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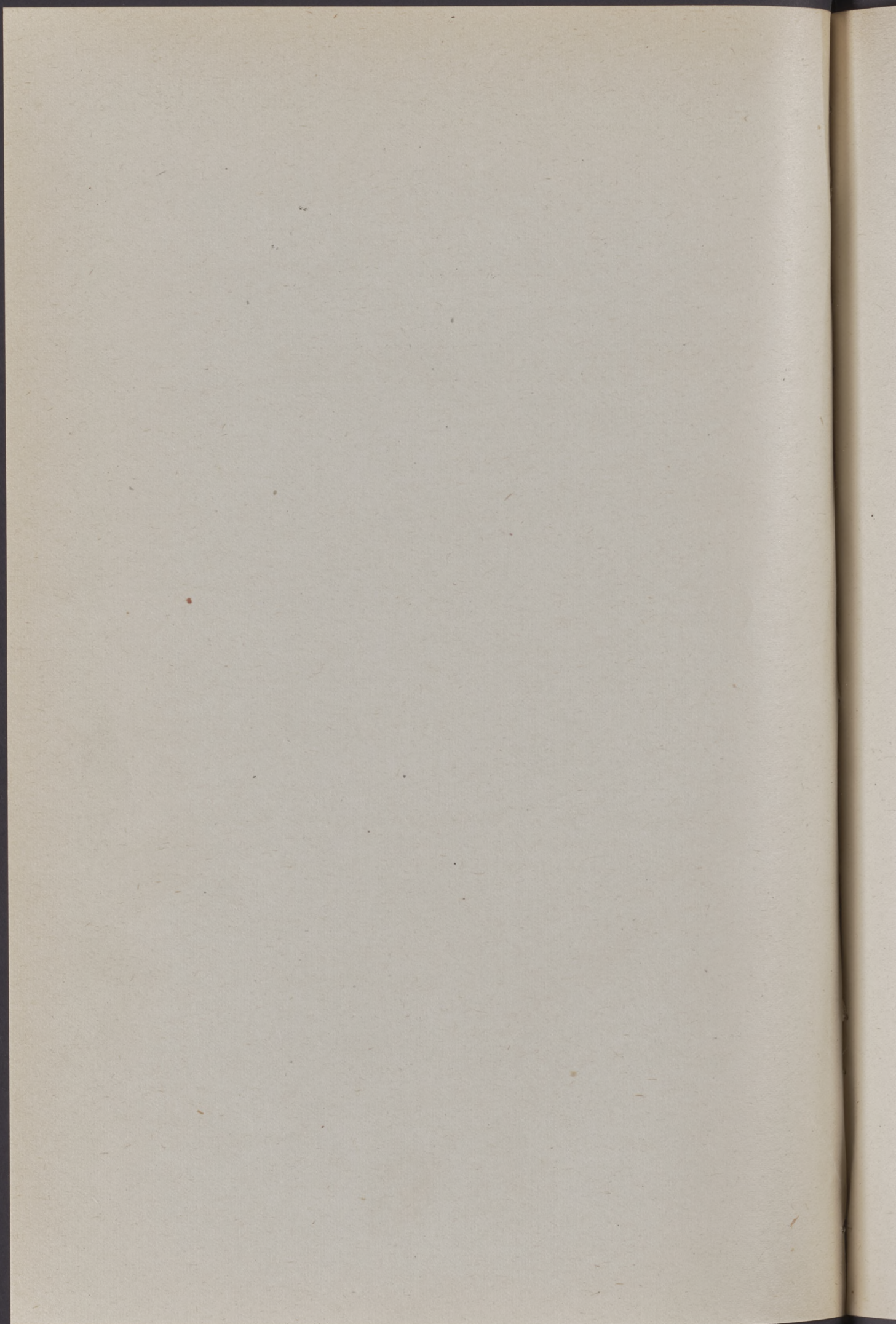
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Notice of Appeal.

(Filed January 31, 1920.)

NEW JERSEY SUPREME COURT

10

PURITY FARMS, a corporation of
the State of New Jersey,
Plaintiff-Appellee,

vs.

ADAMS EXPRESS COMPANY,
Defendant-Appellant.

Action at Law

20

To

KING & VOGT, ESQUIRES,
Attorneys 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 en- 30
tered in this cause.

Dated, January 24, 1920.

JOHN R. PHILLIPS, Jr.,
Attorney for Defendant.

[Indorsed]

Service ack'd Jan. 29, 1920

King & Vogt,
Attys. for Plff.

40

Grounds of Appeal.

(Filed February 28, 1920.)

NEW JERSEY
COURT OF ERRORS AND APPEALS

10	PURITY FARMS, a corporation of the State of New Jersey, <i>Plaintiff-Respondent,</i> vs. ADAMS EXPRESS COMPANY, <i>Defendant-Appellant.</i>	} Action at Law. On Appeal from Supreme Court
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20 And now comes the above-named defendant-appellant, Adams Express Company, by John R. Phillips, Jr., its attorney, and sets down the following Grounds of Appeal from the judgment of the New Jersey Supreme Court in above stated cause:

1: The Court refused to grant a non-suit against plaintiff when thereunto requested by defendant.

30 2: The Court refused to direct a verdict in favor of defendant and against plaintiff when thereunto requested by defendant.

3: The Court charged the jury as follows:

40 "Would or would not the running of the car attached to this freight train give the cattle more air than they would have had had they remained in the New Milford Yard until 6:12? The agent of the plaintiff did not see them from four o'clock or four-fifteen, and did not expect to see them until some time on

Grounds of Appeal

the way to Scranton, when the train stopped at some of the stations, and then he expected, as he testified, to have visited the car and examined the cattle * * * If this car had been allowed to stand in the New Milford Yard until the 6:12 train came along and picked up both the car and the agent, could the damage to the cattle have been prevented 10 by the agent being on the car?"

4: The Court charged the jury as follows:

"If the failure of the Express Company to do something it was required to do under the contract was the proximate cause of the injury to the cattle, then there could be a recovery."

5: The Court charged the jury as follows:

"The plaintiff would also be entitled to 20 such profit as he would have made on the milk from these cattle * * *."

6: The Court charged the jury as follows:

"Now, gentlemen, it is a case for you to determine."

7: The Court charged the jury as follows:

"If you find that this loss was due to the negligence of this Express Company, then the 30 plaintiff can recover."

8: The Court charged the jury as follows:

"Gentlemen, there seems to have been some question raised as to whether or not Mr. Bertholf expected to see the cattle in the New Milford Yard when he arrived at 6:12 o'clock; so that is a question for you to determine; whether he testified to that fact or not, or whether he did not expect to see them until 40

Grounds of Appeal

at some station along the line. All the evidence is for you to determine; not what the court may have recalled; not what counsel may have recalled; but you are to be the sole judges of all the evidence and determine this case from the evidence that has been offered, as you understand it and heard it on the stand.”

10

9: The following questions were admitted:

To the witness Edward Bertholf:

a. Q. On Monday evening what did he tell you after you made your inquiry as to when the car would be ready?

b. Q. And what train did he say it would leave by?

20

c. Q. Did you so intend to accompany the train?

d. Q. Had you accompanied or gone on the train which accompanied the cattle as originally intended, could you have got off at the stations and examined the cattle?

30

e. Q. Mr. Bertholf, with reference to the stopping of this train number 28, had the cattle gone on that train and you had accompanied it, what could you have done with reference to relieving any disability among the cattle had you discovered it?

f. Q. Now, I ask you, Mr. Bertholf, had you accompanied this train number 28, what did you intend to do with reference to inspecting the cattle during the time it was travelling between New Milford and Seranton?

10: The following questions were admitted:

To the Witness Charles F. Chase:

40

a. Q. What would a cow, a Holstein Grade

Grounds of Appeal

cow, in good condition average (in milk production)?

b. Q. What, in your opinion, was the average market value of those cattle when they were unloaded?

c. Q. What, in your opinion, was the increase in value, if any, of those cattle after they had been treated at the Farm? 10

d. Q. What was the weight of these cattle after they had been at the Farm with a chance to—?

e. Q. What is the price which the company received at that time that the cattle were there for their milk?

f. Q. Now, Mr. Chase, how much profit did your company make on each quart of milk sold at the time these cows were there?

20

11: The following questions were admitted:

To the witness Erik Lagerquist:

a. Q. Did you direct Mr. Bertholf how to ship these cattle?

b. Q. Directing your attention to these cattle which were finally sent to the farm which were the ones that you observed, kindly state what, in your opinion, was the average weight of the cattle after they had been at the farm, returned from the shipment? 30

c. Q. * * * With reference to the cattle which have been put through the shipment which has been detailed to the court and jury here, what would you say was a reasonable time after the cattle arrived at the Farm * * * before you could arrive at the real amount of their production as it would permanently exist?

d. Q. With reference to cattle which give less milk than other cattle, does the amount 40

Grounds of Appeal

of feed which you give them, is that the same or not?

12: The following questions were admitted:

To the witness John F. Henning:

10 a. Q. If the original arrangement for the shipment of these cattle had been by freight, would they have ordinarily gone on that manifest freight train?

b. Q. If a man contracts for express service for shipment of some cattle, you think you are giving him express service by shipping it on a non-stop freight between New Milford and Scranton?

13: The following question was admitted:

To the witness Bertholf:

20 Q. The question is what the production amount of these cows should have been under the condition in which he saw them at the time he purchased them and shipped them?

14: The following question was admitted:

To the witness Lagerquist:

30 Q. Mr. Chase has stated that these cows averaged not more than eight quarts a day during the time they were there at the Farm, and the testimony now is that they should have averaged about twelve. When does a milk producing company like your company commence to make a profit upon the milk with reference to the production amount?

15: The following questions were admitted:

To the witness Warren H. Hull:

40 a. Q. The question was when a person ordinarily contracts for express service, on what kind of a train is it ordinarily attached to?

Grounds of Appeal

b. Q. What is the benefit derived over freight service?

16: The following question was overruled:

To the witness, Bertholf:

Q. When you shipped by railroad freight from New Milford, with whom did you make your arrangements for the cars and for the shipping receipts? 10

17: The letter dated May 28, 1918, written by the witness F. Harker, marked D-2 for Identification, was excluded from evidence.

JOHN R. PHILLIPS, Jr.,
Attorney for Defendant-Appellant.

[Indorsed]

Service acknowledged February 28, 1920. 20
King & Vogt,
Attys. for Pltff-Respondent.

30

40

Complaint.

(Filed April 24, 1919.)

NEW JERSEY SUPREME COURT,
BERGEN COUNTY.

10 PURITY FARMS, a corporation of
the State of New Jersey,
Plaintiff,

vs.

ADAMS EXPRESS COMPANY,
Defendant.

Action at Law

20 Plaintiff, a corporation of the State of New
Jersey, with its office at Pennington, Mercer County,
New Jersey, says that:

1. On May 21st, 1918, plaintiff was the owner
of 30 cows and 23 calves, then at New Milford, Pa.

2. On said day, E. D. Bertholf, as authorized
agent of Plaintiff, owner, delivered 30 cows and 23
calves to defendant for transportation to Erick
L. Lagerquist, at Pennington, N. J.

30 3. On said day, said cows and calves were in
good order and condition, and were in good order
and condition when received by the defendant for
transportation to Pennington, N. J., as aforesaid.

4. A value not exceeding \$3600.00 for said cows
and calves was agreed upon between said E. D.
Bertholf, as agent of the plaintiff owner, and the
Adams Express Company.

40 5. For the purpose of transportation, an or-
dinary baggage express car without ventilating
slates and with ordinary glass windows, was sup-
plied by the defendant, and defendant directed the
cows and calves to be placed therein.

Complaint

6. Plaintiff provided the said E. D. Bertholf as the attendants to accompany the animals in transit.

7. Defendant agreed with said Bertholf, as authorized agent of the plaintiff owner, that the car would be attached on that day, May 21, 1918, to train No. 28, a passenger train, leaving New Milford, at 6:12 P. M.

10

8. Before 6:12 P. M. on May 21, 1918, the time said train No. 28, was to leave the station at New Milford, Pa., the attendant of the plaintiff, was then and there ready to accompany said cattle in transit.

9. On or before 6:12 P. M. of said day, defendant advised E. D. Bertholf, as the duly authorized agent of the plaintiff owner, that the cattle had been shipped by a freight train leaving station earlier than said passenger train No. 28.

20

10. By reason of defendant shipping said car containing said cattle by freight and not by the passenger train No. 28 as agreed, Bertholf, the authorized agent of plaintiff was unable to accompany said cattle in said car.

11. By reason of the improper ventilation of said car, that said car was improper for the shipment of cattle, and that said cattle were without an attendant, upon the arrival at Scranton of said stock in said baggage express car, eight cows and three calves were found dead, one cow died afterwards as the result of the poor ventilation and because of lack of an attendant and one escaped while the cattle were being unloaded at Scranton. Another of the calves died enroute from Scranton to Titusville. As the result of the aforesaid negligence of the defendant the remainder of the cattle were found to be in bad physical condition.

30

12. On May 25th, 1918, plaintiff paid to agent of defendant at Titusville, N. J., the charges of

40

Complaint

defendant for shipment on said cattle, \$144.16 and war tax of \$7.21, making a total of \$151.37, which said payment included charges of Adams Express Company for shipment on the cows and calves which died in transit and the cow that escaped.

13. By reason of the premises, Plaintiff claims 10 damages in the sum of THIRTY-SIX HUNDRED DOLLARS, and therefore brings its suit.

KING & VOGT,
Attorneys of Plaintiff.

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30

40

Answer.

(Filed June 18, 1919.)

NEW JERSEY SUPREME COURT,
BERGEN COUNTY.

PURITY FARMS, a corporation of
the State of New Jersey,
Plaintiff,

vs.

ADAMS EXPRESS COMPANY,
Defendant.

10

The defendant formerly had an office in the City of Jersey City, in the County of Hudson and State of New Jersey, and says that:

1. As to the statements in paragraphs Numbers 1 and 3 of the complaint, it has not any knowledge or information thereof sufficient to form a belief. 20

2. It denies paragraph Number 5 of the complaint.

3. It admits paragraph Number 6 of the complaint, that the plaintiff provided E. D. Bertholf as the attendant to accompany the animals in transit.

4. It denies paragraph Number 7 of the complaint, and says that if such an agreement was made, that the same is illegal and void. 30

5. It denies paragraph Number 10 of the complaint, and says that the failure of said Bertholf to accompany said cattle in said car was due to his own neglect.

6. It denies paragraph Number 11 of the complaint, except that eleven cows and three calves died and one cow escaped enroute.

7. It denies paragraphs Numbers 12 and 13 of the complaint. 40

*Answer***First Separate Defense.**

8. The defendant is and at all times mentioned in the complaint was a common carrier engaged in interstate commerce in New Milford, in the State of Pennsylvania, and Pennington, in the State of New Jersey and elsewhere throughout the United States, and as such subject to the Federal Act to Regulate Commerce and the Acts amendatory thereof and supplementary thereto and particularly the Act of February 19, 1903, known as the Elkins Act, and prior to the said 21st day of May, 1918, it filed with the Interstate Commerce Commission and had posted and published, all as required by law, and at the time of said alleged shipment had duly on file with said Interstate Commerce Commission and with full force and effect, Classification and certain Tariffs governing its interstate business, including all of the business between said New Milford and said Pennington.

9. That the shipment of thirty cows and twenty-three calves, as alleged in paragraph Number 2 of the complaint, was received and accepted by the defendant at New Milford pursuant to said Classification and Tariffs, and that said Classification and Tariffs did not provide for an expedited service, or for transportation by any particular train between said New Milford and said Pennington or otherwise, or covering live stock or any other commodity whatsoever.

10. That the alleged agreement to forward said shipment of live stock by a particular train, even if such an agreement was made by the defendant as alleged in paragraph Number 7 of the complaint, was illegal and void because such special service was not provided for in said Classification and Tariffs, filed with the Interstate Commerce Commission as aforesaid, as required by said Fed-

Answer

eral Act to Regulate Commerce and the Acts amendatory thereof and supplementary thereto, and particularly by the Act of February 19, 1903, known as the Elkins Act, and because it constituted a discrimination in favor of a particular shipper.

Second Separate Defense.

10

11. Defendant repeats the allegations contained in paragraph 7 of the First Separate Defense above as fully and completely as though set forth herein and at length.

12. That said shipment of live stock, as alleged in paragraph Number 2 of the complaint, was received and accepted by the defendant at New Milford pursuant to the terms and conditions of a certain Uniform Live Stock Contract in writing, date May 21, 1918, and signed by E. D. Bertholf, the duly authorized agent of the owner, and in the form prescribed in said Classification and not otherwise, and that said contract did not provide for an expedited service, or for the transportation by any particular train of said shipment of live stock between said New Milford and said Pennington or otherwise. 20

13. That under said written contract, dated May 21, 1918, a copy of which is annexed hereto, the plaintiff, among other things agreed to load, trans-ship and unload said live stock at his own risk and to take care of, feed and water the same while being forwarded or transported, and to look after the ventilation and fastening of the cars in which the same was shipped, and released said defendant from all liability on account of the escape of any of said live stock or any injury thereto resulting from open doors or defective ventilation. 30
40

Answer

14. That pursuant to said contract the plaintiff provided an attendant to load and to accompany said shipment of live stock, and to look after the ventilation and fastening of the cars in which the same were shipped, and procured free transportation for said attendant, and said plaintiff through said attendant and agent, E. D. Bertholf, 10 took entire charge of the loading of said live stock at said New Milford, and of the ventilation and fastening of the car in which the same were forwarded.

Third Separate Defense.

15. The defendant repeats the allegations contained in paragraph 7 of the First Separate Defense above as fully and completely as though set 20 forth herein and at length.

16. That the plaintiff ordered a car and did not specify at the time the order for the car was made the number of cattle to be shipped and this car was overloaded by the plaintiff who under said written contract dated May 21, 1918, a copy of which is annexed hereto, the plaintiff among other things agreed to load, trans-ship and unload said live stock at his own risk and to take care of, feed and water the same while being forwarded 30 or transported, and to look after the ventilation and fastening of the cars in which the same was shipped, and released said defendant from all liability on account of the escape of any of said live stock or any injury thereto resulting from open doors or defective ventilation, and that the defendant did not know the number of animals to be shipped until they had been loaded in the car and the tally given them by plaintiff.

17. That pursuant to said contract the plaintiff 40 tiff provided an attendant to load and to accom-

Reply.

(Filed July 5, 1919.)

NEW JERSEY SUPREME COURT,
BERGEN COUNTY.

10	PURITY FARMS, a corporation of the State of New Jersey, <i>Plaintiff,</i>	}	Action at Law
	<i>vs.</i> ADAMS EXPRESS COMPANY, <i>Defendant.</i>		

Plaintiff replying to answer of defendant says:

1. It denies paragraph 4, of the answer.
 2. It denies paragraph 5, of the answer.
 3. It denies paragraph 6, of the answer except
- 20 the part therein said to be admitted.

At the trial of the within cause plaintiff will object to the first, second and third separate defenses in the answer, on the ground that the same contain no defense to the plaintiff's cause of action.

Reply to First Separate Defense.

Plaintiff, further replying to said answer says that it has no knowledge or information sufficient to form a belief as to the allegations contained in

30 paragraph 8, of the first separate defense.

It denies paragraph 9, of the first separate defense, and says that the duly authorized agent of the defendant agreed and represented to plaintiff's agent that the car in which the cattle in question would be shipped would be attached to a train leaving at a certain time which defendant failed to do as more particularly specified in the complaint, and that nothing contained in said alleged classification and tariff could relieve defendant from the duty it owed to take proper care in the

40 loading and transportation of said live stock.

Reply

Plaintiff denies paragraph 10, of the first separate defense and says that defendant by its agent represented and told plaintiff's agent that the car in which the cattle in question would be shipped would be attached to a train leaving at a certain time, (as more particularly set forth in the complaint) plaintiff's agent desiring said information in order to accompany the cattle while being transported. Plaintiff further says that nothing contained in paragraph 10 of the answer could relieve defendant from the duty it owed to take proper care in the loading and transportation of said live stock. 10

Reply to Second Separate Defense.

1. Plaintiff makes the same reply to paragraph 11 of the second separate defense as it did to the similar allegations in the reply to the first defense. 20

2. Plaintiff admits that said cattle were shipped under the provisions of a certain live stock contract dated May 21, 1918, but denies the remainder of paragraph 12. Plaintiff charges that, pursuant to the provisions of said contract, its agent desired to accompany said cattle during their transportation and for that purpose made an inquiry of defendant's agent as to the time when said cattle would be shipped and said defendant represented and agreed that the cattle would be shipped by a certain train which defendant failed to do and by reason of which representation and agreement plaintiff was prevented from accompanying said live stock, as particularly set forth in the complaint. 30

3. Plaintiff denies the 13th paragraph of the second separate defense and says that the provisions of the contract of May 21, 1918, therein set forth, were not to become operative under the 40

Reply

terms thereof except as plaintiff's agent or servant accompanied the said shipment of live stock; that by reason of the matters set forth in the complaint, plaintiff's agent was prevented from accompanying said shipment and the provisions in question therefore never became operative.

10 4. Plaintiff denies the allegations of paragraph 14, of the second separate defense except the portion which alleges that plaintiff had arranged for transportation of an attendant to accompany said shipment of live stock, and says that the provisions of the contract of May 21, 1918, therein referred to did not, by virtue of the terms thereof become operative unless plaintiff's agent accompanied said shipment of live stock, which by reason of the matters set forth in the complaint, plaintiff's agent was prevented by defendant's
20 agent from doing and was further prevented from taking care of the loading of said live stock or of any matters of ventilation or of fastening the car in which said cattle were shipped.

Reply to Third Separate Defense.

1. Plaintiff makes the same reply to paragraph 15, of the third separate defense as it did to the similar allegation in its reply to the first separate
30 defense.

2. Plaintiff denies paragraph 16, of the third separate defense and says that the provisions of the contract of May 21, 1918, therein referred to, did not, by the terms thereof, become operative unless plaintiff's agent accompanied said cattle and that plaintiff's agent was prevented by the acts of defendant's agent from so doing as more particularly set forth in the complaint. Plaintiff denies that defendant did not know the number
40 of cattle to be shipped.

Reply

Plaintiff admits that portion of paragraph 17, of the third separate defense which alleges that plaintiff provided an attendant to accompany said shipment of live stock and that plaintiff had arranged for transportation of said attendant. Plaintiff denies the remainder of said paragraph.

Reply to Fourth Separate Defense. 10

Plaintiff denies the fourth separate defense.

Reply to Fifth Separate Defense.

Plaintiff denies the fifth separate defense.

