

## THE NATIONAL HAY ASSOCIATION

v.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE PENNSYLVANIA COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE DELAWARE & HUDSON COMPANY; THE PHILADELPHIA & READING RAILWAY COMPANY; THE PERE MARQUETTE RAILROAD COMPANY; THE GRAND RAPIDS & INDIANA RAILWAY COMPANY; THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE ANN ARBOR RAILROAD COMPANY; THE TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY; THE CANADIAN PACIFIC RAILWAY COMPANY; THE CANADA ATLANTIC RAILWAY COMPANY; THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; THE CENTRAL VERMONT RAILWAY COMPANY; THE BOSTON & MAINE RAILROAD COMPANY; and THE BOSTON & ALBANY RAILROAD COMPANY.

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*Decided October 16, 1902.*

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1. Carriers are entitled under the Act to regulate commerce to determine for themselves what are proper rates in the first instance, but when they, as in this case, make numerous rate advances by concerted action and under circumstances not showing justification for increased revenue, they cannot successfully plead the excuse of financial necessity where the legality of such action as applied to any given commodity is challenged; and the controlling question must be as to the

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reasonableness and justice of the advance in classification and rate upon the facts shown in each case.

2. The legal duty of common carriers to so classify traffic and fix charges thereon that the burdens of transportation shall be reasonably and justly distributed among the articles they carry arises under the obligation imposed upon them not to charge unreasonable or unjust rates or to inflict any unjust discrimination or undue prejudice in any respect whatsoever; and even in cases where the need of additional revenue is apparent the carrier cannot arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.
3. The defendant carriers by keeping hay and straw in the sixth class and charging sixth class rates thereon for thirteen years or more, with the exception of a short period in 1894, were furnishing evidence that such classification and rates are reasonably high, and while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance of hay and straw to fifth class rates in January, 1900, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and subsequent years.
4. In the carriage of great staples, which supply enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable; and although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the fifth or sixth class of their freight classification, the character, value, volume and use of that commodity are such as to require relatively low charges for its carriage.
5. In a freight classification like the Official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in character, use, value, volume, bulk, weight, risk, expense of handling and competition; the best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects.
6. On January 1, 1900, defendants and other carriers using the Official Classification advanced hay and straw in carloads from sixth to fifth class rates, and have since enforced such advanced charges. It is conceded that hay and straw should take the same rates. Hay in respect of character, use, value and volume corresponds more nearly with articles taking sixth class or lower commodity rates than with those in the fifth class. Apparently all commodities which come to defendants in aggregate volume or tonnage equal to or exceeding that of hay are given commodity rates. Hay as compared with grain and some

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other articles when carried between the same points gives the carriers less revenue per car, but it does not follow therefrom, taking the whole traffic, local as well as through, that hay may not give the carriers an average revenue per car per mile nearly as great or even greater than that derived from grain or such other articles. Though hay may be less desirable than grain as an article of traffic it is much more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities actually taking fifth or even sixth class rates. Hay is a raw agricultural product which is grown, shipped and consumed in all parts of Official Classification Territory and, coming to the carriers in steady and large volume, is profitable to them at sixth class rates. The cost to the shipper of transporting hay from the Middle West to eastern markets constitutes a large part of its value in such markets, and when added to the cost of baling and sale the total approximates or exceeds the price realized by the producer. The increased rates have added to the cost of hay and straw to consumers or diminished the price to producers, or both, and prejudiced in some degree the business of middlemen. The advance in hay rates changed a long-existing rate adjustment as between American and Canadian hay shipped to New England and parts of New York in favor of a producing section in a foreign country from which hay shipments into the United States are required by law to pay a duty as high as \$4.00 per ton. *Held*, Upon all the facts and circumstances, that the action of defendants on January 1, 1900, whereby hay and straw were advanced from sixth to fifth class and thereafter charged fifth class rates for transportation was unreasonable and unjust and resulted in unlawful discrimination and prejudice against hay and straw, localities in Official Classification Territory wherein those commodities are produced, and against producers, shippers, dealers and consumers of such articles in that section of the country.

*John B. Daish, C. C. Cole, E. Richard Shipp and H. E. Page* for complainant.

*Adelbert Moot and George W. Wall* for defendants generally.

*W. J. Calhoun* for New York, Chicago & St. Louis R. R. Co.

*Edgar J. Rich* for Boston & Maine R. R. Co.

*W. A. Day* for Grand Trunk Ry. Co.

#### REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case involves the legality of the change made by defendants on January 1, 1900, in the classification of hay and straw in carloads from sixth to fifth class and the increased cost of transportation resulting from application of the higher fifth

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class rates. Such advanced classification and rates are alleged by the complaint to have been and to be unjust and unreasonable, to subject all producers, merchants, shippers and consumers of hay, including the members of the complaining association, the traffic in hay and straw and numerous localities in hay producing sections of the country to unjust discrimination and undue and unreasonable prejudice and disadvantage, and to give undue and unreasonable preference and advantage to the production, sale and shipment of grain and grain products, all kinds of stock feed and other articles capable of being used in the place of hay or straw, persons engaged in their production, sale or shipment, and localities in sections of the country wherein they are produced or manufactured. The complaint also alleges that the defendants by making and maintaining such advance in classification and rates on hay and straw have unjustly discriminated against producers, merchants, shippers and consumers of those commodities, the traffic therein, and numerous localities and producing sections of the country, and have wrongfully put them to prejudice and disadvantage in favor of and to the unlawful preference and advantage of all other traffic, particularly such traffic as the defendants have given the same rates as or lower rates than they accord to hay and straw.

A further allegation in the complaint is that Congress has seen fit to establish a customs duty of \$4.00 per ton on hay shipped to the United States from foreign countries, but that the rates fixed by the defendants, the Boston & Maine Railroad Company, the Central Vermont Railway Company, the Boston & Albany Railroad Company, the New York, New Haven & Hartford Railroad Company, the New York Central & Hudson River Railroad Company, the Delaware & Hudson Company, the Canadian Pacific Railway Company, the Canada Atlantic Railway Company and the Grand Trunk Railway Company of Canada, for transporting hay from the Provinces of Quebec and Ontario in the Dominion of Canada to points in the New England States north of the Connecticut State line, east of the Connecticut River, New York City, places on Long Island, and all intermediate stations, together with the afore-said advances in the rates on hay and grain in the United States, have largely operated to render nugatory the protection to American hay that said customs duty was intended to give, com-  
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pensating shippers of Canadian hay to the extent of three-fourths of said duty; that such rates enable Canadian hay to compete successfully with American hay in the consuming localities of New England, New York City and Long Island, the distance in each instance to such points being less from places in the aforesaid Provinces of Canada than from places in the Middle West of the United States; that by reason thereof disastrous consequences have resulted to the hay industry in the United States and those interested therein, including carriers; and that the evils thus caused would be remedied if hay and straw were restored to the sixth class of said Official Classification.

The defendants deny generally the violations of law alleged in the complaint.

The facts deemed material to the disposition of this case are found as follows:

#### FINDINGS OF FACT.

1. The complainant is an incorporated association existing under the laws of the State of New York and having about 616 members residing in different parts of the United States, namely, in West Virginia, Wisconsin, Virginia, Texas, Tennessee, Rhode Island, Pennsylvania, Ohio, New Jersey, New York, Nebraska, Missouri, Michigan, Minnesota, Massachusetts, Maryland, Louisiana, Kentucky, Kansas, Iowa, Indiana, Illinois, Indian Territory, Georgia, Washington, Connecticut, Alabama and the District of Columbia. Its members generally deal in hay and straw as shippers, wholesalers, commission men or retailers. Some of them are producers of those commodities and some are interested also in grain and other farm products. The purposes of the Association, as shown by the articles of incorporation, include the promotion of trade and commerce in hay and straw and advancement of the interests of its members and those having common business relationship in such commerce or trade. Although the complainant is an association having membership in numerous States wherein none of the defendants own or operate lines of transportation, a very considerable proportion, if not the greater number, of its members reside and do business in States through which lines

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of the defendants are operated; and, moreover, as stated in its complaint, this proceeding is instituted by the complaining association, not only on behalf of its members, but of all other dealers, shippers, producers and consumers interested in the interstate transportation of hay and straw by the defendants. Numerous shippers and producers of hay and straw at various points in the territory involved have also filed individual protests in this case against the present classification and rates on those commodities.

2. The defendants are common carriers of interstate traffic, including hay and straw, in the territory affected by this proceeding, which is, generally speaking, all that portion of the United States lying east of the Mississippi River and Chicago and north of the Ohio and Potomac Rivers. This territory is called "Official Classification Territory," and the classification of freight articles transported between points in such territory is governed by what is known as the "Official Classification," which has been adopted and is generally applied by the defendants and practically all other railroad carriers therein. This classification is prepared by the "Official Classification Committee," the membership of which is composed of representatives from railway systems in the territory described. As advertised in the Official Railway Guide, these systems are the Pennsylvania, New York Central & Hudson River, Erie, Delaware, Lackawanna & Western, Lehigh Valley, Baltimore & Ohio, Lake Shore & Michigan Southern, Grand Trunk, Cincinnati, Hamilton & Dayton, Wabash, Boston & Albany, Boston & Maine and Ohio Central. All except the last-named company are defendants in this case. On January 1, 1900, the classification of hay and straw in carload quantities, as specified in said Official Classification, was advanced from sixth class to fifth class, and thereby the rates on those articles were substantially increased. Through concerted action this and other advances in classification and rates were made effective on the same day and upon practically all lines in this territory. That change in classification and rates and the subsequent enforcement of the higher charges are the subjects of complaint in this controversy.

3. The first Official Classification was adopted and put in force by carriers throughout the territory to which it applies on April 1, 1887, four days prior to the time when the Act to 9 I. C. C. REP.

regulate commerce took effect, and from that date up to January 1, 1900, hay and straw in carloads were classified in said classification as sixth class freight, minimum carload weight 20,000 pounds, with the exception of the period of four months from January 1 to May 1, 1894, when they were classed by defendants and other carriers using the Official Classification as fifth class, with a minimum carload weight of 18,000 pounds. Though in 1894 hay and straw were not restored in the classification to sixth class until May 1 of that year, nineteen of the thirty defendants filed with the Commission circulars restoring baled hay in carloads to sixth class on dates ranging from January 22 to February 21, 1894. Practically, therefore, the attempt to increase the rates in 1894 was abandoned within about a month and a half, instead of four months as shown by the classification. Since January 1, 1900, the classification of hay and straw in carloads has been fifth class, with a minimum carload weight of 20,000 pounds. Considerable fault was found by shippers with the higher fifth class rating in 1894 because it was put into effect during the shipping season, and they insisted that the advance, if made at all, should have been made about the first of September. As above shown, some of the railroad companies took independent action in restoring the sixth class rating, and while the subject of again applying fifth class rates to hay and straw was afterwards brought up for discussion between the railroad companies from time to time, they were unable to agree upon or at any rate did not take such action until six years later, on January 1, 1900.

