By Mr. HANNA: Petition of citizens of North Dakota, favoring the passage of the amended Kenyon bill (S. 4043); to the Committee on the Judiciary.

By Mr. LANGHAM: Petition of the Lake Michigan Sanitary Association, Chicago, Ill., favoring appropriation for the investigation of the pollution of the waters of the Great Lakes; to the Committee on Appropriations.

Also, petition of Pennsylvania State Camp, Patriotic Order Sons of America, Philadelphia, Pa., favoring the passage of Senate bill 3175, for restriction of immigration; to the Committee on Immigration and Naturalization.

By Mr. LEVY: Petition of the New York Produce Exchange, New York, N. Y., favoring the passage of the Pomerene substitute bill (S. 957); to the Committee on Interstate and Foreign Commerce.

Also, petition of the Lake Michigan Sanitary Association, Chicago, Ill., favoring an appropriation for the investigation of the pollution of the waters of the Great Lakes; to the Committee on Appropriations.

By Mr. McKELLAR: Petition of citizens of Memphis, Tenn., favoring the passage of the Kenyon-Sheppard liquor bill; to the Committee on the Judiciary.

By Mr. MONDELL: Petition of citizens of Powell, Cody, and Basin, Wyo., favoring passage of bill giving the Interstate Commerce Commission further power toward regulation of express rates; to the Committee on Interstate and Foreign Commerce.

By Mr. NEEDHAM: Petition of dairymen of California, protesting against the passage of any legislation removing the tax from oleomargarine; to the Committee on Agriculture.

Also, petition of State Council of Pennsylvania, Order of Independent Americans, Philadelphia, Pa., favoring the passage of Senate bill 3175, for the restriction of immigration; to the Committee on Immigration and Naturalization.

Also, petition of the board of directors of the Modesto irrigation district, protesting against the passage of any legislation changing the boundary line of the Yosemite National Park; to the Committee on the Public Lands.

By Mr. PARRAN: Papers in support of bill (H. R. 26847) granting an honorable discharge from the military service; to the Committee on Military Affairs.

By Mr. ROBINSON: Papers to accompany bill (H. R. 26989) for relief of heirs of James Thompson; to the Committee on War Claims.

By Mr. SULZER: Petition of citizens of New York, favoring passage of House bill 26277, to establish a United States court of patent appeals; to the Committee on the Judiciary.

By Mr. UNDERHILL: Petition of the State Camp of New York, Patriotic Order Sons of America, Binghamton, N. Y., favoring the passage of Senate bill 3175, for restriction of immigration; to the Committee on Immigration and Naturalization.

By Mr. WILLIS: Papers to accompany bill (H. R. 26997) granting an increase of pension to Lemuel H. Mahan; to the Committee on Invalid Pensions.

SENATE.

WEDNESDAY, *December 11, 1912.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Secretary read the Journal of yesterday's proceedings.

Mr. CULLOM. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore (Mr. BACON). The Senator from Illinois suggests the absence of a quorum. The Secretary will proceed to call the roll of the Senate.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Foster	Massey	Sanders
Bankhead	Gallinger	Myers	Smith, Ga.
Brandegee	Gardner	Newlands	Smith, S. C.
Bristow	Gronna	O'Gorman	Smoot
Brown	Hitchcock	Oliver	Stephenson
Bryan	Johnson, Me.	Overman	Sutherland
Burnham	Johnston, Ala.	Owen	Swanson
Clapp	La Follette	Page	Thornton
Clark, Wyo.	Lea	Penrose	Townsend
Clarke, Ark.	Lodge	Perkins	Warren
Crane	McCumber	Perky	Works
Crawford	McLean	Pomerene	
Cullom	Martin, Va.	Richardson	
Davis	Martine, N. J.	Root	

Mr. PAGE. I wish to announce the continued absence of my colleague [Mr. DILLINGHAM], and that he is not able to be in attendance.

The PRESIDENT pro tempore. On the call of the roll 53 Senators have responded to their names. A quorum of the Senate is present. The Journal having been read, if there is no inaccuracy it will be considered as confirmed.

NATIONAL FOREST RESERVATION COMMISSION (H. DOC. NO. 1158).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of War, transmitting, pursuant to law, a report of the National Forest Reservation Commission for the fiscal year ended June 30, 1912, which, with the accompanying paper, was referred to the Committee on Forest Reservations and the Protection of Game and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed Senate concurrent resolution No. 31, providing for the appointment of a joint committee to make necessary arrangements for the inauguration of the President elect of the United States on the 4th day of March next, and in compliance therewith the House had appointed Mr. RUCKER of Missouri, Mr. GARRETT, and Mr. MCKINLEY the committee on the part of the House.

The message also announced that the House insists upon its amendment to the bill (S. 3436) granting to Phillips County, Ark., certain lots in the city of Helena for a site for a county courthouse disagreed to by the Senate; agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. ROBERTSON, Mr. GRAHAM, and Mr. VOLSTEAD managers at the conference on the part of the House.

The message further announced that the House had passed a bill (H. R. 26080) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes, in which it requested the concurrence of the Senate.

PETITIONS AND MEMORIALS.

Mr. OLIVER presented a petition of the Ministerial Association of Beaver Falls, Pa., and a petition of 300 citizens of Masontown, Pa., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were ordered to lie on the table.

He also presented a memorial of Local Union No. 163, International Union of the United Brewery Workmen of America, of Wilkes-Barre, Pa., remonstrating against the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which was ordered to lie on the table.

Mr. BRYAN. I present a petition of the Board of Trade of the city of Eustis, Fla., praying for the passage of the so-called Kenyon-Sheppard liquor bill. I ask that the petition lie on the table and be printed in the RECORD.

There being no objection, the petition was ordered to lie on the table and to be printed in the RECORD, as follows:

EUSTIS BOARD OF TRADE.
Eustis, Fla., December 6, 1912.

Hon. N. P. BRYAN.

DEAR SENATOR: At a meeting of the board of trade of the city of Eustis held this evening it was unanimously resolved to request you to vote for and work for the passage of the Kenyon-Sheppard bill now before Congress. When the subject was introduced it was discussed, and upon motion the resolution was adopted without a dissenting voice. We feel that you could not confer a greater honor upon yourself than by heeding this petition.

Respectfully,

E. L. FERRAN,
President Board of Trade, President Lake County Publishing Co., President E. L. Ferran & Co., Merchants.
D. J. CALDWELL,
Vice President Board of Trade, Proprietor D. J. Caldwell Hardware Co.
H. C. HANNAH,
Secretary Board of Trade, Secretary Lake County Manufacturing Co.
W. F. MANTEY,
Treasurer Board of Trade, Proprietor Mantey Bros., Stationers.

Attest:

HENRY W. BISHOP,
Secretary Pro Tempore Board of Trade, ex-President Board of Trade, ex-Mayor City of Eustis, Attorney at Law.

Mr. SANDERS presented a petition of members of the faculty of Maryville College, Maryville, Tenn., and a petition of sundry citizens of Blount County, Tenn., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were ordered to lie on the table.

Mr. MCCUMBER presented petitions of sundry citizens of Drayton, Cheyenne, Buxton, Casselton, Hatton, Beach, and Wyndmere, all in the State of North Dakota, praying for the passage of the so-called Kenyon interstate liquor bill, which were ordered to lie on the table.

Mr. MCLEAN presented a memorial of Local Union No. 126, International Union of the United Brewery Workmen, of Waterbury, Conn., remonstrating against the passage of the so-called

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Kenyon interstate liquor bill, which was ordered to lie on the table.

Mr. LEA presented memorials of sundry citizens of Tennessee, remonstrating against the installation of the so-called Taylor system of shop management in Government navy yards, etc., which were ordered to lie on the table.

He also presented petitions of sundry citizens of Nashville, Memphis, Knoxville, McKenzie, Sumner County, Fayette County, White County, Madison County, Polk County, Davidson County, Robertson County, Morgan County, Franklin County, Crockett County, Henry County, Dickson County, Chester County, McNairy County, Overton County, McMinn County, Putnam County, Gibson County, Hardin County, Decatur County, Dekalb County, Knox County, Carroll County, Hamilton County, Lawrence County, Fentress County, Dyer County, all in the State of Tennessee, and of the Woman's Missionary Society of the First United Presbyterian Church, of Washington, D. C., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were ordered to lie on the table.

Mr. BROWN presented sundry affidavits in support of the bill (S. 7595) granting an increase of pension to Nelson Taylor, which were referred to the Committee on Pensions.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. TOWNSEND:

A bill (S. 7708) granting an increase of pension to Olive Stull (with accompanying paper); to the Committee on Pensions.

By Mr. THORNTON:

A bill (S. 7709) for the relief of the estate of Philip Felix Herwig, deceased; to the Committee on Claims.

By Mr. McCUMBER:

A bill (S. 7710) granting an increase of pension to Mary M. Croft; and

A bill (S. 7711) granting an increase of pension to John Enright (with accompanying paper); to the Committee on Pensions.

By Mr. CRAWFORD:

A bill (S. 7712) granting an increase of pension to Riley Hawley (with accompanying paper); to the Committee on Pensions.

By Mr. PENROSE:

A bill (S. 7713) establishing compensation of certain customs officials; to the Committee on Finance.

By Mr. CRAWFORD (for Mr. GAMBLE):

A bill (S. 7714) granting an increase of pension to John W. Culver (with accompanying papers); and

A bill (S. 7715) granting a pension to Catherine E. Brown (with accompanying papers); to the Committee on Pensions.

By Mr. STEPHENSON:

A bill (S. 7716) granting an increase of pension to James Mitchell (with accompanying papers); to the Committee on Pensions.

By Mr. FLETCHER:

A bill (S. 7717) granting an increase of pension to Edmund P. Banning; and

A bill (S. 7718) granting a pension to Austin Mooney; to the Committee on Pensions.

AMENDMENT TO LEGISLATIVE APPROPRIATION BILL.

Mr. MYERS submitted an amendment proposing to appropriate $10,400 for the maintenance of an assay office at Helena, Mont., etc., intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

HOUSE BILL REFERRED.

H. R. 26680. An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

OMNIBUS CLAIMS BILL.

The PRESIDENT pro tempore. The morning business is closed.

Mr. CRAWFORD. I ask that the consideration of House bill 19115, known as the omnibus claims bill, be resumed.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 19115) making appropriation for payment of certain claims in accordance with findings of the Court of Claims, reported under the provisions of the acts approved March 3, 1883, and March 3, 1887, and commonly known as the Bowman and the Tucker Acts.

Mr. CRAWFORD. There is an amendment pending.

The PRESIDENT pro tempore. The pending amendment, the Chair is informed, is an amendment submitted by the Senator from Massachusetts [Mr. LODGE]. It will be read.

The SECRETARY. On page 264, after line 17, in the Massachusetts items, insert:

To Thomas B. Flower, of Greenville, Mass, $5,538.

The PRESIDENT pro tempore. The question is on the adoption of the amendment.

Mr. CRAWFORD. Mr. President, when the Senator from Massachusetts offered this amendment yesterday he had the findings of the Court of Claims printed in the RECORD, and they are in the RECORD of yesterday's proceedings. This item was not in the bill as it passed the House. The Senate committee, after examining the items in the bill as it passed the House, proposed an amendment striking out a very large number of claims of the same character and having the same standing as this claim which the Senator from Massachusetts proposes shall be paid. This amendment, which he proposed some time ago, was referred to the committee and received very careful consideration by that committee, and the committee decided against incorporating it in the bill.

Mr. President, I wish to call attention to claims of this class. In the first place, it is for what may be called stores and supplies, although two items in it are for woodland, 163 acres of timber and 133 acres of timber, apparently standing timber, as estimated by the agent. Among the items is a claim for a henhouse and a corncrib and divers items of that kind, which it is claimed were taken by the military forces of the United States for the use of the Army in 1864.

This claim was sent to the Court of Claims under what is known as the Tucker Act. That act required that the court make a finding, giving any excuse which the claimant might have for long delay in presenting his claim. The court, in its findings, say that—

> The claim was not presented to the Southern Claims Commission, and no evidence has been offered by the claimant under the act of March 3, 1887, "bearing upon the question whether there has been any delay or laches in presenting such claim or applying for such grant, gift, or bounty, and facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy."

It was sent to the Court of Claims under an act which required the court to find what the facts were that might be considered in excusing the claimant for his delay and laches, and the court finds no evidence whatever upon the question why during all these years this claim had not been presented to any department of the Government. It was not presented to the Southern Claims Commission; it was not sent to the Court of Claims under the Bowman Act; but apparently it was allowed to slumber from 1864 until the year 1900, when for the first time it was sent to the Court of Claims under the Tucker Act. Now, that is a period or more than a generation. For a period of about 36 years this claim lay dormant and was not presented to any department of the Government. Sir, during that time the claimant died. The court finds in the year 1902 that this claimant was loyal. Mr. President, it can be seen at a glance how difficult it would be, after the expiration of 36 years, the original claimant himself being in his grave, for the Government to get testimony with reference to whether or not he was not loyal.

But it is a notorious fact, which appears all through the omnibus claims bill, that after an ancestor, who during his lifetime was too conscientious and had too much regard for his sense of propriety to come forward and assert a claim, is dead and gone, his children come forward and urge the claim, saying that he was loyal, and this, too, when all the witnesses who lived at the time the claim arose are dead and in their graves and there is no opportunity for the Government to make an issue with reference to the matter. Some of these children come in here and ask damages for corn cribs or for spoliation of timber lands by the hundreds of acres more than a generation ago, and say that the ancestor was loyal. Loyalty is a very general term; it is largely a state of mind; and, as the court has said over and over again, the most competent witness upon the question of loyalty, if he will tell the truth, is the claimant himself who originally had the right to assert the claim. When he is dead, when his lips are forever closed, and when no issue can be made with reference to him, after all the parties are gone and the transaction is a stale one, the children come in and say the ancestor was loyal. That puts the Government of the United States at a very great disadvantage, indeed. Then, when the claimant goes into court under a law which requires the Court of Claims to find what explanation there is for his delay, and under that statute the court takes jurisdiction of the claim and reports it back here without a single

explanation, without any facts whatever to explain the long years that have gone by since the facts arose upon which the claim is based, it seems to me we are opening the door in a very reckless and very dangerous way to go into the appropriation of money to satisfy claims of such a character.

In war all the residents of the country with which we are at war are enemies—public enemies—they are so regarded; and to bring a claim on account of soldiers going through forests and in the conduct of war laying waste to trees, so that they are estimated by the acre—133 acres of timber—is bringing a claim against the Government which arose during the war of such a character that it seems to me it would be a very dangerous precedent, indeed, to appropriate money to satisfy it.

As I have said over and over again, if this particular claim is allowed upon this state of facts, and we are to load this bill down with such claims, I will say frankly to the Senate that after the bill is so loaded it will not have my support.

I have investigated these claims personally. I have not taken the word of clerks; I have taken the findings, and I have carefully and conscientiously gone through each one of them and reported to the full committee the facts which I found. That committee, after seriously considering them, decided to reject this claim and others of this class. It is for the Senate to say whether they will sustain the committee in that policy or throw the bars down here and go into a discussion of all the multitudinous details and facts in relation to stale claims of this character.

I submit to the Senate that the amendment ought not to be accepted.

Mr. LODGE. Mr. President, I have no desire to protract the discussion of this particular amendment. I am unable to say why there was delay in the presentation of the claim, but I do wish to say a single word in regard to one statement made by the Senator from South Dakota as to the children of the man in whose name the claim is made coming forward and making a statement about his loyalty which he would have been unwilling to make. I happen to know the son of this man who, I think, is the one who has brought the claim. He is a young man of a great deal of talent and ability and of the highest character. He is utterly incapable of making any statement for the purpose of getting money from the Government which he did not thoroughly believe to be true. I think it is only just to him to say that I am sure that he is thoroughly convinced that this is an honest and proper claim and that he never would have alleged the loyalty of his father unless he had been perfectly certain of it. I know this case comes under a class of claims very much disputed, but I felt when I introduced it that it was an honest claim and a good claim, and for that reason I presented it. I do not wish to delay the Senate any further.

Mr. CRAWFORD. Just one word further, Mr. President. I do not wish to start in here on one item with a lengthy discussion, but the Tucker Act, under which this claim was sent to the Court of Claims, provides that that court shall also report whether there are any equitable grounds upon which the claim might be allowed. There is absolutely no report under the Tucker Act that there are equitable grounds upon which this claim should be considered.

Another thing. It is said that this property was taken by the military forces for the use of the Army, but it is not said, as is customary in such cases, that it was taken by authority of the Government. It is simply said that it was taken by the military forces for the use of the Army.

Mr. LODGE. The court says specifically that it was taken by proper authority.

Mr. CRAWFORD. That is in the statement of facts, taken from the petition, but not in the findings. The findings are that there was taken from the claimant's decedent in Dinwiddie County——

Mr. LODGE. Yes; that is the statement of fact.

Mr. CRAWFORD. Certainly. That is merely the allegation.

Mr. LODGE. Yes; that is true.

Mr. CRAWFORD. But in the statement of facts it does not say that it was by authority of the Government.

That is not all. Under the laws relating to these claims there should have been a receipt issued by the quartermaster, or whoever represented the Government at the time this property was received, if it was taken in that way and for the use of the Government by authority of the Government. There is nothing of that kind here. The most that can be claimed for these facts is that this property was taken by the United States forces and was used for the Army, but there is nothing in the findings to show that it was taken by the authority of the commanding officer or that it was receipted for, so there is not any evidence of that class and character which, under several of the acts, it is contemplated should be produced before the claim would have any standing before an auditor of the War Department.

I ask that the amendment be rejected, Mr. President.

The PRESIDING OFFICER (Mr. SMITH of Georgia in the chair). The question is on the amendment offered by the Senator from Massachusetts [Mr. LODGE]. [Putting the question.] The ayes seem to have it.

Mr. CRAWFORD. I call for a division, Mr. President.

The PRESIDING OFFICER. A division is called for.

Mr. CRAWFORD. I call for yeas and nays. We might as well go on record on this claim. Some Senators evidently did not understand the question on which the vote was being taken.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Massachusetts, which the Secretary will state.

The SECRETARY. On page 264, after line 13, it is proposed to insert the following:

To Thomas B. Flower, of Greenville, Mass., $5,538.

Mr. CLARKE of Arkansas. May I ask the Senator from Massachusetts what the claim is based on?

Mr. LODGE. That is stated in the findings of the court. It is a claim for property taken and used during the war. Thomas B. Flower is dead, and the claim is brought by his heirs.

Mr. CLARKE of Arkansas. Mr. President, my understanding is that this bill is being made up upon the theory that all private claims should be omitted, except such as relate to overtime charges in favor of those who served in the postal department and various other branches of the public service.

The private claims referred to as being eliminated I supposed were private claims growing out of property taken during the war. I understood all those claims would be left over for future consideration and that the bill was to go to conference as amended on the part of the Senate, sufficient being done at this time to take care of school, church, and other undisputed claims.

I am opposed to the amendment going in the bill unless all the other private claims of the same character are also inserted. There is no reason why there should be an exception made of that one simply because the beneficiary of it happens to reside in Massachusetts.

Mr. CRAWFORD. Mr. President, the Senate has sustained the committee in practically all of the amendments reported by the committee, striking out of the bill just such claims as this. Now, the Senate will have to reverse itself with reference to two or three hundred claims or else discriminate against two or three hundred claims if it allows this one claim presented by the Senator from Massachusetts. I do not think it would be fair to the committee or wise to do anything of the kind.

Mr. THORNTON. Mr. President, I should like to ask the Senator from Massachusetts whether the claim which he now offers was embodied in the House bill?

Mr. LODGE. I have not examined the House bill to see whether it was included or not, but I think it was not.

Mr. CRAWFORD. It was not.

Mr. THORNTON. It was not in the House bill?

Mr. LODGE. No.

Mr. MARTIN of Virginia. Mr. President, I ask the Senator from Massachusetts if it has ever been to the Court of Claims, and if there is a finding from the Court of Claims?

Mr. LODGE. Yes; the findings of the Court of Claims have been rendered.

Mr. MARTIN of Virginia. Have they been read?

Mr. LODGE. They have been read. I will ask that they be read again, if the Senator so desires.

Mr. CRAWFORD. The Senator from Virginia may not have been in the Chamber at the time, but we have just discussed the issue with reference to the report of the Court of Claims. The claim was sent there under that clause of the Tucker Act which required the court to find what the facts were and to ascertain what explanation the claimant gave for his delay. Under that clause the Court of Claims found no excuse whatever for the delay. In addition to that, I have just called attention to the fact that the court findings, while they say the property was taken by the military forces, do not go to the extent of saying that the property was taken by the authority of the Government. There was no voucher, or anything of that kind produced. So that in many respects it is not as strong as cases which the Senate has sustained the committee in striking from the bill as it passed the House. This claim is not in the bill as it passed the House.

Mr. LODGE. The findings of fact read yesterday are as follows:

FINDINGS OF FACT.

I. The claimant's decedent, Thomas B. Flower, the person alleged to have furnished such supplies or stores, or from who the same are alleged to have been taken, was loyal to the Government of the United States throughout said war.

II. There was taken from the claimant's decedent, in Dinwiddie County, State of Virginia, during the War of the Rebellion by the military forces of the United States for the use of the Army property of the kind and character above described, which was then and there reasonably worth the sum of $5,538, for which no payment appears to have been made.

III. The claim was not presented to the Southern Claims Commission, and no evidence has been offered by the claimant under the act of March 3, 1887, "bearing upon the question whether there has been any delay or laches in presenting such claim or applying for such grant, gift, or bounty, and facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy."

Mr. CRAWFORD. The claim was not sent to the Court of Claims until 1900, 36 years after this property was alleged to have been taken, and the finding that the original claimant was loyal was made in 1902, 38 years afterwards, when the claimant was dead and in his grave. There is not anything in the record to show that up to 1900 relief was asked from any department of the Government or even a bill presented to the Congress of the United States for relief. The Court of Claims, under the Tucker Act which required an explanation of the delay and laches, finds no explanation.

Mr. President, I withdraw my request for the yeas and nays on the amendment, but ask that the question again be put on it.

Mr. LODGE. I ask the Chair to put the question again.

The PRESIDING OFFICER. The Chair will again put the question. The question is on agreeing to the amendment offered by the Senator from Massachusetts [Mr. LODGE].

The amendment was rejected.

Mr. ROOT. Mr. President, I wish to offer an amendment covering a longevity claim. I think it is of the same character as others which have been passed upon favorably.

Mr. CRAWFORD. We have been over so many of them that I will not ask to delay the Senate by having the findings read, and I will accept the amendment with this reservation, that I wish to examine the case, and if I find in any way that it differs from the cases that we have allowed, then I am sure the Senator will concede to me that I can ask to have the action reconsidered.

Mr. ROOT. That is entirely satisfactory to me.

Mr. CRAWFORD. With that understanding on the part of the committee, I am willing to accept the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 263, after line 2, in the District of Columbia items, it is proposed to insert:

To Spencer Gordon, administrator of the estate of Charles Harris Lester, deceased, of Washington, $1,545.58.

Mr. CRAWFORD. Is that an overtime navy-yard claim?

Mr. ROOT. That is a longevity claim.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ROOT. I offer another amendment. It does not come under the same head.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 268, after line 9, it is proposed to insert:

Elizabeth B. Eddy, widow of Charles G. Eddy, deceased, $602.92.

Mr. ROOT. There are findings of the Court of Claims in that case. I ask to have the findings read.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

FINDINGS OF FACT.

I. Claimant's decedent, Charles G. Eddy, upon whose service this claim is based, was loyal to the United States, he having served in the military service of the United States from July 26, 1862, until the close of the War of the Rebellion.

II. Said decedent was enrolled in the military service of the United States for three years on the 26th day of July, 1862, at Milwaukee, Wis., and was mustered into said service as sergeant, Company A, Twenty-fourth Wisconsin Infantry, on August 15, 1862. On December 22, 1862, he was detailed as telegraph operator at the headquarters of Gen. A. D. McCook, and served under said detail from December 23, 1862, until June 14, 1863, when the following order was issued:

[Special Field Orders, No. 192.]

HEADQUARTERS DEPARTMENT OF THE CUMBERLAND,
Tullahoma, Tenn., June 14, 1863.

[Extract.]

* * * * * * *

4. Sergt. Charles G. Eddy, Company A, Twenty-fourth Wisconsin Volunteers, is detailed for duty in telegraph office and will report without delay to Capt. J. C. Van Duzer, assistant superintendent military telegraph.

By command of Maj. Gen. Rosecrans:

H. THRALL,
Captain and Assistant Adjutant General.

While serving under said last-mentioned detail the following order was issued:

[Special Orders, No. 93.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, February 26, 1864.

[Extract.]

35. The following enlisted men will be furloughed without pay or emoluments until further orders, to enable them to enter the service of the United States Military Telegraph Corps. They will be borne on their company rolls as on furlough. Sergt. Charles G. Eddy, Company A, Twenty-fourth Wisconsin Volunteers.

* * * * * * *

By order of the Secretary of War.

W. A. NICHOLS,
Assistant Adjutant General.

III. Said Charles G. Eddy was carried on the pay rolls of the Quartermaster Generals Department of civilian employees of the United States Military Telegraph Service for the months of January, February, and March, 1864, at $70 per month, for the months of April, May, and June at $80 per month, and from July, 1864, to May 31, 1865, at $100 per month, a total of $1,550, and he receipted to various assistant quartermasters for the payments to him of said amounts.

It does not appear that said Charles G. Eddy received any pay for services as a telegraph operator for any time prior to January 1, 1864.

IV. No general or special orders were issued by the War Department during the Civil War relative to the granting of furloughs to enlisted men to enable them to be employed in the United States Military Telegraph Service on the civilian rolls prior to October 30, 1863.

V. Said Charles G. Eddy was reduced to private September 1, 1864, and was mustered out with his company June 22, 1865. Including a net overpayment of $5.93, he has been paid by Army paymasters the pay and clothing pay of a sergeant from July 26, 1862, to August 31, 1864, and of a private from September 1, 1864, to June 22, 1865, and $200 bounty under the acts of July 22, 1861, and July 28, 1866.

VI. The salaries paid to civilian employees of the United States Military Telegraph Service in the Department of the Cumberland during the months of January of the years 1862, 1863, and 1864 varied from $15 per month to $100 per month, as follows: $15, $20, $27, $30, $33, $35, $37, $38, $40, $47, $50, $55, $58.20 ($1.94 per day), $60, $65, $70, $75, $76, $80, and $100 per month.

VII. The difference between the pay of a telegraph operator for the period from December 23, 1862, to December 31, 1863, inclusive, at $70 per month, the rate allowed said Charles G. Eddy during the first three months of his service as civilian employee of the United States Military Telegraph Service, as shown in Finding III, and the pay and clothing pay received by him as sergeant during said period is $602.92, after deducting the overpayment of $5.93 as aforesaid.

VIII. The claim herein was duly presented to the accounting officers of the Treasury Department, but by them disallowed April 30, 1896, on the ground that they found nothing due the claimant's decedent under existing law.

BY THE COURT.

Filed the 2d day of December, 1907.
A true copy.
Test this 5th day of December, A. D. 1907.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Mr. ROOT. Mr. President, this little claim has heretofore passed the Senate, and I know of no reason why it should not be put into this bill, unless it be the general consideration relating to the kinds of claims to go into the bill.

Mr. CRAWFORD. May I ask the Senator when the bill passed the Senate?

Mr. ROOT. I think it was in the last session of the last Congress—the Sixty-first Congress.

Mr. CRAWFORD. It was not reported by the committee.

Mr. ROOT. It reached the House too late to be acted upon.

I want to appeal to the chairman of the committee and to the Senate not to apply that rule to this claim, for this reason: This man was a veteran of the Civil War. He was mustered into the service of the United States in April, 1862, with a Wisconsin regiment, and shortly after, the officers ascertaining that he was a skilled telegrapher, he was ordered to duty as a telegrapher at headquarters and was kept there. He had become a sergeant. He was deprived of the opportunity for promotion, deprived of the opportunity for distinction in the military service, which as a young man he was seeking, and was obliged to stay at a desk and do the work of a telegrapher, side by side with civil telegraphers who were paid the salaries that were mentioned in the findings of the Court of Claims, while he was receiving the pay only of a private in the Army.

He brought to me an autograph letter of Gen. Sherman to him containing the highest encomiums upon his fidelity and value of his service. If this just claim is deferred, it never will be of any use to the claimant. As the Senate has once passed upon the case and as the Court of Claims has passed upon it, I hope the Senate will put it in this bill.

Mr. CRAWFORD. Mr. President, I remember quite distinctly talking with the Senator from New York about this claim and reading the letter from Gen. Sherman, which, of course, appeals to anyone who reads it; but I have no recollection of this claim having been reported by the Committee on Claims. I remember we had it before us and there was objection to it,

and, as I recall it, the committee did not make a report upon it. It may have come through some other committee, but I doubt very much if that bill was reported favorably by the Committee on Claims.

Mr. ROOT. I do not know. I have a memorandum that it passed the Senate in the Sixty-first Congress, but too late to pass the House.

Mr. CRAWFORD. If the Senator will permit me, I wish to call attention to some facts disclosed in the findings of the Court of Claims with reference to Mr. Eddy's compensation. He received pay and clothing pay of a sergeant from July 26, 1862, to August 31, 1864, and of a private from September 1, 1864, to June 22, 1865, and $200 bounty, under the acts of July 2, 1861, and July 22, 1866. There was $200 bounty. Then in January, February, and March, 1864, Mr. Eddy received $70 a month as a telegraph operator, while during the same time he drew pay as a sergeant. That is, he got pay as a sergeant as well as pay as a telegraph operator.

Mr. ROOT. I think that is all charged against him in the findings of the Court of Claims, and this $600 is the difference between all he received and what he would have received if he had been paid what the men working side by side with him were receiving.

Mr. CRAWFORD. I want to get that clearly before the Senate. He drew for April and May and June $80 a month as an operator; at the same time he drew pay as a sergeant. My sympathy is naturally with the claimant, particularly because of the letter of Gen. Sherman, but I discovered that he drew pay as an operator, and they did not cut him off from that, and at the same time he drew pay as a sergeant. From July, 1864, to September, 1864, he drew a hundred dollars a month as an operator; and then from July, 1864, to August, 1864, covering the same period, he drew pay as a sergeant. He got a hundred dollars a month and at the same time got a sergeant's pay; and from August, 1864, to May 31, 1865, he drew a hundred dollars a month as an operator, and from September, 1864, to June 22, 1865, he drew pay as a private; and then $200 additional as bounty. So that, after all, there is not as strong a case made out in his favor on the ground that he was unjustly treated by being confined to the duties of an operator while others were drawing salaries in other capacities, because he drew pay as an operator and also pay as a sergeant and got this bounty besides.

Mr. ROOT. But there was a period from 1862, when he was ordered to this telegraph office, until 1864, when there was a general order providing for the pay to men under those circumstances as civilians during which he was receiving only his pay as a sergeant. It was not covered by that general order because it was not retroactive.

Mr. CRAWFORD. Mr. President, I wish the Senator would allow the matter to lie over until I can ascertain whether, as a matter of fact, the Committee on Claims reported this bill favorably. I have no recollection of their doing it. If the committee committed itself to this bill by a favorable report, that would put the committee in a different attitude from what I think it is in. I think the committee is in the position of having rejected this claim; and, if so, I should not feel that I could do otherwise than oppose it. But I should like to have an opportunity to do that.

Mr. ROOT. It will be quite satisfactory to me to have this amendment lie on the table until the chairman of the committee can make the inquiries he wishes.

The PRESIDING OFFICER. Without objection, it will lie on the table.

Mr. MASSEY. Mr. President, I desire to offer the following amendment to the pending bill.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 64, following line 8, insert:

NEVADA.

To John Allman, formerly of Virginia City, now a resident of the State of California, $2,358.

To John M. Forsyth, formerly of Carson City, now a resident of the State of California, $2,728.

To Frank J. McWorthy, formerly of the State of Nevada, now a resident of the State of California, $450.

To Thomas Rodgers, formerly of Virginia City, now a resident of the State of California, $440.

To the legal representatives of James M. Thompson, deceased, late of Carson City, $3,730.

Mr. MASSEY. Mr. President, the items covered by the amendment just read were in the bill at the time it passed the House and have been stricken out by the Committee on Claims in the bill as reported to the Senate.

The items grew out of a Piute Indian depredations in 1859 and 1860. It is true that no action was taken toward the presentation of these bills against the Government until many years after, and it is also true that there was no tribunal in the way of a court having power to adjudicate matters of this kind as between claimants and the Government until many years after these claims arose.

It is also true, Mr. President, that these claims were referred to the Court of Claims, and that the court has in each instance made findings of fact concerning the merits of the claims themselves; and as illustrating the facts out of which all of the claims have grown I call the attention of the Senate to and will read from the report sent to the Senate on the 16th day of December, 1904, under the certification of the clerk of the court.

I refer to the claim of John M. Forsyth, covered by the amendment which I have read.

The claimant in his petition—

Reading from the report—

The claimant in his petition makes the following allegations:

1. That he is a citizen of the United States and a resident of the State of California. That in the spring of 1860 he was a resident of the Territory of Nevada and volunteered to serve under Maj. William Ormsby in a volunteer organization raised to repel the attacks of the Piute Indians who were at the time raiding in the Territory of Nevada. That this volunteer organization was raised by the citizens in order to defend the Territory from the attacks of said Indians, there being at the time no United States troops in the Territory or any authorized militia of the Territory.

2. That he furnished for the use of said organization various supplies, as hereinafter set forth, and in a battle with said Indians in the spring of 1860 the Indians repulsed the volunteer organization forces and captured the horses, supplies, saddles, and other equipments furnished by this claimant. That he claims pay from the United States for the following property.

Then follows in the report a list of the property upon which he bases his rights against the Government of the United States, which I shall not read.

3. That a claim for said property, with evidence therein, was on the 24th day of October, 1890, presented to the State board of examiners of Nevada, the items of said claim being as hereinbefore recited and being for sum of $6,850, under the act of the legislature of said State as follows, to wit, an act entitled "An act relative to the proving of Indian war claims," approved February 27, 1885, and February 13, 1889, respectively. (State Statutes of Nevada for 1885, p. 47, and for 1889, pp. 32, 33.)

That final action was not taken upon this claim by the State board of examiners of Nevada, but the same was reported to the governor of Nevada, being one of a list of cases marked "Action deferred." (Rep. Secretary of State, 1889–90.)

The court, upon the evidence and after considering the briefs and arguments of counsel of both sides, make the following

FINDINGS OF FACT.

I. In 1859 and early in 1860 the Indians of the Piute Tribe inaugurated a series of raids and massacres of settlers on the Carson River, Nevada Territory, and in April, 1860, they drove off a large amount of stock and killed several people and threatened the whites with extermination.

II. It became necessary, for the protection of the life and property of the settlers in and about Carson City, Virginia City, and the country intervening, to organize a company of volunteers to proceed against the Indians, and a company was organized composed of recruits from Carson City, Virginia City, and other smaller settlements, aggregating 125 or 130 men, under the command of Maj. William Ormsby. This company proceeded against the Indians, numbering several hundred; met them in a fight at Pyramid Lake. Nev., where the volunteer company was defeated with great loss. Whatever property, provisions, and supplies the company took into this campaign were used by the volunteers or abandoned or destroyed at or near Pyramid Lake, the survivors returning to their homes.

Immediately after these events home guards were formed and a regular force of volunteers was formed, recruited from residents of Carson and Virginia City, and other neighboring places, and requests for aid were sent to California, and in response several companies of volunteers and one of the regular United States soldiers were sent across the mountains and the whole force was placed under the command of Col. John C. Hays. This force, composed of several hundred men, moved against the Indians, who speedily retreated and after some small fights surrendered and sued for peace, which was granted.

III. These forces under Maj. William Ormsby and Col. Hays were provisioned and equipped by contributions from citizens of both Nevada and California. It was necessary to the success of the expeditions that the soldiers should be furnished with horses and feed, arms, ammunition, clothing, and provisions, all of which were either contributed by citizens upon request or impressed by the officers.

IV. In April, 1860, claimant resided at Carson, Nev., and was the owner of a number of horses and mules. He took an active interest in aiding in the organization of the volunteers under Maj. Ormsby and later those under Col. Hays, and enlisted in each organization.

V. At the request of Maj. William Ormsby claimant gave his services to aiding in recruiting volunteers for Ormsby's company and furnished supplies for the use of said organization, the same being actually used by them in the campaign against the Indians and being reasonably worth at the time the sum of $2,728, for which no payment appears to have been made.

VI. The evidence does not establish to the satisfaction of the court the supply of cash by the claimant.

I read from the findings of the court, Mr. President, that the Senate may know what the facts are as to each of the particular items covered by the amendment which I have proposed. These Indians were the wards of the Government. The Government had invited people to settle in the valleys in the neighborhood of these Indians. It was the duty of the Government to protect the settlers there both in their lives and property. When the trouble arose they were without that protection, and they took upon themselves, necessarily and in response, of course, to the inherent law of nature, to do that which the

Government should have provided for—that is, the protection of their own lives and their own homes and their own property—and they gave this aid to the country for that purpose, although at a subsequent date, as shown, a portion of the Regular Army was sent across the mountains from California to assist in suppressing the uprising of these Indians.

Mr. President, in addition to that these items were covered in the bill as it passed the House. In addition to that fact these same items have passed the Senate in other bills covering the same items for the same purposes. They have been passed by the Senate twice, if I have read the RECORD correctly, in January, 1909, as shown by Senate bill 7971 of the Sixty-first Congress, second session, and on the 20th of December, 1910.

Not only that, Mr. President, but the Senate of the United States and the Congress of the United States, in fact, have recognized a number of claims of similar and like character, some of which, if my recollection serves me correctly, grew out of the same transaction, and have passed bills reimbursing citizens of the State of Nevada on account of the same losses or losses growing out of Indian depredations of the same character.

There were 39 of these claims, many of which have been paid, and when the House evidently deemed the claims of sufficient importance to embody it in the bill as carrying with it that equity which appealed to the conscience of the House in the passage of the bill as it came to the Senate, I think the Senate can not afford to reject at this time these claims.

There was a moral obligation upon the part of the Government as well as a legal obligation, especially under the conditions existing in the Territory of Nevada in 1859 and 1860 to afford that protection of life and property from these marauding tribes to which the settlers were entitled. The Senate well remembers as a part of the history of this country that in those days the trails of that western country across those deserts were crowded with emigrants who were seeking the gold fields of California and settling wherever land could be found at that time upon which to settle in the western country, to build the nation that we have in the western country.

As a matter of fact, the Government did not give to these people that protection which they should have had. They were compelled to make this sacrifice for the protection the Government should have given.

While these claims may be stale the mere question of their being stale ought not to be determinative of these rights where the facts are clear and undisputed. There is no doubt in my mind but that the Senate, in order to act justly regarding these claims, should adopt the amendment and give to the people making the claims what is due under the conditions and facts I have stated.

Mr. CRAWFORD. Mr. President, the claims of certain citizens of Nevada are claims which arose among the people who were taking voluntary steps in their own way to protect their settlements. That has been done in every pioneer community in every State in the United States at some time or another. The Maj. Ormsby who is mentioned was not an officer of the Regular Army of the United States. In fact, he was not connected with the Federal military establishment in any manner, shape, or form. They were going out from Carson City and Virginia City to engage in a contest with these Piute Indians, and the citizens contributed toward the fund with which they purchased the provisions and procured the horses and the equipment which these volunteers used. It seems that a fight occurred in which the settlers were defeated, and they lost a number of their horses and the provisions were consumed or destroyed.

If this had ever had any standing whatever as a claim against the Government, it would be a claim to be presented to the Committee on Indian Depredations, and it would have to proceed under the statutes that have provided for the settlement of claims of that character. Now, that attempt was made. This claim was presented as an Indian depredation claim and it was rejected. That is the entire history of this transaction. It dates away back in 1859. It never came here for reference to the Court of Claims until in the year 1900.

It seems to me that the Territory of Nevada and the State of Nevada that was evolved from it might with more propriety than the Federal Government take care of a claim no larger than this. It is less than $20,000. If their own citizens or the decedents of their own citizens there, away back in the fifties, in a voluntary movement in no way connected with any action of the Federal Government, sustained some loss, they are better prepared to know what the merits are than we at long range for a claim of this kind. Coming to the Capital of the Federal Government as late as 1900, when the transaction was in no way associated with the Federal authorities, and coming here in an omnibus claims bill in 1912, it seems to me opens a door of too great laxity in appropriating money out of the Federal Treasury to satisfy claims. I think there ought to be some responsibility fastened upon the Federal Government to justify taking money out of the Treasury and handing it over to citizens of the United States. I see no connecting link in this case whatever, and I ask that the action of the committee be sustained.

Of course, the court finds no conclusion of law. The Court of Claims finds nothing except the facts which I have recited.

I wish to say to the Senator from Nevada, in all kindness, that if the Senate rejects this amendment there will be a conference in which the views of the two Houses may be presented. The theory upon which the House puts this item in and the theory under which the Senate leaves it out will be therefore adjusted. I think it is fairer to the country, it is more in keeping with the responsibility that rests upon us in connection with the payment of money and the satisfaction of claims of this character, that we take that course rather than sustain the action of the House by placing this item in the bill.

I ask that the amendment be rejected.

Mr. MASSEY. Mr. President, just one or two words more, if I may, in response to the suggestions of the chairman of the Committee on Claims.

In the first place, Mr. President, the settlers on the Carson River in 1859 and 1860 did not voluntarily give up this property which they are now asking compensation for. As to the necessity of the donation, if the chairman wants to term it such, it was compelled by the action of the Piute Indian Tribe, who were wards of the Government, under conditions where the Government was bound to protect those citizens from their raids. There was nothing voluntarily done so far as any citizen made any contribution at that time.

The further proposition that the claims are old, I grant; but that does not militate to any extent against the justice of the claim as based upon the facts found by the Court of Claims in each of these particular cases.

It is true, as the chairman has stated, that there is no conclusion of the court as to whether these claims ought or ought not to be paid upon the facts stated in the findings. I want very frankly to state to the Senate that when I know what the facts are—and there seems to be no dispute as to the facts in either of the cases presented to the Senate—I do not ask any court or any other person to form my conclusion as to the justice or the injustice of the claim, believing that I am capable of drawing my own conclusion as well as the court would be capable of drawing its conclusion, if conclusions were necessary under the facts stated.

Not only that, Mr. President, but I desire to repeat that the Senate in the Sixty-first Congress and in a session prior thereto passed a bill upon these facts compensating these people for these losses. Not only that, Mr. President, but a large amount of money was paid under a prior appropriation act, an act of Congress of the United States, to various claimants for claims of an exactly similar kind and character, and where the facts were no clearer than they are now.

Not only that, but I desire to call the attention of the Senate to the further fact that the House—I am simply repeating because I want to emphasize the fact—following the precedent established by the Senate heretofore, deemed these claims of sufficient character and justice to include them in the bill as it passed the House, and sent the bill here for the action of the Senate upon the same line and under the same direction.

Simply because the claims are old does not militate against a just claim of any kind, and it is only a question in my mind as to whether or not these claims are just. It is not a question whether or not the transaction out of which they arose occurred in 1859 or 1899. The question is whether the Government under the undisputed facts ought to compensate these people for this property that they contributed in protecting their lives and their property under the conditions named.

The PRESIDING OFFICER. The question is on the adoption of the amendment offered by the Senator from Nevada [Mr. MASSEY].

The amendment was rejected.

Mr. LODGE. Mr. President, I desire to offer a single amendment covering two claims, and I will ask to have the findings of fact read in each case, as that will put the cases most briefly before the Senate.

Mr. CRAWFORD. Have the amendments ever been referred to the committee, I will ask the Senator from Massachusetts?

Mr. LODGE. The Selfridge Board has dealt with them.

The PRESIDING OFFICER. The amendment proposed by the Senator from Massachusetts will be stated.

The SECRETARY. It is proposed to insert:

Velma C. Williams, administrator of the estate of Paul Curtis, $4,128.39.

The Secretary read the findings of fact in the case, as follows:

FINDINGS OF FACT.

I. The claimant, Nelson Curtis, is the executor of the estate of Paul Curtis, who died about the year 1872. Edwin Wright, who was the coexecutor under the will, died in the year 1899. Paul Curtis, deceased, was loyal to the Government of the United States throughout the war for the suppression of the rebellion.

II. Said Paul Curtis entered into a contract with the Navy Department September 9, 1862, to build and equip the hull of a paddle-wheel gunboat, known as a wooden double-ender and subsequently called the *Chicopee*, for $75,500. He completed the vessel, and the defendants by their proper officers paid him the contract price of $75,500, together with $3,304.20 for extra work resulting from changes and alterations during the process of the work, making a total payment to him of $78,804.20. By the contract the vessel was to be launched January 13, 1863, 126 days from the date of the contract, but was not launched until March 4, 1863. The contract allowed 50 days more for completing the vessel, but instead of being completed March 4, 1863, she was not finished until April 1, 1864, the principal cause of this delay being the delay of the machinery contractor in completing and installing the machinery of the vessel.

III. Changes in the plans and specifications and alterations of work were ordered by the Government and performed by the contractor throughout the progress of the work, many changes being made after the delivery of the vessel in New York City, some 200 miles distant from the contractor's place of business, which made such work more expensive to the contractor than it would otherwise have been. The vessel remained in New York over a year awaiting completion and installation of the steam machinery before the contractor could finally complete the work on the hull, during which time the prices of labor and materials very greatly increased, thus adding to the cost of the work performed during the period of delay.

IV. In consequence of the presentation of claims by a number of contractors for additional compensation for the construction of war vessels for the Government during the war the United States Senate on March 9, 1865, passed the following resolution:

"*Resolved*, That the Secretary of the Navy be requested to organize a board, of not less than three competent persons, whose duty it shall be to inquire into and determine how much the vessels of war and steam machinery contracted for by the department in the years 1862 and 1863 cost the contractors over and above the contract price and allowance for extra work, and report the same to the Senate at its next session. None but those that have given satisfaction to the department to be considered."

The Navy Department thereupon appointed a board consisting of Commodore Selfridge, Chief Engineer Henderson, and Paymaster Eldridge, commonly known as the Selfridge Board; and the contractor in this case presented to said board a claim for $18,870.41, alleging this to have been the amount of the extra cost of said vessel to him over and above the amount received therefor.

Upon consideration said board decided that the vessel had cost the contractor over and above the amount he had received for it the sum of $4,128.39, and the board so reported to the Secretary of the Navy, by whom said report was transmitted to the Senate on January 30, 1866.

V. No evidence has been adduced to either impeach or confirm the allowance made by the Selfridge Board as aforesaid.

VI. The facts bearing upon the question whether there has been delay or laches in the presentation and prosecution of this claim appear to be that the contractor presented his claim to Congress March 16, 1864; to the Selfridge Board August 3, 1865, and to the Marchand Board in 1867. The claim was also presented to Congress in January, 1901, and later referred to the court by the United States Senate June 17, 1902, as hereinbefore mentioned.

BY THE COURT.

Filed May 15, 1907.
A true copy.
Test this 3d day of March, A. D. 1908.
[SEAL.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Mr. LODGE. I will state, Mr. President, that Velma C. Williams has been substituted as administrator for Nelson Curtis, owing to the death of the latter. I now ask that the findings be read in the other case—the Sampson case. The two cases stand on the same ground.

Mr. CRAWFORD. Does the Senator insist on the findings being read? They cover exactly the same conditions as to facts.

Mr. LODGE. I have made the request only to get the facts before the Senate. I, of course, can state them.

Mr. CRAWFORD. They can be printed.

Mr. LODGE. I will, then, ask to have them printed, as the time for the meeting of the Court of Impeachment arrives in a few moments.

The PRESIDING OFFICER. The next amendment proposed by the Senator from Massachusetts will be stated.

The SECRETARY. It is also proposed to insert the following item:

To George T. Sampson, survivor of the firm of George T. & Augustus Sampson, $4,015.38.

Mr. LODGE. I ask that the findings of fact in that case be printed in the RECORD.

The PRESIDING OFFICER. Without objection, they will be printed in the RECORD.

The matter referred to is as follows:

FINDINGS OF FACT.

I. George T. Sampson and his brother Augustus Sampson resided in Boston, Mass., and were associated in business from the year 1862 to 1875. They gave no aid or comfort to the rebellion, but were loyal to the Government of the United States throughout the war—from 1861 to 1865. Augustus Sampson died about the year 1894, and neither his estate nor his heirs are represented in this suit as parties claimant.

II. The said George T. Sampson and Augustus Sampson entered into a contract with the Navy Department, dated September 9, 1862, to build, launch, deliver to the engine contractor in New York City, and thereafter complete, the hull of the wooden double-ender gunboat *Mattabessett*, for the sum of $75,500. Under the contract the vessel was to be launched within 126 days from the date of the contract, or by January 13, 1863, and promptly thereafter delivered at the premises of the contractor for the steam machinery; but the vessel was not launched until April 3, 1863, 206 days after the date of the contract, and was not delivered to the machinery contractor until May 2, 1863 (reply of Navy Department, filed July 19, 1905, pp. 13, 84, 138). The contract called for the completion of the vessel within 50 days after its delivery to the machinery contractor in New York, May 2, 1863; but it was not completed until eight months thereafter, the principal cause of this delay being the delay on the part of the machinery contractor in completing the installation of the engines and machinery of the vessel.

III. During the construction and equipment of the hull of said vessel by the contractors there were numerous alterations and additions ordered by the Navy Department and made by the contractors, for which the contractors, upon the completion of the vessel, presented a claim to the Navy Department, upon which claim they were allowed and paid the sum of $3,723.70, this being the full amount of the claim, with the exception of an item of $487 for cost of awnings for hurricane deck and an item of $1,325 for additional compensation for delivery of vessel at New York. This allowance and payment of $3,723.70 was in addition to the contract prices of $75,000 for the construction of the vessel and $500 for its delivery to the machinery contractor in New York, thus making a total payment to the contractors of $79,223.70.

IV. In consequence of numerous contractors and builders of Government vessels during the war having asked additional compensation for the construction of such vessels on the ground that they had cost the contractors more than they had received for them, the Senate of the United States on March 9, 1865, passed the following resolution:

"*Resolved*, That the Secretary of the Navy be requested to organize a board of not less than three competent persons whose duty it shall be to inquire into and determine how much the vessels of war and steam machinery contracted for by the department in the years 1862 and 1863 cost the contractors over and above the contract price, and the allowance for extra work, and report the same to the Senate at its next session, none but those who have given satisfaction to the department to be considered."

The Navy Department thereupon appointed a board consisting of Commodore Thomas O. Selfridge, Chief Engineer Henderson, and Paymaster Eldridge, commonly known as the Selfridge Board; and the contractors in this case presented to said board a sworn statement of claim alleging the entire cost to them of the said vessel, *Mattabessett*, to have been $83,239.08, thus claiming the extra cost to them over and above the $79,223.70 theretofore paid them to have been $4,015.38.

Upon consideration said board decided that the vessel had cost the contractors this amount of $4,015.38 over what they had received for it, and the board so reported to the Secretary of the Navy, by whom said report was transmitted to the Senate on January 30, 1866.

V. No evidence has been offered by the Government to disprove the findings of the Selfridge Board, but some evidence has been produced by the claimant to confirm it.

VI. The contractors presented this claim to the said Selfridge Board on June 29, 1865, since which time no action appears from the record to have been taken in the prosecution of the claim until its presentation to the Fifty-seventh Congress by Senate bill No. 703, as hereinbefore set forth.

Mr. LODGE. Mr. President, these cases relate to certain claims of contractors for building vessels during the Civil War. There is no pretense that there was laches at the time. They both presented their claims immediately. They took their claims before the board known as the Selfridge Board, which was established by the Government for the purpose of dealing with such claims, and that board made awards in both cases. Like so many of the claims against the Government, the boards or commissions established by the Government make the award and then Congress does not pay the debt. The matters have dragged along until finally they were referred to the Court of Claims, and the findings of the Court of Claims have been stated. It seems to me that nothing could be stronger, according to mere justice, than these claims. They made their claims at once. The Government said, "All these claims shall be submitted to a board," admitting the liability. The board thereupon was convened, heard the claims, made the awards, and ever since Congress has refused to pay the awards. It seems to me that if any claim is a just one it is a claim of that character.

Mr. CRAWFORD. Let this amendment be considered the pending amendment, and I will ask to-morrow, after the routine morning business, to resume consideration of the bill.

Mr. JOHNSTON of Alabama. I want to put into the RECORD an amendment that I shall offer to this bill and the explanation of facts upon which I propose to offer it. It is very brief, and I merely desire it printed in the RECORD.

The PRESIDING OFFICER. Without objection, the request of the Senator from Alabama will be granted.

The matter referred to is as follows:

On page 267, at the end of line 16, after the words "this act," insert the words "and section 3480 of the Revised Statutes, so far as applicable to these claims, is hereby repealed."

STATEMENT IN REFERENCE TO AMENDMENT BY SENATOR JOHNSTON OF ALABAMA TO H. R. 19115, ON PAGE 267.

The provision now in the bill, lines 3 to 16, page 267, removes the restriction placed upon accounting officers by decisions of the comptroller in cases where the claim has once been presented and denied.

At one time the Comptroller of the Treasury decided adversely to longevity claims. Later this decision was reversed. Since that time numbers of officers who had never previously had their longevity claims passed upon presented their claims, and these claims the comptroller has allowed, but upon the principle of res adjudicata has refused to reopen and allow similar claims that his predecessors had disallowed.

There are certain other claims barred from consideration by the accounting officers by section 3480, Revised Statutes. These are all claims for services in the Army previous to April 13, 1861; that is, claims that had accrued or existed prior to the commencement of the war. In 1867, just after the war, section 3480 was enacted restricting pay officers from allowing claims or demands existing prior to April 13, 1861, in favor of any person who was not known to be opposed to and distinctly in favor of the suppression of the rebellion.

At the close of our Civil War this recognized principle of international law would have applied except for the direct prohibition upon the allowance of such claims by section 3480, enacted in 1867, before the bitterness and passion of the war had passed and as a punitive statute. The repeal of that section now in no way affects existing limitations upon the payment of claims which arose out of the war, as the section affects only debts due before the war commenced.

THE SECTION HAS BEEN REPEALED IN PART SEVERAL TIMES.

1. By an act of March 3, 1873 (17 Stat. L., 528), claims of the census takers of 1860 were exempt from the operations of this section.

2. By an act of March 3, 1877, provision was made for payment of claims of mail carriers for services performed prior to the outbreak of the Civil War, and provision made that this section should not be applicable to the payments therein authorized.

3. By "An act to repeal, in part, and to limit section 3480, Revised Statutes of the United States," approved March 11, 1898 (30 Stat. L., 274), proof of loyalty was dispensed with "in any application for bounty land where the proof otherwise shows that the claimant is entitled thereto."

STATUS OF SECTION 3480 NOW.

As above stated, the bill has already been repealed in part three times. Besides this, a bill to totally repeal the section has been twice favorably reported to the Senate by the Judiciary Committee, once by the late Senator Pettus, of Alabama, in the Fifty-ninth Congress, and in that Congress the bill passed the Senate. The second time on a report by Senator DILLINGHAM, of Vermont, in the Sixtieth Congress. A bill to repeal the section in whole is now pending in this Congress.

If claims which are now barred from consideration because they have been disallowed by the accounting officers are now going to be opened for consideration, these claims also should be so opened which have been barred from consideration by this statute.

The purpose of this amendment is to open to audit these claims of officers of the Regular Army serving in the Confederate Army. No appropriation is asked, and that question would arise after the audit.

Mr. SMOOT. I suggest the lack of a quorum, Mr. President.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Curtis	McLean	Smith, Ga.
Borah	Davis	Martine, N. J.	Smith, S. C.
Brandegee	du Pont	Myers	Smoot
Bristow	Foster	Nelson	Stephenson
Brown	Gallinger	O'Gorman	Sutherland
Bryan	Gronna	Oliver	Swanson
Burnham	Johnson, Me.	Page	Thornton
Chilton	Johnston, Ala.	Penrose	Tillman
Clapp	Kenyon	Perkins	Townsend
Crane	La Follette	Perky	Warren
Crawford	Lea	Richardson	Works
Culberson	Lodge	Root	
Cullom	McCumber	Sanders	

Mr. TOWNSEND. I desire to state that the senior Senator from Michigan [Mr. SMITH] is absent from the Chamber on business of the Senate.

The PRESIDENT pro tempore. On the call of the roll of the Senate 50 Senators have responded to their names. A quorum of the Senate is present.

IMPEACHMENT OF ROBERT W. ARCHBALD.

The PRESIDENT pro tempore (Mr. BACON) having announced that the time had arrived for the consideration of the articles of impeachment against Robert W. Archbald, the respondent appeared with his counsel, Mr. Worthington, Mr. Simpson, and Mr. Robert W. Archbald, jr.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The Sergeant at Arms made the usual proclamation.

The PRESIDENT pro tempore. The Secretary will read the Journal of the last sitting of the Senate as a Court of Impeachment.

The Secretary read the Journal of Tuesday's proceedings of the Senate sitting as a Court of Impeachment.

The PRESIDENT pro tempore. Are there any inaccuracies in the Journal? If not, it will stand approved.

Mr. Manager FLOYD. Mr. President, we will ask to have Mr. W. P. Boland recalled, as his cross-examination has not been concluded.

The PRESIDENT pro tempore. The witness will be recalled.

TESTIMONY OF W. P. BOLAND—RESUMED.

Cross-examination, continued:

Q. (By Mr. WORTHINGTON.) Have you talked with anybody about the case or your evidence since you were on the stand yesterday?—A. Only my brother and Miss Boland and Miss Blackmore, when I went back to the hotel.

The PRESIDENT pro tempore. Speak louder; we can not hear you.

The WITNESS. I say only to my brother and my niece, Miss Boland, and Miss Blackmore, who is with her here as a witness.

Q. (By Mr. WORTHINGTON.) You said yesterday that Judge——A. (Interrupting.) I might say that I spoke to Mr. WEBB. I said, "How do you do?" out here in the corridor.

Q. In the corridor?—A. Yes, sir.

Q. You said yesterday that Judge Witmer laughed you out of his court?—A. I did; yes, sir.

Q. I wish you would tell us a little about that, so we will know to what you refer.

Mr. Manager FLOYD. Mr. President, I object to that on the ground that it is wholly immaterial. Counsel for the respondent brought it out on cross-examination, and we care nothing about testimony of that character. It is not cross-examination, and it has nothing to do with the case. We think that in order to shorten the trial and to get through with the testimony matters that are wholly irrelevant and immaterial and not properly the subject of cross-examination ought to be omitted from this cross-examination.

Mr. WORTHINGTON. We make no quarrel with the honorable managers about the rule that should be applied; but this witness has testified that Judge Archbald and Judge Witmer and his own attorney and others had formed a conspiracy to ruin the Marian Coal Co.

Mr. Manager CLAYTON. Mr. President, I think that statement is hardly justified. I do not think the witness said that.

Mr. WORTHINGTON. Well, Mr. President, if the Chair does not recall that, we will have to stop a moment to see what the witness did say.

The PRESIDENT pro tempore. The Chair does not consider the question whether or not that particular language was used material to the decision of this question. So we will not pause for the purpose of examining the notes as to that.

Mr. WORTHINGTON. Shall I ask the question?

The PRESIDENT pro tempore. No, sir. The Chair would like to hear from counsel.

Mr. WORTHINGTON. I say the witness has testified, and said with great emphasis yesterday, that Judge Archbald and Judge Witmer together, Judge Witmer at the dictation of Judge Archbald, entered a decree in the case of Peale versus the Marian Coal Co., and otherwise took action in the case which ruined that company.

Now, I submit we ought to have the right to find out what is the foundation for such charges; or, as we contend, to determine that there is no foundation for them and that the witness is laboring under hallucinations in his talk about Judge Archbald and Judge Witmer and his own counsel.

The PRESIDENT pro tempore. So far as the Chair remembers, in the articles of impeachment there is no charge of conspiracy between Judge Archbald and Judge Witmer. Therefore the testimony would be utterly irrelevant, and the Chair would not consider it admissible.

Mr. WORTHINGTON. But, if you will permit me, Mr. President, the articles of impeachment charge Judge Archbald with being engaged in improper practices, and especially with reference to this particular suit, and the witness who was called to substantiate the charge says the conspiracy was one to which Judge Witmer was a party.

The PRESIDENT pro tempore. If that testimony had been brought out by the managers, the Chair would recognize the right of counsel to cross-examine the witness upon it; but that was testimony brought out by the respondent, and the Chair thinks it is entirely irrelevant.

Mr. WORTHINGTON. Very well.

Q. (By Mr. WORTHINGTON.) I wish you would repeat—I do not recall now just what you said—about the case of Peale against The Marian Coal Co. remaining idle for a great many months. You said from the 13th of October, 1908, if I remember right, to some date.—A. On the 13th of October the Marian Coal Co. suspended further shipments of coal to Mr. Peale, and somewhere along in 1909 there was a suit started in the Federal courts; but there was not much of a movement to that suit until after or about the time we started proceedings against the railroads before the Interstate Commerce Commission. That is what I meant.

Q. And what was the time you started proceedings before the Interstate Commerce Commission?—A. I think that was about August 12, 1910.

Q. Are you aware of the fact that the Peale suit was not begun until March, 1909?—A. I only know from what I have seen of the records of that case.

Q. You do not doubt that the record is correct about that?—A. I have no reason to doubt that; no.

Q. Did you not, before the Attorney General in February, 1912, assent to this statement made by Mr. Cockrell?

Mr. Manager FLOYD. Mr. President, we object to that unless it is for the purpose of contradicting something that the witness has said in his examination in chief. We did not go into that matter at all. We recognize the right of counsel to refer to it to contradict anything we may have brought out on examination in chief in which the witness has sworn contrary to statements there, but not otherwise.

The PRESIDENT pro tempore. Does counsel desire to say anything on that?

Mr. WORTHINGTON. I was looking for what the witness stated yesterday on that subject, Mr. President. The honorable manager says he did not bring that out. [Addressing witness.] You testified yesterday, did you not?—

Q. How many months do you say the case lay idle?—A. From the 13th of October to about December, 1910.

Q. When?—A. From October, 1908, until about December, 1910, there was scarcely anything done with it.

Now, surely, Mr. President, when the main point of this witness's testimony has been the conduct of Judge Archbald with reference to the case of Peale against The Marian Coal Co., we ought not to be restricted in our cross-examination of him as to just what is charged against Judge Archbald or just what are the facts in reference to the charges so far as we can get them from this witness.

The PRESIDENT pro tempore. The Chair will ask that the question be repeated.

The Reporter read as follows:

Q. Did you not, before the Attorney General in February, 1912, assent to this statement made by Mr. Cockrell?

Mr. WORTHINGTON. That the demurrer was overruled and the case lay idle for about 26 months?

The PRESIDENT pro tempore. The question is as to the witness having assented——

Mr. WORTHINGTON. Yes, sir.

The PRESIDENT pro tempore. To a statement made by another?

Mr. WORTHINGTON. Yes, sir. That would be supposed to be the same thing as if he had said it himself.

Mr. President, what I want to bring out is that this witness, whose statements brought on these proceedings, and who is now brought here as a witness to support them, told the Attorney General and told the Interstate Commerce Commission just what has been said here, that the suit referred to lay idle for 26 months, it being the suit of Peale against the Marian Coal Co.; that nothing was done about it until the Marian Coal Co. ventured to bring a suit before the Interstate Commerce Commission against the Delaware, Lackawanna & Western Railroad Co. in the fall of 1910; and that then immediately, as the witness has said, the machinery of the courts was set to work. He has stated here distinctly that he charges that Judge Archbald and Judge Witmer together then undertook to start the Peale case and ran it to a decree against him for the purpose of interfering with the prosecution before the Interstate Commerce Commission of his suit against the railroad company.

Now, I want to bring out what the facts are to show that, indeed, the suit was brought in March, 1909, and that it went along regularly about the way an equity suit in a Federal court usually goes along, and that there was no hurrying up of the case, and that it is not true that there were no steps taken until about the time the case before the Interstate Commerce Commission was begun, and that his whole story about that made to the Interstate Commerce Commission and made to the Attorney General and made here is in fact a delusion; that there is not the slightest foundation for it in fact.

The PRESIDENT pro tempore. The question of the admissibility of that evidence, if offered, would be a distinct question. The question which the Chair understands counsel to propound is as to the witness having agreed and tacitly consented to what he heard another witness testify. Is that the question?

Mr. WORTHINGTON. No; not another witness; Mr. Cockrell was not a witness.

The PRESIDENT pro tempore. The Chair will not say a witness.

Mr. WORTHINGTON. Mr. Cockrell, if I may say so to you, Mr. President, is an officer in the commission—I think he is private secretary to Commissioner Meyer, of the Interstate Commerce Commission—and he was present when Mr. Boland was examined by the Attorney General—in what capacity I do not know—but not as a witness.

Mr. Manager FLOYD. Now, Mr. President, our objection to this testimony is that counsel has no right to ask the question unless it is for the purpose of contradicting——

The PRESIDENT pro tempore. If the manager will permit the Chair, in order that we may proceed promptly the Chair will for the present exclude this testimony, and if afterwards counsel offer to prove that, which can be done by the record, the question will come up again. But it will possibly be an economy of time to give it that direction at this time without finally concluding the right of counsel to prove those facts.

Q. (By Mr. WORTHINGTON.) Then I will ask you, Mr. Boland, whether before the Judiciary Committee, when you were examined there, this did not happen in your examination——

Mr. Manager FLOYD. Mr. President, we object, unless it is for the purpose of contradicting testimony that the witness has given here, because we did not ask him a single question about what he said before the Judiciary Committee, as I remember it.

The PRESIDENT pro tempore. If the statement counsel now proposes to read relates to matter that the witness testified to on direction examination, of course that would bring it within the rule.

Mr. WORTHINGTON. Mr. President, is there not another ground on which I may ask the witness this question? Is it not competent to show the bias of any person who is brought into court as a witness? Is it not always proper for the opposing counsel to show, if they can do so, that a witness is biased against the person against whom his testimony is directed?

The PRESIDENT pro tempore. The Chair thinks so.

Mr. WORTHINGTON. I propose to show that this witness is not only biased against Judge Archbald in the ordinary way, but that he is responsible practically for this whole prosecution or proceedings, and that he did it by making statements which are absolutely false and groundless.

The PRESIDENT pro tempore. Counsel will recognize the correctness of the rule that on cross-examination a witness can be examined only on matters brought out on direct examination.

Mr. WORTHINGTON. And also the rule as to a witness's bias. Mr. President, if I had witnesses who had heard this witness say yesterday that he was going to come in here and tell a whole lot of things that would hurt Judge Archbald, whether they were true or not, could I not prove that, although he did not testify to it on direct examination? Anything that would tend to show his bitterness and feeling toward Judge Archbald, or anything that he may have stated falsely about Judge Archbald, would be competent as showing bias.

The PRESIDENT pro tempore. Undoubtedly, but the Chair does not know what the particular evidence is.

Mr. WORTHINGTON. I am proposing to bring out clearly that before the Interstate Commerce Commission, before the Attorney General, and before the Judiciary Committee this witness said distinctly that his case lay idle for 26 months—that was the case of Peale against the Marian Coal Co.—that it lay idle until he ventured to bring suit before the Interstate Commerce Commission against the Delaware, Lackawanna & Western Railroad Co., and that then Judge Archbald, who had not been in the court for several months, got Judge Witmer to take up the case and push it along and make a decree, which he says ruined him. Is not that competent on the question of bias?

The PRESIDENT pro tempore. Does counsel propose to examine the witness about testimony which he gave before the Judiciary Committee, and which testimony has not been brought out in the examination here?

Mr. WORTHINGTON. Certainly; for the purpose of showing his bias.

The PRESIDENT pro tempore. The Chair thinks counsel is entitled to show bias, but not in that way. It would open the door widely to the examination of this witness upon every subject connected with this case, whether it be a matter that has been brought out by the managers or not. There would be no limitation whatever under the rule as suggested by counsel for the respondent. The door would be absolutely thrown wide open without any restrictions or limitations as to the whole subject matter of the case if that rule is correct.

The Chair does not wish to be understood as ruling against the right of counsel to show those facts, but not in this way.

Mr. WORTHINGTON. Very well.

Q. (By Mr. WORTHINGTON.) Now, I understood you to testify on your direct examination that when this silent-party paper was prepared, which gave you a one-third interest, you did expect to have an interest in this Katydid purchase and sale, and that afterwards you notified Williams that you released him. Is that right?—A. I did; yes, sir.

Q. When was it you released him?—A. I do not remember the exact date.

Q. Was it before you came down before the Interstate Commerce Commission and the Attorney General?—A. It was.

Q. It was?—A. Yes, sir.

Q. Now I will ask you whether this took place before the Attorney General, when Mr. Cockrell was there, on or about the 12th of February?

Mr. Manager FLOYD. I object to anything that took place before the Attorney General, because I did not ask the witness any questions about that, unless counsel will say that he means to contradict some statement that the witness did make.

Mr. WORTHINGTON. I do mean to show that he then stated that he still had the one-third interest.

Mr. Manager FLOYD. I object, on the statement of counsel, because he is asking this witness certain questions and is then trying to contradict statements which he himself has brought out, not that we brought out.

Mr. WORTHINGTON. That was brought out by the managers. That is my recollection and that of my associates here.

The PRESIDENT pro tempore. The Chair will have to have information on that point—by whom it was elicited. If it was elicited by the managers, counsel undoubtedly have the right to cross-examine the witness on it.

Mr. Manager FLOYD. I desire to state further that what counsel proposes to show is wholly immaterial. Counsel can only contradict the witness upon material matters, and so far as the purposes of this case are concerned, we regard that proposed testimony as wholly immaterial. What happened before the Attorney General or the statements that counsel proposes to quote that he expects to prove the witness then said, we regard as absolutely immaterial to the issues in this case.

Mr. WORTHINGTON. Let me read from the proceedings in this case, page 429. He was asked by Mr. Manager FLOYD:

Then did you afterwards claim any interest under that contract?

The PRESIDENT pro tempore. Who asked the question?

Mr. WORTHINGTON. This is a question put to him by the manager who is now objecting to my going on.

Mr. Manager FLOYD. From what page are you reading, Mr. Worthington?

Mr. WORTHINGTON. Page 429, just a little above the middle of the page:

Q. Then did you afterwards claim any interest under that contract?—A. When I found——

Then there was an objection, and a discussion followed which I will not read. Then Mr. Manager FLOYD said:

I think the whole transaction should come out. Even if it does not affect him, the Senate ought to have the full transaction in order that it may be understood.

The PRESIDENT pro tempore. If the Chair understands the purport of the question, it is legitimate.

Mr. Manager FLOYD. I might explain——

The PRESIDENT pro tempore. It is not necessary. The Chair has ruled with the manager.

Q. (By Mr. Manager FLOYD.) Answer the question.—A. I afterwards withdrew or released Mr. Williams from any interest that I might have in the sale of that property.

The PRESIDENT pro tempore. The Chair thinks the question can be asked.

Q. (By Mr. WORTHINGTON.) I will ask you whether or not, before the Attorney General, on or about the 12th of February last, this did not occur——

Mr. Manager FLOYD. Mr. President, we do not question the right of counsel to cross-examine the witness upon that proposition, but we do question his right, unless the witness has made some contrary statement here, to read that book.

Mr. WORTHINGTON. I have just brought out that upon the question asked him by Mr. Manager FLOYD, the witness said he told Williams he had released him. He told him that was before he came down here. I want to prove that when he came down here he then made the statement that he still had the one-third interest.

The PRESIDENT pro tempore. The counsel will ask the question.

Q. (By Mr. WORTHINGTON.) Reading from the bottom of page 138 of volume 1 of the proceedings before the Judiciary Committee of the House:

The ATTORNEY GENERAL. What was the sum placed on the other option?

Mr. BOLAND. $4,500. Now, I put myself in this proposition because I wanted to know where I stood——

The PRESIDENT pro tempore. The Chair thinks that counsel ought to confine himself to the particular point ruled by the Chair, that he has a right to show it by cross-questioning upon the particular evidence elicited by the managers.

Mr. WORTHINGTON. I thought it was only fair to the witness and to the Senate that I should read the immediate question which led to it. It is the next question which is based on this.

The PRESIDENT pro tempore. Very well.

Mr. WORTHINGTON. Mr. Boland says:

Now, I put myself in this proposition because I wanted to know where I stood, so that I could talk and wouldn't be talking from hearsay, as I knew how utterly helpless I was with the influence I was up against.

Mr. COCKRELL. In other words, you and Mr. Williams and Judge Archbald were three partners in the sale of this culm bank?

Mr. BOLAND. Yes.

Q. (To the witness:) Did you so testify?—A. I did.

Mr. Manager FLOYD. Mr. President, I do not understand that that contradicts anything this witness has said here in any particular.

The PRESIDENT pro tempore. Does the counsel claim that that contradicts the former statement of the witness?

Mr. WORTHINGTON. I do.

The PRESIDENT pro tempore. If the counsel claims that it does, it is proper evidence.

Q. (By Mr. WORTHINGTON.) How was it that Judge Archbald took away your trial by jury?—A. By taking into his court the case which should be brought in the local courts, which he——

Mr. Manager FLOYD. Mr. President, we object.

The PRESIDENT pro tempore. The Chair's attention was diverted for the moment. What was the question?

Mr. Manager FLOYD. The counsel asked the witness how it was that Judge Archbald took away his trial by jury.

The PRESIDENT pro tempore. The stenographer will read the question.

The Reporter read as follows:

Q. How was it that Judge Archbald took away your trial by jury?

Mr. WORTHINGTON. I base that upon this, which happened yesterday——

The PRESIDENT pro tempore. The counsel will ask the question. The question is legitimate. The Chair understands, of course, that it was elicited by the managers. Was it not?

Mr. Manager FLOYD. It was not elicited by the managers.

Mr. WORTHINGTON. I was about to call the attention of the President to what did happen on cross-examination. I read from page 377 of the CONGRESSIONAL RECORD.

Q. You hold Judge Archbald responsible for the delay before the suit was brought in his court?

That was my question. Then he said:

I hold Judge Archbald responsible for taking away our trial by jury. He had no right to do so.

That was volunteered by the witness.

The PRESIDENT pro tempore. That is not material at all to this case. It is not stated in the articles of impeachment that he had deprived anybody of the right of trial by jury.

Mr. WORTHINGTON. It is on page 377 of the RECORD. I should like to have the paper on page 489; the "To whom it may concern" paper.

Mr. Manager CLAYTON. What page is it in the record?

Mr. WORTHINGTON. Page 489 of the hearings before the House Judiciary Committee.

(Mr. Manager FLOYD handed the paper to Mr. Worthington.)

Mr. WORTHINGTON. This is a photographic copy. It is just as good. [To the witness:] Will you look at this paper, which is dated July 31, 1911?

Mr. Manager FLOYD. Mr. President, we object.

The PRESIDENT pro tempore. What is the objection of the manager?

Mr. Manager FLOYD. My objection is that the paper was not in evidence and was not mentioned by the managers in any way in the examination in chief, and the counsel himself brought out whatever reference has been made in the testimony upon the cross-examination. We do not desire to offer that testimony in evidence. We consider it immaterial and irrelevent. I do not think the counsel has a right to cross-examine upon it.

Mr. WORTHINGTON. It is a paper that has not yet been referred to, I submit.

Mr. Manager FLOYD. Then we object because the counsel is not confining himself to a proper cross-examination.

Mr. WORTHINGTON. I offer this evidence for the purpose of showing, in connection with the other matters in the case, that this witness is biased against Judge Archbald, and to show that he was concocting papers in his office to his detriment. I do not see how the President of the Senate can judge about the competency of it without having it read. I recollect that when there was a paper offered by the managers early in these proceedings we objected to its going into the record, but it was decided that it must be read so that the question could be passed upon.

The PRESIDENT pro tempore. The paper may be read if desired. The Senate has the same right to hear it as the Presiding Officer. It is now being read simply for the information of the Senate.

Mr. WORTHINGTON. Certainly; I understand that.

The Secretary read as follows:

SCRANTON, PA., *July 31, 1911.*

To whom it may concern:

This is to certify that I, Edward Williams, called on W. P. Boland about December 15, 1910, with a note of R. W. Archbald, judge of the Interstate Commerce Court, for $500, to have said note discounted. I

did not tell Boland at the time that the judge knew that I was going to call on him to discount the above-mentioned note. I only informed him about July 25, 1911, that he made a mistake in not discounting said Archbald note, as he was interested in the case of John W. Peale *v.* Marian Coal Co., which was then before the United States court, and he would have saved all of the costs had he discounted the note.

E. J. WILLIAMS. [SEAL.]

A. M. BLACKMORE.

The PRESIDENT pro tempore. What is the question that the counsel asked with reference to this paper?

Mr. WORTHINGTON. The question is whether that paper was concocted in his office under his direction.

Mr. Manager FLOYD. I do not think it is fair to the witness to use that language, that it was concocted in his office. I think the counsel ought to use some other language.

Mr. Manager CLAYTON. You ought to treat the witness with respect.

Mr. Manager FLOYD. Certainly.

Mr. WORTHINGTON. I will substitute the word "prepared" for "concocted" if that pleases my honorable friend and if that will be more consistent with my duty to the witness, who does not seem to be worrying himself.

The PRESIDENT pro tempore. If the Chair remembers correctly, the managers brought out the fact as to the presentation of this note for discount and the refusal of the witness to discount it, and the reason he gave for so refusing. Am I correct in that?

Mr. Manager FLOYD. Yes, sir; that is correct.

The PRESIDENT pro tempore. Under those circumstances it seems to the Chair that the counsel is entitled to go fully into that question to show all the motives of the party and throw light on his testimony.

Q. (By Mr. WORTHINGTON, handing paper.) Do you recognize the signature of Mr. Williams to that paper?—A. (Examining.) I do; yes, sir.

Q. And of Miss Blackmore, the witness?—A. I do.

Q. Do you know anything about the creation of that paper?—A. I do.

Q. What?—A. Mr. Williams was making several statements to me regarding his influence on Judge Archbald, what he could do and have the judge to do, and where I made a mistake in not going along with the request of the judge to discount this note. I knew it was dangerous for me to say anything about Judge Archbald when I had to prove it by a friend of his unless I got it reduced to writing. I consequently told Mr. Williams that if he was telling me the truth the only way he could prove it to me was to put it in writing; if he was making those charges against his friend, Judge Archbald, that he had to substantiate me with a written statement so that I might be fortified if I did say something detrimental to Judge Archbald. That is why I asked Mr. Williams for this paper.

Q. You dictated it to a stenographer?—A. Mr. Williams told me in his way where I made the mistake, and he recited that to the stenographer, and she put it in the shape that was satisfactory to him and as he wanted to convey that to me. That is how it was concocted, Mr. Worthington.

Q. Who was the stenographer?—A. I think Miss Mary Boland.

Q. Do you not know?—A. No; it was Miss Blackmore there who wrote this paper.

Q. Were you there?—A. I was in that neighborhood; I was around there; but could not exactly say, because so many things have been on my mind. I can not right off tell you just what occurred two years ago or a year ago.

Q. If you are not sure you were there, how can you tell how it was prepared?—A. I was there, because the paper was delivered to me.

Q. Were you in the room when it was typewritten?—A. I would not deny it. If I could answer that clearly I would not deny that. I do not know whether I was or not. There is nothing about this paper I want to deny of its origination or its possession.

Q. You kept it until when?—A. I kept it until I came to Washington.

Q. And you had a photographic copy made of it, did you not?—A. Yes; I wanted to be sure I would not lose it—if I lost the original that I would have a photographic copy.

Q. Look at this paper [handing paper] and state whether that is the photographic copy; or were two of them made?—A. (Examining.) I had photographic copies made. Whether this is one or not, I know I had. I think this is one.

Q. When did you have that done?—A. Immediately after I got this letter. I think I did.

Mr. WORTHINGTON. This photographic copy had better be marked in evidence. It is not necessary to read it. It is the same as the original, of course.

(The original was marked "Exhibit K," and the photographic copy was marked "Exhibit L.")

Q. (By Mr. WORTHINGTON.) In the letter to Mr. Cockrell, of the Interstate Commerce Commission, which was read yesterday, you referred to "the date you mention." It is on page 379 of the RECORD. Let me remind you of the letter, Mr. Boland, dated February 1, 1912, at Scranton, under the heading of the Marian Coal Co., addressed to Mr. Allen V. Cockrell, Esq., Washington, D. C. It is as follows:

MARIAN COAL CO.,
Scranton, Pa., February 1, 1912.

ALLEN V. COCKRELL, Esq.,
Washington, D. C.

DEAR SIR: I have secured additional information along the lines that I spoke to you and the other parties about and will be ready on the date you mention.

Did Mr. Cockrell mention the date to you by letter, telephone, conversation, or how?—A. I am not clear on what that date meant. I do know that I told Mr. Cockrell, and I told the Attorney General and I told Commissioner Meyer and I told Commissioner Clements that I had a lot of information that I had not time to close up. I had a lot of information that would involve others with the judge, and I felt I might be misunderstood at that particular time as using it for political purposes, and consequently there was a lot of things that were kept out for that purpose. I did not want to injure any man, because I was not in politics only so far as to vote for a good candidate.

Mr. Manager FLOYD. We object to that.

Mr. WORTHINGTON. It has not the slightest reference to the question asked the witness.

The PRESIDENT pro tempore. The Chair will rule it out and request the witness to answer.

Q. (By Mr. WORTHINGTON.) You say you can not tell what you refer to in that letter when you said "Will be ready on the date you mention"?—A. I can not give it to you now. I am not clear on that.

Q. Do you know whether or not, after Mr. Watson had ceased his efforts in the matter about which you have testified, he returned any papers to you or to your brother?—A. I do not remember getting any paper back from Mr. Watson. I gave him none.

Q. Do you know what paper was referred to in the letter of Judge Archbald to your brother dated November 13, 1911, in which he said he returned the paper?—A. I do not think I ever gave Mr. Watson any paper.

Q. Mr. Boland, you do not understand my question entirely. There is already in evidence a letter from Judge Archbald to your brother beginning "My dear Christy," dated November 13, 1911, and at the end of it he said, I return you papers or certain papers. I am asking you what those were or where they are?—A. I can not answer that question. I do not know.

Q. You will correct me if I am wrong, but I think in your testimony before the Judiciary Committee, in referring to this conspiracy which you told us about yesterday, in which Judge Archbald and the railroads were a party, you referred to it as the Black Hand and the Mafia.

Mr. Manager FLOYD. We object, Mr. President. We did not bring out any testimony of that kind.

Mr. WORTHINGTON. On page 1734, I will ask you whether you said——

The PRESIDENT pro tempore. Wait a moment.

Mr. Manager FLOYD. We object to the question put in that way.

Mr. WORTHINGTON. May I read it?

The PRESIDENT pro tempore. The Chair will ask the counsel if it relates to matters brought out on direct examination?

Mr. WORTHINGTON. I confess, Mr. President, that after the cross-examination of this witness had proceeded as far as it did yesterday without any objection being made by the managers or by anybody else, I had supposed we would be permitted to go on and proceed on those lines to-day. So I did not examine his direct examination to see as to which of those lines he had testified on his direct, but he certainly did give testimony which the managers claim tends to show that Judge Archbald was engaged in a conspiracy with Mr. Williams and with Mr. Watson afterwards. I cross-examined him yesterday for the purpose of showing, or trying to show, as I thought, that his views on this subject of Judge Archbald and a conspiracy generally were absolutely unfounded and originated in a disordered brain.

Now, I want to pursue that for the purpose of showing that he has got into his head that they are black-hand people of the same order as the Italian organization which is called the Mafia and which I understand to be a collection of cutthroats; and I was about to read from his testimony before the Judiciary

Committee, where he used that very language in reference to them.

The PRESIDENT pro tempore. The Chair does not think, unless it is in rebuttal of testimony elicited by the managers, that it is, under the rule in Federal courts, admissible to pursue a cross-examination which has no connection with anything brought out by the direct examination. The Chair will state that yesterday a good many things were asked by counsel on cross-examination which, if they had been objected to, the Chair would have ruled out; but the fact that they were not objected to does not warrant the examination of the witness still further upon a line which would not be within the rule.

Mr. WORTHINGTON. Very well.

The PRESIDENT pro tempore. The Chair will be disposed to recognize the right of examination to the utmost as to anything which was elicited by the managers in the direct examination.

Mr. WORTHINGTON. I leave that subject, Mr. President. I understand now the Chair to rule that this is a repetition of his ruling, and where I wish to cross-examine this witness to show his bias against Judge Archbald I can not ask about that unless there is some reference to it in the direct examination; but I may bring it out in another way at a later stage in the case.

The PRESIDENT pro tempore. The Chair does not think it would be competent to lay down the rule suggested by the counsel. For the reason previously given it would absolutely destroy the rule which prohibits the examination of witnesses upon matters not brought out in direct examination, and there would be no limitation thereafter, and counsel, upon cross-examination, could go to the utmost extent in the examination of a witness.

Mr. WORTHINGTON. I do not wish to be persistent about it, but certainly I have a right at some time or other to show that this witness has a deadly bias and prejudice, an unreasonable bias, as I think, against Judge Archbald.

The PRESIDENT pro tempore. There is no question about the counsel's right in the matter.

Mr. WORTHINGTON. The President holds that I can not do it on cross-examination, and the question is how it may come up later.

The PRESIDENT pro tempore. The Chair does not rule on that, but the Chair rules that the counsel can not do it by the infraction of another rule. The counsel can cross-examine the witness in any way that may disclose that fact without going into subjects matter relating to this case which were not brought out in the direct examination. Counsel are not concluded by that. There are two ways in which counsel can reach all that is wanted. One is by proving the same by other parties, and the other by introducing the witness as his own.

Mr. WORTHINGTON. I think we will reserve these questions, then, until we come to introduce our own witnesses, when we will offer his declarations and statements as independent evidence on our own part. [To the witness:] Who was it gave you the information about the Pennsylvania Central Brewing Co.'s estimate of the value of the Katydid dump?—A. I think it was the man in charge of the coal department. I do not know his name, but I think I got that information from him, that the bank was not large enough to consider; that they were not prepared at that time to take the thing over.

Q. Was he the man who told you that the value of the dump or the quantity of coal in it had shrunk after it was found you had something to do with it?—A. No, sir; he did not tell me anything of that kind.

Q. Where did you get that information?—A. I got that information from the statement he made to me and the statement Mr. Robertson made to me and the personal knowledge I had of the bank myself. I was on it. I found, in talking with Mr. John M. Robertson at one time, that he claimed there was about 100,000 tons of coal there, and when this man told me that the Pennsylvania people or the Hillside Coal & Iron people had only estimated 35,000 tons I felt that that was not right, and I told Mr. Williams then that I believed the reason of the shrinkage was on account of my connection with it.

Q. Did you know that the contract Judge Archbald had prepared to be executed in the matter of the sale to Mr. Conn was in Judge Archbald's name?—A. I did.

Q. How did you know that?—A. Mr. Williams told it to me.

Q. That is all you know about it?—A. That was all I knew about it; yes.

Q. Did Mr. Williams tell you that Judge Archbald was going to have it in his own name and not have Williams's name in it?—A. Yes, sir; he did.

Q. And that Williams objected to it?—A. Yes, sir.

Q. And then it was prepared with Judge Archbald's name and Williams's name both in it?—A. Yes, sir; he told me those things.

Q. You said yesterday something about Williams showing you a paper from the window of Judge Archbald's office, and you said that was something in connection with this lighterage matter, as I understood you. I wish you would explain that for my benefit.—A. He told me about how Judge Archbald felt when Capt. May refused to give him this bank.

Q. Mr. Boland, I am only asking you about Williams exhibiting that paper at the window. What window was it, and where?—A. He showed that paper at the window. I want to tell you how he came to show it to me.

Q. I do not care about that. What I want to know is where the window was.—A. The post-office building and the Republican Building are side by side. There is a space of about 30 feet between them. The office of Judge Archbald was on the second floor and my office was on the second floor in the Republican Building, directly opposite Judge Archbald's office, and we could see people coming in and see each other at all times of the day.

Q. Was the window of Judge Archbald's office directly opposite your office, or was it——A. It was just about like that door there [indicating] on the south side.

Q. The Federal building, in which the judge's office was, fronts on what street?—A. It fronts on Washington Avenue and Linden Street. It is on a corner. There are entrances on both streets.

Q. On what side of that building is Washington Avenue—north, south, east, or west?—A. On the east side.

Q. The window of the judge's office you speak of is on what side?—A. On the south side.

Q. How far from the east end of the building is the window on the south side where this paper was exhibited to you?—A. I should say it was about 40 feet.

Q. About 40 feet from the front of the building?—A. No; from Judge Archbald's office window to my office window.

Q. I am asking you how far it was from the window where this paper was exhibited to you to the east line of the Federal building?—A. I could not say that. I could not say which one of the two windows he showed it to me from.

Q. How far was the nearest window from that street?—A. From the street?

Q. Yes; from the east front of the building on that street you mentioned.—A. I could not say whether it was 10 or 12 feet or less than that.

Q. It was very close to the street, was it?—A. Yes, sir.

Q. Could you give us any description of the paper that Mr. Williams exhibited to you from the window?—A. It seemed to be a paper—if I am permitted to handle this paper—it seemed to be in the form of loose leaflets that was not prepared—that is, what was in typewriting form—the paper he showed me. I was not near enough to recognize the contents of the paper, but he held the paper up in that shape before the window.

Q. And you arranged that with him in advance?—A. No; he told me what the judge was doing, and then I wanted to see in what shape it was in—if it was in book form.

Q. He had told you before this that it was something about the lighterage case, I understood you to say?—A. Yes; I knew that it was not unusual for Judge Archbald to have a brief, but I thought it was unusual for Judge Archbald to prepare a brief.

Q. Do you remember that at the time of this conversation that you had with Williams in reference to this lighterage case your niece and stenographer, Mary Boland, was making notes of the conversation and what Williams said about it.—A. I told Mary Boland to be careful and take note of everything said, because I knew it was a case of life and death——

Q. You are not answering the question.—A. Yes, sir.

Q. Did she make a memorandum of that conversation had with Edward J. Williams about the lighterage case in the judge's office?—A. I did not quite understand that question.

Q. Did Mary Boland make a memorandum and in this way note all the conversation you had with Williams in reference to what was going on in the judge's office about the lighterage case?

Mr. Manager FLOYD. We object, Mr. President.

The PRESIDENT pro tempore. On what grounds?

Mr. Manager FLOYD. Because it is immaterial. We brought out nothing about anything of that kind, and it is not a cross-examination. The counsel is asking this witness about something that would be within the knowledge of another witness, even if it is material.

The PRESIDENT pro tempore. The Chair thinks that counsel is entitled to sift the witness as to the truth of the statement which he has made. That is along the line that counsel asked that question. The question is admissible.

The WITNESS. I can only say that she can answer that best herself, but my instructions to her were to take——

Q. I do not care about your instructions to her. I want to ask if you know whether she did or did not?—A. I do not know; I could not swear to that, Mr. Worthington. I am only telling you that I told her to do it.

Q. Did this conversation with Mr. Williams about the lighterage case in the judge's office occur after you had told her to keep memoranda of theses things?—A. I would say I think it did.

Mr. WORTHINGTON. Very well. That is all, Mr. President, I can now ask this witness under the rulings of the Chair, but I would ask that he be not discharged after his examination is finished to-day.

The PRESIDENT pro tempore. The witness will retire, subject to recall. Is there further question for this witness?

Mr. Manager FLOYD. One moment.

The PRESIDENT pro tempore. The witness will remain for the present.

Q. (By Mr. Manager FLOYD.) Mr. Boland, you said that Mr. Williams showed you certain papers. Could you tell now about what those papers were from the distance you were when you saw them when he held them in the window?

The PRESIDENT pro tempore. The Chair will suggest to the manager that the witness has already expressly answered that question.

Mr. Manager FLOYD. That is all.

The PRESIDENT pro tempore. The witness may retire. Call the next witness.

Mr. Manager FLOYD. Our next witness is Mr. Loomis.

Mr. Manager CLAYTON. Mr. President, while the next witness is coming, I desire to offer a certified transcript of all the proceedings in the case of the Marian Coal Co. against the Delaware, Lackawanna & Western Railroad Co., docket No. 3592, and reports and orders filed by the commission in said case on June 8, 1912, and October 19, 1912, the originals of which are now on the files and records in the office of the Interstate Commerce Commission. This is one of the cases in the Interstate Commerce Commission.

