each grade; of a case containing 1 dozen shades, each grade (size about 5x7½x44 inches); of 50 such cases containing together 50 dozen shades, each grade; and also the freight revenue between Minetto and Chicago on each of the above-mentioned quantities at the third-class rate of 35 cents per hundred pounds:

WEIGHT AND VALUE. FREIGHT REVENUE. MINETTO TO CHICAGO.

GRADE.	Shade Cloth or Holands. 1200 Yd. Case.		Shades. 23 Doz. Case.		Shades. Two 23 Doz. Cases.		Shades. One Dozen Case.		Shades. Fifty 1 Doz. Cases.		Shade Cloth or Holands. 1200 Yd. Case.	Shades. 23 Dozen Case.	Shades. Two 23 Doz. Cases.	Shades. One Dozen Case. Actual Weight.	Shades. One Dozen Case. 100 lbs. Minimum Weight.	Shades. Fifty 1 Doz. Cases.
	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Amt. Dolls.	Amt. Dolls.	Amt. Dolls.	Amt. Dolls.	Amt. Dolls	Amt. Dolls.
Minettos	661	132.00	524	69.00	1048	138.00	25	3.00	1250	150.00	2.31	1.83	3.66	.09	.35	4.38
Senecas	616	120.00	539	63.25	1078	126.50	26	2.75	1300	137.50	2.16	1.89	3.78	.09	.35	4.55
Ontarios	493	78.00	486	51.75	972	103.50	23	2.25	1150	112.50	1.73	1.70	3.40	.08	.35	4.03
Hollands	496	72.00	446	49.45	892	98.90	22	2.15	1100	107.50	1.74	1.56	3.12	.08	.35	3.85
Fells	466	24.00	411	25.30	822	50.60	21	1.10	1050	55.00	1.63	1.44	2.88	.07	.35	3.68

Shipments of 1-dozen packages weighing only 20 lbs. are mentioned in some portions of the testimony. It would seem that these packages must have contained shades of the lighter grades, such as "Felts" or "Hollands," for a 23-dozen case of "Ontarios" weighs about 486 lbs., equal to 21 lbs. per dozen, and to put up each dozen separately, even though somewhat lighter wood be used, must increase the total weight considerably. From weights given in evidence, a fair estimate of the average weight of the 1-dozen package appears to be about 23 lbs., and on this basis the total revenue for carrying 50 1-dozen packages from Minetto to Chicago at third class amounts to $4.03.

A 23-dozen case of shades weighs less than a case of hollands or cloth by from 7 to 137 lbs., but the value of a case of window hollands or shade cloth is nearly double that of a like case of "Minetto" and "Seneca" shades, one and a half times for "Ontario" shades, and nearly so for "Holland" shades. The value of the case of felt or paper shades (the cheapest variety) is about equal to that of the felts from which they are made. Applying the 35-cent rate per 100 lbs. in force from Minetto to Chicago, the freight revenue per 23-dozen case of shades is only from 3 to 48 cents less than the total charge for carrying a 1200-yard case of the same grade of shade cloth, and the 3-cent difference results from the carriage of the "Ontarios" grade, which constituted about one third of complainants' shipments of main grades in 1894.

Comparing a 1200-yard case of cloth with 46 dozen of the shades which can be made therefrom, the weight of two 23-dozen cases of shades, each having bulk similar to that of the case of cloth, exceeds the weight of the cloth case by from 356 to 479 lbs. and the total revenue from carrying the two cases is, as shown in the table, very much more than is received for transporting the case of cloth or hollands, while from $6.00 to $27.00 represents the excess in value of the two cases of shades over that of the case of hollands. In this comparison 4 out of the 50 dozen shades which may be made from the case of cloth have been left out of consideration.

Much stress is laid by the defendants upon the fact shown at the rehearing, that complainants, in compliance with the requirements of their wholesale customers, send most of their shades in cases of much less size than the case containing 23 dozen, and that

a large proportion of their shipments are made in the 1-dozen package. When but one such package, weighing from 20 to 26 lbs., is shipped to a consignee, the defendants, and other carriers using the classification, do not limit their charges to actual weight, but exact the full rate per 100 lbs., so that on such a shipment from Minetto to Chicago their compensation would be 35 cents instead of from 7 to 9 cents, if based on the true weight. The same rule applies to the shipment of three such packages, or to any less weight than 100 lbs. But complainants may, for nstance, ship ten or more of the 1-dozen packages to one consignee at the same time, and it is claimed that considerable extra cost of handling and account work is thereby entailed. On an average weight of 23 lbs. for the 1-dozen package, the defendants' Minetto–Chicago third-class total revenue for carrying 50 of these small cases would be, as above shown, $4.03. This gives them more than double the revenue which would result at the same rate on 546 lbs., the full average weight of a case of shade cloth or hollands. The total charge at the third-class rate of 35 cents per 100 lbs. on the 23-dozen case of shades, with an average weight of 473 lbs., would be $1.66, and on 23 1-dozen packages of the same shades, average weight 23 lbs., or 529 lbs. total, it would be $1.85, or 19 cents more for the extra weight of wooden boxing, extra handling, and clerical labor.