KING & VOGT,
Attorneys of Plaintiff.

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Rejoinder.

(Filed January 3, 1920.)

NEW JERSEY SUPREME COURT,
BERGEN COUNTY.

PURITY FARMS, a corporation of the State of New Jersey, <i>Plaintiff,</i> <i>vs.</i> ADAMS EXPRESS COMPANY, <i>Defendant.</i>	}	Action at Law 10
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Defendant denies the reply of plaintiff to the first, second and third separate Defenses to Defendant's Answer.

JOHN R. PHILLIPS, Jr.,
Attorney for Defendant. 20

30

40

Postea.

(Filed January 23, 1920.)

NEW JERSEY SUPREME COURT,
BERGEN COUNTY.

10	PURITY FARMS, a corporation, <i>Plaintiff,</i>	}	Action at Law
	<i>vs.</i>		
	ADAMS EXPRESS COMPANY, <i>Defendant.</i>		

This case was tried before Hon. Willard W. Cutler to whom the same had been referred and a Jury at the Bergen Circuit of the Supreme Court 20 on December 22nd, and 23rd, 1919. The jury rendered a general verdict in favor of the plaintiff and against the defendant for the sum of \$1200.

WILLARD W. CUTLER,
Judge.

30

40

Rule for Judgment.

(Entered January 23, 1920.)

NEW JERSEY SUPREME COURT,

PURITY FARMS, a corporation, <i>Plaintiff,</i>	}	Action at Law 10 On Postea.
<i>vs.</i>		
ADAMS EXPRESS COMPANY, <i>Defendant.</i>		

It is ordered that judgment be and hereby is entered in favor of Plaintiff and against the Defendant for the sum of one thousand two hundred dollars, besides costs to be taxed nisi.

Entered January 23, 1920.

On motion of

King & Vogt, Attys.

20

30

40

Judgment.

(Entered January 23, 1920.)

NEW JERSEY SUPREME COURT,

10	PURITY FARMS, a corporation, the State of New Jersey, <i>Plaintiff,</i>
	<i>vs.</i>
	ADAMS EXPRESS COMPANY, <i>Defendant.</i>

Whereupon it is adjudged that the Plaintiff recover of the defendant the sum of one thousand two hundred dollars damages and its costs which have been taxed at the sum of seventy-one dollars and ninety-two cents, making in the whole the sum of one thousand two hundred and seventy-one dollars and ninety-two cents.

20	Damages \$1,200.00
	Costs 71.92
	\$1,271.92

Judgment entered January 23, 1920,

Wm. S. Gummere,
C. J.

30

40

Testimony.

BERGEN COUNTY SUPREME COURT

<p style="text-align: center;">PURITY FARMS, A Corporation of New Jersey, <i>Plaintiff,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">ADAMS EXPRESS COMPANY, <i>Defendant.</i></p>	}	<p>Action at Law</p> <p style="text-align: right;">10</p>
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Hackensack, N. J., December 22, 1919.

Before: Hon. Willard W. Cutler, Judge,
and a Jury.

For the Plaintiff, King & Vogt.

Harold A. Price, Esq., of Counsel.

For the Defendant, John R. Phillips, Jr., 20
Esq.

John A. Hartpence, Esq., of Counsel.

The jury was empanelled, accepted and sworn.

The Court: What is the change, Mr. Price?

Mr. Price: By adding to paragraph 11 of
the complaint that plaintiff claims damages
for the loss of the commission which he was
obliged to pay to his agent for the cows which
were damaged and destroyed, and for the loss 30
of the express charges paid, for the same reason;
and also for the additional expenses
made necessary by the negligence of the defendant
as set forth in the complaint, and
consider that the answer already filed by the
defendant denying this paragraph shall be
taken as a denial of the amended paragraph.

Mr. Hartpence: We have no objection.

The Court: That may be made.

We also desire to ask leave of the Court 40

Edward Bertholf, for Plaintiff—Direct

to rejoin to the first, second and third separate defenses in the reply of the plaintiff by denying those separate defenses.

The Court: That may be done.

Mr. Price opened the case to the jury on behalf of the Plaintiff.

- 10 Mr. Hartpence opened the case to the jury on behalf of the Defendant.
(Recess).

After Recess. 2:00 O'clock P. M.

EDWARD BERTHOLF, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

20 *Direct Examination by Mr. Price:*

Q. Where do you live, Mr. Bertholf? A. At New Milford.

Q. You will have to speak pretty loud or all the jurymen here cannot hear you. A. At New Milford, Pennsylvania.

Q. How long have you lived there? A. About 26 years.

Q. How old are you? A. I am 63 years old.

Q. What is your business? A. I handle stock.

30 Q. Cattle? A. Yes, sir.

Q. Have you acted as purchasing agent for the Purity Farms? A. I have.

Q. And in May, 1918, were you acting as such agent? A. I was.

Q. Acting as such agent, did you purchase any cows for the plaintiff? A. I did.

Q. And calves? A. Yes, sir.

Q. How many cows and calves did you purchase on or about May 21st for shipment? A. 30 cows and 24 calves.

Edward Bertholf, for Plaintiff—Direct

Q. What kind of cows?

The Court: How many calves?

The Witness: 24.

Q. What kind of cows were they? A. They were milch cows, cows in milk.

Q. Speak louder; the jury cannot possibly hear.

A. Milch cows.

10

Q. What kind of cows? A. They were new milch cows with calves by their sides, practically.

Q. Any particular breed? A. They were Holsteins.

Q. A good grade of cattle? A. Grade Holsteins; yes, sir.

Q. And the calves of which you have spoken, what calves were they? A. Why, they were the mothers' calves, their own calves, the cows'.

Q. Just prior to May 21, 1918, after you had purchased these cattle and calves, did you go to the agent of the express company at New Milford to arrange for the shipment? A. I did.

20

Mr. Hartpence: That is objected to as calling for a conclusion, your Honor. I think he might state whom he interviewed, but as an agent of the Adams Express Company, we object to it.

The Court: Yes; I think you ought to state the party.

30

Q. Who was the man whom you saw? A. John Henning.

Q. Do you see him in court? Is Mr. Henning in court? A. I do; yes, sir.

Mr. Price: Will you stand up, Mr. Henning.

Q. Is that the gentleman you refer to? A. Yes, sir.

40

Edward Bertholf, for Plaintiff—Direct

The Court: John what?

The Witness: Henning.

Mr. Price: Henning; H-e-n-n-i-n-g.

Q. Where is he stationed? A. At New Milford, Pennsylvania.

Q. And with what company is he connected?
10 A. The D. L. & W. Company.

Q. And does he act as agent for the Adams Express also?

Mr. Hartpence: That is also objected to.

The Court: Yes, the objection is well taken.

You may tell us what he did. Find out whether he is agent or not.

Q. Did you communicate with him regarding the shipment of these cattle? A. I did.

20 Q. And about when did you first communicate with him? A. On the Friday before the shipment, the 21st.

Q. And the cattle were, at that time—what place were they kept on Friday? A. Well, part of them I had at home, and part of them weren't delivered as yet.

Q. And at that time did you make any inquiry as to when a car would be available to make this shipment? A. Well, he said he would let me
30 know. Yes, I did make inquiry.

Q. And following that time, did you make a further inquiry? A. I did.

Q. And when did you do that? A. On Monday night.

Q. That is the Monday preceding the Tuesday in which the cattle were loaded? A. Yes, sir.

Q. On Monday night? A. After that.

Q. Do you remember what day of the month, what month that was? A. On—Monday was the
40 20th.

Edward Bertholf, for Plaintiff—Direct

Q. 20th? A. Of May.

..Q. 20th of May? A. Of May.

Q. And of what year? A. 1918.

Q. And what inquiry did you make of him on Monday in the evening? A. I asked him if the car would be ready the next day to ship, and he said it would.

Q. Keep your voice up Mr. Bertholf. A. I 10
asked him if the car would be ready for shipment the next day, and he said it would.

Q. And where were the cattle at that time, on the evening of Monday? A. They were in my yard.

Q. And where is this yard located with reference to the place of shipment? A. My yard is in New Milford about a quarter of a mile, or such matter from the station; the shipping—

Q. On Monday evening what did he tell you 20
after you made your inquiry as to when the car would be ready?

Mr. Hartpence: That is objected to as immaterial, irrelevant and incompetent.

The Court: What relevancy has it to this case?

Mr. Price: Well, I want to find out when the car was ready to be shipped.

The Court: I understood the witness answered that question. 30

Mr. Price: No. He said he was informed later as to when it was, and then on Monday he went back to find out when it would be ready, and then he told him. That is my purpose of this question.

The Court: I will allow it.

Q. When did he tell you the car would be ready? A. It would be ready Tuesday.

Q. On Tuesday, the 21st of May, what did you 40

Edward Bertholf, for Plaintiff—Direct

do? A. Why, after dinner, we went down to see about the car, and found it was there all right, and we then proceeded to bed it and arrange it for shipment.

Q. Who pointed out this car to you as being the car in which you were to load the cattle? A. The agent.

10 Q. Mr. Henning? A. John Henning, yes.

Mr. Hartpence: I move to strike out, your Honor, that portion of the answer, the agent. I think that merely states a conclusion.

The Court: Yes; strike that portion out.

Q. This Mr. John Henning, of whom you speak?

A. Yes, sir.

Q. And at what time of day did you commence the loading of the cattle? A. We commenced
20 loading about half past three.

Q. In the afternoon of the 21st? A. The 21st; yes, sir.

Q. Anybody assist you in loading? A. Yes, sir.

Q. Previous to the time that you had loaded the cattle, what had you done with reference to preparing the car? A. We had bedded it and hayed it; prepared it for shipment, as we usually do.

Q. Speak louder. A. Bedded it and put the hay and straw in it, as I usually do for shipment.

30 Q. Where was this car standing when it was pointed out to you by the—by Mr. Henning, as being the car in which you were to load the cattle? A. At the stock yards.

Q. Is that near the station? A. Well, just above the station, yes; about 20 rods, perhaps.

Q. What kind of a car was this car? A. Why, it was a—I think used as a horse car; it was a different car than I had usually shipped in and
40 not—

Edward Bertholf, for Plaintiff—Direct

Q. You have been shipping cattle for how long?

A. Well, probably 20 years at least.

Q. And have attended to the loading of them during that time? A. Yes, sir.

Q. This car which you have referred to, will you tell us something about its size and condition?

A. Why, it was a very large car, extra large, probably 60 feet long, at least, and—and in good width; 10 you know, an ample room car.

Q. You spoke of it as being a horse car; you distinguish it how, from a cattle car? A. Yes.

Q. An ordinary cattle car? A. A cattle car as I had always used—

Mr. Hartpence: I object as immaterial and irrelevant, as to what he had used on a previous—

Mr. Price: I don't care what he had used. I merely want to draw the distinction between the two cars. 20

Mr. Hartpence: Objected to as immaterial and irrelevant on the same ground.

The Court: Well, he may tell us the difference between the cars.

The Witness: Why, the cattle car that I refer to is a car with slats, or iron—that runs up and gives plenty of ventilation through it, that I had shipped in before as an express car. 30

Q. I cannot hear you. A. As I had shipped in always before as an express car.

Q. Yes. A. Was a car that was ventilated with slats.

Q. Now, with reference to this car, will you describe its doors and windows? A. Sir.

Q. Describe its doors and windows in this car? A. Yes. Well, the windows and ventilators, as I supposed they were, were in the top of the car 40

Edward Bertholf, for Plaintiff—Direct

practically, and a door on each end and a door on the side.

Q. Was there any glass in the doors on each end? A. Yes, sir.

Q. And were they glass that you could move and open? A. You could not.

Q. And regarding the air spaces up at the top
10 around the car where the windows were, did you open those? A. Yes, sir.

Q. All of them? A. All of them.

Q. Did you leave either of the doors open? I mean, open so they were not sealed? A. Yes, one end door I requested to be left open.

Q. The fixing of the car and the loading of the cattle was completed by about what time do you think, on Tuesday? A. Why, the loading was completed at half past four on Tuesday.

20 Q. So far as room was concerned in this car, was there ample room for the cows and cattle which you put in?

Mr. Hartpence: Objected to as calling for a conclusion merely of this witness.

Mr. Price: This witness has loaded cattle for twenty years; he is entitled to know that.

The Court: He may tell us how he left them.

30 Q. Was there plenty of room? A. There was plenty of room in the car for the cattle.

Q. Following the loading and after you had both bedded and put the cattle in, did you speak with Mr. Henning, who has been referred to? A. Yes, sir; after I had them loaded I went to the station and he made out a shipping bill, and I told him I was a-going with the car.

Q. Did you ask him at that time as to the time when the car would be taken away? A. I did.

40 Q. And what train did he say it would leave by?

Edward Bertholf, for Plaintiff—Direct

Mr. Hartpence: Objected to as immaterial and irrelevant.

The Court: I think that is competent. I shall allow that and allow you an exception.

Mr. Hartpence: I ask an objection.

A. He said it would go on Number 28.

Q. Number 28? A. Yes, sir. 10

Q. What train is Number 28? A. Why, it goes at 6:12; it leaves New Milford.

Q. 6:12 what, in the p. m.? A. P. M., yes, sir.

Q. And what kind of a train is it? A. It is a local passenger train.

Q. Between where? A. Binghamton and Scranton.

Q. Makes stops at the various stations? A. All of the stations.

Q. Well with reference to the stations between 20 New Milford and Scranton, does it make those stops? A. Yes, sir.

Q. And about what time was it do you think you had this conversation with Mr. Henning? A. About five o'clock.

Q. And this was the same Mr. Henning who signed the shipping receipt you spoke of for the company? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. What did you tell Mr. Henning after he had 30 informed you that the cattle would be put on Number 28?

Mr. Hartpence: Objected to as immaterial and irrelevant.

The Court: I will allow that.

Mr. Hartpence: It would appear that there was a shipping receipt made out, your Honor. Now, our contention is that shipping receipt speaks for itself, and anything said outside of that is a mere varying of the terms of it 40

Edward Bertholf, for Plaintiff—Direct

by verbal testimony; and also on the further ground that any conversation between these parties could not in any wise affect that contract.

The Court: You may answer that question.

Mr. Hartpence: I will pray my objection be noted.

10 The Court: You may note your objection.
(Question read by the stenographer).

A. I informed him that I was going to accompany the cattle.

Q. And did you advise him anything further?

Mr. Hartpence: I pray an objection, if your Honor please, on the same ground.

The Court: Well, how is it competent? Now, he has told he was going with the cattle; what more is there?

20 Mr. Price: I want to find out where he went.

The Court: All right; ask him.

Q. Where did you go after? A. I went to my home and prepared to go with the cattle.

Q. Prior to leaving for your home, did you so inform Mr. Henning? A. Yes, sir.

30 Mr. Hartpence: That is objected to, and I move to strike it out.

The Court: Yes; strike it out.

Mr. Price: Isn't he entitled to testify as to what he told the agent, where he was going? He goes up to change his clothes and says he will be back at that time, and so notifies the agent.

The Court: What difference does it make?

Mr. Price: May I have an exception?

40 The Court: I don't think it makes any difference. Yes, take your exception.

Edward Bertholf, for Plaintiff—Direct

Q. Where did you go in order to change your clothes? A. I went to my home.

Q. And returned how soon? A. I got down there six o'clock, just about.

Q. Was the passenger train, Number 28, in the station then? A. It pulled in just as I came down.

Q. Was the car there then on which you had loaded the cattle? A. It was not. 10

Q. What did you do? A. I went—started down to the station, and I saw the conductor in the car, and I said—

Q. That is the conductor of this train Number 28? A. The conductor of this train.

Q. Yes. A. I went in and I asked him where the stock car was; he said it wasn't on this train.

Mr. Hartpence: That is objected to on the ground it is immaterial and irrelevant.

The Court: Yes; it is immaterial; strike it out. 20

Mr. Price: Are we not entitled to show that this company, shipping this car as the Adams Express Company car, on a certain train, Number 28—entitled to show the statement of the conductor of that train as to what had been happening to that car?

Mr. Hartpence: It is hearsay.

The Court: What he told somebody else?

Mr. Price: No; that he informed our agent, 30 the fact that the car had already gone.

Mr. Hartpence: Of course, I object to that as hearsay.

The Court: You may prove it in a proper manner, but you cannot do it by hearsay.

Q. Did you go on to Scranton? A. I did.

Q. On what train? A. I went on 28.

Q. The same train where the cattle had originally intended to be shipped? A. Yes, sir. 40

Edward Bertholf, for Plaintiff—Direct

Q. And about what time did you arrive in Sran-ton? A. Well, about half past eight, I think it gets there, as near as I can remember it.

Q. When you got to Seranton, what was the first thing you did? A. I went to the despatcher's office to find out where the car was.

Q. Did you ascertain where the car was? A. I
10 did.

Q. Will you keep your voice up, Mr. Bertholf?
A. I did.

Q. And following your obtaining a knowledge as to where the car was, what did you do? A. Following it?

Q. After you had learned where the car was, what did you do? A. I went down where they said it was switched into the lower end of the station.

20 Q. Did you find it there? A. I did.

Q. What was its condition? A. Why they had smashed in the—

Mr. Hartpence: Now, I object, if your Hon-
or please, stating what they had done; I ask
it be stricken out.

Mr. Price: I consent.

Q. What did you find was the condition of the
30 car? A. I found the car there with its ends
smashed in and the sides, and they were pouring
water through a hose into the car when I got
down there.

Q. Did you see a man there directing the pour-
ing of the water in, and so forth? A. I did.

Q. Do you see him in court?

Mr. Price: Is Mr. Hull in Court?

(No response).

Q. Who was the man you saw doing the direct-
ing there of the operation of the hose, and so
40 forth? A. Mr. Hull.

Edward Bertholf, for Plaintiff—Direct

Q. Do you know who he is? A. I do now.

Q. Who is he? A. He is the express agent.

Q. For what company? A. For the express company.

Q. For the Adams Express Company? A. The Adams Express Company; yes, sir.

Q. And describe in detail to the jury what they were doing when you got there under the direction of Mr. Hull. A. Why, the doors and windows had been smashed in and they were pouring water onto the cows then and he was directing them—somebody, to get an engine to take it to the stock yards. 10

Q. Yes. Now, you speak of the doors being smashed in, the doors whereabouts in the car? A. In the end doors.

Q. And the window glass that was smashed in? Was the window glass in the doors? A. Yes, sir. 20

Q. What was the condition of the cattle as you saw them at that time? A. Why, it was very bad. They were piled up badly on both ends of the car, and looked to be dead. Of course, they were all wet, and looked terrible; it was an awful scene.

Q. What did you do then? A. I went right back to get in communication with Purity Farms, the owner of the stock.

Q. And following that, did you return to the stock yards? A. I did. After I tried to get in communication with them, I returned to the stock yards, and then went down— 30

Q. Let me ask the questions. After you returned to the stock yards, about how long a time was it after you had first seen the cattle at Scranton that you returned to the stock yards? A. Why, it probably was an hour.

Q. Yes. A. Maybe a little more.

Q. And when you got down to the stock yards, was the car there? A. It was. 40

Edward Bertholf, for Plaintiff—Direct

Q. Were the cattle still in it? A. They were.

Q. And what was done while you were there?

A. They proceeded to unload them.

Q. Who was superintending the unloading? A. Well, Mr. Hull was there.

Q. And what was done regarding the unloading; how did they do it? A. Well, they got out all
10 that could walk out, and some that couldn't walk very good, why, they helped them out, got them out.

Q. In what way? A. Why, steadying them to get out of the car.

Q. Did you look in the car at that time? A. I did.

Q. Did you see any cattle dead? A. I did.

Q. How many? A. There were eight.

Q. Eight were dead? A. Dead then.

20 Q. I cannot hear. A. There were eight that were dead then.

Q. Did they leave them in the car? A. Yes, and there was one other that did die; they left it in and it died afterward.

Q. I see.

The Court: Were these cows or calves that were dead?

30 The Witness: These were cows, there were nine cows, eight cows that were dead at that time; one died afterward, and there were three calves that were dead at that time.

Q. And were the three calves that were dead in the car? A. Yes, sir.

Q. And were they left there? A. They were.

Q. Well, now, while you were there, they unloaded the car, didn't they? A. Yes, sir.

Q. And where were the cattle put by the company? A. They were put in the yards.

40 Q. Following that, what did you do after they

Edward Bertholf, for Plaintiff—Direct

were put in the yards? A. I went right back and found out when I could get my train to Purity Farms, and found out it went about two o'clock, and I took the train.

Q. Purity Farms is located near where, Mr. —
A. Near Titusville, New Jersey.

Q. And these cattle which you had purchased for the farms were being sent from New Milford 10
to what place? A. To Titus— to the Purity Farms.

Q. And Titusville is the station? A. Titusville is the station.

Q. Now, after you got to Titusville, with whom did you communicate? A. I communicated with the manager of Purity Farms.

Q. What is his name? A. Chase.

Q. Did you get in touch with Mr. Lagerquist?
A. I did. 20

Q. Is that this gentleman sitting here (indicating)? A. Yes, sir.

Q. At the table? A. Yes, sir.

Q. And where did you go with him? A. Why, we went—I went back to New York with him. He came down after me and took me back to New York.

Q. Yes, and go where with him? A. Well, he had some business—

Q. Speak louder. A. He had some business 30
there and then we came back to Scranton.

Q. Did you go back to Scranton with him? A. I did.

Q. When you got there, did you go down to the stock yards? A. We started to go down.

Q. Well, did you finally get there? A. Yes.

Q. And did you see the cattle? A. We did.

Q. Will you describe their condition at that time to the jury? A. Well, part of them were in fair condition walking around; looked very gaunt 40

Edward Bertholf, for Plaintiff—Direct

and bad, and there was several of them that was still yet staggering around some and was in bad shape.

Q. With reference to the time they came out of the car and with reference to the time that you saw them at Scranton after you had been to New York, what was their general condition, so far as
10 their physical condition is concerned? A. Well, there was not a lot of difference, of course.

Q. I don't mean as to the difference; describe what that condition was as you saw it? A. Why, they were very gaunt and looked very bad.

Q. Any particular thing— A. And there were some of them that were dazed; their eyes were glassy and they looked bad.

Q. And after you had been down to the stock yards that evening—do you know what day of the
20 week that was? A. I think it was on Thursday, I think.

Q. Thursday? A. Yes.

Q. And were the cattle able to be shipped at that time on to Titusville? A. No, they were not.

Q. Were they later shipped by the express company on down to Titusville? A. They were.

Q. Did you accompany that shipment? A. I did.

Q. And when did they arrive at Titusville? A.
30 They arrived at Titusville Saturday about two o'clock.

Q. That is Saturday of the same week? A. The same week.

Q. In which you had originally shipped them? A. Yes, sir.

Q. Were you present when they arrived? A. I was.

Q. Were you there when they were unloaded? A. I was.

40 Q. Who is the Adams Express Company agent at Titusville?

Edward Bertholf, for Plaintiff—Direct

Mr. Hartpence: Objected to as calling for the conclusion of this witness.

