

In the circuit court of the United States in and for the district of Kansas,
first division.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

THE TRANS-MISSOURI FREIGHT ASSOCIATION, THE
Atchison, Topeka & Santa Fe Railroad Company,
The Missouri, Kansas & Texas Railroad
2 Company, Chicago, Kansas & Nebraska Rail-
way Company, Chicago, Rock Island &
Pacific Railway Company, Chicago, St. Paul, Min-
neapolis & Omaha Railway Company, Burlington
& Missouri River Railroad Company in Nebraska,
Denver & Rio Grande Railway Company, Denver
& Rio Grande Western Railway Company, Denver,
Texas & Fort Worth Railroad Company, Fremont,
Elkhorn & Missouri Valley Railroad Company,
Kansas City, Fort Scott & Memphis Railroad Com-
pany, Kansas City, St. Joseph & Council Bluffs
Railroad Company, Missouri Pacific Railway Com-
pany, Sioux City & Pacific Railroad Company, St.
Joseph & Grand Island Railroad Company, St. Louis
& San Francisco Railway Company, Union Pacific
Railway Company, and Utah Central Railway Com-
pany, defendants.

*To the honorable judges of the said circuit court of the United States for the
district of Kansas:*

The United States of America, by J. W. Ady, United States district attorney, acting in this behalf by authority of the Attorney-General of the United States, brings this, its petition against the Atchison, Topeka & Santa Fé Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas; The Chicago, Kansas & Nebraska Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas; The Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa; The Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin; The Burlington & Missouri River Railroad Company (in Nebraska), a corporation organized * * * and existing under and by virtue of the laws of the State of Nebraska; The Denver & Rio Grande Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Colorado; The Denver & Rio Grande Western Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Colorado; The Denver, Texas & Fort Worth Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of Colorado and Texas; The Fremont, Elkhorn & Missouri Valley Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska; The

3 Kansas City, Fort Scott & Memphis Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of Kansas, Missouri, and Arkansas; The Kansas City, St. Joseph, & Council Bluffs Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri; The Missouri Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the States of Missouri and Kansas; The Sioux City & Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa; The St. Joseph & Grand Island Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas; The St. Louis & San Francisco Railway Company, a corporation organized and existing under and by virtue of the laws of the States of Missouri and Kansas; The Union Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the United States; The Utah Central Railway Company, a corporation organized and existing under and by virtue of the laws of the State of ———; The Missouri, Kansas & Texas Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas; and thereupon your orator complains and says that each and every of said defendants were at all the times hereinafter mentioned and now are common carriers of all classes and kinds of freight and commodities which are commonly moved, carried, and transported by railroad companies in the freight traffic of such companies, and were at all times hereinafter mentioned and now are continuously engaged in moving, carrying, and transporting freight and commodities in the commerce, trade, and traffic which is continuously carried on among and between the several States of the United States, and among and between the several States and the Territories of the United States, and among and between the several States and Territories of the United States and foreign countries, and between the people residing in and all persons engaged in trade and commerce within and among and between the States, Territories, and countries aforesaid, and that each of said defendants were, prior to the fifteenth day of March, 1889, the owners of and in control of and were respectively operating and using distinct and separate lines of railroad, fitted up for carrying on business as such carriers in the freight traffic aforesaid, independently and disconnected with each other, and that said lines of railroad were and are the only lines of transportation and communication engaged in the freight traffic between and among the States and Territories of the United States having through lines for said freight traffic, in all that region of country lying to the westward of Mississippi River and Missouri River and east of the Pacific Ocean; which said lines of railroad furnished to the public and to persons engaged in trade and traffic and commerce between the several States, Territories, and

4 countries aforesaid separate, distinct, and competitive lines of transportation and communication extending among and between the States and Territories of the United States lying westward of the Missouri River and the Mississippi River to the Pacific Ocean, and that the construction and maintenance of said several separate, distinct, and competitive lines of railroad aforesaid had been encouraged and assisted by the United States of America and by the States and Territories in the region of country aforesaid, and by the people of the said several States and Territories,

by franchises and by grants and donations of large amounts of land of great value, and of money and securities, for the purpose of securing to the public and to the people engaged in trade and commerce throughout the region of country aforesaid, competitive lines of transportation and communication, and that prior to the said fifteenth day of March, 1889, and subsequently to the present time, each and all of said defendants have been and are engaged as common carriers in the railway freight traffic connected with the interstate commerce of the United States.