The defendants and other carriers using the official classification rarely make distinctions in classification of the same kind of freight on the score of value. Exceptions to this practice are found, however, in the classification of electrotype plates, engravings, paintings and pictures, statuary, bronze or metal, and stereotype plates, where the limitation of value is based upon the net invoice and required to be so expressed in the shipping receipts by shippers. The classification also contains rules restricting to specified sums the valuation of live stock; marble or granite; ore:—antimony, calamine, copper, lead, silver, tin, or mica; such valuation to be stated by the shipper in the shipping order or receipt. The carriers have never, in the official classification, classified shades or shade cloth or felts higher or lower on account of cost, price, or intrinsic value. Any kind of shades, whether worth $10.00 a pair or $1.00 per dozen, decorated or not, mounted or unmounted, packed in a case of small or large dimensions, can be

shipped at first-class rates; and of hollands or shade cloth, the case containing 1,200 yards, or a piece of 60 yards, if plain, uncut and undecorated, can be shipped, regardless of its value as compared with other hollands or shade cloth, at third-class rates. Neither party before the Commission at the first hearing suggested the fact of the different grades or values of shades as a proper basis for a distinction in the classification of that commodity, and it would seem that the defendants raised the question in court for the purpose of resisting the application to enforce our order, rather than with any idea that shades should be classified differently according to difference in their value. This view is fully supported by the fact that they have not endeavored to place shades of much greater value in a higher class than is named for shades generally, and by their claim at the rehearing that any effort to do so would prove impracticable. The elements of bulk, weight, value, and character are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification. Other considerations may also enter into the question, but in this case, where the comparisons made on these bases indicate the propriety of a like class for hollands or shade cloth and window shades made therefrom (the great mass of shades at least), such other matters must be deemed to have only minor weight and importance. It is true that this case is somewhat exceptional in the sense that a manufactured article is here held entitled to as low classification as is given to one of the constituent materials, but there are precedents for such ruling in the classification itself, and if justice is thereby accomplished the fact that they are exceptions to the general practice is not of itself a valid objection.

How the business of manufacturers of shade cloth, rollers, or shade attachments can, as is claimed, be materially damaged by a third-class rating for window shades, is difficult to understand. The cloth is, as shown, so much more valuable than the other usual materials together that the addition to a given quantity of cloth of a variety of much cheaper material results in a completed article which, bulk for bulk or weight for weight, is much less valuable than the cloth, and sending it at the rate per 100 lbs. applied to the cloth can hurt no one. The shade roller, complete with spring attachments, can be shipped at third class, less

than carloads, and fifth class for carloads, and a carload rating is not usually provided in the classification in the absence of fair showing that the commodity will move in carload quantities. However this may be, if it is right that shades should be classed with hollands, it is none the less right if it appears that, relatively, shade rollers in less than carloads would then be classed too high. The metal shade fixtures or attachments when separately shipped may be packed so that a very considerable number can be sent in small packages. The shade fixtures are more valuable than the simple wooden shade roller; the one is an article in the first class, the other is classed by the carriers as third class L. C. L., and fifth class C. L.; and combined, so as to make the complete shade roller with spring and end fixtures, the article is still classed by the carriers in the third class, less than carloads, and the fifth class in carloads. This practice of the carriers with shade rollers and fixtures strongly illustrates the principle of classification that we have endeavored to apply to the rating on window shades and window hollands or shade cloth.

The order heretofore issued in this case was no broader than the defendants' own classification of hollands, shades, and freight articles generally, and the carriers were thereby required to take no greater risks in the transportation of property than they voluntarily assume. Besides, it is difficult, if not impracticable, to provide and properly apply higher or lower classification according to difference in the *actual value* of the same kind of freight, as the value of the same freight must vary at different points and also in the course of commercial dealing. We are of the opinion that all shades should, in accordance with the practice as to freight articles generally, take a common rating based upon the commercial grades which constitute the great majority of window shade shipments. The circuit court, however, refused to enforce our order on the sole ground that it applied to the higher priced shades as well as to those having low value, and this may well be viewed as amounting to a direction in this case that the requirement expressed in the order should be modified so as to apply only to shades having relatively low valuation. As hereinbefore shown, the carriers using the official classification make the rating of various articles depend upon limitation of value at time of shipment, and we think that the criticism expressed in the opinion

of the circuit court will be met substantially if the requirement for a third-class rating of window shades is confined to those shipments on which the valuation is reasonably limited to $6.00 per dozen or under. This disposition of the case will still leave the carriers at liberty to put all shades in the third class.

The order of March 23, 1894, will be vacated, and a new order will be entered containing the same general requirement, but with the proviso that the defendants may restrict their transportation of window shades at third-class rates to those on which the valuation is limited to a maximum of $6.00 per dozen, and they may also prevent excessive undervaluation for transportation purposes of the much more expensive grades of shades by such regulations as they may be advised are just and lawful.