

MILK PRODUCERS' PROTECTIVE ASSOCIATION,
Complainant,

v.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, and J. G. McCullough and E. B. Thomas, the Receivers thereof; NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY; PENNSYLVANIA, POUGHKEEPSIE & BOSTON RAILROAD COMPANY, and Henry H. Kingston, the Receiver thereof; LEHIGH VALLEY RAILROAD COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; LEHIGH & HUDSON RIVER RAILWAY COMPANY; The President, Managers and Company of THE DELAWARE & HUDSON CANAL COMPANY; ALBANY & SUSQUEHANNA RAILROAD COMPANY; PHILADELPHIA, READING & NEW ENGLAND RAILROAD COMPANY, and J. K. O. Sherwood, Receiver thereof; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; WEST SHORE RAILROAD COMPANY; WALLKILL VALLEY RAILROAD COMPANY; ULSTER & DELAWARE RAILROAD COMPANY; ELMIRA, CORTLAND & NORTHERN RAILROAD COMPANY; LEHIGH & NEW ENGLAND RAILROAD COMPANY, and THE ERIE RAILROAD COMPANY, *Defendants.*

Decided March 13, 1897.

1. The complaining Milk Producers' Association, whether representing its own members, or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the defendant lines, was entitled to bring and maintain this proceeding, affecting rates on milk supplied for a common market, against all the defendants engaged in carrying for that market. A defendant carrier is not entitled to have a complaint dismissed as to it "because of the absence of direct damage to the complainant," and it is the duty of the Commission, under express direction in the Act, to "execute and enforce" the provisions of the statute.

2. The defendant, the New York, Susquehanna & Western Railroad Company, engaged in the transportation of milk and cream from points in the State of New York through the State of New Jersey to the City of New York, is subject to regulation under the Act to Regulate Commerce in respect of such transportation.
3. Charging the same aggregate rates on like traffic for longer and shorter distances over the same line, in the same direction, does not contravene the provisions of section 4 of the Act to Regulate Commerce.
4. The free transportation of shippers or dealers between State or interstate points on account of interstate freight traffic furnished to the carrier is unlawful.
5. Whether an agreement entered into by a carrier mainly for the purpose of developing its milk traffic, and under which compensation is afforded to the other contracting party equal to a considerable share of the gross receipts from such traffic, involves extravagant expenditure of revenue and is disadvantageous to the carrier, is matter for it to determine; but extraordinary or unnecessary cost of operation or management cannot be permitted to excuse unreasonable or unjust rates, discriminations, preferences, or prejudices.
6. Charging the same rate per quart on milk in 40-quart cans and in bottles, usually of one quart capacity, and packed in cases, found to constitute discrimination in favor of the bottle method of shipment, but for reasons stated,—*Held*, that the proper relation of rates as between can and bottle milk from all points of shipment need not now be determined.
7. A uniform or blanket rate on milk and also on cream from all stations on the defendant lines to Weehawken, Hoboken, and Jersey City, N. J., or through Jersey City to New York, N. Y., namely, 32 cents on milk and 50 cents on cream per can of 40 quarts, regardless of distance or difference in amount of service rendered,—*Held*, to be unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and in violation of sections 1 and 3 of the Act to Regulate Commerce.
8. Upon all the facts and circumstances, including the peculiarities of defendants' milk and cream transportation service, *Held* :—

That instead of the present method of charging uniform rates per 40-quart can of 32 cents on milk and 50 cents on cream from all interstate shipping stations on the defendant lines west of the Hudson River to the respective points of delivery in Weehawken, Hoboken and Jersey City, N. J., there should be at least four divisions or groups of stations, the first group extending 40 miles from the terminal in New Jersey; the second, covering a distance of 60 miles and ending about 100 miles from such terminal; the third, embracing stations within the next 90 miles and extending about 190 miles from the terminal; and the fourth, comprising stations beyond 190 miles from the point of delivery.

That the rates charged on milk in 40-quart cans should not exceed 23 cents from the first or 40-mile group of stations, 26 cents from the second

or 60-mile group, nor 29 cents from the third or 90-mile group, and that the present rate of 32 cents from stations more distant than 190 miles is not unreasonable ; that a rate on cream in cans which is 18 cents higher than the rate on milk in 40-quart cans, the present difference, is not unreasonable or unjust ; that such group distances and rates should apply on the branches as well as on the main lines, and that the resulting relations of rates should be maintained ; that any reduction that may be made in the present rate per quart on milk or cream in bottles should be followed by a corresponding change in the rate for each group on milk or cream in 40-quart cans.

That the distance on the Ulster & Delaware road covered by the third group should be limited to 30 miles, and stations on that road more than 130 miles from Weehawken *via* the West Shore road should constitute its fourth group ; that by short-line distances all points on the Wallkill Valley and Lehigh & Hudson River roads are within the second group, and rates from such stations should not exceed those applicable for the second group ; that the Erie Railroad Company should charge third group rates from points on its Carbondale branch which can be reached over distances less than 190 miles *via* the Scranton branch of the Ontario & Western, and such relief from the operation of the 4th section is granted to the Erie Company as may be necessary to enable it to lawfully make such charges effective ; that the defendant, the New York, Susquehanna & Western Railroad Company, is entitled on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City to charge such an addition to its rate to Jersey City, N. J., as is reasonably warranted by the greater cost of delivery in New York City.

Evarts, Choate & Beaman, for complainant.

John J. Beattie, for Lehigh & Hudson R. Ry. Co.

Rogers, Locke & Milburn, for D. L. & W. R. R. Co.

John B. Kerr, for N. Y. O. & W. Ry. Co.

F. I. Gowen and *F. H. Janvier*, for L. V. R. R. Co.

Ashbel Green, for N. Y. C. & H. R. R. R. Co.; W. S. R. R. Co. and the Wallkill V. R. R. Co.

Henry W. Taft, for N. Y. N. H. & H. R. R. Co.

Stetson, Tracy, Jennings & Russell, for N. Y. L. E. & W. R. R. Co. and Receivers, and Erie R. R. Co.

Amos Van Etten, for Ulster & Delaware R. R. Co.

Leopold Wallach and *Alfred A. Cook*, for N. Y. S. & W. R. R. Co.

David Willcox and *Lewis E. Carr*, for the D. & H. C. Co., and Alb. & Sus. R. R. Co.

F. R. Gilbert and *George W. Ray*, for Producers of Milk at Longer-Distance Points.

REPORT AND OPINION OF THE COMMISSION.

BY THE COMMISSION :

The complaint in this case is directed against defendants' practice of charging for the transportation of either milk, buttermilk or cream to their terminals at Weehawken, Jersey City or Hoboken, N. J., or New York, N. Y., a group or blanket rate from all shipping stations on their respective lines, regardless of distance. Upon this basis of complaint the petitioner alleges as follows :

1. That the petitioner is a voluntary association of farmers and milk producers and other persons interested in milk production, having its principal office and place of business at Chester, N. Y.; that it makes this complaint, not only on behalf and in the interest of itself and its members, but also on behalf of all other farmers, producers and shippers of cream, milk and buttermilk from all shipping points for such traffic on defendants' roads to the cities of Hoboken, Weehawken, Jersey City and New York ; and that its members and those whom it represents ship and transport over the defendant lines every day of each year large quantities of milk, cream and buttermilk, aggregating many carloads daily, from various shipping points on such lines in the States of New York, Pennsylvania, Massachusetts and Connecticut to said places of destination.

2. That the defendants, engaged as common carriers by railroad in the transportation of property by continuous carriage or shipment between points in New York, Pennsylvania, Massachusetts and Connecticut, and points in New Jersey and New York, are subject to the provisions of the Act to Regulate Commerce and Acts amendatory thereof or supplementary thereto.

3. That the rates charged by the defendants are 50 cents per can for cream and 32 cents per can for milk and buttermilk, from all shipping points in the States of New York and Pennsylvania to Jersey City, Hoboken, and Weehawken, in the State of New Jersey, and 45 cents and 50 cents per can for cream, and 25 cents and 32 cents per can for milk and buttermilk, as the case may be, depending upon the route, from all shipping points in the States of Massachusetts and Connecticut to the city of New York, in the State of New York, and to Weehawken, in the State of New Jersey, including the return carriage of said cans when empty to.

said shipping points ; that said cans when filled weigh 100 pounds, or thereabouts, and when empty about 20 pounds ; that the same rates are maintained and charged on said commodities for all distances, however short or long, from said Jersey City, Hoboken, and Weehawken, and said city of New York, respectively, such distances in some cases exceeding 300 miles ; that the rates charged by said defendants are a very large percentage of the entire value of the cream, milk, and buttermilk carried, are purely arbitrary, are not at all graduated upon the distance of the terminal from the shipping points, nor based to any extent upon the value of the product carried, or upon the cost of carriage to the defendants, or upon any special service rendered ; that other similar classes of freight and farm produce of equal value, such, for example, as butter and cheese, composed of the same elements as milk and cream, together with fresh fruits and vegetables of a perishable nature, designed for the supply of a like special market, and requiring a like special train service, are transported by said defendants upon the same trains carrying said milk and cream, as well as upon other trains, from the shipping points aforesaid to said Jersey City, Hoboken and Weehawken, and said city of New York, for a very much less rate, although the character of the transportation, risk and service are in all respects the same as to such other articles ; that for these and many other reasons said rates and charges on cream, milk, and buttermilk, made and exacted by said defendants, are not reasonable and just within the meaning of said Act to Regulate Commerce, but are now, and for a great many years have been, unjust and unreasonable, both in themselves and relatively, as compared with the rates charged by the defendants for, and with the defendants' classification of, other similar merchandise and like kinds of traffic between the same points ; and that all of said rates are in violation of the provisions of said Act to Regulate Commerce as amended.

4. That for the same reasons such rates and charges constitute unjust discriminations in the rates which are demanded, collected and received by said defendants respectively from the milk producers represented by complainant, in view of the fact that said defendants respectively demand, collect and receive from other persons, for a like and contemporaneous service in the transportation of like kinds of traffic as aforesaid, under not only sub-

stantially similar but identical circumstances and conditions, a much less rate of compensation, and that the rates and charges of said defendants as aforesaid are, therefore, in violation of said Act to Regulate Commerce as amended.

That the defendant, the Lehigh Valley Railroad Company, especially, has thus violated said Act to Regulate Commerce, and has, by special agreement or otherwise, made a special rate for, and furnished special facilities to, the association known as the Farmers' Dairy Despatch, by which said Despatch is enabled to control the transportation of substantially all of the cream, milk and buttermilk transported over that railroad, for the special and sole advantage and benefit of said defendant and said Farmers' Dairy Despatch. That the defendant, the Delaware, Lackawanna & Western Railroad Company, has also, in like manner, especially violated said Act to Regulate Commerce by its special contract or arrangement with an association known as the Produce Despatch.

5. That the rates charged by the defendants for so transporting over their various lines or routes the cream, milk and buttermilk of said producers and shippers, are no less for shorter than for longer distances, are not graduated on account of distance or mileage, and constitute an undue and unreasonable preference and advantage extended by said defendants to particular persons and localities, and subject said milk producers in the States of New York and Connecticut, who are nearer the terminals at Jersey City, Hoboken and Weehawken and at the City of New York, as to their particular description of traffic, to undue, unjust and unreasonable prejudice and disadvantage, in favor of other persons in other localities, farther removed from the said terminals, and in favor of other persons whose traffic is a like kind of traffic, carried under identical circumstances and conditions, and that the rates and charges of said defendants as aforesaid are, in this respect, also in violation of the terms of said Act to Regulate Commerce, as amended.

6. That said rates do, in almost every instance constitute a further violation of said Act to Regulate Commerce, as amended, in that such rates and charges result in greater compensation for the transportation of like kinds of property, under substantially similar circumstances and conditions, for a shorter than for a

longer distance over the same line or lines of connected roads in the same direction, the shorter distance being included within the longer distance.

7. That petitioner refers to and makes a part of its petition the classifications and various schedules, rates and charges adopted and used by the defendants and on file in the office of this Commission for the transportation of cream, milk, buttermilk, butter, cheese, fresh fruits, fresh vegetables, dressed meats, horned cattle, wheat, corn, oats, flour, and other similar products.

The petitioner prays for an order commanding the defendants, and each of them, to wholly cease and desist from the aforesaid violations of the provisions of said Act to Regulate Commerce, as amended, and for such other and further orders as the Commission may deem necessary in the premises.

The Lehigh & New England Railroad Company having succeeded to the control of the railroad of the defendant, the Pennsylvania, Poughkeepsie & Boston Railroad Company, was duly made a party defendant to the proceeding by order entered on June 21, 1895.

Answers were filed by all the defendants except the Lehigh & New England Railroad Company and the Philadelphia, Reading & New England Railroad Company and its receiver. All of the defendants answering deny the violations of law alleged in the complaint, and, while admitting that the rates are substantially as set forth in the petition, claim that the rates are justified by the special nature of the traffic and character of the service rendered.

The answer of the New York, Lake Erie & Western Railroad Company and its Receivers admits that they are common carriers as alleged in the complaint; avers on information and belief that petitioner is an association of farmers and milk producers and other persons interested in milk production located, so far as their lines are concerned, within a distance of 90 miles of New York City; admits that the members of the petitioning association, or some of them, ship and transport over their roads considerable quantities of cream, milk and buttermilk from points on said roads within 90 miles of New York; denies that the petitioner represents all shippers of milk, cream and buttermilk over said lines, and avers that petitioner is acting in hostility to and not in

behalf of the greater number of such shippers, and that the main purpose and object of the petition is to create a monopoly of the milk business in favor of a limited class of shippers by securing lower rates to them than are granted to more distant shippers, the practical effect of which will be to drive the latter out of business and thus enable the petitioner and those it represents to secure higher prices from consumers; that ever since the establishment of the business of transporting milk from remote points to New York and Brooklyn (upwards of forty-five years ago), it has been the custom of all the common carriers engaged in that business to charge a uniform fixed rate per quart or gallon for the milk so transported, irrespective altogether of the length of the haul, and that the same custom now prevails; that such custom owes its origin and long continuance to the fact, among others, that milk is sold to all consumers in the cities aforesaid at a uniform price for the quantity sold; and it was, therefore, deemed better and more satisfactory for all parties interested to have one uniform charge for transporting milk, irrespective of distance, instead of pro-rating for the same according to the length of haul; that this practice has given general and almost universal satisfaction, and that there is not now any legal or just ground for complaint against the same; that it is of the greatest importance to the citizens of New York and Brooklyn, as well as to other consumers of milk, to have the area for the production thereof enlarged as much as possible, instead of having the same narrowed and circumscribed, which would be the effect of granting the prayer of the petitioner, as it would result in a monopoly in the milk business by preventing the establishment of dairy farms and creameries at a greater distance than 50 miles from New York City, which, as these defendants believe, is the sole purpose of the petition; that the business of producing milk is a peculiar one, confined to few localities in comparison with the raising of other farm products, and therefore requires all lawful and reasonable encouragement for the establishment and successful working of dairy farms and creameries; that, as these defendants are informed and believe, a large number of persons, relying upon the above-mentioned custom of making the same charge for the transportation of milk, irrespective of the length of the haul, have established dairy farms and creameries along the lines of their roads at

various points beyond any point at which the persons represented by the petitioner are located; and that any change in the rates heretofore charged for the transportation of milk would cause great loss and damage to the parties located at such more distant points.

The foregoing answer illustrates the general line of defense set up in this case.

As to the alleged special rates and facilities granted to the Produce Despatch by the Delaware, Lackawanna & Western, and to the Farmers' Despatch by the Lehigh Valley, each of these defendants, upon information and belief, denies that it has violated the Act to Regulate Commerce by any special contract or arrangement with any such association or Despatch. Each of these defendants also specifically denies that by any such arrangement it has agreed to carry or does carry for such Despatch all milk, cream and buttermilk transported for its market for a less compensation than it charges, collects, demands or receives from any other person or persons for doing for them alike or similar service under substantially the same circumstances and conditions, or that any arrangement has been entered into by it for the purpose of giving to such Despatch the control of the transportation of all such products over its railroad, for the special and sole advantage and benefit of said defendant and of said Despatch or otherwise.

The Lehigh Valley Railroad Company, while admitting that its rates are as charged in the complaint from points in New York and Pennsylvania to Jersey City, N. J., says they are lower to that point from shipping stations in New Jersey, and therefore denies that its rates on milk, cream and buttermilk are not at all graduated or fixed upon the distance of the terminal from the points of shipment.

The amended answer of the New York, New Haven & Hartford Railroad Company, after denying the alleged violations of law, avers that its rates are as set forth in its tariffs 52-D and No. 3391, both effective April 1, 1893. This company further states in its answer that it makes no distinction in its rates for the transportation of milk, cream and buttermilk, the rates named in its tariffs applying to all three of these commodities alike; and that such rates, though not graduated according to distance, are fixed

at the minimum at which the service required for such transportation can be furnished for any distance; that for such service it furnishes at great cost special trains and other facilities of a different character than are required for the transportation of other merchandise.

Some of the defendants aver in their answers that they are not subject to the Act to Regulate Commerce in respect to the transportation involved in this case, and this averment is based upon various grounds: The Elmira, Cortland & Northern Railroad Company, because, operating a road wholly within the State of New York, it delivers milk to the Delaware, Lackawanna & Western road, and for its service charges its local rates to the junction point; the Delaware & Hudson Canal Company (covering the Albany & Susquehanna road), because, while it has joint rates on milk, it does not itself transport the traffic outside of the State of New York. The New York, Susquehanna & Western raises the question of jurisdiction as to most of its milk traffic, and says that while its road runs through the States of New York, Pennsylvania and New Jersey, the greater portion of all the cream, milk and buttermilk received by it in the State of New York for delivery from producers and shippers is daily transported by it and delivered in the City of New York, in said State, on through bills of lading; that all shipments of milk, cream and buttermilk received by it in the State of New Jersey for transportation during the period complained of in said petition were daily received and delivered by it at points in the State of New Jersey, and that it ships no milk, cream or buttermilk from the State of Pennsylvania to the State of New Jersey or to the State of New York.

On stipulation signed by counsel for petitioner and the defendants, the New York, Lake Erie & Western Railroad Company and its Receivers, and the Erie Railroad Company, filed July 11, 1896, the Erie Railroad Company, then and now operating the railroad formerly known as the New York, Lake Erie & Western Railroad, was made a party defendant herein with the same effect as if it had been an original defendant and duly served as such with all necessary notices in the proceedings theretofore had in this case.

Hearings were had in New York City, November 18 to 23, and

December 17 to 19, 1895. The case was argued orally by counsel on January 30, 1896, and briefs were filed during the period between February 10 and April 3, 1896. At the second hearing, on motion of counsel appearing, milk producers at or near stations on the Erie Railroad west of Orange County, N. Y., and the more distant stations on the New York, Ontario & Western and Delaware, Lackawanna & Western roads, were allowed to intervene in opposition to the petition.

In the case of N. W. Howell and other Orange County milk producers against the New York, Lake Erie & Western, the New York, Ontario & Western, the New York, Susquehanna & Western, and the Lehigh & Hudson River roads, decided by the Commission in 1888 [2 I. C. C. Rep. 272, 2 Inters. Com. Rep. 162], a uniform rate on milk as then charged by those companies from points reached by their regular milk trains was, upon the evidence there presented, held to be lawful. In that proceeding the Commission failed to find any resulting injury to the complaining producers, and in connection with a commendation of the uniform milk rate as then applied by these four carriers, it was said: "Until some actual injury to them (Orange County farmers) arises, the Commission does not feel justified in holding that the grouping of the milk rate upon the route carried daily by a separate milk train, operated as a unit, works undue or unreasonable prejudice to the complainants." It appeared in that case that milk was carried considerable distances over the Erie and Ontario & Western from points beyond those reached by their regular daily milk trains, and that no additional charge was made therefor. As to this the Commission said: "A charge for such service somewhat higher than the charge made upon the route of the daily regular milk train proper would seem to be just, and perhaps to be necessary, in order to fairly equalize the proportionate privileges afforded, in view of the material increase of cost required to send cars out to points beyond the terminus of the daily trip, and to bring them back loaded, at an hour convenient for making up the train. Nevertheless it does not appear but that the present rates to those more distant points are already sufficiently high. No increase in those rates can be recommended or would be proper, in view of the facts above stated, upon the point of the reasonableness of the present tariff. It is presumed

that the rates to all points can be adjusted by the carriers themselves in conformity with the views herein intimated and without any further consideration of details by the Commission. In case that the subject of a reduction of the rates in general shall be brought again before the Commission, the question of grouping, to the extent last above indicated, will be regarded as still open."

