the Interstate Commerce Commission, docket No. 2888, and for such other and further relief as to this court shall seem proper.

Dated May 9, 1911.

HUGH L. BOND,
JACKSON E. REYNOLDS,
W. S. JENNEY,
GEORGE F. BROWNELL,
J. F. SCHAPERKOTTER,
JOHN B. KERR,
GEORGE STUART PATTERSON,
Solicitors for Petitioners.

To THE INTERSTATE COMMERCE COMMISSION.
To the Hon. GEORGE W. WICKERSHAM,
Attorney General of the United States.

In the Commerce Court of the United States.

The Baltimore & Ohio Railroad Co. et al., petitioners, *v.* United States, respondent. Term, 1911. No.

George F. Randolph, E. M. Snyder, B. D. Caldwell, D. W. Cooke, T. W. Jarvis, J. C. Anderson, George D. Dixon, being duly sworn, each for himself deposes and says that he is an officer of one of the petitioners hereinabove stated.

Inasmuch as the city of New York, and more particularly the Borough of Brooklyn, is separated from the rail lines of the petitioners herein, used for transportation of freight, by the waters of New York Harbor, it is necessary for them, in order to receive and deliver freight in said Borough of Brooklyn, to lighter the same between the Borough of Brooklyn and their rail terminals on the western shore of New York Harbor, on lighters, car floats, or barges owned and operated by them or for them under contractual arrangements.

The handling of this traffic requires the petitioners to have facilities along the water front of the borough of Brooklyn where the boats used may lie and receive or deliver freight handled for the public other than the limited number who have private wharf facilities. The impracticability of access with wagons to cars on floats makes it necessary to have at some points track space accessible to wagons on the upland adjacent to the wharf facilities where cars may be placed for loading and unloading of carload shipments by the shipper or consignee to or from wagons, particularly for commodities shipped in bulk. This in turn requires the use of locomotives for moving cars to and from floats and placing the cars. In order to receive and deliver less than carload freight for the general public such water-front facilities must include sufficient space and the necessary facilities for receiving and caring for such shipments while held. Fully equipped public terminal stations at convenient locations are thus required and are now maintained.

The water front which is most accessible to a large and important manufacturing and shipping section of the borough of Brooklyn lies between the United States Brooklyn Navy Yard and the Brooklyn Bridge. The wharf and dock facilities of such water frontage are fully occupied and in use for private or public purposes, and by reason of the enormous amount of water-borne commerce in the port of New York are very valuable. By reason of its accessibility to such valuable dock facilities, its central location in the city of New York and borough of Brooklyn, and the fact that it is built up with costly structures, the property adjacent to such wharf facilities is also very valuable.

The Jay Street Terminal has established and developed a modern terminal station in the center of that portion of the water front of the borough of Brooklyn above described. At such terminal there are the necessary facilities for the receipt and shipment of freight both in carloads and less than carloads and for loading and unloading freight to and from cars on tracks from and to wagons. The petitioners in this proceeding, as well as other common carriers which are not parties hereto, have entered into contracts with said Jay Street Terminal in order to receive the benefits of the use of such terminal facilities for shippers and receivers of freight over their respective lines. Such contracts made by your petitioners are more particularly described and set forth in the petition in this proceeding. As it is more convenient, expeditious, and economical for the freight received and delivered at such terminal to be lightered from and to the rail termini of the petitioners by the lighters, floats, or barges of the Jay Street Terminal rather than by the separate lighters, floats, and barges of the petitioners, the said contracts cover and include the performance of such lighterage service by the Jay Street Terminal.

Such an arrangement is the only practicable means of furnishing the required terminal facilities for that section of the Borough of Brooklyn, because of the limited extent of the water-front facilities and the necessity for their use for other public and private purposes, the high value thereof, and of the land adjacent thereto. It is of great benefit and convenience to that section of the Borough of Brooklyn, which is conveniently accessible to the Jay Street Terminal, to have available at a single point the services of all the carriers which make use of the facilities of such terminal. The public is thus saved large expense and great inconvenience in trucking shipments to more distant separate or joint terminals, and also gets the benefit of various routes, and of the most desirable route, via one line or another, to substantially all points from or to which the public in the territory accessible to the terminal may desire to ship.

The petitioners will suffer and sustain irreparable damage if they are required to give up the valuable use of the facilities of the Jay Street Terminal, in that they will be unable to procure similar facilities elsewhere which will answer the same purpose, and the public shippers and receivers of freight, to whom the Jay Street Terminal is most convenient and accessible, will likewise suffer and sustain irreparable damage through the necessity of being obliged to use other and less accessible and convenient facilities for the shipment and receipt of their freight at a large increased expense. The petitioners will also suffer and sustain irreparable damage if they cease to pay the Jay Street Terminal the compensation provided for in the contracts above referred to, on account of sugar shipped by Arbuckle Bros. through the said Jay Street Terminal, in that the petitioners will thereby violate the aforesaid contracts and thus subject themselves to action for damages for such failure as well as to the termination of such contracts, and the loss of the use of the facilities covered thereby. If, as a condition of the continuance of payments to the Jay Street Terminal on account of Arbuckle Bros.' sugar as aforesaid, and of the continuance of the present arrangement with the Jay Street Terminal, the petitioners pay the Federal Sugar Refining Co. for lighterage of its sugar to the petitioners' terminal on the west shore of New York Harbor, the petitioners will suffer and sustain irreparable damage in that they will be unable to recover from the Federal Sugar Refining Co. the amount so paid in the event of a final decree herein in favor of petitioners.

GEO. F. RANDOLPH.
E. M. SNYDER.
B. D. CALDWELL.
D. W. COOKE.
T. W. JARVIS.
J. C. ANDERSON.
GEO. D. DIXON.

Sworn to and subscribed before me this 12th day of April, 1911.

[SEAL.] C. L. MALCOLM,
Notary Public, Kings County, No. 202.

[Register's office, Kings County, No. 4495. Certificate filed in New York County, No. 3208.]

In the Commerce Court of the United States.

Baltimore & Ohio Railroad Co. et al. *v.* United States.

STATE OF NEW YORK,
City of New York, County of Kings, ss:

William A. Jamison, being duly sworn, says:

The Jay Street Terminal is a copartnership composed of John Arbuckle and myself. We have duly filed the proper certificate under the laws of the State of New York and are authorized to do business under that name. The Jay Street Terminal owns, occupies, and operates a public railroad terminal in the Borough of Brooklyn, city of New York, bordering and extending along the East River about 541 feet and from the bulkhead line to John Street. The depth of the upland on the easterly end is 412 feet 6 inches and at the westerly end 217 feet 6 inches. To make this terminal possible, the city of New York in 1905 closed Bridge Street between John Street and the East River, and this was done upon the petition of merchants and manufacturers of Brooklyn, among them the largest department stores in the borough, principal storage warehouses, and manufacturers with very large tonnage output. Among the petitioners were the following: Kirkman & Son, Frederick Loeser & Co., Anderson & Co., Mack Bros., Pioneer Warehouses, Geo. H. Shephard, F. Bischoff, F. W. Dayton & Son, B. G. Latimer & Sons Co., Journay & Burnham, Cowperthwait & Co., Thompson Bonney Co., American Antiformin Co., Maxwell & Co., Empire Cork Co., Robert Gair Co., Jones Bros., Lamson Machine Works, Hanan & Son, National Licorice Co., Andrew J. Wikander, Kings County Manufacturing Co., the Horando Tuller Brewing Co., Kent Machine Works, Leavy & Britton Co., the Tin Plate Decorating Co., the Sterling Piano Co., Brooklyn Furniture Co., Browning, King & Co., R. A. Becker, Bellevue Chemical Co., M. J. Shevlin, Schwartz & Co., A. C. Elemere, jr., Chapman & Co., A. D. Matthews's Sons, Michael Bros., Ernst Zobel, John McCormick, Burns & Holley, Smith, Gray & Co., E. W. Bliss Co., Grand Union Tea Co., John W. Masury & Son, Boorum Place Co., S. Steinman & Co., Thomas Fleming, Steam Boiler Equipment Co., Thos. D. Carpenter, Edwin C. Burt Co., F. W. Devoe & C. T. Reynolds Co.

In the petition signed by these companies and copartnerships is the following statement:

> Jay Street Terminal has constructed and is now operating a terminal railroad on their premises on the south side of Bridge Street and the East River. This location, by reason of the short haul, easy street grades, via Gold, Bridge, Jay, and Pearl Streets, and the comparative freedom of these streets from congestion incident to street car operation is admirably suited for giving us the improvements in terminal facilities which we so much need.

The manufacturers and merchants who joined in the petition of the Jay Street Terminal are located in the central portion of Brooklyn, bounded by the navy yard, Broadway, Fulton Street, and the East River. The petition to close Bridge Street, looking to the extended operation of Jay Street Terminal, was also approved by the Downtown Taxpayers Association, representing the second ward of the Borough of Brooklyn, and its officers appeared before the public authorities of the city of New York in support of the application and represented the great benefit to this portion of Brooklyn to follow the extension of the operations of the Jay Street Terminal. Bridge Street was finally closed by the board of estimate and apportionment of the city of New York April 14, 1905.

The Jay Street Terminal is the agent of all the railroad companies parties to this proceeding under contracts set forth in the papers herein. The railroad yard is between Bridge and Gold Streets and, including trackage of floats berthed alongside piers, will accommodate at one time 235 freight cars. The tracks extend also from Bridge to Jay Street. There is one float bridge at which car floats tie up, and cars are moved between the float and the terminal tracks. There are three piers. The land and buildings devoted to the purposes of the terminal are assessed for 1911 for taxation at $1,757,300.

The equipment comprises 1 large freight house, 2 Baldwin steam locomotives, 3 tugboats, 2 steam lighters, 10 barges, and 6 floats.

The shipping territory served by the Jay Street Terminal may roughly be bounded by the navy yard, Broadway, Fulton Street, and the East River. The only other freight terminal within these limits is a relatively small and unimportant terminal of the New York Dock Co., at or near the foot of Fulton Street, which occupies a plot near to Fulton Ferry 117 feet three-fourths inch in length and 112 feet in depth. The capacity of the Fulton Terminal is not to exceed 20 cars. The next nearest terminal of the New York Dock Co. is near the foot of Atlantic Avenue. On the other side of the Jay Street Terminal the nearest terminal is at the Wallabout Basin. At this point the Delaware, Lackawanna & Western Railroad has a float bridge and terminal tracks accommodating 100 cars. Proceeding northward and eastward along the East River, the next terminal is that of the Eastern District Terminal. The Jay Street Terminal is the most convenient and accessible to the territory above described bounded by Broadway, Fulton Street, and the East River. One great advantage to shippers at the union terminal of the Jay Street Terminal is that the shipper can in one truck load deliver freight for all of the represented lines and in one trip a truck can carry freight from all of the included lines. The Jay Street Terminal receives it at its freight station and distributes it among cars of different railroads represented.

When the Jay Street Terminal was established it was practically impossible for the railroad companies to acquire and establish a terminal accessible to the shipping territory above described in any other way than by contract with the owners of the Jay Street Terminal property.

Beginning at the New York Navy Yard, the property between Little Street and Hudson Avenue is owned by the Brooklyn Union Gas Co., and is held for the purposes of that company. At this point the bulkhead line and pier line are practically identical. From Hudson Avenue to Gold Street the water front is owned by the Atlantic White Lead Co. Immediately west of Gold Street is the power house of the Kings County Electric Light & Power Co., next to which and extending to Adams Street is the property of the Jay Street Terminal and of Arbuckle Bros. Adjoining Adams Street is the tower of the Manhattan Bridge, belonging to the city of New York. The next block is between Washington and Main Streets, and the piers and water front between Washington and Main Streets are so situated with relation to the Manhattan Bridge pier and tower and the extent and length of this block make it useless for the purposes of a terminal. At the foot of Main Street is the Catherine Ferry, now in operation, and next to Main Street and extending to Dock Street and from Dock Street to the tower of the Brooklyn Bridge is property of the New York Dock Co.

To the west of Fulton Street the availability of the terminals of the New York Dock Co. are limited by the topography of Brooklyn. Immediately back of the water front is Furman Street running east and west, and immediately back of Furman Street is a high bluff, so that trucks desiring to reach any point on the water front substantially between Atlantic Avenue and Fulton Street must make the journey via Fulton Street or Atlantic Avenue. This long haul to the New York Dock Co. terminal makes the Jay Street Terminal of great advantage to shippers and receivers of freight within the territory above described naturally tributary to Jay Street Terminal.

East-bound freight is delivered to Jay Street Terminal as follows:

Railroad cars of the several companies are switched by the railroad companies to and upon the car floats of the Jay Steet Terminal at the termini of the railroads in New Jersey. Representatives of the railroad deliver to the master of the float the freight bill containing a description of the freight, the name of the consignee, and the weight and the charges for the freight. The car floats are then towed by a tugboat belonging to the Jay Street Terminal to the terminal in Brooklyn. Cars containing carload freight are here switched upon special tracks called team tracks. Less than carload freight is taken to warehouses and unloaded from the cars upon platforms. The Jay Street Terminal now prepares (from the data shown in the railroad company's freight bill) its own printed triplicate form, consisting of an arrival notice, freight bill, and delivery receipt, as per sample attached. When the freight reaches Jay Street Terminal the arrival notice is sent to the consignee, who calls and presents it as documentary evidence of title, and it is so accepted. He then pays the freight, if it has not been prepaid, and obtains his goods and the receipted freight bill, after signing the delivery receipt. In comparatively few cases east-bound freight is received on negotiable bill of lading, in which cases the terminal requires the surrender of the bill of lading as well as of the arrival notice. Once a week the terminal accounts to the railroad companies for freight moneys collected, and monthly the terminal renders a balance sheet showing the status of the account, accompanied by an unpaid-bill report of any items that cover freight not delivered.

Westbound freight is handled by the Jay Street Terminal as follows:

The terminal furnishes to the shippers who are doing business with it blank bills of lading of the so-called standard form approved by the Interstate Commerce Commission June 27, 1908, and consisting of (1) a straight (or order) bill of lading, which is sent to the consignee; (2) a memorandum copy thereof, acknowledging that an original bill of lading has been issued, which is held by the shipper; and (3) a shipping order, which is retained by the carrier. These bills of lading are stamped with the name Jay Street Terminal to show that the freight originated in Brooklyn and at the Jay Street Terminal. The bills are there and then signed by Mr. Frederick Tillier, as agent of the railroad company. The bills are signed under the contract with the railroad company. Copies of the bill of lading, the shipping order, and the memorandum acknowledgment are annexed. The shipping order is copied in detail upon manifest and the two are delivered to the railroad company by the master of the float having the freight. These manifests are made from the shipping order in duplicate, the duplicate is receipted by the railroad company and returned to the Jay Street Terminal. Whenever the freight is prepaid it is collected by the Jay Street Terminal and accounted for to the railroad company substantially as above described. This description of the receipt and handling of westbound freight covers shipments by Arbuckle Bros. of sugar, and these are made exactly like shipments by shippers of general merchandise.

A transaction in sugar, including the sale by Arbuckle Bros., delivery to the Jay Street Terminal, and the shipment from the railroad company may be described as follows:

A broker in sugar or any buyer signs and delivers to Arbuckle Bros., at their office in the Borough of Manhattan, written order for a given number of barrels of sugar signed by the purchaser or his broker, which contains the name of the purchaser, his address, and the character of the route over which the sugar is to be shipped, via all rail, lake and rail, ocean and rail, etc. On the face of this and in red letters is the following inscription: "Delivery complete on receipt of goods by carrier." From the office of Arbuckle Bros., in Manhattan, to the refinery in Brooklyn a shipping slip is sent, which gives the name of the consignee, the shipment route, and the description of the sugar, the price, and the freight rate. It also contains the freight rate which the consignee agrees to pay. This freight rate which the consignee agrees to pay may be the full freight rate charged by the railroad company which carries it or may be less, and for the following reasons: Sugar shipped from New York is sold, generally speaking, at the Philadelphia rate, and Arbuckle Bros. absorb the difference between the full freight rate from New York and the Philadelphia rate, so that the rate written upon these orders is, generally speaking, the Philadelphia freight rate. This is the result of competition between New York and Philadelphia refineries in territory served by both. New Orleans also competes with New York, and from time to time the freight rate is the New Orleans rail rate, and Arbuckle Bros. pay the difference between that rate and the New York rate.

