

**STATEMENT AND BRIEF.**

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IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

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No. 386.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE TERMINAL RAILROAD ASSOCIATION OF ST.  
LOUIS ET AL.

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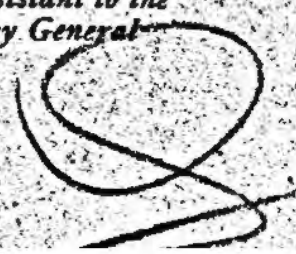
APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF MISSOURI.

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THE ATTORNEY GENERAL  
OF THE UNITED STATES.

CHARLES A. HOUTS,  
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Attorney General.*



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**STATEMENT.**

This is a proceeding begun November 5th, 1905, by Petition, under the Act of Congress, commonly known as the "Sherman Anti-Trust Act" of July 2nd, 1890, against the defendant railroad Companies and certain officers and directors thereof, named in the Petition, charging them with violating said Act by combining and unreasonably restraining interstate commerce between the States of Missouri and Illinois and other states of the Republic and foreign countries.

The Petition avers the facts in detail upon which the complainant relies, and charges a conspiracy in restraint of interstate and foreign trade, and a combina-

tion in restraint of such trade in violation of the First Section of the Anti-Trust Act.

The Bill also charges an attempt to monopolize, and a monopolization of interstate and foreign trade in violation of the Second Section of the Sherman Act.

~~The Government moved to remand because no final judgment had been entered in the lower court.~~

Answers were filed by the various companies, admitting a great many of the facts as to corporate organization and consolidation of interests, and stock ownership and transfer of property, and leases thereof, but denying that the properties as combined and operated restrained commerce, and denying any intent to restrain the movement of interstate commerce. And averring specifically that the properties so combined and operated (in the manner substantially as alleged in the petition) was an aid to commerce and not a restraint, and alleging said properties were so combined and operated for the purpose of facilitating the transportation of persons and property by the fourteen railroads, co-defendants of The Terminal Railroad Association, and all other railroads engaged in interstate commerce between Missouri and Illinois at St. Louis, Missouri.

Issues of fact being made by the Pleadings, a Commissioner was appointed to take the testimony and report the same to the Court without any findings, either as to the law or the facts.

The testimony was taken and filed by the Commissioner in the United States Circuit Court at St. Louis, Mo., and the case was argued at St. Louis, before the four Circuit Judges of the United States Circuit Court of Appeals.

The Judges were equally divided in opinion as to

whether or not the Government was entitled to any relief, and they accordingly certified the case to this Court, where, upon motion made by the Government, it was on the 31st day of January, 1910, remanded because no final judgment had been entered below, to be dealt with according to law.

On June 6th, 1910, the United States District Attorney for the Eastern District of Missouri filed a motion in behalf of complainant, asking for a re-argument of said cause.

Afterwards the four Circuit Judges made an order reciting that the complainant could not prevail because only two of the Judges were of the opinion that it is entitled to relief, while two were of the opinion it is entitled to no relief, and the Court ordered:

“That the motion for a re-argument of this case be, and the same is hereby, denied, and that the Bill of the complainant be, and it is hereby, dismissed.”

And afterwards, on August 1st, 1910, a Petition for Appeal, accompanied by the following Assignment of Errors, was filed by the complainant:

I.

“The complainant assigns as error the action of the Circuit Court in making and entering in this cause its order of June 4th, A. D., 1910, and adjudging and decreeing the dismissal out of Court of complainant's bill of complaint herein. .

II.

The complainant assigns as error the failure and refusal of the Circuit Court by its decree herein to adjudge and decree the complainant the relief prayed for in its bill of complaint.

### III.

The complainant assigns as error the failure and refusal of the Circuit Court under the evidence in this cause to adjudge and decree that the defendants had entered into, prior to the institution of this cause, and at the time of the institution thereof were engaged in carrying out a combination and conspiracy in restraint of trade and commerce among the several states as described in the complaint herein, contrary to and in violation of the act of Congress of July 2nd, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopoly."

### IV.

The complainant assigns as error the failure and refusal of the Circuit Court to adjudge and decree that the several defendants (other than the Terminal Railroad Association of St. Louis, St. Louis Merchants Bridge Terminal Railway Company, Wiggins Ferry Company, and the St. Louis Bridge Company) owned and controlled the entire capital stock of the defendant Terminal Railroad Association of St. Louis, and that such ownership and control constitute a combination in restraint of trade and commerce among the several states and between said states and foreign countries contrary to the act of July 2nd, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopoly."

### V.

The complainant assigns as error the failure and refusal of the Circuit Court to adjudge and decree null

and void the several agreements between the defendants herein, described in complainant's bill of complaint, whereby the defendant, The Terminal Railroad Association of St. Louis, acquired the ownership and control of the St. Louis Bridge (designated in the complaint as the "Eads Bridge"), and the railroad tracks crossing the same, and terminals connecting therewith; and also the St. Louis Merchants Bridge (designated in the complaint as the "Merchants Bridge"), and the railroad tracks crossing the same, and terminals connecting therewith. And also the failure and refusal of the Circuit Court to enjoin the further carrying out of such agreements and the operation of such bridges, railroad tracks, and terminals upon a noncompetitive basis with each other.

## VI.

The complainant assigns as error the failure and refusal of the Circuit Court to adjudge and declare null and void the several agreements between the defendants herein described in the complainant's bill of complaint looking to the operation of the St. Louis Bridge, known as the Eads Bridge, and railroad tracks crossing the same and terminals connecting therewith, in a common or noncompeting interest with the St. Louis Merchants Bridge, known herein as the Merchants Bridge, and railroad tracks crossing the same and terminals connecting therewith, and to enjoin and forbid the defendants, parties to such agreements, from the further carrying out of such agreements or the operation of such bridges, railroad tracks, and terminals in such common or noncompetitive interest, and to enjoin and forbid the defendants and each of them, their agents, servants and employes, from operat-

ing, controlling, and maintaining the properties hereinbefore described as a common instrument or agency of interstate commerce under the common control of the fourteen railroad companies owning the capital stock of the Terminal Railroad Association.

## VII.

The complainant assigns as error the failure and refusal of the Circuit Court to enjoin the defendants, the Missouri, Kansas & Texas Railroad Company, the Chicago & Alton Railway Company, the St. Louis & San Francisco Railway Company, the Baltimore & Ohio Southwestern Railroad Company, the Illinois Central Railroad Company, the St. Louis, Iron Mountain & Southern Railway Company, the Chicago, Burlington & Quincy Railway Company, the St. Louis, Vandalia & Terre Haute Railroad Company, the Wabash Railroad Company, the Cleveland, Cincinnati, Chicago & St. Louis Railroad Company, the Louisville & Nashville Railroad Company, the Southern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Missouri Pacific Railway Company, their stockholders, officers, directors, executive committees, agents, and servants, from voting or in any way acting as the owner of any of the shares of the capital stock of the Terminal Railroad Association of St. Louis, of the Wiggins Ferry Company, and of the St. Louis Merchants Bridge Terminal Railway Company; and to enjoin the Terminal Railroad Association of St. Louis, its stockholders, officers, agents and servants, from in any manner recognizing or accepting the defendants hereinbefore in this assignment specified, as the owners or holders of any share or shares of its capital stock, and from allowing such specified de-

fendants to vote such stock, and from paying any dividends upon such stock to said defendants.

### VIII.

The complainant assigns as error the failure and refusal of the Circuit Court to enjoin the defendant, the Terminal Railroad Association of St. Louis, and the said named railroad companies who own its capital stock as set out in the bill of complaint, their stockholders, officers, directors, agents and servants, from voting, controlling, or acting as the owner or owners of any of the shares of the capital stock of the St. Louis Merchants Bridge Terminal Railway Company, the shares of the capital stock of the St. Louis Merchants Bridge Company, the shares of the capital stock of the Wiggins Ferry Company, the shares of capital stock of the Madison, Illinois & St. Louis Railway Company, the shares of capital stock of the St. Louis Transfer Railway Company, the shares of capital stock of the Wiggins Car Transfer Company, the shares of capital stock of the St. Louis Terminal Railway Company, the shares of capital stock of the Granite City & Madison Belt Railway Company, and the shares of capital stock of the East St. Louis Connecting Railway Company, and to enjoin said last named companies from recognizing or accepting the said Terminal Railroad Association of St. Louis, and the fourteen defendant railroad companies described in the bill of complaint as the owners of the capital stock of the Terminal Railroad Association of St. Louis, as the owners or holders of any of the shares of their respective capital stocks.

In order that the foregoing assignments of error



may be and appear of record, the complainant presents the same to the Court and respectfully prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such case made and provided.

CHARLES A. HOUTS,  
United States Attorney for the Eastern District of  
Missouri.  
Solicitors for Complainant, the United States of  
America.

(Endorsed): Filed Aug. 1, 1910, James R. Gray,  
clerk.

An appeal in proper time and manner was allowed  
to this Court.

The testimony disclosed that, of the railroads named in the petition, The Chicago & Alton, Baltimore & Ohio, Illinois Central, Cleveland, Cincinnati, Chicago & St. Louis, Louisville & Nashville, Chicago, Rock Island & Pacific, had and have their termini at points in Illinois east of the eastern shore of the Mississippi River.

The tracks and rails of the above mentioned eight railroads do not now and never have touched the east bank of the Mississippi River.

Between the termini of the said roads and the east bank of the Mississippi River lies the property which formerly belonged to the Wiggins Ferry Company, and which is covered by tracks connecting with all of the **Eastern Railroads.**

The Missouri, Kansas & Texas, and the Missouri Pacific, and the Wabash, and the Iron Mountain, and Southern, the Chicago, Burlington & Quincy, and St. Louis & San Francisco Railroads have their termini in Missouri.

It is proven that the railroad companies named and their subsidiary corporations comprise all but two of the main lines of railroads handling interstate commerce moving to or from St. Louis, Mo.; and that said railroad companies own and control on either side of the Mississippi River thousands of miles of railway, extending from the Atlantic Coast and the Great Lakes and Canada to St. Louis, Mo., and from St. Louis, Mo., to the Gulf on the south, and to the Pacific Ocean and the Rio Grande River on the west and southwest.

In the language of the President of one of the defendant companies, Julius S. Walsh, found in Vol. 9, p. 3346, "These companies [referring to the defendant railroad companies] control over 50,000 miles of railroad, or more than 25 per cent of the total mileage of the United States."

The haul of freight and passengers from the termini in Illinois of the Eastern roads into the City of St. Louis, Missouri, and to a connection with the rails of the roads from the west having their termini in St. Louis, Missouri, was a carriage of interstate commerce performed by a separate carrier, for which a separate charge was and is made.

No freight from the east or foreign countries

could be shipped and billed to **St. Louis, Missouri**, but it was all shipped and billed to **East St. Louis**, Granite City or Madison, Illinois. No freight could be billed from **St. Louis, Missouri**, to pass over roads leading east to the **Atlantic Coast**, north to the **Great Lakes** or south to the **Gulf**. No **St. Louis** bill of lading was issued on this eastern business. **St. Louis** was not on the railroad map. All freight rates were made to **East St. Louis, Illinois**.

The eight Eastern defendant railroads having their termini in Illinois and the six defendant railroads having their termini in Missouri have combined under one control and monopolized all the agencies and instruments used to move interstate commerce from all States of the Republic and foreign countries which is required to be moved between the termini of the roads in Missouri and Illinois, and which is required to be moved across the Mississippi River at **St. Louis, Missouri**.

This instrument of interstate commerce so used by the defendants to restrain, control and monopolize the movement of interstate commerce is known as "The Terminal Railroad Association of **St. Louis**," and is named as one of the defendants in this action.

The Terminal Railroad Association performs this independent interstate movement of commerce with its own engines, cars and employes.

The Terminal Railroad Association publishes and files with the Interstate Commerce Commission a regular classified Freight and Railroad Tariff, and collects the rates therein stated, for a haul between the termini of the Eastern roads in Illinois and the Western roads in Missouri. It also operated on its own account, over the bridges and ferries across the Mississippi River, freight and passenger trains.

As will be seen on page 1724<sup>Vol. 4</sup> of the Record, The Terminal Railroad Association maintained a **separate** and independent switching charge schedule, which was entirely **separated from the charge for the haul between the cities located in Missouri and Illinois.**

The entire capital stock of the Terminal Railroad Association is owned in equal parts by the fourteen railroads who are co-defendants with it herein. Each of the fourteen railroad companies, co-defendants of the Terminal Railroad Association, own and hold 2056 of the 28,820 issued shares of the authorized capital stock of \$50,000,000 of the Terminal Railroad Association of St. Louis. The 36 remaining outstanding shares are held by officers and agents of the co-defendants herein of the Terminal Railroad Association, for the purpose of qualifying said officers and agents to act as Directors of said company, and Inspectors of Election.

The Terminal Railroad Association is controlled entirely by its co-defendants. The officers and agents of the fourteen railroad companies, co-defendants with the Terminal Railroad Association herein, are the officers and officials **actually and actively in charge of and operating the Terminal Railroad Association.**

The co-defendants of the Terminal Railroad Association each name one of their officials to act as a Director of the Terminal Railroad Association. Each railroad names a Director in accordance with the contract of Oct. 1st, 1889, which provided for and caused the organization of Dft. Terminal Railroad Association. This contract provided how the Directors should be named. The fourteen railroads name all the Directors and Officers, and operate under their joint control the properties of the Terminal Railroad Association.

The Terminal Railroad Association is a "dummy corporation."

**THE DEFENDANTS AND THEIR PREDECESSORS, IN ACCORDANCE WITH A WRITTEN CONTRACT, ORGANIZED THE DEFENDANT TERMINAL RAILROAD ASSOCIATION FOR THE PURPOSE OF UNREASONABLY RESTRAINING INTERSTATE COMMERCE AND CREATING A MONOPOLY THEREOF AT ST. LOUIS, MO.**

The Terminal Railroad Association of St. Louis was organized for the purpose of and has been used to unreasonably restrain and monopolize commerce.

This is clearly shown by the contract between Jay Gould, of New York City, and six of the defendant railroads, in which Gould agreed to organize the Terminal Railroad Association of St. Louis by consolidating corporations he controlled operating railroads in Missouri and Illinois, and controlling the Eads Bridge over the Mississippi River at St. Louis and the tunnel used in connection with it, to move interstate commerce at St. Louis, and in which said contract Gould agreed to convey to each of the seven roads one-seventh of the seven millions of dollars of stock of the Terminal Railroad Association of St. Louis when organized, whenever each of said companies should sign a written agreement with the Terminal Association containing the following clause, binding them to forever use for interstate commerce the properties Gould should convey to the Terminal Association of St. Louis, to-wit:

“Each of the proprietary companies hereby covenant and agree that it will forever make use of the bridge and terminal properties of the first party, as above described [referring to the Terminal Railroad Association] for all freight and passenger traffic within its control, through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided.” Vol. 8 of Exhibits, p. 1861.

See agreement of organization of Terminal Railroad Association of St. Louis, Vol. 8, pages 1849 to 1853.

This clause restrained commerce handled by the seven railroads for all time to the particular instruments used for the movement of interstate traffic at St. Louis by the Terminal Railroad Association.

The same clause practically was written into the Guaranty Agreement of 1902, when the Wiggins Ferry Company was bought and the eight additional lines became the property of the Terminal Railroad. See Exhibits, Vol. 8, page 1868.

These two contracts each prohibited the admission of new members except by unanimous consent.

These contracts show clearly the intent and purpose in creating the Terminal Railroad Association to be to control and restrain and monopolize interstate commerce at St. Louis, Mo. These contracts were not in aid of, but in restraint of, interstate commerce.

The movements of those in control of the various agencies of interstate commerce at St. Louis, and the gradual process by which, slowly but surely, all were consolidated, is clearly shown in the following history as shown by the testimony of these common carriers, and justifies the statement made above, that the Ter-

minimal Railroad Association of St. Louis was organized to restrain interstate commerce.

### **WIGGINS FERRY COMPANY.**

From the time anterior to the erection of the bridges across the Mississippi River, a company then and now known as the Wiggins Ferry Company owned the land on the river front on the Illinois shore for a distance of about three miles opposite the center of the business district of St. Louis, Missouri. This land, several hundred acres in extent, lies between the termini in Illinois of the eight Eastern railroads above mentioned and the Mississippi River and extends to the river front, and on said land the Wiggins Ferry Company built and operated a railroad called the East St. Louis Connecting Railway with 25 or 30 miles of track and directly touching with its rails the termini of all the Eastern roads.

The Wiggins Ferry Company was a common carrier engaged in interstate commerce business and operating car transfer ferries across the Mississippi River and railroad lines in both Illinois and Missouri. The Wiggins company connected with all the railroads in Missouri and Illinois and moved interstate traffic between the termini of roads in Illinois and Missouri.

### **EADS BRIDGE.**

A bridge known as the "Eads Bridge" was built at St. Louis by the Illinois and St. Louis Bridge Company and was opened for operation July 4th, 1874 (Exhibits, Vol. 4, p. 3332) and was built as an independent instrument of interstate commerce.

