UNITED STATES v. TERMINAL ASS'N OF ST. LOUIS.

UNITED STATES CIRCUIT COURT OF THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

Equity No. 5250.

THE UNITED STATES OF AMERICA,
VS.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL.

Before Sanborn, Van Devanter, Hook, and Adams, circuit judges.

Whereas upon full argument and careful consideration of this case two of the judges of this court were of the opinion that the complainant should prevail and two of the judges of this court were of the opinion that the defendants should prevail, and each of them is of the same opinion still, and the Supreme Court of the United States has dismissed the certificate of this division of opinion and has remanded this case to this court with direction to proceed in conformity with the laws of the United States;

Whereas Honorable Charles A. Houts, United States attorney for the Eastern District of Missouri, has made

a motion on behalf of the complainant that this court listen to a reargument of this case, and the judges are unanimously of the opinion that further argument thereof would be futile;

And whereas the complainant cannot prevail because only two of the judges are of the opinion that it is entitled to any relief, while two are of the opinion that it is entitled to no relief;

It is hereby ordered that the motion for a reargument of this case be, and the same is hereby, denied and that the bill of the complainant be, and it is hereby dismissed.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

ST. PAUL, MINNESOTA, JUNE 4, 1910.
Filed June 6, 1910.

ORDERED, ADJUDGED AND DECREED that the said defendants and each of them be and they and each of them is hereby enjoined and restrained from giving any orders or directions to committees, associations or others for the performance of any of the acts herein sought to be enjoined and it is further

ORDERED AND DECREED that the defendants, against whom this action has not been dismissed, pay the cost and disbursements of this action, taxed at $220.75.

ALFRED S. MOORE,
District Judge.

[February 8, 1906.]

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a motion on behalf of the complainant that this court listen to a reargument of this case, and the judges are unanimously of the opinion that further argument thereof would be futile;

And whereas the complainant cannot prevail because only two of the judges are of the opinion that it is entitled to any relief, while two are of the opinion that it is entitled to no relief;

It is hereby ordered that the motion for a reargument of this case be, and the same is hereby, denied and that the bill of the complainant be, and it is hereby dismissed.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

ST. PAUL, MINNESOTA, JUNE 4, 1910.
Filed June 6, 1910.

IN THE DISTRICT COURT OF THE UNITED STATES EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

Equity No. 5250.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL., DEFENDANTS.

INTERLOCUTORY DECREE ON MANDATE.

This cause came on to be heard at this Term, the parties appearing by their respective solicitors, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on

June 4, 1910; and the Supreme Court of the United States at its October Term, 1911, having duly heard said appeal upon the Transcript of the Record, and having thereupon on the Twenty-second day of April, 1912, ordered, adjudged and decreed that the said decree of the United States Circuit Court, in and for the Eastern Division of the Eastern Judicial District of Missouri, in this cause be and the same is hereby reversed, and that said cause be remanded to this Court for further proceedings in accordance with the Mandate of the Supreme Court of the United States in this cause, bearing date May 23, 1912, which Mandate has been entered of record in this Court on June 3, 1912.

Now, therefore, in obedience to said Mandate and in cognizance with the opinion of the Supreme Court of the United States, it is hereby ordered, adjudged and decreed as follows:

That the defendant, The Terminal Railroad Association of St. Louis, and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have become co-members with the said fourteen railroad companies defendants herein, if any, shall submit to this Court a plan upon which the defendants herein shall have agreed for the reorganization of the contracts, agreements, arrangements and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between The Terminal Railroad Association of St. Louis, Missouri, and its fourteen co-defendant railroads, as aforesaid, as will make said contracts conform in all respects to the terms and conditions hereinafter mentioned.

First: By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second: Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character and cost of service, place every such company as nearly on an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third: By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth: By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth: By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called 100 mile area, that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth: By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to this Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh: The final decree will also contain a provision that nothing therein shall be taken to effect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic passing over its lines, or the establishing of joint rates or routes over its lines, or any other power conferred by law upon such Commission.

Eighth: Upon the failure of the parties defendant to come to an agreement within ninety (90) days from June

3rd, 1912, which is in substantial accord with this decree, the Court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between the Terminal Company, The Wiggins Ferry Company, the Merchants Bridge Company, and the several terminal companies related to the Ferry and Merchant's Bridge Company, make such order and decree for the complete disjoinder of the three systems, and their future operation as independent systems, as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

JACOB TRIEBER, *Judge.*

JUNE 11th, 1912.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

Equity No. 5250.