The Official Classification contains six classes numbered consecutively from 1 to 6. It has also provided since March 10, 1900, for what are practically two additional classes applying to a considerable number of articles and which are referred to in the classification as "15 per cent less than second class" and "20 per cent less than third class." Under these various classes freight rates in effect between Chicago and New York are as follows:

Rates in Cents per 100 pounds.							
		15%		20%			
		less than		less than			
Classes.....	1	2	3	3	4	5	6
Rates.....	75	65	55	50	40	35	30
							25

This general basis of rates, namely, 75 cents first class down  
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to 25 cents sixth class, has been in effect practically without change between Chicago and New York for more than fifteen years. Such changes as have been made occurred through advances or reductions in the classification or by the application of commodity rates.

The difference of 5 cents in fifth and sixth class rates between Chicago and New York is equal to 20 per cent of the sixth class rate. That is understood to be about the average percentage difference in the rates applying to those classes on shipments between other points in Official Classification territory. The actual amount of the difference in cents is, of course, greater or less according as the distance the traffic is transported is greater or less. These rates between Chicago and New York constitute the basis according to which practically all rates from the Middle West to eastern destinations are determined. All that territory north of the Ohio River and east of the Mississippi River as far north as Dubuque, Ia., and east of Lake Michigan, to which should also be added the eastern part of the State of Wisconsin, is divided into percentage territories for the purpose of determining these rates. From these territories the eastbound rates are certain defined percentages of the Chicago eastbound rates, Chicago and points taking Chicago rates being called 100 per cent territory. These percentages range from 60 per cent in northwestern Pennsylvania and western New York to 120 per cent in part of Michigan, and as high as 125 per cent in a small section immediately east of the Mississippi River. The percentages involved in this case appear to range as high as 100 per cent in Michigan and western Indiana and 116 per cent in Illinois. As the increase in rates complained of amounts, under the rates from Chicago to New York, to exactly 5 cents per 100 pounds, or \$1.00 per ton, it follows that the increase per ton from any other territory is equal to the percentage by which rates from that territory are determined. For example, the increase from sixth to fifth class rates from Chicago to New York was \$1.00 per ton, from 96 per cent territory it was 96 cents per ton, from 110 per cent territory it was \$1.10 per ton, and from 80 per cent territory it was 80 cents per ton, on shipments destined to New York and points taking New York rates.

The rates from these shipping territories to Boston and points

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taking Boston rates constitute some exception to the rule above described. Such rates are made by adding to the rate to New York certain arbitraries amounting to about 10 per cent of the rate to New York. These arbitraries upon classes 1, 2, 3, 4, 5 and 6 are 7, 6, 5, 4, 3 and 2 cents, respectively. Therefore, while the fifth and sixth class rates from Chicago to New York are 30 and 25 cents per 100 pounds, respectively, the corresponding rates from Chicago to Boston are 33 and 27 cents. To further illustrate, the fifth and sixth class rates to New York from 80 per cent territory are 24 cents fifth class and 20 cents sixth class, and to Boston and Boston points they are the fifth and sixth class arbitraries higher, which make the rates 27 and 22 cents, respectively.

It is claimed by defendants that if these increased rates were figured on actual shipments from the producing territories to the various destinations, including all of the shorter distance consignments, the average increase would not exceed 40 cents per ton, but no figures have been submitted to support that contention. Even if that had been demonstrated to be a correct average, it would not diminish the burden placed upon the large quantity of hay carried over considerable distances from these percentage territories to such markets as New York, Boston and interior eastern localities.

4. As to such eastern markets it is shown that large quantities of hay have been shipped, particularly before January 1, 1900, from Michigan, Ohio, Indiana and eastern Illinois to Boston, Providence, Fall River, Taunton, Hartford, New York City, and numerous other points in New England and New York. After the change in rates complained of took effect the volume of these shipments was considerably diminished. One cause for this decrease in hay shipments to eastern points, particularly to New England and New York City destinations, is claimed by complainant to be the retention by certain of the defendants of commodity rates on hay produced in Canada while enforcing fifth class instead of sixth class rates on American hay from the Middle West. These commodity rates on the Canadian product having remained substantially the same after as they were before January 1, 1900, the increase on that date from sixth to fifth class rates on American hay did plainly give that much advantage to the foreign hay imported from Canada,

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and had the result also of diminishing the effect of the duty of \$4.00 per ton which was imposed on imported hay by the Dingley Act of 1897. The duty on such hay was increased under that Act from \$2.00 per ton, which had been fixed by the Act of 1893. Under the preceding McKinley tariff Act of October, 1890, the duty was \$4.00 per ton. Prior to 1890 the duty was \$2.00 per ton. Immediately after the passage of the Dingley Act importations from Canada began to fall off, and between that time (1897) and the year 1900 they were much less than they had been in previous years, but in 1900 and 1901 the tonnage of imported hay was largely increased. The imports of hay into the United States from 1890 to 1901, inclusive, the years ending with June 30, were in tons as follows:

1890	1891	1892	1893	1894	1895
124,544	58,242	79,715	104,257	86,784	201,900
1896	1897	1898	1899	1900	1901
302,652	119,942	3,887	19,872	143,890	142,627

All but a few tons of this imported hay came from Canada and was consumed very largely in New England and the State of New York. The defendants attribute the increase in importations in 1900 entirely to the short crop of that year. The figures for the succeeding year end, as stated above, with June 30, and the crop gathered in the calendar year 1901 had not then begun to move. Undoubtedly a small or large crop in the United States must operate to increase or diminish the demand in New England or New York for hay from Canada. On the other hand, with sixth class rates prevailing in the United States and a duty of \$4.00 per ton from October, 1890 to 1893 on imported hay, the imports were small for 1891 and 1892 as compared with those in the fiscal year ending June 30, 1890, when the \$2.00 duty was in force; under sixth class rates in the United States and a hay duty of \$2.00 from 1893 to 1897 the imports increased gradually to large proportions in 1896; with sixth class rates and the duty of \$4.00 restored in 1897 the imports decreased to a minimum in 1898 and 1899; and under the advance in rates on American hay from sixth to fifth class on January 1, 1900, the imports became larger in 1900 and 1901 than in any previous year above given except 1895 and 1896, when the \$2.00 duty was in force.

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The increase from sixth to fifth class rates on hay amounted from the Middle West to Boston points to from 80 cents per ton (60 per cent territory) to \$1.40 per ton (116 per cent territory), equal on a minimum carload of 10 tons to from \$8.00 to \$14.00 per car. These amounts apparently mark the advantage given the Canadian product.

The Canadian hay coming to the Boston market is not better than the hay coming from the West. It also appears that the distance from the points of origin in Canada to Boston is less than it is from the Middle West section. Some hay is imported from the Province of Ontario in Canada, but the region in Canada from whence most of the hay carried to New England and New York City has been shipped is from points south and east of the St. Lawrence River in the Province of Quebec, and the rates from points in that section to Boston have been 18 or 19 cents per hundred, or from \$3.60 to \$3.80 per ton. About the same range of rates applies from these Canadian points to New York City. The rates according to a distance table put in by defendants appear to be from 1 to 4 cents higher from Canadian points to Boston and New York than for like distances to the same destinations from shipping points in the United States. It follows, therefore, that the rate per ton per mile afforded by these rates from Canada is to some extent higher than the fifth class rates for the same distance hauls on shipments originating in this country. The rates from Canada are commodity rates lower than fifth class rates, but so far as comparison of rates per mile affects the case, they cannot be found to work hardship upon the American product. But we do find that class rates from the section in Canada above described are higher than those for like distances in the United States in Official Classification territory; that the roads participating in the carriage of Canadian hay have for a period of years been charging on such hay destined to New England and New York City points commodity rates lower than fifth class rates; that under a sixth class rating for hay prevailing in the United States this adjustment did not operate unjustly to the competing American product, but that with a change in rates on American hay from sixth to the higher fifth class rates the advantage was as clearly with Canadian hay as if the rates on Canadian hay had themselves been to the same extent reduced. The defendant carriers

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participating in the transportation of both Canadian and American hay are the Boston & Maine, Central Vermont, Boston & Albany, New York, New Haven & Hartford, New York Central & Hudson River, Delaware & Hudson, Canadian Pacific, Canada Atlantic and Grand Trunk. Some of these defendants operating in New England territory also make commodity rates, lower than class rates, on hay produced in New England. Such commodity rates on the Boston & Maine are about two-thirds of the fifth class rates between the same points.

5. New England States and the State of New York, while producing large quantities of hay, do not raise crops sufficient for the needs of consumers in those States, and the deficiency is supplied by hay from the Middle West or from Canada. The difference in rates from New York points and the Middle West under sixth class rates was apparently sufficient to enable producers in interior New York to market their hay in competition with producers in the Middle West. This is illustrated by a rate of 15 cents to New York City from 60 per cent territory in extreme western New York as compared with a rate of 20 cents from 80 per cent territory in Ohio. Such difference in rates is equal to \$1.00 per ton. Under present rates the difference between rates from those territories to New York City amounts to 6 cents per hundred, or \$1.20 per ton. The surplus production of hay in such States as Michigan, Ohio, Indiana, and perhaps eastern Illinois, must depend very largely upon the East for a market. There has been a demand for this Middle West hay in the eastern markets for many years, and this condition must be expected, in normal crop years at least, to continue. Generally speaking, the people of the eastern part of the United States are more largely engaged in manufacturing, while agricultural pursuits are followed in greater degree in the West. It seems clear, therefore, that as population and industries multiply the amount of hay produced in the east will become less, and the demand in that section for western hay, and even for that produced in Canada, will become greater. The advance from sixth to fifth class rates in effect on and after January 1, 1900, operated to divert shipments from parts of the Middle West to southern destinations. Whether such effect would continue throughout a series of years cannot be determined, as the variation in crops and consequently of de-

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mand in different consuming markets would necessarily produce results independent of the present difference in rates.

In Western Classification territory, which includes all that portion of the country west of the Mississippi River and Chicago, hay and straw are in class C, which takes lower than fifth class rates; and in the Southern Classification territory, covering generally the States south of the Ohio and Potomac Rivers and east of the Mississippi River, hay and straw are classed with grain in class D, which takes rates lower than those fixed for any other class in that classification. In Western Classification territory grain is classed higher than hay as class B, but both grain and hay are carried generally in that territory at commodity rates lower than the class rates and in some instances hay rates are less than those in force on grain. The scales of rates in both the Western and Southern territories range higher than rates in Official Classification territory, but that does not alter the fact that the relative adjustment of rates on hay and straw as compared with grain and various other commodities is more in favor of hay and straw in the territories of the Western and Southern Classifications than it is in Official Classification territory.