The bridge has its western approach at the foot of Washington avenue in St. Louis, Missouri, and its eastern terminus in East St. Louis, Illinois. It is a double deck bridge and has a double track standard gauge railroad on its lower or first part, and immediately over the said railroad tracks is a wagonway, sidewalk for pedestrians and a double track electric street railway line. The wagonway, pedestrian walk and street railway at the western approach are reached by the street surface of Washington avenue. The railroad tracks are reached from the west by a tunnel (built and owned by an independent company known as the St. Louis Tunnel Railroad Company) extending under the surface of Washington avenue and leading to the southwest under the business district of the city for a distance of almost a mile and emerging into the Mill Creek Valley at Clark avenue near Twelfth street, Exhibits, Vol. 4,<sup>9</sup> p. 3327.

The "Eads Bridge" owned no railroad connecting with the lines of road terminating either in Missouri or Illinois, but was built and operated as an independent instrument of interstate commerce. Prior to the erection of the Eads Bridge, the "Wiggins Ferry" owned and operated car transfer boats across the river and railroad tracks on both sides of the river. The roads terminating in Illinois and Missouri having no proprietary or other interest in the "Eads Bridge," and having direct rail connection in Illinois and Missouri with the tracks of the Wiggins Ferry Company, used the Wiggins car transfer boats to conduct the interstate commerce passing through the St. Louis gateway.

The "Eads Bridge" Company defaulted in payment of the interest on its bonds, and in 1879 passed under



foreclosure proceedings to the St. Louis Bridge Company, which now owns it. The St. Louis Tunnel Railroad Company, defaulting in the payment of interest on its bonds, also passed under foreclosure proceedings in 1878 to the Tunnel Railroad Company of St. Louis, which company now owns the tunnel property. Exhibits, Vol. 4, p. 3328.

### **TUNNEL RAILROAD.**

The St. Louis Tunnel Railroad Company was organized in 1872 to construct a railroad through the tunnel from the western terminus of the "Eads Bridge" to a connection with the Missouri Pacific, or any other railroad. Exhibits, Vol. 4, p. 3327.

### **UNION RAILWAY AND TRANSIT CO.**

In April, 1874, two independent railroad companies were organized in Missouri and Illinois and designated respectively the "Union Railway and Transit Company of St. Louis," and the "Union Railway and Transit Company of Illinois," and these companies proceeded to build railroads in Missouri and Illinois with the object of making connection, by rail, by means of the Eads Bridge, between the eastern railroads terminating in Illinois and the western roads terminating in Missouri, but these two corporations were not owned by, but were independent of, the railroads terminating in either State and were also independent of the Eads Bridge.

### **POOLING AGREEMENT BETWEEN TERMINAL RAILROAD ASSOCIATION AND THE WIGGINS FERRY COMPANY.**

The Terminal Railroad Association and the Wiggins Ferry Company being engaged in the same business in the same territory formed a combination and agreed on certain fixed rates to be charged for the interstate haul between the eastern roads in Illinois and roads in St. Louis, Missouri. Record, Vol. 2, pp. 84-85.

Regular statements of the joint earnings were kept by the carriers of the pool. Record, Vol. 2, pp. 103-117.

### **MERCHANTS BRIDGE.**

This state of affairs existed at the time when we find that ex-Governor David R. Francis headed a movement of the merchants of St. Louis and demanded that relief be given from the situation; this will be seen in the testimony of Governor Francis, Vol. 2 of the Record, pages 34 to 69. Governor Francis, the Merchants Exchange and the business men generally of the City of St. Louis banded together and appealed to Congress for a franchise to erect a bridge over the Mississippi River, which was granted, and it was erected as a competing instrument of interstate commerce. Governor Francis says on page 35 of Vol. 2 of the Record, that one of the reasons why this relief was sought was because the people of St. Louis objected to the expense of the haul from St. Louis to the termini at East St. Louis, thinking it too great and feeling that it should be reduced. There was inserted in the Charter of this

Merchants Bridge by Congress of the United States at the request of the merchants of the City of St. Louis the provision that no person who was a **stockholder**, director or manager in any other bridge over the Mississippi River should be a stockholder, director or manager of the Merchants Bridge. The specific clause was as follows, and will be found in.

Vol. <sup>1</sup> of Exhibits, page 3170:

“Section 11. That whereas, a principal reason for giving authority to build a bridge herein contemplated is to secure reasonable rates and tolls for corporations and individuals, for passing over the same, the St. Louis Merchants Bridge Company, or its successors or assigns, shall not agree or consent to the consolidation of this bridge with any other bridge across the Mississippi River, or to the pooling of the earnings of this bridge company with the earnings of any other bridge company on said river. Nor shall any person who is or may be a **stockholder or director or manager** of any other bridge over said river be a stockholder or director or manager of the bridge herein provided for; **provided**, that if this provision of this act shall at any time be violated in any of these particulars, such violation shall, without legal proceedings, at once forfeit the privilege hereby granted, and such bridge shall become the property of the United States, and the Secretary of War shall take possession of the same in the name and for the use of the United States.”

On pages 39 and 40 of Vol. <sup>2</sup> of the Record, Governor Francis testified that the reason for having this clause inserted was to prevent the bridge from being

purchased by the same people who owned the Eads Bridge, and that the object of the Merchants Bridge was to maintain it as an independent structure across the river, to operate independent transportation facilities at St. Louis, and that competition was what the St. Louis merchants desired and they wanted the haul made from the termini of the road from East St. Louis to St. Louis without extra cost.

This Act of Congress was amended September 1st, 1888, before the bridge was completed, by striking out certain words, so that the amended section permitted an acquisition of the ownership of the Merchants Bridge by persons interested in other bridges across the Mississippi River.

This was done to permit the sale of the bridge stock and thus transfer the control of it to some other Bridge Company or its stockholders, to acquire control of the Merchants Bridge.

Governor Francis, in Vol. 2, pages 40, 41 and 43 of the Record, testifies that it was not until 1893 that he discovered that this amendment had been made to the charter of the Merchants Bridge, although the Governor was Chairman of the Finance Committee of this corporation. This admission of Governor Francis, which is undisputed, shows that the fact of the amendment was not known generally to the people of St. Louis. The Merchants Bridge was completed and opened in 1890 and operated between St. Louis, Missouri, and Venice, Illinois. The Merchants Bridge owned a franchise to operate a railway between Venice, Illinois, and the Union Depot in St. Louis. Vol. 2 of Record, p. 36.

**Wiggins Company, Terminal Company and Merchants  
Terminal Company Pool.**

After the Merchants Bridge and Terminal Railway was completed, rates for the interstate haul between the termini in Illinois of the Eastern roads and St. Louis, Missouri, were cut by the Merchants Company. See Record, <sup>Vol. 2</sup> page 86.

This rate cutting was followed by an agreement between the three companies, the Merchants Company, the Wiggins Company and the Terminal Company, for a division of the earnings of the three roads on a tonnage basis, for the traffic carried between the termini of the Eastern railroads in Illinois and St. Louis, Mo. This will be shown by the testimony of the President of the Wiggins Company in Record, <sup>Vol. 2</sup> page 86; also by the testimony of the man who had charge of the records of the pool. Record, <sup>Vol. 2</sup> pages 112 to 122, and 86, 180, 181, 183. <sup>Vol. 9 Exhibits</sup>

On pages 3103 and 3104 of the ~~Record~~ will be found exhibits showing the statement of joint earnings, as kept by the Commissioner of the Pool.

These pooling agreements are offered in evidence and referred to for the purpose of showing the object and intent of the persons and corporations in forming and operating the Terminal Railroad Association.

These pooling agreements are an aid in discovering the intent and purpose in combining under one control all of the instruments of interstate commerce used in moving freight and passengers between the termini of the eastern railroads in Illinois and St. Louis, Mo.

### **St. Louis Merchants Bridge Terminal Railway Company.**

Before the Merchants Bridge had been opened, on August 28th, 1887, the St. Louis Merchants Bridge Terminal Railway Company had been organized to operate a railroad over and from the Merchants Bridge to a connection with railroads in Missouri and Illinois. This company finally built the present elevated railroad structure along the river front in St. Louis, Missouri.

### **LEASE OF MERCHANTS BRIDGE.**

On February 1st, 1889, the Merchants Bridge Company leased the bridge to the Merchants Bridge Terminal Railway Company, the lessee agreeing to pay as rental the interest on \$2,000,000 of six per cent bonds of the Bridge Company. This lease was canceled August 1st, 1893, and a new lease exactly similar was made to the Madison, Illinois and St. Louis Railway, which corporation was organized to and did construct a railroad from the east end of the Merchants Bridge in Illinois to Granite City, Illinois. Exhibits, Vol. 19, pp. 3333-3334-3335.

An agreement was made whereby the Missouri, Kansas & Texas, and the Chicago, Burlington & Quincy railroads used the elevated structure before referred to, in order to get into the Union Station.

### **TERMINAL COMPANY ACQUIRES CONTROL OF MERCHANTS COMPANY.**

On August 17th, 1893, an agreement was made between the Terminal Railroad Association and the Mer-

chants Bridge Terminal Railway Company whereby the Terminal Association acquired \$438,400 of the capital stock of the Merchants Company, giving it with what it already owned a majority of the capital stock of the Merchants Bridge Terminal Railway Company. As the Merchants Terminal Railway Company controlled the stock of the Merchants Bridge, so this gave the Terminal Railroad Association the control of both the "Eads" and the "Merchants" Bridges. Exhibits, Vol. X<sup>9</sup> page 3332.

The Merchants' Bridge Terminal Railway Company owned all the stock of the Merchants Bridge Company and of the railroad reaching the east end of the Merchants Bridge, namely, the Madison, Illinois and St. Louis Railway Company.

The Madison, Illinois and St. Louis Railway connected the east approach of the Merchants Bridge with the East St. Louis Belt Railroad and roads entering East St. Louis from the north.

On September 1st, 1890, for the purpose of making connection with the Eads Bridge in Illinois, the Merchants Bridge Terminal Railway leased in Illinois the Venice and Carondelet Belt Railroad.

These connections in Illinois gave the Merchants Bridge access to all the eastern roads.

#### **GUARANTY CONTRACT OF 1902, IN DIRECT RESTRAINT OF INTERSTATE COMMERCE.**

In the process of combining under the control of the Terminal Railroad Association the various interstate agencies of commerce that had been independent, contracts were made from time to time intended to aid in eliminating competition. One of these contracts, known

as the "Guaranty Contract," found at p. 1868, Vol. 8, of the Exhibits, prohibits the admission of new companies except by unanimous consent of all the proprietary roads.

### **ROCK ISLAND'S FIGHT TO GET INTO ST. LOUIS AND SALE OF WIGGINS FERRY COMPANY.**

In 1902 the Rock Island road wanted to enter St. Louis from the east. To do so it tried to buy the Wiggins property. The Wiggins Company then owned three miles of the river front in Illinois opposite St. Louis, Missouri, and which land lay between the termini of the eastern roads and the river.

When the Terminal Railroad Association found the Rock Island was trying to buy the stock of the Wiggins Ferry Company, the Terminal Association sent its banker and brokers to get control at any price of the majority of the Wiggins Ferry Company stock. The result was, Wiggins shares, worth really about \$300.00 each, were sold for as high as fifteen hundred dollars per share.

The purchase was made to prevent a so valuable property from falling into the hands of a competitor. The usual result followed, i. e., the Rock Island and the Terminal Association got together and arranged for the Rock Island to be admitted to the Terminal Association, and the Wiggins property was transferred to the Terminal Company and an additional issue of Terminal Association bonds was put forth and sold, and the Rock Island and the Terminal Company were repaid with the proceeds of said sale the seven millions of dollars that had jointly been expended by the two companies while the Terminal was trying to keep the



Rock Island out of St. Louis and the Rock Island was trying to get into St. Louis.

Bonds of the Terminal Association to the extent of fifty millions of dollars have been authorized, and twenty-eight millions of dollars have been issued. This twenty-eight million has paid for all the property of the company and made all the improvements thereon.

Another clause of the same contract made in 1889 (and agreed to by the Rock Island in the contract of December, 1902), admitting said last named road to the Terminal Railroad Association, bound all the roads to forever make use of the Terminal Railroad Association properties for all passenger and freight traffic within their control on their fifty thousand miles of road, destined through, to and from St. Louis, Missouri, and destined to cross the Mississippi River at St. Louis, and pay therefor as therein provided. Exhibits, Vol. 8, p. 1861.

#### **RESULT OF COMPLETE MONOPOLY BY FOURTEEN RAILROADS OF INSTRUMENTS OF INTERSTATE COMMERCE AT ST. LOUIS.**

The result of this combination of the instruments of interstate commerce under the control of the Terminal Railroad Association was that the fourteen proprietary lines acting jointly through their dummy company, the Terminal Railroad Association, fixed the freight rates to East St. Louis, Granite City and Madison, Illinois, and the City of St. Louis, Missouri, and collected through the Terminal Railroad Association a specific rate and charge for the interstate traffic between points last above named and the City of S. Louis, Missouri, and compelled the people and the business interests of

St. Louis, Missouri, to pay the original cost of and the operating expenses of the Terminal Railroad Association in addition to the usual and ordinary freight charges.

The practical result of this has been to drive manufacturers away from St. Louis and many have dismantled their plants in St. Louis and moved into Illinois and cities in that state have had their growth stimulated at the expense of St. Louis. Granite City, Madison and East St. Louis, Illinois, owe practically all their population and business and, in fact, existence, to the combination and monopoly of the agencies of interstate commerce controlled by the fourteen roads with its resulting discrimination against St. Louis, Missouri. Fourth Municipal Bridge and Terminal Report, pages 4, 5 and 8.

To make the burden more onerous to St. Louis people and shippers, a charge for the haul between the termini of the eastern roads in Illinois and the City of St. Louis, Missouri, or the termini of the western roads in St. Louis, Missouri, was not imposed directly upon any shipper or receiver of freight passing through St. Louis either way and destined to points one hundred miles beyond St. Louis. But freight originating in St. Louis and destined to points east of St. Louis had to be shipped over the Terminal Association's property or hauled to East St. Louis, Granite City or Madison, Illinois, and then reshipped to the point of destination.

All railroad rates from the Atlantic seacoast were based upon Chicago, and a rate was never made to St. Louis, Missouri, but to East St. Louis, Illinois. This was the end of the haul of the eastern roads. The East St. Louis, Illinois, rate was made by taking the

rate from New York to Chicago as a basis and then it was figured that sixteen per cent of the amount charged for the haul from Chicago to New York should be added to the rate from New York to Chicago, and this would be the **New York to East St. Louis** rate. The Terminal Association then charged its published rate, according to its classified freight traffic for the haul from East St. Louis, Granite City or Madison, Illinois, to St. Louis, Missouri.

On all through business coming from the east the railroads extending west from St. Louis, Missouri, absorbed the charge for the haul from Illinois to the termini of the western roads in Missouri.

The result of this practice has been to create in Illinois a difference in freight rates greatly in favor of the towns on that side of the river as compared with any suburban or similarly situated towns near any other city in the country, a difference amounting on general merchandise to four cents per hundred weight (that being the cost of crossing the river both ways), and this advantage being over the City of St. Louis. The practical result of this policy has been to stimulate the growth of East St. Louis and other Illinois cities at the expense of St. Louis, Missouri, to such an extent that it has greatly crippled the development of St. Louis, especially along manufacturing lines. The fact is, that the cities in the State of Illinois have all of the transportation facilities that the City of St. Louis has, and many advantages that the latter does not have. (Fourth Municipal Bridge and Terminal Report, pp. 4, 5 and 8.)

After this action was instituted a commission was appointed by the City Government of St. Louis, Missouri, called the "Municipal Bridge and Terminal Com-

mission," with the avowed object of securing some relief for St. Louis from the railroads. This Commission appointed Mr. Perkins as a Railroad Traffic Expert to advise it. The defense put him on the stand as their witness and his testimony will be found bound separately in Volume 4<sup>5</sup> of the Record. This expert railroad traffic witness for the defense admitted on pages 2794-95, Volume 4<sup>5</sup> of the Record, **that the monopoly of the Terminal Railroad Association of interstate business restrained the interstate traffic and injured the business interests of St. Louis, Missouri, and gave cities in Illinois an advantage over St. Louis, Missouri, in the manufacturing business.**

The record teems with demonstrations of still further injurious and direct influences of the combination upon interstate commerce.

**Thus upon Coal Traffic.** The largest deposits of soft coal in the Mississippi Valley are in Illinois within a short distance of St. Louis, Missouri. The largest item of freight from the East coming into St. Louis, Missouri, is soft coal, amounting in 1907 to eight millions of tons. All of the eastern roads are coal carrying roads. For many years the rate on soft coal from the mines within a distance of from 25 to 40 miles was 25 cents per ton to East St. Louis, Illinois; then the coal was delivered to the Terminal Railroad Association and it charged for a haul across the river 30 cents per ton, the two rates making 55 cents per ton freight rate to St. Louis for soft coal, as against 25-cent rate for the same article to East St. Louis, Granite City and Madison, Illinois. This drove manufacturers into Illinois. Later the Wabash road forced a reduction of the haul across the river to 20 cents per ton. Record, Vol. 4<sup>4</sup>, page 2471.

But to make up for this reduced charge of 10 cents per ton across the river, the proprietary lines in the Terminal Association increased the rate from the coal mines to East St. Louis, Illinois, from 25 cents to 40 cents per ton. Record, <sup>Vol. 5</sup> page 2929. And later 2 cents per ton more, <sup>Vol. 5</sup> page 2930, was added, making instead of a reduction on coal from the Illinois mines to St. Louis, an increase of 17 cents per ton.