I also introduce in evidence a certified copy of the record and all the papers, including all the orders, in the case of Henry E. Meeker and Caroline H. Meeker, copartners, trading as Meeker & Co., against the Lehigh Valley Railroad Co., docket No. 1180; the complaint and answer in the case of Henry E. Meeker against the Lehigh Valley Railroad Co., docket No. 3235; and also the report and order of the commission, dated June 8, 1911, in said docket, No. 1180, and joint report and orders dated May 7, 1912, in said cases, the originals of which are now on file and in the records in the office of the Interstate Commerce Commission. I do not desire that they be read, Mr. President, but that they be printed in the record.

The PRESIDENT pro tempore. If there be no objection on the part of counsel——

Mr. WORTHINGTON. I should like to have an opportunity to look at those papers before they go in to see whether they are complete. I make that suggestion because, looking at the first one, it does not appear to be complete.

Mr. Manager CLAYTON. I thought they were complete. They purport to be complete, Mr. President.

Mr. WORTHINGTON. Yes; the certificate is all right.

The PRESIDENT pro tempore. They will be withheld for that examination.

Mr. Manager CLAYTON. If they are not complete, the deficiency can be supplied, and I am quite willing that counsel may have a reasonable opportunity to examine them. Then, if he agrees that they are complete, they should be printed in the record as having been introduced at this time.

The PRESIDENT pro tempore. That direction will be given, if it is agreeable to counsel.

The papers were subsequently ordered printed in the record.

[U. S. S. Exhibit 47.]

INTERSTATE COMMERCE COMMISSION,
WASHINGTON.

I, John H. Marble, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of the complaint and answer in the case of Henry E. Meeker and Caroline H. Meeker, copartners, trading as Meeker & Company, against the Lehigh Valley Railroad Company, Docket No. 1180, and complaint and answer in the case of Henry E. Meeker against the Lehigh Valley Railroad Company, Docket No. 3235. Also report and order of the commission dated June 8, 1911, in the said Docket No. 1180 and joint report and orders dated May 7, 1912, in said cases, the originals of which are now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 9th day of December, 1912.

[SEAL.] JOHN H. MARBLE,
Secretary.

(Before the Interstate Commerce Commission. Henry E. Meeker and Caroline H. Meeker, complainants, *v.* Lehigh Valley Railroad Company, defendants.)

To the Interstate Commerce Commission:

The petition of the above-named complainants respectfully shows, on information and belief:

I. At all the times hereinafter mentioned the complainants were and still are copartners, engaged in the business of buying, shipping, and selling anthracite coal, under the firm name of "Meeker & Co."; and ever since the year 1898 they have been shipping large quantities of anthracite coal over the lines operated by the defendant from mines and collieries situated in what is known as the "Wyoming" coal region, in Pennsylvania, to tidewater, at Perth Amboy, New Jersey, and thence to the New York market.

II. At all such times the defendant was and still is a railroad corporation, organized and existing under the laws of the State of Pennsylvania, and a common carrier engaged in the interstate railroad transportation of passengers and property between points in the States of Pennsylvania, New Jersey, and New York over its own lines of road as well as over other lines owned, leased, controlled, or operated by it. About 80 per cent of the defendant's entire business is the transportation of anthracite coal and other merchandise, and about one-half of such percentage of its business is the transportation of anthracite coal.

III. In addition to the complainants there have been a number of other shippers engaged in shipping anthracite coal as interstate commerce over the said lines operated by the defendant from mines and collieries situated in the said Wyoming coal region to tidewater at Perth Amboy, one of whom was and still is the Lehigh Valley Coal Company (hereinafter called the "Coal Company"), a corporation organized and existing under the laws of the State of Pennsylvania and engaged in the business of mining and buying anthracite coal at mines and collieries in the said Wyoming coal region and shipping the same as interstate commerce over the lines of the defendant to tidewater at Perth Amboy, New Jersey, and there selling it. Since the incorporation of the Coal Company, the defendant has owned or controlled and still owns and controls its entire capital stock, and the two companies have had and still have virtually the same officers; and at least 75 per cent of the anthracite coal transported by the defendant since 1899 was owned by the Coal Company.

IV. Substantially all the unmined anthracite coal in the United States is contained in a small area, consisting of about 496 square miles, in the northeastern part of Pennsylvania, in three localities, known as the "Wyoming," the "Lehigh," and the "Schuylkill." Only a small portion of such coal is consumed in the immediate neighborhood of the mines. The greater portion of it is consumed in the Eastern and Middle States; and more than twenty per cent of it is shipped to the harbor of New York City and there marketed.

V. The only means of transporting coal from the anthracite region to New York Harbor is over the line of the defendant and the following other railroad companies, namely, the New York, Ontario and Western Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, and the Pennsylvania Railroad Company. For many years the said railroad companies, in addition to their business as common carriers, have owned and controlled large tracts of coal lands and have been engaged, either directly or indirectly, through the control of coal companies, in mining and dealing in anthracite coal; and, in this manner, the said companies control the eastern market for a very large proportion of the anthracite coal annually mined. The said railroad companies, including the defendant, but excepting the Pennsylvania Railroad Company, are hereinafter referred to as the "Anthracite Companies."

VI. Any charge made by the defendant for transporting anthracite coal from the breakers at the said mines or collieries to tidewater in excess of the difference between the market price at tidewater and a sum representing the price prevailing at the breakers, together with the expenses of selling the coal and a reasonable allowance for interest and profits, is an unreasonable, excessive, unlawful, and discriminatory charge, because it does not permit the independent shippers, including the plaintiff, to sell coal except at a loss, and must inevitably result in enabling the defendant, owning, as it does, the capital stock of the Coal Company, to drive all independent shippers out of the market, for the excessive rates paid by the Coal Company are received by the defendant, and the apparent losses to the Coal Company are consequently only nominal as to the defendant.

VII. For several years prior to August 1, 1901, there was in operation between the defendant and the various shippers of anthracite coal, including the complainants, an arrangement by which it was provided that the rate which should be paid for transporting their coal to tidewater should be the difference between the market price at tidewater and the price prevailing at the breakers, the latter being definite percentages of the former, and although the defendant published nominal tariff rates and draw sight drafts each week upon their shippers for transportation at such tariff rates, which the shippers paid, yet the charges actually made to the shippers for transporting their coal were, in all cases, approximately the difference between the market price at tidewater and the price prevailing at the breakers, and the accounts between the defendant and the various shippers were adjusted accordingly a few days after the expiration of each month; and, in case the defendant had been overpaid upon the said sight drafts, it immediately returned the amount of such overpayment to the shippers, respectively.

VIII. In November, 1900, the Anthracite Companies entered into negotiations with various owners and operators of the anthracite coal mines in the said Wyoming coal region as to the prices to be paid at the breakers for anthracite coal, and agreed that such prices, when determined, should be payable from November 1, 1900, and that, meantime, the prices then prevailing should be paid, namely, 60 per cent of the tidewater prices for prepared sizes, 45 per cent thereof for pea coal, and 32 per cent thereof for buckwheat coal, and that the additional sum, if any, should be subsequently paid as soon as it had been determined.

IX. On or before August 1, 1901, an agreement was made between the anthracite companies and a large majority of the said owners and

operators, which determined the price paid for coal at the breakers in the said Wyoming coal region, shipped subsequent to November 1, 1900, whereby it was provided that the breaker price should be 65 per cent of the tidewater price for prepared sizes, 50 per cent thereof for pea coal, and 40 per cent thereof for buckwheat coal; and thereupon the coal company accordingly paid the said additional percentages, respectively, for each ton of coal purchased by it at the breakers from said owners and operators subsequently to October 31, 1900.

X. During all of the said period between November 1, 1900, and August 1, 1901, no change had been made in the arrangement existing between the defendant and the independent shippers of anthracite coal, including the complainants, as to the rate to be paid for carrying their coal, as hereinbefore stated; but it was well understood between the complainants and the defendant that the usual allowances should be made to them upon the freight charges paid by them, equivalent to the additional price paid at the breakers for coal shipped during the said period; and for a part of the said period between November 1, 1900, and April 1, 1901, before the said prices had been definitely determined and when the difference between the tidewater price and the price at the breakers represented a sum in excess of the amount paid on the said sight drafts, as aforesaid, the defendant rendered statements of accounts to the complainants, showing such difference, some of which the complainants paid.

XI. Before November 1, 1900, and August 1, 1901, the complainants shipped about eighty-eight thousand three hundred and thirty-six (88,336) tons of coal over the defendant's line between the Wyoming coal region and tidewater at Perth Amboy, a distance of about one hundred and sixty-five (165) miles, and paid it, for such service, an average of about 9 40/100 mills per ton per mile for prepared sizes of coal and about 7 5/100 mills per ton per mile for smaller sizes, the total sum of one hundred and twenty-nine thousand nine hundred and eighty-nine dollars and eighteen cents ($129,989.18), whereas the amount which they should have paid pursuant to the said understanding, based upon the difference between the market prices at tidewater and the respective prices for the same coal prevailing at the breakers, was only one hundred and eighteen thousand eight hundred and sixty-seven dollars and twenty-one cents ($118,867.21), showing an overpayment of eleven thousand one hundred and twenty-one dollars and ninety-seven cents ($11,121.97), the repayment of which the plaintiffs have demanded of the defendant, but no part thereof has been paid.

XII. From August, 1901, to July 1, 1907, the anthracite companies, including the defendant, which, prior to 1901, as hereinbefore alleged, had not charged more than the difference between the market price of the coal at the breakers and the price at tidewater for transporting coal, although they had been publishing nominal tariff rates, began to exact from all independent shippers a fixed charge per ton for carrying coal to tidewater in excess of such difference in prices, amounting to $1.55 per ton for prepared coal, $1.40 per ton for pea coal, $1.25 per ton for buckwheat coal, and $1.10 for coal smaller than buckwheat coal, and the said charges have ever since been continued. During the said period any charge made by the defendant for transporting anthracite coal between the said points in excess of one dollar per ton constituted an unreasonable and excessive charge, and the said charges to the plaintiffs were not only far in excess of the value of the services rendered and far more than the defendant had previously received for such service, but they were in excess of the difference between the amounts realized for the coal at New York tidewater after deducting expense of selling and the prices paid for it at the mines and constituted an excessive, unreasonable, unlawful, and discriminatory charge for the said services.

XIII. As a result of the said excessive and unreasonable charges, the independent dealers and shippers, including the complainants, have been unable to ship coal to New York, except at a loss, and the plaintiff has been obliged to pay excessive rates upon all coal shipped by them to tidewater over the lines of the defendant.

XIV. From August 1, 1901, to June 30, 1907, the complainants shipped 501,251 tons of anthracite coal over the lines of the defendant from the breakers at the mines and collieries in the Wyoming region to tidewater, at Perth Amboy, New Jersey, and paid to the defendant for such services, but under protest, $1.55 per ton for 247,652 tons of prepared sizes of such coal, $1.40 per ton for 106,218 tons of the pea size of such coal, $1.20 per ton for 37,379 tons of the buckwheat size of such coal, $1.25 per ton for 87,868 tons of buckwheat size of such coal, $1.10 for 16,733 tons of the rice size of such coal, and $1.10 for 3,136 tons of the barley size of such coal, and $1.10 a ton for 2,264 of the culm size of such coal, all of such prices being greatly in excess of one dollar per ton, the reasonable charge therefor, and constituting a total overcharge of about $210,351.00.

XV. The complainants were unable to continue their shipments of anthracite coal except by complying with the demands of the defendant as to rates; and all their said payments were made under duress, and the complainants, in each and every case, made the said payments under protest, asserting that the rates charged were unreasonable and excessive, and notified the defendant that they reserved the right to recover back from it the amount of excess over the reasonable rate.

XVI. Since August 1, 1901, the Coal Company has been and still is selling anthracite coal at Perth Amboy at such prices that, after deducting therefrom the price at which the coal was purchased at the breakers in the Wyoming coal regions, and a reasonable and proper allowance for shipping and selling expenses, there remains, as revenue or receipts to be paid to the railroad company for the transportation of the coal, a less sum than that charged by the railroad company for the transportation of the said coal between the said Wyoming coal region and Perth Amboy.

XVII. The fact that the Coal Company, in nominally paying the tariff rates prescribed by the railroad company, has paid an excessive amount for the transportation of its coal and has done so only at a loss, is evident from the annual reports of the said companies. The Coal Company would have been unable to transact its business in the manner above mentioned and to pay the railroad company the said charges for the transportation of anthracite coal from the Wyoming coal region to Perth Amboy except for the fact that the railroad company has furnished to it the capital and means to make good the losses which have necessarily resulted in the payment to the railroad company by the Coal Company of the said transportation charges.

Wherefore the complainants respectfully request the commission to make an order fixing the rate for the transportation of anthracite coal by the defendant between the Wyoming coal region in Pennsylvania and Perth Amboy, New Jersey, at not more than one dollar per ton, and ordering and directing the defendant to make reparation to the complainants for the sum of eleven thousand one hundred and twenty-one dollars and ninety-seven cents ($11,121.97), with interest thereon from August 1, 1901, and for the sum of two hundred and ten thousand three hundred and fifty-one dollars ($210,351), with interest on the respective payments made by the complainants in excess of a reasonable rate, from the dates of such payments, respectively, and to award to the complainants such other relief as they may show themselves entitled to receive.

MEEKER & CO., *Complainants.*
SHEARMAN & STERLING.
44 Wall Street, New York City, and
WILLIAM A. GLASGOW, Jr.,
412–417 Real Estate Trust Building, Philadelphia, Pa.,
Attorneys for Complainants.

STATE OF NEW YORK, *County of New York:*

Henry E. Meeker, being duly sworn, says that he is a member of the firm of Meeker & Co. and one of the complainants herein, and that the matters therein set forth are true, as he verily believes.

HENRY E. MEEKER.

Sworn to before me July 11, 1907.
[SEAL.]

O. R. HOUSTON,
Notary Public, New York County.

(Henry E. Meeker & Caroline H. Meeker, complainants, *v.* Lehigh Valley Railroad Company, defendant. Answer. Docket No. 1180. Filed Jan. 21, 1908.)

The above-named defendant, saving and reserving its objections hereinafter stated to the jurisdiction and power of this commission to grant the relief prayed for in the petition, answers the petition in the above-entitled proceeding as follows:

I. Defendant alleges that this commission possesses no jurisdiction or power to make an order fixing the rate for transportation of anthracite coal, as prayed in the petition, and defendant alleges that section 15 of the act to regulate commerce, approved February 4, 1887, as amended by section 4 of the act of June 29, 1906, attempting to confer such jurisdiction and power upon this commission is unconstitutional and void.

II. Defendant admits the allegations contained in Paragraph I of the petition, except the allegation as to the copartnership relation of the complainants, concerning which allegation the defendant has not sufficient knowledge to answer.

III. Defendant admits the allegations contained in Paragraphs II, III, and IV of the petition.

IV. The defendant admits that the only means of transporting coal from the anthracite region to New York Harbor is in the way and manner averred in Paragraph V of the petition. Defendant has not sufficient knowledge to answer as to whether the railroad companies named in the petition, other than this defendant, have owned and controlled or do now own and control large tracts of coal lands or are and have been engaged in mining and dealing in anthracite coal. Defendant denies that it has owned or controlled or now owns or controls large tracts of coal lands, and also denies that it has engaged or is now engaged, directly or indirectly, in mining and dealing in anthracite coal. Defendant admits the ownership of shares of capital stock of the Lehigh Valley Coal Company, a corporation of the Commonwealth of Pennsylvania, and avers that such ownership is in accordance with the laws of the Commonwealth of Pennsylvania, the State in which defendant is incorporated. Defendant denies that it controls the eastern market for a very large proportion of the anthracite coal annually mined, and, so far as it has knowledge, the railroad companies mentioned in Paragraph V of the petition do not control said eastern market for a very large proportion of said anthracite coal.

V. Defendant denies each and every allegation of fact contained in Paragraph VI of the petition.

VI. Defendant denies the allegation contained in Paragraph VII of the petition that for several years prior to August 1st, 1901, there was in operation between the defendant and the various shippers of anthracite coal, including the complainants, an arrangement by which it was provided that the rate that should be paid for transporting their coal to tidewater should be the difference between the market price at tidewater and the price prevailing at the breakers. Defendant further denies the allegation contained in said Paragraph VII of the petition that the charges actually made to the shippers for transportating their coal were in all cases approximately the difference between the market price at tidewater and the price prevailing at the breakers.

VII. Defendant denies that the "Anthracite companies" entered into negotiations with owners and operators as stated and alleged in Paragraph VIII of the petition or entered into such agreements with said owners and operators as stated and averred in said Paragraph VIII.

VIII. Defendant is unable to answer the allegations contained in Paragraph IX of the petition as to what agreements were made by the anthracite companies other than the defendant. Defendant avers, so far as regards this defendant, that it entered into no such arrangement or agreement as is averred in said paragraph.

IX. Defendant denies that any arrangement existed between the defendant and the independent shippers of anthracite coal as to the rate to be paid for carrying their coal, as alleged in Paragraph X of the petition. Defendant denies the averment in said paragraph of an understanding between the complainants and the defendant as to allowances. Defendant further denies that during part of said period it rendered statements of accounts to the complainants showing the difference specified in said paragraph of the petition.

X. Defendant denies each and every allegation contained in Paragraph XI of the petition except that it admits that the statements of the aggregate shipments of coal by the complainants over the defendant's lines between November 1, 1900, and August 1, 1901, and the total amount paid therefor by the complainants are substantially correct, and, except that it further admits that complainants have demanded of the defendant the repayment of eleven thousand one hundred and twenty-one dollars and ninety-seven cents ($11,121.97), and that no part thereof has been paid by the defendant.

XI. Defendant admits that from August, 1901, to July 1, 1907, as alleged in Paragraph XII of the petition, the defendant charged for carrying coal to tidewater the sums of $1.55 per ton for prepared coal, $1.40 per ton for pea coal, $1.25 per ton for buckwheat coal, and $1.10 per ton for coal smaller than buckwheat coal, except that defendant avers that since the 10th day of January, 1905, the charge for buckwheat coal has been on No. 1, $1.20 per ton. Defendant alleges that the charges aforesaid were in accordance with the tariffs duly filed by the defendant with this commission and duly published and posted as required by law. Defendant denies that said charges were, or are, in excess of the value of the services, or in excess of the difference between the amount realized for the coal at New York tidewater, after deducting expenses of selling, and the prices paid for it at the mines, or constituted an excessive, unreasonable, unlawful, or discriminatory charge for such services.

XII. Defendant denies the allegations contained in Paragraph XIII of the petition.

XIII. Defendant admits that the statements contained in Paragraph XIV of the petition as to the amount of the shipments of coal by the complainants over the lines of the defendant between August 1, 1901, and June 30, 1907, and the prices paid therefor are correct. Defendant denies that the prices paid for transportation as alleged in said paragraph were unreasonable, or constituted an overcharge of the amount averred in said paragraph or constituted an overcharge to any amount.

XIV. Defendant denies the allegations contained in Paragraph XV of the petition, except that it admits that complainants have notified the defendant that as to payments made subsequent to the first day of August, 1901, they reserved the right to recover such amounts as they might be entitled to.

XV. Defendant denies the averment contained in Paragraph XVI of the petition.

XVI. Defendant denies the allegations contained in Paragraph XVII of the petition.

XVII. Defendant further alleges that as to all payments made by the complainants on account of the transportation of anthracite coal over lines of the defendant as alleged in the petition prior to the 17th day of July, 1905, the petition herein not having been filed with this commission within two years after the cause of action accrued, or within one year after the passage of the act of June 29th, 1906, all claims for the recovery of any damages based upon said payments are barred by virtue of the provisions of section 5 of the act of June 29th, 1906, amending section 16 of the act to regulate commerce.

Wherefore defendant prays that the petition be dismissed.

LEHIGH VALLEY RAILROAD COMPANY,
By E. B. THOMAS, *President.*

FRANK H. PLATT,
Counsel, 2 Rector Street, New York City.

(Before the Interstate Commerce Commission. Henry E. Meeker, complainant, *v.* Lehigh Valley Railroad Company, defendant. Complaint No. 2.)

To the Interstate Commerce Commission:

The petition of the above-named complainant respectfully shows, on information and belief:

I. The plaintiff is engaged in the business of buying, selling, and shipping anthracite coal, under the trade name of Meeker & Co., having duly succeeded to the business which for many years was carried on by himself and Caroline H. Meeker, under the same name. The said business involves the shipping of large quantities of anthracite coals over the lines operated by the defendant from mines and collieries situated in what is known as the "Wyoming" coal region, in Pennsylvania, to tidewater at Perth Amboy, New Jersey, and thence to the New York market.

II. At all the times herein mentioned the defendant was and still is a railroad corporation, organized and existing under the laws of the State of Pennsylvania, and a common carrier engaged in the interstate railroad transportation of passengers and property between points in the States of Pennsylvania, New Jersey, and New York, over its own lines of road, as well as over other lines owned, leased, controlled, or operated by it. About 80% of the defendant's entire business is the transportation of anthracite coal and other merchandise, and about one-half of such percentage of its business is the transportation of anthracite coal.

III. In addition to the complainant there have been a number of other shippers engaged in shipping anthracite coal, as interstate commerce, over the said lines operated by the defendant from mines and collieries situated in the said Wyoming coal region to tidewater at Perth Amboy, one of whom was and still is the Lehigh Valley Coal Company (hereinafter called the "Coal Company"), a corporation organized and existing under the laws of the State of Pennsylvania and engaged in the business of mining and buying anthracite coal, at mines and collieries in the said Wyoming coal region, and shipping the same as interstate commerce over the lines of the defendant to tidewater at Perth Amboy, New Jersey, and there selling it. Since the incorporation of the Coal Company the defendant has owned or controlled, and still owns and controls, its entire capital stock, and the two companies have had, and still have, virtually the same officers, and at least 75% of the anthracite coal transported by the defendant since 1899 was owned by the Coal Company.

IV. Substantially all the unmined anthracite coal in the United States is contained in a small area, consisting of about 496 square miles, in the northeastern part of Pennsylvania, in three localities, known as the "Wyoming," the "Lehigh," and the "Schuylkill." Only a small portion of such coal is consumed in the immediate neighborhood of the mines. The greater portion of it is consumed in the Eastern and Middle States, and more than twenty per cent of it is shipped to the harbor of New York City and there marketed.

V. The only means of transporting coal from the anthracite region to New York Harbor is over the line of the defendant and of the following other railroad companies, namely: The New York, Ontario and Western Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, and the Pennsylvania Railroad Company. For many years the said railroad companies, in addition to their business as common carriers, have owned and controlled large tracts of coal lands and have been engaged, either directly or indirectly, through the control of coal companies, in mining and dealing in anthracite coal; and in this manner the said companies control the eastern market for a very large proportion of the anthracite coal annually mined. The said railroad companies, including the defendant, but excepting the Pennsylvania Railroad Company, are hereinafter referred to as the "Anthracite Companies."

VI. Any charge made by the defendant for transporting anthracite coal from the breakers, at the said mines or collieries, to tidewater, in excess of the difference between the market price at tidewater and a sum representing the price prevailing at the breakers, together with the expenses of selling the coal and a reasonable allowance for interest and profits, is an unreasonable, excessive, unlawful, and discriminatory charge, because it does not permit the independent shippers, including the complainant, to sell coal except at a loss, and must inevitably result in enabling the defendant, owning, as it does, the capital stock of the Coal Company, to drive all independent shippers out of the market; for the excessive rates paid by the Coal Company are received by the defendant, and the apparent losses to the Coal Company are consequently only nominal as to the defendant.

VII. For several years prior to August 1, 1901, there was in operation between the defendant and the various shippers of anthracite coal, including the complainant and his said copartner, an arrangement by which it was provided that the rate which should be paid for transporting their coal to tidewater should be the difference between the market price at tidewater and the price prevailing at the breakers, the latter being definite percentages of the former; and although the defendant published nominal tariff rates and drew sight drafts each week upon its shippers for transportation at such tariff rates, which the shippers paid, yet the charges actually made to the shippers for transporting their coal were, in all cases, approximately, the difference between the market price at tidewater and the price prevailing at the breakers, and the accounts between the defendant and the various shippers were adjusted accordingly a few days after the expiration of each month; and, in case the defendant had been overpaid upon the said sight drafts, it immediately returned the amount of such overpayment to the shippers, respectively.

VIII. From August 1, 1901, the Anthracite Companies, including the defendant, which, prior to 1901, as hereinbefore alleged, had not charged for transporting coal more than the difference between the market price of the coal at the breakers and the price at tidewater, although they had been publishing nominal tariff rates, began to exact from all independent shippers a fixed charge per ton for carrying coal to tidewater, in excess of such difference in prices, amounting to $1.55 per ton for prepared coal, $1.40 per ton for pea coal, $1.25 per ton for buckwheat coal, and $1.10 for coal smaller than buckwheat coal; and the said charges have ever since been continued, except that the rate for buckwheat coal was reduced from $1.25 to $1.20 per ton on January 10, 1905. The said charges were and are unjust, unreasonable, and discriminatory and are forbidden by the act to regulate commerce and particularly by sections one and three thereof. During the said period any charge in excess of one dollar per ton made by the defendant for transporting anthracite coal between the said points constituted an unreasonable and excessive charge; and the said charges to the complainant were not only far in excess of the value of the services rendered and far more than the defendant had previously received for such service, but they were in excess of the difference between the amounts realized for the coal at New York tidewater, after deducting expenses of selling, and the prices paid for it at the mines, and constituted an excessive, unreasonable, unlawful, and discriminatory charge for the said services.

IX. As a result of the said excessive and unreasonable charges, the independent dealers and shippers, including the complainant, have been unable to ship coal to New York, except at a loss, and the complainant has been obliged to pay excessive rates upon all coal shipped by him to tidewater over the lines of the defendant.

X. In July, 1907, the complainant's said firm submitted a petition to the Interstate Commerce Commission, requesting it to make an order fixing the rate for the transportation of anthracite coal by the defendant between the Wyoming coal region in Pennsylvania, and Perth Amboy, New Jersey, at not more than one dollar per ton, and ordering and directing the defendant to make reparation to said complainant for charges exacted by the defendant from the said complainant in excess of the said rate of one dollar per ton prior to July 1, 1907. The said proceeding has been diligently prosecuted, but is still pending and undetermined before the said commission.

XI. From July 1, 1907, to April 1, 1910, the complainant shipped 126,673 tons of anthracite coal over the lines of the defendant from the breakers at the mines and collieries in the Wyoming region to tidewater at Perth Amboy, New Jersey, and paid to the defendant for such services, but under protest, $1.55 per ton for 68,405.02 tons of the prepared sizes of such coal, $1.40 per ton for 31,327.03 tons of the pea size of such coal, $1.20 per ton for 24,428.06 tons of the buckwheat size of such coal, $1.10 per ton for 2,512.09 tons of the rice and barley sizes of such coal, all of such prices being a great deal in excess of $1 per ton, the reasonable charge therefor, and constituting a total overcharge of about $55,290.73.

XII. The complainant was unable to continue his shipments of anthracite coal except by complying with the demands of the defendant as to rates, and all his said payments were made under duress; and the complainant, in each and every case, made the said payments under protest, asserting that the rates charged were unreasonable and excessive, and notified the defendant that he reserved the right to recover back from it the amount of excess over the reasonable rate.

XIII. Since August 1, 1901, the Coal Company has been, and still is, selling anthracite coal at Perth Amboy at such prices that, after deducting therefrom the price at which the coal was purchased at the breakers in the Wyoming coal region, and a reasonable and proper allowance for shipping and selling expenses, there remains, as revenue or receipts to be paid to the railroad company for the transportation of the coal, a less sum than that charged by the railroad company for the transportation of the said coal between the said Wyoming coal region and Perth Amboy.

XIV. The fact that the Coal Company, in nominally paying the tariff rates prescribed by the railroad company, has paid an excessive amount for the transportation of its coal, and has done so only at a loss, is evident from the annual reports of the said companies. The Coal Company would have been unable to transact its business in the manner above mentioned and to pay to the railroad company the said charges for the transportation of anthracite coal from the Wyoming coal region to Perth Amboy except for the fact that the railroad company has furnished to it the capital and means to make good the losses which have necessarily resulted in the payment to the railroad company by the Coal Company of the said transportation charges.

Wherefore the complainant respectfully requests the commission to make an order requiring the defendant to answer the charges herein; that after due investigation an order may be made commanding said defendant to cease and desist from the aforesaid violations of the said act to regulate commerce, and that an order may be made fixing the rate for the transportation of anthracite coal by the defendant between the Wyoming coal region, Pennsylvania, and Perth Amboy, New Jersey, at not more than $1 per ton; and ordering and directing the defendant to make reparation to the complainant in the sum of $55,290.73, with interest, on the respective payments made by the complainant in excess of a reasonable rate from the date of such payments, respectively; and to award to the complainant such other relief as he may show himself entitled to receive.

HENRY E. MEEKER, *Complainant.*
SHEARMAN & STERLING,
55 Wall Street, New York City.
WILLIAM A. GLASGOW, Jr.,
417 Real Estate Trust Building, Philadelphia, Pa.,
Attorneys for Complainant.

STATE OF NEW YORK, *County of New York:*

Henry E. Meeker, being duly sworn, says that he is the plaintiff herein, and that the foregoing complaint is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

HENRY E. MEEKER.

Sworn to before me April 11, 1910.

[SEAL.] HENRY J. DORGELOH,
Notary Public, No. 35, Kings County.
Certificate filed New York Co.
Commission expires March 30, 1912. Customs Notary.

(Before the Interstate Commerce Commission. Henry E. Meeker, complainant, *v.* Lehigh Valley Railroad Company, defendant. Complaint No. 2. Docket No. 3235. Answer.)

The above-named defendant, saving and reserving its objections hereinafter stated to the jurisdiction and power of this commission to grant the relief prayed for in the petition, answers the petition in the above-entitled proceeding as follows:

I. Defendant alleges that this commission possesses no jurisdiction or power to make an order fixing the rate for transportation of anthracite coal, as prayed in the petition, and defendant alleges that section 15 of the act to regulate commerce, approved February 4, 1887, as amended by section 4 of the act of June 29, 1906, attempting to confer such jurisdiction and power upon this commission, is unconstitutional and void.

II. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph I of the petition.

III. Defendant admits the allegations contained in Paragraphs II, III, and IV of the petition.

IV. The defendant admits that the only means of transporting coal from the anthracite region to New York Harbor is in the way and manner averred in Paragraph V of the petition. Defendant has not sufficient knowledge to answer as to whether the railroad companies named in the petition, other than this defendant, have owned and controlled, or do now own and control, large tracts of coal lands, or are and have been engaged in mining and dealing in anthracite coal. Defendant denies that it has owned or controlled, or now owns or controls, large tracts of coal lands, and also denies that it has engaged, or is now engaged, directly or indirectly, in mining and dealing in anthracite coal. Defendant admits the ownership of shares of capital stock of the Lehigh Valley Coal Company, a corporation of the Commonwealth of Pennsylvania, and avers that such ownership is in accordance with the laws of the Commonwealth of Pennsylvania, the State in which defendant is incorporated. Defendant denies that it controls the eastern market for a very large proportion of the anthracite coal annually mined, and, so far as it has knowledge, the railroad companies mentioned in Paragraph V of the petition do not control said eastern market for a very large proportion of said anthracite coal.

V. Defendant denies each and every allegation of fact contained in Paragraph VI of the petition.

VI. Defendant denies the allegation contained in Paragraph VII of the petition that for several years prior to August 1, 1901, there was in operation between the defendant and the various shippers of anthracite coal, including the complainant, an arrangement by which it was provided that the rate that should be paid for transporting their coal to tidewater should be the difference between the market price at tidewater and the price prevailing at the breakers. Defendant further denies the allegation contained in said Paragraph VII of the petition that the charges actually made to the shippers for transporting their coal were in all cases approximately the difference between the market price at tidewater and the price prevailing at the breakers.

VII. Defendant admits that from August, 1901, as alleged in Paragraph VIII of the petition, the defendant charged for carrying coal to tidewater the sums of $1.55 per ton for prepared coal, $1.40 per ton for pea coal, $1.25 per ton for buckwheat coal, and $1.10 per ton for coal smaller than buckwheat coal, except that since the 10th day of January, 1905, the charge for buckwheat coal has been on No. 1 $1.20 per ton. Defendant alleges that the charges aforesaid were in accordance with the tariffs duly filed by the defendant with this commission and duly published and posted, as required by law. Defendant denies that said charges were, or are, in excess of the value of the services or in excess of the difference between the amount realized for the coal at New York tidewater, after deducting expenses of selling and the prices paid for it at the mines, or constituted an excessive, unreasonable, unlawful, or discriminatory charge for such services. Defendant denies that said charges were or are unjust, unreasonable, and discriminatory or forbidden by the act to regulate commerce. Defendant denies knowledge or information sufficient to form a belief as to any of the other allegations contained in Paragraph VIII of the petition.

VIII. Defendant denies the allegations contained in Paragraph IX of the petition.

IX. Defendant admits and states that on or about July 17, 1907, a complaint was filed with the Interstate Commerce Commission in a proceeding entitled "Henry E. Meeker and Caroline H. Meeker, complainants, against Lehigh Valley Railroad Company, defendant," which proceeding is designated by the commission as Docket No. 1180. Defendant further admits that the petition in said action, Docket No. 1180, contains the following prayer:

"Wherefore the complainants respectfully request the commission to make an order fixing the rate for the transportation of anthracite coal by the defendant between the Wyoming coal region, in Pennsylvania, and Perth Amboy, New Jersey, at not more than one dollar per ton, and ordering and directing the defendant to make reparation to the complainants for the sum of eleven thousand one hundred twenty-one dollars and ninety-seven cents ($11,121.97), with interest thereon from August 1, 1901, and for the sum of two hundred and ten thousand three hundred fifty-one dollars ($210,351), with interest on the respective payments made by the complainants in excess of a reasonable rate from the dates of such payments, respectively, and to award to the complainants such other relief as they may show themselves entitled to receive."

Defendant further admits that said proceeding is still pending and undetermined before the Interstate Commerce Commission. Defendant denies each and every other allegation in Paragraph X of the petition.

X. Defendant denies knowledge or information sufficient to form a belief as to any of the allegations contained in Paragraph XI of the petition, except that it denies that one dollar per ton would be a reasonable or compensatory charge, and further denies that there has been or is any overcharge.

XI. Defendant denies the allegations contained in Paragraph XII of the petition, except that it admits that complainant has notified the defendant that as to payments made subsequent to July 1, 1907, he reserved the right to recover such amounts as he might be entitled to.

XII. Defendant denies each and every allegation contained in Paragraph XIII of the petition.

XIII. Defendant denies each and every allegation contained in Paragraph XIV of the petition.

XIV. Defendant alleges that as to all payments made by the complainant on account of the transportation of anthracite coal over lines of the defendant as alleged in the petition prior to the 20th day of April, 1908, the petition herein not having been filed with this commission within two years after the cause of action accrued, or within one year after the passage of the act of June 29, 1906, all claims for recovery of any damages based upon said payments are barred by virtue of the provisions of section 5 of the act of June 29, 1906, amending section 16 of the act to regulate commerce.

XV. Defendant further alleges that the act to regulate commerce, approved February 4, 1887, as amended by the act of June 29, 1906, does not confer jurisdiction or power upon this commission to make or determine upon any reparation whatsoever to the complainant; and further alleges that any interpretation of said act, as amended, or any part thereof, purporting to give such jurisdiction or power to the commission would render said act, as amended, in so far as it relates to claims for reparation, unconstitutional and void.

Wherefore defendant prays that the petition be dismissed.

LEHIGH VALLEY RAILROAD COMPANY,
By E. B. THOMAS, *President.*
FRANK H. PLATT, *Counsel,*
2 Rector Street, New York City.

NEW YORK, N. Y., *May 10, 1910.*

(Opinion No. 1880, before the Interstate Commerce Commission. No. 1180. Henry E. Meeker and Caroline H. Meeker, copartners, trading as Meeker & Company, *v.* Lehigh Valley Railroad Company. No. 3235. Henry E. Meeker *v.* Lehigh Valley Railroad Company. Submitted February 27, 1912. Decided May 7, 1912.)

Reparation awarded on account of unreasonable and discriminatory rates charged for the transportation of anthracite coal from the Wyoming region in Pennsylvania to Perth Amboy, N. J., in accordance with the conclusions announced in Meeker *v.* L. V. R. R. Co., 21 I. C. C., 129.

William A. Glasgow, jr., for complainants.
Frank H. Platt, George W. Field, and E. H. Boles for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MCCHORD, Commissioner:

The original report in No. 1180, 21 I. C. C., 129, disposed of all the questions at issue except the claim for reparation, and the case was held open for the purpose of securing further information regarding that feature. A further hearing has been held, and complainant has presented exhibits showing the total number of tons of each variety of coal shipped and the amount of reparation due on such shipments. These exhibits have been examined by defendant and admitted to be correct.

In our original report we found that the rates charged complainant for the transportation of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., during the period from November 1, 1900, to August 1, 1901, were unjustly discriminatory in violation of section 2 of the act to the extent that they exceeded the rates contemporaneously charged the Lehigh Valley Coal Company under the contract then in effect between that company and defendant; and we further found that the rates in effect from August 1, 1901, to July 17, 1907, were unreasonable to the extent that they exceeded rates of $1.40 per gross ton on prepared sizes, $1.30 on pea, and $1.15 on buckwheat.

On basis of our conclusions in the former report, and upon consideration of the evidence adduced at the hearing upon the question of reparation, we now find that during the period from November 1, 1900, to August 1, 1901, complainant shipped from the Wyoming coal region of Pennsylvania to Perth Amboy, N. J., 55,257.75 tons of coal of prepared sizes, 16,689.76 tons of pea coal, 11,448.93 tons of buckwheat coal, and 4,926.77 tons of rice coal, and paid charges thereon, amounting to $129,989.18, at the rates found to have been unjustly discriminatory; that complainant has been damaged to the extent of the difference between the amount which he did pay and $118,979.85, the amount which he would have paid had he been given the benefit of the rates applied by defendant to similar shipments of the Lehigh Valley Coal Company; and that he is therefore entitled to an award of reparation in the sum of $11,009.33, with interest thereon from August 1, 1901. We find further that from August 1, 1901, to July 17, 1907, complainant shipped from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., 246,870.15 tons of coal of prepared sizes, 106,051.09 tons of pea coal, and 87,250 tons of buckwheat coal, and paid charges thereon amounting to $685,375.27, at the rates found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which he did pay and $626,945.62, the amount which he would have paid at the rates found reasonable, less $193.20 deducted by stipulation of all parties on account of certain claims already paid; and that he is therefore entitled to an additional award of reparation in the sum of $58,236.45, with interest, amounting to $27,750.64, on the individual charges comprising said sum from the dates of payment thereof to September 1, 1911, together with interest on said sum of $58,236.45 from September 1, 1911.

With the exception of the reparation features, the issues involved in No. 3235 have been passed upon by the commission in No. 1180. The latter case covered the period from November 1, 1900, to July 17, 1907, while the instant case is designed to secure reparation upon shipments which moved between July 17, 1907, and April 13, 1910. The petition in the present case therefore resolves itself into a prayer for reparation on shipments moving subsequent to the period covered by the original report, on basis of the conclusions announced in that report.

In No. 1180 the complaint attacked the reasonableness of rates charged by defendant for the transportation of various sizes of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., and asked reparation. On June 8, 1911, the commission rendered its decision in that case. The petition in the present case was filed on April 13, 1910, or about a year prior to our decision in No. 1180. As before stated, it attacks the same rates that were found unreasonable in No. 1180, and asks reparation on shipments moving from July 17, 1907, to April 13, 1910.

The former case was filed with the commission within one year from the passage of the law of June 29, 1906, and consequently was not limited to causes of action that accrued within two years prior to the

filing of the complaint. The present proceeding, however, was instituted more than one year subsequent to the passage of that law, and is therefore subject to the two-year limitation of the statute. Complainant's prayer for reparation on shipments moving more than two years prior to the filing of the complaint in this case must be denied.

On basis of our decision in No. 1180, and upon consideration of the evidence submitted at the hearing of the present case regarding the amount of reparation due complainant, we now find that the rates exacted by defendant for the transportation of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., during the period from April 13, 1908, to April 13, 1910, were unreasonable to the extent that they exceeded rates of $1.40 per gross ton on prepared sizes, $1.30 on pea, and $1.15 on buckwheat; that complainant shipped from said point of origin to said destination during the period above set forth, 46,772.02 tons of coal of prepared sizes, 26,972.06 tons of pea coal, and 22,004.09 tons of buckwheat coal; that complainant paid charges thereon amounting to $136,663.41 at the rates herein found to have been unreasonable, and was damaged to the extent of the difference between the amount which he did pay and $125,849.81, the amount which he would have paid at the rates above found reasonable; and that he is therefore entitled to an award of reparation in the sum of $10,813.60, with interest, amounting to $1,526.53, upon the individual charges comprising said sum from the dates of payment thereof to September 1, 1911, together with interest on said sum of $10,813.60 from the 1st day of September, 1911.

The exhibits showing details respecting the shipments upon which reparation is asked are too extensive to be set forth in this report. But inasmuch as the accuracy of the figures in said exhibits respecting the shipments made, freight charges paid, and reparation due is conceded of record by defendant, we deem it unnecessary to make detailed findings respecting the numerous shipments involved.

Orders will be issued in accordance with the findings herein announced.

ORDERS.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of May, A. D. 1912.

No. 1180. Henry E. Meeker and Caroline H. Meeker, copartners, trading as Meeker & Company, *v.* Lehigh Valley Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendant Lehigh Valley Railroad Company be, and it is hereby, authorized and required to pay unto complainant, Henry E. Meeker, on or before the 15th day of July, 1912, the sum of $11,009.33, with interest thereon at the rate of 6 per cent per annum from the 1st day of August, 1901, as reparation for unjustly discriminatory rates charged for the transportation of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., which rates so charged have been found by this commission to have been unjustly discriminatory, as more fully and at large appears in and by said report of the commission.

It is further ordered, That defendant Lehigh Valley Railroad Company be, and it is hereby, authorized and required to pay unto complainant, Henry E. Meeker, on or before the 15th day of July, 1912, the sum of $58,236.45, with interest thereon at the rate of 6 per cent per annum, amounting to $27,750.64, upon the various individual charges comprising said sum, from the dates of payment thereof to September 1, 1911, as itemized in complainant's Exhibit 2, together with interest at the rate of 6 per cent per annum on said sum of $58,236.45 from September 1, 1911, as reparation for unreasonable rates charged for the transportation of various shipments of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., which rates so charged have been found by this commission to have been unreasonable, as more fully and at large appears in and by said report of the commission.

No. 3235. Henry E. Meeker *v.* Lehigh Valley Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendant Lehigh Valley Railroad Company be, and it is hereby, authorized and required to pay unto complainant, Henry E. Meeker, on or before the 15th day of July, 1912, the sum of $10,813.60, with interest at the rate of 6 per cent per annum, amounting to $1,526.53, upon the various individual charges comprising said sum, from the dates of payment thereof to September 1, 1911, as itemized in complainant's Exhibit 1, together with interest at the rate of 6 per cent per annum on said sum of $10,813.60 from September 1, 1911, as reparation for unreasonable rates charged for the transportation of various shipments of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., which rates so charged have been found by this commission to have been unreasonable, as more fully and at large appears in and by said report of the commission.

By the commission:

_____, *Secretary.*

(Opinion No. 1585, before the Interstate Commerce Commission. No. 1180. Henry E. Meeker and Caroline H. Meeker, copartners, trading as Meeker & Company, *v.* Lehigh Valley Railroad Company. Submitted May 15, 1911. Decided June 8, 1911.)

1. Upon shipments of anthracite coal made by complainants from the Wyoming region in Pennsylvania to Perth Amboy, N. J., during the period from November 1, 1900, to August 1, 1901, the rates collected by defendant were unjustly discriminatory and resulted in damage to complainant for which reparation will be awarded.

2. Defendant's present rates for the transportation of anthracite coal in carloads from the Wyoming region in Pennsylvania to Perth Amboy, N. J., of $1.55 per gross ton on prepared sizes, $1.40 on pea coal, and $1.20 on buckwheat coal, found unreasonable to the extent that they exceed $1.40 on prepared sizes, $1.30 on pea coal, and $1.15 on buckwheat coal, which latter rates are established as maxima for the future, reparation to be awarded on basis of the latter rates as to shipments made by complainants since August 1, 1901.

William A. Glasgow, jr., and John A. Garver for complainants.

J. F. Schaberkotter, Frank H. Platt, and George W. Field for defendant.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Henry E. Meeker and Caroline H. Meeker, copartners, trading as Meeker & Company, complainants in this proceeding, were, when the complaint was filed, engaged in the business of buying, shipping, and selling anthracite coal over the lines of the Lehigh Valley Railroad Company from mines and collieries situated in the Wyoming coal region of Pennsylvania to tidewater at Perth Amboy, N. J., and thence to the New York market.

During the pendency of the proceeding Caroline H. Meeker died, and it has been continued to be prosecuted in the name of the surviving partner, Henry E. Meeker.

Complainants were not mine operators, but merely dealers on the New York market. The coal shipped by them to Perth Amboy was purchased from the Stevens colliery, which is situated near the city of Wilkes-Barre, Pa., on the West Pittston branch of defendant's Wyoming division, 1.5 miles from Coxton and 165 miles from Perth Amboy.

Practically all the anthracite coal deposits in the United States are in nine counties in the eastern portion of Pennsylvania in an area comprising about 496 square miles. The different coal fields are as follows: The northern, commonly called the Wyoming, from which the shipments involved in this proceeding were made; the eastern middle and western middle, which together are known as the Lehigh regions; and the southern, which also bears the name of Schuylkill. All three regions are reached by the Lehigh Valley Railroad. The northern field is some 55 miles in length, has a maximum width of about 5 miles, and lies northwesterly of the Pocono Mountains in the valley of the Lackawanna and Susquehanna Rivers. From this valley the carriers find comparatively easy outlets to points north and west, along the rivers mentioned, but coal shipped to the east over defendant's line has to be carried over the mountains at a maximum elevation of 1,750 feet. The lowest portions of the valley are about 500 feet above the level of the sea.

The coal mines are usually located at points separated from carrier's main tracks by distances varying from a fraction of a mile to several miles and connected with such tracks by lateral lines called branches or spurs. These branches are sometimes constructed by the mine operators, but generally by the carriers. The manner in which the coal is handled at the mine openings and while in process of transportation is as follows: For convenience in handling the coal at the mouths of the mines and preparing it for market, buildings called "breakers" are erected, and in these buildings the large lumps are broken and the coal separated into required sizes by being run over a series of screens of appropriate mesh. Some lump coal is taken as it comes out of the mine and is marketed for use either in furnaces or locomotives, but the demand for this size is limited. The sizes usually transported are the following:

Broken or grate, which goes through a mesh 4 inches square and over a mesh 2¾ inches square.

Egg, which goes through a mesh 2¾ inches square and over a mesh 2 inches square.

Stove, which goes through a mesh 2 inches square and over a mesh 1⅝ inches square.

Chestnut, which goes through a mesh 1⅝ inches square and over a mesh three-fourths inch square.

Pea, which goes through a mesh three-fourths inch square and over a mesh one-half inch square.

Buckwheat No. 1, which goes through a mesh one-half inch square and over a mesh one-fourth inch square.

Buckwheat No. 2, or rice, which goes through a mesh one-fourth inch square and over a mesh one-eighth square.

Smaller sizes are known as buckwheat No. 3 and culm.

The sizes above pea are known as prepared sizes and are used principally for domestic purposes. The smaller sizes are used almost entirely for steam purposes.

Formerly the smaller sizes had no commercial value and were allowed to accumulate as waste product in banks at the mines. But changes made in the grates of furnaces have facilitated their use for steam purposes, and such use has been increasing rapidly during recent years. By means of "washeries" large quantities of the smaller sizes have been recovered from these waste or culm banks and sent to market to satisfy this increased demand. However, only comparatively small prices can be obtained for these smaller sizes.

The cars are loaded directly from the breakers by means of chutes. The loaded cars are then hauled to a convenient place of concentration along the main track designated a gathering or assembly point, where they are drilled into trains according to destination and with some reference to the sizes. The coal destined to tidewater points is hauled in trains to yards adjacent to the docks, where a more particular separation takes place; that is to say, coal of particular qualities and sizes is placed on separate tracks and afterwards transferred to the boats or storage bins in accordance with the requirements of different purchasers.

For the year ended June 30, 1908, the Lehigh Valley Railroad Co. carried altogether 11,206,774 gross tons of anthracite coal, upon which its gross revenue was $14,908,923.08, showing an average revenue of $1.2411 per gross ton, or $0.00737 per net ton per mile. During the same period the Lehigh Valley's entire freight revenue amounted to 23,643,001 gross tons, its gross revenue to $30,186,581.72, its average rate per gross ton to $1.277, and its average rate per net ton per mile on all traffic, including anthracite coal, to $0.00630. It will thus be seen that during 1908 anthracite coal constituted approximately 47 per cent of the defendant's freight tonnage and produced approximately 49 per cent of its freight revenue. Complainants shipped between August 1, 1901, and June 30, 1907, 499,901.47 gross tons of anthracite coal, upon which they paid total freight charges of $709,637.67, resulting in an average rate per net ton per mile (based on the average mileage from the Wyoming region to Perth Amboy of 170 miles) of $0.00745.

It appears that prior to 1900 various anthracite coal carrying railroads in Pennsylvania, in their endeavor to control the output and sale of anthracite coal, had formed other and distinct corporate organizations, usually known as "coal companies," but which through stock ownership were owned, officered, and controlled by the railroads which brought them into existence. Such was the relation that existed between the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company. The function of the Lehigh Valley Coal Company was to acquire, hold, and operate vast tracts of anthracite coal lands and to make contracts with independent operators for their entire output. In connection with the purchase of coal from independent operators, there came into existence what are known as "percentage contracts." The Lehigh Valley Coal Company regularly for a period of years entered into such contracts with independent coal operators along the line of the Lehigh Valley Railroad. Under these percentage contracts, the Lehigh Valley Coal Company agreed to pay the independent operators fluctuating prices for their coal at the mines, to be arrived at on the basis of certain

percentages of the average market prices of the various grades of anthracite coal at tidewater. An accurate check was kept on the tidewater market prices, and monthly settlements were made. Under the contract which was in effect during the greater part of the year 1900 the agreement by the Lehigh Valley Coal Company was to pay the coal operator 60 per cent of the tidewater price on the highest grade of anthracite coal and lesser percentages on the lower grades. This contract was therefore called the "60-per-cent contract," due to the fact that that percentage figure applied on the highest grade of coal.

Although the Lehigh Valley Railroad Company was not nominally a party to any of the percentage contracts entered into by the Lehigh Valley Coal Company, yet it made a practice of settling for the freight charges on coal purchased and shipped by the Lehigh Valley Coal Company at the differences between the amounts paid to the coal operators and the average market prices at tidewater. The result, therefore, was, taking the highest grade of coal as an illustration, that if the Lehigh Valley Coal Company paid the independent operator 60 per cent of the tidewater price the Lehigh Valley Railroad Company transported the coal for 40 per cent of said tidewater price. It will thus be seen that although the matter of freight rates was not mentioned in the contracts made by the Lehigh Valley Coal Company with the independent operators, yet the freight rates were directly dependent upon said contracts.

It appears that if an independent coal operator lacked established business connections or capital, it was to his interest to enter into the percentage contract with the Lehigh Valley Coal Company. Meeker & Company, however, had been in business as sales agents for coal since 1889, and their facilities for selling were adequate. They therefore made a contract with the Stevens Coal Company for practically their entire output of coal. There were also a number of other shippers of anthracite coal over the lines of the Lehigh Valley Railroad, and in order to place them on an equality with the Lehigh Valley Coal Company they were accorded the same rates as were accorded to that company.

It was the custom of all shippers, including the Lehigh Valley Coal Company, to pay the tariff rates on the various grades of anthracite to tidewater, and then by means of monthly settlements be given the benefit of the rates upon the percentage basis, which rates were known as "adjusted rates," and were usually considerably lower than the tariff rates; but which at certain periods, owing to advancing prices of anthracite coal, were higher than the tariff rates. The general purpose of the adjusted rates was, however, to give the shippers the benefit of rates lower than the tariff rates, and upon the whole they accomplished this result, and the evidence shows that they were impartially applied on all shipments during the greater part of the time that they were in effect.

In November, 1900, the parties interested (i. e., the Lehigh Valley Railroad Company, the Lehigh Valley Coal Company, and the coal producers) began to consider making a change in the terms of the then existing 60 per cent contract. It seems that the subject was not of easy solution, and that the negotiations dragged along for nine months, until August 1, 1901, at which time an agreement was reached whereby the price of the highest grade of coal at the breakers was to be 65 per cent of the tidewater market prices, instead of 60 per cent as formerly, with related increases on the lower grades. From almost the beginning of these negotiations it seems to have been the understanding of all parties that whatever arrangement was finally reached would be made retroactive until November 1, 1900, the date of the beginning of the negotiations, and that the Lehigh Valley Railroad Company would readjust its freight charges retroactively in conformity with the new scale of prices not only upon shipments made by the Lehigh Valley Coal Company but upon all coal shipped by independent dealers.

On the first hearing of this case counsel for the Lehigh Valley Railroad Company took the position that the tariff rates had been paid by all coal shippers during the nine months of negotiations, and that when, on August 1, 1901, it was determined that the 65 per cent basis should govern retroactively to November 1, 1900, the extra cost of the coal on this basis was paid by the Lehigh Valley Coal Company to the coal operators. Hence it was argued that the Lehigh Valley Railroad Company, having charged its full tariff rates to all, and the coal company having paid the increased price, there had been no discrimination against Meeker & Company during said nine months. As the evidence in support of this argument was meager and unsatisfactory, a supplemental hearing was had at which additional evidence was asked upon this point. The facts as disclosed by that hearing were as follows:

The Lehigh Valley Railroad Company during the period from November 1, 1900, to August 1, 1901, endeavored to settle with all shippers upon the basis of adjusted rates, under the 60 per cent contract. During the months of November, December, January, February, and March the adjusted rates upon some of the grades were higher than the tariff rates, owing to the high market price of coal at tidewater. Meeker & Company were expecting the 65 per cent contract to be adopted, and believed that the effect of its adoption would be that they would get the benefit of adjusted rates, which were lower than the tariff rates, whereas under the 60 per cent contract they were being called on to pay adjusted rates, which were in many instances higher than the tariff rates. They protested against paying money to the Lehigh Valley Railroad Company under the 60 per cent basis, which they expected to be subsequently refunded when the 65 per cent contract was adopted. They therefore objected to settling upon the basis of the 60 per cent "adjusted rates," even as early as November and December, 1900, but under some arrangement or understanding with the coal freight agent of the Lehigh Valley Railroad Company settlements were made for November and December in order that the books of that company might be closed for the year. Thereafter they refused to settle upon the basis of the 60 per cent adjusted rates, even in those instances where settlement would have involved a refund to them from the tariff rate which they had paid. Their idea seems to have been to have nothing whatever to do with settlements upon the 60 per cent basis, because they believed the whole matter would have to be subsequently undone and refigured upon the 65 per cent basis.

During the earlier months of 1901, owing to the market prices of coal, the adjusted rates upon the 60 per cent basis were in the main higher than the tariff rates; but in April, May, and June, and possibly thereafter, owing to the lower prices of coal, the adjusted rates became less than the tariff rates. The evidence does not clearly show whether independent shippers other than Meeker & Company paid the adjusted rates when they were higher than the tariff rates, but the presumption is that some of them, at least, did so. It appears, however, that shippers other than Meeker & Company accepted refunds from the Lehigh Valley Railroad Company in such instances as the adjusted rates were lower than the tariff rates.

When it was finally determined on August 1, 1901, to adopt the 65 per cent contract, the Lehigh Valley Railroad Company made a systematic effort to pay back to all shippers, including the Lehigh Valley Coal Company, such amounts as may have been paid during the period November 1, 1900, to August 1, 1901, in excess of the tariff rates. There was not, however, at that time any attempt made to collect back from shippers refunds which may have been made to them from month to month when the "adjusted rates" were lower than the tariff rates. It thus appears that the attempted readjustment to basis of tariff rates which the Lehigh Valley Railroad Company sought to make upon the adoption of the 65 per cent contract was only partial. Meeker & Company were offered refunds of the excess over tariff rates which had been paid in November and December, 1900, but refused to accept the same, stating in a letter of refusal that they would insist upon settlement of freight rates upon the basis of the newly adopted 65 per cent contract.

This brings us to the contention of complainants that the payment of the increased retroactive prices to the coal producers by the Lehigh Valley Coal Company was in fact a payment by the Lehigh Valley Railroad Company, and therefore equivalent to a readjustment by the latter company of its freight rates upon the basis of the 65 per cent contract on such coal as was shipped by the Lehigh Valley Coal Company during the period from November 1, 1900, to August 1, 1901.

Investigation of the books of the Lehigh Valley Railroad Company disclosed the fact that subsequent to August 1, 1901, there were extraordinary cash advances made by that company to the Lehigh Valley Coal Company, and one of the purposes of the supplemental hearing was to ascertain whether said cash advances included the sum which the Lehigh Valley Coal Company paid to the coal operators under the 65 per cent contract which was made retroactive for the nine months from November 1, 1900, to August 1, 1901.

On that hearing it developed that at the end of the year November 30, 1898, the Lehigh Valley Coal Company owed the Lehigh Valley Railroad Company $1,596,650; that at the end of the year November 30, 1899, the amount of its indebtedness remained unchanged; that during the fiscal year November 30, 1899, to November 30, 1900, there was a strike, production was curtailed, and sales were made from stored coal, whereby the coal company was enabled to reduce its stock of coal and its accounts receivable due from customers for coal sold; that as the result of this condition the indebtedness of the coal company to the railroad company on November 30, 1900, had been reduced to about $500,000. The unusual advances made by the railroad company to the coal company in 1901 were necessitated by the resumption of mining operations after the cessation of the strike. Counsel for the Lehigh Valley Railroad Company introduced in evidence the following extracts from the annual report of the company to its stockholders for 1901, viz:

"Under the existing arrangements the Lehigh Valley Coal Company is compelled to depend upon the railroad company for working capital to carry on its operations.

* * * * * * *

"The suspension of mining during the period of the strike last year and the sale of the greater portion of coal in stock enabled the coal company to repay to the railroad company a large proportion of the amount advanced by the latter company for this purpose."

And counsel for the complainant was permitted to read into the record the following additional extract from the same report, viz:

"The uninterrupted continuance of operations during the fiscal year just closed (i. e., the year ending November 30, 1901) restored normal conditions, necessitating advances by the railroad company of a million dollars, which amount is more than represented by the increased tonnage and value of the coal in stock as compared with November 1st last."

The general auditor of the Lehigh Valley Railroad Company testified that the amount which the Lehigh Valley Coal Company had to pay the coal operators under the 65 per cent contract, which on August 1, 1901, became effective retroactively to November 1, 1900, was $231,090.19. He further testified that the deficit of $491,576.65 shown in the operations of the Lehigh Valley Coal Company for the year ended November 30, 1901, would have been less by $231,090.19 had it not been for the payment by the coal company to the operators of the increased prices under the retroactive 65 per cent contract.

In view of the admissions upon the supplemental hearing the conclusion seems inevitable that the financial condition of the Lehigh Valley Coal Company was not such as to have enabled it to pay the $231,090.19 to the coal operators out of its own treasury, and that not only this amount but much larger sums were advanced by the railroad company to the coal company during the year 1901 for the purpose of enabling the latter to carry on its operations.

It is alleged in the petition that between November 1, 1900, and August 1, 1901, complainants, Meeker & Company, shipped 88,336 tons of coal from the Wyoming region to tidewater at Perth Amboy, N. J., a distance of about 165 miles, on which they paid a sum total as freight charges amounting to $129,989.18, whereas upon the 35 per cent basis which complainants contend was the necessary result of the 65 per cent contract entered into by the Lehigh Valley Coal Company on August 1, 1901, the freight charges should have been only $118,867.21, the amount of overpayment by complainants being $11,121.97.

From the facts disclosed it is apparent that the payment of the $231,090.19, which was ostensibly made by the Lehigh Valley Coal Company to the coal operators from which it had purchased coal during the period from November 1, 1900, to August 1, 1901, was in fact made from funds advanced as cash by the Lehigh Valley Railroad Company to the Lehigh Valley Coal Company, and was therefore the equivalent of a readjustment of the freight rates upon the basis of the 65 per cent contract on such coal as was purchased by the Lehigh Valley Coal Company and shipped to tidewater during the period from November 1, 1900, to August 1, 1901. We are of the opinion, and so hold, that complainants have sustained the allegation of unjust discrimination under the second section of the act. Reparation, with interest from August 1, 1901, will be awarded on this account.

Since August 1, 1901, complainants and other shippers have paid full tariff rates on coal from the Wyoming region to Perth Amboy, which rates are as follows:

	Per gross ton.
Prepared sizes	$1.55
Pea coal	1.40
Buckwheat coal	1.20
Aug. 7, 1904, to Jan. 10, 1905	1.25
All sizes below buckwheat	1.10

It is alleged in the complaint that any charge in excess of $1 on all grades subsequent to August 1, 1901, is unreasonable, and reparation is asked by complainants upon the basis of the suggested rate of $1 upon all shipments made by them over the Lehigh Valley Railroad during the period August 1, 1901, to July 1, 1907, the aggregate amount of reparation sought during said period being $210,351.

In a later complaint, filed April 13, 1910, No. 3235, styled Henry E. Meeker *v.* Lehigh Valley Railroad Company, complainant seeks reparation on the basis of a rate of $1 on all grades of coal shipped during the period July 1, 1907, to April 1, 1910, alleging a total overcharge during said period of $55,290.73.

As the subject matter of the two complaints is the same, in so far as the reasonableness of the rates is concerned, the disposition of the later case will perhaps be determined by the conclusions reached in this case.

When complainants filed their complaint in July, 1907, they elected, as to the period from November 1, 1900, to August 1, 1901, to rely entirely upon a violation of the second section of the act, and therefore claimed reparation only to the extent of $11,121.97, on the ground of discrimination during said period in favor of the Lehigh Valley Coal Company, claiming that the effect of the retroactive 65 per cent contract of August 1, 1901, was to readjust upon a lower basis the freight rates which had been paid by the Lehigh Valley Coal Company during said period.

When the case came on for hearing in March, 1909, complainants' counsel announced orally before the commission, and not by way of amendment of their petition, that they desired to claim additional reparation in the sum of $41,644.82—the excess paid over $1 per ton during the period from November 1, 1900, to August 1, 1901.

Complainants' counsel stated in his brief filed with the commission, but not by way of amendment to his petition, that by reason of the fact that the commission may not be convinced that $1 per ton is a reasonable rate on all grades of coal to tidewater he desired to put his claim for reparation in an alternative form, viz, that in event the commission should not approve the suggested rate of $1 per ton on all grades of coal, complainants are entitled to reparation in the amount of $156,144.92, the amount by which the freight charges which they have paid exceed what said charges would have been upon the basis of the average rate per ton per mile on all freight transported by the Lehigh Valley Railroad Company. In support of this claim for reparation he sets forth an exhibit in his brief which covers the calendar years 1902 to 1907, inclusive. This claim therefore does not extend back to November 1, 1900, as do his other claims; but it includes the latter half of 1907, and therefore extends six months beyond the period covered by his larger claim for reparation on the basis of the proposed $1 rate.

Complainants insist that the average rate per ton per mile upon coal ought not to exceed the average rate per ton per mile upon all freight traffic and base their claim for reparation in large part upon the assumption that the higher rate per ton-mile on coal is proof of the unreasonableness of the rates in question. Defendant answers this contention by asserting that the initial service in connection with the transportation of coal, commonly called collection or assembly, and the terminal service at Perth Amboy, are both difficult and complicated and involve extraordinary operating expenses, as well as the permanent investment of a large amount of capital, which are not incurred in the transportation of other classes of freight. The transportation of coal from the mining regions to Perth Amboy is described in detail in the record and may be summarized as follows:

Coal from the Wyoming region around Wilkes-Barre, after being assembled from the various branches, is carried east by way of Coxton or Pittston Junction over what is known as the Mountain Cut-Off, thence by way of Avoca, Penn Haven Junction, and Phillipsburg to South Plainfield, where it leaves the main line for Perth Amboy. Coal from the Lehigh region is collected from the various branches in the neighborhood of Hazleton, Lumber Yard, New Boston, and Mount Carmel, and carried to Penn Haven Junction, from which point it follows the same course as the Wyoming coal. Coal from the Schuylkill region reaches the main line at Lizard Creek Junction from the regions around Blackwood. Coal in transit from the Wyoming region to Perth Amboy passes over defendant's Wyoming and New Jersey & Lehigh divisions. The Wyoming division extends from Sayre to Mauch Chunk and includes the territory known as the Wyoming coal region, or the southern part of the northern coal field, and touches also the Lackawanna coal region. The New Jersey & Lehigh division extends from Easton to the sea end of the Perth Amboy docks. Defendant's Mahanoy & Hazleton division covers a portion of the Lehigh and a portion of the Schuylkill regions in the middle and southern coal fields. This division meets the main line at Penn Haven Junction.

Coal is brought from the collieries to assembly yards, from which it is in turn taken to classification yards, where trains are made up for the main-line hauls. In the Wyoming division there are two such yards, Port Bowkley and Coxton, the former being an assembly yard and the latter both a classification and assembly yard.

At Perth Amboy defendant has adequate terminal facilities, storage bins, two docks, and appropriate equipment for the handling of anthracite coal. Ten locomotives and crews are employed by the company in handling coal at the terminal. At the entrance to the terminal are a series of tracks, eight in number, about one-half mile long, known as the receiving tracks, upon which trainloads of coal are left by the road crews. Upon these tracks employees inspect and check the cars and designate by marks thereon the various kinds and sizes of coal, region and colliery from which shipped, and such other information as may be necessary for proper unloading into vessels or storage bins. After the cars are so marked they are classified for purposes of disposition. When orders are received the coal is removed to the docks or stocking bins, both of which are provided with suitable trackage facilities.

Complainants' contention that the rates to Perth Amboy are unreasonable is based in part upon the testimony of certain persons who were formerly officers of the Delaware, Susquehanna & Schuylkill Railroad and of Coxe Brothers & Company. For many years prior to 1905 Coxe Brothers & Company were engaged in mining and shipping anthracite coal from their extensive properties in the Lehigh region. They owned and operated the Delaware, Susquehanna & Schuylkill Railroad, a road about 28 miles in length, which reached their different collieries and connected with the Lehigh Valley Railroad at a place called Lumberyard or Stockton Junction.

After January, 1894, the Coxe coal, instead of being carried to Perth Amboy in the trains of the Lehigh Valley, was transported to tidewater in the trains of the Delaware, Susquehanna & Schuylkill Railroad, and by its motive power, under a trackage contract between that road and the Lehigh Valley, which provided for the use of the tracks of the latter company from Stockton Junction to Perth Amboy, a distance of approximately 125 miles. The agreed compensation to the Lehigh Valley for the use of its tracks was 2⅞ mills per gross ton per mile, or 35.94 cents per gross ton for the haul from Stockton Junction to Perth Amboy. The Lehigh Valley unloaded the coal at Perth Amboy into vessels or bins and performed other terminal service, for which it charged Coxe Brothers 12 cents per ton. Additional payments were agreed upon from time to time for other services by the Lehigh Valley, such as supplying additional motive power to push trains over grades, furnishing coal to Delaware, Susquehanna & Schuylkill locomotives, repairing cars at Perth Amboy, and similar incidentals.

The contract of January, 1894, remained in force until April, 1904, when it was replaced by another contract, substantially similar in all material respects and providing for the same compensation to the Lehigh Valley and which was to have remained in effect for a period of 15 years. It remained in effect, however, only until 1905, when the Coxe properties were purchased by the Lehigh Valley Railroad.

During the period prior to the absorption of the Delaware, Susquehanna & Schuylkill Railroad by the Lehigh Valley Railroad Company, L. C. Smith, manager of the Delaware, Susquehanna & Schuylkill Railroad Company, and J. H. Pennington, superintendent of motive power of said railroad, and J. Brinton White, vice president and treasurer of Coxe Brothers & Company, made certain calculations as to the cost to the Delaware, Susquehanna & Schuylkill Railroad of transporting anthracite coal to Perth Amboy, based on various elements of operating expense, including the aforementioned trackage charge of the Lehigh Valley Railroad.

Counsel for complainants has introduced the testimony of these three men relative to the cost of transporting coal from the Lehigh region, and insists that it has an important bearing on the cost of transporting coal from the Wyoming region, for the reason that it has been the custom of the Lehigh Valley Railroad Company to make the same rates from the Wyoming region to Perth Amboy as from the Lehigh region to Perth Amboy, and also because the Wyoming region has the advantage over the Lehigh region both in distance and in grades.

L. C. Smith, former manager of the Delaware, Susquehanna & Schuylkill Railroad, testified that about 1900 he, as manager of the Delaware, Susquehanna & Schuylkill Railroad, made up a statement of cost to move one train of coal from Drifton, a mine of Coxe Brothers & Company, to Perth Amboy, including trackage to the Lehigh Valley Railroad Company, the shipping charges of that company at Perth Amboy, and the return of empty cars, which statement is filed as complainants' Exhibit No. 1.

The total cost per ton shown by said exhibit is 76.54 cents.

J. Brinton White, vice president and treasurer of Coxe Brothers & Company, who owned the entire stock of the Delaware, Susquehanna & Schuylkill Railroad Company, made frequent calculations as to the cost per ton of the movement of coal from the mines on the Delaware, Susquehanna & Schuylkill Railroad to Perth Amboy, and continued these calculations until he "got down to a figure which he knew to be correct." The figure which Mr. White arrived at was 76 cents per ton; but as this 76 cents included the trackage charge of the Lehigh Valley Railroad and the shipping charges at Perth Amboy, he was of opinion that the profit of the Lehigh Valley should have been deducted from the 76 cents, if the profit could have been ascertained.

J. H. Pennington was superintendent of motive power of the Delaware, Susquehanna & Schuylkill Railroad Company from 1899 until the latter part of 1905, when that road was bought by the Lehigh Valley Railroad Company, and he made certain tests for the purpose of determining the relative cost of transporting coal from Delaware, Susquehanna & Schuylkill Railroad mines to Perth Amboy in 60,000 and 100,000 pound capacity cars, respectively.

Based upon his tests for the cars of 100,000 pounds capacity (which it is claimed are *now* in use), counsel for complainants claims to show that the cost of transporting a ton of coal from the mines of the Delaware, Susquehanna & Schuylkill Railroad to and including the dumping of the cars at Perth Amboy and the return of the empty cars to the colliery amounted to 62.41 cents, which figure includes the profit of the Lehigh Valley Railroad Company on its trackage charge and the profit on the shipping expense of 12 cents at Perth Amboy.

Counsel for the Lehigh Valley Railroad Company, in his brief, enters upon an exhaustive criticism of complainants' Exhibit No. 1. Among other things he says:

"The exhibit includes no allowance for assembling; it contains no allowance for reserve equipment; it contains no allowance for depreciation; no allowance is made for overtime of crew; no allowance is made for nonrevenue haul; no allowance is made for loss and damage or injuries to persons; the item shown for fuel is manifestly inadequate; the wages allowed are inadequate.

He also argues that as the estimate of J. Brinton White confirms that of Mr. Smith, the presumption is that Mr. White omitted the same items that were omitted by Mr. Smith.

As to J. H. Pennington's estimate of the cost per gross ton of transporting coal to Perth Amboy, counsel for the Lehigh Valley Railroad Company says that he admitted that in making the test he purposely left out of account such expenses as would be substantially the same whether he used 60,000-pound cars or 100,000-pound cars. He did not take into account the following:

Reserve engines; maintenance and repairs of locomotives; repairs to cars; expenses of telephone and telegraph; stationery; clerks; general office expenses; yard expenses; terminal expenses; loss and damage claims; clearing wrecks, etc.

It will be noted that in the calculations made by L. C. Smith and J. Brinton White one of the most important items was the trackage charge of 35.94 cents per gross ton, which the Lehigh Valley Railroad Company charged the Delaware, Susquehanna & Schuylkill Railroad for the use of its tracks for the 125-mile haul from Stockton Junction to Perth Amboy.

As it did not clearly appear from the record what the conditions were that led to the trackage arrangement further testimony was taken upon that point at the supplemental hearing. It was shown that prior to the trackage contract entered into by the Delaware, Susquehanna & Schuylkill Railroad Company with the Lehigh Valley Railroad Company the coal traffic originating on the Delaware, Susquehanna & Schuylkill Railroad had moved to tidewater over the lines of the Philadelphia & Reading Railroad. The following extract from the annual report of the Philadelphia & Reading Railroad Company for the year ended November 30, 1893, was read into the record:

"A contract was made with Coxe Brothers & Company, under date of May 14, 1891, for the transportation over the Reading Railroad system of a large tonnage of coal from the mines of that company to New York tidewater and to other markets, the minimum amount to be 1,000,000 tons per annum.

"In order to transport the coal to be furnished under this contract a railroad 10 miles in length was constructed by the Reading Company to connect its lines with those of the Delaware, Susquehanna & Schuylkill Railroad, which was controlled by Coxe Brothers & Company, and a large coal tonnage had passed and was passing over this road; but the division of the freight rate as between the two railroad companies was felt by the receivers to be so inequitable to the Reading Company, as on the greater part of the tonnage it allowed the Delaware, Susquehanna & Schuylkill Railroad Company an average of about 73 cents per ton for gathering the coal, hauling it an average of

about 12 miles to Roan Junction, and shipping it at Port Johnston, leaving for the Reading Company only 80 cents per ton for hauling the coal 168 miles to Bound Brook Junction, that they notified Coxe Brothers & Company that after August 15, 1893, they would no longer transport their coal under that contract, offering, however, to continue to carry the coal upon terms similar to those which are ordinarily accorded to other railroad companies for the exchange of similar business. This offer was, however, not found satisfactory by Coxe Brothers & Company, and the transportation of their coal has therefore been almost entirely lost to the Reading Company."

The following extract from the annual report of the Lehigh Valley Railroad Company to its stockholders for 1894 was also read into the record:

"On January 31, 1894, a contract was entered into with the Delaware, Susquehanna & Schuylkill Railroad Company whereby that company was granted the privilege of running its own trains coal laden to the tidewaters of New York, thus assuring to this company for a term of 15 years from July 1, 1894, an important traffic, that of the Cross Creek Coal Company, formerly Coxe Brothers & Company, for which several outlets existed, and which had been in contention for some time previously. It also removed an incentive for the construction of new lines into the territory tributary to the Lehigh Valley system. Local coal received from the line of that company continues to be hauled in our trains as it was previously."

It appears that when the contract with the Lehigh Valley Railroad Company was entered into the Philadelphia & Reading Railroad Company tore up its 10-mile extension, which it had built to connect with the Delaware, Susquehanna & Schuylkill, because there was no longer any use for it.

For the purpose of showing the effect of the trackage contract of January, 1894, upon the movement of anthracite coal over the Lehigh Valley Railroad counsel for that company at the supplemental hearing put in evidence the following exhibit, viz:

Statement of anthracite coal received from the Delaware, Susquehanna & Schuylkill Railroad during the fiscal years ended November 30.

Year.	Gross tons.	Year.	Gross tons.
1891	233,061	1894	976,415
1892	199,310	1895	1,053,965
1893	350,295	1896	1,115,077
Total	782,636	Total	3,145,457

It was also shown that the Central Railroad of New Jersey had a track into Drifton, a point located on the Delaware, Susquehanna & Schuylkill Railroad, and that the Delaware, Susquehanna & Schuylkill Railroad also had a connection with the Pennsylvania at Tomhicken.

Defendant has endeavored to show the actual cost of transporting coal from the Wyoming district to the barges at Perth Amboy. Three civil engineers, William J. Wilgus, J. F. Stevens, and John F. Wallace, were engaged by defendant to investigate the transportation of coal from the anthracite region to tidewater for the purpose of ascertaining the cost thereof. They were assisted in their investigation by officers and employees of the road and by engineers in Mr. Wilgus's office. Mr. Wilgus prepared an estimate of the cost of carrying coal based upon theories and formulæ which were approved by the other engineers. His estimate is set forth in a voluminous exhibit known as "Defendant's Exhibit F–3." The exhibit contains all the details from which the final estimate of cost is deduced. The recapitulation of Exhibit F–3 is as follows:

Cost of transporting anthracite coal on the Lehigh Valley Railroad from the Wyoming district to Perth Amboy.

Items.	Perth Amboy terminal.	Mainline, Perth Amboy to Coxton.	Wyoming collection district.	Total.
Operating expenses, including taxes	$0.1189	$0.6915	$0.0866	$0.8970
Interest:				
Roadbed, tracks, and structures	.0700	.1470	.0412	.2582
Equipment	.0096	.0437	.0283	.0816
General facilities	.0012	.0045	.0010	.0067
	.0808	.1952	.0705	.3463
Depreciation:				
Roadbed, tracks, and structures	.0071	.0034	.0009	.0114
Equipment	.0080	.0646	.0176	.0902
General facilities	.0004	.0015	.0003	.0022
	.0155	.0695	.0188	.1038
Total	.2152	.9562		1.3473
Additions and betterments				.0400
Risks and deficits				.1070
Grand total				1.4943

There are many circumstances, however, connected with the preparation of this exhibit, which seriously impair its value as evidence on the question of cost.

Mr. Wilgus testified that the figures which he used in preparing said exhibit as to the value of the roadbed, track, and structures and value of equipment were based on an examination of the road and an examination of the equipment, and that he had attempted to estimate the cost of reproduction. This work he states was done by himself and assistants in his employ. The assistant in his employ, who undertook to make an examination of the road with a view to determining the cost of reproduction, was T. A. Lang, and Mr. Wilgus testified that his calculations are absolutely dependent upon the information furnished him by Lang.

The story of Mr. Lang's investigation as to cost of reproduction, as told by Lang himself, was as follows:

He left Perth Amboy at 1.20 p. m. on a passenger train for Easton, arriving there about 3.20 or 3.30 p. m. In going to Easton he stood on the rear platform of the train. After arriving at Easton he did nothing more that day, as it was Sunday. The following morning at 9 a. m. he left Easton on a pony engine, which had a coach on top of the boiler. On this engine he traveled at the rate of 15 or 20 miles an hour, stopping at various points. About 5.30 p. m. of the same day he arrived at Wilkes-Barre and stayed there all night, all the next day, and the next night. While there he made computations in the railroad company's office. On the following day he left Wilkes-Barre at 8.30 a. m. on a passenger train and arrived at Easton about 11 or 12 o'clock. He remained in Easton until that afternoon and then took a train for New York. While at Easton he devoted a "few minutes" to an examination of the Delaware bridge and the Easton steel viaduct. Based upon this examination, he furnished Mr. Wilgus the data which he required as to estimated cost of reproduction of the Lehigh Valley Railroad.

This examination by Lang was made in the latter part of April, 1909. Mr. Wilgus accepted his estimates and gave his testimony on April 29, 1909. Mr. Lang, however, was not called as a witness until May 25, 1909. Evidently feeling that his first superficial examination of the road would become the subject of attack, he undertook early in May to make a more thorough examination of the road.

On this second trip he consumed eight and one-half days going over the road on a hand car, and the results of his work on the second trip he terms his "check estimate." The cross-examination of Mr. Lang developed that his check estimate was also a very superficial piece of work. He testified that he "could see" the thickness of the ballast "very easily,' and that he measured it "at one place" only; that it was from 18 to 20 inches in thickness. He also testified that he started out to count the number of switches and frogs, but did not carry it all the way through. He further says that there never had been any examination of the ties and ballast or going over the road in a hand car at the time that Mr. Wilgus made his estimate.

Based upon information thus furnished, Mr. Wilgus undertook to determine the cost of carrying a ton of coal from the Wyoming district to Perth Amboy, and Messrs. Wallace and Stevens were called as witnesses to confirm the reliability of his figures.

Mr. Wilgus testified that on the trip which he made over the Lehigh Valley Railroad he started from New York at 6 p. m. in an observation car with Messrs. Wallace and Stevens and certain officials of the Lehigh Valley Railroad Company, and went to Wilkes-Barre. The two following days were spent in riding over the main line of the Lehigh Valley Railroad and some of its branches. It appears never to have been the intention that Messrs. Wilgus, Wallace, or Stevens should personally do any of the detail work incidental to the determination of the cost of carrying coal to Perth Amboy. All of that was to be done for them by subordinates, and they were then to testify whether they believed the work of these subordinates constituted a conservative estimate of the cost.

Mr. Stevens testified in substance that he believed it possible for a competent engineer to get a correct approximate idea of the value of a railroad by riding over it, and that he has done considerable work in estimating values by traveling over railroads. He stated that he was not prepared to dispute Mr. Wilgus's figures, and that he would not guarantee them; and "that it would be worse than foolish for him to say that he had time to undertake to make a mile-by-mile estimate of the cost of reproducing the Lehigh Valley Railroad." The most that he had to say concerning Mr. Wilgus's estimate was that it was "probably conservative."

Mr. Wallace frankly admitted that his testimony given in corroboration of Mr. Wilgus's figures was a matter of purely personal judgment, based on his experience and observation. He testified that men in his line of business were continually drawing comparisons and making "estimated judgments," and that sometimes they were correct and sometimes wrong. He further stated that it was his custom to value railroad property very much as a farmer would value a horse.

The estimate of cost made by Mr. Wilgus is based on the fundamental assumption that the cost of carrying coal is equal to the average cost of carrying all traffic. If this proposition be sound, it follows that by far the greater part of tariffs covering the transportation of coal are improperly constructed, for the rates upon coal are generally much below the average rates.

Again, as a basis of apportioning expenses for which no actual division could be obtained, the engineers used the relation of passenger-train ton-mileage to freight-train ton-mileage, finding that of the total the former was 7.8 per cent and the latter 92.2 per cent. This arbitrary basis of apportionment seems to be unwarranted when we take into consideration the relation which exists between freight revenue and passenger-train revenue on the Lehigh Valley Railroad. Those revenues were as follows for the years shown:

	1901	1905	1908	1910
Total freight revenue	$19,829,363	$25,962,920	$30,186,582	$30,579,597
Passenger-train revenue	3,400,528	4,116,847	4,842,652	5,097,118

It thus appears that upon the basis of relative earnings at least 14 per cent of the value of the road could properly have been assigned to passenger traffic, whereas in the estimate made by Mr. Wilgus but 7.8 per cent has been so assigned.

Moreover, it will be noted that the estimate of cost shows that the average cost of carrying anthracite coal from the Wyoming region to Perth Amboy is $1.49. An exhibit filed by the Lehigh Valley shows that its average receipts per gross ton of anthracite coal to Perth Amboy for the 10 years ending June 30, 1908, were $1.46. It would therefore follow that all anthracite coal which has been hauled by the Lehigh Valley to tidewater has been carried at a loss of about 3 cents per ton. But it is shown by reports on file with the commission that the operations of the Lehigh Valley Railroad Company for a number of years past have been exceedingly profitable, and as anthracite coal has constituted almost half of its tonnage, it is fair to assume that it has made a profit upon the handling of that commodity.

There are other matters contained in the record which go to show that the cost of transporting coal as estimated by Mr. Wilgus is excessive.

Henry B. Ely, who was formerly general eastern agent for Coxe Brothers & Company, testified that after the decision in the case of Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company, 4 I. C. C. Rep., 535, in 1891, and up to the 31st of January, 1894, the rates paid by Coxe Brothers & Company were the tariff rates of the Lehigh Valley, less a discount of 35 per cent. The tariff rates which were in effect during this period are contained in an exhibit filed by the Lehigh Valley,

and deducting said discount therefrom, it appears that the rates actually charged Coxe Brothers & Company were as follows:

	Rate per ton.
For prepared sizes	$1.10½
For pea coal	.91
For buckwheat and smaller sizes	.78

Defendant has also filed in evidence an exhibit, which shows the adjusted rates to Perth Amboy on the various grades of anthracite coal, by months, during the period from January, 1895, to October, 1900, inclusive, a period of five years and nine months, immediately preceding the discontinuance of adjustments upon the percentage basis. An average of the rates contained in said exhibit shows the following:

	Rate per ton.
Prepared sizes	$1.4164
Pea coal	1.1712
Buckwheat	1.1566

These latter figures are of themselves sufficient to show that the estimate cost of carrying coal to tidewater of $1.49 is far from correct.

A very noticeable feature of the work of these experts employed as disinterested parties to ascertain the cost of carrying coal to Perth Amboy is the manner in which they arrived at their valuations of real estate and rights of way.

Mr. Wilgus testified that he did not himself make the estimates upon the value of the Perth Amboy terminals, but took the estimates of his assistant, Mr. Van Houten. Mr. Van Houten testified that he got his information as to the cost of reproduction of the Perth Amboy terminals from the general solicitor of the defendant, because he is an authority on real estate and handles all the real estate matters for the Lehigh Valley Railroad. Mr. Wilgus also stated that he valued the right of way from Perth Amboy to South Plainfield Junction at $3,000 an acre, and between Penn Haven and Phillipsburg at $1,200 an acre, and that these estimates were made "not only upon the way it impressed me, but also from consultation with Mr. Schaperkotter, the general solicitor of the company."

Complainants have called attention to the rates of the Pennsylvania Railroad Company for the transportation of anthracite and the rates of certain bituminous carriers. The Pennsylvania Railroad Company carries anthracite coal from South Wilkes-Barre and Plymouth, in the Wyoming region, to South Amboy, N. J. There are two routes by which the Pennsylvania may carry this coal, the longer route being 276 miles and the shorter 222 miles. Owing to the fact that the grades on the long haul are very much easier than those on the short haul, the long haul is the one generally used. Its rates for this transportation are as follows: Prepared sizes, $1.40 per gross ton; pea coal, $1.25 per gross ton; and buckwheat, $1.15 per gross ton. Up to a comparatively recent date the same rates applied from points on the Delaware, Lackawanna & Western Railroad, which brought the coal to the Pennsylvania Railroad, and the Pennsylvania allowed the Lackawanna a 15-cent lateral charge. The Pennsylvania has since withdrawn the lateral allowance and requires payment to it of its full rate.

The Norfolk & Western Railway Company transports bituminous coal from Pocahontas to Lambert Point, 377 miles, crossing the Blue Ridge and Allegheny Mountains, at a rate of $1.40 per gross ton, and this includes the collection of the coal in the Pocahontas district and dumping the same into vessels at Lambert Point. The rate per ton per mile for this haul is $0.00377. In the Pocahontas district there are two assembling yards, Bluefield and Vivian, the average distance of the collieries from Bluefield being about 29 miles, and the average distance of the collieries from Vivian about 15 miles. During 1907 the Norfolk & Western collected from the 67 collieries in the district 7,285,360 tons of coal. During the same year the Lehigh Valley collected 4,142,442 tons from the 26 collieries connected with its tracks in the Wyoming region. The following exhibit shows certain rates for the transportation of bituminous coal, together with the length of haul and the rate per ton per mile:

Statement showing origin, destination, transporting railroad, miles hauled, rate charged, and rate per ton per mile on bituminous-coal shipments to tidewater.

[2,240 pounds per ton. Rates include dumpage from piers to vessels.]

Region or district.	Transporting railroad.	Destination.	Miles hauled.	Rate charged.	Rate in cents per ton per mile.
Myersdale	Baltimore & Ohio.	Baltimore	215.0	$1.18	0.549
Do	do	Philadelphia	310.8	1.25	.402
Do	do	St. George	390.6	1.55	.396
Pocahontas	Norfolk & Western.	Norfolk (Lamberts Point).	377.0	1.40	.371
New River Thurmond.	Chesapeake & Ohio.	Newport News via Lynchburg.	418.0	1.40	.335
Do	do	Newport News via Gordonsville.	381.0	1.40	.367
Kanawha Handley.	do	Newport News via Lynchburg.	457.0	1.50	.328
Do	do	Newport News via Gordonsville.	420.0	1.50	.357
Kentucky Marrowbone.	do	Newport News via Lynchburg.	673.0	1.70	.253
Do	do	Newport News via Gordonsville.	636.0	1.70	.267
Beech Creek	New York Central and Philadelphia & Reading.	Port Reading	308.0	1.55	.503
Do	do	Philadelphia (Port Richmond).	229.0	1.25	.546
Clearfield	Pennsylvania R. R.	Baltimore (Canton Pier)	242.2	1.18	.487
Do	do	South Amboy	322.5	1.55	.481
Do	do	Philadelphia (Greenwich Piers).	202.2	1.25	.477
Do	do	Philadelphia via Lock Haven and Sunbury.	317.0	1.25	.394

Defendant answers that the tidewater rate of the Pennsylvania Railroad, cited by the complainants, is entirely inconsistent with the other anthracite rates charged by the Pennsylvania, whereas the Lehigh Valley tidewater rate is in line and consistent with its other anthracite rates. An exhibit in this connection shows that the Pennsylvania Railroad Company's rate on prepared sizes to Harrisburg, a distance of 110 miles, is $1.50; to Philadelphia, a distance of 164 miles, $1.80; to Reading, a distance of 111 miles, $1.80; to Perth Amboy, a distance of 226 miles, $1.80; to South Amboy, when not for transshipment, $1.80. The Pennsylvania Railroad Company is a bituminous rather than an anthracite road.

The defendant also introduced evidence tending to show that the market for anthracite coal on the lines of the Pennsylvania Railroad exhausts the supply originating on the road, and for this reason a 15-cent lateral was allowed on coal assembled on other roads and turned over to the Pennsylvania. On such shipments the Pennsylvania was relieved of the gathering cost; and in view of the high line rates on anthracite coal over the Pennsylvania, the arrangement was favorable to the railroad. As has been noted, the Pennsylvania has since withdrawn the lateral allowance.

In so far as the comparison with bituminous rates is concerned, the defendant calls attention to the fact that bituminous rates are generally less than anthracite rates, due in part to the difference in value of the two kinds of coal, and that there are dissimilarities in connection with the carriage and shipment of bituminous and anthracite coal which render the transportation of anthracite coal more expensive. About 95 per cent of the coal shipped from the bituminous regions is run of mine, and no such elaborate classification is necessary in the assembling regions as in the anthracite regions. Bituminous coal is not stored at tidewater, and the carriers are therefore relieved of the expense of building storage bins and of placing the coal in the bins and removing it therefrom. It is also claimed that the carriage of bituminous coal involves less empty car mileage, but upon that point the record is rather indefinite. At any rate, the conditions relating to the transportation of anthracite and bituminous coal have not been shown to be similar to such a degree that the existence of a lower rate on bituminous would warrant a conclusion that a higher rate on anthracite on a different road is unreasonable.

It is earnestly contended that any such comparison disregards the fact that the Lehigh Valley Railroad was built and is maintained primarily as a coal-carrying road; that as such it has the right to receive a return upon the coal transported sufficient to enable it to operate profitably, and is further justified in obtaining all traffic that it can secure in addition to its anthracite tonnage at rates which exceed cost of operation; and that a successful search for such outside tonnage, so long as it is carried at a margin of profit above operating expenses, aids the road to perform more cheaply its service in gathering and carrying coal.

Defendant contends that the extraordinary terminal expense attributable to the comparatively short haul on anthracite coal makes any per-ton-per-mile comparison improper and misleading.

In connection with its terminal at Perth Amboy, defendant has erected 372 stocking or storage bins, which vary in capacity from 500 to 1,000 tons each, and have a total capacity of about 250,000 tons. Trestles extend over the stocking bins, and coal is dropped into them from cars which have been pushed onto the trestles. Underneath the stocking bins are tunnels through which cars are run to remove the coal as called for. About 350 cars of 60,000 pounds capacity are employed exclusively in removing coal from the bins.

Attention is called by defendant to the special privileges accorded and services rendered in connection with the transportation of anthracite coal without extra compensation above the tidewater rates. The rate covers delivery of coal by the railroad into vessels at Perth Amboy. No demurrage is charged on cars at the collieries or at Perth Amboy. A slight deduction is made from the scale weights at the collieries to offset the weight of water in the coal when loaded, and an allowance is made for depreciation in weight due to rehandling. The shippers have the privilege of stocking in transit. Extensive storage privileges are permitted at Perth Amboy, the railroad providing the bins and performing the labor of storing and lifting from storage without additional compensation. This privilege tends to permit daily operation of mines to the limit of their production, regardless of the fluctuation of the market demand. Moreover, the demand for different sizes is more or less irregular, while the production of the several sizes is fairly uniform; and this condition makes the storage privilege of additional value to the shipper at certain seasons of the year. Complainants have freely exercised their privilege of storage. In 1907 they had 47.56 per cent, and in 1908, 32.27 per cent of the coal shipped by them to Perth Amboy placed in the bins. Of the coal tonnage carried to Perth Amboy in 1908, 20.96 per cent was placed in the bins.