6. Straw is a by-product of grain of comparatively low value, and is used mainly for bedding stock and packing and in manufacturing. Hay is a food product used chiefly for stock feeding, but it is also used for packing and, to some extent, for manufacturing purposes. In Official Classification territory hay is graded in market before it is sold, and the price depends upon the grade, the terms used according to the testimony being Nos. 1, 2, 3, Rejected, and No Grade. The terms Heated, Badly Damaged, and Prime or Choice are also used, the latter being better than No. 1. Timothy hay of No. 1 grade appears in this case to be regarded as the standard. There is also prairie hay largely grown in the Middle West, the prices for which, as given in the record, are considerably below those stated for No. 1 Timothy. This prairie hay also has different grades.

In preparing hay for shipment to market, it is compressed into bales of different sizes and weights. It appears that three different sizes are principally used and known as follows: The Perpetual, which is 18 by 14 inches and weighs from 80 to 90

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pounds; the Spencer, which is 17 by 22 inches and weighs from 125 to 160 pounds; and what is known as the Large Bale, which weighs, according to compression, anywhere from 185 to 250 pounds. More of the Spencer bale than of any other kind is made in the Middle West, but the large bale commands the higher price in northern and eastern markets. The reason for this is that the density of the large bale is somewhat less than that of the smaller, and the tighter baling is liable to injure the fibre of the hay and make it less valuable for feeding purposes. The difference in price in favor of the large bale in those markets is said to be about \$1.00 per ton. But little hay is exported from the United States. When exports are made the small bale is used, and the compression of the bale is much greater than when the hay is for domestic use; for the reason that the ocean rates are computed according to space.

7. The hay crop of the United States and home value thereof for the years 1895 to 1901, inclusive, as estimated by the Department of Agriculture, ranged as follows:

	Crop in tons.	Home value per ton.
1895 . . . . .	47,078,541	\$8.35
1896 . . . . .	59,282,158	6.54
1897 . . . . .	60,664,876	6.61
1898 . . . . .	66,376,920	6.00
1899 . . . . .	56,655,756	7.27
1900 . . . . .	50,110,906	8.89
1901 . . . . .	50,590,877	10.00

Corresponding figures for the States of Indiana, Ohio, Michigan and Illinois, which may be taken for the purpose of this case as constituting the Middle West, for the years 1898 to 1901, inclusive, were:

	Crop in tons.	Home value per ton.
1898 . . . . .	9,952,901	\$6.095
1899 . . . . .	8,243,160	8.245
1900 . . . . .	7,163,285	9.41
1901 . . . . .	11,900,915	9.39

For the New England States, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut, the figures were:

	Crop in tons.	Home value per ton.
1898 . . . . .	4,773,994	\$9.845
1899 . . . . .	3,555,746	13.23
1900 . . . . .	3,473,081	15.38
1901 . . . . .	4,654,627	12.21

In New York, Pennsylvania and New Jersey the crops and home values were:

	Crop in tons.	Home value per ton.
1898 .....	10,777,581	\$7.80
1899 .....	7,924,796	12.54
1900 .....	6,521,654	15.46
1901 .....	10,713,570	11.79

These farm prices as compiled by the Department of Agriculture from reports made from time to time in each section are of necessity merely approximate, and they do not show the prices received for the different grades.

Average prices in the New York City market have ranged as follows:

	Prime.	No. 1.	No. 2.	No. 3.
1898 .....	\$14.40	\$13.20	\$11.20	\$ 8.20
1899 .....	15.80	14.60	13.20	11.40
1900 .....	18.20	17.40	16.20	14.60
1901 .....	18.80	17.80	16.80	15.20

8. The cost of baling and putting on the cars is stated generally to be about \$1.50 per ton. It is also testified that some expense is involved in hauling the hay to the station, which is stated by one witness to range from 50 cents to \$1.50 per ton. Probably 50 cents would be sufficient to cover this item. This additional expense of \$2.00 per ton therefore covers the full average cost of placing the harvested hay aboard the cars and ready for transportation. The greater portion of hay consigned to eastern markets goes to commission men who make varying charges. This commission charge, though differing somewhat in various markets, as generally applied is about \$1.00 per ton. There are also commission merchants in the West who handle hay consigned to them on commission for 50 cents a ton, in Chicago a sampling or grading charge of 20 cents per ton is made, and there is also a weighing charge of from 15 to 25 cents per car. The general cost of placing hay in the eastern market may, however, be regarded as made up of the following items: Baling and delivery on board cars, \$2.00; commission, \$1.00, and the transportation at prevailing rates. Using these figures for those items the cost of putting hay in the New York City market which was shipped from various producing territories in the Middle West in 1899 and 1900 was as follows. With this will

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also be found some of the differences between the prices in that market and such cost of marketing. The transportation cost for 1899 was at sixth class rates, and that for 1900 was at fifth class rates.

In 1899 the cost of marketing in New York City from 80 per cent territory was \$7.00; from 84 per cent territory, \$7.20; from 92 per cent territory, \$7.60; from 100 per cent territory, \$8.00; from 110 per cent territory, \$8.50; from 116 per cent territory, \$8.80. The difference between such marketing cost and the market price in New York City was, from 80 per cent territory, prime hay, \$8.80; No. 1, \$7.60; No. 2, \$6.20; No. 3, \$4.40. From 100 per cent territory such differences were, prime hay, \$7.80; No. 1, \$6.60; No. 2, \$5.20; No. 3, \$3.40.

In 1900 the cost of marketing in New York City was, from 80 per cent territory, \$7.80; from 84 per cent territory, \$8.04; from 92 per cent territory, \$8.52; from 100 per cent territory, \$9.00; from 110 per cent territory, \$9.60; from 116 per cent territory, \$9.96. The differences between such marketing cost and the market price in New York City were, from 80 per cent territory, prime hay, \$10.40; No. 1, \$9.60; No. 2, \$8.40; No. 3, \$7.00. From 100 per cent territory such differences were, prime hay, \$9.20; No. 1, \$8.40; No. 2, \$7.20; No. 3, \$5.80. From 110 and 116 per cent territories the differences between the cost of marketing and the market price were of course considerably less.

The prices of hay in the Boston market during 1899 and 1900 ranged less than in the New York market. As before shown, the rates to Boston in 1899 were 2 cents per 100 pounds or 40 cents per ton higher than the rates to New York, and in 1900 they were 3 cents per 100 pounds or 60 cents per ton higher than the rates to New York. This of course results in less differences between the market price and the cost of marketing than those above shown based upon the market price in New York.

One fact shown by these figures is that the cost of putting Middle West hay in the eastern market approximates or exceeds the value of that hay after deducting the cost of marketing, and that the advance in rates made by defendants, and which is illustrated by 70 cents to \$1.16 per ton from that section of the country to New York, has added materially to the cost of mar-

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keting the product. Such advance has been borne by producers, middlemen and consumers, but to what extent by each class is impossible to determine. While the farmer has received higher prices for hay since January 1, 1900, the date when the advance in rates became effective, it is matter of common knowledge that the prices of commodities generally have ranged higher in the last few years. Moreover, with hay selling at prices prevailing in 1898, when the average farm price in the Middle West group was as low as \$6.09, the advanced rates would constitute a still greater proportion to be deducted from the market price and to an extent therefore impose a greater burden upon the producer. Undoubtedly one reason for the continued high price of hay in 1901 was the continued high range of prices for grain during that year, but the rates upon grain were not increased to correspond with the advance in rates on hay.

9. Hay as an article of food for animals comes in competition with some kinds of grain and with feed prepared from grain. Although hay, grain and practically all of the products of grain were together in the sixth class of the Official Classification for a long period of years (except the few weeks in 1894 hereinbefore mentioned when hay was in fifth class), grain and a lengthy list of grain products have taken and do now take commodity rates under defendants' tariffs which are considerably lower than their sixth class rates. The all-rail rates on corn, oats, wheat and rye, and upon feed, bran, flour and other grain products from Chicago to New York, not for export, are the same, 17½ cents per 100 pounds, while the rate on hay was 25 cents at sixth class, and since January 1, 1900, has been 30 cents per 100 pounds. It was testified by one of defendants' witnesses that during the five years prior to the hearing in 1901 the actual grain rate from Chicago to New York did not exceed 15 cents per 100 pounds. The grain and grain products rates from other points are made by percentages of the Chicago rate in the same manner that rates on hay are figured by percentages of the Chicago rate. The action of defendants, therefore, in advancing hay from sixth to fifth class rates was to widen still further the actual difference between hay and grain and grain products which are also used for feeding purposes, although the nominal classification of both had

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long been the same. At different times prior to 1895 sixth class rates were actually in force upon grain and grain products in this territory. Except in New England neither hay nor straw has been given commodity rates lower than sixth class to any extent during the past 15 years. The grain products which are given rates as low as those fixed for grain in Official Classification territory are as follows:

Avena, Bran, Breakfast Food, Brewers' Dried Grain, Brewers' Meal, Buck Wheat, California Breakfast Food, *Cerealine, Corn Flour, Corn Meal, Cotton Seed Cake, Cotton Seed Hulls, Cotton Seed Meal, Cracked Corn, Cracked Wheat, Cream of Maize, Distillers' Dried Slop, Farina, Farinos, Feed, Flake Malt and Flakes, Flour, Flour, prepared, Frumentum, Germos, Glucose Feed, Gluten Meal, Grits, Groats, Ground Corn, Healthall, Hominy, Hominy Feed,	Hulled Corn, Kafir Corn Meal, Maizeline, Maizone, Malt, Malt Silver Flake, Malt Skimmings, Malt Sprouts, Meal, Linseed, Middlings, Mill Feed, Oat Hulls, Oat Meal, Oil Cake, Oil Meal, Pearl Barley, Pearl Wheat, Potato Flour, *Quick Malt, Rice Flour, Rice Meal, Rolled Oats, Rolled Wheat, Rye Flour, Screenings, Ship Stuff, Shorts, Sprouted Barley, Starch, Sugar Meal, Vitos, Wheat Meal.
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An examination of commodities in the fifth and sixth classes shows that food articles are classified therein as follows:

FIFTH CLASS.

