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EXHIBITS.

A

New Jersey Court of Errors and Appeals

Notice of Appeal.

(Filed March 27, 1922.)

NEW JERSEY SUPREME COURT.

EMMA M. LEBKUECHER, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law. On Appeal.

To:

Gustave Haussling, Esq.,
Attorney for Plaintiff.

TAKE NOTICE, That the defendant appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in the Supreme Court in the above stated cause.

Dated March 16th, 1922.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

(Endorsed)

Service of copy of within notice of appeal is hereby acknowledged. Dated March 20, 1922.

GUSTAVE HAUSSLING,
Attorney for Plaintiff.

Grounds of Appeal.

(Filed April 24, 1922.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

EMMA M. LEBKUECHER, *Plaintiff-Respondent,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	In Tort. Grounds of Appeal.

And now comes the defendant-appellant, The Pennsylvania Railroad Company, by Wall, Haight, Carey & Hartpence, its attorneys, and sets down the following grounds of appeal from the judgment of the Supreme Court, appealed from in the above stated cause:

The Supreme Court, in rendering said judgment, erred in giving judgment for the plaintiff-respondent instead of for the defendant-appellant.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Apellant.

(Endorsed.)

Service of a copy of within Grounds of Appeal is acknowledged April 11th, 1922.

GUSTAVE HAUSSLING,
Attorney for Plaintiff-Respondent.

C

Opinion of the Supreme Court.

(Filed March 4, 1922.)

NEW JERSEY SUPREME COURT.

November Term 1921.

EMMA M. LEBKUECHER,
Plaintiff-Respondent,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Submitted November 30th, 1921; Decided February 21, 1922.

1. The plaintiff upon disembarking from a railroad train delivered to an agent in charge of the parcel room at the station two parcels, received from the agent two checks, and paid him ten cents for each of the parcels checked. The agent upon presentation later of one of the checks stated that the parcel checked, a suitcase, had been by mistake delivered to another. Suit was instituted against the railroad company to recover the value of the suit case and contents. At the parcel room notices limiting the liability of the railroad company to twenty-five dollars in the event of loss were posted and a like notice in the form of a contract was printed on the back of the checks. The District Court found as a fact that the plaintiff did not know and had not been apprised of the contents of the notices limiting liability. Held, that no duty was imposed upon the plaintiff to read the check, and that the plaintiff in the absence of knowledge from the railroad company of the special terms upon which the

bailment was accepted could recover the value of the suitcase and contents.

2. While the measure of damages for lost articles is their market value at the time of loss, yet the original cost, being an element to be considered with others in ascertaining the market value, may be received in evidence.

On appeal from the District Court of the Secon Judicial District of the County of Essex.

Argued before Justices Swayze, Black and Katzenbach.

Wall, Haight, Carey & Hartpence, Esqs., for Appellant.

Gustave Haussling, Esq., for Respondent.

The opinion of the court was delivered by Katzenbach, J.

This is an appeal by the defendant below from a judgment entered in the District Court of the Second Judicial District of the County of Essex. On January 31st, 1921, Mrs. Emma M. Lebkuecher, the plaintiff, arrived at the Market Street station of the Pennsylvania Railroad in the City of Newark from Harrisburg, Pa. Upon disembarking, a porter carried by her direction to the parcel room of the station a suit case and a hat box. These were delivered to the agent in charge of the parcel room and Mrs. Lebkuecher received two checks and paid to the agent 10c. for each of the parcels checked. The agent placed the duplicate checks upon the suit case and hat box. In about three quarters of an hour, Mrs. Lebkuecher returned and presented the checks to the agent. He delivered to her the hat box and informed her that he had delivered to another person by mistake the suit case for which she held the check. The railroad company failed in its efforts to recover the suit case. Mrs. Leb-

kuecher then instituted this action against the railroad company to recover the value of the suit case and its contents. Upon the back of the check there was printed an endorsement, reading as follows:

> "The person accepting this check hereby agrees in consideration of the low rate at which it is issued, that no claim in excess of $25.00 shall be made against the Railroad Company for the loss of, or injury to, any package, valise or other article which may have been deposited with it and for which this check has been issued".

In the parcel room there was posted inside at the window a notice to the effect that the Railroad Company would not be responsible for loss, damage or detention of articles left in storage for any amount in excess of $25.00.

The opinion and findings of the trial court based upon the requests of the defendant cover fully and ably the questions presented. The court declined to find for the defendant or to limit its liability to twenty-five dollars upon the theory that the terms and conditions on the check and placards were binding upon the plaintiff, and found that the defendant was guilty of negligence in failing to return the suit case to the plaintiff; that the plaintiff was not chargeable with notice of the terms and conditions printed on the checks and placards and as a fact did not know the contents thereof and had not been apprised thereof by the agent in charge of the parcel room; that the checks and placards did not constitute a contract limiting the liability of the defendant; that the bailment was one for hire and the mutual benefit of the parties; that the bailee was not bound to use ordinary care in safeguarding the

plaintiff's property and as a fact it did not use ordinary care and the defendant was liable for the value of the suit case and contents.

The findings of fact made by the trial court to the effect that the plaintiff did not know and had not been informed by the agent of the defendant of the contents of the check and placards differentiates this case from those cases where the bailor has accepted a check with full knowledge of the limitation of the bailee's liability therein expressed. In the present case, as the trial court found that there was no express contract made between the parties limiting the railroad company's liability, the only contention which can be made by the appellant to reverse the judgment is that the burden was upon the plaintiff to ascertain the terms on which the defendant accepted the bailment and that as the terms were printed on the checks and posted in the parcel room these terms were binding upon the plaintiff as an implied contract and determined the extent of the defendant's liability. This is in fact the contention made by the appellant. The Railroad Company's insistence is that the burden was on the plaintiff to ascertain the terms on which it accepted the bailment and not upon it to see that these terms were brought specifically to the attention of the plainiff. This contention of the appellant we cannot accept. We concede that there are cases supporting this contention, but feel that the weight and reason of the contrary view should prevail. The rights, duties and liabilities of the bailor and bailee must be determined from the terms of the contract between the parties, whether express or implied. Where there is an express contract, the terms thereof control, since both the bailor and the bailee are entitled to impose on each other any

terms they respectively may choose, and their express agreement will prevail against general principles of law applicable in the absence of such an agreement. 6 Corpus Juris, p. 1110, sec. 42. The parties to a bailment may diminish the liability of the bailee by special contract, the principle being that the bailee may impose whatever terms he chooses, if he gives the bailor notice that there are special terms and the means of knowing what they are; and if the bailor chooses to make the bailment, he is bound by them, provided the contract is not in violation of the law or of public policy, and that it stops short of protection in case of fraud or negligence of the bailee; and provided further that the terms of the contract are clear, such stipulations being strictly construed. 6 Corpus Juris, p. 1112, sec. 44.

This, we think, a correct statement of the law. The bailee must bring home to the bailor notice of the special terms upon which the bailment is accepted in order to limit liability. In the present case, the District Court found as a fact that Mrs. Lebkuecher did not know and was not informed of the limitation of the liability, expressed on the check or upon the placards. In this court we must accept the findings of fact made by the District Court, if there be evidence to support them. There was such evidence in the case. It being necessary for the bailee to give to the bailor notice of the special terms of limitation of liability, and the trial court having found that such notice was not given, it follows that the bailee is responsible for the value of the suit case and contents and is precluded from limiting its liability therefor to $25.00.

The case of *Healy* vs. *N. Y. Central and Hudson R. R. Co.* 153 App. Div. 516 (affirmed 210

N. Y. 646), sustains this view. In this case a man checked a handbag at a station and received a check containing on the back thereof a limitation of liability to $10.00 to which his attention was not called. The hand bag was lost. It was held that the bailor could recover the value of the bag and contents. In a concurring opinion in this case, it was said: "If the (bailor) did not know it (purported limitation of liability to $10.00), I think the law imposed no duty upon him to read his check to find whether or not there was a contract printed thereon, or that he was guilty of negligence in not so reading it, because he had no reason to apprehend that a contract was printed thereon. This case was followed in *Dodge* vs. *Nashville, Chattanooga & St. Louis R. R. Co.* 215 S. W. 275.

The view which we have expressed finds support in our own state in the case of *Hill* vs. *Adams Express Co.*, 82 N. J. L. 373 (Court of Errors and Appeals), which, although not a case between bailor and bailee, but between carrier and shipper, holds that where there is no assent by the shipper to the limitation of the value of the goods, nor knowledge that the carrier's receipt contained a contract limiting the liability of the carrier, the limitation is not binding upon the shipper. We cannot see any sound basis for holding differently merely because the relation between the parties is that of bailor and bailee, rather than that of shipper and carrier.

The appellant further contends that the evidence discloses no negligence. The District Court held otherwise and we feel that the failure of the agent of the defendant in the parcel room to return the plaintiff's suit case within an hour of the time she had checked it and the admission that it had been delivered to another is sufficient

evidence to warrant the finding of negligence on the part of the defendant.

The suit case contained articles of wearing apparel and adornment. The plaintiff was permitted to testify as to the cost of many of these articles. Exceptions to the admission of this testimony were taken and are urged on this appeal. While the measure of damages was not the original cost but the market value of the lost articls, yet original cost is an element to be considered with others in ascertaining the market value at the time of loss. We think the testimony admissible upon the authority of *Uuce* vs. *Jones*, 39 N. J. L. 707.

The judgment will be affirmed with costs.

Judgment of Affirmance.

(Entered March 15, 1922.)

NEW JERSEY SUPREME COURT.

EMMA M. LEBKUECHER, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant.*	Rule affirming Judgment.

This cause coming on to be heard at the November Term, and being argued by Wall, Haight, Carey & Hartpence, of counsel for the defendant-appellant, and Gustave Hausling, of counsel for the plaintiff-respondent, and after due consideration of the questions brought upon this appeal, and being of the opinion that the judgment of the District Court of the Second Judicial District of the County of Essex should be affirmed in all things;

It is, therefore, on this day of March, Nineteen Hundred and Twenty Two, Ordered, adjudged and decreed that the judgment of the District Court of the Second Judicial District of the County of Essex be in all things affirmed with costs; and that the record and proceedings be remitted to the District Court of the Second Judicial District of the County of Essex to be therein proceeded on according to law and the practice of said court.

Entered March 15, 1922.

On motion of Gustave Haussling,

Attorney for Plaintiff-Respondent.

Notice of Appeal.

Filed September 7, 1921.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF ESSEX

EMMA M. LEBKUECHER,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, a corporation,
Defendant.

In Tort.

Notice of Appeal.

SIR:

TAKE NOTICE that the defendant, The Pennsylvania Railroad Company, a corporation, hereby appeals to the New Jersey Supreme Court from the judgment of the District Court of the Second Judicial District of the County of Essex, rendered in the above stated action on the twenty-fourth day of August, nineteen hundred and twenty-one.

Dated August 30, 1921.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

To GUSTAVE HAUSSLING,
Attorney for Plaintiff,
and EMMA LEBKUECHER,
Plaintiff.

Specification of Errors.

Filed October 19, 1921.

NEW JERSEY SUPREME COURT

EMMA M. LEBKUECHER, *Plaintiff-Respondent,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Specification of Errors On Appeal In Tort

The following is a specification of the determinations of the district Court with which appellant is dissatisfied in point of law:

1. The Court erred in admitting, over the defendant's objection, plaintiff's testimony as to the contents of her suit case.

2. The Court erred in admitting, over the defendant's objection, plaintiff's testimony as to the value of the several articles contained in her suit case.

3. The Court erred in admitting, over the defendant's objection, plaintiff's testimony as an expert as to the value of the Spanish lace scarf.

4. The Court erred in admitting, over the defendant's objection, plaintiff's testimony as to the value of the solid gold lorgnette.

5. The Court erred in admitting, over the defendant's objection plaintiff's testimony as to the value of the black beaded bag.

Specifications of Error

6. The Court erred in admitting, over the defendant's objection, plaintiff's testimony as to the prevailing values of solid gold beads.

7. The Court erred in admitting, over the defendant's objection, plaintiff's testimony as to the prevailing values of combs similar to the tortoise shell comb.

8. At the close of plaintiff's case, defendant moved for a non suit on the ground that no negligence had been shown on the part of defendant. The court erred in denying said motion. Defendant was granted an exception.

9. The Court erred in refusing to find, at the request of the defendant, in favor of the defendant and against the plaintiff.

10. The Court erred in refusing to find, at the request of defendant, that the damages, if any, which the plaintiff should recover of the defendant, should be limited to an amount not exceeding $25.

11. The Court erred in refusing to find, at the request of defendant, that the terms printed and contained in the parcel check (P1) and the placards (D1) constituted the extent of the holding out of defendant and its corresponding legal duty, in accepting the bailment of the parcel deposited by plaintiff.

12. The Court erred in refusing to find, at the request of defendant, that the terms and conditions contained in the parcel check and the placards referred to were binding on the plaintiff,

and her recovery, if she should recover at all, against the defendant, must be limited in accordance with those terms.

13. The Court erred in refusing to find, at the request of defendant, that no negligence of defendant in the handling of the parcel deposited by plaintiff, was shown, and therefore, there could be no recovery against defendant by plaintiff in this case.

14. Defendant requested the Court to find that the burden of proof was on the plaintiff to establish negligence of defendant and such burden had not been sustained, and plaintiff was therefore not entitled to recover in this action. The Court correctly found that the burden of proof was on the plaintiff to establish negligence on the part of defendant, but erred in finding as matter of law, that plaintiff sustained the burden and made out a prima facie case which defendant did not rebut.

15. Defendant requested the Court to find that the burden was on the plaintiff to ascertain the terms upon which the defendant accepted the bailment of the suit case and not on the defendant to see that those terms were brought specifically to the attention of the plaintiff. The Court erred in finding that it was not the legal duty of plaintiff to ascertain if defendant was accepting the parcel on any other terms than those imposed by the Common Law on a similar bailee and that it was the duty of the bailee, if it wished to limit its liability to bring such limiting terms to the attention of the bailor so that she might accept or refuse them as she saw fit.

16. Defendant requested the Court to find that the regulations contained in the parcel check were binding on the plaintiff. The Court erred in finding that the regulations, not having been called to plaintiff's attention and she having no knowledge of them, were not binding upon her.

17. The Court erred in refusing to find, at defendant's request, that plaintiff was chargeable with notice of the conditions and terms printed on the parcel check and the placards.

18. The Court erred in refusing to find, at defendant's request, that plaintiff was negligent if she did not read the check and placards and ascertain their contents.

19. The Court erred in refusing to find, at defendant's request, that plaintiff was estopped from denying knowledge of the terms and conditions contained in the parcel check and the placards.

20. The Court erred in giving judgment in favor of plaintiff.

21. The Court erred in refusing to give judgment in favor of defendant.

22. The Court erred in finding that the plaintiff was entitled to damages against the defendant for the loss of her suit case, and that the amount of such damages might be ascertained from plaintiff's own testimony.

23. The Court erred in finding that the plaintiff was entitled to a judgment of $500 against the defendant.

Specifications of Error

24. The Court erred in finding that the value of the goods alleged to have been lost was about $500.

25. The Court erred in the foregoing and divers other respects, and appellant is dissatisfied with same in point of law.

Dated October 6th, 1921.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant.

State of Demand.

(Filed April 25, 1921)

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF ESSEX.

EMMA M. LEBKUECHER, *Plaintiff*,	
vs.	State of Demand
PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant.*	In Tort

The plaintiff alleges and says:

1. That on January 31, 1921, she was lawfully in possession of a certain suit case and containing various articles more particularly set forth in the schedule hereto annexed, and of the value of $586.25.

2. That on the day aforesaid, for a consideration, the plaintiff checked said suit case and contents with the defendant at its parcel room at Market Street, Station, Newark, New Jersey, and which was to be returned to her, the said plaintiff, whenever she should demand the same.

3. That on the day aforesaid, the plaintiff demanded of the defendant the return of the said suit case, with contents thereof, which the defendant refused, and the defendant converted the said proprty to its own use.

4. Plaintiff demands, as damages, the sum of $500.

GUSTAVE HAUSSLING,
Attorney for Plaintiff.

State of Demand

SCHEDULE.

	Black Satin Gown	$85.00
	Black Brocaded Satin Gown	90.00
	Black Taffeta & Cloth Gown	50.00
	Black Embroidered Serge Gown	40.00
	One paid Kid Shoes	15.00
10	One pair Kid Shoes	12.00
	One Pink Embroidered Kimona	7.00
	Underclothing	25.00
	Black Silk Petticoat	9.00
	One large real lace Spanish Scarf	40.00
	One pair Gray Silk Gloves	2.25
	One pair Gray Silk Gloves	1.50
	One pair long White Kid Gloves	7.00
	One pair winter gloves	1.25
	One pair white Silk Gloves	3.00
20	Solid Gold Large Lorgnette	30.00
	Black Beaded Bag	35.00
	String of real Coral Beads	20.00
	String of real India Matrix & Solid Gold Beads	35.00
	One large real Tortoise Shell Comb for the hair	25.00
	Comb set with rhine stones	7.00
	Two Pins for the hair	4.00
	Large solid Silver hair brush	15.00
30	Solid silver buffer	3.00
	Solid silver scissors	1.75
	Solid silver thimble	.50
	Band & slide for neck	5.00
	Spectacles	8.00
	Wicker suit case	5.00
	Wool Spencer	4.00
		$586.25

40

Testimony.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF ESSEX.

