PENNSYLVANIA MILLERS' STATE ASSOCIATION

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Decided October 8, 1900.

1. It is well settled that a railway company whose road is wholly within the bounds of a single State, "when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned, to the regulations and provisions of the Act to regulate commerce." *Interstate Commerce Commission* v. *Detroit, G. H. & M. R. Co.* 167 U. S. 642, 42 L. ed. 309, 17 Sup. Ct. Rep. 986; *Cincinnati, N. O. & T. P. R. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700; *The Daniel Ball*, 10 Wall. 565, 566, *sub nom. The Daniel Ball* v. *United States*, 19 L. ed. 1002.
2. There is no violation of section 2 of the Commerce law shown in this case in the *application* of the rule allowing 96 hours for unloading cars at Philadelphia; neither is there any violation of that section in the facts, that on all other commodities beside those to which the 96-hour rule is applied, only 48 hours are allowed at Philadelphia, and on coal, coke, pig iron and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a *like kind of traffic*," and does not apply where the traffic is of different kinds or classes not competitive with each other.
3. The rule of section 4 of the law, forbidding the greater charge for the shorter than the longer haul, has no application to this case. That rule is based on *distance* and relates to the actual transportation charges and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. (*Interstate Commerce Commission* v. *Detroit, G. H. & M. R. Co.* 167 U. S. 644, 42 L. ed. 309, 17 Sup. Ct. Rep. 986.) If, however, such demurrage charges when added to transportation rates result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 3.

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4. If the time allowed at Philadelphia, or other terminals, for loading or unloading is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points in violation of section 3 of the law might result; and, if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1 of the law, which directs "that charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just."
5. While it is held by the Supreme Court in *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896, that the Commission has no power to prescribe rates, "maximum, minimum, or absolute," the Commission may order the carriers to "desist from the continuance of an unlawful practice." (*Interstate Commerce Commission* v. *East Tennessee, V. & G. R. Co.* 85 Fed. Rep. 110). The Commission may therefore after investigation find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time.
6. It is held that 48 hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. It is further held that 48 hours will be a reasonable time for the actual unloading.
7. By section 1 of the law, storage is named as a "service in connection" with transportation, and the charges therefor are required to be "reasonable and just." The schedule of rates required by section 6 of the law to be printed, posted and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage; and the Commission has so ordered.

Wilson Welsh, for the complainant.

Charles Heebner, for Philadelphia & Reading Railway Company, the Central Railroad of New Jersey, the Perkiomen Railroad Company and the Stony Creek Railroad Company.

George V. Massey, for Pennsylvania Railroad Company and the Northern Central Railway Company.

F. I. Gowen, for Lehigh Valley Railroad Company.

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David Willcox, for Delaware & Hudson Canal Company.

S. P. Wolverton, for Erie & Wyoming Valley Railroad Company, Central Pennsylvania & Western Railroad Company, Bangor & Portland Railway Company, Delaware, Susquehanna & Schuylkill Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

The Pennsylvania Millers' State Association, complainant in this cause, is a corporation organized under the laws of the State of Pennsylvania. The object of the Association as stated in its complaint to this commission, is "to protect and promote the interests of the milling industry of the State and of all engaged in the purchase and sale of grain, flour, feed and hay, for consumption in the State and for export."

The complaint alleges that the members of the Association "are engaged in the manufacture of flour and feed" and that "they are purchasers of grain, feed, flour, hay and other merchandise throughout the west for home consumption and for export," and charges:

1. "That the defendants have been and are guilty of violations of the provisions of sections 1, 2, 3 and 4 of the Act to regulate commerce, in that they have long established and maintained, and do establish and maintain, car service rules and regulations that are unjust and unreasonable, and that discriminate against such" of the members of the complainant "as are located at *interior points* of the State upon the lines of the defendant companies."

2. That "this discrimination consists in charging at *interior points* $1.00 per car for each day or fraction of a day said car may be detained over *48 hours* in unloading or loading, while on cars loading with *coal, coke, pig iron or iron ore,* delivered at interior points, *72 hours* are allowed for loading or unloading, and at terminal points, such as Philadelphia, New York and Baltimore, the following privileges are accorded:"

(a) "In *Philadelphia, 96 hours* on all cars that arrive at the delivery points of the respective companies after notice of

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such arrival has been given to the consignee. The latter may then order the car to another delivery point, and will still have 96 hours to unload, after its arrival at the point designated; or if the car contains flour or grain, he may order it to the warehouses of the defendant companies and 10 days' freight storage is accorded him on the grain or flour—whether for local consumption or export. In *New York,* the time allowed on flour is from 5 days to 40, and on grain, feed and hay, 120 hours. In *Baltimore,* 96 hours are allowed on mill feed, hay and straw, and 120 hours on grain and flour."

(b) "In addition to these special and discriminating privileges at the three terminal points above named, consignees may order flour from store at the expiration of the 10 days allowed to a private warehouse, or to a dock for export,—without any additional charge. And when ordered to the warehouses of the defendant companies, the labor of unloading cars is all done at the expense of the carrying companies."

3. "That defendants make no corresponding allowances in rates of freight to complainants, and do not afford any assistance in loading or unloading cars, but complainants are compelled to pay the same rates of freight from the west that prevail to the terminal points, although the distance in most cases is much less, and in addition on reshipment must pay relatively much higher local rates to Philadelphia, New York, Baltimore and interior points."

All the defendants have filed answers except the Central Railroad Company of New Jersey, the Delaware & Hudson Canal Company, the Erie Railroad Company, the Delaware, Lackawanna & Western Railroad Company, and the New York, Ontario & Western Railroad Company.

These answers, while not expressly admitting, do not deny that the "Car Service Rules" are as stated in the complaint, but they allege that they are just and reasonable, that they are not in violation of sections 1, 2, 3 or 4 of the Act to regulate commerce, and that they do not discriminate against such of the members of complainant "as are located at *interior points* in Pennsylvania upon the lines of the defendants," because the circumstances and conditions affecting the loading and unloading of cars at the *terminal points,* Philadelphia, New York and Baltimore, are dis-

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similar from those affecting such loading and unloading at interior points in the State; and that they do not discriminate at interior points against grain, flour, feed and hay in favor of coal, coke, pig iron, or iron ore, because the circumstances and conditions attending the loading and unloading of coal, coke, pig iron or iron ore at interior points are dissimilar from those attending the loading or unloading of grain and flour, feed and hay, at interior points.