### **"COAL POOL."**

Many years ago the St. Louis Coal Pool was formed by the railroads. After the decision in the Joint Traffic Association case the name was changed to the St. Louis Coal Traffic Bureau, as it is now called. Its sole object was to suspend competition between the railroads in coal rates from the Illinois coal fields, most of which are in a very short distance from St. Louis, Missouri, to the St. Louis market. The association had a secretary, whose name is R. M. Frazer. It held its meetings in St. Louis, Missouri. This association was composed of representatives of each of the coal carrying roads and the Tunnel Association. All of the proprietary lines in the Terminal Association were members of the Coal Traffic Bureau. When a rate had been agreed on a circular called "An Information Circular" would be issued and sent to all the railroads. This circular contained the rates to be charged from all the Illinois coal mines to East St. Louis, Illinois. If a road cut the rate, a meeting was called and usually the roads were powerful enough to force a return to the agreed rate. The average coal car will now carry about forty tons. Twenty cents per ton freight over the river makes \$8.00 per car for the transfer charge. This Coal

Traffic Bureau kept an accurate account of all shipments of coal by each road, and issued to its members statements of the same, and in general kept a supervision over the coal traffic into St. Louis from the Illinois coal fields.

**Delays.** The evidence shows that goods from Chicago, Illinois, would be delivered to towns in Illinois only 50 to 75 miles from St. Louis, Missouri, 24 to 48 hours sooner than goods of the same character ordered at the same time from St. Louis, Missouri. Record, Vol. 2, p. 295. These delays caused the St. Louis merchants and manufacturers to haul their goods by wagon to the State of Illinois, and deliver them to the Eastern roads. Record, Vol. 2, pp. 224-225.

The lack of facilities of the monopoly caused delays.

**Dividends and Interest Paid by the Terminal Railroad Association.** The testimony shows that the fourteen proprietary companies are using the Terminal Railroad Association as a dummy company, through which to operate an instrument and agency of interstate commerce. They have not invested a dollar in the Terminal Railroad Association, either in the States of Illinois or Missouri, and do not pay any of the expense of maintaining the agencies of interstate commerce in the two States; but by reason of the control of the stock of the Terminal Railroad Association, and the fixing of freight rates for interstate commerce between Illinois and Missouri, at St. Louis, Missouri, and East St. Louis, Illinois, have caused the public to pay all of the expense of maintaining and operating these properties. In addition thereto, dividends on stock and interest on bonds, amounting to \$1,100,000 in the primary consolidated corporation, and also interest on

twenty-eight millions of bonds issued by the Terminal Association have been paid, and are now being paid, and improvements in the property are also made with the earnings of the property controlled by the fourteen companies through the agency of the Terminal Railroad Association.

### THE ARBITRARY.

The charges made by The Terminal Railroad Association for hauling freight in general from St. Louis, Missouri, to the termini of the Eastern roads in Illinois and from the termini of the Eastern roads in Illinois to St. Louis, was about two cents per hundred pounds each way. The haul was simply across the river. The charge fixed was an **arbitrary** one, varied on different classes of freight. This charge is what is known as "The Arbitrary."

No freight from the east or foreign countries could be shipped and billed to **St. Louis, Missouri**, but it was all shipped and billed to **East St. Louis, Granite City or Madison, Ill.**

No freight could be billed from **St. Louis** to pass over roads leading east to the Atlantic coast, north to the lakes or south to the Gulf. No **St. Louis Bill of Lading** was issued on this eastern business.

If goods were shipped from **East St. Louis, Ill.**, or points **East of Mississippi River** to points west of **St. Louis**, no charge for the haul from **East St. Louis**, or points **East of the Mississippi River**, was made; but if goods were shipped to the same points from **St. Louis** westward, the same rate had to be paid as though it had been shipped from **East St. Louis**—in other words, no charge for the use of the properties of the Terminal Railroad Association crossing the river and mak-

ing the haul from the termini of the eastern roads in Illinois to the termini of the western roads in Missouri was made for shipments originating in **East St. Louis** and points beyond East St. Louis, and destined to points west of **St. Louis**. But if shipments originated in St. Louis, Missouri, bound eastward, or originated on the Atlantic seacoast or in Europe or the Great Lakes, and were destined to St. Louis, Missouri, they could only be billed to **East St. Louis, Granite City or Madison, Ill.**

No Bill of Lading could be issued to **St. Louis, Mo.** When the goods got to East St. Louis, Granite City or Madison, Illinois, they were re-billed to **St. Louis** and an independent charge was made for the interstate haul between **East St. Louis, Granite City or Madison, Ill., and St. Louis, Mo.**

The result of this has been to drive factories from **St. Louis to East St. Louis** to such an extent as to injure the growth of **St. Louis, Mo.,** along the manufacturing lines.

The situation as set forth in the preliminary report of the Bridge & Terminals Commission (copies of which are filed as part of the record in this case) at pages 4 and 5 is as follows:

"The City of St. Louis has for many years been struggling to free itself from what is known as the bridge arbitrary \* \* \* the transportation companies have fixed a rate from East St. Louis and compel the business interests of this city to pay the costs and operating expenses of the Terminal Railroad Association by means of this bridge arbitrary \* \* \* to make the burden more onerous for St. Louis shippers, the bridge charge is not imposed directly on the receiver of freight outside of the City of St. Louis, in the



State of Missouri, when such merchandise passes over the Terminal \* \* \* the result of this practice has been to give shippers on the east side of the river a difference very greatly in their favor, as compared with that of any St. Louis shipper, the difference amounting on general merchandise to 4c per 100 lbs., that being the cost of crossing the river both ways, the disadvantage being all to the City of St. Louis. At the same time the City of East St. Louis is given all facilities without any bridge expense whatever, the west side roads assuming the cost of transfer in car-loads (and less than car-loads over the St. Louis Transfer Co.) from East St. Louis to points west of St. Louis, and whichever direction the freight may go from St. Louis, either east or west, East St. Louis is given the advantage of the bridge charges. The result of this policy has been to stimulate manufacturing in East St. Louis at the expense of this city to such an extent as to greatly hinder the growth of this city along manufacturing lines."

### **EFFECT OF COMPETITION ON CHARGES OF RAILROADS.**

There was one exception, however, to this matter, so far as freight rates are concerned, and that is what is known as the **Green Line** territory, being that territory lying south of the **Ohio River**, east of the **Carolinas** and **Georgia** and extending south to the **Gulf**. At **Memphis, Tennessee**, a railroad bridge was built and freight was allowed to pass over it without any extra charge, the bridge being used as part of the main line of the road, as it should be. Railroads running from **St. Louis, Mo.**, down to a point where a

connection could be made with the tracks crossing the bridge at Memphis on the west bank of the Mississippi River caused Eastern lines extending Southeastwardly from East St. Louis, Illinois, to ship from St. Louis, Mo., to that Green Line territory free of extra charges for haul from St. Louis, Mo., to East St. Louis, Ill., owing to this competition of the Memphis bridge. In other words, if a shipment made from St. Louis, Missouri, going forty miles from St. Louis, in Illinois, the arbitrary charge of two cents per hundred pounds for haul from St. Louis, Mo., to the termini of the Southeastern roads would be made. But if the shipment was made from St. Louis, Mo., over the same line to a point near Memphis, Tenn., or to Memphis, or beyond Memphis, no charge would be made for the haul from St. Louis, Mo., to the termini of the Eastern or Southeastern road that carried the shipment.

### **WHY THE TERMINAL RAILROAD ABSORBED ITS COMPETITOR.**

**Fight of Rock Island Railroad to secure entrance into St. Louis and for Control of Wiggins Co.**

In 1902 the Rock Island road attempted to buy control of the Wiggins Company. The Wiggins Company then owned tracks in Illinois reaching every eastern railroad and connecting with the ferries of the Wiggins Company. It also had a track on the levee in St. Louis, Mo., for almost the entire distance of the city front on the river.

The Wiggins Company had connection with every railroad in Missouri and Illinois carrying St. Louis traffic. It had better facilities for handling business in

Missouri and Illinois than the Terminal Railroad Association possessed.

This was shown by the testimony of a traffic expert placed on the stand by the defendants.

This witness testified the Wiggins had more complete connection with the individual roads than the Terminal Association had. That the connection of the Wiggins in both states was more direct and complete than the connection of the Terminal Association. See Record, <sup>W.O.S.</sup>pages 2746 and 2747.

Mr. Ramsey, President of the Wabash road, (one of the owners of the Terminal Association) testified when he learned the Rock Island wanted to enter St. Louis and was buying Wiggins stock that he told Mr. Gould, President of Missouri Pacific and Iron Mountain Railroads, (both part owners of the Terminal Association) that the Gould lines could well afford to purchase the Wiggins to prevent such a valuable property from passing into the control of a competitor. Record, <sup>U.C.2</sup>page 249.

Mr. Gould then sent a telegram to Mr. Walsh, at St. Louis, Mo., Chairman of the Board of Directors of the Terminal Railroad Association, directing him to buy the control of the Wiggins Company; and a fight for control opened, and the stock, which had never sold for more than \$300 per share, sold as high as \$1500 per share.

The result was a drawn battle, control of the stock being claimed by both the Rock Island and Terminal Company, and was finally settled by an agreement by which the Rock Island road became a member of the Terminal Association, and the stock bought by the Rock Island and the Terminal was all divided up equally between the Rock Island and the other thir-

teen roads owning the Terminal Association; and then the usual railroad financial operation was performed, and the bond indebtedness of the Terminal Association was increased and seven millions of dollars of bonds sold, and the seven millions of dollars was paid to the Rock Island and the other roads to reimburse them for money expended for stock in the contest for control of the Wiggins property.

The new mortgage of December, 1902, of the Terminal, covered the Wiggins Ferry property as well as the Terminal property. The fourteen railroads now owned the stock of the Wiggins Company and had been reimbursed from the sale of bonds for the outlay of money for the Wiggins stock, and the only competitor of the Terminal Association passed into its control, and is operated, and has been since 1902, as a part of the Terminal Association by the fourteen railroads.

These facts appear from the testimony of Mr. Walsh, Chairman of the Board of Directors of the Terminal Association, and Mr. Vinnedge, its Auditor. Record, Vol. 4 pages 2282, 2283 and 2273, and 480, 481 and 2421 to 2445.

But before the Rock Island was admitted to membership, and after fight for control of Wiggins Company, the Southern, the Illinois Central, Burlington and M. K. & T. also agreed to join the Terminal Association, and all the roads signed what is known as "The Guaranty Agreement of 1902."

#### **Control of Conlogue Road Secured by Terminal Railroad Association.**

Prior to 1902, the Pennsylvania Company had built a road known as the "Conlogue" road, extending

southward from a connection with the railroads in Illinois to a point on the Illinois side of the Mississippi River, where connection was made with a car transfer ferry in South St. Louis operated by the Missouri Pacific Railway Company. Over this line several hundred freight cars were sent daily by ferry by the Pennsylvania Railroad across the Mississippi River. This haul was made at the rate of \$2.00 per car. This was about one-third of what the Terminal charged for the same haul.

Mr. Walsh testified the Terminal bought the "Conlogue" road, six miles in length, and paid \$1,250,000 cash for it from the proceeds of the sale of bonds authorized and issued after the Wiggins Company passed into the hands of the Terminal Company. Record, <sup>Vol. 2</sup> pages 500, 501 and <sup>Vol. 4</sup> 2282.

The record shows the "Conlogue" quit delivering cars to the ferry in South St. Louis, and the ferry ceased to operate in 1902 or 1903. Record, <sup>Vol. 4</sup> page 2323.

### GUARANTY AGREEMENT.

The Guaranty Agreement of 1902 in express words restrained forever the movement of all commerce crossing the Mississippi at St. Louis and handled by the fourteen railroads, to the use of the properties of the Terminal Railroad Association.

This agreement will be found in Record, <sup>Vol. 4</sup> pages 1930, 1939.

On Record, <sup>Vol. 4</sup> page 1936 will be found the specific provision referred to. It is as follows:

"(a) The proprietary Companies will forever make use of the properties of the Terminal Association granted under said agreement of October 1, 1889, for

all passenger and freight traffic within their control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis."

This agreement undertakes to perpetuate for all time by express contract the arbitrary charge for the interstate haul between the termini of the Eastern roads in Illinois and St. Louis, Mo.

In express terms, it is a contract restraining forever the movement of all traffic through, to and from St. Louis, Mo., over the fifty thousand miles of railroad of the fourteen companies to the use of a particular and specified instrument of interstate commerce, i. e. the properties of the Terminal Association. It excludes the use of all other instruments of interstate commerce forever. It is a complete monopoly.

The old pool agreement was followed by the purchase of stock of competitors, and now the competitors and the owners of the fourteen railroads contract that, not only the business to or from St. Louis, Mo., but all business originating anywhere on their lines and passing through St. Louis shall forever use the properties of the Terminal Association.

There are 40 million of people tributary in a traffic sense to their railroads and all their present and future interstate commerce is restrained by this agreement.

### **TRAFFIC ASSOCIATION.**

The railroads have, for the purpose of traffic, divided the Republic into different territories, and each is under the jurisdiction of a Traffic Association.

Each Association has a Chairman and Secretary, and maintains an office, and the railroads pay the expenses.

The object and purpose of these Associations is to fix and maintain freight and passenger rates.

The "Central Traffic Association," with offices in Chicago, has charge of territory extending from the Ohio River on the South, to the Great Lakes on the North, thence to a point westward in the State of Iowa, and around the lakes eastward to Pittsburg, and southward to the Ohio River.

Under the direction of the "Central Traffic Association" the railroads, including those owning the Terminal Association and the Terminal Railroad, came together at St. Louis and formed the Eastbound Freight Committee, for the purpose of maintaining freight rates fixed by the Central Traffic Association.

The East-Bound Freight Committee deal with interstate freight rates.

All these Traffic Associations are clearly in violation of the Sherman Antitrust Act under the decision in the Trans-Missouri case and the Joint Traffic Association case.

But the membership of the fourteen railroads and of the Terminal Association itself in these traffic organizations to fix interstate rates is referred to for the purpose of showing that the Terminal Railroad Association is used as an instrument of interstate commerce by its owners, and is looked on by them as a carrier of interstate traffic, and not merely as an aid to interstate commerce. In these Traffic Associations it agrees to, and does, maintain certain fixed interstate rates for freight. This shows the intent and the purpose, and the use to which this combination of railroads known as the Terminal Association of St. Louis, puts the property of said Association, and it proves conclu-

sively that the combination is used to maintain a monopoly of interstate commerce at St. Louis, Mo.

The character of these Traffic Associations and their control is shown completely by the Coal Traffic Association. Record <sup>Vol. 2</sup> pages 702, 751.

And of the Louisville-Cincinnati Traffic Association in Record <sup>Vol. 2</sup> pages 815-882. <sup>Vol. 3</sup>





BRIEF



**BRIEF.**

**UPON THE UNDISPUTED EVIDENCE—THE ESTABLISHED FACTS,—THE COMPLAINANT SHOULD HAVE A DECREE.**

The record shows a plain violation by the defendants of the **Act of July 2nd, 1890**—“**An Act to protect trade and commerce against unlawful restraints and monopolies.**”

Familiar as the Judges are with the provisions of the statute, the counsel for complainant, at the outset, apologize for intruding upon the Judges suggestions and propositions which may justly be considered by the Judges as wanting in novelty as are household words.

**Counsel however submit:**

1. Every contract, combination in the form of trust or otherwise, or conspiracy, in undue restraint of trade or commerce among the several States or foreign nations, is illegal.

**Act July 2nd, 1890, Section 1.**

2. Monopolizing, or attempting, combining or conspiring to monopolize interstate or foreign trade or commerce is illegal.

**Act July 2nd, 1890, Section 2.**

**CERTAIN FUNDAMENTAL CONSIDERATIONS CONTROL.**

1. The statute is aimed at restrictions upon

interstate commerce. Given a reasonable construction as it must receive, its purpose is to permit commerce between the States and with foreign nations to flow in their natural channels “unrestricted by any combinations, contracts, conspiracies, or monopolies whatsoever.”

**Hopkins v. United States**, 171 U. S. 586;  
**Loewe v. Lawlor**, 208 U. S. 274.

2. Combinations between competing railroads engaged in interstate commerce to unduly restrain commerce and combinations between media or instruments of interstate commerce fall within the prohibition of the Act.

**United States v. Trans-Missouri Freight Association**, 166 U. S. 319;  
**United States v. Joint Traffic Association**, 171 U. S. 505;  
**Addyston Pipe, Etc. Co. v. United States**, 175 U. S. 244;  
**Northern Securities v. United States**, 193 U. S. 197;  
**Anderson v. United States**, 171 U. S. 604;

**Standard Oil v. United States** Advance Sheets; opinions of United States Supreme Court, p. 516, No. 12, date June 15th, 1911.

4. To monopolize interstate commerce or the media, or instruments of interstate commerce is to secure, or adopt measures which may bring about an exclusive control of such commerce or of such instruments of commerce so as to prevent others

from engaging therein, or using such instruments of commerce.