The Court: Yes.

Q. Did Mr. Chase of the Purity Farms, the manager, come to the station while the cattle were being unloaded? A. He did.

Q. And you were there when he was there? A. 10
Yes, sir.

Q. Who else was there? A. Why, the Titusville agent was there.

Q. What is his name?

Mr. Hartpence: I object, if your Honor please.

A. I cannot tell his name.

The Court: Strike that out.

Q. Do you see the man in Court you refer to? 20
A. I do.

Q. Will you point him out? A. Right there, yonder (indicating).

Mr. Price: Will you stand up?

The Witness: Sitting by Mr. Henning.

Q. Is that the gentleman (indicating)? A. Yes, sir.

Mr. Price: What is your name? 30
Voice: Hart.

Q. Mr. Hart. Anybody else there? A. Yes, sir.

Q. Who else? A. There was a veterinary there; I don't know his name either.

Q. Do you see him? A. I have seen him here today, I don't—yes, no.

Q. Do you see him, Mr. Bertholf? A. I don't see him here; he came in when I did. Oh, right here (indicating). 40

Edward Bertholf, for Plaintiff—Direct

Q. Is this the gentleman (indicating)? A. Yes, sir.

Q. What was the condition of the cattle as they were unloaded from the car? A. Why, they looked hard and they were very gaunt, and there was four of them that were in very bad condition especially.

10 Q. And describe the condition of the cows generally, and especially these four? A. Well, these four was—their eyes were glazed and they staggered, and they weren't able to be driven; we helped them down out of the cars into the yards.

Q. How far is the Purity Farms from the Titusville station? A. Why, from four and a half to five miles, I should say; I never inquired.

Q. And these four cows of which you speak, how were they taken to the Farms? A. They were
20 taken there by trucks.

Q. With reference to the calves that survived the shipment, what was their general condition? A. Why, they looked not so bad, only they was badly mussed up, and there was one more dead one at Titusville.

Q. Were you present when the cattle were transported from the Titusville station to the Farms? A. I was.

Q. On the following day did you check up the
30 cattle that were there that had been transported? A. I did.

Q. How many cows did you find gone? A. Ten.

Q. Ten? A. Yes, sir.

Q. You have referred to nine to the jury, that is eight which died, found dead at Scranton, and one which died later; what is the other one to which you refer? A. The other one is one that got away up at the Scranton—

Q. Speak louder. A. One that got away at the
40 Scranton stock yards.

Edward Bertholf, for Plaintiff—Direct

Q. In the stock yards you referred to? A. Yes, sir; the stock yards I referred to.

Q. And how did it get away there? A. Why, through an open gate. They claimed that—

Mr. Hartpence: I move to strike it out. Apparently this gentleman is incompetent to testify about that.

The Court: Only what you know yourself. 10

Mr. Price: I consent the last part of his answer be stricken out.

Mr. Hartpence: I move to strike it all out, your Honor.

Mr. Price: Your Honor, as a matter of fact, as I view it, it doesn't make a great deal of difference whether they took these cattle and failed to deliver them, whether they died or not, I only wanted to let the jury know there was one more cattle—

The Court: Unless this witness says he knows of his own knowledge, I will strike it out. 20

Q. Mr. Bertholf, you don't know of your own knowledge how that other cow escaped, do you?

A. I do not.

The Court: Strike it out.

Q. Now, when you checked up the cattle at Titusville, there were ten gone? A. Yes, sir. 30

Q. And how many calves were gone? A. Four.

Q. From what place did you purchase these cattle which were put in this car? A. Well,—

Mr. Hartpence: Objected to as immaterial.

The Court: What difference does it make?

Mr. Price: I am going to show the value of the cattle is all, your Honor.

The Court: Well, that may all be; but I don't think that goes to show. 40

Edward Bertholf, for Plaintiff—Direct

Mr. Price: I beg your pardon?

The Court: I don't think that goes to show, does it?

Mr. Price: Well, I will go into the subject.

Q. You have been dealing with cattle for how long, Mr. Bertholf? A. For 20 years.

10 Q. You will have to speak louder, Mr. Bertholf.
A. 20 years or more.

Q. And during that time you have been buying and selling cattle? A. I have.

Q. Do you know the value of cattle? A. I do.

Q. What kind of cattle did you find missing when you checked them up? A. What do you mean by that?

Q. What was the general kind, Holstein or Guernsey, or what? A. Why, they were grade
20 Holsteins that were checked out.

Q. And can you give us the value of the cattle?
A. I can.

Q. Which were missing. Will you state to the jury the value of the cattle which were missing?

Mr. Hartpence: That is objected to unless the place where the value is found to be is stated. It might be their value in the place of shipment, the value at the place of destination, or the value somewhere else. I think it
30 is their market value at the place of shipment which should be the controlling factor.

Mr. Price: Very well.

Q. Do you know the market value of the cattle at the place of shipment? A. I do.

Q. Now, will you state the market value of these cattle at the place of shipment with reference to those that were missing? A. Yes, that is what I understand. There was one cow—

40 Mr. Hartpence: I object to that on the

Edward Bertholf, for Plaintiff—Direct

ground that these cattle were shipped according to a shipping receipt by the evidence of Mr. Bertholf, and regardless of their market value, the value fixed in the contract—

The Court: Is there a value fixed in the contract?

Mr. Hartpence: Yes, sir; the value of the cows and calves is fixed by tariff regulations. 10

Mr. Price: I have no objection to that; they were stated to be \$3600. May I still press my question under those circumstances?

The Court: Is there any value on the particular ones?

Mr. Price: Why, no; you can't—

The Court: Some of those shipment receipts say a value not over so much.

Mr. Price: Value here and declared by the shipper, \$3600. 20

Mr. Hartpence: I take exception to that.

The Court: Now, what is there in the shipping receipts that you think fixes the value?

Mr. Hartpence: Why, I can give your Honor the contract.

The Court: I know; a great long contract; what portion of it is there—

Mr. Price: Your Honor is not looking at the same paper that I have.

Mr. Hartpence: Section 2 of the livestock 30 contract which is annexed to our answer: cows six months or over, \$75 each; calves under six months, \$25 each.

The Court: Oh, yes; well, how can you get around that?

Mr. Price: Why, that says that the classification, maximum rates on live animals apply only when the value does not exceed the following.

The Court: When it exceeds the following? 40

Edward Bertholf, for Plaintiff—Direct

Mr. Price: Yes. Now, in conjunction with that, it gives this paper which certainly is to be read in connection with their livestock contract, and the value herein declared is the value upon which these cattle were shipped.

The Court: Well, I cannot allow it now until you get something further.

10 Mr. Price: Well, you will not allow the question as to the value of the cattle?

The Court: As it stands now.

Mr. Price: Very well, I withdraw the last question.

Q. I show you a paper stated to be a uniform express receipt, and ask you by whom that was given to you? A. (Referring) John T. Henning.

20 Q. I notice that is signed at the bottom Adams Express Company, at the top, and at the bottom John J. Henning, for the company. Is that the Mr. Henning you pointed out here in court before? A. Yes, sir.

Q. And when was that given to you? A. It was given me after I had loaded the stock at New Milford.

Mr. Hartpence: Now, may I have that answer?

30 Mr. Price: "It was given to me after I loaded the stock at New Milford."

Mr. Price: I offer this receipt.

Mr. Hartpence: Just let me see it, will you please?

Mr. Price: (Handing paper to Mr. Hartpence).

Mr. Hartpence: We object to its admission, your Honor, on the ground it doesn't appear to be the complete contract entered into.

40 Mr. Price: If your Honor please, the ques-

Edward Bertholf, for Plaintiff—Direct

tion in all these cases is a question of the value, of the declared value, at the time of the shipment, and the paper is the livestock contract and the receipt which declares the value. That is the only way we can get at the value; that is the only place for it.

Mr. Hartpence: That is a mere declaration; but this doesn't appear to be the livestock contract. 10

Mr. Price: Why, your Honor, they ask you to declare the value, and when he does it, that is the very thing upon which the rates are based.

Mr. Hartpence: That hasn't been shown yet.

The Court: I will admit it.

Mr. Hartpence: I pray an exception, your Honor. 20

The Court: Take your exception. You may find out, if you can, what these cattle were worth at that time.

(Marked Exhibit P-1).

Q. Now, we will go back to the question, Mr. Bertholf, as to the cattle that were missing. Will you please state to the jury the value of the cows which were missing, being the market value at the place of shipment? A. There was one cow 30 I paid a Mr. DeWitt—

Mr. Hartpence: I object.

The Court: Strike it out.

Q. The question is not what you paid for it, but what it is worth, its market value. A. Worth \$115.

Q. That was one of the cows that was missing?

A. Yes, sir.

Q. What kind of a cow was that? A. It was a 40 Holstein cow.

Edward Bertholf, for Plaintiff—Direct

Q. Will you continue? A. There were two cows that were worth \$85 apiece.

Q. Two of those that were lost, you mean? A. Yes, sir.

Q. What kind of cows were those? A. Those were grade Holsteins.

10 Q. Will you continue? A. And there were three cows that were worth \$100 a piece that were also grade Holsteins.

Q. Will you speak louder? A. Three cows were worth \$100 a piece, were Holstein grades.

Q. Yes. A. And there was one cow that was worth \$90.

Q. What kind of a cow was that, Mr. Bertholf? A. Well, she was a grade Holstein.

20 Q. I see. A. And there was two other cows that were worth \$95 a piece. And there was one other cow that was worth—two other cows was worth \$90 a piece, and one other that was worth ninety-five.

Q. I see. And these other cows which you detailed at the end, were they grade Holsteins, too?

A. They were grade Holsteins; yes, sir.

Q. Do you also know the value of the calves? A. Yes, sir.

Q. What was the value of the four calves that were missing? A. Why, \$6 a piece.

30 Q. Now, to go back for a minute, Mr. Bertholf, to the time when you went down to the station, and notified Mr. Henning that you intended to accompany the train where these cattle were going: Did you so intend? A. Sir?

Q. Did you so intend to accompany the train? A. I did.

Mr. Hartpence: Objected to as immaterial and irrelevant.

The Court: Oh, I shall allow that; proceed.

40 Mr. Hartpence: I pray an exception to your Honor's ruling.

Edward Bertholf, for Plaintiff—Direct

The Court: Take your exception.

Q. I intended to ask you, Mr. Bertholf, about the remainder of the cattle; you have detailed the value of those that were missing or died. Give us some idea about the condition of the remaining twenty? A. Well, their condition was very bad; they were very gaunt.

10

Q. Of course, that doesn't mean a great deal to the jury. Tell us a little more in detail. I personally don't know anything about cattle and possibly the jury doesn't. A. As to their value, I consider them worth—

Mr. Hartpence: I object, your Honor, to his stating what he considered they were worth unless he first shows that he is competent to state to what extent they were damaged, if at all damaged.

20

The Court: Yes, he must show that.

Mr. Hartpence: And furthermore, the question of what their condition was has only been elucidated so far at the time they were actually delivered; as to whether they fully recovered thereafter or not—now, if it is value that is going to show anything at all on that, it would be the condition in which they finally arrived, the way of recovery.

Mr. Price: A man who has been dealing with cattle for twenty years knows the value and if he saw these remaining twenty, and he wanted to buy them, and saw them unloaded, he could state their value then.

30

Mr. Hartpence: They may recover in a few days.

The Court: The jury is entitled to know the condition of the cattle when he saw them there before he expresses an opinion as to the value.

40

Edward Bertholf, for Plaintiff—Direct

Q. Mr. Bertholf, will you describe with particularity the condition of the cattle, of the remaining twenty, as they were taken off the car? A. Well, they weren't worth—

Mr. Hartpence: No.

10 Q. No. Now listen. The Court has told you you cannot state the market value until you first know their real condition. Now, won't you describe their condition in detail at the time they were unloaded from the car? A. Well, they were very—in very bad condition; they were very gaunt and looked very badly.

Q. In what way? A. In every way.

Q. Well, that doesn't tell us anything. A. Their eyes looked bad and their condition was generally very bad.

20 Q. And with reference to the time when you saw them unloaded from the car, what would you have considered their value in the open market at the place of shipment?

30 Mr. Hartpence: Objected to as immaterial and irrelevant. They are suing now for the value of the cows and calves that were entirely lost to them. They are also suing for damage to other cattle. Now, the damage to that cattle is not to be measured by their condition at the time they reached the end of their journey; but, so far as we know, they may have entirely recovered thereafter. So, it seems to me, before he can express any opinion as to a deterioration in value, he must show the condition to which they ultimately arrived, and then he might perhaps say that they could go no farther in the way of recovery, and in my opinion then they were only worth so much money. I suppose that
40 might then be competent.

Edward Bertholf, for Plaintiff—Cross

Mr. Price: This company took a number of cows and delivered to us in a certain very bad condition. I had in mind that this gentlemen could testify as to what in his opinion was the market value at the time they were delivered, and I intend to supplement that by those who treated them thereafter.

The Court: I think the question is what the permanent condition of those cattle was. 10

Mr. Price: Well, isn't a step in showing a permanent condition, showing the condition and the value at the time they were unloaded?

The Court: I do not think so. You may show the condition at the time, but not their value.

Mr. Price: All right, sir; I take an exception.

The Court: You may show their condition. 20

Cross Examination by Mr. Hartpence:

Q. In addition to this paper marked P-1, Mr. Bertholf, at the time this loading of the car was completed and the shipment was made, you also signed this other paper that I show you, didn't you? A. (Referring) I did; yes, sir.

Q. And this is your signature, E. D. Bertholf? A. Yes, sir. 30

Q. And just above it is John F. Henning, is that right? A. Yes, sir.

Mr. Hartpence: I will ask that that be marked for identification.

Mr. Price: No objection. I have a copy that is not quite as badly mutilated as that.

Mr. Hartpence: Yes, if we could use a copy, because that is the original.

Mr. Price: I think when it comes time to read the original, you may show it to the jury. 40

Edward Bertholf, for Plaintiff—Cross

(Marked Exhibit D-1 for identification).

Q. New Milford is in Pennsylvania, isn't it, Mr. Bertholf? A. Yes, sir.

Q. Titusville is in New Jersey? A. (Nodding head) Yes.

10 Q. You finished loading car, I understood you to say, about half past three? A. Half past four.

Q. About half past four. And did you load the car all by yourself? A. No, sir.

Q. Who else assisted you? A. Mr. Ralston.

Q. What is his name? A. Mr. Ralston.

Q. Who was Mr. Ralston? A. He is a resident of our place; he is here in court.

Q. And he was employed by you to do that? A. Yes, sir.

20 Q. Then you and Mr. Ralston together loaded the car? A. We did.

Q. And I understood you to say that the car was then standing on a railroad siding? A. It was at the stock yards, New Milford.

Q. At the Delaware, Lackawanna & Western stock yards, is that right? A. Yes, sir.

Q. At New Milford? A. Yes, sir.

Q. And had you previously driven your cattle into the stock yard? A. Yes, sir; before we loaded them.

30 Q. Yes. How long before? A. Oh, perhaps a half hour.

Q. Then you loaded them right from the stock yards? A. Yes, sir.

Q. It was after you had loaded the car with the assistance of Mr. Ralston that you received these two papers, P-1 and D-1 for Identification from Mr. Henning, isn't that correct? A. Yes, sir.

40 Q. And at that time you stated to Mr. Henning how many cows and how many calves you had put in the car, didn't you? A. Yes, sir.

Edward Bertholf, for Plaintiff—Cross

Q. And it was from that information that you gave him that he made up these two papers, P-1 and D-1, isn't that right? A. Yes, sir.

Q. After you and Mr. Ralston finished the loading of the car, you say there was plenty of room in the car? A. Yes, sir.

Q. You mean by that that the cattle had room to move around in? A. Plenty of room; yes, sir. 10

Q. It was an extra large car, I understood you to say? A. It was.

Q. I understood you to say that there was one door of the car left open: which door was that, Mr. Bertholf? A. Well, it wasn't left open, but it was left not sealed.

Q. Oh, left unsealed? A. The end.

Q. Now, which end? A. The end door.

Q. Which end? A. The end next to the car that I supposed was the car that was going to be in— 20

Mr. Price: You will have to speak louder, Mr. Bertholf.

The Witness: The end next to the baggage car as we come—

Q. Yes. Was there a door in each end? A. Yes, sir; there was a door in each end.

Q. Now, what direction is Scranton from New Milford, east, west, north or south? A. It is south.

Q. South from New Milford to Scranton? A. 30
Yes, sir.

Q. And the door which was left unsealed, was that the north or south end? A. The south end.

Q. It was closed, as I understood you to say, but left unsealed? A. Left unsealed, yes.

Q. Now, the other doors were sealed, weren't they? A. I suppose they were.

Q. And by whom were they sealed? A. By John J. Henning.

Edward Bertholf, for Plaintiff—Cross

Mr. Price: Speak a little louder, Mr. Bertholf.

The Witness: By the agent Henning.

Q. Henning? A. Yes.

Mr. Hartpence: I move to strike out the agent as being a mere conclusion of the witness.

10

Q. And when did he do that, Mr. Bertholf? A. He done that after I had been down and he had made out my contract, and I had signed up.

Q. You told him then the car was ready for sealing, did you? A. Yes.

Q. And did you go down with him when he sealed the door? A. Yes, sir; and I went right up with him, and went right on to my home.

20 Q. And all that was done under your direction?

A. Sir?

Q. That was all done under your direction? A. Yes.

Mr. Price: I cannot hear your answer, Mr. Bertholf, and the jury cannot hear a word of it.

The Witness: Done under my direction.

Q. Yes. A. Yes.

30 Q. And then after he had done that, you went on home, is that correct? A. I did.

Q. Now, these other cars that you have shipped cattle in on other occasions, you say had slat sides? A. Yes, and iron—iron up to the upper part of the car, to give air space.

Q. They gave an opening between the slats or boards, is that right? A. Yes.

Q. When had you ever shipped cattle before that in such a car as that? A. I had shipped up
40 to the Purity Farms.

Edward Bertholf, for Plaintiff—Cross

Q. When? A. Well, at different times before that.

Q. Over that same railroad? A. The same railroad, the same route.

Q. And when you shipped your cattle to Purity Farms before, or to anyone else, using those slat cars, did you always ship by express or sometimes by freight? A. I had shipped by freight, but by 10
express when it was required of me, or asked of me.

Q. Yes. And sometimes—

Mr. Price: What was the last part of that answer?

Q. —by express?

The Witness: I say that I shipped by express when it was asked of me or required, and other times by freight. 20

Q. By freight. That was according to the directions that you received then from the person to whom you were shipping? A. Yes, sir.

Q. Isn't that correct? A. Yes, sir.

Q. If they said ship by express, you would ship by express? A. Yes, sir.

Q. And if they said ship by railroad freight, you shipped by railroad freight? A. I did.

Q. But you shipped in each instance right from 30
that same stock yard at New Milford? A. Sir?

Q. But in each instance you shipped right from that same stock yard at New Milford? A. Not always, no; I shipped from others.

Q. I mean, when you had shipped from New Milford, A. Yes, sir.

Q. You always shipped from that same stock yard? A. Yes, sir; we only have the one.

Q. When had you shipped to the Purity Farms before this occasion any cattle by way of the 40

Edward Bertholf, for Plaintiff—Cross

Adams Express Company? Do you recall? A. I had—why, I can't give you the dates, but I had shipped several loads to the former manager of the Purity Farms, Mr. Moore.

Q. Well, within what time? A. Oh, within—well, anywhere from two to five years. I had shipped there at previous times.

10 Q. Previous to this occasion? A. Yes.

Q. Now, can you tell, approximately, Mr. Bertholf, how long it was before this particular shipment that you are now concerned in, how long before that it was that you had made your next previous shipment by the Adams Express Company to the Purity Farms? A. I couldn't say positive, no; not at present.

Q. Well, had it been several years? A. No, it hadn't been several years, but perhaps a year and
20 maybe not.

Q. You mostly shipped by railroad freight, didn't you? A. Why, no, not mostly; perhaps half of the time.

Q. When you shipped by railroad freight from New Milford with whom did you make your arrangements for the cars and for the shipping receipts? A. With the—

Mr. Price: I object as immaterial. We are
30 dealing with this one particular case, what happened at this time; it is quite immaterial.

The Court: I think you are right about that; I sustain your objection.

Mr. Hartpence: I beg your pardon.

The Court: I sustain the objection. What difference does it make?

Mr. Hartpence: I will ask an objection to your Honor's ruling.

The Court: Take your objection.

Q. Have you ever had any transactions with Mr. John F. Henning before this shipment?

Mr. Price: I object.

The Court: I will allow that.

Mr. Hartpence: Will you repeat it, Mr. Stenographer?

(Question read by the Stenographer).

A. I had.

Q. And with railroad freight shipments or express company shipments? 10

Mr. Price: I object as immaterial.

The Court: I will allow it.

A. With both.

Q. When you made your shipments by railroad freight, you made your arrangements with Mr. Henning, didn't you? A. I did. ,

Q. The railroad station at New Milford was the D. L. & W. station, wasn't it? A. It is.

Q. Why was it, Mr. Bertholf, that you directed Mr. Henning not to seal that north end door? 20

Mr. Price: Objected to as immaterial.

The Court: I will allow that.

A. Because I thought I could look after the stock in better shape.

Q. At the time that you signed and accepted this livestock contract, D-1, you also signed this portion of it marked attendant's contract, didn't you, Mr. Bertholf? A. I did. 30

Q. That is your signature also, E. D. Bertholf?

A. Yes, sir.

Q. And you were furnished transportation by the railroad company as an attendant, were you not?

Mr. Price: I object unless he—

Q. In accordance with that section of the contract?

Mr. Price: I object unless he limits his 40

Edward Bertholf, for Plaintiff—Cross

question as to what is meant by furnishing transportation so far as the physical conveyance is concerned, it didn't take place.

The Court: I will allow that.

10 Mr. Price: Well, may the witness understand the question, that is all. It might mean, were you given a ticket, or were you actually conveyed. We are entitled to know what question is being asked.

Mr. Hartpence: Well, I will insert the word "free".

Mr. Price: That doesn't help it any.

The Court: You may answer it one way or the other.

Mr. Price: Exception.

The Court: Yes.