Animal or Poultry Food, prepared in packages, Apples, dried and green, Apple and Fruit Butter, Beans, N. O. S., Broths and Soups, Canned Fish, Catsup, Cauliflower, salted or in brine, Chicory, 9 I. C. C. REP.	Citron Peel, Coconut, desiccated, Coffee, Curd Milk, Fish and Meat, desiccated, Dog Food, in bags, Fish, smoked, pickled or salted, Sardines, smoked, pickled or salted, Flour, potato, Hay, pressed in bales,
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## FIFTH CLASS—Continued.

Kraut, in wood,	Potatoes,
Lard,	Rye, roasted,
Maccaroni,	Sago,
Meats, cured,	Split Peas,
Milk, can stock,	Sugar,
Mince Meat,	Syrup,
Oysters, spice or cold,	Tapioca,
Pears, green, in keg,	Vegetables, canned,
Peas, dried,	Vermicelli.
Pickles,	

## SIXTH CLASS.

Barley,	Malt,
Bran,	Meal, Linseed,
Cereal Products or Preparations,	Mill Feed,
Chop Feed,	Oat Hulls,
Corn, N. O. S.,	Oatmeal,
Corn, Pop,	Oats,
Cotton Seed Meal,	Rice Chaff or Rice Hulls,
Cracked Wheat,	Rye,
Cracklings,	Sago Flour,
Farina,	Seed, Cotton, Flax and Linseed,
Feed, ground,	Sugar Meal,
Flour or Meal,	Tapioca, flour,
Glucose,	Wheat,
Grain, N. O. S.,	Wheat, cracked.
Grits,	

The coarser food articles, except hay, as well as the finer grades of grain products, though nominally in sixth class, are, as above stated, given commodity rates lower than sixth class rates. The fifth class food articles just recited are nearly all merchandise articles, and not comparable in character, use, or to much extent in value, with the raw product like hay. Some exception to this may be found in potatoes, an agricultural product, but the use of that commodity differs widely from that of hay. Examination of the classification further discloses that wooden articles in the rough are given sixth class rates, taking nominally the same class as lumber, though in actual practice lumber and many of the wooden articles mentioned frequently, if not usually, are given commodity rates. The system of the classification appears to be to group all articles of the same general character in one class, but hay, an agricultural product, was made an exception by the advance from sixth to fifth class.

10. The following articles taking carload rates were advanced

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in the Official Classification from sixth to fifth class January 1, 1900:

Articles.	Minimum Weight.
Actinolite Ore, ground, in bags .....	30,000
Barrels, Half Barrels, Casks and Tierces, N. O. S., new or old, .....	12,000
Basket Material, N. O. S. ....	24,000
Blue Vitriol .....	30,000
Brewers' Chips or Shavings .....	24,000
Carriers, ale, beer, beer tonic, or porter .....	20,000
Cement, asbestos, boiler-covering, and magnesia .....	30,000
Cloth Boards, wooden .....	24,000
Cocoonut Husks .....	24,000
Cocoonut Skin Shavings or Refuse .....	24,000
Coffee, in single or double bags .....	30,000
Coffee, ground or roasted .....	24,000
Copperas .....	30,000
Corn Cobs and Husks .....	20,000
Corrosive Pots .....	30,000
Cotton-Seed Hulls or Motes .....	30,000
Creosote, in wood .....	30,000
Fish, smoked, pickled or salted .....	30,000
Flour, potato, in sacks or barrels .....	30,000
Glauber Salts, in barrels .....	30,000
Hay, pressed in bales .....	20,000
Jute Butts .....	30,000
Mortar Stains or Colors .....	30,000
Moss, nursery and peat .....	24,000
Oil, creosote and pine, in barrels .....	30,000
Oil, creosote and pine in tank cars .....	Capacity of car.
Oxide of iron, in kegs, barrels or casks .....	30,000
Paints, earth, iron, metallic .....	30,000
Peas, dried, coarse, in bulk .....	30,000
Pea Hulls .....	24,000
Peat or Peat Moss .....	24,000
Pitch, N. O. S. ....	30,000
Scrap Rubber .....	30,000
Sea Grass, pressed in bales .....	20,000
Soap, Soft Soap, Soap Extracts, Powders, Tablets, Soapstone .....	30,000
Starch, in sacks, boxes, or barrels,—ground in barrels ..	30,000
Straw, N. O. S., pressed in bales .....	20,000
Sugar, N. O. S., in boxes, bags, barrels, or half barrels ..	30,000
Sulphate of Iron .....	30,000
Shavings, wood, in bales .....	20,000
"    "    in bulk .....	20,000
Tar, Coal, and Coke, in barrels .....	30,000
Tar, Coal, and Coke, in tank cars .....	Capacity of car.
Tobacco Stems and Fertilizers .....	24,000
Turpentine, in tank cars .....	Capacity of car.
Vinegar Chips or Shavings ..	24,000
Washing Powder, dry, in packages .....	30,000

The only food articles in the foregoing list are: Coffee, in single or double bags; Coffee, ground or roasted; Flour, potato, in sacks or barrels; Fish, smoked, pickled or salted; Hay, 9 I. C. C. REP.

pressed in bales; Peas, dried, coarse, in bulk; and Sugar, N. O. S., in boxes, bags, barrels, or half barrels.

The following articles were afterwards restored to the sixth class in the Official Classification; Carriers, ale, beer, beer tonic, and porter; Peas, dried, coarse, in bulk; Shavings, wood, in bales or bulk; Tobacco Fertilizers, compressed in bales or sacks; and Tobacco Stems, in bales.

11. For the year ending June 30, 1900, the total railway tonnage of hay alone was 4,112,092 tons originating on reporting roads, and 3,721,714 received from connecting roads, making a total of 7,833,806 tons reported. The total tonnage so reported for all kinds of grain was 64,998,890 tons, flour 15,305,693 tons, other mill products 9,395,861 tons, tobacco 1,495,872 tons, cotton 5,980,347 tons, fruits and vegetables 13,106,026 tons, and other products of agriculture 3,824,501 tons. It should be noticed that, with the exception of cotton, tobacco, flour and hay, the other figures above given are totals for different articles belonging to a class, corn, wheat, rye, oats, barley, etc., being included under grain. These figures cover the whole United States and exceed the actual tonnage carried, because the tons reported to the Commission as received from connecting lines are included in the reports of other roads as originating upon such roads, except such as may have been received from water carriers. It is unnecessary in this case, however, to go into the extent of such duplication of tonnage in the carriers' annual reports.

The hay tonnage, although vastly below the aggregate for grain and less than that for flour, is very large as compared with any other of the great mass of commodities. We are unable, after careful examination, to find any other single article generally taking class rates which provides the railroads with an aggregate tonnage equal to that of hay. In other words, articles of tonnage equal to or exceeding that of hay, are, as a rule, given commodity rates. It may be urged that lumber is an exception, but there are so many instances where that commodity is given a special rate that it cannot be so regarded; and fruits and vegetables taken together cover numerous distinct articles, all of which must be included to make up the aggregate fruit and vegetable tonnage stated above.

Hay is also an article of universal consumption, and is pro-

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duced in every State and Territory. This fact is emphasized by the showing that out of over 50,000,000 tons produced in 1900 less than 7,850,000 tons were reported carried by the railroads. Over one-third of the hay grown in 1900 and one-half of the total crop of 1901 were raised in Official Classification territory, and in view of the large demand in that more thickly populated section of the country it is evident that a very large proportion of the total amount transported by railroads in those years was carried over roads within Official Classification territory. In our report on statistics for the year ending June 30, 1900, a table is given on page 66 showing the tonnage reported, as originating upon the roads making reports in three large sections or divisions of the country, of general classes of traffic described as products of agriculture, products of animals, products of mines, products of forest, manufactures, merchandise and miscellaneous. The first division or section of country there mentioned comprises statistical groups I, II, and III, and practically covers Official Classification territory with the exception of the State of Illinois. The data pertaining to these groups upon which the totals for products of agriculture as given in that report were computed, give the following tonnage originating upon reporting roads: Grain, 7,359,447 tons; flour, 2,321,884 tons; other mill products, 1,798,926 tons; hay, 2,485,149 tons; tobacco, 296,843 tons; cotton, 127,848 tons; fruit and vegetables, 3,026,615 tons; other products of agriculture, 650,528 tons. These figures show greater tonnage of hay originating in that territory than any other product of agriculture, except "grain" and "fruits and vegetables," both of which terms include a number of distinct products, while the hay tonnage is stated separately.

12. The element of risk is not regarded by the carriers themselves as having much bearing in this controversy. Few claims for loss or damage of hay in transit are made upon the carriers. The testimony on their behalf was to the effect that in estimating the proper rating of a commodity the higher value of that commodity as compared with the value of other articles, particularly in the lower classes, would not be deemed to constitute such additional risk in transportation as to warrant a higher classification solely upon that account. In other words, greater risk because of much higher value is one of the matters

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to be considered in fixing a classification, but it is not considered controlling upon articles not specially liable to damage in transportation. The value of articles most strongly affects determination of rates for their transportation in that the value of the service to the shipper is generally greater upon the more costly products. Some illustration of this is shown by the classification of cotton piece goods in the Official Classification as 15 per cent less than second class, while dry goods generally are in first class, and numerous other examples might be given. The value of hay and straw is low as compared with that of other coarse food products, and is greatly below the value of flour and the finer grades of grain products. It is also greatly less per carload than that of most, if not all, other articles in the fifth class.

13. The evidence is conflicting upon the point whether there is any considerable detention of cars by shippers and consignees in loading and unloading hay and whether such detention is materially greater than that involved in loading and unloading cars used for other freight. Compared with grain, which is loaded usually from elevators, the time consumed in loading hay is somewhat greater. On the other hand, at interior destination points where no elevators have been erected, hay can be unloaded more promptly than grain. The difference in time does not appear to be very important in either case. Some delay, however, may arise from the failure of shippers to load hay promptly after the cars are provided by the carrier. Such detention may be caused wholly or in part by tardy delivery of hay at the station. The delivery at stations may be prevented by storms or bad roads, and rainy weather is also liable to interfere with the work of loading. As compared with grain and various other kinds of freight these are conditions which may operate to produce greater detention of cars at loading points for hay, but the evidence as a whole is not sufficiently specific to warrant a definite finding in this respect.

At large destination centers like New York City, cars of hay are detained somewhat longer than grain cars are, owing largely to the different methods of unloading. Any unreasonable detention may, however, be met by the carriers through suitable regulations and the application of a proper demurrage charge. The situation at Boston illustrates this. Prior to July 1, 1901,

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the Boston & Maine leased spaces in its hay sheds to hay dealers at a nominal rent, and when the spaces were filled allowed the hay to remain in cars upon the tracks. Under this practice hay, at times at least, arrived in Boston regardless of the market demand, and as many as 1,500 cars were at one time waiting to be unloaded. The hay stood in the cars for periods ranging from a week to three or four months. This abuse was remedied by the action of the company in taking the sheds under its own management, allowing a period of ten days at a charge of one dollar, and certain other charges for greater time. These charges prevail whether the hay is unloaded in the sheds or left in the cars. As a result, less than 100 cars were upon the track at the date of the hearing, the hay usually arrives in Boston according to demand, and is unloaded about as fast as it comes in. From 60 to 80 cars are usually upon the tracks, which is less than two days' supply.