THE UNITED STATES OF AMERICA, COMPLAINANT,
VS.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL., DEFENDANTS.

INTERLOCUTORY DECREE ON MANDATE.

This cause came on to be heard at this term on the motion of the United States that an interlocutory decree be entered pursuant to the opinions of the Supreme Court reported in 224 U. S., 382, 411, and 226 U. S., 420. The United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of this court dismissing this cause on

June 4, 1910, and the Supreme Court of the United States at its October term, 1911, having heard the appeal upon a transcript of the record and having thereupon, on the 22nd day of April, 1912, ordered, adjudged, and decreed that the said decree of this court in this cause be reversed and that said cause be remanded to this court for further proceedings in accordance with the mandate of the Supreme Court in this cause bearing date May 23, 1912, which was recorded in this court on June 3, 1912, the Honorable Jacob Trieber, United States district judge, on June 11, 1912, entered an interlocutory decree pursuant to the mandate, but subsequently, on the petition for a writ of prohibition, the Supreme Court of the United States rendered a decision to the effect that he was without jurisdiction to render such decree and that this case could be considered and determined only by a court composed of circuit judges in accordance with the provisions of the expedition act, chap. 544, 32 Stat., 823.

Now, therefore, in obedience to the mandate of the Supreme Court and in accordance with the opinions of that court, to which reference has been made, it is hereby ordered, adjudged and decreed that the interlocutory decree hereinbefore rendered on June 11, 1912, by the Honorable Jacob Trieber, district judge, be, and the same is hereby set aside and for naught held pursuant to the opinion of the Supreme Court; that within sixty days after the entry of this decree the Terminal Railroad Association of St. Louis and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have become co-members with the fourteen defendant railroad companies, if any, shall submit to this court a plan, upon which the defendants herein shall have agreed, for the reorganization of the contracts, agreements, arrangements, and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between the Terminal Railroad Association of St. Louis, Missouri, and its fourteen codefendants railroads, as aforesaid, as will make said contracts conform in all

3rd, 1912, which is in substantial accord with this decree, the Court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between the Terminal Company, The Wiggins Ferry Company, the Merchants Bridge Company, and the several terminal companies related to the Ferry and Merchant's Bridge Company, make such order and decree for the complete disjoinder of the three systems, and their future operation as independent systems, as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

JACOB TRIEBER, *Judge.*

JUNE 11th, 1912.

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respects to the terms and conditions hereinafter mentioned.

First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. Such plan or reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place every such company as nearly on an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the terminal company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then rebilling traffic destined to St. Louis or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called one hundred mile area that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to this court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. It is further ordered, adjudged, and decreed that the said parties also present at the same time a

proposed form of final decree in accordance with the directions of the Supreme Court in its mandate and opinion, which shall contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commision over the rates to be charged by the terminal company, or the mode of billing traffic passing over its lines, or the establishing of joint rates or routes over its lines, or any other power conferred by law upon such commission.

Eighth. Upon the failure of the parties defendant to come to an agreement within sixty days from the entry of this decree which is in substantial accord herewith, the court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between Terminal Company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems or their related constituent companies, through lease, purchase, or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

WALTER H. SANBORN,
WALTER I. SMITH,
Circuit Judges.

APRIL 30, 1913.
Received and filed and entered June 16, 1913.
W. W. NALL, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

Equity No. 5250.

respects to the terms and conditions hereinafter mentioned.

First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. Such plan or reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place every such company as nearly on an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the terminal company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then rebilling traffic destined to St. Louis or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called one hundred mile area that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to this court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. It is further ordered, adjudged, and decreed that the said parties also present at the same time a

proposed form of final decree in accordance with the directions of the Supreme Court in its mandate and opinion, which shall contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commision over the rates to be charged by the terminal company, or the mode of billing traffic passing over its lines, or the establishing of joint rates or routes over its lines, or any other power conferred by law upon such commission.

Eighth. Upon the failure of the parties defendant to come to an agreement within sixty days from the entry of this decree which is in substantial accord herewith, the court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between Terminal Company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems or their related constituent companies, through lease, purchase, or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

WALTER H. SANBORN,
WALTER I. SMITH,
Circuit Judges.

APRIL 30, 1913.
Received and filed and entered June 16, 1913.
W. W. NALL, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

Equity No. 5250.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL., DEFENDANTS.