The sugar is delivered by Arbuckle Bros. from their refinery to the Jay Street Terminal in trucks. The sugar is loaded from the trucks into the railroad cars. Arbuckle Bros., as shipper, fill out and sign, as shipper, a blank bill of lading, which has been delivered to said Arbuckle Bros., as shipper, by the Jay Street Terminal, and deliver said bill of lading to Jay Street Terminal along with sugar to be shipped. The terminal signs the bills of lading in the name of the railroad as hereinabove described and delivers the original and the memorandum acknowledgment to the consignor. The shipping order is retained by the Jay Street Terminal and sent to the railroad company with the freight bill. At the same time the railroad company issues to the Jay Street Terminal a freight bill showing the amount of freight to be collected from Arbuckle Bros. on account of this shipment. The railroad company charges the Jay Street Terminal with this amount. On the receipt of the freight the Jay Street Terminal delivers to Arbuckle Bros. a freight bill showing goods shipped, the route, and the freight charged. These bills are delivered to Arbuckle Bros. daily, and once a week Arbuckle Bros. settle with the Jay Street Terminal and the Jay Street Terminal with the railroad company. The same weekly credit is extended to every regular shipper from the Jay Street Terminal. The bill of lading covering the sugar when it is delivered to Arbuckle Bros. contains the name of the purchaser as the consignee, and this is true of 85 per cent of the shipments of sugar. About 15 per cent of sugar shipped by Arbuckle Bros. is shipped to Arbuckle Bros. as consignee at different points in the United States. The bills of lading received by Arbuckle Bros. are the same day, and never later than the next day, sent by mail to the consignee with an invoice. The result of these transactions, as they are understood between the buyers of sugar and Arbuckle Bros., is that the title to all sugar sold by Arbuckle Bros. changes to the buyer when the bill of lading is signed at Jay Street Terminal.

The refinery of Arbuckle Bros. is situated between Jay and Adams Streets. On the easterly side of Jay Street is the coffee mill of Arbuckle Bros. Next to the coffee mill is the Frost Bros. coal yard, owned and operated also by Arbuckle Bros., and next the property owned and operated by the Jay Street Terminal. All the sugar of Arbuckle Bros. is carried from the refinery to the terminal in trucks and is handled in exactly the same manner as shipments of other shippers received at the terminal.

The total tonnage handled by Jay Street Terminal east and west bound for the year 1910 was 613,305 tons. The sugar shipped by Arbuckle Bros. constituted 44 per cent of the total tonnage handled, which was the largest percentage of the whole tonnage since the terminal started. The number of shipments made by Arbuckle Bros. during 1910 was 22,894, and the number received was 1,826; total, 24,810.

The number of the shipments made by other shippers was 250,480, and the number received by consignees other than Arbuckle Bros. was 40,009; total, 290,489.

The number of shippers and receivers other than Arbuckle Bros. who delivered and received freight to and from the Jay Street Terminal was at least 500.

Hereunto annexed is a directory of about 200 Jay Street Terminal shippers of importance, giving their names and addresses.

WILLIAM A. JAMISON.

Sworn to and subscribed before me this 9th day of May, A. D. 1911.

[SEAL.] A. M. HARNED,
Notary Public, No. 137, Kings County, N. Y.

Certificate filed in New York County.

Directory of Jay Street Terminal.

AGENTS.

Baltimore & Ohio R. R.
Central R. R. of New Jersey.
Delaware, Lackawanna & Western R. R.
Erie R. R.
Lehigh Valley R. R.
New Jersey & New York R. R.
New York, Susquehanna & Western R. R.
New York Central & Hudson River R. R.
New York, Ontario & Western R. R.
Pennsylvania R. R.
West Shore R. R.
Central Hudson Steamboat Co.
Central Vermont Line:
- Canada-Atlantic Transit Co.
- National Despatch.

Clyde Steamship Co.:
- Brunswick Line.
- Charleston-Jacksonville Line.
- Philadelphia Line.
- Wilmington-Georgetown Line.

Hartford & New York Transportation Co.:
- Bridgeport Merchants' Line.
- Hartford Boat.
- Joy Line.
- Maine Steamship Co.

Hudson Navigation Co.:
- Citizens' Line.
- Murray's Line.
- People's Line.

Manhattan Navigation Co.
Metropolitan Steamship Co.
New England Navigation Co.:
- Bridgeport Line.
- Fall River Line.
- New Bedford Line.
- New Haven Line.
- Norwich Line
- Providence Line.

New York & Baltimore Transportation Co.
Norwich Propeller.
Ocean Steamship Co.:
- Atlantic Coast-Savannah Line.
- Central-Savannah Line.
- Seaboard-Savannah Line.

Old Dominion Steamship Co.:
- Atlantic Coast Line.
- Cumberland Gap Despatch.
- Kanawha Dispatch.
- Norfolk & Southern R. R.
- Norfolk & Western Dispatch.
- Piedmont Air Line.
- Seaboard Air Line.
- Virginia, Tennessee & Georgia Air Line.

Rutland Transit Co.
Southern Pacific Co.-Atlantic Steamship Lines.
Texas City Steamship Co.

Terminal docks and warehouses: Foot of Bridge Street, Brooklyn.
Traffic department: 71 Water Street, New York.
F. Tillier, superintendent, Brooklyn; J. L. Carling, general agent, New York.

Directory of receivers and shippers in Brooklyn, N. Y., whose freight can be handled to advantage through Jay Street Terminal.

A.

Abraham & Straus, 420 Fulton Street.
Acton, Jno., 118 John Street.
Adelphi Silver Co., 67 Prospect Street.
Adler Color & Chem. Works, 170 Tillary Street.
Albert & Baker Co., 331 Classon Avenue, consignees preference.
Albertype Co., 250 Adams Street.
Alford, F. A., 1007 Atlantic Avenue.
American Can Co., 93 Adams Street.
Amer. Safety Razor Co., Jay and Johnson Streets.
Anheuser-Busch B. Co., 435 Atlantic Avenue.
Ansonia Clock Co., Seventh Avenue.
Arbuckle Bros., foot of Jay Street.
Armstrong Cork Co., 216 Plymouth Street.
Atlantic Supply Co., 500 Atlantic Avenue.
Averill Paint Co., 240 Plymouth Street.

B.

Bainbridge's Sons, C. T., 2 Cumberland Street.
Balch, Price & Co., 376 Fulton Street.
Barett Mfg. Co., 131 Navy Street.
Behr, H. & Co., 33 Tiffany Place.
Bellevue Chem. Co., 359 Jay Street.
Bennett, Theo. & Son, 382 Fifth Avenue.
Bischoff, F., 32 St. Felix Street.
Bliss, E. W. & Co., Plymouth and Adams Streets.
Boorum & Pease Co., 80 Bridge Street.
Braunworth & Co., 16 Nassau Street.
Brill, Edw. E., 302 Pearl Street.
Brooklyn Daily Eagle, Johnson and Washington Streets.
Brooklyn Furn. Co., Fulton Street and DeKalb Avenue.
Brooklyn Navy Yard, Navy Street.
Brooklyn post office, Washington and Johnson Streets.
Brooklyn Union Gas Co., 180 Remsen Street.
Byron, E. C., 323 Flatbush Avenue.
Burt Co., E. C., 59 Jay Street.

C.

Cameron, Moch Co., 49 Washington Street.
Campbell, Jas., 108 Prospect Street.
Central Knitting Co., 772 Madison Street.
Chandler-Ebel Music Co., 222 Livingston Street.
Chivers Bookbinding Co., 911 Atlantic Avenue.
Clarke, J. F., 228 Concord Street.
Conrad, W. B. & Co., 61 Poplar Street.
Cooke & Cobb, 213 Steuben Street.
Courter, William, care of E. H. Barnes.
Cowperthwait Co., Flatbush Avenue and Fulton Street.
Cro. Hy. & Gardner, 55 Orange Street.
Curtin, W. H., Mfg. Co., 331 Adams Street.
Cuthbert, R. Lee, 6 Prospect Street.

D.

Dayton & Montgomery, 63 Flatbush Avenue.
De Haven Mfg. Co., 52 Columbia Heights.
Devoe, F. W., and C. T. Raynolds Co., Smith Street and Hamilton Avenue.
Dixie Cotton Felt Fibre Co., Pearl and Prospect Streets.
Dodd, Joseph M., Jay and York Streets.
Donnelly, J. R., Co., 54 Classon Avenue.
Dressner Bros., 183 Fulton Street.
Durst, Wm., 4 Water Street.

E.

Eckhardt & Blauth, 73 Raymond Street.
Economy Elec. Co., 217 Fulton Street.
Edison Elec. Illum. Co., 360 Pearl Street.

F.

Foster Pump Works, 36 Bridge Street.
Friedlander, J. B., Co., 233 Washington Street.
Fulton, Fdy. & Mch. Co., 21 Furman Street.

G.

Gair, Robt., Co., Washington and Water Streets.
Gardner, Lucas Co., 54 Columbia Heights.
Gasan Spring & Bed Co., 28 Cumberland Street.
Graef's, H. A., Son, 58 Court Street.
Grand Union Tea Co., Pearl and Water Streets.
Griffin, White Shoe Co., 124 Pearl Street.

H.

Halche, Robt., 47 Fulton Street.
Hanan & Son, Bridge and Front Streets.
Hasbrouck, J. L., & Co., 234 Duffield Street.
Herman Chemical Co., Jay and Willoughby Streets.
Hibbard, W. H., Mfg. Co., 79 Washington Street.
Hilton Co., Smith, Jay, and Fulton Streets.
Hoole Mach. & Eng. Wks., 29 Prospect Street.
Howard & Fuller B. Co., Bridge and Plymouth Streets.
Hydrox Chemical Co., 18 Fulton Street.

I.

Improved Mailing Case Co., 30 Main Street.
Ingersoll, O. W., 243 Plymouth Street.
International Cork Co., 1707 Sutton Street.

J.

Jacobson, A. C., & Sons, 81 Bridge Street.
Jonas & Levinson, 602 Myrtle Avenue.
Jones Bros. Co., 68 Jay Street.
Jones Decorative Glass Co., Hudson Avenue.

K.

Keenan, C. W., Fulton and Jay Streets.
Kent Mch. Wks., 39 Gold Street.
Kenyon, C., Co., 754 Pacific Street.
Kirkman & Son, Bridge Street.
Knight, T. G., Co., 52 Myrtle Avenue.
Kohnstamm & Co., H., Columbia Street.
Krantz, H., Mfg. Co., 160 Seventh Street.
Kreoge, S. S., Fulton Street.
Kronheimer & Oldenbush, 366 Butler Street.
Kurscheedt, E. B., Apron Co., 30 Main Street.
Kurtz & Son, J., 169 Smith Street.

L.

Latimer, B. G., & Son, Fulton and Flatbush Avenue.
Latteman, J. J., Shoe Mfg. Co., St. Edwards Street.
Leavy & Britton, 87 Jay Street.
Levy, A., & Co., 250 Hudson Avenue.
Liebmans & Sons Brewing Co., 33 Forest Street.
L. I. Furn. Co., 46 Myrtle Avenue.
Lockitt's, Geo., Sons, 212 Fulton Street.
Lock Seal Ferrule Co., 256 Plymouth Street.
Loeser, Fredk., & Co., Fulton and Bond Streets.

M.

Mack Bros. Motor Car Co., Atlantic and Third Avenues.
Mallenckrodt Chemical Works, 37 Jay Street.
Malt-Diastase Co., 64 Garden Street.
Marguerite Mfg. Co., 383 Pine Street.
Marresford, Wm. F., 56 Pearl Street.
Mason, Au., & Magenheimer, 22 Henry Street.
Mason, I., 115 Myrtle Avenue.
Masury, Jno. W., & Son, 75 Jay Street.
Matchless Mfg. Co., 31 Washington Street.
Matthews, A. D., & Son, Fulton and Gallatin Streets.
McEnery, J., 86 Myrtle Avenue.
McNeill, R. S., Co., Jay and Water Streets.
Meade Shoe Co., 102 Myrtle Avenue.
Metal Package Co., 30 Main Street.
Metzge, C. H., 12 Clinton Street.
Michaels Bros., 442 Fifth Avenue.
Michaels, Jos., 184 Smith Street.
Miller & Hyams, Smith and State Streets.
Modern Paper Box Co., Tillary and Washington Streets.
Moehle Litho. Co., Clarendon Road.
Moore & Co., Benj., 231 Front Street.
Muller & Van Winkle, 22 Bridge Street.
Mullins, John, & Son, 84 Myrtle Avenue.
Munshein, S., Carlton and Flushing Avenues.
Myers, Wm. H., 62 Fulton Street.

N.

Nachmann, I., 17 Fulton Street.
Namm & Son, A. I., Fulton and Hoyt Streets.
National Casket Co., Pearl Street and Myrtle Avenue.
National Lead Co., Front and Gold Streets.
National Lead Co., Marshall and Gold Streets.
National Licorice Co., 106 John Street.
National Parlor Suit Co., 65 Raymond Street.
Newman, T. A. & L. F., 305 Fulton Street.
N. Y. Sand & Facing Co., 106 Grand Avenue.
Nutting, A. J., & Co., Smith and Fulton Streets.

O.

O'Neill, Wm., 249 Myrtle Avenue.
Ormonde Mfg. Co., 406 Hudson Avenue.

P.

Pearson's, Alex., Sons, 59 Myrtle Avenue.
Perkins, J. T., Co., Kent Avenue.
Phillips, Doup & Co., 60 Pearl Street.
Pittsburg Plate Glass Co., Hudson Avenue and Fulton Street.
Prahar, L. B., 124 Pearl Street.
Peterson, F., 44 Boerum Place.
Pfeiffer, I., Plymouth and Bridge Streets.
Planet Mills Mfg. Co., 335 Carroll Street.
Planten, H., & Son, 93 Henry Street.
Pool's, Geo., Son, 70 Fulton Street.
Purvis & Shelton, 241 Plymouth Street.

R.

Reid, J. W. & W. H., 21 Willoughby Street.
Republic-Dodge Mfg. Co., Pearl and Prospect Streets.
Rich, W. H., & Son, 768 Pacific Street.
Riker Drug Co., 264 Fulton Street.
Robertson, Jno., & Co., 246 Water Street.
Rohman, Sons & Co., C. F., 343 Adams Street.
Ronalds & Johnson Co., 50 Boerum Place.
Roosen, H. D., Co., 263 Water Street.
Ruwe Bros., 765 Atlantic Avenue.
Ruxton, Phillip, 251 Water Street.

S.

Salant & Salant, Knickerbocker Avenue.
Sanitary Metal Tile Co., 137 Duffield Street.
Schaeffer & Budenberg Mfg. Co., 481 DeKalb Avenue.
Schmidt, M. J., 48 Smith Street.
Scollay, Jno. A., 74 Myrtle Avenue.
Shoyer, D. W., Co., 30 Main Street.
Slattery, J. B., & Bro., 135 Johnson Street.
Smith, D. H., 256 Plymouth Street.
Smith & Son, Thos., 410 Third Avenue.
Spalding, A. G., & Bro., 660 Pacific Street.
Squibb, E. R., & Sons, 36 Doughty Street.
Staines, Bunn & Taber Co., 147 Lawrence Street.
Standard Veneer Bbl. Co., 62 Water Street.
Sternan, S., 195 Plymouth Street.
Stransky & Co., 30 Main Street.
Strohbeck, Chas., 309 Johnson Street.
Sweeney, W. H., Mfg. Co., 30 Main Street.

T.

Taylor & Co., 47–49 Rockwell Place.
Thomson Meter Co., 100 Bridge Street.
Thompson & Norris Co., Prince and Concord Streets.
Thompson, Bonney Co., 124 Atlantic Avenue; 45 York Street.
Tiemann, F. M., 88 Fulton Street.
Tin Plate Decorating Co., 176 Front Street.
Tisch, Chas., 93 Rockwell Place.
Tompkins & Tuthill, 15 Fulton Street.
Torres, Jose, 46 Bowne Street.
Towns & James, 174 Fulton Street.
Turner Construction Co., 37 Hewes Street.

U.

Union Lead & Oil Co., 81 Front Street.
United Lead Co., 81 Front Street.
United States Electro Galvanizing Co., 1 Park Avenue.
Unitype Co., 150 Sands Street.

W.

Washington Manufacturing Co., 99 Myrtle Avenue.
Watch Tower, T. & B. Society, 13 Hicks Street.
Webster, E. G., & Son, 622 Atlantic Avenue.
Wesel, F., Manufacturing Co., 70 Cranberry Street.
West Envelope Co., 91 Orange Street.
Whalen Bros., 168 Smith Street.
Williams, J. H. W., & Co., 150 Hamilton Avenue.
Woolworth, F. W., & Co., 532 Fulton Street.