14. Up to 1890, and possibly a few years later, shippers were frequently unable to load cars furnished for hay up to the prescribed minimum weight of 20,000 pounds. This made the cost of transportation in those instances exceed the sixth class rate. As between 100 per cent territory and New York, a car loaded with 18,000 pounds of hay would, at the sixth class rate, under the minimum carload rule of 20,000 pounds, pay about 27.8 cents as against the sixth class rate of 25 cents. The rate on 16,000 pounds of hay at the 20,000 pounds minimum and sixth class rate would be  $31\frac{1}{4}$  cents. This condition, however, has not existed to any considerable extent since about the year 1894, larger cars having come rapidly into general use during the past decade. Improved methods of baling enable shippers to some extent to bale the hay with reference to the size of the cars, and this permits heavier loading in some degree. The defendants further contend, however, that since larger cars which easily hold the minimum weight have been generally provided, the shippers have been inclined to bale the hay more loosely, and so diminish the practicable earning capacity of the car. On the other hand, cars may be used for hay which cannot be economically employed in the grain traffic, and witnesses for complainant say that smaller instead of larger cars are furnished for hay, thereby preventing the shipment of larger carload quantities. The inference is warranted, and we find that

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at times or in particular localities each of these conditions has resulted, but it does not affirmatively appear that either has become a general practice.

15. Grain is transported in immense quantities over the Great Lakes to Buffalo and other eastern lake ports, and carried from thence mostly by rail in large lots to the seaboard. This competition has potential effect upon the rates of the all-rail lines. Much of this competitive grain goes to the seaboard for export at lower rates than those applied to domestic shipments. Similar competition, but to much less extent, obtains in the traffic in flour and some other grain products. Hay is not shipped, in any considerable quantity at least, by water from Michigan or any part of the Middle West.

On the other hand, hay grown in one section is competitive with the hay grown in most other sections of Official Classification territory and in Canada, an adjacent foreign country, and the railroads in those sections are interested in preserving the market demand for hay from the various producing localities. It is also more or less competitive in use and consuming demand with oats, corn, bran, mixed feed, and perhaps some other kinds of grain or grain product, and this condition affects the transportation rate on hay.

16. Hay, as before indicated, is much lighter freight than grain and many other commodities. A car capable of containing 20,000 pounds of hay may be loaded with 40,000 or more pounds of grain. Hay has also been compared in this case with potatoes and apples. The traffic carried over the Pennsylvania lines west of Pittsburgh between January 1 and September 30, 1901—nine months—shows the following differences in traffic, weight per car and average revenue:

	Cars.	Average Pounds per Car.	Average Revenue per Car.
Hay . . . . .	16,587	21,600	\$19.40
Grain . . . . .	69,357	53,000	30.89
Apples . . . . .	461	27,700	22.36
Potatoes . . . . .	2,178	32,400	25.80

This statement does not show the average distances the traffic was hauled. For the Michigan Central a similar statement is in the record which shows the average weight in pounds per car from 1897 to 1900 and nine months of 1901. These range

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as follows: Hay, 20,359 to 21,122; grain, 36,110 to 49,118; apples, 25,763 to 32,839; potatoes, 27,205 to 29,084. Various tonnage statements in evidence show the shipment of hay in car lots of from 20,000 to 30,000 pounds, but apparently the general average is about or nearly 22,000 pounds. Some cars of grain have been shipped containing over 60,000 pounds, and the carriers are now building cars having much greater capacity, estimated at from 80,000 to 110,000 pounds. With greater capacity of the car there is a wider difference in the relative amounts of hay and grain that can be loaded in it. The present general car equipment, however, accommodates hay and grain, as appears from all the tonnage statements, in about the following average proportions: Hay, 22,000 pounds; grain, 50,000 pounds. Possibly this slightly understates the average car of grain upon all of the lines, but the figures are approximately correct and will serve for the purposes of this case.

Upon that basis the revenue per car from 100 per cent territory to New York at present rates would be \$66.00 for hay and \$87.50 for grain, and from 60 per cent territory it would be \$39.60 for hay and \$52.50 for grain. At sixth class rates the hay car revenue would be \$55.00 from 100 per cent territory and \$33.00 from 60 per cent territory. The difference in favor of grain is greater or less as the rates are greater or less from the various territories, but in the carriage of hay and grain between any two given points the revenue per car is considerably more upon grain than upon hay. It does not follow, however, that the average revenue *per car per mile* for all shipments of hay and grain, including all of the short as well as the long distance traffic, will show considerable or any excess in favor of grain at present rates. Only one of the tonnage and revenue statements put in evidence shows the average distances over which the total traffic in hay and grain was carried for any period, but that statement covers the traffic of one of the most economically operated and best equipped roads in Official Classification territory, the Lake Shore & Michigan Southern Railway, for the period of nine months between January 1 and September 30, 1901, and shows the carriage of large quantities of both kinds of traffic. Following are the totals and averages shown in that statement, the average tons per car having been correctly reduced to pounds:

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SHIPMENTS OVER LAKE SHORE & MICHIGAN SOUTHERN RAILWAY  
JANUARY 1 TO SEPTEMBER 30, 1901.

No. of cars.	HAY.		Earnings per car.
	Average weight per car in pounds.	Average distance hailed. Miles.	
11,367	21,815	243.3	\$18.06
	POTATOES.		
2,232	33,175	216.1	\$15.44
	APPLES.		
1,043	26,194	241.6	\$19.02
	GRAIN.		
48,388	49,610	306.1	\$22.12

The earnings per car per mile computed from these figures are: Hay, 7.4229 cents; potatoes, 7.1448 cents; apples, 7.8725 cents; grain, 7.2026 cents. The hay as compared with the grain was carried an average of 63 miles less distance. The average rates per 100 pounds were hay, 8.28 cents; potatoes, 4.66 cents; apples, 7.26 cents; grain, 4.46 cents.

Upon the estimate that the average increase on hay from sixth to fifth class rates has been 20 per cent, the average revenue of the hay per car at sixth class rates would have been \$3.01 less, or \$15.05, and the revenue per car per mile would have been 6.19 cents. The average rate per 100 pounds at the above estimated sixth class rates would have been 6.9 cents.

These figures further indicate that between the same points of shipment and destination with two trains, one loaded with hay and the other with grain, the revenue from the train of grain would greatly exceed that afforded by the train of hay, but that taking hay as it comes to the railroad at all the various points of shipment and is carried over all distances to the various points of destination, and grain as it is offered, carried and delivered, the difference in revenue per car per mile may be in favor of hay, as it was in the case of the Lake Shore. The grain business, if handled principally as through freight in solid trainloads, is apparently hauled at less cost to the carrier, and it is probable that grain generally is somewhat less expensive traffic to the carrier than hay is. On the other hand, considering the tonnage of hay, that article is perhaps carried by the roads at less cost than some other articles in fifth or sixth

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classes. As numerous considerations enter into any comparison of transportation cost to the carriers, we are unable to estimate or find definitely in that respect.

The dead weight of the hay car is said to be about the same as that of the grain car. The average weight of cars which will carry 22,000 pounds of hay or 50,000 pounds of grain is about 32,000 pounds. With this added, the revenue per hundred pounds or per ton is of course reduced. For the Lake Shore, according to the table above given, the relation of earnings per hundred pounds, including the weight of the car, was about 3.35 cents for hay and 2.71 cents for grain. There must be, however, some greater weight to a car capable of carrying 60,000 pounds of grain than to a car limited to 40,000 pounds, or as between any two cars having greatly different capacities, and consequently some additional cost of hauling to the carrier, but how much and whether trifling or appreciable cannot be determined from this record.

There are numerous other essential differences between grain and hay and between potatoes, apples and hay as well. Grain is shipped from the West to the seaboard in large quantities and from Chicago it goes frequently in train loads. On the Lake Shore trains of grain are often composed of as many as 50 cars. This greatly reduces the total cost of operation in respect to the grain traffic. Hay, on the other hand, is not shipped eastward from Chicago to any extent, and is not carried in large trainloads from any point in Official Classification territory. Generally speaking, it must be taken as offered at the several shipping points and hauled as a rule in general freight trains. Nevertheless, it affords the carriers a steady and reliable traffic throughout the greater portion of the year, which is of large volume in the aggregate, and thereby furnishes a considerable proportion of their general freight business. Grain is commonly shipped loose in bulk, while hay is carried only in bales. Grain cars must be tight and provided with "grain doors," which expense, equal to 75 cents or \$1.00 per car, is borne by the carrier. Any ordinary car in good running order may be used for hay. Grain is carried over very long distances and is concentrated at large centers for through shipment, while hay is carried over relatively shorter distances, is forwarded generally in trains at the reasonable convenience of the carrier,  
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and delivery within any short period is not usually required. The value of grain per car greatly exceeds the value of a car-load of hay. The prices vary according to the locality and market conditions, but some idea is afforded by an estimate of \$500 for a 50,000-pound car of wheat and \$165 for a 22,000-pound car of hay. Notwithstanding such greater value, grain is sold upon close margins, and the rate must be fairly low to enable free movement of the traffic. This condition also applies to hay. Both are coarse food articles, and to some extent competitive with each other, but they differ widely in the foregoing, and doubtless in some other respects as articles for transportation.

Still wider differences appear as between hay and potatoes and hay and apples. The value of a car of potatoes or apples is greater than that of a car of hay. The difference between potatoes and hay in this respect ranges well up with the difference in value as between grain and hay, and the value of a car of apples depends largely upon the variety and condition of the fruit, but it is generally largely in excess of the value of hay. The volume of the hay traffic is vastly greater than that of either potatoes or apples. Hay is a non-perishable and general agricultural product, while the potato is a staple vegetable food, and the apple a kind of hardy fruit; both are perishable commodities. In consuming markets potatoes and apples are merchandise articles very frequently retailed in small quantities to families, while hay is often sold by the ton or in larger lots, and never, or if so, but rarely, in less quantity than a bale.

