No. 5917.

G. B. MARKLE COMPANY ET AL.

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted June 17, 1916. Decided April 6, 1920.

On further hearing reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal, prepared and pea sizes, in carloads, from certain collieries in the Lehigh coal region of Pennsylvania to Perth Amboy, N. J., for transshipment by water. Former report 37 I. C. C., 441.

Robert D. Jenks and *William A. Glasgow, jr.*, for complainants and interveners.

E. H. Boles and *Stewart C. Pratt* for defendant.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

In their complaint, filed July 2, 1913, the complainants, G. B. Markle Company, Pardee Brothers & Company, Incorporated, and Weston Dodson & Company, Incorporated, corporations, alleged among other things that the rates charged them by the defendant for the transportation of their shipments of anthracite coal, in carloads, from various collieries on defendant's line in the Lehigh anthracite coal region of Pennsylvania to tidewater at Perth Amboy, N. J., for transshipment by water, were unreasonable and unduly prejudicial. They asked reparation "for the unjust and unreasonable rates heretofore and hereafter charged." Subsequently the partners composing the firm of Charles M. Dodson & Company petitioned for permission to intervene, stating that they were the owners of the Beaver Brook colliery, named in the complaint, and that they sold the output therefrom through Weston Dodson & Company, one of the complainants, as their selling agent. They asked permission "to adopt the complaint * * * with the same effect as if it [they] had originally joined therein." An order permitting intervention was granted on March 20, 1914. In disposing of the issues originally raised we pointed out in our former report, 37 I. C. C., 441, that "just and reasonable rates governing such traffic from the

coal region affected had been prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220," hereinafter called the *Anthracite Case.* The question of reparation was withheld for further hearing, and presents the only issue remaining undetermined. Rates are stated in amounts per ton of 2,240 pounds.

The complainants' and interveners' collieries are located on the Mahanoy and Hazleton division of the defendant's line at an average distance from Perth Amboy of 131 miles. All the shipments moved over the line of the defendant and charges were collected thereon at the following, then applicable, rates: prepared sizes, $1.55; pea, $1.40; buckwheat, $1.20; rice, barley, and culm, $1.10. In the *Anthracite Case* we found these rates unreasonable to the extent that the rates on prepared sizes exceeded $1.40 and on pea and smaller sizes $1.30, which rates, as prescribed by us, became effective on April 1, 1916.

At the further hearing on April 28, 1916, complainants and interveners submitted detailed statements of the shipments made by them during the period from July 3, 1911, to March 31, 1916, inclusive. These exhibits have been checked by the defendant, and the parties are in accord as to the amount of reparation claimed on shipments of prepared and pea sizes. As the rates on buckwheat, rice, barley, and culm coal were not found to be unreasonable in the *Anthracite Case*, and as there is no further evidence that the rates charged thereon were unreasonable or unduly prejudicial, the claim of G. B. Markle Company for reparation with respect to shipments of these smaller sizes is denied. No objection was raised by the defendant to the inclusion of shipments which moved subsequently to the filing of the complaint, and we are of opinion that the filing of a supplemental complaint covering such shipments was unnecessary. The complaint alleged both a past and continuing violation of the act on the part of the defendant in demanding and collecting the rates complained of, for which violation reparation was asked on shipments thereafter moving on such rates. Thus the defendant was fully advised by the complaint and the proceedings had thereunder of complainants' and interveners' claims for reparation on such shipments. *Plymouth Coal Co.* v. *P. R. R. Co.*, 56 I. C. C., 699.

With respect to the claims of interveners, Charles M. Dodson & Company, counsel for the defendant contends that the two-year statutory period should be computed from the date on which the intervening petition was granted and not from the date of filing the complaint. An official of Weston Dodson & Company, a witness for interveners, testified that that company was the selling agent for the interveners' colliery, that all the shipments covered by interveners' claims were sold by it as such agent at prices f. o. b. vessel, and that

in every instance freight charges and commissions were deducted from the selling price before the balance was remitted to the interveners. No claim was submitted by Weston Dodson & Company in its own behalf. It thus appears that Weston Dodson & Company in joining in the prayer for reparation contained in the complaint was acting as agent for its principals, Charles M. Dodson & Company, whose subsequent intervention was merely confirmatory of its agent's act.