Z.

Zeises, L., 101 Bridge Street.
Zerega's, A., Sons, 55 Front Street.

JAY STREET TERMINAL.

At this modern and centrally located terminal fronting on the East River, Brooklyn, N. Y., all classes of merchandise—any quantity—will be received and delivered, excepting the following prohibited articles: Acid, explosives, matches, household goods less than carloads, fresh meats, petroleum and petroleum products (see note), bonded freight, and "to-be-graded" grain.

NOTE.—Shipments of texene (turpentine substitute) in carloads, may be accepted for delivery at this terminal.

Unexcelled trackage facilities insure the prompt handling of cars to and from floats and the loading and delivering of freight to or from cars placed on team tracks.

Less-than-carload shipments are received and loaded under cover direct to cars and unloaded from cars direct to delivery platforms in this terminal's freight house.

Delivery and loading tracks are easy of access, and all driveways are paved and without grade.

Single pieces not exceeding 20 tons may be accepted for this terminal, a gantry crane of 20-tons capacity, for the handling of heavy machinery and other heavy and bulky freight, having been installed for that purpose.

Bills of lading and shipping receipts should bear notation "Jay Street Terminal delivery." to insure that delivery. and card waybills covering shipments of a bulky nature or of sufficient weight to warrant the use of straight cars should read direct to Jay Street Terminal, and thereby avoid delay in transferring or consolidating freight.

Superior facilities are available on the premises for the storage of general merchandise, and cartage arrangements can also be made at reasonable rates.

[Form 44, duplicate, 11-10-400 M sets. Uniform bill of lading: standard form of straight bill of lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.]

LEHIGH VALLEY RAILROAD.

Shippers No. ——

[Straight bill of lading—original—not negotiable.]

Agents No. ——

Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading, at ——, 191—, from ——, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road; otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from —— to —— is in cents per 100 pounds.

If — times 1st.	If 1st class.	If 2d class.	If rule 25.	If 3d class.	If rule 26.	If rule 28.	If 4th class.	If 5th class.	If 6th class.	If special per —.	If special per —.

Consigned to —— ——. (Mail address—not for purposes of delivery.) Destination, ——, State of ——, county of —— Route, —— Car initial —— Car No. ——.

No. packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	If charges are to be prepaid, write or stamp here, "To be prepaid."
					Received $...... to apply in prepayment of the charges on the property described hereon.
					Agent or cashier. Per........
					(The signature here acknowledges only the amount prepaid.)
					Charges advanced: $......

—— ——, *Shipper.* —— ——, *Agent.*

Per —— —— Per —— ——

(This bill of lading is to be signed by the shipper and agent of the carrier issuing same.)

[Form 44, duplicate. 11-10—400 M sets. For use in connection with the standard form of weight bill of lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.]

LEHIGH VALLEY RAILROAD.

[This shipping order must be legibly filled in in ink, in indelible pencil, or in carbon, and retained by the agent.]

Shippers No. ———
Agents No. ———

Receive, subject to the classifications and tariffs in effect on the date of issue of this shipping order, at ———, 191—, from ———, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from ——— to ——— is in cents per 100 pounds.

If — times 1st.	If 1st class.	If 2d class.	If rule 25.	If 3d class.	If rule 26.	If rule 28.	If 4th class.	If 5th class.	If 6th class.	If special per —.	If special per —.

Consigned to ——— ——— (Mail address—Not for purposes of delivery.) Destination ———. State of ———, county of ———. Route ———. Car initial ———. Car No. ———.

No. packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	If charges are to be prepaid, write or stamp here, "To be prepaid."
....	....	....	....	....	Received $...... to apply in prepayment of the charges on the property described hereon.
....	....	....	....	....	*Agent or cashier.*
....	....	....	....	....	Per........................
....	....	....	....	....	(The signature here acknowledges only the amount prepaid.)
....	....	....	....	....	Charges advanced: $......

——— ———, *Shipper.*
Per ——— ———.

Agent must detach and retain this shipping order and must sign the original bill of lading.

Book Form 44-9-08-500 M sets. Uniform bill of lading—Standard form of order bill of lading approved by the Interstate Commerce Commission by Order No. 187 of June 27, 1908.]

LEHIGH VALLEY RAILROAD CO.

Shippers No. ———

[Order bill of lading—original.]

Agents No. ———

Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading at ———, 19—, from ———, the property described below in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this original order bill of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

The rate of freight from —— to —— is in cents per 100 pounds.

If — times 1st.	If 1st class.	If 2d class.	If rule 25.	If 3d class.	If rule 26.	If rule 28.	If 4th class.	If 5th class.	If 6th class.	If special per —.	If special per —.

Consigned to order of —— —— (mail address, not for purposes of delivery). Destination, ——, State of ——, County of ——. Notify —— —— at ——, State of ——, County of ——. Route, ——, car initial ——, car No. ——.

No. packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	If charges are to be prepaid, write or stamp here, "To be prepaid."
					Received $...... to apply in prepayment of the charges on the property described hereon.
					Agent or cashier.
					Per.................................. (The signature here acknowledges only the amount prepaid.)
					Charges advanced: $......

—— ——, *Shipper.* —— ——, *Agent.*

Per —— ——. Per —— ——.

(This bill of lading is to be signed by the shipper and agent of the carrier issuing same.)

[Book form 44-9-06-500 M sets. For use in connection with the standard form of order bill of lading, approved by the Interstate Commerce Commission by Order No. 787, of June 27, 1908.]

LEHIGH VALLEY RAILROAD.

Shippers No. ——

[This shipping order must be legibly filled in, in ink, in indelible pencil, or in carbon, and retained by the agent.]

Agents No. ——

Receive, subject to the classifications and tariffs in effect on the date of issue of this shipping order, at ——, 19—, from ——, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of the original order bill of lading, properly indorsed, shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

The rate of freight from —— to —— is in cents per 100 pounds:

If — times 1st.	If 1st class.	If 2d class.	If rule 25.	If 3d class.	If rule 26.	If rule 28.	If 4th class.	If 5th class.	If 6th class.	If special per —.	If special per —.

Consigned to order of ——— ——— (mail address—not for purposes of delivery). Destination, ———, State of ———, county of ———. Notify ——— ———, at ———, State of ———, county of ———. Route, ———; car initial, ———; car No., ———.

No. packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	If charges are to be prepaid, write or stamp here, "To be prepaid."
....	....	....	....	....	Received $...... to apply in prepayment of the charges on the property described hereon.
....	....	....	....	....	*Agent or cashier.*
....	....	....	....	....	Per..........
....	....	....	....	....	(The signature here acknowledges only the amount prepaid.)
....	....	....	....	....	Charges advanced: $......

——— ———, *Shipper*.
Per ——— ———.

Agent must detach and retain this shipping order and must sign the original bill of lading.

[Book Form 44-9-08c com, 8 cts. For use in connection with the standard form of order bill of lading approved by the Interstate Commerce Commission's Order No. 787 of June 27, 1908.]

LEHIGH VALLEY RAILROAD CO.

[This memorandum is an acknowledgment that a bill of lading has been issued and is not the original bill of lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.]

Shippers No..................
Agents No..................

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the original bill of lading, at ———, 19—, from ———, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of the original order bill of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

The rate of freight from ——— to ——— is in cents per 100 pounds:

If — times 1st.	If 1st class.	If 2d class.	If rule 25.	If 3d class.	If rule 26.	If rule 28.	If 4th class.	If 5th class.	If 6th class.	If special per —.	If special per —.

Consigned to order of ——— ——— (mail address—not for purposes of delivery).
Destination, ———, State of ———, county of ———. Notify——— ———, at ———, State of ———, county of ———. Route, ———; car initial, ———; car No., ———.

No. packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	If charges are to be prepaid, write or stamp here, "To be prepaid."
					Received $...... to apply in prepayment of the charges on the property described hereon.
					Agent or cashier. Per........ (The signature here acknowledges only the amount prepaid.)
					Charges advanced: $......

——— ———, *Shipper.*
Per ——— ———.

——— ———, *Agent.*
Per ——— ———.

CONDITIONS.

SEC. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after 48 hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and bailing at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held 48 hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

[Freight bill.]

Section No. ——. Pro. ——.

JAY STREET TERMINAL,

FOOT BRIDGE STREET.

BROOKLYN, N. Y., ——, *190—*.

Consignee, —— ——, to Jay Street Terminal, Dr.

For charges on freight.	Articles and marks.	Weight.	Rate.	Charges.
From				
Via				
Date				
Waybill				
Debit				
Car No.				
Initials				
Original car No.	Back charges			
	Total			

Received payment for the company.

—— ——, *Agent.*

Original paid freight bills should accompany all claims for overcharge, loss, or damage.

Received on account of articles described on opposite side the following in good order, viz:

Number.	Articles.	Date.	Truck No.	Signature.

[Notice of arrival of freight.]

Section No ——. Pro. ——.

JAY STREET TERMINAL,

FOOT BRIDGE STREET.

BROOKLYN, N. Y., ——, *190—*.

Consignee —— ——, Jay Street Terminal.

	Articles and marks.	Weight.	Rate.	Charges.
From				
Via				
Date				
Waybill				
Debit				
Car No.				
Initials				
Original car No.	Back charges			
	Total			

Terms, cash before delivery.

Make checks payable to the order of Jay Street Terminal.

Special: Storage of freight on premises in any quantity at moderate rates or delivery of freight (store door), carloads or less carloads, to any part of Brooklyn or New York, if desired.

Return this notice when you call to pay charges.

We do not send a second notice.

Free storage expires 6 p. m. ———.

Freight will not be delivered on this notice unless the order is signed by consignee and sent to Jay Street Terminal.

The above-described property has arrived at this station consigned to your address. If not removed within 24 hours it may be stored at the risk and expense of the owner, this company being no longer liable as carriers.

All orders for delivery of goods must give number of car and date of freight bill.

All carload freight shall be subject to a charge for car service of $1 per car for each 24 hours' detention or fractional part thereof after the expiration of 48 hours from its arrival.

Deliver to ——— ———,
——— ———.

[Delivery receipt.]

Section No. ———. Pro. ———.

JAY STREET TERMINAL,

FOOT BRIDGE STREET.

BROOKLYN, N. Y., ———, *190—*.

Consignee ——— ———, received from Jay Street Terminal in good order:

For charges on freight.	Articles and marks.	Weight.	Rate.	Charges.
From........	....	....	....	....
Via........	....	....	....	....
Date........	....	....	....	....
Waybill........	....	....	....	....
Debit........	....	....	....	....
Car No........	....	....	....	....
Initials........	....	....	....	....
Original car No.	Back charges........	....	....	....
Truck No.				
	Total........	....	....	....

Signature, ——— ———, *Consignee.*

Receipt must be signed on delivery of freight. Sign name in full. Initials will not do.

And afterwards, to wit, on the 11th day of May, 1911, there was filed in the clerk's office of said court, in said entitled cause, a certain notice and petition for leave to intervene and for an injunction, on behalf of the Brooklyn Eastern District Terminal, in the words and figures following, to wit:

Notice and intervening petition of Brooklyn Eastern District Terminal

In the Commerce Court of the United States.

The Baltimore & Ohio Railroad Co.; The Central Railroad Co. of New Jersey; The Delaware, Lackawanna & Western Railroad Co.; Erie Railroad Co.; Lehigh Valley Railroad Co.; New York, Ontario & Western Railway Co.; and The Pennsylvania Railroad Co., petitioners, *v.* United States, respondent. May session, 1911. No. 38.

Notice is hereby given that a petition by the Brooklyn Eastern District Terminal, of which the annexed is a copy, for leave to intervent as one of the complainants in this suit, has been filed with the court; and that at a session of the court to be held in the city of Washington, D. C., on the 17th day of May, 1911, at the opening of court on that day, or as soon thereafter as counsel can be heard, application will be made to the court for the relief in said petition prayed, and for such other and further relief as may be just.

Dated New York, May 10, 1911.

PARSONS, CLOSSON & MCILVAINE,
Solicitors for Brooklyn Eastern District Terminal, Petitioner, 52 William Street, New York City, N. Y.

To the honorable ATTORNEY GENERAL OF THE UNITED STATES (And all other parties of record or in interest).

In the Commerce Court of the United States.

The Baltimore & Ohio Railroad Co.; The Central Railroad Co. of New Jersey; The Delaware, Lackawanna & Western Railroad Co.; Erie Railroad Co.; Lehigh Valley Railroad Co.; New York, Ontario & Western Railway Co.; and The Pennsylvania Railroad Co., petitioners, *v.* United States, respondent. Term 1911. No. 38.

To the judges of the Commerce Court of the United States:

The Brooklyn Eastern District Terminal, a corporation of the State of New York, brings this its petition for leave to intervene as one of the complainants in this suit; and thereupon your petitioner respectfully shows unto your honors as follows:

1. Your petitioner is a transportation corporation organized under the laws of the State of New York, engaged as a common carrier in the transportation of property partly by railroad and partly by water, the transportation by water being performed by your petitioner under arrangements, hereinafter stated in detail, with the railroads who are complainants in this suit for a continuous carriage or shipment from one State to another.

2. This is a suit instituted in this court on or about the 11th day of April, 1911, by the seven complainants herein, who are railroads, commonly known as "trunk lines," engaged in the transportation of passengers and property between the city of New York and the Western States and the intermediate territory, to set aside and suspend an order of the Interstate Commerce Commission made on the 5th day of December, 1910, in a proceeding before it, wherein the Federal Sugar Refining Co. of Yonkers was complainant and the complainants herein were defendants, requiring the complainants herein to desist and abstain from paying to Arbuckle Bros. (operating what is known as the Jay Street Terminal) certain so-called allowances for floatage, lighterage, and terminal service rendered by them to the complainants in connection with sugar transported by them in New York Harbor to and for the complainants, while at the same time paying no such allowances to the said Federal Sugar Refining Co. on its sugar. Application has been made to this court by the complainants herein that a temporary injunction issue suspending the said order and any and all proceedings thereunder pending a final determination of the suit; and, as your petitioner is informed and believes, the said application is to be heard by this court on the 17th day of May, 1911.

3. Your petitioner was a party in interest, though not of record, to the proceeding before the Interstate Commerce Commission in which the said order was made; and there is involved in this suit the validity of such order and the interest of your petitioner; and your petitioner is a corporation interested in the said controversy before the Interstate Commerce Commission and in this suit, brought by the complainants, under the terms of the act to regulate commerce, relating to the said action of the Interstate Commerce Commission.

4. Your petitioner is the Brooklyn Eastern District Terminal, which is mentioned in the original petition of the Federal Sugar Refining Co. to the commission, annexed to the petition of the complainants herein as Exhibit B, and in the answer thereto of the defendants, annexed to said petition as Exhibit C, and in the report of the commission and in the separate opinions of certain of the commissioners, thereto appended, upon said original petition (likewise annexed to the complainants' petition herein as Exhibit D), and in the report of the commission and in the separate opinions of certain of the commissioners, thereto appended, upon the petition which resulted in the order now sought to be set aside (likewise annexed to the complainants' petition herein as Exhibit G). In such last-named report your petitioner is referred to in the following passage thereof (p. 106):

> The complainant [the Federal Sugar Refining Co.] also charges that a similar allowance paid to the owners of the so-called Brooklyn Eastern District Terminal, owned by Havemeyer interests, also subjects it to undue prejudice and disadvantage. It is at this dock that the output of the American Sugar Refining Co. is largely handled. But although our understanding had been to the contrary, we were told at the hearing that the Havemeyers owned only an insignificant amount of the capital stock of that company. Accepting these statements at their face value, we need not at this time consider that phase of the complaint.

5. All of the capital stock of your petitioner is owned by the partnership of Havemeyers & Elder, composed of the following persons, to wit: Louisine W. Havemeyer, Horace Havemeyer, Theodore A. Havemeyer, Henry O. Havemeyer, jr., and Frederick C. Havemeyer, jr. Neither the said partnership, nor any of its members, owns or has any interest, direct or indirect, in the American Sugar Refining Co., referred to in the said report of the commission, or in its stock, or any connection therewith, nor has had since the 1st day of January, 1911.