The Central Pennsylvania & Western Railroad Company, the Erie & Wyoming Valley Railroad Company and the Bangor & Portland Railroad Company, each aver that their roads are "situate wholly within the bounds of the State of Pennsylvania, and that the same are not parts of any through lines connecting other roads in different states of the United States," and, therefore, are not subject to the provisions of the Act to regulate commerce. Those defendants also deny that this Commission "has any authority under the Act to regulate commerce to fix and establish any period within which the members of complainant may load or unload cars free of charge upon their tracks."

The Delaware, Susquehanna & Schuylkill Railroad Company avers "that its line of railroad is wholly within the State of Pennsylvania, and if any part of the property transported by it is interstate, it is by reason of such property being delivered on connecting roads to be transported to points *outside* of the State of Pennsylvania."

FACTS.

We find the facts, relevant to the issues presented by the pleadings, to be as follows:

1. The "Car Service Rules" particularly complained of were established by the Philadelphia Car Service Association, an organization composed of many of the defendants and of other railway companies, and which embraces in its operations Philadelphia and territory as far north as "Tamaqua on the Reading Railroad and Sunbury on the Philadelphia & Erie road, south to the Susquehanna River, east to the Delaware River, and about 300 points in South Jersey."

This association was formed September 1, 1890, and its principal object, as stated by its Secretary, J. E. Challenger, is to see

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that cars are loaded and unloaded "within a reasonable time." It appears to have been called for by the fact that the time for loading and unloading at Philadelphia had been indefinite and this gave opportunity for discrimination and was otherwise unsatisfactory. The Association, therefore, soon after it came into existence adopted rules prescribing a definite time for loading and unloading and this time as originally fixed, for Philadelphia as well as interior points, was 48 hours.

Notice was thereupon given the Philadelphia Commercial Exchange that on and after a certain date only 48 hours would be allowed "to unload cars after delivery." The members of the Commercial Exchange, not considering this time sufficient as to grain, flour, feed and hay, protested and their representative had several meetings with the representatives of the Car Service Association for the purpose of procuring an extension. The result was that the Car Service Association extended the time on these commodities to 96 hours, on the condition, as appears from the testimony, that no allowance was to be made on account of weather. This extension took place 60 or 90 days after the formation of the Car Service Association, or about November 1st or December 1st, 1890. On all other commodities the 48 hour rule remained applicable at Philadelphia as well as at interior points.

The 96 hour rule or allowance of "free time" applies "only on commodities which are handled by the Commercial Exchange of Philadelphia." Practically all of the receivers of and dealers in grain and the other commodities to which that rule is applied at Philadelphia are members of the Commercial Exchange. At the time the extension to 96 hours was conceded, the Commercial Exchange entered into an agreement with the Car Service Association that demurrage, or the charges for car service after the expiration of the 96 hours "free time," should be promptly paid. They were enabled to guarantee payment of demurrage because they were the beneficiaries of the 96 hours "free time" from whom the demurrage would be due.

The printed rules of the Philadelphia Car Service Association filed in evidence in this case only set forth the rules making the 48 hour allowance and relating thereto. The special allowance at Philadelphia of 96 hours and the rules relating thereto were

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not published among those printed rules. In the "Revised Printed Rules" (effective July 21, 1898), however, of the Association, the rules and regulations relating to both the 96 hour allowance and to the 48 hour allowance are given.

Those Revised Rules, so far as pertinent to this case, are as follows:

Charges.

RULE 1. A charge of *one dollar* per car per day or fraction of a day shall be made for car and track service on all cars not unloaded within forty-eight hours after arrival, not including Sundays and legal holidays, except as hereinafter provided.

The charge of *one dollar* per day shall not be made on cars loaded with the following commodities, when intended for track delivery, within the limits of Philadelphia and Camden, until forty-eight hours for inspecting, sampling and selling and *forty-eight hours additional for unloading have elapsed:* Wheat, shelled and ear corn, oats, barley, malt, rye, mill-feed, cerealine, maizone, malt sprouts, hay and straw; also perishable fruits, vegetables, melons and berries, in packages or bulk.

RULE 2. Forty-eight hours will be allowed for loading cars on team or private tracks (subject to Rule 13), after the expiration of which time a charge will be made of *one dollar* per car per day or fraction of a day, Sundays and legal holidays excepted.

Cars Subject to the Rules.

RULE 5. All property shipped in car loads or in less than car loads, *which is loaded or unloaded by shippers or consignees* at their request, or is so required by custom or the Official Classification, shall be subject to the car and track service charges of the forwarding and delivering railroads, except as provided in Rule 9.

Cars Exempt.

RULE 9. Cars containing freight in transit billed through over rail or water lines, not held for orders or for disposition by the shipper or consignee, shipments which are to be unloaded in and delivered from railroad freight houses, and company material will not be subject to charge and should not be included in reports to the Manager.

Rules for Computing Time.

RULE 11. On cars arriving *after* seven o'clock A. M., car and

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track service will be charged after the expiration of forty-eight hours from seven A. M. following. On cars arriving *after* twelve o'clock noon, car and track service will be charged after the expiration of forty-eight hours from the noon following.

RULE 12. When cars are delayed after arrival beyond the time allowed by Rule 11, on account of failure of shipper or consignee to give prompt notice of disposition, the time so consumed shall be considered a part of the forty-eight hours allowed for loading or unloading.

RULE 13. On cars consigned direct to team or private tracks, or which may be so delivered on standing or advance orders from the shipper or consignee, car and track service will be charged after the expiration of forty-eight hours from the time such cars are *placed* on the tracks designated. If placed *after* seven A. M. the forty-eight hours will begin at seven A. M. following the placing; if placed *after* twelve o'clock noon, the forty-eight hours will begin at noon following the placing.

RULE 14. On cars *not* consigned to team or private tracks, the forty-eight hours allowed for unloading will begin at seven A. M. or twelve noon following arrival (see Rule 11), will continue until order is given by shipper or consignee, and begin again at the *actual* hour placed according to such order, except that cars so placed between the hours of six P. M. and seven A. M. will be regarded as placed at seven A. M.

Placing of Cars on Arrival.

RULE 17. Cars containing freight to be delivered on team tracks or private sidings shall be delivered on the tracks designated on the way-bills immediately upon arrival, or as soon thereafter as the yard work will permit. The time consumed in placing such cars, or in switching cars for which directions are given by consignees after arrival, shall not be included in the time allowed for unloading.

RULE 18. Delivery of cars shall be considered to have been effected at the time when such cars have been placed on recognized or designated delivery tracks, or if such track or tracks contain cars belonging to the same consignee, which have been detained over forty-eight hours, when the railroad offering the cars would have delivered them had the condition of such tracks permitted.