And your orator further avers that on or about the fifteenth day of March, 1889, the defendants not being content with the usual rates and prices for which they and others were accustomed to move, carry, and transport property, freight, and commodities in the trade and commerce aforesaid and in their said business and occupation, but contriving and intending unjustly and oppressively to increase and augment the said rates and prices, and to counteract the effect of free competition on the facilities and price of transportation, and to establish and maintain arbitrary rates, and to prevent any one of said defendants from reducing such arbitrary rates, and thereby exact and procure great sums of money from the people of the said States and Territory aforesaid, and from the people engaged in the interstate commerce, trade, and traffic within the region of country aforesaid, and from all persons having goods, wares, and merchandise to be transported by said railroads, and intending to monopolize the trade, traffic, and commerce among and between the States and Territories aforesaid, did combine, conspire, confederate, and unlawfully agree together, and did then and there enter into a written contract, combination, agreement, and compact known as a memorandum of agreement of the Trans-Missouri Freight Association, which was signed by each of said above-named defendants.

And your orator further avers that the terms, conditions, preamble, and articles of said agreement are, among other things, in substance and effect as follows :

5

PREAMBLE.

“ For the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local, the subscribers do hereby form an association to be known as the Trans-Missouri Freight Association, and agree to be governed by the following provisions :

ARTICLE I.

1. The traffic to be included in the Trans-Missouri Freight Association shall be as follows: All competitive traffic between points in the following described territory, commencing at the Gulf of Mexico on the 95th meridian, thence north to Red River, thence via that river to the eastern boundary of the Indian Territory, thence north by said boundary line and the eastern line of the State of Kansas to the Missouri River at Kansas City, thence via said Missouri River to the point of intersection of that river with the eastern boundary of Montana, thence via the said eastern boundary line to the international line, the foregoing to be known as “ The Missouri River Line,” thence via said international line to the Pacific

Coast, thence via the Pacific Coast to the international line between the United States and Mexico, thence via said international line to the Gulf of Mexico, thence via said gulf to the point of beginning, including business between points on the boundary line as described.

2. All freight traffic originating within the territory as defined in the first section when destined to points east of the aforesaid Missouri River line.

ARTICLE II.

1. The association shall by unanimous vote elect a chairman of the organization. The chairman may be removed by a two-thirds vote of the members.

2. There shall be regular meetings of the association at Kansas City, unless notice shall be given by the chairman that the business to be transacted does not warrant calling the members together, which notice shall be given not less than four days before the day set for the meeting. When a meeting, regular or special, is convened it shall be incumbent upon each party hereto to be represented by some officer authorized to act definitely upon any and all questions to be considered. Each road shall designate to the chairman one person who shall be held personally responsible for rates on that road. Such person shall be present at all regular meetings when possible and shall represent his road unless a superior officer is present. If unable to attend he shall send a substitute with written authority to act upon all questions which may arise, and the vote of such substitute shall be binding upon the company he represents.

3. A committee shall be appointed to establish rates, rules, and regulations on the traffic subject to this association and to consider changes therein and make rules for meeting the competition of outside lines. Their conclusion, when unanimous, shall be made effective when they so order, but if they differ, the question at issue shall be referred to the managers of the lines parties hereto, and if they disagree it shall be arbitrated in the manner provided in Article 7.

4. At least five days' written notice prior to each monthly meeting shall be given the chairman of any proposed reduction in rates, or change in any rule or regulation governing freight traffic.