6. For years past your petitioner, as lessee of the said firm of Havemeyers & Elder, has maintained and operated in the borough of Brooklyn, New York, along the East River, between North Third and North Tenth Streets, an extensive railroad terminal, which has been designated in the tariffs of the complainants' railroad herein, except the Pennsylvania Railroad, and is used by it and three other railroads, and 18 steamship lines, engaged in the transportation of freight to and from New York Harbor, as a receiving and delivery station for their freight. Its equipment is correctly described in the existing tariff of the complainant, the Central Railroad of New Jersey (I. C. C. S. No. 2230) as follows:

> Brooklyn Eastern District Terminal (formerly Palmer's Dock).
>
> At this station, which faces on the East River and extends from North Fourth Street to North Tenth Street, Brooklyn, N. Y., freight of all descriptions in any quantity, both package and bulk, can be handled, except acids, in carboys, less than carloads; petroleum oils, in tank cars; powder, high explosives, ice, in any quantity; "to be graded grain;" and 12-wheel railroad cars on their own wheels.

There are trackage facilities where cars can be handled to and from floats and contents forwarded or delivered from track; lumber, brick, etc., in full carloads, or heavy packages or pieces sufficient to warrant straight cars may be accepted for and ticketed direct to this station. This station has also covered pier where package freight is handled directly between the cars and pier. The terminals at Brooklyn Eastern District Terminal are centrally located and easy of access, and are equipped with modern appliances for the convenient and prompt handling of freight of all kinds. The yards for the delivery of track freight have paved roadways without grade and a capacity for several hundred cars. There is also a yard for the accommodation of live stock, grain elevators of 500,000 bushels capacity, a hay warehouse in which hay can be inspected, sold, or stored, one crane of 20 tons capacity, and two cranes of 10 tons capacity each, and other special facilities for the handling of heavy freight, such as machinery, structural material, etc.

The present value, as nearly as can be estimated, of the plant and equipment of your petitioner's Brooklyn terminal alone is as follows:

Real estate	$5, 288, 360. 00
Building and construction	435, 869. 53
4 tugs	137, 146. 70
13 floats	258, 987. 98
13 lighters	79, 377. 72
9 locomotives	49, 659. 66
Franchises	14, 000. 00
	6, 263, 401. 59

Upon this investment of $6,263,401.59 the net earnings of your petitioner during the year 1910 were $321,555.12, or 5.13 per cent. All of these earnings (except an amount not to exceed 5.02 per cent thereof, from other sources, such as storage, drayage, etc.) were derived from the payments made to it by the complainants and other connecting carriers, besides charges for dunnage, car service, and shifting of 4½ cents, or 3 cents for each 100 pounds of freight transported by it between its terminal and the termini of such railroads and steamship lines in New York Harbor; the said sum of 4½ cents being paid it on all freight moving to or from the western termini of the trunk lines and points beyond, except grain in bulk, coal, and coke, and the said sum of 3 cents per 100 pounds on all other freight except coal and coke. During the year 1910 the total freight transported by it to or from the said Brooklyn terminal and smaller terminal stations likewise maintained by it at Pidgeon Street in Long Island City and at Warren Street in Jersey City, was 2,796,263,006 pounds. Of this total, 868,022,125 pounds, to wit, 31.04 per cent, was sugar and 1,928,240,811 pounds, to wit, 68.96 per cent, was miscellaneous merchandise. Of this total tonnage transported by your petitioner, 53.74 per cent was east bound and 46.26 per cent west bound. It was received from or delivered to not less than 1,650 separate customers. The maintenance and operation of the terminal is a commercial necessity for the large and busy districts of Brooklyn and Jersey City which it serves, and is rendered possible only by the fact that as a union terminal for all the said railroads and steamship lines it is able to amalgamate their east-bound and west-bound business, so that it handles each way approximately the same amount of traffic, as above stated, and is thus enabled to earn the very moderate return of 5.13 per cent upon its investment, as above stated, a result which could not be accomplished by any terminal handling the traffic of one railroad or steamship line alone.

7. The transportation business of your petitioner, as above outlined, is secured to it not alone by its ability to perform the service,

but, in the case of most of the trunk lines, by contracts between it and them having yet several years to run, substantially in the form of that between your petitioner and the complainant Erie Railroad Co., a copy of which is annexed hereto, marked "Exhibit A." In and by said contract your petitioner agrees to maintain its terminal and the necessary floats, tugs, docks, float bridges, and approaches; at all times to receive, transfer, and deliver freights loaded or to be loaded in cars sufficient to accommodate the amount of business to be interchanged by it with the railroad; to be absolutely and unqualifiedly responsible for the safety of all cars and freight while in its possession; to provide a competent person to superintend the traffic of the railroad, and to issue bills of lading for it upon its account for west-bound freights received for it by your petitioner at its terminal; to be responsible for and pay to the railroad company all freight moneys and charges for the transportation of east-bound freights, and all freight moneys and charges payable in advance on west-bound freights, and to keep insured all freights, cars, or property received by it under the contract. In consideration thereof the railroad company upon its part by the eleventh article of the contract agrees that within the limits of the former city of Williamsburg, extending from Wallabout Bay on the south to Newtown Creek on the north, not inclusive of either, the railroad, unless legally compelled to do so, will not, during the continuance of the contract, establish or maintain any freight stations, nor within said limits receive on barges, lighters, floats, or other water craft, for transportation over the lines of its railroad to western points therein mentioned, any freights, except as provided for in the said contract; and that it will not deliver on barges, lighters, floats, or other water craft at any points within such limits, unless legally compelled to do so, any freight received or transported eastwardly over its railroad in any other manner than as provided for in such contract. And by the fourteenth article thereof the railroad further agrees to pay to your petitioner in full for all its services under this contract, as well as full compensation for all responsibility to be undertaken by it in respect to cars and freight, as follows:

(*a*) For all freight, except coal and coke, transported over the Erie Railroad which shall have been received from its connecting rail or water line west of the western termini of the trunk lines, on through rates, or for freight received by the terminal company at its aforesaid premises and destined for rail or water transportation by the railroad company to points west of said western termini, on through rates, excepting grain in bulk, at the rate of 4½ cents per 100 pounds.

(*b*) For freight originating at or destined to any of said western termini or points east thereof, or billed to or from said western termini at local rates, 3 cents per 100 pounds.

(*c*) For grain in bulk the rate shall be 3 cents per 100 pounds.

8. The contracts between the different trunk lines, complainants herein, and the Jay Street Terminal (operated by Arbuckle Bros.) (annexed to complainants' petition as Exhibit A) are substantially similar to the existing contracts above averred between the said trunk lines and your petitioner. For the reasons hereinafter averred, neither the said Jay Street Terminal, nor the terminals of your petitioner, can be maintained or operated unless the payment of the stipulated compensation of 3 and 4½ cents per 100 pounds for the floatage, lighterage, and terminal service rendered thereunder shall continue to be made to them by the railroads.

9. The order of the Interstate Commerce Commission, which the complainant railroads must necessarily obey, unless it be set aside in this suit, requires them to desist from paying such compensation to the Jay Street Terminal in regard to sugar received through it from Arbuckle Bros., unless they shall at the same time pay the same compensation in regard to sugar received from it to the Federal, Sugar Refining Co.; which is not a common carrier, and does not own or operate a terminal station for any of the railroads or steamship lines, or for any other shipper or consignee of freight, but is simply a shipper of its own product. If this order should go into force, its necessary effect, the only alternative provided being the discontinuance of a terminal the continued maintenance of which is necessary for public convenience and has been contracted for between its owners and the railroads, would be to compel the payment by the railroads to the Federal Sugar Refining Co. of the same sums of 4½ cents and 3 cents per 100 pounds of freight transported, as is now paid by them to the Jay Street Terminal and to your petitioner for the floatage, lighterage, and terminal service afforded by them respectively.

10. The actual cost to the Federal Sugar Refining Co. of transporting its sugar from its refinery to the termini of the railroads, as it maintains no terminal station, tracks, floats, lighters, tugs, or other real estate or equipment necessarily appertaining to a terminal, but procures the transportation to be performed for it by a lighterage company at what is the prevailing rate in the harbor of New York for lighterage alone, to wit, 3 cents per 100 pounds, is and will be such 3 cents per 100 pounds and no more; whereas under the terms of such order it will receive from the railroads on all sugar bound for points beyond the western termini 4½ cents per 100 pounds. On all such sugar it will accordingly earn a profit, and in effect receive a rebate from the railroads, of 1½ cents per 100 pounds, thus making the freight rate actually paid upon such sugar produced by it 1½ cents per 100 pounds less than the published rates, and giving it that advantage over other competing sugar refineries located in the harbor of New York; among others, the American Sugar Refining Co., a large part of whose traffic is now, owing to the contiguity of its refineries to the terminal of your petitioner, handled by your petitioner.

11. In order to avoid the illegal discrimination which would thereby ensue to the Federal Sugar Refining Co. if such order shall go into effect, the railroads will of necessity be compelled to permit the other sugar refineries in the harbor of New York, among others, the said American Sugar Refining Co., instead of delivering their outgoing sugar to the different terminal stations, your petitioners among the number, which are now maintained by the railroads in convenient proximity to the refineries, and at which such sugar is now loaded directly into the through cars upon which it is to be transported to destination, to deliver it at the railroad termini, there to be unloaded and again loaded into such cars, by lighters hired by the refineries themselves at a cost to them of 3 cents per 100 pounds only; and to receive from the railroads upon all such sugar destined for points beyond the western termini 4½ cents per 100 pounds; and in this manner to enable all of the said refineries, as well as the Federal Sugar Refining Co., though maintaining no

terminal stations, to earn the same profit and receive the same rebate on such sugar of 1⅛ cents per 100 pounds, and to make the freight rate payable upon such sugar less than the published rate by that amount.

12. Such diversion of traffic from the now established terminal stations of the railroads not only involves two unnecessary handlings of the merchandise so transported and a congestion of traffic at the termini of the different railroads but a loss to each such terminal station, your petitioners among the number, of their present revenue of 3 and 4⅛ cents per 100 pounds upon the traffic so diverted. Without such revenue it will not be possible for any of such terminals to earn a reasonable return upon the investment involved in it, or to continue to maintain and operate it. The discontinuance of such terminal stations would necessarily involve great inconvenience and loss, not only to the railroads for whom freight is now received and delivered there without transshipment to and from the through cars in which it is transported but to the numerous neighboring shippers and consignees, who now use such terminals for the receipt and delivery of their freight, and who, not having and not being able to procure water-front facilities such as are possessed by the few large refineries and other industries now on the water front, will be unable to avail themselves of the privilege of lightering their own freight at a profit at the expense of the railroads, which the order of the commission complained of in effect secures to such water-front industries alone.

13. The compensation of 4⅛ cents per 100 pounds on western traffic now paid by the railroads to the terminals is a reasonable and necessary compensation for the service performed by them. Such terminals are in effect union receiving and delivery yards, located at convenient points along the water front of New York Harbor, of the railroads for whose benefit they are maintained. They are necessarily union terminals, since individual terminals for the different railroads can not be profitably maintained or operated. They are necessary, since they afford a means whereby the freight shipped from or consigned to the district served by the terminal can be assembled at and delivered from a point conveniently near its origin or destination, and there loaded into or unloaded from the through cars in which its continuous carriage has been or is to be performed without transshipment or breaking bulk. If such terminal stations were not maintained by the terminal companies from the compensation paid to them by the railroads for the services performed by them, they would need to be maintained at the direct expense of the railroads themselves, and less economically than now; since it is only as union terminals, serving all the different railroads and steamship lines entering the harbor, that they can be made to earn a reasonable profit upon the capital necessarily invested in them. Each such terminal involves the devotion to its use of large areas of expensive real estate and the maintenance of the extensive equipment heretofore described, including locomotives, and tugs, and floats, each capable of receiving from the tracks from 12 to 20 loaded freight cars, transporting them across the harbor, and thence delivering them upon the tracks of the terminal or of the railroads by which they are to be moved to destination. It appears from Exhibit G, attached to the complainant's petition hereto, that the capital necessarily invested

in the Jay Street Terminal amounts to $1,200,000, and that its net earnings for one year were but $35,566.84, or approximately 3 per cent. As heretofore averred, the capital necessarily invested in its Brooklyn terminal alone by your petitioner amounts to $6,263,401.59, and its net earnings therefrom for one year were but $321,555.12, or approximately 5.13 per cent. Even such moderate returns upon the capital invested are made possible only by the compensation received from the railroads of 4½ cents per 100 pounds on the western traffic; and for the service performed by such terminals, such compensation of 4½ cents per 100 pounds is reasonable and necessary. On the other hand, lighterage service alone, as distinguished from a terminal and car floatage service, is performed by small lighters, representing each an investment of not more than $7,000, a fleet of from two to four of which can be towed by a tug hired for the purpose at an expense of $7.50 per hour. For such simple lighterage service, when not performed in connection with the maintenance of a terminal, the compensation of 3 cents per 100 pounds is adequate.

14. As your petitioner is advised and believes and therefore alleges, the order of the Interstate Commerce Commission sought to be set aside in this suit is illegal, for the following reasons, among others:

(*a*) The maintenance by the railroads of public receiving and delivery stations to which cars are transported on their own wheels, such as the Jay Street Terminal and that of your petitioner's, located at points on Long Island convenient to the origin and destination of the freight to be carried, and the payment of the compensation necessary to procure the maintenance of such stations and the transportation of such cars to and from them, is a lawful and necessary service performed by the railroads. The Interstate Commerce Commission has not the power to require the railroads, as a condition of being permitted to maintain and operate such terminals, to pay lighterage allowances to individual shippers who elect instead to deliver their own freight to the railroad termini in New Jersey and on Staten Island. By the order in question the commission has assumed to exercise such power.

(*b*) The maintenance of such public terminals for handling cars on their own wheels is not a like service to lightering the freight of individual shippers from their private docks to the railroad termini; and the railroads may pay to such terminals the expenses of the public service, and refuse to pay to such shippers the expense of the private service, without thereby being guilty of any discrimination. The order in question of the commission is based upon the proposition that the railroads in so doing are guilty of unjust discrimination.

(*c*) The railroads may under the law maintain public receiving and delivery stations, such as the Jay Street Terminal and that of your petitioner, at convenient points, without thereby incurring any obligation to pay shippers, located at points remote from such stations, the expenses of the cartage or lighterage of their merchandise from their factories to any of such stations or to another station. The order of the commission imposes upon the railroads such obligation as a condition of being allowed to maintain such public stations.

(*d*) The railroads, having established through routes and joint rates to their several stations on Long Island, your petitioner's among the number, can not be required under the law to pay to individual shippers on Long Island, who elect to deliver their freight instead at an intermediate point in such through route, the cost to such shippers of such delivery to such intermediate point. Under the order of the commission the railroads will be required to make such payments.

(*e*) The just and reasonable charge and allowance for the sole service of lightering sugar, when the expense of maintaining a public terminal station is not involved in the service, from the refineries in New York Harbor, and from the Federal Sugar Refining Co. in Yonkers, to the railroad termini in New Jersey and to Staten Island, and the actual cost to the refineries of such lightering, is 3 cents per 100 pounds. The order of the commission requires the railroads to pay to such refineries on all sugars so lightered bound for points beyond the western termini, 4½ cents per 100 pounds, to wit, a rebate of 1½ cents per 100 pounds on all such sugar.

Wherefore your petitioner prays that it may be allowed to intervene as a complainant herein and to prosecute this suit, and that a final decree may be entered herein setting aside and annulling said order of the Interstate Commerce Commission dated the 5th day of December, 1910, and further that a temporary injunction may issue herein suspending said order and any and all proceedings thereunder pending a final determination of this proceeding.

And your petitioner will ever pray.

Dated, New York, May 9, 1911.

PARSONS, CLOSSON & MCILVAINE,
Solicitors for Brooklyn Eastern District Terminal,
Petitioner, 52 William Street, New York, N. Y.

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

Henry O. Havemeyer, jr., being duly sworn, deposes and says: That he is the president and general manager of the Brooklyn Eastern District Terminal, the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof; and that the statements contained therein are true, according to the best of his knowledge and belief.

H. O. HAVEMEYER, JR.

Sworn to and subscribed before me this 10th day of May, 1911.

[SEAL.] ANDREW WOELFEL,
Notary Public, Richmond County.

Certificate filed in New York County.

[Exhibit A.]