EMMA M. LEBKUECHER, *Plaintiff,*	
vs.	In Tort
PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Stenographer's Minutes.

Irvington, New Jersey, May 13, 1921.

Before Hon. CHARLES H. STEWART, Judge.

GUSTAVE HAUSSLING, Esquire,
Attorney for Plaintiff;
MESSRS. WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

Mr. Haussling: If the Court please, this is an action to recover the value of the contents of a suit case which was deposited at the defendant's parcel room on January 31st of this year. It was left in the parcel room for the space of about three-quarters of an hour or so, and when the plaintiff came and demanded the suit case she was informed that it had been given out by mistake to a third party.

EMMA M. LEBKUECHER, sworn.

Direct Examination by Mr. Haussling:

Q. Mrs. Lebkuecher you are the plaintiff in this suit? A. I am.

Q. You were in possession of a suit case on the 31st of January of this year? A. I was.

Q. Now, did you have occasion to check that suit case at the parcel room of the Pennsylvania Railroad at Market Street, Newark? A. I did.

Q. Will you tell the Court just what transpired when you checked that suit case? A. I came in on the Pennsylvania Railroad from Harrisburg, Pennsylvania; I got there at 3.15, that is when the train was due; I had the porter—I was in the Pullman and I had the porter carry my suit case down, as I had a little business to attend to before I went to visit my sister-in-law, and they gave me two checks. I had a small box, and in that box was contained a hat, and then I had a very large dress suit case, it was a wicker suit case, which was made in Japan, unusually large: I had it filled with all my best clothes, because I was going to visit; and I gave it in to the office and they gave me two checks, one for my hat box and one for my suit case; it was raining and very disagreeable. I was gone about three-quarters of an hour: I had to attend to some business before I went to my sister-in-law, and when I came back I handed out—before I said anything, the man in charge said, "I have given it out, I have given it out, I have given it out." I didn't know what he meant at first, I didn't comprehend: I said, "What did you give out?" He said, "I gave out your suit case to someone else." Well, my suit case was valuable and the

contents of the suit case—

Q. Now, Mrs. Lebkuecher, have you the coupon that was given to you when the suit case and hat box were checked? A. Yes.

Q. Now, is this the check that you received in return for what? A. That was for my suit case.

Q. When this check was given to you was anything said to you? A. No, sir.

Mr. Hartpence: I object to that as immaterial and I move to strike it out.

The Court: What is the materiality of what was said? They gave her a check for the suit case.

Mr. Haussling: All right: I will withdraw it.

The Court: It will be stricken out.

Mr. Haussling: I offer this coupon in evidence. (Parcel room coupon No. 10-94-24 admitted in evidence, without objection, and marked Exhibit P-1).

Q. When you were informed that the suit case had been given out to a third party, what did you then do? A. I asked to see the suit case that was left in place of mine.

Q. Yes. A. The minute I looked at it I knew that the party wasn't honest; I never received my suit case, or the contents.

Q. Now, did you make out a list of contents of that suit case. A. I did.

Q. When did you make it out? A. I made it out that evening.

Q. And the grip was packed when,—or the suit case? A. The suit case was packed the morning that I left, on the 31st day of January.

Q. You packed that suit case yourself? A. I certainly did.

Q. Have you got that list with you? A. Yes.

Q. Will you tell us the contents of that suit case?

Mr. Hartpence: I object to that as immaterial, Your Honor.

The Court: Why immaterial?

Mr. Hartpence: Under the terms of the coupon, Your Honor, the liability of the parcel room custodian, or the Pennsylvania Railroad Company is limited to the valuation of $25. It seems to me therefore, whatever the suit case may have contained is immaterial. She deposited her suit case and she says she hasn't got it back, so I suppose there is, at this point at least liability, and that liability could not exceed $25.

The Court: Isn't it a fact that it has been held that unless the attention of the person depositing a suit case or leaving an article with an express company or a baggage room is called to the phraseology, or the fact that there is an express limiting contract, that they are not bound by it?

Mr. Hartpence: Well, there are some cases that have held that where baggage is deposited: but this was not deposited as baggage for the purpose of transportation. This was just simply left in the parcel room.

The Court: What difference does it make, whether it is left for transportation or whether it is left for him until called for?

Mr. Hartpence: The difference is that in one instance the carrier would accept it as a common carrier, subject to a common carrier's liability to transport; in the other he simply receives it as bailee. Of course the difference there is this, that, as Your Honor

will recall, the basic liability of a common carrier is that perhaps of an insurer, and he limits his responsibility by contract, and then there are certain other situations the law has permitted to come in as limiting his liability; whereas, the bailees' liability proceeds from an entirely different basis. He is simply responsible for the exercise of reasonable care. To start with, he is not bound by that high duty which the common carrier is, so that as to whether or not a common carrier was limiting its liability by some term expressly brought to the attention of a passenger is one thing because that would go to limit the common carrier's liability that the law imposes upon it; whereas the question of the bailee limiting his liability, his liability to start with is the one which he holds himself out to be liable for; and that is the case here; he is holding himself out, in consideration of the low price that he charges, ten cents for the checking of the parcel; he simply holds himself out to be liable only for a small amount.

The Court: I don't think that is so; I don't think that he holds himself out for anything, unless he calls the attention of the bailor to the fact that he is limiting his liability. I don't suppose, as a matter of fact, that there is one person in five hundred that deposits parcels with any of these railroad company parcel rooms knows that on that check there is a contract which limits their liability for putting a piece of baggage in their hands. They just hand it in, take the check and then

walk off, and come back in the course of an hour or so and claim it; they never have any knowledge of what is on there, it is not called to their attention.

Mr. Hartpence: Don't you think there would be some duty on the person checking their baggage that the bailor ascertain what the terms were upon which he deposits it?

The Court: I think the duty is the other way around. If the bailee is to limit his liability I think he ought to call attention to the fact that he is so limiting it. I will overrule the objection and you may have an exception.

Mr. Hartpence: Of course, if Your Honor please, I shall object to Mrs. Lebkuecher using the list that she has there. It seems to me that she is not competent to use that. It is incumbent upon the witness to state what was in the suit case; of course if she is unable to tell that from her own memory, that might raise a different question.

The Court: Well, she was asked previously by counsel to state the contents. Now, unless you cannot state the contents, Mrs. Lebkuecher, without referring to that memorandum, why, you can't refer to it.

Q. First tell what was in that suit case as far as you can? A. I had a black brocade satin gown; I had a black satin and jet gown; I had a black tafetta and cloth gown; I had a black serge embroidered gown; I had two pairs of shoes—new shoes; I had a very handsome Spanish lace scarf; I had a solid gold lorgnette; I had several pieces of solid silver toilet articles; I had a small sweater; I had a tortoise shell comb; I had two

other fancy combs; I had a handsome string of solid gold and torquoise beads; and I had a set of real coral beads; I had my underclothing, all of it; and I had handkerchiefs and things of that kind. Well I just can't think of any more.

Q. Can you recollect perfectly if that consists of all the articles in that suit case? A. No, I think there are a few more.

Q. Now, will it help to refresh your recollection if you should resort to the list made by you that evening? A. Yes.

Q. Will you kindly resort to that list to find out whether there are any other articles? A. Shall I read it as it is exactly?

The Court: I think it would be better.

Mr. Hartpence: Subject to my objection, Your Honor.

The Court: Yes; you may have an exception.

Q. Will you just read the list of articles as appears on that list? A. Black satin gown; black brocaded satin gown; black tafetta and cloth gown; black embroidered serge gown; one pair blue kid shoes; one pair blue kid shoes; one pink embroidered kimona; underclothing; black silk petticoat; large real lace Spanish scarf; one pair silk gloves; one pair silk gloves; one pair long white kid gloves; new Winter gloves; white silk gloves; solid gold lorgnette; black beaded bag; string of read coral beads; string real gold matrix beads; large real tortoise shell comb for the hair; handsome comb set with rhinestones; two handsome pins for the hair; large solid silver hair brush; solid silver buffer; scissors; pair of spectacles, gold frame, made to order; wicker suit case made in Japan and wool Spencer.

solid silver buffer; scissorsffi pair of spectacles, gold frame, made to order; wicker suit case made in Japan and wool Spencer.

By the Court:

Q. That is what you referred to as the sweater before? A. Yes.

By Mr. Haussling:

Q.What was the value of the contents of that suit case?

Mr. Hartpence: I object to that as incompetent. Mrs. Lebkuecher hasn't been shown to know what the value was. There are various articles jewelry and wearing apparel.

The Court: I don't think you have laid any foundation for that.

Q. Now, Mrs. Lebkuecher, you testified that there was a black satin gown; when did you acquire that gown? A. I had acquired that gown in September.

Q. What year? A. 1920; that is before January; (1920. Sept.)

Q. What did you pay for the gown?

Mr. Hartpence: I object to that as immaterial.

Mr. Haussling; If the Court please, I think it has been cited by Courts in this State that what was paid for it, although it is not controlling, yet nevertheless, it is evidence, to make a basis on which the jury will find the amount of the loss. I have here the case of *Luse* v. *Jones,* in 39 N. J. L. 707. In that case there was an action of trespass, for the wrongful removal of furniture, I think under distress. "The first exception insisted upon is, that the plaintiff was allowed to prove the

cost of a bedstead, as tending to show its value. This cost was the price at which a regular dealer of such articles had sold it when new, in the ordinary course of trade. A sale so made was evidence of the market value of the thing when new, and the value of such goods when worn can scarcely be ascertained, except by reference to the former price and the extent of depreciation. Of course, the cost alone would not be a just criterion of the present value, but it would constitute one element in such a criterion, and the attention of the jury in this case was clearly directed to the importance which it deserved to have.

Now, the question was also taken up in 22 C. J., where it says, "While the price which the owner of personalty paid for it does not by itself, furnish a satisfactory test of value, it is a circumstance to be weighed in connection with other evidence, provided the time of the purchase is sufficiently near to the time at which the value is relevant, and it has ever been said that the price paid for property is entitled to great weight in determining its value, although not conclusive evidence thereof. The question of the admission of such evidence is to be determined by the considerations involving the exercise of a sound discertion, under all the circumstances, and the evidence is more readily received when other evidence of value is apparently unavailable."

Then in 3 Ruling Cases, 156, the court has gone on the same assumption.

There is another New Jersey case that I want to call Your Honor's attention to also.

That is an action of conversion of certain shelving sold to the plaintiff by a former tenant, and upon cross examination the following question was asked, "What price did you sell the same (referring to the shelving) to the plaintiff?" the Court held that it was error to refuse the question, saying: "While the price which the plaintiff paid was not controlling on the question of value of the property in suit, it was, nevertheless, evidence which the jury had a right to take into consideration in fixing value."

The Court: How do you, Mr. Hartpence, get around this citation of *Luse* v. *Jones?* That would seem to allow that testimony.

Mr. Hartpence: I think that contemplates the value very near to the time of the alleged conversion.

The Court: This is very near; this is from September to January. I will allow the question and allow you an exception.

A. I paid $85. for the black satin gown.

Q. What did you pay for the black brocaded satin gown? A. $90.

Mr. Hartpence: Will Your Honor permit me an objection and exception to each item, so that I won't have to object to each one?

The Court: Yes. I think you ought to have the witness tell when she purchased them.

Q. When did you purchase that black brocaded satin gown? A. The black brocaded satin gown, in August, 1920.

Q. Now, when did you purchase the black tafetta and cloth gown? A. I purchased that in

September.

Q. What was the price of that? A. $50.

Q. Now, when did you acquire the black embroidered serge gown? A. In 1919—the latter part of 1919.

Q. What did you pay for the black embroidered serge gown? A. $40.

Q. What was the condition of these various gowns on the 31st day of January of this year? A. Perfectly good.

Q. When did you acquire the—you testified you had in the suit case two pairs of new kid shoes; will you kindly tell when you acquired those shoes? A. Just before I went to Harrisburg.

QWhen was that? A. That was in September —no, in June.

By the Court:

Q. 1920? A. 1920.

By Mr. Haussling:

Q. What did you pay for those shoes? A. $15. a pair.

Q. Will you tell us the condition in which those shoes were at the time of the loss? A. One pair of shoes I never had on but one afternoon, a very short time.

Q. Yes. A. The other pair of shoes were probably worn a half dozen times; not more.

Q. When did you acquire your pink embroidered kimona? A. In September.

Q. 1920? A. 1920.

Q. What was paid for that? A. $7.

Q. Now, you testified as to underclothing; when was that asquired? A. In September, 1920.

Q. Well, what was paid for that underclothing?

A. Well, more than $25.; a great deal.

Q. How much more? A. I should imagine I paid about $40. and more.

Q. Were they subject to much wear or use? A. No.

Q. Now, when did you acquire the large lace Spanish scarf? A. Wait a minute. Didn't you skip something?

Q. The black silk petticoat; when did you acquire that? A. About the same time; in September.

Q. What did you pay for that? A. I paid $7 I think, or $9.

Q. What was the condition of that petticoat at the time of the loss? A. Good; very good.

Q. The next is large real Spanish lace scarf; when did you acquire that? A. I acquired that when I was in Spain. about, it was ten years ago.

Q. Do you recollect what was paid for that? A. No, I do not.

Q. What was the condition of that scarf? A. Wonderful; perfectly fine.

Q. Now, the next is a pair—

The Court: One minute. Let us see if she can fix a value on that.

Q. Have you any idea as to the value of that?

Mr. Hartpence: I object to that as incompetent.

The Court: Let the witness tell whether she knows.

A. I know something about the value of laces.

Q. Now, Mrs. Lebkuecher, did you ever act as a buyer of laces? A. I have.

Q. In a professional way? A. I have.

Q. When was that? A. That was about twenty

years ago.

Q. How long a period did you act as buyer? A. About twenty years.

Q. I don't think you understood my question. For how long a period did you purchase laces? A. I purchased laces for about twenty years.

Q. You were conversant with the various types and grades of laces? A. I was, and am.

Q. In your estimation what was the value of this Spanish lace scarf?

Mr. Hartpence: If Your Honor please, I would like to ask one or two questions.

By Mr. Hartpence:

Q. In what capacity did you buy laces, Mrs. Lebkuecher? A. Why, my father had a store selling laces, millinery and dress trimmings, and I was asked to try to purchase goods after I left school, I seemed to be rather competent, as I was kept in the store for twenty years as buyer.

Q. As buyer? A. I also bought on the other side.

Q. Have you ever bought any of this same type or kind of Spanish lace that this scarf was made of? A. Yes, I have.

Q. Have you ever sold any of it? A. Oh, yes.

Q. When did you do that? A. That was when I was purchasing for my father, for the store.

Q. You haven't purchased or sold in that capacity since when? When was the last time that you did that? A. Oh, I have bought laces a good many times, handsome laces, real lace, I bought laces—would you like to know that?

Q. My question is, When did you cease acting in the capacity that you referred to? A. About twenty years ago.

Q. When you bought this lace scarf about ten years ago, you hadn't then been acting in a professional capacity in that respect for about ten years, had you? A. No,

Q. Did you ever buy any of that in Spain before? A. No.

Q. You never did? A. No.

Q. What did you use it for? A. It was used for a wrap in the evenings.

Q. During the ten years you had it, you had worn it from time to time? A. Never but three times, because it was so elaborate.

Q. It wasn't an ordinary piece of lace then? A. No.

Q. Not a piece of lace that people would buy and sell commonly in the stores? A. No.

Q. It had a limited market, if you had attempted to sell it to anyone? A. Yes.

Q. And of course, after you had used it for ten years, it would have simply had the status of a second-hand garment, would it not? A. No.

Q. It would not? A. No.

Q. After using the scarf for ten years it would not have the status of a second-hand garment?

Mr. Haussling: She only used it three times.

A. Only three times.

Q. Yes; but if you were to go and sell it you would have to sell it as a used garment? A. I would probably get more for it than what I ever paid, three times more, if I should sell it at this time.

The Court: I will allow her to testify to the value as an expert.

Mr. Hartpence: Exception.

By Mr. Haussling:

Q. (Question repeated.)

A. Well, I valued it at $40. but the valuation was very, very low.

Q. The next is two pairs of gray gloves; when did you acquire those? A. I acquired those in November, 1920.

Q. What did you pay for those? A. I paid $2.25 for the one pair.

Q. Yes. A. And $2.25 for the other; one pair I never had on my hands.

Q. What was the condition of those gloves? A. One pair of silk gloves I never had on my hands, perfectly new; the other pair I had worn probably half a dozen times; I put a value on that, though, much lower.

Q. Now, one pair—

By the Court:

Q. What value did you put on those that you had on half a dozen times? A. I think $1.50.

By Mr. Haussling:

Q. Now, one pair of long white kid gloves; when did you acquire those? A. About the same time.

Q. What did you pay for those? A. I paid $7.

Q. What was their condition at the time of the loss? A. Perfectly good.

Q. One pair of new Winter gloves; when did you acquire those? A. I bought those in January 1921.

Q. What did you pay for them? A. $1.25.

Q. What was the condition of them on the date of loss? A. New; I never wore them.

Q. One pair of white silk gloves; when did you acquire those? A. In October.

Q. 1920? A. 1920.

Q. What did you pay for those? A. I think I paid $3.

Q. What was the condition of them on the date of loss?A. Good.

Q. Solid gold lorgnette; when did you acquire that?

Mr. Hartpence: That is objected to on the further ground, if Your Honor please, that I take it to be an article of jewelry, which would not form a part of the ordinary baggage of a person, as will be demonstrated later.

