

ating on defendants' line. And at that time and prior thereto, the usual custom was for plaintiffs to supply the necessary cars to carry the goods from shipping points to destination, a custom then common to all four trunk lines, and which the other three still continue.

After the agreement was made, plaintiffs continued the custom for about 9 months, and then refused any longer to do so, and for the first time asserted that under the agreement it was the duty of defendants to supply such cars.

The Chancellor adopted plaintiffs' contention. In his judgment he uses the following language: "Upon the proper meaning of the agreement, I think plaintiffs are right, and that its terms cannot be modified by a reference to a previous practice, in different circumstances. A new relation was established by the terms of the written and sealed contract, and under it the obligation undertaken by defendants was to ship all controllable freight via plaintiffs' lines, for all points reached by plaintiffs lines and connections. Had the intention been to give plaintiffs only a preferential option over other competing trunk lines to obtain its foreign freight, upon sending cars to receive it, different language would have been employed to manifest this intent." And the formal judgment accordingly declares the true meaning and intent of the agreement to be "that the defendants should ship by the plaintiffs' lines and their connections all freight which could be shipped by such route as the defendants might be free to select as between the shipper and the defendants." And a reference was ordered to ascertain the damages, but limited to the period subsequent to that during which plaintiffs had been supplying cars.

With deference, it appears to me that the real question in dispute has not been, at least expressly, determined by the judgment now under review. Defendants did not, as I understand them, dispute that they were bound to send all "controllable freight" by plaintiffs' lines. They can, and no doubt do, subscribe to every word which I have quoted from the formal judgment; but then, after all, what is "controllable freight?" That is the real question. The phrase is not at all self-explanatory, and is therefore properly the subject of explanatory evidence by business experts familiar with the class of business in question, several of whom were examined. From this evidence it clearly appears that it is the shipper who alone controls the route, where he has a choice of