FAMOUS NORTH DAKOTA RATE DECISION.

The following is the text of the decision in what is known as the Dakota rate case, mention of which was made in The Globe of yesterday:

In the Circuit Court of the United States, District of North Dakota.

Northern Pacific Railway Company vs. George H. Keyes et al.

Great Northern Railway Company vs. George H. Keyes et al.

Chicago, Milwaukee & St. Paul Railway Company vs. George H. Keyes et al.

C. W. Bunn, counsel for Northern Pacific Railway company; M. D. Grover, for Great Northern Railway company, and George H. Peck and Ball, Watson & Maclay, for Chicago, Milwaukee & St. Paul Railway company.

John W. Cowan, attorney for defendants.

Before Thayer, circuit judge, and Amidon, district judge.

Amidon, district judge.

Chapter 115 of the Laws of North Dakota for the year 1897 empowers the board of railroad commissioners of that state to fix a schedule of maximum rates for the transportation of persons and property within its limits by common carriers, and makes it a crime punishable by fine of not less than $1,000 nor more than $10,000 for any carrier to charge more than the rates thus prescribed. The statute requires the board to serve the schedule of rates, prepared by them, upon the common carriers to be affected thereby, and to publish notice in a newspaper in each of the judicial districts of the state fixing the time when such rates will take effect. Acting under this statute, the commissioners prepared and served upon the railroad companies doing business in the state a schedule of rates, and commenced the publication of a notice fixing July 1, 1897, as the date upon which the same should take effect. Thereupon the plaintiffs, the Northern Pacific Railway company, Great Northern Railway company and Chicago, Milwaukee & St. Paul Railway company filed their several bills in this court against the board of railroad commissioners, its secretary and the publishers of the newspapers in which the notice was printed, alleging that the rates prescribed were unreasonable and such as to afford no return for the use of the property employed by the plaintiffs in carrying on their business in the state, and praying that the further publication of the notice be restrained and that the board be enjoined from putting the rates in force. After a hearing, a temporary injunction was issued, restraining the defendants from putting the rates into effect during the pendency of the suits. Voluminous testimony has been taken and the cases are now submitted upon their merits.

At the threshold of this inquiry, it is important to define its limits. Much of the argument of counsel on behalf of defendants is devoted to an attempt to show that, under existing rates, the plaintiffs are earning from their entire business, both interstate and local, a high rate of income upon a grossly excessive capitalization of their property. Conceding this to be true, it would be wholly immaterial, unless it further appears that the income derived from business done wholly within this state—that is, commencing and ending in the state—is such as to produce an unreasonable return upon the fair value of the property in doing that business. Excessive income derived from interstate traffic can be reduced by congress alone, which has exclusive jurisdiction of commerce among the states. Excessive income derived from business done in other states can only be reduced by those states.

In prescribing rates, the state of North Dakota is limited to that business which is done wholly within its boundaries, and in determining the reasonableness of such rates, the court cannot take into consideration the carrier's whole business, both interstate and domestic. That question was put to rest by the supreme court in its decision in the case of Smythe vs. Ames, 169 U. S., 466, commonly known as the Nebraska rate case. The court says at page 540 "It is further said, in behalf of the appellants, that the reasonableness of the rates established by the Nebraska statute is not to be determined by the inquiry whether such rates would leave a reasonable net profit from the local business affected thereby, but that the court should take into consideration, among other things, the whole business of the company, that is, all its business, passenger and freight, interstate and domestic. If it be found upon investigation that the profits derived by a railroad company from its interstate business alone are sufficient to cover operating expenses on its entire line, and also to meet interest, and justify a liberal dividend upon its stock, may the legislature prescribe rates for domestic business that would bring no reward and be less than the services rendered are reasonably worth? Or, must the rates for such transportation as begins and ends in the state be established with reference solely to the amount of business done by the carrier wholly within such state, to the cost of doing such local business, and to the fair value of the property used in conducting it, without taking into consideration the amount and cost of its interstate business, and the value of the property employed in it? In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a state for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or the profits derived from it. The state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the state has no control. Nor can the carrier justify unreasonably high rates upon domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. It is only rates for the transportation of persons and property between points within the state that the state can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business."

This is the most important feature of the decision in that important case. The other questions discussed in the opinion had all been passed upon by former decisions of the court; but this clear and complete separation between the local and interstate traffic of a carrier conducting both kinds of commerce, though following as a necessary conclusion from the commerce clause of the federal constitution had not before been expressly declared. It is manifestly a doctrine which is destined to have, in the sparsely settled sections of the West, where local traffic is trifling in comparison with interstate, a far-reaching effect upon the power of states to regulate the business of common carriers.