5. At each monthly meeting the association shall consider and vote upon all changes proposed of which due notice has been given, and all parties shall be bound by the decision of the association so expressed, unless then and there the parties shall give the association definite written notice that in ten days thereafter they shall make such modification, notwithstanding the vote of the association; provided, that if the member giving notice of the change shall fail to be represented at the meeting, no action shall be taken on its notice, and the same shall be considered withdrawn. Should any member insist upon a reduction of rate against the views of the majority, or if the majority favor the same, and if in the judgment of said majority the rate so made affects seriously the rates upon other traffic, then the association may, by a majority vote upon such other traffic, put in effect corresponding rates to take effect upon the same day. By unanimous consent any rate, rule, or regulation relating to freight traffic may be modified at any meeting of the association without previous notice.

6. Notwithstanding anything in this article contained, each member may at its peril make at any time without previous notice such rate, rule, or regulation as may be necessary to meet the competition of lines not members of the association, giving at the same time notice to the chairman of its action in the premises. If the chairman upon investigation shall decide that such rate is not necessary to meet competition of lines not members of the association, and shall so notify the road making the rate, it shall immediately withdraw such rate. At the next meeting of the association held after the making of such rate it shall be reported to the association, and if the association shall decide by a two-thirds vote that such rate was not made in good faith to meet such competition the member offending shall be subject to the penalty provided in section 8 of this article. If the association shall decide by a two-thirds vote that such rate was made in good faith to meet such competition it shall be considered as authority for the rate so made.

7. All agreements with connecting lines for a division of through rates relating to traffic covered by this agreement shall be made by authority of the association, provided, however, that when one road has a proprietary interest in another, the division of such rates shall be what they may elect and shall not be the property of the association. Provided further, that as regards traffic contracts at this date actually existing between lines not having common proprietary interest, the same shall be reported so far as the divisions are concerned to the association, to the end that divisions with competing lines may, if thought advisable by them, be made on equally favorable terms.

8. That if any member shall reduce any rate or change any rule or regulation relating to freight traffic, except as herein provided, it shall be subjected to a penalty of \$100 for each offense, to be assessed by the chairman and paid to the association. If any line party hereto agrees with the shipper, or anyone else, to secure a reduction or change in rates or change in the rules and regulations, and it is shown upon investigation that such arrangement was effected and traffic thereby secured, such action shall subject said party to the same penalty as would an actual unauthorized reduction or change in the rules and regulations.

(Which said section has been amended to read as follows:)

8. It shall be the duty of the chairman to investigate all apparent violations of the agreement and to report his finding to the managers, who shall determine by a majority vote (a member against whom complaint is made, to have no vote) what, if any, penalty shall be assessed, the amount of each fine not to exceed \$100, to be paid to the association. If any line party hereto agrees with the shipper, or anyone else, to secure a reduction or change in rates or change in the rules and regulations, and it is shown upon investigation by the chairman that such an arrangement was effected and traffic thereby secured, such action shall be reported to the managers, who shall determine as above provided what, if any, penalty shall be assessed.

Resolved, That the chairman has authority to examine all books, papers and contracts relating to traffic covered by this agreement for the purpose of ascertaining if violations of the same exist, that the chairman may conduct such examination in any manner he may elect.

8 9. When a penalty shall be declared against any member of this association the chairman shall notify the manager of such company that such fine has been assessed and that within ten days thereafter he will draw for the amount of the fine, and the draft, when presented, shall be honored by the company thus assessed.

10. All fines collected to be used to defray the expenses of the association, the offending party not to be benefited by the amounts it may pay as fine.

ARTICLE III.

The duties and powers of the chairman shall be as follows:

1. He shall preside at all meetings of the association and make and keep a record thereof, and promulgate such proceedings as may be necessary to inform the parties hereto of the action taken by the association.

2. He shall at all times keep and publish for the use of the members a full record of the rates, rules and regulations prevailing on all lines parties hereto on business covered by this agreement, and each of the members hereto agrees to furnish such number of copies of the rates, rules and regulations issued by it as the chairman may require.

