

No. 692.

PLANTERS' COMPRESS COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; ERIE RAILROAD COMPANY; BOSTON & MAINE RAILROAD; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; WABASH RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY, and V. T. MALOTT, Receiver thereof; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; SOUTHERN RAILWAY COMPANY; and ILLINOIS CENTRAL RAILROAD COMPANY.

Decided October 19, 1905.

Cotton is transported by defendants and carriers generally at the same rate per hundred pounds, whether shipments are made by the carload or in less quantities. The usual shipment weighs about 25,000 pounds, when the common method of square-bale compression is used, though considerably greater weight may be loaded in the ordinary car. The round-bale process permits the shipment of 45,000 pounds or more per car, and complainant seeks a ruling which would in effect require one rate on cotton as ordinarily loaded and a lower rate based upon a carload minimum of 45,000 pounds or more. The reasonableness of the defendants' rates as applied to all cotton is not questioned, and

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the sole object of this proceeding is a carload differential based upon a high carload minimum, which could not be complied with by shippers using the square-bale process without considerable difficulty and greater expense. The cotton grower would benefit by a general reduction of cotton rates, but no advantage would result to either the cotton grower or the middleman from such a differential, and complainant's proposal would not advance the interests of the public. After considering all the conditions and circumstances, including the effect of the proposed differential upon carriers from producing territory as well as the defendants, *Held*:

1. No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification.

2. If the rate on an article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per hundred pounds, particularly when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons.

3. While carriers may lawfully establish carload and less than carload rates on cotton, with a reasonable difference between the two rates and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum.

4. Defendants' refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation of the regulating statute.

Felix Rackemann, William Burry and F. S. Goodwin for complainant.

Ed Baxter for Illinois Central Railroad Company; Nashville, Chattanooga & St. Louis Railway Company; and Southern Railway Company.

S. O. Bayless for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Claudian B. Northrop for Southern Railway Company.

A. J. McLaurin and J. C. Longstreet for Mississippi Compress Association.

J. B. Daish for National Hay Association.

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Sullivan & Cromwell submitted brief for successors of American Cotton Company.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman*:

The general subject of inquiry in this case is the rates on cotton, the complaint arising out of different modes of preparing that article for transportation. While the investigation has taken a wide range and developed many matters of interest relating to the production, handling and carriage of cotton, a considerable part of the testimony seems to have little relevancy to the question to be determined. The nature of that question and the facts which are deemed material will appear from the following statement:

The complainant is a corporation organized under the laws of Maine, succeeding a prior corporation existing under the laws of West Virginia. It is the owner of a patented device for baling cotton and is incidentally engaged to some extent in the business of buying and shipping that commodity. The defendants are common carriers operating lines of railway from East St. Louis and other points to the eastern states and Atlantic seaports, and as such are subject to the Act to regulate commerce. The interveners are a number of corporations, members of the Mississippi Compress Association, carrying on the business of compressing cotton at various points in that state. Upon petition filed for that purpose they were allowed to intervene in opposition to the relief sought by complainant. After the case was heard and submitted, the successors of the American Cotton Company, who appear to have acquired the patents formerly belonging to that company covering round-lap bale compresses, were granted leave to present an argument in support of complainant's contention, and the brief subsequently filed by their counsel has been carefully considered.

Cotton is one of the principal products of the United States, the average crop now exceeding 10,000,000 bales each weighing approximately 500 pounds. The section of country in which it is grown is confined to the South Atlantic and South Central

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states which are said to yield about 80 per cent of the world's yearly output. Cotton is perhaps the only great agricultural product no part of which is consumed on the farm or plantation where it is raised. It all moves from the points of origin to the mills where it is manufactured. These mills are located for the most part at long distances from the cotton fields and to a large extent in foreign countries. It appears that more than half of the entire crop is exported. For these and other reasons the conditions under which cotton is transported and the rates charged for carrying it to destination are matters of great importance.

In picking cotton the seed are removed as well as the lint, the former weighing perhaps twice as much as the latter. The first operation is to separate the seed from the lint, and this is done by the process known as ginning. Formerly, and to a great extent at present, a gin plant was erected on every large plantation or in every cotton growing neighborhood within easy access of the producer. The number of such plants appears to be upwards of 29,000. Connected with each gin plant is a relatively cheap and sometimes crude mechanism by which the lint when separated from the seed is reduced in bulk and made into bales about 54 to 58 inches in length 24 to 28 in width and 28 to 36 in thickness, and weighing about 500 pounds. This is known as the flat or plantation bale. The machinery by which it is produced is not expensive, the cost ranging from \$1,000 or less to perhaps \$2,500. The testimony indicates that with the development of railroad facilities in the cotton districts and for other reasons which need not be mentioned, the later tendency is to locate these gin plants at the railway stations or in the country villages instead of on the plantations, and to use more improved and expensive machinery, so that a modern outfit of this kind may cost as much as \$10,000. It also appears that ginning is now largely done for hire, rather than by the actual cotton grower, the bagging, usually of burlaps, in which the cotton is placed, being sometimes furnished by the planter and sometimes by the proprietor of the gin.

The density of the flat or plantation bale is about 12 1/2 pounds to the cubic foot, and 25 such bales, weighing some 12,500
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pounds, are about as many as can be readily placed in a standard box car. This form of bale is quite bulky and otherwise unsuited to long distance transportation. It becomes therefore practically necessary to further compress the greater part of the cotton, and for this purpose the plantation bale is taken from the gin where it is made, sometimes by wagon but generally by rail, to some point more or less remote where its bulk is greatly reduced by the use of powerful and expensive machinery and the condensed bale more securely fastened. The plant employed to perform this operation is called a compress, and the process of reducing the size of the plantation bale is the process commonly spoken of as compression. The machinery alone for such a plant costs from \$20,000 to \$25,000, and the entire compress plant, including the land, building, etc., costs on the average according to the testimony something like \$50,000. Some of them cost more than twice that sum, but the figure named is believed to be a fair estimate. There appear to be about 240 of these compress plants located at various points in the cotton growing sections and representing an aggregate investment of not less than \$12,000,000.

When the plantation bale is subjected to the great pressure of the compress, it is reduced for the time being to a density of some 60 pounds or more to the cubic foot. While under this heavy pressure bands are placed around the bale for the purpose of holding it, but when the pressure is removed the bale expands so that its density becomes about 23 pounds per cubic foot or perhaps a little less. This forms the ordinary commercial or "square" bale as it is prepared for shipment and sold in the markets. It has the same length and width as the plantation bale and a little more than half the thickness. The usual method of loading these bales is to place them on end in the car, and this appears to be the cheapest and most convenient form of loading. It is also said to be the most convenient and inexpensive form for unloading. In this way fifty bales are easily placed in a standard car, their aggregate weight including the bagging being in the neighborhood of 25,000 pounds. In other words, the compressed bale, though of the same weight as the plantation bale, occupies only half as much space and, therefore, twice as many can be loaded in a given car. The weight of such a load is of course much below the

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carrying capacity of the car which may be 60,000 pounds or more.

The testimony shows, however, that a much greater weight of square-bale cotton can be loaded in a standard car. Instances were cited where cars had been loaded with a hundred or more square bales weighing in the aggregate upwards of 50,000 pounds. By placing the square bales on their sides instead of on end and piling them up to about the full space of the car, it seems that loadings approaching carrying capacity can be made, though only at considerably increased expense. Since in the ordinary process of compression the cotton is reduced to a high degree of density for the brief space of time during which the power is applied, it is obvious that if securely tied while in that condition the square bale would have sufficient density to permit full weight loadings. But, as above stated, the methods of tying the cotton while under this extreme pressure as usually practiced are such that when the pressure is removed the bales expand until their density is only about $22\frac{1}{2}$ or 23 pounds to the cubic foot. Various methods have been used to prevent this expansion, at least in part, and so produce a bale of greater density. These methods seem to be practicable, though of varying utility, but they all involve increased expense. Among them is the Gadget process, so called, an attachment by which wires are drawn tightly around the bale and twisted while the cotton is held between the jaws of the compress. By this method a density of perhaps 30 to 35 pounds is retained, and bales of that density and consequently smaller size would apparently permit car loadings of 40,000 pounds and upwards. To what extent the Gadget attachment is in actual use is not disclosed by the testimony.