No state better illustrates the truth of this assertion than North Dakota. The terminals of much the greater portion of its commerce are the cities of St. Paul, Minneapolis and Duluth, in the state of Minnesota. To those points nearly all the grain, live stock, and other products of the state are shipped, and from them most of its merchandise, coal, lumber and other supplies are received. For this reason the main volume of transportation for which the people of North Dakota pay is interstate in character and beyond the state's control. The effect of this condition is strikingly exhibited by the following table of traffic on the Great Northern road for the four years commencing with 1894. Column 1 shows the number of ton miles of strictly local traffic; column 2 the number of ton miles having only one terminal in the state; column 3 the number of ton miles of traffic in the state which passed entirely across the state; column 4 combines the last two items and shows the total ton miles of interstate commerce.

Year.	Ton miles local to the state.....	To n miles originating or terminating in the state.....	Ton miles entirely across the state.....	Total interstate.....
1894 ...	3,170,663	106,976,389	93,989,336	200,965,725
1895 ...	2,778,999	113,332,667	137,902,298	251,135,165
1896 ...	3,456,421	147,538,631	136,077,421	283,616,052
1897 ...	3,988,027	122,157,466	144,416,544	266,574,012
Avge	3,348,576	122,476,339	128,096,400	250,572,739

Changing these figures to percentages, it will be seen that the local traffic averages less that 2¾ per cent of that which either begins in the state and passes to points outside of it, or begins outside of the state and passes to points within it, and is less than 1 1-3 per cent of the total interstate traffic moved in the state. The same condition is shown as to the Northern Pacific road. Its average of local ton miles for the four years mentioned was 5,115,286, or only 2 3-5 per cent of the interstate traffic in the state, which was 198,448,763. From these statistics it appears, therefore, that of all the traffic carried in North Dakota during the four years mentioned, less than 2 per cent began and ended in the state so as to subject it to state regulation, while more than 97 per cent was interstate and thereby subject to the exclusive control of congress. In Minnesota, on the other hand, for the reason that it has its terminals within its own limits, the average of ton miles of local traffic for the same period was 179,285,609, or 46 2-3 per cent of the total interstate traffic, which was 384,093,273.

The passenger business does not present so wide a contrast, but would seem to be sufficiently marked to justify a difference in rate in the two states, the rate at present being 4 cents a mile in North Dakota and 3 cents in Minnesota. During each of the four years mentioned, the average number of passengers carried one mile on the Northern Pacific road in North Dakota was 5,548,981, in Minnesota, 13,436,952; on the Great Northern road the average for North Dakota was 7,301,211 and for Minnesota, 27,284,769. It will thus be seen that the volume of passenger business in the latter state is more than three times as great as in the former.

The nature of the local traffic in North Dakota has as important bearing upon the questions under consideration as the smallness of its volume. The witnesses for the commission, as well as those for the railroads, agree that the principal subject of local commerce is merchandise in less than carload lots. The Great Northern made a compilation of its local business from the way bills for six alternate months of the year 1896. From this it appears that more than 60 per cent of the entire tonnage consisted of merchandise in less than carload lots, and that from the carriage of this merchandise more than 80 per cent of all the company's local freight revenue in the state was derived. The remaining 40 per cent of local tonnage was made up chiefly of seed, grain and lumber, also for the most part carried in small shipments. From two-thirds to three-fourths of the entire local freight of the state emanates from Grand Forks and Fargo, and consists of groceries, hardware, fruit and farm machinery, which is distributed from these points to the local stations in quantities seldom attaining the proportions of a carload, and is carried, as will be pointed out later, under a special terminal tariff which is but little higher than the terminal tariff out of St. Paul and Minneapolis.

Length of haul is another element of prime importance in determining rates for transportation. It is clearly established by the evidence that the local commerce of North Dakota moves on an average of from eighty to ninety miles, while the average of the general business of the roads in this respect is from three hundred and fifty to five hundred miles.

The testimony leaves no room for doubt that the strictly local traffic of North Dakota consits mostly of merchandise, and is light in volume, short in haul and small in individual shipments. These are all elements which add materially to the costs of transportation and justify rates above the average of those for the entire business of the carrier.

Appreciating the force of these facts in respect to the volume and character of traffic in North Dakota, the defense put forth the claim that such interstate traffic as originates or terminates in the state should be divided upon a mileage basis and such portion thereof as is done within the state held to be subject to state control and taken into consideration in determining the reasonableness of the rates fixed by the commission. This, however, cannot be done. Commerce which begins in one state and passes into another is not less interstate commerce than that which passes entirely across states.