In proof of the unreasonableness of the rates assailed complainants submitted, in addition to other evidence, various comparisons showing that the transportation conditions which surrounded the movement of their traffic were, if anything, more favorable than those which applied to the transportation of similar shipments considered in *Meeker & Co.* v. *Lehigh Valley R. R. Co.*, 21 I. C. C., 129, decided June 8, 1911, and *Marian Coal Co.* v. *D., L. & W. R. R. Co.*, 24 I. C. C., 140, decided June 8, 1912. Also, at the further hearing complainants' counsel called attention to our findings in the *Anthracite Case* relating to the cost of service, the earnings on the rates then in effect, the financial history of the carriers, including the defendant, and the circumstances which surrounded the transportation. Counsel for the defendant contend that we can not take into consideration any of the facts found by us in the *Anthracite Case*, citing *United States* v. *B. & O. Southwestern Ry.*, 226 U. S., 14. This contention is contrary to the position taken by them prior to our decision in that case. At the original hearing defendant's counsel objected to the introduction of any evidence relating to the reasonableness of the rates attacked because these rates were then under consideration in the *Anthracite Case;* and again on brief urged:

> * * * that the Commission can not with propriety consider the reasonableness of the Lehigh Region rate from the record in this case, but must do so only upon a full consideration of the record in its general investigation, Docket 4914.

Thus by request of counsel for both complainants and defendant our findings of fact in the *Anthracite Case*, where relevant, are submitted for our consideration in passing upon the reasonableness of the rates in issue. Moreover, the defendant was a party to both the *Meeker Case*, *supra*, and the general investigation in the *Anthracite Case.* It was represented by counsel, was apprised of all the evidence submitted in those cases, and was accorded the opportunity to cross-examine witnesses and submit evidence on its own behalf. A similar objection was overruled by us in *Plymouth Coal Co.* v. *P. R. R. Co.*, *supra*, and that course is taken here.

In the *Meeker Case*, *supra*, we found that this defendant's rates of $1.55 on prepared sizes, $140 on pea size, and $1.20 on buckwheat

coal from the Stevens colliery in the contiguous but more distant Wyoming region to Perth Amboy, were unreasonable, and prescribed rates of $1.40, $1.30, and $1.15, respectively. The distance from Stevens colliery therein involved to Perth Amboy is 165 miles, over the same tracks for 113.7 miles as those over which complainant's shipments moved. In complying with our order in the *Meeker Case*, defendants confined the reductions to rates from the Wyoming region instead of maintaining parity in the rates from the Lehigh and Schuylkill regions, a fact commented on by us at page 146 of our report in the *Marian Case*, *supra*, and upon the expiration of our order in that case endeavored to restore the rates formerly in effect from the Wyoming region. These proposed increased rates were suspended and never became effective because of our decision in the *Anthracite Case*. Moreover, after June 1, 1913, the defendant discontinued its practice of allowing free storage at Perth Amboy, and thereby lessened the service rendered. *Plymouth Coal Co.* v. *L. V. R. R. Co.*, 36 I. C. C., 140. The defendant was thus fully aware of the risk it took in continuing to charge the rates here attacked for the shorter transportation service.

Upon consideration of all the facts of record we are of opinion and find that the rates charged by the defendant during the period from July 3, 1911, to March 31, 1916, inclusive, for the transportation of anthracite coal, in carloads, from the collieries on its line here under consideration, in the Lehigh region of Pennsylvania to Perth Amboy for transshipment by water, were unreasonable to the extent that they exceeded rates of $1.40 per long ton on prepared sizes and $1.30 per long ton on pea size, which rates we find would have been reasonable.