This agreement, made this 6th day of May, A. D. 1907, between the Brooklyn Eastern District Termininal, of the city of New York (hereinafter called the "terminal company"), party of the first part, and the Erie Railroad Co. (hereinafter called the "railroad company"), party of the second part:

Whereas the terminal company is the lessee of certain premises situated in the city of New York, borough of Brooklyn, eastern district, fronting on the East River between North Fifth and North Sixth Streets, and extending back to within 150 feet of Berry Street, upon which are warehouses, main tracks and sidings, float bridges and approaches, with other appurtenances suitable for the reception and delivery of freights, sugars, cooperage materials, etc., for carriage between said premises and the freight station of the railroad company at present located at Jersey City; and

Whereas the terminal company is also the lessee of certain premises situated in the said borough of Brooklyn, eastern district, fronting on the East River between North Ninth and North Tenth Streets, on which are hay warehouses, grain elevators, warehouses, main tracks and sidings, float bridges, and appurtenances suitable for the reception and delivery of freight as contemplated under this contract; and

Whereas the railroad of the railroad company runs to its said freight station at Jersey City, and the railroad company desires to avail itself of the facilities of the terminal company for the purpose of transferring its freight in both directions between said premises in Brooklyn and the freight station aforesaid:

Now this agreement witnesseth:

First. The terminal company will put and maintain in good order the premises aforesaid in the borough of Brooklyn for the reception and delivery of freights hereunder, and will provide and maintain floats, tugs, docks, float bridges, and approaches adequate at all times to receive, transfer, and deliver freights loaded or to be loaded in cars under this contract, and sufficient to accommodate the amount of business hereunder contemplated.

Second. The terminal company will receive at Jersey City float bridges of the railroad company in cars placed on its floats all freight intended for delivery at its premises aforesaid, and will safely carry and deliver same as consigned, and as well will receive at its said premises and load into cars, under the rules of the railroad company, and safely carry and deliver the freights loaded upon its floats to the railroad company at Jersey City float bridges.

Third. The responsibility of the terminal company for eastwardly-bound cars and property therein shall begin when the same are properly loaded and secured upon its floats at said Jersey City float bridges of the railroad company and the floats released from said bridges, and shall continue in respect to cars until they have been returned by it loaded or empty, and in respect to the property contained in eastwardly-bound cars, its responsibility shall continue until its actual delivery and acceptance by consignee at Brooklyn.

Fourth. The responsibility of the terminal company of all property to be transported westbound shall begin from the time the same is received from the consignor or consignors thereof, at its premises aforesaid, and shall continue until the same, loaded into cars, shall have been brought to the float bridges of the railroad company at Jersey City in readiness to be attached thereto.

Fifth. The said responsibility of the terminal company for the safety of all cars and freight shall be absolute and unqualified, without any exception or exemption whatever, without regard to the cause or occasion of the loss or damage, if any, and without regard to the degree of care or want of care exercised by the terminal company, and shall be enforceable by the railroad company, or others, as their interest shall appear, for the full amount of the loss or damage sustained.

Sixth. The terminal company will provide and keep at its own expense, upon its said premises, a competent person, to be satisfactory to the railroad company, to superintend the business hereunder contemplated and to carry out the directions of the railroad company as to loading cars, such person to have authority, subject to current instructions from the railroad company, to issue bills of lading of the railroad company for westbound freights received upon said premises for transportation under this contract; *Provided, however,* That the terminal company hereby assumes all risk of and becomes responsible, as hereinbefore provided, to the railroad company or others, as interest may appear, for all westbound freight so received, until the same shall have been loaded into cars and delivered at the float bridges of the railroad company at Jersey City aforesaid.

Seventh. The terminal company will become responsible for and pay to the railroad company all freight moneys and charges as set forth in the freight bills rendeied by the railroad company for the transportation of eastbound freights, and in like manner will be responsible for and pay to the railroad company all freight moneys and charges which may have been made payable in advance on westbound freights, all of which payments shall be turned over to the railroad company in accordance with the latter's customary rule; and, if so required, a bond with surety satisfactory to the railroad company shall be furnished by the terminal company.

Eighth. The terminal company will insure and keep insured against loss or damage by fire and marine risks all freights, cars, or property received by it upon its floats or upon said premises under this contract, so long as said freights, cars, or property shall remain in its possession and until delivered to consignees or to the railroad company for transportation as heieinbefore provided, including the time such freight, cars, or property shall be upon its lighterage line, and such insurance shall be for the benefit of the railroad company and others as their interest shall appear, and to an amount and in such manner as will be satisfactory to the railroad company.

Ninth. In cases of eastbound freight consigned to other stations of the railroad company in New York Harbor not billed "lighterage free," where destination is changed to the premises of the terminal company, the terminal company shall, at the request of the railroad company, collect from the consignee or forwarder the sum of 3 cents per 100 pounds, and pay the same over to the railroad company, which said 3 cents per 100 pounds shall be allowed and paid to the terminal company as full compensation for all services performed in such cases.

Tenth. Said terminal company will furnish said railroad company with a complete and accurate copy of each and all contracts made by it with other railroad companies during the term of this contract, and the Erie Railroad Co. shall have and enjoy, during the life of this contract, all rights and privileges granted to any other railroad by said terminal company upon as favorable terms, with respect to allowances or otherwise, as granted to any other railroad company, anything herein to the contrary notwithtanding.

Eleventh. It is further understood and agreed that within the limits of the city of Williamsburgh, so called, extending from Wallabout Bay, on the south, to Newton Creek, on the north, not inclusive of either, the said railroad company, unless legally compelled to do so, will not, during the continuance of this contract, establish or maintain any freight stations, nor within said limits receive on barges, lighters, floats, or other water craft, for transportation over the line of its railroad to western points hereinafter mentioned, any freights, except as provided for in this contract, and that it will not deliver on barges, lighters, floats, or other water craft at any points within the limits hereinbefore described, unless legally compelled to do so, any freight received or transported eastwardly over the railroad of the railroad company in any other manner than as provided for in this contract, and that in case of any breach of this provision the terminal company may recover from the said railroad company, and it shall pay to it at the rate of $3 for each carload, averaged at 20,000 pounds received, delivered, or transported contrary to this provision, except that in the event of the disability of the terminal company through strikes, lockouts, fire, etc., not being able to handle the traffic of the railroad company promptly as offered, the railroad company shall have the privilege of making delivery of freight by barge, or float within the limits above named during such disability of the terminal company.

Twelfth. The railroad company will maintain all necessary tracks, float bridges, and approaches at its said Jersey City station for the purpose of the business hereunder contemplated, and will take away from said float bridges in Jersey City in regular turn all the westbound freight intended for transportation over the railroad of the railroad company and its connections, and deliver to the floats of the terminal company all the eastbound freight consigned to or intended for delivery at the terminal of the terminal company.

Thirteenth. The railroad company hereby agrees to provide sufficient cars at all times, unavoidable delays excepted, and to supply all railroad books, blanks, and stationery necessary for the purposes of the business to be carried on under this contract, and with all reasonable dispatch to receive and take away from the freight station at Jersey City aforesaid all the westbound freight intended for transportation over said Erie Railroad and its connections.

Fourteenth. The railroad company shall pay the terminal company in full for all its services under this contract, as well as full compensation for all responsibility to be undertaken by it in respect to cars and freight, as follows:

(*a*) For all freight, except coal and coke, transported over the Erie Railroad which shall have been received from its connecting rail or water line west of the western termini of the trunk lines, on through rates, or for freight received by the terminal company at its aforesaid premises and destined for rail or water transportation by the railroad company to points west of said western termini, on through rates, excepting grain in bulk, at the rate of 4⅛ cents per hundred pounds.

(*b*) For freight originating at or destined to any of said western termini or points east thereof, or billed to or from said western termini at local rates, 3 cents per hundred pounds.

(*c*) For grain in bulk the rate shall be 3 cents per hundred pounds; it being understood that no grain will be handled under this agreement except that intended for domestic consumption.

(*d*) It is understood that the western termini referred to above are as follows: Suspension Bridge, Black Rock, Buffalo Junction, Erie, Belleaire, Niagara Falls, Buffalo, Dunkirk, Pittsburgh, Wheeling, Tonawanda, East Buffalo, Salamanca, Allegheny, Parkersburg.

(*e*) For traffic rated per gross ton either in the official classification or in commodity tariffs, the allowance to the terminal company thereon shall be 3 cents or 4½ cents per hundred pounds, as the case may be, regardless of the gross ton rating.

(*f*) If coal and coke are handled under this contract, the terms of and rates for such handling shall be fixed from time to time by special agreement.

(*g*) All settlements are to be made monthly.

Fifteenth. During the continuance of this contract on eastbound and westbound shipments the same rates of freight shall prevail to and from the premises of the terminal company that prevail to and from the regular freight stations of the railroad company in New York City.

Sixteenth. This contract shall continue in effect until December 1, 1916, and thereafter shall terminate by 90 days' notice in writing given by the terminal company, or the railroad company, to the other of desire to terminate the same.

Seventeenth. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, respectively.

In witness whereof, the parties hereto have executed this contract in duplicate the day and year first above written.

BROOKLYN EASTERN DISTRICT TERMINAL.
By H. O. HAVEMEYER, Jr., *President.*

Attest:
J. H. McCAFFERTY, *Secretary.*
ERIE RAILROAD CO.,
By F. D. UNDERWOOD, *President.*

Attest:
DAVID BOSMAN, *Secretary.*

And on the same day, to wit, the 11th day of May, 1911, there was filed in the clerk's office of said court, in said entitled cause, a certain motion of the intervening respondents, Interstate Commerce Commission and Federal Sugar Refining Co., in the words and figures following, to wit:

Motion to dismiss.

In the United States Commerce Court.

Baltimore & Ohio Railroad Co. et al., petitioners, *v.* United States, respondent. In Equity. No. 38.

Come now the Interstate Commerce Commission and the Federal Sugar Refining Co., parties respondent in the above-entitled suit, by their respective solicitors, and move this honorable court to dismiss the petition of the above-named petitioners in said suit, and in support of said motion show:

That the allegations contained and the facts set forth in said petition do not constitute a cause of action or entitle said petitioners to the relief or any of the relief asked for by them in and by said petition.

P. J. FARRELL,
Solicitor for Interstate Commerce Commission.
ERNEST A. BIGELOW,
Solicitor for Federal Sugar Refining Co.

And afterwards, to wit, on the 12th day of May, 1911, there was filed in the clerk's office of said court, in said entitled cause, a certain affidavit of service of the intervening petition of the Brooklyn Eastern District Terminal, in the words and figures following, to wit:

Affidavit of service.

In the Commerce Court of the United States.

Baltimore & Ohio Railroad Co. et al., petitioners, *v.* United States, respondent. 1911 term. No. 38.

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

Andrew Woelfel, being duly sworn, says that he is upward of 21 years of age; that on the 10th day of May, 1911, he served the intervening petition of Brooklyn Eastern District Terminal and notice herein on the following-named officers and solicitors by depositing in the Wall Street station of the United States post office in the borough of Manhattan, New York City, N. Y., a true copy thereof, properly inclosed in a postpaid wrapper directed to each of said officers and solicitors, respectively, as follows:

Honorable Attorney General of the United States, Washington, D. C.

Honorable secretary of the Interstate Commerce Commission, Washington, D. C.

Hugh L. Bond, jr., solicitor for Baltimore & Ohio Railroad, Baltimore, Md.

Jackson E. Reynolds, Esq., solicitor for Central Railroad of New Jersey, 143 Liberty Street, New York City.

W. S. Jenney, Esq., solicitor for Delaware, Lackawanna & Western Railroad, 90 West Street, New York City.

George F. Brownell, Esq., solicitor for Erie Railroad Co., 50 Church Street, New York City.

J. F. Schaperkotter, Esq., solicitor for Lehigh Valley Railroad, 143 Liberty Street, New York City.

John B. Kerr, Esq., solicitor for New York, Ontario & Western Railway, 56 Beaver Street, New York City.

George Stuart Patterson, solicitor for Pennsylvania Railroad Co., Broad Street Station, Philadelphia, Pa.

ANDREW WOELFEL.

Subscribed and sworn to before me May 11, 1911.

[SEAL.] WOODHULL HAY,
Notary Public, New York County.

And on the same day, to wit, the 12th day of May, 1911, there was filed in the clerk's office of said court, in said entitled cause, a certain notice of motion and petition for leave to intervene and for an injunction, on behalf of John Arbuckle and William A. Jamison, in the words and figures following, to wit:

Notice of motion and intervening petition of John Arbuckle and William A. Jamison.

In the United States Commerce Court.

The Baltimore & Ohio Railroad Co.; The Central Railroad Co. of New Jersey; The Delaware, Lackawana & Western Railroad Co.; Erie Railroad Co.; Lehigh Valley Railroad Co.; New York, Ontario & Western Railway Co.; and The Pennsylvania Railroad Co., petitioners, *v.* United States, respondent, John Arbuckle and William A. Jamison, intervenors. May session, 1911. No. 38.

Please take notice that upon the petition of John Arbuckle and William A. Jamison, composing the copartnership known as the Jay Street Terminal and composing the copartnership known as Arbuckle Bros., and upon the proceedings had and testimony taken in a certain proceeding before the Interstate Commerce Commission of the United States upon the complaint of Federal Sugar Refining Co. against the railroad companies above named, known as Docket No. 2888, and upon the affidavit of William A. Jamison, sworn and subscribed to May 9, 1911, and upon all the papers and proceedings before this court in the proceeding above entitled, we will move this court at a term thereof to be held on the 17th day of May, 1911, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, at the courtroom of this court in the city of Washington, D. C., for an order of intervention, making the Jay Street Terminal and Arbuckle Bros. parties to this suit or proceeding, and for an order restraining and suspending until the final hearing and determination of this action, the order of the Interstate Commerce Commission, dated December 5, 1910, made in the proceeding above referred to, Docket No. 2888, and for such other and further order and relief as may be just and proper.

Dated at New York, May 12, 1911.

DYKMAN, OELAND & KUHN,
Solicitors for Jay Street Terminal and Arbuckle Bros.,
177 Montague Street, Brooklyn, N. Y.

To THE INTERSTATE COMMERCE COMMISSION.
To the Hon. GEORGE W. WICKERSHAM,
Attorney General, United States.

Petition for leave to intervene and for injunction, etc.

In the United States Commerce Court.

Baltimore & Ohio Railroad Co., and others, petitioners, *v.* The United States, respondent, John Arbuckle and William A. Jamison, intervenors.

To the Judges of the Commerce Court of the United States:

The petition of John Arbuckle and William A. Jamison, located and doing business in the city of New York, respectfully shows:

I. The Jay Street Terminal is a copartnership composed of John Arbuckle and William A. Jamison, and its business is to maintain and operate the union freight terminal station of the complainant railroad companies located at the foot of Bridge Street, Brooklyn. The copartners have filed with the clerk of the county of New York, in the State of New York, in accordance with the laws of the State of New York, the certificate necessary to authorize them to do business under the said name.

II. Arbuckle Bros., doing business as refiners of sugar and dealers in green and roasted coffee, is a copartnership composed of John Arbuckle and William A. Jamison. The copartners have filed with the clerk of the county of New York, in the State of New York, in accordance with the laws of the State of New York, the certificate necessary to authorize them to do business under the said name.

III. Your petitioners are interested in this controversy and in the question before the Interstate Commerce Commission and in this suit and they desire to intervene and be made parties complainant in the proceedings above entitled, commenced in this court by complainants above named against the United States. The petition of the complainants is for a final decree setting aside and annulling an order of the Interstate Commerce Commission, dated December 5, 1910, by which the complainants above named are required to cease and desist, on or before the 15th day of April, 1911, and for a period of not less than two years thereafter, to abstain from paying the Jay Street Terminal for transporting the sugar of Arbuckle Bros. from Brooklyn to the railroads of the complainants in New Jersey, while at the same time paying no such allowances to Federal Sugar Refining Co. Your petitioners are aggrieved by the order referred to and desire to intervene in this action or proceeding.

IV. The Jay Street Terminal owns real estate bordering the East River in the borough of Brooklyn, at or near the foot of Bridge Street, extending along the East River about 1,200 feet and 600 feet deep. It has projected piers from this upland into the waters of the East River. Upon the upland it has built freight houses, warehouses, and a railroad yard with railroad tracks reaching and extending to and over a float bridge. It also owns and operates locomotive steam engines, tugboats, steam lighters, barges, and car floats. The value of the real and personal property in use in the business of Jay Street Terminal exceeds $2,000,000. The real estate is assessed for taxation by the city of New York, for the year 1911, at above $1,700,000. By the contracts set forth in the next paragraph hereof the Jay Street Terminal has devoted its real and personal property to the public uses served by the complainant railroad companies.