Traffic moving in large volume generally takes lower classification and rates on that account. The Chairman of the Official Classification Committee testified that, as a rule, the classification is lower if the volume is greater. The greater volume of hay as compared with other articles is shown in preceding findings. Some further illustration of the relative amounts of tonnage furnished by the four commodities last mentioned, counting grain as one, is afforded by the Lake Shore table above given. The total gross revenue to the Lake Shore on the grain and hay traffic shown in that table was \$1,070,342.56 on grain and \$205,288.02 on hay, the grain tonnage was nearly ten times that of hay, and the rates on grain were greatly below the rates on hay. The total revenue on potatoes was \$34,362.08 as com-

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pared with \$205,288.02 for hay, and the hay tonnage was about 3½ times that of potatoes. The total revenue for apples was \$19,837.86 as against \$205,288.02 for hay, and the hay tonnage was about 9 times the tonnage of apples. Yet these three articles are all in class 5 of the classification.

Upon the copy of classification put in evidence numerous commodities in fifth class are marked, and it is testified by one of defendants' witnesses that all or nearly all of those articles furnish heavier loads and therefore produce greater revenue per car than hay does at fifth class rates. But this is not an exceptional condition. The same showing can be made as between some selected article and other articles in each of the six classes, and comparisons indicating differences in this respect may be as many as the number of articles differing from each other in bulk and in weight. It appears, on the other hand, from merely incidental examination of certain rate sheets, that a number of articles in fifth and sixth classes are given special rates and minimum carload weights under which they produce less revenue per car, on the haul from 100 per cent territory to New York, for example, than either fifth or sixth class rates applied to hay with a minimum of 20,000 pounds. Among these are such finer kinds of food products as cerealine, cream of maize, frumentum, maizeline, malt silver flake and quick malt, all taking the commodity rate on grain, and also bleach, and some kinds of woodenware. These are found in tariffs of the Pennsylvania System. Some lumber or wooden articles from Michigan points appearing in the Pere Marquette rate sheets are in the same category.

17. During most of the time since about the middle of 1899, the traffic coming to the defendant carriers has been so great as to call for the use of all their equipment, and at different periods these carriers have been unable to promptly move the freight requiring transportation. With practically all available cars pressed into service and their business demanding still more, they prefer the kinds of traffic which yield the greatest revenue; but when traffic is scarce and cars are idle they are anxious to secure freight of any description. The basis used by defendants in most of their comparisons is the revenue per car, but as before found in many cases this disregards the effect of distance, volume and resulting gross revenue. Numerous arti-

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cles in both classes 5 and 6 of the classification yield greater car revenue than hay between given points, but our attention has not been called to any article actually carried at either fifth or sixth class rates which affords the carriers greater total revenue, or which would do so if hay were carried at sixth class rates. There may be some, but we are unable to discover any from careful examination of the reported tonnage, the rates and the classification.

Any article can be carried at rates so low that, no matter how great the aggregate tonnage may be, the traffic would be unprofitable to the carrier. The further question then arises whether the cost of carrying hay as it is usually shipped is so great that it would under the application of sixth class rates burden other traffic with part of the cost of carriage legitimately pertaining to its movement. It is not understood that this is distinctly claimed by the defendants. A single sentence in defendants' brief (page 100) does state that the present hay rate is below the *average cost* of hauling freight, but the figures employed in that connection are all used in an endeavor to show that the average ton-mile freight rate is higher than the ton-mile rate on hay. Neither is there any direct proof that the average receipts per ton per mile received by the defendants from hay are below the average receipts per ton per mile received by them from all freight, and this cannot be shown in the absence of testimony indicating the average ton-mile rate on hay upon the defendant roads severally or collectively. The defendants use a distance from Chicago to New York of 1,012 miles and figure that at 30 cents per 100 pounds the rate per ton per mile on hay is slightly less than 6 mills, and they compare this with the average ton-mile rates reported by the roads for all freight carried over their lines, high or low, and whether carried a few miles or over the extreme length of line. No proper comparison of the kind can be made, nor can any accurate idea of the average rate per ton per mile actually received from hay be obtained by figuring the ton-mile rate upon a single ton and the rate in force between any two selected points. If we had before us the actual number of tons of hay carried one mile by the defendants and the gross revenue received by them therefrom, we could determine the average revenue per ton per mile received by those roads from hay. That

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is the basis upon which the average receipts per ton per mile for all freight is determined, and it is the only way of securing even an approximate statement of that character for any single commodity.

The average rates per ton per mile received by the defendants on all freight in the year ending June 30, 1901, ranged from 4.54 mills on the New York, Chicago & St. Louis and 4.89 mills on the Lake Shore, to 11.34 mills on the Boston & Maine and 14.79 mills on the New York, New Haven & Hartford.

Although we do not know the average for hay or any other single commodity, it is evident that with a ton-mile rate of 6 mills for so long a distance as that from Chicago to New York, and some approximate figure for other 100 per cent points in the Middle West, the average hay rate per ton per mile for all distances, short and long, was greater than the general average on those roads having a low general average ton-mile rate and less on those roads having a high general average ton-mile rate. Similar wide differences in average receipts per ton per mile are shown in those computed for the three groups wholly covered by Official Classification territory. The average ton-mile rates for such groups were, Group 1 (New England), 11.52 mills; Group 2 (New York, Pennsylvania, etc.), 6.13 mills; Group 3 (Ohio, Michigan, Indiana, etc.), 5.46 mills. The record contains statements showing rates per ton per mile on hay much higher than the rate per ton per mile from Chicago to New York, as follows:

From	To New York City.	
Clayton,	N. Y.	10.3 mills
Ogdensburg,	"	9.7 "
Richville,	"	10.1 "
Massena Springs,	"	9 "
Port Huron,	Mich.	7.3 "
Imlay City,	"	8.2 "
Pontiac,	"	7.59 "
Owosso,	"	7.73 "
Midland,	"	8.3 "
Emmett,	"	7.92 "
Gladwin,	"	8.78 "
Winchester,	Ind.	7.7 "
Fort Wayne,	"	7.07 "
Neoga,	Ill.	7.37 "

At the fifth class rate the rate per ton per mile over the Lake Shore, New York Central and Boston & Albany from Chi-  
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cago to Boston, for so great a distance as 1,038 miles, is 6.45 mills. These figures, however, show simply the rate per ton per mile for a single ton and are figured merely from rates and distances. The Lake Shore table, however, shows actual tonnage, distance and revenue expressed in averages for nine months in 1901. Computations made from the figures there given make the average rates per ton per mile upon the articles as follows: Hay, 6.85+ mills; apples, 6.02— mills; potatoes, 4.308— mills; grain, 2.914— mills. If at the above rate per ton per mile for hay that article was carried at a loss, then the other commodities were also carried at a loss to the carrier, but it will be noted that the hay rate per ton per mile and that for apples also was much greater than the reported average received by that company for all freight during the year 1900.

Comparison of average ton-mile rates based upon actual movement serves to show the relative earnings per mile, but cannot indicate the relative cost, and it is concededly impracticable to demonstrate with any degree of accuracy the cost to a railroad company in transporting any given commodity, or even that of all freight as distinguished from the cost of carrying on its passenger business. Railway classification and rates are not based upon cost of service. In a general way that element must have consideration, but commercial conditions, including characteristics of the traffic and the amount of probable gross and net revenue, are the really determining factors.

18. One reason given by defendants for the changes made in the classification of 1900, including hay and straw, is that there had been a pronounced increase in the prices of lumber and iron and other articles used in railway construction and maintenance, and also in the price of labor, and we find that about the year 1899 the cost of railroad material had increased considerably over the prices which prevailed in the years 1893 to 1897. Steel rails had become much more expensive, and the cost of cars had also increased. Since the early part of 1900 prices of rails and some of the other articles have increased and decreased to some extent. The wages paid to railway labor have also somewhat advanced since the panic years in the last decade, and the number of employees is much greater than it was in those years. Statistics compiled by the Treasury Department show the following range of prices in percentages in

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1887 and 1899, the prices in 1860 being taken at 100 per cent: Fuel and lighting, 88.6 per cent in 1887 and 90.8 per cent in 1899; metal and implements, 74.9 per cent in 1887 and 83.2 in 1899; lumber and building material, 126.5 per cent in 1887 and 94.1 in 1899. At the time of the hearing steel rails were \$28.00 per ton; prior to 1893 they were \$30.00 per ton. They could have been bought about the year 1898 for as low as \$17.00 or \$18.00.

These advanced prices for railroad material and greater general cost of operation were much more than equalled in effect by the tremendous increase of traffic which set in strongly during the year 1899, and which has continued since in nearly as great, if not greater, volume. Whatever exigency for greater revenue may have appeared to the defendants to exist sometime before the advance in January, 1900, in order to reach the scale of earnings or profits which the carriers obtained prior to June 30, 1893, has since disappeared, and if the roads in Official Classification territory had made no advance in classification in January, 1900, their increased aggregate earnings or profits would, we think it is safe to say, have equalled, if not exceeded, in 1900 or 1901, those they received in the most prosperous previous year. This plainly appears from reports of mileage and earnings in the aggregate and per mile of line. The average net earnings per mile of line in this territory, groups I, II and III, for the years ending June 30, 1890, to 1898, inclusive, was \$3,539; for the yearly period in 1899 it was \$3,643; for the fiscal year ending June 30, 1900, it was \$4,217, and the classification changes had been in force only during the latter part of that year. The fiscal year of greatest net earnings prior to 1899 was 1893, when such earnings amounted, in groups I, II and III, to \$185,691,581. In 1899 they were \$192,784,813. In 1900 they were \$225,694,310. These greatly increased net earnings have resulted not alone from increased business. Economies in operation from the use of larger and heavier equipment, both cars and engines, and improved roadbeds, amounting almost to reconstruction in some instances, have been and are still being practiced, and these are permanent improvements which will continue to promote the net earnings of the carriers.

In Official Classification territory the general class rates are,  
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as before found, substantially the same to-day between the west and the east, and practically the same between the various percentage territories and the east, as they were in 1887 or 1890, the changes made having occurred through changes in the classification or by making, changing or canceling commodity rates. Besides the advance in carload rates hereinbefore stated the classification of January 1, 1900, also advanced a large number of less than carload articles, and there were numerous cancellations of commodity rates. Just what happened in regard to commodity rates or what commodity rates were afterward restored or otherwise given does not appear. The record does show, however, that about 818 items were advanced to higher classes in the classification on that date, that six articles were reduced, that on March 10, 1900, certain other articles, how many is not stated, were reduced from the basis fixed on January 1 of that year, that the average net advance based upon the Chicago-New York rates was 21.2 per cent, and that all these advances were made by the carriers for the purpose of securing greater revenue. Hay, with a large tonnage apparently far in excess of that furnished by any of the other advanced articles, was increased about 20 per cent.