*In re Green*, 52 Fed. 115;

**Northern Securities Co. v. United States**, 193  
U. S. 197, 402;

**United States v. American Tobacco Co.**, 164  
Fed. 700.

**United States v. Knight**, 156 U. S. R., p. 1.

5. It is not necessary to bring a combination within the Act, that the result of its operation shall be complete restraint or monopoly, or that it shall have resulted in actual injury to the public. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.

**United States v. Chesapeake, Etc., Fuel Co.**,  
115 Fed. 610;

**United States v. E. C. Knight Co.**, 156 U. S.  
16;

**Northern Securities Co. v. United States**, 193  
U. S. 197;

**Chattanooga, Etc. Works v. Atlanta**, *supra*.

6. **The Terminal Association** is necessarily engaged in interstate commerce.

**United States v. Union Stock Yards**, 161  
Fed. 919;

**United States v. Colorado, Etc. R. R.**, 157 Fed.  
321;

**United States v. R. P. T. Co.**, 144 Fed. 861.

## **THE CASE AT HAND AND IN CHRONOLOGICAL SEQUENCE.**

1. **The Wiggins Ferry Company**, chartered by the State of Illinois. Before the day of railroads operating a steam ferry between "Bloody Island", Illinois, and the City of St. Louis, Missouri. After the advent of railroads, in time, transferring cars, carrying freight and passengers from the eastern termini of railroads to St. Louis or to railroads operating westward, or north or south from St. Louis, these railroads, however, never reaching the eastern bank of the river with tracks of their own.

At no time, either at the beginning or at the end of its connection with interstate commerce as an independent medium, was it a part of a terminal system for railroads, but on the contrary at all times it was an independent, and as time went on, a competing medium or instrument of interstate commerce. When bought by the defendants, it had upon both sides of the river a complete system of its own, which was not terminal in any sense, but which was an adequate, competitive and substantial instrumentality of interstate commerce.

2. **The St. Louis bridge—known as the "Eads Bridge."**

Originally the creation of both Illinois and Missouri in the year 1874, and employed independently for purposes of interstate commerce, competing with the **Wiggins Ferry Company** and in no sense a part of a system of terminals. It did not connect with the rails of any railroad.

In 1878, then being operated by the **Union Rail-**

way and Transit Company and the Terminal Railroad of St. Louis under a lease, it was acquired by the **St. Louis Bridge Company**, a Missouri corporation, and continued to be operated as theretofore under the lease until 1880 when the **Union Railway and Transit Company** and the **Terminal Railroad Company** were consolidated under the name of the present defendant "**The Terminal Railroad Association of St. Louis**," which secured a new lease of the bridge properties, under which it proceeded to operate them, and under which it now operates them.

The **Union Railway and Transit Company** and the **Terminal Railroad** owned and operated railroads so connected as to form a continuous line over the "Eads Bridge" and they were being operated as an instrument of interstate commerce in competition with the **Wiggins Ferry Company**, when the consolidated defendant was created. Consolidated defendant composed of two railroad corporations and necessarily itself a railroad corporation, consolidated into "**one railroad company**."

At the creation of the consolidated company its capital stock was \$7,000,000 owned by seven of the "**proprietary companies**" defendants herein. Subsequently this capital was increased to \$50,000,000, divided into 50,000 shares of the par value of one hundred dollars each, and by contracts made after August 17th, 1893, 28,820 shares were bought by fourteen "**proprietary companies**" now defendants herein.

#### **The Guaranty Agreement.**

December 16th, 1902, the fourteen "**proprietary**"



defendants made with each other and the **Terminal Railroad Association** an agreement entitled "**Guarantee Agreement**" wherein it was recited that at the instance of the "**proprietary companies**" (so designated), the **Terminal Association** was about to issue bonds limited in extent of issue to \$50,000,000 and to secure such bonds by a mortgage upon all of its properties. It was agreed that the rates of toll for the use of properties of the **Terminal Association** should be fixed from time to time by the Association so as to pay certain designated charges.

The "**proprietary companies**" agreed to forever use the properties of the Terminal Association for "**all passenger and freight traffic within their control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis.** The tariff rates were agreed to be so fixed as to insure the production of sufficient revenue at all times to enable the Terminal Association to punctually meet and discharge the fixed charges specified in the guaranty agreement.

Reference being had to an earlier agreement—October 1st, 1889—with five of the "**proprietary companies**" whereby they agreed with "each other and with such other companies as might be admitted as proprietary lines" to the joint use of the properties of the Association, the agreement recited the admission of the remaining "**proprietary companies**" and thus evidenced a complete and exclusive control by the "**proprietary companies**" now parties defendant.

**GUARANTY AGREEMENT MADE IN 1902 BY  
FOURTEEN DEFENDANT RAILROADS, RE-  
STRAINING INTERSTATE COMMERCE FOR-  
EVER TO PROPERTIES OF TERMINAL RAIL-  
ROAD ASSOCIATION.**

This Guaranty Agreement provided (Exhibits, Vol. 8, p. 1936) "The proprietary companies will forever make use of the properties of the Terminal Association granted under said agreement of October 1st, 1889, for all passenger and freight traffic within their control, through, to and from St. Louis and destined to cross the Mississippi River at St. Louis."

The 1902 agreement expressly refers to and recognizes the agreement of October 1st, 1889. Exhibits, Vol. 8, pp. 1931 and 1932.

Directors and officers of Terminal Association were named and determined in advance by the agreement of October 1st, 1889, and the Exhibit "A" attached said agreement.

Exhibits, Vol. 8, p. 1850, 7th clause, Agreement and Exhibit, Vol. 8, p. 1861, 3rd clause "A", and first paragraph of clause 4 of Exhibit "A" attached as part of the Agreement of October 1st, 1889. In the Guaranty Agreement of 1902, railroads were compelled to insert clause restraining commerce to Terminal properties because the agreement of October 1st, 1889, made the right to the possession and control of the stock of the Terminal Association dependent upon the defendant railroad companies signing the agreement to forever use the Terminal properties for interstate commerce.

Exhibits, Vol. 8, sixth clause of agreement of 1889; Exhibits, Vol. 8, pp. 1849 and 1850.

Fourteenth clause of Exhibit "A" attached to said agreement of October 1st, 1889, Exhibits, Vol. 8, p. 1867.

The Agreement of October 1st, 1889, prohibited the transfer of stock of the Terminal Railroad Association to anyone except railroad companies signing the agreement to forever use the Terminal properties for interstate commerce.

Sixth clause of Agreement of 1889, Exhibits, Vol. 8, pp. 1849 and 1850.

The railroads were prohibited by the agreement of October 1st, 1889, from assigning any right acquired under the said contract.

First paragraph of Exhibit "A", Exhibits, Vol. 8, p. 1860.

The Guaranty Agreement of 1902 recognized and continued the obligation of the Agreement of October 1st, 1889, prohibiting transfer of any right acquired under the last named contract.

Exhibits, Vol. 8, p. 1932.

By the consolidation which created the defendant, "**The Terminal Railroad Association**," the St. Louis Bridge, The Terminal Railroad, The Union Railway and Transit Company, The Terminal Railroad of St. Louis, The Terminal Railroad of East St. Louis were brought under one control, together with all of their railroad tracks, branches and switches—so the defendant thus acquired a complete instrument and medium of interstate commerce, which it proceeded to operate and was operating (under its ownership by the "proprietary companies"), when its subsequent acquisition of

all competing instrumentalities took place. The railroads—"proprietary companies"—controlled over 50,000 miles of track and twenty-five per cent of the mileage of the country.

This medium of interstate commerce was so operated in competition with the Wiggins Ferry Company, likewise a medium of interstate commerce.

3. **The St. Louis Merchants Bridge Company, known as the "Merchants Bridge."**

Organized May 11th, 1886, under laws of Illinois. Authorized by Act of Congress to construct railway bridge across Mississippi between Illinois and Missouri. Act prohibited any person who was a stockholder in any other bridge corporation from becoming a stockholder therein.

Built bridge—opened 1890.

**St. Louis Merchants Bridge Terminal Company**, organized August 18th, 1887, under laws of Missouri. Constructed railroad over "Merchants Bridge" from Illinois shore to Union Station, St. Louis. Prior to August 17th, 1893, had secured control of **Madison, Illinois, & St. Louis Terminal Railway**, **East St. Louis Terminal Railway**, **Illinois Transfer Railway Company**, **Granite City and Madison Belt Railway Company**, **St. Louis Belt and Terminal Railway Company** and **St. Louis Merchants Bridge**, going concerns and constituting a competitive system of interstate commerce operating continuous lines of railroad tracks, over the "Merchants Bridge," from St. Louis to points in Illinois with eastern connections, branches, switches, freight stations and depots, so as to enable it to

conduct interstate and international commerce across the Mississippi between Illinois and Missouri.

**RESUME OF CONDITIONS, THUS EXISTING, AS OF AUGUST 17, 1893.**

1. **TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS** operating railroad for interstate commerce over **St. Louis Bridge**.

2. **MERCHANTS BRIDGE TERMINAL RAILWAY** operating railroad for interstate commerce over **Merchants Bridge**.

3. **These railroads parallel and competitive.**

4. **WIGGINS FERRY COMPANY** competitively operating ferry and transfer boats for interstate commerce through connecting terminal railroad and switches which were its own property.

**UNLAWFUL COMBINATION EFFECTED.**

**AUGUST 17TH, 1893**, Missouri Pacific, L. & N., C. C. C. & St. L., O. & M., Wabash, St. Louis Bridge Terminal R. R., Terminal R. R. St. Louis Union Railway & Tr., Terminal R. R., East St. Louis, Merchants Bridge Terminal, Merchants Bridge, E. St. L. & C. R. R., Illinois Transfer, G. C. & M. Belt R. R., St. L. B. & T. R. R. and St. Louis Terminal Railway combined with defendant "Terminal Association" to put properties of the **Eads Bridge**, the **Merchants Bridge** and the **Wiggins Ferry**, under control of the **Terminal Railroad As-**

sociation of St. Louis, defendant herein as aforesaid.

1. **Merchants Bridge Terminal Railway** granted to **Terminal Railroad Association** perpetual use of tracks, switches and terminal facilities of **Merchants Bridge**. Terminal Association guaranteed \$3,500,000 bonds and bought 4,384 shares stock of **Merchants Bridge**—the Act of Congress prohibiting such purchase, in some mysterious manner, having been amended in this respect.

2. **Terminal Association** acquired control of **St. Louis Terminal Railway**.

3. Pooling arrangement which had existed between **Wiggins Ferry Company**, **St. Louis Terminal Railroad Association** and **Merchants Bridge** was continued in force between **Terminal Association** and **Wiggins Ferry Company**.

4. **Terminal Association** acquired 13,416 additional shares in **Merchants Bridge Terminal**, thus acquiring control and thereafter controlling and operating said **Merchants Bridge Terminal**.

5. **M. K. & T., C. & A., St. L. & Fr., B. & O. S. W., I. C., Southern, C. B. & Q., St. L. V. & T. H., C. R. I. & P.** became stockholders of **Terminal Association**, thus constituting an ownership by the fourteen "proprietary companies." **Guarantee agreement theretofore executed created complete monopoly of use of Association's properties.**

6. **Terminal Association** obtained control of **Wiggins Ferry Company** because of **Rock Island** roads endeavor to obtain independent entry into **St. Louis**.

across the Mississippi; 9,500 shares of total of 10,000 deposited with **Central Trust Company** to be voted for the **fourteen roads** owning stock of **Terminal Association**. This stock acquired as hereafter shown, at utterly extravagant prices in reality to defeat an effort by the "Rock Island" to secure an independent entry into St. Louis.

### **RESUME AND CONSEQUENCE.**

By virtue combination August 17, 1893, <b>Terminal Association</b> owned by four- teen defendant railroads, owns, operates and con- trols, arbitrarily fixes rates and stifles competition in interstate commerce over:	}	1. <b>St. Louis Bridge</b> , tracks and terminals. 2. <b>Merchants Bridge</b> , tracks and terminals. 3. <b>Wiggins Ferry Co.</b> , tracks and terminals.
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ALL PARALLEL AND THERETOFORE  
COMPETITIVE VEHICLES OF INTERSTATE  
COMMERCE. By their acquisition and ex-  
clusive control, not only was an opportunity to  
monopolize afforded, but a monopoly was actually  
created.

### **DETRIMENTAL CONSEQUENCES RESULTING FROM MONOPOLY.**

1. Delays in transit and delivery were and are  
caused by the combination.

Complainant affords voluminous evidence show-  
ing necessity for use of their own teams by mer-  
chants and manufacturers of St. Louis, in transfer-  
ing their goods across the river at St. Louis. This

because of delays caused by the Terminal Association. Use of teams necessitated in order to compete with jobbers of other cities.

Contrast clearly shown between time of deliveries from St. Louis to points near at hand and deliveries from Chicago to same points.

Overwhelming mass of testimony showing constant delays in movement of goods across the river, of from one day to ten days, caused by the operations of the Terminal Association.

Abundant evidence adduced to show excessive freight charges made possible by combination.

**2. Favoritism shown to St. Louis Transfer Company by "proprietary companies."**

Complainant adduces abundant evidence of discrimination in favor of **St. Louis Transfer Company**, a corporation engaged in hauling goods across the river to and from railroads terminating on "Bloody Island". It hauls some 400,000 pounds of freight per annum. The railroads "proprietary" defendants allow the **St. Louis Transfer Company** a "differential" of two cents per one hundred pounds over any other transfer company hauling goods to East St. Louis. The **Wiggins Ferry Company**, since 1881 has allowed the Transfer Company a rate 17% lower than to ordinary teams. **Wiggins Ferry** owned by combination as heretofore demonstrated.

**3. Advantages to be afforded by independent freight stations in St. Louis for Eastern railroads.**

Complainant adduces evidence showing that effect of consolidating media of transit across the river is to impede delivery of freight.



4. One consequence of consolidation—deprivation of St. Louis of adequate freight facilities for its commerce across the Mississippi River.

Upon this point evidence clear and conclusive. The total track room of the Terminal Association in St. Louis is practically the same as it was ten years before this suit was brought. The combination could have acquired abundant facilities had it been disposed to expend the necessary amount of money therefor. Shown to have had over \$28,000,000, it devoted nothing to improving its facilities for hauling freight in St. Louis. It paid over \$725.00 per share for **Wiggins Ferry** stock to stifle a competing concern. It bought the **Conlogue** road, which was six miles long but owned neither locomotive nor flat cars, but which was a competing concern. It paid \$620,274.25 for the **Interstate Car Transfer Company**, another competing concern, worth \$225,000.

As soon as the Terminal Association had bought up all of its competitors it raised its rates of transfer from 100 to 375% regardless of the effect upon St. Louis consumers and even forcing manufacturers to leave the city. It paid \$21,250,000 for the "**Conlogue**" road and abandoned it rather than permit competition over the **Carondelet Ferry**, which had been receiving 62½ cents per car for transferring as against eight dollars per car over the St. Louis Bridge.

5. The effect of the consolidation upon freight rates, bridge and ferry charges and the business interests of St. Louis.

**A Filing of tariffs and establishment of transfer rates.**

The **Merchants Terminal Railway Company**, The **Terminal Railroad Association** and the **Wiggin's Ferry Company** filed tariffs of freight charges with the Interstate Commerce Commission.

The Interstate Car and Transfer Company—owned by the defendant, Terminal Association—also filed tariffs.

The **Terminal Association** also joined the **St. Louis Association of General Passenger and Ticket Agents**.

Upon the completion of the **Merchants Bridge** and its operation there was a sharp competition for business and rates of transfer across the "**Eads Bridge**", the "**Wiggins Ferry**" and the "**Merchants Bridge**", were reduced. This was followed by an agreement between the three concerns and rates were restored. A pooling agreement was made between the three companies. Upon the consolidation, this matter of transfer rates became fixed at an onerous figure and came to be known as the **Bridge Arbitrary**.

The "**proprietary companies**" fixed a freight rate to East St. Louis and compelled St. Louis shippers and receivers of freight crossing the river to pay the cost and expenses of the Terminal Association—thus known as the "**Bridge Arbitrary**".

The bridge charge did not fall directly upon any shipper or receiver of freight outside of the limits of St. Louis, where the freight passed over

the consolidated bridges and ferries. The railroads on the west side of the river, on all business passing through St. Louis, absorbed this bridge arbitrary and it was not paid by the consignees.

The result of the system thus brought about by the consolidation of bridges and ferries doing interstate commerce, into one medium under a single ownership (that of the "proprietary companies") was to create for the East side a very great difference in its favor over St. Louis. **IN WHATEVER DIRECTION FREIGHT MIGHT GO FROM ST. LOUIS, EITHER EAST OR WEST, EAST ST. LOUIS WAS GIVEN THE ADVANTAGE OF THE CONSOLIDATED CHARGES—THE "BRIDGE ARBITRARY".**

The City of East St. Louis enjoyed all transportation advantages without expense to that city, but altogether to the disadvantage of St. Louis. To the extent of the arbitrary differentials in rates caused by the system the merchants doing business in St. Louis was handicapped, as compared with the East St. Louis merchant, or a merchant at other large distributing centers where rates were based on East St. Louis. The established fact, upon the record is, that the condition was repellant to new-comers **AND BECAME NOTORIOUS THROUGHOUT THE UNITED STATES AS A CONDITION ADVERSE TO THE PROSPERITY OF ST. LOUIS.**

## B. Coal Traffic.

More than sixty per cent of the seven million tons of coal, which came to St. Louis during the year 1907, came from a territory which lay within a radius of twenty miles eastward from East St. Louis. Within a radius of ten miles farther eastward, ten per cent more came. All of the railroads terminating in East St. Louis are coal-hauling roads. The percentages indicated had obtained for a long period prior to the year named.