V. The Jay Street Terminal has entered into contracts with the complainant railroad companies substantially identical. A copy of one is attached to the petition of the complainant railroad companies, marked Exhibit "A." The contracts with the Baltimore & Ohio Railroad Co. and the Central Railroad Co. of New Jersey are oral contracts and are terminable by either party at any time. The contracts with the New York, Ontario & Western Railroad Co. and the Pennsylvania Railroad Co. are made by interchange of letters and are also terminable at any time. The contract with the Delaware, Lackawanna & Western Railroad Co. was made April 1, 1910, and terminates March 31, 1915. The contract with the Erie Railroad Co. was made February 15, 1906, to terminate March 31, 1910, and continues thereafter until terminated by ninety days' notice in writing by either party to the other. The contract with the Lehigh Valley Co. was made March 15, 1906, to terminate March 31, 1910, and continues thereafter until terminated by ninety days' notice in writing by either party to the other.

VI. The complainant railroad companies transport between the Jay Street Terminal and their rail terminals on the western shore of New York Harbor, as a part of the transportation service from the points of shipment to the points of destination, and for the flat New York rate by means of floats carrying cars operated for them under the said contracts between them and your petitioners, freight received at or destined to said Jay Street Terminal Station. The complainant railroad companies for several years past have held and now hold themselves out as common carriers to and from Jay Street Terminal, both by their practice of receiving and delivering freight at said point, and by their tariffs, which are now and for several years past have been duly published and filed with the Interstate Commerce Commission. The liability under their respective bills of lading attaches to the railroad companies on westbound shipments from the time the freight is received at such terminal station and does not end on eastbound shipments until the freight is delivered into the hands of the consignee at such terminal station. The bill of lading issued by the railroad companies for freight so received or delivered by them by its terms covers and includes the movement afloat.

The Jay Street Terminal is a union freight terminal and is designated as a regular public freight terminal of the complainant railroad companies in their tariffs duly filed with the Interstate Commerce Commission.

Under and pursuant to said contracts the Jay Street Terminal acts as the agent of complainant railroad companies in the receipt, handling and delivery of freight at said terminal and the transportation thereof between said terminal and the rail terminals of complainant railroad companies on the western shore of New York Harbor.

Under and pursuant to said contracts, the said Jay Street Terminal floats eastbound freight from the rails on the western shore of New York Harbor to the docks, wharves and float bridges at Brooklyn and there unloads it from the cars and delivers it to the consignees; it receives westbound freight from the shippers and loads it into cars and floats the cars loaded to the said rails. It is agreed that a competent superintendent shall be kept upon the premises who shall carry out the directions of complainant railroad companies and said superintendent has authority to issue bills of lading on behalf of each of the several complainant railroad companies for westbound freight and to sign the same as agent of the railroad companies. Jay Street Terminal also agrees to be responsible for and pay to the railroad companies all freight charges on eastbound freight and all freight charges payable in advance on westbound freight and accordingly collects and accounts for the same. It agrees to insure against loss or damage by fire or marine risks all freight, cars or property while in its possession, received by it under the provisions of said contracts, said insurance to be for the benefit of the railroad companies and others as their interests shall appear. It also agrees to enforce the car-service regulations of the railroad companies as established from time to time and filed and published in accordance with the act to regulate commerce and the amendments thereof and supplements thereto. It performs the movement in either direction of empty cars between the Jay Street Terminal and the railroad companies' terminals on the west shore of New York Harbor; issues waybills and performs other necessary clerical services and in general furnishes all facilities and performs all work and services required for the receipt or delivery of freight as at any public station of the railroad companies; and for the transportation of said freight between the Jay Street Terminal and complainant railroad companies' terminals on the west shore of New York Harbor.

In consideration of these services each of the railroad companies has agreed to pay to Jay Street Terminal, compensation as follows, to wit:

On freight handled by its said agent originating at or destined to points west of the western termini of the contracting railroad companies (that is, west of trunk line territory, which embraces in general all that portion of the United States lying north of the Potomac and Ohio Rivers, and east of Buffalo and Salamanca, N. Y., and Pittsburgh, Pa), 4½ cents per hundred pounds, and on freight originating at or destined to points east thereof, 3 cents per hundred pounds, with certain exceptions noted in said Exhibit A.

The Jay Street Terminal serves the shippers of a large and important manufacturing and shipping territory, including about one-third of the densely populated part of Brooklyn. It is the only convenient and accessible freight station of the railroad companies for the shippers of that territory. No independent terminals other than the Jay Street Terminal are conveniently accessible to the shippers of that territory. In no other practicable way could the railroad companies in the past, nor can they at present, serve the large and important shipping interests of this section of Brooklyn than by the maintenance of the Jay Street Terminal as a public freight station of complainant railroad companies. The Jay Street Terminal was enlarged in 1905 in response to a public demand for a public union railroad freight terminal on the water front of Brooklyn at or near the foot of Bridge Street. A petition of manufacturers and merchants of Brooklyn was presented to the public authorities of the city of New York, setting forth the urgent public necessity of such a terminal and praying that Bridge Street for one block back from the East River should be closed to make the enlargement of the terminal possible. The prayer of the petition was granted and the street closed and for the land in the street Jay Street Terminal paid the city of New York, $32,000. The enlargement was necessary to accommodate the large and increasing tonnage, including the refined sugar offered to the railroad companies at this terminal by Arbuckle Bros. No claim was ever made by anyone up to 1907, that Jay Street Terminal was for any reason disabled to receive and transport Arbuckle Bros.'s sugar and be paid therefor, as for other freight of other consignors, and in 1909 the Interstate Commerce Commission dismissed the petition of the Federal Sugar Refining Co. which challenged such carriage and payment.

The carriage of Arbuckle Bros.'s sugar and payment therefor according to the latest decision of the Interstate Commerce Commission were lawful until July, 1909, and according to such decision became unlawful only because of the acts of the Federal Sugar Refining Co. hereinafter set forth and refusals of the complainant railroad companies to make payments to it.

VII. That your petitioners under their firm name, Arbuckle Bros., operate a sugar refinery in the Borough of Brooklyn, located upwards of a block from the Jay Street Terminal. Their shipments of sugar are carted to the terminal by Arbuckle Bros. and handled at the terminal by the Jay Street Terminal in the same way as the freight of hundreds of other shippers, and the freight charges thereon are collected by the Jay Street Terminal in accordance with the regularly published tariffs. That approximately four-fifths of the shipments of sugar made by Arbuckle Bros. through Jay Street Terminal are sold f. o. b. Brooklyn and become the property of the consignee immediately upon delivery to the terminal and loading into cars at the terminal. That during the first six months of 1907 the bills of lading issued by the Jay Street Terminal for shipments of general merchandise numbered 93,622, of which 3,969 were for your petitioners' sugar and 1,210 for their coffee, and their shipments and receipts constituted less than one-third of the total tonnage moving through the terminal. That during the same period the number of different consignees who received freight at the terminal was about 765 and the number of different shippers through the terminal about 560. That the moneys paid to the Jay Street Terminal by the railroad company were no more than a just and reasonable charge and allowance for the services rendered. The year 1907 is selected because the results of that year were shown before the Interstate Commerce Commission.

VIII. On information and belief your petitioners further allege:

That the Federal Sugar Refining Co. is a corporation of the State of New York, having its executive offices at 138 Front Street, in the city of New York, and having its refineries from which it ships all its outbound products, including sugar, and at which it receives all its inbound supplies for manufacture of sugar and commodities allied thereto, on the east bank of the Hudson River, within the corporate limits of the city of Yonkers, and more than 10 miles distant from the northernmost boundary of the lighterage limits of the complainant railroad companies. The said refineries are located on the line of the New York Central & Hudson River Railroad Co., with which they have switch connections and over which the Federal Sugar Refining Co. ships the greater part of its output and receives a large part of its inbound shipments. Over this railroad, with few exceptions, the rates to points in the shipping territory of the Federal Sugar Refining Co. are the same as the rates from the Jay Street Terminal over the lines of complainant railroad companies. That in order to make shipments of its sugar from Yonkers via the lines of complainant railroad companies, at the New York rate, the Federal Sugar Refining Co. must deliver such shipments to the New York Central & Hudson River Railroad Co. at Yonkers, thence to be transported by that railroad to New York and there delivered to complainant railroad companies at points within the lighterage limits. Because of alleged delay in the handling and transportation of such shipments via the route aforesaid, the Federal Sugar Refining Co. prefers to deliver said shipments directly to complainant railroad companies by lighter within the lighterage limits. Prior to July, 1909, the Federal Sugar Refining Co. of Yonkers, the predecessor of the Federal Sugar Refining Co., was accustomed to deliver its shipments at Yonkers to the Ben Franklin Transportation Co., which transported the same direct to the terminals of complainant railroad companies on the west shore of New York Harbor, at a charge to the Federal Sugar Refining Co. of Yonkers of 3 cents per hundred pounds.

In the month of May, 1907, the Federal Sugar Refining Co. of Yonkers filed a complaint with the Interstate Commerce Commission against complainant railroad companies, alleging that the complainant, through the Ben Franklin Transportation Co., performed the same service on its shipments of sugar as were said to be performed by the Brooklyn Eastern District Terminal on shipments of the American Sugar Refining Co. and by the Jay Street Terminal on shipments of the Arbuckle Bros; that the lighterage limits prescribed by complainant railroad companies were unduly discriminatory in that they did not extend to Yonkers and include the refinery of the Federal Sugar Refining Co of Yonkers, and permitted allowances to be made on shipments of sugar from the refineries of your petitioners and the American Sugar Refining Co, while not so permitting on the complainant's shipments because the latter was located outside the prescribed limits Said practice was said to result in unjust discrimination and undue prejudice, and to oblige the Federal Sugar Refining Co to pay unreasonable rates. A copy of said complaint is annexed to the petition of the complainant railroad companies and marked "Exhibit B" A copy of the answer filed by one of the complainant railroad companies is thereto annexed and marked "Exhibit C," and is representative of the answers filed by all of the complainant railroad companies Hearings were held thereafter and on the 24th day of June, 1909, in the aforesaid proceeding known as docket No. 1082, the said Interstate Commerce Commission made its report and order, a copy of which is annexed to the petition of the complainant railroad companies and marked "Exhibit D" The said report and order of the Interstate Commerce Commission in docket No. 1082 was to the effect that said complaint should be dismissed because the extension of the lighterage limits in New York Harbor was a matter of business discretion and that said commission had no authority to require such extension beyond the then prescribed boundaries, and that complainant being located outside of the prescribed lighterage limits was not subjected to unlawful discrimination by reason of the practice of complainant railroad companies in affording free lighterage on shipments originating at or destined to points within said lighterage limits, while refusing to so afford on complainant's shipments.

On information and belief your petitioners further allege: That as a device to appear to ship from within the lighterage limits, and within a month after the issuance of said report and order, a new corporation known as the Federal Sugar Refining Co was organized, which established its principal office at 138 Front Street, New York City, and took over the refineries heretofore mentioned in the city of Yonkers, and adopted the following practice: Contracts of sale or orders for sugar were received at 138 Front Street, and each of said orders was given a separate contract number and said order bearing the contract number was forwarded to the refinery where the order was filled and the barrels or bags were stamped with the contract number and placed on a lighter The shipment bearing the contract number remained intact until it reached the hands of the buyer. The refinery received shipping instructions from 138 Front Street, and these shipping instructions showed the contract number, the ultimate destination, and the rail line over which the shipment was to be transported The captain of the lighter of the Ben Franklin Transportation Co. gave a receipt to the refinery and received from the refinery a so-called bill of lading which was no more than a form of railroad bill of lading filled in by the Federal Sugar Refining Co and designating a consignment to the Federal Sugar Refining Co , 138 Front Street, New York City, to be transported by the Ben Franklin Transportation Co , and showing the contract number with which the shipment had been marked. The said document or alleged bill of lading was not signed by the Ben Franklin Transportation Co through any of its officers, or the captain of the lighter or by any other carrier. There was nothing in any of the documents which called for transportation to Pier 24, North River. The said shipping instructions sent from 138 Front Street to Yonkers were to ship to Federal Sugar Refining Co.—138 Front Street, city—"B F. T. Co. (B. & O)" or other initial representing the Ben Franklin Transportation Co and one of complainant railroad companies as the case may have been. That none of complainant railroad companies could or did perform any transportation service in connection with the Ben Franklin Transportation Co. between Yonkers and 138 Front Street, and such shipping instructions were in fact directions to deliver said shipments to the Ben Franklin Transportation Co. to be lightered and delivered to one of the railroad companies at its terminal on the west shore of New York Harbor. The practice has been for the lighter of the Ben Franklin Transportation Co. to go to Pier 24, North River, New York, part of which pier is leased to the Ben Franklin Transportation Co., where the captain of the lighter called up the office of the Federal Sugar Refining Co. at 138 Front Street, and reported the particular shipment then on his lighter. The captain of the lighter was then handed a form of bill of lading not signed by any of complainant railroad companies and showing the name and address of the consignor as the Federal Sugar Refining Co., 138 Front Street, New York, Franklin Street, Pier 24, North River. The lighter then proceeded to the rail terminus of such of complainant railroad companies as had been previously designated in the shipping instructions sent to Yonkers, and there deliver the shipment and obtained the signature of the railroad agent at said terminus upon the form of bill of lading theretofore prepared and delivered to said captain as aforesaid, and said bill of lading was stamped by the said agent to show the receipt of the shipment at said station on the west shore of New York Harbor.

That such shipments were handled under contract between the Ben Franklin Transportation Co. and the Federal Sugar Refining Co. for a compensation of 3 cents per hundred pounds, although the said contract provides for a compensation of 4 cents per hundred pounds on sugar lightered from Yonkers to Pier 24, North River, payments for said service being made to the Ben Franklin Transportation Co. under that provision which provides for a compensation of 3 cents per hundred pounds for sugar lightered from Yonkers to complainant railroad companies' rail termini.

IX. That having established the practice hereinbefore described, the said Federal Sugar Refining Co. filed a complaint in October, 1909, with the Interstate Commerce Commission against complainant railroad companies, a copy of which together with a copy of the answer of one of complainant railroad companies as representative of the answers filed by all of complainant railroad companies are annexed to the petition herein of the railroad companies and marked "Exhibits E" and "F," respectively. Said complaint alleged in substance that the interstate transportation of the product of the said Federal Sugar Refining Co. began at Pier 24, North River, Borough of Manhattan, a point within the lighterage limits as aforesaid, and that said Jay Street Terminal is owned and conducted by copartners, named John Arbuckle and William A. Jamison, which said copartners owned, maintained and operated also a sugar refinery at the foot of Jay Street, Borough of Brooklyn. The petition also alleged that said amounts of 3 cents per hundred pounds and 4⅛ cents per hundred pounds were paid to said copartners for the lightering of their sugar from Jay Street, Brooklyn, to the rail termini of complainant railroad companies on the west bank of New York Harbor and that inasmuch as the said Federal Sugar Refining Co. was a competitor of the said Arbuckle and Jamison in the sugar business, it constituted an undue and unreasonable prejudice and disadvantage against said Federal Sugar Refining Co. to pay said amounts of 3 cents and 4⅛ cents per hundred pounds for the handling of sugar to said Arbuckle and Jamison and not to pay similarly to the said Federal Sugar Refining Co.

X. That hearings were had before the Interstate Commerce Commission upon the last-mentioned complaint on the 25th day of February, 1910, and on the 13th day of April, 1910; and subsequently, to wit, on the 6th day of March, 1911, the Interstate Commerce Commission issued its report and order against complainant railroad companies, being the order first hereinabove referred to, a copy of which report and order is attached to the petition of the railroad companies and marked "Exhibit G," requiring complainant railroad companies to cease and desist on or before the 15th day of April, 1911, and for a period of not less than two years thereafter to abstain from paying what the said Interstate Commerce Commission has termed allowances to said John Arbuckle and William A. Jamison, copartners trading under the firm name of Arbuckle Bros., on the sugar of the latter, while at the same time paying no such allowances to said Federal Sugar Refining Co. on its sugar. The order makes it optional with the railroad companies to keep or break their contracts with Jay Street Terminal, depending on their election to pay or not to pay the contract prices to Federal Sugar Refining Co.

XI. That payment to the Federal Sugar Refining Co. for lighterage service from Pier 24, North River, to any terminal of the railroad companies on the western shore of New York Harbor of the same amount which may reasonably be paid and is paid to the Jay Street Terminal for the performance of the floating service furnished by it would be an unjust and unreasonable allowance to the Federal Sugar Refining Co. and a discrimination against your petitioners, and therefore in violation of the law, inasmuch as the lighterage from Pier 24, North River, to the western shore of New York Harbor costs the Federal Sugar Refining Co. nothing, being included without extra charge in the service required by it from Yonkers to the lighterage limits by reason of the fact of the location of its plant at Yonkers.