Since that decision was rendered the Erie and Ontario & Western have greatly extended their milk territory, as will more fully appear in the findings of fact herein, and other lines, parties to this case, but which were not defendants in that proceeding, have engaged very extensively in the transportation of milk from far-distant localities. Moreover, the uniform rate now charged throughout such extended area is less than that complained of in the *Howell Case*. The question of the reasonableness of the rate complained of in the *Howell Case* was retained by the Commission to enable the complainants to produce additional evidence, and in view of all the changes in conditions respecting the shipment and transportation of milk under a uniform rate, together with the failure of the Erie and Ontario & Western to carry out the recommendation of the Commission for an additional charge for service beyond the points reached by their regular milk trains at that time, the entire question of the legality of the uniform or blanket milk rate should be and is regarded as properly reopened in this proceeding.

FACTS.

1. The petitioner, the Milk Producers' Protective Association, is an unincorporated body having a membership of about 627 milk producers and shippers, farmers, merchants, dealers and others; and of this number about 600 are directly or indirectly interested in the production of milk, buttermilk and cream in the counties of Orange, Ulster and Sullivan, New York, and Sussex, New Jersey, and the shipment thereof by rail for sale and consumption in the City of New York and cities adjoining. The section of country north and westerly of New York City, comprising Sussex and other counties in northern New Jersey, Orange County, N. Y., and contiguous portions of Ulster and Sullivan counties in New York, constitute a large part of a near-by producing region from which a considerable portion of the milk and

cream consumed in New York and adjoining cities is supplied. Other portions of this near-by region are Long Island, N. Y., the southeasterly section of New York State east of the Hudson River, and some adjoining parts of western Connecticut and Massachusetts. Milk and cream are also forwarded in large quantities for consumption in New York, Brooklyn and Jersey City, from relatively "far-off" localities in the States of New York, Pennsylvania and Massachusetts.

2. The roads which deliver milk and cream at Jersey City, Weehawken and Hoboken, N. J., are those of the defendants, the New York, Lake Erie & Western (now Erie and hereinafter so called) at Jersey City, N. J.; the Delaware, Lackawanna & Western (hereinafter called the "Lackawanna") at Hoboken; the Lehigh Valley at Jersey City; the New York, Susquehanna & Western (hereinafter called the "Susquehanna") at Jersey City; the New York, Ontario & Western (hereinafter called the "Ontario & Western") at Weehawken; and the West Shore at Weehawken. The defendant, the New York, New Haven & Hartford Railroad Company (hereinafter called the "New Haven") operates lines through Massachusetts and Connecticut to New York City. The Lehigh & Hudson River connects with and delivers milk and cream for Jersey City to the Erie at Greycourt on the main line. The Delaware & Hudson Canal Company (operating the Albany & Susquehanna Railroad), and the Elmira, Cortland & Northern Railroad Company, deliver milk shipped over their respective roads to the Lackawanna. The Elmira, Cortland & Northern has become part of the Lehigh Valley system since this proceeding was commenced, but such milk delivery to the Lackawanna has not been discontinued. The Lehigh & New England (formerly Pennsylvania, Poughkeepsie & Boston) appears to be operated as follows: That portion between Slatington, Pa., and Hainesburg Junction, N. J., by the Lehigh Valley, and the remainder, Pine Island Junction, N. Y., to Hainesburg Junction, N. J., by the Susquehanna. The Philadelphia, Reading & New England road connects with the Lehigh & Hudson River at Maybrook, N. Y., and with the Ontario & Western and Erie at Campbell Hall, N. Y. Milk is delivered by it to the Ontario & Western and carried by the latter to Weehawken. The Wallkill Valley and Ulster & Delaware roads deliver their milk traffic to the West Shore at Kingston, N. Y.

3. The milk shipping territories served by the defendant lines are described as follows :

Erie: The milk shipping station most distant from the milk terminal at Jersey City is Hornellsville, N. Y., 331 miles, and the milk station in New York State nearest to the terminal is Turner's, N. Y., 46 miles. The distance between such stations, both situated on the main line, is 285 miles.

On the Lehigh & Hudson River road, which delivers its milk to the Erie at Greycourt, N. Y., the milk station most distant from the terminal at Jersey City is Belvidere, N. J., 116 miles, and the shipping station on such connecting road nearest to the terminal is Sugar Loaf, N. Y., 57 miles.

The milk shipping stations in New Jersey located on the Erie line which are nearest to and farthest from the terminal are Langdon, 20 miles, and Mahwah, 29 miles. Milk originating on the Erie main line and branches is also transported from New York and Pennsylvania points to Jersey City, N. J. Shipments over the Lehigh & Hudson River connection originate both in New Jersey and New York, and are carried through New York and then through New Jersey to the terminal.

Susquehanna: The milk shipping station most distant from the terminal at Jersey City is Middletown, N. Y., 88 miles, and the milk shipping station in New York nearest to the terminal is Unionville, N. Y., 74 miles, the distance between such stations being 14 miles. This road also operates the portion of what is now known as the Lehigh & New England Railroad (formerly Pennsylvania, Poughkeepsie & Boston) between Hainesburg Junction, N. J., and Pine Island Junction, N. Y. The latter point is by this line about 79 miles from the terminal, and the station in New York State on such branch nearest to the terminal is Liberty Corner, about 75 miles. It does not appear that the Susquehanna receives any milk from New York stations on the Lehigh & New England branch.

The milk shipping stations in New Jersey which are nearest to and farthest from the terminal are Campgaw, 29 miles, and Hainesburg, 89 miles. The route of this line is through New York and New Jersey.

Ontario & Western: The milk shipping station most distant from the terminal at Weehawken, N. J., is Kenwood, N. Y., 264

miles, and the milk station nearest to the terminal is Cornwall, N. Y., 52 miles. The distance between such stations is 212 miles. Kenwood is on the main line. Milk is also shipped from branch line points in New York and Pennsylvania. The Pennsylvania branch extends from Hancock Junction, N. Y., to Scranton, Pa.

Milk is also received from two connecting roads, the Philadelphia, Reading & New England, and the Port Jervis, Monticello & New York. The shipping stations on these roads are not given. The point of connection with the Philadelphia, Reading & New England is at Campbell Hall, N. Y., 68 miles from the Weehawken terminal. This connecting road runs from Campbell Hall, crossing the Hudson River *via* the Poughkeepsie bridge, to Hartford, Conn. The distance from Campbell Hall to Highland on the Hudson River is about 28 miles. The other connection, the Port Jervis, Monticello & New York road, joins the Ontario & Western at Summitville, N. Y. The Ontario & Western has trackage rights over the West Shore from Cornwall, N. Y., to Weehawken, N. J., and does not carry any milk shipped from south of Cornwall.

Lackawanna: The milk shipping station most distant from the terminal at Hoboken, N. J., is South Columbia, N. Y., 310 miles, on the Richfield Springs branch of the Utica division, and the milk shipping station in Pennsylvania nearest to the terminal is Moscow, Pa., 136 miles. The distance between such stations is 174 miles. In 1894 some milk was carried by that road from Leicester, N. Y., to Hoboken, about 354 miles, but this was the only milk station west of Elmira, 264 miles from Hoboken. The testimony is that South Columbia is the most distant station for regular shipments.

On the Delaware & Hudson Canal Company's road, which connects with the Lackawanna at Binghamton, the milk shipping station most distant from the Hoboken terminal, is at or near Cobleskill, N. Y., 305 miles, and the milk station on such connecting road nearest to the terminal is Osborne Hollow, N. Y., 217 miles. Binghamton, the point of connection, is about 206 miles from the terminal. Milk is also shipped from two or three stations in New York located on the Wilkesbarre, Pa., branch of the Delaware & Hudson road. Some milk originates at Phoenixville and Cooperstown, N. Y., on the Cooperstown & Charlotte Valley road, which

is delivered to the Delaware & Hudson at C. & C. V. Junction and by it in turn delivered to the Lackawanna at Binghamton.

On the Elmira, Cortland & Northern Railroad, which also delivers milk to the Lackawanna, it appears that the milk station most distant from the terminal is Shed's Corners, N. Y., 275 miles, and that the milk station on such connecting road nearest to the terminal is McLean, N. Y., 256 miles. The nearest point of connection with the Lackawanna for shipments from these stations is Cortland, N. Y.

The milk shipping station on the Lackawanna in New Jersey nearest to the terminal is Whitehall, N. J., 26 miles, and the farthest New Jersey milk points from the terminal are Washington, N. J., 71 miles, or Delaware, N. J., 80 miles, on the main line, and Franklin, N. J., 76 miles on the Sussex branch.

West Shore: This line, of which the New York Central & Hudson River is lessee, receives practically all its milk traffic at Kingston, N. Y., 87 miles from its terminal at Weehawken, delivery being made at Kingston by its connections, the Wallkill Valley and the Ulster & Delaware Railroads. The West Shore gets about 12 cans a day at West Park, 78 miles from Weehawken on the main line. The milk station on the Wallkill Valley most distant from the terminal is Campbell Hall, N. Y., 126 miles by this route, and the Wallkill Valley milk station nearest to the terminal is New Paltz, N. Y., 103 miles. The milk station on the Ulster & Delaware most distant from the Weehawken terminal appears to be Bloomville, N. Y., 175 miles, and the milk point on such connecting road nearest to the terminal is, from distance stated in testimony, Fleischmanns, N. Y., 132 miles.

The West Shore routes are through New York and New Jersey.

Lehigh Valley: The most distant milk shipping station from the terminal at Jersey City is about 340 miles. Romulus, N. Y., is a milk station on this line, 335 miles from Jersey City. The milk shipping station in Pennsylvania nearest to the terminal is Catasauqua, Pa., 94 miles. The distance between such stations is 246 miles. The first shipping station west of Catasauqua is La Grange, Pa., 195 miles from Jersey City. Milk shipped from a few points on the Montrose Railway in Pennsylvania is carried

by this road. The names of New Jersey stations at which milk shipments are received by this line are not shown.

New Haven: The milk shipping station most distant from the milk terminal of this road at Harlem River, New York City, is about 163 miles, and the milk point nearest to the terminal is about 72 miles. Practically all the milk traffic for this line originates on lateral roads. The New Haven milk lines run through western Massachusetts and western Connecticut to New York.

Intersecting Points: Campbell Hall, N. Y., is served by the Ontario & Western, Erie and Wallkill Valley (West Shore). Middletown, N. Y., is reached by the Erie, Ontario & Western and Susquehanna. Sidney, N. Y., on the Ontario & Western, is also reached by the Delaware & Hudson-Lackawanna line. Oxford, N. Y., is a crossing point of the Lackawanna (Utica division) and the Ontario & Western main line. Branches of the Erie, and Ontario & Western reach Uniondale, Pa., and other stations in the vicinity of Carbondale, Pa. The Lackawanna, Lehigh Valley and Erie lines each intersect with one or both of the others at Waverly, Elmira and other points in central New York. The Susquehanna crosses the Lehigh & Hudson River at Franklin Junction, N. J., and Sparta Junction, N. J., and reaches a branch line of the Erie at Pine Island Junction, N. Y. The Lackawanna also connects with the Lehigh & Hudson River at Franklin, N. J., and at Andover Junction, N. J.

During the season of navigation on the Hudson River, milk, principally from Orange County, is transported by a steamboat line from Newburgh and other river landings at a rate stated to be as low as 10 cents a can, and this competition diverts considerable quantities of milk from the defendant lines having stations within convenient teaming distance to the river. An electric car line operated between Walden and Newburgh, in Orange County, may be utilized for the transportation of milk to the Hudson River at Newburgh.

Excluding transportation wholly in New Jersey, the distances from the terminal of the nearest and farthest milk shipping stations on each line, and the distances between such stations, based on the foregoing description of milk routes, are as follows :

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LINE.	MILK TERMINAL.	NEAREST STATION.	MILES FROM TERMINAL.	FARTHEST STATION.	MILES FROM TERMINAL.	DISTANCE IN MILES BETWEEN SUCH STATIONS.
Erie.....	Jersey City.....	Turner's, N. Y.....	46	Hornellsville, N. Y.	331	285
Lehigh & Hudson River.....	"	"		Belvidere, N. J.	116	70
Ontario & Western.....	Weehawken	Cornwall, N. Y.	52	Kenwood, N. Y.	264	212
West Shore.....	"	West Park, N. Y.	78			
Wallkill Valley.....	"	New Paltz, N. Y.	103	Campbell Hall, N. Y.	126	23
Ulster & Delaware.....	"	Fleischmanns, N. Y.	132	Bloomville, N. Y.	175	43
Susquehanna.....	Jersey City.....	Unionville, N. Y.	74	Middletown, N. Y.	88	14
Lehigh Valley.....	"	Catasauqua, Pa.	94	Romulus, N. Y.	335	241
Lackawanna.....	Hoboken.....	Moscow, Pa.	136	South Columbia, N. Y.	310	174
Delaware & Hudson.....	"	"		Cobleskill, N. Y.	305	169
Cooperstown & Charlotte Valley.....	"	"		Cooperstown, N. Y.	291	155
Elmira, Cortland & Northern	"	"		Shed's Corners, N. Y.	275	139
New Haven.....	Harlem River, N. Y. City.	Newtown, Conn.	72	Pittsfield, Mass.	163	91

All of the milk *via* the Susquehanna is short distance traffic. Although the most distant point on the Lehigh & Hudson River road is 116 miles from Jersey City, such distance is over that road and the Erie from Greycourt, and a much shorter route from Belvidere, N. J., the 116-mile point, is found in practicable lines to Jersey City *via* the Lehigh & Hudson River to Sparta Junction, N. J., and thence over the Susquehanna, a distance of about 93 miles; or by the Lehigh & Hudson River to Andover Junction, N. J., and from that point over the Lackawanna to Hoboken, 81 miles. From most stations on the Lehigh & Hudson River these lines would be wholly in New Jersey. Sparta and Andover Junctions, on the Lehigh & Hudson River, are located, respectively, 33 and 39 miles from Greycourt, and 29 and 23 miles from Belvidere. Campbell Hall, N. Y., the most distant milk point on the Wallkill Valley—West Shore route, is 126 miles from Weehawken by that line, and New Paltz, N. Y., the nearest milk station to Weehawken, is 103 miles; but Campbell Hall is reached by the Ontario & Western from Weehawken over a distance of about 68 miles, and by the Erie from Jersey City the distance to Campbell Hall is only 64 miles. Traffic from New Paltz *via* Campbell Hall and these shorter connections would be carried to the terminal stations over distances not exceeding 87 or 91 miles. On the other hand, practically all of the milk of the Ulster & Delaware, and the Lackawanna and Lehigh Valley outside of New Jersey, is, relatively considered, long-distance traffic. The milk traffic of the Erie and Ontario & Western is carried over both short and long distances. The New Haven gets no milk nearer than 72 miles from New York, and its most distant milk point as before stated is 163 miles.

4. From the testimony and documents in evidence, it appears that the extreme distances over which milk has been carried by the Erie, Ontario & Western, Susquehanna, Lehigh & Hudson River, Lehigh Valley and Lackawanna, at different periods, were as follows:

<i>Erie:</i>	1875-1884,	Port Jervis, N. Y.	87	miles
"	1884-1886,	Callicoon, N. Y.,	135	"
"	1886-1887,	Summit, N. Y.,	183	"
"	1888-1892,	Elmira, N. Y.,	273	"
"	1893-1895,	Hornellsville, N. Y.,	331	"
<i>Ontario & Western:</i>	Prior to 1881,	Summitville, N. Y.,	92	"
"	" " "	Hurley, N. Y.,	110	"
"	1881 to 1887,	Liberty, N. Y.,	118	"
"	" " "	Livingston Manor,	128	"
"	" " "	Walton, N. Y.,	179	"
"	" " "	Delhi, N. Y.,	196	"
"	" " "	Sidney, N. Y.,	202	"
"	1888-1892,	Randallsville, N. Y.,	244	"
"	1893-1895,	Kenwood, N. Y.,	264	"
<i>Susquehanna:</i>	1879-1895,	Middletown, N. Y.,	88	"
<i>Lehigh & Hudson River:</i>	1879-1882,	McAfee, N. J.,	74	"
"	1882-1895,	Belvidere, N. J.,	116	"
<i>Lehigh Valley:</i>	Carried none up to 1885.			
"	1885,	Three Bridges, N. J.,	49	"
"	1890-1891,	Began to extend the traffic.		
"	1894,	Romulus,	335	"
<i>Lackawanna:</i>	Confined to New Jersey traffic up to about 1886.			
"	1886,	Began to extend the traffic.		
"	1889,	Vicinity of Binghamton, 206 miles		
"	1890-1893,	Extensions continued.		
"	1894-1895,	South Columbia,	310	"

Since the *Howell Milk Case* was instituted before the Commission in 1887, the Erie has extended its most distant milk point 148 miles, and in point of distance from the terminal the extension on the Ontario & Western has been 62 miles. This takes no account of extended branch line service within such total distance. As stated above, and shown in a table hereinafter set forth, nearly all the Lackawanna and Lehigh Valley traffic has been acquired since 1887.

5. Rates for the transportation of milk (including buttermilk) and cream to Jersey City, Hoboken or Weehawken are, per 100 pounds or can of 40 quarts, 32 cents for milk and 50 cents for cream from all milk shipping stations on each of the defendant lines having terminals in those cities. These rates are charged regardless of the distance carried or the greater or less service rendered, the single exception being that the rates over the Lehigh Valley Railroad from points in New Jersey to Jersey City are 28 cents per can of milk and 40 cents per can of cream. Pot cheese in 40-quart cans is carried by the defendant lines at the 32-cent rate.

Shipments of milk or cream are also made in bottles packed in cases of 12 bottles and upwards. The bottle generally used contains one quart. Very few of the pint size are used. The rates

on bottled milk and cream on the lines to Jersey City, Hoboken or Weehawken are the same per quart as those charged on shipments in cans, that is to say, the rate of 32 cents per can of 40 quarts of milk being equal to $\frac{4}{5}$ of a cent per quart, the transportation charge on a 12-quart case of bottled milk is also of a cent a quart, or 9.6 cents for the case. The charge on a 15-quart case is 12 cents. Cream in bottles is carried at the can rate of $1\frac{1}{4}$ cents per quart, amounting to 15 cents per 12-quart case, and $18\frac{3}{4}$ cents for a 15-quart case. The "standard" case is 12 quarts. The bottled milk traffic began 8 or 9 years ago, and large quantities of milk and cream are now shipped by that method. The transportation charge on a can of milk is 32 cents, whether the can contains 40 quarts or a less quantity, and 50 cents is also the minimum rate on cream in cans. The can generally used for the shipment of milk and cream over the defendant lines is of metallic construction, contains 40 quarts, and weighs when full about 100 pounds. The weight of the empty can is about 20 pounds. The case for bottled milk, constructed of wood, is about 24 inches long, 12 inches wide and 12 inches high, partitioned inside so as to provide a protected space for each bottle. There is room at the top to cover the bottles with ice. The bottled milk is iced except during the cold season. Some of the cases have lids. These cases become water soaked from the use of the ice, and this adds to the weight. The car floor is injured materially by the drippings from ice used for the box milk. The 12-quart case weighs from 70 to 75 pounds when full and iced, and 30 to 40 pounds empty. The 15-quart case weighs 100 pounds filled and, approximately, 50 pounds empty. According to these weights, the lines delivering at Jersey City and other New Jersey terminals in transporting 40 quarts of milk carry 100 pounds' weight when the shipment is in cans and from 233 to 266 pounds' weight when the milk is bottled. For the same price they render from $2\frac{1}{3}$ to $2\frac{2}{3}$ times the weight carrying service in hauling bottled milk that they do in transporting milk in cans. The box or case milk may be piled up in the car, while but little more than the floor space of the car can be utilized for can milk. Thus, on the Erie, one of the milk cars in use will carry about 430 standard 12-quart cases of bottled milk, while the maximum load of can milk is 260, and the floor capacity is about 240 cans. Such additional

loading as to number of packages in favor of bottled milk is, however, much more than overcome by the greatly increased non-revenue paying weight which must be hauled. The weight of the full carload of box milk is about 3 tons heavier than the carload made up of 240 cans. The carload of can milk contains 9,600 quarts as compared with 5,160 quarts in the carload of bottle milk, and the total railway charge at the present rate would be \$76.80 for the car of milk in cans as against \$41.28 for the bottled article. In other words, 86 per cent more revenue paying load and the same amount of additional revenue is furnished by the carload of 240 cans. The average carload of milk on the Erie in 1894 was 155 cans, and on the Lackawanna it was 160. A car of 160 cans of 40 quarts furnishes a car revenue of \$51.20, or \$9.92 in excess of an Erie carload of box milk, and the weight carried would be about 15 tons of boxed milk as against 8 tons of can milk. The car revenue on 240 cans of cream would be \$55.50 more than the revenue from a maximum carload of 430 12-quart cases of cream, and 160 cans of cream would still bring the carrier a greater return by \$15.50 than the full carload of boxed cream. The great bulk of the milk traffic is in cans. Milk and cream in cans and bottles are picked up in less than carloads at the great majority of shipping stations; there are few, if any, carload shipments.