If the different states could regulate that portion of interstate commerce which is moved within their respective limits there would be left no commerce whatever subject to congressional control. This matter has been repeatedly before the supreme court of the United States, and that court has uniformly held, from its decision in Wabash, St. Louis & Pacific Railroad Company vs. Illinois, 118 U. S., 557, to the recent decision in Smyth vs. Ames, that the states cannot fix rates for or regulate in any manner that portion of interstate commerce which moves within their territorial limits. Such traffic throughout its entire course is subject to the conclusive jurisdiction of congress.

In order to point out the difference between the present rates of the railroads and those fixed by the commission, it will be necessary to describe briefly the several tariffs under which the business of the plaintiffs is now conducted. Nearly all traffic between subordinate stations is at present moved under the general distance tariff of the roads, in which the rate is based solely on the number of miles the freight is carried. This tariff is the same in North Dakota as in Minnesota and is much lower in those states than in Montana and the states farther west. The distance tariff, however, does not control the principal volume of traffic. That is conducted under what are designated as terminal tariffs, which apply to all shipments into and out of St. Paul, Minneapolis, Minnesota Junction, Duluth and West Superior. The rates thereby fixed are lower than those in the distance tariff on account of the volume of business that is moved to and from the points mentioned. Of these terminal tariffs the most important are three in number. One applies to shipments of live stock in carload lots; another to shipments of grain, flax seed, flour, mill stuffs, millet seed and potatoes in carload lots; and the third to merchandise. Of the traffic moved under these terminal tariffs nearly all is in carload lots, and much the greater portion is solid train loads. The railroads also have a special merchandise tariff on business out of Fargo and Grand Forks, which is substantially the same as the terminal merchandise tariff out of St. Paul, Minneapolis and Duluth. The schedule of rates fixed by the commission is likewise a distance tariff. It prescribed rates for all distances between one mile and four hundred, and takes no account of the volume of business, but applies the same rule to the smallest way stations as to terminal points. How does this schedule of the commission compare with the tariffs of the plaintiffs to which we have referred? It is not only lower than the distance tariff in force in Minnesota, a state having more than six times the population of North Dakota, but is likewise lower than any of the terminal tariffs mentioned, with the exception of that on grain mill stuffs, etc., and as to that is but slightly higher.

While none of the matters to which we have thus far adverted are decisive of these cases, they do tend to throw a strong indirect light upon the primary question under consideration. It is a self-evident proposition that these railroads cannot maintain lower rates for local business in North Dakota than in Minnesota, much less can they maintain for the strictly domestic commerce of that state, which moves in light volume, for short distances and in small shipments, lower rates than are charged for interstate traffic which has more than fifty times its volume is moved more than four times its distance, and is hauled chiefly by carloads and train loads. The result is that one of two propositions must be true. Either the rates fixed by the commission are unreasonably low, or the interstate rates charged by the plaintiffs are grossly excessive; for if local rates ought to be placed below existing interstate rates then the latter rates, owing to the volume and character of the traffic, ought, in justice, to be correspondingly reduced.

The fundamental question in all cases like these is, will the rates prescribed by the state pay the expense of doing the local business and leave to the carrier a reasonable compensation upon a fair value of the property which it employs in performing the service. Certain of the factors necessary to a determination of this question are capable of definite knowledge or must forever rest largely upon opinion. The income derived by the carrier from the business which it conducts within the state can be ascertained accurately from the records of the company, but the expense of doing that business is not susceptible of mathematical ascertainment. Many of its items apply equally to local and interstate business. The different kinds of traffic are often carried in the same train and not infrequently in the same car. It is absolutely impossible to divide the cost of traffic thus moved and say that this amount should be attributed to local business and that amount to interstate. It is possible, however, to ascertain the relation of the cost of doing the entire business of a railroad to its gross income. These amounts are shown by the books of the company in dollars and cents, and furnish the basis from which all investigation as to the cost of doing local business must start.