The Court: I will allow it and allow you an exception.

A. I have had those about eleven years; I have had it for eleven years.

Q. Do you remember what you paid for them? A. They were a gift from my husband.

Q. Do you know what they were worth at the time of the loss?

Mr. Hartpence: I object to that as incompetent, unless she shows that she is qualified.

The Court: You will have to show that she knows the value of gold lorgnettes.

Q. Next is the black beaded bag; when did you acquire that?

Mr. Hartpence: The same objection, if your honor please, to all these articles of jewelry.

The Court: Well, I take it that a bag is not jewelry.

Mr. Hartpence: Of course I can't tell what it was beaded with. It was given a value that would make me think it came

within the category of jewelry of some kind.

By the Court:

Q. What was it beaded with, Mrs. Lebkuecher? A. It was a jet beaded bag, made to order, out of cut jet, very handsome.

By Mr. Haussling:

Q. When did you acquire that, Mrs. Lebkuecher? A. Well, I have had that eight years.

Q. Do you remember what you paid for it? A. That also was a gift. I know what they are worth, though.

By the Court:

Q. What was it beaded on? A. It was made by hand; it was knitted, a knitted bag.

By Mr. Haussling:

Q. Did you have occasion to price bags of this sort at stores about this period? A. Yes. I went with my sister.

Q. Well, how many stores did you visit? A. We visited Altman's in New York, Bamberger's, and McCreery's.

Q. Did you see bags of this same character? A. Yes, sir; but not as elegant as mine.

Q. What was the value of those bags?

Mr. Hartpence: I object to that as immaterial and irrelevant.

The Court: It doesn't make any difference what the value of those bags were.

Mr. Haussling: If the Court please, I feel that is our only way to get this evidence for the Court as to the value of this bag; that is, by comparing it with articles of similar character and what they were worth in the open market.

The Court: I presume the witness is the one that does that comparing; she does that mentally, and she tells us what the value of this bag was, I take it.

Mr. Hartpence: The difficulty here, your Honor, is that the value of the other bags has not been proved. The mere fact that there was a price marked on them or even a price given, would not be binding as to this.

The Court: That would show the market value. As a matter of fact, I suppose most ladies in the station of life of Mrs. Lebkuecher are more or less familiar with the value of most of these articles. I know it is usual for them to go in stores frequently and price these articles even when they don't purchase them. I will allow the question and allow you an exception.

A. My sister bought a bag—

The Court: I will not allow that. What was the value of this bag that you had?

A. What I valued it at?

Q. Yes. A. I valued it at $40.

Q. What was the condition of that bag? A. Very good; fine.

Q. Next is the real coral beads; when did you acquire those? A. I bought those in Italy ten years ago, in Naples.

Q. What did you pay for those? A. I paid $20.

Q. What was the condition of those beads? A. Fine; they were beads; they never can wear out.

Q. Well, I mean, there was nothing broken on them? A. No.

Q. Next is a string of real Indian matrix and

solid gold beads; when did you acquire those? A. I acquired those at the same time.

Q. You bought those in Italy? A. No; I bought those in India; Bombay.

Q. Do you recall what you paid for them? A. No, I don't remember it, because I bought quite a good many things; but I have priced them at Tiffany's.

The Court: Well, that is not responsive.

Q. Have you had occasion to examine and price similar beads in any place of business? I have.

Q. Where? A. At Vantines', because they keep oriental beads; and Tiffany's.

Q. When was that? A. That was in November.

Q. 1920? A. 1920.

Q. What was the prevailing values asked?

Mr. Hartpence: I object to that as immaterial. Your Honor, I want to put in a formal objection to all this line of testimony so that I won't have to object to each question.

The Court: I will allow it and allow you an exception.

A. Well—

The Court: For similar beads, similar strings.

A. Well, of course; may I tell it just this way?

Q. Well, I presume it is the best way to get it on the record. A. Of course my beads that I bought in Bombay were very handsome, and Tiffany's really hadn't as handsome beads as mine, and they were from fifty to sixty dollars, without the gold, solid gold beads, not put in;

I had the solid gold beads put in for me by Clements & Company on my return, they made the matrix, which brought the coloring out.

Q. Next is the real tortoise shell comb for the hair; when did you acquire that? A. That same year.

Q. Do you recall what you paid for it? A. No, I don't.

Q. Did you have occasion to price combs of similar character as the one that was lost? A. I have tried to price combs like that.

Q. You tried to? A. But I haven't seen anything as handsome as mine; not that my things are so beautiful but I haven't been able to find as handsome a comb in the United States as my comb.

Q. Where did you get that comb? A. I got that in Nagasaki, Japan.

Q. What was it worth?

Mr. Hartpence: I make the same objection, your Honor, that is on this particular article.

The Court: There has been no foundation laid to show what it is worth, what she knows of the value of these combs.

Q. During your search for combs have you seen any similar to this? A. I haven't seen any as handsome, not so beautiful and hard.

Q. What was the prevailing price of combs that you did see made from tortoise shell?

Mr. Hartpence: Your Honor, I will ask that my exception be allowed if Your Honor permits the question.

The Court: Yes, I will allow you an exception to that question. I think you ought to be more specific in that question, anyway. What was the value of combs that you saw, that

most nearly approached your comb in value, description and size, etc.

A. Thirty, thirty-five and forty dollars.

Mr. Hartpence: My objection is noted to that, Your Honor.

The Court: Yes your objection is noted.

Q. Next is the handsome comb set with rhinestones; when did you acquire that? A. About six years ago.

Q. What did you pay for that? A. $7.

By the Court:

Q. What kind of comb was that, Mrs. Lebkuecher? A. Well, it was a comb for the hair, an ornament, kind of.

Q. I mean, what was the comb made out of? A. The comb was, I think it was bone; I don't think it was tortoise; it couldn't have been for that price; it was a very pretty comb.

By Mr. Haussling:

Q. What was the condition of that at the time of loss? A. All right, just as good as new.

Q. Next is—will you give us a description of the two handsome pins for the hair? A. They were on the same order as the other, as the comb, as the rhinestone comb, they really come with it.

Q. When did you acquire them? A. About three years ago.

Q. What was the case? A. $4.

Q. What was the condition of those at the time of loss? A. Just the same as the other.

Q. Next is the large silver hair brush; when did you acquire that? A. Oh, I only had it in use about three years.

Q. Do you recall what you paid for that? A. No, I don't know; it was a gift.

Q. Have you seen silver hair brushes similar to yours on sale at various places? A. Similar, yes.

Q. Have you inquired as to the value of those brushes? A. Well, only—no, I have not; but I knew the value of mine, from being in business.

Q. Are you conversant with the values of these brushes? A. I am rather conversant with silver.

Q. What experience have you had? A. Mr. Lebkuecher was a manufacturer of solid silver articles.

Q. Were you in any way interested in the business? A. Only from being at the factory very often and purchasing silver for friends, knowing the weight and the cost of silver articles.

Q. Do you know what the value of this brush was at the time of loss? A. $15.

Q. Now the next is solid silver buffer; when was that acquired? A. Oh, about nine years ago.

Q. Do you know what the value of that was at the time of loss? A. $3.

Q. Next is the solid silver scissors; when were they acquired? A. About the same time as the buffer.

Q. What was that worth at the time of loss? A. About $1.50.

Q. Next is the thimble; what was that worth at the time of loss? A. Fifty cents.

Q. Next is the band and slide for neck; when did you acquire that? A. About two years ago. Shall I explain what that band was?

Q. Yes. A. That was solid silver, set with rhinestones, a very pretty thing; it was an orna-

ment for the slide, to fasten on the back of the neck.

Q. What did you pay for that? A. $5.

Q. What was the condition of that at the time of loss? A. Very good.

Q. One set of spectacles; when did you acquire those? A. Oh, about three years ago.

Q. What did you pay for those? A. I paid $8.50 for them.

Q. And the condition at the time of loss? A. Perfectly good.

Q. Next is the wicker suit case; when did you acquire that? A. I acquired that when I was in Japan, eight years ago.

Q. How long ago? A. About eight years ago.

Q. What did you pay for that? A. I don't remember what I paid for it. I bought so many articles; I valued it at $5. because you couldn't buy it here in this country.

Q. You made inquiries as to the prices of similar cases? A. Similar, yes; I tried it.

Q. What were the prices asked? A. Well, I couldn't find anything like that.

Q. Well, as nearly as you could? A. It is impossible; you couldn't find any.

Q. Next is wool Spencer; when did you acquire that? A. About a year ago.

Q. What did you pay for that? $4.

Q. What was its condition on the day of loss? A. Very good.

Q. Now, Mrs. Lebkuecher, did you make any complaint to any of the authorities of the Pennsylvania Railroad in reference to this loss? A. Yes.

Q. Where? A. I telephoned from my sister-in-law's home to the station, and the man in charge, I called him up several times, but he said

that he couldn't find any trace of it; I called him up that evening twice, I know, and the next morning; then I called for Information and they directed me to Jersey City, the main office. and I called up a Mr. Coakley, the detective, who came out to see me; but he told me that they opened the suit case and he said from the contents of this suit case that was left he couldn't find any trace or any mention whatsoever of the owner.

Q. Did you ever receive a communication from the Pennsylvania System, in reference to this loss? A. Yes.

Q. I show you a letter dated February 24th, 1921. addressed to Mrs. E. Lebkuecher, care of Dr. F. A. Haussling, 61 High Street, Newark, N. J. signed by W. F. McPhail, General Baggage Agent; did you receive that in your mail? A. I did.

Q. When did you receive it? A. Well, I will tell you, I was visiting Mrs. Haussling and I had gone back to Harrisburg, and it was sent to me in two or three days, they re-addressed it right to me.

Q. It was in the same envelope? A. Yes, in the same envelope it was sent to me.

Q. About the time of the date of that letter, was it? A. February 24th.

Q. I say, it was about that time that you received it? A. Oh, yes; it takes about 24 hours to get to Harrisburg.

(Letter offered in evidence, admitted without objection, and marked Exhibit P-2).

Q. You never have received any of these goods since you had returned them over to the possession of the Clerk in the parcel room, and you never received any compensation for your lose to date?

A. No.

Cross Examination by Mr. Hartpence:

Q. You had two parcels, I understood you to say, Mrs. Lebkuecher? A. Yes, sir; a small box and my wicker suit case.

Q. You got the box all right, did you? A. Yes.

Q. How long was that after you had placed these two packages in the parcel room? A. I placed them both in at the same time; it was from three-quarters to one hour that I was away; I don't think it was any longer.

Q. Did you hand them in yourself at the parcel room? A. I did.

Q. That was there in the Market Street station of the Pennsylvania Railroad? A. Yes.

Q. In Newark? A. Yes.

Q. Anybody else standing around at that time, do you recollect or were you there by yourself? A. When I came down, the porter had my luggage, and a woman and her daughter, they were right back of me, I don't know whether they put their luggage in or not, because I was in a great hurry to attend to my business and get back again: I didn't pay any attention whatsoever.

Q. They were the only people you saw around? A. Yes, the only people I saw around: and I really don't know whether they stopped there or not.

Q. Do you recall just what sort of a looking place it was where you put your parcels in? A. Oh, yes, because I handed parcels in there before.

Q. You had handed parcels in there before? A. Yes.

Q. At that same place? A. Yes.

Q. How often had you done that?

Mr. Haussling: I object to that as immaterial, how often she had checked parcels there, because we are only concerned with this parcel.

The Court: I don't think it is immaterial; I think it is material, to show whether she would be familiar with the conditions around there from handing parcels in.

A. Well, I probably did, not over two or three times.

Q. You had received similar checks to this one that you got on this occasion when you handed in your parcels? A. I assume so; I never looked at my checks.

Q. This place where you handed it in was in the nature of a booth, with a little counter in front of it? A. Yes, right next to the ticket offices.

Q. Right next to the ticket offices? A. Yes.

Q. This was about 3.15 in the afternoon? A. Yes, about 3.15.

Q. Perfectly light in there in the station, wasn't it? A. I don't know; I was in a great hurry, I didn't notice.

Q. You, of course, can read the English language all right, can you not, Mrs. Lebkuecher? A. I hope so.

Q. Well, can you? A. I can.

Q. Perfectly well? A. Yes.

Q. You don't wear spectacles or eye glasses all the time, do you? A. I do, to read.

Q. To read? A. And I generally have four or five pairs with me.

Q. Yes; when you read the newspapers you use eye glasses? A. I do.

Q. Is that what you use the spectacles for, that you had in your suit case; were they for your own

use? A. They were for my use, they were made to order by Mr. Aspach to use when I was out in society, in public.

Q. They were your company glasses, so to speak, were they? A. My company spectacles, yes.

Q. Your eyesight is perfect, is it not? A. No, not at all.

Q. In what respect is it not? A. Well, it is a nervous condition of the eye, which is very bad.

Q. Well, what I mean is, you go from place to place yourself, do you not? A. Oh, yes.

Q. You see your way about? A. Yes.

Q. You don't have to have anyone help you get around because of the condition of your eyes, do you? A. No, but my eyes are very peculiar; I have now two pairs of glasses with me; I generally carry three pairs.

Q. Yes. A. I am nearsighted.

Q. Nearsighted? A. Yes.

Q. What does that mean, Mrs. Lebkuecher, nearsighted? A. Well, for instance, if I am going on a trolley, I have to wait until the trolley gets right up beside me before I can tell what trolley it is.

Q. That is to say, when it is near to you you can see all right, but when it is far away you can't see so clearly? A. Well, I can't see far away, either: that is the sad part of it.

Q. Your glasses then really are for nearsightedness? A. Not nearsightedness, but far sight; it is a peculiar condition of the eye.

Q. Did you travel alone from Harrisburg to Newark? A. Yes.

Q. When you came over? A. Yes.

Q. As I understand it, you had gone directly from the train at the train platform at the Market

Street station— A. Yes.

Q. Down to the parcel room, where you handed in your parcels, this suit case and hat box? A. Yes; the porter took it for me from the Pullman.

Q. And you left it there until you had transacted some other business that you were to attend to? A. Yes.

Q. Then you went back for the suit case? A. I did.

Q. Where did you live; where was your home? A. Where was my home?

Q. Yes. A. My home was in East Orange, 119 Harrison Street, until last October; then I went out with my son for a year in Harrisburg.

Q. So that at the time you deposited this suit case, your home was really in Harrisburg? A. Well, I presume I was staying—I am staying there. I am staying here now.

Q. You were living in Harrisburg at the time you came to Newark for a visit; that is what I am trying to get at. A. Yes, I came to Newark on a visit.

Q. How long did you stay in Newark before you returned to Harrisburg? A. I was to stay long enough to get a trosseau.

Q. How long had you contemplated staying? A. Well, I thought I would stay about three or four weeks.

Q. When you speak of Harrisburg, I suppose you refer to Harrisburg, Pennsylvania? A. I do.

Q. Now, these articles that were in the wicker suit case were articles for your own use, I take it? A. Yes.

Q. The black satin gown, for instance, which I think you said you paid $35. for— A. $85.

Q. Was a gown which you yourself wore? A. Twice.

Q. It was for your own use? A. It was.

Q. And the same with the black brocaded satin gown? A. Yes.

Q. And the black tafetta and cloth gown? A. Yes.

Q. And the black embroidered serge gown? A. Yes.

Q. And the shoes, and the kimona and underclothes and other articles of wearing apparel that you have mentioned as being in the suit case, were all articles of wearing apparel for yourself, as I take it? A. For myself only.

Q. Some of them you had worn a number of times, others you had only worn a few times, and some you hadn't worn at all, hardly, as I understand it? A. May I just tell you?

Q. Yes. A. When I went to Harrisburg when I broke up my home on Harrison Street in East Orange, my clothes were all new, I had them made just before coming to Harrisburg, so that I would have everything for the Winter, because I thought I possibly couldn't get the articles I needed in Harrisburg.

Q. What was your object in taking with you these articles of jewelry, the coral beads, and the rhinestone articles and pins and things of that sort; were you just carrying them around with you for the purpose of safe-keeping, or what was your object and purpose?

A. No; I was carrying—

Mr. Haussling: I object to the question; I fail to see its relevancy.

The Court: I will allow the question.

A. My object was to wear them.

Q. While you were on your visit? A. Certainly; while I was on my visit. I hadn't my jewelry;

beads I don't consider jewelry, hardly; they are ornaments, not jewelry.

Q. Even if they have gold settings? A. Well, a gold bead, it was alternated, you know.

Q. And these articles which were made of silver, for instance the large solid silver hair brush; wouldn't you regard that as jewelry? A. Oh, no; toilet articles.

Q. Toilet articles, regardless of what they are composed of? A. I should think so.

Q. Just simply gold and silver, but not necessarily jewelry, is that it? A. Well, a toilet article is quite different from jewelry.

Q. Suppose it had been set with diamonds? A. No, I should think that would make it jewelry; I think jewelry is what you adorn yourself with; isn't it?