If, on the other hand, complainant railroad companies should comply with said order of the commission by not paying any allowance as aforesaid to said Federal Sugar Refining Co. and refraining from paying any compensation to the Jay Street Terminal for transporting Arbuckle Bros.' sugar, then your petitioners would be deprived of their property without due process of law, their contracts with the railroad companies would be broken and canceled, their real estate, docks, railroad yards, railroad warehouses, platforms, and their railroad and floating equipment would be of diminished value, and they would be denied the full use of their property or just and reasonable compensation for the use of their property.

XII. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in finding in said report and order that the practice of stopping the lighter at Pier 24, North River, en route from Yonkers to Jersey City, or other terminal of one of complainant railroad companies, as above described, is different in substance or in legal effect from the practice formerly followed by the Federal Sugar Refining Co. of having shipments lightered direct from Yonkers to such terminal, and differentiates the present case from that formerly before the commission in docket No. 1082, and in holding that by reason of the stoppage of such lighter at Pier 24, North River, the shipments of the Federal Sugar Refining Co. originate within lighterage limits. Such finding is wholly unsupported by evidence.

XIII. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in finding in said report and order that complainant railroad companies refused to bear the burden of lightering across the river sugar for the Federal Sugar Refining Co., inasmuch as complainant railroad companies now and at all times referred to in this petition hold themselves out, and have held themselves out, as ready to accept shipments of the Federal Sugar Refining Co. at any point within the lighterage limits, and to lighter the same to their respective terminals on the western shore of New York Harbor at their own expense. Such finding is wholly unsupported by evidence.

XIV. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in finding in said report and order that Arbuckle Bros. delivered their shipments to complainant railroad companies on the Jersey shore at their own risk, and that at that point and time the liability of complainant railroad companies as common carriers commenced, and that up to that point there is no transportation of the sugar, but only an accessorial service by Arbuckle Bros. in delivering their own shipments to the carrier for transportation. That such sugar of Arbuckle Bros. is in fact covered by the bill of lading of one of complainant railroad companies from the time that it is delivered to the Jay Street Terminal for shipment, and the complainant railroad company whose bill of lading is thus issued is legally liable, if the bill of lading be an order bill of lading, to the lawful holder thereof, and if it be a straight bill of lading, to the consignee or owner of the shipment, who in either case may be and generally is a party other than Arbuckle Bros. from the time of such delivery to the Jay Street Terminal. That the service performed by the Jay Street Terminal is not an accessorial service, but a service connected with and a part of the transportation and the furnishing of instrumentalities used therein, inasmuch as such service and the furnishing of such instrumentalities is covered by the tariffs of complainant railroad companies on file with the Interstate Commerce Commission, and is a service which complainant railroad companies hold themselves out as common carriers to perform under such tariffs and by their general practice, and which may lawfully be performed by the owner of property with respect to his own property for a just and reasonable compensation paid by the carrier. Such finding is wholly unsupported by evidence.

XV. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in its report and order in holding that complainant railroad companies may not lawfully employ, for public station facilities, the facilities owned and operated by Jay Street terminal, and make reasonable compensation therefor to the owner thereof without at the same time permitting Federal Sugar Refining Co. to perform a different service for the same compensation. Such finding is wholly unsupported by evidence.

XVI. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in its report and order in finding that Arbuckle Bros. and the Federal Sugar Refining Co. provide similar facilities and perform the same service in the transportation of their property to the terminals of complainant railroad companies on the western shore of the Hudson River. Such finding is wholly unsupported by evidence.

XVII. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in its report and order in finding that the contractual arrangement between complainant railroad companies and the Jay Street terminal saves Arbuckle Bros. the expense of teaming or conveying the merchandise to a public terminal. Such finding is wholly unsupported by the evidence.

XVIII. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in finding in its report and order that complainant railroad companies make an allowance to Arbuckle Bros. for the lighterage of their sugar. All payments made by complainant railroad companies to the Jay Street terminal are made on account of all the services performed and the facilities furnished by the Jay Street terminal, and the payments of 3 cents and 4½ cents per hundred pounds in connection with particular shipments, are not payments made for lighterage service alone or in respect of any particular shipment, and are not dependent upon the ownership or the shipper of any particular shipment, but are made as a means and measure of compensation for all the general service performed on behalf of complainant railroad companies by said Jay Street terminal as a whole. Such finding is wholly unsupported by evidence.

XIX. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law, and otherwise erred in its report and order in requiring an allowance to be made to the Federal Sugar Refining Co. for a lighterage service measured by the amount paid to the Jay Street terminal for the floating service performed by it. Such payments to the Federal Sugar Refining Co., if made at all, must be made for the performance by it of a part of the lighterage service from Pier 24 to the terminals of complainant railroad companies on the western shore of New York Harbor, and must be a just and reasonable compensation for such service and not measured by the payment made to the Jay Street terminal. Such finding is wholly unsupported by evidence.

XX. That the commission violated the constitutional rights of your petitioners, exceeded the powers delegated to it by law and otherwise erred in its report and order in finding that complainant railroad companies unduly discriminated against the Federal Sugar Refining Co. and unduly preferred Arbuckle Bros. in violation of the act to regulate commerce, because:

(*a*) The circumstances and conditions attending the shipment and transportation of Arbuckle Bros. sugar from the Jay Street terminal are substantially dissimilar from the circumstances and conditions attending the shipments of the Federal Sugar Refining Co. as shown by the facts hereinbefore set forth.

(*b*) No preference or advantage accrues to Arbuckle Bros. or prejudice or disadvantage is sustained by the Federal Sugar Refining Co. by reason of the lighterage of the sugar of Arbuckle Bros. by the Jay Street Terminal, and the payment by complainant railroad companies to said Jay Street Terminal of a just and reasonable amount therefor, and the refusal of complainant railroad companies to make an allowance to the Federal Sugar Refining Co. for the lighterage of its sugar to the terminals of complainant railroad companies on the west shore of New York Harbor. The payment to the Jay Street Terminal being no more than just and reasonable compensation for the service performed is only equivalent to the performance of that service by complainant railroad companies, which complainant railroad companies would be required to and would perform with their own equipment if the floating of such sugar by the Jay Street Terminal and the payment therefor were discontinued. Complainant railroad companies now, and during all the time referred to in this petition, hold themselves out and have held themselves out as willing to perform the same service from any point within the lighterage limits for the Federal Sugar Refining Co. in accordance with their tariffs on file with the Interstate Commerce Commission. Whatever disadvantage the Federal Sugar Refining Co. may be under arises out of the location of its refineries at Yonkers, beyond the lighterage limits of complainant railroad companies. Such finding is wholly unsupported by evidence.

XXI. That if the complainant railroad companies are obliged to obey the order of the commission pending final determination of this action your petitioners will suffer and sustain irreparable damage. Either the railroad companies will discontinue compensation to the Jay Street Terminal for transportation of Arbuckle Bros. sugar or they will pay to the Federal Sugar Refining Co. for its lighterage service the same compensation they pay to the Jay Street Terminal for its floating service. If they discontinue compensation to Jay Street Terminal it must transport Arbuckle Bros. sugar without compensation or greatly decrease its business and plant. If the complainant railroad companies pay the same compensation to the Federal Sugar Refining Co. for lighterage service as they pay the Jay Street Terminal for floating service, an unjust discrimination is worked against Arbuckle Bros. as refiners of sugar. A great public wrong would be done by the crippling of the Jay Street Terminal as a public station, which would follow the diminution of the transportation facilities it could offer if it were forced by the order complained of to curtail its service. Forty per cent of the freight handled in 1910 was Arbuckle Bros. sugar, and if the Jay Street Terminal may not handle this sugar it must greatly cut down its service and great inconvenience and expense to a great number of shippers and receivers of freight would follow who have no access to private wharves or piers and who would be required to transport their shipments by truck to and from distant public stations.

Wherefore your petitioners pray:

1. That they may intervene and be made parties to this record and joined as petitioners with the petitioning railroad companies;

2. That a final decree may be entered herein setting aside and annulling the order of the Interstate Commerce Commission, dated December 5, 1910;

3. That a temporary injunction may issue herein suspending said order and any and all proceedings thereunder pending the final determination of this proceeding.

Dated, New York, May 12, 1911.

DYKMAN, OELAND & KUHN,
Solicitors for Petitioners.

STATE OF NEW YORK, *County of Kings, ss:*

William A. Jamison, being duly sworn, says that he is one of the petitioners herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

WILLIAM A. JAMISON.

Sworn to before me this 12th day of May, 1911.

[SEAL.] HENRY J. RENDICH,
Notary Public, Kings County.

And on the same day, to wit, the 12th day of May, 1911, there was filed in the clerk's office of said court, in said entitled cause, a certain motion of the respondent, the United States, by the Attorney General of the United States, in the words and figures following, to wit:

Motion of the United States to dismiss.

In the United States Commerce Court.

The Baltimore & Ohio Railroad Co.; The Central Railroad Co. of New Jersey; The Delaware, Lackawanna & Western Railroad Co.; Erie Railrod Co.; Lehigh Valley Railroad Co.; New York, Ontario & Western Railroad Co.; and The Pennsylvania Railroad Co., petitioners, *v.* The United States. No. 38.

The Attorney General of the United States of America, in behalf of the United States, moves the court to dismiss the petition upon the following grounds, viz:

(1) It appears from the said petition and the exhibits that the same are insufficient, as not setting forth a cause of action upon which the court may grant the relief prayed or any part of the same.

(2) It appears from the said petition and the exhibits that the said petitioners have not shown that there is any equity in their said petition upon which to grant the relief prayed or any part of the same, or that they are entitled to the relief prayed or to any part of the same.

(3) It appears from the said petition and the exhibits that the said petitioners have not in and by their said petition shown that in making its said order the Interstate Commerce Commission acted beyond its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce.

(4) It appears from the said petition and the exhibits that the said petitioners have not in and by their said petition shown that in making its said order the Interstate Commerce Commission violated any right of the petitioners protected by the Constitution of the United States or any other right of the said petitioners over which this court may exercise jurisdiction.

(5) That in its report in writing in respect to the matters and things heard and determined by the Interstate Commerce Commission, which states its conclusion, together with its decision, order, or requirement in the premises, said Interstate Commerce Commission found that the transportation of the sugar of Arbuckle Bros. and the transportation of the sugar of Federal Sugar Refining Co. in fact commenced at the termini of the said petitioners on the Jersey shore, and that the actual contractual relation between the said two shippers and the said petitioners for the transportation and the liability of the said petitioners as common carriers did not commence previous to the time the sugar of each shipper was delivered to the said petitioners at that point; all of which were matters within the power of that body to hear and determine, and its report and order in the premises are conclusive upon the court and the matters and things alleged in the petition are insufficient to disturb the same.

(6) That in its report in writing in respect to the matters and things heard and determined by the Interstate Commerce Commission, which states its conclusion, together with its decision, order, or requirement in the premises, the said Interstate Commerce Commission found that the services rendered by the Federal Sugar Refining Co. and the services rendered by Arbuckle Bros. in delivering sugar to the petitioners at the Jersey shore were similar services; and that in granting the allowance to Arbuckle Bros. and withholding the same from the Federal Sugar Refining Co. the petitioners unduly discriminate against said Federal Sugar Refining Co. and unduly prefer the said Arbuckle Bros. in violation of the act to regulate commerce; all of which were matters within the power of that body to hear and determine, and its said report and order in the premises are conclusive upon the court and the matters and things alleged in the petition are insufficient to disturb the same.

(7) That in its report in writing in respect to the matters and things heard and determined by the Interstate Commerce Commission, which states its conclusion together with its decision, order, or requirement in the premises, said Interstate Commerce Commission found that the terms under which the petitioners accept the sugar of Arbuckle Bros. at their regular stations west of the river result in inequalities, preferences, and discriminations, and are unduly and unjustly prejudicial to the rights of the Federal Sugar Refining Co. as a shipper of sugar over the lines of the petitioners in competition

with Arbuckle Bros. in the same markets, in violation of the act to regulate commerce; all of which were matters within the power of that body to hear and determine, and its said report and order in the premises are conclusive upon the court and the matters and things alleged in the petition are insufficient to disturb the same.

(8) That in its report in writing, which states its conclusion together with its decision, order, or requirement in the premises, it appears that in the proceedings had and taken before the Interstate Commerce Commission, that body heard and determined matters within its power and authority, and its report made and order entered are conclusive upon the court; and the matters and things alleged in the petition are insufficient to disturb the same.

Wherefore and for divers other good causes appearing from the face of the said petition and the exhibits, this defendant prays that its motion be sustained and that the said petition be dismissed at the petitioners' cost, and that it be not required to make any answer thereto; and for such other and further action as may be appropriate.

GEO. W. WICKERSHAM,
Attorney General of the United States.

And afterwards, to wit, on the 17th day of May, 1911, there was filed and entered in the clerk's office of said court, in said entitled cause, a certain order, in the words and figures following, to wit:

Order granting Brooklyn Eastern District Terminal leave to intervene.

In the United States Commerce Court.

Baltimore & Ohio Railroad Co. et al., petitioners, *v.* The United States, respondent. No. 38.

On motion of Brooklyn Eastern District Terminal, a corporation of the State of New York, by Henry B. Closson, its solicitor, in open court made, notice in that behalf having been duly served, that the said Brooklyn Eastern District Terminal be allowed to intervene and become a party to the above-entitled proceeding, and having duly filed and presented a petition in that behalf:

It is ordered that the said Brooklyn Eastern District Terminal be and it hereby is allowed to intervene in and become a party to the above-entitled cause, and to be represented by its counsel.

By the court:

[SEAL.] MARTIN A. KNAPP,
Presiding Judge.

And on the same day, to wit, on the 17th day of May, 1911, there was filed and entered in the clerk's office of said court, in said entitled cause, a certain order, in the words and figures following, to wit:

Order granting John Arbuckle and William A. Jamison leave to intervene.

In the United States Commerce Court.

Baltimore & Ohio Railroad Co. et al., petitioners, *v.* The United States, respondent. No. 38.

On motion of John Arbuckle and William A. Jamison, composing the copartnership known as the Jay Street Terminal and composing the copartnership known as Arbuckle Bros., by William N.

Dykman, their solicitor, in open court made, due notice having been given in that behalf, that they be allowed to intervene and become parties to the above-entitled proceedings, and having duly filed and presented a petition in that behalf:

It is ordered that the said John Arbuckle and William A. Jamison, composing the copartnership known as the Jay Street Ternimal and composing the copartnership known as Arbuckle Bros., be and they are hereby allowed to intervene in and become parties to the above-entitled cause and to be represented by their counsel.

By the court:

[SEAL.] MARTIN A. KNAPP,
Presiding Judge.

And on the same day, to wit, the 17th day of May, 1911, there was filed and entered in the clerk's office of said court, in said entitled cause, a certain order, in the words and figures following, to wit:

Order extending motions to dismiss petition to cover intervening petitions.

In the United States Commerce Court.

Baltimore & Ohio Railroad Co. et al., petitioners, *v.* United States, respondent. No. 38.

On motion of the respondent, the United States, by Blackburn Esterline, special assistant to the Attorney General, in open court made, it is by the court ordered: That the motion filed by the United States to dismiss the petition in the above-entitled cause filed by the petitioners be extended to and made a motion to dismiss the intervening petition of John Arbuckle and William A. Jamison, and the intervening petition of Brooklyn Eastern District Terminal filed in the above-entitled cause; and it is further ordered: That the said motion to dismiss the petition shall be taken and considered as a motion also to dismiss the said two intervening petitions to the same extent and in the same manner as if the said motion were filed and made to each of the said intervening petitions to dismiss the same and each of them.

And on motion of the Interstate Commerce Commission, by P. J. Farrell, its counsel, in open court made, it is further ordered: That the motion filed by the Interstate Commerce Commission and the Federal Sugar Refining Co. to dismiss the petition in the above-entitled cause filed by the petitioners, be extended to and made a motion to dismiss the intervening petition of John Arbuckle and William A. Jamison, and the intervening petition of Brooklyn Eastern District Terminal filed in the said cause; and it is further ordered: That the said motion to dismiss the petition shall be taken and considered as a motion also to dismiss the said two intervening petitions to the same extent and in the same manner as if the said motion were filed and made to each of the said intervening petitions to dismiss the same and each of them.