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RULE 19. The delivery of cars consigned to or ordered to *private* tracks shall be considered to have been effected, either when such cars have been placed on the tracks designated, or, if such track or tracks be full, when the railroad offering the cars would have made delivery had the condition of such tracks permitted.

Stormy Weather.

RULE 26. Agents will collect car and track service charges occurring under the rules as explained herein, regardless of the condition of the highways or weather.

Claims.

RULE 27. Car and track service charges collected under these rules shall not be refunded except on the written authority of the Manager. Claims for the refunding of such charges will not be considered unless accompanied by the receipted bills for the amounts paid.

RULE 28. Upon receipt of claims for refunding car and track service charges alleged to have been incurred by reason of unfavorable weather, the Manager will decide each case on its merits, taking into consideration the nature of the freight in connection with the condition of the highways and the weather, and authorize such refund as in his judgment may be right and proper.

2. There is applied in the territory of the Philadelphia Car Service Association a rule known as "the 24 hour monthly average." This rule was not published among the printed rules of the Association at the date of the hearing, but among the "Revised Printed Rules," effective July 21, 1898, there is the following rule, entitled "Monthly 24 hour Average Agreement:"

Monthly Twenty-four Hour Average Agreement.

RULE 29. The Manager is authorized to make contracts with such shippers and consignees as desire to enter into a monthly twenty-four hour average agreement. Under this contract agents will render reports each day of the cars loaded and unloaded by those operating under such monthly contracts, and if the average time exceeds *twenty-four hours* per car for the calendar month, the fraction in excess will be charged for at the rate of one dollar per car per day. This privilege is open to all shippers and consignees, but notice must be given the Manager expressing a desire to enter into the contract.

The testimony at the hearing was that under the Twenty-four

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hour Monthly Average Rule, "the total number of cars handled during the month by any one firm is taken and if the average of each car is 24 hours or less, such charges as might have accrued under the 48 hour rule are canceled." For example, if the number of cars handled by a single firm during one month is 20, and 10 of those cars are unloaded in 16 hours, 6 in 18 hours, 2 in 20 hours, and 2 in 78 hours, making a total of 464 hours for all, the average per car would be 23 hours and 12 minutes, and under the "24-hour monthly average rule," the charges which would have accrued under the 48 hour rule on the 2 cars unloaded in 78 hours would be canceled.

This monthly average rule applies on all classes of traffic and at all points, whether interior or terminal. Advantage of it is taken by a large number of shippers. Over 300 firms in the territory of the Philadelphia Car Service Association are "working under it." The beneficiaries under the 96 hour rule at Philadelphia do not, however, avail themselves of it to any extent.

The shipper is required to elect in advance whether or not he will have the 24 hour monthly average applied in his case, and an agreement to that effect has to be made.

Asher Miner, General Manager of the Miner-Hillis Milling Company at Wilkesbarre, Pennsylvania, and a witness for the complainant, testified that "*a monthly average* of 48 hours *per car* would be satisfactory to himself and the other millers in the state."

3. The principal grounds assigned by the witnesses for allowing 96 hours for unloading grain in Philadelphia, while only 48 hours are allowed at interior points, are:

(a) "That 90 per cent of the grain coming to Philadelphia *has to be sold after it arrives*, and it is necessary, according to the rules of the Commercial Exchange in Philadelphia, that each car should be officially inspected, and sampled, and the commodities sold upon the floor of the Philadelphia Exchange; and that all but a small proportion of grain shipped to interior points from the West does not have to be sold after arrival but it is consigned directly to millers and placed at once on their tracks, in which case no sampling and inspecting are necessary."

(b) "That when grain arrives at Philadelphia, it is stopped on suburban or storage tracks and notice is given of its

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arrival, and it is then, in pursuance of directions from the consignee, moved to unloading tracks; and that the time consumed in inspection, sale and other details necessary to be attended to before cars are placed upon the unloading tracks, amounts to about 48 hours, and the consignee at Philadelphia has only about 48 hours in which to unload after the cars are placed on the unloading track, and hence, the 96 hours are necessary to place the Philadelphia consignee in the same position as the consignee at interior points. The 96 hours begin to run from the time notice is given that the shipment has reached the suburban tracks."

(c) That New York, Philadelphia and Baltimore are large "seaports, as well as ultimate domestic markets and general distributing points, and as such attract a great volume of commodities either for export, or for sale and distribution thereat and therefrom," and that at these seaports "sidings and railroads are congested by the amount of traffic upon them, and it is impossible to clear the tracks and handle the traffic in the time which would be ordinarily required at interior points where there is less traffic."

As to the mode of procedure when shipments reach Philadelphia, the testimony is that "the cars are delivered at outlying points. The Philadelphia Commercial Exchange has a Chief Inspector under the control of the grain trade and the Commercial Exchange, and he has his deputy inspectors, a number of them, and those inspectors are detailed at the different termini of the railroads, and it is their duty to go around every morning or during the day. They start in the morning, but do not sometimes go through until late in the day, because they have difficulty in the first place in locating the cars. These cars are mixed in very often with cars of other merchandise. When they find the cars they procure samples. The next day, which is practically 24 hours after arrival and after notification of arrival has been given, those samples are brought on Change and disposition has to be made of them and orders given to the various railroad companies. That is done probably about noon. Then, it almost invariably requires 24 hours—sometimes double that time—before the grain can be delivered at a private warehouse to be unloaded or on a delivery track."

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A small percentage of the grain shipped to Philadelphia is "consigned flat" and not subject to inspection. This has, however, the benefit of the 96-hour rule. The requirement of inspection applies principally, if not exclusively, to grain.

It appears that at interior points "as a rule cars are placed for delivery either on private sidings in connection with warehouse or mills or places to unload," and that there is in such cases "greater capacity for quick delivery at interior points at the place of discharge than there is at Philadelphia at the place of discharge."

As before stated, no allowance on account of bad weather is made at Philadelphia on "96-hour commodities." At interior points and at Philadelphia such allowance, *according to the evidence,* is made on "48-hour commodities." (No note of this distinction appears in the "Revised Rules," effective July 21, 1898.) It is stated by the manager of the Philadelphia Car Service Association, that "in adjusting claims on account of weather refunds are frequently made for bad weather, which occurs *after* the lapse of the 48 hours." Under the Baltimore & Washington Car Service Association, allowance is made for bad weather occurring *during* the "free time," but not after the expiration of that time.