Q. Or ornament yourself with? A. Yes.

Q. Had you ever endeavored to sell any of these articles that you had in your wicker suit case, Mrs. Lebkuecher? A. Indeed no.

Q. You thought too much of them, I suppose, to sell them? A. I certainly did.

Q. They had a real price of affection in your mentality then, hadn't they? A. Yes, they had; and also, I never could replace them for the amount that I paid for them.

Q. Well, you could get another black satin gown, couldn't you? A. Oh, yes; the gowns.

Q. And another pair of kid shoes, couldn't you? A. I had to.

Q. Of course, you know what you had to pay to get others to take their place, don't you? A. Certainly.

Q. Now my question is, Do you know how much you could have gotten for them if you had offered them for sale on the 31st day of January,

1921?

Mr. Haussling: I object to that.

The Court: The question is whether she knows.

A. Why, yes; I thought I answered the question.

Q. Yes. A. Yes, I would have gotten $15. for the one pair, and I probably would have gotten $15. for the other pair; one pair they were button, and the others were lace; they were new shoes.

Q. And they were shoes that were bought to fit you and for your own wearing purposes? A. Yes, sir.

By the Court:

Q.They weren't made to order for you, were they? A. No, but I have worn this style of shoe for years.

Q. They weren't made to order for you? A. Oh, no; that is the style I had worn for years.

By Mr. Hartpence:

Q. You paid $15. for them, as I understood you to say? A. Yes.

Q. If you had offered them for sale yourself to someone else, you think that you could have gotten just as much for them as you paid? A. Yes.

Q. Nothwithstanding the fact that they were second hand shoes? A. One pair wasn't second-hand; I really wore them only a little while one afternoon; the other pair, well, the soles of the shoes were still black.

Q. Well, isn't any article of wearing apparel, after it is once bought from the dealer and then offered for sale by the person for whom it was intended or by whom it was intended to be used,

a secondhand article? A. Well, it depends a great deal on that; if I had offered those shoes I would have offered them to someone that they would have fitted, they are unusual shoes, and I am positive I could have gotten $15. for them if I had any need of selling them.

Q. Provided you could have found someone who just wanted a pair of shoes that size? A. Yes.

By the Court:

Q. If you had taken them back and gotten credit for them, do you think they would give you credit for them? A. That one pair I could; probably not so well the other pair; but I put that value at $12. I think.

By Mr. Hartpence:

Q. Well, you only value that at $12. then? A. Yes.

Q. Now, the gowns had been made for you, hadn't they? A. They had.

Q. If you had offered those four gowns for sale, the black satin, the black brocaded satin, the black tafetta and the black embroidered serge, of course they would have been sold as second hand gowns then, would they not? A. They would.

Q. And they would have been sold only to a person who could have worn them and whom they would have fitted; isn't that true? A. One that could afford to pay the price.

Q. So that your market there was quite limited, wasn't it? A. Well, but I wasn't offering my things for sale.

Q. Can you state how much you would have gotten for them as second hand articles of wearing apparel?

Mr. Haussling: I object to that.
The Court: If she knows.

A. Why, I never have purchased secondhand clothing, so I really down't know the value of secondhand clothing; but these I shouldn't call secondhand; of course I had one gown I had worn twice and the others, well, they were new gowns, beautiful gowns.

Q. But they were gowns for your use, were they not? A. Yes, they were.

Q. Have you ever tried to sell secondhand clothing, Mrs. Lebkuecher? A. Never in my life.

Q. So you don't know then really what these articles of wearing apparel that you had were worth as used wearing apparel, if you had offered them for sale on the 31st of January, 1921, do you? A. No.

Q. The values that you have fixed in your direct examination on these various articles, these various ornaments, combs, beads, etc. were the values of similar articles which you had observed as the values which were given in retail stores were they not? A. Yes.

Q. And they were the values of articles which were offered as new articles in high class stores; isn't that correct? A. Well, you know, that the value, very often, of beads, after they have been worn, is more; they are like some rugs that are more expensive after they are worn than when you first bought them; my values on these are very low.

Q. My question is, the values that you accept, or the values that you ascertained from inquiries, of similar articles in these other stores, were values which were fixed on new articles, offered for sale in these high class stores; isn't that cor-

rect? A. Yes, sir.

Q. And it wasn't the value that you saw or ascertained of articles which were offered as used articles, were they? A. Well now, I am going to answer your question as I understand it—

Q. (Last question repeated). A. Some of the oriental beads they might have been used, they might have been worn by the natives, which are considered more valuable.

Q. I guess you don't catch the meaning of my question after all. My question is this: where you had seen similar articles with a value placed upon them in these stores that you say you visited, those values were not fixed on those articles in those stores on used articles?

The Court: The beads, for instance, that you saw in Vantine's and Tiffany's which were oriental beads, were they beads which had presumably been worn by the natives?

A. Very likely, most of them are; a great many of them are.

The Court: And they were offered in the stores, as such, were they?

A. Well, I don't know.

Q. You don't know about that? A. I don't know that.

Q. They weren't placarded as used beads, beads which had been worn and which are offered as worn or used beads; they were not placarded that way, were they? A. No.

Q. Nor were any of these other articles that you yourself ascertained the price of, they wern't offered and placarded and priced as secondhand or used articles, were they? A. No.

Q. How large a suit case was this wicker suit

case? A. It was a large one.

The Court: Can you give the dimensions, approximately?

A. Well, it was easily that long (indicating).

Q. With relation to the ordinary sized rattan or wicker suit case that a lady would carry, was it larger or smaller than that? A. Oh, much larger.

Q. How much larger would you say? A. Well, I have one of the ordinary suit cases that is the regulation size—

Q. The regulation size. A. I have the regulation size; this was about this much longer; it was very ungainly because it was so large.

Q. About six inches longer? A. Yes; and it was about this thick (indicating); I could get a small box in it.

Q. It was about how thick? A. About a foot thick, or a little more.

Q. About a foot thick, you say? A. Yes.

Q. Then how much higher than the ordinary suit case? A. Well, it was about as high as that (indicating about 18 inches).

Q. So that this suit case was about a foot and a half high, a foot thick, and was six inches longer than the ordinary suit case? A. It was very large; I bought it so that I could carry it instead of taking a trunk; that is all I can tell; I really don't know the size; it is very large and very ungainly to handle; you had to have an extra shawl strap around it.

Q. May I ask you, Mrs. Lebkuecher, how much you paid to the parcel room attendant, at the time you left this suit case at the Market Street station? A. I paid him ten cents for the one package and ten cents for the other.

Q. You paid ten cents for the large package? A. Yes, sir.

Q. That is all you paid? A. Yes, sir.

Q. And that is all you had been called upon to pay at any time for this? A. Yes, sir.

Q. Did you tell the attendant, at the time you left it there, what your wicker suit case contained? A. I don't know; I handed it in and he gave me the check and I went out.

Q. You were in a hurry and you went right on? A. Yes; I think I did say, "Take care of my hat box."

Q. And you got your had box back, didn't you? A. Yes.

Q. And he took care of that? A. Yes.

Q. You didn't take the precaution to ask him to take care of your suit case? A. I thought he would without my telling him.

Q. I show you a photograph, Mrs. Lebkuecher, and ask you if that looks like the parcel room in the Market Street station where you handed in your suit case? A. Yes.

Q. That is the kind of place it was, is it not? A. Yes.

Q. With the counter in front? A. Yes.

Q. And the window here where it says "Western Union Telegraph?" A. Yes.

Q. Then the ticket office is there; do you see that grating off to the right? A. Yes; that is the ticket office there; quite a few ticket offices.

Q. Then the parcel room had this little counter? A. Yes; I stood right here and hurried away (indicating in front of the entrance to the parcel room).

Q. And that substantially represents the situation as it was there when you handed the suit case in? A. Yes.

(Photograph marked Exhibit D-1 for Identification.)

Q. On these other occasions, Mrs. Lebkuecher, when you had left parcels at this parcel room, do you recall how much you paid for the service that you got there? A. I think the same.

Q. Ten cents each time, for each package? A. Yes.

Q. I take it from your testimony that you have traveled considerably, not only in this country but in foreign countries? A. I have.

Q. You have purchased railroad and steamship tickets on many occasions, have you not? A. Yes.

Q. Both for long journeys and for short journeys? A. Yes.

Q. Now, you have often observed, have you not, on those tickets, that there were conditions and terms printed on the tickets?

Mr. Haussling: I object to that; we are dealing only with this one ticket.

The Court: I will allow the question.

A. Well, when I have traveled at a great distance I generally had my luggage checked right through, and my hand luggage, you know how they do on the other side, and I haven't noticed anything in particular, because when I bought my tickets I knew I was putting myself into the hands of the people that were there and that I could trust, and with my hand luggage, there was a porter there, I generally travel in a Pullman, because I like it better, and I like to take my luggage with me, because I feel that it is safer.

Q. You travel alone considerably? A. Well, yes, I travel alone considerably.

Q. Now, my question was, whether you had not

observed on these tickets from time to time that there was printed matter on them?

Mr. Haussling: I presume you had better confine yourself to America.

The Court: Confining yourself to short journeys

A. I don't think I ever had any occasion, except here in Newark, to check any articles.

Q. My question is, as you travel about on the railroads, on long or short journeys, you purchased your tickets from time to time and you saw there was something printed on the tickets?

Mr. Haussling: I object to that; we are only dealing with parcel rooms.

The Court: I don't think what is printed on railroad tickets has any controlling effect on parcel room checks.

A. Well, I don't think I ever noticed very much on tickets.

Mr. Hartpence: I ask for an exception.

Re-direct Examination by Mr. Haussling:

Q. Mrs. Lebkuecher, when you testified you checked your grip two or three times at this place, what usually obtained when you checked it? A. Now, I will tell you; I never have checked very much; sometimes—

Q. I mean in reference to this here station, Market Street. A. Yes; I was going to say, when I have checked anything, I usually was, probably had bought something or was going to New York, and I didn't want to carry it with me, and I just left it in there until I came back.

Q. Well, tell just the formality, what transpired, as you checked it; what you did and what

the clerk did, etc? A. Why, I just handed my goods in and they then gave me a check, that is all.

Q. That is all that happened? A. Yes.

Q. And that is all that happened when you checked this suit case on January 31st? A. Yes; I had perfect confidence in the Pennsylvania Railroad.

Re-Cross Examination by Mr. Hartpence:

Q. So that you sometimes would use the parcel room to check articles when you were not traveling on the railroad? A. Yes; mostly when I would be going to New York; but I never had any great occasion to check anything.

Q. Those were not necessary articles of baggage, but just simply articles you purchased, that you left in the parcel room? A. Sometimes with a small bag that I had something in, because I lived in East Orange, but not often; very seldom.

Q. So that, Mrs. Lebkuecher, you had checked both articles of baggage and different articles which were not baggage, at this parcel room? A. Yes; because I always felt when I had my check, that was a voucher that I would receive my goods and not be given somebody else's.

Mr. Haussling: That is the plaintiff's case.

Mr. Hartpence: We move for a non-suit, on the ground that no negligence has been shown on the part of the defendant in this case. It merely shows the checking of the suit case and the failure to return it. The burden is on the plaintiff that the railroad is

bailee in this case and was guilty of negligence in the handling of the article bailed, in order to fix the liability.

The Court: I think the best proof of that is that when the plaintiff went back and presented her check to the baggage master, or parcel room man, he said, "I have handed it out, I have handed it out, I have handed it out;" she said, "What do you mean?" And he said, "I gave your package to the wrong person." That, I think, was evidence of negligence, prima facie. Your motion is denied.

Mr. Hartpence: Exception.

ALFRED W. MEYERS, sworn:

Direct Examination by Mr. Hartpence:

Q. Mr. Meyers, what is wour occupation? A. Parcel room Agent, Market Street station.

Q. Pennsylvania Railroad? A. Yes, sir.

Q. You have been acting how long in that capacity? A. Twelve years.

Q. On January 31st of the present year, 1921, you were so employed in that same position? A. Yes, sir.

Q. Was anyone else employed there in that same capacity, at that time? A. Yes, sir; there was an assistant agent; I am on from seven to three, and he is on from three to eleven.

Q. Who was on at that time? A. O. B. Levan.

Q. So you and Mr. Levan operated that parcel room, one being on at a time? A. Yes, sir.

Q. Levan was on from when? A. Three to eleven.

By the Court:

Q. That is, three in the afternoon until eleven in the evening? A. Yes, sir.

By Mr. Hartpence:

Q. The parcel room there in the Market Street station, is located at what part of the station? A. It is right at the end as you go in from the plaza; the parcel room is the one window and the telegraph office is the other; the ticket office is next to the parcel room.

Q. That is right near the entrance and exit at Market Street also on the upper side of the station? A. This door leads to Market Street, and this door leads to the plaza (indicating).

Q. As a matter of fact, you from time to time check what kind of packages there? A. Anything that is within the rules, that is parcels, non-explosive or non-breakable, almost anything that complies with the rules; we have notices placed there with the rules on.

Q. It is not limited then simply to baggage of passengers of trains? A. No, sir. Anything, with the exception of explosives; that is positively refused.

Q. And subject to the rules which you say were posted on the outside of the parcel room? A. Yes, sir.

Q. So that if a person from the street had left a package for a little while and then they came back for it, you would receive it just the same as you would the baggage of a passenger of the trains? A. Just the same; yes, sir.

Q. That was the usual custom there, was it? A. Yes, sir; in other words, the parcel room is not the baggage room.

Q. It was a parcel room? A. Yes, sir.

Q. I show you this photograph which has been marked D-1 for Identification, and ask you if you recognize that? A. Yes, sir; I have been there for twelve years.

Q. That is a photograph of that parcel room? A. Positively correct.

Q. Will you state where the rules are that you referred to were posted? A. On this window (indicating); I put that up myself.

By the Court:

Q. That white mark on the one column between the two windows is it? A. Yes, sir; I put that up myself.

Q. Mark that with an "X." A. Yes, sir; printed rules are in there.

By Mr. Hartpence:

Q. When did you put it up? A. Well, the frame was put up, I couldn't tell that, four or five years ago.

Q. And the rules, printed, were there on January 31, 1921? A. Yes, sir.

Q. And had been there how long prior to that? A. Well, I couldn't tell just exactly how long; the rules have not been changed, actually; I think that was put up, if I remember right after the company superseded the United State Railroad Administration; there were some minor changes, but it didn't amount to anything; I don't remember what they were, but they were practically the same for years.

Q. Practically the same for years? A. Yes, sir.

Mr. Hartpence: I will offer that photograph in evidence at this time.

Mr. Haussling: I object to this photograph going in evidence.

The Court: Why?

Mr. Haussling: I think we ought to have the person who took the photograph.

The Court: Mrs. Lebkuecher has identified it as a photograph of the place.

Mr. Haussling: I will waive my objection.

(Photograph marked Exhibit D-1 in evidence).

Q. Now I show you a placard and ask you if you can state what that is, Mr. Meyers; do you know what it is? A. Oh, yes.

Q. What is it? A. If a passenger comes—

Q. Never mind; explain what this is? A. This is the rules from the General Baggage Agent, as to the handling of parcels and everything concerning parcels.

Q. Those are the rules governing the operation of your parcel room at the Market Street station? A. That is correct.

Q. In what way does this card that I have shown you compare with the rules that were posted in this place that you indicate on this photograph, on January 31st, 1921, when Mrs. Lebkuecher put her parcel in there? A. I should say this is the exact one; April 1st, 1920.

Q. In effect April 1st, 1920? A. Yes, sir.

Q. This is still in effect, is it not? A. Still in effect; yes, sir.

Q. It has not been changed since the first of April, 1920? A. No, sir, that is correct.

Q. Now, do I understand that this card, with these things printed on it as you have now identified it, is the card, or one just like it, that was in the frame that you pointed out on the photograph? A. That is right in this frame marked "X"; I put that in there myself.

The Court: Do you say that is the set of rules that was in that frame?

A. No; this is a copy.

The Court: That is a copy?

A. Yes, sir; another one just exactly like that is on the inside.

(Copy of notice and rules offered in evidence, admitted without objection, and marked Exhibit D-2).

Q. I show you the check that has already been referred to in this case, Marked P-1, and ask you if you recognize what that check is? A. Yes, sir; this check was what we call the claim check; the duplicate of this check is strung across and attached to the parcel, and this is given to the passenger at the time of issue.

Q. The part of it that this is attached to, you put that around the package itself? A. That is right.

Q. And that has the same number as this part of the check that you give when anybody leaves a parcel with you; is that right? A. That is correct; that is to identify them when they return to claim a parcel.

Q. In what way does this check that I now show you compare with the check that has been in use there at the parcel room during all the time that you have been there? A. That is just exactly like it; they are still in use.

Q. With the same printed matter upon it as appears on that? A. Yes; I got 50,000 in my last requisition.

Q. If a person leaving a parcel with you, or offering a parcel to you, stated that it contained

any of the articles which the printed rules said would not be received, what would you do with the parcel? A. If they came and said that this was a valuable or breakable parcel, I would take exception, I would refer them to the rules, that we could not take it except at their own risk, and if they stated to me that it is valuable, I would take exception and tell them that those are the rules we have to follow; we would call their attention to it; that is our invariable rule.