It is claimed that the limited life of anthracite railroads has an important bearing on the matter of freight rates, and is therefore a factor to be taken into consideration in connection with the question of "fair return."

As to the limited life of the anthracite railroads, counsel for defendant say in their brief:

"The evidence establishes the fact that when the railroad shall be deprived of the tonnage from the collieries along its lines and the incidental tonnage involved in and dependent upon the production of coal the traffic on the Mahanoy and Hazleton Division and the Blackwood Branch will for all intents and purposes be nil.

"As to the Wyoming Division, the investment in everything but the main line will have been destroyed and the continued existence of the road will depend upon whether or not the through traffic is sufficient to pay the operating expenses and the interest charges.

"There are many instances where, on account of closing up breakers for one reason or another, portions of the Lehigh Valley Railroad have already become useless."

They then cite the following instances of abandoned tracks in the Wyoming region, viz:

"Crescent breaker, 1 mile long, abandoned 1900.
"Babylon breaker, 1½ miles.
"Lawrence track, partially abandoned, length not given.
"Phoenix track, 1 mile long.
"Heidelberg breaker, No. 2, tracks abandoned; length not given.
"Henry breaker, tracks 1½ miles long; will soon be abandoned.
"Wyoming breaker, ¾ mile long.
"Midvale track, ¾ mile long; abandoned.
"Franklin breaker, 1½ miles.
"Abbott or Hillman mine, ¾ mile long.
"Mosier mine, track 1 7/8 miles; abandoned.
"Butler colliery, tracks taken up; length not given."

In addition, it is stated that many collieries have been abandoned which have not involved the taking up of tracks, the tracks remaining in partial use in connection with other breakers.

It will be noted that while the list of abandoned tracks in the Wyoming district has the appearance of being quite large, yet the sum total of such of the mileages as are specified shows that a fraction more than 8 miles has been abandoned.

Counsel also in their brief give quite a list of names of breakers which have been abandoned on the Mahanoy and Hazleton Division, but it is found that the total of abandoned mileage on this division is only 9.5 *miles*.

As to the kindred subject, namely, the exhaustion of anthracite coal supply, counsel in their brief thus state the result of the testimony of W. F. Dodge, an expert mining engineer, introduced as a witness on behalf of the defendant:

The total future shipments from the Wyoming Division, starting with the year 1909, will amount to 91,230,000 tons. The lives of the various collieries will vary from 5 to 50 years. The annual output is estimated for the first five years to be 19,395,000 tons, and will diminish gradually until, from the twenty-fifth to the thirtieth year, the annual output is estimated at only 7,055,000 tons, dwindling down in the period between the forty-fifth and fiftieth years to 500,000 tons per annum. At the end of 25 years, according to the testimony of Mr. Dodge, the output of the Wyoming region will be less than half what it is now, and at the end of 50 years will cease altogether.

On the other hand, the following more optimistic view of the situation appears from the Report of the Anthracite Coal Strike Commission, rendered to the President of the United States March 18, 1903, viz:

"What is of some importance, however, in connection with the discussion of the past production is a consideration of what is to be expected in the future in the way of production and the probable duration of the anthracite coal supply. The original deposits of the anthracite coal field have been ascertained with a reasonable degree of accuracy.

"According to the estimates of the Pennsylvania geological survey, the amount of workable anthracite coal originally in the ground was 19,500,000,000 tons. The production to the close of 1901, as previously stated, amounted to 1,350,000,000 long tons, which would indicate that there remained still available a total of 18,150,000,000 tons. Unfortunately, however, for every ton of coal mined and marketed one and one-half tons, approximately, are either wasted or left in the ground as pillars for the protection of the workings, so that the actual yield of the beds is only about 40 per cent of the contents. Upon this basis the exhaustion to date has amounted to 3,375,000,000 tons. Deducting this from the original deposits, the amount of anthracite remaining in the ground at the close of 1901 is found to be, approximately, 16,125,000,000. Upon the basis of 40 per cent recovery, this would yield 6,450,000,000 long tons. The total production in 1901 was 60,242,560 long tons. If this rate of production were to continue steadily, the fields would become exhausted in just about one hundred years.

"Mr. William Griffith, in a series of articles contributed to the Bond Record in 1896, considers that the estimates upon which the foregoing computations have been made were too liberal. His estimate of the amount of minable coal remaining at the close of 1895 was 5,073,786,750 tons.

"In the six years from 1896 to 1901, inclusive, the production has been, approximately, 308,570,000 tons, which would leave still available for mining 4,765,216,750 tons. This supply, at the rate of production in 1901, would last a little less than 80 years. But as indicating how susceptible to error are human predictions, it is well to state that in his carefully prepared statement, published in 1896, Mr. Griffith assumes the limit of annual production would be reached in 1906 and would amount in that year to 60,000,000 tons.

"This amount of production was reached in 1901, in just half the time predicted by Mr. Griffith, and the production of January, 1903, as recently reported, shows that the anthracite mines are capable of producing at a rate of 72,000,000 tons annually in their present state of development. It is not to be supposed, however, that the annual rate of anthracite production will continue practically uniform until the mines are exhausted and then suddenly cease. Portions of the fields have already been worked out, others are rapidly approaching total exhaustion, while others at the present rate of production will, it is calculated, last from 700 to 800 years. If we can assume the annual production will have reached its maximum limit at between 60,000,000 and 75,000,000 tons, and that the production will then fall off gradually as it increased, we may expect anthracite mining to continue for a period of from 200 to 250 years." (Report of Anthracite Coal Strike Commission, pp. 21, 22.)

Defendant claims the right to earn enough out of its coal rates to provide for a return of the principal of the investment in that part of the railroad company devoted to the carriage of coal, when and as this principal becomes reduced and extinguished by exhaustion of the coal. We have noted the estimate of defendant's witnesses to the effect that shipments of anthracite coal over the railroad will practically cease in 50 years, and we have quoted the opinion expressed on the same subject by the Anthracite Coal Strike Commission to the effect that production may last for 250 years. Probably the truth lies somewhere between the two extremes. During the years 1903 to 1910, the Lehigh Valley Railroad Company under the rates in controversy succeeded in accumulating an unappropriated surplus of $27,219,780. If the company could accumulate this sum for every eight-year period during the next 30 or 40 years, it would have a surplus in the neighborhood of $125,000,000. It seems, therefore, that the present rates are more than sufficient to meet defendant's idea of an annual income sufficient to provide for return of the capital when that part of the railroad devoted to the carriage of anthracite coal loses its earning capacity through the exhaustion of that commodity. This matter, however, is too speculative to be of much value in determining the reasonableness of present rates. By the time anthracite coal is exhausted other traffic may have become so dense that the present value of the road will not be impaired.

It requires no extended argument to sustain the proposition that the maintenance of an unreasonably high rate operates to the advantage of the Lehigh Valley Railroad Company as a dealer in coal. The record shows that the only line of demarcation between the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company is one of bookkeeping. Assuming for purposes of illustration that the cost of mining anthracite coal is $2 per ton and the cost of carrying it to tidewater is $1 per ton, it follows that the cost of coal at tidewater would be $3 per ton; and if the published rate were $1 the independent operator and the railroad coal company would be on a fair competitive basis so far as the cost of mining and transportation are concerned. But as between the railroad company and its coal company it matters not whether the profit comes from mining or transporting the coal. So, therefore, if, instead of the $1 rate above mentioned, the railroad company were to establish a rate of $1.50 per ton, the railroad and its coal company could still sell coal at tidewater for $3 per ton, standing a deficit of 50 cents per ton in the mining price and taking an equal profit in the transportation price. But the independent operator can not recoup himself in this manner, and the best price that he could make at tidewater would necessarily be the mining price of $2, plus the carrying charge of $1.50, or $3.50; and he would enter the market at a disadvantage of 50 cents per ton as compared with the railroad and its coal company. It is obvious that such an advantage would enable the railroad company and its *alter ego*, the coal company, to monopolize the field of production and the selling market. Whatever the means employed, it is a fact that the railroad coal company has monopolized the coal field served by it. In 1901, 47 per cent of the defendant's coal tonnage to Perth Amboy was controlled by it and 53 per cent by independent operators; while in 1908 the defendant controlled 95 per cent of the anthracite tonnage over defendant's line to Perth Amboy and the independent operators 5 per cent. During the same period complainants' shipments to Perth Amboy decreased from 147,811 tons for 1901 to 40,562 tons for 1908.

Coming now to the question of the reasonableness of the rates, counsel for defendants asserts that the rates on coal must be sufficient to produce four results, viz: (1) An income sufficient to make up for past deficiencies in current return on investment. (2) A reasonable current annual return upon the investment in the railroad and transportation adjuncts. (3) An amount sufficient to provide reasonably for keeping the property up to constantly modern standards—i. e., such improvements as are necessary for public convenience and safety and to enable the railroad to get business in competition with other roads. (4) An amount sufficient to provide for a return of the principal of the investment, when and as this principal becomes reduced and extinguished by the exhaustion of coal freight.

Under the first proposition defendant argues that the present rates should be sufficiently high to enable it now to earn the amount by which it has fallen short of paying a 6 per cent annual dividend in the past, or at least as far back as 1894. It shows that a dividend rate of 6 per cent applied to its common stock of $40,441,100 for the period from November 30, 1894, to June 30, 1908, would amount to $35,091,276; that during this period the dividends paid amounted to $7,260,264; and argues that upon a 6 per cent basis the common-stock shareholders suffered a deficiency in dividends during this 14½-year period of $27,831,112. In the Wilgus estimate above mentioned 10 cents per ton is added to the assumed cost of carrying coal to Perth Amboy for the purpose of "making good the deficit of over $20,000,000 in dividends" for past years.

Assuming, without conceding, that the present producers and consumers of anthracite coal must bear the burden of the misfortunes or mismanagement of a previous generation, it is worth while to inquire whether this claim does not amount for the most part to a declaration, not that the shareholder is entitled to a fair dividend, but rather to an assertion that he may invest his dividends in improvement of the property and have it in cash also.

Certain aspects of the financial condition of the Lehigh Valley for the years 1901 to 1910, inclusive, are set forth in the following table:

Lehigh Valley Railroad Company.

Item.	Year ending June 30—				
	1901	1902	1903	1904	1905
§ A. MILEAGE:					
1. Owned—single track, miles	317.67	317.09	316.98	311.63	308.12
2. Owned—all tracks, miles	797.17	799.69	797.84	799.69	802.69
3. Operated—single track, miles	1,387.38	1,387.24	1,392.15	1,392.67	1,393.87
4. Operated—all tracks, miles	2,905.48	2,923.31	2,953.68	2,971.87	3,003.30
§ B. COST OF ROAD AND EQUIPMENT	$37,657,712	$37,657,712	$46,435,550	$46,435,604	$48,410,162
Per mile owned—single track	118,543	118,760	146,493	149,009	157,115
Per mile owned—all tracks	47,239	47,090	58,201	58,067	60,355
§ C. TOTAL CAPITALIZATION	87,416,100	87,900,100	97,555,100	97,267,100	98,984,100
Per mile owned—single track	275,179	277,208	289,072	293,897	321,252
Per mile owned—all tracks	109,658	109,918	122,274	121,631	123,408
Capital stock	40,441,100	40,441,100	40,441,100	40,441,100	40,441,100
Funded debt	46,975,000	47,459,000	57,114,000	56,826,000	58,543,000
§ D. TOTAL OPERATING REVENUES	23,654,215	23,668,672	25,692,270	28,672,362	30,235,345
Per mile operated—single track	17,049	17,062	18,455	20,588	21,692
Per mile operated—all tracks	8,141	8,097	8,698	9,648	10,067
Total operating expenses	18,676,927	19,103,254	13,377,922	18,255,917	18,445,230
Per mile operated—single track	13,462	13,771	13,201	13,109	13,233
Per mile operated—all tracks	6,428	6,535	6,222	6,143	6,142
Ratio to total operating revenues.....per cent	78.96	80.71	71.53	63.67	61.01

Lehigh Valley Railroad Company—Continued.

Item.	Year ending June 30— 1901	1902	1903	1904	1905
§ D. TOTAL OPERATING REVENUES—Continued.					
Analysis of operating expenses under official classification:					
Maintenance of way and structures	$4,241,717	$4,632,997	$4,099,169	$3,058,204	$3,269,383
Per mile operated—single track	3,057	3,340	2,944	2,196	2,346
Per mile operated—all tracks	1,469	1,585	1,388	1,029	1,089
Ratio to total operating revenues.....per cent..	17.93	19.58	15.96	10.67	10.82
Maintenance of equipment	4,448,244	5,149,924	4,694,395	4,744,232	4,894,269
Per mile operated—single track	3,206	3,712	3,372	3,407	3,511
Per mile operated—all tracks	1,531	1,762	1,589	1,596	1,630
Ratio to total operating revenues.....per cent..	18.81	21.76	18.27	16.54	16.19
Traffic and transportation expenses	9,251,820	8,581,666	8,964,825	9,857,586	9,694,567
Per mile operated—single track	6,669	6,186	6,440	7,078	6,955
Per mile operated—all tracks	3,184	2,935	3,035	3,317	3,228
Ratio to total operating revenues.....per cent..	39.11	36.25	34.89	34.38	32.06
General expenses	735,146	738,667	619,533	595,895	587,011
Per mile operated—single track	530	533	445	428	421
Per mile operated—all tracks	253	253	210	201	195
Ratio to total operating revenues.....per cent..	3.11	3.12	2.41	2.08	1.94
Analysis of operating expenses between labor and other expenses:					
Compensation paid direct to labor	9,199,572	9,995,715	10,550,679	10,977,294	10,920,360
Per mile operated—single track	6,631	7,205	7,579	7,882	7,834
Per mile operated—all tracks	3,166	3,419	3,572	3,694	3,636
Ratio to total operating revenues.....per cent..	38.89	42.23	41.07	38.29	36.12
Compensation paid general officers	139,352	128,320	145,835	116,746	103,188
Per mile operated—single track	100	93	105	84	74
Per mile operated—all tracks	48	44	49	39	34
Ratio to total operating revenues.....per cent..	.59	.54	.56	.40	.34
Material, fuel, and all other items	9,338,003	8,979,219	7,681,408	7,161,877	7,421,682
Per mile operated—single track	6,731	6,473	5,517	5,143	5,325
Per mile operated—all tracks	3,214	3,072	2,601	2,410	2,472
Ratio to total operating revenues.....per cent..	39.48	37.94	29.90	24.93	24.55
Taxes	312,182	285,781	289,996	471,262	538,933
Per mile owned—single track	983	901	915	1,512	1,749
Per mile owned—all tracks	392	358	364	589	672
Per mile operated—single track	225	206	208	338	387
Per mile operated—all tracks	107	98	98	159	179
Ratio to total operating revenues.....per cent..	1.31	1.21	1.13	1.65	1.78
Operating income	4,665,106	4,279,637	7,024,352	9,945,183	11,251,182
Per mile operated—single track	3,362	3,085	5,046	7,141	8,072
Per mile operated—all tracks	1,606	1,464	2,378	3,346	3,746
Ratio to total operating revenues.....per cent..	19.73	18.08	27.34	34.68	37.21
§ E. INCOME ACCOUNT:					
Operating income from railroad operation	4,665,106	4,279,637	7,024,352	9,945,183	11,251,182
Additions to income (total of items 1 and 2 following)	1,286,836	1,367,808	1,660,528	1,682,763	1,493,508
1. Rents received from other roads for the use of road, equipment, and facilities of the operating property	718,098	621,011	962,233	1,209,376	1,040,498
Interest on bonds and dividends on stocks in separately operated railroads and income from other miscellaneous property	568,738	746,797	698,295	473,387	453,010
Deductions from income (total of items 1, 2, and 3 following)	7,091,757	6,980,222	6,307,633	5,907,095	5,940,251
1. Rents paid for lease of roads which form a part of the operating property	2,724,019	2,743,965	2,727,328	2,332,434	2,410,967
2. Rents paid to other roads for the partial use of road, equipment, and facilities needed in operating the property	706,919	526,293	562,258	574,384	444,471
3. Interest accrued on funded and floating debt	3,660,819	3,709,964	3,018,047	3,000,277	3,084,813
Corporate income for the year	Def. 1,139,815	Def. 1,332,777	2,377,247	5,720,851	6,804,439
Per cent on capital stock outstanding § C	2.82	3.29	5.88	14.14	16.82
§ F. PROFIT AND LOSS ACCOUNT:					
Accumulated surplus brought forward from preceding year	77,014	Def. 1,178,258	Def. 3,372,147	1,620,681	5,914,796
Corporate income for the year	Def. 1,139,815	Def. 1,332,777	2,377,247	5,720,851	6,804,439
Discounts on securities bought and sold and other profit and loss allocations	−299.195	−861,112	+3,881,763	+38,554	−1,424,371
Total surplus available for distribution	Def., 1,361,996	Def. 3,372,147	2,886,863	7,380,086	11,294,864
Per cent on capital stock outstanding § C	3.37	8.34	7.14	18.25	27.93
Dividends declared					1,225,989
Additions, betterments, and permanent improvement appropriations			1,266,182	1,465,290	1,411,550
Sinking and special reserve funds	Cr. 183,738				
Total surplus appropriated	Cr. 183,738		1,266,182	1,465,290	2,637,539
Per cent on capital stock outstanding § C	.45		3.13	3.62	6.52
Unappropriated surplus carried over to the following year	Def. 1,178,258	Def. 3,372,147	1,620,681	5,914,796	8,657,325

Item.	Year ending June 30— 1906	1907	1908	1909	1910
§ A. MILEAGE:					
1. Owned—single track, miles	306.70	302.30	302.39	303.09	302.61
2. Owned—all tracks, miles	815.42	824.66	833.60	832.99	840.85
3. Operated—single track, miles	1,429.16	1,443.24	1,447.63	1,445.67	1,440.25
4. Operated—all tracks, miles	3,133.48	3,163.30	3,228.49	3,241.48	3,261.43
§ B. COST OF ROAD AND EQUIPMENT	$48,410,162	$54,365,714	$58,782,995	$58,639,362	$61,443,218
Per mile owned—single track	157,842	179,840	194,395	193,472	203,044
Per mile owned—all tracks	59,369	65,925	70,517	70,396	73,073
§ C. TOTAL CAPITALIZATION	120,982,100	129,644,100	132,338,981	129,507,047	127,017,047
Per mile owned—single track	394,464	428,859	437,643	427,289	419,738
Per mile owned—all tracks	148,368	157,209	158,756	155,473	151,058
Capital stock	40,441,100	40,441,100	40,441,100	40,441,100	40,441,100
Funded debt	80,541,000	89,203,000	91,897,881	89,065,947	86,575,947
§ D. TOTAL OPERATING REVENUES	32,050,187	35,287,381	37,426,745	34,949,953	38,151,174
Per mile operated—single track	22,426	24,450	25,854	24,176	26,489
Per mile operated—all tracks	10,228	11,155	11,593	10,782	11,698
Total operating expenses	19,682,035	21,700,358	24,012,038	22,541,145	23,814,256
Per mile operated—single track	13,772	15,036	16,587	15,592	16,535
Per mile operated—all tracks	6,281	6,860	7,438	6,954	7,302
Ratio to total operating revenues.....per cent..	61.41	61.50	64.16	64.50	62.42

Lehigh Valley Railroad Company—Continued.

Item.	Year ending June 30—				
	1906	1907	1908	1909	1910
§ D. TOTAL OPERATING REVENUES—Continued.					
Analysis of operating expenses under official classification:					
Maintenance of way and structures	$3,153,245	$3,196,854	$3,398,042	$3,273,339	$3,462,903
Per mile operated—single track	2,206	2,215	2,348	2,264	2,404
Per mile operated—all tracks	1,006	1,011	1,053	1,010	1,062
Ratio to total operating revenues per cent	9.83	9.06	9.08	9.37	9.08
Maintenance of equipment	5,435,794	6,186,642	6,153,874	5,832,430	5,995,810
Per mile operated—single track	3,838	4,287	4,251	4,034	4,163
Per mile operated—all tracks	1,751	1,956	1,906	1,799	1,838
Ratio to total operating revenues per cent	17.12	17.54	16.44	16.68	15.71
Traffic and transportation expenses	10,421,778	11,686,787	12,121,580	10,760,203	11,512,285
Per mile operated—single track	7,292	8,098	8,373	7,443	7,993
Per mile operated—all tracks	3,326	3,634	3,755	3,320	3,530
Ratio to total operating revenues per cent	32.52	33.12	32.39	30.79	30.17
General expenses	621,218	630,075	637,940	709,764	713,149
Per mile operated—single track	436	436	441	491	495
Per mile operated—all tracks	198	199	198	219	219
Ratio to total operating revenues per cent	1.94	1.78	1.71	2.03	1.87
Analysis of operating expenses between labor and other expenses:					
Compensation paid direct to labor	12,013,753	14,282,297	12,891,828	12,113,151	13,703,039
Per mile operated—single track	8,406	9,896	8,905	8,379	9,514
Per mile operated—all tracks	3,834	4,515	3,993	3,737	4,202
Ratio to total operating revenues per cent	37.49	40.48	34.44	34.66	35.92
Compensation paid general officers	104,576	129,718	178,063	184,768	160,821
Per mile operated—single track	73	90	123	128	112
Per mile operated—all tracks	33	41	56	57	49
Ratio to total operating revenues per cent	.32	.37	.49	.53	.42
Material, fuel, and all other items	7,563,706	7,288,343	10,942,147	10,243,226	9,950,405
Per mile operated—single track	5,293	5,050	7,559	7,085	6,909
Per mile operated—all tracks	2,414	2,304	3,389	3,160	3,051
Ratio to total operating revenues per cent	23.60	20.65	29.23	29.31	26.08
Taxes	468,849	660,501	850,361	780,494	794,998
Per mile owned—single track	1,529	2,185	2,812	2,575	2,627
Per mile owned—all tracks	575	801	1,020	937	946
Per mile operated—single track	328	458	588	540	552
Per mile operated—all tracks	150	209	263	241	244
Ratio to total operating revenues per cent	1.47	1.87	2.27	2.23	2.09
Operating income	11,899,303	12,926,522	12,564,346	11,628,314	13,541,920
Per mile operated—single track	8,326	8,956	8,679	8,044	9,402
Per mile operated—all tracks	3,797	4,686	3,892	3,587	4,152
Ratio to total operating revenues per cent	37.12	36.63	33.57	33.27	35.49
§ E. INCOME ACCOUNT:					
Operating income from railroad operation	11,899,303	12,926,522	12,564,346	11,628,314	13,541,920
Additions to income (total of items 1 and 2 following)	1,548,521	1,726,188	1,474,833	1,057,273	1,463,372
1. Rents received from other roads for the use of road, equipment, and facilities of the operating property	739,670	8,781,050	509,581	292,630	409,013
Interest on bonds and dividends on stocks in separately operated railroads and income from other miscellaneous property	808,851	945,138	856,921	764,643	1,054,359
Deductions from income (total of items 1, 2, and 3 following)	6,426,014	6,559,167	6,606,532	6,841,783	6,867,892
1. Rents paid for lease of roads which form a part of the operating property	2,455,286	2,347,253	2,520,523	2,748,308	2,763,893
2. Rents paid to other roads for the partial use of road, equipment, and facilities needed in operating the property	430,176	373,895	185,833	150,806	173,270
3. Interest accrued on funded and floating debt	3,540,552	3,838,019	3,900,176	3,942,669	3,930,729
Corporate income for the year	7,021,810	8,093,543	7,432,647	5,843,804	8,137,400
Per cent on capital stock outstanding § C	17.36	20.01	18.38	14.45	20.12
§F. PROFIT AND LOSS ACCOUNT:					
Accumulated surplus brought forward from preceding year	8,657,325	11,380,915	14,009,283	16,516,904	19,212,252
Corporate income for the year	7,021,810	8,093,543	7,432,647	5,843,804	8,137,400
Discounts on securities bought and sold and other profit and loss allocations	−1,103,971	−1,252,541	−719,059	−135,110	−391,617
Total surplus available for distribution	14,575,164	18,221,917	20,722,871	22,225,598	26,958,035
Per cent on capital stock outstanding § C	36.04	45.06	51.24	54.96	66.66
Dividends declared	1,624,022	2,144,044	2,430,703	2,430,703	2,430,703
Additions, betterments, and permanent improvement appropriations	1,570,227	2,068,590	1,363,834	580,206	843,877
Sinking and special reserve funds			411,430	2,437	Cr. 3,440,778
Total surplus appropriated	3,194,249	4,212,634	4,205,967	3,013,346	Cr. 95,547
Per cent on capital stock outstanding § C	7.90	10.42	10.40	7.45	261,705
Unappropriated surplus carried over to the following year	11,380,915	14,009,283	16,516,904	19,212,252	27,219,780

The figures for years prior to 1901 are not given above, because we have not had them revised to conform to the present system of accounting, but from 1895 onward they tell practically the same story—that is, the charges to maintenance of way from 1895 to 1904 were abnormal as compared with the years 1905 to 1910. During this 10-year period the density of tonnage per mile of line has increased about 30 per cent. Three of the large items of operating expenses, namely, maintenance of equipment, compensation to labor and material, fuel, and supplies, show an increase somewhat proportionate to the increase in density of tonnage, while the fourth large item of operating expense—maintenance of way and structures—has decreased from $3,057 per mile in 1901 and $3,340 in 1902 to $2,404 in 1910. The only inference which can be drawn from these figures is that in the period from 1895 to 1902 the shareholders elected to devote surplus earnings to rebuilding and improving their road instead of distributing the earnings to themselves in the form of dividends. The excess of the maintenance of way item alone for several years prior to 1903 over that for 1910 was sufficient to pay a 2 per cent dividend on the stock. The devotion of earnings to permanent improvements and betterments was no doubt a wise policy on the part of those in control of the road. But the indications are that the shareholders have already received the benefit of that policy, even though it has not come in the form of cash dividends covering the period in question. From 1894 to 1903 the average market value of Lehigh Valley Railroad stock was in the neighborhood of $75 per share. At this writing the same stock is quoted at $178. Thus a person who had invested in Lehigh Valley at par prior to 1904 has benefited by an appreciation in value of his stock to the amount of 5 per cent per annum since 1894 and has received dividends gradually increased from 2 per cent to 5 per cent since 1905. The earnings in 1910 were sufficient to pay a dividend of 20.12 per cent, but the company elected to increase its unappropriated surplus from $19,212,252 in 1909 to $27,219,890 in 1910. Moreover, the Lehigh Valley Railroad Company has been carrying amongst its assets certificates of indebtedness of the Lehigh Valley Coal Company amounting to $10,537,000, upon which no interest is collected. Interest on this indebtedness would be sufficient to pay a 1 per cent dividend on the stock.

We should hesitate to assent to defendant's first proposition, that present shippers must bear the burden of earlier misfortunes of the road, but it is unnecessary to decide that point in this case, because it has been sufficiently demonstrated that the shareholders have received a fair return on their investment, taking into consideration the money actually received in dividends, the increased value of their shares, the increased value of the property, and the large unappropriated surplus. It follows, therefore, that the allowance in the Wilgus estimate of 10 cents per ton to make up for this alleged deficit should be eliminated from the calculation.

Defendant's second and third contentions that the rates should be sufficient to guarantee a fair annual return on the investment and to provide reasonably for keeping the property up to improved modern methods are sound, but have little bearing on this case, in view of the summary of the road's finances above set forth. It will be noted by referring to that tabulation that defendant's corporate income was sufficient to pay a dividend on the capital stock of 16 per cent in 1905, 17 per cent in 1906, 20 per cent in 1907, 18 per cent in 1908, 14 per cent in 1909, and 20 per cent in 1910. Instead of paying such dividends it has paid 5 per cent on its capital stock, appropriated to additions, bet-

terments, and improvements sums ranging from $580,206 to $2,068,590 per annum, and has increased its unappropriated surplus from nothing in 1902 to $27,219,780 in 1910. Certainly it must be conceded that the present rates provide liberally for a fair annual return on the investment and the proper maintenance of the property.

As noted, the Lehigh Valley Railroad Company carries amongst its assets $10,537,000 noninterest bearing certificates of indebtedness of the Lehigh Valley Coal Company. At 5 per cent per annum the interest on these certificates would be $526,850. The latter sum is in all substantial respects a rebate to the Lehigh Valley Coal Company. The proportion of the total tonnage from the anthracite field shipped by the Lehigh Valley Coal Company does not appear, but it is of record that it ships about 95 per cent of the coal to tidewater. If its proportion of the total traffic is the same as that to tidewater, its tonnage for 1910 was in the neighborhood of 10,500,000 tons; and the net result of the transportation as between it and its competitors was the same as if it had had its coal transported for 5 cents per ton less than the independent dealers. Referring to the same matter in Coxe Brothers Co. *v.* L. V. R. R. Co., supra, the commission said:

"The railroad company advances to the coal company nearly $7,000,000 with which to transact its business, and for the use of which the railroad company receives no advantage other than such advantages as it gets from carrying the freight of the coal company. The value of the annual use of such advances at 5 per cent interest amounts to $350,000, nearly. This sum exceeds 10 cents per ton on all the coal shipped by the coal company over the lines of the railroad company, and is to that extent an undue preference given to said coal company, to the disadvantage of Coxe Brothers & Company and other shippers who receive no advances. The advantage of like advances if made to complainants, estimated on their annual shipments, would exceed $100,000. Had the Lehigh Valley road as a means of securing freight made like advances to any other competitor of complainants, whether an individual operator or a coal company in which the railroad company had no interest, it would hardly be contended that such act did not amount to undue preference and unjust discrimination. The fact that the road was interested in the coal company, as the owner of its capital stock, does not make lawful what would be unlawful without such interest."

Defendant has filed on exhibit purporting to show that its average revenue for the transportation of coal to Perth Amboy from 1898 to 1908 has been $1.46 per gross ton. Assuming that by the loan to the coal company defendant loses interest charges amounting roughly to 5 cents per ton, the average just given would be reduced to $1.41 per gross ton. In the Coxe Brothers case, decided in 1891, the commission decided that a fair return to defendant upon traffic here involved would be an average of $1.40 per gross ton. The rates ordered as a result of that decision were never put in force because, while litigation resulting therefrom was in the courts, it was decided that as the law then stood the commission was without authority to fix a rate for the future. Since that decision density of tonnage has increased, the ratio of operating expenses to income has materially decreased, grades have been eliminated, trainloads and car capacities have materially increased; in short, every factor which ought to make for lower rates has been present. But the rates charged have produced revenue of about 6 cents per ton in excess of that found reasonable by the commission.

Turning again to the Wilgus exhibit, we find the estimated cost of transporting a ton of coal from the Wyoming region to Perth Amboy is $1.49. But we have shown that 10 cents of that amount, designed to cover past deficits, is an improper charge. Therefore $1.39 would be the cost if the exhibit were accurately and properly constructed on the basis of facts known to the witnesses. In considering this exhibit it must be remembered that the so-called cost does not mean operating expense. The item of $1.49 is designed to cover all proper, possible, and probable charges, including not only interest and depreciation charges but other items, such as the 10-cent allowance above mentioned. Therefore, if the exhibit were not open to objection, it would be seen that, after eliminating the 10-cent charge above referred to, defendant's rates on the several sizes of anthracite coal ought to bring them revenue averaging $1.39 per gross ton. That is to say, upon defendant's own showing it is collecting rates which have been on the average 7 cents per ton in excess of a reasonable rate.

After careful study of defendant's exhibits relating to tonnage and cost of movement, as well as a painstaking analysis of defendant's voluminous exhibits respecting its past and present financial condition, we are of opinion, and so find, that defendant's rates for the transportation of coal from the Wyoming region to Perth Amboy of $1.55 per gross ton on prepared sizes, $1.40 on pea coal, and $1.20 on buckwheat coal are unreasonable so far as they exceed $1.40 on prepared sizes, $1.30 on pea coal, and $1.15 on buckwheat. If the relative tonnage of the several sizes continues as it has in the past, the rates herein found to be reasonable would result in an average reduction in defendant's revenue per gross ton for hauling coal to Perth Amboy of about 11 cents below the figure of $1.46 for the 10 years from 1898 to 1908. As applied to 1908, the last year for which anthracite tonnage to Perth Amboy is shown in the record, the proposed rates would have resulted in reducing its operating revenue by about $247,000, and apparently 95 per cent of this amount would accrue to the benefit of the railroad coal company. By reference to the table above set forth it is at once apparent that such a reduction will have no serious effect on defendant's revenues and will afford ample allowance for interest charges, operation, dividends, and all proper reserve funds.

We are further of opinion that reparation should be awarded upon basis of the rates herein found to be reasonable upon all shipments of coal by complainants from the Wyoming region to Perth Amboy since August 1, 1901. The amount of reparation which should be awarded under our finding in this case can not be ascertained from the exhibits now on file, and such further proceedings will be had as may be necessary to determine the amount of money due to complainants.

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 1180. Henry E. Meeker and Caroline H. Meeker, copartners, trading as Meeker & Company, *v.* Lehigh Valley Railroad Company.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendant Lehigh Valley Railroad Company be, and it is hereby, notified and required to cease and desist, on or before the 15th day of August, 1911, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving its present rates for the transportation of anthracite coal in carloads from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., as follows, to wit: Upon prepared sizes, $1.55 per gross ton; on pea coal, $1.40 per gross ton; and on buckwheat coal, $1.20 per gross ton; which said rates have been found by the commission in its said report to be unreasonable.

It is further ordered, That said defendant be, and it is hereby, notified and required to establish, on or before the 15th day of August, 1911, and for a period of two years thereafter to maintain, and apply to the transportation of anthracite coal in carloads from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., rates not in excess of the following, to wit: $1.40 per gross ton on prepared sizes of said coal; $1.30 per gross ton on pea coal; and $1.15 per gross ton on buckwheat coal; which said rates have been found by the commission in its said report to be reasonable.

—

[U. S. S. Exhibit 48.]

INTERSTATE COMMERCE COMMISSION,
Washington.

I, John H. Marble, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of the complaint and answer filed in the case of Marian Coal Company against the Delaware, Lackawanna & Western Railroad Company, docket No. 3592, and reports and orders filed by the commission in said case on June 8, 1912, and October 19, 1912, the originals of which are now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 9th day of December, 1912.

[SEAL.] JOHN H. MARBLE, *Secretary.*

—

(Before the Interstate Commerce Commission of the United States. Marian Coal Company *v.* The Delaware, Lackawanna & Western Railroad Company. Docket No. —.)

Complaint.

The petition of the above-named complainant respectfully shows:

I.

The Marian Coal Company is a corporation organized under the laws of the State of Delaware, with its principal office in the city of Wilmington in the State of Delaware.

The said complainant is engaged in the business of cleaning, preparing, shipping, and selling that character of anthracite coal known in the trade as washery coal, reclaiming from the refuse discarded in the early history of anthracite mining the small pieces of coal which, at such early period were not marketable, but which are now valuable, particularly for steaming purposes. Its washery is located in the borough of Taylor, Lackawanna County, Pennsylvania, distant 2,500 feet from the Bloomsburg Division of the defendant carrier and is situate upon a switch serving three collieries supposed to belong to the defendant or to the D., L. & W. Coal Company, an organization affiliated with the defendant carrier. Large quantities of fresh-mined coal, as well as other washery coal, is transported over this switch for shipment intra and inter state.

II.

The defendant railway is a common carrier organized under the laws of the State of Pennsylvania, engaged in the transportation of passengers and property by railroad, or by rail-and-water transportation, by continuous carriage or shipment between the plant of the complainant located in the State of Pennsylvania aforesaid to points designated hereinafter situate in the States of Pennsylvania, New York, and New Jersey, over its own road, and it operates, leases, owns, and controls certain railways which are part of its system and are made subject to this complaint, issuing tariff sheets over such line as part of its system, and is subject to the provisions of the act of Congress to regulate interstate commerce of the 14th February, 1887, and acts amendatory thereof and supplementary thereto. More than half of its business is the transportation of anthracite coal, and of the anthracite coal transported more than ninety per cent (90%) is produced by the D., L. & W. Coal Co., the capital stock of which defendant owns, or is coal purchased by said coal company from individual operators under contracts covering all coal produced or to be produced by them.

The defendant carrier has established rates for the transportation of the product of the complainant from its plant in the borough of Taylor aforesaid to the destinations hereinafter specified, which severally constitute an unjust and unreasonable charge for the service rendered to the complainant, and are in violation of the first section of the act of Congress to regulate interstate commerce of the 14th February, 1887, and the acts supplementary thereto or amendatory thereof. These several destinations are specified as follows, to wit:

All stations between the borough of Taylor and the several terminals of the defendant railway in the city of Hoboken and Jersey City, in the State of New Jersey, and to docks situate in the Borough of Brooklyn, Greater New York, in the State of New York, and to points between the plant of the complainant and the city of Buffalo, and the city of Oswego, New York, and in the vicinity of said cities in the State of New York.

All points alluded to will be found in I. C. C. Tariff No. 6095.

The complainant avers, that from April 6, 1907, to August 1, 1909, the defendant railway violated section four (4) of the act to regulate commerce, in that it charged and received a greater compensation for the transportation of property for a shorter than for a longer distance, over the same line or route and in the same directions, the shorter being included within the longer distances. By its Tariff I. C. C. No. 6095, the defendant railway, after this complainant had complained to the defendant of the unjust rates, reduced slightly certain of its rates, but is still violating the spirit and intent of the section of the act mentioned, by charging and receiving as great a compensation for a shorter as for a longer distance. The complainant makes specific reference to Tariffs I. C. C. No. 4222–No. 4223 and to joint freight Tariff No. C 3449, D., L. & W. R. R. in connection with Bangor and Portland, the two first mentioned having been cancelled by I. C. C. No. 6095, hereinabove mentioned.

The rates charged to all points on the line of the defendant railway are unjust and unreasonable, particularly so at intermediate points, both intra and interstate, as shown by the tariff mentioned. The rates charged for the transportation of rice and barley coal are also particularly unjust and unreasonable, as shown by Tariff I. C. C. No. 6095,

and are burdensome to the complainant, 75 per cent of whose product is rice and barley coal. The defendant railway has recognized that on account of the slight value of rice and barley coal, at origin, it should bear a less rate of freight than coal of a greater value. The freight rate charged upon barley coal being, for example, from origin to Hoboken, one dollar and thirty-five cents ($1.35) per gross ton, while the price of said coal f. o. b. at Hoboken is one dollar and fifty cents ($1.50). The actual cost of preparing barley coal is about thirty cents (30 cents) per ton, cost of selling ten cents (10 cents) additional. This size is selling locally at from forty to forty-five cents (40 to 45 cents) per ton. The freight rate charged upon rice coal, which is a size larger than barley coal, for example, is from origin to Hoboken one dollar and thirty-five cents ($1.35), while the selling price of coal f. o. b. at Hoboken, is two dollars ($2.00) per ton. The actual cost of preparing rice coal being about forty cents (40 cents) per ton, plus ten cents (10 cents) additional for selling expense. The price locally being from ninety cents (90 cents) to one dollar ($1.00) per ton.

It thus appears that taking the actual cost of barley coal, which amounts to about sixty per cent (60 per cent) of complainant's output, at tidewater, freight added, is one dollar and seventy-five cents ($1.75); it sells at Hoboken at one dollar and fifty cents ($1.50), at a loss of twenty-five cents (25 cents).

The rice coal costs the complainant forty cents (40 cents) per ton to prepare, ten cents (10 cents) per ton for selling expense, and the freight one dollar and thirty-five cents ($1.35), showing a net cost of one dollar and eighty-five cents ($1.85). It sells at Hoboken at two dollars per ton ($2.00), leaving a margin of fifteen cents (15 cents) for rice coal at Hoboken, the intrinsic vale of which is from ninety cents (90 cents) to one dollar ($1.00) per ton at origin.

The defendant also has a rate in effect to Hoboken, N. J., f. o. b. vessel, per gross ton for sizes larger than pea coal one dollar and fifty-eight cents ($1.58); for pea coal, one dollar and forty-three cents ($1.43); buckwheat coal, one dollar and twenty-eight cents ($1.28); and for rice and barley, one dollar and thirteen cents ($1.13), and such charge for transportation includes the service of transfer from car to vessel.

The coal company affiliated with the railroad company charges for barley coal at its mines at Taylor one dollar ($1.00) per gross ton; for rice coal, one dollar and fifty cents ($1.50) per gross ton; and for buckwheat, two dollars ($2.00) per gross ton.

By reason of the injustice complained of the complainant is unable to ship his product to points on the line of the D., L. & W. R. R. at a profit except as to pea coal and sizes larger.

The defendant carrier owns the capital stock of the Delaware, Lackawanna & Western Coal Company, which also mines and ships from the Lackawanna and Wyoming coal regions of Pennsylvania via the defendant road coals of the various sizes shipped by this complainant, and by reason of the conditions imposed upon complainant by the defendant subjects the latter to unjust conditions of competition.

The defendant has charged the complainant a switching charge in addition to the charges for hauls on the main line to some of the destinations lying between the points hereinabove designated to which it has not subjected other shippers of the like product shipping the same under similar circumstances and like conditions, the said switching charges having been absorbed in the haul to such destinations.

In some instances the defendant carrier has imposed a switching charge upon some shippers much less than the switching charge imposed upon complainant's product for much more expensive service. The complainant avers that the defendant has no right to impose any charge whatever upon its product as a switching charge at either origin or destination, but that the same should have been included in the through rate to the destinations mentioned of the D., L. & W. R. R. system on all of its product shipped to interstate destinations of which the commission has jurisdiction. Complainant is informed, believes, and expects to be able to prove upon the trial of this case that it has been subject to this switching charge when it has transported the same character of product to the same destinations for favored shippers at a rate which did not include charges for switching, which several acts constitute an undue or unreasonable prejudice or disadvantage to the complainant discriminatory and in violation of the third section of the act of Congress aforesaid.

IV.

The complainant has been and now is compelled to ship its product over the defendant's road by reason of the refusal of the defendant and other carriers to establish reasonable and just through joint rates, which should absorb the switching or transfer charges to connecting carriers, and complainant avers that the defendant carrier or its coal company has enjoyed a transfer charge as low as three cents (3 cents) per ton for similar service to interstate destinations, rates to which were requested by this complainant to be put into effect, and has performed service more expensive for competitors affiliated with other railroads constituting the Anthracite Coal Trust at much less than has been exacted of this complainant. In some instances, as complainant believes, the switching or transfer charges have been absorbed in the through joint rate. By these unjust and discriminatory acts the complainant has been unable to secure equality of conditions with competitors constituting the Anthracite Coal Trust, and has been and is at a great disadvantage as a result thereof.

V.

The complainant avers that the defendant carrier has willfully violated the sixth section of the act of Congress, in that it has not printed and kept open to public inspection the schedules required under this section of the said act of Congress, nor has it observed the modified requirements of the commission, which requires common carriers to permit shippers to have access to such schedules in the hands of the freight representatives of carriers subject to the act, and has not filed and published in conformance with the provisions of the act mentioned the rates, fares, and charges imposed upon the product of the complainant as required by said section. The complainant made application at the proper freight offices at Taylor, Pa., and Scranton, Pa., three miles from Taylor, and to the freight office in the city of New York for the rates of freight applicable to his product, and further requested the defendant carrier to exhibit to him certain agreements for switching services performed in interstate traffic, for competitors of the complainant, such competitors being coal companies affiliated with various railroads transporting anthracite coal and other products as common carriers over their lines, under like circumstances and similar conditions, specifically stating to the freight agents of such company the particular agreements or freight traffic contracts in force, either written or in parol, existing between such companies and the coal companies specified. The railway freight agents denied the existence of such agreements. The complainant then requested Mr. E. E. Loomis, vice president of said railroad company, in charge of the coal department, to whom the complainant's letter was referred for a reply, to furnish him the information requested of the freight agents.

The defendant railway freight officials instead of giving to the complainant the information which would enable him to ascertain the rates of freight charged to various destinations, referred him to the officials of the coal department, which fixes the rates upon anthracite coal, and is a competitor of your complainant.

VI.

The rate of freight as shown in the tariff cited hereinabove is not a rate imposed upon all shippers alike. The rate obtained from the D., L. & W. Coal Company and from individual operators who sell all their coal to the said company, is based upon a monopoly, maintained through the device of the Temple Iron Company, the directors of which are presidents of the railroad company constituting the Anthracite Coal Trust, and it in effect fixes the price of coal, the freight rate upon such coal is fixed by a percentage of the average price of coal as reported by a bureau maintained by the Coal Trust, to have been received by the various companies constituting the Coal Trust for coal sold at tidewater. The railroads formerly and now the coal companies affiliated therewith sell the coal, making no charge therefor to such operators as enjoy the benefit of the contracts, while complainant must sell its own product and suffer its own losses for bad accounts. The effect of this illegal system of rate making is to enable the Coal Trust to maintain a rate to one class of shippers different from that imposed upon another class, and the rate changes many times each year to one class without notice of change to the other class. In April it decreases, and then the price of coal advancing each month, each month the freight rate advances, thus constituting an illegal device and subjecting the complainant to conditions prohibited by the act to regulate interstate commerce. The rates on complainant's coal have been fixed by the coal company's representatives.

VII.

In deliveries locally the defendant coal company sells delivered at Scranton at the same price it charges at the breaker, which is located within a few hundred feet of complainant's washery, the complainant being subject to a delivery charge of thirty cents (30 cents) per ton. The defendant, the D., L. & W. Coal Company, sells coal delivered along the line, intra and interstate, at a price much less than the freight with the price charged for the coal at its said breaker added, which prices are: For buckwheat, two dollars per ton ($2.00); rice, one dollar and fifty cents ($1.50) per ton; and barley, one dollar ($1.00) per ton; thus preventing the complainant from competing at line points. The unjust amount charged for freight is sufficient to prevent competition by complainants, or other independent shippers, and ultimately must drive the few remaining operators out of the field. When complainant has attempted to ship on the line of the defendant railroad, the defendant's officials have protested to complainant's agents, claiming the line trade as its own.

VIII.

The complainant believes and therefore avers, that the defendant carrier has charged it a compensation greater for services rendered it in the transportation of its commodity, than it has charged, collected, or received from other persons, firms, or corporations for contemporaneous services in the transportation of like traffic under substantially the same circumstances and conditions in violation of the second section of the act of Congress hereinabove recited.

IX.

The several acts in violation of the act of Congress, your complainant believes, together with other acts upon the part of the defendant company, were done for the deliberate purpose of driving the complainant out of business as a producer of coal in competition with the coal company affiliated with the defendant carrier. The acts, in detail, are as follows:

A. The defendant attempted to compel the complainant to sell its coal to it upon an agreement which would require the complainant to restrict its output to such an extent as to make it impossible for the complainant to exist, at the same time compelling the complainant to rate its capacity at much less than its actual capacity.

B. It refused to quote the complainant rates, local or intrastate, and stated that they did not have the tariffs required under the law to be posted at its freight stations, which complainant did not then understand, so that complainant could use the same. During the entire period that this continued the complainant was obliged to sell its product to the defendant railroad. Upon the size of coal which could be produced at a profit at the price received by the defendant it wrongfully procured the condemnation of 95 per cent thereof, although said coal was of as good quality as the defendant was producing at its washeries, prepared with machinery equally as good, if not better, than the machinery used in the washeries of said defendant company. Instead of inspecting the coal by ascertaining the average character thereof in the manner in force with other producing shippers, the defendant's inspector persistently took the coal for test from under the lip screens, where of necessity the percentage of foreign matter would be large, and condemned complainant's buckwheat coal, as hereinabove stated. Upon the sizes of coal which are by-products of a washery, to wit, sizes smaller than buckwheat coal, upon which there would be no possible profit at the prices received from the railroad company, it took freely. For example, for the size of coal known as buckwheat, which it sold 2,500 feet distant from complainant's plant for two dollars ($2.00), it paid complainant one dollar and ten cents ($1.10) per ton; and for coal sold at said point of the size known as rice coal, for which it received one dollar and fifty cents ($1.50) per ton, it paid complainant fifty cents (50 cents) per ton therefor; and for size known as barley, sold at said point, for which it received one dollar ($1.00) per ton, it paid the defendant twenty cents (20 cents) per ton therefor.

C. The complainant having thus ascertained the attitude of the defendant railway, through its coal company, to it as an independent producer of coal and competitor, offered the property for sale and had five responsible bidders willing to purchase the said washery and culm bank. It thereupon offered to sell the property to the defendant for ten thousand dollars ($10,000) less than the best bid it had received, in the hope of getting legitimate concessions over the defendant railway for the shipment of the products of another property owned by the persons interested in the Marian Coal Company, which property had been made valueless by the attitude of another carrier on account of complainant's refusal to sign another contract of the same general character as the one complained of herein. The representative of the defendant railway secured the names of the bidders for the property from the representative of the complainant, and thereupon practically agreed to buy it. The defendant immediately thereafter notified all of the bidders,

the names of which the representative of the complainant had given in confidence, that should they purchase the property they would buy a lawsuit, and then immediately thereafter notified the complainant that it would not purchase the property. The said bidders then also refused to purchase. The complainant endeavored to sell its coal to wholesale purchasers, who were requested by the coal department of said railroad not to purchase its product under the pain of the displeasure of the defendant carrier.

D. The defendant attempted to compel the complainant to sign a contract for the sale of its coal to the D., L. & W. R. R. Co. which would permit a continuance of the acts mentioned in the second paragraph of this article. The plaintiff suggested that it ought to have the right, in case the defendant coal company should condemn its coal, to sell the coal so condemned in the open market, which the defendant's coal company refused to permit the complainant to do. It also in the said contract refused to insert a clause governing the methods of inspection, such as the defendant had agreed to do with other individual operators of which it purchased coal, whereby the coal taken for the purpose of test of quality should be taken from various points upon the car instead of under the lip screens, whereupon this complainant refused to continue the shipment of coal to the defendant and declined to enter into any contract for the sale of the coal under the conditions exacted by the defendant.

E. After the defendant began to sell its coal to purchasers in the open market the defendant railway, without any duty upon its part so to do, proceeded, through its inspectors or the inspectors of the D., L. & W. Coal Company, to condemn coal consigned to independent purchasers, which coal had been accepted by the inspector of such independent purchaser as showing a less percentage of foreign matter than is required under the so-called sixty-five cent (65-cent) contract then in force between the defendant carriers and the operating individual operators selling their output to the defendant.

F. By reason of the inexperience of the complainant the defendant company has persistently routed its products over long hauls at higher rates, instead of via shorter routes at lower rates, to the complainant's great damage and injury.

G. The nature of the business of preparing coal at washeries requires water in considerable quantities. The complainant, a lower riparian owner, had been using the waters of a stream which passed through its property. For the purpose of preventing the defendant from washing its coal from this stream the coal company affiliated with the defendant deliberately built two dams on said stream, diverting the water therefrom, turning it into the mines operated by it, and then pumped the water out at night, at a time when it is practically impossible to work a washery.

H. The complainant has sought to obtain relief by shipping its coal to points along the lines of connecting carriers, several of which are distant five thousand feet (5,000 feet) from its washery, but these carriers have refused to put into effect a through joint rate which would absorb the prohibitive switching charges imposed upon it by the defendant, notwithstanding that these are absorbing switching charges for other operators, the defendant claiming that no rate could be established because the traffic did not terminate upon its line, while the connecting carrier alleged it could not join in the through joint rate which would absorb the switching charges because the traffic did not originate on its line.

I. In the latter part of the year 1906 a culm bank on the land of the defendant railway became ignited and threatened the destruction of the entire contiguous banks leased to the complainant. The representative of the complainant called the attention of the authorities in charge of the defendant's property to the danger of communicating to complainant's bank, and the representatives of the Lackawanna Railroad, or the said D., L. & W. Coal Company, declared that as the fire was in their own culm bank it was nobody's business, and thereafter, against the protests of the complainant, continued deliberately to dump new fuel upon this fire until finally it communicated to the bank of the complainant, destroying about seventy-five thousand (75,000) tons of valuable material. The culm bank of complainant would have been utterly destroyed, and such total destruction was only obviated by the expenditure of about seven thousand dollars ($7,000).

J. The defendant company charged the complainant about 30 cents per ton for hauling its coal from the washery to the connection with the C. R. R. of New Jersey, distant five thousand feet (5,000), while performing service more expensive in character under similar conditions for a small fraction of such charge. This charge almost exactly equaled the additional price for coal which the complainant might have obtained had it been able to ship this coal along the line of the Central R. R. of New Jersey, and is in excess of charges made to competitors of complainant for service much more expensive.

X.

Complainant has repeatedly protested against the several unjust and illegal acts complained of and sought to secure a fair adjustment of the several complaints, and has asked the defendant to create an equality of the conditions of competition with defendant's coal company and others, but has been unable to secure the same.

XI.

By reason of the refusal upon the part of the defendant company to absorb the switching charge in its through rate to interstate points, and by reason of its discrimination in the switching charge for interstate and intrastate shipments, and on account of the acts herein complained of, the complainant has been prevented from marketing its product in such quantity as would enable it to continue its business except at an enormous loss. Its competitors were enjoying switching rates tabulated as follows:

Five cents (5 cents) per gross ton for a distance of about nine miles.

One dollar and fifty cents ($1.50) per car for a distance of about nine miles.

Twelve cents (12 cents) per gross ton through a crowded and expensive yard, distant about two and one-half miles.

Two dollars ($2.00) per car for varying distances from three to five miles.

And at numerous other points as your complainant is informed and believes rates are equally as discriminatory against the defendant as the rates hereinabove quoted.

XII.

This petition is presented upon behalf of the complainant and such other persons, firms, or corporations as may hereafter by proper petition become parties in interest to this suit. And the complainant hereby claims damages to the amount of fifty-five thousand two hundred and thirty-eight and twenty-seven one-hundredths dollars ($55,238.27) with interest, and demands reparation, and attaches hereto a statement which is made a part hereof, detailing the origin of the freight, destination, date of shipment, car number, car initial, size of coal, weight, rate charged.

Wherefore your petitioner prays:

First. That the defendant carrier may be required to answer the charges herein set out, and that after due hearing and investigation and ascertainment of lawful rates, and of the violations of law herein complained of, an order be made requiring the defendant to cease and desist from the several violations of the act to regulate commerce herein specified.

Second. That the defendant be furthermore required to put into effect just and reasonable rates upon the complainant's commodity from Taylor, Pa., to all points within the jurisdiction of the commission upon its railroad or upon railroads owned, leased, controlled, or operated as a part of the defendant system, as shown in its published tariffs. The complainant respectfully requests the commission to make an order fixing the rate for the transportation of anthracite coal from the Lackawanna coal regions in Pennsylvania to Hoboken, N. J., or f. o. b. vessel Hoboken, N. J., which shall include switching and all other transportation charges, at not more than ninety-five cents (95 cents), being about six and one-fourth mills (6¼) per gross ton per mile upon sizes of coal larger than pea coal; ninety cents (90 cents) per gross ton or about six (6) mills per ton per mile upon sizes of coal known as pea and buckwheat coal; and seventy-five cents (75 cents) per gross ton or about five mills per gross ton per mile upon sizes of coal known as rice and barley coal; and ordering and directing the defendant to make reparation to the complainant for the sum of fifty-five thousand two hundred thirty-eight and twenty-seven one-hundredths dollars ($55,238.27), shown as follows:

Excess charges on 2,014.17 of pea coal	$1,068.63
Excess charges on 26,629.09 of buckwheat	9,169.21
Excess charges on 49,156.02 of rice coal	16,679.39
Excess charges on 69,265.06 of barley coal	26,321.04
Total claim for reparation	55,238.27

to which complainant asks interest be added on the respective payments made by complainant in excess of a reasonable rate, from the dates of the several payments, respectively, as made.

The total charge for coal transported is as follows $179,831.82

	Pea.	Buck.	Rice.	Barley.
	2,014.17	26,628.09	49,156.02	69,265.06
Rate	$1.43	$1.28	$1.13	$1.13
	$2,881.23	$33,134.41	$55,546.39	$78,269.79

Just charges based upon a reasonable rate is stated as follows:

Pea.	Buck.	Rice.	Barley.	
$1,812.60	$23,965.20	$36,867.00	$51,948.75	
Total being				124,593.55
Amount claimed as in excess of a just and reasonable rate				55,238.27

Third. And that you make such further orders and decrees as the commission might deem necessary in the premises for the furtherance of justice.

MARIAN COAL COMPANY,
By W. P. BOLAND, *President.*

OCTOBER 11, 1910.

STATE OF PENNSYLVANIA.
County of Lackawanna, ss:

W. P. Boland, president and general manager of the Marian Coal Company, being duly sworn according to law, doth depose and say, that as to the facts set forth in the complaint hereto attached, with which he is familiar, they are true and correct, and as to the facts which he states from information and belief, he believes the same to be true, and further saith not.

W. P. BOLAND.

Sworn to and subscribed before me this 11th day of October, 1910.

[SEAL.] CLARA L. WOODRUFF,
Notary Public.

My commission expires 5th of January, 1913.

Detailed statement of claim for excessive freight rates or overcharges made by Delaware, Lackawanna & Western Railroad for anthracite coal shipped by the Marian Coal Co., via D., L. & W. R. R., from Taylor, Pa., to J. W. Peale, Hoboken, N. J., who was the coal sales agent of the Marian Coal Co., the latter paying freight.

[Rate: Pea, $1.43; Buck., $1.28; rice, $1.13; barley, $1.13.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
July 8	D., L. & W.	75836			38	
	do	74742				38
	do	73572			37.15	
	do	73923				38
9	do	72879			38.05	
	do	70588				37.05
	do	45321				28
	do	44276				21.10
	do	74855				37
	do	72272			37.15	
	do	72817				37.06
	do	74534				37
	do	75808			38	
	do	75562				36.10
10	do	74000			38.05	
	do	72953				39
	do	70494			35	
	do	46123	28.03			
	do	75324				37.15
	do	18371	26.17			
	do	74000			38.05	
	do	72953				39
	do	70494		35		

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
July 10	D., L. & W.	46123	28.03			
	do	75324				37.15
	do	18371	26.17			
11	do	70173			37.07	
	do	70025				37
	do	72808				37.09
	do	74663			39.03	
	do	70058				37
	do	17756			21	
	do	44637			21.05	
	do	73577		37.04		
	do	73221				38
	do	73738				39
	do	72452			38.10	
	do	70517				38.06
	do	19171			27.11	
	do	75215				38
13	do	42158			18.13	
	do	75038			38.10	
	do	72216				38.14
	do	73879			37	
	do	72009				37.03
	do	73212				37.15
	do	18439			28.02	
	do	39530		22.13		
	do	46225				27.18
	do	18449			27.02	
			109	94.17	635.18	870.06
	do	45769				28.05
	do	18102	27.05			
	do	45268		27.04		
	do	46340				27
	do	19210			27.12	
14	do	18485				28
	do	7374			23	
	do	19115				27.05
	do	72378			39	
	do	19093				29
	do	69958				42
	do	73537			37.15	
	do	44915				27.10
	do	45044			27.04	
	do	75996				37.18
	do	74951				37.16
	do	75606			38	
	do	70830				37.04
15	do	73360			38	
	do	74909				38.05
	do	70822			37	
	do	18258		26.17		
	do	75308				38.15
	do	75130				36.15
	do	74942			38.05	
	do	74482				38
	do	73907			37.05	
16	do	73610				36.18
	do	73759			37.04	
	do	75907				37.13
	do	75404			38.05	
	do	73194				37
	do	73432			38	
	do	70097		36.05		
	do	70483				36.15
17	do	74001				39
	do	72269			38.15	
	do	70975				37.15
	do	74500				37.02
	do	74936			39.06	
	do	73209				38
	do	70382			37.05	
	do	70239				38.04
18	do	70213				37
	do	70751			37.08	
	do	72263				38.07
	do	73529			38	
	do	74348				37.12
	do	74339		38.16		
20	do	74202				37
	do	74973			37.02	
	do	72195				38
	do	73454			38.13	
	do	72487				38.05
	do	73528		37.15		
	do	75755			37.16	
	do	69031				40
21	do	72399				39.06
	do	72786			39.05	
	do	39807		27.15		
	do	18801			26.18	
	do	75951				38.10
	do	75258			38.12	
	do	75700				37
	do	12829				24
22	do	73322			39	
	do	74789				37.17
	do	18237		28.15		
	do	18094				28
	do	72823			39.06	
	do	72789				39
	do	75557		39		
	do	70816				37.05
23	do	73431			39	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
July 24	D., L. & W.	45655				29
	do	75769				38.15
25	do	73097				38.15
	do	18657				29
	do	40683			27	
	do	18103				28.10
	do	40278				28.06
	do	46140			28	
	do	15828				27.12
27	do	45245				27
	do	45480			27	
	do	43167		21.05		
	do	44702				21.07
	do	75265				36.10
	do	72355			39	
28	do	73823				37
	do	74955			37.12	
	do	18825				27.05
	do	45325		29		
	do	75948				36.18
	do	70084			37.05	
	do	73881				36.10
	do	74062			38.07	
	do	74455				37.10
29	do	72005				37.08
	do	75893			37.10	
	do	75608				36.10
	do	39725			27	
	do	42220		28		
	do	46267				27
	do	73704			38	
	do	39523				21
30	do	75969			38	
	do	72562				38.05
	do	75660				37
	do	41207			29	
	do	39035		18.05		
	do	45438				27.05
	do	73618			38.05	
	do	72675				37.05
31	do	40525				27.15
	do	45908				28
	do	61177				31
	do	74173				38
	do	41713				19
Sept. 5	do	43439				22.05
	do	74618				37
	do	70847			36.05	
8	do	69975				37.07
11	do	72975				38.10
14	do	73883				37.10
	do	74309				38.15
	do	70599			35.05	
	do	74449				38
	do	75954			37.05	
	do	75603				37.10
	do	72364			38	
	do	72142				36.10
15	do	70623				37
	do	70419			36.10	
	do	75880				37.10
	do	70159				36.05
	do	73946			37.10	
	do	72909				37
	do	75747			36.18	
	do	72257				38
	do	39975				27.10
16	do	72268				27.15
	do	74053			37	
	do	72538				38
17	do	74871			37.10	
	do	75964				37.15
	do	19172			27.05	
	do	73465				37
	do	70743				36.10
	do	70460			36.05	
18	do	73356				37.05
	do	74247				37.15
	do	70914			36	
	do	72314				37.05
19	do	72788				37.05
	do	69983			39	
	do	72331				37.05
21	do	72250		36.15		
	do	75498			38	
	do	74546			37.15	
	do	73242				37.13
	do	70819				36
	do	70038			35.15	
	do	74061				37.14
22	do	72177				37.10
	do	18692				26.10
	do	19257			26.10	
	do	45818		27.02		
23	do	73647				37.15
	do	74848				37
	do	70791			36	
24	do	72223				37.15
	do	72976				37
	do	70969			36.10	
	do	72806				37.05
	do	74264		38		

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
Sept. 24	D., L. & W.	70423				35
	do	75383			36.15	
25	do	15076				23
	do	46244			27.16	
	do	70591				35.18
	do	75816				36.10
	do	40532			26.15	
26	do	45698			26.15	
	do	74100				37.05
	do	70709				36
	do	70143			36.18	
	do	76000				36.18
	do	18388			26.10	
28	do	70723				36.15
	do	70327				36.14
	do	74094			38	
	do	18503				26.05
30	do	46229		26.16		
	do	18284			26.12	
	do	70555				36.03
Oct. 2	do	73797				36
	do	75576			38	
3	do	72601				37.13
	do	75492		37		
5	do	39783			27	
	do	73524				38.10
7	do	74669				36.15
	do	74652		38		
6	do	7374			23	
	do	72724			39	
	do	73978		37.15		
	do	45925				27.05
	do	39731				27
8	do	72631			38.10	
	do	19008				37.08
	do	75036				36.15
	do	12861			23.15	
9	do	45947				28
	do	72025			38.05	
13	do	70008		37.15		
	do	74327		38.07		
	do	74383		38		
		72628				36.05
		45577		27.17		
		75933				37
		70830			36	
		73440				37
		74773			39	
		73084				38.10
14		72043		38.08		
		72021				37
		18039			27	
		74886				36.16
		74164			38	
		73288		38.12		
20		72347				38.16
		74382			38.15	
		70382		36		
		73332				37.15
		72287				38.11
		74482		38		
		73782			38.07	
		72605				37
22		74442				38
		73558		37.05		
		43947				22.05
23		43978		21.12		
		43945				21
		43632				22.05
		73596				36.16
		74736		37.05		
22		74804				38.05
		70702			36.16	
24		70595				35.05
		70318		35		
		75741			37.08	
		75866				36.18
26		72822				37.15
		45371			27	
		73129				37.05
		69956		39.16		
		45201				27.11
		45456			27	
27		73158			38.05	
26		75106				37.15
		72289		39		
27		72015				39
		69949				41.05
		72432		39.06		
29		74259			37.17	
28		74903				36.10
		73431		37.05		
		72426				38.15
		73947		37.10		
29		72191				38
		72907				38
		73486				37
		74600		37.12		
30		70645			35.16	
		72885				39
		72377			39.05	
31		74936				39

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
Oct. 31		75079		37.05		
		76039				37.09
	Total			577.13	496.09	1,145.14
Nov. 1		17936	28.05			
		75953			37.15	
		73606		38		
		75774				37.18
		74514			38	
3		73685			37	
		75744				38
		73784		37		
		73583				38.10
		76062			37.05	
		74339		37.10		
		45460				27.15
5		75819				37.05
		74898		37.15		
		73732			38	
		39826	27.18			
		43617				27.05
		45104				28.10
		43540			19	
		72130				38
		43924				27.05
		17803		27		
		44986	27			
		7745		22.05		
		12815			23.10	
		75472				38.12
		76255				37.02
		70221			36.10	
6		18055			27	
		45213				28
		18419		27.15		
		75576				38
		45450			28.10	
		18559		26.15		
		72319				37.18
		44830			27.15	
		19218		27		
		43256				21.10
		43220				21.10
		45396		26.15		
		44832			26.17	
		72317				39
		18240				28
		70491		36.10		
		74195			38.05	
		18004				28.05
		73085		38.08		
		74955				38
		74086			38.02	
9		74057				38
		73883		37.16		
		74215			39.06	
		73349				39
		72171			39.05	
		72836		38		
12		17798			27.05	
		7456			20.12	
		72635				37
		70192		37.10		
		69993				39.10
		74534			39	
		17851		27.15		
		42227				28.10
		70991			36.02	
		70063				37
10		73743				38
		74047			38.11	
		72154			38.06	
		45522				28
		75233		37.03		
		74385				37.05
		42602		19		
		73787				37
		75523			39.06	
		75249			38.05	
		46293		27.06		
		45801				28
		39773			28.12	
		43951		21		
		12470		22		
13		75116				37.18
		75315		37.04		
		15837			28	
		17627			28.05	
		45225		27.17		
		39783			27	
		17983			27.05	
		18521		27		
		72220				37.10
		17850			27.10	
		45860				28.10
		19161		28		
		70786			37.06	
12		19203			27.08	
		70601				27
		70951		36.15		
		71004			38.17	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
Nov. 12		74873				37.18
		72584		38.10		
		42037			27.10	
		45060		27.11		
		43293				22
		72366			38	
13		73042				37.15
		70164		36.18		
		45596			29.05	
		45286				27.02
		44397				21.10
16		15388		19		
		70100			38.05	
		75107			38.15	
		73644				37.05
17		7499				23.10
19		70233			37.10	
		75975		36.05		
		73654			38.05	
21		70883			38.10	
23		74716		37.02		
24		75930		37.14		
		73698			38.17	
		70779				37.10
		70656		37.08		
		12865			24	
		74984			38.15	
		43695				22
		70449			37.15	
		46005			28.05	
		72035		36.15		
		45572				27.18
		70003		35.08		
		72657			39.05	
		74122				37
		74364		37.08		
		73571			38.05	
		70215				35.16
		17849				37.12
		18311		27.14		
		47428				27.15
		45022		27.08		
		39814			28	
		70011		36		
		73032		36.05		
		76202				36.15
		75080			39	
		74286			39.05	
		72214				37.12
		70319			37	
		73931		37.05		
		76035				37
		76011			39	
		17995		27.05		
		72522			39.01	
		76069				36
25		75766			38.08	
		73870				37
		75048			38.15	
		73162		37.08		
		75841				37
		75020			37.10	
		76196		36.04		
		74426			38.10	
26		18729				28
		72807			39	
		75508				38
27		73795			38.15	
28		73991				37
		45166		26.18		
		12816		23		
30		70057			38.15	
	Total		83.03	1,541.05	2,062.13	1,930.06
Dec. 1		70633				37
		70188			38.17	
		70475		37.04		
		75180				37.18
		79971			41.10	
		74567		38.06		
		75214			37.10	
		73187		38		
2		39808			28.15	
		75085		38.10		
		70526				37.15
		72458			38	
3		72708				37.05
		72691		37.15		
		70957			37.10	
		73325			39.04	
		75541				37.05
		74229		38		
		74066			38.05	
		76169				37
		41731			21	
		76230		37.15		
		12852			25	
		72436			39	
		72513				38.05
		70936		38.04		
		72304			39.06	
		40506				28

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
Dec. 4		72747		38.03		
		75557				38.10
		74486			39.06	
		70419			37.08	
		75649				38
		74098		37.15		
		74967		37		
		73381				36.10
		73497			38.15	
		74775			39	
		70165			38.05	
		73425				37.10
		75611		37.11		
		75211			37.15	
		74660				37.15
		75259		37.18		
		76078			39.06	
		73794				38
		72939			38	
		73886			38	
7		75375			38.10	
		70926		36.06		
		75705				37
		76181			39	
		74375			38.09	
		75300		37.06		
		75125				37
		70851			37.10	
5		75422			38.17	
		70226		36.10		
		45950			35	
		44721				20.10
		75045				35.15
		73161			37.10	
		18134				23.05
8		73384			38	
		74658				37
		70522		36		
7		73999		37.15		
10		70405				37
		15444		21.10		
		75359			39.05	
		70370		37.05		
9		72537				38
		74189			39.06	
12		75830				37.15
10		45184				29
		74256			37.05	
		75927		37		
11		70032			38.18	
		74896				38.10
		45689			28.15	
		76118			39	
		70578				39
		75590			38	
		74617		36.15		
		75043		37.10		
		74663			38.10	
		75480				38.06
		74471			39	
		76178		36.10		
		72770			39	
		75606				39.05
12		18275			29	
		75468				39.06
14		73071			38.05	
		17402		28.09		
		70629				37.10
		40575			28.05	
		45447		28		
		70934			37.15	
		73570				36
		44243		21.11		
15		74110			38.10	
		75138		37.08		
		40513				29.08
		72517			37	
		46203		28.10		
		70191				38.07
		74543		37.05		
		74747				38.15
		73356			39	
		72784				38.18
17		70907				37.10
		72466				28.05
		72236		38.05		
		45820				28
		42632		21		
		74731				38.05
		70383		36		
19		73316				38.05
21		74198		37		
		74282			38	
		70629				37.10
14		72014			39	
		73860				38.17
		70707			38	
		72305		38.05		
		72923			39	
		74697				37.15
		39695		22.10		
		70831		36		
		74626				38

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908						
Dec. 14		73176			38.17	
		75745		35.15		
		15826				29.05
		18655			28.15	
		74641		36.10		
		74556				36.08
		72063				38.15
		70086				37.08
		73961		37		
22		76243		37.10		
		72057				37
		72644				37.15
20		75925		37		
		73337				38
		72957			39.06	
		18554		28		
		70588				37.15
		69941			38	
		75953		37.10		
		72662				38
		72072		37.15		
		18370				28.05
28		12445			23.10	
		70689				37
		17876		28.03		
		70391				36.10
		45679		29		
		70918			38.05	
		73223				38
		72612				38.04
		18880				28
30		75568				38
		73522		37.05		
		75562			39	
		72952				37.15
		73540			38.10	
		74167				37.08
		74388		38		
		76064		36.10		
		73740				37
29		18761			27.05	
31		73969			39	
		73468				37
		45232		28		
		72885				38
		73141			39	
		18957				38
		76219		37.03		
		75275				38.15
		75570			39	
	Total			1,813.12	2,278.10	2,422.13
1909						
Dec. 31		70100				38.12
Jan. 1		74407				37.05
		72406		37		
		72096			38.10	
		69959				38.15
		76135		35.16		
		72670			39.06	
		70352				38.12
		74294			39.05	
		74752				37.10
Dec. 30		44218			38.08	
		45619				27
31		18861		28.15		
Jan. 1		74897				37.05
		39904		27.15		
		72859			39	
		74713				37.05
		75862				37.15
		73963		36		
		73641			38	
		73841				35.15
Dec. 30		71002				35
29		15092		23.06		
Jan. 2		74350		36		
		70416				35.15
		73891		36.05		
		74141			37	
		44004				23
		46433		26.12		
		73870				37.15
		70725				38.15
		70070		36.10		
		72775				38.16
		73873			38	
4		72017				37
		73052			37.15	
		74525				37.15
		70815		36.10		
		70621				36.10
		72244				37.08
		76405			37.15	
		18517		27.03		
		74941				37.15
		72635				37.10
		75347		36.15		
		76283				37.15
		18825			27.15	
		74856				36.15
		70455			35.15	
		75932				37.12

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Jan. 4		76031				37.15
		74053			37.10	
		73059		35.18		
		75291				36.10
		72722				35.17
		72061			37.19	
6		40569			28.05	
		74351				38.05
		70197		37		
		46019				29.08
		12421				23.10
		45659			29	
		74682				38
		75635			37.10	
		74866				38
		46006		27.15		
		72796				38.10
		73772			37.15	
		72471				37.15
		72771		38		
		74862		37		
		75072			39	
		74088				37
		70586				36
		18419				28
		70465			37.10	
		75102		36.10		
		74408				37.10
		76255				37.05
		75511			38.10	
		73604				38
		74037			37.15	
		73081		37.10		
		74561				37
7		17553			29	
8		75208				35.10
		18873		27.10		
		45449				28
		8130		23		
		75380			37.10	
		73348		36.15		
		75508				36.10
		73054			37	
		70739		35.15		
		75827				36
		41270			28.15	
		18371				27.15
		44948		26		
		40283				21.15
		74600			37	
		72501				37.15
		75342		36.10		
		70013				35.15
		73815			36.15	
		75571				37.15
11		73404				38
		70332			37	
		70368				37.10
		55005		29		
		73230				38.08
		74617			39	
		75197				37.12
		72323				39.05
		75008			39.06	
12		43324				23.10
11		72902				39.06
		72481		39		
12		40662			28.15	
		39654				24
		19176		29		
		70743				38.10
		17944			29	
		39955				29.06
		74901			39.06	
		70613				37
13		72046		38.02		
		72388			38	
		73163				37.10
		70672		37		
		75463				38.15
14		44119			21.15	
		18127				29.05
		74888				37.05
		19230		29.09		
		46308				29
		73039				37.15
		61145		32		
		73487				36.15
		74192				37
15		40873		27.10		
		45977				28 15
		72510		38		
		76031				37.16
		70586		38.17		
		69931				28.05
		75053		37.05		
		69941			38	
16		72749				37
15		17988				29
16		18669			28	
		73715				35.16
		75177				36.10
		72304		37.05		

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Jan. 16		70835			35.15	
		74275				37.15
		75909		36		
15		11588				28
		46028		27		
19		75604			37.17	
		73435		36.15		
		18573				29
		40434		29.14		
		44100				23
		46437				28.10
		73418				37
		45398		28.15		
		74798			36.10	
		75714				24.08
		39925				27.10
		74954				34
		73522			31.15	
		73873		32.15		
		74541				34.05
		73017		36.05		
		72499			37.13	
		72733		36		
		55009				27
20		73889				36.04
		17927		27.04		
22		39816				28.04
		17926		27.10		
23		73355			37	
		15862				27.18
		74486		35		
		70760			34.10	
		70616			36.15	
		70683				37
		74787		36.02		
		18587				28.06
		75758		35.10		
		17857			28	
21		73196				35.15
		74516			36.07	
		76108				36.05
		18994		26.10		
		40664				25.14
		46174				27.19
22		72366			39.02	
		70063				35.16
		18160				28.05
		73989				38.04
		74254		35.06		
25		72119				38.03
		39676		18.15		
		45350				29.10
		72639			37.15	
		72228		37		
		74203				37.15
		75999			37.10	
		76183				35.15
		70872		36		
23		75833			36.10	
		75396				37.04
		17106			20.15	
		17907		27		
		19488				28
		46186			28.15	
		17994		28		
		18398				27.10
		46246		28.10		
		71003			40.10	
25		72512				38.10
		72873		36		
		70360				37
		39850			28.13	
		18717				27.10
		18212			27	
26		72463			37	
		74460				36.15
		75699		35.15		
		74114				38.10
		73774			38	
		40992				28.15
		40301				28
		43454		36		
27		70914			38.10	
		74674				37
		42155			30	
26		46023		27.05		
		45920				28.15
		18614		28.10		
		18001				27
		18722		27		
		73210			29	
		70476				38
		73829		35.15		
27		75836			38.06	
		75475				37
		75486				37.15
		45140			29	
		70753				38
		75708			37.10	
		70069		27.06		
		74819				36
28		73639				36.02

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Jan. 28		70540		35.05		
		75144				38
27		73515				37
		75296		36		
		70497			36.07	
		73431				38
		75199		35.15		
		75750				38
		74837			37.05	
		76275				35.05
		73245		37		
28		70466				35.10
		75935		36		
		76141				36.10
		70442			38	
		74080		36		
		72198				38
		73503			37	
		70384				36.10
		40576			28	
		72789				37.08
		18069			28.10	
		40766				30
		12866		25		
		74496			28	
		39743				28
		70454		37.10		
30		72197				37
		7373		24		
		70587				36.10
		18080			28	
		18775			29.17	
		7923				25
		73840		37		
		39887				30
		72425			37.17	
		74711				37
		76143		36.15		
		74643			38.10	
	Total			2,607.12	2,625.15	4,817.15
Feb. 1		74869				37.16
		44421	20.13			
		74412		37		
4		75675				37.02
		75475				36
5		72224				37.15
		18323		27		
		70378				36
		45656		29		
		40628				29
		70274			38	
		70239		36.10		
		70406			34.10	
		17150				29.10
		74313				37
		70784			38.05	
		70974		36		
		70694			37	
		75343				36
4		73246				36.05
6		18841			27	
		73138				36.15
		72365	36.05			
		73394				36.18
5		72378		36		
		55007			29.02	
		74320				35
		74048		37		
		72229			37	
		72279			38.15	
		70892				37.06
8		74158		37		
		72012				37.04
		75099				36.18
		76029		35.16		
		73655				38
		70375				36
9		75192				36.15
8		69963			37	
		45885		25.10		
		72137				37.08
		75546		36		
		73018			37.03	
9		76046			37.08	
		70026				37.17
		45074				29
		74270		36.04		
		74004		36.07		
		74285				36.17
		46404	28			
		69958			38.03	
		72230				37.06
		41061		25.06		
11		74037			37	
		70217		34.12		
		72210				37.06
		70830				35.19
		80553				24.02
		44982		26.01		
		75270			26.13	
		73470				37.02

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Feb. 11		70377				36.19
9		72431				37.56
10		74759		36.12		
		70809				36.03
		41172			28	
		75601		36.02		
		17874				28.02
		45921		26.04		
		72090			36.18	
		74143		36.01		
		76068				37
12		70643			36.02	
		18601		27.10		
		69986				38
		74438			37.04	
		75608				37.01
		70394		36.03		
		75325				36
		72261				37.19
11		74035				36.19
10		19184				27.18
		18636			25.14	
13		15833			28	
		44833			26.07	
		73769				36.05
		73650		35.19		
		75795			37.12	
		75984			36.01	
		73926				37.01
		80528			22	
		74223				35.02
		70850				37.04
		74059		36.14		
		72442				37.15
		73804				36.03
		90538		36.19		
		17824			27.04	
		72281				37.02
		39732		29.03		
15		75185				37.10
		75811				37.08
		46438	27.10			
		72744			36.18	
		74506				36.12
		73136		36		
		72247				38
		73550		35.16		
		73547	35.10			
		17946			27.02	
		45112				27.01
		18440				28.01
		74560		35.10		
		75943				37
		73543			37	
		45577				30.03
		45812		29.05		
		72055				38
		18098			27.01	
		76044		36.12		
		75857				37.09
		75941		28.10		
		45005				28.10
		18354			27.08	
		72328		37.06		
		73765				37.05
		72058				37.03
16		74997				37.05
		75798			36.10	
		75091				36.10
		73416			37	
17		72976			38.03	
		72430				37.02
		72868		36		
		74969				36.18
		75264		36.08		
		75014			37.03	
		73706				37
		73986				35.10
		75408		35		
		73737			37	
		74479		36		
		18343				28.04
		74588			36.10	
		72244			37.03	
		73977		36.02		
		72809				36
		46442			27.08	
18		72946		36		
		18588				26.05
		73917			37.18	
		46254				28
		75253		35.16		
19		74056				36.02
		74990				35.03
		45223			27.10	
		18702				27
		39618			21	
		45041		27		
		18831				26
		75868			37	
		73264				36.01
18		18173			37.02	
		73880				36.07
19		45651		27		
		75766			37	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Feb. 19		45874		27.02		
		72342		36		
		18701			27.05	
		75010				35.16
		39713		20.10		
20		44851				27
		18484		25.14		
		45413			28	
		45070				26.02
		17744		26.02		
		44936			27.08	
		45026		27		
		73700				35.15
		45449			26	
		18576			25	
		70642				36
		75413		34.06		
		75563			36.01	
		72383				36
		46352			27	
		17980				26.07
19		17489			27.10	
		42022				27.05
		72394		35.06		
		46116			27	
		45925			26	
22		15783				26.08
		45393			27.02	
		75371		33		
		40278			28	
		74519				34.15
		70763		35.10		
		45172			27.10	
		72375			37.01	
		70192				34.10
		45781		28.02		
		45266			27.10	
		74100				35
		74671		35.16		
		52209			28.03	
		46164				27
		75634			36	
		75355		34.12		
		70924			37	
		70211				36
23		73758		36.04		
		44857				26.10
		45185			25.18	
		45310		27.15		
		44926				28.10
		17800			26.10	
22		74838			36.10	
		19188		27		
		75673				35
		72568			36.15	
		75103			35.15	
23		41947		18		
		73163			35	
		73446		35.10		
		74250			36.15	
		75429				35
		72899		35.18		
		70661			37	
		43974			20	
		45834		26.15		
24		18647				27
		19250			28.03	
		42435		26.04		
		70848				34
		69918		36.02		
		74666				36.19
		75754				35
		70925			36.01	
		73739		33.19		
		75854				35.10
		76258				34
		73224			31.54	
		72886		34.02		
		74093				35.02
		75301				35.15
26		74343			35.06	
		73659			35	
27		70312		35.12		
		46236				28.01
		45997				26.08
		73361		35.03		
		73376				35.10
		74107		35.03		
		40869				26
		73617				35
		70464				35
		18492		26.04		
		39892				26
		45511		28		
		76235				35.01
		73519		34		
		18535		24.18		
		39885		26.10		
		72386				34
		74347				35
		72335		34.10		
Total			174.02	2,404.16	2,459.08	3,785.04
Total all sizes						8,823.10

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Mar. 1		70930		33.10		
		73314				35
		52229				19.15
2		19205				26.15
3		70501				35.15
		72710		36.12		
		73094				34.05
		74388				34.17
4		73437		36		
		70081				36
		75648		35.15		
		75541				34.15
		17821				26.10
		76234		35.05		
		74640				34.15
		70270		36.08		
		17378				27.15
		44912		28		
		42039		27.15		
		75003				25
5		46183		26.10		
		74379				33.10
		39174		20.03		
		75405		34.16		
		75106				35
		76027		34.18		
		73032				34.16
		72226		35.02		
		43084		26		
		70235			36.01	
		73465				35.01
6		45805			27.01	
		74256				34
		74376			35	
		75623				34
		18305		26.02		
		17651			26.02	
		75352				33.15
		72584		34.15		
		74809				24.15
		39848		25		
		18023			24.08	
		70635				23
		39934			25	
		72709			36	
		74468				34.10
		73389		34		
		76082			35.15	
		45851			26	
		45119				26.10
		17019		26.10		
8		41494			26	
		18338				25
		18149		25.15		
		45216			36	
		70636				34.05
		75244			33.15	
		44982		25.35		
		18833			26	
		46118				25.01
		40500			26.05	
		39755		26		
		74428				33
9		70443		35.14		
		74483			36	
8		72555		35.10		
		80661				23
		74389		36.10		
		74908				33.10
		40502		26.10		
		19132			27.05	
		75255		34.01		
		70143				26.10
9		73053			37	
		76020				36
		73236		35.16		
		75838			36.08	
		18498				34.10
		43833		25.05		
		39138			20	
		72203			25.10	
		18372		36		
		45503			27	
		40259				28
		45568		27		
		46233				26.15
		19131			27.15	
		72941				26.12
		43229		36.15		
		45088				20.14
		73035				26
		70708			36.10	
		75950				25
		72256			37	
		70343				36
		73782				34
		74002		34.10		
		72784			36.02	
		43775				35
		41891			19.15	
		18284	17			
		18572				27.10

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Mar. 9		72951				28.10
		73911			36.15	
		74777				34.16
		72558			36.13	
		75271			35.10	
		74451				36.10
						36.05
13		76013				35
11		73990				36
13		45407	25.10			
		44882				28
		18454		25.10		
		18462				28
		76051				33.10
12		76092			36.10	
		19216		27.05		
		15834			28.15	
		45369			28.02	
		74421			35.08	
		73396			36.15	
		72920				37
		74308			38.05	
		76135				35.06
15		75384		35		
		72248				
13		18858			28	
		72526				36.15
		74412			37.04	
		75744		35.06		
		75219			36.04	
		75000				34
15		74792			37.08	
		45652	26.17			
		72979				37.15
		75173		34		
		75923			37.02	
		76195				36.02
		12480			23.04	
		42346			21	
		18954				28.01
		70301			39	
		70521				25.01
		18976			27	
		18230				27
16		74894			37.15	
		18234		26.05		
15		72208			36	
		46334				26.18
		76022		34.02		
		45230	26			
		75060				34
		76226		35.07		
16		70146				35.02
		73585				35.15
		70808		35.07		
		73808			37	
		72623				35
		73878				35.10
		39916			27.10	
		39981	25.08			
		70568				36
17		61203				28
		42883		19.06		
		72998				36.12
		41979			29	
		74161		34.10		
16		75999			33	
		17262				26.15
		17840		26		
		74323				34.15
		70865			34.15	
17		60246			26.15	
		61229				27.08
		61391			27.15	
		61598		27.06		
		61303				27.18
		45075				27.10
		80241			23.05	
		45861				27.02
		17302			27	
		19025		26.01		
		45677				27.12
18		70845		35		
		14590			36.10	
		74172				36.04
		13503				34.02
		13575			36.03	
		70036		35.15		
		72033				36.01
		75566			36.02	
		75068				35
		69907			37.01	
		74387				35.08
		73259		34.10		
		72775				36.15
		72932				36
		74046				35
		72194			35.18	
		75165				36.01
		75410				35
		72604			36.15	
19		29183	17.18			

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Mar. 19		73117		34.16		
		75532				35.02
		18547			26.04	
		76240		36		
		40787				25
		19208			26.10	
		41992	17.10			
		76102			35.05	
		70179				25
		74059				34.18
		39865				26.10
		19235				27.10
20		70497			34.10	
		72884			36.05	
		70249				36.05
		76088			36	
		72089				35
		70500		35.10		
		76038				35.10
		15820			26.05	
		18314		27.19		
		73000				35.10
		45058	34.08			
		19102				27.19
		73552			34	
		46138				27
		70826		33		
		74467		34.10		
		75497			36	
		72214			36.04	
		15063				20.07
19		72291			36.15	
18		44009			21.05	
		72604				35
		44309		20.10		
		17116			26.05	
		18949			26.00	
		61387				27
		18008				26.15
		43589		27.04		
		40555				27.10
		42251	17.03			
22		18858				29
		69092				36.10
		41260				26.09
		75687		33.11		
		74033				36
		75219				36.13
23		45716				27
		19267			26.04	
		75022				34.05
		70528			34	
		75590			34.03	
		75661				35
		75382			33	
		75994				33
		44982		26		
		70974		35		
		75444				35
		70164				36.04
24		17936				27
		74266			36	
		44468		20.03		
		73067				34
		72369			36.08	
		76035				35.03
		70446		34.16		
		46362			28.05	
		70808				35.12
		74161			35.10	
		76022		34		
		15801			27	
25		73984				35.08
		76089			36.05	
		45507	26.06			
		72577				35.03
24		46172				26
		73370				35.02
		73119			36.03	
		74345		34.14		
		70384			36	
		75025				35
		69995			38.03	
		70214		34		
26		70952			36	
		72274				35.02
		76280			34.18	
		75104		34.16		
		74149			35	
		70714				36.10
		18717				24.09
		73397			35.14	
		72632			36.15	
		45410				27.15
		69952			37.08	
		72739		35.02		
		49967				27
		72241			37.02	
27		73901			34	
		17680		25.16		
		46336				27
		70589			35.15	
		73626				34

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Mar. 27		70254		35.10		
		75713				34.13
		18558	25			
		45592			27.17	
		75378				34.09
		43941			21.16	
		72720			36.07	
		44917		26		
		75390				34.18
		72488			36.09	
		45950				27.04
19		75929				36.02
28		74125				34.09
		74968			35.18	
		18763		26.16		
		75238				34
		75391			34.10	
		75313				35.03
		69888		33.17		
		70204			36	
		73185				34
27		74388			36	
		72752				35
		72737		32.05		
		45875			27.07	
		42546				27.05
		75942			36.04	
		45803	26.08			
		18933				28.02
		70706				36.10
		76043			36.12	
		45765	25.15			
29		73945			36	
		76276				35
		75890				36
		75748			35	
		72212				34.10
		73321		34		
		75343				34.1
		70648			37.07	
		72913				35
		46411		27.05		
30		73321		35		
29		18497			27.10	
		72148				35
		75358			35	
		45237				27.15
		44584			22	
		72948		36.10		
		75282		33.09		
		73581			35.10	
		70936				38
		75446			36	
		75161				25.10
		74857				25.02
		74124			36	
30		72778				35
		74540				34.13
		76759		34		
		76054			36.15	
		19127		24.18		
		18651				26
		72685				35
31		74726		33		
		72733			35.07	
		69906		35		
		73738		33.15		
		73141			34.17	
	Total		310.18	2,475.16	3,991.17	5,159.16
	Total all sizes					11,938.07
Apr. 1		73119				33
		18400	25.12			
		72677		34		
		44861			25.05	
3		73926			33.15	
		70654				35.15
		73794		34.02		
		75867				33
		70671				35.05
		39833				26.05
		44431			20.08	
		75619				34
		75549				34.02
		45587			26.10	
		73685				33.15
4		75266				34
		27224		33		
		76140			34.17	
		40729	25.07			
		72436				35.09
		73634			35.05	
		75338				35
		74861				34
		75887		33		
5		72798				35.10
		75842			35.02	
		75068				35
		76038			34	
4		18354			26	
		74833				34.16
		72768			35.12	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Apr. 4		74805				34.17
5		75769				34
		72693		33		
4		73347			34.18	
		43211				21
		46421				27.15
5		18700				26
		72908			34.15	
		19040				26
		72387				33.05
		18357		25.12		
		73497			35.10	
		74225				34
		74977		33.11		
		76037				24.07
		74019			34.04	
		74054			34.17	
		75822				34.10
		74100				34
6		72887				34
		75992		34.02		
		70758			36	
		76022			33.05	
		76054				32.10
		69945				34.15
		73160				34
		74565		34		
		76074				34
		74876			35.15	
7		74046				34
6		18599	25			
7		46171				26
		70711				35.03
		72009				34.10
		28006		22		
		18977				27.05
6		18419				26.10
		40873			26.07	
		74968				33.17
		73945				33
		70648		34.05		
5		17910	24.14			
7		45106	24.13			
		76073				33.08
		72070		34		
		75748			34.16	
		46378				25.10
6		74431			34.05	
8		39842			26.15	
		75101				33
		75879				33.10
		72239				34.05
		18209		26.04		
		72364				34.16
		45973				23.05
		76380				33.08
		73782				32
		4112	16.10			
		74107		33.04		
		39144				27
		45162			26.10	
		76024				35.01
		73675		34.18		
		18546				26.02
9		78828				23.10
		72952		32.10		
8		18554			25	
		75059				34
		74075				33.15
		18310				26.10
		73792				33.14
		12481		21.17		
		43299				19.13
10		39654				20
		44013			20.03	
		73679				32.10
		78618				35.05
		17874		26.05		
		70440				35.04
		70551			37.15	
		76286				34
		18904				28
		75751				27
		76047			33	
		75725				35
		18142		24.10		
		73506				33
		45148	25.07			
		70635			37.13	
		73845				33.15
12		15152			23	
		19087		25.15		
		75572				33
		74781			24.17	
		76353				33.09
		39741		25.17		
		33747			34.14	
		45803			26.14	
		44866			27	
		70800				35.05
13		45706				27
		45764			27	
		18055				28