The rates charged on this traffic from all points on the New Haven road to Harlem River station, New York City, are 25 cents per 40-quart can, 22½ cents per 30-quart can, and 20 cents per 20-quart can, of either milk or cream, and the charge made by that carrier for bottled milk or cream is 1 cent per quart. Provision is made, however, for a minimum charge of 30 cents. These rates are not exceeded on shipments to intermediate points. Three or four years ago the 40-quart can rate was 30 cents.

The rates charged over the defendant lines to New Jersey terminals for carrying milk and cream are, and for a number of years have been, fixed by agreement between representatives of the different lines engaged in the transportation, and changes made in the rates on any of the lines have been contemporaneously put in effect on the others.

6. The rates thus uniformly in effect from July 1, 1877, to this

date on "lines west of the Hudson River," as contained in an exhibit prepared by the defense, are set forth below :

TIME.	MILK. 40-qt. cans.	CREAM. 40-qt. cans.
July 1, 1877, to April 30, 1879.....	55	60
May 1, 1879, to March 31, 1881.....	40	60
April 1, 1881, to December 31, 1883.....	40	45
January 1, 1884, to January 26, 1885.....	27½	45
January 26, 1885, to January 31, 1886.....	32	45
February 1, 1886, to January 14, 1890.....	35	45
January 14, 1890, to April 1, 1892.....	32	42
April 1, 1892, to date.....	32	50

Up to 1887 or 1888, the Ontario & Western charged higher milk rates from points north of Bloomingburgh, 87 miles from Weehawken, than from stations south of that place. The difference was 5 cents a can from July, 1879, to January 28, 1885, and 3 cents after the last-mentioned date. The rates charged on what is known as the Harlem Railroad, part of the New York Central system, and lying wholly in the State of New York, are 30 cents on milk and 40 cents on cream or condensed milk per 40-quart can, and the bottled milk rates are 12 cents per 12-quart case and 20 cents per 20-quart case. On the Central Railroad of New Jersey, the rates from New Jersey points to Jersey City are 28 cents on milk and 40 cents on cream per 40-quart can or less, and 10 cents per 12-quart case or less of bottled milk. The milk rate on the Long Island road is $\frac{2}{3}$ of a cent per quart on milk in cans or bottles from all of its stations to Brooklyn or New York City. The rate of 27½ cents per can, mentioned in the above table as in effect over lines west of the Hudson River in 1884, is stated in a decision of the New York Railroad Commission in a case entitled *Stevens against the New York, Lake Erie & Western R. R. Co.*, July 29, 1884, as having been put in by the Erie to meet the reduction from 45 to 30 cents per can recommended by that Board in the milk rate on the Harlem road in 1883, and complied with by that carrier.

7. The rates charged on milk and cream cover the return of cans and cases of bottles to shipping points on all the defendant lines. On the return trip, cans as well as cases may be piled or tiered, but this must be done so that those for each station will be in place convenient for unloading. One or more trains are

regularly run by each of the lines delivering at New Jersey terminals, and the cars composing each train must, as a rule, all be sent back the next day to shipping points. With the same number of cars going each day for new loading and carrying empty cans and cases conveniently placed in the cars for distribution, it is not apparent that material saving in transportation cost can result from loading the empties in the smallest number of cars. The return of empty cans and cases to shippers on the defendant lines is a necessary part of the service in milk transportation, and is rendered by the carrier without additional compensation. This return of cases and cans by the carrier includes carriage and handling at both the delivering and shipping points, and the regular milk trains to New Jersey terminals go back usually without other loading than the returned packages.

8. Following is a table showing the annual and total quantity of milk, cream and condensed milk, reduced to units of 40-quart cans, received in the New York market during the 10 years, 1886 to 1895, inclusive, the amount carried by each line, and the increased or decreased percentage of each; also the average daily receipts, with the yearly and ten-year per cent of increase:

FROM THE "MILK REPORTER."

Railroads.	1886.	1887.	1888.	1889.	1890.	1891.
Erie.....	1 451,523	1,512,372	1,536,703	1,594,129	1,694,153	1,751,319
Harlem.....	922,151	955,985	972,453	1,041,593	959,238	851,042
Ontario.....	527,169	537,381	592,348	631,410	760,804	888,375
Susquehanna ...	476,987	530,872	557,777	548,703	543,237	551,874
Northern.....	461,484	487,087	454,927	439,194	434,288	413,853
West Shore.....	281,954	371,160	408,538	425,794	474,203	564,989
New Haven.....	425,224	449,735	354,074	322,910	289,954	217,265
D., L. & W.	140,300	168,750	265,650	338,981	435,310	949,578
Long Island.....	159,332	148,530	144,855	141,045	123,657	113,042
New Jersey Cent.	167,658	190,330	182,315	187,070	157,225	126,651
*Ramsdell Trans- portation Co. ...		185,342	250,645	315,905	274,025	242,919
†Lehigh Valley..						9,231
Other sources...	435,830	277,320	300,900	289,350	283,975	252,750
Total.....	5,449,612	5,814,864	6,021,185	6,276,084	7,480,119	6,932,788
Per cent of yearly increase		06.7	03.55	04.23	03.25	06.98
Daily average...	14,930	15,931	16,451	17,195	17,754	18,994

Railroads.	1892.	1893.	1894.	1895.	Total cans Carried During 10 years.	Per Cent. Increase or Decrease.
Erie.....	1,778,508	1,662,058	1,613,309	1,534,866	16,128,940	05.7 inc
Harlem.....	798,009	830,027	845,017	880,635	9,056,150	04.7 dec
Ontario.....	1,050,924	1,095,484	1,167,809	1,270,937	8,522,641	141.0 inc
Susquehanna ...	534,287	643,492	653,297	685,209	5,730,785	43.6 inc
Northern.....	376,203	355,230	279,827	222,670	3,924,763	51.7 dec
West Shore.....	567,425	479,916	486,667	472,598	4,532,844	67.6 inc
New Haven.....	153,529	255,784	284,833	286,491	3,039,799	32.6 dec
D., L. & W.	1,394,250	1,525,067	1,649,773	1,897,135	8,814,794	1252.0 inc
Long Island.....	187,150	71,989	57,217	50,380	1,197,197	68.3 dec
New Jersey Cent.	83,623	75,879	75,998	85,079	1,331,828	49.2 dec
*Ramsdell Trans- portation Co. ...	267,175	268,963	280,908	250,864	2,336,746	35.3 inc
†Lehigh Valley..	58,954	72,774	123,938	172,726	437,623	193.0 nc
Other sources...	217,950	216,650	215,250	217,450	2,707,325	50.0 dec
Total.....	7,467,987	7,552,913	7,738,843	8,027,040	67,761,435	47.3 inc
Per cent of yearly increase	07.72	01.14	02.46	03.72		
Daily average...	20,404	20,693	21,202	21,992		

*Hudson River Boat Line.

†Percentage of increase figured from 1892, as our report for 1891 included but 3 months.

The table covers the supply of *plain condensed milk* as well as fluid milk and cream.

It appears by these figures that the supply of milk and cream for the New York market (and this is understood to include adjoining cities) increased from less than $5\frac{1}{2}$ million cans in 1886 to over 8 million cans, or, exactly, 321,081,600 quarts in 1895. Such increase was 47.3 per cent, or about $2\frac{1}{2}$ million cans, and the daily average in 1895 was about 7,000 cans in excess of that for 1886. The total population of New York, Brooklyn, Jersey City and Hoboken in 1885, 1890 and 1895, testified to as stated in Census Reports or shown in estimates based thereon, was 2,226,513 in 1885, 2,530,995 in 1890, and 3,113,189 in 1895. The increase in the population of these cities has therefore been nearly 900,000 in 10 years. On a population basis of $2\frac{1}{4}$ millions in 1886 and 3,113,189 in 1895, the delivered milk supply per capita was about 96.88 quarts for 1886 and 103.13 quarts in 1895, an increase of $6\frac{1}{4}$ quarts for each person.

According to the above table, the defendant lines carried very nearly $78\frac{3}{4}$ per cent of the entire New York milk supply in 1895. This amounted to 6,319,962 cans of 40 quarts, and of this quantity the Erie, Lackawanna, Susquehanna and Ontario & Western transported 5,388,147 cans, or more than 85 per cent. These four delivering companies with their connections carried in that year over 67 per cent of the total supply. The volume of this traffic on both the Erie and West Shore has been decreasing since 1892. The quantity carried by the Erie was 243,642 cans less in 1895 than in 1892, and the West Shore milk traffic in 1895 was 94,827 cans less than in 1892. The quantity annually carried by the New Haven road decreased nearly two thirds between 1886 and 1892, but it has increased since, so that it showed in 1895 a decrease as compared with 1886 of only about one third. There were slight decreases between 1888 and 1892 on the Susquehanna, which have been more than recovered since the latter year. The Lackawanna and Ontario & Western milk traffic has continued to increase yearly since 1886. As the table shows, the Ontario & Western increase in 10 years was 141 per cent, and that of the Lackawanna was from 140,300 cans in 1886 to 1,897,135 cans in 1895, or 1252 per cent. About three fourths of the Lackawanna milk and cream business in 1895 was acquired subsequent to 1890.

The "Milk Reporter" shows that 7,729,064 cans of milk,

222,157 cans of cream, and 75,819 cans of condensed milk were brought to the New York market in 1895, the figures being on the basis of 40 quarts to the can. For 1894, the figures so published were 7,479,273 cans of milk, 210,269 cans of cream, and 67,302 cans of condensed milk.

9. The average yearly prices per quart paid by receivers of milk in New York from 1870 to 1895, inclusive, are given below in connection with the freight rate in force from 1877:

Years.	Price. Cents per Qt.	Freight Rate. Cents per Can.	Years.	Price. Cents per Qt.	Freight Rate. Cents per Can.
1870	4.58		1883	3.15	40
1871	3.83		1884	3.06	27.50
1872	3.67		1885	2.77	32
1873	3.75		1886	2.80	35
1874	3.65		1887	2.81	35
1875	3.54		1888	2.83	35
1876	3.38		1889	2.59	35
1877	3.15	55	1890	2.63	32
1878	2.63	55	1891	2.67	32
1879	2.33	40	1892	2.68	32
1880	2.85	40	1893	2.79	32
1881	2.98	40	1894	2.63	32
1882	3.25	40	1895	2.52	32

These prices do not include freight charges. For example, the "exchange price" in January, 1894, was 3 cents per quart, equal to \$1.20 per can of 40 quarts, while the "platform price" on the Erie platform at Jersey City was generally \$1.52 per can in that month, or the freight rate of 32 cents higher than the "exchange price." The platform price is liable to vary according to the day's supply and demand. The freight rate of 32 cents per 40-quart can is at least 25 per cent of the price paid to producers. The price of milk to New York City consumers is not uniform. The price generally charged for delivering to families is about 8 cents a quart; to boarding houses, 6 or 7 cents. A 40-quart can of milk sells for from 4 to 5 cents a quart, the price being lower in summer and higher in winter. When the market is over supplied, milk on that day is sold very cheap. The bottle milk brings usually from a quarter to half a cent more per quart. One witness (Baldwin, a wholesale dealer) testified that more milk is retailed in New York City at 5 cents a quart than above it. Ten years ago the price to families was about 10 cents. Thirty years ago it was as high as 14 cents a quart. In deter-

mining the value in New York City, it has been the custom to add to the freight rate and market price 5 cents a can for ferry and trucking from Jersey City to New York. Thus a can of 40 quarts selling on the Erie platform in Jersey City for \$1.32 would be rated at \$1.37 in New York. There is testimony to the effect that this 5 cents was sometimes deducted from the market price before settlement between consignee and producer, but such deduction is not shown to have been the rule.

In 1877 and 1878, while the freight rate was 55 cents the average price per quart to producers fell from 3.15 cents to 2.63 cents. In 1879, with the rate at 40 cents, the price fell to $2\frac{1}{3}$ cents a quart. From 1879 to 1883 the rate remained at 40 cents, and the price per quart rose steadily each year from $2\frac{1}{3}$ cents in 1879 to $3\frac{1}{4}$ cents in 1882; but in 1883 it fell to 3.15, and for the year 1884, while the rate was as low as $27\frac{1}{2}$ cents, the price declined to 3.06 cents. In 1885 with the rate raised to 32 cents the price declined to 2.77 cents, rising to 2.80 cents per quart in 1886, when the rate went to 35 cents, and remaining about 2.80 per quart until 1889, when with the same rate it fell to 2.59. Since 1889, with the rate at 32 cents, the quart price has fluctuated from 2.52 to 2.79, the lower figure being the average price for 1895. The price generally paid by dealers to producers in the "far-off" region ranges from $\frac{1}{4}$ to $\frac{1}{2}$ cent less than the market price. For a number of years and up to the early part of 1895 the price paid to producers was fixed by the "New York Milk Exchange," but this was discontinued upon a decision in the State court that the Exchange was an illegal combination. The evidence tends to show that the prices paid different producers since that Exchange was discontinued are less uniform. Numerous conditions surround the production, supply and demand for milk, many of which are varied by the season and the character of the season, as well as by added sources of supply and changes in the course of handling or dealing, and the effect of increases or reductions in the uniform freight rate upon prices paid to producers is not shown through comparison of the freight rate and prices so paid during each year. But the general tendency of both such price and rate has been downward. The price to farmers in 1876 was 3.38 cents; in 1882, 3.25 cents; in 1888, 2.83 cents; in 1893, 2.79 cents; and the price for any of those years has not been equalled

since. In 1876 the freight rate was 55 cents or more; in 1882, 40 cents; in 1888, 35 cents; in 1893, 32 cents; and this rate, which is still in effect, is lower than at any former time except during the year 1884. The wholesale and retail prices of milk are also lower than in former years. The transportation charge on milk, whether paid by consignee or shipper, whether included in or deducted from milk prices paid to producers, is part of the cost of marketing, and such cost is therefore reduced by a decrease in the freight rate.

10. The following table shows for the years 1885 to 1895, inclusive, the number of quarts of milk at average price for the year necessary to equal the average price for that year of a pound of butter in the New York market:

YEARS.	QUARTS.	YEARS.	QUARTS.
1885.....	9.75	1891.....	9.70
1886.....	9.50	1892.....	9.70
1887.....	9.55	1893.....	9.60
1888.....	9.60	1894.....	8.80
1889.....	9.20	1895.....	8.50
1890.....	8.90		

The average price of butter in 1894 and 1895 was considerably lower than in 1893, and the shipment of milk for the New York trade, as compared with butter for that market, was more profitable in 1895 than in 1893, by at least the producing value of one quart of milk to the pound of butter.

11. Transportation rates on milk and cream are not the same from all points of shipment to Philadelphia, Baltimore, Boston or Chicago. The rates are graded on the basis of distance or are the same from stations in short distance groups. The service for each city is widely different from that to New York terminals, much of it being performed in connection with general freight or passenger service and prepaid by the purchase of milk tickets prior to shipment. It does not appear that milk is transported to these cities over such considerable distances as is the case with milk for New York.

From tariffs of various roads in evidence, it appears that milk rates to Chicago are established by each with little reference to rates of the other carriers to that city. The rates on 8 and 10 gallon cans on the Erie (Chicago & Erie) are 12 and 15 cents up

to 24 miles; 15 and 25 cents for from 25 to 44 miles; 20 and 30 cents for 45 miles and over. On the Chicago & Northwestern (Galena Division, Air Line) for 8 and 10 gallon cans the rates are graded upward from 15 and 19 cents, respectively, with some short distance groups, the first being for stations 30 miles or under from Chicago, two following of 15 miles each, then with increases for succeeding stations until a distance out of 80 miles is reached at Ashton, Ill., from which point and all stations west, including Clinton, Ia., 138 miles, the rates are 22 and 26 cents. These are the highest can rates on this road to Chicago. Rates on bottled milk begin with 10 cents for the 12-quart case and 16 cents for the 18-quart case for the first 15 miles, increasing gradually to 17 and 25 cents for the Ashton-Clinton group. From that group this company charges within 1 cent as much for 18 quarts in bottles as it does for 40 quarts in cans. On the Chicago, Milwaukee & St. Paul Railway the rates also commence with 15 and 19 cents for 8 or 10 gallon cans, respectively, and, graded both by short distance groups and station to station increases, reach 28 and 32 cents, respectively, at Kittridge, Ill., on the Council Bluffs line, 117 miles from Chicago, and 25 and 29 cents on the "Northern Division" at Fond du Lac, Wis., 161 miles from Chicago. The Chicago & Alton rates range from 13½ cents per can at Summit, 12 miles out of Chicago, increasing 1 cent or ½ cent with each station. The highest rate, 26 cents, is from McLean, Ill., 141 miles from Chicago. The Illinois Central rates for 8 and 10 gallon cans grade from 15 and 19 cents up to 22 and 26 cents, and those of the Chicago, Burlington & Quincy from 15 to 25 cents per 8-gallon can. On all these roads the freight is prepaid, the shipper being required to purchase milk tickets and attach a ticket to each can before delivery for transportation.

ERIE LINE.

12. The total amount of milk and cream brought by the Erie to Jersey City in 1894 was 1,297,505 cans and 729,280 boxes of milk, 77,509 cans and 2,164 boxes of cream, on which the total freight revenue was \$523,484.10. The Erie share of this total was \$484,093.24. From a statement in evidence of milk traffic on the Lehigh & Hudson River it appears that the receipts of that road from this milk traffic for 1894 amounted to \$45,773.68.

and that rates are divided between it and the Erie on the basis of 40 per cent to the Lehigh & Hudson River and 60 per cent to the Erie. This deducted from the above stated total milk revenue would make the Erie receipts \$477,710.42. The 1894 revenue of the Erie from milk traffic on its Delaware Division, running west from Port Jervis to Susquehanna, was \$79,387.34; from the Susquehanna Division, Susquehanna to Hornellsville, it was \$30,208.95, and from points on the Jefferson or Carbondale branch, it was \$6,233.70, making a total west of Port Jervis of \$115,829.99. The remainder of the total milk revenue for 1894, \$407,654.11, was derived from shipments east of Port Jervis. On the basis of milk business from points on the Lehigh & Hudson River amounting to \$114,434.20, as indicated by the statement filed for that company, the traffic originating on the Erie main line and branches east of Port Jervis amounted to \$293,219.91. Of this, \$116,990.83 was main line business, leaving \$176,229.08 for traffic from branches of the eastern division. The foregoing distribution of the Erie milk revenue for 1894 is based upon totals given in testimony. Analysis of the statement of traffic by stations, filed for the Erie, four stations not located, shows totals somewhat less for the eastern branches and the lines west of Port Jervis, and a little more revenue from the main line traffic east of Port Jervis. Included in the figures above given are earnings on milk carried to Newark, Passaic and Paterson, N. J., in 1894, to the amount of about \$11,190.76. The rates of 32 cents on milk and 50 cents on cream are charged whether the freight is consigned to Jersey City or carried between local stations.