The greater expense of baling cotton by this and other similar methods is caused in a variety of ways but mainly, as it seems, by the greater time required to perform the operation. Ordinarily it is said that from 50 to 100 bales and even more can be turned out in an hour by the usual process, whereas perhaps not half that number can be prepared when devices of the character here referred to are employed. In short, while it is possible by special pains and effort to put as much as 50,000 pounds of square cotton in a standard car, and while it is practicable to

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load to about that weight by the use of certain appliances for increasing the density of the bales, all of which add materially to the cost of compression and loading, the general fact appears to be that square-bale cotton as usually compressed does not conveniently load more than about 25,000 or 26,000 pounds. It should be stated, however, that there is considerable difference in the size and shape of square bales produced in different localities and by different compresses of the same general type. This may be due in a measure to differences in the quality or condition of the cotton but is mainly caused, as we understand, by greater care in some cases in tying the bales while the pressure is applied. Possibly the varying circumstances of the ownership of the compress plants furnish some explanation of the variations in density and form of the compressed bales. In the territory west of the Mississippi river and in the Mississippi valley region the carriers have nothing to do with the compress operations, while in the easterly and southeasterly portions of the cotton belt the carriers are more or less interested in the compress plants and perhaps to a limited extent do their own compressing. Whatever the reason, it seems to be the fact that in the last-named territory the compressed bales are of somewhat greater density and more uniform size, with the result that car loadings of 30,000 pounds and upwards are frequent if not usual.

In this connection it may be noted that the ordinary square-bale compression is designed to comply with the rules of the port shipping associations which call for a density of $22\frac{1}{2}$ pounds per cubic foot. As a large part of the cotton is exported, and as the above stated density meets the requirements of ocean carriage, it was natural that the same density should become the standard for rail transportation. It was equally natural that the mechanism which produced the standard density at the lowest cost should be extensively employed, and this appears to be the ordinary square-bale compress.

The foregoing briefly describes the methods of compression now in general use and applied to probably ninety per cent or more of the cotton, not including the comparatively small portion which moves, mostly for short distances, in the plantation or uncompressed form.

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The device or process employed by complainant for compressing cotton is altogether different. This is the invention of one George A. Lowry, and by its use a cylindrical bale is produced which is known as a "round" bale or "Lowry" bale. Without attempting an accurate description of the process, it is sufficient to say that the lint cotton in its fluffy condition as it comes from the gin is fed into a hopper at the top of the machine and there passed through slots which arrange the lint on a revolving column of cotton beneath, this revolving column of cotton being held up against the head-plate with such pressure that the cotton is compressed as it goes down through the slots and remains compressed until the entire bale is formed. The cotton is not squeezed together, as is the case in square-bale compression, and therefore the bale made in this way retains its shape and density without expansion. It has a density of 45 to 47 pounds per cubic foot and weighs about 250 pounds. The diameter of such a bale is about 18 inches, perhaps a trifle more, and its length from 36 to 38 inches. Compared with the power compress it is an inexpensive machine, costing from \$3,500 to \$4,000. It is designed to be and is in fact installed and used in connection with the gin, in much the same manner as the mechanism used for producing the flat or plantation bale. Its speed is from 8 to 10 bales an hour. By this process or device there is produced at the gin, where the seed is separated from the lint, a bale of high density and complete in every respect for transportation from that point to final destination. Having approximately twice the density of the square bale, it follows that the space occupied is only about half as great and consequently it is entirely feasible to put in a given car twice as many pounds of round-bale cotton as of square-bale cotton, as the latter is commonly loaded. In short, a given quantity of cotton in round bales can be transported in half the number of cars ordinarily used for transporting it in the square-bale form. Indeed, the testimony shows and it appears to be the fact that cars can be loaded with Lowry cotton without difficulty to ten per cent above marked capacity, or to the full limit allowed by the carriers.

The above described round-bale device is covered by letters patent which are owned by complainant and which appear to
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have a number of years yet to run. The complainant therefore enjoys, and rightfully, a monopoly of this particular process and can dictate the terms upon which it may be used during the lifetime of the patents. This round-bale machine is sold or leased by complainant at the option of the ginner. On a sale outright the price is understood to be \$3,500, and leases are made upon a corresponding basis. It is not suggested in any quarter that these are unreasonable terms, but obviously the complainant will be at liberty until the expiration of the patents to advance the price or vary the terms as may seem to be for its interest. In other words, the public will not have, for some years at least, the benefit of competition in furnishing machinery for baling cotton by the Lowry process.

To some extent the complainant has bought and sold Lowry cotton, but it has confessedly engaged in that business not for the direct profit obtainable therefrom but solely to introduce the round-bale process and promote its adoption. The amount of such cotton handled during the season of 1901-02—the season beginning the first of September—was 238,000 bales; in 1902-03, 473,000 bales; in 1903-04 260,000 bales. The volume of its dealings during the present season is not indicated by the record. It does not distinctly appear whether any considerable quantity of cotton, in addition to that purchased by complainant, is baled by the Lowry method but we infer from the testimony that the amount is comparatively small.

There are a number of other methods of producing a round or cylindrical bale in connection with the operation of ginning. Of these the only one which appears to be much in use is owned or was owned by the American Cotton Company. This device makes a bale by arranging the lint cotton as it comes from the gin in the form of a lap, like a piece of carpet, and then rolling up the lap into a bale under pressure applied by two rollers. The bale thus produced weighs about 250 pounds and has a density of 30 to 33 pounds per cubic foot. Bales of this description readily provide a loading of 40,000 to 45,000 pounds in a standard box car. The American Cotton Company appears to be the principal rival of complainant in exploiting the round bale process, as the latter's president stated that they were in competi-

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tion "at all points throughout the south." Neither the cost of compression by the American Cotton Company's method nor the terms upon which its machines may be obtained were disclosed at the hearing, but it is understood to be a patented process controlled by that company or its successors.

There was a good deal of testimony as to the relative cost of baling cotton by the square-bale and Lowry methods respectively, and as to the relative desirability to the producer and the consumer of these different modes of compression. As to the matter of expense the general fact appears to be that the cost of compressing a given quantity of cotton into round bales is materially greater than the cost of putting it into square bales. In other words, having regard to the cost of machinery and operation, the round-bale process is considerably more expensive than the other. As to the comparative utility of the two methods the evidence is quite conflicting. The complainant insists that the round bale is much better suited to transportation, that it requires less weight and cost of bagging, that it practically prevents the introduction of foreign substances into the bale and that it is superior in other respects. The interveners on the other hand claim that cotton may be injured by the round-bale process, either because the great density damages the fiber or because the cotton deteriorates if subjected to such heavy pressure while in the green or oily state in which it is ginned. They also contend that the square-bale method is better suited to the nature of the cotton industry and operates to the advantage of the cotton producer. It is not perceived that the former claim is material. Whether the one process is better or worse than the other as respects the condition of the cotton when it reaches the consumer is a matter of private concern which does not affect the public obligations of the carrier.