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Apr. 13		17914		24.10		
		42182			26.15	
		15823				27.10
		44817			26	
		70083			34.02	
		45578			28	
		73444			34	
12		73798				35.10
		73701			34.02	
		75042				33.17
		74974				34.05
		18442			26.15	
14		18569			26	
		75787				32.10
		17976			26.15	
		72814			34.05	
		70948				36.08
13		45839			24	
		18329		26		
		45125				27.10
		44862				12.02
14		18750			26.02	
		73898			33.10	
		72618				33
		73814		33.05		
		42947			18.10	
		18240			27	
		75543				34
		76115		33.06		
		70651				36.11
		73562			34	
		70866				34.15
		8648		21.05		
15		74378				34
		76397				32.10
		8288		20.10		
		74817			34	
		39922				27
		18454			25	
		72895			33	
		76319			32.06	
		76365				33
		73920		32		
		19207				28
		18650				26.06
		70048			36.10	
		17246				27
		76958				32.10
		76360			33.05	
		74907				33.17
		75074			34.02	
		75285				33
		74693			34	
		70222				34
		41534		16.12		
		75737				33
		75064			33.55	
		72023				34.05
16		73856				32.05
		70691		34		
		73990				32
		70901			34	
15		45408	24			
17		73087				34.10
		74854				37
		75206			33.10	
		75790			34	
		74995			34	
		72434				32.15
		70581		33		
		73507			35.10	
		75559				33.12
		75956			33.15	
		75789		32.18		
		74636			34	
		46015				25.10
		18762				27
16		73553			33	
		12827			21.06	
		75762			33	
17		44951			26	
22		45434			31	
21		70168				37.08
		74574		36		
2		73256				39
		73061			40.15	
		18579				29
		74645			40.17	
		43077				23
		45726		28.15		
		74685				39.14
23		73709			40.04	
		18829			28.14	
		74120			40.09	
		70192				37.06
27		39853	29			
		76386			40.18	
		75055		39.12		
		73105			41.12	
		74676				39
		46429			28.15	
		73442				38.12
		72163		39.13		

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Apr. 27		73771			40.14	
		73668				39
		75633		38.13		
26		45560			28.19	
		18343		29.04		
		75359				37.15
		43787			23	
		46333			29.17	
24		74424				37.14
		76170			38.07	
		72144				38.15
26		74662			39.11	
		74815				37.13
		74944		37.10		
		75284				37.16
		70260			38	
		75131			39	
		73089				38.16
		74622			40	
		75009		38.18		
		73937				38.16
23		70421				36
		76518			40.14	
		70957				36.11
		76477			59.06	
		73878		37.14		
		61354				31.04
		75917				38.14
		72899			40.07	
		73495		37		
		41061	27.04			
		18830			28.02	
		74305			40	
		74671				37
		75005		37		
		72408			39.19	
		17956	27.04			
		73822			41	
		72611				40.04
		74000			42	
		72929		40.05		
28		75839				39.05
		75509				38
		72219				40.04
		75001			41.08	
		72772			41.16	
		76509				38.10
30		45193	26.12			
19		74799				38.02
22		74010				38.13
		73075				39.15
	Total		300.03	1,246.04	3,248.14	4,413.02
	Total all sizes					9,309.03
June 1		72845				39.08
		74906				39.05
		72755				39.10
3		73240			38	
		74445				37
		76011			38.12	
2		70808				35.09
		45699		30.04		
		74879			38	
		72107				38.12
		72980			40	
3		87000				21.05
		70874			36	
		70357				34.12
4		75505			37.09	
		70337				35.00
		70071			35.11	
		70180				33
		76023			37.09	
		75104				35
5		72555			39.16	
		75611				37.10
		43229			21.01	
		45079				26.16
		75343		36.13		
		75869			37.12	
		70946				35
		75448			38.13	
7		70822				34.13
		73479			37.06	
		73831				26.10
		45824			27.05	
		18971			27.10	
		45423				28.06
		70699		35.07		
		18879			26.15	
8		17858			27.08	
		39911		29.02		
		39809			27.06	
		15635	21.08			
		73301			38	
		75714				38.02
		41266		27.07		
		45243			27.02	
		46220				28
		45222			27.13	
		18321				26.15
		73913			38.10	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
June 8		73888				37.11
		76215				37
		70443		35.10		
9		73504			37.06	
		17295			27.06	
		15869				26.13
		45106			28.01	
		40345				26.06
		17192			25.12	
10		18332				27.04
		70848				34.10
11		74860				37.15
		73137			38.12	
		75455			37.18	
		75312				37.18
		74768			38.05	
		73835			38.12	
		70110				37.06
		73727			38.15	
		72385			39.03	
12		46426				28.02
		75094			39.03	
		70645				37.02
		70700			34.16	
		72473			38.03	
		72600				38.03
		73659			38.05	
		73790			39.03	
		19190	35.14			
		72944				37.18
		75153			39	
		75595			39.13	
		70227				25.03
		72005			39	
		73052				33.19
		75527			36.18	
14		70933		35.02		
		76536			39	
		74871				38.13
		46180			29.01	
		69938				29.10
		18184			27.09	
		72267			38.13	
		46418				28.06
		74803			38.16	
		73367				37.08
		72875		38.08		
		72186			38.05	
		70832				35.19
15		79991				36.01
		72947			39.03	
		73170				37.18
		72055				39.03
		72269		39.03		
		70088				35.04
		73114			38.14	
		75397			38.15	
		75914				56.16
		72784			38.02	
16		72900				38.10
		75310			38.04	
		72805			38.05	
		75355				37.11
15		15846		27		
		75927			39.02	
		73412				38.13
		72508			38.04	
16		71782			38.18	
		46814		20.11		
		46289				27.10
		39948			27.16	
17		70786			36.08	
		45410	27.13			
		46347				27.07
		73214			37.16	
16		46407				28.02
15		17925			26.14	
16		45846		26.08		
		45023			27.05	
		74391				36.01
		70500			36.04	
		73112			39.09	
		17923		27		
17		75116				36.17
		45616				26.17
		44875			36.09	
		70707			36.09	
		73554			38.06	
		70309				36
		74065		37.01		
18		43072			28.05	
		18397		27.07		
		75403				37.03
		74874			37.11	
		46399			23.11	
		72283			39.01	
		45379		27.13		
		73057			38.04	
		72946				37.17
		19240			25.12	
		72825				38.01
		46235		27.06		
		72477			38.13	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
June 18		70301				35.18
		75215			38.19	
		75152				38.03
19		18737				36.11
		45257			28.01	
		17794	26.07			
		73931				38.17
		75411			38.04	
		75315			37.02	
		75250				36.18
		75243			36.17	
		18015				26.14
		39795		27.10		
		45914			27.10	
		70781				36.05
		72007			39.11	
		39870				28.02
		45536			28.02	
		70200		34.01		
		70206			34.17	
21		69979				39.03
		45815				27.03
		73852				34.04
		40513			28.02	
		75549			37.15	
		70891				34.18
		74765			35.14	
		74761			28.13	
		74778				37.12
		75580			38.10	
22		76491				38.16
		76349			37.11	
		75039				37.08
		72623			38.01	
		74192				36.04
		70651			35.07	
		72744				37.03
		72720			36.17	
19		70592		35.14		
		70154				35.10
		74466			38.08	
		75352			38.18	
		45311	27.14			
		73479				37.03
		70435		34.09		
22		73249			36.11	
		70272				35.01
		18765		26.01		
		76290			38.13	
		76557				37.02
		73220			36.11	
		45798				27.04
		45237		27.07		
		19212				25.13
		72159			39.09	
		46082	27			
23		46144	25.09			
		73166			37.01	
		74484				38.14
		70841			33.10	
		74508				36.09
		70713		34.14		
24		18798			27	
		72320				37.03
		75478			37.13	
		72940			38.12	
		45513	26.11			
		75239				36.02
		19113				27.05
		45187			27.06	
25		70603		36.04		
		73882			35.07	
		73116			38.05	
		75487				36.17
		75367				36.15
		74306			38.05	
		76103			37.16	
		44956				27.14
		76326			38.15	
28		76438				37
		76173		36.19		
		76198				36.03
		72174		37.16		
		74173			38.04	
29		72834				36.16
		75821	39			
		76192			39.15	
		72149				37.09
		76000			37.02	
		72872			37.16	
		75055				35.13
		73707				27.03
		70686			37	
		72525		38.03		
		72957		38.03		
		74779				36.11
		75929				36.16
		75751	29.03			
		74129			38.04	
		74610			37.02	
		72479				37.06
	Total		275.19	898.09	4,090.05	3,403.10
	Total all sizes					8,668.03

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
July 1		70014				34.06
		73881			37.02	
		73475				37.17
		74275		36.16		
		75301			36.06	
		74549				35.09
		70407		36.01		
		76111			37.08	
		75068				37.18
		39840	27.06			
2		40902	25			
		45790		27.14		
		75937		36.04		
		17812		27.03		
		72002		39.09		
		18329			25.18	
1		70037			34.17	
		73802			37.11	
2		72298			36.16	
		73877			37.06	
		76430				36.14
		73545				36.04
		73736				35.16
		73436				37.10
		73986				37.14
1		72080				38.01
		75068				36.04
3		75540			38	
		74201			36.07	
		76057				36.14
		69943			39.01	
		70143				34.18
		72046		37		
		73228			37.10	
		74074				38.03
6		70793			34.17	
		72514				37.05
		74679		37.19		
		72753			37.13	
		74419				37.01
		70218				36.01
7		72202			37.04	
		70927		36.04		
		72741				37.06
		17123			27.17	
		39618				22.12
		72035			39	
		44194		22.10		
		73387				38.18
		18816		27.04		
		43303				21.18
		45208				27.03
		41497		28.05		
6		18637				28
		70040			35.19	
		74865				37.02
		75517	39			
9		72787				37.14
		74345			39	
		39953		28.05		
		75544				35.16
		73702			37.15	
		69961				38.10
		45860			28	
		39742				28.01
		19051		26.18		
		18009				28.09
		73704			38.15	
		70709				53.07
		73177				38.06
		17184				28.18
		45094			26.04	
		18518	27.10			
10		44307		21.10		
		18398				26.12
		46090			27.03	
		73376				37.07
		74843			39.05	
		74065				37.18
12		40579				37.05
		74731				37.18
		74593			38	
		74460		*	38.05	
		17916		27.17		
		18196	27.10			
		75107			38.17	
		73631				38.03
		75044			37.16	
		75760				39.13
		69914			40.17	
		73198				36.08
		70461			35.02	
		44020	21			
		72968		39.15		
		18225			26.11	
		19092				26.04
13		18638				26
		76076			36.14	
		45039				27
		75199			38	
		75501				38.11
		72659			39.17	
		72617				39.08

Detailed statement of claim for excessive freight rates, etc.—Continued

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
July 13		74032		38.04		
		74038			39.05	
		73556				38.08
		74560	35.14			
14		73016				37.11
		76516				37.03
		18353			27.05	
		72414				36.14
		72518				36.14
		72516		18		
		72131			36.01	
		75106			37	
		74307				36.16
		75297		36.09		
		17788			27.09	
		18658			25	
		72238				38.18
15		73122			38.14	
		74288				36.19
		44886	27.16			
		75200			36.18	
		75303				38.06
		39929		26.18		
		73360				37.09
		76389			38.02	
		72363			37.15	
		43118				20.14
		19281			28	
		17947		26.12		
		75171			36.16	
		18469				27.14
16		17793	25.09			
		45564			28.04	
		18128			26.02	
		72758				39.18
		73953			28.15	
		74511			38.15	
		72499				37.13
		70889		34.14		
		45797		28.02		
		75073				37.01
		70526			36.14	
		70771			37	
17		72880			37.10	
		18454				26.14
		61085		28		
		8826			22.12	
		7955			22.03	
		12336				21.06
		8459			21.07	
		12451				22.03
		15410		22.05		
		45963			27.07	
		46133			26.11	
		75793			39.15	
		46275				26.16
		72275			38.05	
		17827	25			
		18925				24.07
		44776		22.02		
		45304			27.17	
		18575				27.12
19		76003				35.14
		45745			26.05	
		71006				33.10
		75239			37.01	
20		74392			37.03	
		7757			22.05	
		19093	25.13			
		74407			38.11	
		75359			37.17	
		73525			35.10	
		75705		37.08		
		72036				37.14
		73051			38.03	
		76078				38.12
		70599			37	
		75948			41	
		73002				38.11
		76152		37.11		
		73788			39.03	
		75877				39.14
		73093			41.03	
		75886				38.05
		73501			40.03	
		74924		38.01		
		72635				38.03
		70202			36.06	
21		43725			23	
		72542				39
		40955			28.17	
		70098			36.07	
		17835			26.11	
		18179	26.12			
		74932		28		
		75053				38.03
		73598			38.10	
		46281				29.03
22		72853			39.13	
		75654				35.14
21		70605			36.15	
		41107			27.18	
		70061				38.03

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
July 21		45685		26.18		
		70582				35.13
		18176			26.16	
		61667				31.05
		45593			28.12	
		75309				38.18
		74995			39.15	
		76591			39.14	
		70108				36.15
		44252		28.05		
		61301			30.08	
		45357				28.16
		18442			29.10	
		44893				28.09
22		44525			28.14	
		19230		28.04		
23		46278				28.02
		73177			40.04	
22		42000	19			
		7569			22.11	
		18480				26.07
		74666			36.09	
		45388		27.03		
		45852	27			
		75119			38.15	
		74133				26.14
		73885				36.08
		70546			35	
		76406				33.01
		73760				38
		18925			25.12	
		18454				25.17
		76516			39.01	
		18638				26.02
		73556			36.10	
		18994			25.15	
		75745				38.03
		75706		37.12		
24		73896				37.01
		74187			38.15	
		18949	26			
		73276			38	
		73331			39.05	
		74800			38.05	
		70653				33.04
26		70199			36.15	
		72890				39.02
24		45455				27
		73400		36.04		
26		18870	26.15			
		74071			39	
		73516			40.09	
		72947				38
		73516			40.07	
		75024		38.08		
		73282				27
		73638				37.03
		74585		37.16		
		73668				37.13
		76198				36.14
		70565			37.01	
		70864		36.05		
		70122			37.09	
		72117				37.17
		75175			38.10	
28		45866			28	
		75246				37
		45241		26.08		
		74085			37.15	
		74483				37.05
		75306				37.15
29		76093			39.06	
		75161				39.05
		75256		37.14		
		73977				39.06
		17780			29.16	
		46141				29.15
		72429			40.04	
		72505				39.19
		73250			38.05	
		70431				36.12
		42715		27.10		
30		18465			27.12	
		45607	28.03			
		45644				27.15
		72452			39.05	
		75636				37
		70385			35.18	
		75513				37.03
		72769				38.03
		70384			35	
		74552				37.15
		75093				36
		7347				23.10
31		19056				26.03
		73580			38.10	
		75867		28.07		
		73237				36.18
		39786		26.13		
		17877			28.05	
		18080		28.02		
		45386				30.08
		17814			29	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
July 31		74175			39	
		73913				36.05
		19137	23.15			
		73969			38.01	
		46377				27.18
		39233				28
	Total		487.03	1,488.05	4,289.01	4,320.07
	Total all sizes					10,584.16
Aug. 2		46099				27.05
		73835			38	
		73119				37.05
		75569		36.03		
		17690			21.15	
		76494				37.11
		75760				37.02
		72145			38.10	
		19028		25.18		
		73734				36.12
		73785				36.14
		73656				37.11
3		75725			38.01	
		74277			37.09	
		76527				39.18
		45536				28.14
		75155			38.03	
		39839				28
		76534			37.12	
		18608			25.14	
		72204		38.07		
		19098				37
		44555				21.06
		17314	17.12			
		73585				38.05
4		40517				27
5		45824			28.14	
		44243				21.03
6		39320			25.12	
		39819				26
		45337		27		
		45178				26
		12347		21		
		76596				35.04
3		75684				37.15
9		39529				20.05
		44599				20.15
		72459				36.13
10		43981				30.17
		18209				27
9		7417		23.06		
		45861	27.06			
		45211				26
10		19028				25.08
		73360			36.02	
		46355				25.11
		75325				34
		46301		27.19		
13		75168				35
		74803				36.18
		74461		35.05		
11		72063				35
		46055		27.13		
		44485			20.05	
		18756				25.13
		46112				26 19
12		74597			35.03	
13		73066				35.14
		73808				36.12
		46102	28.05			
		45006		27.02		
		72358				36.04
		43651			20.02	
		17991				27.01
		44113				21.01
		17826				26.07
		39751			27	
		75631			35.19	
14		45912				26.03
		40306			25	
13		73900			36.17	
		75794				38.03
14		17824				25.04
		46302				25.16
		45965		26.08		
		74195				37.15
		74963			37	
16		46173		26.18		
		74857				37.07
		45793		27.05		
		73097				36
		44194				21.02
		44554			22.01	
		42804				21
		44508			20.11	
		73986				36.02
		45191			26.02	
		39897		27.02		
		73923				37.02
17		75459				35.13
		75873			37.08	
		74939				36.14
16		69951				39.13

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
July 17		46275	27.10			
		72861				36.11
		45986		27.11		
		46148			26.10	
		39772				29
		45292				28.04
		15823		27.03		
		76169				35.12
21		69934				38.13
		69804			40.04	
		69967				38.05
		40533			27.13	
		76215				37.16
		17059				28
		39778				28.05
20		75309		36		
21		74310			36.16	
		76057				37
		76189				36.08
20		75299				37.02
		70597				36.10
21		70031				34.01
24		45823			36.11	
		55003				25.11
		40820				27.02
		72355			39.05	
		74835				37.13
		75840			40	
		76469				39.08
22		46170				25.04
23		75453			38	
		75773				36.10
		39746			25.16	
		45438		27.15		
		73126			37	
		72998		37.04		
		70620				33.14
		44989			26.14	
		39985				28
		17030				28
25		74101				39
		74212				37
		75580			37.14	
		74905		36.12		
26		76143			37.08	
		75110				37.13
		73920				39.03
		72627			39.15	
25		76050				38
		19186			27.03	
		74602			37.10	
		74246				38.13
		73858			38.17	
21		18811				28.16
		76397				39.05
		76847			39.08	
		70303	31.06			
24		19279			26.07	
		72808				39.06
		74644			40.03	
		17469				28.09
25		45900			28.16	
		41225			28	
		70388				33.14
		70792			35.08	
		73832				37.06
		73076			37.01	
27		75555				37.17
28		75545			38.04	
27		75408				38.18
		76423				37
		18532			26.18	
		75100				39.08
		75232			37.15	
		46126				28.13
28		74417			29.05	
31		73784				39
		76027			39.05	
30		73603				39.10
		75575			39.17	
		70700				37.11
		70167			36.10	
		70942			37.12	
		75040		39.05		
	Total		131.19	628.16	1,851.09	3,115.09
	Total all sizes					5,727.13
Sept. 1		75697				36.10
		73980		38.09		
		96201			38.18	
		70468			34	
		18418				28.18
		76580				39.03
		70278				35.15
		72636				39.10
2		72872		39.03		
		73038				38.05
		7097				36.05
		75791				37
		72520				39.08
		72867			39	
		76595			39.15	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Sept. 2		73932				39.18
3		72718			40.16	
		76111				37.01
		76594			40.09	
		75045			40	
		74510				37.05
		72428			37	
		72487			38.17	
		73901				37.15
7		72564			40.05	
		46058				28.02
		74195			39	
		45167				29.05
		46113		29.03		
		18892			28.19	
		45567				26
		41058			21.05	
		74945			38.05	
		70902				36
		75354			39	
		73004		39.10		
		73432				37.12
8		75511			38.15	
		73218				37.05
		18317			28	
		72338				36.18
		73088				39
10		73455				34.15
		70948				32.08
		19002		27.08		
		75000			38.07	
		72736				38.12
		73538			38.19	
		75889		26.08		
		73904				36.15
		70135		35.18		
		70569			35.15	
		76083			34.19	
		76092				37
		73039			38	
		70534				38.12
		73842			38.06	
		72297				38.04
		74169			37.09	
		73094				37.10
		18951				27.07
11		72555			39.05	
		75732				38.03
		73145		38.08		
		72982				38.17
		17994				28.08
13		75563			38.10	
		74595				38.03
		74986		37.16		
		73456				37.04
		72845			38.15	
		74522				37.16
		76011				37
		74814			37.16	
		74887				35.05
		76242		38		
		73557				37.03
		76527			38.18	
		75170				37.12
		72764			39.15	
		73957				38.11
		75710				37.10
		75702			38.04	
		72839				37.12
		74207		38.10		
15		70703			35.09	
		45103				28.15
		45464				28
		17747				27.10
		74281				38.04
		73448			38.03	
		75954				36.04
		74339		36.11		
16		69984				38.05
		19001			27.05	
		74706				38.03
17		17297				27.07
		46187				27.10
		18815			28.10	
		43280				29.09
		44279				22
		45678			27.17	
		18219				27
		74440				38.05
		46255				27.05
		44067		21.11		
19		75082			38.03	
		75856				38.13
		70482				36.02
20		15268			22.05	
		76068				36.12
		74942			38	
		75631				36
		43072			27.11	
		70072				34.07
		73075				34.18
		72363			38	
		17884				27

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Sept. 20		75051				37.10
		73426			36.13	
		75012				36.07
		73564				35.15
		17331		27.02		
		73826			37.01	
22		74487				37.17
		73423				36.07
		74409	35.08			
		76144		35.17		
		74198				37.18
		75941				36.16
		73671			38.10	
		76054				37
		73475				38.01
		44892				28.12
		76181			38.07	
23		75911				36.15
		76305			36.15	
		70977				35
24		75810				37.15
		76230				37.13
		70309				34.15
		18191		26.02		
		45357				28.18
		17399				27.16
		39929				28.16
		75560				37.07
25		39789				27.15
		74042				37.06
		75710			36.14	
		45795				27.13
		73384				37.05
	Total		35.08	536.16	1,699.16	3,018.04
	Total all sizes					5,290.04
Oct. 1		74643				37.03
		17030				26.15
		19262				27
		17785			27	
		72163				36.14
		74952				36.03
		75548				36.13
		74470				36.16
		74361			39	
		45773				27.02
		42277				26.09
		69952			39.05	
		69913				39.13
		72957				38
		74804			37.06	
		76560				36.14
		69943				40.02
3		55011			28.12	
		55062				26.03
		19621		27.17		
		76503				34.10
		70931			33	
		70676			37	
		79620				27.18
		41497		28.13		
		73471				39.03
		74369			38	
		72665				37.09
4		75594				26.05
		40679			27.10	
		18622				26
		18105				25.07
		45785			26.16	
		17173				26.10
		70175			34.10	
5		69940				36.01
		74406				36
		72992				25.07
		76370			36.13	
6		76017				36.09
		74006			37.10	
		74084				35.18
		72523			36.13	
		72368				36.05
		74413			36.00	
		44428				25
		18312		26.06		
7		76310				36.07
		73543			38.03	
		70468				33.14
9		73921			36.12	
		72039				37.05
		72265			36.10	
		70087				33.01
		75752			35	
13		44255			21.16	
		74863				36
		70293			33.12	
		75542			36.19	
		70138				31.03
12		72833				36.12
		70584			30.10	
		46160			25.08	
		46045		25.18		
11		74007			37	
		70477				33

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Oct. 11		76448			37.16	
		72294				34.14
		75445			36.15	
		70751				32
		12857			26.05	
		70419			33	
		69949				36.04
10		45173				25.14
		45851		26		
		76323			36.03	
		72497				37
		76465			37.11	
		41805			20.10	
11		73433		37.02		
14		73181			37.08	
		75404				35.07
		73642			35.14	
15		70520				33
		39743			26.18	
12		46150			24.05	
		72742				37.01
		72068			36	
		39642		21		
		42715				26.17
		74824			37.01	
		40569				28.05
		76447			35.05	
		73045				33
15		74469			35.03	
		72114				35.10
		73500		37		
		73991				32.05
16		18116			26.07	
		74890				35.16
		17884		26.11		
		72730			37.17	
17		73918		36.10		
		76376				36.08
		70303			35.07	
		18029			25.09	
		75627				36.18
		70383			34.10	
		72452				38
		72951			37.01	
18		18973			26.16	
		39060			26.14	
		40416		26.12		
		44956			25.09	
		45828				26.03
		76335			37.12	
16		40530			25.01	
		45232				25.14
20		75818			36.10	
		69966				38.10
		70010			35.14	
		73554				36.09
		46290			27	
22		72522			36.10	
		75981				35.01
		72685				35.12
21		40250			27.02	
		70810				25.12
		70923			35.16	
		41639				26.07
		75140			38.17	
20		73332				37
		74703			38.02	
22		74912			37.16	
		44905			27.10	
		70313				37.03
		72124			38.08	
		74308		35.16		
		39780				26.11
		76305			38.03	
		18490				26.05
23		18882			28	
		45345		28.03		
		74893				37
		40983			25.10	
		46398				26.12
		45066		26.06		
		73809				33.10
		75307			22	
25		74328			34.01	
		75155				33.08
		44821			24.09	
		74468		35		
		75430				34.07
		73782			36.12	
		72745				24.12
		72099				33.07
		73050				36.14
		73043			35.07	
		72302				35.12
		73213		36		
		70611				35
26		39906			25.12	
		75421		35.16		
		72618			36.04	
27		70415				35.02
26		75034				34.15
27		4[illegible]			27.10	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Oct. 27		70657		34.17		
28		44843		26.18		
		45483			25.08	
		45923				27.09
		74120				25.06
		73998		36.01		
		45849			27.10	
		45008				24.18
		70231			34.18	
		76180				36.16
		72431		35.12		
		69982				37.10
		45493			26.11	
		76322		37.05		
		73789			36.10	
		74230				37
30		79146				34.10
		74327		35.06		
29		18725				25.18
		76452		36.08		
30		72190		36.09		
28		72552				33.06
	Total					6,643.06
	Total all sizes			823.05	2,526.03	2,893.18
Nov. 6		46010				27.12
		70044				33.18
		73148			35.19	
		72063		36		
		75350			36	
		73331		35.12		
		76533				35
		17932			28.02	
		73281			37.10	
8		74140			35.12	
		74833		34.11		
		72912				34
		72815		36		
		75360				36.08
9		70334				34.10
		39853		26.16		
		17823				25.06
		72312		37.04		
		73401				33.16
		39764			27.09	
10		45412				26.06
		72080		35.10		
		70039				32.02
		72040				35.10
11		18304		27.05		
		45748				26.03
		75553		35		
10		70517			33.02	
		70781	35.15			
11		70244		36.15		
		18330				26
10		75457		35.16		
		70741				33.05
12		73305		36.10		
		72253				34.04
		72730			37.18	
		72332				36
13		69986				39
		73247			38.08	
		18322			27.12	
		73982				36.04
		19186			25.12	
		45230		26		
		75117				37.02
15		73009		36.04		
		72410				36
		39787			26	
		46304				26.08
		45123			27	
16		76363				36.11
		74616		35.18		
		75009			37.12	
		70807				35.04
		70513				33.12
		70544			36.19	
17		76208				35.05
		73792		36.04		
		75409				35
		72574				37.08
18		17140		27.10		
		70729			36.05	
		70832		34.14		
		70061		36		
		75107				36.15
		70283				35.15
20		72044				36.18
		73379		36.15		
		46117				27.04
		70052		34.05		
		76333				36
19		18116				25.10
		46554				26.15
		45367		36.02		
22		47081				36.15
		45363		25.17		
		70152				33.05

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Nov. 22		45164		26.02		
		73463		38.01		
		45882				27.05
		73196			38.15	
24		74043			38.15	
		76405				37
		70123		34.04		
23		73132		36.18		
		39734		27.16		
		74297			39.10	
		74502			36.05	
		72380				36.07
		75925		36.04		
		75834				38.05
		73961		36		
		19004		26.07		
24		18739			28	
		19102				25.03
26		19196		26		
		75999				36.10
		42108				27.10
		18780		25.15		
		45475			28.15	
		45689				28
	Total		35.15	1,444.00	1,075.09	2,235.18
	Total all sizes					4,791.02
Dec. 1		70784				35.09
		75646		36		
		72184				36.18
		76062				38.05
2		45093				27
		41344				27.18
		46229				27
3		70964		34.14		
		76113				37.05
1		17856				25.18
8		75015				36.04
		74575				36.05
10		72782				37.13
		76332				35.09
		70711				35.05
		70499		32.10		
		74225				36
11		74657				35.14
		18380				25.18
10		18968				26.15
8		74030				37.02
13		73319				37
		74061		35.18		
		73357				36.13
		72888				37.11
		73718				36.01
14		76591				35.01
		76073				35.15
		76331				36.13
		73322		36.04		
15		74027				37.08
16		18808		26.04		
		8060				22.08
15		18430				27.05
		70036				32.07
16		45262				26.14
		45150				26.12
17		76191				35.19
16		70551				32
		72406				37.08
		18570				26.10
17		73362		37.02		
		45197				25.04
18		39820				27.13
		70265				34.10
20		18932				27
		39850				27
		8135		21.15		
		40305				26.05
		73292				34.08
		17924		26.18		
		74310				36.15
17		70063				30
22		75134			26.12	
		73613				36.04
23		74608				36.18
22		44498			20.12	
		44010			22	
		43929				21
		44375		21.01		
		41717			21.07	
		44546				20.09
23		42759			20.07	
22		44354			19.17	
23		72120			38.18	
		72932				37.12
		70277			36.05	
		17938				27.18
		72738			38.05	
		18673				27.04
24		72180				36.17
		43704			21	
		18927			27.11	
		75563				36.12

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909						
Dec. 24		70213			38.10	
		18133			26.08	
		18795				26.05
		45515	25.12			
27		74115				35.07
		73358				36.13
24		70866		34.07		
		73124			38.10	
27		75422				35.04
		39969		26.15		
		72145				36.05
		74812			25	
		73550			34.05	
		76262			36.03	
29		72813			38.05	
		70856		37.04		
		69950				37.12
28		76421			36.12	
		76308			38.01	
		70841				35
29		75688				34.18
30		74618				36.03
		74800			37	
31		69916				37
		75352				36.05
	Total		25.12	406.15	651.08	2,093.03
	Total all sizes					3,176.18
1910						
Jan. 3	D., L. & W	41058			21.15	
	do	73386				36.12
	do	44404				21.10
	do	42478			20	
	do	45795				28.03
	do	73000			37	
	do	74757				26.07
	do	44932		25.07		
4	do	70527				34.17
5	do	73435				37.14
	do	45179				26.18
4	do	75298				34.12
5	do	74508				34.10
6	do	74048				37.12
	do	76577				37.12
7	do	75378				33.16
	do	72453				36.05
8	do	73897				34.06
	do	75199				36.08
11	do	74636				37
	do	42802				18.05
	do	74085				32
10	do	74795				35.06
	do	73402				37.12
	do	75285				36.08
12	do	76171				37.18
	do	70083				34.18
	do	75644				37.12
13	do	18511				26.18
	do	72689				38.01
14	do	45915				27.18
	do	46293				27.14
	do	72634				36.10
	do	75794				36.09
	do	18330				25.18
18	do	45914 or 45984				27.01
	do	74862				36.01
24	do	72988				37.05
22	do	46304				26.07
	do	72310				37.15
25	do	8052				24
24	do	72109				36.03
26	do	46172				26.14
	do	17482				26.15
	do	72256				35.13
27	do	73089				35.17
26	do	70404				35
	do	70776			35.15	
27	do	75223			36	
	do	72747				36.15
	do	70647				34.15
28	do	41681				26.03
	do	19175			27.05	
29	do	45700				26.18
	do	45308			27.06	
	do	44583				20.13
28	do	70196				33
29	do	74239				38.01
	do	75578			34.15	
	Total			25.07	239.16	1,662.03
	Total all sizes					1,927.06
Feb. 1	D., L. & W	73067				35.10
	do	73397		33		
	do	74310			34.04	
	do	76452				34.12
	do	75771			35	
	do	76369				34
	do	76237		35.01		

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
Feb. 1	D., L. & W	76353				35.04
	do	73264			35.14	
	do	73899				35.15
	do	72661				35.10
	do	19146				25.16
	do	75008			34.15	
	do	73501				33
2	do	70681		33.01		
	do	46377				25.05
	do	75789				35.09
	do	73607			35.05	
	do	73753			33.15	
	do	70194				33
	do	73458			35.02	
	do	74158				36
3	do	76519				34.05
	do	74122			36.12	
	do	70980				33
	do	70894			34	
	do	70100				34.07
	do	75582		35.07		
	do	45331				26.08
	do	76305			35.06	
	do	72912		35.14		
	do	73672				36.04
	do	73321			35.04	
4	do	73920			38	
	do	76414				35.15
	do	74381				34.12
	do	72012		36		
	do	75071			36.15	
	do	73040				36
3	do	46234			29	
	do	75754				34.05
5	do	70157		34		
	do	75168				34.18
	do	73442				37.11
	do	72743			36.18	
4	do	72207				35.10
	do	76389		35		
	do	72266			36.06	
	do	70408				36
5	do	75418				35.05
	do	69986			35.07	
	do	74287				36.12
	do	73071			37.12	
	do	72535		35.12		
	do	45068			27	
8	do	69996				37.14
	do	72322			37.18	
7	do	72884				37.08
	do	75474		36.08		
	do	74623			36.12	
	do	75712				35.04
	do	44846				27
8	do	40509			27.12	
	do	72154		35.10		
	do	18412				27.05
	do	72631				36
	do	73056		37		
9	do	70430				32.18
		73523			36.05	
		74565				33.14
		74969			37.11	
		70090				35.18
		45903		30.05		
		70633			35.69	
		75489				35.01
		75261		34.18		
11		44926				26.04
		18584				26.08
		70046		33.15		
		72733				35
10		73858			36.15	
		73006				37
		76008			35.09	
11		70800			35.05	
		75267			36.05	
		75434		37.08		
12		44953				26.13
		18284			26.15	
		72365		36		
		75828			38	
		70417				26.01
		18345				25.10
		73788			34.07	
15		76192				33.04
		70125				33.01
		73368			35.09	
		45580		26		
16		19276				24.14
		73209		38.05		
		72231				36
		45395				26.13
		73371				34.19
		45761			27.03	
		74116		35.05		
		73439			36.04	
		43072		27.18		
		46129		29.03		
18		75747			35.16	
		72618				35.15
		72152				36

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
Feb. 18		18950		26.04		
19		70417			34	
		45299		27.14		
18		18557		26.11		
19		75313				33.12
18		39225			26.10	
		45894				25.16
		76314			35.02	
		72847				35
19		76301				35.04
		45537		26		
		72573			35.14	
		44856			25.05	
		73612				34.18
		18643		26.05		
		73845				34.07
		75317			36.15	
		74403				37
		41291		25.04		
		70525				31.05
	D., L. & W	75693			35.10	
21	do	70546				34.10
	do	19227			26.04	
	do	70516			35.03	
	do	40272		26.17		
	do	72947				33.16
	do	17622		25		
	do	45086			25.18	
22	do	17962				26.13
	do	76062			34.03	
	do	75961				33.05
15	do	44829				26.05
23	do	46176				28
	do	75087				34.13
	do	74840			33	
24	do	74940				34.11
	do	70329			34	
	do	75669		34.02		
	do	69937				37.14
	do	70299			34.10	
	do	43699		20.06		
25	do	45158			25.17	
	do	74049				36.15
24	do	75943				34.04
	do	17140		26.08		
26	do	75541				36
25	do	72021				31.10
	do	72426			36	
	do	74046		34.15		
	do	76563				36.10
	do	74390			35	
26	do	70181			33.15	
	Total			1,075.19	1,833.16	2,461.19
	Total all sizes					5,371.14
Mar. 1	D., L. & W	75046			35.15	
	do	75988				35
	do	46180				27.10
	do	76223			34.14	
	do	76022			37.08	
	do	74545				36.03
	do	15788			25.13	
	do	73464				33
	do	76308			37	
	do	76019				32.12
	do	75852		38		
2	do	72371		36.03		
	do	70635			33.15	
	do	72483				35.08
	do	18502			26.07	
	do	74801			33.18	
1	do	74140		34.03		
2	do	43517			20.01	
1	do	75869				35
	do	74011				35.02
	do	70464			35	
	do	74803				34.02
	do	74450			34.12	
	do	70391				32
	do	70982			32.04	
	do	73009				33
3	do	72947				36.09
	do	75881			37.12	
	do	72517				36.03
	do	74902			36.10	
	do	74816			36.04	
	do	40630				26.08
	do	17947			25.05	
	do	72062				34.02
	do	74718			35.14	
	do	44863				25
	do	18367		24.07		
	do	74460			25.12	
	do	76495				35.13
	do	42934				25
5	do	74492				35.18
	do	70970			34.17	
	do	76254				34
	do	73353			38	
	do	40309				26
	do	17781				25.06
4	do	70657				34.04

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
Mar. 4	D., L. & W.	18428			25	
	do	18459			25	
	do	43485			25	
	do	70023				33.05
	do	46278			28.12	
	do	72285				37.10
	do	18038			25.12	
	do	73184			37	
	do	76106			37.14	
	do	74239				36
	do	72375			39	
	do	73115				36.14
8	do	75116			37.14	
	do	72459				36.01
	do	75270			38.06	
	do	42045		27.03		
	do	18403			26.18	
	do	18056				27.08
	do	70620			34.04	
	do	73235				37.10
	do	72891			38.02	
	do	75387				36
	do	18089			28.01	
	do	70640				35.06
	do	45463			27	
9	do	46071			28.00	
	do	72349				38
	do	74443			36.17	
	do	46303		27.16		
	do	46170			28.09	
	do	70704				35.12
	do	76120			38.15	
	do	76358				35.15
	do	44574		21.12		
	do	75923			38.02	
	do	75247			37.05	
	do	75784				36.06
	do	75576			36.01	
	do	74104		36		
	do	46037				27.15
10	do	70568			38	
	do	44951				29
	do	75531			38.08	
	do	75065				37.16
	do	18785		27.10		
	do	15827			26	
	do	18420			27.10	
	do	46230				26.13
	do	15811			25.10	
	do	72515			37.02	
	do	74429				38.11
	do	74332			35	
	do	70427				33.09
	do	69943			39.03	
	do	73269			39	
	do	45957			28	
	do	73969				37.14
11	do	45567			28.05	
	do	74463				37.04
	do	70318			37.05	
14	do	73787				36.05
	do	75001		36.05		
	do	73435				35
	do	18240				26.10
	do	44853				25.10
	do	73171				35.08
	do	18914				27
11	do	73743			36.17	
	do	76377				36.15
	do	70175			33.18	
	do	73959				36.15
	do	45962			27.14	
	do	76332			38	
	do	76456				37
12	do	72862				37.11
11	do	73398			38	
	do	74166			37	
	do	70777				38
12	do	41291			28.04	
	do	18005				28
	do	42050			28	
	do	73553				38.05
	do	45123		27		
	do	18817				27.16
15	do	72909				37.03
	do	82405		27.10		
	do	70086			35.08	
	do	73148				34.08
	do	46000				27
	do	44189		21.06		
	do	74614			37.10	
	do	74088				36
	do	72260			35.02	
16	do	75023				36.12
	do	73533			36.12	
	do	72389				36
	do	45596				27.12
	do	76581			38.03	
	do	39279			27.13	
	do	75040				36
	do	40345				27.10
	do	17408		27.16		
	do	17870		26		

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
Mar. 16	D., L. & W.	70737			33	
	do	75806				34.05
17	do	75810				36
	do	70939				37.05
	do	24955				36.01
	do	44929		26.08		
	do	18438			28	
18	do	74990				34.02
	do	70563				34
	do	46191		27.18		
	do	75851			37	
	do	72984				35.18
	do	45169			26.18	
	do	45796		26.14		
	do	84253				28
	do	41000			27.06	
	do	74510				34.05
	do	45529		26		
	do	73522			36.10	
	do	74405			37.07	
	do	72267				37.15
	do	75219			36.15	
	do	70523				34
	do	75682		34.14		
19	do	19046			27	
	do	72457			37.10	
	do	45925				28.10
21	do	73565				38
	do	74888		35.12		
	do	70389				32.08
	do	19193		25.08		
	do	76044			36.15	
	do	75643				34.02
	do	72605			28	
22	do	45681		26		
	do	73432				37
	do	76349			37.14	
	do	73814				35.09
	do	73175			37	
23	do	73043			37.14	
	do	75801				36
	do	72823		36.15		
	do	73266				36
	do	40523		26.12		
	do	75114			38	
	do	72077		36.06		
	do	73173			35.15	
	do	84115			26	
	do	76000				33.15
22	do	72232			36.15	
	do	72844			36.04	
	do	75002				35.02
	do	72377			38.02	
24	do	18070		26.19		
	do	74074				35
	do	46069		28.05		
	do	73871			37.04	
	do	40377				25
	do	75582			38.03	
	do	70221				36.10
	do	19098			27	
	do	19087				26
	do	72502			39	
	do	76583		35.11		
	do	75925			37.15	
25	do	75310			37.06	
	do	44015			21	
	do	45748				27
	do	45959				23.10
	do	72779			36.05	
	do	76224			36	
	do	18717				24.12
26	do	46140			27.03	
	do	70003			34.18	
	do	18313			25	
	do	75294			35	
25	do	45692				27.09
	do	72938			38.15	
	do	46108		30		
28	do	73316				34.05
	do	72107			36.11	
	do	74143				35
	do	70783			35.07	
	do	74141				34.18
30	do	19849			25.18	
	do	74106				34.10
	do	70495			35.17	
29	do	70973			36.09	
	do	70804				33.02
30	do	73711			36.18	
	do	73560			36.18	
	do	74126				34
	do	72120		35.06		
	do	73036			34.09	
31	do	75415			35.08	
	Total			922.18	3,769.15	3,429.02
	Total all sizes					8,121.15
Apr. 1	D., L. & W.	76348			35.04	
	do	45013		28.07		
	do	18829			26.08	
	do	74814				34.15

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
Apr. 1	D., L. & W.	72380			35.15	
	do	76107				34.15
	do	73973		36		
	do	45853			26.05	
	do	46103				27.18
	do	73283			36.03	
2	do	74985			36	
	do	19034				25.15
	do	17881			26.07	
	do	73114		35		
	do	17959				26.13
	do	69985			37.10	
	do	43459				34.17
1	do	74290		36.01		
	do	76233			34	
	do	46403		28.05		
	do	76567				35.08
	do	74248			36.02	
4	do	74497			34.07	
	do	84096		26.07		
	do	42155		28.12		
	do	75336				34.04
	do	45500			27	
	do	18994		28.05		
	do	73649				35.07
	do	75168			38	
	do	72137				36.12
2	do	45901				26
	do	17889		25		
		75751				35
		76520			35.18	
		84320				27
5		75060				37
		74809			36.11	
		76537				36.01
4		75933				34
		73053			35.12	
		72213				37.11
5		75542			36.02	
		75249		36.04		
		76155		34.12		
		42314		27.06		
		73668				35.15
		70372				35
		70801			33	
6		78775				34.15
		70299			34.08	
		74056				35
		73354		33.11		33.07
7		72441			33.04	
		45243		28.04		
		72127				35
		70994		33		
		74453			36.17	
		75557				34.10
		44559		28		
8		74537				34.03
		75713				36
		42861				19.04
		76110				35
		18701		27		
11		70693		33.15		
		39860				25.13
		70123			35.08	
		75553				36.10
		74927				35.07
		55004		29.15		
12		18815		28.07		
		39828				25.15
		73366		35.09		
		75324			36.07	
		18067				26.05
11		18661		26.15		
		76367				35
12		72470				38
		18669		26.05		
		70285			35	
		74029				35.18
		18761			25.18	
		74697				37
13		70065				36
12		72088			36.12	
		18966				26.15
		41818		28.17		
		46377			26.18	
		73391			35.18	
13		73582				35.02
		72878			38.07	
		75574		37		
		75519				36.04
		73615			39.07	
14	D., L. & W.	73936			34.04	
13	do	70424				34.18
	do	70891			32	
	do	72563				38.02
14	do	19248		25.13		
	do	19186		28		
	do	46156				26.10
	do	73074			35	
	do	70628				36.18
	do	74504				35
	do	75802		35.03		
	do	74165				35.18

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
Apr. 14	D., L. & W.	19122		26.08		
	do	73134			37.11	
	do	76072			36.18	
	do	75061		35		
	do	70050				34.15
	do	70340			34.12	
16	do	18546				25.07
	do	18013			25.14	
	do	44522				20.07
	do	46264				26.15
	do	45680				26.18
	do	15965		27		
	do	73612			37	
	do	45240				25.15
	do	75980				35
	do	45633			27.18	
	do	74866				34.08
	do	70481			37	
	do	72527				37
	do	69934				36.03
	do	19215		26.15		
	do	74855				36.04
	do	74503				36
	do	74605		36.07		
	do	46005				28
19	do	45181				29
	do	70646				35.10
	do	45067		26.05		
18	do	18573		29.05		
	do	45158				25.10
19	do	70591				35.18
	do	70066			35	
	do	70905		33		
	do	45778				28
	do	70580				35.09
	do	70416			35	
	do	70904				34.12
20	do	70924			35	
	do	46207		26.04		
	do	15852				27.05
	do	74883				36
	do	75840			36.07	
	do	17781		28.18		
	do	74251				34.05
	do	41938		27.06		
	do	73754			36.10	
	do	75735				36
21	do	72506				37
	do	74852			37.05	
	do	70045		35.05		
	do	75527				35.14
22	do	74458				38.10
	do	72330				37
	do	74184			38.06	
	do	76268			37.03	
	do	72433				36.08
	do	69916		38.13		
	do	44164				22
	do	76205		36.10		
	do	73305			37.16	
	do	74398				36
	do	76108				35.15
23	do	73133				36.05
	do	72325				37.10
	do	74247				35.12
22	do	73276				36.11
	do	74350			39	
	do	18906		29.12		
	do	17901		26		
23	do	72557				35.16
	do	70738				36.05
	do	74909			36.10	
25	do	69964				36.07
	do	74685				34.16
	do	73524		35		
	do	70297				35
	do	73509				36.12
	do	75948				34.15
	do	75251			34.16	
26	do	73952				34.18
	do	75777		35.08		
25	do	73356				36.08
26	do	74970				35
	do	74780				35.04
	do	75226		37		
	do	74381			35.04	
27	do	72059				35.03
	do	74766		35.09		
	do	18310		29		
	do	75973				36.18
	do	75739				37
28	do	72930		36.15		
	do	75951			38	
	do	75617			37.18	
	do	75076				34.05
	do	45714			27.09	
	do	72931				35.14
	do	73759			36	
	do	73827				34.17
	do	70203			33.15	
29	do	69933		38.12		
	do	74332				36.12
	do	74737			35.17	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight. Pea.	Buck.	Rice.	Barley.
1910						
Apr. 29	D., L. & W.	74197				37
	do	18302		26.06		
	do	44793		24		
	do	73810				37.10
30	do	18832			25.09	
	do	18482		26.05		
	do	75993				36
	do	17821			25.15	
	do	19018		27.10		
	do	42488				27.15
	do	84216			26.18	
	do	72133		37		
	Total			1,731.06	2,123.18	3,529
	Total all sizes					7,384.04
May 1	D., L. & W.	72609				37.06
	do	70017			35	
	do	70696		33.10		
3	do	72714				36.17
	do	19185		27		
	do	19230		27.15		
	do	72412				36.05
	do	76754		38.01		
	do	74635				35
	do	74028		36.19		
	do	76612				35
	do	40699		27.06		
	do	75405			36	
	do	76544				32
6	do	39879				26.10
	do	18494				26.14
	do	70077		34.10		
5	do	73513			36.09	
	do	75024		36		
6	do	72127		37.12		
	do	72913				35.18
	do	76422				33.07
	do	76488		37		
	do	75580			34.18	
	do	75895				32.17
	do	69935		38.07		
	do	72742		37.10		
	do	74928			36.12	
7	do	76632				36
	do	72728			36.06	
	do	73344		37.05		
	do	74394				34.12
	do	18187			25	
	do	18479		27.06		
	do	18933			27.15	
	do	75133				36.07
9	do	73904		37.02		
	do	74294			37.12	
	do	72923				35.14
	do	18419		27.07		
	do	75759			36	
	do	73219				33.18
	do	70344			34.11	
	do	15197		23.05		
11	do	18938		27		
	do	74269				35
	do	19145		27.03		
	do	72525			36.16	
	do	73977				36.07
12	do	73173		37.15		
	do	75776				36.08
11	do	70563			33.17	
	do	44236		22.02		
	do	72584				36.07
	do	75170			36	
	do	76240		37.12		
12	do	70293			35	
	do	74653				35.05
	do	18385			26.10	
	do	73592				36
	do	73067		37.04		
	do	76595				34.16
13	do	76783				35.1
	do	75787		35.18		
	do	73952			35.17	
	do	45719				26.18
14	do	18930				25
	do	18746				24.08
	do	45789		27.15		
	do	76491				35
	do	72563				35.09
	do	72297		37.07		
	do	76786		35		
	do	74877				36
	do	72716				36
16	do	75378			36.07	
	do	75079				36.04
	do	73047		37.19		
	do	45346				27.12
	do	45948		27.03		
	do	76604				34
	do	72354			36	
	do	46275				27.13
	do	74319			37.10	
	do	73510		36.07		
	do	73426				35.16
	do	72193			36.18	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight. Pea.	Buck.	Rice.	Barley.
1910						
May 17	D., L. & W.	69985			38.16	
	do	70410				34
	do	72885			35.12	
	do	41856		24		
	do	17937				23.14
19	do	70349				25.04
	do	75723		37		
	do	72578				35.15
	do	70005				33.02
	do	73124				34.18
	do	75941		35.07		
20	do	45140				26.15
	do	45449			26.12	
	do	74981				35.04
	do	45504		28		
	do	75987				35.07
	do	19115		27.11		
21	do	45223				27
	do	75582		37.08		
	do	46386		28.03		
	do	73771				35.18
	do	75779			38.07	
19	do	72071			34.17	
21	do	74526				35
23	do	76380				36.06
	do	76836		38.10		
	do	72617				35.16
	do	46140		26.10		
	do	72264				36
	do	74015			34.10	
24	do	73460				35
21	do	45220				23
	do	75412		36.19		
	do	75761			35.01	
23	do	70975		35		
25	do	18632		26		
	do	46133				25
	do	45285			26.16	
24	do	19232				25
	do	46183		26.15		
	do	70969				34
	do	72987				35.04
	do	76160				37.02
	do	70576		32.05		
	do	76677				35.05
	do	74761				34
26	do	15851				26
	do	75296		37.03		
	do	70834				34.07
	do	46157			26.11	
	do	18584		26.13		
	do	73837				34.17
	do	72156				36
27	do	18408		27.15		
	do	18290				28
28	do	74714				33.02
27	do	70280				36.18
	do	70766		35.18		
	do	69900				37.15
28	do	72086				35
	do	74572		36.06		
31	do	73630				35.10
	do	72806		37.08		
	do	76215			35.10	
	do	70268				33.15
	Total			1,033	1,059.01	2,365.07
	Total all sizes					5,057.08
June 1	D., L. & W.	70085		34.13		
	do	76338			36	
	do	72084				34
	do	74081			34.14	
	do	71987				33.14
	do	72414			35.15	
	do	73472				75.02
2	do	75397			36.07	
	do	70783				34.04
1	do	73771		37.07		
	do	72225			36.04	
	do	74176				34.09
2	do	72256				34.12
	do	76138			34.09	
	do	73351		37.10		
	do	72709				35.13
3	do	41183		26.17		
	do	70698			33.05	
	do	76955				33.09
2	do	70655				32.11
	do	18619			24.16	
4	do	72406			36.16	
	do	76884				35.09
	do	42161			26.10	
3	do	7552				34.09
	do	70013		33.18		
	do	72453			36	
	do	73124				34.10
4	do	73409				35.16
	do	19019			24.09	
	do	45567		27.03		
6	do	18309			25.06	
	do	70859				34.15
	do	75658				34.02

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
June 6	D., L. & W.	72915		36		
	do	75596				33.04
7	do	73713				33.15
	do	75111				34.04
8	do	45379				26
	do	75319				34.06
15	do	70770			33.19	
	do	70909				33
	do	70954		33.10		
14	do	75269			33.10	
	do	76862				33
15	do	74448				34.11
17	do	18134		26.08		
	do	70305				34.02
	do	70553			36	
	do	72712			36.16	
	do	46186				26
16	do	74121		36.04		
	do	75167				34
	do	76405				35
	do	73688				34.14
18	do	72128				33.16
	do	45865				26.06
15	do	19008				26
	do	45608				27
17	do	45509				26.17
18	do	84208				27
	do	45830			26.07	
17	do	17295				27.05
	do	77056		36.06		
15	do	72573			33	
21	do	45391				25.15
	do	76119				35.09
	do	70153			33.02	
	do	77080				34
	do	76282			35.10	
	do	74223				35
24	do	75302			36.04	
	do	74386				34.17
	do	76440				35.05
	do	43798				21.02
	do	74403				36.06
	do	73711				35.10
	do	45639		27		
	do	76418				35.15
	do	74251				34.15
25	do	72226				36.10
	do	75125			36.14	
24	do	45308		26.11		
	do	74343			34.10	
25	do	42088		26.02		
	do	19095				26.10
	do	74337				36.18
	do	70523				31.12
27	do	74949			35.16	
	do	70245				32.14
24	do	15569				20.11
	Total			445.09	831.19	1,684.19
	Total all sizes					2,962.07
July 1	D., L. & W.	72982				36
	do	40509				27.17
	do	40519				26.07
	do	46149		27.09		
	do	84199				28
	do	76001				35.03
	do	76847			36	
	do	75423				35.02
	do	74404				35.16
	do	72842			36.08	
	do	19229		27.04		
	do	40524		27		
	do	75116				34
	do	74368			35.03	
	do	19050				25.18
2	do	84282		25.05		
	do	73080				33.12
	do	73082			37	
	do	75923				34
	do	73636				35.05
	do	74261			35.10	
8	do	73974				35.06
	do	74902				35
	do	75246				35.09
9	do	76002				34
	do	76323				34.15
	do	72453				33.10
	do	72619				35.04
11	do	74598			36.16	
12	do	76662				34.12
	do	73465		35.08		
13	do	74015				34.15
	do	70685		33.17		
14	do	70150				35.13
	do	73911				35
	do	74076			36.11	
13	do	72538				36.06
	do	72466				35.12
	do	72762		35		
	do	76083				33.08
11	do	76081				35

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
July 18	D., L. & W.	70687				32.17
	do	76151				35.02
	do	76461				33.18
	do	70839		32		
20	do	73315				33.02
	do	73312				35.08
23	do	76422				36.18
	do	73346			36.08	
	do	76421				35.04
	do	74051			36.02	
	do	72693				35.14
25	do	73027				33.18
23	do	73119		35.12		
15	do	76462				35.16
	do	73016		35.10		
14	do	70221			34	
	do	76123				36
15	do	74758				34.08
	do	74811				34
16	do	75715				35
	do	70736			33	
18	do	72747				35.11
16	do	73951		34.16		
	do	73273				37.04
11	do	76083				35
25	do	45782				26.07
	do	76178			36	
	do	72660		36.16		
	do	75949				34.15
27	do	76638			35	
	do	73977				34.18
	do	73754		35.24		
	do	76751				36
28	do	75885				34.14
27	do	78410			34	
	do	72719				35.12
28	do	75376		36.04		
	do	75534				34.11
	do	74827			35.02	
	do	75838				34.18
	Total			457.15	533	1,777.05
	Total all sizes					2,768
Aug. 1	D., L. & W.	73673				35.17
	do	74998		36.15		
	do	75634				35.14
	do	73466				36.12
	do	72882				30
	do	45724				26.15
	do	70148			35	
	do	72839				36.11
2	do	76215			36.17	
1	do	72584				34.11
2	do	75308				34.15
	do	74327				36.09
	do	70838		33.15		
	do	73917				35.06
3	do	45086		26.18		
	do	44921				26.18
	do	46266				27.02
	do	76216				34.03
4	do	18824			26.15	
5	do	76726			37.10	
	do	76733				35.18
4	do	73180			37.05	
	do	76059				35.13
	do	18105		23.18		
	do	73326				36.04
6	do	75372			37.04	
	do	76798				36.18
5	do	69985			37	
	do	74672				35.17
	do	70622			32	
	do	76474				35.16
	do	74522			36.16	
	do	45710		27.02		
	do	74796				34
	do	72778			37	
	do	74401				36.04
6	do	43006				26.15
	do	18872			27	
	do	45913				27.05
	do	70627			34	
8	do	70170				32.04
6	do	45189		28.15		
	do	41718				27.02
	do	84169		27.03		
9	do	74450		37.05		
	do	76252				35.11
	do	70389				33
	do	70378				34
	do	75877			35	
10	do	45368				23
	do	73271			36.17	
11	do	15829		28		
10	do	75044				38.15
	do	83154			28.07	
	do	74703			36	
	do	76900				36
11	do	72284			36	
12	do	74299			36.14	

Detailed statement of claim for excessive freight rates, etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
Aug. 13	D., L. & W	74644			35.12	
15	do	74260				34.10
	do	45272			26	
	do	74706				33
	do	75202				35
16	do	74751				34
	do	73834			36.11	
11	do	73993			36.04	
12	do	75634			35.10	
	do	73466			35.05	
11	do	72584			37.04	
	do	74595			35.18	
	do	76619				37.02
	do	75824				36.05
13	do	73673			36	
	do	73449				35.14
12	do	70792			34.11	
	do	74612				35.18
	do	76256			36.09	
	do	74089		36.06		
	do	73026				34
16	do	74937			36.15	
	do	76557				36
	do	75853		35.14		
13	do	73641				35
17	do	19058			26	
	do	75367			37	
	do	76030				34.02
	do	72359				35.14
	do	76070			35.16	
16	do	76049				34
	do	45463			28.02	
	do	75999			36.14	
18	do	75482			36.07	
	do	76009				35.14
	do	74465			36.04	
	do	45180		28.10		
	do	75536				35
17	do	18568				27.03
	do	74754			37.11	
	do	76024				33.15
18	do	73915			36.15	
17	do	74800			36	
18	do	70059			35	
	do	70022				34.05
	do	74099			35.15	
19	do	74670				35.06
	do	73750			36.09	
	do	76684				36
	do	72621			25.16	
	do	75652		36.18		
	do	72934			37	
	do	74831				35
20	do	39969			28.07	
	do	18210				26.05
	do	69920			38.04	
	do	75017				36.05
	do	75348		37.06		
	do	75849				35.14
22	do	76746				35.11
20	do	70972		36		
	do	72103			37.02	
25	do	45938				26.14
24	do	76636				35.16
	do	76642			35.07	
	do	70727			26.15	
	do	70946			34.10	
23	do	74249				35.12
	do	73312				36.07
22	do	73311		38		
	do	73831				35.11
24	do	72210				36.10
	do	75770			36.15	
23	do	77095			36.08	
	do	75236				35.15
	do	72310				35.09
	do	73042			36.17	
	do	72523		37.06		
	do	72042			38.08	
25	do	73922			37.05	
26	do	76046				36
27	do	10284		27.10		
	do	70092			37.03	
25	do	74486				35
26	do	73140			37.12	
	do	18720			28.03	
	do	72829			37.05	
27	do	19251				27.10
	do	15841			27.04	
29	do	84287			26.08	
	do	73701				36.07
	do	72429				37
	do	45046				27.05
	do	45479			28	
	do	19168			27.04	
	do	18043				27.11
	do	75163			37.03	
	Total			556.07	2,202.13	2,503.10
	Total all sizes					5,262.10

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Messrs. Low Bros., Lime Ridge, Pa.

[Rate: Pea, $0.80; buck., $0.80; rice, $0.80; barley, $0.80.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908.						
July 15	D., L. & W	45888	27.15			
18	do	45905	27.10			
22	do	18364	27.05			
28	do	45341	27.17			
30	do	46419	28.00			
31	do	43165	21.10			
Sept. 15	do	43047	21.00			
23	do	39974	27.12			
25	do	17780	26.17			
Oct. 26	do	45103	26.05			
Nov. 10	do	44415	21.10			
13	do	39939	28.00			
20	do	45382	28.05			
28	do	41069	27.00			
Dec. 3	do	15819	27.15			
4	do	75514	37.18			
7	do	45112	27.05			
17	do	76111	36.05			
28	do	18578	27.15			
29	do	44830	27.10			
1909.						
Jan. 1	do	18087	27.15			
2	do	43196	21.11			
7	do	45488	26.00			
11	do	18077	28.00			
12	do	12367	20.15			
16	do	45735	28.00			
22	do	39839	27.00			
23	do	39797	26.05			
26	do	44001	20.08			
27	do	18272	28.00			
29	do	39738	26.04			
Feb. 18	do	41965	27.00			
20	do	15846	25.04			
24	do	40505	25.17			
27	do	40538	26.01			
Mar. 3	do	45203	25.08			
5	do	45744	26.02			
8	do	17776	25.13			
8	do	45228	24.00			
9	do	18141	25.00			
10	do	40464	24.15			

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to American Car & Foundry Co., Berwick, Pa.

[Rate: Pea, $0.75; buck., $0.75; rice, $0.75; barley, $0.75.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908.						
Dec. 15	D., L. & W	74149			38.05	
1909.						
Jan. 9	do	74170	37.00			
Nov. 30	do	73830			36.12	
Nov. 1	do	75834			37.09	
1	do	75809			35.15	
1	do	72309			34.00	
2	do	75557			36.11	
2	do	75302			36.02	
9	do	74024			36.01	
10	do	74089			35.03	
11	do	76008			37.07	
17	do	76571			38.02	
17	do	76365			37.15	
18	do	74540			37.03	
18	do	76268			37.12	
19	do	75600			38.18	
20	do	74116			37.16	
20	do	74385			38.10	
20	do	74647			38.01	
22	do	73480			37.10	
22	do	72091			40.00	
23	do	75094			39.00	
23	do	76413			37.15	
24	do	76379			37.09	
26	do	75928			39.10	
30	do	75282			38.14	
Dec. 10	do	76220			37.00	
13	do	73763			37.03	
14	do	72672			37.12	
	do	84546			36.00	
16	do	72123			37.18	
	do	72414			37.07	
17	do	75346			38.02	
	do	74279			35.15	
	do	74204			38.15	
18	do	75578			34.18	
20	do	73744			35.15	
21	do	74909			37.18	
	do	74965			37.00	

Line shipments made by the Marian Coal Co., etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910.						
Jan. 4	do	73535			36.15	
6	do	73328			35.00	
10	do	74941		34.18		
	do	73132			37.18	
Jan. 12	D., L. & W	75249			33.14	
	do	73675			36.04	
13	do	76380			37.16	
	do	74543			36.02	
	do	74446			36.10	
15	do	73189			37.02	
	do	69944			38.04	
18	do	15358			37.12	
22	do	75857			38.18	
	do	72292			36.02	
24	do	76213			37.00	
	do	72741			37.15	
25	do	70409			35.00	
	do	76346			38.14	
26	do	70296			37.02	
	do	73313			36.00	
	do	75254			37.00	
	do	74679		36.10		
27	do	74725			36.15	
28	do	75706		35.17		
	do	72330		37.05		
29	do	72446		36.08		
	do	76126			36.14	
31	do	72311		35.00		
	do	69981			38.11	
Mar. 14	do	75545			37.00	
14	do	75433			36.05	
14	do	76248			37.00	
14	do	72595			37.08	
14	do	73909			35.15	
14	do	72674			35.00	
15	do	73244			36.18	
16	do	74917			36.15	
17	do	74210			37.12	
18	do	72007			36.00	
21	do	70651			35.00	
22	do	72506			38.00	
23	do	72226			38.00	
23	do	73083			38.10	
28	do	70986			35.00	
28	do	76028			35.07	
29	do	75970			35.15	
29	do	73806			37.00	
Apr. 5	do	73491			36.10	
5	do	70833			34.15	
8	do	72711			35.12	
8	do	70797			36.00	
11	do	73044			36.17	
11	do	75458			36.15	
11	do	74886			36.00	
18	do	74124			37.17	
18	do	76443			38.05	
18	do	76334			35.04	
19	do	75884			35.07	
23	do	74752			37.11	
23	do	70897			35.00	
25	do	72329			38.03	
25	do	73472			35.17	
26	do	76119			36.17	
26	do	72900			36.14	
27	do	74650			38.14	
27	do	72005			37.16	
29	do	75957			35.15	
30	do	74311			35.16	
May 3	do	70583			34.18	
3	do	76423			37.05	
3	do	76485			36.05	
3	do	72558			37.16	
6	do	73349			37.06	
6	do	73909			36.11	
12	do	76073			35.18	
14	do	74663			35.17	
14	do	75141			33.00	
14	do	73492			34.18	
19	do	70252			34.17	
19	do	73390			37.00	
20	do	74135			37.16	
20	do	76128			33.02	
21	do	69948			36.12	
21	do	75983			36.06	
23	do	74312			36.00	
23	do	70942			35.15	
24	do	75783			34.07	
25	do	73580			35.13	
25	do	70938			35.00	
25	do	74102			35.07	
26	do	76868			36.06	
26	do	75237			36.08	
27	do	73026			38.00	
28	do	69981			37.09	
June 2	do	73226			36.00	
7	do	73163			34.00	
8	do	76334			35.09	
8	do	75136			36.16	
15	do	70082			34.06	
16	do	69956			37.16	
17	do	70349			36.12	

Line shipments made by the Marian Coal Co., etc.—Continued.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910						
June 18	D., L. & W	72908			36.19	
22	do	74443			37.02	
22	do	77010			36.12	
23	do	75573			36.19	
23	do	74726			35.10	
28	do	72460			36.13	
29	do	72917			38.07	
29	do	76184			37.02	
30	do	73283			36.10	
July 9	do	73580			36.00	
9	do	73867			36.05	
12	do	75887			34.18	
12	do	73017			35.00	
13	do	72667			36.13	
13	do	72008			37.15	
14	do	76656			35.12	
14	do	73039			34.10	
18	do	74428			36.06	
19	do	73775			36.07	
20	do	72585			36.15	
20	do	72388			35.00	
28	do	76646			37.00	
30	do	73422			37.16	

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Atlas Portland Cement Co., Northampton, Pa.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Feb. 26	D., L. & W	74343			35.06	
26	do	73659			35.00	
26	do	44674		19.00		
26	do	12854			22.10	
27	do	45057			20.12	
27	do	72249			36.05	
27	do	70496			37.02	
27	do	45885			27.05	
26	do	43506			20.10	
Mar. 1	do	74045			35.10	
1	do	44243			21.05	
1	do	74009			34.08	
1	do	45958			27.00	
Mar. 1	D., L. & W	2846			19.00	
2	do	76058			20.10	
3	do	12837			21.16	
3	do	73835			35.00	
3	do	75437			34.04	
3	do	74898			35.07	
3	do	73176			35.00	
3	do	70397			37.02	
3	do	73349			36.01	
4	do	72750			36.16	
4	do	72338			36.16	
4	do	18575			27.08	
5	do	74344			35.10	
5	do	45272			27.06	
Apr. 7	do	70648			35.15	
8	do	74465			35.00	
8	do	73095			34.00	
8	do	74987			34.10	
9	do	44833			25.07	
9	do	75364			33.15	
9	do	73064			34.02	
10	do	74256			35.00	
10	do	73735			35.00	
21	do	73144			40.05	

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Danville Structural Tubing Co., Danville, Pa.

[Pea, $0.90; buck., $0.80; rice, $0.80; barley, $0.80.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Mar. 3	D., L. & W	73835		35.00	35.00	
10	do	73479		35.03		
11	do	45757		26.10		
11	do	18826		37.04		
12	do	70977		35.00		
12	do	19216		25.07		
10	do	73452		34.04		
10	do	73064		34.05		

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Messrs. Hawley & Slate, Bloomsburg, Pa.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Jan. 22	D., L. & W.	76263		36.10		
Feb. 6	do	69900		37.15		
Mar. 3	do	73835		33.12		

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Silver Spring Quarry, Alemedia, Pa.

[Rate: Pea, $1.43; buck., $1.28; rice, $1.13; barley, $1.13.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Aug. 21	D., L. & W.	19188	26.08			
Sept. 20	do	15037	22.06			
Oct. 18	do	55021	27.09			
Nov. 26	do	17345	27.07			
Dec. 10	do	46002	27.05			

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Clark Thread Works, Newark, N. J.

[Rate: Pea, $1.43; buck., $1.28; rice, $1.13; barley, $1.13.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910.						
Jan. 11	D., L. & W.	73401			34.08	

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Ballbach Sugar & Refining Co., Newark, N. J.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1910.						
Feb. 11	D., L. & W.	70685				35.14
11	do	69949				37.09

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Pennsylvania Brakebeam Co., Danville, Pa.

[Rate: Pea, $0.80; buck., $0.80; rice, $0.80; barley, $0.80.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Nov. 14	D., L. & W.	75208		35.14		

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to W. N. Stell, Bloomfield, N. J.

[Rate: Pea, $1.45; buck., $1.35; rice, $1.35, barley, $1.35.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908.						
July 25	D., L. & W.	18031	24.09			
1909.						
Oct. 5	do	17957	24.17			

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines to Nevins Church Press, Bloomfield, N. J.

[Rate: Pea, $1.45; buck., $1.35; rice, $1.25; barley, $1.35.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Jan. 27	D., L. & W.	46180		28.00		
29	do	17224			28.00	
Feb. 13	do	72686		37.06		
26	do	45346		27.05		
Mar. 2	do	76058		35.13		
8	do	76299		34.05		
15	do	70853		35.10		
23	do	70819		34.00		

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines to American Clay Product Co., Forty Fort, Pa.

[Rate: Rice, $0.60.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908.						
July 24	D., L. & W.	72283			29.06	
Sept. 5	do	70647			36.05	
Nov. 28	do	70984			36.18	
Dec. 15	do	74149			38.05	
1909.						
Jan. 16	do					

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines to O. W. Drake, Bloomsburg, Pa.

[Pea, $0.80; buck., $0.80; rice, $0.80; barley, $0.80.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908.						
Sept. 19	D., L. & W.	69983	26.18			
Oct. 14	do	45133	27.15			
1909.						
Mar. 23	do	18509	25.09			
Aug. 16	do	3706	18.05			
Sept. 7	do	46271	28.12			
Oct. 12	do	44734	27.18			
Nov. 24	do	18153	26.00			
Dec. 24	do	15867	26.06			

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Milton Flory, Esq., Bangor, Pa.

[Rate: Nut, $1.60; pea, $1.45; buck., $1.35; rice, $1.35; barley, $1.35.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Nov. 28			27.14			

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Messrs. Garfield & Proctor Co., Paterson, N. J.

[Rate: Pea, $1.70; buck., $1.50; rice, $1.50; barley, $1.50.]

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Nov. 28	D., L. & W.	18968	27.05			
	do	18483	27.12			

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Standard Oil Cloth Co., Athenia, N. Y.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1909.						
Jan. 7	D., L. & W.		26.11			
	do		26.00			

Line shipments made by the Marian Coal Co., Taylor, Pa., via D., L. & W. R. R. Co. and connecting lines, to Columbia Baking & Manufacturing Co., Columbia, Pa.

Date of shipment.	Car initial.	Car number.	Weight.			
			Pea.	Buck.	Rice.	Barley.
1908.						
Nov. 8	D., L. & W.	45118	26.16			

(Before the Interstate Commerce Commission. Marian Coal Company against the Delaware, Lackawanna & Western Railroad Company. *Docket No. 3592.)*

The defendant answers the complaint of the complainant herein, as follows:

First. It admits the allegations contained in the paragraph of said complaint marked "I," except that it is not advised as to the exact distance of complainant's washery from the Bloomsburg division of the defendant's railroad, and except that it denies that the Delaware, Lackawanna and Western Coal Company is an organization affiliated with the defendant.

Second. It admits that the defendant is a common carrier, organized under the laws of the State of Pennsylvania, engaged in the transportation of passengers and property by railroad by continuous carriage or shipment between the plant of the complainant to points in the States of Pennsylvania, New York, and New Jersey over its own road, and that it operates, leases, owns, and controls certain railways which are part of its system, issuing tariff sheets over such lines as part of its system, and that as to the interstate part or portion of transportation over such roads it is subject to the provisions of the act of Congress to regulate interstate commerce of the 14th of February, 1887, and acts amendatory thereof and supplementary thereto, in so far as said acts are constitutional and enforceable.

It admits that a large amount of its business is the transportation of anthracite coal. It denies that 90 per cent or any of the coal so transported is produced by the Delaware, Lackawanna and Western Coal Company or that the capital stock of said company or any part thereof is owned by the defendant.

It admits that defendant has established rates for the transportation of the product of complainant from its plant as set forth in D., L. & W. Tariff, I. C. C., No. 6095.

It denies that any of the rates so established constitute an unjust or unreasonable charge for the services rendered or that they are in violation of the first section of the act of Congress to regulate interstate commerce, or of any other law. It denies that any of the rates charged by the defendant for the transportation of anthracite coal are in violation of the law.

It admits that defendant is charging and collecting, and did charge and collect at the time referred to in the complaint, the rates therein set forth on rice and barley coal and for prepared sizes of coal. It is not prepared to answer as to the price of coal f. o. b. Hoboken, as to the cost of preparing barley, rice, and other coal to the complainant or others, or as to the cost of selling thereof, or as to the selling price thereof locally, at and in the vicinity of the place of production, and demands that if deemed material due proof thereof be made. It denies that the complainant is subjected by the defendant to unjust conditions of competition. It denies that it has subjected complainant to switching charges to which it has not subjected shippers of a like product shipping under the same or similar circumstances and conditions, and it denies that in the matter of switching charges, or in other matters, it has subjected the complainant to undue or unreasonable prejudice or disadvantage or discrimination.

Third. It denies each and every allegation contained in paragraph IV of said complaint.

Fourth. As to the allegations contained in paragraph marked "V" of said complaint, defendant denies each and every allegation thereof.

Fifth. It denies each and every allegation in paragraph marked "VI" of said complaint contained, except that it admits that this defendant formerly sold such coal as it purchased from independent operators at the mine, making no charge therefor to such independent operators, and that since August, 1909, the Delaware, Lackawanna and Western Coal Company likewise has sold coal so purchased by contract without making charge therefor to such independent operators.

Sixth. Answering the allegations contained in the paragraph marked "VII" of said complaint, this defendant says that it has no knowledge or information sufficient to enable it to answer the allegations of said paragraph, except that it denies that it has any coal company, that any unjust amounts are charged complainant for freight, or that such charges are sufficient to prevent competition by complainant or other independent shippers in the markets, and it denies that the defendant's officials have protested to complainant's agents when complainant has attempted to ship on the line of the defendant's railroad, or that the defendant's officials have claimed the line trade as its own. Defendant alleges that it is not now and has not been since August 2nd, 1909, in the business of selling coal at any point on its line or elsewhere, except in the State of Pennsylvania.

Seventh. It denies each and every allegation contained in paragraph marked "VIII" of the said complaint.

Eighth. Of the allegations in paragraph marked "IX" of said complaint, the defendant admits that it purchased from the complainant, from time to time during the period referred to in the complaint, various sizes of coal at a fair price for such coal, and that it resold said coal at the best price obtainable. Whether the purchase price or selling price of such coal was as alleged in the complaint this defendant is at this time unable to answer, except to say that such prices are immaterial. It admits that considerable water is required in preparing coal at washeries and that complainant had been using water of a stream passing through or near its property. It further admits that its connecting carriers, or some of them, have refused to put in effect a joint through rate which would absorb any switching charge imposed by the defendant upon complainant's traffic. Defendant has no knowledge as to the reason given by the connecting lines for not joining in a through rate, except that such connecting lines or line refused to absorb any switching charge of the defendant unless such switching charge was added to the charges applicable generally throughout the anthracite region to the transportation of coal therefrom. That it admits that in the latter part of the year 1906 a culm bank on the land of this defendant became ignited, and that there was on or about said time a fire in the culm bank of complainant which consumed considerable material and which was extinguished or cut off by complainant at considerable expense. It further admits that the defendant charged the complainant about 30¢ per ton for hauling its coal from the washery to the connection with the Central Railroad of New Jersey.

It denies each and every other allegation in said paragraph marked "IX."

Ninth. Defendant admits that an officer of the complainant has repeatedly and continuously complained and protested against the defendant's alleged ill-treatment of complainant, including some of the alleged illegal acts herein complained of, and has demanded adjustments in respect to such last-mentioned complaints without success.

It denies, as it has heretofore denied, any illegal acts or injustice in its relations with complainant.

Tenth. As to the allegations of paragraph "XI" of said complaint, defendant says that there is no switching charge at point of origin, in addition to any through rate which it has made, applicable to complainant's coal; that it has not unlawfully discriminated against complainant in any switching charge established. It admits that it has established switching charges at 5¢ and 12¢ per gross ton and of $1.50 and $2.00 per car, but it alleges that the circumstances and conditions surrounding the transportation and traffic covered by such charges are substantially dissimilar to those surrounding the traffic of complainant.

Eleventh. As to the paragraph marked "XII" of said complaint, it alleges that it has not completed its check of the detailed statement attached to said complaint and is unable to admit or deny the accuracy thereof, and demands due proof thereof.

THE DELAWARE LACKAWANNA & WESTERN RAILROAD COMPANY,
By J. L. SEAGER, *Its Attorney Thereunto Duly Authorized.*

(Opinion No. 1925—Interstate Commerce Commission. No. 3592. Marian Coal Company *v.* Delaware, Lackawanna & Western Railroad Company. Submitted May 16, 1912. Decided June 8, 1912.)

Upon complaint attacking defendant's rates on anthracite coal from the Lackawanna (Wyoming) coal region of Pennsylvania to tidewater, *Held:*

1. That the rates of defendant per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J. (f. o. b. vessel), of $1.58 on prepared sizes, $1.43 on pea, and $1.28 on buckwheat, are excessive and unreasonable in and to the extent that they exceed $1.33 on prepared sizes, $1.24 on pea, and $1.09 on buckwheat, and that for the future the latter rates must not be exceeded for such movement.

2. That the complainant is entitled to reparation upon basis of the rates herein found reasonable as applied to such of the shipments embraced in its claim as were delivered within the statutory period of two years prior to the date of filing complaint. No conclusion as to the amount of the award will be given at this time, and this question will be held in abeyance for determination in a supplemental report.

H. C. Reynolds for complainant.
W. S. Jenney and J. L. Seager for defendant.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complaint in this proceeding, filed on October 18, 1910, puts in issue the reasonableness of defendant's rates, local and proportional, on anthracite coal from Taylor, Pa., to all points on that line, and specifically seeks the establishment by the commission of rates from the Lackawanna (Wyoming) coal region of Pennsylvania to Hoboken, N. J., f. o. b. vessel there, of not more than 95 cents per gross ton on sizes larger than pea, 90 cents on sizes known as pea and buckwheat, and 75 cents on sizes known as rice and barley. Reparation in the sum of $55,238.27 is asked for the imposition of alleged excessive rates on numerous carload shipments.

On March 13, 1911, the complainant filed another petition, No. 3931, in which it asks that the commission require the defendant herein and other carriers to establish through routes and joint rates from Taylor to specified points without the State of Pennsylvania. This complaint and No. 3592 were heard together, but before the hearing had been concluded it was announced that certain of the defendants would establish through routes and joint rates in connection with the Delaware, Lackawanna & Western Railroad. This intention led to an agreement with the complainant to discontinue further proceedings in No. 3931 unless the routes and rates were not made effective as proposed. It appears that only two of the defendants, the Central Railroad of New Jersey and the Pennsylvania Railroad, have published joint rates to points on their lines. Under the circumstances we can not in justice to the complainant dismiss this case. If an adjustment of the matter, as outlined at the hearing, is not made by all the defendants, as it has been made by the above-named two, the proceeding will be resumed with the view of making an appropriate order. The reasonableness per se of the rates established or proposed is not in issue, and the agreement in question does not prejudice the right of the complainant to test the reasonableness of such rates by the filing of a new petition.

The petitioner is a corporation engaged in the business of cleaning, preparing, shipping, and selling that character of anthracite coal known in the trade as "washery" coal, reclaiming from the refuse discarded in the early history of anthracite mining the small pieces

which at such early period were not marketable, but which are now valuable, especially for steaming purposes, owing to improved methods of preparation and draft grates. The washery of complainant at which such refuse is prepared for the market is located in the borough of Taylor, Lackawanna County, Pa., about 2,500 feet from the Bloomsburg division of defendant's line. It is served by a spur track connecting with such division near Taylor, a point about 3 miles west of Scranton. The Bloomsburg division is that part of defendant's road upon which originates the bulk of its anthracite tonnage, being located in what is known as the "northern" anthracite region, and runs in a northwesterly direction from Northumberland to Scranton, a distance of about 80 miles. The main line of defendant runs in a southeasterly direction from Buffalo, N. Y., through Scranton to tidewater at Hoboken, N. J., a distance of 411 miles.

The present rates per gross ton from Taylor, Pa., to tidewater (f. o. b. vessels, Hoboken N. J.), which complainant specifically seeks to have reduced to the basis before noted, are as follows: Prepared (larger than pea), $1.58; pea, $1.43; buckwheat, $1.28; rice and smaller, $1.13. The distance from Taylor to Hoboken is 147.8 miles, and these rates per ton-mile are 10.6, 9.6, 8.6, and 7.6 mills, respectively, or an average revenue on the four rates of 9.1 mills. On basis of the rates sought by complainant, the ton-mile revenues would approximate 6.4 mills on prepared, 6 mills on pea and buckwheat, and 5 mills on rice and barley.

These proportional rates are also applicable to the transportation of anthracite coal to tidewater from all the collieries and washeries reached by defendant's line, and have been in effect since June 1, 1903. It is urged by complainant that the average distance from these various points to tidewater is 148 miles, but the defendant claims an average of 155 miles, stating that its auditing department figures the average haul as being in excess of 10 miles above the distance from Scranton to tidewater. Accepting the figure advanced by defendant, the ton-mile earnings on these rates will approximate 10.2 9.2, 8.2, and 7.2 mills, respectively, or an average of 8.7 mills. It will be noted that this line haul of 155 miles is not reckoned via the new "cut-off" line, Delaware Water Gap to Netcong. The completion of this cut-off in December, 1911, reduced the distance 12 miles, or from 155 to 143 miles.

In substantiation of the charge that these rates are excessive, the complainant makes numerous comparisons with rates between other points on selected commodities, including anthracite and bituminous coal, sand, etc. These comparisons reveal lower ton-mile earnings than under the rates of defendant, and the complainant asserted that this showing condemns such rates. Comparisons of ton-mile revenues are frequently resorted to by the commission, and several such comparisons are made in this report. Their limitations have repeatedly been pointed out by us in previous cases.

The defendant, in denying the allegations of the petition, attempts to justify its rates on the ground of the expensive character of the service performed, particularly the terminal expenses. The testimony shows that empty cars come into the anthracite region, and are distributed from the yards to the collieries and washeries. These cars are switched and classified on mine spurs. After they are loaded they are assembled at various points and are then forwarded to the so-called classification yards. The assembling point from the Marian washery appears to be the Taylor yards, and the classification point the Hampton yards. The classification performed at these yards appears to be simply the separation of the tonnage moving north toward Buffalo and that moving south to tide, except as to the Buffalo and intermediate points traffic there is a further classification into two sizes of coal, and likewise to local points south of Scranton moving short distances. On the great bulk of the anthracite tonnage, which appears normally to be in the direction of tidewater, the only classification into sizes takes place at Secaucus, N. J., a point on the New Jersey meadows a few miles outside of Hoboken. From that point it is moved to Hoboken for local delivery, or delivered on board ships.

It is claimed that coal, unlike other commodities, is a nonproducing commodity, affording no tonnage other than such as may be supplied by the use of steam generated from it; that on account of the peculiar condition of the trade, cars are often supplied in excess of the actual demand and are held free from demurrage while awaiting loading; reconsignment is permitted without charge; stoppage in transit for storage for an unlimited period is granted free of charge; 97 per cent of the cars are hauled back to the mines empty; and, in general, that the handling of this commodity is different and more expensive than that of other traffic.

While the record supports some of the contentions of defendant, it is not shown that it costs more to handle the coal traffic than other freight. The complainant, to sustain its demand for lower rates, points to the fact that the ton-mile earnings on defendant's coal traffic have been very high. Following is a statement of the ton-mile earnings on all traffic (revenue-earning freight), anthracite traffic, and for all other than anthracite traffic (revenue-earning freight) for the years 1909 to 1911, inclusive, compiled from the annual reports of the defendant to the commission.

Statement compiled from the annual reports filed with the Interstate Commerce Commission in behalf of the Delaware, Lackawanna & Western Railroad Co. for the years ending June 30, 1909, to June 30, 1911.

ALL REVENUE-EARNING FREIGHT TRAFFIC.

Item.	1909	1910	1911
Total tonnage	19,053,696	21,603,849	21,563,915
Total revenue	$24,832,586.66	$26,789,316.44	$26,967,755.87
Ton-mileage	3,363,062,727	3,675,364,577	3,642,161,113
Ton-per-mile revenue, mills	7.38	7.29	7.16

ANTHRACITE COAL.

Total tonnage, gross tons	10,033,827	10,298,870	9,644,864
Revenue	$14,500,031	$14,544,751	$13,637,892
Ton-mileage	1,870,431,785	1,929,304,534	1,828,065,293
Ton-per-mile revenue:			
Mills per ton of 2,240 pounds	7.75	7.54	7.46
Mills per ton of 2,000 pounds	6.92	6.73	6.66

ALL REVENUE-EARNING FREIGHT TRAFFIC OTHER THAN ANTHRACITE COAL.

Item.	1909	1910	1911
Total tonnage	9,019,869	11,304,979	11,919,051
Revenue	$10,332,555.66	$12,244,555.44	$12,429,863.87
Ton-mileage	1,493,630,942	1,746,060,043	1,814,095,820
Ton-per-mile revenue, mills	6.91	7.01	6.85

That the traffic handled by the defendant has been very remunerative is revealed by the following financial statement and condensed balance sheet compiled from the annual reports of that carrier to the commission for the last four years:

The Delaware, Lackawanna & Western Railroad Co. financial statement for years 1908–1911.

[Compiled from annual reports to the Interstate Commerce Commission.]

	1911	1910	1909	1908
INCOME ACCOUNT.				
Operating revenues	$35,947,066	$36,005,987	$33,553,436	$33,810,254
Operating expenses	21,627,942	19,292,769	18,477,713	19,622,043
Net operating revenue	14,319,124	16,713,218	15,075,723	14,188,211
Net revenue from outside operations	295,524	280,673	304,036	245,165
Total net revenue	14,614,648	16,993,891	15,379,758	14,433,376
Taxes accrued	1,640,664	1,516,000	1,094,400	1,290,300
Operating income	12,973,984	15,477,891	14,285,358	13,143,076
Other income	1,039,552	1,048,960	1,422,827	1,382,884
Gross corporate income	14,013,536	16,526,851	15,708,185	14,525,960
Rents and miscellaneous deductions	5,476,000	5,531,728	5,500,646	5,500,860
Interest on funded debt	6,486	6,486		35,531
Dividends from income [1]	6,028,800	6,028,786	5,240,000	5,240,000
Appropriations for betterments	2,554,375	2,471,020	1,676,375	3,540,120
Balance to profit and loss	[1] 52,125	[2] 2,488,831	[2] 3,291,164	[2] 209,449
PROFIT AND LOSS.				
Balance at beginning of year	32,072,279	39,819,591	31,922,627	28,274,909
Other properties—profit	3,228,958	4,079,377	4,634,635	3,614,063
Dividends from surplus [3]		17,030,000		
Credit balance to balance sheet after other adjustments are made	35,362,685	32,072,279	29,819,591	31,922,627
BALANCE SHEET.				
Assets:				
Road and equipment, less reserves for accrued depreciation	42,301,394	38,848,710	Balance sheet form not comparable with 1910 and 1911.	
Securities	17,323,041	13,686,707		
Other investments	2,957,897	2,817,450		
Working assets	19,356,547	19,846,994		
Deferred debit items	5,241,117	6,319,261		
Total	87,179,996	81,499,131		
Liabilities:				
Stock	30,347,720	30,347,720		
Mortgage bonds	320,000	320,000		
Working liabilities	6,567,776	6,941,021		
Accrued liabilities not due	3,047,304	2,707,343		
Deferred credit items	179,023	369,656		
Appropriated surplus	11,355,488	8,801,112		
Balance	35,362,685	32,072,279		
Total	87,179,996	81,499,131		

[1] Debit.
[2] Credit.
[3] Rate of dividends from both income and surplus, 1911, 20 per cent; 1910, 85 per cent; 1909, 20 per cent; 1908, 20 per cent.

NOTE.—The capitalization covers both railroad and coal properties. "In former reports an assignment of $10,000,000 was made to other properties, purporting to represent the capital cost of coal properties, etc. The division was purely arbitrary and had no basis. The two interests are inseparable and we do not care to guess how much is applicable to either." (Annual Report, 1908, p. 28.)

This financial statement shows a high degree of prosperity. With practically no bonded indebtedness, the dividends actually paid in four years are nearly one and a half times the par value of the stock. At the same time there have been expended, since June 30, 1907, out of income for improvements over eleven million dollars, leaving a surplus in 1911 of over thirty-five million dollars. It is true that these returns in part come out of the profits of coal mining, but the capitalization covers both the railroad and coal properties. It should be noted, however, that the capitalization of the Delaware, Lackawanna & Western per mile of all tracks is low as compared with roads in this territory, including the other anthracite roads.

In the case of Meeker & Co. *v.* L. V. R. R. Co., 21 I. C. C., 129, the commission reached the conclusion that the rates for the transportation of coal from the Wyoming region of Pennsylvania to Perth Amboy, N. J. (tidewater), of $1.55 per ton on prepared sizes, $1.40 on pea, and $1.20 on buckwheat, were unreasonable so far as they exceeded $1.40 on prepared sizes, $1.30 on pea, and $1.15 on buckwheat. These reductions of 15, 10, and 5 cents, respectively, were on rates which applied for an average distance of 165 miles. The maximum rates established by the commission afford the carrier ton-mile earnings of 8.48, 7.87, and 6.96 mills, respectively. Upon this basis the

rates to tidewater of the defendant herein would be approximately $1.31 on prepared sizes, $1.22 on pea, and $1.08 on buckwheat.

Following is a comparison for the past 10 years of the anthracite coal rates per gross ton maintained by the Lackawanna and Lehigh Valley Railroads and the Central Railroad of New Jersey from the Wyoming region of Pennsylvania to tidewater:

From—	To—	Period.	Prepared sizes.	Pea.	Buckwheat and culm.
Mines on Central R. R. of New Jersey.	Elizabethport, N. J., and Port Johnston, N. J.	Jan. 1, 1902, to Jan. 15, 1905, inclusive.	$1.55	31.40	$1.20 Buckwheat No. 1.
		Jan. 16, 1905, to date.	1.55	1.40	1.20
Mines on Lehigh Valley R. R. (Lehigh, Schuylkill, and Wyoming regions).	Perth Amboy, N. J., f. o. b. vessels.	Jan. 1, 1902, to Nov. 15, 1903, inclusive.	1.55	1.40	1.25 Buckwheat.
		Nov. 16, 1903, to Jan. 9, 1905, inclusive.	1.55	1.40	1.25
		Jan. 10, 1905, to Oct. 14, 1911, inclusive.	1.55	1.40	1.20
Lehigh and Schuylkill regions.	do	Oct. 15, 1911, to date.	1.55	1.40	1.20
Wyoming region	do	do	1.40	1.30	1.15
Mines on Delaware, Lackawanna & Western R. R.	Hoboken, N. J., f. o. b. vessels.	June 1, 1903, to Feb. 25, 1912, inclusive.	1.58	1.43	1.28
	New York Lighterage Station, N. J., f. o. b. vessels.	Feb. 26, 1912, to date.	1.58	1.43	1.28

It will be seen from this table that the tidewater rates on prepared sizes, pea, and buckwheat over these lines have remained unchanged for 10 years past except over the Lehigh Valley, which reduced its rate on buckwheat 5 cents per ton on January 10, 1905, and on October 15, 1911, established the lower rates on the three sizes in accordance with the commission's order in the Meeker case, supra. In this connection it is worthy of note that this carrier confined the latter reduction to the rates from the Wyoming region alone, although it had always, prior to that time, maintained the same rates from the Lehigh, Schuylkill, and Wyoming regions.