The Wells Fargo Express Company, which conducts the express business on the Erie lines, charges, according to agreement with the railroad company, double the railroad rates for carrying milk, cream and garden products within the milk-train limits; thus, the express rates on milk and cream are 64 cents and \$1, respectively, the delivery being to consignees' places of business in New York City. The express charges on merchandise traffic, the highest class of express business (money excepted) are about double the railroad freight rates. Potatoes, onions, apples and other agricultural products usually have considerably lower special express rates. The express company carries about 5 cans of milk and cream daily.

The branch lines east of Port Jervis are: Two to Newburgh, one from Turner's, 15 miles, and another from Greycourt, 19 miles; the Pine Island and Montgomery branches, 12 and 10 miles in length, respectively, connecting with the main line at Goshen; and the Middletown & Crawford branch, 13 miles, leading from Middletown to Pine Bush. Except three stations in New Jersey, all the main line milk traffic in 1894 east of Port Jervis originated at Turner's and stations between that point and Port Jervis. The distance between Turner's and Port Jervis is 41 miles. These main and branch line distances are all in Orange County, New York. Nearly 80 per cent of the total milk traffic of the Erie in 1894 originated east of Port Jervis on the main line and branches and the Lehigh & Hudson River connection, and over 55 per cent was from main and branch lines in Orange County. Prior to the construction of these branch roads butter was the principal agricultural product of that county. The branches were built with a view of penetrating this dairy region, and with the facilities thus furnished for milk traffic, the making of butter was largely discontinued. The Ramsdell Transportation Company's boat line on the Hudson River, touching at Newburgh, Cornwall, and other landings, has carried, at times, as much as 1,000 cans a day from Newburgh alone. This river competition affects traffic at stations 15 or more miles from the river, but it has not resulted in causing the reduction of railroad rates on milk from the localities affected. The Erie bought out a large creamery at Washingtonville, Orange County, mainly to prevent the milk business at that point from going by the river.

The following statement shows the amount and increase of milk and cream from points west of Port Jervis from September 30, 1891, to 1895:

Year	Cans, 40 qts.	Gallons boxed.	Total reduced to cans of 40 qts.	Yearly increase or decrease.
1891	199,360	585,139	257,874	Increase.
1892	229,677	712,994	300,976	43,102
1893	252,864	735,956	326,460	25,484
1894	283,211	676,767	350,888	24,428
1895	268,897	652,225	334,120	Decrease 16,768
Increase in 1895 over 1891.	69,537	67,086	76,246	

The increase on the Lehigh & Hudson River connection in 1894 over 1891 was 1,021 cans. The total milk, cream and condensed milk traffic of the Erie in 1894, reduced to cans, was 1,613,309 cans, and in 1892 it was 1,778,508 cans, a loss in two years on the whole traffic of 165,199 cans. The total of the west of Port Jervis and Lehigh & Hudson River milk traffic was 713,565 cans in 1894 and 660,325 cans in 1892. These figures leave for the Erie main line and branches east of Port Jervis 899,744 cans in 1894 and 1,118,183 cans in 1892, showing a loss in two years in traffic originating on the Erie east of Port Jervis of 218,439 cans, over 19½ per cent of the shipments so originating in 1892.

This result may be increased or decreased somewhat by the fact that the figures used for west of Port Jervis traffic are for years ending September 30, those for the calendar year not having been given, and that a few thousand cans of condensed milk are included in the totals used for 1894 and 1892. The total milk traffic of the Erie in 1895 was less than in 1894 by 78,443 cans, and the decrease in west of Port Jervis milk for the year ending September 30, 1895, compared with the year preceding, was 16,768 cans. This indicates a further loss on the Erie lines east of Port Jervis in 1895 of about 61,675 cans, and a total loss since 1892 of about 280,114 cans, unless the loss as compared with 1894 was made up by increase in shipments on the Lehigh & Hudson River. The annual supply from Lehigh & Hudson River points was about equal during the four years prior to 1895. Such decrease since 1892 is not to be ascribed to the competition of the Hudson River Boat Line, the number of cans carried by the boats in 1895 having been about equal to the quantity carried by them in 1891 and 1892, and 30,000 cans less than in 1894.

Milk, buttermilk and cream are brought by the Erie to Jersey City in two daily milk trains usually composed of 13 milk cars and one combination car which will seat 35 or 40 persons in one of the compartments, the other compartment being used for clerical work pertaining to the milk business. The train employees are carried in this car. Some passengers are transported west-bound between local stations on one of the trains, and east-bound on Sunday only by both trains. No other traffic is carried on these trains. One train, No. 18, starts from Port Jervis at 6:50

P. M. and arrives at Jersey City at 11:15 P. M., making the distance of 87 miles in 4 hours and 25 minutes, or about 20 miles an hour, including numerous stops above Turner's. No. 20, the other train, starts from Pine Island Junction on the Pine Island Branch at 6:55 P. M. and reaches Jersey City at 11:00, covering the 70 miles in about 4 hours at the rate of $17\frac{1}{2}$ miles per hour, including stops. Milk originating on the Lehigh & Hudson River road and the branches other than the Pine Island is brought to the main line junctions and hauled from thence to the terminal in these trains. Considering the greater number of stops, these trains run at about passenger train speed and usually arrive in Jersey City "on time." In the operation of the road they have the same rights as passenger trains.

Seven cars of milk are brought down to Port Jervis daily: Two from the Susquehanna Division, Horneilville to Susquehanna; four from the Delaware Division, Susquehanna to Port Jervis; one from the Jefferson or Carbondale branch. This west of Port Jervis milk is carried to Jersey City in milk train No. 18, leaving Port Jervis at 6:50 P. M. The service west of Port Jervis is by passenger train. The ice used is, as a rule, furnished by shippers. The total expense to the company for this item in 1894 was only \$79.46. It does, however, haul ice for shippers from ponds to their ice houses and creameries at low rates. The company heats the cars in winter when necessary. The icing of can milk shipped from the near-by stations is not permitted by the carrier.

There are employed in the conduct of the two regular milk trains, the one from Port Jervis and the other from Pine Island Junction, four engineers, four firemen, four conductors, four flagmen, and thirty brakemen; fourteen brakemen to one train and sixteen for the other, and the engineers, firemen, conductors and flagmen are two to each train. One crew composed of one conductor, one engineer, one fireman, one flagman, and seven or eight brakemen, according to the train, makes a round trip and lays off, another like crew making the next trip. The engineers and firemen are paid the same as passenger engine men. This is in some cases more than the pay of freight engine men. The conductors on milk trains get \$13.00 per month more than freight train conductors, and the brakemen are paid the same as brakemen on

freight trains. The milk trains remain at Jersey City until 5 and 6 o'clock A. M., when, having been loaded with cans, they return to Port Jervis and Pine Island Junction, making the same stops going back to unload the empties. The returning trains are numbered 17 and 19. The milk train locomotives are heavy and similar to those used on through passenger trains, but while the milk trains require the use of four engines the same four are not exclusively devoted to that business. The cost of the milk car used is about \$1,500; that of an ordinary box car is about \$450. The life of the milk car is about ten years, while that of the box car is stated to average fifteen years. The Erie has 26 milk cars in constant use, but it keeps 11 others on hand at various sidings to be ready in case of accident or extra demand.

The company has erected separate stations and platforms exclusively for the milk business at a considerable number of points and put in sidings for that traffic at some of the larger stations. There are two large milk platforms at Jersey City, and a third is also used for that business in connection with general traffic.

13. The estimated cost of transporting the milk and cream business of the Erie in 1894 is stated to be \$108,603.72 of which \$26,971.72 are assigned to the business west of Port Jervis and the remainder, \$81,632 to the service east of that point. It does not affirmatively appear that this stated total cost includes all the branch line service east of Port Jervis. Comparison of this cost with estimated cost of doing the business by ordinary freight trains is presented in a statement filed for the Erie in reply to interrogatories propounded by complainant. Train mileage and some car mileage were used in the computation. The result reached through such comparison and claimed in the Erie statement is that east of Port Jervis the milk traffic could be carried in the ordinary freight service for \$18,940.16, as compared with \$81,632, the stated actual cost of the present service, and another calculation based on such figures is that the milk traffic as conducted costs the carrier $12\frac{1}{2}$ cents per carload per mile, while as ordinary freight such carload would only cost it at the rate of 2.9 cents per mile; in other words, that the transportation cost of the milk traffic east of Port Jervis is about $4\frac{1}{4}$ times what it would be if carried as ordinary freight. Besides the stated cost of transporting the milk, there is an additional expense of handling at the

terminal which is stated at \$11,388 and a milk agent is employed at \$3,000 per year. These various items foot up a total transportation cost of \$122,990.72, leaving an income over cost of transportation and terminal handling of about \$361,102.52. The share borne by this traffic of general expenses and maintenance of way, structures and equipment is also to be deducted to arrive at net income from operation. In making up an estimate of total cost of the milk traffic to the road the operating expenses and fixed charges applicable to milk traffic are determined by complainant according to the proportion of the milk tonnage to total tons carried, while for the same purpose the carrier adds some claimed terminal expenses to stated cost of transportation and uses the train mileage basis for the remaining operating expenses and fixed charges, resulting in a profit or net income of something less than 300 per cent on complainant's theory and about 10 per cent by the carrier's method of computation.

The expense of running an all-night ferry boat to accommodate milk dealers, claimed by the carrier as an additional item of cost, represents no part of the Erie expense in transporting milk for which rates to Jersey City are charged; such ferry boat expense relates to a distinct service for which the company is entitled to and does make a separate charge.

For the lines east of Salamanca fixed charges were apportioned for the year ending June 30, 1894, to the amount of \$7,493,307, including interest on funded debt and interest-bearing current liabilities, rents for lease of road, taxes, and \$9,643 "other deductions." This added to the total operating expenses on all business amounted to \$20,774,610, and exceeded the total gross earnings from operation by \$692,633. The estimate of cost submitted by counsel for the Erie Company shows, after making deductions for all claimed expenses and for fixed charges, a net profit from milk of \$49,726.31. The Erie's estimate of \$26,971.72, cost west of Port Jervis, applies to the carriage of about 20 per cent of its milk traffic, and \$81,632, stated cost of the milk train service east of that point, applies to the carriage of all the milk business by such trains to Jersey City. Upon this basis the cost of handling a can of milk west of Port Jervis by mixed train service is greater than the cost of transporting a can of milk by regular milk trains east of that point.

The foregoing figures pertaining to cost of the milk service are for the calendar year 1894. As the amount of milk business on the Erie for 1893 was a few thousand cans greater than in the succeeding year, and there was no substantial difference in the service rendered, the earnings for the calendar year 1894 were not greater, and the expense of the milk service was not materially different, than for the year ending June 30, 1894, the fiscal year for which annual reports covering the Erie system are filed with the Commission.

The total operating expenses for the year ending June 30, 1894, on the Erie lines east of Salamanca, N. Y. (82 miles west of Hornellsville), were \$13,281,303.00, covering general expenses, conducting transportation, maintenance of equipment and maintenance of way and structures; and the gross earnings of such lines from passenger, freight and miscellaneous service, including stockyards and elevators, were, for the same period, \$20,081,977.00, leaving a net operating income of \$6,800,674. These operating expenses were 66.14 per cent of the gross earnings. The Erie earnings from milk of \$484,093.24 were about 2.41 per cent of the above stated total gross earnings, and such percentage of total operating expenses is \$326,079.40. This leaves a net income from operation of the milk traffic of \$158,013.84, on the basis of cost according to the proportion of milk earnings to gross revenue. The use of either train mileage, tonnage or earnings as a basis for estimating cost excludes the other two important items from the calculation. While the true cost of conducting transportation only by the separate milk trains may be stated with some degree of accuracy, it is impossible to arrive at the actual expense involved in the carriage of that commodity from all points of shipment, or to determine the share properly borne by milk in total operating expenses or in any statement of fixed charges, and this is true as to any particular kind of traffic.

Following is a comparison of average rates per ton, rates per ton per mile, car and locomotive earnings, empty car mileage, average number of loaded cars to the train and average load per car for milk and freight traffic generally:

A. According to the number of cans and cases of milk and cream carried by the Erie in 1894, and the estimated weights of 100 lbs. per can of 40 quarts and 70 lbs. per case of 12 quarts, the

total Erie milk tonnage was a little less than 95,000 tons, and this divided into the milk receipts of that company for the year gives an average revenue per ton of about \$5.10, more than five times the average of 97.767 cents per ton received for the year ending June 30, 1894, on all freight.

B. The average revenue per ton per mile reported for all freight carried over the Erie line east of Salamanca for the year to June 30, 1894, was 6.30 mills. On the basis of the Port Jervis distance of 87 miles, which exceeds the distance haul of the bulk of milk carried by this line, the rate per ton per mile received for milk at 32 cents per 100 pounds is over 7.35 cents, and doubling the distance on account of service in returning the cans, the rate still yields 3.68 cents per ton per mile, more than $5\frac{1}{2}$ times the average for all freight traffic east of Salamanca. The rate per ton per mile from Hornellsville to Jersey City, 331 miles, is 1.93 cents, and applying the rate to the service down and back, the rate per ton per mile for the 662 miles is .966 cents, a little over one and a half times the average received on all freight traffic.

C. A milk car on the Erie, with an average load, as testified, of 155 cans of milk, earns daily with the engine hauling it \$49.60, or \$18,104.00 per year, and with such average loading the earnings of the 26 milk cars and engines employed were \$1289.60 daily, equal on that basis to \$470,704.00 per year. The actual receipts of the Erie alone, stated at \$484,093.24, gives average Erie earnings per car for the year of \$18,618.97, and on the basis of the total number of milk cars owned (37 in number), such earnings per car in 1894 were \$13,083.60. The number of freight cars reported in service for the Erie lines east of Salamanca for the year to June 30, 1894, was 28,431. The balance of car mileage due and receivable from other companies was in favor of the Erie to the extent of \$16,200.60, so that not all of this number of cars may have been in service on these lines. The total freight revenue was \$14,963,855.22, and if only half the number of freight cars owned were used on this portion of the system the earnings per car were \$1,052.60.

D. If the return trip of the milk trains is regarded as empty car mileage, such empty car mileage is 50 per cent of the total milk mileage. The proportion of empty freight car mileage to

the total freight car mileage east of Salamanca for the year to June 30, 1894, was 31.70 per cent, and 81.33 per cent of the empty mileage was west-bound.

E. The separate milk trains on the Erie, consisting of 13 milk cars each, average $7\frac{3}{4}$ tons per car on the basis of 155 cans per car. The average number of loaded cars in a freight train, on the Erie east of Salamanca in the fiscal year 1894 was 19.29, and the average load per car was 13.44 tons. But these figures do not show the *frequency of movement* with such loading and number of cars to the train. Each of the two milk trains and each of the 26 cars with $7\frac{3}{4}$ tons burden moves every day in the year, while the averages given for the freight business generally are made up from the record of all trains, through and local, fast and slow, regular and special, heavy and light. This, with the amount of rate charged, accounts for the greater yearly earnings per car from milk than from freight traffic generally.

The revenue from passengers carried on the Erie milk trains in 1894 was \$2,868. The amount paid by this company in 1894 for loss and damage accruing through its milk service was \$21.80.

LEHIGH & HUDSON RIVER RAILROAD.

14. As above stated, the total milk and cream traffic annually carried by this road varied but little in amount from 1891 to 1894, inclusive; it increased from 284,465 cans in 1885 to 361,656 cans in 1891, decreased to 359,349 cans in 1892, and the amount in 1894 was 362,677 cans. All milk and cream on this road destined for the New York market goes *via* Greycourt, N. Y., and the Erie. The Lehigh & Hudson River milk receipts in 1894 amounted to \$45,773.68. The train which collects milk at the different stations, carries it to Greycourt, and returning distributes the empty cans at the several stations, also carries dressed meat, butter, and other commodities, passengers, mail and express. As apportioned by the road, its revenue for this train from these additional items amounted in 1894 to \$10,609.15. The most distant point from which milk was brought in that year was Great Meadows, N. J., about 51 miles from Greycourt. There are three or four stations on the Orange County Railroad branch east of Greycourt. Over half of the 1894 milk revenue of this road was derived from traffic shipped from points in

New York State, the most distant of which, New Milford, is 13 miles from Greycourt. No attempt to approximate the cost of doing the milk business other than by train mileage average has been made. The president of the company testified to the effect that milk is among the most profitable articles carried by his road. The average revenue per ton received by this company on all freight for the year ending June 30, 1894, was 43.042 cents, and the average received per ton for all milk, computed from total cans carried, is about five times the amount received per ton on all freight.

In the year to June 30, 1894, the proportion of empty freight car mileage to total loaded and empty freight car mileage was over 39.27 per cent, and over 95 per cent of this empty car mileage was west-bound. The average number of loaded cars in a train was 12, and the average load per car was 15 tons. This road, like the Erie branches in Orange County, was built from Greycourt with main reference to the milk business. It extended first to Warwick, N. Y., and was known as the Warwick Valley R. R. In 1879 the road ran to McAfee, N. J., and in 1882 to Belvidere, the present western terminus. Milk is still one of its principal articles of traffic, yielding in the year to June 30, 1894, over 10 per cent of the total freight revenue, though milk and cream constituted but 2.18 per cent of the tonnage. About \$14 was paid for spilled milk or other loss through milk transportation by this company in 1894.

SUSQUEHANNA LINE.

15. For the year 1894 the total milk revenue of this road was \$208,403.19, of which about \$81,314.51 arose from traffic shipped at stations in New York State. These stations are all on the short branch to Middletown, N. Y., which is 88 miles from Jersey City by this line. About 65 per cent of the milk shipped from New York points and carried by this line through New Jersey is delivered in New York City. The other 35 per cent is delivered at Jersey City. Some other traffic, small in amount, is carried by the milk trains, but what kind or the revenue derived therefrom is not shown; 2,160 passengers, paying \$420.60, were carried on milk trains during the year ending June 30, 1895. No statement of the cost of operating the

milk train is given, except an estimate based on stated percentages of operating expenses as applicable to all freight transportation and to milk alone, and the addition of one third thereto for extra expense in running this milk train. The road had no extra expense for ferry boat service to accommodate receivers of milk. The company paid for loss and damage claims to shippers and consignees of milk and cream in 1894 about \$2,921.58. All the milk cars are iced when necessary at Two Bridges, N. J., and the company paid \$600 for milk car icing in 1894. The milk car costs from \$1,200 to \$1,700 and the ordinary box car about \$450 or \$500. About \$150 per car was expended for milk car repairs in 1894. The company built no creameries in New York in that year, but did erect two in New Jersey; 43.10 per cent of the total car mileage was empty, and 95 per cent of the empty mileage was west-bound. The average number of loaded cars in a freight train was 30, and the average load per car was 18 tons. The average receipts per ton from freight generally in that year were 77.241 cents. The milk and cream carried, a large portion of which was bottled, is computed at a little less than 45,000 tons, and with such tonnage the average milk revenue per ton for the year 1894 was \$4.63, or about six times the revenue per ton on all freight. The milk rate to Jersey City also applies on shipments to intermediate stations.

ONTARIO & WESTERN.

16. This company carried to Weekawken in 1894, as reported by it for this case, 1,164,848½ cans of 40 quarts of milk, cream and pot cheese. The latter item amounted to 2,918 cans, on which its revenue was \$933.76. There were 1,110,037 cans of milk and 51,893½ cans of cream. This includes 145,590 cases of bottled milk, equivalent to 45,664½ cans, or 3.92 per cent of the whole amount carried. The total revenue for carrying was \$381,186.55. The gross revenue on the traffic shipped from Ontario & Western stations was \$365,489.58. The remainder was for shipments received from the Philadelphia & Reading and New England at Campbell Hall, amounting to \$12,382.40; and from the Port Jervis, Monticello & New York road at Summitville, amounting to \$3,314.79. The 32-cent milk rate is divided as follows: Ontario & Western 15 cents; Philadelphia, Reading

& New England 17 cents; Ontario & Western $18\frac{3}{8}$ cents; Port Jervis, Monticello & New York $13\frac{2}{5}$ cents.