By the court:

[SEAL.] MARTIN A. KNAPP,
Presiding Judge.

And on the same day, to wit, the 17th day of May, 1911, there was filed and entered in the clerk's office of said court, in said entitled cause, a certain order, in the words and figures following, to wit:

Order excluding evidence taken before Interstate Commerce Commission.

In the United States Commerce Court.

Baltimore & Ohio Railroad Co. et al., petitioners, *v.* The United States, respondent. No. 38.

This cause coming on to be heard on the motions for a temporary restraining order of the petitioners and the intervening petitioners; and on the motion of the respondent, the United States, to dismiss the petition; and on the motion of the respondents, Interstate Commerce Commission and Federal Sugar Refining Co., to dismiss the petition;

On motion of counsel for the United States and of counsel for the Interstate Commerce Commission in open court made, it is ordered that the evidence taken in a certain proceeding before the Interstate Commerce Commission wherein Federal Sugar Refining Co. was complainant and the said petitioners were defendants, and known as docket No. 2888, and each and every part of the same be, and it is hereby, excluded from the record and proceedings in this cause on the hearing on the motions for a temporary restraining order and on the motions to dismiss the petition.

By the court:

[SEAL.] MARTIN A. KNAPP,
Presiding Judge.

And on the same day, to wit, the 17th day of May, 1911, being one of the days of the May session of said court, 1911, in the proceedings thereof in said entitled cause before the Hon. Martin A. Knapp, presiding judge, and the honorables Robert W. Archbald, William H. Hunt, John E. Carland, and Julian W. Mack, judges, appears the following entry, to wit:

Hearing on motions for preliminary injunction and on motions to dismiss.

Thereupon the court announced that the petitions for a temporary injunction and the motions to dismiss would be heard together, and the court further announced that the petitions for a temporary injunction should have precedence.

Thereupon, said cause coming on to be heard upon the motions of the petitioners and the intervening petitioners for a temporary injunction and upon the motions of the respondent and the intervening respondents to dismiss the petitions, all of the parties being represented by their respective counsel, the arguments of counsel were commenced, George F. Brownell, Esq., appearing for the petitioners; William N. Dykman, Esq., for intervening petitioners, John Arbuckle and William A. Jamison; Henry B. Closson, Esq., for intervening petitioner, Brooklyn Eastern District Terminal; Blackburn Esterline, Esq., for the respondent, the United States; and

E. A. Bigelow, for the intervening respondent, Federal Sugar Refining Co.

Thereupon said cause was continued for further hearing until tomorrow morning.

And on the 18th day of May, 1911, being one of the days of the May session of said court, 1911, in the proceedings thereof in said entitled cause before the Hon. Martin A. Knapp, presiding judge, and the honorables Robert W. Archbald, William H. Hunt, John E. Carland, and Julian W. Mack, judges, appears the following entry, to wit:

Cause taken under advisement.

Said cause came on for further hearing before the court upon the petitions for temporary injunction and the motions to dismiss, all the parties being represented by their respective counsel, and the arguments of counsel were concluded; E. A. Bigelow, Esq., appearing for intervener Federal Sugar Refining Co.; George F. Brownell, Esq., for the petitioners; and P. J. Farrell, Esq., for Interstate Commerce Commission. Upon request of Mr. Esterline, the United States was allowed until May 20 to file a brief on its motion to dismiss, and Mr. Brownell was allowed five days from that date to file a brief in reply.

Thereupon said cause was taken under advisement by the court.

And afterwards, to wit, on the 22d day of May, 1911, there was filed and entered in the clerk's office of said court, in said entitled cause, a certain order, in the words and figures following, to wit:

Order denying motions to dismiss.

In the United States Commerce Court.

The Baltimore & Ohio Railroad Co. et al., petitioners, *v.* The United States, respondent. May term, 1911. No. 38.

On motions to dismiss the petition filed in said action for the reason that the facts therein stated do not constitute a cause of action.

Mr. P. J. Farrell, Mr. Blackburn Esterline, and Mr. Ernest A. Bigelow, counsel for intervening defendants, appearing for the motions; and Mr George F. Brownell, solicitor for the petitioners; Mr. Closson, solicitor for the intervening petitioner, Brooklyn Eastern District Terminal; and Mr. Dykman, solicitor for the intervening petitioners John Arbuckle and William A Jamison, doing business under the firm name of the Jay Street Terminal, appearing contra.

The above-entitled cause came on for hearing before the United States Commerce Court at a regular session of said court held in the city of Washington on the 17th day of May, 1911, upon motions made by the United States, the Interstate Commerce Commission, and the Federal Sugar Refining Co to dismiss.

And the court having considered said motions and the arguments of counsel in support thereof and the petition filed in said cause, and due consideration thereof being had,

Now, on this 22d day of May, 1911, it is ordered and adjudged that said motions be, and the same are hereby, denied, with leave to the defendants making said motions to answer the petition of the petitioners within 20 days from the date hereof, if they shall be so advised.

By the court:

[SEAL] MARTIN A. KNAPP, *Presiding Judge.*

And on the same day, to wit, the 22d day of May, 1911, there was filed and entered in the clerk's office of said court, in said entitled cause, a certain order, which said order, and the marshal's returns indorsed thereon, are in the words and figures following, to wit:

Order granting motion for temporary injunction.

In the United States Commerce Court.

The Baltimore & Ohio Railroad Co. et al., petitioners, *v.* United States, respondent. May term, 1911. No. 38.

On motion for a temporary injunction enjoining the enforcement of an order of the United States Interstate Commerce Commission, made December 5, 1910, and effective on or before the 15th day of April, 1911, said last-mentioned date having been extended by the commission to June 1, 1911.

Mr. George F. Brownell, solicitor for the petitioners; Mr. Closson, solicitor for the intervening petitioner, Brooklyn Eastern District Terminal; and Mr. Dykman, solicitor for the intervening petitioners John Arbuckle and William A. Jamison, doing business under the firm name of the Jay Street Terminal, appearing for the motion.

Mr. P. J. Farrell, Mr. Blackburn Esterline, and Mr. Ernest A. Bigelow, counsel for intervening defendants, appearing contra.

The above-entitled cause came on for hearing before the United States Commerce Court at a regular session thereof held at the city of Washington May 17, 1911, upon the petition of the petitioners and the intervening petitions of the Brooklyn Eastern District Terminal and the Jay Street Terminal, and affidavits submitted by petitioners in support of their petition.

The court having heard the arguments of counsel, and considered the pleadings and affidavits presented in support of the motion, and having given the same due consideration,

Now, on this 22d day of May, 1911, it is ordered and adjudged that the motion for a temporary injunction for the purposes herein mentioned be, and the same is hereby, granted.

And it is further ordered and adjudged that said order, to wit:

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, which said report is made a part hereof, and having found that the allowances paid by the above-named defendants to Arbuckle Bros. on their sugar brought by them on floats from lighters to the regular terminals of defendants on the Jersey shore in the State of New Jersey, while at the same time paying no such allowances to complainant on its sugar brought by it on lighters to the defendants' said regular terminals on the Jersey shore, unduly discriminate against said complainants and unduly prefer said Arbuckle Bros. in violation of the act to regulate commerce:

It is ordered that the above-named defendants be, and they are hereby, notified and required to cease and desist, on and after the 15th day of April, 1911, and for a period of not less than two years thereafter, abstain from paying such allowances to Arbuckle Bros. on their sugar, which said allowances so paid to said Arbuckle Bros. by said defendants are found by the commission in said report to be unduly discriminatory and in violation of the act to regulate commerce,

and its force and effect be, and the same hereby is, suspended until the further order of this court.

And it is further ordered and adjudged that a duly certified copy of this order be served upon the chairman of the Interstate Commerce Commission.

By the court:

[SEAL.] MARTIN A. KNAPP,
Presiding Judge.

Certified copy of the foregoing order served on the chairman of the Interstate Commerce Commission this 23d day of May, 1911.

F. J. STAREK, *Marshal.*

Accepted by:

W. J. HOWELL.

Certified copy of the foregoing order served on the Attorney General of the United States this 25th day of May, 1911.

F. J. STAREK, *Marshal.*

Accepted by:

B. M. MOORE (for Blackburn Esterline).

And afterwards, to wit, on the 12th day of June, 1911, came the intervening respondents, the Interstate Commerce Commission and the Federal Sugar Refining Co., by their solicitors, and filed in the clerk's office of said court in said entitled cause, their certain petition for appeal, in the words and figures following, to wit:

Petition for appeal by Interstate Commerce Commission and Federal Sugar Refining Co.

In the United States Commerce Court.

The Baltimore & Ohio Railroad Co.; The Central Railroad Co. of New Jersey; The Delaware, Lackawanna & Western Railroad Co.; Erie Railroad Co.; Lehigh Valley Railroad Co.; New York, Ontario & Western Railway Co.; and The Pennsylvania Railroad Co., petitioners, and William A. Jamison, John Arbuckle, and Brooklyn Eastern District Terminal, intervening petitioners, *v.* The United States, respondent, and Interstate Commerce Commission and Federal Sugar Refining Co., intervening respondents. In equity, No. 38. May session, 1911.

The Interstate Commerce Commission and the Federal Sugar Refining Co., intervening respondents in the above-entitled cause, by their respective solicitors, represent that in the decree or order of said Commerce Court in said cause, rendered on the 22d day of May, 1911, there was manifest error to their injury, and therefore pray for an order granting an appeal from said decree to the Supreme Court of the United States.

P. J. FARRELL,
Solicitor for Interstate Commerce Commission.

ERNEST A. BIGELOW,
Solicitor for Federal Sugar Refining Co.

And on the same day, to wit, the 12th day of June, 1911, came the intervening respondents, the Interstate Commerce Commission and the Federal Sugar Refining Co., by their solicitors, and filed in the clerk's office of said court, in said entitled cause, their certain assignment of errors, in the words and figures following, to wit:

Assignment of errors by Interstate Commerce Commission and Federal Sugar Refining Co.

In the United States Commerce Court.

The Baltimore & Ohio Railroad Co.; The Central Railroad Co. of New Jersey; The Delaware, Lackawanna & Western Railroad Co.; Erie Railroad Co.; Lehigh Valley Railroad Co.; New York, Ontario & Western Railway Co.; and the Pennsylvania Railroad Co.; petitioners, and William A. Jamison, John Arbuckle, and Brooklyn Eastern District Terminal, intervening petitioners, *v.* The United States, respondent, and Interstate Commerce Commission and Federal Sugar Refining Co., intervening respondents. In Equity, No. 38. May Session. 1911.

And now, on the 12th day of June, 1911, come the above-named intervening respondents, Interstate Commerce Commission and Federal Sugar Refining Co., by their respective solicitors, and say that the decree in the above-entitled cause is erroneous and against the just rights of said respondents for the following reasons:

First. The court erred in not dismissing the petition for want of equity.

Second. The court erred in granting the temporary injunction enjoining enforcement of the order of the commission for the following reasons:

(*a*) That said petitioners, including said intervening petitioners, have not, nor has any of them, in and by their said petitions, or any of them, shown that the legislative department of the Government of the United States is, or ever has been, without power to grant the authority exercised by the commission in making said order.

(*b*) That said petitioners, including said intervening petitioners, have not, nor has any of them, in and by said petitions, or any of them, shown that said legislative department did not duly confer upon this commission the authority exercised by this commission in making said order.

(*c*) That said petitioners, including said intervening petitioners, have not, nor has any of them, in and by said petitions, or any of them, shown that the subject matter of said order is not within the jurisdiction conferred upon the commission by said legislative department.

(*d*) That said petitioners, including said intervening petitioners, have not, nor has any of them, in and by said petitions, or any of them, shown that in making said order the commission exercised authority in excess of the authority conferred upon it by said legislative department.

(*e*) That said petitioners, including said intervening petitioners, have not, nor has any of them, in and by said petitions, or any of them, shown that in making said order the commission exercised either unreasonably or unlawfully the authority or any of the authority conferred upon it by said legislative department.

(*f*) That said petitioners, including said intervening petitioners, have not, nor has any of them, in and by said petitions, or any of them, shown that in making said order the commission violated any constitutional or other right of said petitioners, or of any of said petitioners, over which the Commerce Court exercised or may exercise jurisdiction.

Third. The court erred in holding that the transportation and transportation services of the petitioners, relating to the shipments of sugar made by Arbuckle Bros., do not begin at the respective termini of the petitioners on the Jersey shore.

Fourth. The court erred in holding that the shipments of sugar delivered by the Federal Sugar Refining Co. for transportation, to the petitioners at the respective termini of the petitioners on the Jersey shore, do not originate at Pier 24 in New York City.

Fifth. The court erred in holding that the practice of the petitioners of paying allowances per 100 pounds of 3 cents and 4½ cents on said Arbuckle Bros. shipments, and refusing to pay either like allowances or any allowances on the said Federal Sugar Refining Co. shipments, does not constitute the discrimination and preference and prejudice prohibited by sections 2 and 3 of said act.

Sixth. The court erred in holding that said discrimination can not be held to be unlawful in the absence of a showing that the allowances paid to Arbuckle Bros. are unreasonable in and of themselves.

Seventh. The court erred in holding that it is proper to consider how and by whom the sugar transported is handled previous to the time when it is offered to the petitioners for transportation at their respective termini on the Jersey shore in determining whether or not said Arbuckle Bros.' shipments are transported by petitioners under circumstances and conditions which are substantially similar to the circumstances and conditions pertaining to the transportation by petitioners of said Federal Sugar Refining Co. shipments.

Eighth. The court erred in substituting its own judgment for the judgment of the commission concerning the question of whether or not said Arbukle Bros.' shipments, as compared with said Federal Sugar Refining Co. shipments, are a like kind of traffic.

Ninth. The court erred in substituting its own judgment for the judgment of the commission concerning the question of whether or not the transportation services performed by the petitioners in and in connection with the transportation of said Arbuckle Bros.' shipments, as compared with the transportation services performed by the petitioners in and in connection with the transportation of said Federal Sugar Refining Co. shipments, are like and contemporaneous.

Tenth. The court erred in substituting its own judgment for the judgment of the commission concerning the question of whether or not the services performed by the petitioners in and in connection with the transportation of said Arbuckle Bros.' shipments, as compared with the services performed by the petitioners in and in connection with the transportation of said Federal Sugar Refining Co. shipments, are performed by petitioners under substantially similar circumstances and conditions.

Eleventh. The court erred in substituting its own judgment for the judgment of the commission concerning the character of the discrimination and preference and prejudice aforesaid.

Twelfth. The court erred in making the order granting the temporary injunction for the following reasons:

(*a*) The court did not, in accordance with section 3 of the Commerce Court act of June 18, 1910, state that irreparable damage to said petitioners, or to one or more of them, would result if the order were not made and such injunction granted.

(*b*) The court did not, in accordance with said section 3, include in said order a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result if the order were not made and such injunction granted.

(*c*) The court did not, in accordance with said section 3, specify in said order the nature of such damage.

Wherefore, these respondents pray that said decree be reversed.

P. J. FARRELL,
Solicitor for Interstate Commerce Commission.
ERNEST A. BIGELOW,
Solicitor for Federal Sugar Refining Co.

And afterwards, to wit, on the 13th day of June, 1911, there was filed in the clerk's office of said court in said entitled cause a certain order, in the words and figures following, to wit:

Order allowing appeal of Interstate Commerce Commission and Federal Sugar Refining Co.

In the United States Commerce Court.

The Baltimore & Ohio Railroad Co.; The Central Railroad Co. of New Jersey; the Delaware, Lackawanna & Western Railroad Co.; Erie Railroad Co.; Lehigh Valley Railroad Co.; New York, Ontario & Western Railway Co.; and the Pennsylvania Railroad Co., petitioners, and William A. Jamison, John Arbuckle, and Brooklyn Eastern District Terminal, intervening petitioners, *v.* The United States, respondent, and Interstate Commerce Commission and Federal Sugar Refining Co., intervening respondents. In equity, No. 38. May session, 1911.

In this cause the Interstate Commerce Commission, one of the intervening respondents, by its solicitor, P. J. Farrell, and the Federal Sugar Refining Co., another of the intervening respondents, by its solicitor, Ernest A. Bigelow, having made their application on writing for an appeal from the decree therein rendered on the 22d day of May, 1911, to the Supreme Court of the United States, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 13th day of July, A. D. 1911.

[SEAL.] MARTIN A. KNAPP,
Presiding Judge.

An afterwards, to wit, on the 16th day of June, 1911, came the respondent, the United States, by its Attorney General, and filed in the