These differences of method are radical and involve diverse results in the handling of cotton. Under the square-bale system it becomes necessary to transfer the plantation bale from the gin to some point where a compress plant is located. Mainly because of their great cost and partly perhaps for other reasons, the number of such plants is comparatively small and in consequence the business of compressing cotton by this method is

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highly concentrated. On the other hand, the round-bale device produces a finished bale at the place where the ginning operation is performed. As the ginning points are very numerous it is evident that the round-bale system would greatly diffuse the compression industry. By one system the entire volume of cotton would be compressed at perhaps not more than 240 compress points; by the other system it would be scattered through thousands of different localities. Generally speaking, the diffusion of an industry is regarded as a social and economic advantage. In the case of cotton, however, the benefits of diffusion are more or less offset, or seem so to be, by a somewhat exceptional feature. The cotton produced in each neighborhood and indeed on each plantation is of various distinguishable grades or qualities, the number of which appears surprisingly large. The average consumer, however, ordinarily wants only a single grade, or at most a very few grades, depending upon the particular kind of goods which he manufactures. As a practical matter, therefore, it becomes necessary to assemble a large quantity of cotton at some convenient place where it can be classified or separated into grades to meet the varying requirements of the trade. This needful classification of the cotton is now effected, for the most part if not altogether, at the places where the cotton is compressed into square bales, for at each of those places the product of quite a large territory is brought together and the opportunity thereby afforded for dividing it into different grades. In short, the compress point becomes a classification point, and thus the necessary assembling of large masses of cotton for the purposes of grading is provided for by the concentration required for compressing cotton by the square-bale process. The square-bale method, therefore, is less wanting in economy of time and labor than would at first be supposed because it seems to fit in with a peculiarity of the cotton business for which provision needs to be made. It may not be as scientific or suitable as the round-bale process but it appears to accommodate in large measure an important condition of the cotton industry.

To this may be added a further word respecting the relative cost of the two methods, because the direct and indirect expense of preparing the cotton for market falls ultimately upon the pro-

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ducer. It is quite true that a Lowry machine costs perhaps not more than one twentieth as much as a modern square-bale compress plant; but on the other hand, since the Lowry process requires a machine in connection with every gin, the number of machines necessary to compress a crop of cotton would be extremely large. For example, the complainant's president testified that in the state of Texas there are only 68 square compresses, whereas it would require 4,000 Lowry machines to compress the present cotton output of that state. Obviously, on any such basis as that, the general substitution of the round-bale process would involve an expenditure several times greater than the present aggregate investment in square compress plants.

The rates applied to the carriage of cotton have been, almost without exception, by the hundred pounds without regard to quantity, and they appear to be everywhere on that basis at the present time. That is, there are no carload and less than carload rates on this commodity. In most if not all cases there is a rate on uncompressed cotton, meaning thereby the flat or plantation bale, and a lower rate on compressed cotton, meaning thereby the ordinary square bale of commerce. It is somewhat inaccurate, however, to describe the rate on compressed cotton as a "lower rate" than is applied to uncompressed cotton. In other words, the difference between such rates does not exactly correspond to the customary relations between carload and less than carload rates. In point of fact the rate is generally made on uncompressed cotton and out of that rate a fixed allowance is made for compression, usually at the carrier's option. The amount thus allowed is different in different districts. In the Mississippi valley, for example, the allowance is invariably 10 cents per hundred pounds without regard to destination; in the more easterly districts it is less, sometimes as low as 6 cents. Moreover, in the latter territory the allowance is not always the same but may be smaller when the cotton is shipped to nearby mills or ports and larger when it is shipped to more remote points of consumption or export. Such varying allowances, however, are unlike the differences between carload and less than carload rates because the larger allowance appears to be accorded not for reasons of economy but from circumstances of competition.

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Indeed, the carriers assert, and to a considerable extent at least it seems to be the case, that the allowance for compression had its origin mainly in competitive conditions rather than in the reduced cost of transportation resulting from heavier loadings of the compressed article. In numerous instances at the present time the allowance is not made, except for competitive reasons, where the distances are comparatively short. In other words, there are many cases where the carrier finds it more profitable to transport the uncompressed cotton at the uncompressed rate than to make the customary allowance for compression. In such cases no allowance appears to be made unless for the purpose of meeting competition.

There is an apparent exception to the general statement above made. The rates from East St. Louis to the North Atlantic seaboard, which are the special subject of complaint in this proceeding, are not in terms made on the theory of an allowance for compression. For example, the rate on uncompressed cotton to New York is 42½ cents and the rate on compressed cotton 30 cents. While this difference is greater than the compression allowance in southern territory it is understood to equal the prevailing compression charge at East St. Louis and in the territory west of the Mississippi river. However, any distinction in the form of the tariffs is quite unimportant, because the uncompressed rate appears to be always 12½ cents higher than the compressed rate without regard to destination. It is even more unimportant for the further reason that practically no uncompressed cotton moves from East St. Louis. The 42½-cent rate is therefore virtually a paper rate, since any traffic moving under it is insignificant.

As a reason for not making carload and less than carload rates it is said that commercial conditions render such a distinction unnecessary. In the purchase and sale of cotton the ordinary unit is a hundred bales. There are occasional transactions in fifty bale lots, and perhaps a few in twenty-five bale lots, but the great bulk of the cotton is bought and sold in hundred bale lots or multiples of that number. This being so, it rarely happens that a shipment is offered of less than fifty bales, or an ordinary carload of square cotton, while most shipments involve the use of two or more cars. In other words, the requirements of the

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trade and the circumstances under which cotton is handled operate to bring about, as experience shows, the practical equivalent of a carload minimum of about 25,000 or 26,000 pounds. Therefore, as the cotton moves for the most part in carload quantities there is no occasion for a difference between carload and less than carload rates. This claim is supported in a general way by statements produced at the hearing of actual loadings from a representative shipping point. While these statements show considerable variations, they indicate that the ordinary loading approximates fifty square bales and that the application of carload and less than carload rates to compressed cotton, the carload minimum being, say, 25,000 pounds, would result in no material change from present loadings. It follows that a requirement to that effect, if it were desirable to enforce it, could be readily complied with by square-bale shippers.

A further reason for the same rates on any quantity is found in the offerings of uncompressed cotton at the country stations and its movement to the compress points. Not only does the size of the plantation bale limit the loadings to about 25 bales, but the amount of such cotton delivered at many of the country stations from day to day is so small that shipments to the compress would be more or less delayed if materially heavier loadings were required as the condition upon which carload rates could be obtained. As a practical matter, therefore, the application of carload and less than carload rates would have to be limited to the compressed cotton; and this would apparently interfere with the long-established practice of making through rates from the point where the cotton originates. In short, a carload rule would widely disturb existing conditions and involve a general readjustment of cotton rates.

For the most part if not altogether the rates on cotton apply from points of origin regardless of the place of compression. The rate actually paid is the through rate from the point where the cotton is ginned or the plantation bale first loaded, though it may move to the compress point on a local rate. In such case, however, the amount paid for taking the cotton to the compress is credited on the through rate from origin to destination when the cotton is shipped out from the compress point.

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The steamships carrying export cotton accord lower rates on the round-bale article. This is because its greater density permits a greater weight to be loaded in the same space, and perhaps to some extent because it is easier to handle. In the nature of the case vessel rates are based largely upon space occupied, because the capacity of a vessel is fixed and limited, whereas the capacity of a railroad is practically indefinite to the extent of available equipment. From the Gulf ports the foreign rate on round-bale cotton appears to be about two-thirds the rate on square-bale cotton. For example, if the rate on square cotton is 36 cents from Galveston to a foreign destination, the round-bale rate to the same place would be 24 cents. It appears, however, that coastwise steamers from Gulf ports and South Atlantic ports to North Atlantic ports make no difference in rates between round-bale and square-bale cotton. From North Atlantic ports to foreign destinations the ocean rate on round bales is about three-fourths the square-bale rate. That is to say, when the rate from Boston is 12 cents on square cotton, the rate on round cotton would be 9 cents. It also appears that round-bale cotton gets a somewhat more favorable rate of insurance.