A. Well, I was given transportation.

20 Q. You didn't have to pay for any ticket to accompany the shipment? A. No, sir.

Q. And it was your intention to ride in one of the passenger coaches of train Number 28, was it not? A. Yes, sir.

Q. And the north end door was merely left unsealed so that you could go in from time to time to look after the stock, is that right? A. Yes, sir. sir.

30 Q. This train Number 28, I understood you to say, leaving at 6:12 p. m., was an old-time train? A. Yes, sir, I think so; it has been there a long time.

Q. Yes, it had run for a good while, hadn't it? A. Yes, sir.

Q. You had often ridden on it yourself, had you? A. Yes, sir.

Q. And it was a local from New Milford into Scranton, wasn't it? A. Yes.

Q. Do you know how far it is from New Milford to Scranton? A. 42 miles they claim.

40 Q. And do you know what the running time of

Edward Bertholf, for Plaintiff—Cross

that train Number 28 was between the two points of New Milford and Scranton? A. Why, not exactly, no.

Q. But you did get in that evening about half past eight, did you? A. Yes, sir; practically that time; sometimes—

Q. When you reached Scranton you found that the car with your cattle in it had already preceded you, did you not? A. Yes, sir. 10

Q. And it was there? A. Yes, sir.

Q. You had just about time to get on that passenger train and go on with it when you reached the station, didn't you, Mr. Bertholf? A. I did.

Q. It was just pulling into the station, I understood you to say? A. Yes, sir.

Q. You had purchased these cows just prior to the time of shipment, had you? A. Yes, sir.

Q. For the Purity Farms? A. Yes, sir. 20

Q. When you speak of grade Holstein, what do you mean by grade Holstein? Well, they are graded up from different cattle with a Holstein bull, and have what we call grade; lots of times a thoroughbred bull, and—

Mr. Price: Keep your voice up, Mr. Bertholf.

A. (Continuing) —lots of times a thoroughbred bull and a grade cow of some other stock; sometimes it is a Holstein and sometimes others. 30

Q. Did you examine the pedigrees of these different cattle at the time you bought them? A. I did not.

Q. And on what do you base your statement that they were graded Holstein? A. On their color practically.

Q. A mere matter of your judgment; is that right? A. Yes, sir.

Q. What sort of a truck was it that you took the four cattle over from Titusville station to the 40

Edward Bertholf, for Plaintiff—Redirect

Purity Farms? A. An automobile truck.

Mr. Price: Keep your hand down.

The Witness: Sir?

Mr. Price: I cannot hear you if you have your hand up.

The Witness: An automobile truck.

10 Q. And belonging to whom? A. Belonged to the Purity Farms— truck.

Q. It was the Purity Farms truck, wasn't it?

A. Yes, they had men with it.

Q. It had a rack up on the sides for the purpose of carrying cattle? A. It did.

Mr. Hartpence: That is all, your Honor.

Redirect Examination by Mr. Price:

20 Q. You were shown D-1 for identification by the defendant, and they directed your attention to the signature of John F. Henning. I direct your attention to the fact that that says, "Adams Express Company, by John F. Henning, Agent," and ask you if that John F. Henning who signed that as agent is the same John F. Henning you pointed out in court here? A. It is.

Q. And it is the same John F. Henning whom you informed that you intended to accompany the cattle? A. It is.

30 Q. Is it the same John F. Henning who informed you that the cattle would be put on and attached to train Number 28? A. He is.

Q. What was the condition of the cattle at the time you put them in this car? A. They were in good condition.

Q. Any sick? A. No, sir.

Q. Had the car been attached to the train Number 28, which you were to take also, would you prior to leaving New Milford have looked at the cattle? A. I would have.

40 Mr. Hartpence: That is objected to as im-

Edward Bertholf, for Plaintiff—Redirect

material, irrelevant and incompetent, and merely speculative.

Mr. Price: I have a right to show what the intention was.

The Court: He said he got there when the train was just about moving out.

Mr. Price: Well, the car had been taken away. 10

Q. You say the train was just coming into the station when you got there? A. Yes, sir.

The Court: What do you say, as you got there?

The Witness: The train pulled in.

The Court: When you got to the station?

The Witness: Yes, sir.

Q. The train pulled in as you got to the station? A. Yes, sir. 20

Q. And on our trip to New Milford, had you accompanied the cattle—

Mr. Hartpence: One moment, please. Your Honor, I do not know whether there is any ruling made on my objection or not. I only want to get the record straight, to Mr. Price's previous question. I do not know whether Mr. Bertholf answered it or not.

The Court: As I understand the evidence stands, it is this: That the train pulled in as he came to the station. 30

Mr. Hartpence: Yes, but the question was what he intended to have done. My objection to that was it was merely speculative.

The Court: Yes, I sustain your objection.

Mr. Price: Isn't that as much his intention as his intention to accompany the car? Only one way the man could have looked after the cattle. 40

Edward Bertholf, for Plaintiff—Redirect

The Court: I may have been mistaken in allowing you to put that testimony in.

Mr. Price: Then I will continue to ask another one.

The Court: Two wrongs do not make a right, Mr. Price.

10 Q. On your trip to New Milford, had you accompanied these cattle, you spoke of the fact that the train would have stopped at the stations intervening between New Milford and Scranton, is that so? Had you accompanied the cattle as provided for in the contract, would you have inspected the cattle? A. I would.

Mr. Hartpence: I object to that.

20 The Court: Yes. Strike it out. I do not think what he could have done is a question, but whether he would have done it. It is too speculative; and whether there was an opportunity for it.

Q. You have ridden on this train 28 that you speak of from time to time? A. Yes, sir.

Q. It stops at these stations as it goes through? A. It does.

30 Q. Had you accompanied or gone on the train which accompanied the cattle as originally intended, could you have got off at the stations and examined the cattle? A. I could have.

Mr. Hartpence: Objected to as immaterial and speculative.

The Witness: I could have.

The Court: I will allow that.

Mr. Hartpence: Exception.

The Court: Note your objection.

Q. And in accompanying the cattle, is that what you would have done? A. It is.

40 Mr. Hartpence: I object on the same ground.

Edward Bertholf, for Plaintiff—Redirect

Mr. Price: Now we were given an opportunity to accompany these cattle under the express intention—our theory of this case is that they removed the car from our control by not letting us accompany it. If the condition of the cattle had become bad, we would have attended to them enroute.

The Court: You may show what he would have done if he had been there. 10

Mr. Price: I think I have covered that.

Mr. Hartpence: Your Honor sustains my objection?

The Court: I will allow him to prove what he could have done if he had been there; whether he would have done it, that is another matter.

Q. Mr. Bertholf, with reference to the stopping of this train Number 28, had the cattle gone on that train and you had accompanied it, what could you have done with reference to relieving any disability among the cattle had you discovered it? A. During the route? 20

Mr. Hartpence: That is objected to as immaterial.

The Court: I shall allow that.

Mr. Hartpence: Objection.

The Court: Note your objection. 30

The Witness: Why, I should have had the stock taken off the train and stopped and looked after them.

Q. In this particular case, you received orders to ship these cattle by express, is that correct? A. Yes, sir.

Q. From the plaintiff? A. Yes, sir.

Mr. Price: Cross examine.

*Edward Bertholf, for Plaintiff—Recross**Recross Examination by Mr. Hartpence:*

Q. At the time that you had your conversation with Mr. Henning, when you reported to him that the loading of this car was complete, completed, and that you were going along with it, you told him that it was not your intention to go into the car until you got to Scranton, didn't you, Mr. Bertholf? A. No, sir.

Q. You did not? A. No, sir.

Q. As a matter of fact, it was not your intention to go into the car until you got to Scranton, was it? A. It was my intention to look after the car, see that things were right.

Q. Now, after you left the car about half past four, when you say you finished loading and went back home— A. I went to the station.

Q. No, I mean after you had finished your loading and had gone back home, after you had gone to the station and you and Mr. Henning had gone down to the car, I understood you to say that you then went on home? A. I did.

Q. Now, after you went home, at that time you didn't go back again to the car until you went back to take the train about six o'clock, did you? A. I did not.

Mr. Hartpence: That is all.

30 By Mr. Price:

Q. Now, I ask you, Mr. Bertholf, had you accompanied this train Number 28, what did you intend to do with reference to inspecting the cattle during the time it was traveling between New Milford and Scranton?

Mr. Hartpence: That is objected to as immaterial and irrelevant.

The Court: I think you have opened it up.

40 Q. Now, you may state that.

Charles F. Chase, for Plaintiff—Direct

Mr. Hartpence: I pray an objection.

The Court: Note your objection.

Q. What would you have intended to do with reference to inspecting the cattle between New Milford and Scranton? A. Why, I intended to have gotten off the train at the stations as it stopped, or I could have gone through the baggage car. 10

Q. Did you so intend to do? A. I did.

Mr. Hartpence: That is objected to.

The Court: Yes.

The Witness: Yes, sir.

CHARLES F. CHASE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: 20

Direct Examination by Mr. Price:

Q. Mr. Chase, where do you live? A. I live at Purity Farms, Pennington, New Jersey.

Q. You will have to speak a little louder and a little slower, sir. A. All right, sir.

Q. How long have you lived there? A. About 19 months.

Q. And by whom are you employed? A. By the company.

Q. Purity Farms? A. Purity Farms. 30

Q. In May, 1918, were you employed by the Purity Farms? A. I was.

Q. Do you recall a shipment of cattle arriving there on Saturday morning, following May 21st, 1918? A. I do.

Q. Were you present when the cattle were unloaded? A. I was.

Q. Who is the Adams Express Company agent at Titusville?

Mr. Hartpence: That is objected to as in- 40

Charles F. Chase, for Plaintiff—Direct

competent, merely calling for a conclusion. This witness hasn't shown he is competent to say who the agent is.

The Court: Objection sustained.

Q. Whose signature is on the piece of paper I show you?

10 Mr. Hartpence: Objected to on the ground that the paper shows for itself.

The Court: It will show for itself.

A. Why—

Q. Just a minute; you needn't answer the question. By whom was this paper given to you which I show you? A. (Referring) By Mr. Hart.

Q. Do you see Mr. Hart in the court room? A. I do.

20 Mr. Price: Will you stand up, Mr. Hart?

Q. Is that the gentleman you refer to? A. Yes, sir.

Q. And where is he stationed? A. Titusville.

Q. What part of Titusville? A. Where is he stationed?

Q. Yes. Where is his business; what does he do? A. He is the station agent at Titusville.

30 Q. And I show you a paper marked Erik Lagerquist, to Adams Express Company, which you say has been signed by Mr. Hart.

Mr. Hartpence: I object to that, if your Honor please. He made no such statement. He said it was handed to him by Mr. Hart.

Q. Was that signed by Mr. Hart? A. I believe it was.

Q. Do you know? A. I am quite positive.

Mr. Price: I offer it in evidence.

40 Mr. Hartpence: That is objected to as immaterial and irrelevant and incompetent. Mr.

Charles F. Chase, for Plaintiff—Direct

Hart hasn't been shown as anyone authorized by the Adams Express Company. He is the station agent at Titusville according to this witness.

The Court: Mark it for identification.
(Marked Exhibit P-2 for Identification.)

Q. Were you present when these cattle were unloaded, Mr. Chase? A. I was. 10

Q. Who else was there? A. I think Dr. Herker was there.

Q. Is this Dr. Herker who was pointed out in court before? A. Yes, sir.

Q. Who else? A. Mr. Hart was there, and there was another gentleman there that came from Trenton. I don't know what his name was.

Q. Well, who was Dr. Herker? A. He is a veterinary of Trenton, New Jersey. 20

Q. Were the cattle unloaded before or after Dr. Herker came? A. After Dr. Herker came.

Q. Was there any statement made to you by Mr. Hart as to why they wanted to wait until after he came? A. I believe there was.

Q. What was that? A. I believe they said we couldn't unload them until somebody came up from Trenton to look them over.

Q. And who made that statement? A. I think Mr. Hart, if I ain't mistaken. 30

Q. And the cattle when unloaded were unloaded in what manner? A. Why, they were run up to the cattle pen, the same as usual, and we took them all off. We had quite a job taking two or three of them off; we had to assist them a little, but we finally got them off in pretty good shape.

Q. Were the cattle which Mr. Bertholf has detailed had died at Scranton, were they in the car at that time? A. There were no dead cattle in the car, I think, at that time. 40

Charles F. Chase, for Plaintiff—Direct

Q. The cattle which you took off were taken where, Mr. Chase? A. They were taken to the Purity Farms.

Q. Did you accompany the transportation of these cattle? A. I did.

Q. Concerning the calves, what was done with them? A. They was taken to the Purity Farms.

10 Q. And what was the condition of the cattle as they were unloaded from the car? A. They were very stupid, they were in bad condition and very stupid.

Q. And detail to the jury a little more just what their condition was as indicated by their appearance? A. Well, they were cows that—I don't know. I can't tell you just exactly; but they were in very stupid condition. There was four of them really paid no attention to you at all and they wouldn't
20 even try to eat. We had to get a truck, sent over to the farm and get a truck and load four of them in the truck in order to get them home. They were in a weak condition that they couldn't walk.

Q. How about the ability to walk of those that you didn't take over? A. Well, we got them over there, but some of them were rather weak.

Q. With reference to their appearance, as to whether they appeared— A. They were very gaunt.

30 Q. How did their eyes look? A. Very glassy.

The Court: What do you mean when you say they were very gaunt?

The Witness: Shrunk up.

The Court: Lack of food?

The Witness: Yes, you might say lack of food and water.

The Court: All right. Proceed.

Q. You are manager of the Purity Farms? A. I
40 am.

Charles F. Chase, for Plaintiff—Direct

Q. And were manager in 1918? A. Yes, sir.

Q. Did you observe these cattle after their arrival at the Purity Farms? A. Did I what?

Q. Observe them after they arrived at Purity Farms? A. I did.

Q. Did you continue to observe them during the time that they were retained there? A. I did.

Q. Describe to the jury with reference to the twenty cattle which came down to Titusville, what their condition continued to be as to permanency? 10

A. Why, their condition, the dairy cows were ruined, that is, for dairy purposes.

Mr. Hartpence: I move to strike it out as incompetent, your Honor. I do not think this witness has been qualified.

The Court: Not yet.

Mr. Price: What did you say, your Honor?

The Court: He hasn't qualified as an expert. 20

Q. You are the manager of the Purity Farms, you say, Mr. Chase? A. I am.

Q. And have been handling cows how long? A. I suppose along for the last 17 or 18 years.

Q. Have you had experience in the care of cows during that time? A. Yes, sir.

Q. Have you had experience in the value of cows with reference to their milk production? A. 30
I have.

Q. And over what period does that experience extend, the same period? A. Yes, sir.

Q. Now, I ask you from a standpoint as to the permanency of their condition, what have you to say about that?

The Court: You may cross-examine as to his qualifications, if you desire.

Mr. Hartpence: I do not desire to cross examine, your Honor. 40

The Court: Proceed.

Charles F. Chase, for Plaintiff—Direct

Q. You may proceed; you may answer the question. A. The question again, please?

Q. The question is, what was the permanent impaired condition of these cattle?

Mr. Hartpence: If your Honor please, I object to that.

10 Mr. Price: I withdraw it.

Q. What was the permanent condition of these cattle after they arrived at the farm and had been there for some time, so that the condition as you observed it was the permanent one? That is what I want to get at.

20 Mr. Hartpence: I object to it as immaterial, irrelevant and incompetent. I did not object to the question as to what—Mr. Price put it before—what he observed.

Q. What did your observation show to be the permanent condition of these cattle?

Mr. Hartpence: I object to that on the same ground. What it shows to be the permanent condition.

The Court: This question is what the condition of the cattle was when they came there, and how long that condition continued.

30 Mr. Price: The reason I asked that question was your Honor intimated that was the crux of the matter. Does your Honor strike out the question I just asked?

The Court: Yes. Find out the condition of the cattle.

Q. What was the condition of the cattle following the time they were transported from Titusville down to the farm? A. Why, the condition of the cows were very poor for dairy purposes.

40 Q. Is the Purity Farms engaged in the handling

Charles F. Chase, for Plaintiff—Direct

of cows for dairy purposes? A. They are.

Q. With reference to their value since their permanent condition became apparent as you observed, what, in your opinion, was the percentage of decrease of value of these cattle by reason of their condition?

Mr. Hartpence: Objected to as immaterial, irrelevant and incompetent. 10

The Court: How are you fixing it? He didn't see them before.

Mr. Price: I can fix it with reference to the question of a cow in good health under these conditions, and with reference to the condition in which he saw them.

The Court: Well, I think your question is improper as it stands now.

Mr. Price: Your Honor, may I ask, on a question of the qualification of the witness, 20 you mean?

The Court: No. You are not showing anything the jury can gauge his testimony by.

Q. Well, I will put it this way: Describe to the jury the milk production of these cattle which had been damaged? A. I don't think they averaged over eight quarts a piece.

Q. What would a cow, a Holstein grade cow, in good condition, average? 30

Mr. Hartpence: That is objected to as immaterial and irrelevant. Because any Holstein cow might give any certain amount of milk wouldn't show these cows gave that amount of milk.

The Court: I think it is an element to consider.

Q. You may answer.

Mr. Hartpence: I pray an objection. 40

The Court: Take your exception.

Charles F. Chase, for Plaintiff—Direct

A. They should give at least twelve quarts.

Q. Mr. Bertholf has detailed the value of these ten cows which were lost is \$974, averaging very close to \$97 a piece. With reference to the remainder of the cattle which were brought to the farm and which you have detailed the condition of, what, in your opinion, was their average market value since their rimpaired permanent condition became apparent?

Mr. Hartpence: Objected to as immaterial, irrelevant and incompetent. This witness has not shown that he is qualified to express an opinion in that respect, and the recital of the evidence of the previous witness is not put in the form of a hypothetical question.

The Court: No. I do not think he has shown any knowledge at all as to the value of the cattle. He has handled cattle.

Mr. Price: When I started to qualify him, if your Honor please, they said they had no question as to his qualifications.

Mr. Hartpence: I said I had no cross-examination.

Q. Have you knowledge as to the value of cattle, Mr. Chase? A. Yes, sir.

Q. And upon what is that based? What experience have you had? A. Well, I have had experience for the last seventeen or eighteen years.

Q. Doing what? A. Handling cattle.

Q. Have you bought and sold them? A. I have.

Mr. Price: Now, do you want to cross-examine as to his qualifications?

Mr. Hartpence: No.

Mr. Price: Now, I ask the previous question; will you read it, Mr. Stenographer, please?

(Question read by the Stenographer).

Charles F. Chase, for Plaintiff—Direct

Mr. Hartpence: I make the same objection, your Honor.

The Court: Objecton sustained. You may tell us what, in your opinion, the cattle were worth when they came there, and then find out what change there was in their value later on, whether they became less valuable, or what. Then, of course, you would have to connect that up with what caused the change in value. 10

Mr. Price: Certainly.

Q. You observed the cattle, Mr. Chase, when they were unloaded from the car? A. I did; yes, sir.

Q. What, in your opinion, was the average market value of those cattle when they were unloaded?

Mr. Hartpence: Objected to as immaterial and irrelevant. 20

The Court: I will allow that.

Mr. Hartpence: I pray an objection.

The Court: Yes.

A. Four of them really wasn't worth their hides.

Q. The four were not really worth their hides?

A. No.

Q. Which four do you refer to? A. That is the four we had to take home in the automobile. 30

Q. Yes. Now, with reference to the others? A. Well, I don't think the others was worth over \$80 a piece, take them as they ran.

Q. As they ran, yes. Now, you continued to observe these cattle after they were brought to the farm, did you not? A. I did; yes, sir.

Q. Will you state to the court and jury what your opinion was as to the value of these cattle after they had been there at the place for a considerable length of time? 40

Charles F. Chase, for Plaintiff—Direct

Mr. Hartpence: Objected to as immaterial, irrelevant and incompetent, if your Honor please. It may be shown what they did and what the condition became and then it is a question for the jury.

10 Mr. Price: This man has a right to pass upon the condition of these cattle after it became apparent. Then he may express his valuation.

Q. Did the condition of these cattle which were brought to the farm improve any? A. A little.

Q. To any great extent or not? A. Not to any great extent; no.

Q. What, in your opinion, was the increase in value, if any, of those cattle after they had been
20 treated at the farm? A. There wasn't any real—

Mr. Hartpence: Objected to as immaterial and incompetent. I pray the same objection, your Honor.

The Court: I will allow that; you may answer that.

A. There wasn't any really; they were a loss to us, because they didn't pay for themselves.

Q. And you say there was no increase over the
30 average of \$85? A. I don't think there was; no.

The Court: What do you do, raise milk or sell cattle?

The Witness: No, we make certified milk.

The Court: Make certified milk?

The Witness: Yes, sir.

The Court: Did you keep these cattle separate from the other cattle or mingle them in?

The Witness: Why, we mingled them in, I guess, after they had been there three or
40 four weeks, probably two or three weeks; it would depend on the condition of the cows.

Charles F. Chase, for Plaintiff—Cross

The Court: Anything further, Mr. Price?

Mr. Price: I think not.

Cross Examination by Mr. Hartpence:

Q. What became of those four, Mr. Chase, that you referred to that you thought were in the worst condition of the lot? A. Well, we kept them along, and finally disposed of them in three or four 10 months time.

Q. You kept them for three or four months?

A. Yes.

Q. Then you disposed of them? A. What do you mean? A. We sold them to the dealers in Trenton.

Q. Milk dealers? A. Beef dealers, you know; mostly Jews they are.

Q. How much did you get for them, do you remember? A. I don't just remember, no. 20

Q. Well, what was their condition so far as— A. Those four, they didn't improve of any amount.

Q. Well, you mean by that that their qualifications as to good milk didn't improve? A. No, they—they—as far as milk production went, they was no earthly use. They improved a little in flesh; picked up a little.

Q. They ate, of course? A. Oh, yes, they got so they ate.

Q. Ate nicely, and were in pretty good condition as far as that was concerned? A. Yes, they got so they would eat pretty fair. 30

Q. And you regarded them as being recovered, did you not? As far as eating was concerned? A. Yes, they got so they would eat pretty good, those four; the rest of them all ate when we got them up; those four was a little slack for a few days.

Q. Were those four fresh, do you know, at the time? A. Why, they came there as fresh cows.

The Court: No, that is not the question. 40

Charles F. Chase, for Plaintiff—Cross

The question is whether they were fresh or not.

The Witness: Well, they were milking when I received them.

Q. Those four? A. Yes, sir.

Q. Did you attempt to breed them again? A.
10 No, sir.

Q. The rest of the shipment that you received outside of those four, how long did you keep those? A. Well, it run from five to eight or nine months.