The operating expenses of a railroad consist of two principal items: (1) cost of maintenance of plant; (2) cost of conducting transportation. The former item is constant and can justly be divided between the different kinds of traffic in proportion to their volume. As to the second item, however, such a division cannot properly be made, for it is agreed by all who have had occasion to consider the subject, railroad commissioners as well as railroad officials, that the cost of conducting transportation is relative to income, much higher for local business than for the general business of a road. The causes of this added cost are chiefly three: (1) the shortness of the haul; (2) the lightness of the train loads; (3) expense of billing and handling the traffic. The evidence shows that the average haul on local business is between sixty and ninety miles, while the average haul on the entire business of the roads is from 350 to 500 miles. There is no principle of railroading that is better established than that the cost of doing business rapidly decreases as the length of haul increases; that is, if you double the distance you do not double the cost. This is recognized by the defendants the same as by complainants. For example: The rate fixed by the commission on grain per 100 pounds for 100 miles is 9 cents, while for 380 miles it is 18 cents. Thus while the length of haul is increased nearly four times, the rate has only doubled. Another element of added cost is the lightness of the load. The evidence clearly shows two things. First, that the trains in which the local business is done do not average more than one-half as many cars as those in which the general traffic of the roads is carried. Second, that the cars carrying local traffic are only loaded at from one-tenth to one-half of their capacity. Many of the items of expense in conducting traffic are constant, whether the train is large or small, whether the cars are fully or lightly loaded. The carrier furnishes the power, the vehicle, and the trainmen to do the business. If a train which is capable of hauling one thousand tons gets only one hundred tons to haul, the relative cost of moving the traffic to the revenue which it produces is increased nearly ten fold. This matter was aptly illustrated by one of the witnesses, who compared it to the raising of wheat. The expense of raising an acre of wheat is substantially the same whether the yield be ten or thirty bushels, but the cost per bushel in the one case is approximately three times as great as in the other. The third item mentioned is the extra expense of billing and hauling local traffic. It costs as much to bill and pass through the records of the company a box of merchandise paying a freight charge of 50 cents as it does to perform the same service for a carload of wheat paying a revenue of $75. Furthermore, the great volume of traffic is loaded by the shipper and unloaded by the consignee, while local freight has to be stored, loaded and unloaded by the carrier. There are many other minor items of extra expense which were mentioned by the witnesses on behalf of plaintiffs to which we do not deem it necessary to advert. Counsel for defendants makes some point of the fact that the same trains that do local business also collect and distribute interstate freight. That, however, is not important. The amount of interstate traffic that is of this parcel character is but trifling when compared with the entire volume, whereas nearly all the local freight in North Dakota is of that kind. All traffic which moves in small shipments for short distances is burdened with a heavy expense in proportion to its income; but if in any class of business the amount of such traffic is small in comparison with the entire volume, as it is in the case of interstate traffic, its effect upon the proportion of cost to revenue for the entire class is slight, whereas if the traffic is mainly of that character, as in the case of local business in North Dakota, its effect becomes controlling.

Many witnesses were called by the plaintiffs to testify in respect to the relation of cost to revenue in the case of local business as compared with the entire business of the companies. By none of them is the expense of conducting transportation placed at less than twice as much in the former case as in the latter. Mr. Earling, the general manager of the Milwaukee road, a person of great experience and apparent candor, stated that the cost of conducting local business on the entire system of that road was at least twice as great as for through business, and that in sparsely settled communities like North Dakota, where traffic is light, such cost was four or five times as great in the one case as in the other. This was also the testimony of Mr. Fink in the Nebraska case, a witness whom both the circuit and supreme court mention as possessing peculiar qualifications for giving a trustworthy opinion upon such matters. The evidence on this subject is wholly uncontradicted. It is given by men whose many years of experience entitles their opinions to credit. The facts which they set forth as the foundation of their estimates impart to them a high degree of inherent probability. It is true that these witnesses are all identified with the business of common carriers, but the subject is confessedly one for expert testimony, and it is not easy to see how persons can be qualified to testify as experts except by experience in the business of which they speak. We are satisfied that the evidence of the plaintiffs on this subject is in the main both correct and trustworthy, and from it we are led to the conclusion that the cost of conducting transportation in North Dakota is in proportion to revenue at least twice as great for local business as for the entire business of the plaintiffs.

Accepting this as an established fact, the decision of these cases becomes plain. The evidence shows that the general operating expenses and taxes for the four years, 1894, 1895, 1896 and 1897, on the Great Northern road varied from 60.82 per cent to 55.00 per cent of its entire receipts, and on the Northern Pacific road were from 74.19 per cent to 63.44 per cent. For the same period it is also shown that on the former road the expense of conducting transportation was on an average 30.25 per cent of its gross income, and on the latter 31.41 per cent. The amount of reduction in revenue that would be caused by the schedule of rates fixed by the commission is at least 13 per cent. The testimony adduced by complainants tends to show that it is considerably more than that. But the computation of Mr. Phelan, the secretary of the board, fixes the reduction at this percentage and we shall adopt his estimate for the purposes of this opinion. If this percentage of reduction had been applied to the local business of the Great Northern and Northern Pacific roads for the four years mentioned, such business would have been done at an actual loss, and nothing whatever would have been left as a return upon the value of property used in conducting it. This is shown by the following table:

	Percentage of operating expenses and taxes to gross receipts of entire road.....	Extra cost of local business.....	Total cost of local business.....	Earnings as reduced by commission.....	Deficit.....
Great Northern—					
1894	60.82	30.25	91.07	67.00	4.07
1895	56.00	30.25	86.25	87.00	1.25
1896	55.09	30.25	85.34	87.00	*1.68
1897	57.86	30.25	88.11	87.00	1.11
Average	57.94	30.25	88.19	87.00	1.19
Northern Pacific—					
1894	74.19	31.41	105.60	87.00	18.60
1895	67.81	31.41	99.22	87.00	12.22
1896	63.44	31.41	94.85	87.00	7.85
1897	69.92	31.41	101.33	87.00	14.33
Average	68.86	31.41	100.25	87.00	13.25

*Surplus.