Q. About this time, around January 31st, how many packages would go in and out of the parcel room per day? A. I can give you it yearly.

Q. Well, average it per day? A. Well, last year between fifty-seven and fifty-eight thousand; that is, more in the Summer than in the Winter.

Q. About how many is that per day, just approximately? A. That would be about 175 probably.

Q. 175 to 200 per day? A. Around that; I can't tell you exactly from day to day.

Q. They go in and out on the same terms and subject to these same checks and some regulations? A. Just exactly; yes, sir; with the exception, that, as I stated, the ten cents payable in advance goes for 24 hours, and after that ten cents per day or a fraction of a day.

Q. What I mean is, that all these articles come in subject to the same conditions? A. Just exactly; yes, sir.

Q. What was your method of caring for the articles that were just checked in your parcel room? A. Without any exception, you mean?

Q. Yes. A. Just take them in, present the check, hand it to the passenger, and collect the money.

Q. What do you do with the articles themselves

then after that while you are keeping them? A. I have a set of shelves, we keep them in numerical order; we have a set of shelves and we place them right down in order, with the exception of, well, anything that would be paper or breakable, we keep that on another shelf, so that they don't get jammed up with the others and broken; that is our personal care.

Q. Is there someone in the parcel room at all times? A. From seven a. m. to eleven p. m. after that the office is closed; we only have a man on duty at that time.

Q. When a check is presented to you by some person, this portion of it like is marked P-1, what is your method then of obtaining the parcel from your room to be handed back to the person checking it? A. We take the check and go down the line until we come to that number, and take that number out as it tallies with the parcel, and compare it with the check.

Q. You compare it with the check? A. Yes, sir.

Q. Then you give out the parcel? A. Yes; when we come to that check, we recognize what is marked down according to the check number and we give it out.

Q. Suppose there are a number of people there at a given time with their checks either to put parcels in or to take them out, which is a usual thing, I suppose? A. Yes, sir; that is usual.

Q. Do you have any method of comparing the checks after your window is free from people asking for their packages or checking them? A. Yes, sir: afterwards the stubs are taken, the rules are that as soon as we get through, of course the passengers are waited on first, and after that we stamp our checks, and sometimes

it is stamped when it is issued, the returning time is stamped on there with a time stamp.

Q. When you say you put a stamp on there, you mean a stamp showing the time it was issued? A. Yes, sir; I have a copy.

Q. That is stamped at the time where it says 3.14, that is the receiving time? A. Yes; that is the time the check is issued; at the time it is returned, it is stamped with another.

Q. You stamp that on when the article is handed back? A. Yes; that shows the party hadn't left it over the 24 hour period.

By the Court:

Q. You weren't on duty at the time this check was issued? A. I am not; no, sir; I am supposed to be off duty at three o'clock, but when there is a very big rush I wait to help Mr. Levan out to accommodate the public until the rush is over, I couldn't say the hour, but I imagine fifteen or twenty minutes.

Q. You recall the fact that Mrs. Lebuecher's suit case was not delivered when she presented her check? A. Well, not until the next morning, Mr. Levan notified me that it was not recovered; I was away from duty; after my time it happened.

Q. You were there on January 31st? A. Yes, sir; officially until three P. M. and after that I merely help Mr. Levan out in the rush, that is all.

By Mr. Hartpence:

Q. During the past year how many thousand packages did you say came in and went out? A. Between fifty-seven and fifty-eight thousand.

Q. Have any other packages except this one of

Mrs. Lebkuecher's been misdelivered or lost? A. Yes.

Q. If so; about how many.

The Court: How is that material? We are only concerned with their negligence in this case.

Mr. Hartpence: If Your Honor please, it goes to the question of the care exercised by the bailee over the goods bailed.

The Court: All right; go ahead.

A. Only one by our office force; there were two; the other was given out by an extra man in April of last year, a man new at the business, he just came in to help out in an emergency.

Q. As a matter of fact, did you succeed, upon investigation in locating the misdelivered package? A. Yes, sir.

Q. And restored it to its proper owner, A. Yes.

Q. In this case of Mrs. Lebkuecher's do you know what was done to locate that package? A. It was handed over to Captain Coakley; I don't know what he did.

Q. You do know that considerable investigation was made? A. Oh, yes; those things were turned over to Captain Coakley as soon as we find there is anything lost; the evidence is cleaned up and turned over to Captain Coakley of the Railroad Police.

Q. How was the placard containing the printed rules placed there on the parcel room? A. Well—

Q. It seems to be fastened there; in what way is it fastened? A. Why, there was a frame, it is inside the frame, and it is put on a level with the eye; I put it there; that is about on a level with a person's face, where they can read it, because

if we have occasion to refer to it a man could look and see it quickly.

Q. Was that nailed fast to the frame? A. Yes, sir; it is inside the frame; it is on two hooks there at the top.

Q. That is kept there at all times, you say? A. Yes, sir.

Q. And it was there all day during this day, January 31st? A. Yes.

Q. And has been there, as a matter of fact, ever since you have been there? A. Day and night; we never removed the sign.

By the Court:

Q. Mr. Meyers, you weren't the agent who took in this package of Mrs. Lebkuecher's, were you? A. I wouldn't like to say, that, Your Honor, because there were two of us, you see, we have to attend to the telegraph and parcels; I wouldn't like to say whether I took it in or not; as I stated before, after three o'clock Mr. Levan relieves me and he was officially on duty, but I stayed to help and accommodate the passengers.

Q. You weren't there as late as four o'clock when she returned for that? A. No, I am not there.

Cross Examination by Mr. Haussling:

Q. You say you don't take any packages that are in violation of the rules? A. Only after we take exception and call the passenger's attention to it.

Q. Then the only time you take exception is when a person presents a package and informs you of the contents? A. I never ask; it is very seldom that it has ever happened.

Q. Answer my question. A. Yes.

Q. If they don't inform you what is in the package you just take the package and give him your check? A. No, sir; not if we are informed of the contents.

Q. I say, if they don't inform you, why you take it? A. That is it, exactly.

Q. The only time you vary from the rule is when they inform you that there is something in that package in violation of the rules? A. That is correct.

Q. In that sign which you say was posted up there and which you have fixed? A. Yes, sir.

Q. By the way, what are your duties besides taking care of the parcel room? A. We handle the Western Union telegraph, that is all.

Q. You perform the duties of telegraph operator and package clerk? A. Yes, sir; we come under the telegraph department.

Q. Your duties are not confined simply to receiving parcels? A. No, sir.

Q. This here window, what is the distance between this here, you might say on the side of that package room next to the ticket office, to where this sign is fixed; what is the distance in feet? A. Well, now—

Q. About. A. He will give it to you, just about like that (indicating a distance of about five feet).

Q. How many people can stand in front of that window side by side? A. Three or four, easily.

Q. Four easily? A. Well, three or four; I have had three or four people up at the window at the same time.

Q. About five or six? A. Around there.

Q. Now, this here post on which this sign is fixed, does that stand out? A. No, that is on a level.

Q. The windows are all on a level? A. Yes, sir; this part projects out beyond the other; that is where you know there is a counter, where the telegrapher is.

Q. How much wider is that? A. Oh, I don't know; probably six inches.

Q. If a person standing at the extreme end of that window looked, could he see this sign? A. They couldn't read it from there; no, sir; they would have to be over further.

Q. You would have to come in front of that sign? A. About middle way they would be; I couldn't read the sign from there that is too far over to the right.

Q. You have to go in front of it? A. You would have to go over around here (indicating); in other words, if there were three or four passengers there, this man over here at the extreme end, he couldn't read the sign.

Q. Even if there was nobody there, they couldn't see the sign, could they? A. I don't think he could hardly read it if he was over here (indicating); he would have to come to here (indicating), in front of it.

By the Court:

Q. Mr. Meyers, did you say that you, in addition to your duties as parcel room clerk, also take care of the telegraph office there? A. Yes, sir; telegraphy, the Western Union besides.

Q. With reference to the parced room window there, where are your telegraph instruments? A. They are right down here (indicating), on a table; we take in the parcel room here and the telegraphy over here (indicating), and the table is below.

Q. Then, when you are working at the tele-

graph instrument, is your back to the window through which you take parcels? A. No, sir; about like you are to me, just about half; that is the telegraph instrument over there, I would be just about on the side with this window up here, and the man would look right at my ear.

Q. In other words, you faced the left hand side on this D-1? A. Yes, sir; that is correct.

By Mr. Haussling:

Q. Your back would be towards the parcel? A. Yes, sir.

Q. Well, how far away from that window would you be located? A. The telegraph desk?

Q. Yes. A. Well, I should imagine four or five feet. I will tell you where we are on there; we have all this, and there is another window that goes that way (indicating) and we are right in at the post of that window.

Q. You operate towards the Market Street side of the station? A. Yes, sir; half way between this window, and the station, that faces on Market Street (indicating).

Q. When you are receiving messages, etc, your mind is intent on the instrument in front of you? A. Yes, sir.

Q. You can't see on the side or in the rear while you are receiving messages over the wire? A. We don't receive as we send, it is chiefly sending; we always do that, as the fellow says, keeping one eye on the window, because it is a rule that the passengers have to be waited on ahead of anything else.

Q. Isn't it possible for somebody to put their hand in there to take things out unbeknown to you while you are sending messages? A. I don't think so, because it would be impossible, anyhow,

because we have a closet here, and there are three closets before you get to the shelves.

ORLANDO B. LEVAN, sworn.

Direct Examination by Mr. Hartpence:

Q. Mr. Levan, where were you employed on January 31st, 1921? A. Market Street station, Pennsylvania Railroad Parcel Room.

Q. In Newark? A. Yes, sir.

Q. Do you recall the fact that Mrs. Lebkuecher presented a check for her suit case and it was not returned to her on that check? A. Yes, sir.

Q. You were there at the time, were you not? A. I was.

Q. Do you recall having received the suit case from Mrs. Lebkuecher yourself? A. No, sir; I don't think I took it in.

Q. You remember when she came after it? A. Yes, sir.

Q. About what time of day was that? A. I should imagine about 3.50, somewhere in that neighborhood, maybe a few minutes before, or a few minutes later.

Q. What was your system there of checking up these parcel checks, the string end of the check and the part that was given to the one that deposited the parcel? A. After a package is given out, you mean?

Q. Yes. A. Well, when we are busy and a package is given out, why we throw them on our counter, we have a place we throw them, and after we get time we get the string end of it and compare both checks together.

By the Court:

Q. That is after you have given the package out? A. That is when we are putting them up, we put them up in hundreds.

Q. That is after the package is given out? A. Yes, sir.

Q. Don't you compare the check when a man—
A. Yes, sir; but then we throw them aside—

Q. Just let me finish my question. When a person comes in and hands you that check which has been issued for a parcel left with you, you take that check and compare it with some other check? A. We have them as nearly as possible in hundreds, all in routine.

Q. My question is, Do you compare it with the check on the parcel that you have there? A. Yes, sir.

By Mr. Hartpence:

Q. Now, when Mrs. Lebkuecher presented this check to you, you had no article with the corresponding number on it, did you? A. No, sir.

Q. Had you discovered that before she came in? A. Yes, sir.

Q. How did you discover it? A. As I was saying, when I got all the checks and cut the string off, and was comparing them, I discovered I had two that did not mate.

Q. Did not mate? A. Yes, sir.

Q. After you put them in packages of a hundred that you referred to, what became of the checks then? A. Why, we make up our report from those and then they are sent to the Auditor with our report the following morning.

Q. And it was while you were checking that up after a number of them had accumulated in that way, that you discovered there was a mismating of the numbers? A. Yes, sir.

Q. Then what did you do after that, when you discovered the numbers did not mate? A. Why, there was nothing to do; I went over the packages to locate it, and I finally found out where the mistake was; there was nothing to be done then.

Q. Did you find any other suit case there that matched with the other number.

Q. With the other number? A. Yes, sir.

Q. What became of that suit case? A. That suit case was never called for.

Q. No one ever came back for it? A. No, sir.

Q. And no one ever came back with Mrs. Lebkuecher's suit case and stated that they had gotten the wrong one? A. No, sir.

Q. Are you familiar with the signs and placards, with reference to the rules pertaining to the parcel room? A. Yes, sir.

Q. Where were those placards placed, or where were they along about the time when this particular package was lost in January? A. There was one there where the cross is. And there was one inside on this closet (indicating).

Q. Mark that with "XX". A. Witness marks as indicated.

Q. Right where that double "X" is there was another placard. A. And there was another up on the wall.

Q. Was there another like this placard? A. Yes, sir.

Q. Were the contents of that the same? A. Yes, sir; all the same, in the frame here (indicating).

Q. This placard D-2, is that the card that was back inside there also in the same form as on the outside? A. The reading is the same; yes, sir.

Q. And that was there on the 31st day of January, 1921? A. Yes, sir.

Q. And it had been there how long to your knowledge? A. Ever since I have been there.

Q. And it is still there, as amatter of fact, so far as you know? A. So far as I know.

By the Court:

Q. How far is this placard marked with "XX" on this D-1 from the outside of the parcel room shelf? A. As nearly as I could judge, between three and three and a half feet, I should imagine.

Q. And that shelf is how wide? A. About eighteen inches; it isn't quite as far as from the shelf to that there; the shelf is only, I should imagine, probably thirty inches.

Q. And those closets run at right angles to the face of the parcel room office? A. Yes, sir.

Cross Examination by Mr. Haussling:

Q. This sign, you say, is nailed against the wall? A. That is tacked, that is the side of the closets there.

Q. What are those closets used for? A. For our clothes; each man has a locker.

Q. Each man has a locker? A. Yes.

Q. How wide are those doors? A. How do you mean, the doors come out this way (indicating).

Q. Opened up. A. The wrong way, you mean, the length of the door of the closet that way (indicating).

Q. No, no; these here closets there, are they single or double doors? A. Single doors; each has a small lock on.

Q. How wide are those doors? A. They are probably eighteen inches.

Q. About eighteen inches? A. Yes, sir.

Q. You recollect telling Mrs. Lebkuecher that you gave out her suit case to the wrong party? A. Yes, sir.

Mr. Hartpence: That is our case, if Your Honor please.

The Court: I suppose you would like to submit briefs on the law.

Mr. Hartpence: Yes; and I would like also to reserve our right to submit with the brief our requests to find as matters of fact and as matters of law.

The Court: You may reserve that right on both sides.

I, Harry Schirmer, the stenographer designated by the Court and sworn, do certify that the foregoing is a true and accurate transcript of the minutes and proceedings taken by me at the trial of the case of Emma M. Lebkuecher, plaintiff, against Pennsylvania Railroad Company, defendant, at the District Court for the Second Judicial District of the County of Essex.

HARRY SCHIRMER,
Stenographer.

To the Chief Justice of the New Jersey Supreme Court:

I do certify the foregoing transcript, made by the stenographer designated by me and sworn, as the minutes and proceedings of the trial of the above entitled case, to be used on the appeal herein.

CHARLES H. STEWART,
Judge.

Dated September 6, 1921.

Opinion and Findings.

(Filed August 24, 1921.)

SECOND JUDICIAL COURT,

FOR THE COUNTY OF ESSEX.

EMMA M. LEBKUECHER, vs. PENNSYLVANIA RAILROAD CO.	Opinion In Tort

This is an action brought by the Plaintiff to recover from the defendant the value of a suit-case (and contents) which was deposited by Plaintiff in defendant's parcel room at the Market St. Station in Newark, N. J., on January 31, 1921, and which was not returned to Plaintiff on demand.

The undisputed facts in the case were as follows: Plaintiff was a passenger on the Defendant's train coming from Harrisburg, Penn., to Newark, N. J. She arrived in Newark at 3:15 P. M. on Jan. 31, 1921 and had a station porter carry her suit case from the train to the parcel room where she checked it and received from the agent in charge of the room a check and also at the same time deposited a hat box for which she also received a check and paid the fee demanded of ten cents for each article checked. After an absence of about three quarters of an hour Plaintiff returned, presented her checks and received her hat box but was informed by the man in charge that he had given her suit case to some other party by mistake.

She requested an inspection of the suit case that was left in place of hers but there was noth-

ing in or about it that indicated who its owner was.

The defendant company made every reasonable effort to locate Plaintiff's suit case but without success and it has not been received.

The Plaintiff contends that no notice was given to her that there was any limitation as to the liability assumed by the Defendant Company when receiving her suit case for care and that she did not read the matter printed on the check given her or see the placards posted outside the parcel room window in which a limitation was expressly set forth or see a similar placard posted inside the parcel roof.

The defendant contends that when Plaintiff deposited her suit case with defendant in its parcel room it was incumbent upon her to ascertain the terms upon which defendant accepted it.

I find as a fact that Plaintiff's attention was not called by defendant to the terms of the contract printed upon the check given her or to the placards posted outside and inside the parcel room setting forth the Regulations under which defendant received articles for deposit and that she did not read the printed matter on the check or the posted regulations above mentioned. The testimony convinces me that from where she stood in front of the pracel room window she could not see the posted regulations so as to know what they were: in other words she might have known that something in the way of a sign was posted there but what its contents were or to what it referred she could not read.

The defendant submitted the following requests:

1. That the Court "find in favor of the defendant and against the Plaintiff.

I decline to so find.

2. If the finding be in favor of the Plaintiff and against the defendant then it shall be limited to an amount not exceeding $25.00.