The defendant and the Lehigh Valley Railroad also transport anthracite coal from the Wyoming region to the Lake Erie port of Buffalo for shipment beyond. A comparison of the present rates per gross ton for this movement is as follows:

	Prepared sizes.	Pea.	Buckwheat.	Rice and barley.
Mines on Delaware, Lackawanna & Western R. R. to Buffalo, N. Y.	$2.00	$1.75	$1.75	$1.75
Mines on Lehigh Valley R. R. to Buffalo, N. Y., f. o. b. vessel	2.25	2.00	2.00	2.00
Mines on Lehigh Valley R. R. to Buffalo, N. Y., for reshipment via rail	2.00	1.75	1.75	1.75

The distance to Buffalo via the line of the defendant from Wyoming, Pa., which may be taken as a representative point of origin, is 277.6 miles, and the rate per ton per mile on prepared sizes is 7.2 mills, or 3.4 mills less than the rate under attack, from Taylor, Pa., to tidewater, a distance of 147.8 miles. Via the Lehigh Valley from Wyoming, Pa., to Buffalo the distance is 273 miles, and the rate per ton per mile on prepared sizes, for reshipment by rail, is 7.3 mills, and f. o. b. vessel 8.2 mills. The Lehigh Valley rate on prepared sizes from the Wyoming region to tidewater, a distance of 165 miles, was, until reduced by the commission, 9.4 mills. This table shows that on coal to the Lakes no difference is made in the rates on pea, buckwheat, rice, and barley.

A study of the anthracite-coal movement of the principal coal-carrying roads shows that the bulk of the tidewater coal goes to the New York terminals, and that this tonnage is greatly in excess of the aggregate tonnage to all Lake Erie and Lake Ontario ports, including Buffalo, for domestic as well as Canadian destinations. The following is a statement of the total anthracite movement of eight originating carriers for the last two calendar years:

Anthracite coal movement.

Shipments by railroads, via—	1910	1911
	Long tons.	*Long tons.*
Philadelphia & Reading	12,445,733	13,265,758
Lehigh Valley	11,195,765	12,603,000
Central Railroad of New Jersey	8,519,135	9,218,802
Delaware, Lackawanna & Western	9,589,076	9,869,620
Delaware & Hudson	6,578,356	7,206,731
Pennsylvania	6,250,976	6,494,733
Erie	7,554,198	8,800,179
New York, Ontario & Western	2,772,547	2,495,476
Total	64,905,786	69,954,299

The tidewater coal handled at the principal ports was as follows:

Tidewater coal handled.

To—	1910	1911
DOMESTIC SHIPMENTS.	*Long tons.*	*Long tons.*
New York	13,991,426	14,651,401
Philadelphia	1,980,830	2,197,750
Baltimore	271,122	257,025
Total domestic shipments	16,243,378	17,106,176
EXPORTS.		
Baltimore	3,248	4,525
New York	65,807	87,747
Newark, N. J.	23,335	26,064
Perth Amboy, N. J.	42,591	33,547
Philadelphia	74,733	52,984
Total	209,764	214,867
Total shipments	16,453,142	17,321,043

These figures show the quantities of anthracite coal handled over tidewater docks at New York, Philadelphia, and Baltimore; also exports from these three ports as well as from Newark and Perth Amboy, N. J. Some of these exports, especially at New York, may be contained in the totals of tidewater coal reported by the carriers, but as the exports are relatively small the error resulting from either adding or disregarding the export figures would not be very serious.

The lake shipments of anthracite coal during the same calendar years were as follows:

Lake shipments of anthracite coal.

	1910	1911
TO DOMESTIC DESTINATIONS.	*Short tons.*	*Short tons.*
From Lake Erie ports	3,927,106	4,074,383
From Lake Ontario ports	226,366	254,419
Total domestic	4,153,472	4,328,802
Equivalent in long tons	3,708,904	3,865,002
EXPORTS BY LAKE.	*Long tons.*	*Long tons.*
From Buffalo customs district	320,677	462,588
From Oswego[1] customs district	456,627	778,437
Total, long tons	4,486,208	5,103,027

[1] Figures represent probably exports by lake as well as rail; exports by lake only are not given. The customs district of Oswego includes Sodus Point and Fair Haven.

The foregoing tables have been compiled from data in the possession of the commission.

No definite calculation of initial and terminal expenses was submitted by defendant although it endeavored to show that they are "extremely expensive." It is clear, however, that any possible allowance on account of such extra cost would not bring the total operating expenses to a point where rates of $1.33 on prepared sizes, $1.24 on pea, and $1.09 on buckwheat would not be highly remunerative for the average haul of 155 miles from the mines to tidewater. These rates are based on a consideration of the ton-mile rates established by the commission in the Meeker case, supra, making due allowance for the fact that for a shorter distance the ton-mile rate should be slightly higher.

Considering all the facts of record, we are of the opinion that the defendant's rates per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J. (f. o. b. vessel), of $1.58 on prepared sizes, $1.43 on pea, and $1.28 on buckwheat are excessive and unreasonable in and to the extent that they exceed $1.33 on prepared sizes, $1.24 on pea, and $1.09 on buckwheat, and that for the future the latter rates must not be exceeded for such movement.

We are further of the opinion that the complainant is entitled to reparation upon basis of the rates herein found reasonable as applied to such of the shipments embraced in its claim as were delivered within the statutory period of two years prior to the date of filing complaint. No conclusion as to the amount of the award will be given at this time, and this question will be held in abeyance for determination in a supplemental report.

The complaint contains numerous allegations not connected with the rate. All of them relate to the manner of conduct of the carrier's business in certain respects. The commission is charged with the duty of keeping itself informed with respect to the manner in which this business is conducted, and therefore this report might well devote attention to such matters. However, the petitioner is primarily interested in the rates in question, and we are disposing of that feature of its complaint at this time to avoid the delay which a fair consideration of the collateral issues might necessitate. The extent to which, if any, such collateral issues will be dealt with in a formal report is a matter for future determination.

An order will be issued in accordance with the conclusions herein expressed.

ORDER.

(At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1912. No. 3592. Marian Coal Company *v.* the Delaware, Lackawanna & Western Railroad Company.)

1. This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the

commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and having found that the above-named defendant's present rates for the transportation of anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J. (f. o. b. vessel), are, to the extent that said rates exceed those named in paragraph 3 hereof, unreasonable and unjust:

2. *It is ordered*, That said defendant be, and it is hereby, notified and required to cease and desist, on or before the 15th day of August, 1912, and for a period of not less than two years thereafter abstain, from exacting their present rates for the transportation of anthracite coal in carloads from the point of origin named in paragraph 1 hereof to the points of destination mentioned in said paragraph.

3. *It is further ordered*, That said defendant be, and it is hereby, notified and required to establish, on or before the 15th day of August, 1912, and maintain in force thereafter during a period of not less than two years, rates for the transportation of anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J. (f. o. b. vessel), which shall not exceed the following per long ton: $1.33 on prepared sizes, $1.24 on pea, and $1.09 on buckwheat.

By the commission:

——— ———,
Secretary.

(Opinion No. 2012—Interstate Commerce Commission. No. 3592. Marian Coal Company *v.* Delaware, Lackawanna & Western Railroad Company. Decided October 19 1912.)

Defendant's rate per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J., f. o. b. vessel, of $1.13 on rice and smaller sizes found excessive and unreasonable to the extent that it exceeds 98 cents per long ton.

H. C. Reynolds for complainant.

W. S. Jenney and J. L. Seager for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

The original report in this case (24 I. C. C., 140) found that the rates of defendant per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J., f. o. b. vessel, of $1.58 on prepared sizes, $1.43 on pea, and $1.28 on buckwheat were excessive and unreasonable in and to the extent that they exceeded $1.33 on prepared sizes, $1.24 on pea, and $1.09 on buckwheat, and that for the future the latter rates must not be exceeded for such movement. No finding was made as to the rate on the smaller sizes, barley and rice, although the complaint also put such sizes in issue.

The complainant has applied for a modification of our order, requesting that we reduce defendant's rate of $1.13 per long ton on rice and smaller from Taylor, Pa., to tidewater, f. o. b. vessel, Hoboken, N. J., to a degree proportionate to the reduction on the larger sizes. We are asked to establish rates on rice, barley, and culm. The original petition does not involve culm, and no testimony covering it was submitted; therefore we can not in this proceeding consider the matter of a specific rate on that grade of coal.

It appears, however, from further investigation that our original findings should be supplemented so as to include a rate on rice and barley. The record shows that the complainant sought the establishment of a rate on these sizes and introduced evidence in support thereof. Our former report embraced a consideration of defendant's rate of $1.13 on rice and smaller (which would apply on rice and barley) and showed that such rate per ton-mile for the distance of 147.8 miles from Taylor to Hoboken amounts to 7.6 mills; also that on basis of the rate sought by complainant the ton-mile revenue would be 5 mills. We further pointed out that the ton-mile earnings on the rate of $1.13 approximate 7.2 mills when we accept defendant's claim of 155 miles as the average distance to tidewater from all the collieries and washeries reached by its line.

A large part of the shipments involved in the original claim for reparation consisted of rice and barley, and the complainant asserts that it still has a considerable tonnage of these sizes to ship. In our former report we found that the rate on buckwheat should not exceed $1.09, and it is apparent that our failure to fix a rate on rice and barley, which are in size and value less than buckwheat, would leave in force the rate of $1.13 on such smaller sizes, or a rate 4 cents greater than the rate fixed by us on the next larger size.

We based our conclusions with respect to the rates on prepared sizes, pea and buckwheat, upon the evidence of record and the facts adduced from our examination and analysis of the annual reports filed by defendant in their relation to the rates on coal. We think such evidence and facts apply with equal force to the rate on rice and smaller, and in consideration thereof it is our judgment and determination that defendant's rate per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J., f. o. b. vessel, of $1.13 on rice and smaller is excessive and unreasonable to the extent that it exceeds 98 cents per long ton and that for the future the latter rate must not be exceeded for such movement. An order will be issued in accordance with these conclusions.

We further find that the application of defendant's rate of $1.13 per long ton upon such of complainant's shipments of rice and smaller sizes embraced in its claim as were delivered within the statutory period of two years prior to the date of filing the complaint damaged complainant to the extent of the difference between the amount which it did pay on such shipments and the amount which it would have paid at the rate of 98 cents per long ton herein found reasonable, and that it is entitled to reparation in the sum of such difference. An order awarding reparation will be issued following the receipt and approval by the commission of an itemized statement agreed to by the complainant and defendant which shall show the amount due the complainant under our findings herein.

SUPPLEMENTAL ORDER.

(At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of October, A. D. 1912. No. 3592. Marian Coal Company *v.* The Delaware, Lackawanna & Western Railroad Company.)

1. Upon further consideration of the record in the above-entitled case, the commission having found that the above-named defendant's present rate for the transportation in carloads of anthracite coal, rice and smaller sizes, from Taylor, Pa., to Hoboken or New York lighterage station, N. J., f. o. b. vessel, is, to the extent that said rate exceeds the rate named in paragraph 3 hereof, excessive and unreasonable.

2. *It is ordered*, That said defendant be, and it is hereby, notified and required to cease and desist, on or before the 1st day of January, 1913, and for a period of not less than two years thereafter, abstain from exacting its present rate for the transportation in carloads of anthracite coal, rice and smaller sizes, from Taylor, Pa., to Hoboken or New York lighterage station, N. J., f. o. b. vessel.

3. *It is further ordered*, That said defendant be, and it is hereby, notified and required to establish, on or before the 1st day of January, 1913, upon notice to the Interstate Commerce Commission and the general public by not less than five days, filing and posting in the manner prescribed in section 6 of the act to regulate commerce and for a period of two years after said 1st day of January, 1913, to maintain and apply a rate for the transportation in carloads of anthracite coal, rice and smaller sizes, from Taylor, Pa., to Hoboken or New York lighterage station, N. J., f. o. b. vessel, which shall not exceed 98 cents per long ton.

By the commission:

——— ———,
Secretary.

Mr. Manager STERLING. Mr. President, I will offer now all printed documents in the cases Nos. 38 and 39, and in what is known as the Meeker case, about which the witness Snyder, the clerk of Commerce Court, testified on Saturday last. We do not want them printed, and we shall not ask to have them printed in the record and read, but they are here for inspection.

Mr. WORTHINGTON. They should be marked in some way for identification.

The PRESIDENT pro tempore. If it is agreeable to counsel that they shall be simply here for the convenience of counsel without being incorporated into the record——

Mr. WORTHINGTON. It is entirely so if they are marked so that they can not get mixed up. They should be marked as exhibits in their regular order.

The PRESIDENT pro tempore. They will be identified in the way suggested by counsel. Will the managers name the witness next desired.

Mr. Manager CLAYTON. We next desire to examine Mr. Loomis.

TESTIMONY OF EDWARD E. LOOMIS.

Edward E. Loomis entered the Chamber.

The PRESIDENT pro tempore. Mr. Loomis, state your name and address.

The WITNESS. Edward E. Loomis; house address, 160 West Fifty-ninth Street, New York; office address, 90 West Street, New York.

Edward E. Loomis, being duly sworn, was examined and testified as follows:

Q. (By Mr. Manager FLOYD.) Mr. Loomis, please state your name and address.—A. Edward E. Loomis; residence, 160 West Fifty-ninth Street, New York.

Q. State whether or not you are connected with the Delaware, Lackawanna & Western Railroad Co., and if so, in what position?—A. I am vice president of the Delaware, Lackawanna & Western Railroad Co.

Q. I will ask you to state, Mr. Loomis, whether or not you had at any time a conversation with Judge Archbald, or he with you, concerning a proposed settlement of disputes between the Marian Coal Co. and the Delaware, Lackawanna & Western Railroad Co., through an attorney, Mr. Watson?—A. We did.

Q. Now, state fully the circumstances of that conversation; tell all about it in your own way.—A. I think it was in the latter part of August, 1911, on one of my inspection trips in Scranton, I met Judge Archbald either on the street or in the club, I do not recollect which, and in the course of our conversation the question of settling up the pending difficulties with the Bolands was raised.

Q. By "the Bolands," you mean the Marian Coal Co.?—A. Yes; the Bolands—the Marian Coal Co.

Q. Their corporation was called the Marian Coal Co.?—A. Yes, sir. I replied to him that it was the policy of our company to settle all cases out of court if we could do so on a fair basis. The judge stated that he thought possibly the case could be settled on a fair basis now, and suggested that I have some one call on Attorney Watson. I agreed to do that, and on my return to the company's office in Scranton our superintendent of the mining department, who would have been the proper party to call on Mr. Watson, as he was more familiar with the case, being away, in his absence I requested our superintendent, or our assistant general superintendent at that time, to call on Mr. Watson and listen to what he had to say.

Q. Please state the name of this official.—A. Mr. Rine was the assistant general superintendent of the railroad. He is the general superintendent now, and I think he was the superintendent at that time. He reported that he had a very short interview with Mr. Watson, but that Mr. Watson wanted to see him again and would let him know when. Mr. Watson did call on him or he telephoned him later. Col. Phillips, the superintendent of our mining department, had returned from his vacation——

Q. Now, Mr. Loomis, at that point permit to ask you whether Mr. Rine reported to you verbally or in writing?—A. Verbally, as I recollect.

Q. Go on with your statement.—A. Mr. Phillips called on Attorney Watson, discussed the case with him, and reported to me in writing. That letter, I think, is in evidence here; I *think it is* in the record, and I can read it if you wish.

Q. I am trying to find it. [Handing paper to witness.] Examine that letter and see if that is Mr. Phillips's letter to you.—A. It is.

Q. Now, examine the note attached to it and explain to us what that is.—A. This letter from Col. Phillips reports—do you wish me to read this letter or to state in substance what it contains?

Q. I want you to identify it and explain what the note attached to it meant, and there seems to be another paper attached to it.—A. There is. On receipt of this letter I turned it over to our legal department with a view of ascertaining—there were two claims involved in this settlement; one was the claim——

Q. Just wait a moment. I want to get those documents identified. One of those letters is a letter which you received from Mr. Phillips and the other is the note?—A. The indorsement over to our legal department; yes.

Mr. Manager FLOYD (to Mr. Worthington). Do you wish to examine the letter?

Mr. WORTHINGTON. Oh, no; we have seen the letter.

Mr. Manager FLOYD. Mr. President, we ask that the letter be marked as an exhibit and read in evidence, with the note attached to it.

The PRESIDENT pro tempore. The letter will be marked and read as requested. Is it the manager's desire that the paper be handed back to the witness?

Mr. Manager FLOYD. Yes; he can have it if he desires to refresh his memory. We desire to have it read in evidence at this point. I ask the Secretary to read first the letter and then the note.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read the paper marked "U. S. S. Exhibit 39," as follows:

[U. S. S. Exhibit 39.]

DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
COAL MINING DEPARTMENT,
Scranton, Pa., September 1, 1911.

Mr. E. E. LOOMIS,
Vice President, New York, N. Y.

DEAR SIR: I have had two conferences with George Watson, attorney, relative to settlement of Boland's claim against our company. He came in this morning and stated that he had a long conference with the Marian Coal Co. people, and after going over all the claims they have against us, particularly the claims for excessive freight rates, he stated that Mr. Boland says there were 376,000 tons of coal shipped by the Marian washery, for which he had paid an excess freight averaging 43 cents a ton. The total amount of this claim alone is $161,680, and Mr. Boland would agree to sell us his washery, turn over his lease, satisfy all claims, etc., now pending against our company if we would pay him this $161,680. Mr. Watson intimated to me that possibly this could be shaded somewhat, and that he would be pleased to go over the matter with you at your earliest convenience. Mr. Watson strongly recommends that this matter be adjusted, for the reason that the Boland people have considerable data that would not be well to disclose before the Interstate Commerce Commission.

I promised to let Mr. Watson know the early part of next week as to whether he can confer with you further relative to this matter. If there is anything further I can do in this matter, please advise.

Yours, truly,

R. A. PHILLIPS.

The SECRETARY. There is a notation on the outside on a paper attached, with the initials "W. S. J." at the top, which reads:

W. S. J.:

How much, if anything, can we afford to offer?

E. E. L.

The SECRETARY. There is another letter attached to this.

Mr. Manager FLOYD. Let me examine that. I did not know the other letter was attached. [Examining paper.] I find that one is simply a copy of the other.

The PRESIDENT pro tempore. Are they both to be filed or only the original copy?

Mr. Manager FLOYD. Detach the copy; it is not necessary to have them both.

Q. (By Mr. Manager FLOYD.) Now, Mr. Loomis, if you desire to make any further statements about that letter you can do so.

The WITNESS. You notice in that letter he refers to two claims which the Bolands had. One was in connection with the freight rate and pending litigation and the other was in connection with the sale of his washery. Upon receipt of that letter I indorsed it over to our legal department to ascertain what, if any, value there was to the claim in the way of excessive freight rates, in their opinion. They conferred with our traffic people, and replied to me that they thought the claim would amount to approximately $3,700. I then, in order to ascertain the value of the washery which he was trying to sell, wrote another letter to Col. Phillips, or, rather, requested Col. Phillips to make a report as to the value of the washery and the Marian Coal Co.'s plant, which he did, and he reported to me that its value would approximate $11,853. That made the total value of Mr. Boland's claim, first, for the freight claims as estimated by our traffic people at that time, about $4,000, and the claims on account of the washery at approximately between $11,000 and $12,000; so that the total claims, you will note, amounted to only about $15,000, as compared with the claim that they were presenting to settle of $161,000.

Q. Mr. Loomis, did Mr. Phillips report to you verbally or in writing?—A. In writing; and that letter was put in evidence. It is under date of September 25, 1911.

Q. Will you examine that letter for the purpose of identification, Mr. Loomis?—A. (After examining paper.) That is correct, sir.

Mr. Manager FLOYD. Mr. President, we ask that the letter be read in evidence at this point and marked an exhibit.

The PRESIDENT pro tempore. The letter will be marked and read by the Secretary.

The Secretary read the paper marked "U. S. S. Exhibit 40," as follows:

[U. S. S. Exhibit 40.]

(Form C. M. D. 92–A. 10–09. Lackawanna Railroad. R. A. Phillips, superintendent; C. E. Tubey, assistant superintendent.)

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
COAL MINING DEPARTMENT,
Scranton, Pa., September 25, 1911.

Mr. E. E. LOOMIS,
Vice President, New York, N. Y.

DEAR SIR: Referring to the additional information relative to the value of the Marian Coal Co. property.

Would call your attention to copy of letter of Master Carpenter Robinson to Superintendent Samson, in which you will note that he places no value on the washery building. Mr. Thornton has made a careful appraisement of the machinery, which, you will note by the statement attached, is $11,853.29.

As to the value of the dump. I call your attention to letter from Chief Engineer La Monte in which you will note there is about from 20,000 to 30,000 tons of coal yet remaining that could be prepared, but the value of it is nothing more than the royalty value, which should not be considered as any value to us as a purchaser.

Therefore the value of the Marian Coal Co. plant to us as it stands would be appraised value of machinery, as made by Mr. Thornton, viz, $11,853.29.

Mr. George Watson has called upon me two or three times, asking for an answer to his proposition. Also if he can arrange to confer with you on the matter of settlement. Please advise me what answer I shall make him.

Yours, truly,

R. A. PHILLIPS.

Q. (By Mr. Manager FLOYD.) Mr. Loomis, I will ask you to state what action you took when Mr. Phillips made this report on September 25, I believe it was?—A. I wrote Judge Archbald in connection therewith under date of September 27.

Q. Will you examine the paper, which I hand you, and state whether or not that is a copy of the letter which you sent to Judge Archbald?—A. (After examining paper.) That is correct.

Mr. Manager FLOYD. Mr. President, we ask that it be read in evidence at this point and marked an exhibit.

The PRESIDENT pro tempore. It will be marked and read.

The Secretary read the paper marked "U. S. S. Exhibit 41," as follows:

[U. S. S. Exhibit 41.]

SEPTEMBER 27, 1911.

Judge R. W. ARCHBALD, *Scranton, Pa.*

MY DEAR JUDGE: As per our recent interview, I instructed our people to call on Attorney Watson in connection with the Boland case, and I find there is little, if any, prospect of our reaching any settlement of this case, owing to the very great difference of opinion as to the merits of Mr. Boland's claims and the value of his properties.

Thanking you, however, for your good efforts in this direction, I am,

Very truly, yours,

———.

Q. (By Mr. Manager FLOYD.) This letter is dated September 27, 1911. Did you also write a letter to Mr. Phillips at that time?—A. I did.

Q. Before we get to that, did you reply to Judge Archbald's letter?—A. That is the reply you just read.

Q. Yes; did he reply to your letter—that is what I mean—did he make any reply by letter?—A. He did; yes, sir; the next day, I think it was, on September 28.

Q. I will ask you to examine the paper which I hand you and state whether or not that is Judge Archbald's letter to you in reply to your letter of September 27.—A. (After examining paper.) It is.

Mr. Manager FLOYD. Mr. President, we ask that it be marked an exhibit and read in evidence at this point.

The PRESIDENT pro tempore. It will be marked and read by the Secretary.

The Secretary read the paper marked "U. S. S. Exhibit 42," as follows:

[U. S. S. Exhibit 42.]

(R. Archbald, judge, United States Commerce Court, Washington.)

SCRANTON, PA., *September 28, 1911.*

MY DEAR MR. LOOMIS: I am very sorry to have your letter stating that you have not been able to effect a settlement with Mr. Boland. I trust, however, that the matter is still not beyond remedy. And if I thought that it would help to secure an adjustment I would offer my direct services. I have no interest except to try and do away with an unpleasant situation for both parties, and I hope that this still may be possible.

Yours, very truly, R. W. ARCHBALD.

Q. (By Mr. Manager FLOYD.) Mr. Loomis, I ask you to examine this paper and state if that is the paper that you sent to Mr. Phillips on the same date that you wrote Judge Archbald, September 27.—A. (After examining paper.) September 27; yes, sir.

Mr. Manager FLOYD. Mr. President, I will ask that the letter be marked as an exhibit and read in evidence at this point.

The PRESIDENT pro tempore. The letter will be marked and read by the Secretary.

The Secretary read the paper marked "U. S. S. Exhibit 43," as follows:

[U. S. S. Exhibit 43.]

(E. E. Loomis, vice president. Exhibit 131.)

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
90 WEST STREET,
New York, September 27, 1911.

Mr. R. A. PHILLIPS,
Superintendent Coal Mining Department, Scranton, Pa.

DEAR SIR: I send you herewith copy of a letter I have this day written Judge Archbald in connection with the settlement of the Boland case. As you must know, the figures Mr. Watson suggested in settlement are simply ridiculous.

In the first place, you are too familiar with the merits of his claims as to our having set fire to the Holden dump, or diverting water from his washery, or as to our preventing him from selling the washery at an advantageous figure for me to enter into any discussion of them. In other words, I think you will agree with me, he would have a pretty hard time to go into court and make out a case in any of these claims.

Assuming we were obliged to adopt the freight rates which have recently been established by the commission in the Meeker case. In this award the commission reduced the freight rate on buckwheat coal to tidewater to $1.15 per ton. They did not, however, reduce the rates on rice and barley. In other words, they O. K.'d the present rates on these two smaller sizes, and it is fair to assume, after doing so, they will not grant a lower rate to Mr. Boland. Assuming that Mr. Boland is entitled to reparation on the buckwheat shipments he has made over our line since he has been operating his washery, based on the findings in the Meeker case, our freight department state he could not recover but $3,774.64.

As to the purchase of his washery, I think you will agree we are not particularly keen to purchase old washery machinery. We have plenty of that on hand ourselves, and the building and bank seem to be of little or no value.

Taking all the matters into consideration, as enumerated in Mr. Seager's letter, copy of which is attached hereto, I doubt if we care to make any offer to Mr. Watson. I can see no objection, however, to your meeting him and explaining to him our position.

From the above you will note we would not be warranted in paying in settlement of this claim more than from $15,000 to $20,000 instead of $161,680. I do not think we even want to put ourselves in position of making an offer to Mr. Watson of $15,000 to $20,000, but, as stated above, I can see no particular objection to explaining to him the reasons for our position.

Yours, very truly,

Vice President.

The SECRETARY. In the first paragraph of the letter, after the word "figures," there is written in pencil "Mr. Watson," the word "he" being stricken out; and after the words "buckwheat coal to tidewater," in the third paragraph, there is written in pencil "to $1.15."

Q. (By Mr. Manager FLOYD.) Mr. Loomis, please state if, shortly after that letter, you received a letter from Mr. Watson concerning this settlement.—A. Yes; I did.

Q. Will you examine the paper I send you and state whether that is the letter?—A. (After examination.) It is.

Q. Please state the date of the letter.—A. October 2, 1911.

Mr. Manager FLOYD. Mr. President, we ask that this be marked as an exhibit and be read in evidence at this point.

The Secretary read as follows:

[U. S. S. Exhibit 44.]

(George M. Watson, attorney at law, Scranton, Pa. In re claim of Marian Coal Co.)

OCTOBER 2, 1911.

Mr. E. E. LOOMIS,
Vice President Delaware, Lackawanna & Western Railroad Co., 90 West Street, New York City.

DEAR SIR: In relation to a matter existing between the Marian Coal Co. and your road and coal department, and also a claim against the traffic department of your road which I have had under consideration here and with which I presume you are more or less familiar, I decided after a conference with your Mr. Phillips, of the coal department, to ask for a meeting with you and the president of your road, Mr. Truesdale, if convenient, at the earliest time you could find your way clear to meet me either in New York or Scranton. If you will kindly advise me either by wire or letter, I will hold myself in readiness to meet you on a few hours' notice.

I am, very truly, yours, G. M. WATSON.

Q. (By Mr. Manager FLOYD.) I will ask you to state if about the same time you received a letter from Judge Archbald pertaining to the same subject matter; and, if so, examine the paper I send to you and see whether that is the letter.—A. (After examination.) It is. October 3, 1911.

Mr. Manager FLOYD. Mr. President, I will ask that it be marked as an exhibit and be read in evidence at this point.

The Secretary read as follows:

[U. S. S. Exhibit 45.]

UNITED STATES COMMERCE COURT,
Washington, October 3, 1911.

E. E. LOOMIS, Esq.,
Vice President Delaware, Lackawanna & Western,
90 West Street, New York City.

MY DEAR MR. LOOMIS: I understand that there has been a suggestion that Mr. Watson meet you and possibly also Mr. Truesdale, and that Mr. Watson has written asking for an appointment. It seems to me, if I may be permitted to say so, that this is a very good idea. It will give you an opportunity to discuss the Boland claim with Mr. Watson upon a somewhat different basis than Col. Phillips could representing the coal department.

I have little doubt but that it will appear so to you, and it may be altogether unnecessary for me to write about it. But I am sure you will not take it amiss to have me do so, and I shall hope that a settlement may yet be reached in that way. There is nothing like a personal interview to bring about such a result.

Yours, very truly, R. W. ARCHBALD.

Q. (By Mr. Manager FLOYD.) Mr. Loomis, I will ask you to examine this paper and see if that is the letter you received from Mr. Phillips relating to the same transaction.—A. (After examination.) It is; dated September 28, 1911.

Mr. Manager FLOYD. We ask that it be marked as an exhibit and read at this point.

The Secretary read as follows:

[U. S. S. Exhibit 46.]

(Form C. M. D. 92–A. 12–10. Lackawanna Railroad. R. A. Phillips, superintendent; C. E. Tobey, assistant superintendent.)

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
COAL MINING DEPARTMENT,
Scranton, Pa., September 28, 1911.

Mr. E. E. LOOMIS,
Vice President, New York, N. Y.

DEAR SIR: I have your letter of the 27th instant relative to conference that I have had with Attorney Watson in connection with Marian Coal Co. matters, and would say that I agree with you in this matter and will arrange to handle it as outlined in your letter.

Yours, truly,

R. A. PHILLIPS.

Q. (By Mr. Manager FLOYD.) Mr. Loomis, to refresh your memory, I will ask you to examine this paper and state if it is a letter from Mr. Rine reporting his action in the matter.—A. (After examination.) It may be; I can not say positively. I assume that it is. It is not on his letterhead, but I assume that it is. I do not recall it.

Mr. Manager FLOYD. We will not offer it at this point, then.

Mr. WORTHINGTON. Will you let me look at it?

Mr. Manager FLOYD. Yes, sir. I say we are not offering it at this point.

Mr. WORTHINGTON. I understand.

Q. (By Mr. Manager FLOYD.) I will ask you to state whether or not you had any other conference or conversation with Judge Archbald in regard to this proposed negotiation or settlement except the one you testified to in the beginning of your testimony; and if so, when and where.—A. One short interview in my office in New York.

Q. As nearly as you can, please state the date when it was.—A. That was between September 1 and October 5. That is as near as I can come to it. It was during the time that I was investigating the actual value of the Boland claim, when I was awaiting my reports from the traffic department and from the coal-mining department.

Q. Then, if I understand you, it was between the 1st of September and the 5th of October?—A. Yes, sir.

Q. What did Judge Archbald say to you in that conference?—A. It was nothing but a friendly conference. We did not enter into the merits or discuss it in any way.

Q. But as nearly as you can remember, how did it come about and what did he say?—A. He simply wanted to know, not having heard from me in any way, what progress was being made, and I told him I would call for these reports, and just as soon as I heard from these people I would let him know.

Q. What progress was being made about what?—A. What progress was being made toward finding out the value of this property. In other words, mind you, Mr. Watson up to that time had received no reply from us. I could make no reply until I received the report of the mining department and the traffic department, and there was some time elapsing, mind you,

and it was during that time that the judge wanted to know what progress was being made. I explained to him that I had called upon these people for the reports, and that as soon as I got the reports I would let him know the conclusions.

Q. What I want to bring out clearly is whether or not his conversation related to the attempted settlement through Mr. Watson and himself.—A. I do not remember whether the judge brought up the point or I brought it up. I simply told him that I had received his letter and we would let Mr. Watson know what our conclusions were.

Q. Well, the conversation related to this Watson settlement?—A. Yes; we referred to it in our conversation.

Q. Or the attempted settlement through Mr. Watson?—A. We referred to it in our conversation; yes.

Q. It related to that; that was the matter you were investigating?—A. Yes, sir. I might add that the judge probably was not in my office 10 minutes, all told.

Q. Do you know what he was doing in New York at that time?—A. I do not.

Q. Did he mention any other business?—A. He did not.

Q. Now, Mr. Loomis, state whether or not the conference with Mr. Truesdale and yourself requested in the letter from Mr. Watson was granted; and if so, state when and where it took place.—A. It was. It occurred in Scranton on October 5.

Q. Who was present?—A. Mr. Watson; Mr. Truesdale; Mr. *Phillips, superintendent* of the coal-mining department; Mr. Tobey, assistant superintendent; and Mr. Reese, attorney; and myself.

Q. And that was held on the 5th of October?—A. The 5th of October, in Scranton.

Q. Did Mr. Watson appear there and submit a proposition to the officials of your company—to Mr. Truesdale?—A. He did.

Q. What was that proposition?—A. A settlement for $161,000, approximately.

Q. How long did that conference last?—A. I do not know that I remember exactly. It was long drawn out. We got nowhere with it, though.

Q. The proposition was turned down by your company, was it?—A. It was.

Q. Just tell as nearly as you can what took place at the conference, what was said, and what was discussed.—A. He presented the case from their standpoint. He tried to impress us with the importance of settling it, which we failed to see and declined to consider. That is practically all that occurred.

Q. What was it that he was trying to settle—all the disputes between the two companies?—A. Yes, sir.

Q. I will ask you to state whether Mr. Watson at that conference presented any data or facts or referred to what is known as the Meeker case as a reason why you should settle?—A. I think he did make some reference to the Meeker case, but I do not remember what it was.

Mr. REED. Mr. President, I desire to send up a question which I should like to have propounded to the witness.

The PRESIDENT pro tempore. The Senator from Missouri sends up a question which he desires propounded to the witness. It will be read.

The Secretary read the question, as follows:

Q. You state that Judge Archbald was in your office only about 10 minutes. Did he have any other business there except to discuss the matters you have referred to?

The WITNESS. I think that was all that was discussed. He passed the time of day, and we may have had some social exchange of courtesies, and that is all. He raised this point, and I told him as soon as I heard from these people I would let him know.

Q. (By Mr. Manager FLOYD.) I will ask you to state if your company at the time these negotiations were being carried on had a suit pending in the Commerce Court or were interested in any litigation before the Commerce Court?

Mr. WORTHINGTON. I think that is to be shown by the record.

Mr. Manager WEBB. That is admitted in the pleadings, Mr. President.

Mr. WORTHINGTON. Then why prove it?

Mr. Manager FLOYD. I think——

The WITNESS. I know only from hearsay. I do not follow that. That is not in my department, and I have nothing at all to do with it, but I understand there was.

Q. (By Mr. Manager FLOYD.) Well, you did know it, as a matter of fact?—A. In a general way, yes. But I never attended any of the meetings.

Q. What was the principal reason that Mr. Watson gave in this conference as to why the settlement should be made?—A. I beg your pardon.

Q. What was the principal reason or argument that Mr. Watson presented to the officials of the railroad company why he thought you ought to settle on a basis of $161,000?—A. He tried to convince us that it was a bargain; that is, that it was worth that. He had an exaggerated idea of the value of the washery.

Q. Did he say anything about the necessity of settling this litigation on account of the ruling of the Interstate Commerce Commission in the Meeker case?—A. I think he did say it was desirable.

Q. He urged that as a reason also?—A. I am not clear on that, but I think he did.

Q. In one of these letters, if I remember correctly reading it, you referred to the proposition as ridiculous to settle on the basis proposed by Mr. Watson. Do you so regard it?

Mr. WORTHINGTON. One moment, please. I object to what he thinks now about it.

Mr. Manager FLOYD. He said in his letter——

Mr. WORTHINGTON. He said in his letter that he thought the claim was absurd. If you want to ask him if he believed what he wrote, there is no objection to it, but I object to your asking him what he thinks about it now.

The PRESIDENT pro tempore. The Chair understands the question to be whether the witness is of the same opinion as to the value at this time.

Mr. Manager FLOYD. That is the question exactly; whether he regards that as an excessive demand to settle the suits—so excessive as to be ridiculous.

Q. (By Mr. Manager FLOYD.) Do you still so regard it?—A. Certainly; his claim as to the value of the washery is ridiculous. As you probably know, the findings in the case of the Lackawanna before the Interstate Commerce Commission were not based on the findings in the Meeker case, so our estimate of the value of the claim from the rate standpoint at that time naturally was not accurate when we got our findings in the Interstate Commerce Commission later. Just what that amounts to I am not prepared to say.

Q. I ask you now if you at this time consider a demand for $161,000 ridiculous or preposterous?—A. I could not answer that without getting a report from our traffic department and see how the findings in the Marian Coal Co. case would work out—the same as I did before.

Q. Then since that letter was written, the case of the Marian Coal Co. has been decided by the Interstate Commerce Comsion adverse to your company, has it not?—A. It has.

Q. And you could not tell exactly about that until you had ascertained the effect of those findings; is that what you mean?—A. That is correct.

Q. You say the rates in this case, which was decided against your company, were not based upon the Meeker rates?—A. They were different.

Q. If the Meeker rates were applied in your case, would you regard the proposition submitted by Mr. Watson as ridiculous or excessive?—A. Yes, sir.

Q. I will ask you to state, Mr. Loomis, if the conference on the 5th of October was the end of these negotiations through Mr. Watson, about which Judge Archbald spoke to you?—A. So far as I am concerned; yes, sir.

Q. Did either of the Bolands ever afterwards confer with you looking to further negotiation?—A. No, sir.

Q. To refresh your memory, did C. G. Boland ever call on you afterwards?—A. He called at my office, but we did not go into the details of the settlement of this case, as I testified before.

Mr. Manager FLOYD. That is all.

Cross-examination:

Q. (By Mr. WORTHINGTON.) How long have you known Judge Archbald?—A. I should say for seven or eight years.

Q. Did you formerly live in Scranton?—A. Yes, sir.

Q. Did you know him well there?—A. I knew him as a citizen; yes, sir.

Q. Was Judge Archbald present at any time at any talk you had with Mr. Watson?—A. No, sir.

Q. What do you mean by the expression in one of theses letters read in evidence about setting fire to something?—A. That is one of the claims that Mr. Boland made.

Q. In order that all may know what I am asking about I will read this, which I find in one of these letters.

Mr. Manager FLOYD. On what page is that?

Mr. WORTHINGTON. At top of page 1610. This is your letter of September 27, 1911, to Mr. R. A. Phillips, your superintendent, saying:

In the first place you are too familiar with the merits of his claims—

That is, Boland's claims, I take it—

as to our having set fire to the Holden dump or diverting water from his washery or as to our preventing him from selling the washery at an advantageous figure for me to enter into any discussion of them.

What does that mean?—A. It means what is says. It is a long story. He had filed a lot of claims against us or, rather, he made a lot of claims against us from time to time in connection with all those matters, to which we attached no importance.

Q. You were asked whether this negotiation with Mr. Watson was to settle all the transactions between the two companies. That is what Mr. Watson wanted you to settle. Did you have any transactions between the Marian Coal Co. and the Lackawanna Co. then except the suit in the Interstate Commerce Commission?—A. Yes, sir. The claims he wanted to settle were for selling the Marian washery as well.

Q. But you did not have any litigation with him about the Marian washery?—A. No, sir.

Q. Was his proposition to you to sell the washery or to sell part of the stock of the Marian Coal Co.?—A. To sell the washery.

Q. Did you ever hear anything about any proposition to you or to your company to have the company purchase two-thirds of the stock of the Marian Coal Co.?—A. No, sir.

Q. In reference to the amount of the claim, did you have any inquiry made as to whether Watson's figures were right when you stated in your letter of September 1 that Mr. Boland said there were 376,000 tons of coal shipped by the washery? Did you have any investigation made to see whether that was true?—A. I did not.

Q. When you say the claim was excessive did you mean to express any opinion as to whether or not there were that many thousands of tons that had been shipped by the Marian Coal Co. over your road?—A. That was our traffic department. I called upon them for the value of the claim, and they based it on the Meeker case, which covered only the buckwheat coal.

Q. You were basing your opinion that it was ridiculous upon the report of the traffic department and did not know yourself?—A. No, sir; I never figured it out. I depended upon them for the value of the freight claims.

Mr. WORTHINGTON. That is all.

Mr. Manager FLOYD. That is all.

The PRESIDENT pro tempore. The witness may retire. Do the managers or the counsel desire this witness retained?

Mr. WORTHINGTON. I may say it is almost a certainty that we shall be required to recall him, instead of now asking him questions, under the rulings which have been made.

The PRESIDENT pro tempore. Under the present summons?

Mr. WORTHINGTON. We are perfectly willing that he shall go back to his duties and come here on telegraphic order, if that is satisfactory to him.

The WITNESS. It is satisfactory to me.

Mr. Manager FLOYD. So far as the managers are concerned, we are willing to discharge him under our summons.

The PRESIDENT pro tempore. Does counsel desire his recall for cross-examination or examination in chief?

Mr. WORTHINGTON. I think under the rulings which have been made we will have to call him as our witness.

The PRESIDENT pro tempore. Very well. The witness is then discharged under the present summons, and as the Chair understands it, counsel desires a subpœna for him as a witness.

Mr. WORTHINGTON. I hope we will not be put to that trouble. The witness is perfectly willing to return on telegraphic order.

The PRESIDENT pro tempore. Unless the witness will respond to such a call.

Mr. WORTHINGTON. Very well.

Mr. Manager FLOYD. Call Mr. Rine.

TESTIMONY OF EDWIN M. RINE.

Edwin M. Rine, being duly sworn, was examined and testified as follows:

Q. (By Mr. Manager FLOYD.) Please state your name and place of residence?—A. Edwin M. Rine, Scranton, Pa.

Q. Are you connected in any way with the Delaware, Lackawanna & Western Railroad Co.?—A. Yes, sir; general superintendent.

Q. Were you connected with that railroad company in August, 1911?—A. Yes, sir.

Q. In the same capacity?—A. Assistant general superintendent at that time.

Q. I will ask you to state if some time in August, 1911, or about that time, Mr. Loomis gave you directions to confer with one Mr. Watson, an attorney of Scranton?—A. Yes, sir; he did.

Q. What did he tell you?—A. He asked me if I knew Mr. Watson, an attorney.

Q. What Watson was that?—A. George M., I believe, are his initials. I replied that I did know him. He asked me to see him and see what he had to propose in the way of a settlement of the differences between the Delaware, Lackawanna & Western and the company Mr. Watson represented, which he represented to be the Marian Coal Co.

I called Mr. Watson to my office, and he advised me he had not had time to go over the papers in connection with the case, but that as soon as he had time he would call me up and confer with me. In perhaps 10 days, or perhaps less, he called me up and said he was ready to discuss the matter. I told him Mr. Phillips, the general manager of the coal department, had returned to Scranton, and that he could call him up and confer with him.

Q. Have you repeated all that occurred between Mr. Loomis and yourself when he gave you the instructions?—A. Yes, sir; to the best of my recollection.

Q. Did he give you any information as to why or upon whose recommendation he wanted you to see Mr. Watson?—A. I do not recollect that he did. I would not have asked him. When he asked me to go down and see Mr. Watson I complied with his request.

Q. Did he tell you anything to the effect that he had received information that a settlement could be had through Watson?—A. I do not recollect that he did; no, sir. He asked me to find out what Mr. Watson had to propose.

Q. I will ask you if you did not, when you were before the Judiciary Committee of the House, state in substance that Mr. Loomis told you that it had been intimated to him that a settlement of the case might be made through Mr. Watson and asked you to go to Mr. Watson's office?—A. Whatever I testified to before the Judiciary Committee is correct.

Q. I will ask you to state now, since your attention has been called to it, if you do not remember that Mr. Loomis did tell you that he had some kind of an intimation or suggestion that Mr. Watson was in a position to make a settlement?—A. He may have said so. I can not recollect it at this time.

Q. At page 1653 of the hearings before the Judiciary Committee I will read the question and then read the answer. Listen to it, Mr. Rine:

The CHAIRMAN. State in your own way, Mr. Rine, all that you know regarding the negotiations for the sale of the stock or properties of the Marian Coal Co. to the Lackawanna Railroad, or for the settlement of the case between that coal company and the railroad company before the Interstate Commerce Commission.

Mr. RINE. Mr. Chairman, I know very little about the matter, except that one day Mr. Loomis stated to me that it had been intimated to him that there was a possibility of a settlement of the case, and he requested me to call on Attorney George Watson in reference to the matter.

Did you not so swear before the Judiciary Committee of the House?—A. If it is down there, yes, sir; I swore that. I swore to whatever they took down that day I was here.

Q. It is down here.—A. Then I swore to it.

Q. Is not that a fact?—A. To the best of my recollection.

Q. Now, I will ask you to examine this paper. [Handing paper.] Is it a copy of a letter that you sent to Mr. Loomis in regard to this?—A. (Examining.) I believe it is.

Mr. WORTHINGTON. May I look at it?

Mr. Manager FLOYD. It is Exhibit 136. [Handing paper to the witness.] You say you think that is your letter to Mr. Loomis?—A. (Examining.) I believe it is; yes, sir.

Q. Are you satisfied it is?—A. I could not swear to it unless I had the original.

Q. To the best of your recollection, this is a copy of the letter you sent to Mr. Loomis?—A. To the best of my recollection, I made a report similar to that to Mr. Loomis as a result of my conference with Mr. George M. Watson.

Q. Did you not put this exhibit in evidence before the Judiciary Committee?—A. I do not know whether I put in that or whether it was one similar to it.

Q. Similar to that?—A. Yes; something similar to that.

Q. You put in only one letter?—A. That is all I put in; yes, sir.

Mr. Manager FLOYD. Mr. President, we will ask that it be read, with the notation on it.

The PRESIDENT pro tempore. It will be read, without objection.

Mr. WORTHINGTON. I have not seen the notation.

Mr. Manager FLOYD. It is just the exhibit.

Mr. WORTHINGTON. Very well.

The Secretary read as follows:

[U. S. S. Exhibit 49.]

AUGUST 25, 1911.

Mr. E. E. LOOMIS:

In accordance with your request I met Attorney Watson my office this afternoon; conferred with him re subject we discussed. He has agreed to see Mr. Boland and report results shortly.

Respectfully, ———— ————.

Q. (By Mr. Manager FLOYD.) Mr. Rine, Mr. Phillips, then, as I understand it, took charge of the matter?—A. I assume he did. I never heard anything more about it.

Q. You did not know more about it yourself?—A. No, sir; I did not.

Q. I will ask you to state whether Mr. Loomis informed you as to who had intimated that a settlement could be brought about through Mr. Watson.—A. He did not.

Q. Did you know?—A. No, sir; I had no means of knowing how Mr. Loomis brought this about.

Q. He did not inform you, then, who had intimated to him that a settlement could be made?—A. No, sir; he did not.

Q. And you went and did what he instructed you to do and made your report?—A. Yes, sir.

Q. Is that all you know about the case?—A. All, I think. There is another little item here. I do not want to be called back, and you might as well have it all.

Q. You have in your mind what it is?—A. Yes. Before I called Mr. Watson up I called Mr. Boland on the telephone and asked him if Mr. Watson had been delegated by him to represent him, and he said he had.

Q. Tell us which one of the Bolands.—A. William P. Boland.

Q. After you received your instructions from Mr. Loomis you called him up over the phone?—A. Yes, sir.

Q. And asked him whether or not Mr. Watson was authorized to represent him, and he told you he was?—A. Yes, sir; he told me he was.

Q. Why did you do that, Mr. Rine?—A. I can not say why I did it, any more than——

Q. Did Mr. Loomis instruct you to do that?—A. He did not. I know Mr. Boland quite well. I wanted to be sure of my ground before I did it. I had seen from the newspapers that Mr. Reynolds had been handling the case and I wanted to be sure there was no mistake.

Q. You knew or had seen in the newspapers that Mr. Reynolds was handling the case?—A. Yes, sir.

Q. Mr. Reynolds did continue to handle the case, did he not?—A. I do not know anything about that.

Q. You wanted to be sure that Mr. Watson had authority?—A. Yes, sir.

Mr. Manager FLOYD. That is all.

Cross-examination:

Q. (By Mr. SIMPSON.) Mr. Rine, did you have any conversation, either verbal or written, with Judge Archbald in relation to the matter at any time?—A. Not to my knowledge.

Mr. SIMPSON. That is all.

Mr. Manager FLOYD. So far as we are concerned, this witness may be discharged.

Mr. WORTHINGTON. That is satisfactory to us, Mr. President.

The PRESIDENT pro tempore. The witness is finally discharged.

TESTIMONY OF REESE A. PHILLIPS.

Reese A. Phillips, having been duly sworn, was examined and testified as follows:

Q. (By Mr. Manager FLOYD.) Mr. Phillips, please state your name and place of residence.—A. Reese A. Phillips, Scranton, Pa.

Q. State if you are in any way connected with the Delaware, Lackawanna & Western Railroad Co., and if so, please state your connection with it.—A. I am general manager of the coal-mining department.

Q. Were you occupying the same position with the company in August, 1911?—A. I am not quite sure whether I was general manager then or general superintendent of the coal-mining department, either one of the two.

Q. Either one or the other?—A. Yes, sir.

Q. Now, Mr. Phillips, I will ask you to state whether or not, about August 11, you received any instructions from Mr. Loomis in regard to a settlement of the affairs of the Marian Coal Co. and the railroad company, and if so, just state the facts in regard to it.—A. I had no instructions from Mr. Loomis. Mr. Rine, the superintendent of the railroad department, advised me that Mr. Loomis was in town during my absence and stated that when I returned home I was to get in touch with Mr. George Watson, an attorney at law in Scranton, in relation to receiving a proposition from Mr. Watson toward the settlement of some disputes the Marian Coal Co. had against the Lackawanna Railroad.

Q. Under instructions from Mr. Rine you took that matter up with Mr. Watson?—A. Yes, sir.

Q. Immediately?—A. Immediately; yes, sir.

Q. Just state what occurred, what Mr. Watson proposed.—A. I called Mr. Watson on the telephone a day or two after Mr. Rine notified me, and I think Mr. Watson came to my office and stated he was not prepared at that time to give me a proposition, for the reason that the officials of the Marian Coal Co. were preparing a statement showing the amount of money or the total amount of the various claims that they had against our company. A few days later Mr. Watson called me on the telephone and said he was prepared to meet me, and he came over to the office with a large bundle of papers. He started out by saying that he had an itemized list in his possession of the various claims, and called off a number of claims, that is, the amount of the claims—among them was three hundred and some odd thousand tons of coal at forty and some odd cents per ton that Mr. Boland claimed he had been overcharged in transportation—that amounted to over $161,000. Watson said that they would strike off or reduce that amount somewhat, but he said he would make his claim $161,000; that is, make his proposition $161,000 flat.

Q. Now, state if after he made that proposition you had any investigation made in regard to the property looking to a settlement?—A. I told Mr. Watson at that time that from my knowledge of the Marian Coal Co.'s property his proposition was preposterous, and that I would submit it to Mr. Loomis, our vice president, which I did in a letter.

Q. Mr. Phillips, I will ask you to examine Exhibit 43 [handing paper] and state whether or not that is a copy of the letter.—A. (Examining.) This is not the letter I sent to Mr. Loomis.

Q. I asked you if that was a copy of the letter.—A. No, sir; it is not.

Mr. Manager FLOYD. It is the letter from Mr. Phillips to Mr. Loomis that I wanted.

The PRESIDENT pro tempore. All those letters have been identified, have they not?

Mr. Manager FLOYD. Yes, sir. [To the witness:] Have you a copy of that letter?—A. With me?

Q. Yes, sir.—A. No, sir.

Mr. Manager FLOYD. It is the letter from Phillips to Loomis making a report.

(Exhibit 39 was handed to the manager.)

Q. (By Mr. Manager FLOYD.) Do you remember the date of your report?—A. Some time in September. I do not recall the date.

Q. I will ask you to examine that letter [handing paper] and see whether or not it is the letter you wrote to Mr. Loomis.—A. (Examining.) That is my letter to Mr. Loomis; yes, sir; under date of September 1, 1911.

Q. And in that letter you reported to Mr. Loomis your views about it?—A. Yes, sir.

Mr. Manager FLOYD. The letter is already in evidence, and I do not desire to advert to it further than to identify it.

The WITNESS. That is not the letter I reported my views in. That is the letter the result of the conference I had with Mr. Watson.

Q. (By Mr. Manager FLOYD.) Is there still another letter? Have you a copy of the letter in which you reported your views?—A. I have no copy of any correspondence with me.

The PRESIDENT pro tempore. That letter has been already identified and read in evidence, and it is not disputed.

The WITNESS. I have heard it read.

Mr. Manager FLOYD. It has been read in evidence.

The PRESIDENT pro tempore. It has, and is not disputed.

Mr. Manager FLOYD. Very well; that is sufficient. [To the witness:] Mr. Phillips I will ask you to state any further steps that were taken in regard to this negotiation with Watson in which you were concerned in any way. First, I will ask you to state if you ever had any interview or conversation or conference with Judge Archbald about it in any way whatever.—A. I had a conference or a conversation with Judge Archbald; yes, sir.

Q. Just state when that occurred, how it came about, and what was said.—A. It was some time in September; I think the latter part of September. I recall it was on a Friday evening. I received a telephone message from Judge Archbald, in which he asked me if I would call and see him the next morning at his office. I told him I did not know he had an office in Scranton, and asked where its location was. He stated in the Government building. I told him I would be very happy to call on him the next morning. The next morning when I got to my office I had some other important matters to attend to and I forgot about the appointment I had with Judge Archbald. Saturday noon, while home at lunch, Judge Archbald called me and said, "You forgot to keep your appointment with me this morning." I said, "Yes; I had forgotten about it, and I will call on you in the afternoon." He said he usually went out to the country and to the woods for a walk on Saturday afternoon. I told him I would call and see him Monday morning.

Q. This conversation was over the telephone?—A. This conversation was over the telephone.

Q. Go ahead.—A. He told me he was going to Washington Sunday and would like to know if I would not come over to

his house that evening, which I did about 7 o'clock Saturday evening.

Q. I will ask you to state what occurred. What was said?—A. When I got to Judge Archbald's house he greeted me and took me into his parlor. Mrs. Archbald was sitting in the next room. The doors were open between one room and the other. After talking a few minutes of olden times, old acquaintanceship we had, he finally asked me what was the value of the Holden washery or their plant down at the Holden colliery. I told him I did not think the value of that plant was very much, that if I was going in the coal business I did not know that I would take it for a gift. He finally said, "Boland has a number of claims against you," and I says, "He has stated that he has a number of claims." Says I, "What do you refer to, Judge Archbald, these rate matters, or alleged claims in connection with the burning of the culm bank and diverting water?" He says, "That is what I mean, about the washery; I do not mean anything about the rate question."

I went on then and explained in detail to Judge Archbald all the alleged claims that Mr. Boland had in connection with the operating of the Marian coal washery. When I got through Judge Archbald said, "If that is the case the settlement between the Bolands and your company is very far apart, because, as I understand it from," I think he said, Mr. Christy Boland, "they place the value of the washery at over $60,000," or something to that effect. I told Judge Archbald that I did not care what value the Bolands placed on it, as to my value I had already told him. That was all the conversation I had.

Q. Now, Mr. Phillips, to refresh your memory, did he not state that was the value put on it by Boland and Watson?—A. No; he never said no such thing.

Q. Mr. Phillips, you testified before the Judiciary Committee of the House, did you not?—A. Yes, sir.

Mr. Manager FLOYD. It is on page 1307, Mr. Worthington.

Mr. WORTHINGTON. I have it.

Q. (By Mr. Manager FLOYD.) I will ask you to state if, in response to the following question by the chairman, you did not testify as follows:

The CHAIRMAN. I do not know that it has anything to do with the case, but what position has his son now?

Mr. PHILLIPS. His son now is assistant mine foreman. The next step will be this special engineer.

I went over to his house, went in and shook hands with the judge and passed the time of evening, and he says, "Colonel, what do you know about the claim of Will Boland against your company?"

I says—

Did you make that statement?—A. Sure. If it is there; yes, sir. That is just about what I said a little while ago, I think.

Q. I am continuing your answer—

I says, "You mean in connection with his washery or the transportation of coal?" "Oh," he says, "about the washery." He says, "What do you value that washery and culm bank at?" I told him, roughly, what I thought it was worth. Then I recited to Judge Archbald the entire history of the various conversations that I had had with Mr. Boland in that connection from the day he got the lease of the bank up until he filed his suit with the Interstate Commerce Commission. Judge Archbald said, "Well, if that is the case, Colonel, his proposition of settlement, from what I can understand from George Watson and what you tell me, is away off." I said, "Yes, indeed."

Q. Did you not swear to that?—A. I may have said it, but I do not recall ever mentioning Watson's name. I may have done it. If it is in my testimony the chances are that I did say it, because my memory was more fresh then about this transaction than it is now.

Q. I ask you if you did not make that statement before the Judiciary Committee of the House?—A. Sure. If it is there in print there is no question about it. I do not dispute that you have read it correctly, Mr. Floyd.

Q. If you said it then, your memory would be more reliable than it is now?—A. Oh, yes; there is no question about it.

Q. Owing to the lapse of time?—A. Yes, sir.

Q. So he said that to you in that conversation?—A. Yes, sir.

Q. Did you have any other or further conversation with him about it?—A. With Judge Archbald?

Q. Yes, sir.—A. I never had any more conversation with Judge Archbald at all with reference to the matter or any other matter.

Q. You knew or understood that George Watson was attempting to bring about a settlement of this difficulty?—A. Sure; I had had a conference with George Watson prior to my conference with Judge Archbald, if I recall it correctly.

Q. I will ask you to state whether you had had a conference with George Watson just a short time before this conference with Judge Archbald?—A. I think it was a few days before that.

Q. Did you understand from Loomis that Judge Archbald had anything to do in bringing in this settlement or had anything to say?—A. I do not recall that Mr. Loomis ever mentioned Judge Archbald's name to me until after I had this conference at Judge Archbald's residence.

Q. He did after that?—A. He did after that; yes, sir.

Q. Now, I will ask you to state, Mr. Phillips, if after you had made your report there was to your knowledge any further effort made to get a settlement by a further conference?—A. I do not know of any effort that has been made to settle this transaction on the part of our company at all.

Q. That is not the question. I am asking, if through Mr. Watson or Judge Archbald there was a further conference held with Mr. Loomis and Mr. Truesdale?—A. Oh, yes. That was after the conference held with Judge Archbald, you mean?

Q. Yes, sir.—A. Yes, sir.

Q. State what you know about that.—A. In my letter that I wrote to Mr. Loomis—I think it was in that letter, or else I conferred with Mr. Loomis over the telephone, I am not sure which—I told him that George Watson would like to make an appointment to meet Mr. Loomis and Mr. Truesdale in order to take the matter up with them, and that I had told George Watson that I would try and arrange for such a conference. He said, "Well, maybe I had better write to Mr. Loomis myself." I said, "I think maybe you had better do that, George." Mr. Loomis advised me that he and Mr. Truesdale were coming west on an inspection trip and would be in Scranton a certain evening and would meet Mr. Watson in my office the next morning at 10 o'clock. I called up Mr. Watson on the telephone and told him that our people would be here and meet him in my office at that time, 10 o'clock.

Q. Were you present at that conference?—A. I was; yes, sir.

Q. When Mr. Loomis and Mr. Truesdale were there?—A. Yes, sir; it was held in my office, and I was present.

Q. Just state who were there.—A. Mr. Truesdale, our president; the vice president, Mr. Loomis; our counsel, Daniel R. Reese; Mr. Tobey, the assistant superintendent; George Watson, and myself.

Q. Now, state, Mr. Phillips, your recollection of what occurred at that conference, what Mr. Watson submitted, and what reasons he gave for making the proposition.—A. He gave practically the same reason that he gave to me in the conference I had with him.

Q. First state what his proposition was.—A. His proposition was that for $161,000 the Marian Coal Co. would turn over their washery and their bank and withdraw all suits and to put an end to all controversy that was existing at that time between the Marian Coal Co. and the Delaware, Lackawanna & Western Railroad Co. That was Mr. Watson's proposition.

Q. What reason or what argument did he make as to why the railroad company should accept such a proposition?—A. I do not know. He read from this statement he had a number of items, but seemed to base his argument entirely upon the coal rates, and as that subject was entirely foreign to me, I paid very little attention to it.

Q. Did he refer in any way in his argument to what is known as the Meeker case?—A. I think he did. Either he or one of the party referred to the Meeker case as an illustration. I think it was one of our officials referred to the Meeker case as an illustration that the Bolands could not expect to recover any more reparation than the rates allowed in the Meeker case, and that was a part of the basis on which our company calculated the amount of money they would be willing to pay in settlement of the entire matter.

Q. The effect of the Meeker case as applied in the case of the Bolands was discussed, among other things, in that conference?—A. Yes, sir; as I recall it now.

Q. What did Mr. Truesdale say, Mr. Phillips?—A. Mr. Truesdale said that the proposition was ridiculous and he would not consider it. In fact, Mr. Watson did most of the talking.

Q. The proposition was turned down?—A. Oh, yes.

Q. Rejected?—A. Yes, sir.

Q. I will ask you to refresh your memory—if Mr. Truesdale did not say it was a holdup?—A. Positively he did not.

Q. He did not?—A. At least, if he did, I did not hear it, and I was sitting within 4 feet of him.

Q. I was going to ask you if you remember anything that was said?—A. No; I can not remember everything; I am not infallible.

Q. You say now, then, that if he did say that you did not hear him or do not remember it?—A. I did not hear him or I do not recall it.

Q. I will ask you to state if, when you had your conference with Judge Archbald, you told him about your conferences with Watson just a few days before?—A. I do not recall whether I did or not. I may have said that I had had a conference with George Watson with regard to the settlement, and I may not, because all that Mr. Archbald asked me about

was the value of the Marian washery and the claims of the Bolands against our company in connection with the operating of that washery. I may have mentioned Watson's name; I do not know. My evidence before your committee ought to disclose it if I did. My memory was fresher then than it is now.

Q. You said, if I understood you, that you went over in detail the proposition?—A. Not the details, bear in mind, of the proposition, but the details of the claims or the alleged claims that Mr. Boland had against our company in connection with the operating of the Marian washery, such as setting the culm bank afire, of which we owned ourselves 27 per cent, and the drying up of the creek or diverting some water from it, and a number of other claims that I do not recall just at present.

Q. From whom did you get the information about their contentions—from Mr. Watson?—A. What contentions?

Q. About them claiming this.—A. I got that from Mr. Boland Mr. Boland was operating a little washery that they had down there, and when they were operating it, if he had any grievance, he would always bring it up with me. He imagined that we were trying to stop the wheels of his washery at work. I would go down there and help him and try to do what I could to assist him with his washery.

Q. I am not asking you about that. You said you discussed that matter fully with Judge Archbald and never mentioned Watson's connection with it?—A. I can not say that I mentioned Mr. Watson's connection with the case at all. I may have mentioned his name; I do not recall. If it is in my testimony before the Judiciary Committee, I did; if it is not, I did not.

Q. I am asking you about your present recollection.—A. My present recollection is, as I have told you three or four times, that I do not recall ever mentioning George Watson's name in the conference that I had with Judge Archbald.

Q. In the testimony quoted some reference was made to Judge Archbald's son. He was in the employ of the railroad at that time?—A. Yes, sir.

Q. Mr. Phillips, when you were at the final conference did you understand that Judge Archbald had had anything to do with these Watson negotiations?

Mr. WORTHINGTON. I object to a question about what the witness understood, Mr. President.

Q. (By Mr. Manager FLOYD.) Did you know through the officers of your company that had been investigating this matter that Judge Archbald had any connection with this proposed negotiation or had anything to do with it?—A. I do not think I had any knowledge of it at that time. Later on—it may be a day after that conference or a week or two later—Mr. Loomis inquired of me if I knew why——

Mr. WORTHINGTON. We object to subsequent conversations between Mr. Loomis and the witness.

The PRESIDENT pro tempore. The witness can answer the question whether or not he knew it.

Mr. Manager FLOYD. That is all I am asking.

Mr. WORTHINGTON. What I am bringing out is that this is something which occurred after these negotiations were all over.

Mr. Manager FLOYD. I asked him, "at the conferences before they were over"?

Mr. WORTHINGTON. At the conferences?

Mr. Manager FLOYD. At the final conference.

The WITNESS. No; I do not think so.

Q. (By Mr. Manager FLOYD.) He did not know anything about it?—A. No, sir.

Q. Now, I will ask you to state if, immediately after that conference, you did receive information of Judge Archbald's connection with it?

Mr. WORTHINGTON. I will object to that.

Q. (By Mr. Manager FLOYD.) Or the next day?

Mr. WORTHINGTON. It has already appeared that that terminated Mr. Watson's connection with it. The managers have proved by Mr. Christy Boland that Mr. Watson's connection with this matter terminated immediately after that conference. If this was anything that took place in the way of carrying on the negotiations for that settlement, of course I would not object to it. We have not very much objected to that, but, as I understand, any recital of conversation between persons who had been parties to the conference after it was all over—something that occurred after the negotiations were all over—which had reference to a past transaction, of course can not affect Judge Archbald.

The PRESIDENT pro tempore. The Chair presumes the purpose of the testimony is to show what influences were brought to bear upon representatives of the railroad at that time, and if he did not know it at that time, of course it is not pertinent that he did know it afterwards.

Mr. Manager FLOYD. Mr. President, we have some evidence to show that after that conference Mr. Watson wired Judge Archbald and came to Washington for some purpose. We expect to connect that up.

The PRESIDENT pro tempore. If counsel will state that they propose to do that, then they are at liberty——

Mr. WORTHINGTON. Of course, if they propose to show that he had anything to do with that telegram or with Mr. Watson's coming here, we would not rise for a moment to object. But I should like to interpose here and ask a question of the witness, as I have a right to do, I think, to find out when this conversation occurred, so that we may know whether it is anything that is competent or not. If, for instance, Mr. Loomis and Col. Phillips——

Mr. Manager FLOYD. We object to counsel making a statement. He can ask a question.

The PRESIDENT pro tempore. Counsel can ask the question.

Mr. WORTHINGTON (to the witness). I want to ask you whether or not you did not testify before the Judiciary Committee in this way:

But several days, or a month, rather, after the conference, Mr. Loomis inquired of me—

To which you referred. Is not that right?—A. That is what I was about to say. It was a week or two afterwards.

Q. It was after the negotiations were all over?—A. After the negotiations were all over; after this conference was over.

Mr. WORTHINGTON. I was going to say, Mr. President, it would be just the same, it seems to me, as if Mr. Loomis and Col. Phillips should have a conversation out in the corridor now about this matter, and then the managers should offer to prove what it was. If it was after the negotiations were all over, it would not make any difference how long it was.

The PRESIDENT pro tempore. The Chair thinks that testimony as to general knowledge upon the part of the officials of the company of Judge Archbald's connection with the matter ought to be received, especially under the statement of the manager that he expects to prove that this matter did continue after that time. The Chair has ruled that the question can be asked.

Mr. Manager FLOYD. Answer the question, Mr. Phillips.

The WITNESS. What question?

Q. I will ask that the question may be read.

The PRESIDENT pro tempore. The Reporter will read the question.

The Reporter read as follows:

Q. (By Mr. Manager FLOYD.) Now, I will ask you to state if immediately after that conference you did receive information of Judge Archbald's connection with it?

The WITNESS. No, sir; not immediately after.

Q. How soon?—A. Two or three weeks.

Q. I will ask you to state what information you received touching that matter?—A. I think it was two or three weeks after that that Mr. Loomis was again in Scranton. Mr. Boland had made a statement to me on the street in regard to Mr. Loomis, and I reported the result of that statement or the result of the conference that I had had with Mr. Boland to Mr. Loomis. Mr. Loomis said that he could not understand why Boland was so prejudiced or imagined that he was trying to do him harm; and that he had never had any occasion or cause to do Mr. Boland any harm. I told him that I could not account for it except that Boland was a highly excitable sort of man. Then Mr. Loomis asked me, "How is it that Mr. Archbald is interesting himself in this case in behalf of the Bolands?"

Q. Did you understand him to refer to Judge Archbald?—A. Oh, yes; Judge Archbald. I think he mentioned "Judge" Archbald, and not "Mr."

Q. Mr. Loomis inquired of you what?—A. If I knew why.

Q. Did you?—A. I did not, only what I told him what I assumed as the reasons why Judge Archbald was interesting himself in the case in behalf of the Bolands.

Q. You did not know why?—A. No; only my own presumption.

Q. We do not care anything about your presumption if you had no knowledge on the subject.

Mr. Manager FLOYD. That is all.

Cross-examination:

Q. (By Mr. WORTHINGTON.) We do care. What was your answer to the question that Mr. Loomis put to you about Judge Archbald?—A. I told Mr. Loomis that I thought Judge Archbald was interesting himself in this case from the fact that he and the Boland family had lived in the city of Scranton for at least 30 or 40 years; that, to my knowledge, Mr. Christy Boland and Judge Archbald were always looked upon as being pretty close friends, and that Mr. Boland, being in this litigation, I thought he would naturally, meeting Judge Archbald, tell him of

it, or ask him what he thought he had better do under the circumstances, and that Judge Archbald told him, "Well, Christy, I think you had better try to settle this case. I know some of the officials of the D., L. & W. Co.; you know some of them; and if I can be of any service in introducing you or bringing them to you I will do so." That was my explanation to Mr. Loomis. I have no reason to think that was true other than it is customary in towns of the size of the city of Scranton for the smaller people who have lived there for a long time, if they have friends who are influential men, either lawyers, judges, or otherwise, they would naturally go to their friends when in trouble. That was my sole deduction about the matter.

Q. Did Mr. Christopher Boland have any talk with you during these negotiations with reference to them?—A. Mr. Christopher Boland called upon me, I think, after the conference in my office, at which time Mr. Truesdale and other officials were there with Mr. Watson.

Q. After the Truesdale conference in your office?—A. Yes, sir.

Q. Well, did he tell you anything then about the condition of his brother in reference to this claim?

Mr. Manager FLOYD. We object.

Mr. WORTHINGTON. Why can we not have all the negotiations, Mr. President?

The PRESIDENT pro tempore. There must be some limitation, and the Chair thinks that is one of them.

Q. (By Mr. WORTHINGTON.) The son of Judge Archbald to whom you refer is not the son who has been present during these proceedings?—A. No, sir.

Q. His son Hugh?—A. Hugh Archbald, mining engineer.

Q. He is not in the employ of the company now, I believe?—A. No, sir; he resigned his position a few months ago. I think he is editor of Mines and Minerals, published in connection with the International Correspondence School.

Q. Now, with reference to the questions that were asked you and read from the record to refresh your recollection, do you now recall that Mr. Watson's name was mentioned at the time? That was referred to in the question that was read to you from the RECORD?—A. Judge Archbald——

Q. You have stated that your recollection was better then than it is now, and that you undoubtedly gave that testimony; but, as a matter of fact, is your memory refreshed so that you now remember it?—A. I really can not say that I remember it.

Q. I will ask you if during your testimony there you did not refer to it in the same way you did here—that is, in this way——

Mr. Manager FLOYD. I ask from what page counsel is about to read?

Mr. WORTHINGTON. Page 1311, at the bottom of the page:

Mr. PHILLIPS. The judge told me after I had stated, as I have repeated twice already here—he says: "If that is the case, the value of that washery and bank, that I understand Boland is claiming it is worth, is far in excess of what you say it is worth."

A. In fact, I am almost positive that Watson's name was not mentioned; and I think you will find in my testimony there that I there say that I did not mention Watson's name, and that my conference with Archbald was between the conference that we had in my office with George Watson our officials, or something of that kind. I do not recall Watson's name ever being mentioned at Judge Archbald's house.

Mr. WORTHINGTON. That is all, Mr. President.

Redirect examination:

Mr. Manager FLOYD. One moment, Mr. Phillips. Mr. Worthington has asked you about your conversation with Christy Boland. Did you have any conversation with W. P. Boland?—A. Oh, I have had several conversations with W. P. Boland.

Q. I will ask you to state if W. P. Boland did not tell you that Judge Archbald was not in this case by his request or consent?—A. I think he did.

Q. Did you not so swear before the Judiciary Committee?—A. I think he did tell me at the time. He told me that Mr. Loomis came up and went to Judge Witmer and made him hand down the opinion in the Peale case. That was at the same period, and I told him——

Q. You told about a conversation at Judge Archbald's house? Was that the first time you were ever at Judge Archbald's house?—A. The first time I have ever been in Judge Archbald's house in my life.

Q. Before or since?—A. Yes.

Mr. Manager FLOYD. That is all.

Recross-examination:

Q. (By Mr. WORTHINGTON.) Well, what was it that William P. Boland said that you have been asked about? Let us hear all about it.—A. I was coming up from Wilkes-Barre on the Laurel line, and W. P. Boland was coming up on the same car. Nearly every time that Will Boland would meet me we would discuss some features or part of these alleged claims that he has against our company in operating the Marian washery. He was very excitable on this day, and said that Mr. Loomis, our vice president, came from New York, and had Judge Witmer hand down an opinion against the Marian washery in the Peale case.

Mr. Manager FLOYD. We object.

The PRESIDENT pro tempore. The Chair must hold there must be a limitation to the examination, and that certainly has nothing to do with the case.

Mr. WORTHINGTON. I was only asking for the remainder of the conversation.

The PRESIDENT pro tempore. The Chair only interposes in the interest of time.

Mr. WORTHINGTON. I was only asking him a question to finish the conversation of which the managers brought out a part.

The PRESIDENT pro tempore. The conversation evidently has nothing to do with the merits of this case. Is there any other question of the witness?

Mr. Manager FLOYD. We have no further questions.

Mr. Manager CLAYTON. Mr. President, this witness may be discharged.

Mr. WORTHINGTON. We agree.

The PRESIDENT pro tempore. The witness is finally discharged.

TESTIMONY OF JOHN L. SEAGER.

John L. Seager, having been duly sworn, was examined and testified as follows:

Q. (By Mr. Manager FLOYD.) Mr. Seager, please state your name and place of residence.—A. John L. Seager; business address, 90 West Street; residence, 256 Prospect Street, South Orange, N. J.

Q. If you are in anyway connected with the Delaware, Lackawanna & Western Railroad Co., please state the position you hold.—A. I am an attorney in the legal department of that railroad.

Q. I will ask you to state, Mr. Seager, if you know anything about the negotiations or attempted negotiations to make a settlement of certain matters between the Marian Coal Co. and your railroad company through one George M. Watson, of Scranton, Pa.?—A. I knew nothing about it until I received a letter from Col. R. A. Phillips, which was sent me by Mr. Loomis.

Q. You first received your information, then, through correspondence?—A. Yes, sir.

Q. With other officials of the company?—A. Yes, sir.

Q. You are acquainted with Mr. Reese?—A. Yes, sir.

Q. Was he at that time representing your company in some capacity?—A. He was, sir.

Q. Please state his position with the railroad.—A. He was known as the general attorney for the State of Pennsylvania for the Delaware, Lackawanna & Western Railroad Co.

Q. Did you have any communication with Mr. Reese in regard to this matter?—A. I did; several.

Q. I will ask you to examine the paper which I hand you, Mr. Seager, and state if that is a letter you received from Mr. Reese in regard to this matter.—A. (After examining.) It is.

Mr. Manager FLOYD. Mr. President, I ask that the letter be marked as an exhibit and be read in evidence at this point.

The PRESIDENT pro tempore. Is there any objection to reading the paper? If not, it will be marked and read.

Mr. WORTHINGTON. Wait a moment until we see what is the date.

The SECRETARY. Scranton, Pa., July 31, 1911.

Mr. WORTHINGTON. I have no objection.

The Secretary read the letter marked "U. S. S. Exhibit 50," as follows:

[U. S. S. Exhibit 50.]

(Daniel R. Reese, attorney.)

DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
LEGAL DEPARTMENT,
Scranton, Pa., July 31, 1911.

J. L. SEAGER,
Commerce Counsel, New York City.

DEAR SIR: For your information I inclose herewith copy of my letter to R. A. Phillips, superintendent coal mining department, in relation to a suggestion made by W. P. Boland in a conference between us for the purpose of trying to arrange amicably the differences between him and this company.

Mr. Phillips has agreed that I should proceed to make the arrangements, and will have a conference some day this week, the result of which will be made known to you.

Yours, truly,
D. R. REESE.

Q. (By Mr. Manager FLOYD.) Please examine the paper I hand you and state whether or not that is a letter pertaining

to this matter, and give the date of the letter.—A. A letter dated August 11—a letter which I received from Mr. Reese.

Q. Examine the paper accompanying that. Was that an inclosure with that letter?—A. (After examining.) It was.

Mr. Manager FLOYD. Mr. President, we ask that the letter be marked as an exhibit and read in evidence at this point, together with the inclosure.

The PRESIDENT pro tempore. Without objection, it will be read.

The Secretary read the paper marked "U. S. S. Exhibit 51," as follows:

[U. S. S. Exhibit 51.]

(Daniel R. Reese, general attorney.)

DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
LEGAL DEPARTMENT,
Scranton, Pa., August 11, 1911.

J. L. SEAGER, Esq.,
Commerce Counsel, New York City, N. Y.

DEAR SIR: As I wrote to you some time ago, we had a conference with Mr. Boland with reference to adjusting the differences between Mr. Boland and this company. Such a conference was held in Col. Phillips's office, between Mr. Phillips, Mr. Boland, and myself, but nothing of importance developed.

Inasmuch as the adjustment, if it is going to be made, is to be based largely upon matters involved in his action against us before the Interstate Commerce Commission, and consequently as you are familiar with those matters, you are the only one that I know of that can confer with Mr. Boland in relation thereto. Therefore, I am writing to you to ask you to take up these matters with Mr. Boland, either at Scranton or at your office, and I will arrange to have Mr. Boland present, and I understand that he wants his counsel with him. Please advise your wishes in the matter, as Mr. Boland seems to be very anxious to arrange matters amicably, if possible, and has called me on the telephone several times inquiring as to whether I have yet arranged a conference. He advises me that Mr. Reynolds, his attorney, is going away on his vacation soon, and he would like to arrange a conference at once.

Yours, truly, D. R. REESE.

RO.

(Inclosure.)

JULY 29, 1911.

Mr. R. A. PHILLIPS,
Superintendent Coal Mining Department.

DEAR SIR: While conferring with Mr. W. P. Boland yesterday, concerning another matter, he intimated very strongly that he would like to fix up his differences with the Lackawanna Co. and discontinue further hostilities. He intimated that this could be accomplished by a conference with you and me. I believe Mr. Boland has had a wrong impression as to the attitude of this company, having gotten the idea that we are pursuing him directly and indirectly, but I think he is getting straightened out as to that now and has sent out his flag of truce in order to try and arrange matters amicably.

I believe it is worth while attempting this, and respectfully submit the matter to you for such action as you deem it advisable under all the circumstances to take.

Yours, truly, ———.

R/D.

Q. (By Mr. Manager FLOYD.) Did you make reply to that letter, Mr. Seager?—A. If I recollect aright, I did, sir, some time later.

Mr. SIMPSON. What is the date?

Q. (By Mr. Manager FLOYD.) September 7?—A. I can not remember. I would have to see the letter. [After examination.] I answered the letter just read by one dated September 7, 1911, addressed to Mr. D. R. Reese.

Mr. PRESIDENT pro tempore. Does the manager wish this letter read?

Mr. Manager FLOYD. I ask that it be marked as an exhibit and read in evidence at this point.

The Secretary read as follows:

[U. S. S. Exhibit 52.]

SEPTEMBER 7, 1911.

Mr. D. R. REESE,
General Attorney, Scranton, Pa.

DEAR SIR: In order that there may be some proper ending to your file headed by your letter of July 31, 1911, relative to proposed conference between W. P. Boland and a representative of this company, I would advise that apparently Mr. E. E. Loomis, vice president, through Col. Phillips, has taken up the matter of Mr. Boland's difficulties with George Watson, attorney, with a view of arriving at some settlement thereof. I say apparently because I was handed a letter from Col. Phillips this morning by Mr. Jenney, dated September 1, 1911, containing a report of a conference with Mr. Watson and a tentative proposition by Watson for a settlement with the Marian Coal Co. people and Boland. I might further say that in a conversation which I had with Mr. Loomis some two weeks ago relative to the advisability of conferring with Boland's representative, with a view of coming to some settlement, it was tentatively agreed between us that he should see what Boland was willing to do. Mr. Jenney has now directed me to give Mr. Loomis my views as to the proposition made by Mr. Watson.

Yours, truly, ———.

Q. (By Mr. Manager FLOYD.) This is a letter from Mr. Reese to Mr. Seager dated September 8. Mr. Seager, will you examine this letter and state whether or not it is a letter you received from Mr. Reese concerning this matter?—A. (After examination.) It is a letter I received from Mr. Reese.

Mr. Manager FLOYD. Mr. President, I ask that it be marked as an exhibit and read in evidence at this point.

The Secretary read as follows:

[U. S. S. Exhibit 53.]

(Daniel R. Reese, attorney.)

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
LEGAL DEPARTMENT,
Scranton, Pa., September 8, 1911.

Mr. JOHN L. SEAGER,
Commerce Counsel, New York City.

DEAR SIR: I have your kind favor of the 7th instant relative to the proposed conference between W. P. Boland and a representative of this company and am obliged to you for the information contained therein.

Since I have started this matter I have attended one conference, but knew nothing of a Mr. Watson being interested nor of subsequent meetings. However, I have claims against Mr. Boland for $313.32, and I have written him stating that I will institute suit to collect the amount if it is not paid at once. The time limit in which he was to pay this bill has elapsed, and I would like to know whether there is anything in the negotiations referred to in your letter that would interfere with my proceeding to institute suit to collect this amount which he has refused to pay. I would be obliged if you would advise me upon this point.

Yours, truly, D. R. REESE.

R/D

Q. (By Mr. Manager FLOYD.) Now, Mr. Seager, I will ask you to state if later, January 12, 1912, you received a further letter from Mr. Reese bearing upon that settlement between you and the Bolands?—A. I can not recollect the date, sir.

Q. Examine this letter which I hand you and state.—A. (After examination.) I did, sir.

Mr. Manager FLOYD. Mr. President, we ask that it be marked as an exhibit and that it be read in evidence at this point, with the paper attached, whatever it is.

The Secretary read as follows:

[U. S. S. Exhibit 54.]

(William S. Jenney, vice president and general counsel; Daniel R. Reese, general attorney.)

DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.,
LEGAL DEPARTMENT,
Scranton, Pa., January 12, 1912.

Mr. JOHN L. SEAGER,
Commerce Counsel, New York City.

MY DEAR SEAGER: During a conference which I had with Mr. Boland on Tuesday last in relation to the water proposition that he had in mind, I incidentally mentioned the Marian Coal Co. matters, and intimated to him that if the Marian Coal Co. matter was disposed of it would be easier for me to get the water proposition through, in which latter proposition Boland is very much interested and is anxious to dispose of the land to this company. After a long chat he decided to submit a proposition as to what he would take in settlement of all his claims, both as to freight claims and whatnot and, consequently, he called at my office this afternoon and submitted a letter, of which the inclosed is the first paragraph, the balance of the letter having reference to the water proposition. He declined to give me the letter he had drawn, which was addressed to me, but permitted me to copy the part referring to the Marian Coal Co. matter.

I told him I was going to submit this to our people to see what action they would take in relation thereto, and so I am submitting it to you for such action as you deem advisable, and I would be obliged if you would arrange to advise me whether our people will agree to this proposition or submit a counter proposition.

I hope to be in New York next week and will go over this matter with you, if you desire any further information.

Yours, truly, D. R. REESE.

R/D

—

Confirming the suggestion you made that an adjustment might be made between the Delaware, Lackawanna & Western Railroad Co. and the Marian Coal Co. of the differences between them, it is my opinion that the matter might be settled in manner following: For $50,000 of the capital stock of the Marian Coal Co. I believe the persons owning it would be willing to accept $75,000. This would place you in possession of two-thirds of the capital stock of the Marian Coal Co., which would enable you to make such disposition of the Marian Coal Co.'s affairs as you might desire. Out of the $75,000 received for this $50,000 of stock all the just obligations of the Marian Coal Co. will be paid. We have always denied the justice of the claim of John W. Peale. This would, of course, be arranged by the Marian Coal Co. after the transfer of the stock, and would be ultimately paid by you if the claim should be finally established in court. With the payment of this we shall have nothing to do with the claim. I need not say that we would regard an offer of this sort as much less than the stock is really worth; but we are desirous, if possible, of ending a complicated and serious litigation which has been waging between the two corporations.

Q. (By Mr. Manager FLOYD.) Mr. Seager, did you take any action, either yourself or by direction of your superior officers, in regard to that; did you make any proposition?—A. I did.

Q. What was it and on whose authority?—A. I was authorized by Vice President and General Counsel Jenney to make a counter proposition of $25,000, I think it was. I made that proposition, or I telephoned Mr. Reese telling him that that was the counter proposition.

Q. Did anything come of that proposition?—A. No.

Q. Matters remained unsettled. Now I want to ask you if you have any knowledge of your own about Judge Archbald being concerned or associated in any way with Mr. Watson in this negotiation that Mr. Watson undertook to bring about between your company and the Marian Coal Co.?—A. I never knew anything about it until the 27th day of May last.

Q. You never knew anything about it until the 27th of this May, when these hearings——A. After I had been subpœnaed to attend the Judiciary Committee investigation.

Q. State how you got your information about it then, and from whom.—A. Of course, I had seen——

Mr. WORTHINGTON. Mr. President, if we are going to have the information this witness acquired about Judge Archbald long after all negotiations were over——

Mr. Manager FLOYD. I am asking him to give his information as a railroad official, if he got information from any of his associates in the company about it.

The WITNESS. I did.

Q. (By Mr. Manager FLOYD.) State it.

Mr. WORTHINGTON. I object to that. I do not see how the information that this witness acquired long after all the negotiations were over can possibly affect Judge Archbald. Nobody pretends that any negotiations were going on after the last letter that was written, which was in December prior to May, when the witness obtained it. This investigation was then going on. That would certainly be hearsay evidence. It was nothing that was done in the course of this negotiation.

We have not objected to any testimony as to anything done in pursuance of the negotiation, because Mr. Christopher Boland has testified to a certain conversation that occurred in Judge Archbald's office as to a settlement being proposed, and so we have not objected to any evidence as to what was done in carrying on the negotiation. But the time referred to now is months and months after the negotiation was over and while this inquiry was on foot.

The PRESIDENT pro tempore. Testimony is already in from Mr. Loomis as to his knowledge. I suppose this is along that line.

Mr. Manager FLOYD. I asked him just what knowledge he had in regard to it. However, I am not particular about pressing the question.

Q. (By Mr. Manager FLOYD.) Did you, during the time this correspondence was going on, have or not have any knowledge that Judge Archbald was or was not connected with the transaction?—A. I had no knowledge at that time.

Q. None whatever?—A. No, sir.

Q. And yet you were connected with the legal department of your company?—A. I was, sir.

Mr. Manager FLOYD. That is all we wish to ask the witness.

Mr. SIMPSON. We have no questions, Mr. President.

The PRESIDENT pro tempore. The witness may retire.

Mr. Manager FLOYD. This witness may be discharged, I think.

The PRESIDENT pro tempore. The witness is finally discharged.

Mr. Manager FLOYD. Mr. President, Mr. Manager CLAYTON informs me that he desires at this point to have Mr. Loomis recalled, for the purpose of asking him two questions.

The PRESIDENT pro tempore. Recall Mr. Loomis.

TESTIMONY OF EDWARD E. LOOMIS—RECALLED.

Q. (By Mr. Manager CLAYTON.) Mr. Loomis, did Judge Archbald ever call at your office in New York about any other matter or on any other mission except the one time he called about the Marian Coal Co. matter?—A. No, sir.

Q. When Judge Archbald called on you at the time you mentioned did he disclose to you his interest in the matter or why he was interested?—A. No, sir.

Mr. Manager CLAYTON. That is all. The witness may be discharged.

Mr. WORTHINGTON. There is another matter to which my attention has been called, about which I would like to ask him a question.

Q. (By Mr. WORTHINGTON.) What was it about Mr. Morgan Davis coming to you to buy the Marian washery?—A. To buy it? You mean to sell it?

Q. Yes; to sell it, I mean.—A. Morgan Davis called at my office two or three times and asked me if we did not want to change our mind and buy the Marian washery. I told him no, sir; that we did not want to buy it.

Mr. Manager CLAYTON. My recollection is that this is not cross-examination; that we did not go into the matter at all; and hence I feel constrained to object to the question.

Mr. WORTHINGTON. I thought it might save bringing the witness back.

The PRESIDENT pro tempore. It is not in regard to anything elicited on direct examination, and is not now admissible.

Mr. WORTHINGTON. Very well. The witness may have to be recalled, then.

The PRESIDENT pro tempore. The witness is excused subject to recall under the previous arrangement.

The witness withdrew.

TESTIMONY OF WILLIAM S. JENNEY.

William S. Jenney, being duly sworn, was examined and testified as follows:

Q. (By Mr. Manager FLOYD.) Please state your name and place of residence.—A. My name is William S. Jenney; my residence is 638 West End Avenue, New York City; my place of business is 90 West Street, New York City.

Q. Are you connected in any way with the Delaware, Lackawanna & Western Railroad Co.? And if so, state in what way or in what capacity.—A. I am vice president and general counsel.

Q. I will ask you to state what you know about any negotiations looking to the settlement of differences between the Marian Coal Co. and your railroad company in which George M. Watson, of Scranton, participated.—A. Nothing except by hearsay.

Q. Do you know anything through Mr. Loomis, an officer of your company?—A. Yes, sir.

Q. Just state what you learned about it through Mr. Loomis.—A. The only thing I know about the negotiations to which you refer is that a memorandum was sent to me by Mr. Loomis during the summer—some time during the later part of the summer, as I recollect—which has been introduced in evidence. My initials are W. S. J., and that was sent to me. In it Mr. Loomis inquired of our department what, in our opinion, the Marian Coal Co. was likely to get in its proceeding before the commission by way of reparation. I referred it to the commerce counsel of the company, Mr. Seager, and asked him to reply direct to Mr. Loomis on that subject after taking it up with the traffic department. That is the only thing I know personally in connection with any adjustment of that case that was had through Mr. Watson. Everything else I know about it I learned by hearsay either from Mr. Loomis or Mr. Tobey or some other official of the company.

Q. I will ask you what you learned about it through Mr. Loomis, especially whether you heard from Mr. Loomis that Judge Archbald had any connection with that settlement?—A. I did.

Q. State what you learned and what Mr. Loomis said to you on the subject.—A. Nothing further than the fact that Judge Archbald had taken the matter up with him, suggested that we had better take it up, or suggested that our company might obtain an adjustment of the case, and it would be a good thing if we did obtain an adjustment of the case, or something of the kind; I have forgotten just what words Mr. Loomis used. He told me Judge Archbald had taken the matter up.

Q. Mr. Loomis did tell you that Judge Archbald suggested to him to take the matter up with Mr. Watson?—A. I am not sure about that. Mr. Loomis told me that Judge Archbald had spoken to him about the case with a view of having it adjusted. That is about as far as I can say. I can not repeat his language or tell you anything further than that.

Q. I will ask you to state whether or not you, in your capacity as a representative of the legal department, made any inquiries as to what interest Judge Archbald could have in that matter; and if so, state the circumstances.—A. All I can say about that is this, that, as I testified before your committee heretofore, on one occasion, when one of my local counsel in Scranton, Maj. Warren, of the firm of Warren, Knapp & O'Malley, was in my office, as I recollect it, during the fall of last year, and some time after I had heard from Mr. Loomis that Judge Archbald had spoken to him about the case, I inquired of Maj. Warren what possible interest Judge Archbald could have in this case, and Maj. Warren gave me his opinion upon it. That is the only time I ever asked anybody about it.

Q. And that is all you know about it?—A. All I know about it is what Maj. Warren told me. He did not know anything about it; he simply gave me his opinion as to the reason why Judge Archbald had interested himself in the case.

Q. He just gave you an opinion right then and there on the spot?—A. Yes, sir.

Mr. Manager FLOYD. We do not care anything about that.

Mr. WORTHINGTON. I think if it is important to know that an opinion was given it is important to bring out what the opinion was; and I will ask the witness what it was, following his answer to the manager's question.

Mr. Manager FLOYD. I object.

Mr. WORTHINGTON. Then I move to strike out the witness's testimony about that. The manager asked the question.

The PRESIDENT pro tempore. The Chair understood the manager to inquire whether the witness made any inquiries as to the reason for Judge Archbald's interest in the case.

Mr. Manager FLOYD. That is all.