During a period of about two years beginning with the cotton season of 1900, as we understand, it appears that complainant was allowed a lower rate on shipments of round-bale cotton from East St. Louis to the North Atlantic seaboard, both on cotton for export and that for domestic consumption in the New England mills. No tariff establishing such lower rates was published or filed. The rate actually paid by complainant was 10 cents less than the published tariff, on both domestic and export cotton, and this lower rate seems to have been accepted by all the roads leading from East St. Louis to New York and New England points, except the Pennsylvania system which refused to make any concession. There was rather sharp dispute as to whether the tariff rate was charged in the first instance and the 10 cents afterwards refunded, or whether the shipper simply paid the lower rate. The testimony indicates that the greater portion of the cotton carried at the reduced rate was exported, and in such cases the complainant appears to have paid only 20 cents as the inland portion of a through rate to the foreign des-

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tion. On domestic shipments to New England points it would seem that the tariff rate was paid, at least in some instances, and 10 cents per hundred thereafter refunded. This was manifestly unlawful and known to be so by both parties to the transaction. The complainant was perfectly aware that no tariff authorized the rate which it received, and the carriers in granting the concession acted in plain violation of law. The refunding of a part of the tariff rate, when that occurred, was not the honest return of an overcharge but simply and purely the payment of a rebate. In this proceeding, however, neither the form of the transaction nor its illegal character need to be considered, but the fact that round-bale cotton was carried for about two years from East St. Louis to the North Atlantic seaboard on a 20-cent basis may properly be taken into account. To what extent concessions were made during the same period on square-bale cotton does not appear, but enough was stated by a witness for complainant to show that less than tariff rates were paid during the same period on more or less of the square-bale shipments. The rebates on square-bale cotton were probably not as great nor as generally allowed as on complainant's shipments; but the difference in actual rates, in many cases if not generally, was materially less than the difference between 20 cents and the rate named in the tariff.

After this lower rate had been allowed for about two years, as above stated, the carriers refused to continue the concession and declared their intention to exact the full tariff rate. Thereupon a suit was brought by this complainant against the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, one of the defendants herein, to enjoin the charging of a higher rate than had been accorded during the period mentioned, and in that suit a temporary injunction was granted. A motion to vacate this injunction was denied and the injunction continued pending the trial of the cause, on condition that complainant give a bond to pay the increased charges if it failed in the suit. Such bond was given but the testimony shows that the complainant has not since tendered any shipments of cotton to that company. The case has not been tried on the merits.

The foregoing appear to be the principal facts relating to the
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question to be determined, but some further facts will be stated and inferences drawn as we proceed to examine the complainant's demand and the grounds upon which it is urged. Briefly stated, the defendants are charged with imposing unreasonable rates on round-bale cotton which readily loads 45,000 pounds or more, because they have for years and do now carry at the same rate square-bale cotton which ordinarily loads only about half as much. It is conceded that round-bale cotton as such is not entitled to more favorable rates and therefore the demand in form is that any cotton in carloads of 45,000 pounds and upwards shall be accorded lower rates than are or may be applied when cars are less heavily loaded. This demand is based mainly on the reduced cost and consequently greater profit to the carrier resulting from heavier loadings. Other facts relied upon to support the contention are the lower rates at which complainant's cotton was carried by certain of the defendants during the period above mentioned, the differential allowed on ocean shipments of round-bale cotton to foreign destinations and the greater expense of compressing cotton by the round-bale process. The complainant's case has been presented with great ability and is entitled to serious consideration.

It will be observed that the defendants, with two exceptions, are carriers having lines between East St. Louis and the North Atlantic seaboard, and it is against those carriers that the complaint is specifically directed. No cotton originates on any of those lines nor are they concerned in the methods by which it is collected and handled at the points of origin. They receive the cotton in carload quantities for the most part and transport it to the East for domestic consumption and for export. If the question raised could properly be confined to the defendants in this proceeding the complainant's argument would be more plausible. We are of the opinion, however, that the case should be more broadly considered and that we should take into account the effect of the ruling sought upon other lines and routes and the general conditions of the cotton industry.

As already stated, the rates on cotton are uniformly made and have been for a long time by the hundred pounds without regard to quantity, that is, without any difference between carload and

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less than carload shipments. Now, it seems evident that complainant's demand could not be complied with, as a practical matter, without departing from this long standing custom and establishing some minimum quantity or weight of car loading which should receive a lower rate. The propriety of such a change and its probable effect are involved in the question to be decided. The carriers apply rates on cotton in any quantity, whether square bales or round bales, making the same rates and the same allowances for compression in one case as in the other, and they refuse to allow lower rates based upon car loadings. Is such refusal a violation of law?

It would seem that a lower car-load rate is in the nature of a premium for heavy loading. Certain rates are established which apply on smaller shipments and lower rates accorded when a given quantity or weight of an article is placed in a single car. In effect the car-load rate is granted upon a condition in respect of loading. The minimum amount which thus secures the lower carload rate is usually not more than half and frequently less than half the weight-carrying capacity of the car provided. For bulky articles the minimum is often determined by the space capacity of the car, but so far as weight is concerned the minimum is ordinarily very much below carrying capacity. To this general rule there appear to be a few exceptions, the most notable perhaps being grain and grain products which sometimes though not generally have a minimum of car capacity or nearly that amount. In such cases, however, where the usual minimum is greatly increased, it does not follow that there is a corresponding reduction of the rate *on that account*. The usual carload rate is not applied to the usual minimum and then a lower rate provided for loadings to the increased minimum, but rather the carload rate is applied only to the increased minimum loading. In other words, the exceptions to the general rule may be regarded as instances of more favorable carload rates but on less favorable conditions than are ordinarily imposed. Moreover, in the case of grain and grain products, when car capacity or other exceptionally high minimum is fixed for carload rates, the condition imposed can be complied with by all shippers, or at least by one shipper as well as another. In 11 I. C. C. REP.

this respect there is a marked and material difference between cotton and the articles named.

If there ought to be carload and less than carload rates on compressed cotton, it is not easy to see why the carload minimum should be so much higher in proportion to carrying capacity than is usually fixed as the basis of carload rates. What peculiarity has this article, or under what special circumstances is it transported, that an exceptionally high minimum should be the required condition of carload rates? Why should most articles be carried at carload rates with loadings of not more than half of car capacity and cotton be denied carload rates except in loadings that approximate capacity? What legitimate distinction is there in this regard between cotton and other commodities?

These questions naturally arise and they invite attention to the status of complainant and the purpose which it evidently has in view. The complainant is neither a cotton grower nor a cotton spinner. The object of its incorporation is to sell or lease a patented device for baling cotton. Incidentally it is engaged to some extent in the purchase and sale of round-bale cotton, not as an independent and regular business but solely to aid the introduction and use of its machine. Its real object is to supersede the other and customary modes of compressing cotton by a mechanical contrivance which it controls. This is entirely proper and even commendable, but the fact is not without importance that the complainant as the owner of a special process for baling cotton has no interest in that article either as producer or consumer. The rates at which cotton is carried are of no more concern to complainant than they are to any other dealer in cotton machinery. Undoubtedly a lower charge for transporting cotton would enure to the public benefit, but that is a matter of comparative indifference to the complainant. Its interests would not be promoted by a general reduction or injured by a general advance in cotton rates. Every purpose of complainant would be as fully accomplished by continuing the present rates for carloads of 45,000 pounds and upwards and increasing the rates for smaller shipments as by continuing the present rates on small loadings and reducing the rates on car-

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loads of the proposed minimum. The only thing really wanted is a readjustment of cotton rates so that instead of a rate per 100 pounds without regard to quantity there shall be one rate on cotton as ordinarily loaded and a lower rate when 45,000 pounds or more are placed in a car.

That this and nothing else is sought by complainant has been virtually conceded throughout the inquiry and abundantly appears from the record. Early in the first hearing a question was asked by a member of the Commission and answered by complainant's counsel as follows:

"Question: You have put in issue the rates from East St. Louis to New York. The rate is now 30 cents. The rate has been 20 cents. Suppose the rate on compressed cotton generally were reduced to 20 cents; would that satisfy your complaint?"

"Answer: No, your honor, we cannot live under that condition, because our compression costs more."

Again, at a later hearing, when the defendants offered to show that the present cotton rates are reasonably low, another Commissioner remarked: "I do not understand this to be a complaint as to the rates, except as to the relation or justness." During the colloquy which followed, complainant's counsel among other things said:

"In other words, I will agree that if the Illinois Central Railroad Company consents to such an order as we ask that they may add 50 per cent to their rate on the plantation bale and I will never murmur. It is the differential that I am concerned about."