From these tables it appears that for every $100 which the Great Northern received from local business during the four years, it was obliged to pay out on an average as operating expenses $88.19. If the schedule of rates fixed by the commission had been in force, in place of every $100 of its revenue, the company would have received $13.00 less, or $87.00, an amount which is $1.19 less than the expense of doing the business. For every $100 which the Northern Pacific received from local traffic it was compelled to pay out $100.25 in operating expenses, and if the schedule of rates fixed by the commission had been in force it would have received only $87, where it did receive $100, and thus would have conducted its local business at a loss of $13.25 on every $100 of traffic.

No reference has been made to the Chicago, Milwaukee & St. Paul road for the reason that the testimony clearly shows that if the rates prescribed by the commission are unreasonable when applied to the traffic of the Great Northern and Northern Pacific railroads, it cannot be justified when applied to the traffic of the Chicago, Milwaukee & St. Paul. That company has only branch lines in the state of North Dakota, and the evidence demonstrates that as to its business the rates now in force are not unreasonable.

In justification of the rates fixed by the commission, two theories are put forth by its secretary and counsel. The first is based upon what the secretary denominates "North Dakota's proportional" of the terminal tariffs for interstate business. The second is based upon a comparison of the rate per ton mile under the commission's schedule, with the rate per ton mile for the entire business of the roads. In support of the first theory, the terminal rates on traffic between St. Paul, Minneapolis and Duluth and points in North Dakota is divided on a ton mileage basis in such proportion as the number of miles in North Dakota bears to the entire haul, and the rate thus produced for that portion of the haul which lies in North Dakota is what is designated as "North Dakota's proportional." This result is invariably found to be less than the rate fixed by the commission, and it is contended that those rates are thereby proven to be reasonable. This theory disregards many of the elements which have been considered fundamental in fixing rates. It takes no account of the length of haul. By the same calculation which it adopts, the rates fixed by the commission for short distances could be proven to be unreasonable when compared with their rates for long distances. For example: The rate fixed by the commission on fourth-class merchandise is 30 cents from Fargo to Mandan. Casselton is an intermediate point twenty miles distant from Fargo. What might be called its "proportional" of the 30 cents rate under the theory proposed would be 3 cents, whereas the rate fixed by the commission from Fargo to Casselton is 10 cents. The plan suggested also fails to take any account of the large volume of business out of terminal points as justifying a reduction of rates from such points.

Under the other theory the rate per ton mile of the entire business of the plaintiffs is found to be much less than the rate per ton mile on local business under the rates prescribed by the commission, and it is claimed that this fact establishes the reasonableness of the commission's rates. This, however, by no means follows. It is axiomatic that the rate per ton mile rapidly decreases as the length of haul increases. The evidence shows, as has already been pointed out, that the average haul of traffic local to North Dakota is less than one-fourth of the average haul on the entire business of the roads. This fact alone would necessitate a much lower rate per ten mile on general than on local business. But it must be further remembered that the great volume of traffic carried by the complainants consists of heavy articles, like coal, lumber, grain and live stock, which are invariably moved at the lowest of all rates, while much the larger portion of local traffic in North Dakota consists of merchandise in less than carload lots, which, under all classifications of freight, is charged a higher rate than any other kind of traffic. In ascertaining the cost per ton mile of doing the entire business of the roads, the enormous tonnage of these heavy commodities, is embodied in the calculation. No distinction is made between groceries and lumber, between dry goods and live stock. It needs no argument to show that the average cost per ton mile of a traffic composed mainly of such articles as lumber, coal, grain and live stock, hauled on an average more than 400 miles, affords no indication of what the average price per ton mile ought to be for a traffic which is made up for the most part of merchandise that is hauled on an average less than ninety miles.

There only remain for consideration two questions of practice.