This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 4, 1910; and the Supreme Court of the United States at its October Term, 1911, having duly heard said appeal upon the Transcript of the Record, and having thereupon on the 22nd day of April, 1912, ordered, adjudged and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be and the same is hereby reversed, and that said cause is remanded to this Court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date the twenty-third day of May, 1912.

And afterwards, to wit, it appearing that on the 16th day of June, 1913, a preliminary decree was entered in accordance with the mandate of the Supreme Court, now, therefore, it is ordered, adjudged and decreed by the Court as follows:

1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the Anti-Trust Act of July 2, 1890 (26 Stat. 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads and to assist in the collecting and distributing of traffic for the carrier

companies, switching, storage and the like, and modifying its contracts as herein specified.

An election having been made to continue the combination for terminal purposes the defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered.

2. The Agreement of October 1, 1889, between the Terminal Railroad Association and various other defendants, known in the record as Exhibit "A," shall be reformed in the following manner:

(a) The provision thereof reading as follows shall be eliminated:

> "III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

(b) The provision thereof reading as follows shall be eliminated:

> "XVII. Neither party shall sell, assign, transfer or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the Board of Directors of the first party."

In lieu thereof the following may be inserted: "No proprietary or using company shall sublet its rights and privileges in the use of the terminal facilities to any other company or companies."

(c) The provision thereof reading as follows shall be eliminated:

"XIX. This agreement may be executed in counterparts, and any railroad company not named as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto."

In lieu thereof the following shall be inserted:

(1) In case any other railroad company, not named as second party hereto, shall hereafter desire to become a mamber of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said Association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(2) Any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis may enjoy the use thereof upon such just and reasonable terms and regulations, as will in respect of use, character and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

(3) Any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said terminal properties and the owning, proprietary companies shall be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed and the party so filing said petition shall at least fifteen (15) days before so doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day. Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri, and shall be heard when called in its regular order on said docket and the proceedings shall be subject to review by appeal as in any other cases. Upon being advised by the filing of a petition of such dispute or controversy the Court may at once admit the applying company to ownership or use of the terminal facilities during the pendency of the proceeding upon the giving of security in amount and form as it may direct.

(d) All provisions of the purport or effect of those eliminated from the Agreement of October 1, 1889, shall also be removed from all other contracts affecting the ownership or use of the terminal facilities to which the Terminal Railroad Association and the proprietary companies or any of them are parties. The benefits and burdens of the amended agreement shall inure to and rest upon all future proprietary and using railroad companies respectively.

3. Hereafter traffic destined to St. Louis, Missouri, or to points west of the Mississippi River and to be transported through the St. Louis gateway or traffic from St. Louis, Missouri, destined to points east of said river, shall not be billed to East St. Louis, Illinois, or other junction points or termini of the railroads of any of the said railroad companies east of the river and then rebilled to destination, but for all such traffic each railroad company shall issue through bills of lading unless otherwise directed by the person controlling the same. The defendants

are perpetually enjoined from violating the above provisions.

4. The defendants are perpetually enjoined from making any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

5. The provisions of this decree shall extend to and embrace all railroad companies now or hereafter admitted to joint ownership or use of the facilities of the Terminal Railroad Association and to all its facilities present and future acquired.

6. Nothing in this decree shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such commission.

7. This cause is reserved for such further orders and decrees as may be deemed necessary.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
Circuit Judges.

ST. LOUIS, JANUARY 29, 1914.
Filed March 2, 1914.

W. W. NALL, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF MISSOURI.

Equity No. 5250.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL.
DEFENDANTS.

ORDER AND DECREE.

Upon consideration of the motions of the Terminal Railroad Association of St. Louis et al., defendants, filed May 7, 1915, of the Evens & Howard Fire Brick Company et al., intervenors, filed October 18, 1915, and of the Missouri Pacific Railway Company et al., defendants, filed February 11, 1916, it is

Ordered and decreed that the mandate of the Supreme Court of the United States of April 23, 1915, in this cause be spread upon the records of this court, and that conformably thereto paragraph 1 of the final decree of this court of January 29, 1914, be and it is modified so as to read as follows:

"1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the antitrust act of July 2, 1890 (26 Stat., 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads and to assist in the collecting and distributing of traffic for the carrier companies, switching, storing, and the like, and modifying its contracts as herein specified. An election having been made to continue the combination for terminal purposes the defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered: *Provided, however,* That the right of said Terminal Railroad Association as an accessory to its strictly terminal business to carry on transportation as to business

are perpetually enjoined from violating the above provisions.