Mr. WORTHINGTON. No; he further brought out the fact that an opinion was obtained.

The PRESIDENT pro tempore. If the opinion is evidence at all, of course it should properly be given in evidence by the man who entertained it. It might be given as a reason for the action of counsel, if any action was afterwards based on that opinion, but other than that the Chair thinks it is wholly inadmissible.

Mr. WORTHINGTON. Then I move to strike out the statement that he gave an opinion. How can it be competent to state that an opinion was given and not state what the opinion was?

The PRESIDENT pro tempore. Counsel asks that the answer be stricken out. The Chair will grant the motion.

Mr. Manager CLAYTON. There is no objection. We did not ask for the testimony.

Mr. Manager FLOYD. That is all.

The PRESIDENT pro tempore. Do you desire that this witness be retained?

Mr. Manager FLOYD. If there is no question on the part of counsel for respondent, we ask that this witness be finally discharged.

Mr. WORTHINGTON. We have no questions to ask, and he may be discharged so far as we are concerned.

The PRESIDENT pro tempore. The witness is finally discharged.

TESTIMONY OF WILLIAM H. TRUESDALE.

William H. Truesdale, having been duly sworn, was examined and testified as follows:

Q. (By Mr. Manager FLOYD.) Please state your name and place of residence.—A. William H. Truesdale. My residence is in Greenwich, Conn.

Q. State your connection with the Delaware, Lackawanna & Western Railroad Co.—A. I am president of that company.

Q. Mr. Truesdale, I will ask you to state whether you know anything about an attempted settlement or negotiation carried on by one George M. Watson to settle certain disputes and differences between the Marian Coal Co. and your railroad company.—A. I have known about it; I think perhaps everything of material importance connected with those negotiations. I had very little direct personal dealing with the matter, however, being confined to the——

Q. Well, I will ask you to state it in your own way fully. You got your information or knowledge through the various officers of the company to a certain point?—A. Yes, sir.

Q. Tell all you know about it.—A. All I know personally is confined to the interview with Attorney Watson in the office of the superintendent of our coal-mining department, Mr. Phillips, in Scranton, October 5, 1911, in which Mr. Loomis, Mr. Phillips, Mr. Reese, and myself were present and about which Mr. Loomis has already testified to-day.

Q. I will ask you to state how you got your knowledge of this conference before the conference took place that it was to take place.—A. Through Mr. Loomis.

Q. What did Mr. Loomis tell you?—A. He told me that he had a request first from Mr. Watson for such a conference, and that had been supplemented by a request from Judge Archbald that we appoint a conference with Mr. Watson at Scranton.

Q. He told you that he had first a request from Mr. Watson, and that that was afterwards supplemented by a request from Judge Archbald that you have a conference at Scranton?—A. Yes; that is right.

Q. Now, I will ask you to state, Mr. Truesdale, when that conference at Scranton was held.—A. On the 5th of October, 1911.

Q. Now, you can state what occurred. You were present at that conference?—A. I was.

Q. What occurred and what proposition, if any, was submitted by Mr. Watson? Tell all you know about it.—A. There was a discussion, opened, I think, by Mr. Watson, lasting perhaps an hour or a little more, in which in detail we went over the various points that were covered by the correspondence that has been introduced in evidence here to-day. That was elaborated upon, the merits of it discussed pro and con, and, so far as we were concerned, we again stated what had been previously stated in the letters, that we could not see any chance of a settlement being arrived at.

Q. What was the proposition that Mr. Watson submitted there?—A. It was not very definite. In a general way he had submitted what he thought was a just claim, I presume, amounting to somewhere in the neighborhood of $160,000.

Q. In the neighborhood of $160,000?—A. Yes, sir.

Q. How long did that conference last, Mr. Truesdale?—A. An hour or an hour and a quarter, I should say, or something like that.

Q. And the proposition was turned down on your part, was it?—A. Yes, sir.

Q. Did you make any statement in that conference as to the maximum you would offer for a settlement?—A. I do not think we made any offer at all; in fact, I am sure we did not. We stated that we could not figure——

Q. Did you make any statement as to what would be the maximum in case you should make any offer?—A. I think we stated very plainly that we could not see where there was any claim they had that we could consider for more than $15,000 or $17,000, as has been previously explained by Mr. Loomis.

Q. Did you have any knowledge or information concerning Judge Archbald's connection with this negotiation until Mr. Loomis a few days before that conference, told you that Mr. Watson's request had been supplemented by Judge Archbald?—A. I knew of some previous letters that Judge Archbald had written.

Q. You knew of the previous letters that Judge Archbald had written?—A. Yes; I think I saw them. I think Mr. Loomis showed them to me.

Q. I will ask you to state if that conference was not arranged by reason of Judge Archbald's request?—A. Well, I presume so, although Watson also requested it. I can not say but that we might have held it even if we had not received this special request from Judge Archbald to do so.

Q. Would you have granted that conference but for Judge Archbald's request?—A. I do not know that I can say. I frequently respond to requests like that from people, even when I do not think anything can come of them.

Q. On page 1591, in the hearings before the Judiciary Committee of the House, I will ask you, Mr. Truesdale, if you did not make this response in answer to a question by Mr. Webb:

Mr. WEBB. You knew, of course, that the judge was responsible for this conference?

Mr. TRUESDALE. I knew that he had requested it. I never heard that any responsibility lay upon him for holding it.

Mr. WEBB. I will put it in this way: You had the conference because of the judge's request?

Mr. TRUESDALE. Yes, sir.

Did you so answer before the Judiciary Committee of the House?—A. I presume that was taken down correctly.

Q. Now, is that true?—A. I think it is. I think I made it because of his request, but we might have had it anyhow. I might have attended a conference even at Mr. Watson's request. I think I explained at that time that I was taking a trip upon the road with Mr. Loomis and other officials, and that made it convenient to have a conference in connection with it.

Q. Mr. Truesdale, you understood, through Mr. Loomis and through the correspondence, that the beginning of these negotiations was at the instance of Judge Archbald, did you not, through a request made to Mr. Loomis?—A. At the beginning with Mr. Watson.

Q. With Mr. Watson. It was through Judge Archbald's request?—A. Growing out of that; yes, sir.

Q. You also knew and understood that this final conference was brought about by Judge Archbald?—A. I knew he had requested it; yes, sir.

Q. I will ask you to state what was said at this conference on the 5th of October about the nature of the claim that was presented to you on that occasion. Did you refer to it as a holdup in that conference?—A. I do not think I did, sir.

Q. Did you regard it as excessive?—A. I did.

Q. Did you so say?—A. I think I did; yes, sir.

Q. Was Judge Archbald's connection with the transaction mentioned in that conference?—A. I do not think it was.

Q. You do not think it was?—A. I do not.

Q. You knew about his connection with it?—A. I knew he had asked us to have this conference; yes, sir.

Q. What did you understand Judge Archbald's interest in this matter was and what do you understand now it was?

Mr. SIMPSON. I object, unless it is by reason of something said or done directly or indirectly connecting Judge Archbald with it.

The PRESIDENT pro tempore. The Chair will sustain the objection. The counsel will limit it to specific facts.

Mr. Manager FLOYD. The Chair overrules the question.

The PRESIDENT pro tempore. The manager can address his inquiry as to any particular fact at the conference.

Q. (By Mr. Manager FLOYD.) Do you know what his connection was?—A. I do not.

Q. I will ask you to state what you thought about it.

Mr. SIMPSON. I object for the reason already given, sir. If anything was said or done, I do not object to it, but to ask the witness what he thought about it is certainly irrelevant to this inquiry.

Q. (By Mr. Manager FLOYD.) I will ask you, Mr. Truesdale, if you know of Judge Archbald being connected with any other

transaction in your company or trying to effect any other settlement between litigants in your company?—A. No, sir; I never knew of that.

Q. Has it by letter or correspondence ever been brought to your attention that he has been connected with any such matter before?—A. It has not.

Q. This is the first and only instance that you know of?—A. Yes.

Q. Did your company have litigation pending in the Commerce Court at the time?—A. I really do not know whether it had or not.

Q. You do not know whether it had or not?—A. No, sir.

Q. Your company frequently has litigation before the Commerce Court, or is likely to have litigation before the Commerce Court, has it not?—A. We have not had very many, I believe.

Q. It is a court that has jurisdiction over matters in which your railroad is sometimes concerned?

Mr. SIMPSON. Do you think that is a question to ask of the witness?

Mr. Manager FLOYD. That is all.

Cross-examination:

Q. (By Mr. SIMPSON.) Mr. Truesdale, at this conference was not Mr. Watson's claim first that the Bolands had in fact a claim against your company of three or four hundred thousand dollars?—A. I have no recollection of mentioning any such amount as that.

Q. Let me ask you whether this question and answer were not given at the hearing before the Judiciary Committee upon this one point, page 1601:

Mr. WORTHINGTON. You do not remember that his claims amounted to three or four hundred thousand dollars?

Mr. TRUESDALE. I do not. I have an impression that they did amount to something like that, but I have nothing very distinct in my mind on that subject.

Do you remember that?—A. Yes; I do. I remember giving some evidence upon that point.

Q. What was the conference about? Was it to settle differences between your company and the Bolands and the Marian Coal Co., or was it to purchase two-thirds of the stock of the Marian Coal Co.?—A. To settle the claims.

Q. It had no relevancy to stock at all?—A. I never heard of any attempt being made to sell us any amount of their stock. It was not considered at all.

Q. And, as I understand you, the conference itself, so far as the details of it were concerned, was taken up mostly in discussing the rate matter. Is that right?—A. That is my recollection; yes, sir.

Q. But the washery and so on was incidentally spoken of?—A. It was, sir.

Mr. SIMPSON. That is all, Mr. President.

Mr. Manager FLOYD. That is all. This witness may be discharged.

The PRESIDENT pro tempore. The witness will be finally discharged.

TESTIMONY OF DANIEL R. REESE.

Daniel R. Reese appeared, and, having been duly sworn, was examined and testified as follows:

Q. (By Mr. Manager FLOYD.) Mr. Reese, state your name and place of residence.—A. Daniel R. Reese, Scranton, Pa.

Q. I will ask you to state, Mr. Reese, whether you are connected in any way with the Delaware, Lackawanna & Western Railroad Co.—A. I am.

Q. In what capacity?—A. I am an attorney for that railroad.

Q. I will ask you to state if you had certain correspondence concerning an attempted settlement of some differences between the Marian Coal Co. and your railroad company.—A. I had.

Q. Examine this letter of July 31, 1911 [handing paper], and state whether or not you wrote that letter.—A. (Examining.) It is my signature. I wrote the letter.

Q. What is the Senate exhibit mark?—A. Exhibit 50.

Mr. Manager FLOYD. Mr. President, the letter has already been read in evidence. We do not desire to have it read at this time. (To the witness:) I will ask you to examine the paper which I hand you [handing paper] marked "U. S. S. Exhibit 51," and state whether or not you wrote that letter.—A. (Examining.) I did.

Q. (By Mr. Manager FLOYD.) That letter also is already in evidence. [Handing paper to witness.] This is Senate Exhibit 53. Examine that letter and state whether or not you sent it.—A. (Examining.) I did.

The PRESIDENT pro tempore. Is this for the identification of the letters?

Mr. WORTHINGTON. They have already been identified and read in evidence, and we do not object to them.

The PRESIDENT pro tempore. They have already been read in evidence and not objected to.

Q. (By Mr. Manager FLOYD.) You wrote the letters?—A. I did.

Q. Did you have any knowledge of these negotiations that were going on with Mr. Watson?—A. I did not.

Q. You did not?—A. No, sir.

Q. You lived in Scranton?—A. I live in Scranton.

Q. You wrote these letters?—A. Yes, sir.

Q. Mr. Reese, were you present at the conference on the 5th of October?—A. I was.

Q. I will ask you to state, if you know, what the proposition was which was submitted there by Mr. Watson.—A. Mr. Watson submitted a proposition to settle all matters for $161,000.

Q. $161,000?—A. Yes, sir.

Q. Did you not know at that time that the Bolands were willing to settle it for $100,000 or a less amount?—A. I did not.

Q. You did not?—A. No, sir.

Q. You never heard of that?—A. I did not.

Mr. Manager FLOYD. That is all.

Mr. WORTHINGTON. That is all.

Mr. Manager CLAYTON. The witness may be discharged.

The PRESIDENT pro tempore. The witness will be finally discharged.

TESTIMONY OF HELM BRUCE.

Helm Bruce appeared and, having been duly sworn, was examined, and testified as follows:

Mr. Manager CLAYTON. Mr. NORRIS will conduct the examination of this witness, Mr. President.

Mr. Manager NORRIS. Mr. President, this witness's testimony pertains and applies to article 4. We have taken him and the following witness out of order because we want to give them an opportunity to get away. [To the witness:] Mr. Bruce, state your name.—A. My name is Helm Bruce.

Q. (By Mr. Manager NORRIS.) Where do you reside, Mr. Bruce?—A. Louisville, Ky.

Q. What is your business, occupation, or profession now?—A. I am a lawyer.

Q. How old are you, Mr. Bruce?—A. I am 52.

Q. How long have you been a lawyer?—A. 30 years.

Q. Did you in your professional capacity have anything to do with the case before the Commerce Court entitled "The Interstate Commerce Commission and the United States against the Louisville & Nashville Railroad Co."?—A. It was entitled just the other way. It was the Louisville & Nashville Railroad Co. against the Interstate Commerce Commission.

Q. I gave you the title as it appeared in the Supreme Court. Whom did you represent in that litigation?—A. The Louisville & Nashville Railroad Co.

Q. Are you at the present time an attorney for the Louisville & Nashville Railroad?—A. One of its attorneys.

Q. I did not expect you to be more than one.—A. I mean by that that I am not its general counsel.

Q. How long have you been one of the attorneys for this railroad company?—A. I have represented it in different kinds of litigation for something like 20 years.

Q. Mr. Bruce, were you the managing attorney on the part of the railroad company in this particular case to which I have called your attention at the time it was argued and submitted in the Commerce Court?—A. I was.

Q. How long had you been in control of that case on the part of the railroad company?—A. Since the spring of 1910, my recollection is. The case was argued on the 3d and 4th of April, 1911, and submitted on the 4th of April.

Q. What year?—A. 1911.

Q. When did this case get into the Commerce Court with relation to the time of the organization of the Commerce Court?—As soon as the Commerce Court was organized.

Q. It was one of the cases that under the law was sent into that court as soon as it was organized?—A. It was transferred by operation of law.

Q. When was that case argued, did you say?—A. On the 3d and 4th days of April, 1911.

Q. Was it submitted on the 4th day of April, 1911, to the court?—A. It was.

Q. When was the judgment of the court rendered?—A. I do not remember the date, but it was, I think, in the early part of March, 1912, this year.

Q. So that between its submission and the time it was decided it was nearly a year?—A. About 11 months.

Q. Did you argue the case orally before the court?—A. I did.

Q. After it was argued and submitted and before it was decided, while it was pending in the court, did you have any correspondence with Judge Archbald in relation to it?—A. I did.

Mr. Manager NORRIS. I will ask that this letter be marked as an exhibit. [Handing paper to the Secretary.]

The Secretary marked the paper "U. S. S. Exhibit 55."

Q. (By Mr. Manager NORRIS.) Mr. Bruce, I hand to you Senate Exhibit 55 and ask you to examine it and state what it is.—A. (Examining.) It is a letter from Judge Archbald to me.

Q. Is that the first letter that you received from him?—A. Let me see the date of that. [Examining.] Yes, sir.

Mr. Manager NORRIS. We offer this letter in evidence and ask that it be read.

Mr. Manager SIMPSON. What is the date of the letter?

Mr. Manager NORRIS. August 22, 1911.

The PRESIDENT pro tempore. Without objection, the letter will be read.

The Secretary read as follows:

[U. S. S. Exhibit 55.]

(United States Commerce Court, Washington.)

SCRANTON, PA., *August 22, 1911.*

HELM BRUCE, Esq.

DEAR SIR: In the New Orleans-Montgomery rate case, referring to Mr. Compton's testimony on page 397 of the stenographer's minutes of the hearing before the commission, will you please confer with Mr. Compton and advise me whether in answer to the first question by Commissioner Clements upon that page Mr. Compton intended to say that they "did" or "did not" apply the combination of locals to protect a through shipment in the case of Mobile and Montgomery? As the record stands Mr. Compton is made to say "We did apply it there." It is rather indefinite what "it" refers to; whether to the word "exception," in the question of Commissioner Clements, or to the word "combination," with which the word "apply" seems to connect it. I would like to have you clear this up if possible.

Yours, very truly,

R. W. ARCHBALD.

Q. (By Mr. Manager NORRIS.) Mr. Bruce, did you answer that *letter*?—A. I did.

Q. Did you keep a copy of your answer?—A. I did.

Q. Do you have that copy, Mr. Bruce?—A. No; you had it.

Q. I do not seem to have it here.

Mr. WORTHINGTON. You may read it from the record.

Mr. SIMPSON. It is found on page 1540, and there is no objection to reading it.

Mr. Manager NORRIS. I will ask you, Mr. Bruce, to examine this letter as printed in the record of the proceedings before the House Judiciary Committee and to say whether that is a copy of it?

Mr. SIMPSON. We will admit that it is, Mr. Manager NORRIS, to save time.

Mr. Manager NORRIS. Very well; then we will have it read. It is admitted that the letter on page 1540 is a copy of the answer of the witness.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read the paper marked "U. S. S. Exhibit 56," as follows:

[U. S. S. Exhibit 56.]

Judge R. W. ARCHBALD, *Scranton, Pa.*

DEAR SIR: I have yours of the 22d instant concerning the New Orleans-Montgomery Rate case and have just seen Mr. Compton concerning his testimony before the commission to which you refer, being the testimony on page 397. When I called this to his attention he immediately and unhesitatingly said that what he meant was that the company did not apply the combination of locals to protect a through shipment in the case of Mobile and Montgomery. He called attention to the fact that the remainder of his answer shows that such was his meaning, because he immediately proceeds to state that the company has tried, as far as possible, at all times to maintain the relative adjustment in the southeastern territory, which relative adjustment applies to rates between competitive points which are fixed with relation to each other, whereas rates to and from or between mere local points are not involved in the relative adjustment of rates.

You will find this matter very clearly explained by Mr. Compton in his testimony before the special examiner appointed by the circuit court in the present case in answer to question No. 19, beginning on page 173 of the transcript of the testimony before the special examiner. You will see that Mr. Compton there not only states the facts fully, but explains the reasons for them. And this testimony is wholly uncontradicted.

Yours, very truly, HELM BRUCE.

Mr. Manager NORRIS. Mr. President, we should like to have that letter marked as an exhibit so that it may appear in the record in regular order.

The PRESIDENT pro tempore. It will be so ordered.

Q. (By Mr. Manager NORRIS.) Mr. Bruce, did you have any further correspondence with Judge Archbald about this case while it was pending?—A. I did.

Q. What was the next letter from him to you or from you to him?—A. A letter from him to me.

Q. What is the date of the letter? It is the one written in longhand.—A. It is dated January 10, 1912.

Mr. SIMPSON. There is an intervening letter, Judge Norris.

Mr. Manager NORRIS. I want the next letter, Mr. Bruce.

Mr. SIMPSON. It is found on page 1541 of the record, and I presume you want it in the record.

Mr. Manager CLAYTON. The letter of August 26, 1911, is next.

Mr. Manager NORRIS (to the witness). Does that appear among the letters I gave you, Mr. Bruce?

The WITNESS. What is the date?

Mr. SIMPSON. August 26.

The WITNESS (after examination). There is no such letter here.

Mr. Manager NORRIS. I think there is.

Mr. WORTHINGTON. You may read it from the record; we do not care anything about it.

Mr. Manager NORRIS. Very well; mark it as an exhibit, and we will read it from the printed record.

The WITNESS. Shall I answer the question? You asked me to read the next letter, and I started to read the letter of January 10, 1912. I had overlooked the fact that there was a letter of August 26, 1911, including——

Mr. Manager NORRIS. We will ask that the letter of August 26, 1911, be read.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read the letter, which was marked "U. S. S. Exhibit 57," as follows:

[U. S. S. Exhibit 57.]

(United States Commerce Court, Washington.)

SCRANTON, PA., *August 26, 1911.*

MY DEAR MR. BRUCE: I thank you for your letter of August 24, with reference to Mr. Compton's testimony, about which I wrote you. I was quite sure from the context that the word "not" ought to be in the answer of Mr. Compton, on page 397, to which I referred. I think, however, that the intention to give a negative answer to the idea advanced in the question put is sufficiently evident from the context; and, as you have pointed out, this is fully explained by Mr. Compton in his answer to question 19, found in the testimony taken before the examiner.

Yours, very truly, R. W. ARCHBALD.

Q. (By Mr. Manager NORRIS.) Mr. Bruce, what was the next step in this correspondence?—A. The next letter was the one I started to read a moment ago, of January 10, 1912, from Judge Archbald to me.

Mr. Manager NORRIS. Mr. President, I ask that that letter be marked and read.

The letter was marked "U. S. S. Exhibit 58" and read, as follows:

[U. S. S. Exhibit 58.]

(United States Commerce Court, Washington.)

ON BOARD HOUSE BOAT "FIESOLE,"
Indian River, Fla., January 10, 1912.

MY DEAR MR. BRUCE: The inscription above will betray where I am and the pleasures I am about, while the New Orleans-Mobile-Montgomery rate case remains undecided. But I am where I am by irresistible invitation, and as tender to Mrs. Archbald, who could not go without me, which affords a partial extenuation.

And that I am not altogether oblivious of duty, permit me to make another inquiry about the rate case referred to. On page 69 of your brief you refer to the assertion by the commission in its report that "the building of new railroads and other causes have forced many departures from the adjustment of rates made by the Cooley arbitration." As to which you state that according to the record this is shown to be clearly mistaken. An examination of the tariffs in evidence by one of the members of our court has disclosed, however, a very large number of changes in commodity rates from time to time, which is claimed to refute your argument and sustain the commission, and it is with regard to this that I am writing you.

Assuming that these tariffs have been correctly interpreted by us, would you still affirm the position taken in your brief and upon what theory would you sustain it? That is to say, if there have been these departures from time to time in commodity rates from the adjustment of rates under the Cooley arbitration, would not that of itself be sufficient to warrant the assertion made by the commission, which you say is in the face of the record? Also, have you made such an examination of the tariffs in evidence that you are prepared to give us your views as to whether they have been correctly interpreted by us, and whether they show the numerous changes which I have referred to? And again, is there anything to indicate that the commission did or did not rely on these tariffs for the statements which they make with regard to the alleged departures from the Cooley arbitration? And if there are such departures in commodity rates, whether the commission noted them or not, could it be said that the statement in their report was not sustained by the evidence?

I, of course, have not failed to note the argument you make on the allegations of the bill not being denied by the answer as well as the references made to the testimony of Mr. Compton, Mr. Powell, Mr. Green, Mr. Bannon, and Mr. Hattendorf. But are not the denials of some of the witnesses, for instance, Mr. Compton and Mr. Powell, somewhat qualified, and do they positively declare that since the construction of the Memphis & Birmingham road and the adjustments following it, there have in fact been no further departures?

I regret that we can not have the benefit orally of your answer to these inquiries, and that the matter has to be disposed of by correspondence. But, at the same time, everything is put so clearly in your brief, I have no doubt you will be able to meet what I suggest with equal explicitness, and you will understand through it all that what I want to get at is the effect to be given to these changes in commodity rates—if there have been such—on the general question, whether the statement of the commission to which I refer is indeed in disregard of the record and unsustained by it.

Not having a stenographer, I write under some difficulties, and I will therefore ask you to return with your answers a copy of this letter, or at least a specific answer to each question which I put, stating the question in the same connection.

I am, with much regard, very truly, yours,

R. W. ARCHBALD.

Q. Mr. Bruce, did you comply with the request contained in that letter?—A. I did.

Q. And answered the letter?—A. I did.

Q. What was the date of your reply?—A. January 24, 1912.

Mr. Manager NORRIS. Mr. President, we ask that the letter be marked as an exhibit and read in evidence.

The Secretary read the letter, marked "U. S. S. Exhibit 59," as follows:

[U. S. S. Exhibit 59.]

JANUARY 24, 1912.

MY DEAR JUDGE: Yours of the 10th instant concerning the New Orleans-Mobile-Montgomery case reached me, I think, some days after it was written. I, however, deferred making any attempt to answer until I could have a chance to talk with Mr. Compton about some of the matters to which your inquiries are directed. And, as Mr. Compton was off on one of his testifying expeditions and did not return to his office for several days, the answer to your letter has been delayed much longer than I expected. Otherwise I would have made a brief acknowledgment of it immediately, with promise of an additional answer later.

As your letter was written without the aid of a stenographer, so that you have no copy of it, I will, pursuant to your suggestion, state the substance of your inquiries, so that my answer may be clearly understood.

You refer to the following facts, (1) that the commission in its report stated that the building of new railroads and other causes have forced many departures from the adjustments of rates made by the Cooley arbitration; (2) that in my brief, on page 69, I refer to this assertion by the commission and say it is not according to the record; and (3) that an examination of the tariffs in evidence seems to disclose a large number of changes in commodity rates from time to time, which seem to refute my statement. Having made this reference to the record and the brief, you then ask:

"Assuming that these tariffs have been correctly interpreted by us, would you still affirm the position taken in your brief, and upon what theory would you sustain it? That is to say, if there have been these departures from time to time in commodity rates from the adjustment of rates under the Cooley arbitration, would not that of itself be sufficient to warrant the assertion made by the commission, which you say is in the face of the record? Also, have you made such an examination of the tariffs in evidence that you are prepared to give us your views as to whether they have been correctly interpreted by us, and whether they show the numerous changes which I have referred to? Again, is there anything to indicate that the commission did or did not rely on these tariffs for the statement that they make with regard to the alleged departure from the Cooley arbitration? And if there are such departures in commodity rates, whether the commission noted them or not, could it be said that the statement in their report was not sustained by the evidence?

"I of course have not failed to note the argument you make on the allegations of the bill not being denied by the answer, as well as the references made to the testimony of Mr. Compton, Mr. Powell, Mr. Green, Mr. Bannon, and Mr. Hattendorf. But are not the denials of some of these witnesses, for instance, Mr. Compton, somewhat qualified and do they positively declare that since the construction of the Memphis & Birmingham road and the adjustment following it there have in fact been no further departures?"

I have not examined the tariffs, filed with any view of ascertaining whether or not, in making commodity rates, there have been departures from the Cooley adjustment, and the reason I did not do so, I believe, was entirely sufficient and shows, as it seems to me, that the matter is not now before the Commerce Court. In the beginning the complaint by the New Orleans Board of Trade embraced both class rates and commodity rates. But the commission, for reasons expressed by it in its report, never passed upon the complaint as to commodity rates, the concluding clause of the commission's report being in the following language:

"In regard to the commodity rates attacked in these proceedings certain adjustments and changes have been made therein by the defendant since the institution thereof, with the view of correcting inequalities or excessive charges found to exist, which adjustments and changes are admitted to have removed the cause of complaint to some extent. It is impracticable in the present state of the record to determine satisfactorily what other changes, if any, respecting commodity rates should be made. These cases will be retained, therefore, for such further investigation and consideration of commodity rates involved as the facts and circumstances may seem to require." (Complainant's exhibit book, p. 89.)

I was not in the case before the commission at all. And I did not come into the case in the circuit court until after the bill was filed and the commission had filed its answer. I did, however, have charge of the taking of proof and the preparation of the case from the time the issues were made. Finding that the commission had decided nothing on the subject of commodity rates, but had expressly reserved that subject for further consideration, and that the equity suit filed by the railroad company attacking the commission's order was therefore necessarily confined to the subject of class rates, to which the commission's order was confined, I never attempted to make any investigation of the subject of commodity rates, or to make any preparation of the case based upon a consideration of them; and I do not see how any question pertaining to commodity rates can now be before the Commerce Court. Whether or not there have been departures from the Cooley adjustment in the fixing of commodity rates is a matter that would require investigation, followed by explanation, but that investigation has not been made for the reasons which seem to me to sufficiently appear from what I have said.

I do not see how it can be possible that the commission, in making the statement it did in its report as to the departure from the Cooley adjustment, could have had reference merely to possible departures in commodity rates, when the language which I have quoted from its report shows it did not have commodity rates under consideration, but had determined to reserve them for future consideration. If it be true that there were no departures from the Cooley adjustment in class rates, except such as resulted from the building of the Kansas City, Memphis & Birmingham road, but there were possible departures in the fixing of commodity rates, it would seem strange that the commission, when dealing solely with class rates, and expressly excluding commodity rates, would refer to a condition which was true solely of commodity rates, but not true of class rates, and give this as the reason for its action taken with reference to class rates.

And if such departures from the Cooley adjustment do exist as to commodity rates, then whether the commission noted and intended to refer to these departures in commodity rates or not, it seems very clear to me that the commission's statement that the Cooley adjustment had been departed from, must be considered as relating to that subject matter upon which it was passing judgment, or expressing a conclusion and which, as we have seen, was confined to the subject of class rates, expressly excluding commodity rates, and therefore in any proper sense it is true that the commission's statement is not sustained by the evidence.

When I at last succeeded in getting hold of Mr. Compton, and asked him about the fact as to whether or not the Cooley adjustment had been departed from in fixing commodity rates, a subject to which I had never before given any attention, he said that that was a question which it was not possible for him to answer without very careful examination, and that any correct treatment of the subject would require a very great deal of very painstaking investigation. He called my attention to the fact that in the tariffs there are a great many pages devoted to commodity rates; that it would be necessary to check over all of these individual rates for the purpose of seeing whether or not any rates on any commodity departed from the Cooley adjustment, and then to ascertain, if possible, the reason why the departure was made in that particular case.

As to the particular tariffs that were filed before the commission, I was not able to call them specially to his attention, because my file is very incomplete as to copies of the tariffs introduced in evidence, and it would of course be an enormous work to read through the entire testimony before the commission for the purpose of picking out here and there where some tariff of this kind may have been referred to. He said, therefore, that while it was a possible thing to check over all of these commodity tariffs prevailing in the southeastern territory, it would involve a work of tremendous labor. And I told him that I did not believe you meant to call for them at this time, especially in view of the situation of this case, as I have heretofore explained. Speaking generally upon the subject, without investigation, he said that there might be some cases where a commodity moved in substantial quantities from one point, such as New Orleans, which did not move in substantial quantities from the Ohio River, or the upper Mississippi River crossing, or vice versa, and that in such cases it might be found that a commodity rate had been put in on the commodity from the point, or points, from which it moved in substantial quantities, while the same article was left in the classified list at points from which it did not move in substantial quantities; and that again there might be some cases where, either through mistake or through oversight, there had been a departure in fixing commodity rates on some specified article; or again, there might be departures upon other commodities intentionally made, but made for some reason that could be explained if the facts were fully investigated; but, as said before, that to check this matter over and get at the truth as to these details would require a great deal of labor and quite a considerable length of time.

As to the testimony of the witnesses in the case at bar, it seems to me it is very clear and positive. In answering my questions as to whether or not there had been any departures from the Cooley arbitration subsequent to those caused by the building of the Kansas City, Memphis & Birmingham Railroad they may have had in mind only departures in class rates—that was certainly what I had in mind in my questions—but their answers seem to me as specific and direct as you could expect of witnesses upon such a subject. One or two of them may have used the expression that since the building of the Kansas City, Memphis & Birmingham road there had been no departures so far as they knew. But that is all that a witness could say. The territory is a large one, and the subject is a large one, but each of these witnesses was a man of very large experience and information in this line, and when they said that there had been no departures within their knowledge it was about as complete testimony as it would be possible to produce in such a case. They were all subject to cross-examination by the counsel for the Interstate Commerce Commission, who had his rate expert at his elbow when the examination was in progress, and if he knew of any departure it was his duty to call attention to it.

I hope I have made myself plain and that I have answered the questions in your mind, as expressed in your letter. If, however, there is any further assistance I can render, it will give me great pleasure to render it if you will indicate how I can serve you or the court.

Yours, truly,

_____.

Hon. R. W. ARCHBALD,
Judge United States Commerce Court, Washington, D. C.

Q. (By Mr. Manager NORRIS.) That letter, Mr. Bruce, was signed by you?—A. Oh, yes.

Q. The Secretary has read from a carbon copy. Did you hear from the judge again before this case was finally determined?—A. No.

Q. When did you next hear from him in regard to this case?—A. After the case was decided I wrote the judge a letter and he answered that.

Q. Have you a copy of the letter that you wrote to the judge?—A. Yes, sir.

Mr. Manager NORRIS. I ask that it be marked as an exhibit and that it be read in evidence.

The Secretary read as follows:

[U. S. S. Exhibit 60.]

MARCH 4, 1912.

Hon. R. W. ARCHBALD, *Scranton, Pa.*

MY DEAR JUDGE: Of course, a lawyer is always gratified at winning a case, but I hope that I offend against no rule of propriety when I express my gratification, not simply at the ultimate result, to wit, the annulling of the order of the commission in the case of Louisville & Nashville Railroad Co. *v.* Interstate Commerce Commission (which we know as the New Orleans Board of Trade case), but over the opinion. This seems to me to show a familiarity on your part of the intricate details of this case that is really extraordinary; and your statement of the principles by which the court was guided in acting upon the case is so clear as to leave no doubt in the mind of one who is looking for a guiding rule in such cases.

Yours, truly,

_____.

HB–B.

Q. (By Mr. Manager NORRIS.) Mr. Bruce, that letter bore your signature as it was sent?—A. Yes.

Q. Did you get an answer to that?—A. I did.

Mr. Manager NORRIS. We ask that it be marked as an exhibit and read in evidence.

The Secretary read as follows:

[U. S. S. Exhibit 61.]

(R. W. Archbald, judge, United States Commerce Court, Washington.)

SCRANTON, PA., *March 8, 1912.*

MY DEAR MR. BRUCE: I thank you for your letter and its kind appreciation of the opinion of the court in the New Orleans Board of Trade case; but you fail to take credit for the very important part which you played in the result. Frankly, the case was won on your argument and brief. Your oral argument was one of the best that we have heard, and your brief was an absolute demonstration of the errors committed by the commission, and complete at every point. You can not fail to note how closely the opinion follows and reflects what is there said.

As for myself, I am only entitled at the most to a part of the opinion as filed. A considerable portion of it, if not indeed the best, is from the hand of another member of the court, and it is probably there that you find the enunciation of principles which you particularly commend. I regret exceedingly the delay which has occurred in this case; but some time, when I have the pleasure of seeing you again, I will endeavor to explain how it came about.

Very truly, yours, R. W. ARCHBALD.

I hope we shall have the pleasure of hearing you soon in argument again.

Q. (By Mr. Manager NORRIS.) Mr. Bruce, the judge in that last letter speaks of a conference. Did you have that conference?—A. No; I never saw—I never spoke to Judge Archbald in my life, except twice, once——

Q. You never saw him after the receipt of that letter except since you have appeared as a witness here or before the committee?—A. I have never seen him until I saw him before the Judiciary Committee.

Q. Did you give to the other attorneys in the case any notice of this letter or argument that you sent to the judge?—A. I did not.

Q. Do you know whether any of the other attorneys in the case knew anything about the correspondence that was going on while the case was pending?—A. I do not know, but I have no reason to think they did.

Q. In that litigation who represented the United States Government?—A. Do you mean the Government or the commission?

Q. I mean the Interstate Commerce Commission.—A. Mr. William E. Lamb, now of Chicago, then of Washington.

Q. Who instituted this suit originally?—A. The Louisville & Nashville Railroad Co.

Q. There was a complaint made coming from the New Orleans Board of Trade, was there not?—A. Yes; that was the hearing before the Interstate Commerce Commission.

Q. Yes.—A. That was a complaint, or, rather, there were three complaints by the New Orleans Board of Trade against the Louisville & Nashville Railroad Co. before the Interstate Commerce Commission.

Q. Who represented the New Orleans Board of Trade in this litigation, if anybody?—A. In this judicial case?

Q. Yes.—A. Nobody.

Q. They were not represented?—A. No, sir.

Q. Were they represented before the Interstate Commerce Commission, do you know?—A. I know that from having seen a brief filed before the commission by Mr. Smith.

Q. Mr. Smith?—A. He represented the board of trade before the commission.

Q. Do you know his full name?—A. I think it is John Smith.

Q. He lives in New Orleans?—A. Yes. I am not sure of his name.

Q. I will ask explicitly did you notify Mr. Smith or this other gentleman, whose name you have given——

Mr. SIMPSON. Mr. Lamb.

Q. (Continuing). Mr. Lamb, of what was going on in this correspondence?—A. I did not.

Cross-examination:

Q. (By Mr. SIMPSON.) Mr. Bruce, you have been a practicing attorney how long?—A. Thirty years.

Q. In active practice during the whole of that time?—A. Yes, sir.

Q. In what courts has your practice been principally?—A. Well, all of the courts in my part of the country.

Q. And the Supreme Court of the United States?—A. Yes, sir; and the circuit court, Court of Appeals of Kentucky, the circuit and district courts of the United States, the circuit court of appeals, and the Supreme Court.

Mr. SIMPSON. Mr. President, there are a couple of matters as to which there is no dispute, about which we want to examine the witness. Mr. Bruce is an exceedingly active man. I do not know whether the managers would object to our examining him in regard to these matters at this time or not. It will not be cross-examination.

Mr. Manager NORRIS. I did not hear the statement of counsel.

Mr. SIMPSON. I say there are a couple of matters about which there is no dispute as to which we would like to examine Mr. Bruce at this time. He has been subpœnaed by us. I do not think there will be any dispute about it, but of course we will have to wait until our case comes on if the managers object.

I will state, if you desire, what the points are. In the first place to prove by Mr. Bruce that the first letter which was received by Judge Archbald from him was, in fact, attached to the record in the case.

Mr. Manager NORRIS. There is no dispute about that. We will admit that.

Mr. SIMPSON. And is printed in the record in the Supreme Court. If that is admitted I do not want to ask him about it.

Mr. Manager NORRIS. That is the first letter?

Mr. SIMPSON. Yes; from Mr. Bruce to Judge Archbald.

Mr. Manager NORRIS. Yes; from Mr. Bruce to Judge Archbald.

Mr. SIMPSON. And the second thing is that he received a letter from Judge Mack and wrote a reply, which he has been asked to produce. I would simply like to have the letters identified and copies left here.

Mr. Manager NORRIS. There will be no objection to his doing that. We will not object to Judge Mack's letter, except the objection that may be made on the ground of its immateriality.

Mr. SIMPSON. That is all right.

Mr. Manager NORRIS. We will not require you to identify them. You need not keep him here for that purpose. I do not think it is material.

Mr. SIMPSON. I do not think there is any use of Bruce remaining here.

The WITNESS. Do I correctly understand that you want me to produce the letter?

Mr. SIMPSON. A copy of Judge Mack's letter to you and your reply to him. With that we will let you go.

Mr. WORTHINGTON. He might produce the originals.

Mr. SIMPSON. He would, of course, I suppose prefer to keep the originals.

Mr. Manager CLAYTON. You will let us see those?

Mr. SIMPSON. I have not seen them myself yet, Judge, but I will be very glad to show them to you.

The WITNESS. There are three letters. You asked for only two.

Mr. SIMPSON. I did not know there were three. [To the witness.] Can you leave these letters or send us copies? It does not make any difference which you do.

The WITNESS. I will leave the originals here, and you can return them to me when you get ready.

Mr. SIMPSON. Thank you.

Q. (By Mr. Manager NORRIS.) Referring to this case of the Louisville & Nashville Railroad Co. against the Interstate Commerce Commission, after it was decided by the Commerce Court it went to the Supreme Court, did it not?—A. It did.

Q. And is there pending?—A. Under submission.

Q. Had the case originally been passed upon by the Interstate Commerce Commission?—A. Oh, yes; that is the foundation.

Q. And your client, the Louisville & Nashville Railroad Co., commenced the case by injunction against the Interstate Commerce Commission from enforcing its order; that was the origin of it?—A. That is it.

Q. Mr. Bruce, since your testimony have you talked with the attorneys for the respondent?—A. I have not; except——

Q. Have you had any correspondence with them?—A. (Continuing.) Let me answer the question completely.

Q. All right.—A. When I got to the city, having been subpœnaed by both sides, I notified the managers that I was here and ready to testify; and I also notified Mr. Worthington, counsel for Judge Archbald, that I was here and ready to testify.

Q. Did you communicate to them the fact that you had had some correspondence with Judge Mack?—A. I testified to that before the Judiciary Committee.

Q. I believe you did make reference to that.

Mr. SIMPSON. That is the reason we subpœnaed him to produce them.

The WITNESS. I was served with a subpœna duces tecum to produce those letters.

Q. (By Mr. SIMPSON.) Did you write a letter to Mr. Worthington after your testimony before the Judiciary Committee?—A. I did.

Mr. SIMPSON. I think, gentlemen, you have that letter.

Mr. WORTHINGTON. We should like to have that letter to identify it. It is not in evidence.

Mr. Manager CLAYTON. There will be no trouble about the identification. We will find it or a copy of it.

Mr. SIMPSON. All right.

Mr. WORTHINGTON. The record of the Judiciary Committee will show that this witness did write a letter to me, which

I produced at the hearing before the Judiciary Committee. It was turned over to the committee and has been in their possession since.

Mr. Manager CLAYTON. I apprehend we will have no controversy about that unless it be about the admissibility of it in evidence; but about the identification of it or the fact that such a letter was written, there will be no controversy.

The WITNESS. I did not understand you to ask me, Judge, if I had written to Mr. Worthington. Was that the purport of your question?

Mr. Manager NORRIS. I asked you if you had had any correspondence with him.

The WITNESS. I did not understand that. Of course I did write to Mr. Worthington shortly after my appearance before the Judiciary Committee, but I knew the managers knew of that letter, and when you asked me if I had had any correspondence I thought you meant some late correspondence.

Mr. Manager NORRIS. That is all with this witness.

Mr. Manager CLAYTON. The witness may be discharged.

The WITNESS. I should like to ask if my letter which I wrote to Mr. Worthington is in the record.

Mr. WORTHINGTON. No; it is not.

The WITNESS. I think the facts I stated in that letter are material, if I may be permitted to say so, to this matter you have under consideration, because it states the attitude of the parties upon the question on which Judge Archbald wrote to me.

Mr. Manager CLAYTON. This is not in response to anything we have asked; and while it is very interesting, I think we can deal with that matter later. There will, no doubt, be an agreement about the identity of the letter, but any argument predicated on that letter I do not think we care to have at this time.

The PRESIDENT pro tempore. The witness may be finally discharged?

Mr. SIMPSON. Yes.

The WITNESS. Discharged by both sides.

Mr. Manager NORRIS. I have a witness, whose testimony will be very brief, whom we might call at this time.

The PRESIDENT pro tempore. If it is the desire of the Senate, the time can be prolonged. If not, the order of the Senate will require the Senate sitting as a Court of Impeachment to adjourn at 6 o'clock. On the suggestion of the manager that the testimony of his next witness will be short——

Mr. Manager NORRIS. It may be the witness has gone. I think he has gone. We will not ask that he be called at this time.

Mr. LODGE. I move that the Senate sitting as a Court of Impeachment adjourn.

The motion was agreed to.

Thereupon the managers on the part of the House, the respondent, and his counsel retired.

Mr. SMITH of Georgia. I move that the Senate adjourn.

The motion was agreed to, and (at 5 o'clock and 59 minutes p. m.) the Senate adjourned until to-morrow, Thursday, December 12, 1912, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *December 11, 1912.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

We bless Thee, Almighty God, our heavenly Father, for the deep and abiding faith which Thou hast implanted in the hearts of Thy children, the inspiration of men to noble and heroic lives, to whom we are indebted for the civilization of our day. We most fervently pray that this faith may grow until it becomes universal, crowding out hate and revenge, doubt and uncertainty, bringing in brotherly love, until all men can say,

I know not where His islands lift
Their fronded palms in air;
I only know I can not drift
Beyond His love and care.

This we ask in the name of Christ the Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

LEAVE TO PRINT.

Mr. CANTRILL. Mr. Speaker, I ask unanimous consent to print in the RECORD the argument of the Hon. James M. Beck in the Supreme Court of the United States as to the invalidity of a Federal censorship of the press under the operation of House bill 21279.

The SPEAKER. Is there objection?

There was no objection.

The following is the argument referred to:

(Supreme Court of the United States. The Lewis Publishing Co., a body corporate in law, complainant-appellant, against Edward M. Morgan, postmaster in and for the city of New York, defendant-appellee.)

BRIEF FOR THE APPELLANT.

STATEMENT OF FACTS.

The newspaper law (reprinted in full as an appendix, *post*, p. 51), whose constitutionality is in this suit called into question, is neither in form nor substance a law to regulate the carriage of the mails, but *to regulate journalism.*

In this respect is has the merit of sincerity. It does not pretend to be in aid of the Post Office Department. That department did not seek its enactment, but protested against it. (When the bill was under consideration before the Senate Committee on Post Offices and Post Roads the Postmaster General addressed a formal letter to Senator BOURNE, the chairman of the committee, in which, after discussing other details of the general appropriation bill, he made this specific protest against the passage of the newspaper section: "I also call your attention to that portion of the bill beginning on page 33, line 19, which requires the insertion in newspapers and periodicals of the name of the owner or owners and the managing editor or managing editors, and also that matter for the insertion of which a charge is made by the publishers should be marked as an advertisement or private name of the writer signed thereto. *In my judgment this provision is not only needless, but will be positively harmful, as it will require the continuous use of valuable space in the publication and at the same time be resented as a censorship of the press.* One of the greatest difficulties now encountered in the enforcement of the laws relating to second-class mail privileges is the fact that the Post Office Department is under its duty compelled to make inquiry into many aspects of the private business of publishers. This gives rise to the complaint, though ill-founded, that the Government carries on a needless interference with the privileges of the press. The *only possible service* to be rendered by such a provision would be the identification of the owners and writers of newspapers and periodicals in order to hold them for contractual obligations or for libelous printed matter, both of which would be matter under the jurisdiction of the State and not the Federal authorities. *I am of the opinion that it should be the constant aim, not only of Congress, but of the Post Office Department as well, to lessen the necessity for supervision of the public press in order to administer the postal laws and regulations. I earnestly hope that the provision referred to will not become law.*")

The law in question makes no reference to the mails, except that it uses exclusion therefrom *as a means of enforcing this censorship of the press.*

Even this remote connection is wanting in the latter section of the law, which requires paid reading matter to be formally branded as an advertisement. Its enforcement is left to a criminal action for a penalty.

The law has two plainly avowed objects.

The first is to compel a disclosure to the Government, under oath, of the names and addresses of the editors, publishers, business managers and owners, stockholders, security creditors, and the daily circulation of such newspapers for the preceding six months.

This will be hereafter referred to as the inquisitorial provision.

The second object is to compel a disclosure to the public through newspaper publication of these facts and also whether any editorial or reading matter in such publication has been inserted for a valuable consideration.

This will be hereafter referred to as the publicity provision.

The publicity provision can not be referred to any proper function of the Post Office Department. Its function is to carry the mails and in such carriage it can not matter whether *the public* are advised as to the ownership, editorial direction, and circulation of a newspaper or not, or whether the matter which it publishes is published for a consideration.

The requirement that the publishers shall file a sworn statement on these matters with the Post Office Department was not intended as a means of determining whether a newspaper was in fact entitled to the privileges of second-class rates, for as the Attorney General, in the opinion which he has given to the Postmaster General with reference to this law, plainly points out, the Post Office Department already has all of the inquisitorial power that it needs for this purpose. (The Attorney General says: "Independently of this amending act, in order that the Postmaster General may determine whether or not a publication applying to be admitted to the second class has a legitimate list of subscribers, and is not designed primarily for advertising purposes, or free circulation, or for circulation at nominal rates, the Postmaster General is entitled to require full and complete statements showing the character of the business of the publication, and by section 436 of regulations (edition of 1902) he has required postmasters to secure satisfactory evidence that publications so offered for entry have 'a legitimate list of subscribers approximating 50 per cent of the numbers of copies regularly issued and circulated, by mail or otherwise, made up, not of persons whose names are furnished by advertisers or by others interested in the circulation of the publication, but of those who voluntarily seek it and pay for it with their own money, although this rule is not intended to interfere with any genuine case where one person subscribes for a definite period of several issues for a limited number of copies for another.' And by section 438 the postmasters are directed to require the proprietor or duly authorized representative, on applying for second-class mail privilege, to furnish detail information of a character deemed requisite by the Postmaster General to enable him to determine whether or not the publication falls within the requirements of the acts of Congress. The right of the Postmaster General to exact this information is in no respect impaired or affected by the provisions of the statute under consideration. Those provisions are inserted as a part of the act of 1912, which is apparently designed to insure publicity as to the ownership and control of a publication. This particular clause was inserted by amendment just before the passage of the act, and bears no ascertainable relation to the subject matter of the paragraph in which it was inserted.")

The history of the legislation also makes it clear that the purpose of the act was not to enable the Post Office Department to carry on its work, but to regulate journalism for the supposed benefit of the public.

While resort may not be had to the debates in Congress to determine the *interpretation* of a statute, yet they can be examined when the *object* of a statute is a pertinent matter. The proponents in Congress of this novel law very frankly admitted that the purpose of the act was to regulate journalism, rather than the mails. The debates may be searched in vain for any suggestion that the efficient carriage of the mails was the object of the legislation. (Senator BOURNE, chair-

man of the Committee on Post Offices and Post Roads, said: "I assume the desire is to furnish the public information as to the possible bias of the paper incident to ownership or incident to obligations of the paper or its owners to individuals." Another advocate of the legislation, Senator REED, of Missouri, said that "the purpose of the proposed law was that the people who read the newspapers should be advised of the control back of the newspapers." When the proposed legislation was originally suggested in the House of Representatives, Congressman HENRY of Texas, chairman of the Committee on Rules, stated that its purpose was "that the American people may see the men who stand behind the guns trained against public officials." When the addition with reference to the printing of paid matter was added, its proponent, Congressman BARNHART, of New York, stated as its purpose that this provision "will not cost the people anything, but will conserve honesty and public confidence in one of the greatest educational factors in the world." Congressman VICTOR BERGER, of Wisconsin, said: "It seems to me that the politicians are trying to get even with the newspapers, which are continually prying into the private affairs of the politicians. The politicians want to know everybody connected with the papers and thus get the best of them. You can never do it, gentlemen, because in the end the newspapers will have the last word every time, no matter what you do. If you get the ill will of your own party papers, you might just as well quit the political game. Moreover, there is a grave danger lurking behind the proposition. The freedom of the press is involved.")

The face of the statute shows its true purpose. Religious, fraternal, temperance, scientific, or other similar publications are exempted from its provisions, and the requirement as to disclosure of circulation is further limited to daily newspapers.

If it be desirable that the Postmaster General, before admitting a periodical to second-class rates or to the privileges of the mail at all, shall require a statement of its average circulation, such requirement, so far as the Post Office Department is concerned, must be quite as important in the case of a religious or scientific journal as an ordinary *newspaper*, and certainly there can be no reasonable distinction as to such publicity between a weekly and daily newspaper. This discrimination shows that the law attempts to regulate the instrumentalities of public opinion, the newspaper press, and that the carriage of the mails or the right to second-class matter was not the object of Congress. It attempts to ascertain who are responsible for daily newspapers, and the extent of their influence as measured by circulation.

Congress sought to censor the press by compelling disclosure and publicity of facts vital to its influence under the penalty of exclusion from the mails, a penalty sufficiently drastic, for such exclusion would wreck any publication. The penalty is not merely exclusion from the privilege of *second-class* rates or a denial of the carriage of the newspaper through the mails. The owners and publishers who refuse to comply with the law are denied the privilege of the mails for any purpose. As to paid matter, they are subject to indictment and a fine.

With the policy of this law this court has no concern. It can only inquire whether it is a valid law under the Constitution.

My argument against its validity will be divided into three propositions—

1. The Constitution has not, either under the post-roads clause or elsewhere, delegated to the Federal Government the power (1) to compel these disclosures and (2) to direct their publication or (3) to compel paid reading matter to be marked as an advertisement.

2. The Constitution not only failed to give such power, but it expressly forbade it by the first amendment prohibiting any law "abridging the freedom of the press."

3. The requirement that a certain class of newspapers shall disclose to the public by publication the most intimate details of their business and use their own capital, labor facilities, and valuable space for such disclosure is a taking of "liberty" and "property" without due process of law and a like taking of valuable property rights for an assumed public use without just compensation.

ARGUMENT OF THE LAW.

I.

The Constitution has not, either under the post-roads clause or elsewhere, delegated to the Federal Government the power (1) to compel these disclosures and (2) to direct their publication or (3) to compel paid matter to be marked as an advertisement.

While no *express* power for such a law will be claimed, the Government will seek to sustain it as an *implied* power necessary to the *express* power "to establish post offices and post roads" (Art. I., sec. 8). It has been well said:

"No other constitutional grant seems to be clothed in words which so poorly express its object or so feebly indicate the particular measures which may be adopted to carry out its design. To establish post offices and post roads is the form of the grant; to create and regulate the entire postal system of the Government is the evident intent." (Pomeroy on Constitutional Law, sec. 411.)

It was originally thought—indeed, as late as the administration of President Monroe—that the only purpose of the grant was to designate the routes over which the mails should be carried and the post offices where it should be received and distributed. At the time the Constitution was framed the carriage of the mails was a private enterprise, although the establishment of post offices was a governmental function. This was the view of President Monroe when he vetoed the Cumberland Road bill on May 4, 1822. The carriage of the mails is therefore in itself an implied power.

These earlier and narrow views of an important governmental power are, however, academic, for I freely concede that, however unhappily expressed, the Constitution meant to give to the Federal Government full power to make a monopoly of the carriage and distribution of the mails, and that all "*necessary and proper*" means are to be regarded as fairly embraced in the power.

The present law as an alleged implied power must therefore be subjected to the acid test of Chief Justice Marshall:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means *which are appropriate*, which are *plainly adapted to that end*, which are not prohibited but *consistent with the letter and spirit of the Constitution*, are constitutional."

Is the enforced disclosure and publication of the most intimate secrets of the ownership and editorial management of a newspaper and the circulation thereof a means "*plainly adapted*" to the carriage of the mails?

Is it an "*appropriate*" method?

Is it "*consistent with the letter and spirit of the Constitution*," in view of the express declaration that the freedom of the press shall not be "*abridged*"?

When governmental powers—only *enumerated* in the Constitution in the broadest and most general way—pass to the stage of necessary definition through judicial decisions, restrictions are imperatively necessary, unless the Constitution itself is to fall into careless ruin.

The commanding genius of Marshall and his associates quickly recognized the absolute necessity of the judiciary confining both the National and State Governments within their respective spheres by so *defining the enumerated powers* as to create a harmonious though dual system.

In the case of McCulloch *v.* Maryland (4 Wheat., 423) the Chief Justice laid down for all time this great and absolutely necessary rule of interpretation, as follows:

"Should Congress, *under the pretext of executing its powers*, pass laws for the accomplishment of objects *not intrusted to the Government*, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, *to say that such an act was not the law of the land*." (Hamilton, in the Federalist, No. 33, said: "The priority of a law in a constitutional light must always be determined by the nature of the powers upon which it is founded. Suppose, by some forced construction of its authority (which, indeed, can not be easily imagined) the Federal Legislature should attempt to vary the law of descent in any State, would it not be evident that in making such an attempt it had exceeded its jurisdiction and infringed upon that of the State? Suppose, again, that upon the pretense of an interference with its revenues it should undertake to abrogate a land tax imposed by the authority of the State, would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to these species of tax which the Constitution plainly supposes to exist in the State governments?" The fatal effect upon constitutional government of any other course was pointed out by Senator Hayne in his great debate with Webster, when he said that if Congress "*may use a power granted for one purpose for the accomplishment of another and very different purpose, it is easy to show that a Constitution on parchment is worth nothing.*")

The Government may contend that the later decisions of this court modify, if not altogether abrogate, this primary and vital principle of constitutional construction. The line of cases, of which Veazie *v.* Fenno, 8 Wall., 533, is the leading case, will probably be cited, in which the doctrine is laid down in various forms but substantially to the following effect:

"The judiciary can not prescribe to the legislative departments of the Government limitations upon the exercise *of its acknowledged powers*. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected."

It was clearly shown in subsequent decisions that the decision in Veazie *v.* Fenno was amply justified in the exclusive power of the Federal Government to establish an exclusive currency, with the incidental power to "restrain by suitable enactments the circulation money the notes not issued under its own authority." The statement in that case, therefore, that "the judiciary can not prescribe the legislative department of the Government limitations upon the exercise of its acknowledged powers" was mere obiter. This decision means nothing more than that the "acknowledged," *i. e.*, conceded powers, can not be restricted by the judiciary to prevent some supposed injustice. If, therefore, the Constitution had given the Federal Government power to regulate journalism and provide the conditions under which a newspaper could be published, the judiciary could not limit the power because a particular method of enforcing it seemed unwise or unjust. Much less could it invalidate such method because the judiciary believed that the methods of Congress were improper and inconsistent with the spirit of the Constitution.

It must also be remembered that in Veazie *v.* Fenno, Chief Justice Chase also said:

"There are indeed certain virtual limitations arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States *or if exercised for ends inconsistent with the limited grants of power in the Constitution.*"

Reading these excerpts from this leading case together, it must be obvious that in considering the constitutionality of any statute we "beg the question" if we first assume the power and then simply deny the right of the judiciary to place limitations upon its exercise. In Veazie *v.* Fenno this court did not hold that the motive and object of Congress might not be very pertinent in determining this primary question of power. On the contrary, this court ruled that if the legislation were clearly within the Constitution the motives of Congress were beyond judicial inquiry. This court has never conceded—and I venture to predict never will concede—that Congress may use a power given only for one purpose for an entirely different and unconstitutional purpose. In this class of cases reasoning in a circle must be carefully avoided.

A later and more striking case is McCray *v.* United States (195 U. S., 27), in which this court, having under consideration the constitutionality of the designedly prohibitive tax upon oleomargarine, held that the judiciary could not inquire into the "*motive or purpose*" of Congress in adopting a statute levying an excise tax within its constitutional power.

There is no necessary inconsistency between these two lines of decisions.

The latter line of cases are generally, if not invariably, instances of *express powers*, like that of taxation or the regulation of commerce, and as to these this court has said that they, being what Marshall called "acknowledged powers," the judiciary *ex necessitate rei* can neither limit them further than they are expressly limited in the Constitution nor impeach the power by questioning the uncertain motives of Congress.

A very different question arises and must arise where the exercise of an *implied* power is under consideration. There the law finds no warrant in the letter of the Federal Constitution. The power has not been expressly granted. It is confronted with the tenth amendment, expressly reserving all undelegated powers to the States.

Indeed, implied powers are derived from the section of the Constitution which gives "power to make all laws *necessary and proper* for carrying into execution the powers expressly granted to Congress or vested by the Constitution in the Government or in any of its departments or officers." While no narrow, literal, and impracticable meaning can now be given to the words "necessary and proper," yet, as Mr. Justice Story said in his great commentary on the Constitution, these words "are at once admonitory and directory," and they require that the means used in the execution of an express power "should be *bona fide* appropriate to the end." (Hepburn *v.* Griswold, 8 Wall., 603, 614.)

"Every valid act of Congress must find in the Constitution some warrant for its passage." (United States *v.* Harris, 106 U. S., 636.)

An alleged implied power, as in the case at bar, must justify itself by showing that it is "necessary and proper" and "plainly adapted" to carrying out some express power. (State powers and Federal powers are mere complements of each other, and to both can be applied the words of this court in Mugler *v.* Kansas (123 U. S., 623): "It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exercise of the police powers of the State. There are of necessity limits beyond which legislation can not rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute (Sinking Fund cases, 99 U. S., 700, 718) the courts must obey the Constitution rather than the law-making department of Government, and must, upon their own responsibility, determine whether in any particular case these limits have been passed. 'To what purpose,' it was said in Marbury *v.* Madison (1 Cranch, 137, 176), 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution.")

The question in this case, as in every similar case, is not whether this legislation is an exercise of a *delegated* Federal power for some ulterior or improper purpose, but whether, having regard to the Constitution as a whole and giving due effect to all the limitations of the amendments—particularly the tenth—*the specific legislation is within the true definition of the power.*

When therefore a law is passed under the pretense of exercising a Federal power and it is not "necessary and proper," "appropriate," or "plainly adapted" to such power, then the judiciary declares it invalid, not as withdrawing from the Federal Government anything delegated by the Constitution, *but in more accurately defining the nature of the power.*

While this court has with reason exercised this great power sparingly, yet the number of Federal enactments that have been adjudged unconstitutional is sometimes underestimated. Without pretending to have made an exhaustive search of the authorities, I have found 20 cases in which Federal enactments were thus adjudged unconstitutional by this court. In one of these (the Legal Tender cases) the decision was subsequently reversed. Of the remaining 19, 12 were adjudged void for want of power and 7 because they contravened some express constitutional limitation. The cases are:

Marbury *v.* Madison, 1 Cranch, 138; decided 1803. Dred Scott *v.* Sanford, 19 Howard, 393; decided 1857. Ex parte Garland, 4 Wallace, 333; decided 1866. The Alicia, 7 Wallace, 571; decided 1868. Hepburn *v.* Griswold 8 Wallace, 603; decided 1869. Justices *v.* Murray, 9 Wallace, 274; decided 1869. Collector *v.* Day, 11 Wallace, 113; decided 1870. United States *v.* Klein, 13 Wallace, 128; decided 1871. United States *v.* Reese, 92 United States, 214; decided 1875. Trade-mark Cases, 100 United States, 82; decided 1879. United States *v.* Harris, 106 United States, 629; decided 1882. Civil Rights Case, 109 United States, 3; decided 1883. Boyd *v.* United States, 116 United States, 616; declared invalid 1886. Monongahela Navigation Co. *v.* United States, 148 United States, 312; decided 1893. Income Tax Case, 157 United States, 429; decided 1895. Wong Wing *v.* United States, 163 United States, 228; decided 1896. Fairbank *v.* United States, 181 United States, 283; decided 1901. James *v.* Bowman, 190 United States, 127; decided 1903. Employers Liability Cases, 207 United States, 463; decided 1908. Adair *v.* United States, 208 United States, 161; decided 1908.

In the case at bar the pretense is that the law is an appropriate and necessary means of carrying out the power to regulate the establishment of post offices and post roads and the carriage of the mails. *The declaration of Congress to this effect, while entitled to respect, can not conclude the question.* It remains for the judiciary to determine whether the means are thus "necessary and proper," "appropriate," and "plainly adapted."

This question presents a graver aspect of this constitutional problem than has ever developed before. The idea has in recent years gained ground among many eminent publicists and statesmen that certain powers granted to the Federal Government can be so utilized as to penalize men into submitting to governmental demands which would otherwise be unconstitutional. In other words, that which the Federal Government can not do directly it is attempted to do indirectly.

I call this nullification by indirection. (There is a growing belief in a power of Congress to compel the citizen to do things in themselves beyond the direct powers of the Federal Government, under penalty of a denial of some valuable privilege under the Constitution, such as the facilities of interstate commerce. The section of the Hepburn bill known as the commodities clause was based upon this novel and most dangerous doctrine that Congress, by reflex action, could compel railroad corporations to do that which otherwise Congress had no power to require, under penalty of being denied the privilege of engaging in interstate commerce. On this same theory was based Senator Beveridge's child-labor bill, which in effect attempted to prohibit the interstate transportation of any commodity, however innocent in itself, if it were the product of child labor. This attempt to compel action in matters beyond the scope of the Federal Government, through a species of statutory duress, gained remarkable ground in the congressional discussion of the trust problem, where it was again and again suggested that if the Federal power could not directly interfere with the formation and operations of large domestic State corporations, it could indirectly, by so exercising alleged Federal powers as to make it impossible for the State corporations to exist when they reached the commercial dimensions of a so-called trust. Thus it was suggested that a destructive internal-revenue tax could be imposed as had been done with the currency of State banks; graded excise taxes were proposed to discourage excessive capitalization; the mails were to be denied to monopolistic trusts. The denial to them of a right of appeal to the Federal courts was also suggested. National banks and other governmental fiscal agencies were to be prohibited from receiving on deposit or accepting as collateral any stocks, bonds, or securities of a trust. It was even suggested that the United States Government should not deposit Government moneys in any bank, which in any manner deals with the stocks, bonds, or securities of a trust. No corporation should engage in interstate commerce without obtaining a Federal charter and subjecting its contracts to the supervision of a Government bureau. Trust-made commodities were to be forbidden access to the channels of interstate and foreign trade. Putting together the two remedies, it must be admitted that they would be sufficiently drastic, for if a large corporation can neither sue in the Federal court, transport its freight on interstate railroad lines, import its raw material in foreign commerce, telegraph a message, mail a letter, or enjoy the usual national-banking facilities, its outlawry would be complete.)

The present case affords a striking illustration of this new gospel of subverting the Constitution by a perversion of Federal powers, at which the framers of the Constitution would have stood aghast. Following the scheme of unconstitutional duress, the law simply provides that the owners of a newspaper must file with the Postmaster General, and later publish in their newspapers, the names and addresses of the editors, owners, creditors, etc., and the amount of the circulation, and shall brand paid reading matter as an advertisement, and, conscious of its inability to enforce such requirements under any *express* grant of the Constitution, Congress attempts to compel the owners of newspapers to submit to these unlawful demands by penalizing them with exclusion from the mails and liability to a fine.

Is such duress within any true definition of Federal powers?

Is it a due regulation of the mails for the Federal Government to say to a citizen, "Unless you do certain things, which we have not otherwise the power to compel you to do, we will deny you the facilities of the mail"?

If such a right exists, then it must be obvious that our Government is not one of effective restrictions. Congress, exercising a group of powers which are absolutely vital to the well being of every citizen, can coerce him into doing anything that Congress requires, under penalty of a denial of the ordinary privileges of a citizen.

Independent of the bill of rights there must be *ex necessitate rei* some restriction of the power to use the mails as a club to secure ends not within the scope of the Federal Government.

Could Congress provide that no physician should use the mails unless he has filed a statement giving his name, address, property holdings, liabilities, the number, names, and ailments of his patients and a declaration that he would only practice as an allopath? If the power over the mails be plenary and absolute, what clause in the Bill of Rights expressly forbids it?

It is not a question of the motives of Congress or the policy of the law. *It is a question of power,* and it is inconceivable that the framers of the Constitution, jealous as they were of the powers of the Government which they had created, would ever have given the Federal Government such power over the private affairs of the American people.

THE AUTHORITIES.

The decisions of this court, from its earliest history, leave no doubt that in a proper case the Supreme Court will not permit such nullification by indirection as results from the perversion of Federal powers to accomplish indirectly unconstitutional ends.

It can not be doubted that if Congress had passed the law now under consideration as a special statute and not as a part of a post-office appropriation bill, and had omitted any reference to the mails, this court would hold that the Constitution not only did not grant such a supervisory power over the press, but by the first amendment had expressly prohibited it.

Can it be possible that what Congress could not do directly it may nevertheless accomplish indirectly by the pretense that such supervision is necessary in order that the Post Office Department may suitably carry on its important function?

As Mr. Justice Brewer, in Fairbank *v.* United States (181 U. S., 283, 294), speaking of the previous decision of Woodruff *v.* Parham (8 Wall., 123), said:

"In other words, that decision affirms the great principle *that what can not be done directly because of constitutional restriction can not be accomplished indirectly by legislation which accomplishes the same result.* * * * The form in which the burden is imposed can not vary the substance. * * * Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and can not be evaded by any legislation which, though not in terms trespassing upon the letter and spirit, yet in substance and effect destroys the grant or limitation."

As was said by this court in Union Bridge Co. *v.* United States (204 U. S., 364, 397):

"If the means employed have no real substantial relation to public objects which the Government may legally accomplish, if they are arbitrary and unreasonable beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action. The authority of the courts to interfere in such cases is beyond all doubt."

See also Lochner *v.* New York (198 U. S., 45), Mugler *v.* Kansas (123 U. S., 623). Chicago R. R. *v.* Drainage Commissioners (200 U. S., 561). Reagan *v.* Farmers Loan & Trust (154 U. S., 362). Even where the power asserted is the power to tax—the most sweeping, unlimited, and fundamental of governmental powers—this court has found no insuperable difficulty in determining the difference between a tax and a reasonable fee covering expenses to protect the Government against fraud (Pace *v.* Burgess, 92 U. S., 372); between a tax on exports and a mere stamp duty on a document (Fairbank *v.* United States, 181 U. S., 283); between a tax and a penalty (Helwig *v.* United States, 188 U. S., 605); between a tax and an improper burden on interstate commerce (Atlantic Telegraph Co. *v.* Philadelphia, 190 U. S., 160); between a legitimate regulation of rates and a confiscation of private property (Smyth *v.* Ames, 169 U. S., 466).

Nor can it matter that the law now under consideration may incidentally and to some extent relate to the due administration of the Post Office Department, for even a regulation of interstate commerce may be invalid if its enforcement involves a direct interference with intrastate commerce.

In the Trade-Mark cases (100 U. S., 82) Mr. Justice Miller said:

"When therefore Congress undertakes to enact a law which can only be valid as a regulation of commerce it is reasonable to expect to find on the face of the law, or from its essential nature, that it is a regulation of commerce with foreign nations or among the several States or with the Indian tribes. *If not so limited,* it is in excess of the power of Congress. *If its main purpose be to establish a regulation applicable to all trade,* to commerce at all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress."

Applying the doctrine of these decisions to the case in hand, I submit that this court should hold either—

1. That the law in question is not in substance and effect a regulation of the mails but a regulation of journalism; or

2. That even if the law is to be regarded as an attempt to regulate the mails, the means employed are, to apply the test of McCulloch *v.* Maryland, not "within the scope of the Constitution," not "appropriate," "not plainly adapted to that end," and not consistent "with the letter and spirit of the Constitution," and not "limited" to a fair exercise of Federal power.

I recognize that the power under the post office roads clause has been defined by this court in Public Clearing House *v.* Coyne (194 U. S., 497) as "the regulation of the entire postal system of the country."

But what is the postal system of the country? Is it more than the collection, carriage, and distribution of letters, documents, or other merchandise sent by one citizen to another? It can not be questioned that this power embraces the right to exclude from the mails any matter that is unlawful or immoral. In other words, the Government is not required to be an accessory in distributing immoral literature.

As stated in Public Clearing House *v.* Coyne (*supra*), such regulation includes the power to exclude from the mails any matter that would be "dangerous to its employees or injurious to other mail matter carried in the same packages." But in the opinion in that case, especially in the first clause of the syllabus, it is intimated that the power is not arbitrary, for

"Congress would have no right to extend to one the benefit of its postal service and deny it to another person in the same class and standing in the same relation to the Government."

I concede that in *Ex parte* Jackson, 96 U. S., 727; *In re* Rapier, 143 U. S., 110; Horner *v.* United States, *id.*, 207; Public Clearing House *v.* Coyne, 194 U. S., 497, this court has recognized a sweeping power in the Federal Government to determine what it shall and what it shall not carry in the mails. But in all these cases the law simply provided that matter that was either immoral or fraudulent should not be carried in the mails. It did not pretend to prohibit the publication or circulation in any other way of the matter deemed to be immoral or fraudulent, nor did it attempt otherwise to exercise any police power with reference thereto. It simply declined to give the immoral or fraudulent enterprise the assistance of mail facilities. Those who were engaged in the nefarious traffic could, so far as the postal law was concerned, pursue their way undisturbed, provided they did not attempt to use the mails to further their unlawful ends.

All previous laws have always observed this distinction between regulating an exercise of the Federal power such as the carriage of mails and punishing generally a given evil. Congress has excluded from the mails any newspaper which contained a lottery advertisement, but it has not legislated with reference to lotteries. The line of demarcation has always been drawn and admits of no dispute.

In the case at bar, however, the exclusion from the mails is but an incident to the law and is merely introduced into the act as a method of compelling obedience to the other provisions. It seeks to compel newspapers to disclose the secrets of their business, not only to the Post Office Department but to the public, and it requires them to notify the public when any reading matter has been inserted for a consideration.

Are these requirements "*appropriate*" to the carriage of the mails? Are they "*plainly adapted*" to that end? In the collection, carriage, and distribution of newspapers how can it matter to the Federal Government who the editors are, who the mortgage creditors, and what is its circulation?

In the Lottery case (188 U. S., 321) I argued for the Government that the power to regulate interstate commerce was plenary and absolute, but I disclaimed any suggestion that it could be used for any purpose, however arbitrary or remote from the great purposes of the Federal Government. My opponents attempted a *reductio ad absurdum* by arguing that if the power were exclusive and plenary and included a right to prohibit as a regulation, then Congress could "arbitrarily exclude from commerce among the States any article, commodity, or thing of whatever kind or nature or however useful or available which it may choose, no matter with what motive, to declare shall not be carried from one State to another."

This court disclaimed any such conclusion and significantly added: "We may, however, repeat in this connection what the court has heretofore said, that the power of Congress to regulate commerce among the States, although plenary, *can not be deemed arbitrary* since it is subject to such limitations or restrictions as are prescribed by the Constitution. This power, therefore, may not be exercised so as to infringe rights secured or protected by that instrument. It would not be difficult to imagine legislation that would be justly liable to such an objection as that stated and be hostile to the objects for the accomplishment of which Congress was invested with the general power to regulate commerce among the several States. * * * If what is done by Congress is manifestly in excess of the powers granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people."

The attitude of this court, however, can not be doubted since the case of Adair *v.* United States (208 U. S., 161, 178, decided 1908).

Congress had attempted to regulate interstate commerce by a law prohibiting an interstate carrier from discriminating against organized labor, and in its judgment such a law was necessary to prevent obstructions through labor controversies of the free flow of such commerce.

If, therefore, the doctrine of Veazie Bank *v.* Fenno and McCray *v.* United States were, as the Government now contends, that the judiciary can neither inquire into the motive of Congress in determining the question of power nor restrict the exercise of such power within the limits of the Constitution, but must leave these questions wholly to the discretion of Congress, then it would necessarily follow that this attempted regulation of commerce was constitutional, or at least beyond judicial review. This court, however, reached the conclusion that, the declaration of Congress to the contrary notwithstanding, section 10 was not a regulation of commerce. This court said:

"Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the States, *must have some real or substantial relation to or connection with the commerce regulated.* But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization can not have *in itself* and in the eye of the law any bearing upon the commerce with which the employee is connected by his labor and services. * * * If such a power exists in Congress, it is difficult to perceive why it might not, by absolute regulation, require interstate carriers under penalties to employ in the conduct of its interstate business *only* members of labor organizations or *only* those who are *not* members of such organizations—a power which could not be recognized as existing under the Constitution of the United States. No such rule of criminal liability as that to which we have referred can be regarded as in any just sense a regulation of interstate commerce. We need scarcely repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, can not be exerted in violation of any fundamental right secured by other provisions of the Constitution. (Gibbons *v.* Ogden, 9 Wheat., 1, 196; Lottery case, 188 U. S., 321, 353.) It results, on the whole case, that the provision of the statute under which the defendant was convicted must be held to be repugnant to the fifth amendment and as not embraced by nor within the power of Congress to regulate interstate commerce, but *under the guise of regulating interstate commerce*, and as applied to this case it arbitrarily sanctions an illegal invasion of the personal *liberty* as well as the right of property of the defendant Adair."

In the Employers' Liability cases (207 U. S., 463, 502), decided in 1907, the same question arose as to the power of the Federal Government to include within an otherwise valid law provisions which were beyond the power of the Federal Government. There a law was under consideration regulating the liability of interstate carriers for injuries to their employees, but in providing a remedy the law was not restricted to employees while engaged in interstate commerce. This court held that the law as a whole was unconstitutional.

Incidentally it disposed of the contention, which underlies the Government's proposition in the present case, as to whether Congress can so use its conceded powers as to reach objects beyond its scope. Thus it was there contended that when when a carrier engaged in interstate commerce it thereby subjected itself to the power of the Federal Government, not merely with respect to interstate commerce but as to all its business. To this contention this court replied:

"To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which can not be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

The language of these two opinions, representing the latest expression of this court, could be applied with little change of language to the present case. As in the Employers' Liability cases, the Government now contends, in substance, that if the newspaper publishers of this country wish to enjoy the facilities of the mails they must do so upon the conditions that Congress imposes and must subject their business details to any regulation which Congress may prescribe as a condition of using the mails.

As in the Adair case, the Government now contends that the mere fact that we wish to enjoy mail facilities makes it competent for Congress to legislate with reference to business details, which have only a very remote, if any, relation to the carriage of the mails. Apart from these recent cases, there are a number of earlier cases equally illuminating. I shall only select a few. In United States *v.* Fox (95 U. S., 670) the validity of an act of Congress, which made it a penal offense for any person to obtain goods on credit three months before proceedings in bankruptcy, on the false pretense of dealing in the ordinary course of trade, was held invalid, as having no reasonable relation to the Federal power over bankruptcy. Mr. Justice Field said: "Any act committed with a view of evading the legislation of Congress passed in the execution of any of its powers * * * may properly be made an offense against the United States. But an act committed within a State, whether for a good or a bad purpose or whether with an honest or a criminal intent, can not be made an offense against the United States, *unless it have some relation to the execution of a power of Congress or to some matter within the jurisdiction of the United States.*" In United States *v.* Reese (92 U. S., 214) a law passed by Congress in enforcement of the fifteenth amendment was held invalid because it went further than was necessary or proper to carry out the power committed to Congress. Similarly in the case at bar we contend that the act has gone further than is either necessary or appropriate in regulating the carriage of the mails. See also Dent *v.* W. Va. (129 U. S., 114); Cummings *v.* State of Missouri (4 Wallace, 277).

In each of these cases laws were declared invalid because there was no just relation between them and the legitimate object sought to be accomplished.

II.

The Constitution not only failed to give such power but it expressly forbade it by the first amendment, prohibiting any enactment "abridging the freedom of the press."

Assuming, for the sake of argument, that in the absence of the first amendment such a censorship of the press would be an implied power incident to the regulation of the mails, yet such power was expressly withheld by the first amendment, which forbade any law "abridging the freedom of speech or of the press."

All provisions of the Constitution must be read together, and thus read together the Constitution virtually provides that Congress shall have the power "to establish post offices and post roads," and for this power "to make all laws which shall be necessary and proper:" *Provided, however,* That it shall make no law "abridging the freedom of the press."

What is the freedom of the press? To determine this question we must resort to the history of the times when the Constitution was framed, for the expressions used in the 10 amendments must be given the meaning attached to them at the time the Constitution was adopted. (Boyd *v.* United States, 116 U. S., 616.)

Thus interpreted, it can not be questioned that the liberty of the press means the liberty of free discussion in print, without any restraint save that which was imposed by the law of libel and by certain axiomatic principles of morality, such as the prohibition either of fraud or obscenity.

With these exceptions, the liberty of the press was the right to print one's opinions whether they were wise or foolish, whether they were consistent with or contravened accepted ideas or ideals, and to do this *without any restraint by the Government* save that which was clearly and necessarily demanded to prevent either immorality or fraud.

The necessity of this freedom need not be enlarged upon. Our Government rests upon public opinion, and its perpetuity must depend upon the education of that opinion.

It is therefore the policy of our Constitution that no burden shall be imposed upon the press, no restriction upon its rights, no impairment

of its influence, excepting only in matters of axiomatic morality and subject always to responsibility at common law for libelous statements.

The restriction of the press has taken two forms, and the struggle over each has marked a different stage in the long battle for the freedom of the press.

The first stage was the censorship of the press. It acted *by anticipation*, and its essence was a previous restraint of printed thought and not its subsequent punishment. (Recognizing the enormous power of the press, the Crown in England considered that the licensing of the press was a part of the royal prerogative, and it at first attempted to prohibit the printing of anything which was not *viséed* by the Government and secondly by vesting the exclusive privilege of printing in a few institutions, as the two universities and the Printers & Stationers' Co. of London. Later the power was fittingly lodged in the Star Chamber, and after the restoration of Charles II a subservient Parliament again vested it in the Crown. (May's Constitutional History of Eng., Vol. II, pp. 102–106; Anstig *v.* Carrington, 19 How. State Trials, 1029; Erskine's speech for Th. Carran; Dices' Law of the Constitution, p. 274.) It was this form of censorship, even at the hands of the Long Parliament, which in 1648 drew from John Milton his Areopagitica, in which he defended the liberty of the press in unrivaled splendor of rhetoric and prophetically anticipated the day when his "noble and puissant nation" would arouse herself "like a strong man after sleep" and "purge and unscale her long abused sight at the fountain itself of heavenly radiance, while the whole noise of timorous and flocking birds with those also that love the twilight flutter about amazed at what she means, and in their envious gabble would prognosticate a night of sects and schisms." The infamous licensing act, against which Milton inveighed in his Areopagitica, was constructed on the same lines as the present act of Congress, for the English act of September 20, 1649, provided that "no person whatever should presume to send through *the post*, carriers, or otherwise or endeavor to dispense any unlicensed book," etc. Then, as now, the plan was to strike at the freedom of communication by exclusion from the mails. It is also interesting to recall that almost the last act of the Star Chamber of malodorous memory was its assumption of power to restrain and publish what it chose to regard as libelous statements.)

In 1695 Parliament abolished the whole system of censorship, and, as Macaulay has said, this action has "done more for liberty and civilization than the great charter or the bill of rights."

The other and remaining stage of the long battle was the attempt *retrospectively* to censor the press by punishment. Obviously the freedom of the press would be of little value and would be rarely exercised if after freely printing the author or publisher could be subjected to such punishments as were known to the rigor of the English law. It was soon established that no man could be punished for publishing any writing, unless it was at common law either libelous or criminal in character, and the struggle between freedom and tyranny largely turned on the question as to the method of determining whether a publication were libelous. After a memorable contest, which "shook the foundations of Westminster Hall," it was finally decided, in aid of the freedom of the press, that a jury and not a magistracy should determine whether the printed matter was unlawful at common law. (There is no greater battle in the constitutional history of the English race than that which was waged to defend the rights of a jury and to withhold from the bench appointed by the Crown the power to determine the unlawful character of any printed matter. On the one hand was Lord Mansfield, whose great influence induced the 12 judges to claim this vital right for the bench, and on the other hand were the master spirits of the English bar, Chatham, Camden, Burke, Fox, Sheridan, and others. Mansfield's decision in King *v.* Woodfull, in 1770, 20 State Trials, 1895, resulted in an acrimonious debate in Parliament, in which Sargeant Glyn, Dunning, and Burke attacked the decision and Thurlow and Fox defended it. Fourteen years later the question was again debated in the case of King *v.* The Dean of Asaph, in which Erskine made his closing argument, but Erskine's contention had been anticipated in the courts of New York by Andrew Hamilton, of Philadelphia, in the famous Zenger case. Lord Kenyon, in Rex *v.* Cuthill, 27 State Trials, 675, laid down the rule which was finally adopted, as follows: "After all, the truth of the matter as to the liberty of the press is very simple when stripped of the ornaments of speech, and a man of plain common sense may easily understand it. It is neither more nor less than this, that a man may publish anything which 12 of his countrymen think is not blamable, but that he ought to be punished if he publishes what is blamable. This, in plain common sense, is the substance of all that has been said upon the subject.")

When our Constitutional Convention met the struggle was over. The liberty of the press had triumphed, and it was then universally recognized both in England and America that the liberty consisted not merely in freedom from punishment except by a verdict of a jury *but that it also consisted of exemption from any burdensome or unreasonable restraint.* When, therefore, the new Constitution was adopted without any bill of rights the new Government promptly passed in accordance with the general understanding the first 10 amendments, and it is significant that in the very first there was this clause, that none of the powers previously granted to the Federal Government should be so exercised as to abridge the freedom of the press.

The word "abridge" is most significant. The prohibition is not directed only to such laws as *destroy* the freedom of the press. If so, it might have been argued that any law which restrained the liberty of printing but did not altogether forbid it were permissible. The fathers, however, used the word "abridge," meaning thereby "to lessen or diminish." *They desired to preserve the full fruits of the long constitutional struggle.* They wished to have the press enjoy complete freedom, subject only to the qualifications above expressed.

There have been few judicial interpretations of the first amendment, and this because the liberty of the press as a basic principle is so rooted in the minds of the public that with two exceptions no party has ever attempted to contravene the first amendment.

In 1798 Congress did pass the sedition law, which sought to make libels upon the United States Government punishable, just as libels against the British Government had always been punishable at common law. The constitutionality of the law was bitterly assailed by Jefferson, Madison, and others, and the political controversy which resulted led to the Virginia and Kentucky resolutions which contained the germ of nullification and secession. The law was repealed before it ever reached this court.

In 1836 the question again arose in the heated antislavery agitation, when an attempt was made to exclude antislavery literature from the mails. It is to the lasting honor of John C. Calhoun, chairman of the special committee, to whom the proposed law was referred, that, notwithstanding his interest in the maintenance of negro slavery, he denied that the Constitution gave Congress any such power except to prevent the delivery of such matter in States where by local laws it was unlawful. (In the debate that followed, Henry Clay said: "When I saw that the exercise of a most extraordinary and dangerous power had been announced by the head of the Post Office and that it had been sustained by the President's message, I turned my attention to the subject and inquired whether it was necessary that the Postmaster General should under any circumstances exercise such a power and whether they possessed it. After much reflection I have come to the conclusion that they could not pass any law interfering with the subject in any shape or form whatever. The evil complained of was the circulation of papers having a certain tendency. These papers, unless circulated and while in the post office, could do no harm. It is the circulation solely—the taking out of the mail and the use to be made of them—that constitutes the evil. Then it is perfectly competent for the State authorities to apply the remedy." To the question of Senator Buchanan, of Pennsylvania, as to whether the post-office power had not given to Congress the right to determine what should be carried in the mails, Clay replied in the negative, adding: "If such a doctrine prevailed, the Government may designate the persons or parties or classes who shall have the benefit of the mails, excluding all others." Senator Davis said: "It would be claiming on the part of the Government a monopoly and exclusive right either to send such papers as it pleased or to deny the privilege of sending them through the mail. Once establish the precedent, and where will it lead to? *The Government may take it into its head to prohibit the transmission of political, religious, or even moral philosophical publications,* in which it might fancy there was something offensive, and under this reserved right, contended for in this report, it would be the duty of the Government to carry it into effect." He also denied "the right of the Government to exercise a power indirectly which it could not exercise directly, and if there was no direct power in the Constitution, he would like to know how they would get the power of the States—legislative power at most." Daniel Webster expressed himself as "shocked" at the unconstitutionality of the proposed law, saying: "Any law distinguishing what shall or what shall not go into the mails, founded on the sentiments of the paper and making a deputy postmaster a judge, I should say is expressly unconstitutional.")

It is to the credit of Congress that after a full discussion the proposed law was voted down by a vote of 25 to 19 on the ground of its unconstitutionality.

I concede that the present form of censorship is mild by comparison with previous forms. I also admit that a large majority of the newspapers could submit to this censorship without any practical impairment of their liberty to print or diminution of their influence. But it is equally true that this form of censorship would in many instances affect disastrously the liberty to print. It is a reasonable possibility that the enforcement of this law might destroy some newspapers. It is certain that with the exception of the limited few newspapers which enjoy an immense circulation this form of censorship would impair the influence of many newspapers.

The clause with reference to printing paid matter as an advertisement would in many instances destroy the opportunity of classes and individuals to get their views before the public.

If these suggestions are true, then the freedom of the press is abridged in that there is not the same full, free, unimpaired right to print and circulate newspapers as existed before the passage of the law.

Without amplifying all of the destructive possibilities of the law, it will suffice to discuss three which are apparent on its face—

1. The law provides that a newspaper must disclose its circulation not only to the Government but to the public. Such disclosures would in many instances go far to destroy the influence of the paper in the minds of the masses, and that without justice or reason. A newspaper having a circulation of 30,000 may have more real influence than a newspaper having a circulation of 300,000. The first newspaper may find its readers among the educated, thoughtful, and influential class, whose views profoundly affect their fellow men. The other newspaper may be read largely for its sporting page or its divorce reports. At present the influence of both papers is measured largely by the comparative character of their editorial utterances, but if it were published to the world that one reached but 30,000 readers and the other 300,000, the influence of the first paper would be substantially impaired.

Such impairment might result in destruction, for it is well known that a newspaper pays its way by advertisements and not by the copies which it sells. The latter, apart from advertisements, are sold at a loss, and anything that destroys the advertising business strikes the newspaper a fatal wound. It is safe to say that there is not a newspaper in the United States that could be continued at a profit, if its advertisements are withdrawn. Manifestly a disclosure of circulation to the public would lessen the business of the paper of small circulation and increase that of the paper with a large circulation, and this notwithstanding the fact that the paper of 30,000 readers might be a far more valuable advertising medium than the one with 300,000.

A great objection to this legislation is therefore that it weakens and tends to destroy the class of papers which most needs freedom from undue interference. The disclosure to the public of the intimate details of business management would in many cases tend to drive the weak newspaper to the wall, for, armed with this knowledge, the strong and wealthy newspaper could readily impair the influence of its weaker rival, secure its business, and drive it to the wall. There is possibly in no industry keener competition than exists between newspapers, and therefore in none is there greater need on the part of the weaker competitors of privacy as to their business details.

There may be no absolute right of privacy, and yet the owner of a business is entitled to safeguard the secrets of his business unless there is some reasonable and just occasion for a compulsory disclosure to the public of his private affairs.

As was said by Mr. Justice Field in *In re* Pacific Railway Commission (32 Fed. Rep., 241, 250):

"Of all the rights of the citizen few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault *but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.*"

This right of privacy and the sanctity of one's books and papers were never better emphasized than in the case of Boyd *v.* United States (116 U. S., 616), where Mr. Justice Bradley, in one of the ablest defenses of personal liberty to which this court ever gave utterance, defended the right of privacy against oppressive Federal regulations, even though they were enacted in execution of the most drastic of all governmental powers—the power of taxation.

There was far more justification, from the standpoint of the public interests, for the legislation which this court condemned in that case than can be urged in behalf of the newspaper statute, whose obvious effect would be to impair the credit of the weaker newspapers, alarm their creditors and advertisers, impair their just influence with their readers, without in any manner assisting the Government in the effective and economical carriage of the mails.

2. The provision that there shall be a public disclosure of the editors and owners of the newspaper abridges the right to disseminate ideas impersonally.

I freely recognize the prejudice which to-day ordinarily and generally justly prevails against anonymity. But even anonymous arguments have played a useful part in past struggles for liberty and progress. To this day we do not know who wrote the letters of "Junius," and yet these letters were some of the most forceful blows struck in the great struggle for English freedom.

When the Constitution was submitted to the people for adoption, the most valuable arguments in its support were those submitted anonymously by Madison, Hamilton, Jay, Sullivan, Winthrop, Gerry, Ellsworth, Roger Sherman, Pinckney, and many others. These were published under such *nom de plumes* as Publius, Cassius, Agrippa, Cato, Cæsar, Sidney, Plain Dealer, Columbian Patriot, Plebian, etc.

It is altogether probable that the Federal Constitution would never have been adopted by a sufficient number of States had it not been for the anonymous political pamphlets written over the *nom de plume* of "Publius," which we now know as the Federalist Papers. While Hamilton's identification with "Publius" was soon suspected by many, it was not until long after his death that it was known that many of these papers were written by Madison, Jay, and others.

Nothing was more familiar to the framers of the Constitution than this method of impersonal pamphleteering.

When the burning issue of neutrality arose in the administration of Washington, Hamilton assailed the Secretary of State in pamphlets written under the *nom de guerre* of "Pacificus," and Madison replied under the name of "Helvedius." It was the exception when any political argument or other reading matter was written over the true name of the author. Franklin, while agent of the colonies in London, published his most effective arguments in their behalf anonymously in the English press.

Tempora mutantur, et nos mutamus, etc. Constitutional rights do not change and to-day a man has still a right to submit his views impersonally to his fellow men and if his personality unfairly prejudices the intrinsic merit of his facts or opinions he may on occasion be justified in withholding his name in order not to obscure the merits of what he advocates. If this be true of fugitive expressions, it is especially true of a great continuing organ of public opinion like a newspaper.

As in interpreting the Constitution recourse must be had to the standards of thought an dconduct of its framers in order to determine its meaning and scope (South Carolina *v.* United States, 199 U. S., 437) it should be remembered *that no abridgment of the freedom of the press would have excited more opposition among those who framed the Constitution than the compulsory disclosure of authorship.* They would have felt that an invaluable weapon against error had been taken from their hands.

An instance could reasonably be imagined of a man of large means, justly or unjustly unpopular with the masses, who might desire to submit, either in his own defense or for the public good, some facts, ideas, or proposed laws. For this purpose he acquires a newspaper. If the fact of his ownership is known, he will not get any adequate hearing, and his ideas, however intrinsically meritorious, would receive an exceedingly scant hearing. Has he not the same *right* to disseminate through the press his views impersonally as another man has to do so over his signature?