In the course of the taking of the testimony the attorney general made a demand upon Mr. Kendrick, the general manager of the Northern Pacific road, and upon Mr. Clough, the vice president of the Great Northern road, both of whom were witnesses on behalf of complainants, as follows: "I now ask you to prepare a table showing the freight handled in each of the four years ending June 30, 1894, June, 30, 1895, June 30, 1896, and June 30, 1897, so as to show for each year the amount of freight handled under each of the following classes: (1) Freight shipments local in North Dakota; (2) freight shipped into North Dakota; (3) freight shipped out of North Dakota; (4) freight shipped through North Dakota, making the table show the number of tons under each class and the ton miles in each class for the total actual haul; also show the actual freight receipts for each of the four classes mentioned above." The witnesses upon the advice of counsel refused to furnish these statements. It was admitted at the time that it was physically possible to prepare the tables and the request was declined upon the ground that the evidence was immaterial and that the preparation of it would involve great expense and delay. At the opening of the argument of the cases, the attorney general moved the court to strike out the evidence of Mr. Kendrick and Mr. Clough on account of this refusal. There are two sufficient reasons for overruling this motion. First, the remedy which counsel asks is not the one he should have pursued. If he was entitled to this evidence and the witnesses refused to furnish it, his proper remedy was to apply to the federal court of the district in which the testimony was taken for process to compel its production. Second, if such application had been made we do not think the process could have been properly granted. The record in this case shows that these tables could only be prepared from an actual examination of all the way-bills under which the business of the companies was conducted for the four years named, and by a separation of the business as shown by those way-bills into the classes mentioned in the demand of the attorney general. This would be a task nearly, if not quite, equal to that of doing over again the entire accounting work for those years. The evidence shows that over one hundred clerks are employed by each of the companies in examining the way-bills and reports of the business and entering the same in their proper accounts. A compliance with the request would therefore have required the plaintiffs to employ a vast force of clerks for a long period of time to go over their entire business for those years. We know of no rule of evidence by virtue of which one party to a suit can require another to go to such expense for his benefit unless the expense is first tendered.

The Great Northern and Northern Pacific companies for the purpose of ascertaining the character of the local business and the reduction which would have been made in that business if the rates fixed by the commission had been in force, caused the actual way-bills for certain periods to be examined and the effect upon the business of an application of the commission's rates to be computed. The Northern Pacific selected the months of April and October, 1896, and the Great Northern the months of January, February, April, July, October and November of the same year. The officers of the road testified that these months were such as would fairly represent the average business of the companies and that the only reason why the same investigation was not conducted for a longer period, was the great expense and labor involved. The attorney general objected to this evidence, not upon the ground that the months selected had not been honestly selected for the purpose of showing the business of the companies, but that it was impossible that the business of the companies for a term of years could be fairly shown by the periods selected, owing chiefly to the shortness of those periods. We do not think this objection is well taken. It goes to the trustworthiness of the evidence, but certainly affords no grounds for its entire rejection. This is especially true when it is taken in connection with other testimony tending to show that the relative volume of local and interstate business is fairly represented by the periods selected and that those periods also fairly represent the business of the companies during the years under investigation.

A large number of tables were prepared in the accounting departments of the several roads bearing upon different features of the business of the companies for the years 1894, 1895, 1896 and 1897. Those tables were compiled pursuant to the directions of general officers, who testified that they were correct according to their best judgment and belief. The record shows that from forty to fifty clerks were employed by each of the companies in the preparation of the different tables. These clerks were not called to testify that the several computations made by them were correct, but the heads of departments under whose immediate supervision the work was done were called as witnesses, and the methods of preparing the figures from which the tables were compiled was fully explained and their trustworthiness shown. The clerks were also present in the building where the testimony was taken, as were likewise the way-bills and other records from which they made their computations. Counsel for defendant was invited to call any of the clerks for the purpose of cross-examination, and was given the freest access to all the papers and records from which the computations were made. He objected to the evidence upon the ground that it was incompetent. The objection cannot be sustained. To have called each of the clerks would have added very little to the trustworthiness of the evidence. No clerk conducted any entire investigation, but various details were placed in the hands of forty or fifty different employes and each contributed his computation to the general result. No clerk could have testified that the tables were correct, for the reason that they were not made by him; neither could any single clerk testify that the figures from which the tables were compiled were correct, but he only contributed a small fragment to the general result. The method adopted was the only practicable one for conducting the investigation. It would have been absolutely impossible for any one man to have compiled the general result without delaying the case for years. A reasonable safe-guard against falsification in the preparation of such statements is furnished by placing the records from which they are compiled freely at the disposal of the adverse party. It was the duty of the companies to do this, and to give the attorney general the fullest assistance in explaining such records and to allow him to place the same in the hands of expert accountants, if he so desired, for the purpose of detecting error or falsification in the testimony as prepared by the companies. The record shows that this was done throughout the taking of the testimony in these cases. We must assume that the attorney general was satisfied of the correctness of the testimony from the fact that he declined to investigate its trustworthiness.