Q. Did you breed them again? A. No, sir.

Q. Were they fresh when you got them? A. Supposed to be; yes, sir.

Q. You don't know of your own knowledge? A. Well, no more than likely, they were fresh; they
20 looked like fresh cows.

Q. And were milking? A. Yes, milking; some of them were milking; some of them weren't; two or three of them.

Q. How long, ordinarily do they give milk after they were fresh and had a calf? A. Well, if you don't breed them again, they will milk along probably a year or a year and a half. If you breed them again you don't expect to milk them for seven or eight months.

30 Q. And sometimes a cow's milk supply runs down? A. Sure, it will run down if you breed them; after it gets along a period of five or six months, it will commence to shrink up.

Q. Whether you breed them or not? A. Yes, sometimes they do. Sometimes they hold their milk seventeen or eighteen months.

Q. Then you breed them to make them come fresh again? A. Yes, sometimes.

40 Q. If you find that a cow which has come dry and stops giving milk without any explainable

James F. Lyett, for Plaintiff—Direct

cause, you will sometimes breed them in order to make them fresh again, don't you? A. Never.

Q. What do you do with them? A. We dispose of them immediately. We call them very poor property.

Q. You regard it as being more proper to dispose of them than to breed them? A. Why, sure.

Q. You breed your cows right there at the farm, 10 do you? A. Yes, sir; good cows that we want to carry over.

Q. These four cows that you took over to the farm, you took over in your own truck, did you? A. Yes, sir.

Q. Who is Erik S. Lagerquist, Mr. Chase, do you know? A. Yes, sir.

Q. Who is he? A. The gentleman sitting right alongside of you there (indicating).

Q. What is his connection with the Purity Farms, 20 do you know? A. I think he has a half interest in the farms.

Q. President of the corporation? A. Yes, sir.

Q. He was in May, 1918, in June, 1918? A. Yes, sir.

Mr. Hartpence: That is all.

Mr. Price: That is all, Mr. Chase.

If your Honor please, the other side desires the doctor we have, whom the other side has subpoenaed also, called at this time so he can 30 go.

The Court: All right, proceed. Call him.

JAMES F. LYETT, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

James F. Lyett, for Plaintiff—Direct

Direct Examination by Mr. Price:

Q. Doctor, you are a veterinary? A. Yes, sir.

Q. And where do you live? A. Scranton, Pennsylvania.

Q. You have been a veterinary how long? A. Ten years.

Q. Your office maintained in Scranton? A. Yes,
10 sir.

Q. In May, 1918, were you practicing your profession there? A. Yes, sir.

Q. As a veterinary. And you treat both horses and cows in sickness? A. Yes, sir.

Q. On May 21st, 1918, were you called to the railroad station at Scranton to observe some cattle? A. Yes, sir.

Q. What was the condition of the cattle? A. I saw the car containing the cattle in the rear of the
20 Lackawanna railroad station attached to an engine. It was removed to the Taylor Borough; that is about three miles south of Scranton. After the car was placed in position there, myself and some of the expressmen and the railroad men got into the car. I found about eight or nine of the cattle down; the balance were able to stand on their feet.

Q. Just a minute, doctor. Those eight or nine that were down, were they dead? A. I believe six
30 was dead, as I recall.

Q. How about the remainder? A. They were just about alive.

Q. Did they subsequently die? A. They did.

Q. By whom were you called down to Scranton to observe these cattle? A. I don't know just who was on the phone, but I understood it was Mr. Hull's orders.

Q. That is, from the Adams Express Company? A. Yes, sir.
40

James F. Lyett, for Plaintiff—Direct

Mr. Hartpence: That is objected to as calling for a conclusion.

The Court: Well, he said he understood it was Mr. Hull's orders.

Q. Well, you weren't called down for the Purity Farms, the Plaintiff, were you? A. No, sir.

Q. What was the appearance of the remainder of the cattle, doctor? A. Why, they were jagged out looking; they were very thin and very much depressed. They showed no particular life to any external influences. And after taking the temperature of two or three of them, and I believe we gave each cow that could drink and was on their feet about two-thirds of a pail of water. 10

Q. Were you there when they were put in the stock yards? A. Yes, I was with them.

Q. Did you observe them after they were put in the stock yards? A. Yes, I helped them out into the yards and saw them the following day. 20

Q. And you met Mr. Lagerquist when he came up there a day or so afterward, didn't you? A. Yes, sir.

Q. And it was by your orders was it not, that the cattle were not removed immediately? A. Yes, sir.

Q. And why was that? A. They weren't in condition, in my judgment. 30

Q. You mean regarding their safe conduct? A. I beg pardon.

Q. You mean to make safe conduct, is that what you mean? A. Why, I thought they had better remain in Scranton to recuperate some before they were sent any farther on.

Q. How long did you keep them there. A. I believe four days.

Q. And you were there when they were finally put on the car and shipped on? A. Yes, sir. 40

James F. Lyett, for Plaintiff—Direct

Q. The Mr. Hull you have referred to who took charge of the car there, is he the Mr. Hull who is in court? A. Yes, sir; he is the gentleman.

Q. And he was there when the cattle were shipped on down to Titusville? A. Yes, sir.

Q. How about the calves, doctor? Were there any calves dead? A. Yes, there was four calves
10 dead.

Q. And where were they in the car, when you first saw them? A. They were in the car, under the cows, in the middle of the car.

Q. What was the condition of the car when you first saw it with reference to being damaged in any way? A. The doors were intact, but the glasses were broken out all around, both in the rear and on the sides and front.

Q. Was any water applied while you were there?
20 Somebody made reference to the water being applied? A. No, sir; no water applied; that was done at Scranton.

Q. That was done at Scranton? A. The bottom of the car was rather soggy and wet, but that naturally would be that way with cattle.

Q. Mr. Bertholf, do you know him, doctor? A. Well, I met him at Scranton. Yes, sir; I know him.

Q. He was the man who came up here after these
30 cattle? A. Yes, sir.

Q. For the Purity Farms? A. Yes, sir.

Q. Were you there when he went on the train that took the cattle down to Titusville? A. That night, the cattle?

Q. No. The night when the cattle left for Titusville, or the time the cattle left for Titusville, you said was three or four days later. Did you see Mr. Bertholf at that time? A. I believe Mr. Bertholf was there that afternoon.

40 Q. Do you know whether he accompanied the

James F. Lyett, for Plaintiff—Cross

train or not? A. I don't know whether he accompanied the train or not. The engine was there in the yard there, and I was in my machine.

Q. You weren't there when the train actually got under way then? A. (Shaking head) No.

Mr. Price: Cross-examine.

Cross Examination by Mr. Hartpence:

Q. You are a veterinary surgeon, doctor? A. 10
Yes, sir.

Q. Studied at what institution? A. University
of Pennsylvania.

Q. Graduated when? A. 1909.

Q. And practiced as a veterinary ever since,
have you? A. Yes, sir; nothing else.

Q. In general practice? A. Beg pardon.

Q. In general practice? A. Well, I am confined
to the city, but do some country work. 20

Q. What, in your opinion, was the cause of the
death of those eight or nine cows and the four
calves that you found dead in the car? A. Lack of
air.

Q. And what, in your opinion, was the cause of
the condition of the rest of the cattle that you
found there? A. It was also due to the lack of
ventilation, of proper air.

Q. Did the cattle improve during the time they
were at Scranton after you unloaded them from
the car? A. To outward appearances they appar- 30
ently did, somewhat.

Q. What do you mean by outward appearance?
A. Well, they started to eat, and the majority
of the cattle got about the stockyards without an
awful lot of assistance, and apparently seemed to
be gaining strength; they were very thin and
emaciated, of course.

Q. That would be overcome in time when they
began to eat properly, would it not? A. I pre- 40
sume it would, some.

James F. Lyett, for Plaintiff—Cross

Q. Did you have them under observation all the time that they were there? A. I saw them morning and night while they were at Taylor.

Q. And were they forwarded when you said they were in condition to go forward, or was that done by somebody else's directions? A. I thought they ought to have remained longer, but Mr. Lagerquist
10 thought they should be sent on to Titusville to get better care, which was proper.

Q. So that was done at his direction? A. Yes, sir.

Q. Did you see them loaded in the car? A. Yes, sir.

Q. For their forwarding to Titusville? A. I was there when they were put in the car; yes, sir.

Q. You have been here in court all the afternoon, haven't you, doctor? A. Yes, sir.
20

Q. And you have heard the testimony of all the witnesses? A. Yes, sir.

Q. Who preceded you? A. Yes, sir.

Q. Assuming that these cows that reached their destination alive were kept on the Purity Farm thereafter for several months continued to improve during that period and to eat well, and were thereafter bred for calves, would that, in your opinion, have any beneficial effect?

30 Mr. Price: Just a minute.

Q. On the amount and quality of milk which they would thereafter—

Mr. Price: Just a minute. The reason this witness cannot state that is for the very reason that he has not observed that; that was the reason you said Mr. Bertholf could not tell that.

The Court: He is a veterinary produced as an expert. Proceed.

40 Mr. Price: I haven't produced him as an expert.

James F. Lyett, for Plaintiff—Cross

Mr. Hartpence: I will make him my witness for that purpose.

Mr. Price: Your Honor, may I have an objection to the effect that even though an expert attempts to qualify as to a statement he has to have some observation of these cattle covering the period under which he attempts to testify, and this he didn't do? 10

The Court: You may answer the question.

A. Answer the question?

Q. Yes, sir. A. It is my opinion that these cows will take considerable time before they were back anywheres near normal. It is a question that I cannot positively say, whether they would entirely recover or not. We are dealing with a condition that I admit I have been unable to find any data on, and for any intelligent answer, I must say 20 that a man would have to observe these cattle at least some period of time before he would be sure to answer the question with any degree of intelligence.

Mr. Price: If I had known your answer would be that way, sir, I would not have objected.

Q. Confining your question to the effect of breeding upon the milk supply, the amount and quality, 30 what would be your opinion there? A. There is no question but what cattle has to be bred at intervals to sustain the milk supply, as far as—

Q. That is the usual effect of the breeding, isn't it? A. No other reason in the world unless they are raising a stock farm for sale purposes, and so on.

Q. I say, the usual effect of breeding and having calves is to restore the quantity of the milk supply, isn't it? A. As I understand it, yes. 40

Walter H. Hart, for Plaintiff—Direct

Mr. Hartpence: That is all, doctor.

The Court: Would you think that the lack of air would make these cows thin and emaciated?

10 The Witness: I certainly would, your Honor. You understand that cattle that are penned in a car of that kind without air, the red corpuscles of the blood that really maintains their life, are practically destroyed. Instead of having oxygen or promotion which restores the blood, they get—

The Court: How long would that take to show effect?

The Witness: It would show immediate effects.

The Court: You said they were emaciated?

20 The Witness: These cows were not emaciated; they were shrunk up. It was nothing but tucked up, as they call it, through lack of air, and these cattle were down and struggling.

The Court: You don't mean—

30 The Witness: They have no real change in a bodily way to speak of; that is their muscular condition, and so on; they haven't lost any of that. They were naturally shrunk up from the conditions of a car of cattle in the shape they were in.

WALTER H. HART, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Price:

Q. Mr. Hart, where do you live? A. Titusville, New Jersey.

40

Walter H. Hart, for Plaintiff—Direct

Q. You are the agent for the Adams Express Company at that place, are you not? A. Yes, sir.

Q. And you have been agent for the Adams Express Company at Titusville how long? A. About 10 years.

Q. You were agent in May, 1918? A. I was.

Q. I show you a receipt signed W. H. Hart, and ask you if that is your signature? A. (Referring) 10
That is.

Q. Did you deliver that to Mr. Chase? A. I believe I did.

Q. Manager of the farm? A. Yes, sir.

Q. And that is the—that was delivered to him at the time of the arrival of the cattle and calves in question, was it not? A. It was.

Q. This May 25th, 1918, then, was the day when they arrived? A. It was.

Q. At Titusville? A. Yes, sir. 20

Mr. Price: I want to offer this in evidence.

Mr. Hartpence: No objection.

(Marked Exhibit P-2).

Mr. Price: I want to read this to the jury, please. This is on the receiving form of the Adams Express Company; office at Titusville, New Jersey, May 25, 1918. Mr. Erik Lagerquist. The Adams Express Company, debtor. For transportation of the following described shipment: 30 cows, weight 12857. 23 calves, 30
weight 2300. From Edward Bertholf, New Milford, Pennsylvania, to Erik L. Lagerquist, Care of Purity Farms. 9 cows died enroute. 1 escaped while unloading, 3 died enroute, 1 died while unloading at dest. Titusville. Charges. \$144.16; war tax, \$7.21, total \$151.37. Received payment, W. H. Hart.

Q. This receipt which has been marked in evidence was given by you to Mr. Hart in receipt for 40

Walter H. Hart, for Plaintiff—Cross

the payment of the charges due the Adams Express Company for this transportation? A. To Mr. Chase.

Q. To Mr. Chase for the Purity Farms? A. Yes, sir.

Q. And represents the receipt for the charges for the transportation by the Adams Express Company? A. Yes, sir.

Cross Examination by Mr. Phillips:

Q. How did you arrive at the calculation of these charges and the calculation of the weight on this Exhibit P-2?

Mr. Price: I object as immaterial.

The Court: I will allow it.

Mr. Price: Exception.

The Court: Yes.

20

A. From the original waybill as verified from the tariffs in effect at that time.

Q. Did you verify the charges from the tariff?

Mr. Price: If your Honor please, if he has the original waybill here, it should be produced.

The Court: Well, proceed.

Q. What is your answer, Mr. Hart? A. Regarding the weight?

Q. Yes. A. Why, you verify all shipments, yes, sir.

Q. I see. Now, with reference to this notation on the lefthand corner of the waybill about one cow having escaped: From whom did you obtain this information? A. From the waybill.

Q. That appeared on the waybill? A. Yes, sir.

Mr. Phillips: That is all.

Mr. Price: That is all, Mr. Hart.

40

The Court: Mr. Hart must remain.

F. Harker, for Plaintiff—Direct

F. HARKER, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Price:

Q. Doctor, you are a veterinary? A. Yes.

Q. And have been a veterinary how long? A. About 30 years. 10

Q. And you have practiced where? A. Trenton.

Q. You have been practicing there during that time? A. Yes, sir.

Q. Did you observe certain cattle and calves at Titusville, New Jersey, on May 25, 1918? A. Yes, sir.

Q. And by whom were you called there to observe them? A. I don't know the man's name, but one of the Adams Express people at Trenton.

Q. You appeared for the Adams Express Company? A. Yes, sir. 20

Q. Did you see the cattle when they were unloaded? A. I did.

Q. What was the condition of the cattle as you saw them at that time? A. Well, they were tucked up and showed lack of food and water, and such as that, and showed they had been through some pretty hard experience, the whole lot; four of them were particularly bad.

Q. Did you see those four loaded on the truck? A. I did. 30

Q. And with reference to the remainder of the cattle, can you tell us something about their appearance in a little more detail? A. Well, they looked tucked up, as if they had not been well cared for.

Q. Well, you have already stated that. With reference to the remainder— A. Of the four?

Q. No, as to the remainder of the cattle, the rest of them, their appearance? A. I don't know as they appeared sick at all. 40

F. Harker, for Plaintiff—Direct

Q. How about their eyes? A. Well, I don't know that I noticed anything about their eyes.

Q. How about their ability to walk and so forth? A. Well, they could walk, and they ate when they got out in the cattle pen; all but these four began to eat grass and weeds.

Q. And did you accompany them over to the
10 farm? A. I did not.

Q. Your observation for the company on that day was—for the Adams Express Company on that day was limited to seeing their condition when they got off the car, is that right? A. Well, I was asked to go look at the cows afterward.

Q. By the defendant? A. Yes.

Q. I mean, on this particular day, you didn't go over to the farm with them? A. I didn't go over with them, no, sir.

20

Cross Examination by Mr. Hartpence:

Q. Doctor, from what institution were you graduated? A. University of Pennsylvania.

Q. What year? A. 1889.

Q. I show you a paper and ask you if that is your signature appended to it, doctor, and if that is written on one of your professional letterheads? A. (Referring) It is.

Q. That is your signature there (indicating)?

30 A. Yes, sir.

Mr. Hartpence: I ask it be marked for identification.

(Marked Exhibit D-2 for Identification.)

Q. Did you see the cattle at all after the first time that you saw them there at Titusville? A. I saw them two or three times after that.

Q. Where? A. At the Purity Farms at the dry barn.

Q. And covering about what period, doctor? A.
40 I should say a week, as near as I remember.

F. Harker, for Plaintiff—Cross

Q. And you didn't see them after that time? A. Well, I did see them after that time, but not specially with reference to the condition, or this trouble.

Q. Were you called by the Purity Farms people to look at them? A. I understand they called the same day the express people did; but I went with the express man, and I don't know that I heard about their calling until I got home. 10

Q. Well, you went out to the farm to do that? You went at the request of the farm people? A. No, sir. I went at the express company's request. They told me to keep in touch with them until they got to eating, and such as that.

Q. When was the last time you saw them, how long after? A. Possibly a week. I don't remember exactly. It shows on that statement; it was made when the thing was fresh in my mind, that statement there. I don't know whether that says when I saw them last or not. 20

Q. Would this serve to refresh your memory in that respect? Would it, doctor? A. Well, it might.

Q. Just look at it and see (handing paper). A. This was written, you see, and I don't remember anything about the thing in particular.

Q. Just look at it and see if that refreshes your memory as to the last time you saw them. A. They are no doubt the facts of the case that was written when the facts were fresh in my mind. 30

Q. Does that also refresh your memory as to about what time it was when you last saw them, doctor? A. (Referring) It doesn't mention any date.

Q. Well, the date of the letter is what? A. The date of the letter is the 28th.

Q. Of May? A. Yes.

Q. 1918? A. That was probably the date I saw them the last time. 40

Erik Lagerquist, for Plaintiff—Direct

Q. Yes. A. I don't know absolutely about that.

Q. You don't recall whether you went up to the farm again after that to see them or not do you?

A. I didn't go there for the express purpose, and if I went it was incidentally for something else. I treat stock there occasionally and may have seen the cows at the same time.

10 Q. Yes. Sometime when you were called there to treat cattle of the Purity Farms people? A. Yes; I may have seen these cattle then.

Q. And you do treat their cattle from time to time, do you? A. I do.

Q. You acted as verterinarian for them from time to time? A. Yes, sir.

Q. As they called you for that purpose? A. Yes, sir.

20 Q. Both before and after? A. Yes, sir.

Q. This carload was shipped in May, 1918? A. Yes, sir.

Mr. Hartpence: That is all.

Mr. Price: That is all, doctor. You need not return tomorrow.

30 ERIK LAGERQUIST, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Price:

Q. Where do you live, Mr. Lagerquist? A. I live at 518 Washington Avenue, Brooklyn.

Q. And lived there how long? A. Lived there 17 years.

Q. You are connected with the Purity Farms? A. I am.

40 Q. In what way? A. I am president of the company.

Erik Lagerquist, for Plaintiff—Direct

Q. In May, 1918, what office did you hold? A. Well, I was President of the Purity Farms Company.

Q. Reference has been made to a Mr. Bertholf who has been a witness in this case. What relation did he have with your company in May, 1918?

A. Well, shall I begin, what I done, tell the—

Q. What is that? A. Shall I give the facts from 10 the beginning?

Q. No. Answer my question. Who was he in reference to your company? A. Who?

Q. I mean, was he an agent or did he act for you, or what? A. Yes, yes; I went there to his home and arranged for him to buy some cows for me.

Q. And had he been doing that in the past? A. Been buying some cows for us in the past.

Q. And on or about May, 1918, did Mr. Bertholf, 20 at your request, purchase certain cattle? A. He did.

Q. And also calves? A. Well, of course, the calves come with the cows, because I requested a number of fresh cows, and some of those cows came in after they were bought by him, so that is why we had so many calves.

Q. Did you instruct him how many calves or how many cows and calves to purchase? A. I instructed him to buy a carload of cows for me. 30

Q. And on or about May 21st or shortly prior thereto, did he advise you about the purchase of these cattle? A. He advised me a few days before he was going to ship, and he told me there was—

Mr. Hartpence: I object.

A. —no fresh cows.

The Court: That is immaterial.

Q. You cannot testify as to what he told you. 40

A. Yes, sir.

Erik Lagerquist, for Plaintiff—Direct

Q. Because it is hearsay. I asked you, did he advise you of the purchase of the cattle? A. He did.

Mr. Hartpence: Objected to as immaterial.
The Court: It may stand.

Q. Did you direct Mr. Bertholf how to ship these cattle? A. I told him to ship it by express.

Mr. Hartpence: Objected to as immaterial and irrevelant. The shipping receipts have been proved, your Honor.

The Court: What difference does it make?

Mr. Price: I want to develop this witness—this is nothing but a preliminary question—the purpose the Purity Farms had in having these cattle shipped by express.

The Court: What difference does it make? They were shipped by express.

Mr. Price: No, they were not; we tried to have them shipped by express; that is the very case.

The Court: All right.

Mr. Hartpence: I pray an objection to your Honor's ruling.

Q. You may answer the question as to what you directed him to do as to the shipping. A. I directed him to ship them by express.

Q. And what was the object in having these cattle shipped by express instead of by freight?

Mr. Hartpence: Objected to as immaterial and irrelevant.

The Court: Objection sustained.

Mr. Price: Now, your Honor, isn't that equally competent as my other question?

The Court: No, I do not think so.

Mr. Price: Now, this witness testified as to the additional benefits arising from express

Erik Lagerquist, for Plaintiff—Direct

shipment for which this company wanted it done.

The Court: I do not think so.

Mr. Price: May I have an exception to your Honor's ruling?

The Court: Take your exception.

Mr. Price: I want to state that the object of my questions as to the direction to ship by express and the object of it is to show the service which would have been acquired by that method, and I take an exception to your Honor's refusal to allow me to have those questions answered. 10

The Court: Yes. Proceed.

Q. Have you shipped cattle by express before?

A. I have.

Q. In shipping cattle by express, what is the particular benefit derived from that as against freight shipment? 20

Mr. Hartpence: That is objected to as immaterial and irrelevant.

The Court: Objection sustained.

Mr. Price: May I have an exception, your Honor?

The Court: Yes.

Mr. Price: If your Honor please, I may not have made myself quite clear. What I have in mind is this: That if a shipper desires a certain kind of shipment made of cattle for a certain reason, and the reason for which he had those cattle—wanted the cattle shipped that way, he is prohibited from carrying out by reason of the act which we claim by this defendant, it seems to me the jury should know from the evidence in the case what benefit would have accrued to him if shipped in the manner called for. He had paid for this express shippage, and I think we are entitled 30 40

Erik Lagerquist, for Plaintiff—Direct

to show what benefit would have been received if we had been allowed to ship by express.