Up to 1900, the average rate per ton per mile in the United States tended to decrease during a long series of years. There were slight increases, but the general trend was downward. For the United States the average was 9.41 mills in 1890; 8.95 mills in 1891; 8.98 mills in 1892; 8.78 mills in 1893; 8.60 mills in 1894; 8.39 mills in 1895; 8.06 mills in 1896; 7.98 mills in 1897; 7.53 mills in 1898; 7.24 mills in 1899; 7.29 mills in 1900; 7.50 mills in 1901. The same general tendency existed in Groups I, II and III, all of which are embraced in Official Classification territory. Taking the defendants together, their net earnings for 1900 were much greater than those for 1899, and their net earnings for 1901 were in excess of those for 1900. The only defendant roads showing decreased net earnings in 1901 as compared with those for 1899 were the Delaware, Lackawanna & Western, Grand Rapids & Indiana and Lehigh Valley. Using round figures, the earnings of the Baltimore & Ohio and Baltimore & Ohio Southwestern, the two roads having been consolidated, increased between those years from 8 to 15 mil-

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lions, the Boston & Maine from 6 to 9 millions, Erie from 9 to 11 millions, Lake Shore from  $7\frac{3}{4}$  to nearly 10 millions, New York Central from 17 to 20 millions, Pennsylvania Company from  $6\frac{3}{4}$  to  $8\frac{1}{2}$  millions, Pennsylvania Railroad from 21 to over  $33\frac{1}{2}$  millions. Several of the others show increases of a million. For others, smaller differences are shown. The Pere Marquette, Canada Atlantic and Grand Trunk Railway of Canada are not considered in this statement of earnings because of substantial differences between reports of the Pere Marquette and its predecessor, the change occurring during the years mentioned, and because the Canada Atlantic filed no report with the Commission and reports are only filed for subsidiary lines in the Grand Trunk System.

Notwithstanding the large increases in traffic and earnings, the average rate per ton per mile was greater, and in some instances considerably greater, in 1901 than in 1899 on all the defendant lines except the Boston & Maine, Delaware, Lackawanna & Western, New York Central and New York, Chicago & St. Louis. The Baltimore & Ohio and Baltimore & Ohio Southwestern, Pere Marquette, Canada Atlantic, and Grand Trunk are not included in this statement.

Leaving out the Baltimore & Ohio Southwestern, Canada Atlantic, and Grand Trunk, all of the defendants paid interest on their funded debt, and all, including the Baltimore & Ohio, paid dividends upon common or preferred stock, or both, except the Ann Arbor, Central Vermont, Erie, Lehigh Valley, New York, Ontario & Western, Pennsylvania Co., Philadelphia & Reading, Toledo, St. Louis & Western, and Wabash. The Pennsylvania Company is allied with the Pennsylvania Railroad Company, which paid a six per cent dividend upon its stock. The number of defendant corporations reporting as having paid a dividend is 18. The Lake Shore dividends were 7 per cent on common stock and 10 per cent on preferred. The Boston & Albany paid  $8\frac{3}{4}$  per cent on its stock. The New York, New Haven & Hartford paid 8 per cent, the Boston & Maine 7 per cent on common and 6 per cent on preferred, the Delaware, Lackawanna & Western 7 per cent on common stock, the Delaware & Hudson 6 per cent on common stock, the New York Central and Central of New Jersey 5 per cent on their common stock, the Canadian Pacific 5 per cent on common and 4 per

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cent on preferred, the Cleveland, Cincinnati, Chicago & St. Louis  $3\frac{1}{2}$  percent on common and 5 and 6 per cent on preferred, the Baltimore & Ohio 4 per cent on common and preferred, the New York, Chicago & St. Louis 5 per cent on common and 2 per cent on preferred, the Pere Marquette 4 per cent on preferred, the Pittsburgh, Cincinnati, Chicago & St. Louis 4 per cent on preferred, and the Grand Rapids & Indiana 1 per cent on common. Compared with roads generally throughout the United States, these defendant roads are, with few exceptions, in fair to excellent financial condition, and several of the companies are extremely prosperous.

Counsel for defendants say in their brief that the dividends paid by railroads throughout the United States in 1901 (June 30), as shown by our Preliminary Report on Income Account for that fiscal year were less than for the fiscal year of 1900, and they ask why it was that with over 91 million dollars increase in gross earnings in 1901, that year resulted in less aggregate dividends than those paid in 1900. They say that if there is no mistake in the figures, it would appear that the average freight rate is so low that the railroads which can pay any dividends are decreasing in number. This statement of counsel and the argument based thereon are due to a misapprehension of the figures given in our Preliminary Report on Income Account for 1901. The dividends actually paid in that year were greater than those paid in 1900. That report was confined to returns made by operating roads. The dividends so reported amounted to \$121,108,637, as against \$108,210,652 paid in dividends by the same roads in 1900. The total dividends paid in 1900, including those of subsidiary lines, were \$139,597,972, and it is said at the end of the Preliminary Report on Income Account that if a corresponding payment of dividends by subsidiary lines be assumed for 1901, the total dividends in that year would exceed \$150,000,000. As shown in our report on Statistics of Railways, about to be issued for the year ending June 30, 1901, the total amount of dividends paid by railways in that year was \$156,735,784, an increase over 1900 of \$17,137,812.

19. The facts hereinbefore stated, taken together, warrant the further finding, and we find accordingly, that the action of defendants in advancing the classification and rates on hay

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and straw in carloads from sixth to fifth class on January 1, 1900, and their subsequent maintenance and enforcement of such advanced classification and rates resulted in undue and unreasonable prejudice and disadvantage and unjust discrimination against hay and straw and members of the complaining association, and generally against the localities, shippers and dealers participating in the production, shipment, sale, and consumption thereof; and that such action and the higher rates resulting therefrom were and are unreasonable.

#### CONCLUSIONS.

The record in this case consists of a great mass of testimony and exhibits, including the freight classification used in Official Classification territory, and many tables showing rates, tonnage, values, details of railway operation, earnings and traffic, and various other statistics, and as determination of the matter in issue depends upon the proper statement and decision of numerous material questions of fact, the findings herewith presented are necessarily more extended than those required in cases involving a narrower range of facts.

The advance in the classification of hay and straw on January 1, 1900, covered but two out of 818 items which were changed on that date from a lower to a higher class in the Official Classification. When notice of these impending changes was given in 1899, a large number of protests against them were filed with the Commission, and as a result a general investigation was ordered and held by the Commission on December 21 of that year. That investigation was general in character and had for its object the disclosure of the reasons which prompted the carriers to undertake such very considerable and unusual changes in freight classification and rates at that time. At such hearing, representatives of the complaining association appeared in opposition to the proposed changes. As throwing light upon the conditions then prevailing, it is not inappropriate to refer here to some passages contained in our Thirteenth and Fourteenth Annual Reports. After saying on page 6 of the Thirteenth Annual Report that it was matter of common knowledge that vast schemes of railway control were in process of consummation, and that the competition of rival lines would be restrained by these combinations, we stated that the remark-

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able increase in 1899 of the volume of railroad business had been so great, and to an extent so unexpected, that many carriers were not prepared for the unusual demands upon their facilities, that as a rule their equipment had been taxed to full capacity and often found inadequate for the service required, and that this had brought a substantial addition to the gross and net revenues of nearly every railroad in the country and greatly reduced the number of railway failures. We then referred in that report to the changes in the Official Classification, which were about to become effective, as follows:

“Coincident with these schemes of unified control, and while this exceptional movement of traffic continues, the carriers operating throughout an extensive and important territory have recently made substantial, and in many cases very large, increases in their scale of charges. These advances in rates have been mainly effected by concerted and agreed changes in the classification of freight articles by roads, both connecting and competing, which use the same classification and make the same a part of the tariffs filed by them under the law. Numerous articles have been taken from the class in which they were formerly placed and put in a higher class, to which a higher rate is applied, and many articles heretofore on the commodity list have been included in the classified traffic with the result of materially increasing the charges imposed thereon. Advances of rates in this manner have been made on hundreds of articles, many of which are necessities in general use and constantly moving from place to place in the process of distribution.”

In our Fourteenth Annual Report (1900), we discussed at some length these Official Classification changes and the results of the general investigation thereof in December, 1899. In regard to the question of greater revenue the Commission stated (page 17) that the “railway witnesses all agreed in this, that the moving and only purpose in the greater part of these changes was to obtain more revenue by advancing rates. There were two ways, they said, in which this could be accomplished: first, by increasing the rate *eo nomine*; second, by changing the classification, and the latter course was adopted.” And in the same connection the following appears on page 18: “Of course it is impossible to say what effect these advances in rate, which

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prevailed during the last half of the year 1900, may have had upon the result for the entire year, but when it is considered that gross receipts, and, therefore, net revenues, enormously increased during that year, it is evident that there is little in the claim that increased cost of operation justified these advances in rates."

Those statements in the annual reports of the Commission above mentioned are not contradicted by the evidence in this case. On the contrary, the facts found herein tend strongly to confirm the views there expressed in regard to defendants' need of further revenue. The action of defendants in changing rates by means of advancing a large number of freight articles in the classification was taken at a time when, notwithstanding increased prices of railroad material and some additional cost of operation, an unprecedented volume of trade and railroad traffic had become established, when there were no indications that such commercial prosperity would not continue for an indefinite period, and after they had successfully inaugurated and adopted operating economies, through the use of larger and heavier equipment and improvement of roadbeds, which served to decrease the percentage cost of operation. The evidence abundantly proves that they were not then nor at any subsequent period in any such financial condition as to call for the large advances which were made by them, through concerted action, to apply throughout the whole length and breadth of Official Classification territory. Some of the companies were and are in much better condition than others, but the action under consideration was taken by all and intended to have beneficial effect upon all through the increased profits accruing from general rate advances upon a great number of classified articles, including hay and straw.

Carriers are entitled under the Act to regulate commerce to determine for themselves what are proper rates in the first instance; but when they, as in this case, make numerous rate advances under the circumstances above shown, they cannot successfully plead the excuse of financial necessity in cases where the legality of such action as applied to any given commodity is challenged. The controlling question in such cases must be as to the reasonableness and justice of the partic-

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ular advance in classification and rate upon the facts shown in each case.

If it be assumed, however, that some valid reasons existed for increased revenues to the defendants, we are nevertheless dealing with a case where the relation of rates as between hay and straw and other commodities is a chief matter for consideration, and this involves the recognized legal duty of the carriers to so classify traffic and fix charges thereon that the burdens of transportation shall be reasonably and justly distributed among the articles they carry. *Page v. Delaware, L. & W. R. Co.* 6 I. C. C. Rep. 148, 4 Inters. Com. Rep. 525; *Myer v. Cleveland, C. C. & St. L. Ry. Co.* 9 I. C. C. Rep. 78. That is the governing principle of a freight classification, and it arises under the obligation imposed upon carriers by the statute not to charge unreasonable or unjust rates or to impose any unjust discrimination or undue prejudice in any respect whatsoever. It is evident therefore that even in cases where the need of additional revenue is apparent the carrier cannot arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.