The rule for Reckoning Time (Rule 11 of Rules of Philadelphia Car Service Association, hereinbefore set forth), namely, that the 48 hours "free time" shall begin to run from 7 A. M. or 12 M. of the day following arrival as provided in that rule, does not, according to the testimony at the hearing and under the "Revised Rules," effective July 21, 1898, apply under the 96 hour rule at Philadelphia.

On the other hand, while a comparatively small amount of grain is consigned to interior points *to be sold after its arrival,* when it is so consigned, it has to be sampled and inspected by the consignee himself and then sold before placed for delivery or unloading, and it is claimed that this business to interior points would be much larger "if there were not the discrimination in the car service rules as between interior points and the terminal points, Philadelphia, New York and Baltimore." In many cases, also, grain shipped to interior points comes "without any

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certificate as to grade," or "with draft and *subject to inspection* before draft is paid." All such grain has to be inspected. In this and other cases, inspection has to be made at interior points. It also appears that grain, as well as coal, coke, pig iron and iron ore, comes to interior points at times in *train loads* and that these entire train loads have to be unloaded within the "free time."

There is general complaint on the part of the interior millers, members of complainant's Association, that the Car Service Rules applicable to interior points are oppressive and result in some financial loss.

4. The Car Service Rules appear to be enforced and demurrage, or charges made for the detention of cars and occupation of tracks after the expiration of the "free time," is collected by an officer of the Car Service Association promptly and, so far as the proof shows, without discrimination.

The demurrage *on traffic of all classes* collected by the Philadelphia Car Service Association amounts annually to about $50,000, of which from 60 to 70 per cent is collected in Philadelphia. This would be about $32,500 at Philadelphia and about $17,500 at interior points. The bulk of the traffic at Philadelphia consists of other commodities than grain and the other traffic subject to the 96 hour rule, and the greater part of the demurrage collected is on such other traffic. This may also be true as to interior points. The demurrage under the 48 hour rule is collected subject to a refund for what are deemed good and sufficient reasons, particularly *weather*. (As before said, no weather allowance is made on the 96-hour commodities at Philadelphia.) About 20 per cent of the demurrage is refunded because, for the most part, of weather conditions. This leaves a net annual demurrage collected at interior points *on all traffic* of $14,000.

For the year 1897 demurrage was collected in the territory of the *Northeastern Pennsylvania* Car Service Association to the amount of $30,000 on *traffic of all classes*, of which $10,000 was refunded. The General Manager of the Miner-Hillis Milling Company at Wilkesbarre, Pennsylvania (the largest interior milling company in the State), testified that during the year 1897 there were from 1500 to 2000 cars received by that

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company, that the demurrage paid on those cars was $50 and that $25 of that was refunded. He further stated that his company was "unusually well equipped in comparison with other interior mills for handling cars," and that they often had to unload at night to avoid demurrage charges.

According to the statistics of the Philadelphia Car Service Association, *about 97 or 98 per cent of* the cars are unloaded at interior points within the "free time," and about *80* per cent in large cities like Philadelphia. In other words, a larger percentage of cars are unloaded on time at interior points than are unloaded on time at Philadelphia. The same is true as between *Baltimore* and interior points in the territory of the *Baltimore & Washington* Car Service Association.

5. The grain receiver in Philadelphia "has 48 hours from the time he receives notice of its arrival in which to get the result of the inspection and to order the car, and then has 48 hours additional in which to make a disposition of it, and if he orders it into the grain depot or the Twentieth Street Elevator, he has 10 days' storage in addition to which the company unloads the cars." For the service of unloading, however, the consignee pays ½ cent per bushel, which follows the grain and adds that much to its cost. The testimony is that the ½ cent paid for unloading "gives" the 10 days' storage.

Flour is said to be "warehouse freight" and not subject to Car Service Rules. It will be observed that the 96 hour rule at Philadelphia as set forth in Rule 1 of "Revised Rules," effective July 21, 1898, does not name flour as one of the commodities to which it is applicable, but only "wheat, shelled and ground corn, oats, barley, malt, rye, mill-feed, cerealines, maizone, malt sprouts, hay and straw, and also perishable fruits, vegetables, melons and berries, in packages or bulk."

When grain and other 96 hour commodities are shipped to Philadelphia for export they are not subject to the Car Service Rules, but are considered through shipment via Philadelphia to foreign ports. The same is true as to all "freight in transit billed through over rail or water lines." (Rule 9, Revised Rules.)

6. Car Service Associations of Railroad Companies, similar in

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object to the Philadelphia Car Service Association, exist throughout the United States. There is evidence in this case, introduced by defendants, relating to the Car Service Rules and regulations of three other Car Service Associations besides the Philadelphia Car Service Association, to wit, the Northeastern Pennsylvania Car Service Association, the Baltimore & Washington Car Service Association, and the New York & New Jersey Car Service Association.

The Northeastern Pennsylvania Car Service Association embraces in its operations territory in the State of Pennsylvania described in the printed rules of that Association, as follows:

"All that part of the State of Pennsylvania bounded on the north and east by the state line, and on the south and west by a line drawn from the Delaware River through Easton, Bethlehem, Allentown, Slatington, Mauch Chunk, Tamaqua, New Boston, Frackville, Gordon, Kneass, Sunbury, Northumberland, Lewisburg, Milton, Williamsport, Jersey Shore to Lockhaven, and from Williamsport to Fasset. All stations on the line of the south and west boundary to be included except Tamaqua, New Boston, Frackville, and Gordon, which are included in the territory of the Philadelphia Car Service Association."

All this territory appears to be *interior* as distinguished from sea-coast territory and the 48-hour rule is applied by the Northeastern Pennsylvania Car Service Association throughout this territory. The rules and regulations of that Association are similar to, if not identical with, the printed rules and regulations of the Philadelphia Car Service Association, *relating to the 48-hour rule,* heretofore set forth. The 96-hour rule is not applied at any points in the territory of the Northeastern Association.

The Baltimore & Washington Car Service Association covers, as stated by its manager (A. L. Gardner), "the southern tier of counties of Pennsylvania, the State of Maryland, the District of Columbia, and the upper part of the State of West Virginia, through Wheeling and Parkersburg."

This witness testifies that "the rules of the Baltimore & Washington Car Service Association, with respect to grain, feed and hay, are substantially the same as the rules of the Philadelphia Car Service Association, and that the regulations applied as

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between *Philadelphia* and interior points are substantially the same as those applied between *Baltimore* and interior points with one exception," that allowance is made on account of weather during "free time" but not thereafter.

The rule as set forth in the printed rules of the Baltimore & Washington Car Service Association, effective January 1, 1894, is as follows:

Charges.