The Court: I do not think so.

Mr. Price: Exception, your Honor.

The Court: Take your exception.

Q. Mr. Lagerquist, after the 21st of May, when
10 was the first you heard of difficulty regarding these cattle? A. Mr. Chase telephoned to me Tuesday about noon, or Wednesday about noon.

Q. Wednesday following? A. May 22nd.

Q. Wednesday following May 21st? A. Yes, Wednesday.

Q. And the Mr. Chase you refer to is the person who is the Purity Farms manager? A. Yes, sir.

Q. The person who has been on the stand here
20 before? A. Yes, sir.

Q. Following his telephone message, what did you do? A. I went to Trenton on the evening train, arrived there about 7:15 and met Mr. Chase and Mr. Bertholf, and Mr. Bertholf—

Q. Speak a little louder. A. And Mr. Bertholf related to me what had happened to the stock.

Q. And did you and Mr. Bertholf go to Scranton? A. Mr. Bertholf come with me to the city and stayed all night, and I had a lot of business
30 to do the next forenoon, so I couldn't leave until noon; I took the D. L. & W. train to Scranton with Mr. Bertholf.

Q. What time did you arrive at Scranton and on what day? A. Arrived there Thursday afternoon about six o'clock.

Q. And that is the following Thursday you have spoken of? A. Yes, sir; it may have been five o'clock.

Q. And what was the first thing that you did?
40 A. When we got off the station, Mr. Bertholf brought me down.

Erik Lagerquist, for Plaintiff—Direct

Q. Go a little slower; we cannot hear you. A. When we got off the station at Scranton, Mr. Bertholf brought me down to the express agent, Mr. Hull.

Q. Is this the Mr. Hull that has been pointed out in Court here? A. It is.

Q. Then what happened? A. First think I asked him how the stock was, and he said the doctor would be able to tell us very shortly; he was coming to go down there; he hadn't come yet, and he would go down through the yards with us and show us the stock. 10

Q. Did the doctor subsequently come? A. Yes. The doctor came in a few minutes.

Q. And did he go down with you to the yards? A. Mr. Hull and the doctor and Mr. Bertholf and myself went down to the yard.

Q. And where were the yards situated with reference to the Scranton station? A. Well, it was at, I should say, southeast. 20

Q. I mean, about how far away? A. Well, I—we had an automobile and it took us quite a while because the road was bad; I should judge around 3 miles.

Q. And when you got down to the yards, was it a stock yard where the cattle then were? A. Yes, sir.

Q. And Mr. Hull was with you then? A. He was. 30

Q. What was the condition of the cattle as you then observed it? A. They were in a very weak condition.

Q. Will you describe it in a little more detail, Mr.— A. Well, they were—most of them seemed to walk around or stood; well, you know; kind of—didn't seem to have life, and when you tried to make them walk, you know, they didn't seem to realize that you were speaking to them; they were more or less dazed. 40

(Recess.)

Erik Lagerquist, for Plaintiff—Direct

Hackensack, N. J., December 23, 1919.

10 O'clock A. M.

ERIK LAGERQUIST, recalled as a witness on behalf of the Plaintiff for further direct examination, testified as follows:

10 By Mr. Price:

Q. Mr. Lagerquist, when you got to Scranton on the Friday, I believe it was, you got there, was it not, following the 21st of May? A. Thursday.

Q. Thursday? A. Yes, sir.

Q. About what time of day was it you reached there? A. Well, between five and six o'clock.

Q. And was it on that evening that you went down to view the cattle? A. It was.

20 Q. Were any of the cattle down in the stock yards at that time, that is, lying down? A. They had the stock divided up in three pens, and they had, I think, ten or eleven in one pen that were fairly good; then they had another pen that the stock was not in as good condition as those ten or eleven, whatever it was; and then they had the four in another pen, that was lying down, that was in very bad shape. They hadn't eaten anything and were in very bad shape.

30 Q. Now, you were also present, were you not, at the Purity Farms after the cattle had been brought over there that were finally transported? A. I was there—they came in there Saturday afternoon; I was down there on Sunday.

Q. And did you continue from time to time after Sunday to view the cattle? A. I did.

Q. And over how long a period did your observation extend? A. As long as I saw them.

40 Q. What would you say was the average time that you continued to keep those cattle there with

Erik Lagerquist, for Plaintiff—Direct

reference to the whole lot? A. Well, about 8 months.

Q. About 8 months? A. 8 months.

Q. And were the cattle finally sold? A. Cows were finally sold.

Q. In what business is the Purity Farms Company primarily engaged? A. In producing certified milk. 10

Q. Selling certified milk? A. Yes, sir.

Q. Keep your voice up? A. Producing and selling certified milk.

Q. So it is primarily a dairy farm in a sense of selling the milk? A. Yes.

Q. About how often during the time that the cattle continued to be there did you continue to observe their condition? A. From once to twice week.

Q. At the farm? A. At the farm. 20

Q. Describe to the jury generally so that they may have some idea about the continuation of the condition of the cattle during the time that you observed them.

Mr. Phillips: Now, that is objected to for the reason that it does not appear that this witness had a knowledge of the cattle or their condition before the cattle were shipped from New Milford, Pennsylvania.

The Court: He may describe that condition, however. 30

Q. If you will continue, Mr. Lagerquist? A. Well, the stock, while they ate, they didn't seem to do well in this respect, that they wouldn't pick up flesh like other cows; when we bring them in here we feed heavy and, of course, get good production and they also grow in flesh, but these cows didn't give us production, neither did they seem to gain in flesh like other cows that we brought in. 40

Erik Lagerquist, for Plaintiff—Direct

Q. What price did the Purity Farms receive during the time these cattle were there for milk, certified milk which was sold?

Mr. Phillips: That is objected to as being immaterial, irrelevant and incompetent.

The Court: Objection sustained.

Mr. Price: May I be heard, your Honor?

10

The Court: Yes.

Mr. Price: What I had in mind was that one of the elements of damage in this case was that this company had lost the milk production value of these cows. Now, this company is engaged solely in the sale of milk. Their profit necessarily arose from the money they will have received from the sale of these cows. I intend to show in this case that had these cows been in the condition in which they were shipped, they would have given about twelve quarts of milk a day. I will show the decreased production by reason of their condition that resulted from this shipment. Now, that is certainly an element of damage in this case, for this company lost the profit which would have been made. Now, it is just as much an element of damage as the value of the stock. The evidence is Mr. Chase considered these cattle were worth about \$80. Now, this company kept the cattle there for about eight months, as Mr. Lagerquist says. During that time they lost in milk production by reason of this condition.

20

80

The Court: Did they have to keep them there?

Mr. Price: Why, if we hadn't kept them there for a reasonable length of time to show what would happen, they would come in court and say, "If you had kept them there, you would have had cattle there that would have produced it in time."

40

Erik Lagerquist, for Plaintiff—Direct

The Court: No, it is too remote. The Court refuses it.

Mr. Price: May I put it on the record so I may have it clear?

The Court: You have got it on now, haven't you?

Mr. Price: Well, I want to put it on.

The Court: Put it in any shape you want. 10

Mr. Price: I propose to show by this witness and a subsequent witness that by reason of the condition of the cattle because—as we claim—by the negligence of the company, their milk producing value was seriously impaired, and the extent of the loss which the company entailed by reason of that production. Now, your Honor, so that I may not encumber the record, does your Honor hold that the sole measure of damages which we can have, is the difference in value between the stock— 20

The Court: No, I do not.

Q. Then, Mr. Lagerquist, in addition to the loss of value for the stock which has been detailed on the stand, has there been any other element of loss by your company by reason of the condition of the cattle at the time they came to the farm?

A. The loss of production; also loss—the cow—the loss in the meat value of the cow because it didn't grow fat. Of course, a thin cow doesn't bring the price of fat cows. 30

Q. Directing your attention to the loss of production, what do you say that loss is?

Mr. Phillips: That is objected to.

The Court: The question is too broad.

Mr. Price: I will re-frame it.

Q. With reference to the question of the loss of production, milk production which you have men- 40

Erik Lagerquist, for Plaintiff—Direct

tioned, will you state to the jury upon what you base your statement as to the loss of milk production?

Mr. Phillips: That question is—

10 The Court: The trouble about it is this: There isn't any evidence that there is any loss of production. You haven't shown by anybody who milked these cows the quantity of milk they gave.

Mr. Price: I can do that by another witness, your Honor.

The Court: Well, you had better do it. It is too broad, too general.

Mr. Price: All right, sir.

20 The Court: I can readily see how, that perhaps for a reasonable length of time, there might be a loss of production; but how a company can carry these cattle on after they find that they are not producing, and then ask the express company to pay for loss of profits, I cannot see.

Mr. Price: I think probably, your Honor, your suggestion is right, as to the reasonable length of time. My only purpose as to showing the length of time was to show when it was disposed of.

30 The Court: There hasn't been anything shown yet that there was a loss.

Mr. Price: I can show that by another witness.

Q. Mr. Lagerquist, you have been dealing in cattle for how long? A. Twenty years or more.

Q. And you have been in the milk production business for how long? A. Twenty years or more.

40 Q. And during how much of that time have you been conducting the Purity Farms? A. About twelve years.

Erik Lagerquist, for Plaintiff—Direct

Q. Directing your attention to these cattle which were finally sent to the farm which were the ones that you observed, kindly state what, in your opinion, was the average weight of the cattle after they had been at the farm, returned from the shipment?

Mr. Phillips: That is objected to, if your Honor please. Now, I submit that the measure of damages in this case as far as these cattle is concerned, was the difference in the market value when those cattle should have arrived and later, that is, in good condition, and in the actual condition in which they arrived. 10

The Court: Wouldn't there be a loss for length of time to supplant them with other cattle?

Mr. Phillips: I consider that is in the nature of special damages and it must have been in the reasonable contemplation of the parties at the time this shipment was forwarded; special damages. 20

The Court: Well, the weight of the cattle, wouldn't that be an element of the damage?

Mr. Phillips: They were milch cows.

The Court: Well, I know; but if they were damaged as milch cows, they then become something else. You have now some evidence as to what they were worth at that time. You may ask this gentleman what he— 30

Mr. Phillips: Note my objection, please.

The Court: Yes. —what he thinks they would weigh.

Q. What was the average weight of these cattle? A. About 900 pounds.

Q. Now, with reference to the calves, how did they make out? A. Well, we sold them shortly— 40

Erik Lagerquist, for Plaintiff—Cross

Q. Sold them what? A. We sold them shortly after they come to the farm. We don't keep calves—

Q. I see. A. —only about ten to two weeks old.

Q. Who is the man who has charge of the milking of the cows, superintending the milking?
10 Was that the person who knows the actual amount? A. Mr. Chase.

Q. And who is he? A. He is the superintendent and manager of the farm.

Q. Who is it that has charge of the sale of the cattle from your place? A. Mr. Chase.

Q. With reference to the time that the cattle were at your place after they had been received from the shipment, and during the time that they continued there, tell the jury how their
20 condition became changed, if any? A. Well, some of them picked up, and some of them did come—got more flesh; but none of them grew like they would have done had they come through in good shape. Some of them, of course, never was—four of them that didn't come—get on at all. One especially I remember that was sold very shortly after we got the cow there.

Mr. Price: I want to ask this witness further questions after I have put on another
30 witness. Mr. Phillips, at this time you may cross-examine.

Cross Examination by Mr. Phillips:

Q. Mr. Lagerquist, you say you are the President of the Purity Farms? A. I was then, yes.

Q. Are you now? A. No.

Q. What business are you in now? A. I am in the milk business.

Q. With whom? A. Connected with the Bor-
40 den's Farm Products Company.

Erik Lagerquist, for Plaintiff—Cross

Q. I see.

The Court: Who is running it now?

The Witness: I am running it still. I am Secretary and Treasurer of the company, only that my partner died in the spring of 1918 who owned the other half interest in the farm, and that half interest was sold to another concern.

10

The Court: You are still carrying on the corporation, then?

The Witness: Still carrying on the corporation, but when I was President, of course, my partner at that time was treasurer, and he signed checks and so forth, and as I was close in touch with the business I continued to run the business, and took the office of Secretary and Treasurer instead of President, and the new owners, one of the stockholders in the new company that took—
bought the interest from me from the other half interest, become the President. We simply adjusted that to make things work out the very best.

20

Q. Mr. Lagerquist, you never saw these cattle before they were loaded into the Adams Express Company car at New Milford, Pennsylvania, did you? A. I did not.

30

Q. You don't know the condition of those cattle then at the time they were shipped? A. Only what I was told.

Q. You don't know anything about their milk production before these cattle were shipped? A. A man can tell who has bought cows for many years—can tell when he looks at a cow, condition of the cow and the milk, and so forth, can tell whether it is a milk producing cow.

Q. Yes. But as far as the actual milk produc- 40

Erik Lagerquist, for Plaintiff—Cross

ing qualities of these cows, before they were shipped, it is all a matter of speculation on your part, isn't it? A. No, sir. No, sir; it is not.

Q. Do you know how much milk these cattle were giving before? A. I do not.

Q. They were shipped? A. But I know what they should have given.

10 Q. Yes, you base your—it is just merely an opinion, then, on your part, isn't it? A. No, it isn't an opinion. It is a study. I followed it up for all these years and I can tell whether cows are going to give twelve or fourteen or fifteen quarts.

Q. Cows vary as to their milk production qualities, don't they, quite considerably? A. When you get into the different breeds, yes.

Q. Well, what kind of cattle were these? A. They were Holstein grades.

20 Q. Holstein grades. Now, from your experience, you have observed that Holstein cattle vary in their milk giving qualities, don't they? A. Well, there is some variation, of course. We have—

Q. Yes. Considerable variation at times, isn't there? A. We got Holstein cows that will give forty quarts of milk a day.

Q. Forty? A. Forty quarts of milk a day, yes, sir.

30 Q. What kind of cattle are they that give forty quarts of milk a day? A. Well, I have seen grade cows—

Q. Of course, you don't know whether any of these cattle gave forty quarts? A. No, I didn't figure that.

Q. Did you ever milk any of these cattle after they got down to the Purity Farms? A. No, I haven't.

Q. Have you ever seen any of them milked?
40 A. I have seen them milked, yes, sir.

Erik Lagerquist, for Plaintiff—Cross

Q. How many of them did you see milked? A. Well, I think I saw them all milked.

Q. And how much milk were they giving? A. Well, I saw them milked; they gave about four quarts.

Q. About four quarts. Have you any record as to the number of quarts of milk these cattle were giving? A. We do not keep a steady record; we 10
take records about every week.

Q. Well, where are those records now? A. Well, I cannot tell you that.

Q. When did you last look at those records? A. I haven't looked at them.

Q. Then you are just testifying from your recollection, is that right? A. Yes, sir.

Q. How many times did you see these cattle milked? A. I don't think I was **there over one** evening and saw them milked. I may have seen 20
part of them milked.

Q. Oh, you saw part of them milked. These cattle looked like the rest of the cattle you had on your place, didn't they? A. Yes, but they were thinner than the rest of them, **because they didn't** seem to improve.

Q. Practically the same color cows? A. Yes.

Q. And you saw them in the evening, of course, didn't you? A. Yes, sir.

Q. When did you sell these cows? A. Well, I 30
can't say the dates; I don't know whether Mr. Chase can or not.

Q. About how long did you keep these cows? A. Well, we kept—we kept some of them for—I don't think the one cow that we kept for six weeks; the others—

Q. You re-sold them in six weeks, did you? A. No, no. I said one cow. The rest we kept eight, nine, ten weeks, the average I figure about eight weeks. I mean, eight months. 40

Erik Lagerquist, for Plaintiff—Cross

Q. Eight months? A. Yes, about eight months.

Q. Then you mean that you sold all these cattle within about eight months? A. No, not all of them; about eight months, I said, average.

Q. How much did you receive for these cattle?
A. How much—

Q. When you sold them? A. I think that they
10 averaged, say—

Q. Not what you think. What did you sell them for?

Mr. Price: You know, do you not?

The Witness: Yes.

Mr. Price: State.

The Witness: The average sale of these cows amounted to \$65.06.

Q. Have you got a record as to what these cattle brought, with you? A. I have not.
20

Q. Who did you sell them to? A. I didn't sell them myself personally.

Q. How much did the highest priced cow bring?
A. I think it was around about—close to \$100.

Q. Yes, that is about what you paid for it, wasn't it? A. No, they cost me \$110 when they landed at Titusville station.

Q. You sold this cow for \$100 that you bought for \$110. When did you sell that? A. Well, I
30 cannot tell you, but Mr. Chase perhaps can; I can't.

Q. What did you sell each of the other cows for, how much apiece? A. Mr. Chase sold one for \$5.00.

Q. Yes. Well, how much did you sell the others for, each one of them? A. Well, I cannot give that, because—Mr. Chase might tell you; I couldn't.

Q. How do you arrive at the figures of \$65.06?
A. Added all the—the—the sale price of all the
40

Erik Lagerquist, for Plaintiff—Cross

cows and divided it by twenty.

Q. Where is the list of those figures now that you received for those cows? A. Mr. Chase got a memorandum of that.

Q. Got it with him, has he? A. I think so.

Q. Yes. How long ago did you figure this up? A. This morning we figured—he showed me the list of the figures. 10

Q. Then you know he has got those figures with him? A. Yes.

Q. You breed cattle there at your farm, don't you? A. We breed, yes, some.

Q. Did you try breeding any of these cattle for the purpose of increasing their milk? A. That wouldn't increase the milk to breed them; that would help to decrease it.

Q. But it is true, though, that when you breed cattle they go dry and then come in fresh after having calves, don't they? A. Yes, sir; yes, sir. 20

Q. And the milk production of cattle after breeding is larger than before breeding usually, isn't it? A. When they come in fresh, they always give bigger supply, flow.

Q. Do you know these cattle that you bought at New Milford, Pennsylvania, do you know when they came in fresh? A. Well, they had calves by their sides, and some of them come in after they come to our place; the balance of them was fresh cows. 30

Q. That wasn't true with all of them though, was it? A. I was told it was true with all of them.

Q. Not what you were told, but— A. Well, no man can say; you couldn't go and tell whether a cow had been in two days or ten, and no other man.

Q. You said these cattle weighed 900 pounds. When did they weigh 900 pounds? A. At the 40

Erik Lagerquist, for Plaintiff—Cross

farm when I saw them, I figured that that estimated the weight.

Q. That is just an estimate on your part? A. Yes, we didn't put them on the scale, no.

Q. What did they weigh at the time they were purchased at New Milford, Pennsylvania? A. Well, of course, I do not know; I did not see them.

10 Q. As a matter of fact, then, you don't know whether they were any thinner when observed by you at the farm when they weighed 900 pounds apiece than they did when you purchased them? A. Common sense will tell you that they weighed more at New Milford.

Q. It is just a matter of speculation on your part, isn't it? A. No, sir.

Q. You never saw them, did you? A. No.

20 Q. Did you ever put any of these cows on the scale and weigh them? A. I think some of them was weighed.

Q. Did you? A. I did not.

Q. That is a fair weight for such cattle as these, isn't it, 900 pounds? A. Oh, nine, ten hundred pounds, yes, when they are not fresh.

Q. That is a fair weight for cattle of this kind? A. Yes, when they are young.

Q. And these were young cattle? A. Yes.

30 Q. So that if they weighed 900 pounds when they arrived at the farm and weighed 900 pounds during the course of your observation, you don't know whether they weighed any more than 900 pounds before that, do you? A. They surely would, because in shipping, you know, a cow always loses weight.

Q. Oh, that is customary for cattle to lose weight in shipment, is it? A. They will lose some, yes, sir.

40 Mr. Phillips: That is all.

Erik Lagerquist, for Plaintiff—Redirect

The Court: When did you see these cows milked?

The Witness: I saw them milked, I guess, about, probably about three weeks—

Mr. Price: A little louder.

The Witness: About three weeks after they were on the farm.

10

Re-direct Examination by Mr. Price:

Q. Mr. Phillips has asked you with reference to the fact that cattle ordinarily lose some weight while being transported. If cattle had been put through the condition which has been detailed on the stand by the witnesses, would that result in a loss of weight? A. It certainly would.

Q. To a greater or less extent than the ordinary transportation? A. To much greater. I contracted for express service, and if they had come through by express service as they should—

20

The Court: No, no.

Q. The Court has indicated that the plaintiff should possibly confined to a reasonable length of time after the cattle arrived in order to determine their milk production. With reference to the cattle which have been put through the shipment which has been detailed to the court and jury here, what would you say was a reasonable time after the cattle had arrived at the farm?

30

Mr. Phillips: Objected to.

Mr. Price: Just a minute.

Q. Before you could arrive at the real amount of their production as it would permanently exist?

Mr. Phillips: That question is objected to, if your Honor please.

The Court: I shall allow that question.

Mr. Phillips: Exception, please.

40

Erik Lagerquist, for Plaintiff—Redirect

The Court: Take your exception.

Q. Answer that question, Mr. Lagerquist. A. About eight months.

Q. During the time these cattle were at the farm, did they receive good attention? A. They did; the very best care.

10 Q. With reference to cattle which give less milk than other cattle, does the amount of feed which you give them, is that the same or not? A. No.

Mr. Phillips: Now, if your Honor please, that question is objected to as not within the issue. There is no claim in these pleadings at all for special damages, such as feeding these cattle.

20 Mr. Price: That is not asked for that reason, your Honor. I am only getting at the cost of the milk production.

Mr. Phillips: Now, I object to any evidence as to cost of milk production, not being a proper element of damages.

The Court: Why not?

80 Mr. Phillips: For the simple reason that it is our contention that the measure of damages, if any, in this case, is the difference between the market value of those cattle at Titusville, New Jersey, if delivered in good condition, and in the actual condition in which they were delivered.

The Court: I am going to allow that question.

Mr. Phillips: I ask an objection.

The Court: Yes, take your exception.

40 Q. You may answer the question. A. We figure to feed about one pound of grain to every three pounds of milk. Then, of course, all the hay and all the ensilage that the cow can feed.

Erik Lagerquist, for Plaintiff—Redirect

The Court: Strike the answer out; it is not responsive.

Mr. Price: Well, your Honor, am I not—I suppose your Honor controls that.

Q. The question was, Mr. Lagerquist, not what you do with reference to the amount. A. I beg your pardon; I misunderstood. 10

Q. But do you feed cattle who are bearing a less amount of milk, producing a less amount of milk, the same amount of feed as those producing a greater amount of milk? A. We do not.

Q. Now, with reference to the amount of grain that you give cattle who are producing a less amount of milk, how do you determine the amount of grain you give cattle who are producing a less amount of milk?