4. The defendants are perpetually enjoined from making any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

5. The provisions of this decree shall extend to and embrace all railroad companies now or hereafter admitted to joint ownership or use of the facilities of the Terminal Railroad Association and to all its facilities present and future acquired.

6. Nothing in this decree shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such commission.

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WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
Circuit Judges.

ST. LOUIS, JANUARY 29, 1914.
Filed March 2, 1914.

W. W. NALL, *Clerk.*

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Upon consideration of the motions of the Terminal Railroad Association of St. Louis et al., defendants, filed May 7, 1915, of the Evens & Howard Fire Brick Company et al., intervenors, filed October 18, 1915, and of the Missouri Pacific Railway Company et al., defendants, filed February 11, 1916, it is

Ordered and decreed that the mandate of the Supreme Court of the United States of April 23, 1915, in this cause be spread upon the records of this court, and that conformably thereto paragraph 1 of the final decree of this court of January 29, 1914, be and it is modified so as to read as follows:

"1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the antitrust act of July 2, 1890 (26 Stat., 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads and to assist in the collecting and distributing of traffic for the carrier companies, switching, storing, and the like, and modifying its contracts as herein specified. An election having been made to continue the combination for terminal purposes the defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered: *Provided, however,* That the right of said Terminal Railroad Association as an accessory to its strictly terminal business to carry on transportation as to business

exclusively originating on its lines, exclusively moving thereon, and exclusively intended for delivery on the same is hereby recognized, and nothing in this decree shall be construed to deny such right."

It is further ordered that the motion of the Terminal Railroad Association of St. Louis et al to modify the final decree of January 29, 1914, in other respects be and it is denied.

Dated, St. Louis, Missouri, January 29, 1917.

(Signed) WALTER H. SANBORN,
(Signed) WILLIAM C. HOOK,
(Signed) WALTER J. SMITH,
Circuit Judges.

(Indorsed: "Received, filed, and entered Feb. 7, 1917. W. W. Nall, Clerk.")

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

Equity No. 5250.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, ET AL.
DEFENDANTS.

Expedited under Act of 1903. 32 Stat. 823.

ORDER.

The motion of Missouri, Kansas & Texas Railway Company, St. Louis-San Francisco Railway Company, Missouri Pacific Railroad Company and The Chicago, Rock Island and Pacific Railway Company praying that certain of the defendants herein, to wit, the Baltimore & Ohio Southwestern Railway Company and R. N. Begein, its representative on the board of defendant Terminal Railroad Association of St. Louis; the Chicago & Alton Railroad Company and W. G. Bierd, its representative on said board, the Chicago, Burlington & Quincy Railroad Company and E. P. Bracken, its representative on said board; the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and H. A. Worcester, its representative on said board; the Illinois Central Railroad Company and C. M. Kittle, its representative on said board; the Louisville & Nashville Railroad Company and John Fitzgerald, its representative on said board; the Southern Railway Company and John B. Munson, its representative on said board; the Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company and Benjamin McKeen, its representative on said board; The St. Louis Southwestern Railway Company; the Wabash Railway Company and J. E. Taussig, its representative on said board, and Henry Miller, the representative at large upon said board, as well as president of said Terminal Railroad Association of St. Louis; the Terminal Railroad Association of St. Louis, the St. Louis Merchants Bridge Terminal Railway Company and the Wiggins Ferry Company, be cited to show cause, if any, why they, and each of them, should not be punished for contempt of the injunctive order and decree of this court in this cause, entered March 2, 1914, came on to be heard pursuant to due notice to all the parties hereto who appeared by their respective solicitors, and was argued; and the court after the consideration of the motion, other motions, the returns, pleadings, evidence, arguments and briefs of counsel;

ORDERED, ADJUDGED and DECREED as follows, viz:

1st. That the following named companies, having duly entered their respectvie appearances on the hearing of said motion and participated in such hearing are hereby made parties defendant as of the date of their respective entries of appearances, namely; Wabash Railway Company, as successor to the Wabash Railroad Company; St. Louis-San Francisco Railway Company as successor to the St. Louis & San Francisco Railroad Company; Missouri Pacific Railroad Company, as successor to the Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; the Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company, as

exclusively originating on its lines, exclusively moving thereon, and exclusively intended for delivery on the same is hereby recognized, and nothing in this decree shall be construed to deny such right."

It is further ordered that the motion of the Terminal Railroad Association of St. Louis et al to modify the final decree of January 29, 1914, in other respects be and it is denied.