"1. A charge of One Dollar ($1.00) per car per day, or fraction thereof, shall be made for delay of cars and use of track on all cars not unloaded within forty-eight (48) hours after arrival, not including Sundays or legal holidays, except as hereinafter provided. *An additional forty-eight (48) hours shall be allowed (in Baltimore only) for inspecting, sampling, and selling Hay and Straw, Bran, Mill Feed, and Ear Corn, in bulk,* also on Fruit and Vegetables in bulk, and one hundred and twenty hours on grain arriving by the Western Maryland R. R. for city or track delivery in Baltimore. No charge will be made on freight in transit, or freight for trans-shipment to Water Lines.

Forty-eight (48) hours will be allowed for loading cars on all car-load delivery tracks or private sidings, after the expiration of which time a charge will be made of One Dollar ($1.00) per car per day, or fraction thereof, Sundays and legal holidays excepted."

F. E. Morse, Manager of the New York & New Jersey Car Service Association, states that the territory covered by that Association "is the State of New Jersey and all south of a line from Deposit to Kingston, touching a part of New York State." He further states, "the 48-hour rule applies all through that territory on everything."

The 48-hour rule as set forth in the printed rules of that Association, effective November 1, 1892, is as follows:

"1. A charge of one dollar ($1.00) per car per day or fraction thereof, shall be made for delay of cars and use of track, on all cars not unloaded *within forty-eight (48) hours after* arrival, not including Sundays or legal holidays, except as hereinafter provided.

Forty-eight (48) hours will be allowed for loading cars on car-

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load delivery tracks or private sidings, after the expiration of which time a charge will be made of one dollar ($1.00) per car per day or fraction thereof, Sundays and legal holidays excepted."

In New York City grain is divided into two classes, graded grain and ungraded grain. Graded grain is delivered as fast as possible by the roads to the elevators and the cars are released as soon as the grain can be put into the elevators. Ungraded grain for track delivery has 72 hours "free time," at the end of which the roads have the option of putting it in the elevator or allowing demurrage to accumulate. The receivers generally prefer to pay the demurrage of $1.00 per day rather than to pay the charges for having the grain put in the elevator and taken out and for storage while it is in the elevator. There is no substantial dissimilarity of conditions shown by the evidence as between New York and Philadelphia.

The rules for reckoning time under the Northeastern Pennsylvania Car Service Association, the Washington & Baltimore Car Service Association and the New York & New Jersey Car Service Association, are substantially the same as Rule II. of the Philadelphia Car Service Association hereinbefore set forth, namely, that the "free time" shall begin to run from 7 A. M. or 12 M. of the day following arrival as provided in that rule.

Flour does not come under the Car Service rules of either the New York & New Jersey or Baltimore & Washington Associations. It goes direct to the flour warehouses.

7. It was testified in this case that the *96-hour rule* prevailed at interior points in New England. On examination of the printed rules filed with this Commission by the Connecticut Car Service Association, the Rhode Island Car Service Association and the Massachusetts & New Hampshire Car Service Association, we find this to be the case in the territories covered by those associations.

The territory embraced in the Connecticut Car Service Association includes "all freight stations and sidings in the State of Connecticut owned or operated by its members," to wit, the Central Vermont Railroad Company, the New York & New England Railroad Company, the New York, New Haven & Hartford

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Railroad Company, the Philadelphia, Reading & New England Railroad Company, and the Shepaug, Litchfield & Northern Railroad Company.

The territory of the Rhode Island Car Service Association embraces "all freight stations and sidings in the State of Rhode Island owned or operated by its members," to wit, the New York, New Haven & Hartford Railroad and the New York and New England Railroad.

The territory of the Massachusetts & New Hampshire Car Service Association includes "all freight stations and sidings in the states of Massachusetts and New Hampshire owned or operated by its members," to wit, the Concord & Montreal Railroad, the Boston & Albany Railroad Company, the Boston & Maine Railroad, the Fitchburg Railroad Company, the New York & New England Railroad Company, the New York, New Haven & Hartford Railroad Company, the Union Freight Railroad, the Maine Central Railroad and the Grand Trunk Railway.

8. The rules of the Northeastern Pennsylvania Car Service Association provide for an allowance of 72 hours for unloading coal, coke, pig iron and iron ore.

Seventy-two hours for unloading these commodities is also allowed at interior points in the territory of the Philadelphia Car Service Association, but in Philadelphia the 48-hour rule is applied to coal and coke.

The 72-hour rule prevails on grain at New York and under the New York & New Jersey Car Service Association.

The reasons assigned for allowing coal, coke, pig iron and iron ore 24 hours in addition to the 48 hours allowed traffic in general in the territory of the Northeastern Pennsylvania Car Service Association are, as stated by the secretary of that Association, that coal shipments are "made and received at points of unloading irregularly, and grouped in large shipments," and that the "material allowed the additional 24 hours is shipped in open cars of less value than the house car, available only for rough material and rarely used for return shipments, and as to pig iron and iron ore, they are received at the furnaces by the train load, delivered into yards where it is physically necessary to sometimes shove up the earlier arrivals to make room for the

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later ones, the result being that the unloader is unloading a great many cars in one day, and finds himself delayed in getting at older arrivals of several days." On the other hand, carloads of coal, coke and iron ore can by dumping be unloaded probably in less time than carloads of grain, feed or hay.

It is testified that the 72 hours allowed for unloading coal, coke, pig iron and iron ore, are not for unloading a single car but a number of cars or train load.

9. The 48-hour rule is stated by the witnesses to be "the basis" or general rule throughout the country, to which the rules of certain associations, to which we have referred, allowing 96 hours and 72 hours in certain cases, are exceptions.

CONCLUSIONS.

1. We will first dispose of the plea of the Central Pennsylvania & Western Railroad Company, the Erie & Wyoming Valley Railroad Company, and the Bangor & Portland Railway Company, that their roads are "situate wholly within the bounds of the State of Pennsylvania, and that the same are not parts of any through lines connecting other roads in different states of the United States," and the plea of the Delaware, Susquehanna & Schuylkill Railroad Company, "that its line of railroad is wholly within the State of Pennsylvania and if any part of the property transported by it is interstate, it is by reason of such property being delivered on connecting roads to be transported to points *outside* the State of Pennsylvania."

It is well settled that a railway company whose road is wholly within the bounds of a single state, "when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subject, so far as such traffic is concerned, to the regulations and provisions of the Act to regulate commerce."