I decline to so find.

3. That the terms printed and contained in the parcel check (P-1) and the placards (D-1) constistitute extent of the holding out of the defendant and its corresponding legal duty, in accepting the bailment of the parcel deposited by the plaintiff.

I decline to so find under the evidence in this case.

4. That the terms and conditions contained in the parcel check and the placards referred to are binding upon the plaintiff and her recovery, if she recovers at all, against defendant, must be limited in accordance with those terms.

I decline to so find under the evidence in this case.

5. Defendant, as bailee was charged with the duty of reasonable care only in handling the parcel deposited by the Plaintiff, and is liable only to plaintiff for loss or damage ensuing only in case of negligence in the handling or care of it.

I so find.

6. No Negligence of defendant in handling of the parcel deposited by plaintiff is shown, and therefore, there can be no recovery against defendent by plaintiff in this case.

I find that the defendant did not return the suit case and contents on presentation, by the Plaintiff, of the check issued to plaintiff, and that the evidence of Defendant showed that Defendant's servant had turned over the suit case and contents to a person not presenting the check issued therefor, and not authorized to receive the same and that therefore, the defendant, not having

satisfactorily shown that the delivery to the wrong party could not have been avoided by the use of reasonable care in comparing the check offered by the third party with the check attached to the suit case of the plaintiff, was guilty of negligence.

The case of *Smith* vs. *Bank,* 69 N. J. L. 288 cited by defendant as controlling this phase of the case is, in my opinion not applicable as that case was that of a gratuitous bailee, while the case now under consideration is one of a bailee for hire.

7. "The burden of proof is on the plaintiff to establish negligence of defendant and such burden has not been sustained and plaintiff is therefore not entitled to recover in this action."

The suit case not having been returned at all the law presumes negligence and casts upon the bailee the onus of showing he was not negligent.

France vs. *Grand Rapids L. R. I. Rwy. Co.,* 126 N. Y. 851.

In 3 R. C. Law p. 104 P. 29 it is stated

"Accordingly if he should deliver the property to a person not authorized to receive it he would make himself responsible for its value, without regard to the question of due care or the degree of diligence."

If he does so he subjects the property to a risk which the bailor did not contemplate; he does an act not authorized by the terms of his trust and in such an event the fact that he has made an honest mistake in the identity of the owner or of the property after the exercise of care on his part, will not excuse him. (see also last par. of 38)

I find that the burden of proof is on the plaintiff to establish negligence on the part of defen-

dant but I find as a matter of law that plaintiff sustained the burden and made out a prima facie case which defendant did not rebut.

8. The eighth request, "The burden" was on the plaintiff to ascertain in the terms upon which the defendant accepted the bailment of the suit case and not on the defendant to see that those terms were brought specifically to the attention of the plaintiff."

I find that it was not the legal duty of plaintiff to ascertain if defendant was accepting the parcel on any other terms than those imposed by the Common Law on a similar bailee and that it was the duty of the bailee if it wished to limit its liability to bring such limiting terms to the attention of the bailor so that she might accept or refuse them as she saw fit.

9. "The regulations contained in the parcel check and the placards were reasonable."

I so find.

10. "The Regulations contained in the parcel check and the placards were binding on the plaintiff."

I find that the regulations, not having been called to plaintiff's attention and she having no knowledge of them, were not binding upon her.

11. "The defendant was not an insurer of the safety of the parcel deposited by plaintiff."

I so find.

12. "The plaintiff was chargeable with notice of the conditions and terms printed on the parcel check and the placards."

I decline to so find.

13. "Plaintiff was negligent if she did not read the check and placards and ascertain their contents."

I decline to so find.

14. "Plaintiff is estopped from denying knowledge of the terms and conditions contained in the parcel check and the placards."

I decline to so find.

The bailment in this case was one for hire for the mutual benefit of both parties and the fact that only a ten cent charge was made for the care of the article can in no way affect the rights and duties of the parties to the bailment on the ground that consideration was not adaquate recompence for the service to be performed.

3 R. C. L. p. 80-par 9.

The Bailee was bound to use ordinary care and diligence in safeguarding plaintiff's property and I find as a fact that it did not use ordinary care in this respect and the article was lost by reason of the negligence of defendant's servant and that the loss could have been prevented by the use of ordinary care on the part of the defendant's servant. *Healy* vs. *N. Y. C. & H. R. R.* 60, 138 N. Y. Supp. 287.

Accordingly the defendant is liable for the value of the suit case and contents unless its liability is limited by the terms provided on the parcel check and placards. (P1 and D1).

The rule with respect to the right of the bailee to restrict or diminish its liability by special contract with the bailor is stated as follows:

"The parties to a bailment may diminish the liability of the bailee by special contract, the principle being that the bailee may impose whatever terms he chooses if he gives the bailor notice that there are special terms and the means of knowing what they are; and if the bailor choose to make the bailment he is bound then, provided the contract is not in violation of law or of public policy and that it stops short of protection in case

of fraud or negligence of the bailee and provided further that the terms of the contract are clear, such stipulations being strictly construed.

Corp. Juris Vol. 6, p. 1112. See also *Dodge* vs. *Nashville & Ch. & St. Louis R. R.* 215 S. W. 274-276.

The evidence shows that plaintiff did not read the parcel check (P1) or the placards (D1). Did not know their contents and that the agent of the defendant did not call her attention to them at the time of bailment.

They therefore did not constitute a contract binding the liability of defendant.

As to the duty of the plaintiff to read the terms printed on the check the Court says in *Dodge* vs. *Nashville & Ch. & St. Louis R. R. Co.* supra. "If he did not know it" (the conditions in the check).

"I think the law imposed no duty on him to read his check to find whether or not there was a contract provided thereon or that he was guilty of neglect in not reading it because he had no reason to apprehend that a contract was printed thereon."

From the foregoing law and facts I conclude that the plaintiff is entitled to damages against the defendant for the loss of her suit case and the amount of such damages must be ascertained from plaintiff's own testimony as she was the only witness offered on this point.

It is contended that she was not competent and qualified to testify as to the value of the articles in question.

The value of articles may be shown by showing the price at which they were bought in ordinary course of trade from a dealer.

Luci vs. *Jones*, 39 N. J. L. 707.

Mrs. Lebkuecher testified that in the suit case was a black satin gown bought by her in September, 1920 and for which she paid $85.00, a black brocaded satin gown for which she paid $90. in August, 1920, and so on thru the entire list of articles which she enumerated as being the contents of the suit case. Without taking up in detail each article purchased it is sufficient to say that as to the articles which she purchased in the United States and which were articles strictly of female wearing apparel I feel that the witness was competant to testify both as to what she paid for these and what their market value was at the time of purchase. She also testified as to how much wear they had been subjected to and from the evidence the court sitting as a jury is able to find what their value was on the day the suit case was checked.

As to the Spanish lace scarf the witness qualified as an expert on the value of laces, and placed the value of the scarf at $40.00.

As to the articles purchased abroad by witness she testified as to their present value based on what she paid for them or on what similar articles were charged for in stores dealing in them at retail.

As the total value of the articles testified to exceeds the jurisdiction of this court and the plaintiff only asks as damages the amount allowed by the act as the jurisdiction of the court I find that the plaintiff is entitled to a judgment of $500 against the defendant. In making calculation of the value of the goods lost and allowing a more liberal reduction from their cost value then estimated by the plaintiff, (the deduction being made by the court on account of the use of articles by

plaintiff since their purchase) I find that their lessened value is about $500.00.

A judgment will therefore be entered in favor of the plaintiff and against the defendant for $500. damages and costs of suit.

CHARLES H. STEWART,
J.

Aug. 24, 1921.

Transcript of Docket.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF ESSEX.

Transcript of Docket Page No. 759.

In Tort

EMMA M. LEBKUECHER, *Plaintiff,* v. PENNSYLVANIA RAILROAD COMPANY (a corp'n.) *Defendant.*	Plaintiff's Costs: Summons ...$ 2.10 Mileage .... .24 Listing Fee.. 1.50 Attorney Fee 25.00 Total Cost $28.84

GUSTAVE HAUSSLING, *Plaintiff's Attorney.*
WALL, HAIGHT, CAREY & HARTPENCE, *Defendant's Attorneys.*

A summons in the above entitled cause was issued on April 13th, 1921, returnable on April 20th, 1921, wherein the plaintiff demands of the defendant the sum of Five Hundred Dollars.

The plaintiff filed a State of Demand, April 25th, 1921.

The summons was served and returned as follows:

"I served the within summons April 14, 1921 on Mr. Mossman, he being agent for the within named defendant by reading it to him and giving him a copy thereof.

"C. J. Schroeder, Sergeant-at Arms."

This was adjourned to May 4th, 1921, and to May 13th, 1921.

May 13th, 1921 This cause was tried:

HARRY SCHIRMER was sworn as stenographer.

The following witnesses were sworn on behalf of the plaintiff:

EMMA M. LEBKUECHER.

The following witnesses were sworn on behalf of the defendant:

Alfred W. Meyers and Orlando B. Levan.

Exhibits:

P 1—Baggage check.

P 2—Letter from Pennsylvania R. R.

D 1—Photograph of Check Room.

D 2—Set of Rules.

May 13th, 1921—Whereupon decision was reserved.

August 24th, 1921—Opinion filed—Judgment entered as follows:

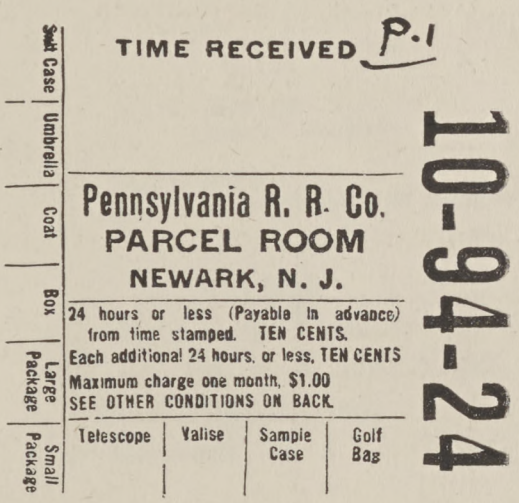
August 24th, 1921—Whereupon it is on this day, by this Court considered and adjudged that Emma M. Lebkuecher, the plaintiff, recover against Pennsylvania Railroad Company, the defendant, the sum of Five Hundred Dollars damages and costs of suit.

I, J. Edward DeLancy, Clerk of the District Court of the Second Judicial District of the County of Essex, do certify that the foregoing is a true and complete copy of the record in the above entitled matter. Witness my hand and the seal of said Court.

J. EDWARD DE LANCY,
Clerk.

Irvington, N. J.,
August 25th, 1921.
[Seal]

EXHIBIT P—1



RECEIVED

The person accepting this check hereby agrees in consideration of the low rate at which it is issued, that no claim in excess of $25 shall be made against the Railroad Company for the loss of, or injury to, any package, valise or other article which may have been deposited with it and for which this check has been issued.

Articles remaining unclaimed after 90 days will be subject ot sale for accrued charges.

EXHIBIT P—2

PENNSYLVANIA SYSTEM

Eastern Region

Traffic Department

Philadelphia, Feb. 24, 1921.

W. F. McPHAIL,
General Baggage Agent.

A. A. BROWN,
Assistant General Baggage Agent.

In Reply Refer to No. D4Y

Ep9

Mrs. A. E. Lebknecker,
c/o Dr. F. A. Haussling,
661 High Street,
Newark, N. J.

Dear Madam:

I am in receipt of a communication from Mr. P. L. Grove, Superintendent at Jersey City, attached to which is report from Inspector of Police at Jersey City, N. J. relative to loss of your suitcase and contents, checked in the Parcel Room at Market Street, Newark, N. J., January 31, 1921, under check No. 109424.

The investigation indicates that your suitcase was in error delivered to some other person, and although strenuous efforts have been made by the Police Department to recover same, I regret very much that their efforts have not been successful. However, the investigation will be continued and if successful we shall promptly communicate the good news to you.

Under the regulations governing the checking of parcels the railroads' liability is limited to

$25.00 for loss or damage, and notice to this effect is displayed on placards at the windows of the parcel rooms, and in addition the information is printed on the reverse side of the duplicate check. While we will continue our efforts to recover the case we are also willing to send you cheque for $25.00 in settlement promptly on receipt of advice from you as to its acceptance and on receipt of the duplicate check which you now hold.

Very truly,

W. F. McPHAIL.
General Baggage Agent.

h-m
Copy to
Mrs. A. E. Lebknecker,
Harrisburgh, Pa.

EXHIBIT D—1

Pennsylvania System

EASTERN REGION

Parcel Room Charges

THE STORAGE OF VALISES, PARCELS, etc., at stations will be subject to the following rates and regulations on and after April 1, 1920:

For 24 hours or less (PAYABLE IN ADVANCE)	10 cents
For each additional 24 hours or less	10 cents
Maximum charge for one month	$1.00
Each subsequent day or fraction thereof after one month	10 cents
Maximum charge for two months	$2.00

Umbrellas, canes, coats, or other garments will be subject to the same charge as a parcel.

Articles of a fragile, inflammable, or explosive nature, or otherwise objectionable; also articles of a bulky nature, such as trunks, tool chests, baby coaches, etc., will not be received.

Money, jewelry, negotiable papers and like valuables should not be enclosed in valises or parcels to be checked, and the Railroad will not be responsible therefor.

When duplicate check is lost, ownership of property must be proved by accurate description of contents, and delivery will then be made on deposit of twenty-five cents and signing of lost check receipt. If check is later found and presented the amount paid will be refunded.

The Railroad will not be responsible for loss, damage, or detention of articles left in storage for any amount in excess of $25.00.

W. F. McPHAIL,
General Baggage Agent.

A. A. BROWN,
Assistant General Baggage Agent.

Allen, Lane & Scott, Printers, Philadelphia.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

EMMA M. LEBKUECHER, *Plaintiff-Respondent,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	*In Tort.* *On Appeal from Supreme Court.*

RESPONDENT'S BRIEF.

Statement of the Case.

On January 31, 1921, the plaintiff-respondent arrived from Harrisburg, Pa., at the Market Street Station, at Newark, N. J., and checked her suit case, together with a hat box, at the parcel room maintained by the defendant-appellant, and paid the agent in charge thereof the sum of ten cents for each parcel checked. The said agent delivered to her two checks, and placed a duplicate or corresponding numbered check upon each parcel so deposited. Upon returning to the parcel room about three-quarters of an hour later, the plaintiff-respondent presented her checks, and received the hat box, but was informed by the agent that the suit case had been delivered to some other person for a check different in number from that issued to the plaintiff-respondent. There was a printed endorsement upon the back of the check that no claim in excess of $25.00 was to be made against the defendant-appellant "for the loss of, or injury to, any package, valise or other article which may have been deposited with it." The plaintiff-respondent's attention was not called to said limit of liability when the check was issued, or to the placards posted in the parcel room, which contained a similar limitation of liability.

An action was instituted to recover the value of the suit case and contents thereof, which proceedings was tried, without a jury, in the Second Judicial District Court for the County of Essex, and judgment was rendered in favor of the plaintiff-respondent in the sum of $500.00.

POINTS.

I.

The degree of negligence has no application to the liability of the bailee in respect to the return or delivery of the goods bailed.

The degree of diligence which is exacted in each of the several classes of bailees, in respect to the care of the thing bailed, has no application to the liability of the bailee in respect to its return or delivery. Every bailee is bound, at his peril, to know that the person to whom he delivers the chattels is the proper person to receive it, and *if he delivers it to the wrong person, though acting in good faith, he is nevertheless liable for its conversion.* 3 A. & E. (2 ed.) 754; 3 R. C. L. 104, § 29; *Id.*, 116, § 38.

The defendant-appellant was bound to use ordinary care and diligence in safeguarding the plaintiff-respondent's property and the delivery of the suit case to the wrong person is not the exercise of ordinary care.

II.

Contracts of bailment limiting common law liabilities must be assented to by both parties.

The courts of ~~the~~ THIS State have never directly decided the question dealing with loss of goods deposited with a bailee issuing a check or coupon with a limited liability, nevertheless, the courts of New York and Tennessee have decided the question that is at issue in the case at bar. The courts of those jurisdictions have held that the bailee was

liable for the full amount of damages, notwithstanding the issuance of checks or coupons with limited liability endorsed thereon.

In *Healy* v. *N. Y. Central & Hudson R. R. Co.*, 153 App. Div. 516, and affirmed (without opinion) in 210 N. Y. 646, the facts in the case were exactly similar to the case at bar.

At page 519, Judge Lyons says:

> "I think that the decision in this appeal should be placed upon the broader ground that under the circumstances disclosed by the record the unreasonable condition printed upon the coupon attempting to limit the liability of the defendant to not exceeding ten dollars was void. Had notice been given by the bailee to the bailor of the condition limiting the liability of the former, and the latter then seen fit to enter into the bailment, a different question would be presented. But in the case at bar no notice whatever was given to the bailor of the existence of the condition, neither was there anything connected with the transaction, which was for the mutual benefit of both parties, which would tend in any way to suggest to a reasonably prudent man or lead him to suspect the existence of such a special contract, or tend to put him on guard or on inquiry relative thereto.
>
> The coupon was presumptively intended as between the parties to serve the special purpose of affording a means of identifying the parcel left by the bailor. In the mind of the bailor the little piece of cardboard which was undoubtedly hurriedly handed to him and which he doubtless as hurriedly slipped into his pocket without any reasonable opportunity to read it, and hastened away without any suggestion having been made upon the part of the parcel room clerk as to the statements in fine print thereon, did not arise to the dignity of a contract by which he agreed that in the event of the loss of the parcel, even through the negligence of the bailee itself, he would accept therefor a sum which perhaps would be but a small fraction of its actual value.

