

two or more. And it also clearly appears that a determining circumstance with the shipper always is the advantage of a through or continuous carriage without transshipment or breaking bulk; that in fact, speaking, generally, of two routes, otherwise equal, the one offering through cars, while the other does not, making transshipment necessary, the shipper would always select the former. And if he did, the local railway would be bound to follow his directions. These circumstances, which are, I think, abundantly proved, make it clear that "controllable freight," that is, freight which defendants could or can control, is limited to such freight as is placed in cars at the point of shipment to be thence carried in the same cars without transshipment to the place of destination.

The agreement in fact made and could make no difference. The same competition continued, and what was "controllable" before remained so afterwards, and by exactly the same methods, for the simple reason that the real control rests in the hands of the shipper, and not of the railway company.

Then, what did the parties intend by the use of the term "controllable freight" in the light of the surrounding circumstances?

Transshipment being out of the question, owing to the objection of the shipper, there were only two modes left by which the agreement could be reasonably performed—one that plaintiffs should as theretofore continue to supply the cars, as the other competing lines were doing, the other that the defendants should themselves do so. There is nothing in the agreement itself one way or the other on the subject. The Chancellor's opinion evidently was that the parties intended by the agreement to effect a change in this respect, but, if so, would it not be reasonable to expect to find an express stipulation in it of such intention? And finding none, is it not reasonable to infer that the parties did not intend such an important change, but rather to continue as before, the conditions of the competition remaining the same? That at all events is my interpretation of the agreement. And it is, I think, strongly confirmatory that such was also the interpretation of the parties themselves for several months after the agreement was made.

The other mode, that the defendants should supply the cars, thus necessitating a large increase in their car equipment, especially in the light of the fact that the other through lines were and are ready and willing to supply them, seems