Interstate Commerce Commission v. *Detroit, G. H. & M. R. Co.* 167 U. S. 642, 42 L. ed. 309, 17 Sup. Ct. Rep. 986; *Cincinnati, N. O. & T. P. R. Co.* v. *Interstate Commerce Commission,* 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700; *The Daniel Ball,* 10 Wall. 565, 566, *sub nom. The Daniel Ball* v. *United States,* 19 L .ed. 1002.

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If it be true, as alleged by the three defendants first named, that "their roads are situate wholly within the bounds of the State of Pennsylvania, and the same are not parts of any through lines connecting other roads in different states of the United States," and they do not, in fact, participate, as links in chains of carriers, in the transportation of traffic from points outside the State of Pennsylvania to points within that State or from points within to points outside, they are not subject to the provisions of the Act to regulate commerce. If, also, the line of the Delaware, Susquehanna & Schuylkill Railroad Company is, as alleged by it, "wholly within the State of Pennsylvania" and the only interstate traffic transported by it is traffic delivered "to connecting roads to be transported to points *outside* of the State of Pennsylvania," then it is only subject to the provisions of the law in respect to the traffic from points within to points outside the state in which alone it participates. It appears, however, that the grain of interior Pennsylvania goes, not only to Philadelphia, but largely *outside* the State to Baltimore and New York. As to this traffic from within the State to the latter cities, the road, if it participates in its transportation, is subject to the provisions of the law.

There was no evidence introduced bearing upon the matters of fact alleged in these pleas. Of course, if these defendants do not participate in the interstate traffic involved, they will not be affected by any order which the Commission may make.

2. It is alleged in the complaint that the members of complainant "are compelled to pay the same rates of freight from the west that prevail at the terminal points, although the distance in most cases is much less, and in addition on reshipment, must pay relatively much higher local rates to Philadelphia, New York, Baltimore and interior points." No testimony was introduced at the hearing relating to these allegations and nothing has been said in argument in reference thereto either at the hearing or in the briefs subsequently filed.

3. The complainant avers that the "Car Service Rules" of the defendants prescribing the time to be allowed for the unloading of cars at interior points in the territory of the Philadelphia Car Service Association, are in violation of Sections 1, 2, 3 and 4

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of the Act to regulate commerce. These were the charges insisted upon at the hearing and to which the investigation was confined.

In *Wight* v. *United States,* 167 U. S. 518, 42 L. ed. 259, 17 Sup. Ct. Rep. 822, the Supreme Court held that "it was the purpose of the section [2] to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor."

It is admitted there is no discrimination against members of complainant's association, or anyone, *"in the application"* of the 96-hour Car Service Rule at Philadelphia—in other words, for example, one shipper to, or consignee at, Philadelphia, is not allowed 96 hours free time while it is denied to another. It is true the proof shows that *practically* the 96-hour rule benefits only the members of the Commercial Exchange of Philadelphia, but this is because of the fact, that that Exchange embraces in its membership virtually all the receivers of or dealers in grain and the other commodities to which the 96-hour rule is applicable; and the testimony indicates that if there were such receivers or dealers outside the Commercial Exchange, they would receive the benefit of the rule. There is not, therefore, shown any violation of section 2 in the administration of the 96-hour rule. *Cattle Raisers' Asso.* v. *Fort Worth & D. C. R. Co.* 7 I. C. C. Rep. 513; *Wight* v. *United States,* 167 U. S. 518, 42 L. ed. 259, 17 Sup. Ct. Rep. 822.

Neither is there any violation of section 2 in the facts, that on all other commodities besides the "96-hour commodities" only 48 hours "free time" is allowed at Philadelphia, and on coal, coke, pig iron and iron ore 72 hours are allowed at interior points while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a *like kind of traffic,"* and does not apply where the traffic is of different kinds or classes not competitive with each other.

We are, also, of the opinion that the rule of Section 4, forbidding the charging or receiving "any greater compensation in the aggregate for the transportation of a like kind of property under

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substantially similar circumstances and conditions, for a shorter than for a longer *distance* over the same line in the same direction, the shorter being included in the longer distance," has no application to this case. That rule is *based on distance* and relates to the *actual transportation charges,* and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. *Interstate Commerce Commission* v. *Detroit, G. H. & M. R. Co.* 167 U. S. 644, 42 L. ed. 309, 17 Sup. Ct. Rep. 986. The actual transportation is at an end and the goods delivered by the carrier when the car is placed on the unloading track or other proper place for unloading by the consignee. The functions of the carrier, "to receive, transport and deliver," are then fully discharged. *American Warehousemen's Asso.* v. *Illinois C. R. Co.* 7 I. C. C. Rep. 589.

If, however, such demurrage charges when added to transportation rates, result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 3.

Counsel for the Delaware & Hudson Canal Company in a printed brief claims, that, in the case *supra* of the *Interstate Commerce Commission* v. *Detroit, G. H. & M. R. Co.* 167 U. S. 633, 42 L. ed. 306, 17 Sup. Ct. Rep. 986, the Supreme Court held that "it was not an unlawful discrimination for a carrier to furnish free cartage at one place and to decline to furnish the same at another place at some distance," and that "under this authority it must be held that no discrimination arises from the fact that the time during which free storage in the carriers' cars is allowed varies in one place from that allowed in another." In this counsel is in error. The Supreme Court placed its decision distinctly upon the ground, that the only question before it was, whether the furnishing of free cartage at Grand Rapids when it was not furnished at Ionia, constituted a violation of *the rule of Section 4*, and held that under the facts of the case it was not a violation of *that rule.* The court, after calling attention to the fact that the question whether there was an undue preference under Section 3 had been withdrawn from the consideration of the Court, says:

"It may be that it was open for the Commission to entertain

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a complaint of the Ionia merchants that such a course of conduct was in conflict with sections 2 and 3 of the act; but, as we have seen, such questions, if they really arose in the proceedings before the Commission and in the circuit court, have been withdrawn from our consideration in this appeal from the decree of the circuit court of appeals."

Witnesses for the complainant testify that in their opinion the allowance of 96 hours' "free time" at Philadelphia, and of 72 hours on coal, coke, pig iron and iron ore at interior points, was not excessive, but only reasonable. The contention on the part of complainant is solely that the 48 hours' "free time" allowed at interior points is unreasonably small. If the time allowed at Philadelphia, or other terminals, is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points, in violation of section 3 of the law, might result. It is testified that the fact that only 48 hours is allowed at interior points, while 96 are allowed at Philadelphia and other terminals, has diverted grain and other traffic covered by the 96-hour rule from the former to the latter.