If the defendant carriers had advanced all of their class rates, in case of complaint against the increased rate upon any particular article the reasonableness of such higher charge might well have been the principal question; but what these defendants did on January 1, 1900, was to increase the classification rating and consequently the rates upon numerous commodities selected by them from the classification, including hay and straw, and by such action they laid themselves open to the additional charge of having subjected such higher rated traffic and those interested in it to undue prejudice and unjust discrimination.

Proceeding now to the particular questions in this case, the first point for consideration is whether the advance in the classification and rates on hay and straw was reasonable. Hay and straw were always sixth class in the Official Classification, with a minimum of 20,000 pounds per carload up to January 1, 1900, with the exception of a few weeks in the early part of 1894, during which short period they were in fifth class with a minimum of 18,000 pounds; and while there is evidence show-

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ing that prior to 1894 shippers were unable to load the prescribed 20,000 pounds minimum into many of the cars then in use, that difficulty disappeared with the introduction of cars having greater capacity. To what extent the carriers were unable to supply suitable cars for loading 20,000 pounds of hay prior to 1894 does not appear, but the fact that they did not reduce the minimum carload between the years 1887 and 1894 indicates that even at that time the inability to load the required amount may have been confined to the older car equipment. In *Suffern, Hunt & Co. v. Indiana, D. & W. R. Co.* 7 I. C. C. Rep. 282, we said, speaking of minimum carload weights for grain, that it would manifestly be unjust, under any rule as to minimum loads or otherwise, to charge for weight not carried in a car which the carrier has furnished and in which on account of its size and the nature and bulk of the freight the required minimum cannot be loaded. There may of course be some exceptions to such a rule in cases where the freight is extremely light in weight in comparison with its bulk, and of such character as to forbid close packing, but it has proper application to general freight which is usually capable of being shipped in bulk or in bales or boxes.

The defendant carriers by keeping hay and straw in the sixth class and charging sixth class rates thereon for thirteen years or more, with the exception of the short period in 1894, were furnishing evidence that such classification and rates were reasonably high, and while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance of hay and straw to fifth class rates in January, 1900, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and subsequent years. Our ruling in *Holmes v. Southern Ry. Co.* 8 I. C. C. Rep. 561, decided in 1900, was to the same effect.

In 1891 we held, in *Florida R. Com. v. Savannah, F. & W. Ry.* 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688, that "carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increas-

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ing volume and of vital importance to a large section of country."

Hay is a staple food article of a kind known as raw agricultural product which is grown, shipped and consumed in all sections of Official Classification territory, and which furnishes the carriers in that territory with a steady and large volume of yearly tonnage. The traffic so provided by shipments of hay is profitable to these carriers at sixth class rates. Some other kinds of traffic furnish the defendants greater revenue per car at sixth class or even less rates, but, on the other hand, giving due weight to the large volume of hay, comparatively few articles furnish them with greater aggregate revenue. Straw, it is conceded, should be classified and rated the same as hay. One of the conclusions announced by the Commission in the Food Products Investigation of 1890 (4 I. C. C. Rep. 48, 3 Inters. Com. Rep. 93), has direct bearing in this case: "In the carriage of great staples, which supply an enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable." The carriers claim that hay costs them more to handle and transport than most other articles in either the fifth or sixth classes. Taking the traffic as a whole, we cannot sustain that contention, but if that should be the fact, the character, value, volume and use of this commodity are such as to require relatively low charges for its carriage.

The findings indicate that the advanced rates operated in some degree to divert shipments from parts of the Middle West to other than eastern destinations. Moreover, the cost of transportation to the shipper of hay from the Middle West to New York and other large eastern markets constitutes a large proportion of its value in such markets, and when added to the cost of baling and sale, the total approximates or largely exceeds the price realized by the producer. These increased rates added to the cost of hay and straw to consumers or diminished the price to the producer, or both, and prejudiced in some degree the business of the middleman, but the extent to which either of these classes has been injuriously affected by the advanced rates was not, and apparently could not, be shown. The advance in transportation cost is shown in the findings, and that

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greater cost is an additional burden placed upon those concerned in the production, sale, and consumption of hay and straw.

The effect of the advance in hay rates from American shipping points to New England and parts of the State of New York as compared with shipments from Canada to the same New England and New York points is fully stated in the findings. That advance interfered with a long-standing relation of charges from the two producing sections which operated to give an advantage to Canadian hay compared with the pre-existing situation, and such change in a long-existing rate adjustment was in favor of a producing section in an adjacent foreign country from which hay shipments into the United States are required by law to pay a duty as great as \$4.00 per ton.

The question of the reasonableness of the hay rates in this case also depends in large measure upon the relation of hay as a transportation commodity to other articles carried by the defendant companies, and it is this phase of the controversy, the proper classification of hay, and of straw likewise, to which the greater part of the record applies. This branch of the case, as before stated, involved the question of unlawful discrimination or prejudice.

The making of railroad tariffs is simplified by classifying the great number of articles commonly offered for transportation and fixing rates for the different classes instead of making a separate rate for each commodity. In a classification such as the Official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in the elements of character, use, value, volume, bulk, weight, risk and expense of handling, which have so often been referred to as governing conditions in freight classification. Besides these general considerations affecting classification, competition is often an important factor. Such competition includes not only that between carriers, but also that of a commodity produced in one section with the same commodity produced in another section, and sometimes the competition of one kind of traffic with another.

Necessarily many articles must appear together in a class which bear little relation to each other in all of these respects, though some may be of like character while differing in

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bulk or in value, others have similar bulk while varying largely as to weight or volume, and still others present similarity in one or more of the elements mentioned, but have no common relation as to others. The best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects.

As shown by the findings, hay, in the elements of character, use, value and volume, corresponds more nearly with articles taking sixth class or lower commodity rates than with those in fifth class. In the Southern and Western Classifications hay is classed with grain in the first, and even lower than grain in the second, though in the territory of the latter both hay and grain take commodity rates. Its value is low as compared with that of articles generally in defendants' fifth class.

As a raw agricultural product used for stock feeding it comes in competition to a certain extent with various kinds of grain and mill products, all of which, though nominally kept in the sixth class by the defendants, take commodity rates far below the rates named for that class. Even the finer and much more expensive kinds of grain products take the commodity rates provided for grain and ordinary grain products. Of the other food articles which now take fifth class rates under defendants' classification nearly all have greater value than hay, and with few exceptions are merchandise or grocery articles, used as food for man, and, as a rule, sold at retail to consumers in small quantities. Many wooden articles in the rough, though classed as sixth class with lumber, are given such commodity rates as are applied by defendants upon lumber, yet hay, a coarse food product, is rated higher than any other kind of staple food except potatoes and higher than many of the finer kinds of food products. The list of other carload articles advanced by defendants from sixth to fifth class and not afterwards restored by them to sixth class, and which is given in the tenth finding, contains no article which is comparable with hay in either character, volume of the traffic, value, or use in any striking sense. We are also unable to discover any single article actually taking fifth or sixth class rates over the defendant lines which fur-

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nishes them with an aggregate tonnage equal to that of hay. Apparently all commodities which come to the defendant carriers in an aggregate volume equal to or exceeding that of hay are given commodity rates. The tonnage of hay originating in Official Classification territory is greater than that of any other product of agriculture except grain, and fruits and vegetables, both of which terms include a number of distinct products.

A contention strongly urged by the defendants is based upon the greater bulk and less weight of hay as compared with grain and various other commodities. The points of dissimilarity as between hay and grain and some other articles are fully noted in the findings. Grain loads so much heavier per car than hay does that when transported between two given points at present rates, hay gives the carriers less revenue per car; but the findings furnish a useful illustration, based upon the Lake Shore traffic for a period of nine months, which indicates that taking all the hay as it is received by the carrier at many different points and carried over varying distances to numerous destinations, and taking all the grain traffic in the same way, the revenue per car per mile was greater for the Lake Shore and Michigan Southern, and possibly greater for other defendant lines, upon hay than upon grain. The record does not show what the actual fact was as to the other defendant roads, and it is to be regretted that similar complete tables were not furnished for those lines. Several of them did furnish statistics showing the number of cars, tonnage per car and average revenue per car, but without the average distance haul for each of the commodities compared they were obviously defective. A car of hay may yield greater revenue per car per mile than a car containing some other commodity because of its carriage over a shorter distance at a higher rate, and a car of grain, though carried a longer distance, may yield less revenue per mile than a car of hay because of its transportation at a much lower rate. It does not follow, therefore, that the difference between the revenues per car afforded by hay and some other commodity when shipped between specified points will be maintained as to all traffic in both articles, the local carried at local rates as well as the through traffic over joint lines carried by each at a share of the through rate. The rate per car per mile between two given

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points may, for example, be greater upon grain than upon hay, but the average rate per car per mile, which includes all traffic in the commodities compared, may at the same time be nearly as great upon hay as upon grain, or it may even be greater upon hay than upon grain.

Nevertheless, in view of the usual practice of loading grain to the capacity of the car and the greater bulk as compared to weight of hay, which limits the loading of that commodity as a rule to a small excess above the prescribed minimum, and the probability that hay is handled by the carrier at some greater cost than it handles grain, we think, upon the whole, that from the standpoint of the carrier hay as an article of traffic is somewhat less profitable than grain. But rates cannot be adjusted in exact mathematical relation. Though hay may be less desirable than grain as an article of traffic, it is vastly more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities taking fifth or even sixth class rates over the defendant lines.

Some claim was made on behalf of defendants that with hay at fifth class rates the carriers would be more likely to promptly furnish cars for its movement than they would be in case of its restoration to the sixth class. If, as matter of justice, hay should take sixth instead of fifth class rates, the furnishing of a fair proportion of cars for its transportation at such rates becomes a legal duty devolving upon the carriers which they would not be at liberty to disregard.

After giving full and careful consideration to all of the facts and circumstances, and the arguments of counsel in this case, we are of the opinion that the defendants are mistaken in believing that hay and straw were improperly classified and carried by them as sixth class freight, and that their action on January 1, 1900, whereby those commodities were raised to fifth class and thereafter charged fifth class rates was unreasonable and unjust, and resulted in unlawful discrimination and prejudice against hay and straw, localities in Official Classification territory wherein those commodities are produced, and against producers, shippers, dealers, and consumers of such articles in that section of the country. An order in conformity with these conclusions will be entered and served.

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