Dated, St. Louis, Missouri, January 29, 1917.

(Signed) WALTER H. SANBORN,
(Signed) WILLIAM C. HOOK,
(Signed) WALTER J. SMITH,
Circuit Judges.

(Indorsed: "Received, filed, and entered Feb. 7, 1917. W. W. Nall, Clerk.")

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

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Expedited under Act of 1903. 32 Stat. 823.

ORDER.

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ORDERED, ADJUDGED and DECREED as follows, viz:

1st. That the following named companies, having duly entered their respectvie appearances on the hearing of said motion and participated in such hearing are hereby made parties defendant as of the date of their respective entries of appearances, namely; Wabash Railway Company, as successor to the Wabash Railroad Company; St. Louis-San Francisco Railway Company as successor to the St. Louis & San Francisco Railroad Company; Missouri Pacific Railroad Company, as successor to the Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; the Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company, as

successor to St. Louis, Vandalia & Terre Haute Railroad Company, and St. Louis, Southwestern Railway Company. That because the Wabash Railway Company and the Chicago, Burlington & Quincy Railroad Company have lines of road on each side of the Mississippi River they are and shall be deemed in this decree and any accounting hereunder to be East Side Lines to the extent of their lines on the east side of that river and West Side Lines to the extent of their lines on the west side of that river.

2nd. That the motions of respondents to dismiss and to quash the order to show cause be and the same are hereby overruled and denied.

3rd. That the respondent companies and each of them and the above named individual defendants and their respective predecessors and each of them as representatives of said respective defendant companies on the Board of Directors of the defendant Terminal Railroad Association of St. Louis have continuously since the entry of said final order and decree, in contempt of this court, violated the terms thereof and are still violating its said terms:

(a) In that defendants, the Terminal Railroad Association of St. Louis and its subsidiary companies are not acting in good faith as the impartial agents of the various proprietary lines.

(b) In that the proprietary lines other than the petitioner, through the domination and control of the Board of Directors of defendant, the Terminal Railroad Association of St. Louis and its subsidiaries compelled the petitioners to pay the Terminal Railroad Association its transfer charges for supplying and operating facilities for the interchange of both through east bound and through west bound freight traffic between the east sidelines and the west sidelines.

(c) In that the defendants, the Baltimore & Ohio Southwestern Railway Company; the Chicago & Alton Railroad Company, the Chicago, Burlington & Quincy Railroad Company; the Cleveland, Cincinnati, Chicago & St. Louis Railway Company; the Illinois Central Railroad Company; the Louisville & Nashville Railroad Company;

the Southern Railway Company; the Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company; the St. Louis South Western Railway Company, and the Wabash Railway Company have not paid and are not now paying the reasonable transfer charges of defendant, The Terminal Railroad Association of St. Louis and its subsidiary companies on west bound through freight to the rails of said Missouri, Kansas & Texas Railway Company; St. Louis-San Francisco Railway Company; Missouri Pacific Railroad Company; the Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company, and the Wabash Railway Company.

(d) In that the said Terminal Railroad Association has been issuing bills of lading or receipts taking the place of bills of lading usable for the transportation of through freight from points on its lines to distant points beyond its lines, and has been issuing passes usable by passengers riding on passes or tickets from points on its lines to distant points beyond its lines.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that within sixty days from the date of the entry of this order, the said defendant companies and each of them cease and desist from violating the said final order and decree in the respects hereinbefore specified, and that upon the failure of them or either of them so to do and proof thereof this court will consider what further order or action should be taken.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the East Side Lines, to wit: The Baltimore & Ohio Southwestern Railway Company, the Chicago & Alton Railroad Company, the Chicago, Burlington & Quincy Railroad Company, the Cleveland, Chicago, Cincinnati & St. Louis Railway Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, the Southern Railway Company, the Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company, the St. Louis Southwestern Railway Company, and the Wabash Railway Company be and they are hereby required to pay within