3. The provision as to paid matter goes a step further. Here is an undoubted attempt to impair the freedom of the press by the destruction of its influence. A man can only reach the minds of his fellow men on a large scale through newspapers or periodicals. He may have some idea or plan for the ultimate good of his fellow men, but of which his fellow man, as so often happens, is ignorant. His ideas may be so novel as to excite little interest at first. Perhaps they are also unpopular. It can not be expected that the owner of a newspaper will always donate his space and the labor of his printing establishment without compensation. If the man wishes to reach his fellow men, therefore, he must pay the newspaper for the privilege of using its columns.

The matter referred to may have no reference to merchandise or to anything commercial. In no sense can its insertion be regarded as a commercial advertisement. The opinions which he expresses are reading matter. If marked as an advertisement the influence is largely impaired.

Take, for example, the campaign committee of a political party. It wishes to get before the people of the country certain facts with reference to operations of the tariff. If inserted in the newspaper as an advertisement few will read it, and those few will not give to the paid advertisement the serious attention which the article may deserve. The newspaper publishes it as reading matter and requires the committee to pay the reasonable cost of the service. Does not the requirement that it be printed as an advertisement, with the destructive effect upon its influence as reading matter which such a branding necessarily entails, involve an abridgment of the freedom of the press? Is that freedom as complete and unimpaired after such a law is passed as before?

III.

The requirement that a certain class of newspapers shall disclose the most intimate details of their business and use their own capital, labor facilities, and valuable space for such disclosure, is a taking of "liberty" and "property" without due process of law and a like taking of valuable property rights for an assumed public use without just compensation.

The post office power must also be regarded as subject to the fifth amendment.

I do not contend that the mere compulsory disclosure of ownership, editorial management, and other business details to the Postmaster General is a taking of property without due process of law.

The act goes further. It compels the newspaper proprietor twice a year to use the valuable space of his paper and his capital and labor facilities to print the statement. To set up the matter, print it, and distribute it all require expenditure of capital. It is an enforced appropriation of valuable space for the assumed benefit of the public. It is as much a taking of property as if it compelled the owner to hire a hall and announce the facts to the public.

Even though this compulsory appropriation of the citizen's property and labor were not strictly a *physical* taking of his property, nevertheless it is a "taking" within the meaning of the Constitution. It was well said by the Court of Appeals of New York, in Forster *v.* Scott (136 N. Y., 584):

"Whenever a law deprives the owner of the beneficial use *and free enjoyment of his property, or imposes restraints upon such use and enjoyment* that materially affect its value, without legal process or compensation, it deprives him of his property within the meaning of the Constitution. *All that is beneficial in property arises from its use and the fruits of that use, and whatever deprives a person of them deprives him of all that is desirable or valuable in the title and possession.* It is not necessary, in order to render a statute obnoxious to the restraints of the Constitution, that it must in terms or in effect authorize an actual physical taking of the property or the thing itself, so long as it affects its free use and enjoyment or the power of disposition at the will of the owner."

This interpretation of the Constitution only followed the undoubted doctrine of this court, for this court said, in Lawton *v.* Steele (152 U. S., 137):

"The legislature may not, under the guise of protecting the public interests, *arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations.* In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts. Thus an act requiring the master of a vessel arriving from a foreign port to raport the name, birthplace, and occupation of every passenger, and the owner of such vessel to give a bond for every passenger so reported, conditioned to indemnify the State against any expense for the support of the persons named for four years thereafter, was held by this court to be indefensible as an exercise of the police power and to be void as interfering with the right of Congress to regulate commerce with foreign nations. (Henderson *v.* New York, 92 U. S., 259.)"

As was said by Mr. Justice Field in Munn *v.* Illinois (94 U. S., 141):

"All that is beneficial in property arises from its use and the fruits of that use, and whatever deprives a person of them deprives him of all that is desirable or valuable in the title or possession. *If the constitutional guaranty extends no further than to prevent a deprivation of title and possession and allows a deprivation of use and the fruits of that use, it does not merit the encomiums it has received.*"

This contention is strengthened when it is remembered that no other citizen desiring the use of the mails is subjected to any such requirement. Scientific, religious, and temperance publications are relieved of any such expense, and as to circulation, all but daily newspapers are similarly exempted. The law therefore puts upon daily newspapers an unfair expense and a burden not imposed either upon other publishers or upon any other class of citizens.

Freely granting the power of classification, there is here such an unreasonable discrimination as to amount to a denial of the equal protection of the laws, and that phrase is synonymous with due process of law.

To amplify this argument would require a restatement of all that has been herein said as to the unreasonable character of this regulation. It is enough to say that not only does the act seek to appropriate the space of newspapers without compensation for an assumed public use, but it interferes with the liberty of contract, in that a newspaper owner may not contract with one desiring to use his columns for the insertion of reading matter, except under burdensome conditions.

The law as a whole singles out the owners of newspapers and attempts to aim at them an oppressive postal regulation, which clearly offends the intimation given by this court in Public Clearing House *v.* Coyne (*supra*), that—

"Congress would have no right to extend to one the benefit of its postal service and deny it to another person in the same class and standing in the same relation to the Government."

CONCLUSION.

I need not emphasize the importance of this case. As already stated, the form of censorship now sought to be imposed upon the press of the country may seem mild by comparison with that of other countries in former times. The concession to Congress of the power to utilize the mails for the purpose of disciplining the free press of the country would mean hereafter a stricter and more dangerous censorship, for in the matter of arbitrary power "the appetite grows by what it feeds on."

The warning words of Mr. Justice Bradley in Boyd *v.* United States (116 U. S., 616) should never be forgotten:

"Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. * * * It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

Respectfully submitted.

JAMES M. BECK.

NEW YORK, *November 20, 1912*

APPENDIX.

THE NEWSPAPER LAW.

[Public No. 336; H. R. 21279.]

An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1913, and for other purposes.

Be it enacted, etc., That the following sums be, and they are hereby, appropriated for the service of the Post Office Department, in conformity with the act of July 2, 1836, as follows: * * *

SEC. 2. * * * That it shall be the duty of the editor, publisher, business manager, or owner of every newspaper, magazine, periodical, or other publication to file with the Postmaster General and the postmaster at the office at which said publication is entered, not later than the 1st day of April and the 1st day of October of each year, on blanks furnished by the Post Office Department, a sworn statement setting forth the names and post-office addresses of the editor and managing editor, publisher, business managers, and owners, and, in addition, the stockholders, if the publication be owned by a corporation; and also the names of known bondholders, mortgagees, or other security holders; and also, in the case of daily newspapers, there shall be included in such statement the average of the number of copies of each issue of such publication sold or distributed to paid subscribers during the preceding six months: *Provided*, That the provisions of this paragraph shall not apply to religious, fraternal, temperance, and scientific, or other similar publications: *Provided further*, That it shall not be necessary to include in such statement the names of persons owning less than 1 per cent of the total amount of stock, bonds, mortgages, or other securities. A copy of such sworn statement shall be published in

the second issue of such newspaper, magazine, or other publication printed next after the filing of such statement. Any such publication shall be denied the privileges of the mail if it shall fail to comply with the provisions of this paragraph within 10 days after notice by registered letter of such failure.

That all editorial or other reading matter published in any such newspaper, magazine, or periodical, for the publication of which money or other valuable consideration is paid, accepted, or promised, shall be plainly marked "advertisement." Any editor or publisher printing editorial or other reading matter for which compensation is paid, accepted, or promised, without so marking the same, shall upon conviction in any court having jurisdiction be fined not less than $50 nor more than $500.

PROTECTING THE COAST LINE.

Mr. MOORE of Pennsylvania. Mr. Speaker, at New London, Conn., in September last, the Fifth Annual Convention of the Atlantic Deeper Waterways Association, which stands for a continuous inland waterway along the Atlantic coast, adopted the following preamble and resolutions:

ATLANTIC INTRACOASTAL WATERWAY.

"We, the members and delegates of the Atlantic Deeper Waterways Association, representing all the States of the Atlantic coast region, from Maine to Florida, inclusive, in fifth annual convention assembled in New London, Conn., do hereby reaffirm to the American people, to the States and municipalities within our territory, and especially to the Congress of the United States, our recognition of the need and our demand for the completion of improved connecting protected waterways, owned and operated by the Nation, along the entire Atlantic coast.

"Within the Atlantic coastal region, comprising all the original American colonies, are now located more than one-third of the total population of the United States, and an even greater proportion of its commerce, industry, and wealth.

POPULATION AND COMMERCE.

"Within these coastal States are situated the most densely populated industrial communities of the country and the most rapidly increasing centers of population. Congestion of population, industry, and commerce require as their first remedy larger, better, and cheaper facilities of transportation. It is now time that such shall be provided within the Atlantic coastal territory.

"The existing lines of railways, splendid as their equipment unquestionably is, and rapidly as it is being expanded, are now, and have been for years past, unable during certain periods to handle the amount of traffic offering with assurance of quick transit, safe delivery, and minimum cost.

"Under these conditions it becomes imperative to seek additional means of transportation, and these are provided by our coastal bays and sounds if connected through the short spaces of intervening lowlands by modern sea-level canals, freely operated as public highways.

THE SACRIFICE TO THE SEA.

"It has been suggested that the ocean is sufficient for the coastal traffic. In reply, it may be stated that our Atlantic seaboard is a lee shore; that it is lined with dangerous shoals; that these shoals are blackened with the wrecks of thousands of ships and bear the bodies of many thousands of American mariners; that the average annual loss is more than 200 human lives and $4,000,000 in property; that this loss in two decades equals the cost of our proposed waterway chain; that, meantime, coastwise shipping is disappearing from the seas, coastwise insurance steadily rising, and coastwise commerce declining. The ocean does not provide the needed facilities of cheap coastwise transportation.

RESOLUTIONS SHOWING PROGRESS MADE.

"With this statement of facts it is hereby

"1. *Resolved*, That we congratulate the Atlantic States upon the favorable report and survey of the Army Engineers now reported to Congress at the insistence of this association, proving the feasibility of its project.

"2. *Resolved*, That we demand the adoption and construction of the Atlantic intracoastal waterway as a national project, and the continuous appropriation by Congress of funds sufficient for its early completion.

"3. *Resolved*, That we commend the initial step taken by Congress in the river and harbor act passed at the recent session, which contained a provision adopting that link in the proposed intracoastal waterway extending from Norfolk, Va., to Beaufort Inlet, N. C., and carrying an appropriation immediately available of $500,000 for the purchase of the Chesapeake & Albemarle Canal, and an additional $100,000 for the improvement and maintenance.

NEXT STEPS TO BE UNDERTAKEN.

"4. *Resolved*, That we demand of Congress at its next session an act acquiring the Chesapeake & Delaware Canal, one of the most essential links in the whole intracoastal chain, one of the most feasible to improve for modern requirements, and the next in logical order of progress northward, all of which is fully shown by the recent report of the United States Army Engineers. And, in event of failure to negotiate a satisfactory contract for the purchase of the canal, we favor the immediate condemnation thereof by the Government or the construction of a canal over an alternative route.

"5. *Resolved*, That we demand of the next Congress the adoption of the New Jersey sea-level canal project, thus connecting southern waters with those of New England and New York.

"6. *Resolved*, That we urge steady progress northward and southward at every session of Congress until the entire route shall be opened to traffic.

THE HUDSON AND HELL GATE.

"7. *Resolved*, That to provide safe passage through the Hudson River for vessels from the Lakes, through the Erie Canal, and to establish a feasible connection with the Intracoastal Waterway, we advocate early completion of the improvement of the upper Hudson as the approach to the Erie Canal, and also of the East River and lower Hudson and Harlem Rivers and the opening of Bronx Kills and Little Hell Gate.

"8. *Resolved*, That we advocate the authorization by Congress of a survey for the extension of the Intracoastal Waterway northwardly from Boston to such point on the coast of Maine as may be deemed desirable and feasible.

NATIONAL WATERWAYS POLICY NEEDED.

"9. *Resolved*, That we demand the adoption of a national policy of waterway improvement which shall gauge the amount of the appropriation according to the commerce, existing and prospective, that will be served by such improvement.

"10. *Resolved*, That the Atlantic Intracoastal Waterway, exceeding as it does in its commercial importance all other projects of waterway improvement, deserves and should receive the means for its completion in a ratio at least equal to that accorded to projects in other sections of the United States.

PROBLEM OF WATER TERMINALS.

"*Resolved*, That we emphatically approve those provisions in the Panama Canal act, approved August 24, 1912, which forbid ownership or control by railroad corporations of competing water carriers, and which provide for joint rates and through bills of lading and a system of prorating between railroads and water carriers, and which forbids railroads to discriminate in favor of and extend special privileges to favored shipping lines at ports, and which confer upon the Interstate Commerce Commission the power to enforce these and other wise provisions of law.

"To the end that the above provisions may be given full effect, and that water commerce may be established as an integral part of our system of transportation, we earnestly urge upon all States and municipalities located upon the intracoastal waterway and other waterways that ample water frontage be acquired and adequate public terminals constructed, owned, and controlled by and for the benefit of the public."

MORE ABOUT THE CHESAPEAKE AND DELAWARE.

In view of their brevity and clearness, Mr. Speaker, I am glad of the opportunity of submitting those resolutions to the House. They will now be laid before the Rivers and Harbors Committee with the hope and expectation that the recommendation of the association for immediate recognition of the Chesapeake & Delaware Canal project will be granted in the next appropriation bill. For five years the Atlantic Association has been laying stress upon the advisability of action in the opening up of this much-needed avenue of communication between the North and the South, and there is now ample reason why the Government engineers should be authorized to open negotiations for the purchase of the existing canal or to construct a new one. At some later period of the session I shall undertake to advise the House more fully of the manner in which commerce between points north and south of the Chesapeake and Delaware Canal is discouraged by high transportation rates and inadequate facilities. I shall also hope to enlighten the House as to the loss of life and the destruction of property along the seaboard.

CALENDAR WEDNESDAY.

The SPEAKER. This is Calendar Wednesday. The unfinished business is the bill (H. R. 16314) to amend section 162 of the act to codify, revise, and amend the laws relating to the judiciary, approved March 3, 1911. The House resolves itself automatically into Committee of the Whole House on the state of the Union, and the gentleman from Colorado [Mr. RUCKER] will take the chair.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. RUCKER of Colorado in the chair.

ALLEGATION AND PROOF OF LOYALTY IN CERTAIN CASES.

The CHAIRMAN. The House is now in Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 16314) to amend section 162 of the act to codify, revise, and amend the laws relating to the judiciary, approved March 3, 1911. By unanimous consent the debate was limited to two hours, the gentleman from Louisiana [Mr. WATKINS] to control one hour and the gentleman from Illinois [Mr. MANN] to control the other hour.

Mr. WATKINS. Mr. Chairman, will the gentleman from Illinois consume part of his time? We have four gentlemen on this side who want to be heard on the question.

Mr. MANN. Mr. Chairman, the pending bill is the bill to amend section 162 of the judiciary title act, which was passed two years ago. In that act there was inserted in the House a provision conferring on the Court of Claims jurisdiction relating to money in the Treasury under the captured and abandoned property act.

When that bill was before the House the gentleman from Georgia [Mr. BARTLETT] offered as an amendment to the bill to insert section 6, now section 162 of the act. That amendment was agreed to in the House. The gentleman from Pennsylvania [Mr. MOON] had charge of that bill, which was a bill reported from the Committee on the Revision of the Laws. It was a long bill, codifying the statutes. It was on my advice, I believe, that the gentleman from Pennsylvania [Mr. MOON] finally at the time agreed not to oppose the amendment, and it was agreed to.

Now, this proposition is one to amend the law so as not to provide that there shall be proof of loyalty of the claimants. The original proposition was of somewhat doubtful propriety. For many years there has been no right to file a claim in the Court of Claims under the captured and abandoned property act, but it was thought desirable by the House at the time, on the suggestion of the gentleman from Georgia [Mr. BARTLETT], to provide that claims might be filed which, under the language proposed by him, would require the claimants to make proof of loyalty.

There has been considerable discussion as to how these claims arise, and it may be proper to call to the attention of the House the circumstances as to how the claims do arise. By the act of March 12, 1863, known as the captured and abandoned property act, and acts amendatory thereof, the Secretary of the Treasury was authorized to appoint special agents to collect captured and abandoned property in the States then in insurrection, the proceeds thereof to be paid into the Treasury of the United States.

The act provided that the property to be collected under it "shall not include any kind or description which has been used, or which has been intended to be used, for waging or carrying on war against the Unted States, such as arms, ordnance, ships, steamboats, or other water craft, and the furniture, forage, military supplies, or munitions of war."

As a matter of fact, the property which was collected was in the main, if not entirely, cotton. Nine districts were established under this law and an agent appointed in each district.

A large amount of property in the States in insurrection was seized and the proceeds, amounting to over $30,000,000, reported to the Secretary of the Treasury. The money was treated as a trust fund under the control of the Secretary. Under joint resolution approved March 30, 1868, it was provided that all moneys derived from the sale of captured and abandoned property "which have not already been actually covered into the Treasury shall immediately be paid into the Treasury of the United States."

As I understand it, the balance covered into the Treasury under this resolution was nearly $21,000,000.

The third section of the original act of 1863 provided as follows:

> Any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims; and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase money which may have been paid, together with the expense of transportation and sale of such property, and any other lawful expenses attending the disposition thereof.

Under this provision of the statute a large number of claims were referred to the Court of Claims and judgments recovered. In a statement which has been made by one of the committees of the House it was stated that the following was believed to be a substantially correct statement of the payments which have been made from the amounts covered into the Treasury under the resolution of March 30, 1868:

On judgments under act of Mar. 12, 1863	$9,852,956.95
On judgments against Treasury agents	65,276.79
Disbursed for expenses under joint resolution of Mar. 30, 1868	242,140.34
Paid on special acts of relief	451,125.38
Paid by Secretary of Treasury under act of May 18, 1872	195,896.21
On judgment Court of Claims, Duffy, Report C. C., 24275	15,270.00
Under private act, 25 Stat., p. 1310	32,669.20
Under private act to Briggs, paid Mar. 24, 1894	88,104.21
Total	10,943,439.08

Which would leave in the Treasury undisposed of $10,028,351.88.

Mr. WATKINS. Will the gentleman yield for a question?

Mr. MANN. I will in a moment. How much of that amount would be affected by the pending resolution I do not believe any one actually knows. I yield to the gentleman from Louisiana.

Mr. WATKINS. That statement covers the point I wanted to ask the gentleman about, whether the amount covered by this bill would be over half that amount, and whether the statement referred to by the gentleman does not include all that was covered into the Treasury?

Mr. MANN. My statement shows that that amount included all that was covered into the Treasury. Just how much this resolution will cover no one will ever be able to find out unless this bill becomes a law and the Court of Claims finds the amount.

Now, Mr. Chairman, this bill would only provide for the payment of claims for property taken subsequent to June 1, 1865, while the amount in the Treasury is included from the date of the captured and abandoned property act, which was passed in 1863.

This is one of a series of propositions, however. This bill proposes simply to abandon the present law requiring proof of loyalty as to the claims subsequent to June 1, 1865. As to the claims subsequent to the date June 1, 1865, there is another bill on the calendar reported from another committee, a bill (H. R. 16820) which goes a little further than the pending bill. I do not know whether it is intended to offer the provisions of that bill in the House as a substitute for the provisions of the pending bill. I was told that that was likely to be done, but the distinguished gentleman from Tennessee, chairman of the Committee on War Claims, which reported the bill 16820, stated on the floor the other day, as I understood him, that if the pending bill was passed the bill reported from his committee would be abandoned.

Among the provisions of the bill reported from the Committee on War Claims, a new proposition, is the one that all judgments rendered on these claims and all payments thereon shall be free from claims of assignees in bankruptcy or insolvency of the original owner of said claim.

There are other bills pending before Congress on the subject, one introduced by the gentleman representing the Tombigbee district, Mr. CANDLER, which introduces a new proposition. As stated by the gentleman from Ohio the other day, the Confederate States purchased large quantities of this cotton, paid for the cotton in the current coin of the realm at that time in the Southern States, but did not take control of the cotton because they did not have the storage facilities, as was stated. There is no question, probably, in reference to the passage of the title of the property. The property was purchased and paid for, but possession remained in the hands of the seller of the property. The Candler bill provides, in addition to dispensing with the proof of loyalty, further, that judgment rendered hereunder shall not be denied by reason of any bill or other conveyance of such property to the Federal Government, in consideration of securities of said Government, unless accompanied and followed by actual delivery of such property.

There are also pending before the House a number of resolutions asking for information from the Treasury Department. There can be no doubt that when the Bartlett amendment to the judiciary title bill became a law that the claim agents got very busy and active. It is invariably the rule that when you excite the claim agents or claim attorneys to the possibility of obtaining the payment of claims in which they become interested, and draw the line arbitrarily at any particular point, the claim agents want to move the line over a little further from time to time so as to provide for the payment of additional claims. The claim agents found under the Bartlett proposition that it was necessary to make proof of loyalty before claims could be allowed. They desired in addition to change the law upon that subject, to obtain all the information of the Treasury Department in reference to the evidence in the possession of that department.

House resolution No. 333, which is only one of a series of resolutions introduced into the House, and a similar series introduced in the Senate, provides:

That the Secretary of the Treasury be, and he is hereby, directed to prepare from records in his possession, either those of the United States Government or those of the late Confederate States, and to transmit to the Speaker of the House of Representatives, as soon as practicable, a list of persons shown to have sold cotton to the Confederate States Government, or to have entered into any agreement to sell cotton to said Government; such list to indicate whether there is shown to have been a completed sale, or only an agreement to sell, and the date of the transaction; to show, when possible, the residence of the person making such sale, or agreement to sell, by county or parish, and State; the amount of cotton covered by such sale or agreement, the price to be paid, and whether or not the payment of the agreed price is shown by such records.

I do not know that these resolutions were prepared by claim agents. I am quite sure they were not introduced by Members of the House at the request of claim agents, but that they were prepared by claim agents and transmitted to claimants, who transmitted them to Members of the House, is quite likely.

I called the attention of the Treasury Department to this series of resolutions endeavoring to obtain information from the Treasury purely for the benefit of claimants and claim agents, and asked them to make investigation of the subject. On January 6 the Secretary of the Treasury transmitted to the Speaker of the House a letter upon this subject, in which he stated among other things:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, January 6, 1912.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: My attention has been called to House resolution 333, introduced by Mr. JACOWAY December 9, 1911, and referred to the Committee on War Claims, directing the Secretary of the Treasury to prepare from records in his possession, either those of the United States Government or those of the late Confederate States, a list of persons shown to have sold cotton to the Confederate States Government, or to have entered into any agreement to sell cotton to said Government, and also to House resolution 349, introduced by Mr. CANDLER December 19, 1911, and referred to the Committee on Expenditures in the Treasury Department, which calls for the preparation and transmission of all the information specified in House resolution 333, and in addition requires information whether the cotton sold to the Confederate Government was subsequently taken possession of by officers of the United States Government; and if so, the disposition of the cotton, the gross and net proceeds realized from any sales thereof, and whether or not the proceeds now remain in the United States Treasury, and also to show the cotton for which claims have been filed in the Treasury Department, and the names of persons by whom such claims were filed.

The resolutions have a direct bearing upon the cotton claims which, under section 162 of the judicial code approved March 3, 1911 (36 Stat., 1139–1140), were referred to the Court of Claims for adjudication, and as this department is now actively employed in the work of collecting and arranging information for the use of the court in the trial of pending cases, it would seem that neither the interests of the claimants nor of the Government would be subserved by diverting the limited available force of the department from the completion of the information desired by the court, to engage in the preparation of the data specified in the resolutions.

The additional information required by House resolution 349 intended to show the disposition of the cotton, the proceeds realized therefrom and now remaining in the Treasury with a report of all the claims for such cotton heretofore filed, would necessitate a further and separate examination of all Civil War records of the department pertaining to cotton transactions, and of all cotton claims heretofore filed in either the Treasury Department or the courts to determine the claims in which the proceeds of the cotton were refunded by the Treasury Department under general and special laws authorizing such refunds, or paid to claimants upon judgments of the Court of Claims and other courts.

The Secretary of the Treasury goes on to say that it would be a very expensive proposition for the Government to do this. It would require a vast amount of clerical work to ascertain this information, much of which it is assumed by gentlemen who have argued in favor of this bill they already know, and besides that it would furnish to the claimants all the defensive evidence which the Government may possess.

So it is perfectly apparent that having, under the original act of 1863 and the resolution of 1868, covered into the Treasury a certain amount of money, which was then placed by the Secretary of the Treasury as being held in trust by the Government, the men who now are active in extracting money from the Treasury upon every possible excuse are very busily engaged in endeavoring to obtain legislation which will open the doors of the Treasury as to all of this sum of money. It is said by some that the present bill would not cover more than $5,000,000.

It is said by gentlemen in charge of the bill that it would not cover over $1,000,000. I venture to say from the information which I have received that no one knows how much it will cover, though it is quite certain that it would not be over $1,000,000. That is the amount that is in the Treasury. The original act providing for the collection and disposition of this property contained a provision that the claimant for the fund in each case must show that he has never given any aid or comfort to the "present rebellion."

Mr. COX of Indiana. Mr. Chairman, will the gentleman yield for a question? I want information.

Mr. MANN. Certainly.

Mr. COX of Indiana. I have obtained the idea or opinion from statements made on the floor here that the amount of money that is now actually in the Treasury does not exceed $5,000,000. What information has the gentleman on that proposition?

Mr. MANN. The gentleman from Ohio [Mr. WILLIS] presented a report from the Secretary of the Treasury covering certain phases of this proposition, which indicated that there were $5,000,000 in the Treasury.

Mr. COX of Indiana. Right in that connection, if the gentleman will further yield, are all of the claims adjudicated so far as the money now in the Treasury Department is concerned, or if this amendment be adopted by the House will it open up another series of claims to go before the Court of Claims?

Mr. MANN. The original money in the Treasury was turned in by the special agents of the Government in the various districts where the property was seized and sold and the money collected. These claims have been in the main, I think, presented to the Court of Claims. The Court of Claims, as to a large portion of them at least, decided they could not be paid because the claimant had given aid or comfort to the rebellion.

Mr. COX of Indiana. Then the only real question in controversy that will be considered in the future, in the event this amendment finally carries, will be to get possession of the money that is now actually in the Treasury Department. Is that correct?

Mr. MANN. I think that is correct, that there could not be any claim for more than that money, because there could be no possible claim, I think, for property seized and sold where the money was not in fact covered into the Treasury, although we have some claims on the Private Calendar—and whether they will ever get any further I do not know—insisting on the payment of claims upon the ground that property was not properly conserved and sold.

Mr. COX of Indiana. The gentleman answered a moment ago that the gentleman from Ohio made the statement the other day to the effect that this may reach about $10,000,000.

Mr. MANN. No, the gentleman from Ohio said it would be about $5,000,000.

Mr. COX of Indiana. Has the gentleman from Illinois investigated that with a view to determining whether it is accurate or not? I ask for information because I know the gentleman investigates these questions.

Mr. MANN. I have no doubt that is accurate, so far as this bill is concerned. Probably the amount would not exceed $5,000,000. The amount that is in the Treasury is in the neighborhood of $10,000,000, I am informed.

Mr. COX of Indiana. Where does the extra $5,000,000 come in?

Mr. MANN. I do not have sufficient information to differentiate between the two. Whether the $5,000,000 is supposed to cover everything in the Treasury I do not undertake to say. The gentleman from Ohio presented the other day a statement from the Treasury Department upon that subject. On the other hand, I have presented another statement made by the Treasury Department saying that the amount in the Treasury was $10,000,000.

Mr. COX of Indiana. I just came in on the floor and did not hear the gentleman's statement.

Mr. MANN. Just what the differentiation is I am not able to say.

Mr. WATKINS. Will the gentleman yield?

Mr. MANN. Certainly.

Mr. WATKINS. Has the gentleman examined Senate Document No. 3, second session, Forty-third Congress?

Mr. MANN. I have.

Mr. WATKINS. Will not that show actually all those claims which are in the Treasury on which property was seized after June 1, 1865?

Mr. MANN. I think that is a disputed proposition, Mr. Chairman.

Mr. WATKINS. If that does show that, then can not we tell exactly the number of dollars in the Treasury after June 1, 1865?

Mr. MANN. Well, the Treasury proposition upon that is not final. Just how much money there is for property seized after a certain date is not ascertainable until the Court of Claims has passed upon the proposition.

Mr. WATKINS. But the question is this: Does not that report show that amount was paid into the Treasury on the property which was taken after June, 1865?

Mr. MANN. I think likely that is true, but that is not binding upon the Court of Claims or upon the claimants.

Mr. WATKINS. Under this bill can the Court of Claims order paid out any money except that?

Mr. MANN. I have stated half a dozen times, and I do not think it is necessary to repeat, although I will, that this bill only refers to property which was taken subsequent to June 1, 1865, but a statement from the Treasury Department as to when the property was taken, if they have made such a statement, is at the best a guess and is not binding, because the law, if this becomes the law, gives the claimant the right to make proof as to when that property was taken. My opinion is a very large amount of this property was in fact seized after that date. However that may be, the original act provided that no claim should be paid without proof of loyalty.

It was afterwards held by the Supreme Court of the United States that the pardon and amnesty act of President Johnson in effect removed the disability in reference to giving aid or comfort to the rebellion. That was purely a technical ruling by the Supreme Court, was not in conformity with the spirit of the original act, and so far as they were technically entitled to the benefit of the ruling they have obtained it already. It is now proposed to have Congress itself by act provide that the *proof of loyalty* should not be required in these cases, although the act under which this property was seized and sold provided that every claimant obtaining the money must prove that he has never given any aid or comfort to the rebellion.

Mr. SIMS. May I ask the gentleman a question?

Mr. MANN. Certainly.

Mr. SIMS. Was not that decision on the substance of the act and not a mere technicality as to practice, or something of that sort? How does the gentleman hold it was a technicality if he holds that a certain act does not apply to it or a certain provision does not apply?

Mr. MANN. I hold decidedly that it is quite a technicality when Congress provides that no person shall be given his claim unless he proves loyalty or unless he proves that he has not given air or comfort to the rebellion when the Supreme Court says that a subsequent proclamation of amnesty removes the necessity of making that proof.

Mr. SIMS. Is the proclamation to be treated as a mere technicality and not substantive law?

Mr. MANN. Certainly not. You got the benefit so far as it was provided by law that is passed. The claimants have already seized the advantage of that as far as they could under the original act. Although President Johnson issued his proclamation of amnesty and the court held that if the claimants filed under that act they were not required to give proof of loyalty, you now want to change that law and apply it to those who were not covered by the Supreme Court opinion. They accepted the Supreme Court opinion in these cases to which it would apply or to which it would be applied, but the purpose of the original act was that those who were engaged in rebellion should not be paid their claims, and there is no differentiation in principle between paying these claims and paying all other claims in the Southern States. I do not undertake to argue one way or the other on the question as to whether for all of these various claimants loyalty should be required, because outside of this special class of cases neither the gentleman from Tennessee nor anybody else on that side of the House dares say he is in favor of paying all claims from the South without proof of loyalty.

Mr. SIMS. But the original act provided for claims arising while war was in actual existence. After the 1st of June, 1865, there was no war, and therefore the question of loyalty should cut no figure as to claims arising after that date.

Mr. MANN. The gentleman takes the opinion of the Supreme Court on one phase, but refuses to take it on the other. The Supreme Court said that the rebellion was not over at this time.

Mr. SIMS. That is a technical question, sure enough.

Mr. MANN. Both technical. There is no reason why the case now should open up the door to the payment of all the southern claims of those who were disloyal to the Union.

Mr. SIMS. Arising after the war; not during the war.

Mr. MANN. I do not propose to fight over the war. I will be very glad if it all could be returned to them. The South went into rebellion, or war, whatever you please to call it, and in the main are willing to abide by the consequences of the war. One of those consequences is that property taken and destroyed is not to be repaid by the country which succeeds to the country which is defeated, or to those who aided the country which was defeated. You propose to reverse that rule, which is practically universal throughout the world, on what you please to call a technicality on the one side, but which I call a technicality on the other side. It was never the intention of Congress to provide that these claims should be paid to those who were disloyal to the Union. The original act expressly provides for it. You wish to remove that provision, and when you remove it in this case you will find that you will be called upon to remove it in all other cases. Whether you will do so or not no one can tell. There are millions and millions of claims which have been presented to the Court of Claims, and millions upon millions of claims which were not presented to the Court of Claims, the allowance of which depends upon the proof of loyalty. You propose in the interest of some claimants to remove the necessity of that proof and open the door so that you will be called upon to remove it in all other cases. I do not believe that the Government of the United States is under any obligation to pay money for property seized during the war to those who were in rebellion against the Government.

Mr. COX of Indiana. What does the gentleman think of the proposition, if he will pardon me, as to the duty of the Government to pay actual bona fide claims arising after the war actually ceased?

Mr. MANN. There is no controversy about that.

Mr. COX of Indiana. I understand that is the controversy here. However, I may be wrong about it.

Mr. SIMS. There is a difference as to when it ceased. We contend it ceased at the time this bill applies, and the gentleman from Illinois [Mr. MANN] claims it did not cease until August, 1866. May I ask the gentleman, inasmuch as he is so kind to permit interruptions——

Mr. MANN. I am always willing to yield.

Mr. SIMS (continuing). After Gen. Lee had accepted the terms of surrender, which was in April, 1865, suppose in June, 1865, private property had been taken from him—that is, prior to August 20, 1866—does the gentleman hold that we ought to require proof of loyalty as to Gen. Lee for years prior to the time of taking that property, in order to pay him for the property taken from him after his surrender and after he had done all that a loyal man could do?

Mr. MANN. I hold distinctly that where the Government seized the property under the provisions of this act of 1863, it was a war measure. They seized the property and converted it and sold it, and took the money under the provisions. The claimant must prove loyalty before he should obtain it, and that should remain the law. This was still a war measure, as the gentleman perfectly well knows.

Mr. SIMS. Although taken after the war had, in fact, ceased.

Mr. MANN. The Confederate Government was still buying this property.

Mr. SIMS. In 1865?

Mr. MANN. After June 1, 1865.

Mr. SIMS. The Confederate Government was buying this property after June 1, 1866?

Mr. MANN. It was. Part of its property was bought by the Confederate Government after 1865.

Mr. SIMS. And also June 1, 1865?

Mr. MANN. June 1, 1865.

Mr. NELSON. Is this the first time the bill has been up in Congress, or have other attempts been made to get this money by removing the bar of loyalty?

Mr. MANN. There have been many attempts made to get money by removing the bar of loyalty or various other ways. But when the House years ago put this provision in the bill it was the distinct understanding of those who understood the matter that it still required proof of loyalty before these claims were to be allowed.

Having obtained that much, professing at the time to be perfectly satisfied with that provision, as soon as the claim agents find that many of the claimants are unable to make proof of loyalty they seek to have that proof no longer required, while at the same time other gentlemen in the House are urging that other defenses of the Government be waived and set aside.

You can not differentiate between these various classes of cases, so far as principle is concerned, and if the Government sets aside the principle of loyalty, it can only be upon the basis that the Government that seized the property sold and holds the money ought to give it to the men who owned the property. If that be the case, this bill does not go far enough. If that is the principle upon which you act, then you ought to allow all of these claimants to enter the Court of Claims, that all of this money should be returned to the claimants.

Unless we adopted this as a war measure we are not justified in keeping 1 cent of the proceeds of the sale of this property. If it was a war measure, as I contend, then the claimants have no rights under it until they prove loyalty. [Applause.]

Mr. Chairman, I reserve the balance of my time.

Mr. WATKINS. Mr. Chairman, I yield 10 minutes to the gentleman from Texas [Mr. YOUNG].

The CHAIRMAN. The gentleman from Texas [Mr. YOUNG] is recognized for 10 minutes.

Mr. YOUNG of Texas. Mr. Chairman, with respect to this bill, I think the House ought to be in possession of the real facts upon which it is based and upon which it is asked that it be passed. The gentleman who has just made an argument in opposition to the bill bases his whole argument upon the fact that a war measure is a measure under which he seeks to justify the United States Government in retaining the proceeds of property sold but taken subsequent to June 1, 1865. The book is a sealed book up to the time of the surrender. This measure does not seek to open up any claims, war measures or otherwise, as to property taken during that struggle. But the war is over. The surrender had come. Consternation, it is true, prevailed from one end of the country to the other. Yet, acting presumably under this war-measure proclamation, this property is taken after the surrender and after the war has closed. The Government agent officially proceeds to go about over the country, taking the cotton of the Southern States, selling that cotton, reserving his expense account for it, and then converting into the Treasury the remainder. The war has now ceased. That is private property taken from the people who produced it on the farms. That is property belonging to the people who grew this cotton. The war being over, how can you justify the extension of the war measure when the war drum throbs no longer and the battleflags are furled? [Applause.]

That is the proposition pending before Congress. This property was taken from private citizens. The surrender is had. Their property is taken. Now, what is the sole reason why these private rights can not be exercised as to the money that has been converted into the United States Treasury? They throw themselves back of the technical proposition that loyalty must be proved. Loyalty when? The war is over. Battles have ceased. The property was taken after the surrender. Yet that was private propetry and not property of the Government. It is the fund of the private individuals who grew the crops. It was taken from them after the war had ceased.

Now, shall the United States Congress say to the people who have lost this property that, although you accepted the results of the war, although the surrender has been had, that property does not belong to you? Yet you come after the ceasing of the conflict and take the property of those people and convert it into the Treasury of the United States and say to them, "You must prove loyalty."

This property was on hand after the war closed. It was grown on the farms and sold after the war was over, and yet this money is in the Federal Treasury. I base myself on the proposition of abstract right and wrong. The Southern people who lost this property feel that they have a right to the proceeds that have been put into the Treasury.

We are not asking to take somcthing out of the Treasury that is not ours. We are asking to take out of the Treasury that fund that was placed there after the war ceased, proceeds of sale of our private property, and the vote of this Congress is to determine that fact. We are not opening up what happened during the period of the strife. We are simply opening up the claims for property taken after that strife had ceased. I say, as a matter of right, that the people should have the privilege to go into the Court of Claims and assert their rights to such of these trust funds as they may show themselves entitled.

Mr. HARDY. Will the gentleman yield for a question?

Mr. YOUNG of Texas. Yes.

Mr. HARDY. I wish to ask if it does not appear by the very action of the United States Government itself that it does not claim any title in the money thus covered into the Treasury?

Mr. YOUNG of Texas. It is a trust fund placed in the Treasury, and the United States Government makes no abstract claim of right to it.

Mr. HARDY. Then the secondary question is, if the title is not in the Government it is in somebody, somewhere.

Mr. YOUNG of Texas. That is true. It is a trust fund placed there, and the question is, who has title to it? It is a matter to be determined in the Court of Claims. Let them present their proof.

Mr. BURKE of Pennsylvania. Will the gentleman yield for a question?

Mr. YOUNG of Texas. Yes.

Mr. BURKE of Pennsylvania. Regardless of other questions, has the gentleman any objection to inserting in this bill a provision that the claimant shall assert and prove his loyalty on the date of the so-called confiscation?

Mr. YOUNG of Texas. That amnesty proposition which has been so much discussed has already been promulgated. The war is over, and the decree has gone forth. This is a special list of claims. It is a trust fund there. The Government does not claim it, and this is simply to remove the bar of a technical provision that the claimant may come into court and not be cut off by demurrer raising the question of loyalty. [Applause.]

Mr. WATKINS. I yield to the gentleman from Texas [Mr. SLAYDEN] five minutes.

Mr. SLAYDEN. Mr. Chairman, I agree perfectly with all that my colleague [Mr. YOUNG] has said with reference to the justice of this claim against the Government and the righteousness of the demand that the proceeds of property that was captured and sold and covered into the Treasury be returned to the rightful owners, but in my judgment this measure does not go far enough to do full justice to cases that will appeal to the sympathy of every Member of this House. I believe that if Members will take the time to investigate them they will find that this bill applies to a class of cases that will appeal not merely to the sympathy, but to the active, earnest legislative sympathy of the Members of the House. I have special reference to one case. In order that I may make myself perfectly clear, I will illustrate my meaning by telling of a concrete case.

In November and December, 1865, and January and February, 1866, the armies of the Union came into Texas and camped during that winter on land belonging to a man by the name of Hatch, who lived near Victoria, in southern Texas. It is a prairie country. Timber of any sort is very scarce. Occasionally there would be what we call a "mott" of standing timber down there. This man had an unusually large and valuable one. This Army was encamped on his land, and during that winter they consumed all of his standing timber for firewood. At that time, as we have been able to prove by abundant evidence, wood sold readily in the neighboring market of Victoria at $6 a cord. It was estimated at the time that more than 2,000 cords had been taken from him. Mr. Hatch during his entire lifetime endeavored to recover from the Government for that property which had been taken and used for the benefit of its troops. He failed to do so. I tried for several years to get an appropriation out of the Treasury to settle this claim, the facts in reference to which are undisputed. I failed. It was sent to the Court of Claims and they rendered an opinion agreeing to the facts that were alleged, admitting the truthfulness of our claim with reference to the facts, but they denied payment because of a lack of loyalty on the part of Hatch during the war. That is probably true. Nearly every respectable man in my part of the country was what would be called disloyal at that particular period. But Mr. Hatch has been dead for a number of years. His widow, who is approximately 80 years of age, still lives, in the direst poverty. The Court of Claims says that the Government owes her certainly as much as $3,000, putting a very small estimate on the value of the wood taken at the time, but it denies payment of it because of the disloyalty of Mr. Hatch during the war. Now, it is well to remember that this property was taken more than six months after the surrender of Gen. Lee at Appomattox. There was no state of rebellion existing in Texas at that time and there was no open disloyalty to the Government.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. SLAYDEN. Then, Mr. Chairman, I shall only say that I shall endeavor to have the law amended so as to provide for this widow. [Applause.]

Mr. WATKINS. Mr. Chairman, I yield five minutes to the gentleman from Indiana [Mr. CULLOP].

Mr. CULLOP. Mr. Chairman, the purpose of this legislation is twofold: First, to require a speedy presentation of all the claims coming under the provisions of this act. One of the requirements is that the claims shall be filed prior to January, 1915; if not filed by that time they are barred. This is a trust fund, as I understand it, in the Treasury. It applies to cotton which was abandoned, taken, and sold by the Government after June 1, 1865, after peace had been restored and after the war was over. It is not one of the classes of property that come within the category of what is usually taken in the case of war and where the ownership vests in the Government from its capture as a result of hostilities.

Mr. WILLIS. Will the gentleman yield?

Mr. CULLOP. I will yield to the gentleman from Ohio.

Mr. WILLIS. I should like to have the gentleman state the theory upon which he holds this to be a trust fund, in view of the fact that the Supreme Court of the United States, in Young against the United States, distinctly says that it is not a trust fund. How does the gentleman argue that it is in the face of that decision?

Mr. CULLOP. The statute under which the fund was created makes it a trust fund. Upon the question I am presenting now the Supreme Court has never passed. It was on another class of property altogether, secured under a different provision of law. By direction of the statute the Government was to take

charge of abandoned property, sell it, and deposit the fund in the Treasury Department to be kept for the lawful owners. That is this fund; that is what this legislation applies to and solely to this. That fund is not a public fund to be used in expenditure in the current business of the Government, but is held in trust by the United States Government for the rightful owners of it. The statute authorizing the taking of it so provided.

I desire to call attention to the report of the committee which reported this bill, which clearly and specifically defines its object and the scope of its purpose.

It was evidently the intention of Congress to allow this money to be paid to the claimants from whom the property was taken after June 1, 1865 (after the cessation of hostilities), without the proof of loyalty; but as section 159 of the act approved March 3, 1911, requires such allegation and proof, a conflict of opinion has arisen as to the interpretation of the law upon this point, and it is to settle this question that this bill is presented.

This explains the sole purpose of this bill and expresses the only object of it.

Now, the Supreme Court has stated the different classes of property which were taken during the war and held. They are divided into four classes—

First, that which belonged to the hostile organizations or was employed in actual hostilities on land.

Second, that which at sea became the lawful subject of capture.

Third, that which became subject to confiscation.

This property belonged to neither of those classes.

Fourth, a further description, known only in the recent law, called "captured and abandoned property."

To this latter class of property alone this legislation applies. Now, by virtue of the statute passed in 1863, wherever such property had been found during the continuance of the war it was to be taken and sold, the expenses deducted, and the residue deposited in the Treasury to be held for the lawful owner.

This legislation applies to that class of property which was taken after June 1, 1865, and to no other class of property, and after the war was over, after the proclamation of the President declaring peace had been made. Certainly it is only fair and right that the money now carried in the Public Treasury derived from the sale of such property—the net proceeds of it—ought to be returned to those who have the proper claim to it. The records of the Treasury Department disclose who are the rightful owners and the amount belonging to each claimant.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. WATKINS. Mr. Chairman, I yield to the gentleman from Indiana five minutes more.

Mr. CULLOP. Now, the condition is that all of these claims must be presented before January 1, 1915, and then adjudicated. Claims not presented by that time are barred by this statute, and ought to be barred, and whatever amount there is in the fund be paid pro rata among the owners of the fund as found by the Court of Claims in passing upon the cases presented to it for adjudication.

Why should this fund be continued in the Public Treasury? It is not used for public purposes. It is held there inviolate because it is kept for a specific purpose, and that purpose is to pay back to the owners of this property the residue remaining after deducting the expenses incurred in disposing of the property, the net proceeds remaining in the Treasury from the sale of the same—that is, this fund. It is not a general fund, but a specific fund created by statute, held for a sole and specific purpose, and certainly it ought to be distributed to its rightful owners as a matter of common justice and a magnanimous act of a great Government prompted by the patriotic purpose of a generous people. All this talk about opening the door to the war claims has nothing to do with the case. We are not disturbing in any respect the law by which those claims are adjudicated. That law stands intact as it has stood from the time of its passage, and will, I trust, continue to stand that way; but here is a trust fund that the Government can not use, which has been carried on the books of the Treasury Department for a long time—since some time in 1865—and has continued to be carried there. It is time that the rightful owners of that property under the purpose for which it is carried be determined, and the fund itself be distributed, and that is the purpose of this bill. It will not open the door to wholesale war claims at all. It does not in any way affect the law now on the statute books in regard to southern war claims, but it is simply construing by legislation the statute that has been on the books since 1863 concerning this particular fund. It has no other object and can not be employed for any other purpose.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. WATKINS. Mr. Chairman, in the absence of another gentleman who is to speak, if it is agreeable for him to speak at this time, I will yield to the gentleman from Pennsylvania [Mr. BUTLER] five minutes.

Mr. BUTLER. Mr. Chairman, I understand that Gen. Grant said, when the surrender at Macon, Ga., took place, on the 21st of April, 1865, that all fighting between the North and South then ceased. There was a surrender, I think, of Forrest at Macon, Ga., and, as I recall, it was on the 21st of May, 1865. I may not recollect history correctly. I understand that Gen. Grant has said in his memoirs that after that day there was no fighting between the North and the South; that so far as actual hostilities were concerned the war was then over. I appreciate that it has been held by the Supreme Court of the United States that the rebellion did not cease, as a rebellion, until some time in August, 1866. I would not vote to remove the disability of anyone who gave aid or comfort to the Confederacy prior to April 21, 1865.

To make myself more definite and to endeavor to explain myself more fully, I would not vote to remove the disability of anyone who actually participated in the rebellion while hostilities were carried on or in any way aided or encouraged it. If I am correct, there were no hostilities subsequent to May 21, 1865. I do not permit anyone to charge me with disloyalty to my country or its best interests or halting in the endeavor to take care of its rights as I think they should be taken care of, but I do not think it was right to seize the property of anyone for war reasons after the war was over. Technically it may not have been over prior to August, 1866; yet the great tumult was done. I can understand the feeling, which must have been ill and ugly, among the people of the South after Lee had surrendered at Appomattox, as well as after Forrest and Johnston and other Confederates had surrendered and their men had gone home, after they had put their arms upon the ground and had taken their horses and retired from the fields of conflict to do for themselves. I can appreciate the emotions and the passions of Confederates, inflamed by long fighting and embittered by defeat. They would have been the same within me had I been a Confederate soldier or had lived in the South with my views in accordance with those who had participated in the rebellion. I am disposed to forgive them if their feelings toward the Union were not as they now are. I do not feel, in our advancing years, that we ought to fail to recognize the fact that the southern people suffered a great loss—and they should have so suffered, because they were not loyal to their country—but at the same time we should be slow to criticize them beyond the proper measure or take from them rights which they otherwise would have had were it not for their expression of their views touching their duties toward their Government immediately after actual hostilities were done. They lost their kin in this war, their property was gone, and they had started to work for themselves. It was then, the gentleman has informed us, and then only, that the property in question was seized because of an act of Congress that authorized its seizure. Gentlemen ought to know, and it is stated by them, that this property was seized when there was really no justification for its seizure.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. BUTLER. Mr. Chairman, I did not intend to say anything, but the gentleman from Louisiana offered me the time, and I will now ask him to yield me five minutes more.

Mr. WATKINS. Mr. Chairman, I yield the gentleman five minutes more.

Mr. BUTLER. Mr. Chairman, an old soldier of Lee's armies who had surrendered at Appomattox and who had stacked his gun forever and instead took hold of the rein of the horse which Grant gave him and started for the South no doubt in his heart held hatred toward us, as we held hatred toward him, long after he had surrendered. He may have spoken perhaps as he should not have spoken and as he would not speak to-day. He may have done those things perhaps which he should not have done after he returned to the South, but his fighting days were done. He had handed in his weapon. He was submitting as patiently and quietly as he could, adjusting himself to distasteful conditions, and if he planted his cotton and it was afterwards seized pursuant to war measures, I do not think the act was right, and I am willing to pay him for it. It must not be understood by reason of what I have said that I would vote to remove the disability from any man who bore arms against the Government prior to the cessation of hostilities. The question seems to be, When was the war over? I

think it was when the fighting was done. Others seem to think not until the day of proclamation.

Many of us have always understood—it may be the Supreme Court has ruled otherwise, and I concede it has—that the great conflict was done when Lee surrendered. I do not propose to consider in this dispute any other time, and therefore it is my purpose to vote for this measure. [Applause.] I did not say what I said for the purpose of moving the gentlemen to any kind of demonstration; I said it because I meant it. This money is in the Treasury. It does not belong to the United States Government, but it belongs to somebody, and, as I understand, arises from the proceeds of property taken from the people who now ask to have it returned. I understand by this bill that no one can receive any part of this fund except he who lost his property subsequent to June 1, 1865, and feeling, as I have already said, that hostilities having ceased, property seized after that time was improperly seized, I think the money now in the Treasury, the product of the sale of improper seizures, ought to be returned to the people whose property was seized. That is all I have to say. [Applause.]

The CHAIRMAN. Does the gentleman yield back the balance of his time?

Mr. BUTLER. I yield back the balance of my time.

Mr. WATKINS. Mr. Chairman, I yield to the gentleman from West Virginia.

Mr. HAMILTON of West Virginia. Mr. Chairman, I am heartily in favor of the passage of this bill. It is but an act of justice and equity to a large class of our people living, I presume, principally in the Southern States and to the descendants of those of that class who have passed away.

The rule which prevails throughout the world that one country or one people can, with its armies, take the property of another country or people in time of war between them without being liable for compensation therefor is founded upon necessity and not upon the abstract principles of equity and justice. But in this case even that harsh rule is in nowise applicable. On the 1st day of June, 1865, the war between the States, sometimes known in history as the War of the Rebellion, but, more truly speaking, now denominated as the Civil War between the American States, was ended. Nearly two months before that date the commanding general of the Southern forces had surrendered, and the war was at an end forever.

The pending bill only bears upon property which was taken subsequent to June 1, 1865, by the Federal forces under an act approved March 12, 1863, which provided for the taking of abandoned property, to be disposed of by the Government and the proceeds held for the benefit of the former owners thereof. The bill under consideration only changes existing law in the respect that it provides that the Court of Claims may consider the rights of such former owners to participate in the trust fund arising from the sale of such property, without such claimant having first to prove his loyalty during the rebellion.

Whatever may be said as to property taken under the laws of war during actual hostilities, it seems to me that no greater injustice could be done than by stretching this harsh rule so as to allow the conqueror to take property without compensation after hostilities had ceased.

The proceeds of the property taken under the act of 1863 does not belong to the Treasury of the United States, but it is a trust fund to be disposed of and paid out to the former owners upon the findings of the Court of Claims, and to bar a brave man, who fought on the losing side of that great conflict under the belief and conviction that he was doing his duty to the sovereign State in which he lived and perhaps was born, from the participation in the proceeds of his own property taken not in time of war but after all hostilities had ceased, and when he had returned to his home, laid down his arms, and become a peaceful citizen of the Nation, can not be upheld upon any theory either of necessity or justice, and is abhorrent to the principles upon which this great Republic is founded.

During my short career in this body I think that I can say that I have been liberal upon the question of pensions to the Union soldier, notwithstanding the fact that all my people during the late war were in sympathy with the Southern cause; and if I had been of sufficient age I would have probably been on that side of the conflict. I thought that the Nation owed to those who fought for it a recognition of their services and a substantial remuneration therefor, and have acted accordingly, even at the sacrifice of the political friendship of some people of my district.

Now, it is quite apparent that all pension legislation for soldiers of the Civil War is almost wholly beneficial to residents of so-called Northern States, and I am glad at this time upon this pending bill to do something, however feeble it may be, in justice to the men and their descendants who fought for and were in sympathy with the principles which were finally settled against them by the arbitrament of arms in the great conflict to which I have referred. It is eminently right, in my judgment, that this bill become a law, and I shall vote for it with the greatest of pleasure.

Mr. WATKINS. Mr. Chairman, I yield three minutes to the gentleman from Indiana [Mr. Cox].

Mr. COX of Indiana. Mr. Chairman, it seems to me that the crux of the situation, so far as this bill is concerned, is not so much when did the war cease as it is of giving certain people the right to go in and get their rights from the Treasury Department. It strikes me, Mr. Chairman, as being preposterous for us to undertake to hold that hostilities did not cease until August, 1866. The history of our country tells us that it ceased long before that time. The gentleman from Pennsylvania [Mr. BUTLER] brought to my mind a remark which I remember distinctly of reading in Gen. Grant's memoirs when he declared that after Forrest surrendered some time in May, 1865, that marked a complete cessation of hostilities between the North and the South. But even were it not for the declaration of Gen. Grant the history of our country, our common-school history, records the fact that hostilities ceased between the North and the South at the time when Lee surrendered at Appomattox and Joseph E. Johnston surrendered to Gen. Sherman, so it is not a question now as to when the war actually ceased. I think we are all agreed practically upon the proposition that there is a fund in the Treasury which belongs to some one, and that fund does not belong to the Treasury of the United States. I think we are all agreed, or substantially so, upon the proposition that the fund in the Treasury Department is not a general fund, but belongs to certain persons in the South who have a claim to it because of property taken from them after the war ceased. It strikes me, Mr. Chairman, that that is the only question in dispute here: Shall we permit by an amendment to the law as it now stands opportunity to the claimants to go in and prove their rights to this fund, whatever it may be called. I do not care a whit whether it is a trust fund or not, it is a fund that does not belong to the people of the country generally; it belongs to somebody, and, in my judgment, it is the duty of Congress to let that money be paid out to the proper persons after their claims have been adjudicated by the Court of Claims and it has determined who the owners are and the respective amounts due to each. It is our duty, Mr. Chairman, as I view it, to let the Treasury of the United States pay it. [Applause.] As the Treasury concedes the fund now held by it as belonging to certain claimants of the South, what objection is there to paying it out to the claimants. Let them have it.

Mr. WATKINS. Mr. Chairman, I yield such time as he may want to the gentleman from Pennsylvania [Mr. MOON], the ranking minority member of the committee, and I will be glad if the gentleman will inform me what time he desires to use, for the reason there are others who expect to speak.

Mr. MOON of Pennsylvania. Mr. Chairman, as a matter of fact I did not want any time.

Mr. WATKINS. I yield such time as the gentleman may wish.

Mr. MOON of Pennsylvania. Mr. Chairman, I want to say I have not asked for any time in this discussion. I just came upon the floor of the House, and I do not think I have anything of importance to say to this House upon the subject. I was chairman of the Committee on Revision of the Laws upon which, and upon a bill of that committee, section 162 was ingrafted. I was opposed to it, and those who were present will remember I spoke against it on two or three different occasions.

It was adopted, however, by the House by a very substantial majority, and I afterwards stood for it in conference, and acting in obedience to the spirit manifested in this House, I felt it was the intention of the country that the section should be enacted, and it was enacted, into law. I knew nothing whatever of the history of these claims at the time the amendment was offered. It came in the midst of a debate. The gentleman from Georgia [Mr. BARTLETT] offered the resolution. My recollection is that he offered it of an afternoon on a Calendar Wednesday, and that it originally included the elimination of the necessity of the proof of loyalty. We discussed it during that afternoon and no vote was reached. On the following Calendar Wednesday the gentleman withdrew that amendment and submitted another, which was carefully prepared by him and which afterwards became section 162 of the bill. I can only say that in obedience to the spirit manifested in this House I voted for it in conference, and when it came before the revision committee that reports this bill, in view of

that fact I voted for it there, and I propose to vote for it here on the floor of the House to-day. I have no definite, accurate information respecting the history of these claims to give to the House. I had none at the time; I have not had the opportunity since to prepare myself upon them, and I therefore feel that there is nothing more for me to say on this subject.

Mr. WATKINS. Mr. Chairman, I yield to the gentleman from Alabama [Mr. HOBSON].

Mr. HOBSON. Mr. Chairman, I do not desire to go into the details of this question. My purpose is to call attention at this time to the broader aspects which this question involves, namely, the justice that the Federal Government has a chance to render to the people of the South. It is not necessary to remind the Members here that a tax was placed upon cotton during the Civil War, afterwards declared to be unconstitutional, and that the money collected from that tax, amounting to some sixty to seventy millions of dollars, was not refunded to the people from whom it had been unlawfully collected, as the money collected from the income tax recently passed was refunded. That money never has been refunded, and the failure to refund it has worked a harsh injustice upon the southern people. In this present case, Mr. Chairman, the proof of loyalty, it seems to me, might be completely waived if we practiced the same spirit toward our own people that we have practiced toward foreigners. We returned an indemnity of $750,000 to the Japanese Government, part of our share of an indemnity paid in the late sixties, when we made a demonstration in conjunction with Great Britain, France, and the Netherlands in the Straits of Shimonosiki. We never used a dollar of our share. In due time every dollar was returned to the Japanese Government. As a result of the Boxer disturbances, some twelve-odd millions of dollars were likewise paid to the United States for war damages. We did not use that money. I never cast a vote more gladly than the vote to return that money to the Chinese Government.

In the case of Spain we had a perfect right not only to take what territory we had occupied, but, following the precedents of civilized warfare, to demand a war indemnity. Instead we found that Spain was impoverished. Our peace commission practically volunteered and the Nation confirmed that we pay $20,000,000 to a vanquished foe; and we also voluntarily transported all the Spanish soldiers back home to Spain.

And so it has been in all the wars of our country. When we fight we fight with all our might, but when the war is over we do not harbor animosity or hatred, but proceed in a spirit of generosity to reestablish good fellowship with the former foe. Members here realize that since the Civil War pensions have been a large part of the expenditures of this Government, amounting to hundreds and hundreds and hundreds of millions of dollars. The total has gone into the billions. The South pays its pro rata share, which amounts to tens of millions of dollars every year, very little of which ever goes back to the South. It would really be in keeping with the uniform practice of returning war indemnities if this Government could find some way in which the South might be partially recouped for this stupendous permanent burden due to the war. But the South has never asked that. All we say here at this juncture is that a little meed of justice, plain and simple, be done the southern people, the same that every individual would recognize as just and right in his own business relations with his fellows. All we ask is that this Congress now, even at this late date, should do that little amount of justice to the southern people.

Mr. Chairman, I know the Members will not take it amiss if I seize upon this opportunity to point out hardships borne by the South at the hands of the Federal Government. We are a rural section. For decades the general system of taxation, the indirect system of the high tariff, has caused hundreds of millions of dollars of taxes to be collected from the rural sections for the benefit of the great cities. While the Government collects $300,000,000 at the customhouses a year the great special interests, whose activities are located chiefly in the great cities of other sections, collect $1,900,000,000.

Again, the fiscal policies of the Nation as bearing upon banking and currency provide large means for the financing of the business of the banker, the merchant, the manufacturer in the large cities, but there is no means provided for financing the business of the farmer. On the contrary, the national banking law forbids a national bank to loan money on a farm, the best security on earth.

Again, take the question of transportation. The railroads transport goods straight through the small farm to the big city beyond cheaper than they deliver the goods at the little town. In other words, the general taxing policies, the general fiscal policies, the general transportation policies of the Nation have combined to place hardships upon the South.

I will not now raise the specter of the reconstruction and carpetbag days that followed the war, but all Members will remember how those days carried forward for many years the poverty and devastation produced by the war and made more difficult the steep ascent to prosperity of the southern people. Again, Mr. Chairman, I call attention to the attitude of the Federal Government toward the great world staple of cotton, upon which southern prosperity so largely depends. The Brazilian Government cooperates with its coffee growers to raise the world's price of coffee. The German Government cooperates with its potash producers to raise the world's price of potash. Our Government not only has not raised a finger to help the cotton grower to raise the price of cotton, but has, on the contrary, used the power of the Attorney General's office to prosecute the cotton bulls who tried to produce this result, while it allowed the cotton bears to go scot free when they conspired to put the price of cotton down.

Mr. Chairman, the time has now come for the Nation to do justice to the southern people when they have legitimate claims upon the Government and to extend a cordial godspeed to them as they move out upon a new period of prosperity and empire building.

The CHAIRMAN (Mr. TAYLOR of Alabama). The time of the gentleman has expired.

Mr. HOBSON. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from Alabama asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. WATKINS. Mr. Chairman, I ask at this time unanimous consent that all gentlemen who speak on the subject of this bill may be permitted to extend their remarks in the RECORD.

Mr. MANN. I am not willing that that be done, Mr. Chairman.

The CHAIRMAN. This is in Committee of the Whole, and that permission can not be granted in committee. The House can do that later on.

Mr. WATKINS. I will make my request later, when we go back into the House.

Now, Mr. Chairman, I yield three minutes to the gentleman from Texas [Mr. HARDY].

The CHAIRMAN. The gentleman from Texas [Mr. HARDY] is recognized for three minutes.

Mr. HARDY. Mr. Chairman, I want to avail myself of the opportunity afforded by these three minutes chiefly to say that I admire the magnanimous spirit of the gentleman from Pennsylvania [Mr. BUTLER] who addressed this House a few moments ago. If we had more of that kind of men, more of that kind of sentiment, which is the sentiment of brave manhood, there would be less of prejudice between the sections than there is to-day, and, thank God, that prejudice is fast passing away. [Applause.]

Mr. BUTLER. Mr. Chairman, will the gentleman permit me right there?

Mr. HARDY. Certainly.

Mr. BUTLER. I do not want any praise for doing what I think is right.

Mr. HARDY. I wish to say to the gentleman that I am not praising him individually, but the sentiment and the manner and the magnanimity of his remarks. I know he was not seeking praise, and that makes his action all the more praiseworthy. Every really generous act or utterance is without desire or care for applause.

I wish to say a word further that is a little bit personal. In 1865 I was a boy 9 years old. One day in June or July of that year I saw my father walk out on his front gallery, send word down to the quarters not far away, and call up the negroes; and when they were all assembled I heard him tell them that, under the proclamation that had been issued by the Government, they were free. He added that it was theirs to go back on the plantation or not, as they saw proper; that if they went back and finished making and gathering the crop, he would do the best he could to compensate them for their labor and to see that they were properly fed and clothed while working.

Now, I could not go into his innermost heart and undertake to prove loyalty or the precise sentiments or feelings that moved him from that time on, but at that time that was his action, and then he went back into the house. His whole fortune was gone, his spirit was broken, and for six months afterwards he scarcely moved from the inner portions of the house, and my mother was the mainstay and the thoroughgoing head of the family. The next year he bought a place on credit, and

many of his old slaves went with him, and they planted the crops of 1866 and 1867.

Now, suppose that after that incident the crops that were being grown under those circumstances were taken. Would it have been right? Was it any more right to take the property of any citizen of the South after he had laid down his arms and thought no more of resistance or war, except as it bore on his desolation or woe?

And now, Mr. Chairman, where property was taken under similar circumstances, and the proceeds of it turned into the Treasury, to give it back to the rightful owner is a simple act of justice, as has been so well spoken by the gentleman from Alabama [Mr. HOBSON.]

This property does not belong to the United States. It was taken without any justification under any principle, of right or just law, among men or between nations, except the idea of taking it to preserve it for the rightful owner. You may call it a trust or what you will. The Government recognizes that it does not belong to it. It belongs to somebody, and it ought to be given in justice to that somebody. Oh, we have been generous—and I am proud of it—with other nationalities and other peoples. To the Japanese we were generous; to the Spanish we were generous; to the Chinese in the Boxer difficulties we were generous, and I glory in the generosity of a great country and a great people. We ought to be able now to be just to each other. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. WATKINS. Mr. Chairman, will the gentleman from Illinois [Mr. MANN] consume some part of his time now?

Mr. MANN. I yield to the gentleman from Pennsylvania [Mr. BOWMAN].

Mr. BOWMAN. Mr. Chairman, I rise for the purpose of asking permission to extend my remarks in the RECORD.

The CHAIRMAN. Unless objection is made, the request of the gentleman will be granted.

There was no objection.

Mr. MANN. Mr. Chairman, I notice that usually these outbursts of friendly feeling between the sections of the country, exhibited by friends from the South, come in connection with an effort to extract some money from the Treasury. They are supposed to be very magnanimous. They are supposed to want to be very magnanimous while they are getting the money. I do not blame them for that, or for complimenting my friend from Pennsylvania [Mr. BUTLER], who stated, without any warrant of authority whatever for it, that this property was improperly seized by the Government agents. I doubt whether he knows the facts in connection with it. I doubt whether he is informed as to whether the property was improperly seized or not, or as to the circumstances surrounding the seizure of the property. My information is that no portion of this property was seized in any part of the South where hostilities had in fact ceased.

Only where the war was in fact still in existence, shortly after the surrender of Lee, was the property in fact seized by the Government, seized from men who were disloyal to the Government at the time, and who were at the time lending aid and comfort to the rebellion; men who had not accepted the surrender of Lee by any means as the ending of the rebellion. The Government agents did not take property from men who were willing to consider that the war was ended, men who had laid down their arms, men who had accepted the surrender of Lee as the final result. Their property was not disturbed. But my friend from Pennsylvania [Mr. BUTLER] says the Government agents improperly seized the property. That is a mere guess on his part.

Mr. BUTLER. It is a mere guess on the gentleman's part, for I used no such language. I refer to the notes of the Official Reporters to verify my statement. I said it was claimed by gentlemen on the other side.

Mr. MANN. I am glad the gentleman disavows the language.

Mr. BUTLER. I leave it to the notes of the Official Reporters to settle it.

Mr. MANN. There is nothing between us to settle. If the gentleman did not make the statement, then I withdraw what I have said. That is the whole assumption, however, of gentlemen who favor this bill. That is the only excuse that can be given for it—that the property was improperly seized by the Government agents, taken from men who were willing to admit that the rebellion no longer existed. The assumption is that this property was seized from men who were in peaceable possession of it, not as an act of war but as an act of confiscation. But no such thing happened, and there is no justification for the claim. No property was taken from those people who were willing to consider the rebellion at an end, but in those cases where property was seized it was seized from men who were then disloyal to the Government, and the gentlemen on the other side of the aisle have refused to agree to an amendment which will amend this bill so as to provide that it shall apply only to those who were not disloyal after the date fixed in the bill.

This is only the beginning of doing away with the proof of loyalty. It has nothing to do with the question of peace between the people of the different portions of the country. I had the honor to introduce in this House the first bill which was passed providing that the General Government of the United States should care for a Confederate cemetery, that is now being cared for by the Government, where only Confederate dead are buried. So far as feeling is concerned, the war ought long since to have been buried, and, so far as I am concerned, was long since buried; but when gentlemen come into the House under the pretense of trying to have peace and magnanimity between different portions of the country for the purpose of extracting money from the Treasury that they know ought not to be paid out, I repudiate the claim that it is necessary in order to be magnanimous to pay money to which they are not entitled. [Applause on the Republican side.]

The Government of the United States seized this property. Aye, it seized millions of dollars' worth of property in the South during the War of the Rebellion. The gentleman from Alabama says that proof of loyalty in these cases ought to be dispensed with. What is the distinction between this case and those cases? Are we to say now, 50 years after the war, in order to prove our magnanimity in the North, that we propose to pay the owners of property in the South for all the property taken from disloyal citizens by the armies of the North? It would take billions of dollars, perhaps. No one knows how much it would take. When you propose to dispense with the proof of loyalty in one case you open the door wide, so you can not refuse to do the same deed of justice in other cases.

I believe that when war is entered into, people ought to abide by the results of the war. And one of the results of war recognized throughout the world is that the country which succeeds does not pay the citizens of the country which loses for the property taken as a result of the war. And that is all this case is. Remove the proof of loyalty, establish now the proposition that no longer is proof of loyalty necessary in order to obtain from the Treasury of the United States payment for property seized by the Government of the United States or its armies in the South from disloyal citizens, and no one can tell how serious and far-reaching will be the result.

It is assumed here that this money is in the Treasury. It is in the Treasury only theoretically. It is carried on the books of the Treasury, but every dollar which is to be paid out on this and other claims must first be taken from the citizenship of the country. The money is not in fact in the Treasury. If its payment is provided, it must be raised by taxation. Those who put down the rebellion must again be called upon to pay the money to the Treasury in order to pay it out to those who sought to destroy the Union. I am not willing to do that in order to curry the favor of my distinguished friends of the South and be called magnanimous. [Applause on the Republican side.]

Mr. Chairman, how much time have I remaining?

The CHAIRMAN. The gentleman has 11 minutes remaining.

Mr. MANN. I yield five minutes to the gentleman from Pennsylvania [Mr. BURKE].

Mr. BURKE of Pennsylvania. Mr. Chairman, throughout the discussion last Wednesday and to-day there has developed, to a certain extent, an obstinacy on the part of the proponents of this bill with reference to suggested amendments which I can not reconcile with the eloquent expressions made on the floor of this House within the last 30 minutes. The amendment suggested last week was not prompted for the purpose of giving voice to any hatred or animosity. No one on this side of the aisle is more willing to throw over the act of every man, woman, and child in the South the mantle of forgiveness for acts committed during the period of the war prior to June 1, 1865, and no one would do more to cement beyond its ever being severed again the Union to which these people who seek to-day to extract this money from the Treasury claim unquestionably to be loyal.

Mr. HARDY. Will the gentleman yield?

Mr. BURKE of Pennsylvania. Certainly.

Mr. HARDY. Does the gentleman consider it extracting money from the Treasury if the Government should turn over this money to its rightful owner; should give it back to the people who owned it?

Mr. BURKE of Pennsylvania. The question of ownership depends on the manner in which this property was taken and the attitude of the party toward the Government at the time of the confiscation. If the individual who makes this claim to-day was

disloyal to the Government at the hour of the confiscation of his property, it is my contention that he is not entitled to recover in 1912 any more than he was on June 15, 1865.

Mr. HARDY. Does the gentleman conceive that it was necessary for a descendant of the owner—take the illustration I made as to my own father—one, who by his action then showed that the surrender was complete, that resistance was ended, does he contend that some one now should come in and swear that at that time he was thoroughly devoted to the Union?

Mr. BURKE of Pennsylvania. The gentleman from Texas must admit, that in order to recover in these claims, the claimant, whether he be sensitive or not regarding his own personal feelings, must make a charge against the Government of the United States. He must charge the Government with having committed a wrong, and if he is not sensitive about charging the Government with committing a wrong, why should he be sensitive about alleging his own loyalty to the Government at the time?

Mr. HARDY. The claimant makes no claim that the Government does not admit.

Mr. BURKE of Pennsylvania. The Government admits taking the property, but the Government claims that it took it under the color of right.

Mr. HARDY. It took the property under the authority of law, but it admits by its present holding of the property for its owner that it belongs to another.

Mr. BURKE of Pennsylvania. The taking of the property was not in violation of any individual right, and if it was not, then no one has a claim against the money in the Treasury.

Mr. HARDY. What amount of proof would the gentleman want as to the loyalty of the claimant? Would he want some one to swear that he run up the Union flag, or something of that sort?

Mr. BURKE of Pennsylvania. No; I would hesitate to pay the claim from the funds in the Treasury to a man who would be unwilling to admit that he was a loyal citizen of this Republic at the time.

Mr. HARDY. The whole country was at peace, was it not?

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. MANN. I yield to the gentleman from Pennsylvania five minutes more.

Mr. BURKE of Pennsylvania. That is a question in controversy. As the gentleman from Illinois stated, arms had been laid down, hostilities had ceased in certain sections, but in other sections there is a question whether the hostilities of certain individuals had not been prolonged beyond this period. The purpose of this amendment is to guard against paying money out of the Treasury to those who are not willing to admit or declare that they followed the generous and brave action of the men of the South, who laid down their arms and became ardent and loyal supporters of a rejuvenated Republic, but prolonged it beyond that period, and as an incident to, and during whose disloyalty, the Government took this property.

Mr. HARDY. The gentleman wishes a statement that the party claiming was not still in rebellion?

Mr. BURKE of Pennsylvania. I will read to the gentleman——

Mr. HARDY. I know what the gentleman's amendment is, but I want the effect of it. The gentleman knows that everybody was at peace, the old soldiers had gone home, they were plowing in the country and trying to build up the waste places and were paying no attention to public affairs.

Mr. BURKE of Pennsylvania. Those are very broad declarations that I believe are hardly justified.

Mr. SLAYDEN. Mr. Chairman, will the gentleman yield?

Mr. BURKE of Pennsylvania. Certainly.

Mr. SLAYDEN. The gentleman from Pennsylvania has made a remarkable statement or proposition about some people in the South continuing in rebellion after the surrender of Lee and Johnston, and I would like to know when and where it was done, for I have heard nothing about it.

Mr. MANN. The records of the War Department will show it.

Mr. BURKE of Pennsylvania. Mr. Chairman, without submitting any evidence on the subject, is it not an inevitable conclusion to which we are driven, when these very claimants refuse to admit that at that time they had laid down their arms and were loyal to the Government?

Mr. SLAYDEN. At what time?

Mr. BURKE of Pennsylvania. Subsequent to June 1, 1865, during the period in which the gentleman claims they are entitled to recover, because they were presumably loyal.

Mr. SLAYDEN. I do not know anything about what any individual may have said, but I do know as a matter of fact that we not only were in complete submission, but that there was no armed insurrection against the Government of the United States. We were in neither the physical nor mental attitude that made such a thing possible. We were not only peaceful, but we were subdued. We were quiet; we were terrified in a way.

Mr. BURKE of Pennsylvania. Taking the gentleman's statement to be an accurate description of the fact, then what harm can come from an admission in the pleadings—the gentleman is a lawyer I take it.

Mr. SLAYDEN. No; I am not.

Mr. BURKE of Pennsylvania. Can any wrong result from a declaration in these pleadings that the people seeking to extract the money from the Treasury or recover it from the Treasury—whatever language you wish to use—were loyal at the time their property was taken?

Mr. SLAYDEN. Mr. Chairman, I am not so much interested in the gentleman's argument as in this strange new history which he is relating. As a student of history I am interested in knowing when and where and by whom that rebellion, subsequent to June, 1865, was carried on.

Mr. BURKE of Pennsylvania. Aside from the records of the War Department the fact is as I say that the proponents of this bill emphatically refuse to put in any provision whatsoever that would safeguard the interests of those who were loyal.

Mr. HARDY. Does the gentleman make that demand of any claimant against the Government except these?

Mr. BURKE of Pennsylvania. The gentleman knows that these claims stand in a class by themselves. They were born in a period, if not of open hostility, then, at least, in a period of doubt.

Mr. MANN. Does the gentleman know of any other claim against the Government growing out of the war where the proof of loyalty is not required.

Mr. BURKE of Pennsylvania. That is a fair question.

Mr. HARDY. The gentleman does not know of any other claims against the Government growing out of the war on account of the seizure of property after the war was ended.

Mr. MANN. Oh, there are lots of claims growing out of the war prior to the time when the war ceased.

Mr. HARDY. What I say is that these claims come from acts after the war had ceased.

Mr. MANN. No; they do not at all.

Mr. HARDY. Unless the gentleman's colleague is fearfully wrong, and unless my reading of history is wrong, they do.

Mr. BURKE of Pennsylvania. That is a controversy in history, as is illustrated by the statements of the two last gentlemen on the floor, both of whose opinions I respect, but which I can not reconcile with each other.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. MANN. Mr. Chairman, I yield the remainder of my time to the gentleman from Ohio [Mr. WILLIS].

Mr. WILLIS. Mr. Chairman, in the one minute that remains I want to call attention to the fact, first, that the Supreme Court of the United States has repeatedly decided and it is now the law of the land that this is not a trust fund, but is the absolute property of the United States. I want to call attention, second, to the undoubted fact, as has been pointed out by the gentleman from Illinois [Mr. MANN], and as I tried to point out one week ago, that this is simply the beginning of a series of bills, some of which have been reported and are now on the calendar, the purpose of which is to absolutely reverse the policy that has obtained heretofore in the handling of these claims. I want to call the attention especially of my distinguished friend from Indiana [Mr. CULLOP], who is the guardian of the Treasury and who undoubtedly by his eloquence has saved the people of this country hundreds of millions of dollars—I want to call his attention especially to the fact that he is now supporting a proposition which if enacted into law neither he nor any other Member of this House can see the termination of. The immediate effect will be that at least $5,000,000 will be open to almost anybody who wants to back his wagon up to the Treasury Department and scoop in the money.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. WATKINS. Mr. Chairman, I yield five minutes to the gentleman from Alabama [Mr. HEFLIN].

Mr. HEFLIN. Mr. Chairman, the gentleman from Illinois [Mr. MANN] has announced that he could not afford to vote for a measure of this kind in order to curry favor with his friends of the South.

Mr. Chairman, his friends of the South are only asking that simple justice be done. This measure does not appropriate one cent. It gives the Court of Claims jurisdiction of claims

that may be filed prior to January 1, 1915. It requires that the people whose property was taken by the Federal forces after the 1st of June, 1865, be paid for their property out of money now in the Treasury for that purpose. Does the gentleman want to deny the South the justice sought in this measure? His own colleagues on the committee voted unanimously in favor of this bill, and those of them who have spoken in this House to-day have championed the measure. The gentleman from Pennsylvania [Mr. BURKE] speaks of throwing the mantle of forgiveness over the South for the part it took in the war between the States. The Federal soldier himself would not speak in that fashion now. He realizes that both sides fought for the right as God gave them the power to see it. [Applause.] An English officer has stated in his history of Stonewall Jackson that if Grant had been reared and educated in Virginia and Stonewall Jackson reared and educated in New England, Grant would have been a Confederate general and Stonewall Jackson a Federal general, saying that it was the viewpoint that each had of the situation. [Applause.] Each fought for the right, according to the lights before him. Dr. Ellis in his history of our country, recently written, and Dr. Ellis is a northern man, says that the question of secession was never settled in the United States until the war settled it. Brave men fought on opposing sides in settling that question, and now, thank God, we have a reunited country. [Applause.] I want to say to these gentlemen on the other side that many northern people do not share in the sentiments that you have uttered to-day. [Applause.] I canvassed eight Northern States in the recent campaign and I found the feeling with most people there strong to bury everything that looks to sectional differences, and the best people in the North and in the South are striving to unite these sections together in the ties of love, loyalty, and the clinging of section to section. [Applause.] Mr. Chairman, let the Members of all sections do simple justice to-day. When the bugle was singing truce at Appomattox Robert E. Lee was not only plighting his faith, but plighting the faith of every Confederate soldier, and plighting the faith of the son of every Confederate soldier to lay down their arms forever. [Applause.] Surely Members of this House can do simple justice to those whose property was taken by the Federal forces. All we ask is that these people have a chance to go into court and ask that court to say whether or not their property was really taken and order pay therefor. June 1, 1865, there were no hostilities anywhere; none after the 1st of May; then why require these people to prove loyalty to the Union. Mr. Chairman, the soldier in blue and the soldier in gray were fighting for what they thought was right; and it is said that when Lee surrendered at Appomattox Lincoln, with tears in his eyes, at the White House said, "Have the band play Dixie." [Applause.] He was hoping that hostilities were over; he was hoping that war was at an end; he was glad that we would have a reunited country; and now, gentlemen, we have that glorious reunited country, and I appeal to gentlemen here to rise to the full measure of your duty toward this meritorious measure.

The South pleads for simple justice to those whose property was taken after Lee's surrender at Appomatox. The South will follow faithfully wherever Old Glory bares her beauty to the breeze; one heart, one hope, and one country—America, the grandest Government on the globe. [Loud applause.]

The CHAIRMAN. The gentleman from Louisiana has six minutes remaining.

Mr. WATKINS. Mr. Chairman, in that length of time I can hardly be able to discuss satisfactorily the legal propositions involved in this case. I have several volumes here before me. If the gentleman from Illinois [Mr. MANN] will not object when we go into the House, I will simply ask to extend my remarks in the RECORD, but if he is going to object I will try in the few minutes I have to cover the question as far as I can.

Mr. MANN. The gentleman can ask leave to extend his remarks now.

Mr. WATKINS. I do ask that permission.

The CHAIRMAN. If there be no objection, leave will be granted. [After a pause.] The Chair hears no objection.

Mr. WATKINS. With that understanding, Mr. Chairman, I——

Mr. MANN. There is no understanding; the gentleman has leave to extend his remarks now.

Mr. WATKINS. If I have leave, then, all right.

Mr. MANN. It has already been granted to the gentleman.

Mr. WATKINS. Mr. Chairman, understanding I have leave to extend my remarks in the RECORD, as the time is so short and the proposition so extensive, I will now ask that general debate be closed and the bill be read for amendment.

The CHAIRMAN. General debate is now closed, and the Clerk will read the bill.

The Clerk read as follows:

Be it enacted, etc., That section 162 of the act to codify, revise, and amend the laws relating to the judiciary, approved March 3, 1911, be amended and reenacted so as to read as follows:

"SEC. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the act of Congress approved March 12, 1863, entitled 'An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' and acts amendatory thereof, where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding: *Provided*, That no allegation or proof of loyalty shall be required in the presentation or adjudication of such claims."

Also, the following committee amendment was read:

Line 8, page 1, strike out the words "to hear and determine the claims" and insert in lieu thereof "of any claim therefor filed prior to January 1, 1915."

The CHAIRMAN [Mr. RUCKER of Colorado]. The question is on agreeing to the committee amendment.

The question was taken, and the amendment was agreed to.

Mr. MANN. Mr. Chairman, I move to amend, on page 1, line 6, by striking out the words "and reenacted."

The CHAIRMAN. The gentleman from Illinois offers an amendment which the Clerk will report.

The Clerk read as follows:

Page 1, line 6, strike out the words "and reenacted."

Mr. MANN. Mr. Chairman, I hope that is satisfactory to the gentleman. It does not affect the bill at all except the form of it. We have invariably struck out those words where they came in a bill. The enacting clause is sufficient when it says "The section shall be amended to read as follows."

Mr. WATKINS. Mr. Chairman, we are really reenacting the bill, and I see no objections to so stating by vote of the committee.

Mr. MANN. Mr. Chairman, I do not care anything about it in this bill. Somebody conceived the idea a year or two ago of putting this sort of an item in the bill. Every time it has been before the committee it has been stricken out, up to the present time, because it is not necessary to have but one enacting clause to the bill. When you say that "a section is amended to read as follows," that makes it read "as follows" when it is enacted.

Mr. WATKINS. Mr. Chairman, with the statement of the gentleman that this is the custom, I will not oppose the amendment.

The CHAIRMAN. The Clerk will again report the amendment.

The amendment was again read.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

Mr. MANN. Mr. Chairman, I move to strike out, on page 2, lines 8, 9, and 10, the following language:

And the Secretary of the Treasury shall return said net proceeds to the owners thereof on the judgment of said court.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend, page 2, lines 8, 9, and 10, by striking out the words "and the Secretary of the Treasury shall return said net proceeds to the owners thereof on the judgment of said court."

Mr. MANN. Mr. Chairman, I had intended to call this to the attention of the gentleman from Louisiana [Mr. WATKINS] privately, because I think if I had he would have agreed to it. That language is in the existing law, and was in the original law, I believe. Since that time Congress has repeatedly provided, and that is now the law, that the Secretary of the Treasury can not pay out money from the Treasury until it is appropriated. This purports to give the Secretary of the Treasury authority to return this money without an appropriation. It will simply mislead people, because he will not return it without an appropriation, for the law prohibits paying any money out of the Treasury unless it is appropriated. And the custom will be, whether it is in or out of the law, when claims are allowed by the Court of Claims, they will be certified to the House and will be included by the Committee on Appropriations in the general deficiency bill. There is no other way of paying claims out of the Treasury. This is not an appropriation.

Mr. FITZGERALD. Will the gentleman yield to a question?

Mr. MANN. Certainly.

Mr. FITZGERALD. I have not looked into the matter. Would one of these judgments be such a judgment as would come in as a certified claim?

Mr. MANN. It would be the same as any other judgment against the United States.

Mr. FITZGERALD. If it is a final judgment, then it would be carried as all such judgments are, in the deficiency bill. The practice is to appropriate in the deficiency bills the amount of money required to pay judgments against the United States.

Mr. MANN. As I understand, the practice is to certify the judgment to Congress, and the Committee on Appropriations includes in the deficiency bill these specific items for the payment of these judgments. I do not know that this will do any harm, except it will make people believe they can obtain the money without an appropriation for it.

Mr. CULLOP. Mr. Chairman, if the gentleman's amendment should prevail it would do just what he has been opposing being done all through the debate on this bill. This is a specific fund, raised from a specific object, and for a specific purpose.

The fund is in the Treasury. It is there for a certain and specific purpose, and covers money derived from a specific source. It is there to be paid back to the persons who may be legally entitled to the same, and is not as other funds that are in the Public Treasury, as a general fund. So that if the gentleman's amendment should prevail it would open the door to the very object that he has been opposing all through the consideration of this bill. This fund was raised from the sale of the cotton which had been abandoned by the legal owners. It was sold under a statute which directed that it should be sold and what should be done with the net proceeds arising from the sale, and that was to pay it into the Treasury to be held for the legal owners of it, less the cost and expense of the sale and handling of the property. Now, the purpose of this act is for the Court of Claims to ascertain the amount, the legal ownership of the money of the trust fund in the Treasury, and prorate it among the lawful owners or those who shall assert their right to it by the 1st day of January, 1915. If the gentleman's amendment prevails, it will destroy the entire purpose of the act and leave it subject to wholesale litigation concerning the ownership of that fund, which ought not to occur in the disposition of this particular fund at all. The Treasury Department has the name of each and every owner, the amount derived from each and every sale, when and to whom made, the cost of handling the property, and the net proceeds. If this amendment is adopted, it emasculates the entire object of the measure and will produce confusion in the settlement of this matter. Therefore, instead of clarifying the situation, it will have the opposite effect. So that if his amendment prevails, the condition then would be worse than it is now for the distribution of this fund and the disposition of the matter. I hope, therefore, that the amendment will not prevail.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

The committee informally rose; and Mr. HEFLIN having taken the chair as Speaker pro tempore, a message in writing from the President of the United States was communicated to the House of Representatives by Mr. Latta, one of his secretaries.

ALLEGATION AND PROOF OF LOYALTY IN CERTAIN CASES.

The committee resumed its session.

Mr. BARTLETT. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Georgia [Mr. BARTLETT] moves to strike out the last word.

Mr. BARTLETT. I oppose the amendment offered by the gentleman from Illinois [Mr. MANN].

Mr. Chairman, this section, which it is proposed to amend, was adopted by the last Congress on the codification law bill. This fund, which is now in the Treasury, or which should be there, is not like other assets of the United States in the Treasury of the United States. Under the act of 1863, known as the captured and abandoned property act, proceeds of the property that was taken, after it had been sold and the expense deducted, were to be held as a trust fund for the true owner thereof. Under that law after the close of the war this property was taken and sold and the proceeds turned into the Treasury. I do not mean after the legal close of the war, because with a view of regulating certain matters in the Army—discharges, and so on—it has been decided that the war legally closed on the 21st day of August, 1866. But the war had actually closed on the 9th day of April, 1865, with the cessation of hostilities.

Now, I drew this amendment to the codification bill and presented it to the House, and after a spirited debate and discussion for quite a while the House adopted it. The Senate made some amendments to it and then it went to conference, and the conferees agreed to this proposition as it now appears in section 162 of the Civil Code.

Now, I am not going to detain the House with any details of the history of this matter, but I want to say that both Houses of Congress recognized the justice of the claim that after the war was actually over and while the United States Army was simply in possession of the territory of the States of the Southern Confederacy after June 1, 1865, the officers of the United States took this cotton from the farms of the planters and from the warehouses where it was stored and sold it, and that the owners ought to be paid the money on proof of the identity of the persons to whom it belonged. As to the date—June 1, 1865—I fixed that myself, after conference with the chairman of the Committee on the Revision of the Laws, Mr. MOON of Pennsylvania, and some other gentlemen who on that side were actively engaged in that codification work.

Mr. BUTLER. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. With pleasure.

Mr. BUTLER. If these claimants had availed themselves of the provisions of the act of Congress of 1872, could they not have proven their claims and recovered this property without first having offered proof of loyalty?

Mr. BARTLETT. I think they could.

Mr. BUTLER. Was not the question of loyalty waived by the act of 1872?

Mr. BARTLETT. It was not only waived, but by the decision of the Supreme Court, in Thirteenth Wallace, in the case of Klein, it was held that under the general amnesty of President Johnson, issued with reference to them, they could have recovered without proof of loyalty. But they did not do it, and if my friend from Pennsylvania were familiar with the condition of affairs in the South at that time, where men had lost their all and where people had their property taken from them, he would know that they did not have the means of prosecuting claims before the Court of Claims at Washington in order to recover what belonged to them.

This simply provides, as the act of 1863 provided, that the Secretary of the Treasury shall make payment to the owners upon the judgment of the Court of Claims certifying that they were entitled to it. I do not believe that the Secretary of the Treasury will pay it without an appropriation, but to put this amendment on the bill will simply place those people one step farther away from what it is admitted they should receive—payment for property of which they had for long years been deprived unjustly and without law. [Applause.]

Mr. WATKINS. Mr. Chairman, I object to this amendment. I will state that it would not only destroy the bill as it is now presented, but it would also destroy section 162 of the codification of the laws which we are seeking to amend. It would be acting in the utmost bad faith on the part of the other side of the House to insist on the incorporation of this amendment. A majority of this House voted for the passage of section 162 of the codification, under the head of the judiciary, providing for the payment of these claims. These claims now fall under that section, and the payment of the claims is provided for.

The distinctive feature of this bill is simply and purely that it establishes the principle whether the parties shall be required to prove loyalty at the time the property was taken, after June 1, 1865, and the effort now made is not only to destroy the amendment, but also to destroy the original enactment.

When that enactment was passed, as I stated on a former occasion, when that section passed the House and went over to the Senate, the features in this bill were allowed to remain the same as they were as they came from the House, with a Republican majority in the Senate. Not only that, but on four occasions in the Senate bills of this kind have been reported from Senate committees. This section and the entire codification went into conference, and when it went into conference it was agreed between the conferees that this section should be not only operative, but it should be effective for all intents and purposes; and it was on account of that agreement—and the gentleman from Pennsylvania [Mr. MOON], one of the conferees, and the gentleman from Kentucky [Mr. SHERLEY], another of the conferees, will bear me out in the statement—that the conference report was adopted. If it had not been for the understanding that this section 162 would be carried out in good faith to all intents and purposes practically, that conference report could not have been adopted. Even the conferees themselves would not have agreed to that codification. It would be acting in bad faith to destroy that section 162 by the enactment of this amendment which is now offered. I ask that it be voted down.

Mr. MANN. Mr. Chairman, just a word. The amendment which I have offered does not go in any way whatever to the merits of the bill. It only goes to the form of laws passed by Congress. It was simply an effort on my part to have the House obey the provisions of the Constitution of the United States and conform to them. Possibly the gentleman from Indiana [Mr. CULLOP] is not familiar with that provision of

the Constitution, and for his benefit I will read the language in paragraph 7 of Article IX of the Constitution:

No money shall be drawn from the Treasury but in consequence of appropriations made by law.