All of the railroads, defendants herein, together with a few roads which are not defendants, and which brought coal only to East St. Louis, created a "**Coal Traffic Bureau**" composed of representatives of the various members. This bureau became operative about 1885, and its control over rates on coal became peculiarly effective after the consolidation. The bureau fixed the rate on coal to East St. Louis, fixed the rate on coal shipped to points in Missouri other than St. Louis, required of its members maintenance of rates as fixed by the bureau, vigorously held members to such rates, and in every way strove to preserve the monopoly.

The record shows the maintenance of a through rate to St. Louis from Illinois coal fields of from forty to sixty cents per ton. Of this a "bridge arbitrary" of 20 cents per ton was charged by the defendant Terminal Association. This was fixed and unvarying, no matter how the rate of the coal bureau may have changed from time to time.

This burden upon the commerce of St. Louis in a branch of the most formidable importance, led to the removal from St. Louis of many manufacturing establishments and their location in the neighborhood of East St. Louis; to the creation and location of many new concerns in the same locality, which would otherwise have been located in St. Louis.

All railroads, defendant herein, all known as "trunk lines" and have organized "**Freight Committees**" of which the "trunk lines" are members.

### **C. Freight Rates.**

#### **1. "Central Traffic Territory."**

Beginning at the western limit of what is known as "The Trunk Line Territory," which is an imaginary line between Buffalo and Pittsburgh, a territory extends westward to a line running up the Mississippi and Illinois rivers from St. Louis to Chicago, which is known as the "**Central Traffic Territory.**" In this territory exists the "**St. Louis East Bound Freight Committee,**" composed of the following roads: B. & O., C. & A., C. P. & St. L., C. C. C. & St. L., I. C., H. & St. L., C. & E., Vandalia, Wabash, Southern and The Terminal Railroad Association.

#### **2. The Southern Freight Association.**

The territory of this Association lies from St. Louis South of the Ohio River to Paducah and then follows the Southern line of Kentucky and

Virginia to the Atlantic ocean. The Association is composed of I. & M., M. & O., I. C., L. & N. Southern and St. Louis Transfer Co.

3. **Belleville and St. Louis Traffic Bureau.**

Covering freight between St. Louis, Missouri, and Belleville, Illinois, is the "**Belleville and St. Louis Traffic Bureau**," composed of the I. C. R. R., L. E. & St. L., I. C., and L. & N. R. R.

4. **The St. Louis, Cincinnati and Louisville Freight Committee.**

The committee has "jurisdiction" over all traffic handled between Cincinnati and Cincinnati points, Louisville and Louisville points, and East St. Louis and East St. Louis points, proper; Pacific Coast traffic handled through East St. Louis; traffic between Cincinnati and Louisville and Arkansas, Texas, certain territories and the Republic of Mexico; all traffic between Cincinnati and Louisville or their "points," and East St. Louis where the roads get their full published individual rates.

The railroads composing this committee are B. & O. S. W., C. C. C. & St. L., P. C. C. & St. L., L. H. & St. L., Southern, Vandalia.

The "**proprietary companies**" having agreed to route their freight over the "Terminal Association" properties forever, the record teems with instances of the injurious features of the monopoly created by the bridge and ferry consolidation.

Rates are fixed by the Committee for interstate traffic and adherence to them rigidly insisted upon.

Members obligate themselves to not issue individual tariffs and agree that no tariff shall be promulgated except by the Committee or bureau.

Vigilant supervision is exercised to prevent departure from promulgated rates.

Anything like a benefit to shippers by reason of a member not having adhered to the fixed rate is strenuously opposed.

Applications for reduced rates proceeding from shippers are bluntly rejected.

A permanent Committee is appointed to consider "**all questions of violations of tariff rates**".

Rates are readily increased—rarely lowered.

East-bound freight committee members each agree to "absolutely maintain all authorized published tariff rates on freight originating at East St. Louis or St. Louis and all business delivered to them by connecting lines at St. Louis or East St. Louis, originating beyond.

Careful scrutiny of members' business shows failure to maintain rates on the part of some, which is deprecated by the Committee. Reports as to "views on the situation" which show some **irregularities** but generally **improved** conditions received with marked favor.

"**Impressions**," seem to prevail among members that there can be no good reason why the "**authorized**" rate on cotton both domestic and export should not be maintained. The "Clover Leaf" was, however, shown to be unsound on

rates on packing house products and provisions from Missouri River.

As illustrating the **animus** of the situation created by the monopoly, at noon, Oct. 1, 1901, "as to traffic to the western termini" (trunk lines) "and points east thereof", each road agreed that it would **absolutely** maintain the agreed rates and thirty minutes thereafter, "as to **Central Freight Association traffic**" each road agreed that it would just as **absolutely** so maintain the tariff of the last named association.

By **authorized tariffs** are meant tariffs created and imposed by the freight bureaus or committees. It is tariffs of this description which the members pledge themselves to maintain. It is such tariffs which the bureaus or committees from time to time refuse to change, although shippers apply for the change on the ground that the tariff as imposed is injurious to such shippers.

Tariffs of freight carriage having thus been arbitrarily fixed and inflexibly maintained, the **necessity** of having the Terminal Association a member of the freight bureaus at once becomes obvious. If any feature were needed to prove the nefarious character of the combination which unlawfully merged all of the competing carriers and media of interstate commerce at St. Louis into one concern, this feature of traffic bureaus and their tariffs would suffice for the demonstration.



**DEFENDANTS, BY CONTRACT IN 1889, AGREED  
TO AND DID ORGANIZE DEFENDANT  
TERMINAL RAIROAD ASSOCIA-  
TION TO RESTRAIN  
COMMERCE.**

The complainant charges that the defendant railroad companies, by contract and combination, have unduly restrained commerce between Missouri and Illinois and the other states of the republic and foreign countries; that the defendants, by combination and contract and conspiracy, have created a monopoly and prevented competition in the movement of interstate commerce between Missouri and Illinois and all other states and foreign countries by combining under one control all the instruments used to carry on said commerce at St. Louis; that the defendant railroad companies organized the defendant The Terminal Railroad Association of St. Louis with the intent and for the purpose of unduly and unreasonably forever restraining and monopolizing the movement of interstate commerce between the termini of the eight Eastern Railroads in Illinois and the six Western railways in Missouri.

The complainant charges that the contract between Jay Gould and six of defendant companies, of October 1st, 1889, and which contract is still in force between defendant railroads, which provided for and caused the organization of the defendant, The Terminal Railroad Association of St. Louis, contained a clause that then was and now is in direct and undue restraint of interstate commerce. The clause referred to is as follows:

“In consideration of the foregoing each of the proprietary companies, for itself only and not for others,

accepts the right of joint use hereinbefore granted by the first party (The Terminal Railroad Association of St. Louis was the first party), and hereby covenants and agrees **that it will forever make use of the bridge and terminal properties of the first party as above described, for all passenger and freight traffic within its control, through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."**

This contract with this clause was made between The Terminal Railroad Association and six of the railroad companies now defendants herein, in pursuance of a contract of even date therewith, made between Jay Gould, of New York City, as one party, and the six defendants hereinabove mentioned; and in which said contract between Gould and the said railroads it was provided that Gould should organize by consolidation of corporations he owned, the defendant The Terminal Railroad Association of St. Louis, and that the other six defendant companies should then execute an agreement with the Terminal Association mentioned in the Gould contract as Exhibit "A", which said contract of said six defendant railroads should bind them to forever use for the movement of interstate commerce the instruments thereof, at St. Louis, which Gould should consolidate and place in the control of the Terminal Railroad Association. This agreement between Gould and the six railroad companies will be found in Vol. 8, of Exhibits, pp. 1846 to 1853. The reference to the agreement which was to be and was made between the six railroad companies and the Terminal Railroad Association will be found in Paragraph Six of the contract between Gould and the roads, in Vol. 8 of the Exhibits, and on p. 1850.

The agreement between the six defendant roads and the Terminal Railroad Association referred to in the above mentioned Gould contract as Exhibit "A" will be found in Exhibit, Vol. 8, pp. 1859 to 1869.

The particular clause above set out, binding the six roads to the use of the Terminal properties forever, will be found in paragraph 3 of the contract between the Terminal Railroad Association and the six roads, in Vol. 8 of Exhibits, p. 1861.

When your Honors examine first, the consolidation agreement of 1889, and the later agreement of 1902, which reaffirmed that of 1889 (these agreements will be found at pp. 1840 and 1930, Vol. 8 of Exhibits), you will find that each and every one of these proprietary lines, with their more than 50,000 miles of rails, running from the lakes on the north to the gulf on the south, and to either coast on the east and west, bound themselves forevermore that whatever freight passes through the St. Louis gateway, no matter where it originates on their line shall pass over these instruments of interstate commerce in controversy here now.

Not only that, but they bound themselves by that agreement forevermore to pay charges sufficient to meet all of the bonded indebtedness, and to pay the dividends on the preferred stock that these primary companies had out, keep up the operating expenses and produce a fund sufficient to meet any annual loss from time to time as the years went on, and provide funds for all needed improvements and sinking fund to pay the principal when it is due.

Now this contract of 1902, is a contract, an agreement, that is clearly in restraint of commerce.

If there were a dozen independent agencies aside from these controlled by the Terminal Railway Asso-

ciation, carrying on commerce between the termini of the roads in Missouri and the roads in Illinois, if a shipment of goods originates in Texas or on the Pacific Coast, on one of the lines of one of these railway companies, and it was routed through the City of St. Louis, when it got to the City of St. Louis it would have to pass over one of these mediums of commerce controlled by this Terminal Association, and pay the charges agreed upon in this contract. **Competition is eliminated.** Restraint of commerce is established and freedom of commerce is destroyed by this contract of 1902. Otherwise that contract would be violated.

Can it be said that that is not in violation of the anti-trust act which says that this commerce should be allowed to flow free and unrestrained? It certainly is; there is no way to evade that proposition—no way to get around it. It is a direct restraint. It shuts off forevermore from all the millions of people that now, or that may hereafter be on either side of the Mississippi River that are using or will have to use the railroads of the defendant companies in all the years to come, from any relief from the situation, because that contract is one in perpetuity, and it shuts them off from competition in this carriage between Missouri and Illinois, at this great gateway.

Now, I ask is that freedom of commerce? Is that in consonance with the spirit of the Federal Anti-trust Law that this Republic has passed?

It certainly is not. And yet the gentleman says that this Terminal Association is one of the things which will help to build up the City of St. Louis.

And the argument is made that the Government has nothing to do with the internal economy that relates to the operation of these railroads; that if they can save

money, they can do as they please with reference to the instruments that they use. The logic of this argument is that if the consolidation is economical to its owners, the law is not violated even if competition is eliminated.

Now I do not so understand the law. They say that it does not concern the shipper. I ask your Honors to test the soundness of this proposition. Who pays the money that keeps up these railroads? Who pays the money that goes to buy coal and pay wages of employes and keep up repairs? Who maintains these bridges and these ferries? It is the traveling public, isn't it? Why, certainly. Then, are they not interested in the proposition of whether or not there is any reasonable competition in these instruments of commerce? The public interest is affected the moment competition is eliminated and prevented.

The clause of the agreement of October 1st, 1889, above set out, shows clearly that it was intended that all the commerce passing through St. Louis, Mo., should be moved by one particular instrument of commerce, to-wit: The Terminal Railroad Association.

This made the contract clearly one in undue restraint of commerce and, being yet operative, it violates the Sherman Act.

Addystone Pipe and Steel Co. vs. United States,  
175 M. S. R., p. 2111.

Northern Securities Co. vs. United States, Loc.  
Cit., pp. 389-390.

This contract was between the railroads—strangers to each other's business; \* \* \* in some instances competitors and in some instances not competitors;

and it was also made <sup>for benefit of</sup> ~~with~~ the persons who took the bonds, J. P. Morgan and others.

This was a true contract in restraint of trade and commerce.

This clause, for the perpetual use of the properties of the Terminal Railroad Association by the fourteen co-defendant railroads herein, in the movement of interstate commerce, was placed in the Guaranty Agreement of the railroad companies, made in 1902, and will be found in Vol. 8 of the Exhibits, p. 1936.

This contract of October 1st, 1889, was recognized and continued in force by the Guaranty Agreement of December, 1902.

Both the contracts of October 1st, 1889, and of December, 1902, were contracts made by the respective common carriers with strangers to their business, and being with a stranger to the business of the contracting parties, and controlling the movement of all interstate commerce handled by the defendant railroads at St. Louis, it created a monopoly in traffic and affected public interest, and violated the Anti-Trust Law.

United States vs. Joint Traffic Association, 171  
M. S. R., p. 505.

Northern Securities Co. vs. United States, 193  
M. S. R. Loc Cit., p. 405.

Every movement of all the officials of the defendant roads throughout the years that have intervened point conclusively to one intent and purpose, and that was and is to compel all interstate movement of commerce, at St. Louis to pass over the property of the Terminal Railroad Association, in pursuance of the directions contained in, and the agreements made in, the contract of October 1st, 1889.

The iron hand of restraint on commerce, laid with full force on traffic by that agreement of 1889, has been and yet is reaching out and forcing the movement of commerce over the rails Gould dictated it should move upon.

The combination effected put all the agencies capable of being used to move passengers and freight between the termini of the Eastern roads in Illinois and St. Louis, Mo., in control of The Terminal Railroad Association, and excluded all competition.

The plain purpose of the contract of 1889 and 1902 was to control unreasonably commerce; and the presumption of an intent to monopolize and restrain trade arising from the increase of the stock of the Terminal Railroad Association from Five to Fifty Millions of Dollars, and vesting in said Terminal Association such complete control of all the agencies of interstate commerce at St. Louis, Mo., is rendering conclusive by considering—

First:—The conduct of the persons or corporations who were instrumental in increasing the power and control over commerce of the Terminal Railroad Association before the completion of that result, i. e., prior to the combination by the fourteen railroads of the control of the agencies of interstate commerce, and prior to the formation of the Pools and the creation of the Trust Agreements.

We find the citizens built a bridge and opened it for the use of the railways in 1874. That the Eastern railroads terminating in Illinois refused to build tracks and connect with the bridge approach, but continued to use the Wiggins Ferry tracks and car ferry transfer across the river.

The persons who built the bridge (mainly St. Louis citizens) then built railroads in Illinois and in Mis-

souri, connecting the approach so that the connections could be made by the carriers by rail in both states.

These companies were known as the "Union Railway & Transit Company of St. Louis" and the "Union Railway & Transit Company of Illinois."

There was also a tunnel built by The Tunnel Railroad Co., extending westward under St. Louis, Mo., from the "Eads" Bridge.

The Eastern railroads with their termini in Illinois refused to use the "Eads" Bridge and its connections.

The Bridge Company and the Tunnel Company defaulted in payment of interest and principal on bonded indebtedness, and passed by foreclosure proceedings to two new corporations known as The Tunnel Railroad of St. Louis and the St. Louis Bridge Co.

These companies leased the bridge and tunnel to the Wabash and Missouri Pacific Railway Companies.

These companies, in 1889, after the organization of the Terminal Railroad Association, transferred the control of the stock of the Bridge and Tunnel Companies to the Terminal Railroad Association, in pursuance of the contract of 1889.

After the bridge and tunnel had passed into the control of the corporation, Gould organized, in accordance with his contract with the six defendant railroads companies herein, we find The Terminal Railroad Association and the Wiggins Ferry Company, a competitor of the Terminal Railroad Association, forming a pool on the interstate business between Missouri and Illinois.

The unification of power and control begun by the contract of Gould, of Oct. 1st, 1889, over the instruments used to transport persons and property between the termini of the Eastern Railroads in Illinois and St. Louis, Mo., and the transfer of The Terminal Rail-



road Association of St. Louis and to the fourteen railroads of the stock of all the competing interstate carriers, aggregating so vast a capital and such complete ownership and control of all the agencies by which interstate commerce was carried on, in the absence of testimony to the contrary, gives rise to the presumption of intent and purpose to maintain a dominioncy over the interstate commerce in question by means of a combination of control and operation of said instruments of commerce, not as a result of ordinary transportation development, but by means of a combination of said instruments so that greater power would be added than would otherwise have arisen, and with the purpose of excluding others from this commerce, and thus fixing in the combination a perpetual control of the said business.

Standard Oil Co. v. United States Advance Sheets. Vol. 12, date June 15th, 1911, opinions United States Supreme Court, p. 520.

This presumption of intent to restrain and monopolize commerce is ~~and~~ further strengthened by considering the conduct of Gould and the six railroad companies defendants herein, in making the agreement of October 1st, 1889, forever restraining all movement of interstate business at St. Louis to one particular instrument of commerce, to-wit: The properties of The Terminal Railroad Association; and what has been done by the defendant railroads in excluding here and there and everywhere all competition, until at last the defendants control all the agencies that are used as common carriers to move interstate traffic between Missouri and Illinois.