Counsel for defendants cites as directly in point a recent decision of the United States circuit court for the district of South Dakota in the case of Chicago, Milwaukee & St. Paul Railway Company vs. Board of Railway Commissioners, which involved substantially the same issues as the cases under consideration. There can be no criticism of the law as declared in the opinion in that case, but the learned judge seems to have proceeded upon a fundamental error of fact. In determining the rate of income, which the company was earning upon the value of its property, as fixed by the court, no allowance whatever is made for operating expenses, but the entire gross receipts of the road are treated as net profits. This error greatly weakens, if it does not destroy, the authority of the opinion.

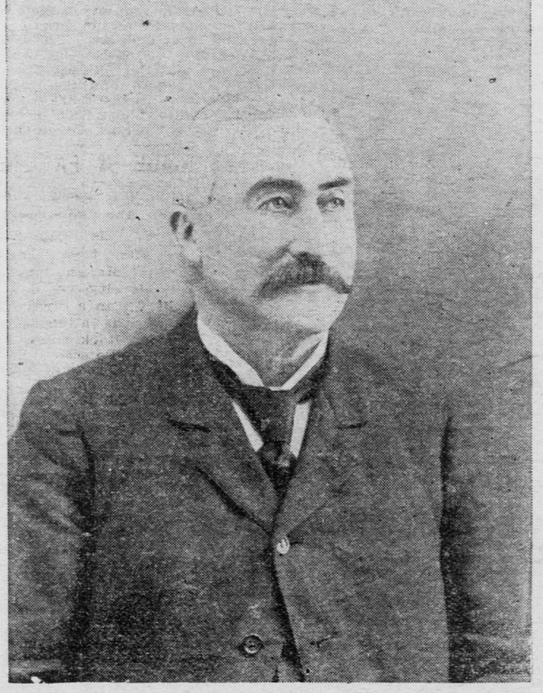
It follows from what has been said that a decree must be entered in each of the cases in accordance with the prayer of the bill therein, and it is so rendered; but following the practice adopted in the case of Smyth vs. Ames, right will be reserved in the decree to the commission to apply to the court for such further relief as it may be advised, in case circumstances shall so change that the rates fixed by them will yield to the companies a reasonable compensation for the services required.

Thayer, circuit judge, concurs.

REPRESENTATIVE P. B. WINSTON, MINNEAPOLIS.

P. B. Winston was born in Hanover county, Virginia, Aug. 12, 1845. He got a liberal common school education and entered the cavalry service in Lee's army in 1862. He was promoted in 1863, and assigned to the staff of Brig. Gen. Thomas L. Rosser. He was with Lee's surrendered army at Appomattox April 9, 1865. He returned to his farm in Hanover county, and followed farming until April, 1872. He came to Minnesota in May, 1872. He was first employed on the Northern Pacific railroad, and remained there until September, 1873. He was two years with the government land survey in Northern Minnesota. He commenced contracting in 1875 and is still in that business. He was married in Minneapoli in 1876. He was nominated for mayor of Minneapolis in 1888, and was defeated by Babb in a close election. He was nominated for mayor again in 1890 and elected by a large majority. He was elected to the legislature in 1892 from the Thirty-second district (Republican), and was defeated for the same position by a close vote in 1894. He was elected again Nov. 8, 1898, for the legislature from the same district, now the Forty-first. He has been a delegate to the last three national Democratic conventions, and two or three terms a member of the Democratic state central committee, the last two treasurer of the committee.

SENATOR M. R. EVERETT, WATERVILLE.



Mahlon R. Everett, senator from Le Sueur county, was born in Champaign county, Ohio, Jan. 11, 1842. Besides a common school education he attended Wittenberg college, at Springfield, O., for a short course. He taught school in Ohio after leaving school, and in 1865 and 1866 followed teaching in California. He came to Minnesota in 1867 and located in Le Sueur county, having remained there ever since. He studied law with Cadwell & Severance, and was admitted to the bar in 1872. He has practiced law most of the time since. He was a partner of Judge Cardwell ten years and in 1881 went to Waterville and engaged in the practice of law and in the banking business. He held the office of county superintendent for nine years, and was county attorney for six years. He was elected mayor of the city of Waterville in the spring of 1898, just after organizing as a city. He has always been a Democrat in politics. He was nominated for state senator, without opposition, and received over 450 majority over J. W. Lloyd, who had held the office for four years.

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Live Stock Markets.