3. He shall construe this agreement and all resolutions adopted thereunder, his construction to be binding until changed by a majority vote of the association.

4. He shall publish in convenient form all rates, rules or regulations which are general in their character and apply throughout the territory of the association, and shall also publish in the manner above such rates, rules or regulations applying on traffic common to two or more lines as may be agreed upon by the lines in interest.

5. He shall be furnished with copies of all waybills for freight carried under this agreement when called for, and shall furnish such statistics as may be necessary to give members general information as to traffic moved subject to the provisions of the Interstate Commerce Railway Association agreement as to lines members thereof.

6. He shall render to each member of the association monthly statements of the expenses of the association showing the proportions due from each, and shall make drafts upon members for the different amounts thus shown to be due.

7. He shall hear and determine all charges of violations of this agreement and assess, collect, and dispose of fines for such violations as provided for herein.

9 8. The chairman shall be empowered to authorize lines in the association to meet the rates of any other lines or other lines in the association when in his judgment such action is justified by the circumstances. This, however, not to act in any way as an endorsement of an unauthorized rate made by any member.

9. Only parties interested shall vote upon questions arising under the agreement, and in case of doubt the chairman shall decide as to whether any party is so interested or not, subject to appeal as provided by section 3 of article 3 of the agreement.

ARTICLE IV.

Any willful under-billing in weights or billing freight at wrong classification shall be considered a violation of the agreement, and the rules and regulations of any weighing association or inspection bureau as established by it or as enforced by its officers and agents shall be considered binding under the provisions of this agreement, and any willful violation of them shall be subject to the penalties provided herein.

ARTICLE VIII.

"This agreement shall take effect April 1, 1889, subject thereafter to thirty days' notice of a desire on the part of any line to withdraw or amend the same."

That there were other articles of said association, but nothing in any way altering or modifying the conditions and powers set forth in the foregoing articles, terms, and conditions. That your orator is informed and believes that said articles have been amended in some particulars, and exact nature of which amendments your orator is unable to state, and complainant asks that defendants be required to set forth in full any amendments that may have been made affecting or modifying the powers of this association as herein set forth, but avers that the general powers, terms, and conditions of said agreement have not been changed or materially altered, but still remain in full force and effect as above set forth.

And your orator further avers that on said first day of April, 1889, said agreement did take effect, and that from and after said first day of April, 1889, by reason of said agreement and by reason of the combination of all of said defendants in said association, and by reason of the operation of said articles of agreement, and under duress of the fines and penalties threatened by the articles of said agreement, each and all of said defendants have put into effect and kept in force upon their several lines of railroad the rules and regulations and rates and prices for moving, carrying, and transporting freight fixed and established by said association and have declined and refused at all times to fix, establish, and maintain or give on their said railroads rates and prices for the carriage of freight based upon the cost of constructing and maintaining their several lines of railroad and the cost of carrying freights over the same, and such other elements as should be considered in establishing tariff rates upon each particular road, and the people of the States and Territories subject to said association and all persons engaged in the trade and commerce within, among and between said States and Territories have been compelled to and are still compelled to pay the arbitrary rates of freight and submit to the arbitrary rules and regulations established and maintained by said association, and ever since said date have been and still are deprived of the benefits that might be expected to flow from free competition between said several lines of transportation and communication, and deprived of the better facilities and cheaper rates of freight that might be reasonably expected to flow from free competition between said lines of transportation and communication, and that the trade, traffic, and commerce among and between the States and Territories in said region of country and the freight traffic in connection with said trade and commerce

are monopolized and restrained, hindered, injured, and retarded by said defendants by means of and through the instrumentality of said Trans-Missouri Freight Association.