Thus it plainly appears that the sole object of this proceeding is a carload differential based upon an extremely high carload minimum. And complainant demands this not in the interest of cotton shippers generally but manifestly for the purpose of having lower carload rates on a condition which cotton baled by its process can easily meet but which other shippers cannot comply with, at least not without materially greater trouble and expense than they now incur. Merely requiring carload and less than earload rates with about the usual carload minimum as related to car capacity, say 25,000 pounds or even 30,000 pounds, would not be of the least benefit to com-

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plainant because all other shippers could load to such a minimum and thereby obtain the same carload rates. It is not asked or desired that carload rates shall be provided which all shippers or most shippers can secure without added expense, but carload rates based upon such a high minimum as will inure to complainant's advantage as the exclusive vendor of a particular process of baling cotton. In short, the confessed aim of complainant is to have carload rates—whether higher or lower than present rates is unimportant—dependent upon an unusual and difficult condition. It evidently believes, and that is apparently the fact, that such a condition could not be complied with by most cotton shippers without materially increasing their present expenses for compression and loading. Such increased expense on their part would be an advantage to complainant simply and solely because it would increase the desirability of complainant's device and promote its adoption. We can understand that the cotton grower would be benefited by a general reduction of cotton rates, but we do not perceive that the grower, or the middleman as such, would be benefited by a differential. It seems to us, therefore, that the proposed change is sought not in the interest of the cotton producer or the cotton dealer but for the purpose of increasing the advantage of complainant's method of preparing the article for transportation. In our judgment the defendants are under no legal obligation to afford an advantage of that sort. No provision of the regulating statute requires the carrier to provide lower rates upon a condition which most shippers are not prepared to meet, and which they could meet if at all only by a considerably increased outlay; and we do not feel called upon to make a ruling which admittedly leads to that result.

Something akin to this in principle was decided by the Commission during the first year of its existence. This was a case where the carrier allowed a discount from its coal rates to consignees receiving not less than 30,000 tons a year. This was held to be unlawful on the ground that it was a condition which most shippers could not meet, and Judge Cooley in that case, speaking of the carriers' offer of a lower rate on 30,000 tons yearly shipments, said that "a discrimination which should

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so limit the offer that a part of those who could and might desire to accept it would be excluded from its benefits, would for that very reason be unjust and indefensible." *Providence Coal Co. v Providence & W. R. Co.* 1 I C. C. Rep. 107, 1 Inters. Com. Rep. 363.

It is upon the same theory that a lower rate for a train load than for a carload is regarded unlawful; because it is in effect allowing lower rates upon a condition which only a few shippers can comply with and consequently is an injustice to those unable to ship the required quantity.

There is another difficulty which may be referred to in this connection. Where rates are based upon the hundred pounds regardless of quantity, there is of course no particular inducement to the shipper to make heavy car loadings, and actual loadings will practically be determined by commercial conditions and the requirements of the trade. As would naturally be expected, the testimony shows that the great bulk of cotton is compressed only to the density necessary to secure the compression allowance, and this degree of compression is effected in the cheapest manner. The result is that most of the cotton is prepared for shipment in such manner and form as to load conveniently about 25,000 or 26,000 pounds. Some part of it, however, by the exercise of a little more care in tying the bales and loading the cars, exceeds the minimum density and loads 30,000 pounds and upwards. By the use of the Gadget attachment and similar devices a bale of still greater density is produced which loads readily 35,000 to 40,000 pounds. The American Cotton Company's bale has a density of about 33 pounds and conveniently loads 40,000 to 45,000 pounds. The complainant's cotton with a density of 45 pounds and upwards permits loadings of 60,000 pounds or full car capacity. Even the ordinary square bales can by unusual effort and at considerable expense be loaded up to about 50,000 pounds. So we have cotton compressed into bales of different sizes and various degrees of density, with feasible loadings ranging from 25,000 pounds to 60,000 pounds and more in the standard car. At present all these different kinds of bales are carried at the same rate per 100 pounds without regard to the

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amount or weight loaded in a car. Now, if this system is to be set aside and what amounts to carload and less than carload rates established, why should the minimum be placed at 45,000 pounds? Logically, the complainant might ask for a minimum of 60,000 pounds. If the cost principle invoked is to govern, if rates are to be based upon the weight of cotton placed in a car, how can the regulation be consistently limited to the one minimum proposed? If there is to be a carload minimum, why should it be fixed at a figure which would promote the interests of the two principal round-bale methods and place all square-bale methods at more or less disadvantage? Yet that is precisely what the complainant seeks to accomplish and that would be the expected result of the ruling it asks for, as its counsel frankly admit. We do not believe that the law requires such an adjustment. On the contrary it appears to us, taking the whole situation and all interests into account, that the present system of cotton rates on any quantity is better suited to the peculiarities of the cotton industry, and that the rule contended for by complainant would tend to confusion and probable injustice.

The circumstance that foreign steamship lines grant a differential to round-bale cotton does not seem to be important. For obvious reasons the space occupied by a given article as compared with its weight is of much greater consequence to the ocean carrier than to the rail carrier, and it does not follow that the latter is bound to grant a difference in rates which the former sees fit to allow.

The fact that complainant for a couple of years secured lower rates from certain carriers undoubtedly aids the complainant, though its force is much impaired, in our judgment, by the circumstances under which the concession was made. This view is not alone based upon the unlawful character of the transaction but quite as much upon the related fact that unauthorized rates were more or less granted at the same time to square-bale shipments. Giving due weight to all the testimony bearing upon this point we are far from believing that it is sufficient of itself to sustain the complainant's demand.

The complainant's case rests really upon the contention that

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the reduced cost of hauling effected by heavy car loadings of round-bale cotton imposes upon the carrier the obligation to recognize this saving of expense by a corresponding reduction of charges. It is assumed, or at least not denied, that the 30-cent basis from East St. Louis is reasonable as applied to the ordinary loading of cotton but that basis is claimed to be unreasonable when the loadings are greatly increased. Whatever may be the merits of this claim as an abstract proposition, we cannot admit its application to the facts of this case. To adjust rates on different articles on the basis of comparative cost to the carrier would involve a wide departure from accepted theories of rate-making; to adjust rates on the same article with reference to cost of carriage under different conditions would be still more radical. If the rate on a given article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate in our opinion does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per 100 pounds. Particularly is this so, as we think, when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons. No classification can be so minute as to conform to the differing varieties and conditions of traffic. To separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification, as was held by the Commission in *Derr Mfg. Co. v. Pennsylvania R. Co.* 9 I. C. C. Rep. 646. Where numerous articles are carried at the same rate it necessarily happens that the profit to the carrier is greater in one case than in another. Even the same article in the same form and at the same rate will result in varying profits because of the differing circumstances of transportation. In short, as it seems to us, the principle contended for is subject to many exceptions and admits of practical application only to a limited extent. Besides, the adjustment of rates on

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the basis of cost to the carrier leaves out of view in large measure the value of the service to the shipper, which has always been regarded as a prominent factor in classification and entitled to due recognition in the rates applied to different articles and to different grades and conditions of the same article. There is no difference in quality between round-bale and square-bale cotton. Both sell at the same price in the markets of the world, and the value of the service to the shipper for transporting a given quantity is the same whether carried in one form or the other.

As we understand the facts, this identical question was presented to the Railroad Commission of Texas, and by the same interests as are here complaining. That commission twice refused to order lower rates on round-bale cotton or on account of any condition in respect of loading. Thereupon a suit was brought under the Texas statute to compel the commission to fix lower rates on substantially the same grounds as are urged in this proceeding. The plaintiffs in that suit (corresponding to the complainant here) succeeded in the lower courts, but the ruling was reversed on appeal by the Supreme Court of Texas for reasons set forth in an extended opinion. *Railroad Commission of Texas v. Weld*, 96 Tex. 394, 73 S. W. 529.

Without endorsing all that is said in that opinion we quote the following observations which appear to us pertinent and in the main correct:

“The same rate is charged per hundred weight for all cotton, and the plaintiffs’ case rests wholly upon the proposition that they have the right to compel the railroad commission to make a rate by the carload instead of by the 100 pounds, or to give lower rates on cotton in round bales. There is no rule of the common law nor provision of the statute which requires the carrier or the commission to make rates based upon carload lots, nor is there any precedent or principle by which the reasonableness of a rate (as it affects individual shippers) made by carriers or by the commission can be determined by a comparison

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of the profits derived from the shipment of different classes of freight.”