By examining the Pooling Agreements and Tonnage Pools made by the Terminal Railroad Association, first,

with its only competitor, the Wiggins Company, and, second, with its second competitor, the Merchants Company, and by examining the record showing the acquisition, first, of the Merchants Terminal Company, then the Wiggins and "Conlogue" Companies, and finally the Interstate Car Company, which, together comprised every efficient means by which competition could have been arrested,—all these facts prove clearly intent to control, not to aid commerce.

**Not Necessary to Make Pooling Agreements or Prevent Competition, nor buy all Agencies that Might Compete, in Order to Facilitate Interstate Commerce.**

. If it be claimed that the defendant companies were merely seeking to aid commerce, and not control it, then why was it necessary to enter into the Pooling Agreements with the Wiggins and Merchants before their purchase by the fourteen defendant railroads?

What was a Pool formed for?

Was it to facilitate commerce?

Certainly not. It was made to protect and maintain rates, and is now prohibited by the Interstate Commerce Law.

**The Pooling Agreements to Which the Defendants Were Parties, Show Intent to Restrain Commerce.**

These Pooling Agreements made prior to the adoption of the Sherman Law are competent to aid in discovering the intent and purpose with which the combination of all these instruments of interstate commerce were brought about.

Standard Oil Co. v. United States, Advance Sheets of Opinion, Supreme Court, No. 12, date June 15th, 1911, l. c., p. 521.

The payment of fifteen hundred dollars per share for Wiggins Ferry Company stock in 1902, worth actually only three hundred, in order to keep an independent road, the Rock Island, from obtaining an entrance to St. Louis, was frankly not put by Mr. Ramsey, then an officer and director of The Terminal Railroad Association, upon the ground that the acquisition of the Wiggins Company was to facilitate commerce.

Mr. Ramsey testified:

"We discussed the matter and I told Mr. Gould that the Missouri Pacific, the Iron Mountain and the Wabash Railroads could well afford to purchase the Wiggins Ferry Company in order to prevent such a valuable property from passing into the control of a competitor of those railways."

Ramsey's testimony, Vol. 2, Terminal case, p. 249.

Ramsey's testimony, Vol. 2, Terminal case, p. 249.

**The Membership of all the Defendants in "Traffic Association" Shows an Intent to Control Interstate Commerce.**

The defendant, The Terminal Railroad Association, and all the other defendant railroads were members of the Traffic Association.

The defendant Terminal Railroad Association and the eight Eastern railroads with their termini in Illinois belonged to the Central Freight Association. This organization fixed freight rates on interstate commerce.

The record clearly shows that these Traffic organizations were created for the purpose of and did eliminate competition in rates between the railroads on interstate traffic, and did maintain these rates.

The defendant, The Terminal Railroad Association, belonged to the Traffic Association and kept up the rates fixed by said Traffic Association on interstate commerce.

This is competent to show the intent with which the Terminal Railroad was operated. It shows the intent was to maintain rates and control and monopolize all interstate commerce moving over the properties of The Terminal Railroad Association. It shows also that the fourteen railroads owning the Terminal Railroad Association regarded it as an interstate carrier of commerce, and not simply as a terminal company.

If The Terminal Railroad Association was merely a terminal facility used to aid commerce in terminal connections, why was it necessary for it to join a traffic association whose only object and work was to maintain interstate rates and prevent competition in interstate commerce?

**Defendants All Were Members of Coal Traffic Association to Maintain Interstate Freight Rates.**

The eight Eastern defendant railroads all ran through the coal fields in Illinois and were heavy carriers of the product.

The soft coal is the largest single item coming to St. Louis, Mo., from the east.

Most of coal coming into St. Louis, Mo., has been hauled a distance of 20 to 40 miles only—more than

70% of it comes from within a radius of 40 miles of St. Louis. Now, for years and years, the average charge for hauling coal, not to St. Louis, but, to East St. Louis, Ills., has been from 35 to 45c per ton. In later years it dropped down to 25c. Then, after it got to East St. Louis, Ills., these interstate carriers, the Wiggins Ferry Co., the Eads and the Merchants Bridge, charge 30c a ton for bringing it across the river. That, added to the other charges, of course, made it a pretty expensive freight item; but it had to be paid, and the citizens of St. Louis have been paying it.

Many years ago the coal-carrying roads now comprising the proprietary lines of the Terminal Railroad Association and the Terminal Association formed what is known as a Coal Traffic Bureau, the object of which was the fixing and maintaining of a common rate from the same coal mining territory to East St. Louis, Illinois, and the elimination of competition in freight rates in hauling the millions of tons of coal from the near-by Illinois coal mines to the St. Louis markets. This Association had a President and Secretary and kept written and printed records of its transactions. The organization was composed of a freight traffic representative from each of the coal-carrying roads. This rate was the same on all the roads, as all coal-carrying roads extending eastward or northeastward or southeastward reached coal mines in about the same distance from East St. Louis and this made a common competitive territory and hence competition was eliminated by an agreement as to the rates to be charged.

After the coal reached East St. Louis, Illinois, it was turned over to the Terminal Association for the haul to St. Louis, Missouri, and for this haul a charge of 30 cents per ton was made. It is apparent at once that if

a manufacturing company uses one hundred thousand tons of coal per annum, that if it moved from St. Louis, Missouri, to East St. Louis, Madison or Granite City, Illinois, it would save immediately ten thousand dollars per annum on coal alone. This one discrimination against St. Louis manufacturers and in favor of Illinois manufacturers located in East St. Louis, Madison or Granite City, Illinois, together with the further fact that a factory located in either East St. Louis, Granite City or Madison, Illinois, could ship its products to Kansas City or any point west at the same rate it could have done if it was located in St. Louis, Missouri, and had no additional charges to pay for the haul of its products from its factory in East St. Louis to St. Louis, Missouri, has driven many of the largest factories from St. Louis, Missouri, and caused many new ones to locate in East St. Louis, Granite City or Madison, Illinois, instead of in St. Louis, Missouri.

The different coal-carrying roads reported to the Coal Traffic Association the coal tonnage of its road each day and a record of this was kept and printed and sent to each of the roads. After the rates had been agreed upon and fixed for hauling coal to East St. Louis, Granite City and Madison, Illinois, a regular coal tariff was issued by the Coal Traffic Bureau and sent to all of the roads and it was the rate they were expected to and did charge. It was a complete combination to stifle and did completely stifle competition.

A regular coal tariff of the St. Louis Coal Traffic Association will be found printed in full on pp. 2034-2041, Vol. 8, of the Exhibits. Another will be found on pp. 2041-2049 of Vol. 8 of Exhibits.

The Terminal Railroad Association belonged to the Coal Traffic Association.

This testimony concerning the Coal Traffic Association and the membership of the defendants therein is offered to show the purposes and uses to which the defendants put the properties of the Terminal Association, and to show the intent of the defendants in operating the Terminal Railroad Association.

**The Terminal Railroad Association as Controlled and  
Operated by the Defendants was a Hindrance and  
Not an Aid to Commerce.**

This is clearly shown by the testimony of the thirty-six witnesses placed on the stand by the Government, who were all shippers and who testified that traffic could be handled more rapidly by team, by hauling to and from St. Louis, Mo., to the termini of the Eastern roads in Illinois because of the delay of the defendants in getting the freight over the properties of the Terminal Railroad Association between Missouri and Illinois. Witnesses from cities and towns within seventy-five and one hundred miles of St. Louis, Mo., testified that shipments of goods from Chicago, two hundred miles farther away than St. Louis, would be received from one to three days sooner than shipments from St. Louis. The testimony showed the delay was caused by the defendant not moving the freight over the tracks from Missouri to Illinois as rapidly as should be done. The witnesses all claim the delay was in the handling of the shipments by the Terminal Railroad Association.

**Consolidation of all Agencies of Interstate Commerce  
did not Improve Connections or Increase Facilities  
For Handling Commerce.**

If it be claimed that the combination increased the

facilities for the interchange of commerce the answer in the record shows the connections were no better between the roads after, than before the combination was formed.

On pp. 2746-7, Vol. 4 of the Record, the traffic expert of the defendants, Mr. Perkins, says that the Wiggins Company had more complete connection with the individual roads than the Terminal Association had. That the connection of the Wiggins Company with the roads in both States was more direct and complete than the connection of the Terminal Association. **The Terminal, the Merchants and the Wiggins all owned locomotives, passenger and freight cars, and all operated trains.** The Terminal Association operated passenger trains out of Union Station to the State of Illinois over both the Merchants and the Eads Bridge, as shown by the testimony of Mr. Sarber, pp. 445-6 of Vol. 2 of the Record.

The argument was made by counsel for the defense that the consolidation of these companies, the Wiggins, the Merchants and the Terminal Association had benefited the City of St. Louis, Mo., by opening up more industries to the rails of the different roads. On pp. 2729-30 of Vol. 4 of the Record, the traffic expert of the defendant, Mr. Perkins, says the consolidation of these companies opened so many track-located industries because the Terminal Company owned so many terminal tracks and property, and thereby brought so many track-located industries on the line of the consolidated companies, and then on pp. 2730-31 of Vol. 4 of the Record, Perkins is forced to admit that of the 700 track-located industries in the City of St. Louis, Mo., more than 500 are on the Rock Island, Frisco,



Iron Mountain and Missouri Pacific and less than 200 of them are on the St. Louis Transfer Railway, Wiggins Ferry, Merchants Bridge Terminal and Terminal Railroad Association of St. Louis, and that it is the individual and independent terminals of the individual and independent roads and not the Terminal Railroad Association which really furnish the connections and transportation facilities to the track-located industries in the City of St. Louis.

In Vol. 4<sup>th</sup> of Exhibits, pp. 2507 to 2526, is found a complete list of track-located industries, giving the location of each. But the tariff schedules for freight rates of the Terminal and the Wiggins and the Merchants before referred to and the testimony before mentioned show that from 1893 on the three roads by their connection with the railroads in Missouri and Illinois all had access to all the roads in both States. But the agreement of consolidation between the Merchants and the Terminal Association of August 17th, 1893, recites that the two railroads, the Merchants and the Terminal Association, are connected with each other (Exhibits, Vol. 3, pp. 1551-1552) and therefore the consolidation did not, as counsel argue, produce a connection or coupling up of the Merchants and the Terminal Association tracks.

On page 2312, Vol. 3<sup>rd</sup> of the Record, a witness testified the Conlogue was a competitor of the Terminal Railroad Association for transferring cars across the river and was accessible to all roads alike.

When you inspect this record you will find that the facts heretofore detailed are established and clearly prove that the Merchants Bridge Terminal Railway Company and the Wiggins Ferry Company had access before 1893, when the Terminal

Association absorbed the Merchants, directly and indirectly to every railroad entering the City of St. Louis and the City of East St. Louis, Illinois; that before the consolidation of Wiggins with the Terminal Association each had access to all roads. The highest proof of this is found in these switching tariffs and freight tariffs which are in this record here, where the connections are given, in 1898 and then in 1905; the combination was effected in 1902.

This tariff the Merchants Railroad Company issued in 1891 before the consolidation and shows that the Merchants Bridge Terminal had connection with all the roads in both Missouri and Illinois, and connected in Illinois with the tracks of the Wiggins Ferry Company and with those of the Terminal Railroad Association.

On pages 1658-59 and 62<sup>Vol. 3</sup> will be found another freight tariff of the Merchants Bridge Terminal Railway, dated April 1st, 1892, and on R.<sup>Vol. 3</sup> page 1662 under Rule No. 3 the following will be found:

3. No loaded car will be received by this company unless accompanied by regular waybill showing final destination and consignee. If for St. Louis delivery, the freight yard or switch at which delivery it is to be made must be designated on waybill.

These tariffs show that the Merchants Bridge Terminal Railroad Company in 1891 prior to the consolidation was carrying on interstate commerce and making a specific charge for the haul to the termini of the Western roads in St. Louis and to the City of St. Louis. It also shows that the Merchants Terminal Railway Company required goods to be billed to St. Louis, Mo., after reaching East St. Louis, Granite City and Madi-

son, Illinois, or if from St. Louis they had to be billed to Madison, Granite City or East St. Louis, Illinois.

These tariffs show the Merchants Terminal Co., prior to the consolidation in 1893, had freight yards in both States and also depots; that one of the depots of the Merchant's Co. was located in **Mill Creek Valley** within a short distance of the Terminal Association tracks therein; that the Wiggins Co. railroad tracks also reached the lower end of Mill Creek Valley and within a short distance of the Terminal Association tracks; that all three companies reached common competitive territory in the center of St. Louis, Mo., and like common competitive territory in the State of Illinois and all three reached practically the same railroads in the two States.

These facts hereinbefore stated show conclusively, first, that these corporations were independent competing instruments of interstate commerce; second, that they had been combined by pooling arrangement; third, that they were making a specific charge for the interstate haul.

~~Exhibit~~ That the Exhibits, Vol. 2 p. 1663, show on February 13, 1893, the Merchants Terminal had direct connection by its own rails with the Missouri Pacific Railroad in the Mill Creek Valley in St. Louis, Mo., only a few feet distant from the rails of the Terminal Railroad Association, and in the heart of the manufacturing and business district of St. Louis, Mo., and by its own rails with the St. Louis Transfer Railway of the Wiggins Co., which extended almost the entire length of the City of St. Louis up and down the west bank of the Mississippi River that the Merchants Company had connection directly with the Iron Mountain,

Frisko and Wabash west. This Exhibit shows the Merchants Terminal had in February, 1893, prior to the consolidation agreement of August 17, 1893, connection direct by its own rails with every road in St. Louis but the Terminal Railroad Association and the Merchants could reach the Terminal Association Mill Creek Valley by either the rails of the Missouri Pacific, the Wabash or the Iron Mountain, which constituted the three westside members of the six proprietary lines then owning the Terminal Association. These facts show cars could be and were sent over the Merchants tracks to all roads in St. Louis from Illinois and the termini of the Eastern lines in said State.

At this time in February, 1893, prior to the consolidation, the Merchants Terminal Railway Company had leased from what is now the Southern Railway, and was operating the Venice and Carondelet Railway Company. This road was a belt road and still is so used. It ran from a connection with the eastern approach of the Merchants Bridge Company in Venice, Illinois, southeast to and through East St. Louis, Illinois, to a connection with the Mobile & Ohio Railroad and connected and intersected with its own rails every railroad in East St. Louis, Illinois. This gave the Merchants Company, prior to agreement with Terminal Association of 17th of August, 1893, direct access over rails of its own to every railroad in East St. Louis, Illinois, and it reached every road in Illinois that the Terminal Railroad Association reached.

Primarily, before the Merchants Bridge was built, but after the Eads Bridge was built, when the Eads Bridge and the Wiggins Ferry Company were conformed their pools and agreements as to rates—when

peting interstate carriers, when they from time to time their freight agents met, as the record in this case shows, their General Freight Agents did—when they met and agreed upon tariffs that they were to promulgate, and when they did promulgate them in accordance with those agreements—these classified freight tariffs, covering every article of merchandise, the same as every other railroad in the country did—during that period of years the Pennsylvania Railroad—what is known as the Pennsylvania Railroad Company—had its termini in East St. Louis, Missouri, that Railroad Company made various efforts to obtain relief from Bridge and the Wiggins Ferry Company were com- its termini in East St. Louis, Missouri; that Railroad what we term in this case the combination and control of commerce across the river by the proprietary railroad companies. For many years the Pennsylvania Company was not a proprietary company. It became a proprietary company of The Terminal Association in 1903. The proprietary companies were only 6 in number up to 1903, and then 8 more (The Pennsylvania being one of them) were admitted, and these admissions came after the fight for the control of the Wiggins between the Terminal Company and the Rock Island had occurred. The Pennsylvania was up to that time an outside company, and not one of the proprietary railroads.

In one of the efforts of the Pennsylvania road to reach St. Louis, it acquired and afterwards extended to the Eastern bank of the Mississippi River a belt line of railroad that connected with the Pennsylvania's own rails and intersected every other railroad in the city of East St. Louis, Illinois, reaching the termini of every

Eastern railroad that came in there. This was known as the Conlogue road.

It ran down the Eastern bank of the Mississippi River, six or seven miles to East Carondelet to a point where there was a ferry boat owned by the Missouri Pacific operated from the foot of Robert avenue in St. Louis, Missouri, to East Carondelet and cars were transferred from the rails of the Conlogue road to the ferry and by the ferry brought to Missouri and placed directly on the Missouri Pacific rails and carried up the Mill Creek Valley and did not pass over the Terminal Association tracks to get into or through the City of St. Louis, Mo.

That was in 1879—about that time; long prior to the agreement of 1893. The Conlogue track or a portion of it had been there for many years; it was owned by a corporation, and it was acquired by the Pennsylvania Company, and extended so as to facilitate their getting their commerce across the river by means of the Missouri Pacific car transfer ferry at East Carondelet.

Now, the object of the Pennsylvania in going to East Carondelet with the Conlogue road was to meet a car ferry, and that car ferry was owned and operated by the Missouri Pacific Railway.