sixty days after the amount of same shall have been ascertained and determined, for the use and benefit of said west side lines, to wit: Missouri, Kansas & Texas Railway Company; St. Louis-San Francisco Railway Company; Missouri Pacific Railroad Company; Chicago, Rock Island & Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company and the Wabash Railway Company, the total amount of the transfer charges of defendant Terminal Railroad Association of St. Louis and its subsidiary companies paid by said West Side Lines on west bound through freight of said East Side Lines to the rails of said West Side Lines at St. Louis, Missouri; from the date of the entry of said final decree, to wit; March 2, 1914 to the date of this order; that such total amount shall be ascertained and determined in the manner hereinafter provided; that of such total amount each of said East Side Lines shall pay such proportion thereof as the transfer charges on West bound through freight handled by it paid by said West Side Lines bears to the total amount of the transfer charges on freight handled by all said East Side Lines; that each of said West Side Lines shall receive such proportion of said total amount as the charges on such west bound through freight paid by it bears to the total charges on all such west bound freight; that for the purpose of ascertaining and determining the amount to be assessed against and paid by the said East Side Lines, and the amount payable by each thereof, and the respective amounts thereof payable to said West Side Lines respectively as herein provided Byron F. Babbitt, Esq. is hereby appointed the Special Master in this case to hear the testimony offered by the said East Side Lines and the West Side Lines as to such matters, to examine the evidence and to report to this court the facts and amounts to be ascertained pursuant to this paragraph of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said West Side Lines have and recover of the respondents their costs herein laid out and expended in this proceeding.

(Signed) WALTER H. SANBORN,
United States Circuit Judge.
(Signed) ROBT. E. LEWIS,
United States Circuit Judge.

Dated this 8th day of February, A. D. 1923.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

Equity No. 5250.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, ET AL., DEFENDANTS.

Now come the respondents summoned herein to answer to a petition upon the part of the Missouri, Kansas & Texas Railway Company, St. Louis-San Francisco Railway Company, Missouri Pacific Railroad Company, and the Chicago, Rock Island & Pacific Railway Company, petitioners, and upon the motion of the said respondents it is now ordered:

1. That the mandate of the Supreme Court of the United States, dated November 21, 1924, be and it is hereby directed to be spread at large upon the order book of the Court.

2. That decree entered herein February 8, 1923, be and it is hereby set aside and held for naught, and the said petition is hereby dismissed.

Approved May 21, 1925.
(s) WALTER H. SANBORN,
(s) KIMBROUGH STONE,
(s) ROBT. E. LEWIS,
Circuit Judges.

Received, Filed and Entered,
June 1, 1925,
James J. O'Connor, *Clerk.*

sixty days after the amount of same shall have been ascertained and determined, for the use and benefit of said west side lines, to wit: Missouri, Kansas & Texas Railway Company; St. Louis-San Francisco Railway Company; Missouri Pacific Railroad Company; Chicago, Rock Island & Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company and the Wabash Railway Company, the total amount of the transfer charges of defendant Terminal Railroad Association of St. Louis and its subsidiary companies paid by said West Side Lines on west bound through freight of said East Side Lines to the rails of said West Side Lines at St. Louis, Missouri; from the date of the entry of said final decree, to wit; March 2, 1914 to the date of this order; that such total amount shall be ascertained and determined in the manner hereinafter provided; that of such total amount each of said East Side Lines shall pay such proportion thereof as the transfer charges on West bound through freight handled by it paid by said West Side Lines bears to the total amount of the transfer charges on freight handled by all said East Side Lines; that each of said West Side Lines shall receive such proportion of said total amount as the charges on such west bound through freight paid by it bears to the total charges on all such west bound freight; that for the purpose of ascertaining and determining the amount to be assessed against and paid by the said East Side Lines, and the amount payable by each thereof, and the respective amounts thereof payable to said West Side Lines respectively as herein provided Byron F. Babbitt, Esq. is hereby appointed the Special Master in this case to hear the testimony offered by the said East Side Lines and the West Side Lines as to such matters, to examine the evidence and to report to this court the facts and amounts to be ascertained pursuant to this paragraph of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said West Side Lines have and recover of the respondents their costs herein laid out and expended in this proceeding.

(Signed) WALTER H. SANBORN,
United States Circuit Judge.
(Signed) ROBT. E. LEWIS,
United States Circuit Judge.

Dated this 8th day of February, A. D. 1923.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

Equity No. 5250.

UNITED STATES OF AMERICA, COMPLAINANT,
VS.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, ET AL., DEFENDANTS.

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1. That the mandate of the Supreme Court of the United States, dated November 21, 1924, be and it is hereby directed to be spread at large upon the order book of the Court.

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Approved May 21, 1925.
(s) WALTER H. SANBORN,
(s) KIMBROUGH STONE,
(s) ROBT. E. LEWIS,
Circuit Judges.

Received, Filed and Entered,
June 1, 1925,
James J. O'Connor, *Clerk.*