Mr. Phillips: That is objected to. 20

The Court: Objection sustained. The only question would be the profit on milk.

Mr. Price: Yes. But in order to do that, I have to show the amount of cost difference between a cow that produces a large amount of milk and a small amount of milk.

The Court: I don't think so.

Mr. Price: May I have an exception, your Honor?

The Court: Yes. 30

Q. Mr. Lagerquist, you have stated that the amount of milk which a cow was producing controls in a substantial measure the amount of grain that you give it? A. Yes, sir.

Q. Now, will you state to the jury just how that is?

Mr. Phillips: That is objected to.

The Court: Read the question, won't you please, Mr. Stenographer? 40

Charles F. Chase, for Plaintiff—Direct

(Question read by the Stenographer.)

The Court: Objection sustained.

Mr. Price: May I have an exception, your Honor?

The Court: Yes.

Mr. Price: I will re-frame the question after I call the next witness. You may step
10 down at this time, please. Mr. Chase.

CHARLES F. CHASE, recalled as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Price:

Q. Mr. Chase, you are the manager of the Purity
20 Farms who was on the stand yesterday? A. Yes, sir.

Q. Were you in charge of these cattle during the time that they continued to be at the farm?
A. I was.

Q. And did you have actual charge of the sale of the cattle when they were finally sold? A. I did.

Q. Did you have charge of the milk, of the milking of the cattle so that you know the milk
30 producing amount? A. I did.

Q. With reference to the cattle that were finally brought to the farm, describe to the jury, if you will first, what their condition continued to be as they were at the farm?

Mr. Phillips: Now, that question is objected to as having been asked and answered when this witness was on the stand before.

The Court: That is my recollection.

Mr. Price: All right, sir; if it is in, it is
40 all right.

Charles F. Chase, for Plaintiff—Direct

Q. What was the weight of these cattle after they had been at the farm with a chance to—

Mr. Phillips: That question is objected to; unless this witness shows he has weighed them, it is speculative.

The Court: Well, he has been in this business a long time; I will allow that.

Mr. Phillips: I ask an objection. 10

The Court: Yes. I do not suppose you weighed them?

The Witness: I weighed them when I sold them. Do you want the weights when we received them or sold them?

Q. Did you weigh them when you received them? A. No. I think they would average about 900 pounds.

Q. Now, can you give us the average weight about when you sold them? A. I couldn't just give you the average weight, but I could give you the weight of a good many of the cows, for I took it off last night, and I have it with me. 20

Q. About how much did they weigh?

The Court: He says he cannot tell you.

A. I cannot tell you the average; I didn't average it up.

Q. Will you state to the jury the weights of those you know about now? A. There was some of them weighed eight fifty, nine hundred, some of them less. 30

Q. How did you sell these cattle, by the pound?

A. Well, I think we sold them all by the pound but three.

Q. But three. Mr. Lagerquist was asked on cross-examination concerning the sale of some of these cattle. What do you state was the average amount from all these cattle received for their sale price? 40

Charles F. Chase, for Plaintiff—Direct

Mr. Phillips: Now, if your Honor please, I object to any average amount; the best evidence will be what each one of these cows sold for.

The Court: Yes.

Mr. Price: May I have an objection, your Honor?

10 The Court: Certainly. If you sold them the jury can average it up themselves.

Q. Mr. Chase, what was the amount received for these cattle?

Mr. Phillips: Now, that is objected to.

Mr. Price: Wait a minute.

20 Q. With reference, so far as you can to the specific amount received for those which were sold by weight, and those which were sold as cattle themselves?

Mr. Phillips: That is objected to for the reason that it does not appear that this value received was a reasonable price for these cattle.

The Court: You may state what the cattle were sold for, how they were sold, and where.

30 Q. Go ahead, Mr. Chase. A. I sold one of those cows for \$5.00.

Q. Yes. Go ahead. A. She wasn't weighed; and another one I sold for—

The Court: \$5.00?

The Witness: Yes. That was the one that was so badly received in the car.

The Court: And who did you sell it to?

The Witness: I sold it to a Jew down town. I sold another one, I think it was \$30.00. We didn't weigh her either.

40 Q. Yes. A. But the exact amounts I got for the

Charles F. Chase, for Plaintiff—Direct

others, I would have to look at my report; I have it with me.

Q. Have you the memorandum with you? A. I have just a little memorandum of it.

Q. Produce it. A. That I copied off of my report books last night.

Mr. Phillips: Now, just a moment, please.

I object to this witness referring his memory to a memorandum which it appears was copied off by him last night. 10

Mr. Price: I haven't offered the memorandum yet.

Q. Mr. Chase, what was the highest amount—do not refer to your memorandum—what was the highest amount that you received for the cattle? For any one of the cattle? A. I think I got about \$101 and a few cents for the highest priced one. 20

Q. And the lowest amount was the \$5.00? A. Was \$5.00.

Q. With reference to the remainder, did their price, I suppose, go between the \$5 and the \$101 which you speak about? A. How is that?

Q. The price of the remainder ranged between the \$5.00 and the \$101.00 of which you spoke? A. Yes, sir. It is a pretty hard matter to keep in mind the price of all these cows when you sell about two hundred of them a year. 30

Q. Now, with reference to the milk production of these cattle, can you state to the jury the average amount of milk, cows of this particular breed should have produced? A. Yes, sir.

Q. What is it? A. They should produce about 12 quarts a day.

Q. 12 quarts a day. A. Take it on the average of a carload.

Q. Yes. What did these cows which were finally brought to the farm average in production per day? A. About 8 quarts. 40

Charles F. Chase, for Plaintiff—Direct

Q. And did that production extend over the time that they were at the farm, that average production? A. A period that they were there, about.

Q. What is the price which the company received at that time that the cattle were there for their milk?

10 Mr. Phillips: That is objected to as being too remote.

The Court: You may answer that question.

Q. You may answer, Mr. Chase. A. I think it was 12 cents.

Mr. Phillips: You will note my objection, please?

The Court: Yes.

20 Q. What is that? A. 12 cents.

Q. And how does the cost of maintenance of a cow which yields 8 quarts a day compare with a cow which yields 12 quarts a day?

Mr. Phillips: That question is objected to, your Honor.

The Court: Objection sustained.

30 Mr. Price: Well, now, that was the question I desired to ask before, and you said I should call the witness who knew about it. I had in mind we ought to show if there is any difference between them, so that it really operates against us on that phase of it. If there is any difference between it, we should have to deduct that cost from the difference in the amount. It seems to me that is perfectly reasonable. Here is a cow which would ordinarily produce 12 quarts; by reason of its condition, it only produces eight.

40 The Court: Isn't the real thing what the profit on that difference would be?

Charles F. Chase, for Plaintiff—Direct

Mr. Price: Yes, I think if this witness will state that, it will be all right.

The Court: That is the only thing.

Q. Mr. Chase, with reference to each day's production, what would be the difference in the profit—

Mr. Phillips: I object.

10

Mr. Price: Just a minute.

Q. —which your company would receive from each of the cows delivering only 8 quarts, when ordinarily the production should have been 12?

Mr. Phillips: Now, that question is objected to, if your Honor please, as being too remote, incompetent and irrelevant.

The Court: Yes, I think it is.

Mr. Price: Your Honor, I thought I was asking the very question you indicated.

20

The Court: Here the evidence shows that they were four quarts shy. Now, the question is, what profits did they make on that milk? They lost the profit on four quarts; that is a simple proposition.

Mr. Price: I was going to get at it in detail if this man can give it in detail for us.

Q. What profit does your company make on each quart of milk sold at that time?

30

Mr. Phillips: Now, if your Honor please, that question is objected to as being speculative and not within the issues. There is no allegation in this complaint alleging a loss by virtue of milk production, a loss of profits on milk.

The Court: I understood his amendment yesterday covered that. Have you got that written out, the way you amended it yesterday?

40

Charles F. Chase, for Plaintiff—Direct

Mr. Price: I don't know whether the stenographer has or not. I think that part was in our complaint before, because we charge the loss and depreciation of the cattle. Now, one of the elements of the depreciation is their production value and these are dairy cattle.

10 The Court: That wouldn't go to your profits; if you didn't cover it yesterday, you haven't any right to put it in.

Mr. Price: Your Honor, wouldn't you say—I thought I covered it yesterday; I intended to, and I think it was so understood.

Mr. Hartpence: I have forgotten the question.

The Court: Mr. Stenographer, will you turn to that amendment and read what it is?

20 Mr. Price: Mr. Hartpence says we may put it in.

Mr. Hartpence: I have no objection to that; we object to the evidence, however.

Mr. Price: We might add that plaintiff also claims damages for the loss in the milk production of the cows by reason of the acts alleged in the complaint.

30 Q. Now, Mr. Chase, how much profit did your company make on each quart of milk sold at the time these cows were there?

Mr. Phillips: I object to that.

The Court: I am going to let that come in.

Mr. Phillips: Note my objection, please.

The Court: Yes. If you know.

A. I do not just exactly know.

40 Q. Did you have charge of the milk production at that time? A. I had charge of the milk production, but I didn't have all the bills, and I

Charles F. Chase, for Plaintiff—Cross

couldn't say just at that time what their profit was per quart. I couldn't say just at that time, because—

Q. Did Mr. Lagerquist have charge of that?

A. He handled most of the bills at that time.

Q. So that he would be the person who is in possession of that knowledge? A. I think likely.

Q. What is that? A. I do not quite understand. 10

Q. He would be the person who is in the possession of that knowledge, as to the profits made on each quart of milk? A. I think so; yes, sir.

Mr. Price: You may cross-examine.

Cross Examination by Mr. Phillips:

Q. You didn't see these cattle at New Milford, Pennsylvania, before they were shipped, did you?

A. I did not.

Q. You don't know the weights of them before they were shipped, do you? A. No, I do not. 20

Q. I believe you testified that the average weight of these cattle was 900 pounds? A. Well, we just estimated that; we didn't weigh them, you know; it is just a rough estimate, see?

Q. And when did they weigh this 900 pounds? A. When did they weight that?

Q. Yes. A. I didn't say they did weigh that. I said that was a rough estimate. We just had to kind of guess at it. 30

Q. About when did you make this estimate? A. We looked them over when they arrived.

Q. Yes. A. And we came to the conclusion they were about 900 pound cows on the average.

Q. Did you estimate the weight of these cattle three months later? A. We did not; when we sold them—

Q. Was the weight more or less at that time than when first estimated by you? A. Some of them weighed more; some of them weighed less. 40

Charles F. Chase, for Plaintiff—Cross

Q. You estimated the weight at the time you sold them at about 900 pounds apiece? A. Yes. We thought they would average that about.

Q. Who did you sell this cow to for \$5.00? A. I think Mr. Eckerson.

Q. When did you sell it? A. I think it was the month of August.

10 Q. And where does Eckerson live? A. He is a Trenton man.

Q. What did you sell it for that amount for? A. Well, as the fellow says, she got very poor and unable to get around, and we disposed of her for what we could get for her, and that was the sum we got for her. That was one of those cows that was so bad in the car when we took them out.

20 Q. You have cows at the Purity Farm every once in a while get thin, don't they, and get sick? A. We have them get sick, sure, the same as anybody else.

Q. How did Eckerson take that cow away? A. In an automobile.

Q. For what purpose did he take it? A. I couldn't tell you.

Q. Beef or bologna? A. I don't know what he done with it; just took it for the hide, or what.

Q. No. A. I never asked him no such question as that.

30 Q. Did you try and get any more than \$5.00 for it? A. I did.

Q. From whom? A. From Mr. Eckerson.

Q. Anybody else? A. No.

Q. Who did you sell the one for \$30 to? A. I think a man by the name of Hefertus, if I recall it right.

Q. Did you try to sell that cow to Eckerson too? A. No.

40 Q. Did you try to sell the other cow, the \$5.00 cow, to this man that you got \$30 from? A. No.

Charles F. Chase, for Plaintiff—Cross

I don't think there was but only that cattle dealer around that morning as I sold it.

Q. You sold one cow for \$101 you testified? A. (Nodding head) Yes.

Q. What did that cow cost? A. I couldn't tell you. I never saw the figures that they paid for those cows.

Q. At that particular time that was a fair price 10 for the cow, wasn't it? A. What do you mean, for a beef cow or a milch cow?

Q. A milch cow? A. Well, a fair price.

Q. You didn't pay over \$115 for any of these cows, did you? A. Well, that's what I understood the company paid for them; somewhere about that. I never saw any bills or anything of that kind to know what they did pay for them.

Q. Did you get any more for any of these cows than \$101? A. No. 20

Q. What was the next highest price you got for any particular cow of this lot? A. Well, I couldn't remember until I looked at my list. We were selling about two hundred cows a year, and I cannot recall.

Q. How much did you get all told for these cows? A. That I didn't figure out.

Q. No. A. The total sum.

Mr. Phillips: That is all.

Mr. Price: That is all just now, Mr. Chase. 30

By the Court:

Q. Why do you sell 200 cows a year? A. Well, they keep wearing out; some years we sell as many as that; other years we don't; sometimes 150 or 125.

Q. Then when a cow gets— A. We get rid of her.

Q. Sell her? A. Unless she is an extra good one, then we breed her and hold her over for a milker. 40

Charles F. Chase, for Plaintiff—Cross

Q. What is the average difference between a cow that is milked out and a fresh cow? A. What is the average difference?

Q. Yes. You have been speaking on averages; what was the average difference? A. Well, if she went dry, we will say, for instance, now, and she was coming fresh in six weeks or two months
10 time, we would consider at that time she went dry there would possibly be a difference of fifteen or twenty dollars.

Q. Do you hold them until they come in, within six weeks of going dry? A. We do hold them, yes, when they are extra good cows.

Q. No. On the average when do you dispose of your cows? Now, you say you dispose of from 125 to 150 cows a year. A. As soon as they are milked out and are not profitable for milk purposes, unless they come in fresh.

20 Q. Now, when you sell those cows, what would be the average difference in the value between that cow when you think it is profitable to sell her and when you buy her fresh? A. Well, that depends a great deal.

Q. I am talking on an average. A. Well, that is a pretty hard matter to get at. Some cows are larger and in better condition and you get more out of them. Some you can sell for five cents, and others you can get nine, ten or eleven for them.

30 Q. Isn't there any average at all? A. Well, I don't know that I ever averaged that up.

Q. Well, when you get a cow and bring her in fresh from a strange place, she always falls off in milk, doesn't she? A. Not as a rule.

Q. What? A new cow, you mean to say, when you bring a cow in over the railroad, she doesn't fall off in milk? A. Oh, when you first receive her, she certainly does; she won't come back on her milk again for a week or ten days or two
40 weeks.

Charles F. Chase, for Plaintiff—Cross

Q. Now, how much does it fall off? A. Well, some will fall off more than others.

Q. Well, what would the average fall off? A. Oh, I would say five or six quarts.

By Mr. Phillips:

Q. Some of them, as a matter of fact, never come back to normal again, isn't that right? A. 10
Very seldom one.

Q. But they do at times; that is true, isn't it? A. Well, we don't know whether they come back to normal or not, because we don't know the production before we receive them.

Q. And that is what happened in this case. You didn't know what their normal was— A. We consider it a very poor cow that doesn't give twelve quarts a day. Lots of them we buy gives eighteen, twenty and twenty-four a day. 20

Q. But you don't know how much these cows were giving at the time you bought them? A. No, I don't know a thing about it.

Q. You testified that you sell anywheres from— or about 150 cows a years; and, as a matter of fact, you often sell some of those cows that you have only had a little while, that is true, isn't it? A. Well, not very often; not unless the cow happens to go wrong, and has a bad bag, or something of that kind. 30

Q. That happens once in a while, doesn't it? A. Oh, they get bad bags, sure. A heavy producer generally goes wrong in the bag.

Q. And once in a while it has been known for Mr. Bertholf to pick up a bad cow, isn't that right? A. What do you mean by that?

Q. Pick up a cow that doesn't give a high quantity of milk? A. Well, all cattle dealers will once in a while make a mistake.

Mr. Phillips: That is all. 40

John F. Henning, for Plaintiff—Direct

Mr. Price: That is all, Mr. Chase. Mr. Henning.

JOHN F. HENNING, called as a witness on behalf
10 of the Plaintiff, being first duly sworn, testified
as follows:

Direct Examination by Mr. Price:

Q. Mr. Henning, you live where? A. I live at
New Milford, Pennsylvania.

Q. You have lived there how long? A. Since
1913.

Q. Are you the agent for the Adams Express
Company, New Milford? A. I am.

20 Q. I show you a paper marked Exhibit P-1,
and ask you if that is your signature, John F.
Henning? A. That is it.

Q. And that was signed as agent for the Adams
Express Company? A. That is it.

Q. This paper, is it not, is the receipt given to
Mr. Bertholf at the time these cattle were shipped?
A. It was.

Q. Mr. Henning? A. Yes, sir.

30 Q. You recall very well, do you not, the 21st day
of May, when these cattle were loaded in this
car? A. I do.

Q. On what train did these cattle leave New
Milford? A. They left on the manifest freight.

Q. That freight train operates between what
places? A. Well, I think that one operated be-
tween Binghamton and Scranton.

Q. And what time did they leave on this mani-
fest freight? A. I judge somewhere between 4:30
and 4:45 the afternoon of May 21st.

40 Mr. Price: Cross examine.

John F. Henning, for Plaintiff—Cross

Cross Examination by Mr. Hartpence:

Q. At the time that you issued this express receipt, P-1, Mr. Henning, you also issued this livestock contract marked D-1 for Identification, did you not, which I show you? A. (Referring) I did.

Q. And that was received by you when you issued it? A. Do you mean the original?

Q. Yes. Whom did you issue it to? A. Well, 10 those contracts are made out in triplicate.

Q. Yes. A. The original goes to the superintendent of the division; the duplicate goes to the shipper; the triplicate is attached to the original waybill and goes with the shipment.

Q. When you say goes to the shipper, to whom did the triplicate go in this case? A. To Mr. Bertholf.

Q. And is that his signature to the paper? A. That is his signature. 20

Q. Is this also his signature here to the attendant's contract here on D-1? A. That is his signature also.

Q. What is your position at New Milford, Pennsylvania, Mr. Henning? A. I am the freight and ticket—

Q. Prior to May 21st, 1918? A. I am the freight agent of the Lackawanna Railroad.

Q. That is the Delaware, Lackawanna & Western Railroad? A. It is. 30

Q. Do they pay you your salary? A. They do.

Q. Any other railroad operate through New Milford? A. No, sir.

Q. You also acted for the Adams Express Company at that time, did you? A. I do and did.

Q. The Adams Express Company did not operate any part of the railroad there, did it? A. No.

Q. When you state that this particular shipment left sometime between four-thirty and four-forty-five in the afternoon— 40

John F. Henning, for Plaintiff—Cross

Mr. Price: You said about five o'clock, didn't you?

The Witness: Between four-thirty and four-forty-five.

Mr. Price: I beg your pardon.

Q. —four-thirty and four-forty-five on the after-
10 noon of May 21st, 1918, by what means or by what route did it leave? A. Over the Lackawanna Railroad.

Q. And this manifest freight that you referred to was a freight train of the Delaware, Lackawanna & Western Railroad? A. It was a freight train; yes, sir.

Q. Of the Lackawanna Railroad? A. Of the Lackawanna Railroad; yes, sir.

Q. And the car containing this shipment was
20 simply attached to that Lackawanna freight train, is that correct? A. Yes; they picked it up there.

Q. How long had you been employed there as the station agent for the Lackawanna Railroad up until that time?

Mr. Price: I object as immaterial. What earthly difference does it make? He received this as Adams Express Company agent.

The Court: What difference does it make in this case?

30 Mr. Hartpence: Well, I want to find out something about this manifest freight. I thought I would qualify him to state what he knew about it.

The Court: All right; you may.

A. Five years.

Q. And was this manifest freight that you have referred to a freight train that ran regularly every day? A. Manifest freights run every day; not
40

John F. Henning, for Plaintiff—Cross

particularly this one. All fast freights, or freights that carry perishable goods, livestock or anything like that, are called manifest freights. In other words, they only stop between **certain designated points**. This one in general would only stop between Scranton and Binghamton, which is a distance of about 72 miles, except in cases of emergency like a case of a car of cattle, or a car of grain, or something like that. They would pick it up; that is all. 10

Q. And would that also be true on its run from Binghamton to Scranton? A. **Either way.**

Q. And do you know upon whose direction such a manifest freight would stop? A. The superintendent, the train dispatcher.

Q. Of the Lackawanna Railroad? A. Of the Lackawanna Railroad, under the signature of the superintendent. 20

Q. So that if for any reason it was necessary or desirable for that manifest train to stop on its run from Binghamton to Scranton at New Milford Pennsylvania, it would only do so upon the special order of the—

Mr. Price: One minue.

Q. —dispatcher?

Mr. Price: I object on the ground that the Adams Express Company received a carload of cattle for transportation by express, and it is entirely immaterial what the Lackawanna Railroad did. 30

The Court: You may answer the question.

Mr. Price: Exception.

A. What is the question?

(Question read by the Stenographer.)

A. Yes, sir. 40

John F. Henning, for Plaintiff—Cross

Q. You had nothing to do with that as the Adams Express Company agent?

10 Mr. Price: I object, sir, on the ground that the exhibits which are in evidence show that he had and that precludes him from denying the authority which he already admitted he had, and which the express agent's contract shows he received. Now, they received our cattle as the Adams Express Company, and there cannot be anything outside of that which has any bearing on this case.

Mr. Hartpence: If your Honor please, my question was not addressed to that at all.

Mr. Price: It seemed so to me.

Mr. Hartpence: If the stenographer will repeat it, we will get it clear.

20 (Question read by the Stenographer.)

Mr. Price: I object for the same reason I have already stated. Now, that certainly has nothing to do with this case.

The Court: I cannot see that it throws any light on the subject. How can it?

30 Mr. Hartpence: Well, I think, if your Honor please, that it throws this much light on it: That the plaintiff has now shown by this witness the issuing of an express receipt and the departure of the shipment by a manifest freight at a given hour of the day, at a given hour on a given day.

The Court: Yes.

Mr. Hartpence: And it seems to me that that gives me the right then on cross-examination to show all the circumstances under which that shipment was sent on its way, and particularly the fact—

The Court: All right.

40 Mr. Hartpence: —that it was the railroad

John F. Henning, for Plaintiff—Cross

company that took the car, and he had nothing to do with it.

The Court: Does that relieve the express company from liability?

Mr. Price: Certainly not.

Mr. Hartpence: It may in the light of what develops later.

Mr. Price: Subject to my objection, and to their connecting it up later. 10

The Court: Oh, yes. As it stands now, I do not see that it throws any light on it at all, although on cross-examination I suppose he has a right to have all the facts.