We find further that G. B. Markle Company, a corporation, during the period from July 3, 1911, to March 31, 1916, inclusive, made certain carload shipments of anthracite coal of prepared and pea sizes via the defendant, Lehigh Valley Railroad, from four collieries on defendant's line in the Lehigh anthracite region of Pennsylvania known as Jeddo No. 4, Jeddo No. 7, Highland No. 2, and Highland No. 5 to Perth Amboy for transshipment by water; that such shipments aggregated 657,594.10 long tons, prepared sizes, and 25,615.10 long tons, pea size; that complainant G. B. Markle Company ultimately paid and bore thereon the established tariff rates of $1.55 on prepared sizes and $1.40 on pea size; that said rates so paid were excessive and unreasonable to the extent that they exceeded $1.40 on prepared sizes and $1.30 on pea size, which latter would have been reasonable rates for the service; that complainant G. B. Markle Company has been damaged by the payment of said unreasonable rates to the extent of the difference between the

amount paid at the rates herein found unreasonable and the amount it would have paid at the rates herein found reasonable; and that said damages amount to the sum of $101,200.60, as principal, and the sum of $13,538.91 as interest at 6 per cent per annum from the date of payment of the charge on each shipment to April 1, 1916, together with interest on the said principal sum of $101,200.60 from April 1, 1916, to the date of payment.

We find further that during the period from July 3, 1911, to March 31, 1916, inclusive, complainant Pardee Brothers & Company, Incorporated, a corporation, made certain carload shipments of anthracite coal of prepared and pea sizes via the Lehigh Valley Railroad from three collieries on defendant's line in the Lehigh anthracite region of Pennsylvania, known as Lattimer No. 3, Lattimer No. 4, and Lattimer No. 5, to Perth Amboy for transshipment by water; that such shipments aggregated 192,251.02 long tons, prepared sizes, and 3,126.06 long tons, pea size; that complainant Pardee Brothers & Company, Incorporated, paid and bore thereon the established tariff rates of $1.55 on prepared sizes and $1.40 on pea size; that said rates so paid were excessive and unreasonable to the extent that they exceeded $1.40 on prepared sizes and $1.30 on pea size, which latter would have been reasonable rates for the service; that complainant Pardee Brothers & Company, Incorporated, has been damaged by the payment of said unreasonable rates to the extent of the difference between the amount paid at the rates herein found unreasonable and the amount it would have paid at the rates herein found reasonable; and that said damages amount to the sum of $30,164.30 as principal, and the sum of $3,399.79 as interest at 6 per cent per annum from the date of payment of the charges on each shipment to April 1, 1916, together with interest on the said principal sum of $30,164.30 from April 1, 1916, to the date of payment.

We further find that during the period between July 3, 1911, to March 31, 1916, inclusive, the interveners, Charles M. Dodson, the estate of Weston Dodson, deceased, the estate of T. M. Dodson, deceased, the estate of Samuel Adams, deceased, Frank C. Stout, E. L. Bullock, and A. S. Schopp, copartners doing business as Charles M. Dodson & Company, made certain carload shipments of anthracite coal of prepared and pea sizes from Beaver Brook colliery on defendant's line in the Lehigh region of Pennsylvania, via the Lehigh Valley Railroad to Perth Amboy, N. J., for transshipment by water; that such shipments aggregated 214,346.47 long tons, prepared sizes, and 3,573 long tons, pea size; that said interveners Charles M. Dodson & Company ultimately paid and bore thereon the established tariff rates of $1.55 on prepared sizes and $1.40 on pea size; that said rates so paid were excessive and unreasonable to the ex-

tent that they exceeded $1.40 on prepared sizes and $1.30 on pea size, which latter would have been reasonable rates for the service; that interveners have been damaged by the payment of said unreasonable rates to the extent of the difference between the amount paid at the rates herein found unreasonable and the amount they would have paid at the rates herein found reasonable; and that said damages amount to the sum of $32,509.77 as principal, and the sum of $3,596.39 as interest at 6 per cent per annum from the date of payment of the charges on each shipment to April 1, 1916, together with interest on the said principal sum of $32,509.77 from April 1, 1916, to the date of payment.

An appropriate order will be entered.

HALL, *Commissioner*, concurring:

For reasons stated in my expression appended to the report in *Plymouth Coal Co.* v. *P. R. R. Co.*, 56 I. C. C., 699, at 709, I concur in the foregoing report.