> "The plaintiff having had no knowledge of the existence of the special contract limiting the liability of the defendant to an amount not exceeding ten dollars, and not being chargeable with such knowledge, the minds of the parties never met thereon, and the plaintiff cannot be deemed to have assented thereto and is not bound thereby."

Houghton, *J.*, filed a concurring opinion, and at page 525 says:

> "The business of checking hand baggage at railway stations has become a large and important one. It seems to me that any one in the ordinary course of business, checking his baggage at such a place would regard the check received as a mere token to enable him to identify his baggage when called for, and that in no sense would he have any reason to believe that it embodied a contract exempting the bailee from liability or limiting the amount thereof. If the plaintiff knew that the defendant had limited its liability to $10, either by his attention being called to it or otherwise, then, of course, the law would deem him to have assented to it, so that a binding contract would be effected. If he did not know it, I think *the law imposed no duty upon him to read his check to find whether or not there was a contract printed thereon,* or that he was guilty of negligence in not so reading it, because he had no reason to apprehend that a contract was printed thereon."

The decision of *Healy* v. *N. Y. Central & Hudson R. R. Co.* was cited and followed in *Dodge* v. *Nashville, Chattanooga & St. Louis R. R. Co.,* 215 S. W. 274. The facts in this case were also similar to the facts in the case at bar. On the face of the check issued to the plaintiff was printed the following in red letters: "Notice.—Not responsible for an amount to exceed ten dollars on any article covered by this check."

At page 277, the Court says:

> "In the absence of notice to the complainant of the stipulation printed upon the check restricting the liability of the defendant, we do not think

that he should be bound thereby. It is hardly probable that, if the complainant had known that the defendant was limiting its liability for his suit case and contents to $10, he would have deposited it with the defendant. The uncontradicted evidence is that the value of the suit case and contents were more than 22 times the amount for which the defendant would be liable if the limitation is held binding. *We do not think that the complainant, by receiving the numbered check, was chargeable with notice of the printed stipulation thereon.* We do not think that he was bound to regard it as a receipt containing a printed stipulation restricting the liability of the company in the absence of his attention being called to such stipulation, but was warranted in regarding it as a mere check or token that would enable him and the agent of the defendant to identify his suit case upon his return and making demand therefor. We do not think that an ordinarily prudent man would have regarded it as more, and the complainant was not guilty of a breach of duty in failing to appraise himself of such limitation. It was not similar to the usual warehouseman's receipt, or the receipt of an express company or railway company issued for goods received on deposit or for transportation containing various printed stipulations which the depositor or shipper, as the case may be, is supposed to read and acquaint himself with. It was simply a numbered check showing that the holder had deposited a parcel of some character with the defendant, which enabled the defendant to identify the parcel by comparing the number on the check with the number of the duplicate attached to the parcel.

In receiving baggage for deposit at its check room, the defendant held itself out as a bailee for hire, and said to the public:

'I will receive your baggage for safe keeping, giving you a numbered check, a duplicate of which will be attached to the baggage deposited that will enable identification and delivery upon your calling for same.'

It was for safekeeping that the complainant deposited his suit case with the defendant, for which

> he was given the check of identification by the young lady in charge. He had no reason to suspect that said check contained any statement restricting the liability of the company, in the absence of his attention being called thereto, and to hold the company only liable for $10, when the proof shows that the suit case and contents were worth more than 22 times that amount, and were lost through the admitted negligence of the defendant's servant, would be to encourage the defendant in its failure to exercise proper care in the performance of its duties as such bailee."

The Court of Errors and Appeals of this State in *Hill* v. *Adams Express Co.*, 82 N. J. L. 373, has held that where a shipper accepted in silence from an express company a shipping receipt containing a limitation of the company's liability of $50, and it appearing that the shipper did not assent to such limitation, the limitation was not binding upon the shipper.

At page 376 the Court says:

> "We hold that since there was no assent by the plaintiff Hill, or by Barnett through whom he acted, to the limitation of the value of the goods, nor knowledge that the express company's receipt contained a contract limiting the liability of the company, the limitation is not binding upon the plaintiff."

At page 376:

> "In transactions of this sort, as in other matters, the assent of both parties is required in order to make a contract. More than fifty years ago our Supreme Court declared that 'where a common carrier undertakes to transport an article in his line of business, the legal presumption is that he does it subject to the common law liability, and this presumption remains until it is overcome by positive proof of a special agreement.' New Jersey Railroad Co. *ads.* Pennsylvania Railroad Co., 3 Dutcher 100. * * * The doctrine thus announced entered into the reasoning of this Court in Russell *v.* Erie Railroad Co., 41 Vroom 808, 811; and Judge Vroom, in deliv-

> ering the opinion of the Court, declared: 'The burden of proof of showing such a limitation of liability is on the defendant company, and being in derogation of common right is to be construed most strongly against the carrier. (Citations.) *No presumption will be indulged in favor of exemptions from common law liability.*' "

It has also been established in this State that a common carrier cannot limit the amount of its liability for losses caused by its negligence. *Paul* v. *Pennsylvania R. R. Co.*, 70 N. J. L. 442.

The cases of bailees and common carriers are analogous, inasmuch as each incur certain common law duties or liabilities, and they cannot impose any limitation in derogation of these liabilities except by special agreement and the assent of both parties. The courts in *Healy* v. *New York Central & Hudson R. R. Co.* and *Dodge* v. *Nashville, Etc., R. R. Co., supra,* have adopted the same theory of reasoning as to the limitation of liability of bailees as the New Jersey courts have established as to the limitations of liability imposed by common carriers.

The right of the bailee to diminish its liability by special contract is stated as follows:

> "The parties to a bailment may diminish the liability of the bailee by special contract, the principle being that the bailee may impose whatever terms he chooses, if he gives the bailor notice that there are special terms and the means of knowing what they are; and if the bailor chooses to make the bailment, he is bound by them, provided the contract is not in violation of law or of public policy, and that it stops short of protection in case of fraud or *negligence of the bailee;* and provided further, that the terms of the contract are clear, such stipulations being strictly construed" (6 C. J. 1112).

The evidence shows that the plaintiff-respondent did not read the parcel check or the placards, nor was her

attention called to them by the agent of the defendant-appellant at the time the suit case was checked at the parcel room, and therefore no special contract was created limiting the liability of the defendant-appellant and binding upon the plaintiff-respondent.

Terry v. *Southern Ry. Co.,* 81 S. C. 279, 18 L. R. A. (N. S.) 295, cited in the brief of the defendant-appellant, is not decisive of the case at bar, inasmuch as the facts of the case do not show that the plaintiff did not have notice, either express or implied, of the limitation printed on the check.

The amount of the fee charged by the bailee does not govern the extent of its liability. The Court in *Fraam* v. *Grand Rapids & Indiana Ry. Co.,* 161 Mich 556, 126 N. W. 351, stated:

> "It may be true as regarded by defendant, that the fee charged (five cents) for the services performed is not much in excess of the value of the check attached to the article, but we are nevertheless of the opinion that the insignificant amount of the charges cannot control the status of the parties. Defendant held itself out to the plaintiff as willing to take charge of his property, and to re-deliver it to him on presentation of the check. It demanded a certain compensation, which the plaintiff paid. That this compensation was small is of no consequence. Its adequacy was a matter for the determination of the parties, and they having agreed, the courts will not interfere."

III.

The endorsement of a limited liability for "Loss of, or injury to" the subject matter of bailment does not limit the liability of the bailee for loss arising from its negligence.

In *Minn. Butter & Cheese Co.* v. *St. Paul Cold Storage Co.,* 77 N. W. 977, in deciding that the bailee was liable for damages, notwithstanding the issuance of a receipt reciting that the owner or bailor assumed "loss

or damage" arising from particular causes, the Court says:

> "Now, this receipt was issued by the defendant, and if it is ambiguous, it must be construed against itself; and we think that an exception from a loss or damage through any particular cause will never be construed to cover a negligent loss of that character. (Lawson, Bailm., § 162.) This receipt does not in terms provide against the negligence of the defendant. The condition that all the property shall be at the owner's risk of any loss or damage from water might doubtless apply to cases of a great flood, or a violent storm of rain, but not to dripping of water from overhead pipes, resulting from the negligence of the defendant in not giving them proper attention."

The same doctrine was followed in *Denver Public Warehouse* v. *Munger,* 20 Colo. App. 56, 77 Pac. 5, and *Moeran* v. *N. Y. Poultry, Etc., Assoc.,* 59 N. Y. Supp. 584, where the Court also held that the words "at owner's risk" did not exempt the bailee for damages from its negligence in caring for the subject matter of bailment. In *Sinischalchi* v. *Baslico,* 92 N. Y. Supp. 722, the lease of an organ provided that the lessee should not be liable for damages by the elements, and the Court held that such a clause did not release the lessee or bailee for damages to the organ by the elements, which could have been avoided by the exercise of ordinary care. In *Cohen* v. *Koster,* 111 N. Y. Supp. 673, where the owner of a stable had posted a sign therein that he would not be responsible for goods left in trucks in the stable, the Court held that he was liable for conversion of merchandise left in a truck, where he delivered same to a stranger.

A provision in receipts issued by a warehouseman for property stored with him, that he is not responsible for loss by fire, does not include fire due to his own negligence. *Gulf Compress Co.* v. *Harrington,* 119 S. W. 249, 23 L. R. A. (N. S.) 1205; *Dieterle* v. *Bekin,* 143 Cal. 683, 77 Pac. 664.

In discussing the question of the limitation of liability of warehousemen by the insertion of clauses in their receipts, in 27 R. C. L., p. 997, § 557, it is stated:

> "Some courts, however, deny the power of a warehouseman to insert provisions in the receipt which will relieve him from the consequences of his own negligence. But, assuming the power of a warehouseman to exempt himself from liability arising from his own negligent conduct, it is clear that the courts will strictly construe the exemption clause and will not allow the exemption, unless the contract plainly shows that it is the intention of the parties to relieve the warehouseman from the result of such conduct."

When the plaintiff-respondent deposited her articles in the custody of the defendant-appellant, she was entitled to the exercise of ordinary care in the safe-keeping of her suit case, and no implication could arise under the terms of the notice printed upon the check or the placards that a contract was created whereby the plaintiff-respondent waived the exercise of that care and agreed to limit her claim to the sum of $25.00 in the event of a loss arising from the negligence of the defendant-appellant by the delivery of her suit case to another person. No such interpretation could be imputed to the terms of a contract providing for "loss of, or injury to" the subject matter of the bailment.

The English authorities cited in the brief of the defendant-appellant are subject to the criticism that the Court was imposing terms not within the contemplation of the minds of the parties, when it imposed a limitation of liability for a loss directly attributable to the negligence of the bailee.

It is respectfully submitted that the judgment below should be affirmed.

GUSTAVE HAUSSLING,
Of Counsel for the Plaintiff-Respondent.

New Jersey Court of Errors and Appeals

EMMA M. LEBKUECHER, *Plaintiff-Respondent,* vs. THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	In Tort. On Appeal from Supreme Court.

APPELLANT'S BRIEF.

Statement of the Case.

This is an action to recover the value of a suit case and contents, deposited by plaintiff in the Parcel Room of defendant, at the Market Street Station, Newark, N. J., on January 31st, 1921. Plaintiff paid defendant 10 cents at the time the suit case was so deposited, and received and accepted a check therefor, which was offered in evidence by plaintiff on the trial and is marked Exhibit "P-1".

When the plaintiff presented the check at the Parcel Room for the purpose of receiving back her suit-case, it was learned that the suit-case had been handed out by the Parcel Room attendant to some other person by mistake, through a confusion of the numbers upon the checks, and although, as shown by the letter Exhibit "P-2", which was also offered in evidence by the plaintiff, "strenuous efforts" were made by defendant to locate the missing suitcase, it has never been found, nor

has the parcel erroneously retained in its place ever been called for by its owner.

Printed on the check accepted by plaintiff (Exhibit "P-1") is the following:

> "The person accepting this check hereby agrees, in consideration of the low rate at which it is issued, that no claim in excess of $25. shall be made against the Railroad Company for the loss of, or injury to, any package, valise or other articles which may have been deposited with it and for which this check has been issued. Articles remaining unclaimed after 90 days will be subject to sale for accrued charges".

Posted at the Parcel Room window where plaintiff deposited the suit-case were also printed placards, one on the outside frame of the window to the left and the other just inside the window, on the right, at about the level of the average person's eyes, on which was printed, in large type, a statement to the effect that the Railroad Company would not be responsible for loss, damage or detention of articles left in storage for any amount in excess of $25. (Exhibit "D-2")

Plaintiff stated in her testimony that at the time she deposited the suit-case and accepted the check, she was in a great hurry, (State of the Case, p. 34) and that nothing was said by her or the parcel room attendant at the time. (pp. 44, 46, 47)

She had left parcels, other than baggage, in that same Parcel Room on a number of previous occasions, and had received similar checks. She had traveled extensively both in this country and abroad, and went about on her travels alone. The Market Street Station was perfectly light, and there was nothing to prevent plaintiff from reading the placards or check.

According to plaintiff's testimony, the missing

suit-case contained wearing apparel, jewelry, toilet accessories and like articles, upon which, she placed a value somewhat in excess of $500.

The case wase tried by the Court without a Jury, and the Court gave judgment for the plaintiff for $500. damages, holding that defendant was negligent in giving out the suit case to the wrong person, and that as the plaintiff did not read the check or placard, and did not know of the limitations contained thereon, she was not bound by such limitations. The Court further found that plaintiff was not negligent for failing to read her check or the placards, or for failing to inquire as to the terms upon which her parcel was received by the defendant. The value of the several articles contained in the suitcase was sought to be proved by plaintiff's testimony alone, much of which was received subject to defendant's objection. To all of these rulings defendant made objection, and exceptions were allowed by the Court.

The judgment was affirmed by the Supreme Court and from that judgment this appeal is taken.

The questions involved in this appeal are the rulings and findings of the trial judge in the following particulars:

(1) The refusal of the Court to find that the damages, if any, which the plaintiff should recover of the defendant, should be limited to an amount not exceeding $25.

(2) The refusal of the court to find, that the terms and conditions printed and contained in the parcel check (P-1) and the placards (D-1) constituted the extent of the holding out of defendant and its corresponding legal duty, in accepting the bailment of the parcel deposited by plaintiff, and that said terms and conditions were binding on plaintiff, and her recovery, if she should recover at all, against the defendant, must be

limited in accordance with those terms and conditions.

(3) The refusal of the court to find that the burden was on the plaintiff to ascertain the terms upon which the defendant accepted the bailment of the suit-case and not on the defendant to see that those terms were brought specifically to the attention of the plaintiff; and the finding by the court that it was not the legal duty of plaintiff to ascertain if defendant was accepting the parcel on any other terms than those imposed by the common law on a similar bailee and that it was the duty of the bailee, if it wished to limit its liability to bring such limiting terms to the attention of the bailor so that she might accept or refuse them as she saw fit.

(4) The finding by the court that the regulations contained in the parcel check not having been called to plaintiff's attention, and she having no knowledge of them, were not binding upon her.

(5) The refusal of the court to find that plaintiff was chargeable with notice of the terms and conditions printed on the parcel check and placards, that she was negligent if she did not read the check and placards and ascertain their contents, and that she was estopped from denying knowledge of such terms and conditions.

(6) The finding by the court that the plaintiff was entitled to damages against the defendant for the loss of her suit case and contents, and that the value of the goods alleged to have been lost was about $500.

(7) The refusal of the court to grant defendant's motion for a non suit on the ground that no negligence had been shown on the part of defendant.

(8) The refusal of the court to find that

no negligence was shown on the part of defendant in the handling of plaintiff's suit case, or that plaintiff had failed to make out a prima facie case and to sustain the burden of proof of such negligence.

The grounds of appeal on which appellant relies, and which are asserted and intended to be argued, are contained in the specifications of error, numbers 8 to 25, inclusive (State of Case pp. 2-6). The others are not pressed or argued.

POINTS.

I.

No negligence was shown on the part of Defendant or its servants in the handling of parcels in the parcel room, and the failure of Defendant to return Plaintiff's parcel in the single instance does not show want of such care as is required of the Defendant as a bailee in such case.

Meyers, the agent in charge of the parcel room, showed by his testimony (p. 53-56) that the parcles were handled systematically and with due care, and that every precaution was taken to see that they were returned to the right persons. During the year previous to this transaction, between 57,000 and 58,000 parcels were checked, and in only two cases were parcels lost. It is submitted that the defendant could not be guilty of negligence when it had handled, with the loss of only two parcels, this large number during the year, for the proper test of the defendant's conduct is this: Was due care exercised at all times in the management of defendant's parcel room? The testimony shows that it was.

II.