* * *

“Plaintiffs can as well complain of lower rates given upon other articles; for instance, upon wheat, oats, and corn, neither of which would bear a charge equal to that placed upon cotton, either by the carload or by the 100 pounds. In truth, if such a rule were adopted as that proposed by the plaintiffs in this case, the commission’s work could not possibly be sustained in any court, for it might, by comparison between rates on different articles, and by showing a difference in profits derived from the transportation of one over the other, destroy any schedule of rates that could be prepared.”

* * *

“To make such difference in the rates upon cotton in flat bales and that in round bales would manifestly be unjust discrimination, and it was proper for the commission, in making rates, to bear in mind that the probable effect would be the creation of a monopoly to the detriment of the public. The owners of improved machinery have a right to all the benefits of its superiority over the old machinery for ginning and baling cotton that comes from the use of the machinery itself, but they have no right to ask the government to bend its policy to their aid in this respect to the injury of the citizenship of the state.”

One or two other matters seem to justify brief mention. We are of the opinion that complainant overestimates the practicable saving to the carriers effected by loading a part of the cotton transported to the proposed minimum. Of course it is more profitable to haul 50,000 pounds at 20 cents *in one car* and get \$100 than to haul 25,000 pounds at 30 cents and get only \$75. On the other hand, it is more profitable to haul 50,000 pounds at 30 cents *in two cars* and get \$150 than to haul the same amount at 20 cents in one car and get only \$100. Obviously any inference from the former fact must be greatly modified by the latter, especially in view of the further fact that there is only a given quantity of cotton to be moved. In the nature of the case the amount saved by increasing the loadings *of a portion of one kind of traffic* must be quite limited and uncertain under the actual

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and usual conditions of railway operation. Having regard to the volume of cotton tonnage and the supply of available equipment, it seems to us scarcely possible that a loss of one-third in gross revenue could be made up by the fewer cars used and the reduced cost of hauling a given quantity of that article. Undoubtedly in some instances, as of car famine and the like, the saving would be great for the time being, sufficient perhaps to compensate for a rate reduction of $33 \frac{1}{3}$ per cent, but for the most part and under ordinary circumstances the gain would be very much less and often so slight as to be inappreciable.

In this connection it is to be borne in mind that the adoption of a carload minimum as the condition of lower rates would not materially if at all increase the volume of cotton to be carried, and therefore any reduction in the rate would diminish to the same amount the gross income from this traffic. That a considerable saving in cost of movement would result in very many cases may be admitted, but if the rate reduction were no greater than to offset the actual gain of the carriers it might turn out, and the evidence indicates it would turn out, that most shippers would lose quite as much by reason of the increased expense of compression and loading as they would save in lower transportation charges. Indeed it may well be doubted, upon the testimony submitted as to the cost of baling by different methods, whether on the whole or in most cases there would be any saving to cotton shippers from the operation of a carload rule—the carload rate being only enough lower to equalize the reduced cost of hauling—except as such a rule might lead to a reduction of cotton rates generally. In other words, the adoption of complainant's proposal would not benefit the public. And this view of the matter, it may be observed, takes no account of any injury or loss to the owners of plantation and square-bale compress plants brought about by a rate adjustment which would favor the use of the round-bale process.

As above stated, we think the ruling sought by complainant should be considered with reference to its probable bearing upon other carriers than these defendants and upon the general movement of cotton. A lower rate from East St. Louis conditioned upon the minimum loadings proposed would undoubtedly af-

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fect the present distribution of cotton as between different lines and routes, and tend immediately to increase shipments through the St. Louis gateway. Cotton is a highly competitive article. It has much the greatest value per pound of any of the leading agricultural products. -The demand for it is constant and comes from many widely separated quarters. It is handled on exceedingly narrow margins and slight influences affect its price and movement. Out of all the competitive conditions to which it is subjected there has come about an apparently well adjusted and satisfactory relation of rates by different routes from the cotton growing districts to the numerous manufacturing points in this country and abroad. If cotton should be taken from East St. Louis to the New England mills or to North Atlantic seaports at relatively less cost than is now incurred, the carriers from Memphis and other points and to other mills and ports would be obliged to make a corresponding reduction. If those lines discovered that square-bale shippers could not or did not load cars to the required minimum, they would be virtually forced to grant the reduced rate on a lower minimum or on cotton in any quantity; and thus the ultimate and early result would be a general reduction in cotton rates and the same relation of rates as now exists. If that result followed, as we believe it would, the ruling which brought it about would be valueless to complainant. Even if we were convinced that its contention is well founded and ought to be sustained by such authority as the Commission possesses, we should still have much difficulty in seeing how as a practical matter the real object of complainant could be attained.

In cases like this it seems plain that a distinction should be drawn between the legal obligation of carriers and the discretion which they may rightfully exercise. We do not doubt that it would be lawful for these defendants and other carriers to establish carload and less than carload rates on cotton, with a reasonable difference between the two rates and a reasonable minimum which should secure to shippers the lower carload rates; but it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum.

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No evidence has been offered to show that unreasonable rates are applied to cotton as that article is generally and for the most part prepared for transportation, and that issue is not involved in this proceeding. The complainant demands that lower rates be accorded on cotton in car-loads of 45,000 pounds or more, and that demand presents the only question we are called upon to determine. Upon all the facts and circumstances now disclosed, we are constrained to hold that the refusal of the carriers to grant such lower rates is not a violation of the regulating statute; and this conclusion is in harmony with our previous decisions. *Brownell v. Columbus & C. M. R. Co.* 5 I. C. C. Rep. 638; *Paine Bros. & Co. v. Lehigh Valley R. Co.* 7 I. C. C. Rep. 218; *Re Relative Rates upon Export & Domestic Traffic*, 8 I. C. C. Rep. 214; *Carr v. Northern P. R. Co.* 9 I. C. C. Rep. 1.

In our opinion the defendants are not acting unlawfully in the respects charged and therefore the complaint against them should be dismissed.

PROUTY, *Commissioner*, dissenting:

I am unable to agree in the conclusions reached by my associates in this case, and, since the principle is one of importance, wish to state my reasons for arriving at a different result.

The rates put in issue are those from East St. Louis to the Atlantic seaboard. The complainant makes two distinct claims. It insists, first, that to impose upon round-bale cotton the same rate which is charged square-bale cotton is an unjust discrimination under the third section, and second, that 30 cents per hundred pounds from East St. Louis to New York is in itself an unreasonable charge for the transportation of round-bale cotton.

The Commission holds that the carriers do not violate the Act to regulate commerce in refusing to make a distinction in their tariffs between cotton when offered for transportation compressed to different degrees of density. In this I am inclined to agree. In the transportation of cotton compression is universally recognized as an essential. The complainant compresses to more than twice the density of the square bale. There

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is good ground for saying that cotton as presented for transportation by the complainant should be treated as a different commodity from cotton as ordinarily compressed, and that it is an undue discrimination against the complainant to impose upon its commodity the same transportation charges which are imposed upon the commodity of its competitor, the square compress; but in view of the wide limits within which carriers may properly regulate their own business we should perhaps hold that these defendants may apply the same rate to the transportation of cotton, compressed or uncompressed, in carloads or in less than carloads. It seems clear to me, however, that the rate which is imposed upon cotton as tendered by the complainant must be a reasonable one for the transportation of that commodity in that form, and that the defendants cannot exact from the complainant an unreasonable rate upon the plea that they carry that same article in some other form at a loss. For illustration, carriers engaged in the transportation of grain from East St. Louis to the Atlantic seaboard may, if they see fit, establish a carload minimum of 30,000 pounds, or no carload minimum at all, but they have no right to fix the rate upon the theory that only 30,000 pounds are transported in a car. In determining what rate is reasonable we should consider what can be and what is the actual carload. I think 30 cents per hundred pounds is too much for the carriage of cotton from East St. Louis to New York, when presented in such form that it can be easily loaded to 50,000 pounds, or, if required, to ten per cent beyond the marked capacity of the car.