The Ontario & Western milk traffic south of, and including Bloomingburgh, 88 miles from Weehawken, and that received from the Philadelphia, Reading & New England connection at Campbell Hall, consisted in 1894 of 175,119 $\frac{3}{4}$ cans, and the revenue from this was \$56,562.35. The cans received south of Middletown, 78 miles from Weehawken, are stated in evidence to be about 200 cans a day. Cornwall, the station nearest to Weehawken, is 52 miles from that terminal, and the distance between Cornwall and Middletown is 26 miles. The company's detailed statement of the milk traffic and revenue shows that such revenue from stations south of Middletown and covered by this 26 miles was about \$42,128.90, and that the number of cans received at said stations was 130,659 $\frac{1}{2}$, equal to about 358 cans per day. Exclusive of milk received from the Philadelphia, Reading & New England connection, the number of cans shipped from such stations was about 253 per day.

The total milk receipts from main line stations, Cornwall to Kenwood, the distance between being 212 miles, were \$253,841.62, leaving \$127,344.93, or about 33 $\frac{1}{3}$ per cent for the business from branches and connections. All of the branch line milk is long distance traffic:

Scranton branch, Como, 173 miles, to Belmont, 178 miles.....	\$ 9,390.89
Delhi branch, Colchester, 183 miles, to Delhi, 196 miles.....	38,039.08
New Berlin branch, Pine Grove, 207 miles, to Edmeston, 232 miles	56,968.95
Utica division, Hamilton, 246 miles, to Deansville, 267 miles	6,315.28

Total from branch lines	\$110,714.20
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This added to the main line business north of Bloomingburgh, and the traffic received from the Port Jervis, Monticello & New York connection at Summitville, 93 miles from Weehawken, gives a total revenue on milk business from points north of Bloomingburgh—exceeding 88 miles and up to 264 miles distant—of \$323,690.44, nearly 85 per cent of the total milk revenue.

The Ontario & Western has two milk trains, composed of 12 or 13 cars each, until Cornwall is reached, at which points the trains are consolidated. The milk is delivered at Weehawken at about 11 P. M. One train starts from Oneida, 267 miles from

Weehawken, and picks up milk on the main line stations, including that from the Utica division at Randallville, down as far as Walton. The other train starts from New Berlin or Edmeston on the New Berlin branch. Traffic from the other branches is brought to the main line by local mixed trains. North of Middletown the grades are heavy, ranging from 65 to 80 feet to the mile, and for the heaviest a second engine is required. Prior to March 1, 1894, no separate account was kept of the earnings from commodities other than milk, cream and pot cheese carried on milk trains. For the succeeding ten months such earnings were \$3,368.13, and for the year to March 1, 1895, they were \$4,060.30. The amount of these earnings for the calendar year 1894 was not far from \$4,000. The passenger receipts are estimated at about \$6,363. These items added to \$373,236.11, the Ontario & Western milk earnings exclusive of payments to connections, amount to \$383,599.11, but this includes some mixed train milk service on branch lines. The company reports the total Ontario & Western earnings of the milk trains proper at \$377,194.00, covering passenger, express and all freight carried on such trains. The cost of these trains is estimated by dividing the number of all train miles run into total operating expenses for the year ending June 30, 1894, multiplying the total milk train miles run by the average expense per mile for all trains, and adding thereto .0829 cents per milk train mile, equal to \$25,532.62, as extra expense of milk train crews, ice, milk collectors' force, heating cars and milk agents' salary. This estimate amounts to \$313,844.87, or 83.20 per cent of the stated milk train earnings, and leaves a net income from operation of \$63,349.13. The total operating expenses used by the company included taxes, but in the reports of railroads to this Commission that item is placed under the head of fixed charges. The gross earnings of this company from operation in the fiscal year 1894 were \$3,842,119.63. The total operating expenses, including general expenses, maintenance of way, structures and equipment and conducting transportation were \$2,624,426.09. The percentage of the stated milk train earnings, \$377,194.00, to such gross earnings was about 9.81 per cent; such percentage of total operating expenses leaves, on this basis, a net operating income from its milk trains of \$119,737.80. The extra expense item of \$25,532.62 above mentioned includes \$7,152.59

for ice and heating of milk cars, the milk being iced from all stations. Icing points are Oneida, Utica, Hamilton, Norwich, Edmeston, New Berlin, Living Waters, Delhi, Belmont (long-distance points), and Fallsburgh and Middletown. The amount used in each car is about 3,000 lbs. Another expense included in the stated extra cost is that for "milk collectors' force," the meaning of which is not explained in testimony. This is given at .0278 per milk train mile, equal to \$8,562.20.

The company has built 16 creameries at a cost of \$32,498.46, and 16 ice houses costing \$10,187. There are about 75 creameries on the line. The loss and damage account in 1894 on milk amounted to only \$6.58, but \$177.96 was paid to a can collector for his services in looking up missing cans. The company reported 39 milk cars in service in the year to June 30, 1894, and the testimony is that the number in 1895 was 44. Besides those used daily in milk trains, a number are kept ready at convenient points for extra demand, but during the season of lighter traffic 10 or 12 of the cars and one engine assigned to the service are laid up. The company's cost for milk car repairs in 1894 was \$9,513.48, or \$250.34 for each of 38 cars. The car and engines are similar in kind and size to those used on the Erie. The receipts per car in 1894 were somewhat less than the milk car receipts of the Erie, but the daily average for each car in use was far in excess of the average daily earnings of the ordinary freight car in the company's service. The company has 6,047 freight cars. For the fiscal year 1894 the balance of car mileage was against it to the amount of \$51,756.39. The total freight revenue was \$2,997,011.22, and if only half the number of cars owned were used in freight service on the road, the annual earnings per car were not quite \$1,000, while the Ontario & Western milk train earnings in 1894 divided by a total of 44 milk cars owned gave a revenue per car for the year of \$8,572.59, and with 13 cars for each of the 2 milk trains, the earnings per car for 1894 were \$14,507.46. The average freight revenue per ton per mile was a little over 9 mills (9.12), while the milk rate per ton per mile from Kenwood, the longest distance point, is over 2.42 cents. Doubling the distance for return can service it would still be 1.21 cents. The average rate per ton per mile actually received from milk business based on the tonnage and actual distance hauled was

much greater. The empty freight car mileage on the Ontario & Western during the year ending June 30, 1894, was 44 per cent of the total freight car mileage, and about 45.45 per cent of the empty mileage was west-bound. The average number of cars in a train was 10.09, and the average load per car was 17.67 tons. As above stated, the two milk trains average 12 or 13 cars each, and these trains are consolidated at Cornwall, 52 miles from Weehawken. The milk tonnage in 1894 was about 60,000 tons, and this divided into the Ontario & Western receipts gives \$6.22 revenue per ton. This is about five times \$1.24649, the average revenue per ton received on all freight in the year ending June 30, 1894. Less than 4 per cent of the traffic was shipped by the heavier bottle or case method. The company furnishes free transportation to dairymen. In 1895 the Ontario & Western milk traffic was only about 264,000 cans less than was carried by the Erie, but the cost of doing the business on the Ontario & Western is greater than on the Erie, mainly because of the much greater distance traveled by the Ontario & Western daily milk train, the great bulk of this company's milk being shipped from long distance points, while that of the Erie comes from the near-by region and its more distant milk is brought to Port Jervis by mixed service. The Ontario & Western daily milk trains run over distances three times greater than milk train distances on the Erie, and the same rate is charged on both roads.

LACKAWANNA LINE.

17. The milk and cream brought by this line is mostly delivered at Hoboken. A comparatively small amount consigned to Newark, N. J., is first transported to Hoboken. Three regular milk trains run daily from Binghamton, N. Y., and another starts from Scranton, Pa. Binghamton is 206 miles and Scranton 144 miles from Hoboken. These trains average about eight cars to the train. The loading for the three trains on leaving Binghamton is milk brought to that point from the Utica & Syracuse divisions and by milk cars attached to passenger trains. The Delaware & Hudson milk is brought by that road to Binghamton. Four or five trains carry milk to Binghamton, and the milk cars are there drilled into the three trains mentioned. These milk trains run at a speed of about 35 miles per hour, including stops. The line runs

through a mountainous region east of Scranton to Delaware Water Gap, and an extra engine is used to surmount the heavy grade on that portion of the line. The delivery service at Hoboken is similar to that performed by the Erie.

In 1894 the total milk traffic of the Lackawanna was about the same in amount as that on the Erie, yet all the Erie milk and cream business was hauled to Jersey City in two milk trains, while four daily trains were employed in taking the Lackawanna milk and cream to Hoboken.

The total amount of milk and cream carried by the Lackawanna in 1894, expressed in cans, is put at 1,649,733 cans by the "Milk Reporter" (6th finding). Analysis of the statement filed for the company setting forth this traffic by stations and months for that year shows the following:

1,238,180 cans of milk at 32¢.....	\$396,217.60
230,418 cans of milk (9,216,709 bottles shipped in cases) at 32¢....	73,733.67
30,862 cans of cream at 50¢.....	15,431.00
<hr/>	<hr/>
1,499,460 cans.	Total, \$485,382.27

To this is to be added a small quantity of bottled cream and earnings from miscellaneous cans and cases of various sizes amounting in all to about \$1,691.67, making a total milk revenue \$487,073.94. The butter and cheese revenue from carriage in milk trains amounted to about \$3,299.59, thus increasing the total milk train revenue to \$490,373.53. This is only \$742.16 greater than the total milk earnings given in evidence and stated in briefs of counsel to be \$489,631.37. Passengers are carried on some of the milk trains, but the revenue for this service is not given. The difference between the total milk revenue of the Erie and that of the Lackawanna for 1894, about \$34,000, is accounted for to some extent by apparently somewhat less volume of traffic, and slightly lower rates on a small amount of milk to Newark from New Jersey points, but principally by the much greater quantity of cream carried by the Erie in that year.

18. From the Lackawanna statement filed it appears that in 1894 about 7 per cent of the total Lackawanna milk revenue arose from shipments at points in New Jersey and 80 miles or less from Hoboken. All the remainder came from shipments at places 136 miles up to 310 miles from Hoboken, and a little at

Leicester, N. Y., 354 miles. About 10 per cent of the total revenue was from shipments in Pennsylvania, and, approximately, 83 per cent was collected on traffic originating beyond Binghamton, N. Y., 206 miles from Hoboken. A little less than 2 per cent came from the Elmira, Cortland & Northern connection, and about 13½ per cent from the Delaware & Hudson, including the Cooperstown & Charlotte Valley traffic, which is first delivered to the Delaware & Hudson. The remainder arose from shipments mostly upon the Syracuse & Utica Division, including the Richfield Springs Branch. The rates are divided with connections as follows: Elmira, Cortland & Northern, 10 cents a can, whether milk or cream; Delaware & Hudson, 42 per cent. A can of milk from the Elmira, Cortland & Northern is carried by the Lackawanna for 22 cents from Cortland, N. Y., 259 miles, and if the can comes from the Delaware & Hudson at Binghamton, the Lackawanna receives 18.56 cents for carriage from Binghamton.

19. Under a contract now in force between the Lackawanna Company and Robert E. Westcott, of New York City, Westcott has charge of the milk and cream business on the Lackawanna line, and by the terms of the agreement he receives 20 per cent of the gross receipts. This contract, bearing date July 9, 1886, provides that it shall continue in force ten years, subject to revision after three years, and at the end of any one year thereafter, on three months' notice. Mr. Westcott sent the following request to the company on November 25, 1887: "I have established 12 creameries up to this date on different points of the road, and propose still further materially increasing the number, but before doing so must ask whether section 12 of my contract with your company may be modified, striking out the option of revision after 3 years and substituting '5 years from this date' instead, as the construction of buildings, likely to be 35 to 50 additional and 3 large ice houses, will not admit of my being subject to the revision as now contained in the contract." It was thereupon agreed in writing by the parties on November 28, 1887, that the revision clause should not take effect until 5 years from *this date* instead of the 3 years in section 12 of the contract, "it being understood the number is increased to at least 20." On September 30, 1892, about 5 years later, the parties agreed in writing that the

duration of the contract should be extended until July 9, 1901. On April 1, 1872, Robert F. Westcott, father of Robert E., entered into a contract with the Lackawanna to "increase, facilitate, build up and develop the transportation of milk over the Morris & Essex Railroad" (a division of the Lackawanna in New Jersey). It was provided in that contract that the milk rates charged shall be from time to time "fixed by said Robert F. Westcott subject to the approval of the president of the railroad company," but not to exceed 55 cents per can of 40 quarts, and Westcott's compensation under that contract was also 20 per cent of the transportation charge. This contract ran 5 years, was extended for 5 years longer, and then extended to April 25, 1884, "so as to expire with a similar contract of Sussex Railroad," another portion of the Lackawanna system in New Jersey. In March, 1884, two new contracts were made by the elder Westcott, one with the Sussex Railroad Company and another with the Lackawanna, each to run 5 years from February 1, 1884. Under this contract with the Lackawanna, Westcott was to develop and handle milk traffic on the Morris & Essex and on the Lackawanna from Stroudsburg, Pa., fix the rates subject to approval by the president, and receive 20 per cent of the charges. Afterwards, in July, 1886, the present contract with the younger Westcott was made whereby he agrees "to use his best efforts and efficiently do and cause to be done all within his ability to build up, develop, increase, facilitate and conduct the business of transportation of milk over all the lines of the party of the second part, whether owned, controlled or leased by it," and to "charge for the transportation of such milk rates not in excess of those charged by competitive railroads for similar service." Westcott under this agreement is responsible for loss and damage claims connected with the milk business, excepting such loss and claims as may arise through accidents or casualties to the train or negligence of the company or its employees. He collects the freight charges and pays 80 per cent thereof to the company, retaining the remainder as full compensation for all his services, and renders a monthly account. He also undertakes to save the company harmless from all liability for loss of life or injury to "any of the persons doing business over the lines of the party of the second part (company) for or on account of the

party of the first part" (Westcott). The railroad company undertakes that it will not do or permit to be done by its agents or servants any act which will prevent or interfere with Westcott in developing, building up and conducting said business, and grants him "the exclusive privilege of transporting milk over its said lines" so far as it is permitted so to do by law. It agrees to receive, load and transport from all its said stations all the milk furnished at said stations upon a train or trains leaving the same severally at such time or times as may be best calculated to promote the business; to run an extra train upon application to and at the option of its president and general manager; to receive milk at stations not served by milk trains and transport the same on passenger trains, have its agents at such stations collect the charges, waybill the milk, and ship it in the baggage car of such trains, the baggage master to take the same on the car and put it off therefrom; to furnish depot accommodations at stations where milk trains run for the convenient conduct of the business; to render such assistance to the "messengers" of Westcott upon the milk trains by its train hands as may be necessary for the prompt loading and unloading of milk from the trains; to promptly retransport and return empty milk cars to the several stations; to accept 80 per cent of the charges as full compensation for all claims against Westcott for service rendered by it, including the free transportation of Westcott's agents and messengers engaged in the milk business. Arbitration is provided for in case of differences arising between the parties as to matters connected with the contract or the business therein referred to.

The contract only refers to milk, but it appears that Westcott also handles cream, butter and cheese. He also gets 20 per cent from the revenue of the Lackawanna connections. His compensation for 1894 out of \$489,631.37, the total earnings, amounted to \$97,926.27. His expenses during that year were about \$78,000, but what portion of this was spent in the erection of creameries and otherwise "developing" the business and what expenses incident to handling, transportation and delivery of milk were actually incurred by him are not definitely shown. Westcott has built about 100 creameries on the line. This creamery cost in 1894 is stated at about \$35,000, but the creameries are mostly sold to dealers and other outside parties, and they yield some re-

turn. The remaining \$43,000 of expenses includes some loss on ice furnished to shippers, traveling expenses of milkmen whom he induced to go out into Lackawanna territory, and other items which do not pertain directly to transportation. His salary account for superintendents, messengers on trains and employees at the terminal was about \$30,000. The item of damages paid for spilled milk, lost through delays or accidents and similar causes, is trifling in any year. Westcott obtains and furnishes free passes to milkmen entitling them to transportation over the Lackawanna and connections to points in the milk territory. The passes are countersigned by him and not good otherwise. The Lackawanna receives and transports the milk, pays all train expenses, cleans the cars, and its agents do the billing, waybills being sent to Westcott. Westcott ices the milk cars when the season requires. His duties in reference to transportation appear to be refrigerating the cars, furnishing one or more messengers on each train, doing all the terminal milk business, including handling and delivery, looking after empty cans and securing their prompt return, collecting the freight, keeping an account thereof, paying over 80 per cent to the company, and paying loss and damage claims not chargeable to the company under the contract. Under the figures above given, the cost to Westcott was apparently little if anything in excess of \$40,000 in 1894, leaving about \$58,000 for "developing" the business and his profit.

Westcott operates individually under the title of "Produce Despatch," but that is a name merely. It is not an express company, nor is the business done by Westcott analogous to that of such a company. All of the duties performed by him in connection with this special fast freight business are done by the other defendant lines (except the Lehigh Valley) for themselves. He neither gathers the milk at the farms nor delivers it to dealers' places of business in New York. The railroad company, on account of the volume of the traffic, furnishes trains for a business which when small in amount is usually done by other carriers in baggage or other cars in passenger trains. Concerning the transportation and delivery at the railroad terminal, he is an agent of the railroad company, and for this and for developing the Lackawanna milk traffic he receives the compensation stated. Westcott is authorized by the company in the present milk contract to fix the rate

from all stations under the sole limitation that such rates shall not be greater than "those charged by competitive railroads for similar service." It was Westcott who at a meeting of agents in relation to the milk rate insisted upon the reduction from 35 to 32 cents, and his action was finally assented to by the other lines, but notwithstanding his contract authority Westcott did not make this reduction on the Lackawanna until it had received the approval of the president of that company.

20. After deducting Mr. Westcott's 20 per cent, there remained of total earnings in 1894 on milk carried on the Lackawanna line about \$391,705.10. On the basis of train mileage the assistant auditor of the company testified that the share of total operating expenses, including taxes, chargeable against the milk business, for the calendar year 1894 was 3.13 per cent, amounting to \$478,754.28. This is within \$10,877.09 of the sum given as total milk earnings. Counsel for the company in their brief also use the train-mileage basis and compute cost of transportation and maintenance at \$327,147.54, leaving out of this item Westcott's 20 per cent, and such operating expenses as the milk traffic share of general expenses and of station expenses outside of Hoboken. The difference between such cost and the Lackawanna milk earnings is \$162,483.83, and deducting therefrom the amount paid to Mr. Westcott leaves a balance of \$64,557.56 for the omitted expenses and the company's profit from operation.

The average Lackawanna receipts per ton from freight in the year ending June 30, 1894, were \$1.3031. It is testified that the average load for each milk car to Hoboken was 8 tons, and that 8 was the average number of milk cars to the train, making a train load of 64 tons and 256 tons for the 4 daily trains to Hoboken, or 93,440 tons for the year. Dividing such estimate of total tonnage into gross receipts results in a milk revenue per ton of about \$5.24, four times the average receipts per ton for all freight. For the fiscal year to June 30, 1894, the average number of tons in each loaded freight car on the Lackawanna was 16; the average number of tons to the train was 575; the average number of freight cars in a train was 30; the average number of loaded cars in a train was 25, and the average for empties was 22. About 43 per cent of the total car mileage was empty.

LEHIGH VALLEY LINE.

21. From a detailed statement prepared by officers of the company for this case, it appears that in 1894 the Lehigh Valley carried to Jersey City from points west of the New Jersey State line,—namely, stations in Pennsylvania and New York,—about 75,717 cans of milk, 1,639 cans of cream and 311,752 bottles of milk, equal to about 7,794 cans, amounting in all to 85,150 cans, on which the total freight revenue was \$27,574.49. The amount of milk traffic from stations in New Jersey to Jersey City is not given. The number of cans shipped from points outside of New Jersey is about 69 per cent of the amount published in the "Milk Reporter" (6th finding) as the total cans carried for the New York market by this company in that year. Of the freight revenue above mentioned, \$21,282.35 was earned on shipments from main line points in Pennsylvania, 195 miles or more from Jersey City (except about \$347 from one station 94 miles out), and about \$591.86 arose from shipments on the Montrose Railway in Pennsylvania, which connects with the main line at Tunkhannock, 206 miles from Jersey City. The remainder, \$5,700.28, was paid on shipments from points in New York State. As shown in the 6th finding, the number of cans carried by this line in 1895 was greater than in the year preceding by nearly 49,000. This company's aggregate milk revenue in 1894 on shipments to all destinations and from all points on its line was \$134,248.74. This is understood to include milk carried to Philadelphia and between local stations. The other freight traffic carried in milk trains consisted chiefly of butter and eggs, which were charged 35 cents in 1894 as against the regular rate of 30 cents for ordinary service. The butter and cheese rate on milk trains is now 38 cents. About 17,024 pounds of butter and eggs were carried to Jersey City in 1894, yielding a revenue at the 35 cent rate of about \$5,958.40. The passenger business on the milk train is not stated.