It is admitted that this money is in the Treasury, and the bill itself so recites. This language is not an appropriation of money, and no one pretends that it is. Everyone at all familiar with legislative proceedings certainly knows that you can not draw the money, even where a judgment has been entered, until the money has been appropriated. There is no reason for the gentleman attempting to fool claimants in this case by making them believe that they can get the money out of the Treasury before an appropriation is made, because they can not. The Treasury Department will continue to follow the provision of the Constitution and will pay no money out of the Treasury until it has been appropriated. If gentlemen desire to have the money paid on a judgment without further appropriation, then the bill itself should carry an item appropriating the necessary money for that purpose.

The CHAIRMAN. The question is upon agreeing to the amendment of the gentleman from Illinois [Mr. MANN].

The question being taken, the amendment was rejected.

Mr. BURKE of Pennsylvania. Mr. Chairman, I offer the amendment which I send to the Clerk's desk to be read.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend by striking out the proviso in lines 12, 13, and 14 on page 2 and insert the following:

"*Provided*, That allegation and proof of loyalty on the date of the taking of the property in question shall be required in the presentation and adjudication of such claims."

Mr. BURKE of Pennsylvania. Mr. Chairman, I do not desire to take the time of the committee. This has been thoroughly thrashed out, but it is submitted in connection with the arguments already offered.

Mr. WATKINS. Mr. Chairman, it is proposed by this amendment to destroy the entire bill. It goes to the very substance of the bill itself.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania.

The question being taken, the amendment was rejected.

Mr. MANN. Mr. Chairman, I move to strike out the proviso on page 2, lines 12, 13, and 14, which reads as follows:

Provided, That no allegation or proof of loyalty shall be required in the presentation or adjudication of such claims.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. MANN].

The question being taken, the amendment was rejected.

Mr. WATKINS. Mr. Chairman, I move that the committee do now rise and report the bill to the House with the amendments, and with the recommendation that the bill as amended do pass.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. RUCKER of Colorado, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (H. R. 16314) to amend section 162 of the act to codify, revise, and amend the laws relating to the judiciary, approved March 3, 1911, and had directed him to report the same to the House with amendments, and with the recommendation that the bill as amended do pass.

Mr. WATKINS. Mr. Speaker, I move the previous question on the bill and amendments to the final passage.

The previous question was ordered.

The SPEAKER. Is a separate vote demanded on any amendment? If not, the Chair will put them in gross.

There was no demand for a separate vote.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the amended bill.

The bill was ordered to be engrossed and read a third time, and was accordingly read the third time.

Mr. MANN. Mr. Speaker, I move that the bill be recommitted to the Committee on Revision of the Laws, with directions to that committee to report the bill back forthwith with an amendment to strike out the following language at the end of the bill:

Provided, That no allegation or proof of loyalty shall be required in the presentation or adjudication of such claims.

The SPEAKER. The Clerk will report the motion to recommit with instructions.

The Clerk read as follows:

Mr. MANN moves to recommit the bill to the Committee on Revision of the Laws, with instructions to strike out, on page 2, the proviso in lines 12, 13, and 14, as follows:

"*Provided*, That no allegation or proof of loyalty shall be required in the presentation or adjudication of such claims."

Mr. WATKINS. Mr. Speaker, I move the previous question on the motion to recommit with instructions.

The previous question was ordered.

The SPEAKER. The question is on the motion of the gentleman from Illinois to recommit.

Mr. MANN. Mr. Speaker, I make the point of order that no quorum is present.

The SPEAKER. The gentleman from Illinois makes the point of no quorum, and the Chair will count.

Mr. UNDERWOOD. Mr. Speaker, before the announcement is made I ask unanimous consent to make a report and pass a recess adjournment resolution.

Mr. MANN. I have no objection to that.

The SPEAKER. That can be done by unanimous consent. Is there objection to the request of the gentleman from Alabama?

There was no objection.

DISTRIBUTION OF MESSAGES OF THE PRESIDENT.

Mr. UNDERWOOD. Mr. Speaker, I desire to make a privileged report from the Committee on Ways and Means distributing the President's messages.

The SPEAKER. The Clerk will report.

The Clerk read as follows:

House resolution 742 (H. Rept. 1270), relating to the messages of the President of the United States communicated to the two Houses of Congress December 3 and December 6, 1912.

The SPEAKER. The report will be referred to the Union Calendar.

Mr. UNDERWOOD. Mr. Speaker, I ask unanimous consent to consider the resolution which I send to the desk.

ADJOURNMENT FOR THE HOLIDAYS.

The Clerk read as follows:

House concurrent resolution 66.

Resolved, That when the two Houses adjourn December 19, 1912, they stand adjourned until 12 o'clock meridian on Thursday, January 2, 1913.

The SPEAKER. Is there objection to the present consideration of this resolution?

There was no objection.

The resolution was considered and agreed to.

ALLEGATION AND PROOF OF LOYALTY IN CERTAIN CASES.

The SPEAKER. The gentleman from Illinois makes the point that no quorum is present. The Chair has counted, and there are 177 Members present, not a quorum. Under the rule a call of the House is ordered. The Doorkeeper will close the doors, the Sergeant at Arms will notify the absentees, and the Clerk will call the roll.

The question was taken; and there were—yeas 94, nays 174, answered "present" 7, not voting 115, as follows:

YEAS—94.

Ainey	Gardner, Mass.	Mann	Rodenberg
Akin, N. Y.	Greene, Mass.	Martin, S. Dak.	Scott
Anthony	Griest	Merritt	Simmons
Barchfeld	Hamilton, Mich.	Mondell	Sloan
Bartholdt	Helgesen	Moore, Pa.	Smith, J. M. C.
Bates	Hill	Morgan, Okla.	Smith, Saml. W.
Bowman	Hinds	Morse, Wis.	Speer
Browning	Howell	Mott	Steenerson
Burke, Pa.	Hughes, W. Va.	Murdock	Stephens, Cal.
Burke, S. Dak.	Humphrey, Wash.	Needham	Switzer
Calder	Kahn	Neeley	Taylor, Ohio
Cannon	Kendall	Nelson	Thistlewood
Cooper	Kennedy	Nye	Tilson
Crumpacker	Lafean	Olmsted	Towner
Dalzell	La Follette	Patton, Pa.	Vare
Danforth	Langham	Payne	Volstead
Davis, Minn.	Lawrence	Pickett	Wedemeyer
De Forest	Lenroot	Plumley	Wilder
Dodds	Lindbergh	Porter	Willis
Farr	Loud	Powers	Wilson, Ill.
Focht	McKenzie	Pray	Young, Kans.
Foss	McKinley	Prince	Young, Mich.
French	McKinney	Rees	
Fuller	Madden	Roberts, Mass.	

NAYS—174.

Adair	Burnett	Dies	Francis
Alexander	Butler	Difenderfer	Gallagher
Allen	Byrnes, S. C.	Dixon, Ind.	Garner
Ashbrook	Byrns, Tenn.	Doremus	Garrett
Austin	Callaway	Doughton	George
Ayres	Candler	Driscoll, D. A.	Gill
Barnhart	Cantrill	Dupré	Glass
Bartlett	Carter	Dyer	Godwin, N. C.
Bathrick	Cary	Edwards	Goeke
Beall, Tex.	Clark, Fla.	Ellerbe	Goldfogle
Berger	Claypool	Estopinal	Goodwin, Ark.
Blackmon	Cline	Evans	Graham
Boehne	Collier	Faison	Green, Iowa
Booher	Cox, Ind.	Fergusson	Gudger
Brantley	Cox, Ohio	Ferris	Hamilton, W. Va.
Buchanan	Cullop	Finley	Hamlin
Bulkley	Curley	Fitzgerald	Hammond
Burgess	Dent	Flood, Va.	Hardwick
Burke, Wis.	Denver	Foster	Hardy
Burleson	Dickinson	Fowler	Harrison, Miss.

Hay	Lee, Pa.	Ransdell, La.	Stedman
Hayden	Lever	Redfield	Stephens, Miss.
Heflin	Levy	Reilly	Stephens, Nebr.
Helm	Lloyd	Robinson	Stephens, Tex.
Henry, Tex.	Lobeck	Roddenbery	Stone
Hensley	McCoy	Rothermel	Sulzer
Hobson	McDermott	Rouse	Sweet
Holland	McKellar	Rubey	Taggart
Houston	Macon	Rucker, Colo.	Taylor, Ala.
Hull	Maguire, Nebr.	Rucker, Mo.	Thayer
Humphreys, Miss.	Mays	Russell	Thomas
James	Moon, Tenn.	Saunders	Townsend
Johnson, Ky.	Moore, Tex.	Scully	Tribble
Johnson, S. C.	Morgan, La.	Sells	Tuttle
Jones	Murray	Shackleford	Underhill
Kent	Oldfield	Sharp	Underwood
Kinkead, N. J.	Padgett	Sheppard	Watkins
Kitchin	Page	Sherwood	Whitacre
Konig	Palmer	Sims	White
Konop	Pepper	Slayden	Wilson, Pa.
Kopp	Peters	Small	Witherspoon
Lafferty	Post	Smith, N. Y.	Young, Tex.
Lamb	Rainey	Smith, Tex.	
Lee, Ga.	Raker	Sparkman	

ANSWERED "PRESENT"—7.

Anderson	Donohoe	Fields	Talbott, Md.
Bradley	Esch	Stevens, Minn.	

NOT VOTING—115.

Adamson	Fordney	Kinkaid, Nebr.	Pou
Aiken, S. C.	Fornes	Knowland	Prouty
Ames	Gardner, N. J.	Korbly	Pujo
Andrus	Gillett	Langley	Randell, Tex.
Ansberry	Good	Legare	Rauch
Bell, Ga.	Gould	Lewis	Reyburn
Borland	Gray	Lindsay	Richardson
Broussard	Greene, Vt.	Linthicum	Riordan
Brown	Gregg, Pa.	Littlepage	Roberts, Nev.
Campbell	Gregg, Tex.	Littleton	Sabath
Carlin	Guernsey	Longworth	Sherley
Clayton	Hamill	McCall	Sisson
Conry	Hanna	McCreary	Slemp
Copley	Harris	McGillicuddy	Smith, Cal.
Covington	Harrison, N. Y.	McGuire, Okla.	Stack
Crago	Hart	McHenry	Stanley
Cravens	Hartman	McLaughlin	Sterling
Currier	Haugen	McMorran	Sulloway
Curry	Hawley	Maher	Talcott, N. Y.
Daugherty	Hayes	Martin, Colo.	Taylor, Colo.
Davenport	Heald	Matthews	Turnbull
Davidson	Henry, Conn.	Miller	Vreeland
Davis, W. Va.	Higgins	Moon, Pa.	Warburton
Dickson, Miss.	Howard	Morrison	Webb
Draper	Howland	Moss, Ind.	Weeks
Driscoll, M. E.	Hughes, Ga.	Norris	Wilson, N. Y.
Dwight	Jackson	O'Shaunessy	Wood, N. J.
Fairchild	Jacoway	Parran	Woods, Iowa
Floyd, Ark.	Kindred	Patten, N. Y.	

So the motion to recommit was rejected.

The Clerk announced the following pairs:

Until further notice:

Mr. MORRISON with Mr. FAIRCHILD.
Mr. LINTHICUM with Mr. REYBURN.
Mr. JACOWAY with Mr. MCCALL.
Mr. HOWARD with Mr. KNOWLAND.
Mr. BROWN with Mr. DRAPER.
Mr. SISSON with Mr. HANNA.
Mr. COVINGTON with Mr. FORDNEY.
Mr. GREGG of Texas with Mr. HARRIS.
Mr. HAMILL with Mr. HENRY of Connecticut.
Mr. HARRISON of New York with Mr. HIGGINS.
Mr. FIELDS with Mr. LANGLEY.
Mr. RICHARDSON with Mr. ESCH.
Mr. PUJO with Mr. MCMORRAN.
Mr. DICKSON of Mississippi with Mr. SLEMP.
Mr. TURNBULL with Mr. WOODS of Iowa.
Mr. O'SHAUNESSY with Mr. SULLOWAY.
Mr. MAHER with Mr. ROBERTS of Nevada.
Mr. WILSON of New York with Mr. WOOD of New Jersey.
Mr. AIKEN of South Carolina with Mr. AMES.
Mr. ANSBERRY with Mr. CAMPBELL.
Mr. BELL of Georgia with Mr. COPLEY.
Mr. BORLAND with Mr. CRAGO.
Mr. BROUSSARD with Mr. CURRIER.
Mr. CARLIN with Mr. DAVIDSON.
Mr. CONRY with Mr. MICHAEL E. DRISCOLL.
Mr. DAVENPORT with Mr. GARDNER of New Jersey.
Mr. HART with Mr. GILLETT.
Mr. HUGHES of Georgia with Mr. GOOD.
Mr. KINDRED with Mr. GREENE of Vermont.
Mr. KORBLY with Mr. GUERNSEY.
Mr. LEGARE with Mr. HAUGEN.
Mr. LEWIS with Mr. HAWLEY.
Mr. LITTLEPAGE with Mr. HAYES.
Mr. MCGILLICUDDY with Mr. HEALD.
Mr. MARTIN of Colorado with Mr. KINKAID of Nebraska.
Mr. MOSS of Indiana with Mr. MCCREARY.
Mr. PATTEN of New York with Mr. MCGUIRE of Oklahoma.
Mr. POU with Mr. MCLAUGHLIN.
Mr. RANDELL of Texas with Mr. MATTHEWS.
Mr. RAUCH with Mr. MILLER.
Mr. SABATH with Mr. MOON of Pennsylvania.
Mr. SHERLEY with Mr. LONGWORTH.
Mr. STANLEY with Mr. VREELAND.
Mr. TALCOTT of New York with Mr. SMITH of California.
Mr. TAYLOR of Colorado with Mr. WEEKS.

For the session:

Mr. TALBOTT of Maryland with Mr. PARRAN.
Mr. ADAMSON with Mr. STEVENS of Minnesota.
Mr. LITTLETON with Mr. DWIGHT.
Mr. RIORDAN with Mr. ANDRUS.
Mr. FORNES with Mr. BRADLEY.

The result of the vote was announced as above recorded.

A quorum being present, the doors were opened.

The SPEAKER. The question now is on the passage of the bill.

The question was taken, and the bill was passed.

On motion of Mr. WATKINS, a motion to reconsider the vote by which the bill was passed was laid on the table.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. SISSON, for two days, on account of illness.
To Mr. CAMPBELL, on account of illness.
To Mr. SLEMP, for one week, on account of important business.

WITHDRAWAL OF PAPERS.

By unanimous consent, leave was granted to Mr. HULL to withdraw from the files of the House, without leaving copies, the papers in the case of Martin L. Holt, Sixty-second Congress, no adverse report having been made thereon.

RESIGNATIONS FROM COMMITTEES.

The SPEAKER laid before the House the following resignations from committees:

DECEMBER 11, 1912.

Hon. CHAMP CLARK,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: I herewith tender my resignation as a member of the House Committee on Mines and Mining.

Very respectfully,
W. J. FIELDS.

DECEMBER 10, 1912.

Hon. CHAMP CLARK,
Speaker of the House of Representatives, Washington, D. C.

SIR: I hereby respectfully tender my resignation as a member of the Committee on Merchant Marine and Fisheries, the same to take effect immediately.

Yours, truly,
JAMES YOUNG.

The SPEAKER. Without objection, the resignations will be accepted.

There was no objection.

APPROPRIATIONS AND BALANCES UNDER CONTROL OF STATE DEPARTMENT (H. DOC. NO. 1123).

The SPEAKER laid before the House the following message from the President of the United States, which was read and, with the accompanying papers, referred to the Committee on Expenditures in the State Department:

To the House of Representatives:

I transmit herewith a statement by the Secretary of State, with accompanying papers, of appropriations, expenditures, and balances of appropriations under the Department of State for the fiscal year ended June 30, 1912, as required by law.

WM. H. TAFT.

THE WHITE HOUSE, *December 10, 1912.*

ORDER OF BUSINESS.

The SPEAKER. The Committee on Revision of the Laws having occupied two Wednesdays, the Clerk will proceed with the call of committees.

The Clerk proceeded with the call of committees.

PATENT TO DESERT-LAND ENTRIES.

Mr. SMITH of Texas (when the Committee on Irrigation of Arid Lands was called.) Mr. Speaker, I desire to call up the bill H. R. 26338.

The SPEAKER. The Clerk will report the bill by title.

The Clerk read as follows:

A bill (H. R. 26338) providing for patent to desert-land entries on reclamation projects, and for other purposes.

The SPEAKER. This bill is on the Union Calendar.

Mr. SMITH of Texas. Mr. Speaker, just a moment. This bill was attached to one of the appropriation bills at the last session of Congress and passed, and I would ask that this bill be stricken from the calendar.

The SPEAKER. The gentleman from Texas asks unanimous consent that the bill lie on the table.

Mr. GOLDFOGLE. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GOLDFOGLE. Did the Chair state whether unanimous consent was asked for striking the bill from the calendar?

The SPEAKER. No; the Chair took the liberty of stating the question according to the rule—that is, instead of striking the bill from the calendar that the bill lie on the table. Is there objection. [After a pause.] The Chair hears none.

Mr. MANN. There will be no objection to that.

The SPEAKER. Has the gentleman from Texas any more business from that committee?

Mr. SMITH of Texas. Yes, sir; Senate bill 3947——

Mr. MANN. Was consent given to lay this bill on the table?

The SPEAKER. Yes.

BRIDGE ACROSS SNAKE RIVER, IN JACKSON HOLE, WYO.

Mr. SMITH of Texas. Mr. Speaker, I desire to call up Senate bill 3947.

The SPEAKER. The Clerk will report the bill by title.

The Clerk read as follows:

S. 3947. An act to provide for a bridge across Snake River, in Jackson Hole, Wyo.

The SPEAKER. This bill is on the Union Calendar, and the House will automatically resolve itself into the Committee of the Whole House on the state of the Union, and the gentleman from Ohio [Mr. COX] will take the chair.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 3947, with Mr. COX of Ohio in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of the bill S. 3947, which the Clerk will report.

The Clerk read as follows:

Whereas in the administration of the act of June 17, 1902, "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," the United States Reclamation Service has constructed at the outlet of Jackson Lake, Wyo., and the source of the Snake River a retaining storage dam; and

Whereas the use of this dam to store the flood waters of Jackson Lake and the Snake River watershed, and the release of the surplus waters thus stored into the channel of the Snake River for utilization in irrigating lands upon lower levels, maintains high water in the Snake River at all periods of the year; and

Whereas through the maintenance of high water the Snake River, previously fordable for parts of each year, in its course through the Jackson Hole region is now rendered unfordable at all times, and the residents of that region, upward of 1,000 in number, are cut off from railroad and other communication for freight and travel: Therefore

Be it enacted, etc., That the sum of $25,000 is hereby appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, to be expended under the direction of the Secretary of War, through the engineer officer in charge of road and bridge construction and maintenance in the Yellowstone National Park, for the construction of a bridge across Snake River, at a point in township 41 or 42 north, range 116 or 117 west, Wyoming, to be determined with a view of best serving the public travel through Jackson Hole and adjacent territory in Wyoming and Idaho: *Provided,* That the local authorities shall cause the approaches to the proposed bridge to be constructed without expense to the United States: *And provided further,* That the local authorities shall provide for the maintenance and repair of the proposed bridge after it is constructed.

The amendment in the nature of a substitute was read, as follows:

Strike out all except the enacting clause and insert:

"That the Secretary of the Interior is hereby authorized to use such portion of the reclamation fund, not to exceed $18,000, and in no event more than one-half the sum that may be necessary for the construction of a bridge across Snake River, at a point in township 41 or 42 north, range 116 or 117 west, Wyoming, to be determined by the Reclamation Service, with the view of best serving the people of Jackson Hole and adjacent territory in Wyoming: *Provided,* That no part of the funds herein authorized to be used, except such as may be necessary for the making of examinations and estimates, shall be expended until the Secretary of the Interior shall have obtained, from the proper local authorities, satisfactory guaranties of the payment by the said local authorities of one-half the cost of said bridge, and that the said local authorities assume full responsibility for and will at all times maintain and repair the said bridge and approaches thereto."

Mr. SMITH of Texas. Mr. Chairman, this is a bill to authorize the Secretary of the Interior, through the Reclamation Service, to construct a bridge across Snake River, in the State of Wyoming, one-half of the cost of the bridge to be borne by the Reclamation Service and the balance by the local authorities in that vicinity. This bill does not authorize, in my judgment, the Secretary of the Interior to do more than the law perhaps already authorizes him to do. The necessity for the construction of this bridge arises from the construction of an irrigation project on Snake River. As I understand it, in the State of Wyoming there is a lake called Jackson Lake, and the Government has constructed a dam at the mouth of that lake, and Jackson River running through that lake is used as a canal for carrying the water to irrigation lands below in the State of Idaho. I believe it is, and it is across this Snake River between the lake and the irrigated lands that this bridge is proposed to be constructed. In the natural state the testimony before the committee showed very clearly that for only a short period during the year this river could be forded by the people in that vicinity, but the storage of the water in the lake and utilization of it through this river channel for the purposes of irrigation below makes the river unfordable and difficult to cross for a much greater period during the year. Now, the Reclamation Service has always exercised the authority under the law of constructing bridges that have been made necessary by the construction of irrigation work, but on account of the peculiar circumstances of this case, where the river was not fordable a part of the year in its natural state, the Reclamation Service thought that perhaps it would not be proper for them to go to the whole expense of building this bridge, and it was concluded by the department that under all of the circumstances it would be proper for the Government to pay half of the expenses, provided the local authorities would pay the other half and provide for the maintenance and repairs of the bridge thereafter.

The Committee on Irrigation of Arid Lands gave the matter very thorough consideration, and finally came to agree with the Reclamation Service that that would be the fair and equitable thing to do. That, I believe, Mr. Chairman, makes a full statement of this matter. I reserve the balance of my time.

Mr. STEPHENS of Texas. I would like to ask the gentleman a question.

The CHAIRMAN. Does the gentleman yield to his colleague?

Mr. SMITH of Texas. I do.

Mr. STEPHENS of Texas. Would the building of this bridge across this stream commit the Government to the policy of building roads where they have been submerged by the irrigation caused by building dams on streams? It might be a case where the roads would have to be removed from the streams. In that western country the roads follow the streams, and if they should be submerged by waters from the dams, would that compel the United States Government to go higher up the mountain sides and commit itself to the purpose of building roads that might cost a good deal of money?

Mr. SMITH of Texas. I will say to the gentleman that that is a question of law which he can determine as well as I can, but I understand the Reclamation Service heretofore has provided roads where in constructing an irrigation project it destroyed the roads in existence.

Mr. STEPHENS of Texas. They have already adopted that policy?

Mr. SMITH of Texas. That is my understanding; yes, sir.

Mr. STEPHENS of Texas. I do not believe that should be done. I believe the city or the community or the county where these irrigation plants are located will be sufficiently benefited so that they can build these roads and bridges themselves.

Mr. SMITH of Texas. I call the attention of the gentleman to the fact that all these irrigation improvements are to be paid for by the people themselves, who get the benefit of them, and the Reclamation Service has adopted the policy of restoring the conveniences of the people in those localities where they construct these works wherever they are impaired or destroyed.

Mr. STEPHENS of Texas. Would that be added to the annual amount that has to be paid for the land used by these waters?

Mr. SMITH of Texas. Charged up to the project and paid back by the people.

Mr. STEPHENS of Texas. The same as building ditches and dams, and so forth?

Mr. SMITH of Texas. Yes, sir.

Mr. STEPHENS of Texas. I did not understand what the policy would be.

Mr. SMITH of Texas. That is my understanding of the policy.

Mr. Chairman, I reserve the balance of my time.

Mr. MANN. Mr. Chairman, I think this bill ought to be understood by the House before it passes. I am not opposed to the provisions of the bill, although I desire at the proper time to offer an amendment to it. But because it is practically a new proposition it seems to me it ought to be discussed to some extent on the floor of the House. The Senate bill as it passed the Senate and has come to the House provided for a direct appropriation out of the Treasury of $25,000 for the construction of this bridge across Snake River. The only limitation upon that was that the local authorities should provide the approaches to the bridge and after its construction provide for the maintenance and repair of the bridge. Probably $25,000 is not a sufficient amount with which to construct the bridge. At least the committee of the House proposes what seems to me a very equitable and fair proposition, that there shall be paid out of the reclamation fund, not to exceed $18,000, for one-half the

cost of the construction of the bridge—that is, the amount shall not exceed $18,000 and shall not in any event exceed one-half the cost. The amendment which I propose to offer at the proper time is to insert at the end of the bill:

Provided further, That the amount of the reclamation funds so used shall be charged as a part of the cost of the reclamation project or projects, the construction and development of which caused the necessity for such bridge.

Mr. SMITH of Texas. Mr. Chairman, if the gentleman will permit, I will state that I have no objection myself to that amendment.

Mr. MANN. I think the gentleman has not, and I think the gentleman from Wyoming [Mr. MONDELL] does not object to it either. I think myself that the bill presented here is a fair proposition. What will become of it when it goes to conference I do not know, but I hope that the Senate will be willing to agree to the House amendment. However, it seems to me that this matter is of such importance in the principles involved in it that the RECORD ought to contain a full statement of the reasons for the passage of the bill. I therefore ask the Clerk to read the report of the committee in my time.

The CHAIRMAN. Without objection, the report will be read.

The Clerk read as follows:

Mr. SMITH of Texas, from the Committee on Irrigation of Arid Lands, submitted the following report, to accompany S. 3947:

The Committee on Irrigation of Arid Lands, having had under consideration Senate bill 3947, to provide for a bridge across Snake River in Jackson Hole, Wyo., report the same back with the following recommendation: Strike out all after the enacting clause and insert the following:

"That the Secretary of the Interior is hereby authorized to use such portion of the reclamation fund, not to exceed $18,000, and in no event more than one-half the sum that may be necessary for the construction of a bridge across Snake River, at a point in township 41 or 42 north, range 116 or 117 west, Wyoming, to be determined by the Reclamation Service, with the view of best serving the people of Jackson Hole and adjacent territory in Wyoming: *Provided*, That no part of the funds herein authorized to be used, except such as may be necessary for the making of examinations and estimates, shall be expended until the Secretary of the Interior shall have obtained, from the proper local authorities, satisfactory guaranties of the payment, byt the said local authorities, of one-half of the cost of said bridge; and that the said local authorities assume full responsibility for and will at all times maintain and repair the said bridge and approaches thereto."

Strike out the preamble.

As thus amended it is recommended that the bill do pass.

The bill as it is recommended to be amended is identical with H. R. 21171, a bill authorizing the use of the reclamation fund in construction of a bridge across Snake River, in Wyoming; and there is appended hereto and made a part of this report the report made on the said bill by Mr. TAYLOR of Colorado.

The building of the bridge provided for in this bill is rendered necessary by the construction by the Reclamation Service under the reclamation law of a dam at the outlet of Jackson Lake, near the Yellowstone National Park, in northwestern Wyoming; and the change in the character of the flow of Snake River, through which the impounded waters are discharged.

Jackson Lake lies in the northern part of what is known as "the Jackson Hole country," immediately south of the Yellowstone National Park. The lake, which covers approximately 20,000 acres, is formed by the waters of the Snake River flowing from the north, and the water is discharged through Snake River to the south. The Jackson Hole region, through which the Snake River flows, is a comparatively level basin entirely surrounded by high mountains; it is about 50 miles in length and from 15 to 20 miles in width. Through this basin Snake River flows in a southwesterly direction, finally entering the canyon of the Gros-Ventre Range and flowing through a deep canyon west into Idaho.

Owing to the topography of the country, the Snake River is not available for irrigation to any considerable extent as it flows through Jackson Hole, but a considerable acreage in the eastern part of the region is irrigated from the waters of the Gros-Ventre River, Flat Creek, and other streams. The region supports a permanent population of about 2,000 people and a very much larger population during the tourist and hunting season.

The Reclamation Service is at present prepared to impound nearly half a million feet of water in Jackson Lake, but have in contemplation works which will ultimately impound a million and a half acre-feet. The reservoir is therefore the largest in capacity of any used by the Reclamation Service. The waters thus impounded are all used in the State of Idaho on the Minidoka project of the Reclamation Service and, by arrangement with the Reclamation Service, by two private enterprises, the North Side Twin Falls Land & Water Co. and the American Falls Canal & Power Co.

Prior to the building of the dam at the outlet of Jackson Lake the Snake River was fordable in its course through Jackson Hole most of the year, except a limited period of high water in the spring. Most of the travel through Jackson Hole comes from the west, over the Teton Pass, and for years a ferry has been maintained near Wilson on the road from the Teton Pass to the lower end of the Jackson Hole region.

The use of Snake River as a channel for the carrying of the impounded waters from Jackson Lake into Idaho converts Snake River into a stream too deep to ford during any portion of the summer; and, in addition to that, in regulating the water in Jackson Lake it occasionally becomes necessary for the Reclamation Service to open the gates and discharge large quantities of water in the very early spring. This was done twice this last spring, with the result that the flood, carrying with it accumulated ice, washed out the ferry anchorages and left the people of Jackson Hole without any communication with the outside world for a considerable length of time.

It is very clear that the building of the dam at the outlet of Jackson Lake necessitates the building of a bridge across Snake River, and that but for such construction the people of the region could have forded and ferried the river as heretofore, and that there is at least a moral if not a legal obligation on the part of the Reclamation Service to contribute toward remedying the condition they have created. This is recognized by the Secretary of the Interior, as shown by letters made part of this report. The Reclamation Service is, of course, obliged to build bridges across the canals they construct where public roads cross the same. The service also restores all roads submerged by flooding or interfered with by its construction, but, while acknowledging the obligation on the part of the Government in this case, the service seems to be of the opinion that their obligation is not so clear and direct in the case as to warrant the building of the bridge by the service without the sanction of Congress.

The equities in the case are enhanced by the fact that the small community whose only means of communication with the outside world is rendered difficult, and at times impossible, is in no way even remotely benefited by the new condition from which they suffer, and it seems but just that those who benefit from the waters impounded should pay at least a part of the cost of remedying conditions thus created. The Secretary of the Interior expresses the view that the local community should pay half of the cost of the bridge and agree to maintain and repair it.

In these views the committee concur and have amended the bill accordingly.

Letters of the Secretary of the Interior are appended hereto.

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DEPARTMENT OF THE INTERIOR,
Washington, March 16, 1912.

Hon. W. R. SMITH,
Chairman Committee on Irrigation of Arid Lands,
House of Representatives.

SIR: The department is in receipt of your letter of March 8, transmitting copy of H. R. 21171, with a request for the views of the department and any suggestions that may be deemed proper.

This bill is entitled as follows: "A bill authorizing the use of the reclamation fund in construction of a bridge across Snake River in Wyoming."

It provides that such portion of the reclamation fund as may be necessary, in the judgment of the Secretary, may be used for the construction of a bridge across Snake River at a point in T. 41 or 42 N., R. 116 or 117 W., Wyoming, to be determined by the Reclamation Service, with a view of best serving the people of Jackson Hole and adjacent territory in Wyoming.

This bill is substantially the same as S. 3947, except that the latter appropriates the sum of $10,000 for the purpose.

The department on January 4, 1912, reported to Hon. George S. Nixon, chairman of the Senate Committee on Irrigation and Reclamation of Arid Lands, upon the said bill S. 3947, copy herewith.

In this report the conditions are reviewed, and it is shown that the operations of the Reclamation Service have contributed to a change in the conditions such that it seemed reasonable that the United States should bear one-half the expense of construction. As its operation had a material effect upon the conditions of the river during only two months in the year, it seems proper that the county should contribute at least one-half of the expense of construction and assume responsibility for its maintenance.

It is believed, therefore, that the bill should provide that the bridge may be constructed by the Reclamation Service as soon as arrangements have been made with the county by which the latter would deposit one-half the estimated cost and agree to maintain the bridge.

Very respectfully,

SAMUEL ADAMS,
Acting Secretary.

—

DEPARTMENT OF THE INTERIOR,
Washington, January 4, 1912.

Hon. GEORGE S. NIXON,
Chairman Committee on Irrigation and
Reclamation of Arid Lands, United States Senate.

SIR: By reference of December 20 I am in receipt of bill S. 3947, with request for an expression regarding the advisability of this legislation.

This bill is to provide a bridge across Snake River, Wyo., at a cost of $10,000, to be paid out of the reclamation fund. The demand for such a bridge arises from the fact that the Snake River in its course through Jackson Lake has but few practicable fords. The settlers in this area obtain their supplies by team from towns to the west in the State of Idaho by crossing the Teton Mountains. The pass is traversed with great difficulty by heavy teams excepting for two months in the year, namely, August and September. During these months the settlers, as a rule, drive their stock to market and bring back their year's supplies.

A dam has recently been built under the terms of the reclamation act of June 17, 1902 (32 Stat., 388), for controlling the water in Jackson Lake. Before the lake was thus regulated the river was at a low stage during August and September, but with the storage of floods and turning these down the river during the latter part of the crop season the river is maintained at a height above the normal and many of the fords are impassable, so that it is necessary to make wide detours to reach a ferry.

A reconnoissance has been made of the country and the conclusion reached that a steel bridge can be built at a cost of between $25,000 and $35,000. It is hardly practicable to attempt to construct anything much cheaper, as a bridge which is not well built can hardly be expected to remain long enough to justify the outlay.

It is not wise to attempt the construction of such a bridge until the contemplated railroad has been completed to the town of Driggs, Idaho, from which point material can be freighted in at less expense than from the present railroad stations. It is understood that the railroad will be in operation to Driggs by the end of 1912.

Assuming that there is a moral obligation on the part of the Government to provide a bridge in order to meet the changed conditions in August and September, due to the construction of the Jackson Lake Dam, it is believed that Uinta County, Wyo., in which the bridge is to be located, should not only bear one-half the expense of this construction, but should also be required to assume responsibility for its maintenance. The county should also be required to put in good condition an adequate wagon road and approaches to the bridge.

The payment of half the cost by the county should be required, because the bridge would be available during the entire year, whereas the operations of the Government do not deleteriously affect the river in other months than August and September.

Considering all the conditions, the department is of the opinion that the Government could not be required to construct this bridge unless the county shall cooperate in the manner hereinbefore indicated.

Very respectfully,

WALTER L. FISHER, *Secretary.*

Mr. MANN. Now, Mr. Chairman, while I shall hope at the proper time to hear the gentleman from Wyoming [Mr. MONDELL], who introduced the bill, explain a little more in detail the reasons for its passage, personally it rather appealed to me, although I did think that the objections at the last session of Congress made to the bill by the distinguished gentleman from Oklahoma had a good deal of force in them.

Mr. Chairman, this is Calendar Wednesday, sometimes designated in a ribald spirit as "Holy Wednesday." It is the day upon which the committees have an opportunity to bring up measures in the House. There are various ways of getting a matter before the House. If you put a bill on the Unanimous Consent Calendar and unanimous consent is given, the bill is taken up for consideration. You can get a promise from the Speaker to be recognized to move to suspend the rules, although there has been no such opportunity, I believe, for a year or so, and make use of it. Or you can wait for Calendar Wednesday.

At the last session of Congress the distinguished gentleman from Tennessee [Mr. HULL] introduced a bill entitled "A bill to promote efficiency in the Government service." It provided:

That no officer, agent, clerk, or other employee of the United States Government who holds his or her position by virtue of appointment shall, during the term of such appointment or employment, be or become an accredited delegate of any political party to any national convention held or to be held by such political party for the purpose of nominating a candidate or candidates for the offices of President and Vice President of the United States or President or Vice President of the United States;

With an amendment to section 1:

or become a delegate to any State or district convention at which such national delegates are elected.

Section 2 provided:

SEC. 2. That no officer, agent, clerk, or other employee of the United States Government who holds his or her position by virtue of appointment shall, during the term of such appointment or employment, hold or occupy any official position in any national branch of any political organization organized or constituted for the purpose of influencing, or attempting to influence, in two or more States the nomination or selection of such candidates or candidate.

Section 3 of the bill provided:

SEC. 3. That every such officer, agent, clerk, or employee offending against either of the provisions of the two foregoing sections shall be deemed guilty of a misdemeanor, and shall be fined not exceeding $500, and also shall be summarily discharged from the service of the United States Government.

That bill was referred to the Committee on Reform in the Civil Service, and was favorably reported by the committee to the House with the recommendation that it pass. It was placed on the Unanimous Consent Calendar and was called up on August 19 last. I reserved the right to object. The right to object was also reserved by other Members of the House. The gentleman from Tennessee [Mr. HULL], after some little discussion, made this appeal to me:

Mr. Speaker, before the gentleman finally expresses himself upon the matter, I wish to say, in view of the lateness of the session and of the importance of this bill—I held it up until after the conventions were held so that I would not be in the attitude of seeming to appear to take any interest in the candidacy of any gentleman—I wish to appeal to the wisdom and the statesmanship and the patriotism and, if necessary, to the generosity of the gentleman from Illinois to withhold his objection and allow us to have the present consideration of the bill, and these amendments can be offered in their order.

I will not say that such an appeal as that will not affect me. When a gentleman appeals to my wisdom and statesmanship and generosity it might have an effect. However, another gentleman objected to the then consideration of the bill.

Lo and behold, at that time it was considered extremely important by the Democratic side of the House to introduce, report, and consider this bill to prevent Federal employees from interfering with national conventions. Since that time we have had an election and the Democratic Party has been successful, and we are to have a Democratic President who will sit in wisdom over the Federal officials.

A few moments ago, on the call of committees, the distinguished Committee on Reform in the Civil Service, which reported this bill and tried to pass it under a unanimous-consent agreement, was called by the Clerk, with the privilege of calling this bill up for consideration, and failed to respond. There is a great difference between before and after. Before they had elected their President they wanted to provide that Federal employees should in no case interfere in national conventions. Now, on that side of the House, they hope that the Federal employees will be their employees, and they do not want to prevent their interfering in national or State conventions. When they thought the Federal officials would be Republican officials they were extremely holy in their attitude. They could see the necessity, the wisdom, the patriotism, and the statesmanship of taking up this bill and passing it for the restraint of Republican officials, but when they have been successful, now that they have the right under the rules to call up the bill, they have changed their holy attitude and are not now thinking of the holy side of it, but they are thinking of getting the jobs.

Here in the District of Columbia, where we are sitting, they are having a great squabble over the question who shall be the chairman of the local committee to have charge of the grandstand matters relating to the inauguration. This man and that man are being urged. The chairman of the Democratic national committee is called to Washington for the purpose of deciding the question. After consideration for days he has been unable to determine who shall hold the high and mighty office of presiding over the circus part of the inaugural. Gentlemen are so worked up over getting jobs and patronage that they fail any longer to appeal to my statesmanship, my wisdom, my generosity, and my other things that they may think of to aid in calling up a bill which they did when the gentleman knew there was no time to consider it; but now, when there is time, they fail to rise to the occasion. [Applause on the Republican side.]

The CHAIRMAN (Mr. SAUNDERS). The time of the gentleman has expired.

Mr. MONDELL. Mr. Chairman, the gentleman from Texas [Mr. SMITH], chairman of the committee in charge of this bill, has so clearly stated the many good reasons for the passage of the pending legislation, and the gentleman from Illinois [Mr. MANN], particularly in the latter part of his remarks, has so illuminated the matter and elucidated all of the problems connected with it, that I shall not take the time of the House at any considerable length in the discussion of the measure.

The Reclamation Service, in carrying out certain projects under the law, used Jacksons Lake, in Wyoming, as an impounding reservoir, and the necessary discharge of the waters of that reservoir through Snake River so changed the character of that stream—which ordinarily could be forded most of the year—as to necessitate the building and maintenance of an expensive bridge.

The country there is very sparsely settled. Most of it is within a forest reserve. The few people there ought not to be called upon to go to the heavy expense necessary for the construction of this bridge, which would not be needed except for the change in the character of the river through the impounding and discharge of the waters from Jacksons Lake. Were the use of the river in connection with this project a little more direct, the Reclamation Service would be entirely justified in building the bridge without calling upon Congress, but under the circumstances they feel as though Congress should pass upon the question. As I understand it, the Reclamation Service is of the opinion that the people who are to be benefited by these projects might very properly be charged with the entire cost of the bridge; but the committee in its wisdom believed that there should be a division of the burden, and that part of the cost should be laid upon the people and the community and a part borne by the people under the project. The bill under consideration, therefore, provides that one-half the cost of the bridge, or not to exceed $18,000, shall be paid out of the reclamation fund, chargeable under the amendment of the gentleman from Illinois [Mr. MANN] to the projects using the water, the balance to be paid by the people locally.

Mr. FERRIS. Will the gentleman yield?

Mr. MONDELL. Yes.

Mr. FERRIS. What was the statement of the gentleman with reference to the amendment of the gentleman from Illinois? Have those in charge of the bill agreed to an amendment to let that portion of it be charged to the project?

Mr. MONDELL. I think there is no objection on the part of anyone. As a matter of fact, I think the committee understood—at least, I understood—that the bill without an amendment would be interpreted by the Reclamation Service as authorizing them to charge the cost against the project; but in order that there may be no question with regard to that and to make the matter clear and definite, the gentleman from Illinois [Mr. MANN] has proposed the amendment, which has been reported, and to which I think there is certainly no objection.

Mr. FERRIS. If that be the case, I have no objection to the bill, but the gentleman will recall that I was seriously opposed to it last year.

Mr. MONDELL. I understand.

Mr. FERRIS. The same opposition that I felt then is even more magnified now, if that money is to be taken out of the reclamation fund and never returned to it.

Mr. MONDELL. I think it has not been intended at any time to have the bridge paid for, or any part of it paid for, out of the reclamation fund not reimbursable.

Mr. FERRIS. In the absence of an amendment?

Mr. MONDELL. My opinion is—and I think it is the opinion of the committee—that the language of the bill would justify

the Reclamation Service in charging the sum up to the projects in Idaho that use the water, but under the amendment to be offered by the gentleman from Illinois there can be no question in regard to it.

Mr. FERRIS. I would like to inquire if the gentleman knows how that amendment will fare in conference at the other end of the Capitol?

Mr. MONDELL. I do not think there would be any objection to the amendment anywhere; at least, I hope there would not.

Mr. FERRIS. Was it not seriously fought last year?

Mr. MANN. Last year when the matter came up on the Unanimous Consent Calendar I talked with the gentleman from Wyoming, and he was willing to accept this amendment. Perhaps that was not known to the gentleman from Oklahoma, because I think it did not come up on the floor of the House.

Mr. FERRIS. I feel sure that it was not known to me. I thought the contention was that inasmuch as the settlers had already contributed as much as they could, the general reclamation fund ought to contribute this. I do not agree to that, because if that were continued, the reclamation fund would soon be dissipated.

Mr. SMITH of Texas. That was never the contention of anybody before the committee. The view of the committee was that under the bill as it now stands, without an amendment, this amount furnished by the reclamation fund would be paid back by the water users under that project. If there is any doubt about it, we are anxious to insert this amendment in the bill.

Mr. MANN. I thought last summer that the gentleman from Oklahoma objected under a misapprehension of what was going to be done.

Mr. FERRIS. I think this is about the only bill I ever objected to, and I want to be as cautious as I can about making any captious objection. If the proposition was to take the money from the reclamation fund and spend it so that it would not be returned, I would object to it and demand a quorum and do everything I could to defeat it, because I think that is a bad proposition.

Mr. MANN. I would follow the gentleman on that myself.

Mr. MONDELL. Mr. Chairman, having briefly thus explained the provisions of the bill, and I think among us cleared up the misapprehensions in regard to it, I shall not take up any further time of the committee unless there is some objection, and I reserve the balance of my time.

Mr. FERRIS. Mr. Chairman, if I may in my time, I would like to have the amendment of the gentleman from Illinois reported.

Mr. MANN. The amendment has not yet been offered. I read it myself, and I will read it again. It is:

Add at the end of the bill the following:
"*Provided further*, That the amount of the reclamation fund so used shall be charged as a part of the cost of the reclamation project or projects, the *construction* and development of which have caused the necessity of such project."

Mr. FERRIS. And that is acceptable to the managers of the bill?

Mr. MANN. It is acceptable, as I understand, to the gentleman from Texas and the gentleman from Wyoming.

Mr. RODDENBERY. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. RODDENBERY. I do not understand the exact status in regard to the amendment. Is the bill being read for amendment?

Mr. MANN. The bill has not been read for amendment.

The CHAIRMAN. The Chair will state that we have not finished the general debate on the bill as yet.

Mr. RODDENBERY. Mr. Chairman, is it in order for me to be recognized on the bill?

The CHAIRMAN. Yes; the gentleman from Georgia is recognized.

Mr. RODDENBERY. Mr. Chairman, on this very important bill providing for a bridge across the Snake River in Jackson Hole, Wyo., the gentleman has very properly discussed an entirely germane matter, treating of the views of distinguished gentlemen as expressed in pending bills with reference to the civil service employees. The remarks of the gentleman were entertaining and very instructive.

In connection with the same subject, if I may in general debate be permitted to do so, and it will not weight down too much a very important piece of legislation that is now proposed by the gentleman from Wyoming in the pending bill, I think there should be added to it a House joint resolution, by unanimous consent, dealing with another question of equal importance to the State of Wyoming and to the country in general.

The resolution to which I make reference is one already introduced by me, providing for an amendment to the Constitution of the United States, with the usual resolving clause, and the article is as follows:

That intermarriage between negroes or persons of color and Caucasians or any other character of persons within the United States or any territory under their jurisdiction, is forever prohibited; and the term "negro or person of color," as here employed, shall be held to mean any and all persons of African descent or having any trace of African or negro blood.

Nothing will contribute more to the popular development and wise administration of a republican government than for the people in their legislatures to have an opportunity, by the adoption of this resolution, to provide that forever hereafter it shall be contrary to the fundamental law of the Republic for a negro or a part negro or an African or a part African to intermarry with a white person, a Caucasian, or any person of like description. The object of this resolution is to submit to the States a constitutional amendment for this purpose.

We have heard a great deal in late days about the white-slave traffic and its enormity in New York, its appalling extent in many of the great cities, particularly in Chicago, wherein it is shown that aliens from France and the more enlightened countries of Europe go to the south of Europe among the more ignorant and impoverished classes and there, under pretense of bringing these helpless girls to the United States, where they have great opportunity for employment and honest labor, transporting them, like cattle, in the holds of vessels, have them landed at Ellis Island and there buried into the slums of these cities. Thus, the innocent, ignorant, homeless, and friendless girls of other lands are brought to fair America by villainous aliens, only to find themselves in the shackles of poverty, in the toils of the libertine and most helpless depravity. It is appalling and unspeakably repulsive that such a thing under our immigration laws or other statutes can be possible in this great country. But, Mr. Chairman, as terrific and revolting as it is, it is not yet so revolting as that occurrence lately in one of the cities of our country—the city of Chicago. Not only is the white-slave traffic carried on, but a white girl of this country is made the slave of an African brute, sanctioned by the laws of the State, and that slavery solemnized by the form of a marriage ceremony. The newspapers, glaring in their headlines, announce that Jack Johnson again marries a white woman. Thank God such an outrage is impossible anywhere in the Southland.

Yet we say that this is a great country, with its morals, its traditions, its virtues, and its examples, deserving to be emulated and envied by other countries of the earth. Behold, if you will, an African prizefighter-saloonkeeper, in defiance of the laws of the State of Illinois—nay, in accordance with the laws of the State of Illinois, in accordance with the municipal regulations—entering the office of a probate magistrate, calling on him to issue—"To me, Jack Johnson!"—a marriage license to wed a young American white woman, a woman of our own blood, of our own race, of our own color. When a clerk says, "But, sir, except under given rules you can not get it," forthwith the African turns to a superior and demands it, and the clerk is directed by his superior to issue to the fiendish brute a legal certificate permitting a white woman in Chicago, U. S. A., to be bound in the wedlock of black slavery.

To-day, Mr. Chairman, during another discussion, we have already heard something from our northern colleagues touching the slavery of the negroes of the South. No brutality, no infamy, no degredation in all the years of southern slavery possessed such villainous character and such atrocious qualities as the provision of the laws of Illinois, New York, Massachusetts, and other States which allow the marriage of the negro Jack Johnson to a woman of the Caucasian strain. [Applause.] Gentlemen, I offer this resolution that the proper committee may consider it and that the States of the Union may have an opportunity to ratify it. This is no amendment peculiarly favorable to one portion of our great land. In that section far to the south of us such is the relation between the two races that no African within all of Dixie land carries in his heart the hope or cherishes in his mind the aspiration that he can ever lead there to the altar of matrimony a woman of Caucasian blood. With all the impositions we are alleged to have placed upon this inferior race, such is our harmony, such is the fellowship between the blacks and the whites of the South, such is the black's respect for the superiority of his former master, that they would commit self-destruction before they would entertain the thought of matrimony with a white girl beneath southern skies.

You have some negro problems up North yourselves. The negro question stands out in the example of Johnson's marriage in Chicago as presenting to you as grave a negro question as ever confronted your brethren in the South; and I say to you, in no bitterness, but in the depths of good fellowship, that we in that far-off land will be glad, in the spirit of love and fraternity, to aid you in its proper and its wise and its permanent solution. The case we cite is not an isolated one. The records of Boston,

of Chicago, and of other cities show that negroes less prominent, of less notoriety, are from time to time binding themselves in matrimony with weak and unfortunate women of the white race. Gentlemen, that does not happen in the South. May God spare you, our brethren of the North, of its recurrence. It does transpire in the North; it does occur in the West; and I say to you that we are ready now, without the arbitrament of war, without an appeal to arms, without a terrific four years' deluge of fratricidal blood, to join with you in peace, in harmony, and in amity in solving this great negro problem that now confronts you in the North and in the West. Every son of the South will offer his life to lift the pall of its infamy from your homes and perish if need be to free your white girls from the accursed thralldom. We will support you in the adoption of an amendment of this character to our fundamental law. There is no place in all our southern country where a negro can not go and find employment and peaceful habitation. There are sections in the northern country and in the State of my friend from Indiana, who sits before me, where they allow no negro to stop. When one comes along seeking a place of residence or a place of abode he is advised peacefully and properly that it is not healthy there for gentlemen of his color. If this presents to you any serious problem, we will be glad to come and in peace and fraternity undertake to aid you in its solution.

My colleagues, it is a source of gratification for a Member from Dixie to observe with what better conception, with what fairer vision, with what greater intelligence you now view and appreciate the difficulties and struggles our southern people went through when we came from the crucible of war to meet and solve the negro question in the ashes of poverty. We are glad to observe your generous spirit, your conciliatory attitude, and happy we are to announce to you that in all these former belligerent States a condition of peace exists between the African and the Caucasian. The negro goes on in his accustomed employment, not only undisturbed, but encouraged. There is no avenue of honorable labor and honorable employment in which he has not an opportunity to go. He is unintimidated, protected by law, aided and helped in every laudable ambition, but he has known through all the generations that wedlock between him and a woman of the South was impossible, yea, more impossible than any other human undertaking to which he could aspire. He knew not only that, but he knew and realized that government and the administration of law properly belong to the white people of those States and he has acquiesced. He largely obeys the law; he is protected; he is secure and he has the fairest opportunity to-day to go forward in industrial progress and moral development that he has ever had and his opportunities for this growth and this progress in the South are superior to that of any other section of this great land. This being true, gentlemen, there comes into our hearts a yearning desire to aid you in the herculean difficulties you encounter in the northern sections of our country with respect to the negro, his relations to society, and your protection against the damning blight of his blood in the veins of your descendants. Do you propose that in all the future years the negro man who can seize upon some weak-minded woman of our race, who can infatuate her, who can over-persuade her and contract her in wedlock, do you propose that these things shall go sanctioned by laws of your States?

If the power, political or otherwise, of the African in those States is so potential, where the division between political parties may be close, that you can not solve it by State constitutional amendments or State legislation, we are ready, from the southern country, with, I apprehend, not a dissenting voice, to join you in adopting a resolution in the Congress submitting to the people of all the States a constitutional amendment that will make it impossible forever hereafter for a brutal African prize-fighter to join to his name that of even a fallen American woman. [Applause.] We invite you to this grave question and its fair, nonsectional, but just consideration. Gentlemen, is it possible that in some far day in the distance—three generations, or five generations, or ten generations—is it possible that in those future years, under a legal permission of marriage between the white and the black races, that when your great-great-grandson goes to take unto himself a companion for life he will wonder and not know whether the bride for his young manhood is a pure American girl or corrupted by a strain of kinky-headed blood? Let this condition go on if you will. It will grow; it will spread. At some day, perhaps remote, it will be a question always whether or not the solemnizing of matrimony in the North is between two descendants of our Anglo-Saxon fathers and mothers or whether it be of a mixed blood descended from the orang-utan trodden shores of far-off Africa.

Bestir yourselves for the adoption of the amendment to our Constitution which I am now discussing and which is your haven of safety and for the glory and purity of our whole country.

Moreover, it is detrimental to the highest welfare of both races for such a condition to exist. I put the plain question to you, that if here in this northern city and yonder in that western city and over there in this city bordering on the Mason and Dixon line, with from time to time the journals of the country carrying news of the accomplishment of the relation of husband and wife between white and black, do you apprehend, as thoughtful men, that it will not make an impress upon the vicious element of the negro race? The permission of such a thing by a sovereign State or a republican Government is damning and a danger signal heralding an ill omen for which we can offer no excuse. We can do no greater violence, we can offer no more ill-fated injustice, to the negro in this land than to let our statutes permit him to entertain the hope that at some future time he or his offspring, or she or her offspring, may be married to a woman or a man of the white race. It will bring conflicts in the coming years—black, dark, gruesome, and bloody. Whenever, gentlemen, this condition prevails at the North to such an extent that these ideas and notions begin to creep into the heads of negroes south of the Mason and Dixon line, and whenever we have a foreign tide into the Southland of the white race unacquainted with our customs and traditions, and when they begin to bargain and contemplate matrimony between the whites and the blacks there, know you now that the result will be fraught with disaster, the consequences of which will bring annihilation to that race whom we have protected in our land for all these years. And your States that permit the intermarriage of races will bear their just share of responsibility and odium for such a condition. Are we ready for the broad practice, I ask you again, are we ready for the broad and general practice to exist in this country of intermarriage between whites and blacks? Are you prepared for it? If you are, then well and good. The South is not and never will be. If you are not, I give you warning now when these occurrences are comparatively rare—I give you warning to-day, when just now and then these horrible matrimonial contracts are made—that this is a time for the American Congress to intervene and decree that forever the dominant race in this country shall preserve its veins from even the taint of African blood.

Mr. HEFLIN. Will my friend permit an interruption?

Mr. RODDENBERY. I will.

Mr. HEFLIN. Does the gentleman recall that in the debate between Douglas and Lincoln at Charleston, Ill., in 1858, Mr. Lincoln said:

> I have not, am not, and never have been in favor of permitting marriage between the white and black races?

Mr. RODDENBERY. Substantially that language is correct, and it is historic. The same sentiment might be quoted from other of the leading patriots of the retreating past without regard to politics and without regard to their geographical origin or residence. Intermarriage between whites and blacks is repulsive and averse to every sentiment of pure American spirit. It is abhorrent and repugnant to the very principles of a pure Saxon government. It is subversive of social peace. It is destructive of moral supremacy, and ultimately this slavery of white women to black beasts will bring this Nation to a conflict as fatal and as bloody as ever reddened the soil of Virginia or crimsoned the mountain paths of Pennsylvania. It may now be but a small cloud on the western horizon, hanging over the borders of the Great Lakes around that wonderful city; it may be but the vapors apparently rising from the Atlantic above the towering smokestacks around the suburbs of the great city of New York; it may be but an hallucination around the historic and puritanic city of Boston, but if this policy is long indulged by these States and countenanced by our Federal Government permitting by law the sombre-hued, black-skinned, thick-lipped, bull-necked, brutal-hearted African to walk into the office of a magistrate and demand an edict of the courts of his State, guaranteeing him legal wedlock to a white woman, if this proceed henceforth and onward, I challenge any man of wisdom and insight into the future to assert that my language portends a more calamitous culmination than a far-seeing statesman would prophesy. Let us uproot and exterminate now this debasing, ultrademoralizing, un-American, and inhuman leprosy.

Gentlemen, you may Africanize this great country by continuing in Northern and Western States to sacrifice white women on the altar of the negroes' lustful fires, but, thank God, there are yet 13 States beneath cerulean skies that turn with yearning heart and willing hands to help you strike it down ere it curse you, and in cursing you curse us all forever [applause], and, in cursing you, lest it destroy you and destroy us altogether. No blacker incubus ever fixed its slimy claws upon

the social body of this Republic than the embryonic cancer of negro marriage to white women in certain portions of our country. It even now begins to fester. No more voracious parasite ever sucked at the heart of pure society, innocent girlhood, or Caucasian motherhood than the one which welcomes and recognizes the sacred ties of wedlock between Africa and America. [Applause.]

There is no racial antipathy in this. There is no sectional arraignment here. I am glad to chronicle the fact that many States in these vast prairies to the westward and a number of these States in the hills northeastward and reaching out to New England will not permit Jack Johnson to marry the daughter of their brother. God speed the day when Illinois and her sisters may rise and put their constitutional inhibition or legal prohibition upon it! Lest that day be far off, lest the results be disastrous ere we reach it, I address an appeal to your judgment, to your Americanism, your patriotism, and your wisdom to support a constitutional amendment uprooting totally an evil of the present, thus warding off the disasters of the future. May it please honorable Members to communicate with the Committee on the Judiciary and implead the committee that they report in favor of this resolution, to be speedily acted upon in the House, that we may submit to the sovereign States an opportunity for the people's representatives there to declare that forever hereafter marriage between white man and negro or white woman and negro is prohibited by the fundamental law of this Republic. [Applause.]

And again I say to you, my brethren from all sections of the country, when we of the South are asking no appropriation for the goods that were taken years ago; when we are asking you for no access to the Treasury; when we are submitting to you a problem of the intermarriage between the races, which is unknown in our Southland—again I say to you that there is not a flag or a coat of arms south of Mason and Dixon's line that is not ready now, in peace and in unbroken phalanx, to join the Members from New England, to join the Members from the Mississippi Basin and the valleys below, to join the gentlemen from the Great Lakes and the prairies far to the westward in fixing in the Constitution of our country a provision that shall forever give us undefiled homes, a pure manhood, an uncorrupted womanhood. Do this and, secure in the bonds of brotherhood, we will go forward and onward, living, loving, marrying, and multiplying under the protection of a Government worthy of the sacrifices that Washington and his Colonial armies made to give it existence and establish it, and worthy of the wisdom and the patriotism that Jefferson, Madison, Jackson, Lincoln, and the others bestowed that it might be preserved to us and our posterity in perpetuity forever. [Applause.]

I had not intended to discuss this question just now, but it being apparent from the proceedings that Calendar Wednesday would be consumed entirely with the discussion of a little bill dealing with $18,000 for a bridge across Snake River, around Jacksons Hole, in Wyoming, and regarding the question of supremacy of American manhood, of the unsullied purity of the blood of American womanhood as at least of equal dignity with Snake River, or Johnsons Hole, in Wyoming, we have ventured to make these few brief and impromptu observations. [Applause.]

Why, gentlemen, while you are dealing with Snake River the black vulture is gnawing at the vitals of the integrity, and love, and purity of American homes. While you are attempting the appropriation of $18,000 to construct a bridge over Jacksons Hole, in the ruts and hills of Wyoming, the brutal hand of Africa's son is laid about the throat of woman's hope in free America. [Applause.] Therefore I thank the committee for its indulgence while we make these remarks touching what we regard a most serious problem. If strength permitted, with your close attention and with that extreme courtesy that you have shown, we would extend our remarks at a greater length on this important subject. At some future time we trust again, in conjunction with other Members, to undertake to impress the vitality and momentousness of this proposition upon the House of Representatives.

Mr. SMITH of Texas. Mr. Chairman, if no other gentleman desires to address the committee on the bill, I will ask that the bill be read for amendment.

Mr. GOLDFOGLE. Mr. Chairman, I make the point of order that there is no quorum present.

The CHAIRMAN. The gentleman from New York [Mr. GOLDFOGLE] makes the point of no quorum. The Chair will count.

Mr. MANN. I do not suppose the gentleman means to intimate that the last speech drove the Members out of the Hall so that there are not even 100 members of the committee present.

The CHAIRMAN. The Chair ascertains by counting that there are 70 Members present, not a quorum. The Clerk will call the roll.

The Clerk proceeded to call the roll, when the following Members failed to answer to their names:

Adamson	Fairchild	Jacoway	Powers
Aiken, S. C.	Fitzgerald	Kendall	Pujo
Ames	Floyd, Ark.	Kindred	Rainey
Andrus	Fordney	Kitchin	Randell, Tex.
Ansberry	Fornes	Knowland	Ransdell, La.
Anthony	Foss	Konig	Rees
Bates	Fuller	Kopp	Reyburn
Bell, Ga.	Gardner, Mass.	Lafferty	Richardson
Berger	Gardner, N. J.	La Follette	Riordan
Borland	Garrett	Langham	Roberts, Mass.
Bradley	George	Langley	Roberts, Nev.
Brantley	Gill	Lawrence	Rodenberg
Brown	Gillett	Legare	Sabath
Burke, Wis.	Good	Lenroot	Scully
Byrnes, S. C.	Gould	Levy	Sells
Campbell	Gray	Lewis	Sherley
Candler	Green, Iowa	Lindsay	Sisson
Carter	Gregg, Pa.	Linthicum	Slayden
Clark, Fla.	Gregg, Tex.	Littlepage	Slemp
Clayton	Gudger	Littleton	Small
Collier	Guernsey	Longworth	Smith, Cal.
Conry	Hamill	McCreary	Sparkman
Copley	Hanna	McGillicuddy	Stack
Cox, Ohio	Hardwick	McGuire, Okla.	Sterling
Crago	Harris	McHenry	Sulloway
Cravens	Harrison, N. Y.	McKenzie	Talbott, Md.
Crumpacker	Hart	Maher	Taylor, Colo.
Currier	Hartman	Martin, Colo.	Taylor, Ohio
Curry	Haugen	Matthews	Townsend
Daugherty	Hawley	Miller	Turnbull
Davidson	Henry, Conn.	Moon, Pa.	Vreeland
Davis, W. Va.	Henry, Tex.	Morrison	Warburton
De Forest	Higgins	Murray	Webb
Denver	Hill	Norris	Weeks
Dickson, Miss.	Hinds	Olmsted	Whitacre
Difenderfer	Hobson	O'Shaunessy	Wilson, N. Y.
Draper	Howard	Padgett	Wood, N. J.
Driscoll, D. A.	Howland	Parran	Woods, Iowa
Driscoll, M. E.	Hughes, Ga.	Patten, N. Y.	Young, Mich.
Dwight	Humphreys, Miss.	Peters	
Estopinal	Jackson	Pou	

The SPEAKER. The Clerk will call my name.

The Clerk called the name of Mr. CLARK of Missouri, and he answered "Present."

The committee rose; and the Speaker having resumed the chair, Mr. SAUNDERS, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee finding itself without a quorum, he had caused the roll to be called, when 228 Members, a quorum, had responded to their names, and that he reported the names of the absentees to the House.

The SPEAKER. A quorum being present, the committee will resume its session.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (S. 3947) to provide for a bridge across Snake River, in Jackson Hole, Wyo., with Mr. SAUNDERS in the chair.

Mr. SMITH of Texas. Mr. Chairman, I ask that the bill be read for amendment.

The CHAIRMAN. The Clerk will report the bill.

Mr. MONDELL. Mr. Chairman, I ask unanimous consent that the amendment in the form of a substitute be read in lieu of the bill.

The CHAIRMAN. The gentleman from Wyoming asks unanimous consent that the amendment in the form of a substitute be read instead of the original bill.

Mr. MANN. Mr. Chairman, the bill is very short. Let it be read.

The CHAIRMAN. The gentleman from Illinois objects. The Clerk will report the bill.

The Clerk read the bill, as follows:

Whereas in the administration of the act of June 17, 1902, "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," the United States Reclamation Service has constructed at the outlet of Jackson Lake, Wyo., and the source of the Snake River a retaining storage dam; and

Whereas the use of this dam to store the flood waters of Jackson Lake and the Snake River watershed and the release of the surplus waters thus stored into the channel of the Snake River for utilization in irrigating lands upon lower levels maintains high water in the Snake River at all periods of the year; and

Whereas through the maintenance of high water the Snake River, previously fordable for parts of each year, in its course through the Jackson Hole region is now rendered unfordable at all times, and the residents of that region, upward of 1,000 in number, are cut off from railroad and other communication for freight and travel: Therefore:

Be it enacted, etc., That the sum of $25,000 is hereby appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, to be expended under the direction of the Secretary of War, through the engineer officer in charge of road and bridge construction and maintenance in the Yellowstone National Park, for the construction of a bridge across Snake River, at a point in township 41 or 42 north, range 116 or 117 west, Wyoming, to be determined with a view of best serving the public travel through Jackson Hole and adjacent territory in Wyoming and Idaho: *Provided*, That the local authorities shall cause the approaches to the proposed bridge to be constructed

without expense to the United States: *And provided further*, That the local authorities shall provide for the maintenance and repair of the proposed bridge after it is constructed.

The Clerk read the following amendment, recommended by the committee:

Strike out all after the enacting clause and insert the following:
"That the Secretary of the Interior is hereby authorized to use such portion of the reclamation fund, not to exceed $18,000, and in no event more than one-half the sum that may be necessary for the construction of a bridge across Snake River at a point in township 41 or 42 north, range 116 or 117 west, Wyoming, to be determined by the Reclamation Service, with the view of best serving the people of Jackson Hole and adjacent territory in Wyoming: *Provided*, That no part of the funds herein authorized to be used, except such as may be necessary for the making of examinations and estimates, shall be expended until the Secretary of the Interior shall have obtained, from the proper local authorities, satisfactory guaranties of the payment by the said local authorities of one-half of the cost of said bridge; and that the said local authorities assume full responsibility for and will at all times maintain and repair the said bridge and approaches thereto."
Strike out the preamble.

Mr. MANN. Mr. Chairman, I move to amend the amendment by adding thereto the following:

The Clerk read as follows:

Add to the amendment the following:
"*Provided further*, That the amount of the reclamation fund so used shall be charged as a part of the cost of the reclamation project or projects the construction and development of which have caused the necessity of such project."

The CHAIRMAN. The question is on the amendment to the amendment.

The question was taken, and the amendment to the amendment was agreed to.

The CHAIRMAN. The question now is on the amendment as amended.

The question was taken, and the amendment as amended was agreed to.

Mr. SMITH of Texas. Mr. Chairman, I move that the committee do now rise and report the bill to the House with the recommendation that the amendment be agreed to and the bill as amended do pass.

The motion was agreed to.

Accordingly the committee determined to rise; and the Speaker having resumed the chair, Mr. SAUNDERS, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (S. 3947) to provide for a bridge across Snake River in Jackson Hole, Wyo., and had directed him to report the same back with an amendment, with the recommendation that the amendment be agreed to and that the bill as amended do pass.

The SPEAKER. The question is on the amendment.

The question was taken, and the amendment was agreed to.

The SPEAKER. The question now is on the third reading of the amended Senate bill.

The bill was ordered to be read a third time, was read the third time, and passed.

The preamble was stricken out.

On motion of Mr. SMITH of Texas, a motion to reconsider the vote whereby the bill was passed was laid on the table.

On motion of Mr. SMITH of Texas, the bill H. R. 21171, a similar House bill, was laid on the table.

ADJOURNMENT.

The SPEAKER. Has the gentleman from Texas any further business from his committee?

Mr. SMITH of Texas. Yes, Mr. Speaker, we have one more bill, which we design to take up next Calendar Wednesday. I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 10 minutes p. m.) the House adjourned until to-morrow, Thursday, December 12, 1912, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of War, transmitting, with a letter from the Acting Chief of Engineers, report on preliminary examination of Pagan River with a view to securing a depth of 12 feet and a turning basin at Smithfield, Va. (H. Doc. No. 1126); to the Committee on Rivers and Harbors and ordered to be printed.

2. A letter from the Secretary of the Treasury, transmitting copy of a communication from the Secretary of the Interior submitting estimate of appropriation to pay the occupants under patents from the State of Michigan for their improvements and possessory rights to lands within the L'Anse and Vieux de Sert Indian Reservation, Mich. (H. Doc. No. 1151); to the Committee on Indian Affairs and ordered to be printed.

3. A letter from the Secretary of War, recommending legislation on the Army appropriation bill authorizing an increase of pay to certain clerks and messengers, citizens of the United States, employed in the Philippine Islands, and requesting authority for the department to employ natives of the Philippine Islands as clerks and messengers of lower grades at reduced compensation (H. Doc. No. 1156); to the Committee on Military Affairs and ordered to be printed.

4. A letter from the Secretary of the Treasury, submitting supplemental estimate of appropriation for equipping the new building for the Bureau of Printing and Engraving, now under construction (H. Doc. No. 1150); to the Committee on Appropriations and ordered to be printed.

5. A letter from the Secretary of the Treasury, transmitting copy of a communication from the Acting Secretary of Commerce and Labor submitting estimate of deficiencies in appropriations for said department for the fiscal year ending June 30, 1913 (H. Doc. No. 1152); to the Committee on Appropriations and ordered to be printed.

6. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and fact in the French spoliation cases relating to the vessel schooner *Betsey*, George Vincent, master (H. Doc. No. 1147); to the Committee on Claims and ordered to be printed.

7. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Commerce*, Samuel Freeman, master (H. Doc. No. 1143); to the Committee on Claims and ordered to be printed.

8. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Two Brothers*, Isaac Lockwood, master (H. Doc. No. 1141); to the Committee on Claims and ordered to be printed.

9. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel brig *George*, Richard Quick, master (H. Doc. No. 1136); to the Committee on Claims and ordered to be printed.

10. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Dolphin*, N. H. Downe, master (H. Doc. No. 1148); to the Committee on Claims and ordered to be printed.

11. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel brig *Peggy*, Nathaniel Small, master (H. Doc. No. 1139); to the Committee on Claims and ordered to be printed.

12. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel ship *Asia*, Edward Yard, master (H. Doc. No. 1135); to the Committee on Claims and ordered to be printed.

13. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel brig *Philanthropist*, Forrest Richardson, master (H. Doc. No. 1140); to the Committee on Claims and ordered to be printed.

14. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel brig *Mars*, Thomas Buntin, master (H. Doc. No. 1137); to the Committee on Claims and ordered to be printed.

15. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel ship *Hunter*, William Whitlock, master (H. Doc. No. 1134); to the Committee on Claims and ordered to be printed.

16. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Lucy*, Eliakin Benham, master (H. Doc. No. 1142); to the Committee on Claims and ordered to be printed.

17. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel brig *Abby*, Harding Williams, master (H. Doc. No. 1138); to the Committee on Claims and ordered to be printed.

18. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel sloop *Orpha*, John Annable, master (H. Doc. No. 1132); to the Committee on Claims and ordered to be printed.

19. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Rising States*, Daniel Bradford, master (H. Doc. No. 1145); to the Committee on Claims and ordered to be printed.

20. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel *Dogger Neptune*, F. M. Bargum, master (H. Doc. No. 1131); to the Committee on Claims and ordered to be printed.

21. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel ship *Louisa*, John Clarke, jr., master (H. Doc. No. 1133); to the Committee on Claims and ordered to be printed.

22. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Lion*, Peter Frazier, master (H. Doc. No. 1146); to the Committee on Claims and ordered to be printed.

23. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Belisarius*, William Bartlett, master (H. Doc. No. 1149); to the Committee on Claims and ordered to be printed.

24. A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of law and of fact in the French spoliation cases relating to the vessel schooner *Kitty*, Ezra Finney, master (H. Doc. No. 1144); to the Committee on Claims and ordered to be printed.

25. A letter from the Secretary of War, transmitting, with a letter from the Acting Chief of Engineers, report on examination and survey of the New York Harbor with a view of securing increased width and depth of water from a point at or near southwest spit northwest of Sandy Hook (H. Doc. No. 1124); to the Committee on Rivers and Harbors and ordered to be printed.

26. A letter from the Secretary of War, transmitting, with a letter from the Acting Chief of Engineers, report on examination of Potomac River at Colonial Beach, Va., with a view to a proper approach to the landing place (H. Doc. No. 1127); to the Committee on Rivers and Harbors and ordered to be printed.

27. A letter from the Secretary of War, transmitting report of National Forest Reserve Commission for the fiscal year ending June 30, 1912 (H. Doc. No. 1158); to the Committee on Interstate and Foreign Commerce and ordered to be printed.

28. A letter from the Secretary of War, transmitting, with a letter from the Acting Chief of Engineers, report on examination and survey of Archers Hope River, Va., with a view to securing increased depth from its mouth to Williamsburg (H. Doc. No. 1130); to the Committee on Rivers and Harbors and ordered to be printed.

29. A letter from the Secretary of War, transmitting, with a letter from the Acting Chief of Engineers, report on examination and survey of Bass Harbor Bar and Deer Island Thoroughfare, Me. (H. Doc. No. 1128); to the Committee on Rivers and Harbors and ordered to be printed.

30. A letter from the Secretary of War, transmitting, with a letter from the Acting Chief of Engineers, report on examination and survey of Brule Harbor, Wis. (H. Doc. No. 1129); to the Committee on Rivers and Harbors and ordered to be printed.

31. A letter from the Secretary of War, transmitting report of Lieut. Gen. S. B. M. Young, United States Army, retired, president of the Board of Commissioners of the United States Soldiers' Home, upon the financial and other affairs of the military prison at Fort Leavenworth, Kans., together with copies of reports from commanding officer of that prison and the commanding officer of the Pacific branch United States military prison, all for the fiscal year ended June 30, 1912 (H. Doc. No. 1157); to the Committee on Expenditures in the War Department and ordered to be printed.

32. A letter from the Secretary of the Treasury, transmitting the report of the Surgeon General of the Public Health Service for the fiscal year 1912 (H. Doc. No. 971); to the Committee on Interstate and Foreign Commerce and ordered to be printed.

33. A letter from the Secretary of the Treasury, transmitting copy of communication from the Secretary of the Interior, requesting appropriation for the continuation of the investigation of the mineral resources of Alaska (H. Doc. No. 1153); to the Committee on Appropriations and ordered to be printed.

34. A letter from the Secretary of the Treasury, recommending that the urgent deficiency bill provide that the expenses of the annual assay commission for the fiscal year 1913 may be paid from the appropriation, "Contingent expenses, mint at Philadelphia, 1913" (H. Doc. No. 1154); to the Committee on Appropriations and ordered to be printed.

35. A letter from the Secretary of the Treasury, transmitting copy of communication from the Secretary of State recommending that an appropriation be made in the sundry civil bill for the expenses of the International Joint Commission, United States and Great Britain, instead of being made in the consular and diplomatic bill (H. Doc. No. 1155); to the Committee on Appropriations and ordered to be printed.

36. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of Port Aransas, Tex. (H. Doc. No. 1125); to the Committee on Rivers and Harbors and ordered to be printed.

37. A letter from the Secretary of State, transmitting, pursuant to law, authentic copy of the certificate of the final ascertainment of electors appointed in the State of Indiana for President and Vice President at the election held therein on November 5, 1912; to the Committee on Election of President, Vice President, and Representatives in Congress.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. REILLY, from the Committee on the Post Office and Post Roads, to which was referred the bill (H. R. 26819) to regulate the pay of substitute letter carriers in the City Delivery Service and provide for their status when appointed to permanent positions as regular carriers, reported the same without amendment, accompanied by a report (No. 1269), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. ADAIR, from the Committee on Invalid Pensions, to which was referred sundry bills, reported in lieu thereof the bill (H. R. 27062) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war, accompanied by a report (No. 1267), which said bill and report were referred to the Private Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. JOHNSON of Kentucky: A bill (H. R. 27063) authorizing the purchase of a site for a post-office building at Hodgenville, Ky.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 27064) authorizing the purchase of a post-office site at Elizabethtown, Ky.; to the Committee on Public Buildings and Grounds.

By Mr. KINKAID of Nebraska: A bill (H. R. 27065) providing for the purchase of a site and the erection of a public building in the city of O'Neill, State of Nebraska; to the Committee on Public Buildings and Grounds.

By Mr. CALDER: A bill (H. R. 27066) to amend section 4756 of the Revised Statutes; to the Committee on Naval Affairs.

By Mr. HAMLIN: A bill (H. R. 27067) for the purchase of a site and the erection of a public building in the town of Fayette, Mo.; to the Committee on Public Buildings and Grounds.

By Mr. SMITH of Texas: A bill (H. R. 27068) making appropriation for the construction of additional barracks at Fort Bliss, the Army post at El Paso, Tex.; to the Committee on Military Affairs.

By Mr. MADDEN: A bill (H. R. 27069) to amend the interstate-commerce law; to the Committee on Interstate and Foreign Commerce.

By Mr. ANTHONY: A bill (H. R. 27070) to purchase the Kansas and Missouri bridge at Fort Leavenworth for military purposes; to the Committee on Military Affairs.

By Mr. ADAMSON: A bill (H. R. 27071) to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. AUSTIN: A bill (H. R. 27072) to authorize the President of the United States to appoint, by selection, an additional major general of the United States Army; to the Committee on Military Affairs.

By Mr. MORGAN of Louisiana: A bill (H. R. 27073) for the erection of a Federal building at Hammond, La.; to the Committee on Public Buildings and Grounds.

By Mr. COLLIER: A bill (H. R. 27074) authorizing a survey of Big Black River, Miss.; to the Committee on Rivers and Harbors.

By Mr. HUGHES of West Virginia: A bill (H. R. 27075) to promote the safety of employees and passengers upon railroads

engaged in interstate traffic; to the Committee on Interstate and Foreign Commerce.

By Mr. CLAYTON: A bill (H. R. 27076) to amend section 36 of "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909; to the Committee on the Judiciary.

By Mr. SPARKMAN: A bill (H. R. 27077) making it unlawful for any society, order, or association to send or receive through the United States mails, or to deposit in the United States mails, any written or printed matter representing such society, fraternal order, or association to be named or designated or entitled by any name hereafter adopted, any word or part of which title shall be the name of any bird or animal the name of which bird or animal is already being used as a part of its title or name by any other society, fraternal order, or association; to the Committee on the Post Office and Post Roads.

By Mr. HAYES: A bill (H. R. 27078) to exempt from cancellation certain desert-land entries in the Chuckawalla Valley and Palo Verde Mesa, Riverside County, Cal.; to the Committee on the Public Lands.

By Mr. CARTER: A bill (H. R. 27079) making it unlawful for any society, order, or association to send or receive through the United States mails, or to deposit in the United States mails, any written or printed matter representing such society, fraternal order, or associaion to be named or designated or entitled by any name hereafter adopted, any word or part of which title shall be the name of any bird or animal the name of which bird or animal is already being used as a part of its title or name by any other society, fraternal order, or association; to the Committee on the Post Office and Post Roads.

By Mr. CARLIN: Resolution (H. Res. 744) to pay to Lillie M. Reesch $600 for certain services; to the Committee on Accounts.

By Mr. DUPRÉ: Resolution (H. Res. 745) to provide for printing additional copies of Senate Document No. 972, Rules of Practice for the Courts of Equity; to the Committee on Printing.

By Mr. RODDENBERY: Joint resolution (H. J. Res. 368) proposing an amendment to the Constitution of the United States prohibiting intermarriage between negroes or persons of color and Caucasian or any other character of persons; to the Committee on the Judiciary.

By Mr. GARDNER of Massachusetts: Joint resolution (H. J. Res. 369) authorizing the Secretary of the Treasury to give certain old Government documents to the Old Newbury Historical Society, of Newburyport, Mass.; to the Committee on the Library.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ADAIR: A bill (H. R. 27062) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war; to the Committee of the Whole House.

By Mr. ANTHONY: A bill (H. R. 27080) granting an increase of pension to Judson N. Pollard; to the Committee on Invalid Pensions.

By Mr. ASHBROOK: A bill (H. R. 27081) granting an increase of pension to David H. Scott; to the Committee on Invalid Pensions.

By Mr. BROWN: A bill (H. R. 27082) for the relief of the heirs of Elias W. Phares, deceased; to the Committee on War Claims.

Also, a bill (H. R. 27083) for the relief of the heirs of Jesse Phares, deceased; to the Committee on War Claims.

By Mr. BULKLEY: A bill (H. R. 27084) to remove the charge of desertion from the military record of Lora E. Reed; to the Committee on Military Affairs.

By Mr. CARTER: A bill (H. R. 27085) to remove the charge of desertion standing against George W. Smith; to the Committee on Military Affairs.

By Mr. CLARK of Missouri: A bill (H. R. 27086) for the relief of Henry L. Heckmann; to the Committee on War Claims.

By Mr. CLAYPOOL: A bill (H. R. 27087) granting an increase of pension to Barnett A. Hook; to the Committee on Invalid Pensions.

By Mr. DODDS: A bill (H. R. 27088) granting an increase of pension to Charles H. Crandall; to the Committee on Invalid Pensions.

By Mr. DYER: A bill (H. R. 27089) granting a pension to Josephine C. Nixon; to the Committee on Invalid Pensions.

By Mr. FARR: A bill (H. R. 27090) for the relief of Cora Evans; to the Committee on Claims.

By Mr. GARRETT: A bill (H. R. 27091) for the relief of the estates of Nathan Dungan and Rebecca Dungan, deceased; to the Committee on War Claims.

Also, a bill (H. R. 27092) for the relief of William Grant; to the Committee on War Claims.

By Mr. GOEKE: A bill (H. R. 27093) to remove the charge of desertion from the record of William E. Cummings; to the Committee on Military Affairs.

By Mr. GOLDFOGLE: A bill (H. R. 27094) for the relief of Nelson D. Dillon, executor of Harriet A. Dillon, deceased, widow of Robert Dillon, deceased; to the Committee on War Claims.

By Mr. GUDGER: A bill (H. R. 27095) for the relief of Stanley Mitchell; to the Committee on Naval Affairs.

By Mr. HAMLIN: A bill (H. R. 27096) granting a pension to Mary U. Isenberg; to the Committee on Invalid Pensions.

By Mr. HAYES: A bill (H. R. 27097) granting an increase of pension to Jasper Pitts; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27098) granting an increase of pension to Bridget Scanlon; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27099) for the relief of Patrick G. Dollard; to the Committee on Military Affairs.

Also, a bill (H. R. 27100) for the relief of William Richard Hogg; to the Committee on Military Affairs.

Also, a bill (H. R. 27101) for the relief of David Walker; to the Committee on Military Affairs.

Also, a bill (H. R. 27102) for the relief of Albert C. Waltenspiel; to the Committee on Military Affairs.

Also, a bill (H. R. 27103) for the relief of Jasper J. Henry; to the Committee on Military Affairs.

Also, a bill (H. R. 27104) for the relief of John Vreeland; to the Committee on Military Affairs.

By Mr. HENSLEY: A bill (H. R. 27105) for the relief of Henry J. Tucker; to the Committee on Military Affairs.

By Mr. HOWELL: A bill (H. R. 27106) granting an increase of pension to Brigham Lamb; to the Committee on Pensions.

By Mr. JOHNSON of Kentucky: A bill (H. R. 27107) for the relief of the trustees of Bloomfield Lodge, No. 57, Ancient Free and Accepted Masons, of Bloomfield, Ky., the trustees of the town of Bloomfield, Ky., and the trustees of the Bloomfield graded common schools at Bloomfield, Ky.; to the Committee on War Claims.

By Mr. KAHN: A bill (H. R. 27108) granting a pension to William Deable; to the Committee on Pensions.

Also, a bill (H. R. 27109) granting an increase of pension to Belle McP. McCrackin; to the Committee on Pensions.

Also, a bill (H. R. 27110) for the relief of Charles Hellyer; to the Committee on Military Affairs.

By Mr. LEE of Georgia: A bill (H. R. 27111) granting a pension to Stacy Ann Wacker; to the Committee on Invalid Pensions.

By Mr. LITTLEPAGE: A bill (H. R. 27112) granting an increase of pension to Allen T. Landers; to the Committee on Invalid Pensions.

By Mr. MERRITT: A bill (H. R. 27113) granting an increase of pension to Orlando Burt; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27114) granting a pension to Esther Neddo; to the Committee on Pensions.

Also, a bill (H. R. 27115) granting a pension to John Bresett; to the Committee on Invalid Pensions.

By Mr. MOON of Tennessee: A bill (H. R. 27116) granting an increase of pension to James H. Pack; to the Committee on Invalid Pensions.

By Mr. MOORE of Texas: A bill (H. R. 27117) for the relief of Mrs. E. J. Amacker; to the Committee on War Claims.

By Mr. NYE: A bill (H. R. 27118) granting a pension to Caroline Fust; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27119) granting an increase of pension to Anna Rebecca Overman; to the Committee on Invalid Pensions.

By Mr. OLDFIELD: A bill (H. R. 27120) to correct the military record of John N. Thompson; to the Committee on Military Affairs.

By Mr. PICKETT: A bill (H. R. 27121) granting a pension to August A. Bemtgen; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27122) granting a pension to Lizzie S. Williams; to the Committee on Invalid Pensions.

By Mr. POST: A bill (H. R. 27123) granting an increase of pension to James A. Dicus; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27124) granting a pension to Martha Moore; to the Committee on Pensions.

Also, a bill (H. R. 27125) to grant an honorable discharge to John R. Stockstill; to the Committee on Military Affairs.

By Mr. ROUSE: A bill (H. R. 27126) granting an increase of pension to Jennie Reed; to the Committee on Invalid Pensions.

By Mr. SELLS: A bill (H. R. 27127) for the relief of the estate of Adam B. Fullen, deceased; to the Committee on War Claims.

By Mr. SLOAN: A bill (H. R. 27128) granting a pension to Carrie Willett Yates; to the Committee on Invalid Pensions.

By Mr. J. M. C. SMITH: A bill (H. R. 27129) granting an increase of pension to Archie E. Booth; to the Committee on Pensions.

By Mr. STEENERSON: A bill (H. R. 27130) granting an increase of pension to James B. Whaley; to the Committee on Pensions.

Also, a bill (H. R. 27131) granting an increase of pension to Daniel W. Brown; to the Committee on Invalid Pensions.

By Mr. STEPHENS of California: A bill (H. R. 27132) granting an increase of pension to Cyrena M. Hatfield; to the Committee on Invalid Pensions.

By Mr. TAYLOR of Ohio: A bill (H. R. 27133) granting an increase of pension to William Collins; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27134) granting an increase of pension to Thomas J. Reynolds; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27135) granting an increase of pension to Robert A. Powelson; to the Committee on Invalid Pensions.

By Mr. THISTLEWOOD: A bill (H. R. 27136) granting an increase of pension to Mary Neace; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27137) granting an increase of pension to Laura J. Ingram; to the Committee on Invalid Pensions.

By Mr. UNDERHILL: A bill (H. R. 27138) granting a pension to Ellen A. Chappell; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. BULKLEY: Resolution adopted by the Lake Michigan Sanitary Association, urging the appropriation of $300,000 for the investigation of the extent of the pollution of the waters of the Great Lakes and of the injury to health resulting therefrom; to the Committee on Interstate and Foreign Commerce.

By Mr. DALZELL: Petition of sundry citizens of Allegheny County, Pa., in favor of the passage of the Dillingham immigration bill; to the Committee on Immigration and Naturalization.

By Mr. DAVIS of Minnesota: Petitions of merchants of various cities in Minnesota, protesting against further extension of parcel-post zone act; to the Committee on the Post Office and Post Roads.

By Mr. DYER: Petition of C. F. Blanke, St. Louis, Mo., favoring House bill 22589, appropriating $500,000 to carry out the recommendations of the State Department that the first expenditure under the Lowden Act for the acquisition of embassy, legation, and consular buildings be made at Mexico City, $150,000; Tokyo, $150,000; Berne, $140,000; Hankow, $60,000; to the Committee on Foreign Affairs.

Also, memorial of George W. Burley, a member of the Pure Fabric League, St. Louis, Mo., favoring House bill 25685, for the labeling and tagging of all fabrics and articles of clothing intended for sale which enter into interstate commerce, and providing penalties for misbranding; to the Committee on Interstate and Foreign Commerce.

By Mr. ESCH: Petition of citizens of Wisconsin, favoring the enactment of legislation giving the Interstate Commerce Commission further power toward controlling the express rates; to the Committee on Interstate and Foreign Commerce.

By Mr. FULLER: Memorial of the State Council of Pennsylvania, Order of Independent Americans, favoring the Dillingham immigration bill (S. 3175); to the Committee on Immigration and Naturalization.

By Mr. GARRETT: Petition of sundry citizens of Brownsville and other places in the ninth congressional district of Tennessee, favoring the enactment of legislation to give the Interstate Commerce Commission further power toward regulating express rates; to the Committee on Interstate and Foreign Commerce.

By Mr. HAYES: Memorial of H. F. Copeland, of San Francisco; Arthur Rosenblatt Co., of San Francisco; and Grace Edwards, of San Jose, Cal., against the Kenyon bill (S. 4043); to the Committee on the Judiciary.

By Mr. HOWELL: Petition of citizens of Richfield, Utah, in favor of regulation of express rates by Interstate Commerce Commission; to the Committee on Interstate and Foreign Commerce.

By Mr. LINDSAY: Memorial of the Patriotic Order Sons of America, State Camp of New York, favoring passage of the Senate bill on immigration; to the Committee on Immigration and Naturalization.

By Mr. MOTT: Memorial of the Millers' National Federation, favoring the passage of Senate bill 957; to the Committee on Interstate and Foreign Commerce.

By Mr. NELSON: Petition of citizens of Lodi, Wis., favoring the enactment of legislation to give the Interstate Commerce Commission further power toward regulating express rates; to the Committee on Interstate and Foreign Commerce.

By Mr. POST: Petition of Mason Bros. and others, of Circleville, Troy, and Plainville, Ohio, against the extension of the parcel post; to the Committee on the Post Office and Post Roads.

By Mr. SLOAN: Petition of numerous persons protesting against parcel-post regulation, the same being residents of the following municipalities in the fourth congressional district of Nebraska: Crete, Clatonia, Waco, Hayes, Utica, Gresham, David City, Alexandria, Milford, Wilber, Ohiowa, Strang, Davenport, Carleton, Bradshaw, Tobias, Giltner, Aurora, Benedict, Sheckley, York, Henderson, Surprise, Stockham, Belvedere, Diller, Brenning, Gilead, Harbin, Chester, Filley, Beatrice, and Goshen; to the Committee on the Post Office and Post Roads.

By Mr. WILSON of New York: Memorial of the Lake Michigan Sanitary Association, favoring investigation by authority of Congress of the extent of the pollution of the waters of the Great Lakes by sewage and asking that Congress appropriate $300,000 for such investigation, of which $25,000 shall be for investigation of Lake Michigan; to the Committee on Interstate and Foreign Commerce.

Also, memorial of the State Camp of New York, Patriotic Order Sons of America, favoring the passage by the House of Representatives of the bill now pending in the House restricting immigration; to the Committee on Immigration and Naturalization.

SENATE.

THURSDAY, *December 12, 1912.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

FINDINGS OF THE COURT OF CLAIMS.

The PRESIDENT pro tempore (Mr. BACON) laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact and conclusion filed by the court in the following causes:

Katharine B. Thomson, administratrix de bonis non cum testamento annexo of the estate of Francis Beach, deceased, *v.* United States (S. Doc. No. 975);

Phil Mitchell, administrator de bonis non cum testamento annexo of the estate of William Hoffman, deceased, *v.* United States (S. Doc. No. 977);

George F. McGinniss *v.* United States (S. Doc. No. 976); and

Harry Troll, administrator of the estate of Justus McKinstry, deceased, *v.* United States (S. Doc. No. 978).

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

DISTRICT REFORM SCHOOL (S. DOC. NO. 979).

The PRESIDENT pro tempore laid before the Senate a communication from the Commissioners of the District of Columbia, transmitting a copy of a memorandum prepared by the Board of Charities of the District of Columbia, in which they concur as their response to a provision in the appropriation act approved June 26, 1912, relative to the necessity for the construction and operation within the District of Columbia of a reform school for white girls, etc., which, with the accompanying paper, was referred to the Committee on the District of Columbia and ordered to be printed.

CITIZENSHIP FOR PORTO RICO.

The PRESIDENT pro tempore laid before the Senate the following communication, which was read and ordered to lie on the table:

WAR DEPARTMENT,
BUREAU OF INSULAR AFFAIRS,
Washington, December 5, 1912.

The honorable the PRESIDENT PRO TEMPORE OF THE SENATE,
United States Senate.

SIR: Referring to letter from this office of the 3d instant quoting a cablegram received from Porto Rico with reference to the bill now pend-