The facts presented by this record which bear upon this point seem to be the following.

The plantation bale, or what is known as uncompressed cotton, has a density of $12\frac{1}{2}$ pounds to the cubic foot and loads in the standard box car about 12,500 pounds. The ordinary compressed square bale has a density of from 22 to 23 pounds to the cubic foot and ordinarily loads in the standard car 25,000 pounds. The cotton offered by the complainant has a density of from 45 to 47 pounds to the cubic foot and ordinarily loads in the standard car 50,000 pounds. For many years rates on cotton from East St. Louis to New York have been, and now

are, 42½ cents per hundred pounds upon uncompressed cotton and 30 cents upon compressed cotton. The complainant urges that these rates having been maintained by these defendants for many years without protest or objection must be assumed to be just and reasonable compensation for the service performed; and it further urges that if these rates are reasonable for the transportation of cotton in the form in which it has been carried in the past, it must of necessity follow that 30 cents per hundred pounds is unreasonable as applied to its product.

In determining what rates are reasonable for the carriage of various commodities no one thing has been oftener or more earnestly insisted upon by the carriers as a controlling element than car capacity. It has not only been given as a matter of opinion by traffic experts without number but has been demonstrated by mathematical computation that the cost of the service varies almost exactly with the ability to secure a heavy car loading. This Commission in its opinions has repeatedly recognized the substantial accuracy of this position. That it must be so is obvious from the most superficial consideration of the case before us. The ordinary carload of uncompressed cotton is 25,000 pounds and for hauling that carload from St. Louis to New York the carrier receives \$75. The ordinary loading of round-bale cotton is 50,000 pounds and for transporting that carload from East St. Louis to New York the carrier receives \$150. It must haul two cars of uncompressed cotton to earn the same amount of money which accrues from the hauling of a single carload of round-bale cotton. While the total weight of the car loaded with round-bale cotton is somewhat greater than the weight of the car loaded with square-bale cotton, it is evident that in earning the \$150 by the transportation of the square bale a second car must be provided and hauled and that the additional expense of the transportation, while not quite twice as great, is very much greater.

This same fact may be stated in another way. An ordinary box car weighs perhaps 36,000 pounds. The total weight of that car loaded with square-bale cotton would be 61,000 pounds and the carrier, would receive at a rate of 30 cents per hundred

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pounds \$75 for the service or about 12.3 cents per hundred pounds for the gross weight of car and contents. If this same car were loaded with round-bale cotton it would weigh, car and contents, 86,000 pounds. At a rate of 20 cents per hundred pounds the total revenue would be \$100 or about 11.6 cents per hundred pounds for the gross weight carried. When it is remembered, therefore, that the car in one case earns \$100 while in the other it earns \$75 it must be evident that cotton compressed to a density which permits of a loading of 50,000 pounds to the car is as good business, looking only to cost of carriage, at 20 cents per hundred pounds as is cotton which will only load 25,000 pounds to the car at 30 cents. It seems to me that the complainant is entirely justified in its claim that if 30 cents per hundred is a reasonable rate for the transportation of cotton in carloads of 25,000 pounds to the car it is entirely unreasonable when applied to cotton so compressed as to be capable of loading 50,000 pounds to the car.

The acts of the defendants themselves clearly substantiate this conclusion. When this cotton was offered for shipment in 1900 the railroads voluntarily agreed to accord it a rate from East St. Louis of 20 cents per hundred pounds. The same rate was applied during the season of 1901-02. The complainant was notified at the beginning of the season of 1902-03 that its rate would be advanced to 30 cents per hundred pounds. The traffic manager of the Big Four Railroad stated to the agent of the complainant at St. Louis, when giving notice of this advance that in his opinion the rate of 20 cents was a reasonable one and should be continued but that his line could not name that rate without the consent of the Central Freight Association. He subsequently stated to the agent of the complainant that this matter had again been laid before the committee of that association and that the proposition to accord round bale cotton a rate of 20 cents had been defeated by one vote. This was not denied on the part of the defendants.

The rate of 20 cents which the complainant enjoyed was not published by the defendants, and was not, therefore, a lawful rate; but it was an open rate in the sense that all the defendants except the Pennsylvania accorded it and that shippers of cotton

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generally knew of it. It seems probable that, as stated by the Commission, there may have been some concession from the regular 30-cent rate which should have been applied to square-bale cotton, although this does not clearly appear. If so it would simply indicate that the actual difference between round-bale cotton and square-bale cotton was something less than 10 cents per hundred pounds; there is no dispute that for these two years, until the Central Freight Association interfered, these defendant lines gave to the product of the complainant a rate substantially one-third less than was applied to ordinary square-bale cotton and that this was done upon the ground that the cost of transportation was enough less to warrant the difference.

Hay as compressed in the ordinary bale loads about 20,000 pounds to the car. It appears that the process used by the complainant in the compression of cotton can also be applied to the compression of hay. One or more of these defendants did for several years and still does name a rate on hay which is one-third less than the regular rate when so compressed as to load 50,000 pounds to the car.

It is customary upon some railways, but not these defendants,' to make a single rate on cotton which applies both to compressed and uncompressed. The railway does not transport the cotton in its uncompressed state, but is to the expense of compressing it for its own convenience and usually pays in the vicinity of 10 cents per hundred pounds for this service. If the carrier can afford to pay 10 cents per hundred pounds for increasing the loading of its cars from 12,500 to 25,000 pounds, can it not well afford to pay 10 cents per hundred pounds for increasing that loading from 25,000 to 50,000 pounds?

The present rate on grain and grain products from East St. Louis to New York for domestic consumption is 20½ cents per hundred pounds, for export 17½ per hundred pounds, except in case of grain on through bill when it is 16 cents per hundred pounds. The minimum carload weight on most kinds of domestic grain is 40,000 and on grain products 35,000 pounds. When for export both grain and grain products must be loaded to 10 per cent beyond the marked capacity of the

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car. The testimony in this case shows that cotton in the form offered by the complainant will readily load 10 per cent beyond the marked capacity of the car. The actual cost of transporting Lowry bale cotton from East St. Louis to New York is no greater than the actual cost of carrying grain or the products of grain. The commodity itself is more valuable and the risk from fire may be somewhat greater, although in the case of the round-bale this is slight, and a somewhat higher rate may perhaps be charged than for the transportation of grain or the products of grain, but upon what possible theory can that rate be almost twice as high. From all the foregoing facts it appears to me perfectly clear that when cotton is presented for transportation in such condition that it will load 10 per cent beyond the marked capacity of the car, 30 cents per hundred pounds from East St. Louis to New York is an utterly unreasonable charge for its carriage.

Various reasons are alleged by the Commission for declining to find that the complainant is entitled to a lower rate than 30 cents per hundred pounds. It is said, for example, that cost of service is not the test of a reasonable rate. This is undoubtedly true in many cases. There are many instances in which there is no intimate connection between cost of carriage and the rate charged for that carriage. But with respect to a staple commodity like cotton I believe that there should be a very intimate connection between cost of carriage and the rate charged the public and that if in any way the cost of carriage has been or can be actually reduced one-third the public should be given the benefit of that reduction. If cotton rates are sufficiently low a mere reduction of the rate is not necessarily either just or of benefit to the public, since you are simply taking away from one part of the public, the railroad, and giving to another part of the public. But the proposition here is not to take away from the railroad any part of its revenue by this reduction in rate, but to compel the railway to recognize a form of transportation which works an actual saving in the cost of moving this great crop to market amounting in the aggregate to millions of dollars annually.

Suppose, for example, that up to the present time cotton had

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been uniformly moved in the plantation bale, with a density of $12\frac{1}{2}$ pounds to the cubic foot. The device of this complainant increases that density four times and thereby reduces the cost of moving the cotton crop of this country by at least 100 per cent. Are the railroads at liberty to impose the old rate for the carriage of cotton presented in the new form? I insist they are not. They may perhaps carry the plantation bale at the same rate which they charge for the round bale,—that is a question between the management and its stockholders—, but they have no right to compel the public to pay an unreasonable price for the carriage of the round bale. If they decline to take advantage of this manifest economy they and not the public should suffer.