22. In 1890 the Lehigh Valley entered into a contract or agreement with Andrew P. Bedford and Arthur J. Stone, doing business as the Farmers' Dairy Despatch, for the development or building up by them of the milk traffic over its line. This was superseded by another contract in 1892 entered into by the fol-

lowing parties: The Farmers' Dairy Despatch, which had become a corporation and had succeeded to the rights of Bedford & Stone under the first agreement; the Easton & Amboy Railroad Company, part of the Lehigh Valley system; the Lehigh Valley Railroad Company; and the Philadelphia & Reading Railroad Company, at that time lessee of the Lehigh Valley. By its terms this contract is to run until May 1, 1906. Daily milk trains are provided for between the various shipping stations and Jersey City and Philadelphia. The compensation of the Despatch is fixed at 20 per cent of the rate of 45 cents per can of milk charged to Philadelphia, and 25 per cent of the rate charged on shipments of milk and cream to points in New Jersey, making, as figured in the contract, 9 cents per can of milk to Philadelphia and 8 cents out of the 32-cent rate to Jersey City. After May 1, 1897, the percentage of the Despatch Company is to be 20 per cent of the freight charge to Jersey City as well as to Philadelphia. A percentage similar to that allowed on Jersey City shipments is provided for on milk between local stations, subject to revision by the parties or in case of disagreement by arbitration. The shipment of butter, cheese, eggs and other dairy products besides milk and cream is permitted in refrigerator cars, the Despatch Company paying the regular published rates therefor. All shipments of milk and cream are to be carried in refrigerator cars furnished by the railroad company and specially fitted for the purpose. The Despatch Company acts merely as a contractor to solicit and to procure the transportation of milk, and is not to own or purchase any part of the milk carried, or pay transportation charges thereon, or have any interest in the traffic whatever. The Despatch agreed to erect milk depots, creameries and ice houses at its own expense, furnish ice needed for the cars, and provide the milk cans and fixtures necessary to carry on the business; but the railroad company contracts to furnish ground for the erection of milk depots, creameries and ice houses at a nominal rent, as well as suitable and convenient terminal facilities. It is also provided in the contract that the Despatch shall be entitled to have from each of the railroad companies a reasonable supply of trip passes for milk dealers to visit the creameries located on the line, but "that such passes shall only be good for use between

points within the same State." The lease to the Philadelphia & Reading has been terminated, and the line is now again operated by the Lehigh Valley Company. Up to the time of hearing about 40 creameries had been erected by the Despatch. The secretary of the Despatch testified that under the arrangement the Despatch takes and develops the milk business of the Lehigh Valley, builds all the creameries and ice houses, fills the ice houses, cleans all the cars, and is at all the expense except the proper railroad business; that the cars are of the refrigerator class, and are owned by "the Dairy Car Company," some of the officers of which are officers of the Despatch, and the cars are leased to the Lehigh Valley. These cars cost about \$2,600 each. The road runs the train, furnishes the crew, loads and unloads the milk. The milk rates are not to be higher than those on other railroads engaged in the traffic. Up to the hearing the milk rate to Philadelphia was still 45 cents a can, the Jersey City rate from the same points being 32 cents.

The total mileage of all milk trains on the Lehigh Valley in 1894, carrying to all destinations, was 324,696, and the earnings per train mile were about 41.3 cents. This includes the higher earnings to Philadelphia. The earnings per train mile on general business were about \$1.30 for the year ending June 30, 1895. The Lehigh Valley did not begin to extend its milk business until 1890, and its general freight agent testified that it had "proved a big loss up to 1894." The increase in the milk carried by this line to Jersey City in 1895, over that so carried in 1893, did not exceed, as appears by the 6th finding, 100,000 cans. Another witness in the company's employ testified that the cost of moving a milk train is not less than 35 cents per train mile. The cost of moving the milk traffic on the Lehigh Valley in 1894 was estimated by the same witness at \$107,823. 00. Deducting 20 per cent of the 1894 milk revenue for the Dairy Despatch (it gets 25 per cent on business to Jersey City) leaves the carrier \$107,398.99 for its expense, not merely of moving the train, but also for maintenance of way, structures and equipment and general expenses. To this should be added the miscellaneous milk train revenue derived from transporting eggs, butter, cheese, vegetables and passengers. The company's average receipts per ton on all freight in that year were \$1.0522. The average receipts per ton from the milk car-

ried from Pennsylvania and New York stations to Jersey City were about six times the average ton revenue for all freight, but compared to that of the other defendant roads delivering milk at New Jersey terminals the Lehigh Valley milk tonnage to Jersey City was very small, amounting, on the basis of 85,150 cans, to only about 4,258 tons.

WEST SHORE LINE.

23. Of the milk traffic carried by the West Shore to Weehawken practically all is delivered to it at Kingston, N. Y., by the Ulster & Delaware and by the Wallkill Valley, a road operated in close affiliation with the West Shore. A special milk train is run from Kingston, 88 miles, to Weehawken. The West Shore and Ulster & Delaware each furnishes one half the car equipment for their route. The train leaves Kingston about 9 o'clock in the evening and arrives in Weehawken at 11 p. m. The milk service on this line is similar to that of the Erie and Ontario & Western. It is claimed for the West Shore that a ferry boat is run during the night at a daily loss of about \$25, which would be unnecessary if the boat were not needed for the accommodation of New York milkmen. This ferry carries the Ontario & Western as well as the West Shore milk. The ferry service is distinct from the transportation by rail, and a separate charge is made for such service. A carload of butter per day for New York City has at times been received from the Ulster & Delaware and hauled in the milk train from Kingston to Weehawken. It appears that this butter traffic is now handled by another train. The 32-cent rate is divided with the two connections on the basis of 50 per cent to the Ulster & Delaware and 40 per cent to the Wallkill Valley. The West Shore has 18 or 20 milk cars in service, costing each between \$1,700 and \$2,000.

The Ulster & Delaware runs 87 miles from Kingston over the Catskill Mountains and through the counties of Ulster and Delaware, N. Y., to Bloomville, its farthest milk point. The grades are heavy. All the milk is gathered in Delaware County on the other side of the mountain and within 45 miles of Bloomville. The traffic amounts to 1,000 or 1,200 cans a day, and there was in 1895 a demand for about 50 per cent more. Prior to the development of this milk traffic the farmers of Delaware County

were very largely engaged in butter-making. Creameries have been built along the line, and now the farmers' principal source of revenue is milk. The Ulster & Delaware has about 15 milk cars, each costing about \$1,800. About one half of the milk shipped over the road is in bottles.

The Wallkill Valley extends from Kingston, 38 miles, to Campbell Hall. All the milk brought to the West Shore at Kingston by this road is collected at stations within a distance of 13 miles from Campbell Hall. There is no statement in the record of the output from the various milk stations on the Wallkill Valley and Ulster & Delaware, but under the testimony of about 1,000 cans shipped daily over the Ulster & Delaware and the statement in the 6th finding of the total cans carried by the West Shore, about three fourths of the West Shore milk appears to originate on the Ulster & Delaware road.

While nearly all the milk traffic of the West Shore is shown to have been derived from its Wallkill Valley and Ulster & Delaware connections, Kingston, N. Y., being the point of junction with both of these roads, the uniform milk rate has been in force over the West Shore as far as and including Utica, N. Y., 232 miles from Weehawken, N. J., under Special Interstate Tariff No. 544, effective January 17, 1890. Since this case was heard and submitted the West Shore has by Special Tariff 1648, I. C. C. No. 173, in effect November 16, 1896, extended the application of the milk and cream rates of 32 and 50 cents per 40-quart can, respectively, to all stations up to and including Bowmansville, N. Y., a point just east of Buffalo, and about 417 miles from Weehawken. The rates on bottled milk and cream are $\frac{2}{3}$ of a cent and $1\frac{1}{4}$ cents per quart, respectively. By supplements to this tariff in force November 30, and December 5, 1896, shipments of milk and cream in cans of less than 40 quarts are charged $\frac{2}{3}$ of a cent per quart on milk and $1\frac{1}{4}$ cents on cream for the full capacity of the can. Cases of bottled milk are also charged for at the capacity of the case. What amount of milk and cream is carried over this line under the uniform rates as thus extended, or what additional facilities have been provided by the West Shore to induce the shipment of long distance milk, or how, generally, its milk service and milk traffic may have been altered, thereby changing facts hereinabove set forth as to such service

and traffic, does not appear. It is shown, however, by the tariff and supplements mentioned that a shipper at Bowmansville, N. Y., can ship milk and cream over the West Shore to Weehawken, 417 miles, at the same rates that are charged by it from West Park, N. Y., 78 miles, the nearest point from which milk is shown to be actually shipped to Weehawken, and at the rates that are in force under such tariff from Tappan, N. Y., 19 miles from Weehawken.

NEW HAVEN LINE.

24. This road hauls 6 or 7 cars of milk daily. There is no showing of facts peculiar to the traffic on this road which is not included in prior findings.

25. There is no delay of equipment at the terminals of the respective delivering lines. The traffic is all removed by consignees within a few hours after its arrival, and the cans, usually returned by the wagons which take milk from the platform at the delivering station, are sent back on the next returning train. In the case of ordinary freight, warehouses or sidings are necessary. Lighterage of cars to New York City on freight consigned to that point over lines running through New Jersey is required, and consignees are allowed by the carriers from 24 to 48 hours for removal of freight from warehouses or cars. Lighterage costs the carriers about 3 cents per 100 pounds. It is claimed for the carriers and not disputed that milk could not be delivered in New York City as early, or with any such certainty as to time, as is accomplished under the present method of delivery to consignees' trucks or drays on the New Jersey side and transportation across the river by ferry; and, moreover, that delivery of this kind of traffic in New York instead of on the New Jersey shore would, for various reasons, involve much greater expense than is represented in the cost of lighterage. The facilities provided by the carriers both for transportation and delivery of milk are generally satisfactory to shippers, consignees and dealers. The losses occurring through spilling of milk or accident to trains are generally insignificant.

26. Condensed milk is of two kinds, plain and preserved. The plain has no sugar in it, is similar in value to cream, and, like cream, it is shipped in cans at the rate of 50 cents per 40 quarts.

Condensed milk is "preserved" by the addition of sugar. The preserved milk is put up in small sealed cans holding about a pint, packed in cases, and shipped by ordinary freight. This milk is also sometimes shipped in kegs or barrels. In the manufacture of a case of preserved milk which sells for about \$5, about $1\frac{1}{2}$ cans of raw milk are required. A case worth \$10 weighs about 100 pounds, and a 100-pound or 40-quart can of cream is worth about \$6. There are several condensaries in the nearby region, and some have been established in the more distant districts. These factories have been located on most of the defendant lines. One company, operating 6 or 7 condensaries, ships over the Susquehanna, Ontario & Western, Lackawanna, Wallkill Valley, West Shore and Harlem roads. Its most distant condensing plant is about 240 miles out on the Ontario & Western. This condensing company is also largely engaged in sending raw milk to the New York market. It has established bottling plants at a number of points, and practically all of its shipments of raw milk are in bottles. The condensary takes milk from the farmers under contracts which forbid them from feeding brewers' grains and some other foods deemed objectionable for condensing purposes, and it pays more than the average price received by farmers in the same locality on shipments of milk for the New York market; but the condensing company gets its milk for a less price in the more distant regions than it pays to farmers in nearby localities, about $\frac{1}{4}$ cent less per quart the year through. The secretary of the condensing company above referred to testified that rates per 100 pounds paid by his company on preserved milk to New York City were, in 1895, 10 cents on the Wallkill Valley-West Shore line, 10 cents on the Harlem and 12 cents on the Ontario & Western. The tariffs of the Lackawanna road show rates of 25 and 23 cents (3d class) on less than carloads and 17 and 18 cents (4th class) carloads. On the Erie condensed milk rates are named in tariffs filed only to Jersey City. These are 50 cents per can on plain condensed milk from all points, and for the preserved article they range from 16 cents less than carloads and 11 cents carloads at Port Jervis, N. Y., down to 12 and 8 cents at Turner's, 10 and 7 cents at Suffern, N. Y., and 5 cents for any quantity at Rutherford, N. J., 12 miles from Jersey City.

27. From Chicago, Ill., rates on cattle, feed and hay are higher

on the Erie to Port Jervis and stations east of that point than to the more distant milk shipping stations on that line. As between Hornellsville and Greycourt, the differences in those rates are 5 cents on cattle, $3\frac{1}{2}$ cents on feed and $4\frac{1}{2}$ cents on hay. On the Lackawanna these rates from Chicago are about 1 cent less to South Columbia than to Delaware, N. J., 310 miles and 80 miles, respectively, from Hoboken; and they are from 2 to 3 cents lower from Chicago to Kenwood than to Summitville, N. Y., 264 and 93 miles, respectively, from Weehawken on the Ontario & Western. Some of the Ontario & Western branch lines north of Summitville take higher rates than points on the main line. The difference in these rates on the Lehigh Valley as between the nearer and far-distant milk stations is about the same as it is on the Lackawanna. Cattle, feed and hay rates to points on the Delaware & Hudson (Albany to Binghamton), Lehigh & Hudson River and Wallkill Valley roads are the same from Chicago to all stations.

28. Following are less than carload rates in cents per 100 pounds on potatoes, apples, onions butter, eggs, cheese, dressed meats, green fruit and milk from various points on the defendant lines to their respective New Jersey terminals:

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LINE.	PLACES.	Miles.	Potatoes.	Apples.	Onions.	Butter.	Eggs.	Cheese.	Dressed Meats.	Green Fruit.	Milk.
ERIE.	Hornellsville to Binghamton,	331									
	Susquehanna,	214	18	25	18	30	30	25	35	35	32
	Port Jervis,	191	18	24	18	29	29	24	34	34	32
	Greycourt,	87	11	16	11	20	20	16			32
		53	9	13	9	15	15	13	18	18	32
Lehigh & Hudson River.	Belvidere, Andover, to Warwick, Maybrook,	116 102	16	18	16	23	23	18	28	28	32
		73	10	15	10	17	17	15	20	20	32
ONTARIO & WESTERN.	Oneida to Sidney,	267									
	Summitville,	200	18	25	18	30	30	25	35	35	32
	Middletown,	93	11	16	11	20	20	16	23	23	32
	Campbell Hall,	78	10	15	10	17	17	15	20	20	32
	West Cornwall,	68	9	13	9	15	15	13	18	18	32
LACKAWANNA.	South Columbia to Binghamton, Wayland	310									
	to Owego, Alford	206	18	25	18	30	30	25	35	35	32
	to Scranton, Delaware,	325									
		227	18	25	18	30	30	25	35	35	32
		179									
Delaware & Hudson.	Cobleskill to Sanitaria Springs,	144	17	23	17	30	30	23	35	35	32
		79	14	19	14	23	23	19	26	26	32
		303									
WEST SHORE (Wallkill Valley).	New Paltz to Campbell Hall,	103									
		126	18	20	18	25	25	20	30	30	32
LEHIGH VALLEY.	Points on Auburn & Cayuga Div. and main line, in- cluding Romulus, Tunkhannock to White Haven, Catasauqua, Phillipsburgh,	335	18	25	18	30	30	25	35	35	32
		206									
		145	17	23	17	30	30	23	35	35	32
		96	13	17	13	21	21	17	25	25	
	75	12	15	12	17	17	15	20	20		

29. Fifteen or twenty years ago the bulk of milk for the New York market was shipped direct by farmers to the dealers. Since then many additional "creameries" have been erected at points on the various defendant lines. Some are controlled by associations of farmers. A considerable number are owned or operated by New York dealers. The amount shipped by the creameries is often regulated by daily advices from New York consignees. The surplus milk at the creamery is made into butter and cheese. The creamery cools the milk, and keeps it in that condition until loaded into the cars. The creamery men buy milk of the farmers, paying from 10 to 20 cents a can under the market price, and any loss resulting from surplus of milk necessarily made into butter and cheese is borne by the creamery. A continuance of decreased demand upon the creamery by its New York consignees must, however, unless it occurs at a time when there is greater profit in the manufacture of butter and cheese than in the shipment of milk, tend to affect the price paid to or the quantity of milk taken from farmers by the creamery.

Some New York dealers who formerly bought milk in Orange County, N. Y., and other portions of the nearby district, have gone out into the more distant fields of production. Among the causes for this action on the part of such New York dealers are (1), the acceptance of a less price per quart by farmers in the far-off region; (2), a constantly growing demand in New York and adjacent cities which could not have been met by Orange County, N. Y., Sussex County, N. J., and localities in counties adjoining, if all the milk they were capable of producing had been supplied; (3), the more or less constant friction and at times serious differences between the nearby farmers and dealers over prices arbitrarily fixed by the Milk Exchange; (4), a practice followed by some nearby producers of feeding brewers' grains to their cows in such condition or quantity as to result in a poorer quality of milk. These circumstances tend, when they exist, to increase the development of the more distant milk region whether the milk is carried from all sources under a uniform rate or not. But the development of the far-off milk region has been carried far beyond this natural demand, and a total supply made possible (largely regulated by changes in orders for shipment) which is much greater than the current requirements of the cities; and this has

been accomplished through extension of the uniform rate for considerable distances from time to time, through the free icing of milk in transportation by most of the carriers, through solicitations by railway agents, and through facilities and other material aid to dealers and others in the erection of creameries in the more distant localities or the occupation of those already built. This extension of the total milk traffic under a uniform rate charged by all the defendant lines has been without regard to greater cost of transportation from the more distant regions or to any difference in cost of service on the several lines from their respective fields of supply. While this extraordinary development of distant milk production has been going on, changes in conditions affecting milk traffic from the nearby producing region have also taken place. An efficient system of milk inspection has been established in New York City. Milk adulteration subjects the offender to rigorous prosecution, and the quality of the milk sold in that city must, on chemical analysis, come up to the prescribed standard of purity. A dairy bureau or commissionership has been established by the State; the keeping of diseased cattle on milk farms has been practically done away with under the operation of State law; and the fixing of prices to producers by a combination of dealers known as the "Milk Exchange" has been judicially prohibited. The milk produced in the nearby section and shipped for the New York market has, for several years, at least, been of good quality and fully up to the prescribed standard of purity. The dealers rely upon the nearby section for a convenient source of fresh milk supply. Notwithstanding these changes, the operation of the uniform rate, together with the efforts of the several roads and their agents to increase the more distant milk business and the acquired interest of some of the New York milkmen in distant creameries, have resulted in a large decrease of Orange County milk shipments over the Erie, the principal carrier from that section, and in comparatively little increase, in the face of the constantly growing demand, on the Lehigh & Hudson River and the Susquehanna. The West Shore traffic has also diminished. The demand as now apportioned is considerably less in the nearby section than its farms, particularly in Orange County, are able to supply. This county could and would, it is testified, have produced more milk than it has if the uniform rate had not

been extended for such considerable distances over the various roads, and the possible additional amount is estimated in testimony at from 30 to 50 per cent. Much of the country quite near to New York City has been converted into a suburban residence section during the past 15 years. Thus, milk on the Long Island road has become a comparatively small item, and many localities served by the New Jersey Central and other roads in New Jersey have been similarly affected. Orange County, N. Y., also contains many suburban residences, and the acreage in that county which could under sufficient demand be devoted to milk production is apparently somewhat less than it would have been several years ago. The value of farming land in this county and in most of the less distant milk producing localities is greater than that of such land in the far-off region, and to that extent, and any difference in the prices of feed which may exist, it costs more to produce milk in the nearby region than in the much more distant districts.

