thorities furnished fail, in my judgment, to meet the point in question. It is a mistake to confound the two contracts. An agreement by the tug Mayflower to tow the dredge Wisewall, for a reasonable sum, from Albany to Troy, is not void because the Mayflower is associated with other tugs to regulate the price of towing at Albany. Should the claimant purchase a pair of trousers at an Albany clothing shop he would find it difficult to avoid paying their actual market value because the vendor and other tailors of that city had combined to keep up prices. So when he employs the Albany tugs during an entire season and receives services worth, upon the present proof, over $900, he should not be permitted to disavow his just obligations upon a pretext so illogical. The tugs do not ask that the dredge shall pay any more than their services are actually worth. If they are worth less than $924 demanded in the libel, it is still open for the claimant to show it. But it is unnecessary to pursue the subject further. Above and beyond every other consideration stands the indisputable fact that the tugs rendered valuable services to the dredge at her request. These debts she should pay. To permit her to escape would be aiding a scheme of repudiation. The tugs are entitled to a decree. Unless there is a reasonable prospect that the claimant can produce testimony reducing the amount proved to be due, a reference would seem unnecessary. However, if the claimant desires it a reference will be ordered. The libelants may amend the libel in the respects heretofore suggested if on reflection they desire to do so.

DETROIT, G. H. & M. RY. CO. v. INTERSTATE COMMERCE COMMISSION.

(Circuit Court of Appeals, Sixth Circuit. April 14, 1896.)

No. 252.

1. CARRIERS—INTERSTATE COMMERCE LAW—TRANSPORTATION AND ACCESSORIAL SERVICES.

   In the provision contained in the first section of the interstate commerce law, that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid or in connection therewith, or for receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unreasonable charge for such service is prohibited and declared to be unlawful," the word "charges" is used in the technical sense of segregated items of expense, or dues demanded in connection with the "transportation," or with the "receiving," etc., the accessorial service described by the latter terms (which include cartage) being thus distinguished from the transportation. And, although these terms are not repeated with the same particularity in sections 2, 3, and 4, this segregation of the two kinds of service is not to be overlooked, in their construction.

2. SAME—DISCRIMINATION BETWEEN LOCALITIES—GROUP RATES—ADMISSIONS.

   The fact that a railroad company, in its schedule of freight rates, groups together two cities on its line, some distance apart, and charges the same rate for carriage to both, is not to be treated as a conclusive admission that the service is performed under substantially similar circumstances and conditions, within the meaning of the interstate commerce law, so

as to make it necessarily unlawful to furnish, without additional charge, an additional service at the further city, by cartage from its depot to the places of business of the consignees.

3. SAME—LONG AND SHORT HAULS—PRELIMINARY APPLICATION TO COMMISSION.
The provisions of the fourth section, forbidding a greater charge for a longer than for a shorter haul, under "substantially similar circumstances and conditions," and authorizing carriers to apply to the commission for leave to charge a less rate for the longer haul, do not make it unlawful, in itself, for the carrier to charge such less rate without first applying for and obtaining such permission. It may, on the contrary, establish such rate in the first instance, and when the same is challenged in the courts, or before the commission, may justify itself by showing a substantial dissimilarity of circumstances and conditions, within the meaning of the act.

4. SAME—AGGREGATE CHARGES—CARTAGE.
The prohibition of the fourth section is against a greater compensation for the shorter haul, "in the aggregate," which includes, not only the "rates" and "fares" (for transportation on the rails proper), but also the "charges" (for accessorial services including cartage). And therefore, where the "aggregate" is the same for both the shorter and the longer haul, the section is not violated, in its very terms, although in the case of the longer haul an additional cartage service is furnished, which is not furnished in the case of the shorter haul.

5. SAME—EQUALITY OF RATES—PRESUMPTIONS.
Where the carrier fixes an equality of compensation, in the aggregate, for two places some distance apart, on the same line, there must be an equality in fact as well as in form; but equality in form will be accepted as equality in fact, until it is shown to be colorable by him who challenges it.

6. SAME—DISSIMILARITY OF CONDITIONS AND CIRCUMSTANCES—CARTAGE.
Differences in population and tonnage traffic may constitute a "circumstance" or "condition" of dissimilarity, within the meaning of the statute; and it cannot be said that a railroad company may not reasonably, and without undue preference or advantage, or unlawful discrimination, collect and deliver, at its own expense, goods at one city, and not at another, when the difference in population is 70,000 to 6,000, and in traffic 1,000,000 tons to 55,000 tons.

7. SAME—LONG-ESTABLISHED CUSTOMS.
The long existence, before the enactment of the interstate commerce law, of a custom to collect and deliver freight by cartage, in a particular city, and not in others, may be one of the "circumstances" mentioned in the act as elements entering into the question of unjust and unfair discrimination.

8. SAME—LOCATION OF FREIGHT STATIONS—COMPETITION.
Other circumstances and conditions of great importance may be that, having long ago adopted such a plan of accessorial services by furnishing cartage, and adapted its terminal facilities thereto, the carrier's station is located a great distance from the traffic center of the city, and to now abandon such service, and extend its road and appliances to the traffic centers, would entail enormous expense for rights of way, and for construction and reconstruction; also, the fact that rival and competing carriers have their stations near the traffic centers, so that to abandon the cartage service would result in the annihilation of the company's business.

9. SAME—POWER OF "REGULATION"—PROPERTY RIGHTS.
The power to "regulate" the accessorial service facilities, which is given to the commission by the act, must, on a proper construction, be confined to the existing state of things in regard to the use of its property by each carrier. The power is one of "regulation," merely, and the commission and the courts have no authority to invade rights of property by entering the domain of deprivation, construction, and reconstruction of properties, to carry out the proposed regulation.