4. Furthermore, if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1, which directs, "that charges made for any service rendered or to be rendered in the transportation of passengers or property *or in connection therewith,* or for the receiving and delivering, *storage or handling of such property,* shall be reasonable and just." The charge of demurrage, before a reasonable time for loading or unloading has elapsed, would, so far as that charge covers time which should be embraced in a reasonable time, be an unjust or unreasonable charge for a "service rendered in connection with the transportation of property" or "for the storage or handling" of such property. For example, if 96 hours were a reasonable time at interior points, then the exaction of $1.00 a day, or $2.00 for the two days, following the expiration of the 48 hours' free time now allowed, would be an unjust and unreasonable charge.

5. It is admitted on the part of complainant, not only that the allowance of 96 hours on grain and certain other products at Philadelphia and of 72 hours on coal, coke, iron ore and pig iron,

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at interior points, is reasonable, but, also, that the charge of $1.00 a day for the detention of cars beyond a reasonable time for loading or unloading is a just and proper charge. The question raised is simply whether the *time allowed at interior points* is reasonable. This is the question under section 3 as well as under section 1, because, as before stated, it being admitted that the time allowed at Philadelphia is reasonable, the undue prejudice under section 3 would result from the fact, that while a reasonable time is allowed at Philadelphia, the time allowed at interior points is not reasonable.

6. While reference is made in the complaint to the greater time allowed at Baltimore and New York as well as at Philadelphia than is allowed at interior points in Pennsylvania, Mr. Welsh, who represented the complainant at the hearing, said that "the real contention was with reference to the differential conditions between Philadelphia and interior points," that the "complaint was confined to the State of Pennsylvania," and that reference was made in the complaint to the rules at New York and Baltimore "simply as a matter of comparison and to emphasize, if possible, the discrimination which was made at interior points in Pennsylvania." While, also, the complaint relates to *loading* as well as unloading, it was admitted on the part of the complainant, that the chief ground of complaint was the rules in reference to *unloading*, and the testimony relates almost exclusively to those rules. In fact, on an examination of the rule (Rule 1 of the Philadelphia Car Service Association), it will be seen that the 48 hours additional time on grain and certain other commodities provided for therein, is expressly stated to be for "unloading," the language of the rule being "*48 hours additional for unloading.*"

7. The gravamen of the complaint, which we will now consider, is the reasonableness of the 48 hours allowed for unloading at interior points.

There appear from the rules to be two distinct cases to which the 48-hour allowance of time is applicable:

First, where cars are "consigned direct to team or private tracks, or may be so delivered on standing or advance orders from the shipper or consignee." In such cases no time after arrival is consumed in procuring direction from the consignee as

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to where the cars shall be *placed* for unloading, and, if the cars are so "*placed* after 7 A. M., the 48 hours will begin at 7 A. M. of the day *following the placing,* and, if placed after 12 M., the 48 hours will begin at 12 M. of the day *following the placing.*" (Rule 13.)

Second, where "cars are not consigned to team or private tracks" and are not deliverable at previously designated places. In such cases, the consignee after the arrival of the car has to designate the place of unloading and this will consume more or less time, and the 48 hours for unloading "begins at 7 A. M. or 12 M. *following arrival,* and continues until order for placing is given by the shipper or consignee, and *begins again* at the actual hour placed according to such order, except that cars so placed between the hours of 6 P. M. and 7 A. M. will be regarded as placed at 7 A. M." (Rule 14.)

Under the 96-hour rule applicable at Philadelphia, "48 hours is allowed for inspecting, sampling and selling" alone, and 48 hours additional for unloading. Witnesses for the defendants all testify that the 96 hours is necessary to place Philadelphia on an equality with interior points—that is, that the 96 hours is necessary to give Philadelphia fully 48 hours for unloading alone. The claim that this simply places Philadelphia on an equality with interior points is based upon the assumption that under the 48-hour rule and regulations in relation thereto applicable at interior points, consignees at interior points have fully 48 hours for unloading. In the first case above mentioned, under rule 13, where cars are consigned direct to team or private tracks or to some designated point for unloading, and the 48 hours begins at 7 A. M. or 12 M. of the day following the day of the *placing* of the cars for unloading, there may be 48 hours left for the process of unloading, provided prompt notice is given of the placing. In the second case, however, under rule 14, where the cars are not consigned to team or private tracks and the place for unloading is not designated prior to arrival, and the 48 hours begins at 7 A. M. or 12 M. *following arrival and before order for placing is* given, there will, as the cars cannot be unloaded until placed, be less than 48 hours left for the process of unloading. In the latter case, therefore, if not in the former, the 96-hour rule at Philadelphia would not simply place Philadelphia on an equality

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with interior points but would give a longer time for the actual unloading at Philadelphia than for the actual unloading at interior points.

The testimony is that fully 48 hours are required for the actual unloading at Philadelphia, and, so far as the process of unloading is concerned, there is no reason for holding that a less time will be required at interior points.

It may be that at Philadelphia more time is required for inspecting, sampling and selling than at interior points, because the sampling and inspecting is done in Philadelphia by an official inspector and his deputies, who are required to perform these services daily for a large number of shipments, while at interior points the sampling and inspection are done by each consignee himself and it is not probable that he will have many inspections on his hands at once. Moreover, at Philadelphia the sampling and inspection may be delayed by the difficulty in promptly finding the cars on the crowded or "congested" tracks —the traffic to Philadelphia being much larger than at interior points—and, after inspection, a report thereof is made to the Commercial Exchange.

It appears that at interior points cars as a rule are placed for delivery or unloading on "private sidings in connection with warehouses and mills" and that there is in such cases "greater capacity for quick delivery at the place of discharge at interior points than at Philadelphia," and also that the bulk of the grain shipped to interior points is shipped "sold," and does not have to be sampled, inspected and sold after arrival. The traffic *when sold before arrival,* however, often comes to interior points "without certificate as to grade" or "with draft and subject to inspection before draft is paid." In the latter cases, as well as where the traffic arrives unsold, inspection is necessary. Some traffic is shipped to interior points unsold and that has to be both inspected and sold after arrival.

On the other hand, cars loaded with commodities subject to the 96-hour rule at Philadelphia are "intended for track delivery" (Rule 1), and all but a small percentage of such commodities have to be sampled, inspected and sold after arrival. Where, however, they are shipped "sold" and do not require sampling,

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inspection and sale after arrival, they are given the benefit of the 96-hour rule.

We are of the opinion that a distinction should be made between shipments of grain and other commodities which are already sold before arrival, and which do not have to be sampled, inspected and sold after arrival, and which are consigned to designated places for unloading, and shipments which have to be sampled, inspected and sold, and the place for unloading which has to be designated, after arrival. It is true the latter are but a small percentage of the shipments to interior points, but it is claimed that, if a longer time was allowed for unloading, that class of business in the interior would be encouraged and increased.