And your orator further avers that on the second day of July, 1890, an act entitled "An act to protect trade and commerce against unlawful restraints and monopolies" was duly enacted and adopted by the Congress of the United States and became a law governing said defendants in carrying on the freight traffic in connection with and appertaining to trade and commerce between the States and Territories lying within the region of country subject to said freight association and in all respects applicable to the traffic in which said defendants were and are engaged as aforesaid and that said association is in violation of said act, but that notwithstanding said act, and notwithstanding the fact that said association and the articles thereof is in direct violation of the terms of said act of Congress said defendants still continue in and still engage in said unlawful combination and conspiracy and still maintain said Trans-Missouri Freight Association with all the powers specified in the memorandum of agreement and articles of association hereinbefore set forth, which said agreement, combination, and conspiracy so as aforesaid entered into and maintained by said defendants is of great injury and grievous prejudice to the common and public good and to the welfare of the people of the United States.

In consideration whereof, and inasmuch as your orator can only have adequate relief in the premises in this honorable court where matters II of this nature are properly cognizable and relievable, your orator prays that this honorable court may order, adjudge and decree that said Trans-Missouri Freight Association be dissolved, and that said defendants, and all and each of them, be enjoined and prohibited from further agreeing, combining, and conspiring and acting together to maintain rules and regulations and rates for carrying freight upon their several lines of railroad to hinder trade and commerce between the States and Territories of the United States, and that all and each of them be enjoined and prohibited from entering or continuing in a combination, association or conspiracy to deprive the people engaged in trade and commerce between and among the States and Territories of the United States of such facilities and rates and charges of freight transportation as will be afforded by free and unrestrained competition between the said several lines of railroad, and that all and each of said defendants be enjoined and prohibited from agreeing, combining and conspiring and acting together to monopolize, or attempt to monopolize the freight traffic in the trade and commerce between the States and Territories of the United States, and that all and each of said defendants be enjoined and prohibited from agreeing, combining and conspiring and acting together to prevent each and any of their associates from carrying freight and commodities in the trade and commerce between the States and Territories of the United States at such rates as shall be voluntarily fixed by the officers and agents of each of said roads acting independently and separately in its own behalf.

To the end therefore that said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make, but not under oath, answer under oath being specially waived, to each and all matters and

things in this bill and petition contained, and that as fully and as particularly as if the same were here repeated paragraph by paragraph and they were specially interrogated thereunto severally, may it please your honors to grant to your orator a writ of subpoena *ad respondendum* issuing out of and under the seal of this honorable court, to be directed to said defendants, and each of them, commanding them on a certain day and under a certain penalty to be therein inserted, to appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide by such further order or decree as to your honors shall seem meet, and your orator as in duty bound will ever pray.

J. W. ADY,

United States Attorney and Solicitor for Complainant.

W. H. H. MILLER,

Attorney-General.

12 Endorsed: No. 6799. In the circuit court of the United States, district of Kansas, *The United States vs. The Trans-Missouri Freight Association et al.* Bill of complaint. Filed January 6, 1892; Geo. F. Sharitt, clerk.

In the circuit court of the United States in and for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,

vs.

THE TRANS-MISSOURI FREIGHT ASSOCIATION, THE }
Atchison, Topeka & Santa Fe Railroad Company, }
et al. }

The Chicago, Kansas & Nebraska Railway Company, one of the defendants in the above entitled suit, answering the bill of complaint therein, respectfully says:

That it is not now and never has been a member of the Trans-Missouri Freight Association, and that it is not now and has not at any time since the filing of said bill been engaged in business as a common carrier.

Wherefore this defendant prays to be dismissed hence with its costs.

In testimony whereof said The Chicago, Kansas & Nebraska Railway Company has caused this answer to be signed by its president, attested by its secretary, and its corporate seal to be hereon impressed, this second day of March, 1882.

M. A. Low,

President of The Chicago, Kansas & Nebraska Railway Company.

Attest:

C. F. JILSON, *Secretary.*

[SEAL.]

W. F. EVANS,

Solicitor for The Chicago, Kansas & Nebraska Railway Company.

Endorsed. No. 6799. Answer of The Chicago, Kansas & Nebraska Railway Company. Filed March 4, 1892. Geo. F. Sharitt, clerk.