The terms printed and contained in the parcel check (P-1) and conspicuously displayed on the placards (D-2) constituted the extent of the holding out of Defendant, and its corresponding legal duty in accepting the bailment of the parcel delivered by Plaintiff; and the burden was on Plaintiff to ascertain the terms on which Defendant accepted such bailment, and not on Defendant to see that these terms were brought specifically to the attention of Plaintiff; and the terms contained in the parcel check and placards became binding on Plaintiff upon and by reason of her acceptance of the parcel check without objection, and her recovery should be limited in accordance therewith.

The relation of the parties was that of bailor and bailee, and not of passenger and carrier. The transaction was a simple bailment.

Plaintiff had herself used the Parcel Room on previous occasions when not a passenger (pp. 33, 34 and 47)

See *Gilson* v. *P.R.R. Co.*, 86 N. J. L. 446; Aff. 87 N.J.L. 690.

The rights, duties and liabilities of a bailor and bailee are governed by the contract of bailment, and the general rule is stated as follows:

> "The rights, duties and liabilities of the bailor and bailee must be determined from the terms of the contract between the parties, whether express or implied. Where there is an express contract, the terms thereof control, since both the bailor and the bailee are entitled to impose on each other any terms they respectively may choose, and their express

agreement will prevail against general principles of law applicable in the absence of such an agreement. Where the bailment is implied the intention of the parties must be ascertained and explained by all the surrounding and attending circumstances." (6 Corpus Juris, p. 1110)

Where an individual or a corporation holds itself out to perform certain services to the public generally, and establishes rules respecting its charges for such services, and terms and conditions in connection therewith, it is submitted that it is the duty of persons who wish to avail themselves of such services, to ascertain what those terms and conditions are, either by inquiry or by reference to printed rules or provisions, and if they fail to do this and then avail themselves of such services, they will be presumed to have assented to such terms and conditions.

In the case at bar, the plaintiff must have known, or must be presumed to have known, that the defendant had established rates, terms and conditions for its parcel checking business, and if she failed to inquire, when she checked her parcel, what those terms and conditions were, the defendant and its agent might properly assume that she knew and assented to them. They were perfectly obvious and easily discernible.

III.

The Defendant established a reasonable charge, with reasonable limitations as to value and liability, with respect to the articles left in its custody as bailee, and gave reasonable notice thereof to the public and to persons dealing with it as such bailee, by a plain statement printed on its

checks given for the article bailed, and also by plainly printed notices on placards of reasonable size, posted in conspicuous places at the parcel window, and in the parcel room, in plain view of persons checking parcels; and Plaintiff was chargeable with such notice, was negligent if she failed to read the check and placards, or to inquire and ascertain the terms on which Defendant would accept her parcel, was estopped from denying knowledge of such terms, and was bound by such terms and conditions.

The liability claimed by the plaintiff being based on contract, it becomes important to ascertain, by the acts and conduct of the parties, and the surrounding circumstances, what the contract was.

When plaintiff deposited her suit case at the parcel window, it must be presumed, as she had checked articles there before, that she expected to receive the numbered check which would enable her to again reclaim the suit case. She knew that the giving of the check constituted a part, and a very important part, of the transaction. She must have attached sufficient importance to the check to look at it when it was handed to her, and to at least satisfy herself that it was a check. In doing so she must have seen that it contained printing, other than the number intended to identify her property, and presumably she must have known that the printing related in some way to the parcel transaction. The plaintiff had traveled extensively (p. 45), and in doing so must have had frequent occasion to use railroad and steamship tickets, receipts, checks and other papers and documents of a like character issued by railroad and steamship companies, upon which were printed notices, rules, terms and regulations of various kinds. She must have known, also,

through her experience in traveling, that printing such rules on tickets and other documents similar thereto, was the method generaly adopted for notifying travelers, passengers, and the public of such rules and regulations.

Many contracts are made by the delivery of a document by one party and its acceptance by the other, such for instance as deeds, mortgages, bills of sale, fire insurance policies, and shipping receipts. These frequently contain provisions of which the party receiving them is ignorant, and which he does not take the trouble to read, and yet, in the absence of fraud or mistake, the law holds the contract binding on him.

The plaintiff gives no excuse for not reading the check, except that she was in a hurry (p. 34). But she could have read all that was on the check in two minutes. The station was well lighted, and she could see to read with the aid of her glasses. (p. 34)

Whether we call Mrs. Lebkuecher's failure to read her check negligence, or whether we regard it as a risk which she was willing to run, rather than take the time and trouble of reading the check, we submit that her act in receiving it without objection constituted an acceptance of the check and the contract printed thereon.

Upon the question of what constitutes reasonable notice to the public of the terms governing parcel room transactions, we submit that in the case at bar the Railroad Company did everything that it could reasonably be required to do, to give notice to plaintiff and the public generally, of these terms. It posted notices on placards in large print, at the parcel room, one at the left of the window, in plain view of persons approaching the window (pp. 50, 51, 56, 57, Exhibit D1) and another inside the parcel room, where it could be clearly seen by persons standing at the window (p. 65), and it printed these terms on its parcel

checks with a plain reference on the front of the check in the words "See other Conditions on back". (Exhibit P-1) It would seem that a person exercising any degree of care could not fail to see one or more of these notices. What more could the Railroad Company reasonably be required to do, to bring these terms to the attention of patrons of the parcel room? Surely it ought not to be required to notify each person by word of mouth of that which it had already notified him in writing. That would place an unreasonable burden on the Company, and cause endless confusion and delay especially when there was a rush of patrons to the parcel room. The traveling public surely must be presumed to know the practice adopted by railroads and steamship companies, and others performing public or quasi-public services, of giving notice to the public of their rules, terms and conditions by means of notices printed on tickets, checks, receipts and placards.

While the decisions bearing directy on the facts in this case, are not numerous, nevertheless we submit that a review of the authorities in this country and in England, will show that the weight of authority is in favor of the appellant's contention that the plaintiff is bound by the limitation in the parcel check.

In the case of *Noyes* v. *Hines, Director General,* 220 Ill. App. Ct. Repts. 409, very recently decided in the Appellate Court of Illinois, where the facts are almost identical with the case at bar, the court, after careful review and consideration of the authorities, both in England and this country, adopts the English rule, and reaches the same conclusion that the appellant is contending for here.

The facts in this case were that the plaintiff deposited in the Parcel Room conducted by the defendant at the Grand Central Station in New York a Gladstone bag and contents, and paid the

sum of ten cents which was the published charge therefor. The plaintiff received a numbered receipt for the bag, and later, upon returning and presenting the receipt at the Parcel Room window, learned that the Parcel Room attendant had by mistake given the bag to another person. On the face of the check was printed in heavy type the words "See other conditions on back" and on the back of the check the following was printed:

> "The person accepting this check hereby agrees, in consideration of the low rate at which it is issued, that no claim in excess of $25. shall be made against the Railroad Company for the loss of, or injury to, any package, valise or other article which may have been deposited with it, and for which this check has been issued.
>
> "Articles remaining unclaimed after 90 days will be subject to sale for accrued charges."

There was also posted conspicuously at the Parcel Room window a white card, 10 inches by 13 inches in size, printed in heavy black letters, containing, among other information, the statement that liability for loss or damage of articles left in storage was limited to $25.

When the plaintiff deposited his bag in the Parcel Room nothing was said to him about the contents of the check nor was his attention drawn to any language on the back and nothing was said either by plaintiff or the defendant about the contents of the bag.

At this time plaintiff, in the course of his business, was traveling constantly and had checked his bag at different Parcel Rooms prior to this time. The bag and contents were never recovered and plaintiff sued for the value thereof. The case was tried before the court without a jury, and the Court found the defendant guilty as charged in

the statement of claim, and gave judgment for $200., the value of the bag and contents. The Appellate Court reversed the judgment, holding that plaintiff had reasonable notice of the limitation of the defendant's liability to the sum of $25. and was bound thereby. The Court in its opinion, said:

"We think the weight of authority is to the effect that when a person accepts a ticket from a bailee in receipt for a parcel deposited with him, he is bound by the terms and conditions of that receipt, in so far as he has reasonable notice of the same, and in so far as the same are reasonable.

"In this case it does not seem to be unreasonable to hold that a person depositing luggage or similar articles temporarily, in the manner as shown by the evidence, and for a consideration of only 10 cents to be paid by him would expect that there would be some limitation placed upon the value of the article so deposited. If this were not so then the defendant would have been bound if plaintiff had deposited with his suit-case $100.000. worth of diamonds or other articles of similar great value. The condition, therefore, in itself, seems to have been a reasonable one. The notice as to the condition would also seem to have been reasonable. The defendant had a right to assume that the plaintiff could read the English language; had also a right to assume that the plaintiff would take notice that by reason of the very small charge he could not expect an unlimited liability.

The defendant, we think, may very properly have asked—What more could or ought the defendant to have done in order to put plaintiff upon notice? Large placards, so situated that one exercising any degree of

> care could scarcely fail to see them, announced to the plaintiff these limitations. The ticket which was handed to him specifically pointed them out. What more could defendant have done, or what more ought we require it to do? Should the defendant be required to instruct every one of its servants to personally notify each one of its customers by word of mouth, of that which it had already notified him in writing? We do not think so."

The English authorities strongly support the appellant's contention, as a reference to the following cases will show:

In *Harris* v. *Great Western Ry. Co.*, 45 L. J. Q. *B.* 729; *I. Q. B. D.* 515; 34 L. T. 647; (1876), plaintiff left luggage of more than £5 in the cloakroom at defendant's station and received therefor a ticket stating among other things that defendant would not be responsible for loss of or injury to the same beyond the value of £5, unless a greater value should have been declared and an additional sum paid for keeping the same. The luggage was stolen, and it was not disputed that the loss was occasioned by the failure of the defendant's servants to exercise proper care. The defence was rested on the ground that plaintiff was bound by the limitations on the tickets which prevented recovery beyond £5, unless a greater value was declared and an increased rate paid. The plaintiff's servant who deposited the luggage did not read the conditions and did not know what they were. It was held that plaintiff was bound by the conditions, although they were not specifically brought to her or her servant's attention, and she had not read them.

In *Van Toll* v. *S.E. Ry.* 12 C.B. (N.S.) 75; 31 L. J. C.P. 241; 6 L.T. 244; a passenger deposited her bag in a cloak room at a railway station, taking

a ticket for it, and paying 2d. On returning to reclaim it, she found it had been delivered to some one else, by mistake. On the back of the ticket was printed a provision that the company would not be responsible for any package exceeding the value of £10. It did not appear whether the passenger had read the ticket or not. It was held that the passenger assented to the terms on the ticket and was bound thereby.

In *Parker* v. *S.E. Ry.* 46 *L.J., C.P.* 768; 36 *L.T.* 540; the plaintiff deposited his bag in a cloak room of a station on the defendant's railway, paying the usual charge, and receiving in return a printed ticket, having on the face of it a receipt for each of the articles, and at the bottom, the words, "See back." On the back of the ticket were the words:

> "The Company will not be responsible for any package exceeding the value of Ten Pounds."

The same conditions were also printed on a placard hanging up in the Cloak Room. The bag was lost through the negligence of the defendant's servants. The trial court submitted the case to a jury on two questions, first, as to whether plaintiff read or was aware of the special terms of the contract, and second, whether he was guilty of negligence in being unaware of them. The court, on appeal, held that the jury was misdirected, and that the proper question for the jury was,—whether the defendant had done what was reasonably sufficient to give the plaintiff notice of the conditions? That if that question were answered in the affirmative, judgment should be given for the defendant. Bramwell, L. J., in a separate opinion, held that on the facts the trial judge should have directed a verdict for the defendant.

In *Lyons* v. *Coledonian Ry. Co.* (1909) 11 *S.C.*

1185, a traveler deposited a skip in the parcel room of the railway in Glasgow, and received a check with a limitation of liability thereon. It was lost through the fault of the defendant. *Held* that the traveler was bound by the limitation, although he had not read the condition and did not know it was there.

In *Burke* v. *S.E. Ry.*, 5 *C.P.D.* 1: 49 *L.J.C.P.* 107, plaintiff had purchased a book of coupons forming a railway ticket from London to Paris and back, on the outside of which there was no reference to the inside of the cover. On the inside, and apparent on turning the cover, was a condition limiting the responsibility of defendants to their own trains. Plaintiff, having been injured while traveling on the ticket in a French train, sued the defendants. They set up the condition. The plaintiff had not read and did not know if it. It was held that the whole book was the contract accepted by the plaintiff, and that he, therefore, could not reject the condition which was one of its terms, and that judgment should be entered for the defendant.

In the following cases also, the owner of articles checked in a cloak room was held bound by the conditions on the check, although he failed to read them:

Skipwith v. *G.W.R.*, 59 *L.T.N.S.* 520; *Pratt.* v. *S.E. Ry. Co.* 66 *L.J.Q.B.* (*N.S.*) 418; and *Pepper* v. *S.E.R.Co.*, 17 *L.T.N.S.* 469.

The English doctrine has been adopted in many jurisdictions in this country.

In *Terry* v. *Southern Ry. Co.* 81 *S.C.* 279, 18 *L.R.A.* (*N.S.*) 295, the South Carolina Supreme Court held that a provision on a check issued by a railroad company maintaining a check room in its station, limiting its liability for each article lost, is binding on the patron; that the railroad

company contracted with the patron as warehouseman; that as such warehouseman, in receiving the goods, it had a right to contract for the limitation of the amount of its liability, in case of loss, and the receipt expressing such limitation was binding on the owner of the goods.

A somewhat analagous case is that of *N. Y. C. & H. R. R. Co.* v. *Beaham,* 242 U. S. 148. The plaintiff in that case had purchased a first class ticket as a passenger on the defendant's line, and received a ticket which on its face stated that the package liability was limited to wearing apparel, not to exceed $100 in value for a whole ticket, and $50 for a half ticket, unless a greater value was declared by the owner and excess charges thereon paid at the time of taking passage.

The plaintiff checked her trunk on this ticket and received a check or receipt on the face of which were the words: "See conditions on back. Value not stated." On the back of the ticket was printed—

> "Notice to passengers. Baggage consists of a passenger's personal wearing apparel and liability is limited to $100. (except a greater or less amount is provided in tariffs) on full fare ticket, unless a greater value is declared by owner at time of checking, and payment is made therefor."

Plaintiff's trunk and its contents were lost. The defendant denied liability for more than $100, relying upon the limitation prescribed in the ticket and check or receipt, and also upon similar limitations embodied in its tariff schedules filed with the Interstate Commerce Commission. It appeared as a fact that the plaintiff had not read these conditions, and their validity was denied by her. The Supreme Court in its opinion held that the plaintiff was bound by the limitation, and said:

> "In the circumstances disclosed, acceptance and use of the ticket sufficed to establish an agreement prima facie valid, which limited the carrier's liability. Mere failure by the passenger to read matter plainly placed before her could not overcome the presumption of assent."

In *Missouri Pacific R. Co.* v. *Fuqua,* 223 S. W. 926, in the Arkansas Supreme Court, a question arose as to the construction of a clause on a parcel check, and it was held that a provision on the check that "the carrier will not be responsible for damage or detention of articles left in storage for any amount in excess of $25" was broad enough to cover liability on any account, including negligence.

The learned justice of the Supreme Court, in his opinion accompanying the decision below, cites *Hill* v. *Adams Express Co.,* 82 N. J. L. 373, as supporting the view that actual knowledge of the limitation must be brought home to the bailor, in order to bind him, and that his assent is not implied by his acceptance of the parcel check containing such limitation.

But the distinction between the liability of a common carrier and that of an ordinary bailee should be borne in mind. Hutchinson on Carriers (3rd Ed. Sec. 265) states the carrier's liability as follows:

> "The liability of the common carrier by law is, as has been seen, an unusual and extraordinary one, based upon considerations of public policy which have survived the wonderful change in the circumstances under which they first arose. By that law the common carrier is regarded as a practical insurer of the goods against all losses of whatever kind with the exception of (1) those arising from what is known as the act of God, and

(2) those caused by the public enemy; to which in modern times have been added (3) those arising from the act of the public authority, (4) those arising from the act of the shipper, and (5) those arising from the inherent nature of the goods."

But the liability of a bailee is not primarily that of a common carrier at common law, but is to be determined by the extent of the holding out, which fixes the limits of the legal duty assumed by the bailee.

It is respectfully submitted that the ruling in the Hill case is not controlling on the issue here presented. In that case the court cited as authorits for its decision the case of *New Jersey Railroad Co. ads. Pennsylvania Railroad Co.*, 3 Dutcher 100, in which the Supreme Court declared that "where a common carrier undertakes to transport an article in his line of business, the legal presumption is that he does it subject to the common law liability, and this presumption remains until it is overcome by positive proof of a special agreement."

No such presumption exists in the case of an ordinary bailment.

It is submitted that the English and American cases reviewed, the opinions quoted, and the reasons given, should be controlling on the questions here presented, and we respectfully ask the Court to hold that the plaintiff was chargeable with knowledge of and was bound by the conditions printed on her parcel check.

IV.

For the reasons stated herein, it is respectfully submitted that the judgment appealed from should be reversed and judgment given in favor of defendant.

Respectfully submitted,

WALL, HAIGHT, CAREY & HARTPENCE,
of Counsel with Defendant-Appellant.