The Missouri Pacific Railway, as I said, had a track coming down Poplar street, to the western bank of the Mississippi River, and it operated cradles on either side of the river, approaches to this ferry boat, and it operated its ferry and transferred its own freight cars. Now, the Pennsylvania Railroad, and several other railroads made an agreement or an arrangement with the Missouri Pacific by which they used the car ferry,

and thus freight cars were sent right across the ferry and up the Mill Creek Valley—not on the rails of the Terminal Railway Company, but on the independent rails of the Missouri Pacific Railroad Company, which were then laid there and are there today. The Missouri Pacific Railway Company connected directly on the Levee with the rails of the Iron Mountain, which latter road the Missouri Pacific owned, and the Iron Mountain tracks ran south from Poplar street along the river to and beyond the southern limits of St. Louis, Mo. On the Levee, near Poplar street, the Wiggins, Iron Mountain and Missouri Pacific tracks also had direct connection.

Now, the Missouri Pacific Road, as you can see, was receiving the traffic of these Eastern lines reaching its car ferry and it was, of course, an important competitor for this interstate commerce which was being carried on by the Wiggins Ferry Co. and by the Eads Bridge.

On pages 2317, 2322<sup>1644</sup> the Court will find the testimony of a witness having charge at the time of the Conlogue Road for the Pennsylvania Company who stated 200 to 300 cars of freight per day coming from both Missouri and Illinois and from all the Eastern roads, and Western roads were handled over the ferry of the Missouri Pacific and by the Conlogue Railroad. That after the purchase of the Conlogue by the Terminal Company, the Conlogue ceased to be operated in connection with the Carondelet, Missouri Pacific Ferry.

This witness testified that the Conlogue Road and the Carondelet Ferry was an open competitor with the Terminal Company, operating two car ferry boats, and hauled from East St. Louis, Illinois, to Missouri most of the iron and steel coming from Pittsburg, Pennsylv-

vania, and other Eastern points over the Pennsylvania Road and destined to St. Louis, Missouri, and points beyond in the West and Southwest.

The assistant auditor of the Missouri Pacific Railroad testified at p. 2323 of Vol. 3 of the Record, that about 1902, the Missouri Pacific ceased to operate the Carondelet Ferry as a car transfer ferry in connection with the Conlogue Road in Illinois. From that date on, the Conlogue Road did not and does not now operate and haul loaded freight cars to the Carondelet Ferry, and cars of freight from 1902 were no longer transferred by the Carondelet Ferry from the Conlogue rails over the river to Missouri and on to the Missouri Pacific rails. The reason was that in 1902 the Pennsylvania, with seven other roads joined The Terminal Railroad Association and the vast interstate business of 200 to 300 cars of freight per day was sent over the Eads and Merchants or the Wiggins rails and no longer over the Conlogue Road. The competition of the Conlogue and the Missouri Pacific car transfer ferry boats with the Terminal Railroad Association in the interstate commerce ceased and the two car transfer ferry boats of the Missouri Pacific were moved a few miles further down the river where they are now operated to transfer to Missouri line of Mo. Pac. cars of freight from a point called Bixby Junction on rails of a road incorporated in Illinois as "The Valley" line and extending down the east bank of the Mississippi River, and which road is controlled by the Missouri Pacific Railway Company, p. 2282, Vol. 3 of the Record.

The Court will find from the testimony of the President of the Terminal Railroad Association that the purchase price of one million and two hundred thou-



sand dollars was paid for the Conlogue road to the Pennsylvania by the Terminal Association from funds arising from the sale of the fifty millions of dollars of bonds authorized by the Terminal Association after the Pennsylvania and the other seven roads joined the Terminal Association, when the fight between the Terminal and the Rock Island roads for the control of the Wiggins Ferry had been settled in 1902, and the Wiggins Ferry Company, with its five car transfer boats operated at different points on the river in connection with its splendid system of railroads in Missouri and Illinois having direct connection by its own rails with every road in both States, and been absorbed by the Terminal Railroad Association. The Pennsylvania, the Burlington and other roads had stood out for years and used the Merchants Terminal and the Conlogue Road and the Carondelet Car Transfer Ferry and the Wiggins tracks, and its five car transfer boats, but when the Wiggins Company, with all of its direct connection by its own rails with all the roads in both Missouri and Illinois passed into the control of the Terminal Railroad Association, the Pennsylvania and the Burlington and the other six roads were compelled in 1902 to join the Terminal Railroad Association and accept the terms of the Terminal Railroad Association, and one of the terms was that the eight new roads joining the Terminal Association should forever use the properties and the tracks of the Terminal Company for the interstate commerce of said roads between Missouri and Illinois, at St. Louis, Missouri.

This witness Walsh also at pp. 2282-2283 of Vol. 3<sup>d</sup> of the Record testified that out of the proceeds of the sale of the increased issue of bonds following the con-

solidation of the Eads, Wiggins and Merchants and Interstate and Cologue Companies in 1902, the proprietary companies were all repaid the amount they had expended, the Rock Island on the one hand and the six roads comprising the Terminal on the other, in the struggle to get control of the Wiggins property, and also that expensive machine shops were built out of the money from the sale of these bonds aforesaid.

The fabulous price of fifteen hundred dollars per share paid for Wiggins Ferry Company stock, worth not over Three Hundred Dollars per share, was all put as a burden upon the people of St. Louis to be paid as freight charges for the haul between East St. Louis, Illinois, and St. Louis, Missouri, to enable the Terminal Railroad Association to pay the interest on the increased issue of bonds and provide a sinking fund to retire them at maturity; and yet counsel for the defendants say no profit was made from the operation of the Terminal Railroad Association. Charges admittedly were collected sufficient to pay interest on increased bonds of the Terminal Association in amount sufficient to pay the purchase price of seven and one half millions of dollars for the Wiggins property, and the property was transferred to the proprietary lines and they own it today, and according to Walsh, the President of the Terminal Railroad Company, the proprietary lines have not a dollar of their own money in the Wiggins property. Did the proprietary lines not make seven and one-half millions of dollars in this transaction I have detailed? The proprietary companies own the stock of the Wiggins and mortgaged it and got money to repay the purchase price paid by them for the Wiggins property.

Julius S. Walsh testified at page 481: <sup>Vol. 2</sup> The 13 proprietary lines and the Pennsylvania own every share of Wiggins Ferry stock (10,000) shares in 14 equal parts each.

Page 500: <sup>Vol. 2</sup> Each of the 14 roads took the 1-14 of the Wiggins Ferry stock and deposited it with the Central Trust Company. It does not go to the Terminal Railway on the expiration of the mortgage.

Page 2274: <sup>Vol. 3</sup> Control of Wiggins Ferry was owned by the 14 proprietary lines, not the Terminal Railroad.

Page 2277: <sup>Vol. 3</sup> The 7 old and 7 new companies finally paid their proportionate part of whatever was finally paid for the entire issue of Wiggins stock.

Page 2282: <sup>Vol. 4</sup> The 14 railroads were reimbursed for the expenditure that had been made for the Wiggins Ferry Company from the sale of the bonds (page 2283) <sup>Vol. 4</sup> so that the roads have practically no money invested in the Wiggins Ferry stock as a primary proposition themselves.

By examination of the testimony heretofore referred to, we find that the Eads Bridge with its subsidiary companies (and designated as the Terminal Association), at the time the Merchants Bridge was opened, had not nearly so extensive terminal facilities in Missouri in the way of making connections with other roads and industries as did the Wiggins Ferry Company—the Wiggins Company had a track running down the levee from the northern part of the City, extending well towards the south, and all the railroads in St. Louis reached these tracks of the Wiggins Company. This track on the levee of the Wiggins Company was known as the St. Louis Transfer Company. The Terminal Railroad with its facilities did not before the

consolidation, reach all of the railroads, but practically all; connections could be made by using the Wiggins track on the levee and by use of private switching tracks of independent lines, such as the Wabash and the Missouri Pacific, and a car could be readily and practically sent to any other railroad over the tracks of the Terminal Association; using the same Wiggins Ferry tracks, the same thing is true of the Merchants Bridge Terminal Company, prior to the consolidation in 1893, and a car could readily and practically be sent to any other railroad over the tracks of the Merchants Bridge Terminal Railway. This same condition prevailed in the State of Illinois with reference to both the Merchants Terminal and the Terminal Railroad Association. In the State of Illinois the Wiggins Ferry Company, however, reached every railroad that came into East St. Louis. The Merchants Bridge Terminal Railway through the Venice & Carondelet Belt also reached every Railroad company in East St. Louis. This Venice & Carondelet Belt ran from the east end of the Merchants Bridge to a point south of East St. Louis, where it touched the tracks of the Mobile & Ohio, crossing and intersecting directly the rails of all eastern roads coming into East St. Louis. This condition giving access to the eastern roads, by the Merchants Company, existed long prior to the consolidation in 1893. The Wiggins Company also had a line of road on the east side, as is shown by reference to the testimony heretofore quoted which reached every railroad in East St. Louis, Madison and Granite City, and which was known as the East St. Louis Connecting Railway.

So Your Honors see that before this consolidation took place in 1893, the record shows that these three

separate, independent agencies of interstate commerce were here in the States of Missouri and Illinois, competing for the haul between the termini of the roads in Illinois and the termini of the roads in Missouri, that is, the carriage between connecting roads in Missouri and Illinois, and between the City of St. Louis and the termini of the eastern roads in Illinois.

Then the thing happened that has been happening in America for many years, as this record shows, *i. e.*, the Wiggins, Merchants and Terminal Companies got together through their officers, and they established a schedule of classified freight tariffs to be charged for the haul from East St. Louis, Illinois, to St. Louis, Missouri, and from St. Louis, Missouri, to East St. Louis, Madison and Granite City, Illinois. These rates were all agreed upon and published, and filed with the Interstate Commerce Commission, the roads arranging to divide their earnings on the basis of a tonnage pool, which was carried out for many years.

Now, I ask if these were not competing instruments of interstate commerce, why should they get together and make an arrangement or agreement to fix and maintain the same rate of freight for the same class of property? Why should they arrange to divide their earnings upon a tonnage basis if not competing in common territory for similar classes of business? Is there any reason for companies used merely for terminal facilities to do that? Certainly not.

The facts proven by reference to the Record heretofore quoted, show conclusively that the Merchants Terminal, the Wiggins Ferry and the Terminal Railroad Association, prior to 1893, reached a common territory and were practically as well connected as they are to-

day, so far as the actual carrying on of the interstate business between the States of Illinois and Missouri, and St. Louis, Missouri, and East St. Louis, Illinois, are concerned; but whether that proposition be true or not, the principle still remains, that it would not cut any figure whether coupling up of these railroads acted beneficially to the operation of the railroads or not, if the operation of these agencies of interstate commerce unreasonably restrained, or tended to restrain, or monopolize, commerce, it violates the provisions of the Federal statute which says that commerce shall flow freely between the States. If it violates the provisions of the Sherman Anti-Trust Law, it does not matter whether it is a terminal company or two or three terminal companies, or whether it is a line of railroad with a thousand miles of track extending from the sea to the Mississippi River; if in its operation or in its contracts made with roads who operate thereon, the carrying on of commerce between the States through this instrument or instruments of interstate commerce, the provisions of the Sherman Anti-Trust Law are violated by restraining or monopolizing the business between the different States, then the road or roads must respond for the violation thereof, and the fact that it or they might be a terminal company, should have no bearing in that regard, if in truth and in fact the operations and conduct of the instrument of interstate commerce comes within the principle prohibited by the Act of Congress. The record here shows clearly that five independent carriers of interstate commerce, i. e., the Merchants, Eads, Conlogue, Wiggins and Interstate Commerce, have been unlawfully consolidated; and that these five agencies consolidated under the control of one company, the stock of

which is owned by the fourteen proprietary lines having an absolute monopoly of the movement of all commerce between the States of Missouri and Illinois at St. Louis, Missouri, and East St. Louis, Granite City and Madison, Illinois, and of a like monopoly on all that great commerce that comes from the producing regions in and around St. Louis, in Missouri and in the Mississippi Valley, and which is routed through the St. Louis gateway, as said commerce passes either to or from one coast to the other, or foreign countries.

**The Claim That the Defendants Make no Profit From  
The Terminal Railroad Association Does Not  
Exempt it From the Provisions of the Anti-  
Trust Act.**

The contention may be made by counsel on the other side, that this consolidation was not made for profit, and consequently there could be no violation of the Sherman Anti-trust Law. I do not understand that there is any such exception in the Sherman law—I do not understand that a profit must be realized in order that the Sherman Anti-trust Law may be violated. I do not understand that the Sherman Law reads all combinations for profit and none other in restraint of commerce are illegal. It may be that a combination has been made very injurious to commerce, and yet there may be no greater charge to the public than there was before the combination was organized, but the operation of the combination may be cheaper for those in control of it, and yet the control and combination may exclude competition. If it were a test as to whether or not profit were realized, and if it were to be held that because it could pay the asso-

ciation no additional profit, a combination such as this is legal, what would hinder the combination of competing lines from East St. Louis to the Atlantic sea coast, provided they charged the same rate as was charged theretofore, and made no additional profit? It was contended below and may be here that the Court must carve out of this Anti-trust Law first, an exception in favor of the Terminal Railroad Association, because it is claimed to be only a Terminal Railroad, and second, in favor of a combination which it is alleged is a benefit to commerce and in aid of commerce, although it controls commerce. If an exception be carved out of this statute by judicial interpretation, the question naturally presents itself, where are you going to stop? If a combination of competing instrumentalities of interstate commerce controlling, restraining and monopolizing trade can be legal, which will reach from the western limits of St. Louis, Mo., 12 or 15 miles to the furthestmost limits of East St. Louis, Madison and Granite City, Illinois, and if that combination controls commerce, both local and through, over these instruments of trade, and if such combination is legal because of the presence of these cities in the two states, I ask how far along the lines of those rails of those roads in either direction can that combination be extended? Can it be extended westward to Kansas City and eastward to Indianapolis, or northeast to Chicago, or must it stop at some point short of the Great Lakes or the Atlantic sea coast or the foothills of the Rocky Mountains on the west? Perhaps the answer of the gentlemen is that so long as those properties are operated as terminal facilities alone, that that fixes the limit. But the Sherman Law contains no exception exempting from its provisions ter-



minal railroads operated to aid terminal facilities. If an instrument of service does an interstate business and is combined with a competing instrument of interstate commerce, competition between the two is necessarily eliminated.

I take it that if the statute contained exceptions, it would be proper to discuss the question of whether or not the existing instruments of interstate commerce here under consideration came within the terms of the exception; but there is no exception; the Federal statute is plain and clear, and as suggested before, I understand the rule of interpretation in this Court to be where a statute is plain and clear and unequivocal, this Court holds that no exception was intended.

If these five agencies were separate and independent corporations, and pooled their earnings as they once did there could be no doubt but what they would be violating the law.

St. Louis is a great center of commerce; a great highway; a gateway through which flows commerce North and South, East and West, across this continent.

Does not that appeal all the more strongly as a reason why we should clearly and definitely apply the rule of the Federal statute?

That rule says that this commerce shall flow not unduly unrestrained and competitive.

It seems to me that this statute is made to act on great gateways of commerce as well as at places where commerce is light, and does apply equally in both places; but there certainly is more reason for the Federal rule where the commerce is greater—and why? Because the injury flowing from the combination is so much greater.

It is just such gateways as this, and such contracts and the forming of such combinations as we have here that should come under the rule. St. Louis is in the geographical and productive and industrial center of the Republic and each passing year will make it more and more a center; commerce radiates from this city in all directions to the uttermost confines of the Republic and to foreign lands and can be influenced more readily by its control here as to rates than almost anywhere else.

**The Defendant Companies Have Made and Now Make  
a Profit From the Operation of The Terminal  
Railroad Association.**

The contention will no doubt be made that the consolidation is not operated for profit. Did anyone ever hear of a railroad pool or combine not being operated for profit?

I say that the record in this case shows that the Terminal Railroad Association was operated for profit, and that it was a profitable enterprise. The Record discloses that the Terminal Association controlled by fourteen proprietary railroads, did just what every railroad in this country has been at least wanting to do for years—that is, mortgaging its property for a sufficient amount to reimburse the investors and owners for all moneys invested, and then retaining the control of the stock and operating the property and declaring dividends on the stock, in addition to the payment of interest on the bonds for which the property had been pledged.

An inspection of this Record and a reference to the organization of the primary companies, will disclose that each of these primary companies had stocks and

bonds outstanding and that as the consolidation occurred from time to time, beginning with 1881, there was always an agreement on the part of the Terminal Association that the bonds outstanding and the stock outstanding in the constituent and consolidated companies, should have the interest and dividends thereon paid, and a guarantee was made by the Terminal Association to this effect.

When your Honors will inspect the Record, you will find in Vol. 8 of Exhibits in the form of written agreements, at pages 1823 to 1880, and from 1930 to 1939, whereby the Terminal Association actually guaranteed payment of interest on bonds and dividends on issued stock to the extent of something like \$28,000,000, with the right to issue some \$22,000,000 additional, and under the clause of the agreement hereinbefore referred to, the companies agree to charge sufficient freight rates for the haul over the properties of the consolidated companies to meet any amounts that might be needed for future improvements, agreeing that the whole \$22,000,000 could be used and the roads bound themselves to charge rates sufficient to pay interest on the additional \$22,000,000 that might be so used.