Not long ago rates on hay were advanced in official classification territory and the only substantial reason given by the carriers for the higher rate was the light loading of that commodity. The testimony showed that only from 20,000 to 22,000 pounds could be put into an ordinary box car. Suppose now that some process were invented by which the density of compressed hay were so increased that not 20,000 but 50,000 pounds could be loaded into a car. Would not the excuse of the carriers disappear and must they not upon the same theory on which they justify the advance reduce the rate even lower than it had been before?

It is said a minimum of 50,000 pounds would be greater than that ordinarily applied to grain, grain products, lumber, coal, etc., and that there is no reason for establishing in favor of the complainant so high a minimum. This entirely misconceives my position. I am not urging that these carriers be required to establish any minimum; I am simply insisting that they should recognize the density of the complainant's cotton in fixing the rate charged for its transportation. If they prefer to name a rate for the carriage of cotton which recognizes neither carload nor minimum they may do so, or they may establish a rule which will secure the loading which the lower rate justifies. The application of different rates to the carriage of the same article when offered in different degrees of density is of

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common occurrence as the most casual examination of the official classification will show.

It is said that railways cannot be required to reduce their rates to meet every slight change in form of the commodity or article offered, although there be an actual saving in the cost of the service, and to this proposition the case *Derr Mfg. Co. v. Pennsylvania R. Co.*, 9 I. C. C. Rep. 646, is cited. There is no question about the correctness of this proposition. No classification and no schedule of rates can do absolute justice to all shippers. Classifications and schedules must be general and must, therefore, create more or less discrimination. The case cited is an excellent illustration of this principle. The complainant was a manufacturer of bristle blacking brushes, known as daubers. In the manufacture of his brush he used an iron handle; whereas, the ordinary dauber had a wooden handle. The result was that his article when packed for shipment weighed more than the wooden-handled dauber and more than most bristle brushes, while it was of less value. For this reason he claimed that the classification of his article ought to be lower than that of bristle brushes in general; but the Commission held otherwise upon the ground above indicated.

What possible analogy between that case and the one before us? We have here one of the staple products of this country; the only great staple which is invariably moved some distance, and usually a long distance from the point of production to the point of consumption. The invention of the complainant reduces the actual cost of that transportation by rail one-third, at least, and yet we are told that the railways of this country may decline to recognize the economy made possible by this process, and in confirmation we are cited to a decision holding that carriers need make no distinction in classification between a blacking dauber with an iron and one with a wooden handle.

It is said that if the carriers are required to make a lower rate for cotton as compressed by the compresses of the complainant they create a condition which can only be taken advantage of by a small part of the total cotton product of this country.

This suggestion resembles that of the fond mother who de-
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clared that her boy should never go near the water until he could swim. The cost of compression by the Lowry bale is as great, possibly a trifle greater than by the square bale. The round bale and the square bale sell for exactly the same price at the mill. The only advantage of the round bale is that it produces a bale of greater density and thereby reduces the actual cost of movement materially. If this advantage in transportation is not recognized, it has no value and cannot come into use. If the railways decline to accord to this form of compression the saving in cost of transportation which it actually makes, or some reasonable part of it, that bale never can be offered for transportation in very large quantity.

It can hardly be said, however, that the amount of cotton presented by this complainant, although it may be but a fraction of the entire crop, is insignificant. The complainant has handled four hundred thousand bales in a single year. It paid to these defendants for the transportation of its product \$50,000 per year on a 20-cent rate, and would have been compelled to pay \$75,000 upon a 30-cent rate. \$25,000 annually cannot be regarded as too trifling a sum to engage the attention of this Commission. But this is insignificant in comparison with the real interests involved.

I am not a friend of monopolies, and if I thought that the according of a lower rate to cotton of greater density would produce a monopoly which might finally become burdensome that would be to my mind a very substantial reason for declining the rate. I see nothing in this case to even indicate that. There is another round bale made in a different way of substantially the same density as the Lowry bale. There are processes by which square cotton can be compressed to nearly the density of the Lowry bale. Other forms of compression would be invented to meet the new conditions. So far from creating a monopoly, I think it would tend to modify the semi-monopoly in the compression of cotton which exists to-day.

It is said that \$12,000,000 are invested in the square-bale compresses of this country and that these investments pay an annual return of from 20 to 50 per cent. They are to some extent owned by railroads. The square compress companies have as-

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sumed the burden of defending this complaint. While it is hardly probable that the round bale, even if given its just transportation advantage, would come into as extensive use as the square bale, it is altogether probable that the square compress would be obliged to perform the service of compression for a less sum while rendering a better service.

It is said that the complainant is only interested in obtaining a lower rate upon its product than is accorded to the square bale and that it has no real interest in the reasonableness of the rate. If rates on all cotton from East St. Louis to the seaboard were reduced to 20 cents per hundred pounds this would in no respect benefit the complainant.

That is undoubtedly the case. The complainant insists that a reasonable rate should be accorded to it because it believes that the defendants would be compelled, in the preservation of their own legitimate interests, to impose a higher rate upon cotton having a less density. While, however, the complainant has no direct interest in the reasonableness of the rate in question, the public has, and it has an interest in seeing that those competitive conditions which are relied upon to produce reasonable rates are, in so far as may be, preserved and protected. My fundamental objection to the decision of the Commission is that it declines to accord to the invention of the complainant any and all opportunity to compete; that it permits the railway to refuse to avail itself of a cheaper method of transportation which would result in the saving of millions of dollars in the cost of transporting the cotton of this country.

Northern mills at the present time consume approximately 2,000,000 bales annually. The rate from East St. Louis to New England points is 35 cents per hundred pounds. Assuming that the cost of transportation from the point of production in the south to the point of consumption in the north is reduced $12\frac{1}{2}$ cents per hundred pounds, (and this is much short of the actual fact) by the invention of the complainant and by similar processes, this would amount to \$1,250,000 annually. It is suggested that the cost of compression by the Lowry bale is more than by the square compress, and that the total cost of marketing cotton is as great by the round bale as by the square. The com-
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plainant insists that while the cost of compression may be a trifle more by its method this is as nothing compared to the saving in transportation. We deal with transportation alone, and while we may with propriety to some extent examine various commercial and industrial conditions as bearing upon proper rates and regulations for transportation, I see nothing of that sort in this case which should control our decision. Our business is not to say that cotton shall be compressed by one process or the other; not to preserve investments in one case or to give value to patents in another case, but simply to see that the railways accord fair and just rates to all parties. When that has been done these processes must stand or fall as they can in the struggle for existence.

It is true in the very nature of things that cotton compressed to a density of 47 pounds to the cubic foot is entitled to a lower rate of transportation than cotton compressed to a density of 23 pounds to the cubic foot. Wherever the round bale has come into fair competition with the less dense square bale it has won a better rate. It has an advantage of $33\frac{1}{3}$ per cent from the Gulf ports. It has an advantage of 25 per cent from the Atlantic ports. It has no advantage by water from the Gulf to the Atlantic ports because the steamship lines there belong to the same traffic associations and are dominated by the same influences which control the railways. It did win for itself a rate substantially $33\frac{1}{3}$ per cent better from East St. Louis to New York so long as competition was permitted. That rate was only withdrawn when the committee of the Central Freight Association had decreed by a majority of a single vote that it should be withdrawn.

I find it difficult to believe that the function of this Commission should be to sustain illegal transactions of that character when they involve directly the elimination of competition and the withdrawal of rates which competition has produced. I believe it to be the duty of this Commission, in so far as it has the power, to compel railroads to accord to the product of this complainant the just and reasonable rate to which upon every test which has ever been applied either by the railways or this Commission it is entitled, and to leave the result to the competitive

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influences which should in all similar cases control. The conclusion to which we have come absolutely ordains that this invention shall die although its life would mean no possible injury to anyone except the square compress and a possible saving of millions of dollars annually to the people of this country. It means much more; it means that no similar invention shall live, and that this enormous waste in the transportation of this great crop shall permanently continue.

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