Interior points in Pennsylvania can be placed on an equality with Philadelphia only by rules allowing 48 hours *net* for the actual unloading. In order to accomplish this, a reasonable *definite* period of time should be allowed in the interior, as at Philadelphia, for attending to all the matters necessarily preliminary to the placing of the cars for unloading. It may be that, for reasons heretofore stated, as much time as that allowed for these preliminaries at Philadelphia is not necessary in the interior.

In four of the New England States, Connecticut, Rhode Island, Massachusetts and New Hampshire, the rules of the Car Service Association allow 96 hours at interior points, and general complaint is made throughout Pennsylvania of the 48-hour allowance as being insufficient and "oppressive." The testimony also shows that at one interior point, Wilkesbarre, Pa., where there are exceptional facilities for unloading, it has to be done at times after dark in order not to exceed the 48-hour limit.

On the face of the rules, "refunds" on account of *weather* are allowable without discrimination, but the manager of the Philadelphia Car Service Association testified, that such refunds are only made under the 48-hour rule and not under the 96-hour rule, and that at the time the latter was granted, the receivers of grain at Philadelphia waived any allowance on account of weather. If 96 hours are only a reasonable time at Philadelphia, and 48 hours a reasonable time at interior points, it is difficult to conceive of any valid reason why weather should not be taken into consideration in the former as well as in the latter case. From the distinction made it is a legitimate inference,

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that the 96-hour allowance was considered liberal and sufficient to cover delays on account of weather, while that of 48 hours was not so considered. If this be not the basis of the distinction, then injustice is being done Philadelphia.

8. As we have seen, certain defendants in their answers deny that this Commission "has any authority under the act to regulate commerce to fix and establish a period within which the members of complainant may load or unload cars free of charge upon their tracks."

In *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896, the Supreme Court held that the Commission had no power to prescribe rates, "maximum, minimum or absolute," as a mode of enforcing the provision of section 1 of the law requiring all rate charges to be just and reasonable. This was based upon the ground, principally, that the Act to regulate commerce does not *expressly* delegate to the Commission the power to prescribe rates. *Cattle Raisers' Asso.* v. *Fort Worth & D. C. R. Co.* 7 I. C. C. Rep. 552. The law does not expressly confer upon the Commission power to prescribe the time which shall be allowed for loading or unloading cars, and, if the absence of authority expressly conferred is a valid reason for denying power in the Commission to prescribe rates, it would seem that such absence of express authorization would preclude the exercise of the former power.

Section 15 of the Act to regulate commerce, however, does in *express* terms provide that the Commission shall, upon finding a carrier in violation of any of the provisions of the Act, order it to cease and desist therefrom. In the language of the circuit court in *Interstate Commerce Commission* v. *East Tennessee, V. & G. R. Co.* 85 Fed. Rep. 110, the Commission may order the carriers to "desist from the continuance of an unlawful practice." The power to prohibit an unlawful practice or to forbid "the continuance" thereof, necessarily involves the power to determine and declare the unlawfulness of the practice. The Commission may, therefore, after investigation, find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of de-

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murrage at the expiration of that time and before the expiration of a reasonable time.

We find that 48 hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. Our opinion is that 48 hours will be a reasonable time for the *actual unloading*. This is the time allowed at Philadelphia and by making that allowance at interior points after the cars have been placed and due notice given, will put such points on an equality with Philadelphia.

If by reason of any fault on the part of the consignee, the carriers are unable to place the cars promptly for unloading, the time so lost may be deducted from the 48 hours, and to this end suitable rules may be adopted—the object and intent of our order being to secure 48 hours *net* for unloading where unnecessary delay in placing the cars for that purpose is not caused by the default of the consignee.

9. In respect to grain and flour, it is claimed, that at the expiration of the 96 hours they may be ordered to the grain depot, warehouse or elevator, where they are unloaded by the roads and given 10 days' storage. The roads, however, charge ½ cent per bushel for unloading and the *storage is incidental to that.* It does not appear from the evidence whether or not facilities for storage, or the necessity therefor, exist at interior points to the same extent as at terminal seaports like Philadelphia, New York and Baltimore. Inasmuch as all but a small percentage of these commodities shipped to Philadelphia have to be sold or disposed of after arrival, while the reverse is the case at interior points, the presumption is, that the *necessity* for storage does not exist to the same *extent* in the interior as at Philadelphia.

By section 1 of the law, storage is named as a "service in connection" with transportation, and the charges therefor are re-

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quired to be "reasonable and just." In *American Warehousemen's Asso.* v. *Illinois C. R. Co.* 7 I. C. C. Rep. 591, we held that the schedules of rates required by section 6 of the law to be printed, posted, and filed with the Commission, should state among other terminal charges the rules and regulations, if any, of the carrier in relation to storage; and the Commission, February 8, 1898, issued a general order directing "that all carriers subject to the Act shall plainly indicate upon the schedules published and filed with the Commission under the provisions of the sixth section . . . what storage in stations, warehouses or cars will be permitted, stating the length of time, the character of the storage, the service rendered in connection therewith, and all the terms and conditions upon which the same will be granted." This order became effective April 1, 1898, and at that date the carriers issued a general Circular providing that "property unloaded in the railroad stations or warehouses must be removed within 24 hours after arrival and if not so removed will, at the option of the carrier, either be removed and stored at a public warehouse at owner's cost and risk, and there held subject to lien for freight and charges, or will be retained in carrier's station or warehouse under the same conditions and subject to like charges for storage as prevail at public warehouses, except *as may be provided by local regulations at destination* as made by public warehouses or delivering carrier." In the schedule of rates of the carriers filed with the Commission under section 6 we find reference to this general Circular allowing 24 hours' storage after arrival. A special allowance at Philadelphia of 10 days' storage on grain and flour is not mentioned either in the general Circular or in the schedules of rates of the defendants. If such storage is given, the order of the Commission has not in this respect been complied with and the carriers are liable to be proceeded against under section 16 of the law for "neglecting to obey or perform a lawful order of the Commission."

In *American Warehousemen's Asso.* v. *Illinois C. R. Co.* 7 I. C. C. Rep. 591, *supra,* we held, on the authority of the decision of the Supreme Court in *Interstate Commerce Commission* v. *Detroit, G. H. & M. R. Co.* 167 U. S. 633, 42 L. ed. 306, 17 Sup. Ct. Rep. 986, that the Commission had authority to make the order in question. 7 I. C. C. Rep. p. 592.

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