30. On the Erie, class rates to Jersey City, Hornellsville, 331 miles, to Great Bend, 200 miles, inclusive, are on classes 1 to 6,—35, 30, 25, 18, 15 and 13 cents, respectively. The same rates also apply from points on the Jefferson or Carbondale branch, 218 miles from Jersey City. These class rates decrease station by station or by short groups, so that from Port Jervis, 87 miles from Jersey City, they are 23, 20, 16, 11, $9\frac{1}{2}$ and $8\frac{1}{2}$ cents, and from Turner's, 46 miles, they are 17, 14, 12, 8, $6\frac{1}{2}$ and $5\frac{1}{2}$ cents. Somewhat higher rates are charged from branch lines east of Port Jervis. On the Lehigh & Hudson River connection the first class rate from Belvidere, 116 miles from Jersey City, is 28 cents, but Great Meadows, 105 miles, to Stone Bridge, 62 miles, take first class, 20 cents, and Maybrook, on the Orange County branch, has a first-class rate of 18 cents to Jersey City.

All Susquehanna stations in New York 74 to 88 miles from Jersey City take the same class rates (first class 22 cents). From all stations on the Wallkill Valley to Weehawken the class rates are the same, 30 cents first class. On the West Shore class rates are on a basis of 39 cents first class from Bowmansville, 417 miles from Weehawken, 35 cents from Oakfield, 395 miles, 34 cents from Manlius Centre, 270 miles, and are graded downwards from shorter distance stations or groups. The Ontario & Western first-

class rate to Weehawken is 35 cents, Kenwood, 264 miles, to Walton, 179 miles, and also on the Scranton Branch and Utica Division. Class rates on the Delhi and New Berlin branch are somewhat higher. From Walton they decrease in short groups, at Bloomingburgh, 88 miles, the first-class rate is 23 cents, at Middletown, 78 miles, 20 cents, and Campbell Hall, 68 miles, 18 cents.

The Lackawanna class rates from South Columbia, N. Y., 310 miles from Hoboken, are on the basis of 35 cents first class, and so are practically all other milk stations on its main line and branches in New York and on the Delaware & Hudson connection, and also stations on the Lackawanna in Pennsylvania to Factoryville, Pa., 160 miles from Hoboken, with slight variation in the third-class rate. From Delaware, N. J., on or near the State line, and about 80 miles from Hoboken, the first-class rate is 23 cents. The class rates of the Lehigh Valley are similarly arranged, the 35 cent rate applying at its New York milk stations and ending with La Grange, Pa., 195 miles from Jersey City.

Class rates on the New Haven road to New York City are 20 cents first class from Pittsfield, Mass., 163 miles, and 17 cents from Newtown, Conn., 72 miles, its farthest and nearest milk stations.

31. As the transportation service is conducted, milk is a very desirable kind of traffic to the defendant roads. As prior findings show, the Erie is among those on which, from the method of transportation, the cost of service is least, while on the Lackawanna and Lehigh Valley the cost of service is relatively much greater. Economically conducted, milk transportation on all the lines is highly profitable.

32. The return of empty cans is, as before found, part of the transportation service rendered by defendants, for which they charge a total rate of 32 cents on milk. Empty milk cans are $1\frac{1}{2}$ times first class in the "Official Classification" in force over the defendant roads. The empty milk can weighs about 20 pounds, and the weight of an average carload of about 160 cans (on the Lackawanna, Ontario, and substantially so on the Erie) is 3,200 pounds, $1\frac{3}{4}$ tons. The practical limit of the short distance traffic on the Erie, Lackawanna, Ontario & Western and Lehigh Valley is from 80 to 100 miles, to Port Jervis, Delaware, Bloomingburgh or Summitville, and Catasauqua, on their respective lines, and the

first-class rates between New Jersey terminals and these points range from 23 to 25 cents. Empty milk cans in any quantity, carloads or less, may be shipped to those points at $1\frac{1}{2}$ times the first-class rate independently of their having been used to bring milk for the New York market, and the charge per can of 20 pounds for such shipment would be 7 or $7\frac{1}{2}$ cents in 100 pound lots. On this basis, $7\frac{1}{2}$ cents out of the 32-cent rate is applicable to the service rendered in returning empty cans for such short-distance traffic. This excludes the consideration that such cans are returned by the fast milk service, but, on the other hand, it takes no account of the fact that the same or like cars and crews required to carry milk down must, to do the business, be ready at the shipping points for the next day's supply, whether there is any return load or not. In the decision of the *Howell Case*, the Commission found that "taking into account the return of empty cans, the rate per 100 pounds charged upon milk shipments is about $29\frac{1}{4}$ cents." The uniform milk rate was then 35 cents, making an allowance of $5\frac{5}{8}$ cents for the return of the can. This was determined on the basis of 200 cans to the car, making 10 tons down and 2 tons of empties back. An average load down of 160 cans of milk and back of the like number of empties gives 8 tons down and $1\frac{2}{3}$ tons back, and apportioning the rate of 32 cents to such tonnage results in $26\frac{2}{3}$ cents for the milk business down and $5\frac{1}{3}$ cents for the haul of empties back regardless of the distance carried. Seven and one-half cents for the return of empties, therefore, represents more than the tonnage share due to the empty cans on the basis of the rate fixed by defendants themselves for the entire service from the most distant milk stations, and is substantially equal to defendants' established rate for the independent shipment of milk cans in any quantity for distances of 80 to 100 miles from the terminal.

33. Practically all of the Lehigh Valley and Lackawanna milk goes over long distances except that which is transported wholly in New Jersey. An estimate of the shipments of milk in 1895 from nearby localities in New York, New Jersey and Connecticut transported through different States is arrived at from prior findings on the basis of 80 per cent of the Erie traffic (including all Lehigh & Hudson River shipments), 15 per cent of Ontario & Western shipments, 40 per cent of the Susquehanna business, 25

per cent of the West Shore and 50 per cent of the New Haven shipments. According to these proportions such nearby milk shipments amounted in 1895, on the basis of total cans carried as stated in the 6th finding, to less than 2,000,000 cans, and less than 25 per cent of the total milk, cream and condensed milk carried by the defendant and all lines to the terminals in that year. An increase of 30 per cent of this output carried through different States from the nearby milk region only amounts to an addition of 600,000 cans,—about double the estimated amount of traffic lost from the Erie main line and branches in Orange County between 1892 and 1895. Such loss in Erie traffic, the decrease on the West Shore, and the only slight increases on other nearby roads, may be partially due to the diversion of milk to condensaries in that section, but the testimony is that condensing companies have also been establishing plants in more distant districts. The total of about 8,000,000 cans carried to New York by all lines in 1895 was an increase in 10 years of over 47 per cent of the amount transported in 1886. An average yearly increase of 4 per cent in the New York demand is reasonably certain, and such percentage is likely to be more than 4 per cent on account of the greater additions to the city population in each succeeding year. Such additional yearly demand, the limited capacity of the nearby field and the tendency in a considerable portion of that region toward a decrease of acreage applicable to milk production, the apparently somewhat less cost of production to farmers in the distant districts, the less price which has been accepted by such producers, the milk transportation facilities afforded by all the long distance roads, and the large number of creameries in operation on such roads,—are all conditions which operate directly to increase shipments from the more distant regions, and which together must necessarily prevent any very great or permanent diminution of such shipments resulting from somewhat lower transportation rates for the lesser service from the shorter distance localities.

CONCLUSIONS.

The roads of the Elmira, Cortland & Northern Railroad Co. and the Delaware & Hudson Canal Co. wholly in New York are employed in connection with the Lackawanna, under a "common arrangement" for continuous carriage or shipment, in the transportation of milk and cream from points in New York to Hoboken, N. J., and the provisions of the Act to Regulate Commerce apply to such transportation and the carriers engaged therein. The transportation of milk or cream by any of the defendants to Hoboken, Jersey City or Weehawken, which is performed wholly within the State of New Jersey, is not subject to regulation under that Act.

A further question of jurisdiction is raised by the Susquehanna as to 65 per cent of the milk transported by it from points in the State of New York. It claims that such portion of its milk from New York points, though carried through New Jersey, is delivered by it in New York City, and that transportation so conducted between points in the same State is not subject to the Federal statute. The decision of the United States Supreme Court in *Lehigh Valley R. Co. v. Pennsylvania*, 145 U. S. 194, 36 L. ed. 673, 4 Inters. Com. Rep. 87, is relied upon by counsel for the Susquehanna as authority for a ruling that traffic shipped between points in the same State, but passing through another State in the course of transportation, is not within the provisions of that statute; and in their brief counsel call attention by citation to the fact that this Commission regarded the *Lehigh Valley Case* as such authority in *Chamber of Commerce of Minneapolis v. Chicago, M. & St. P. R. Co.* 5 I. C. C. Rep. 571. We did not have occasion to decide the question in the *Minneapolis Case*, and our reference there to the Supreme Court decision was that it *seemed* to have the effect of excluding commerce between points in the same State which passes through another State from regulation by the Federal government. The question is now distinctly raised as to the greater part of the milk traffic shipped over the Susquehanna from New York State points, and we have carefully examined and considered the *Lehigh Valley* decision with a view of determining whether it is actually controlling, as claimed by counsel. That case involved the right of the State of Pennsylvania to tax the receipts of the Lehigh Valley Company-

from traffic shipped between points in that State, but passing through New Jersey in course of transportation, *so far as such receipts arose from service over the Lehigh Valley mileage within the State of Pennsylvania.* There was no dispute as to the amount of the tax, and the only question raised was whether the State could lay a tax upon the business at all. The Supreme Court upheld the validity of the tax involved. Whatever other or broader application may be given to language used or principles considered by the court in that case, the decision was confined to the question of taxation on what was done or earned within the State. The Lehigh Valley carried the property from a point in Pennsylvania to the New Jersey line and just across it to Phillipsburg, N. J., and from thence the continuous carriage was by arrangement conducted by the Pennsylvania Railroad Company to Philadelphia, Pa. If the State of Pennsylvania had attempted to regulate the aggregate charge or charges made for the entire transportation through different States, we think the court would have had an entirely different case to consider. In this milk case, the Susquehanna, in carrying from Middletown, N. Y., to Jersey City, N. J., is admittedly engaged in interstate transportation, and the carriage from Jersey City, N. J., to New York City, N. Y., across the Hudson River, whether performed by ferry or lighter, is also transportation between different States. Yet its contention is that by combining these two interstate transportations the service becomes intrastate, and the commerce internal to the State of New York. A State and an interstate transportation may be combined and made continuous so as as to *extend* the interstate service over the whole distance; but we are unable to understand how two distinctly interstate carriages can, on being connected and made continuous, be *contracted* into purely state transportation because the beginning and ending points happen to be in the same State, so as to give that State jurisdiction of the whole transportation. The Lackawanna receives freight at New York City, takes it across the river to New Jersey, and through that State and the State of Pennsylvania to Binghamton, N. Y.; and out of the total distance of about 208 miles less than 15 are within the State of New York. Granting that New York may impose a tax on the gross receipts of the Lackawanna, represented by its mileage in New York, on traffic between points in that

State, does it follow that New York can also regulate the freight charges and passenger fares of the Lackawanna for the whole distance between New York City and Binghamton, N. Y.? We think not. If neither of the States through which the transportation is conducted has power to regulate the entire transportation or the compensation exacted therefor, it does follow, we think, that such power is vested in the general government. This Commission held, in 1888, in *New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co.* 2 I. C. C. Rep. 375, 2 Inters. Com. Rep. 289, that:

“All commerce is subject to regulation; that wholly within a State and subject to its sovereign power by the State; that among the States and with foreign nations and not wholly within the sovereign power of any one State by the United States, for the reason that to be effectual, regulation must be uniform, at least not conflicting. Commerce between Shreveport and New Orleans, while crossing on the ferry between Delta, La., and Vicksburg, Miss., is not subject to regulation by the State of Louisiana. The business of transferring freight by the ferry between the two States is interstate commerce. *Gloucester Ferry Company v. Pennsylvania*, 114 U. S. 196, 29 L. ed. 158, 1 Inters. Com. Rep. 382.

“While passing through Mississippi, after passing from Louisiana, this commerce is interstate, and subject alone to interstate regulation. It is not subject at any place between Shreveport and New Orleans to regulation by both the State and the Congress. It passes by continuous carriage from Louisiana to, and through, the State of Mississippi. It is not transportation ‘wholly within one State.’ It is subject to regulation by the provision of the Act to Regulate Commerce, and the Commission has jurisdiction to revise the rates when the parties interested in them are before it.”

The Lehigh Valley decision is not necessarily in conflict with this view. The Supreme Court called attention in that decision to the fact that the case was one of taxation, *and not one of direct regulation*, citing *Pacific Coast S. S. Co. v. Board of R. Comrs.* 9 Sawy. 253, as indicating the distinction. In the case so cited, the California Commission sought to regulate commerce between ports of that State when carried by a line of vessels navigating the Pacific Ocean more than a marine league from the shore. Mr. Justice Field, sitting as circuit justice and writing the opinion, said: “To bring the transportation within the control of the State, as part of its domestic commerce, *the subject transported*

must be within the entire voyage under the exclusive jurisdiction of the State." That decision seems to rest entirely upon the commerce clause in the Constitution of the United States. If the steamship or vessel plying between California ports was, while on the ocean, engaged in commerce with foreign nations, as was observed in the Lehigh Valley decision in discussing *Lord v. Goodall, N. & P. S. S. Co.* 102 U. S. 541, 26 L. ed. 224, then a railroad company in carrying between points in the same State, by a route which passes through another State, is as clearly engaged in commerce among the States while operating in the second State. The effect in either case is to deny the jurisdiction of the State wherein the shipment commences and terminates to regulate transportation over the entire distance when the route passes beyond its borders.

In *Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204, 38 L. ed. 962, 4 Inters. Com. Rep. 649, decided since the *Lehigh Valley Case*, the power of a State to tax, and its power to prescribe a scale of charges for the use of, instrumentalities of interstate commerce are carefully distinguished. The Supreme Court held that the action of Kentucky in prescribing tolls to be charged over a bridge between Covington, Ky., and Cincinnati, O., was a regulation of interstate commerce. "It is obvious that the bridge could not have been built without the consent of Ohio, since the north end of the bridge and its abutments rest upon Ohio soil; and without authority from that State to exercise the right of eminent domain, no land could have been acquired for that purpose. It follows that, if the State of Kentucky has the right to regulate the travel upon such bridge and fix the tolls, the State of Ohio has the same right, and so long as their action is harmonious there may be no room for friction between the States; but it would scarcely be consonant with good sense to say that separate regulations and separate tariffs may be adopted by each State (if the subject be one for State regulation), and made applicable to that portion of the bridge within its own territory." After showing how, through a conflict of State interests, different tolls might be established by each State, the Supreme Court held: "Congress, and Congress alone, possesses the requisite power to harmonize such differences, and to enact a uniform scale of charges which will be operative in both directions." A practicable transporta-

tion route exists from Covington, Ky., to Louisville, Ky., over the bridge to Cincinnati, through Ohio and Indiana to Jeffersonville, and across a bridge to Louisville. Kentucky cannot prescribe the tolls over either bridge, nor the transportation charges between Cincinnati, O., and Jeffersonville, Ind., nor can it authorize the construction of such a line or control its operation, and it follows that it could not regulate the aggregate charges over that route between Covington and Louisville. For the same reasons, New York is without power to authorize the construction of a route like the Susquehanna from Middletown, N. Y., through New Jersey to New York City, or to control the operation of such a route, or to regulate charges made thereover between Middletown and New York City.

In *Texas & P. R. Co. v. Interstate Commerce Commission*. (*The Import Rate Case*), 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, the Supreme Court was called upon to determine what commerce was subject to the provisions of the Act to Regulate Commerce. The court said: "It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (*excepting commerce wholly within the State*), as well that between the States and Territories as that going to or coming from foreign countries."

We hold in this case that the Susquehanna Company is as much subject to regulation under the Act to Regulate Commerce in respect of the portion of its milk business from New York points which it carries through New Jersey and claims to deliver in New York City as it is in regard to other interstate transportation in which it is engaged.

A further question as to the right of the complaining association to maintain the proceeding as against several of the defendants was raised chiefly in argument, but based upon denials on information and belief in the answers of such defendants that members of the complainant or those whom it represents are engaged in shipping milk over their lines to their respective terminals. Complainant alleged in its petition that it complained not only on behalf and in the interest of itself and its members, but also on behalf of all other farmers, producers or shippers of cream, milk and buttermilk from all shipping points on the defendant roads to Hoboken, Weehawken, Jersey City and New

York. The complaint is against the same uniform or blanket milk rate and cream rate for all distances on each line as fixed by agreement or consent of all the lines. The complainant, whether representing its own members, or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the lines, was entitled to bring and maintain this proceeding—affecting rates on milk supplied for a common and necessarily limited market—against all the defendants engaged in carrying for that market; and the milk rates charged on all of these lines from the various points of shipment are properly involved in the controversy. Moreover, a defendant is not entitled to have a complaint dismissed as to it “because of the absence of direct damage to the complainant,” and it is the duty of this Commission, under express direction in the Act, to “execute and enforce” the provisions of that statute.

The complaint alleges that defendants' milk rates for longer and shorter distances over the same line, in the same direction, are in violation of the fourth section of the statute. We find nothing in the facts to sustain this allegation, and the point was not pressed in argument. Charging the same aggregate rates for longer and shorter distances does not contravene the provisions of section 4, though such charges may constitute violations of other provisions in the statute. *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 4 I. C. C. Rep. 744, 3 Inters. Com. Rep. 682.

The findings show that on some of the lines passes entitling the holder to free transportation as a passenger are issued to shippers or dealers on account of the interstate milk traffic of the road. The issuance of such passes for interstate transportation is an offense against the law, as affording transportation for an interstate journey at less than established fares or charges; and whether the pass issued entitles the holder to interstate passage or not, if granted on account of the interstate transportation of freight, it results in a “rebate” or “device” whereby the pass holder obtains such freight transportation not only at something less than tariff rates, but for a less net price than is exacted from persons not so favored who are shippers of like traffic transported under similar conditions between the same points. The giving of free or reduced transportation to shippers of or dealers in milk carried by a road to interstate destinations is unlawful.

The Lackawanna and Lehigh Valley are parties to agreements entered into mainly for the purpose of developing their milk traffic, and under which compensation is afforded to the other contracting parties equal to a considerable share of the gross receipts from the transportation. Such compensation, as the business has been increased or "developed" on the Lackawanna, or may become greater on the Lehigh Valley, seems extravagant, but whether either agreement is disadvantageous to the carrier or otherwise is matter for it to determine. "Improvident management of the road is primarily a matter of internal or corporate concern, to be dealt with by the corporation and its creditors among themselves." *Shamberg v. Delaware, L. & W. R. Co.* 4 I. C. C. Rep. 660, 3 Inters. Com. Rep. 502. But extraordinary or unnecessary cost of operation or management cannot be permitted to cause unreasonable or unjust rates, discriminations, preferences or prejudices. *Shamberg v. Delaware, L. & W. R. Co. supra.*

The main subject for decision is whether defendants' uniform rate on milk and uniform rate on cream from all stations to their respective delivering terminals in New Jersey or in New York City are unlawful, and, if so, to what extent.