The Record shows that the present owners of the Terminal Association, the owners of this consolidated property, have never put one dollar into these properties that they have not received back. In other words, the proceeds of a bonded indebtedness of \$28,000,000 against the Terminal has repaid the proprietary railroad companies every cent they have invested, and these proprietary companies still own the stock of the Terminal Railroad Association and control and operate the property.

Several of the primary companies whose charters are still in force and whose bonds and stocks are out

with a guarantee for the payment of the interest and dividends thereon by the Terminal Railroad Association, are paying at the rate of 6% and 7% on many hundred thousand dollars of stocks and bonds. There is a stock and bonded indebtedness guaranteed by the Terminal Railroad Association and proprietary lines against the Eads Bridge to the extent of \$11,000,000, and that was onyl one of these combined instruemnts of interstate commerce, and yet we hear that this is a beneficent organization for the public benefit and not for the profit of its owners.

It seems to me to make a community like the City of St. Louis pay for this vast property, and for maintaining and keeping it up, free of cost of purchase and of maintenance to the railroads and owners, is an extremely profitable investment to the defendant interstate carriers of commerce. The defendants have a monopoly of all the interstate commerce at the St. Louis gateway without investing a dollar. This burden and tax is imposed upon each resident who lives within the confines of St. Louis, and nowhere else. To illustrate, if a shipment of freight originated in East St. Louis and was destined for Leavenworth, Kansas, Utah or Colorado, the freight charge is the same as though the shipment originated from St. Louis, Mo. If the shipment originates in a foreign country, or at the Atlantic sea coast and passes over the rails of the roads east coming west, or is destined for the Pacific coast, passing through St. Louis, the consignee pays no additional charge for the haul between the termini of the eastern roads in Illinois and the termini of the western roads at St. Louis. This commerce goes through free and unobstructed. The bridges and ferries are treated as a part of the main line of road in cases of

through shipments to points west of St. Louis, Missouri; but if a citizen of St. Louis, Missouri, wishes to make a shipment anywhere east of the City of St. Louis, except to what is called the Green Line territory, a charge of 2c per 100 lbs. was made, on an average, for the haul from St. Louis, Mo., to the termini of the eastern roads in East St. Louis. No St. Louis bill of lading was issued prior to the time this suit was brought. When a merchant used one of these instruments of interstate commerce, the Eads, Wiggins, Merchants, Conlogue or Interstate, the shipment was never received by the eastern railroad company until it arrived in East St. Louis, Madison or Granite City.

The President of the Terminal Railroad Association, Mr. Walsh, in a letter to Mr. Morgan giving the facts about the value of the property of the Terminal Railroad Association to enable Mr. Morgan to accurately represent the facts to his clients who might wish to purchase Terminal bonds, stated, that the Terminal Railroad Association controlled all the facilities for interstate commerce at St. Louis, Missouri, and had made a profit of (\$2,500,000) Two Million and Five Hundred Thousand Dollars.

**The Right to Use the Defendants' Properties Known  
as The Terminal Railroad Association Could Only  
be Acquired by a Road Outside The Terminal  
Railroad Association by Signing the Con-  
tract to Forever use the Properties of  
the Defendants for Movement of  
Interstate Commerce at St.  
Louis.**

A reference to the agreement of October 1st, 1889, between Gould and six of the defendant roads herein

and the contract known as the Guaranty Agreement of 1902, shows that no railroad could become a member of the Terminal Railroad Association and participate in the use of the properties of said last named company without first signing an agreement to forever send all its interstate commerce originating anywhere and passing through St. Louis, or to or from St. Louis, over the properties of the defendant, the Terminal Railroad Association.

Again, if a railroad was willing to sign the agreement, it even then could not become a member under the terms of the two contracts, if any one railroad that was a member objected. In other words, unanimous consent of all of the defendants allowing an applicant to join must first be obtained.

This power enabled the defendant companies to shut out all competitors from the use of the agencies for moving interstate commerce between Illinois and Missouri at St. Louis.

**The Charge for the Haul Between the Termini of the Eastern Roads in Illinois Defendants Herein and St. Louis Was Not a Switching Charge.**

It will be seen by reference to R., <sup>Vol. 4</sup> p. 1724, the Terminal Railroad Association maintained a separate and independent switching charge schedule which was entirely separate from the charge for the haul between the termini of the defendant roads in Illinois and St. Louis.

The Terminal Railroad Association issued a regular classified schedule of freight rates for the haul between the termini of the Eastern roads in Illinois and St. Louis.

See R., <sup>Vol. 3</sup> pp. 1651-1654, and 1658-1659 and <sup>Vol. 4</sup> 2246 and 2233.

The Pool between Terminal Railroad Association and Merchants Co. and Wiggins Co., admitted to exist by Mr. Scullin on R., <sup>Vol. 2</sup> pp. 87-88, shows a regular classified schedule of freights was used by all three companies last above named. This was the pool Scullin said was formed when they stopped cutting rates and "agreed to sin no more."

**It Was Not Necessary to Combine Under One Control  
all the Instruments Used to Move Interstate Commerce to Facilitate the Interchange of Business  
Between the Defendant Railroads.**

The Wiggins Company had for a long time prior to the building of any bridge across the river at St. Louis been a carrier of interstate commerce between the termini of the Eastern roads in Illinois and St. Louis. For many years after the building of the bridges and after the organization of the Terminal Railroad Association, the Wiggins Company continued to operate its locomotives and cars in Missouri and Illinois and its car transfer ferries across the Mississippi River, moving interstate commerce. The Record shows as hereinbefore stated that the Wiggins Company connected with every railroad in Missouri and Illinois doing business at St. Louis. It connected with the Terminal Association in Missouri and Illinois. It had more and better facilities for handling interstate commerce than the Terminal Association had. The combining of the two companies did not and could not add anything to the facility with which traffic could be interchanged between the Wiggins and other carriers, nor between



the Wiggins and the Terminal Railroad Association. The Record shows the Wiggins Company had more track-located industries than the Terminal; that most of the track-located industries were on the tracks belonging to individual roads and not belonging to either the Wiggins or the Terminal Companies.

The payment of five times the value of the Wiggins properties by the defendants in 1902 to get control of it did not add additional facilities for the interchange of traffic moving between Missouri and Illinois or elsewhere at or through or to St. Louis.

The excessive price was paid only to exclude competition. The Record shows the Merchants Terminal Company had connection with all the railroads before it was combined with the Terminal Railroad Association. Therefore no additional facilities were afforded for interchange of traffic by that combination.



## **RESUME AND CONSEQUENCE OF FOREGOING.**

### **1. August 17, 1893.**

St. Louis Bridge, with tracks and terminals, Wiggins Ferry, with tracks and terminals, Merchants Bridge with tracks and terminals, all independent, competing and distinct media of interstate commerce—each being operated on its own account and for its own purposes.

### **2. August 17, 1893.**

Foregoing three separate media combined under one control and thenceforward so operated.

### **3. August 17, 1893.**

“The Terminal Railroad Association of St. Louis” —owned by fourteen “proprietary” railroad companies, also defendants herein.

### **4. Purpose to monopolize by foregoing combination farther shown by:**

1. Purchase of Merchants Company.
2. Purchase of Wiggins Company.
3. Purchase of Conlogue railroad.
4. Purchase of Interstate Car and Transfer Company.
5. Purchase and control of Alton bridge.

Every semblance of competition thus effectually removed.

### **5. Detrimental consequence of combination and monopoly shown by:**

1. Guaranty agreement.
2. Delays in transit and delivery.

3. Favoritism to St. Louis Transfer Company.
4. Independent freight stations rendered impossible.
5. City of St. Louis deprived of adequate freight facilities.
6. "Bridge Arbitrary" established hostile to business interests of St. Louis shippers and manufacturers.
7. Coal traffic handled to St. Louis' detriment.
8. Freight rates arbitrarily fixed and maintained to St. Louis' detriment.

Every fact thus demonstrates a clear and deliberate violation of the statute.

**Unreasonable Restraint of Interstate Commerce and a Monopoly Thereof is Shown by the Record.**

The intent to create a restraint upon interstate commerce from the time of the creation of the Terminal Railroad Association is shown by the agreement binding all the railroads, stockholders of the Terminal Association to forever use the properties of said corporation for all interstate commerce.

This contract fixes the intent the organizers of the Terminal Association had when they caused said company to be formed.

Purpose to create a monopoly shown by the acts of those controlling the Terminal Company in causing it to buy the Wiggins Ferry Company at three times its value to exclude the Rock Island as a competitor.

The intent to create a monopoly is shown by the acquisition, by Terminal, of every agency and instrument that could possibly be used as a competitor, to-wit:

1. Purchase of Merchants Bridge and Terminal Railway Company.
2. Purchase of Wiggins Ferry Company.
3. Purchase of Conlogue road.
4. Purchase of Interstate Car and Transfer Company.
5. Defendants purchase and control of the Alton Bridge.

### Monopoly is Complete.

The record shows the control of all the instruments used to move interstate commerce between the termini of the Eastern railroads in Illinois and St. Louis is absolute. none are left to compete.

No road can acquire the right to use the facilities of the defendants in Missouri and Illinois without unanimous consent of all defendants, and then only by signing an agreement to forever use the properties of the defendants for the movement of interstate traffic destined to or from St. Louis. This binds forever all interstate traffic at St. Louis and puts it in the hands of the defendants.

If it is legal and not a violation of the law and policy of the Republic for one city, and the million of people commercially and industrially tributary to it, to have all of its traffic placed in the hands of fourteen railroads why is it not legal for the different railroads at all of the cities to control in this manner the traffic at all centers? The control thus extended would practically forever exclude perpetually all competition in railroad transportation and place it in the hands of the existing lines and their successors.

**It is Legally no Justification for This Complete Monopoly to Say it is a Terminal Facility and the Combination is Made Only to Facilitate Interchange of Traffic.**

The physical interchange of traffic has not been facilitated because there has been no change in the physical condition or arrangement of the properties since the combination.

No additional facilities have been added.

Again the interstate commerce act provides all interstate commerce carriers must interchange traffic at points of connection. The law of Missouri requires the same thing of connecting carriers.

The record shows competition was eliminated as to rates between, first, the Terminal Company and the Wiggins Company by pooling agreements. This was followed by pooling agreements between the then competing carriers, The Merchants, the Wiggins and the Terminal Companies. Now the old form of eliminating competition by pooling agreements has been displaced by combining the control in one consolidated corporation by transfer of stock.

The result is the same—elimination of competition and undue restraint of trade. If brought about now by an old fashioned pooling contract it would at once be declared illegal. Is it legalized because now the undue restraint of commerce and the monopoly thereof appears clothed in the corporate form of a "dummy" corporation, having as an excuse for its existence economy of operation and facility of interchange of traffic?

The Trust's excuse for its undue restraint of trade is always "economy of operation."

**The Defendant, Terminal Railway Association, is an  
Illegal Combination in Restraint of Commerce.  
It is a Monopoly.**

This defendant, The Terminal Railroad Association, was the illegal product of an unlawful contract made in 1889, between six of the defendants herein and Jay Gould, and it was brought into existence to be used only to unreasonably restrain interstate commerce and create a monopoly thereof. And this corporate entity the spawn of an illegal contract in which the public policy of this Republic was ~~spurned~~<sup>spurned</sup> has in its every act of its corporate life been true to the object for which it was created and it has never failed to use its power to restrain commerce and create monopoly as its creators, the defendants, intended it should do. The defendants hail this Terminal Association as a public benefactor while the shipping world looks on it as a burden on commerce.

The Conlogue road reached every road in East St. Louis, and it carried over its rails to a connection with the East Carondelet Ferry of the Missouri Pacific freight cars from all the Eastern roads destined to St. Louis, Missouri, and to points beyond.

The Interstate Car-Transfer Company operated two car-transfer boats passing from a point south of the Eads Bridge to a point north of it and between the Eads and the Merchants Bridge. The Interstate Car-Transfer Company operated in connection with the railroads in Missouri and Illinois and thereby had access to the central business and manufacturing sections of St. Louis, Missouri, and East St. Louis, Madison and Granite City, Illinois.

The Conlogue and the Interstate Companies were clearly competitors with each other and with the Mer-

chants and Wiggins and the St. Louis Terminal Association. All five were competitive instruments of interstate commerce and carried on interstate commerce, and the combination of them restrained interstate commerce by eliminating all competition.

The combination of the five instruments of interstate commerce violated the Sherman Law by creating a monopoly of the interstate commerce between the States of Missouri and Illinois at St. Louis, Missouri, and Granite City, Madison and East St. Louis, Illinois.

The consolidation of the five instruments of interstate commerce, the Wiggins, the Eads, the Merchants, the Conlogue and the Interstate Car Transfer Company into a single instrument of interstate commerce unduly restrained competition and this consolidation therefore was an unlawful restraint of interstate commerce.

The interstate commerce theretofore controlled by the five companies, was thenceforward controlled by one single corporation, and the commerce between the States of Missouri and Illinois, at St. Louis, Missouri, and East St. Louis, Madison and Granite City, Illinois, was placed under the command and mastery of a single corporation, i. e., the Terminal Railroad Association. The great commerce passing over the 50,000 miles of rails of the fourteen proprietary companies and through the St. Louis gateway was absolutely controlled and restrained and its movement and the cost thereof, absolutely directed wholly by the single corporation known as the Terminal Railroad Association.

Competition was eliminated. The control, restraint and mastery of interstate commerce was complete. The fourteen roads and the Terminal Association acted as one road. The fourteen roads acted through the

Traffic Association as a single corporate entity. The combination eliminated all competition in rates and service. **It was a complete monopoly.**

The acts of the defendants clearly violate the Sherman Law and the prayer of the Government should be granted.

*lly*  
**RELIEF SPECIFICALLY~~AS~~ ASKED BY PETITION.**

1. That all acts done or to be done in carrying out the combination are in derogation of the common rights of the people of the United States, and in violation of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopoly", and that the defendants and each of them and every one of them, and their officers, directors, stockholders, agents and servants, and each of them be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out the same in the future; that all agreements made between the defendants looking to the operation of the St. Louis Bridge, known herein as the Eads Bridge, and railroad tracks crossing the same and terminals connecting therewith, in a common or non-competing interest with the St. Louis Merchants Bridge, known herein as the Merchants Bridge, and railroad tracks crossing the same and terminals connecting therewith be declared void, and the defendants, parties to such agreements, be enjoined and forbidden from the further carrying out of such agreements or the operation of such bridges, railroad tracks and terminals in such common or non-competitive interest; that the said defendants and each of them, their agents, servants and representatives, be enjoined and forbid-

den from operating, controlling and maintaining the properties hereinbefore described as a common instruments or agency of interstate commerce, under the common control of the fourteen railroad companies, owning the capital stock of the Terminal Railroad Association.

This finds its authority in **Northern Securities v. United States**, 193 U. S. 197.

2. That the fourteen "proprietary companies" be enjoined from voting or in any manner acting as owner of shares of the capital stock of the Terminal Railroad Association, the Wiggins Ferry Company or the Merchants Bridge Terminal Railway Company.

This consequence follows from the unlawful character of the combination complained of in the petition.

**Northern Securities Cases—*supra*.**

3. That the Terminal Railroad Association be enjoined from recognizing or accepting the "proprietary companies" as owners of its stock, or permitting them to vote the same or paying them dividends thereon, or recognizing as valid any transfer, mortgage, pledge or assignment of the same.

This is the necessary accompaniment of the next preceding prayer and is based upon the same authority.

4. That Eads Bridge, Merchants Bridge and Wiggins Ferry and their associated subsidiary companies be enjoined from recognizing or accepting the Terminal Association and its fourteen co-defendants as the owners of the stock of the said Bridges, Ferry and Subsidiary Companies, and from voting same, or paying any



dividends thereon and from recognizing as valid any mortgage, pledge, assignment or transfer of the stock of said bridges, ferry, or subsidiary corporations.

5. That the individuals above named and each of them, and each and every person combining or conspiring with them as hereinbefore charged, and their trustees, agents and assigns, present or future, and each and every one of them, be perpetually enjoined from doing any and every act or thing hereinbefore complained of, or in furtherance of the combination or conspiracy described herein, or intended or tending to place the capital stock of the Terminal Railroad Association of St. Louis, in any of the corporations controlled by it, or the St. Louis Merchants Bridge Terminal Railway Company, or any of the corporations controlled by it, or the stock of either the Merchants or the Eads Bridge, or the said two bridges or the competing railway systems operated by the St. Louis Merchants Bridge Terminal Railway Company and the Terminal Railroad Association of St. Louis, or the competitive interstate or foreign trade or commerce carried on by them under the control legally or practically of the defendant, the Terminal Railroad Association of St. Louis, or either or all of the said fourteen railroad companies above named, who now own the capital stock of the Terminal Railroad Association, or of any person or persons, association or associations, corporation or corporations acting for or in lieu of said Terminal Railroad Association of St. Louis, or the said fourteen railroad companies above named, owning and controlling the stock thereof, in carrying out the unlawful combination or conspiracy hereinbefore complained of in this petition.

6. The relief sought in general is necessarily aimed at restoring conditions existing when the monopoly was effected—that of restoring to their position as media of interstate commerce the three competitive instruments—the “Eads Bridge”, the “Merchants Bridge” and the “Wiggins Ferry”, under whatever form each was being operated.

THE ATTORNEY GENERAL  
OF THE UNITED STATES.

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