SOUTH ST. PAUL, Dec. 24.—The receipts at the Union stockyards today were: Cattle, 100; calves, 50; hogs, 800. There was practically nothing doing in the cattle alleys. The run was light and there were no buyers. All kinds of cattle quoted steady. The hog market was decidedly active. The opening was 10c higher and closed strong. The bulk of the butchers sold at $3.35 and $3.37½. The quality was fair. The sheep market continues dull and weak. There were none in and no demand.

Hogs—Comparative receipts:
Total for today 800
A week ago 800
A year ago ..... None

Market opened 10c higher and closed strong. The range on butchers was $3.25 to $3.37½, with the bulk selling at $3.35 and $3.37½. The quality was fair. Representative sales:

Butchers—

No.	Wt.	Dkg. Price.	No.	Wt.	Dkg. Price.
85	190	40 $3 35	62	223	80 $3 37½
54	238	.. 3 40	89	185	.. 3 35

Packers—

3	364	40 $3 10	6	400	.. $3 10

Rough—

1	160	.. $2 37½

Pigs—

7	126	.. $3 00	5	118	.. $3 00

Cattle—Comparative receipts:
Total for today 150
A week ago 125
A year ago ..... None

Market steady on all kinds of cattle. The run was light and there was little doing. Representative sales:

Butcher Cows and Heifers—

No.	Wt.	Price.	No.	Wt.	Price.
1	1200	$3 15	1	1010	$2 90
1	940	3 00			

Stock Cows and Heifers—

2	600	$3 00	1	740	$3 00
1	580	2 90	1	610	2 85

Stockers and Feeders—

1	340	$3 30	1	510	$3 15
1	480	3 20	1	900	3 00

Thin Cows and Canners—

1	980	$2 00	1	1020	$2 25
1	870	1 50			

Bulls—

1	1200	$3 00	1	560	$2 50

Veal Calves—

1	100	$5 00	1	120	$5 25

Milkers and Springers—

1 c and 1 c		$35 00	1 cow		$28 00
1 cow		22 00			

Sheep—Comparative receipts:
Total for today ..... none
A week ago ..... none
A year ago ..... none

There were no sheep in and little or no demand. Prices low and expected to continue so until after the holidays. Representative sales:

1 mutton	160	$3 25	2 ewes	120	$3 25
3 mutions	167	3 15			

Day's Sales—

	Cattle.	Hogs.	Sheep.
Swift & Co	10	760	..
F. M. Mosher	7	...	..
E. W. Karn	2	5	2
Unclassified, late sales	10	35	..

MILCH COW EXCHANGE, South St. Paul, Dec. 24.—Lytle & Raeburn's report: Market dull and inactive. But few choice cows in. All grades quoted steady. Representative sales:

1 cow ..... $35 | 1 cow $30

AMONG THE SHIPPERS—The following were on the market: M. B. Cassell, Clifton, hogs; L. M. Weston, Hogfield, 2 loads cattle, calves and hogs; P. H. Holton, Kenyon, hogs; Gibbons & Gilbert, West Concord, hogs; Jentz Bros., East Henderson, hogs; H. W. Sisdale, Goodhue, hogs; L. Wooders, Red Wing; hogs; J. Lehm, Sanborn, hogs.

MIDWAY HORSE MARKET, Minnesota Transfer, St. Paul. Barrett & Zimmerman's report: Market opened up moderate, but revived to an active trade towards the closing of the day. The bulk of stock negotiated was logging horses. The cold weather is creating a need for that class of horses in the woods. The disposal of farm horses not as heavy as expected. Receipts of horses not as numerous as yesterday, but consisted of the best grade drafters. The nominal value of serviceable, sound horses from 4 to 8 years as follows:

Drafters, choice to extra	$80 to $130
Drafters, common to good	70 to 100
Farm horses choice to extra	75 to 105
Farm horses, common to good	50 to 65

KANSAS CITY, Mo., Dec. 24.—Cattle—Receipts, 700; market strong, unchanged. Hogs—Receipts, 5,000; market strong to 10c higher; bulk of sales, $3.35@3.45; heavies, $3.40@3.55; packers, $3.30@3.52½; mixed, $3.20@3.45; lights, $3.10@3.35; Yorkers, $3.30@3.35; pigs, $3@3.20. Sheep—Receipts, 1,000. Market, firm; lambs, $3.75@5.25; muttons, $2.50@4.

ST. LOUIS, Dec. 24.—Cattle—Receipts, 200; market steady. Hogs—Receipts, 3,000; market 10c higher and strong; pigs and lights, $3.20@3.40; packers, $3.35@3.45; butchers, $3.50@3.60. Sheep—Receipts, 300; market strong; muttons, $3.50@4; culls and bucks, $2