Counsel on both sides have cited decisions of the Commission in support of their respective views as to the application of the undue preference clause of the law to this case. The Commission held in *Howell v. New York, L. E. & W. R. Co. (The Howell Milk Case)*, 2 I. C. C. Rep. 272, 2 Inters. Com. Rep. 162, and also in *Imperial Coal Co. v. Pittsburg & L. E. R. Co.* 2 I. C. C. Rep. 618, 2 Inters. Com. Rep. 436, cases relied upon by the defense, that proof of tangible injury must be shown to make the preference or prejudice arising from a group rate unreasonable or undue. But it was also said in the prevailing opinion in the *Imperial Coal Case* that "if the effect of disregarding distance is to impose burdens for the benefit of others on those who have the natural advantage of location, it is unjust and cannot be sanctioned;" and in the *Howell Milk Case* it was determined on the facts by a majority of the Commission that "it is not shown that the addition of new territory at any time has operated to the prejudice of the old." This Commission held in the later cases of *Eau Claire*, 5 I. C. C. Rep. 265, *Minneapolis*, 5 I. C. C. Rep. 571, and *James & Abbott*, 5 I. C. C. Rep. 613, that each community is entitled to

the benefits arising from its location and natural conditions. Fixing rates with a view of equalizing commercial conditions was also condemned in the *Eau Claire Case*. In the case of *Newland v. Northern P. R. Co.* 6 I. C. C. Rep. 131, the same grain rate from grouped stations 200 or more miles apart was held to deny to the producer nearer the market the advantages of his location. We said further in that case that "the practice of making one rate on the same product over a very large district, and thus equalizing the burdens of transportation to the same market, is only justifiable under special and exceptional circumstances." The complaint also presents the further question as to the reasonableness and justice of the uniform rate as applied to this traffic from the various shipping points on the several lines.

Unlike most cases in which the legality of group or uniform rating has been questioned, the traffic which is the subject of present consideration constitutes the great bulk of an important daily food supply for New York and adjacent cities which, because of its extra perishability, can be drawn only from sources accessible by daily rail communication from the market of consumption and sale; and, on the other hand, the sale or demand in such market is necessarily limited to the quantity required for daily consumption. While the available milk supply should at all times be sufficient to meet the needs of consumers in such a market, a surplus of this commodity cannot, because of its perishability, be kept over or reshipped for sale in other cities. Under such circumstances, the shipments are practically limited to the amount of daily consumption, and this fact emphasizes the duty of the carriers to establish rates which will not deprive producers more favorably situated with reference to and dependent upon that market of part of their trade in a limited traffic, or prevent them from supplying their share of the greater demand due to increase in the city population or in consumption per capita. Furnishing an extra perishable article like milk in no greater quantities than is required for daily use in a given city is a business which falls naturally to those producers nearest to the city who are able to provide the needed supply. As was said by the Commission in the *Howell Case*: "Prudence would influence railroad managers to confine the collection of milk within the territory in which it can be most cheaply handled, and to extend the milk system no further than the increasing growth of the demand should require."

This milk which is carried under a single rate charged by agreement or concurrent action of all the lines for all shipping distances on each line, must be regarded as one mass of traffic destined for consumption only in New York and adjacent cities. It has been largely varied in amount for each line, and the producing localities served by it, according as greater inducements have been afforded in the way of creamery leases or sales, cheap ice, labor, and other local advantages, refrigeration in transportation, quick service, convenient delivery and like facilities, and by the lower price at which milk of good quality may be sold in localities reached by the line. There has been uniformity in charge and absence of uniformity as to service and traffic inducements on the lines west of the Hudson River. Natural disadvantages of more distant producers have been thereby overcome, and producers nearer the market have been denied recognition of their more favorable location. Under the present system, the amount of the uniform transportation charge is made the subject of agreement between the principal carriers west of the Hudson River, and the cost to dealers in the city market of milk brought over both long and short distances is thereby practically or nearly equalized. This situation facilitates agreements among the dealers as to the price paid to producers, and it does not operate to prevent them from fixing a standard scale of charges to the different classes of consumers. Benefits which may accrue to New York City consumers under the uniform milk rate, would apparently be enhanced rather than diminished under transportation rates properly graded or grouped, and no higher than reasonable from the more distant sources of supply.

The findings demonstrate what was found not to be the fact in the *Howell Case*, "that the addition of new territory," in connection with methods adopted for developing the business, "has operated to the prejudice of the old." The nearby section, comprised within a radius of 100 miles of New York by direct lines, has participated but little in the more than 47 per cent increase in the New York supply during the ten years including 1895. While this is partly due to diversion of land in that section to other than dairy uses, much of it is directly ascribable to the transfer of the patronage of many New York dealers to the distant producers resulting from inducements offered by the long

distance roads. It is probable that in course of time the milk demand in the New York market will equal the producing capacity of all the various localities included within the present uniform rate territory, and this is considered in the findings; but it is also probable that the carriers will be able, through improved transportation methods, to bring milk daily over much greater distances than they do now, and deliver it at their New York City terminals in good condition and at a suitable hour. The course of the West Shore in recently extending the uniform milk rate to a point near Buffalo, so as to cover a total distance of 417 miles from its Weehawken terminal, illustrates this view. The interests of all milk producers, whether located within 50 or 250 miles of New York City on any of the lines, in retaining the share of this traffic to which their nearer location would naturally entitle them, are plainly imperilled under a uniform rate for the transportation service. This milk territory when the *Howell Case* was decided was much less extensive than it is now, and what has since been done by carriers under the uniform rate system to add to the volume of their traffic, with little regard to its origin or the cost of service, would doubtless be continued in greater or less degree, if that system should be retained. As the service is now performed, the single rate for all distances is fair neither as between the carriers nor as between the differently situated producers.

But whether the area of supply has been unnecessarily increased or not under the uniform rate and the practices of the carriers, the right of producers nearer the market to a rate which is reasonable in itself for the service rendered, and relatively reasonable as compared with the rate charged for the service to other producers of milk, must be upheld. Considering the character and constancy of the traffic, a transportation charge, which is about 25 per cent of the value of the milk, applied on distances as short as 50, 75 or 90 miles seems clearly excessive; and when the same rate is applied by the same carrier over distances of from 264 to 335 or more miles, so that much greater service is rendered for a charge no higher than is imposed on any of the shorter-distance milk, disparity in treatment as to a highly desirable and easily handled traffic is shown to a degree that has not been justified in this case. While the service is special, particularly in the matters of speed, safe carriage and prompt delivery,

and refrigeration when necessary, the traffic is regular for each day, and specified equipment and crews can be constantly employed in the service, with all the economy resulting from such conditions. While the service costs more, it yields more, and the findings show that per ton moved the revenue from milk is four or five times the revenue derived from freight generally. Under economical operation the 32-cent rate on milk and 50-cent rate on cream must afford a reasonable profit to the carriers for the service rendered by them over the extreme distances of 264 to 335 miles shown in this case. Whatever service beyond ordinary freight service may be necessary to provide transportation for the shorter-distance milk is also required for milk from the longer-distance points, and, to some extent, more of such extra service is needed by the latter. That the carriers may find it necessary to provide special train service on account of the volume of their business in a particular line of traffic, like milk, is no reason for greatly disproportionate rates on less distant milk, some of which, as on the Erie east of Port Jervis, or on the Ontario & Western south of Bloomingburgh, requires comparatively little or no icing, and much less fast service than is necessary to bring the long-distance milk to the terminal at a suitable hour for delivery. It costs the carriers more to transport milk from the longer-distance points of shipment; it costs *something* more to transport a car of milk for every additional mile it is hauled, both in fuel and wear on track and equipment, and sometimes something for additional labor.

The present system of a uniform or blanket rate on milk and also on cream from all stations on the various defendant lines west of the Hudson River must be held unlawful under both sections 1 and 3 of the Act to Regulate Commerce, and the resulting unreasonableness, injustice and wrongful prejudices and preferences should be corrected.

Charging 32 cents on a 40-quart can of milk weighing 100 pounds, and no more than 12 cents on a 15-quart case of bottled milk also weighing about 100 pounds, nor more than 9.6 cents on a 12-quart case of about 70 pounds, being the same per quart, $\frac{4}{5}$ of a cent, on each, or carrying for 32 cents $2\frac{1}{5}$ times the weight when the shipment is in bottles or cases instead of in cans, is a disparity in rate for like weight carried, or in service for like rate, for which there has been little attempt at justification in this case.

Several witnesses in the employ of defendant carriers considered the bottle or case rate too low as compared with the rate on cans. One witness endeavored to justify the difference by the fact that more of the filled cases and many more empty cases can be carried in a car than is possible or practicable with the shipment in cans; but this results in no advantage, since it appears, as shown in the findings, that under the same rate on case and can milk the car loaded with cans yields about 86 per cent greater revenue than the car loaded with cases. It is suggested in one of the briefs as a reason why the same rate should be charged that the bottle method has come in vogue because it largely enables the consumer to obtain clean and pure milk. It is true that by shipping in the smaller package, the bottle, the identity of milk sent from a given point or by a particular shipper may be preserved, but we are unable to see how that or any other safeguard as to quality constitutes a reason for equal rather than higher rates on a grade better than that which is handled in large cans, especially when the quality of the can milk generally sent to and used in the New York market is conceded to be quite up to the standard prescribed by law. On the other hand, it is plain that the producer shipping in cans from a point where bottling is also done by a condensary, a creamery, or by another shipper, pays much more per hundred pounds, including the can, than the shipper in bottles, including the bottles and case, for transportation to the same point. Besides, the bottle milk sells usually at a slight advance per quart over milk delivered from the can. The drippings from ice placed in the box containing bottle milk, during a portion of the year at least, resulting in damage to the car, is also an item to be considered in connection with the greater weight carried by defendants in transporting milk shipped in that way. The facts indicate that the rates on milk in cans should be lower than those on bottle milk from all stations by at least $\frac{1}{3}$ of a cent a quart, and if we were only dealing with the question of discrimination in favor of the bottle method, we should have little difficulty in ordering that difference to be made effective. But independently of what should be the just relation of rates on can and bottle milk, the case requires determination of what are reasonable and otherwise lawful rates on milk in cans from stations on the various lines. This constitutes the main branch

of the investigation, and in view of the substantial reductions to be ordered in can milk rates from the nearer stations, we think it advisable, under all the circumstances, to refrain for the present from disturbing the rate on milk when shipped in bottles. That rate, $\frac{1}{2}$ of a cent per quart, is no more than reasonable compensation to the carriers for service rendered in carrying shipments in bottles from the less distant points where the reductions in can milk rates will be made effective, and the carriers will be enjoined from diminishing the differences so resulting in can and bottle milk rates from such stations. On the contrary, we believe that the rate per quart on bottle milk could well be made $\frac{1}{2}$ of a cent per quart higher from all milk shipping stations than is charged on shipments in cans, and that the carriers would only be serving their just interests by so doing. The proportion of bottle milk and cream ranges, as computed from statements filed for 1894, from less than 4 per cent of the total milk and cream on the Ontario & Western to between $13\frac{1}{2}$ and 16 per cent on the Erie and Lackawanna, and such percentages of total traffic, in view of the constantly increasing New York demand, are not regarded as having operated to greatly diminish the general custom of shipping milk in cans. The foregoing considerations, in connection with the further peculiar condition that ordering a uniform difference of $\frac{1}{2}$ of a cent a quart in favor of can milk would operate to either reduce the can rate from the far-off points as low as 24 cents or to raise the bottle milk rate 8 cents per 40 quarts from those points, indicate that the general adjustment of rates on can and bottle milk should, for the present, be left for the carriers to arrange.

Upon consideration of all the facts and circumstances, and taking into account the peculiarities of this milk and cream service, we conclude as follows:

That there should be, instead of the present common group with uniform rates per 40-quart can of 32 cents on milk and 50 cents on cream, at least four divisions of stations, each division or group taking different rates as hereinafter indicated. The first group should extend 40 miles from the terminal in New Jersey. This distance is still within New Jersey except a few miles over the Erie and West Shore (the Ontario & Western running over the West Shore tracks from Cornwall, N. Y., to Weehawken,

N. J., 52 miles, and not carrying traffic from points below Cornwall), and there are few if any interstate shipments of milk from points in this group. The second group should cover a distance of 60 miles, ending at points about 100 miles from the terminal. The third group will embrace stations within the next 90 miles and extend about 190 miles from the terminal. The fourth division will comprise stations beyond 190 miles.

Ordinarily, the branch line traffic should pay more, but most of the branch lines in the nearby section are short, all of them have heretofore been given main line rates on this traffic, and some of them pass through main line stations of other roads or lead to or near the Hudson River where the traffic is affected by the competition of a line of steamers. Again, with an additional charge over main line rates from nearby branch line points, applying the same rate on main and branch lines in the distant region, which the long-distance carriers will doubtless deem necessary, would hardly be consistent. In view of these facts, we think that the group distances and rates for this traffic should be made to apply on branch as well as on main lines.

The rates charged on milk in 40-quart cans should not exceed 23 cents from the first or 40-mile group of stations, 26 cents from the second or 60-mile group, nor 29 cents from the third or 90-mile group. A rate of 32 cents per 40-quart can of milk from stations more distant than 190 miles is not unreasonable. Cream is four or five times more valuable than milk, and we see no reason for disturbing the present difference of 18 cents in the rates on these commodities.

On the basis of the present rates per 40-quart can of 32 cents on milk and 50 cents on cream from stations more than 190 miles from the point of delivery, the rates on shipments in cans from the various groups will be as follows :

Group 1. — 40 miles from terminal.			
Can Milk,	23 cents.	Can Cream,	41 cents.
Group 2. — Next 60 miles.			
Can Milk,	26 cents.	Can Cream,	44 cents.
Group 3. — Next 90 miles.			
Can Milk,	29 cents.	Can Cream,	47 cents.
Group 4. — Beyond 190 miles from terminal.			
Can Milk,	32 cents.	Can Cream,	50 cents.

These relations should be maintained, and any necessary grading at the end of one and the beginning of another group should apply over the shortest possible distance. It will be noted that the 3-cent lower rate on can milk from each less distant group is substantially 10 per cent less than the rate from stations in the preceding more distant group; and that for each division of stations the cream rate in cans is 18 cents higher than the can milk rate from such station. Any reduction which may hereafter be made in the present rate of $\frac{4}{3}$ of a cent a quart on bottle milk should be followed by corresponding change in the rate from each group on can milk, and any lowering of the rate on cream in bottles should also result in like change in can cream rates. Nothing here said is intended to preclude the carriers from increasing their rates on bottle milk and cream without changing the rate on the same article when shipped in 40-quart cans.

The foregoing group distances are not applicable to the Ulster & Delaware road. This line passes by difficult grades over the Catskill Mountains, and all its milk is gathered beyond the mountains between Bloomville, N. Y., its terminus, 175 miles from Weehawken, and a point on its line at or near Fleischmann's, N. Y., 132 miles from Weehawken. The present rates on milk and cream over this line from the territory mentioned do not appear to be unreasonable or otherwise unlawful, under the circumstances. This road connects with the West Shore at Kingston, which is about 88 miles from Weehawken. The second or 60-mile group runs out 100 miles from that terminal, and for the Ulster & Delaware, we think the third group from the terminal should end at about 130 miles on that road from Weehawken, and the remainder of its mileage, about 50 miles, should constitute its fourth group, from which 32 and 50-cent rates on can milk and cream are not deemed unreasonable. Any shipments made from points on this road in the second group out from Weehawken or from the third group of 30 miles above mentioned, should not be charged higher than the maximum rates herein determined for the second and third groups on other lines; and what is above required in case of reduction in the rate on bottle milk or cream is also to be observed.

Using the short-line distance, all points on the Wallkill Valley come within the second or 60-mile group. A few points on the

Lehigh & Hudson River *via* the Erie, are in the third group, but those points may be reached by other connections over distances which come within the second group. The rates from all points on the Wallkill Valley and Lehigh & Hudson River should not exceed those applicable from the second or 60-mile group.

Points on the Jefferson division or Carbondale branch of the Erie are in group 4 by the Erie distance, but some of them are in group 3 by a shorter distance route *via* the Scranton branch of the Ontario & Western. The Erie should charge group 3 rates from points on its Carbondale branch which can be reached over distances less than 190 miles by using the Scranton branch of the Ontario & Western, and it is hereby granted such relief from the operation of the 4th section as may be necessary to enable it to lawfully effect that purpose.

The Susquehanna is entitled, on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City, to charge such an addition to its rate to Jersey City as is reasonably warranted by the greater cost of delivering in New York.

The New Haven road runs through entirely different territory from that which is penetrated by the other defendant lines. It gets no milk within 72 miles of New York and none beyond 163 miles from that city, making a milk territory of about 91 miles, and its rates are now upon a much lower scale than is charged by other carriers or than is herein found lawful for such carriers over like distances from the terminal. Rates of 25 cents per 40-quart can of milk or cream, 22½ cents per 30-quart can and 20 cents per 20-quart can, for the group distances above mentioned having been heretofore maintained and being now in effect will have no greater influence upon the traffic of the other carriers or the interests of producers along other lines under the changes in rates to be made on such other lines. The New Haven, while charging only 25 cents per 40-quart can, also charges 1 cent per quart on bottled milk or cream. That it makes no lower charge on milk than on cream may be open to some criticism, but its rate on milk is already reasonably low, and we do not feel inclined to disturb its schedule on that account. No order will now be entered as against that company.

Although we find little reference in the record to the custom

of some of the carriers to charge 32 cents per can, whether holding 40 quarts or less quantity, and the practice on most of the lines is to ship milk in 40-quart cans, we note that the New Haven road charges less for 30-quart and for 20-quart cans of milk and that the recent tariff of the West Shore provides for charging the per quart rate on cans holding less than 40 quarts. We think provision should be made by all the defendants for a reasonably less rate *per can* when the can capacity is less than 40 quarts, but a somewhat higher charge *per quart* on cans of less than 40-quart capacity would be proper.

The groups or divisions herein defined appear to include stations on the various lines as follows :

MAIN LINES.

- GROUP 1.....40 miles from terminal. 23-cent rate.
 West Shore.....Tappan, N. Y., 19 miles, to Jones Point, N. Y., 39 miles.
 Erie.....Suffern, N. Y., 31 miles, to Tuxedo, N. Y., 37 miles.
- GROUP 2.....Next 60 miles. 26-cent rate.
 West Shore.....Iona Island, 41 miles, to Saugerties, 99 miles.
 Erie.....Southfield, 41 miles, to Pond Eddy, 99 miles.
 Ontario & Western..Cornwall, 52 miles, to Summitville, 93 miles.
 Susquehanna.....Unionville, 74 miles, to Middletown, 88 miles.
 Lackawanna.....Portland, Pa., 82 miles, to Spragueville, about 98 miles.
 Lehigh Valley.....Easton, Pa., 76 miles, to Whitehall, 99 miles.
- GROUP 3.....Next 90 miles. 29-cent rate.
 West Shore.....Catskill, 110 miles, to Canajoharie, 190 miles.
 Erie.....Parker's Glen, 102 miles, to Susquehanna, 191 miles.
 Ontario & Western..Mountaindale, 101 miles, to Franklin, 190 miles.
 Lackawanna.....Henryville, about 101 miles, to New Milford, about 188 miles.
 Lehigh Valley.....Laury's, 101 miles, to Ransom, 189 miles.
- GROUP 4.....Beyond 190 miles. Present rate 32 cents.
 Stations on defendant lines located more than 190 miles from terminal.

BRANCHES AND CONNECTIONS.

- West Shore.....
 Wallkill Valley.....Group 2. All stations.
 Ulster & Delaware.....Group 2. Stony Hollow, 94 miles, to Olive Branch, 98 miles.
 Group 3. (30 miles.) Brown's station, 101 miles, to Pine Hill, 126 miles.
 (Stations beyond are in fourth division.)

Erie.....		
Newburgh branch from Turner's....	Group 2.	All stations.
Newburgh branch from Greycourt..	"	"
Pine Island branch.....	"	"
Montgomery branch	"	"
Middletown & Crawford branch...	"	"
Jefferson or Carbondale branch....	Group 3.	Stations from which short line distance <i>via</i> Scranton branch of O. & W. is 190- miles or less.
	Group 4.	All other stations.
Lehigh & Hudson River.....	Group 2.	All stations.
Ontario & Western....		
Philadelphia, R. & N. E.....	Group 2.	All stations to Hudson- River.
Ellenville branch	Group 2.	All stations.
Scranton branch.....	Group 3.	All stations to Forest City, 190 miles.
	Group 4.	All stations beyond 190- miles.
Delhi branch	Group 3.	Stations to DeLancey, 190- miles.
	Group 4.	Delhi, 196 miles.
Port Jervis, Mont. & N. Y.....	Group 3.	All stations.
Other branches and connections....	Group 4.	All stations.

Branches and connections of other lines are all beyond the 190-mile distance reached by Group 3.

The defendants affected by this decision should proceed immediately to readjust their rates in accordance with the foregoing conclusions, and publish and file the new rate schedules on or before April 15 next.