A. Do you mean my personal authority for stopping this train?

Q. That is what I referred to, yes, sir. A. I haven't any. 20

Q. And you didn't stop this train on this particular day? A. No, sir.

Mr. Price: I object for the same reason that has already been stated.

The Court: Yes. I will allow that.

Q. What was your answer, Mr. Henning?

Mr. Price: He hasn't answered the last question. 30

A. The one you just asked?

Q. Yes. A. Let me have that question, will you please?

(Question and answer read by the Stenographer.)

Q. Do you know of your own knowledge, Mr. Henning, what time that manifest freight took out the car in question, arrived at Scranton? A. No, I do not. 40

John F. Henning, for Plaintiff—Cross

Q. Do you know the usual running time of that manifest freight between New Milford and Scranton? A. They are not scheduled trains.

Q. I know they are not scheduled, but do you know what their usual running time is between those two points? A. No, I do not.

10 The Court: How many miles is it from New Milford to Scranton?

The Witness: About 62 miles. Oh, you say from New Milford to Scranton?

The Court: New Milford to Scranton?

The Witness: Oh, 41 miles.

The Court: I thought it was pretty—

The Witness: Yes, I was thinking from Binghamton.

Q. It is 62 from Binghamton? A. 62, yes.

20 Q. Do you recall who the conductor of the manifest freight was that took the car out that day? A. I do not.

Q. Prior to its leaving on this manifest freight at the time you have stated, when did you last see the car containing this shipment?

Mr. Price: I object as immaterial, the car having been delivered into the custody of the company.

The Court: He may testify to that point.

30 Mr. Price: May I have an objection, your Honor?

The Court: When did you last see it?

The Witness: Some time between four o'clock and four-fifteen when I sealed the car.

Q. Yes. And where was it when you did that?

A. Up at the cattle pen about 250 yards south of the station.

40 Q. Did you seal all the doors of the car? A. All but one.

John F. Henning, for Plaintiff—Redirect

Q. Which one was that? A. The south door.

Q. On the south end? A. South end, yes.

Q. That was the end nearest Scranton? A. Nearest Scranton.

Mr. Hartpence: That is all.

Re-direct Examination by Mr. Price:

Q. Mr. Henning, on my direct examination you stated that this manifest freight left between four-thirty and five, didn't you, about four-forty-five? 10

A. Between four-thirty and four-forty-five.

Q. Yes. That is correct, isn't it? A. Yes.

Q. If the original arrangement for the shipment of these cattle had been by freight, would they have ordinarily gone on that manifest freight train?

Mr. Hartpence: I object as immaterial.

The Court: You may answer. 20

Mr. Hartpence: Objection.

A. Any freight that would come along.

Q. It might be a manifest freight or any other freight? A. It might be a local.

Q. What is the proportion of charge for freight service with reference to the charge for express service?

Mr. Hartpence: That is objected to as immaterial and irrelevant. 30

The Court: You have a contract in this case, have you not?

Mr. Price: I have, sir; my only reason being to show we paid the extra sum for express service that we didn't get.

The Court: You haven't shown yet the difference between the two.

Mr. Price: That is what I am asking.

The Court: You haven't shown that there 40

John F. Henning, for Plaintiff—Redirect

is any difference between the freight and express.

Mr. Price: That is my present question, between the two.

The Court: The price you are asking now; that is immaterial.

10 Mr. Price: I didn't quite get your Honor's point.

The Court: You haven't shown any difference that they didn't get by freight that they would get by express.

Mr. Price: Oh, I withdraw the question, then.

Q. Is there a difference between the charge—

20 The Court: The charge is immaterial. The question is what you were to get and whether you got it or not; that is the only question in this case.

Mr. Price: You mean with reference to the amount?

The Court: No. As to the service you got.

Mr. Price: Oh, that is already in. I was asking as to whether there was any difference in the charge.

The Court: You see your contract does not call for any particular train.

30 Mr. Price: Oh, I see what you mean.

Q. When you ship by express, Mr. Henning, your express car is ordinarily attached to a passenger train, is it not? A. I have made two shipments of express, and one went on a passenger and one went on this manifest.

Q. Ordinary shipments of express are made by passenger service, are they not?

40 Mr. Hartpence: Objected to as immaterial and irrelevant.

John F. Henning, for Plaintiff—Redirect

The Court: You may answer that question.

Q. You may answer, Mr. Henning. A. Well, I can't say; I don't know what they are.

Q. My goodness, man! You are the man who has charge of this very thing? A. I had nothing to do with anything going by passenger trains.

Q. Do you know that express service is made by attaching an express car to a passenger train? 10

Mr. Hartpence: I object.

The Court: You may answer.

A. I told you before one went on a passenger train and one on a freight train.

Q. Is it your statement that if express had not been contracted for, it would not have gone on a freight train?

Mr. Hartpence: I object to that. 20

The Court: You may answer.

A. Not necessarily.

Q. That is your statement to this jury? A. Yes, sir.

Q. If a man contracts for express service for shipment of some cattle, you think you are giving him express service by shipping it on a non-stop freight between New Milford and Scranton?

Mr. Hartpence: Objected to. 30

The Court: I will allow that.

Mr. Hartpence: Objection.

A. I suppose so; it would make it the same time.

Q. If you ship it by freight, it would go by a freight train? A. Yes, sir.

Q. Is it your statement to this jury there is no difference between the shipment of cows sent by a freight train and express, so far as the kind of train they go on? 40

John F. Henning, for Plaintiff—Redirect

Mr. Hartpence: Objected to.

The Court: You may answer.

A. I cannot see any difference, no; as far as the time is concerned.

Q. A man pays extra, sir, for express service, doesn't he?

10 Mr. Hartpence: Objected to as immaterial and irrelevant. The best proof are the filed tariffs.

The Court: It is immaterial. He paid for something; did he get it? If he didn't get it, is there any damage?

Mr. Price: I think that is all then, Mr. Henning.

20 The Court: Now, when you figured out your rate, there is a rate in that contract of \$144; how do you figure that out?

The Witness: The minimum carload of cattle is twelve thousand—is twenty-eight thousand pounds, at a first class rate all cattle over twenty-eight here, shows the weight of a hundred pounds, or a thousand pounds for each cattle.

The Court: Yes.

30 The Witness: And there is also an estimated weight to be furnished for each calf. By getting these estimated weights and adding them together and using the first-class rate is where I got the charges from. Also by using the excess valuation.

The Court: Did the value of these cattle have anything to do with the rates that are charged?

The Witness: Yes, there is an extra charge which is shown on the waybill for excess valuation.

40 The Court: I notice that there is noth-

John F. Henning, for Plaintiff—Redirect

ing in the livestock contract as to the value.

Mr. Price: If your Honor please, I don't know whether I—I explained that by showing the other receipt, don't you know.

The Court: I understand. I asked him why there isn't in there anything about value.

The Witness: I do not know.

The Court: And was this receipt that has been offered in evidence given at the same time? 10

The Witness: Yes; both at the same time.

The Court: And that was the value that was fixed on the cattle at the same time?

The Witness: Yes.

By Mr. Hartpence:

Q. And those rates, Mr. Henning, that you have reference to, were obtained from what? A. The public files of the express company. 20

Q. By the public files, you refer to the official classification? A. Official classification.

Q. Schedules and tariffs? A. Yes.

Q. And you assessed them in this particular shipment in accordance with those tariff schedules and classifications? A. According to those tariffs.

Q. I show you what purports to be a set of official express classifications, tariffs and schedules, and ask you whether or not you can state— 30

Mr. Price: Now, if your Honor please, I know what this question is going to be. I object on the ground that it is not cross-examination. He may produce it on his own case. All I have asked this man about is as to the time when this train left, and whether it went by freight. Now, he cannot go into a question of what the rates are upon cross examination. I think that is his own case. 40

Edward Bertholf (recalled), for Plaintiff—Direct

Mr. Hartpence: Well, the Court opened up the question of rates and I want to show on—

Mr. Price: Let him do it on his defense; that is not our case.

Mr. Hartpence: How far did I get with my question, Mr. Stenographer?

(Question read by the Stenographer).

10

Q. —if they are the classifications, the same as those that you used for the assessment of the express charges on the shipment involved in this case?

Mr. Price: Now, I object, as not cross-examination, and certainly they have no right—

Mr. Hartpence: I am only asking him, if your Honor will observe, whether or not he can state it.

20

The Court: He may answer that.

Mr. Price: Can you state it? Yes or no.

A. I cannot say whether these are the ones that were in effect at that time.

Q. All right.

EDWARD BERTHOLF, recalled as a witness on behalf of the Plaintiff, testified as follows:

30

Direct Examination by Mr. Price:

Q. Mr. Bertholf, there has been testimony in this case that the average weight of these cattle, after they had arrived at Titusville and been taken to the farm, was about 900 pounds. Do you know their average weight approximately prior to the time that they were shipped? A. Why, I do not, except from estimation.

40

Q. Well, that is what I mean; you are a cattle

Edward Bertholf (recalled), for Plaintiff—Direct

man. A. They would weigh 950 at least, I think.

Q. You saw, of course, these cattle; you attended to the purchase and everything? A. Yes, sir.

Q. With reference to the kind of cattle that these were and the condition in which they were, what should have been their average production of milk per day?

Mr. Hartpence: Objected to as incompetent 10
and—

The Court: Objection sustained.

Mr. Price: Your Honor permitted that on the other—Mr. Chase's statement on the question after they had arrived. I would like to show it prior to their arrival.

The Court: He ought to know; he examined these cattle; he ought to know something about that.

Mr. Price: That is what I am asking him. 20

Q. You examined the cattle, did you not? A. Yes, sir.

Q. And you know from your knowledge as a cattle man—do you know their milk production, so far as their milk production at that time, as to what their condition was? A. I think I do.

Q. And how much should that be?

The Court: Now, one minute. He examined these cattle and must know what they 30
give. He certainly didn't go out and buy these cattle without knowing anything about their milk production, when he was buying them for the farm.

The Witness: Yes, sir.

Q. State to the jury what you know about these cattle? A. I know these cattle were practical milkers; they were from good producing herds and were good cows.

Q. Were they fresh? A. They were fresh; that 40

Edward Bertholf (recalled), for Plaintiff—Direct

is, they were in; there were a few that weren't in.

The Court: How many of them were milkers?

The Witness: There was 24 of them that were milkers.

The Court: Now, did you see those cows milked?

10 The Witness: I did not.

The Court: You bought them on what somebody told you?

The Witness: No, sir; I tested them.

The Court: How did you test them?

The Witness: By trying their milk, their general appearance and their bags and everything else, and their udders were all right and perfect.

Mr. Price: Now, I ask the question.

20 Mr. Hartpence: What is the question?

Mr. Price: The question is what the production amount of these cows should have been under the condition in which he saw them at the time he purchased them and shipped them.

Mr. Hartpence: Objected to as immaterial, irrelevant and incompetent.

The Court: I will allow that.

Mr. Hartpence: Note my objection.

30 The Witness: Fully 12 quarts.

The Court: How long did you keep these cows in your yard before you shipped them?

The Witness: I didn't have the cows in the yard only—all of them.

The Court: No, no.

The Witness: The day before I had them brought in.

The Court: How long a time was the longest?

40 The Witness: That I kept any of them?

Edward Bertholf (recalled), for Plaintiff—Cross

The Court: Yes.

The Witness: Well, I—well, probably three to five days.

The Court: Now, didn't you milk those cows when you had them there?

The Witness: Why the calves milked them; they were fresh cows.

The Court: You didn't milk them at all? 10

The Witness: Oh, I stripped out what the calves didn't take. I see that they were properly cared for.

Q. Mr. Bertholf, you yesterday gave us the value of these cows which had been lost? A. Yes, sir.

Q. Either killed during the transit, and of the ten which you gave us, the average which I have figured is about \$95. With reference to the remaining twenty which finally arrived at the farm, was their average value about the same as the amount which the ten which were killed represented? 20

Mr. Hartpence: Objected to as immaterial and irrelevant and incompetent.

The Court: He may tell us what he knows about it.

Q. Please state, Mr. Bertholf. A. Why, they were, so far as I know. 30

Q. Well, you know, do you not? A. Yes, I know; I purchased them for good cows.

Q. No. My question was whether the remaining twenty cows were about the same average value as the amount for the cows which were lost? A. It was.

Cross Examination by Mr. Hartpence: 40

Q. You didn't weigh the cattle before you shipped them, did you, Mr.— A. I did not.

Earl D. Ralston, for Plaintiff—Direct

Q. Nor did you actually milk any of them completely so as to determine just how many quarts—

A. I did not.

Q. —any given cow gave, did you? A. I did not.

Mr. Hartpence: That is all.

The Court: When you bought these cattle, you bought a cow and a calf at one price, didn't you?

The Witness: Yes, sir.

The Court: So when you gave us the value yesterday of one cow costing \$115, you meant a cow and a calf?

The Witness: Yes, sir.

The Court: So when they are speaking of the value of a cow at the farm, you usually deduct the value of the calf from that?

The Witness: Yes, sir.

20

EARL D. RALSTON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Price:

Q. Mr. Ralston, you are the young man, are you not, who helped Mr. Bertholf load the car?

A. Yes, sir.

30 Q. And you were there when the agent sealed it? A. I don't remember as I was.

Q. You had gone at that time? A. Yes, sir.

Q. This car has been described as a horse car; is that what you would call it? A. That is what I should call it; yes, sir.

Q. Tell the jury about the work which you did towards bedding the car and so forth? A. Why, we put shavings—

40 Q. A little louder, Mr. Ralston. A. We took shavings and put in and straw and hay around the sides.

Earl D. Ralston, for Plaintiff—Cross

The Court: Hay where?

Mr. Price: On the sides.

Q. And what did you do with reference to the windows in the car? A. We fastened them all open.

Q. Open? A. Yes, sir.

Q. How did they swing open? A. They swung up, I believe. 10

Q. And were those windows in the car? A. They were near the top.

Q. Around the top? A. Around the top.

Q. But on the side, I suppose? A. On the side; yes, sir.

Q. And about at what time did you finish completing that work? A. Well, I couldn't say. I should imagine it was after four o'clock, sometime after four o'clock. 20

Mr. Price: You may cross-examine.

Cross Examination by Mr. Hartpence:

Q. When you say we, you mean you and Mr. Bertholf? A. Bertholf; yes, sir.

Mr. Hartpence: That is all.

The Court: How did you load these cattle, how do you put them in the car?

The Witness: Why, they have a runway; 30 they drive them in.

The Court: Yes. But I mean when you got them in the car, did you just drive them in the car promiscuously?

Mr. Price: He doesn't know what promiscuously means, your Honor.

The Court: I mean you didn't try to fasten them?

The Witness: Just drove them in.

The Court: Well, there wasn't much room 40

Erik Lagerquist, for Plaintiff—Direct

after you got 24 cows and 3 calves in the car, was there?

The Witness: Yes, sir.

Mr. Price: It was a very large horse car, your Honor. That is all.

10

ERIK LAGERQUIST, recalled as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Price:

Q. Mr. Chase has stated that these cows averaged not more than eight quarts a day during the time that they were there at the farm, and the testimony now is that they should have averaged about twelve. When does a milk producing company like your company commence to make a profit upon the milk with reference to the production amount?

20

Mr. Hartpence: Objected to as immaterial and irrelevant; too remote, and not within the contemplation of the parties at the time the contracts of shipments were entered into.

The Court: I will sustain your objection.

Mr. Price: Your Honor, this is the same question I ask before where you said I might prove the production amount.

30

The Court: If you have any estimate at all for the loss of production of milk, it would be the loss of the profits on the amount of milk that you didn't get.

Mr. Price: Yes. Now, your Honor, in this case as a matter of fact, Mr. Bertholf or Mr. Lagerquist tells me that in selling milk if a cow doesn't give over eight quarts, it doesn't amount to anything; at twelve quarts, it is a certain amount, which I do not want to state

40

Erik Lagerquist, for Plaintiff—Cross

before the jury, and the difference would be what I am getting at.

The Court: You may show that.

Mr. Hartpence: I ask my objection be noted.

The Court: Yes.

Q. Mr. Lagerquist, at twelve quarts, a cow producing twelve quarts a day, what is the profit 10 which in this time these cows would have made on each cow? A. About 36 to 37 cents a day.

Q. On each cow? A. On each cow.

Q. At eight quarts, is there any profit or not? A. Well, probably two or three cents profit.

Q. On each cow? A. Yes.

Mr. Price: Cross examine.

Cross Examination by Mr. Hartpence:

Q. Mr. Lagerquist, if you had put in the place 20 of these twenty cows that you refer to with their diminished production of milk, twenty other cows that produced the normal amount of milk, then you would have made this extra profit, would you not? A. I would.

Q. Mr. Lagerquist, I show you letter dated June 11, 1918, consisting of four pages and a statement and an Adams Express Company receipt annexed, and ask you if that is your signature on the fourth page, Erik S. Lagerquist? A. (Re- 30 ferring) Correct, yes, sir; it is.

Q. And you sent that letter to Mr. R. W. Daniel, Claim Agent of the Adams Express Company, didn't you? A. I did.

Mr. Hartpence: I will ask it be marked for identification.

(Marked Exhibit D-3 for Identification.)

Q. Were the Adams Express Company receipt and this paper I have referred to as a statement 40

Erik Lagerquist, for Plaintiff—Redirect

both annexed to the letter at the time you sent it, Mr. Lagerquist? A. Well, I can't remember, but I presume it was. I can't remember that.

Q. Would it refresh your memory as to that question if I were to read from page three of the letter as follows: "I am enclosing a copy of the original receipt; also bill for cattle which were not delivered"? A. Copy of receipt, that is what I thought it was, because I didn't send the original.

Q. So that the copy of the receipt and this bill or statement were attached to the letter, weren't they? A. Yes, sir; yes, sir.

Q. As you state on page three of the letter?

A. Yes, sir.

Q. I also show you letter dated July 5, 1918, addressed to R. W. Daniel, Claim Agent of Adams Express Company, and ask you if that is your signature at the bottom of that letter, Erik S. Lagerquist? A. (Referring) It is, yes.

Mr. Hartpence: I will ask that that be marked for identification.

(Marked Exhibit D-4 for identification.)

Q. And you also sent that letter to Mr. Daniel, didn't you? A. I did.

Mr. Hartpence: That is all.

Mr. Price: May I have those?

30 Mr. Hartpence: They are only marked for identification.

Redirect Examination by Mr. Price:

Q. Mr. Lagerquist, in the Exhibit D-3 for identification which has been shown you, the claim as then itemized and determined by you and sent to them, was \$1787.42? A. Yes, sir.

Q. At that time had you made any claim for milk production, for loss of milk production? A. 40 I had not.

Erik Lagerquist, for Plaintiff—Redirect

Q. And why not? A. Because I thought that the cows may come back in the production, and I only wanted to put in claim for what I actually—the damages at that time.

Q. I notice in this letter that there is a statement that the enclosed statement represents what we are willing to do now in the hope of adjusting this matter without being put to a legal expense. 10 That was included in that letter, was it? A. Yes, sir.

Q. Mr. Lagerquist, have you shipped cattle by express before and after, or before this time rather? A. I have.

Q. And what kind of service with reference to the kind of trains to which it was attached did you then receive?

Mr. Hartpence: Objected to a simmaterial and irrelevant. 20

The Court: Objection sustained.

Mr. Price: Your Honor, am I not entitled to show how these cattle would be shipped ordinarily?

The Court: You may show the difference between the two. I have been asking you what the difference was.

Mr. Price: All right, sir.

Q. You have had experience with shipping cattle and receiving cattle by shipments? A. Yes, sir. 30

Q. What is the difference between express service which you bargained for in this case, and freight service?

Mr. Hartpence: Objected to as immaterial and incompetent.

The Court: I do not see that this gentleman has any knowledge on this subject.

Mr. Price: He says he has shipped cattle by both freight and express. 40

The Court: Suppose he has? To what ex-

Erik Lagerquist, for Plaintiff—Redirect

tent? What does he know about it? He may have received something one way and something another way.

Mr. Price: I withdraw it.

Q. Do you know, Mr. Lagerquist, the difference between shipments by freight and by express?

A. I do.

10 Q. And what is it?

Mr. Hartpence: That is objected to as immaterial, irrelevant and incompetent.

The Court: You haven't shown his knowledge; you haven't qualified him; that is the trouble.

Q. How do you know that difference, Mr. Lagerquist? How do you know the difference between the manner of shipment between freight and express? A. Because express shipments go on passenger—

20

The Court: No.

Q. No. How do you know what the difference is? Not what the difference is between the freight and express shipments, but how do you know the difference? Where do you get your knowledge from as to the difference? A. Why, the way the shipment is going forward when I made them.

30 Q. You mean your experience in shipping? A. Yes, sir.

Q. And over what period has that experience been? A. Well, I have only shipped a few loads by express.

Q. I see. Over what period, what length of time? Well, probably within twelve years.

Q. And your freight, freight the same time? A. I have shipped by freight twenty years.

40 Q. Now, what is the difference between express service as you so bargained for it and freight service?

Erik Lagerquist, for Plaintiff—Redirect

Mr. Hartpence: I object as immaterial and incompetent.

A. I have always had—

Mr. Hartpence: Just a minute—and that the contract in this case is the only complete and only guide as to what the process of shipment should have been in this case. It wouldn't 10
make any difference how Mr. Lagerquist shipped in other cases and on other occasions, nor how other people shipped in other cases and on other occasions. The shipping receipt and livestock contract set forth the terms which govern this shipment, and the filed tariff, and nothing can vary them, and for that reason we object to the question.

The Court: You called for a shipment by express. What this gentleman has done in 20
the past has nothing to do with it.

Mr. Price: No. But it was just stated, as I understood it, that I could show the difference between those two kinds of shipments.

The Court: That isn't sufficient to make him an expert. You can get your railroad and express men who know all about it.

Mr. Price: Unfortunately, sir, they are witnesses for the other side.

The Court: There are other experts in the 30
country whom you can produce. This is only a gentleman's opinion who has had very little experience, and you put him on the stand as an expert. I cannot allow it. You may show the difference, but you must show it in the proper way.

Mr. Price: I thought your Honor qualified him, but, however, I will—

The Court: Oh, no.

Mr. Price: Does your Honor hold that I 40

Warren H. Hull, for Plaintiff—Direct

may qualify him as to what kind of shipment they get when they ship by freight?

The Court: He doesn't appear to be qualified.

Mr. Price: That is all.

10

WARREN H. HULL, called as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Price:

Q. Mr. Hull, you are agent for the defendant Adams Express Company at Scranton, are you not? A. I was.

Q. At the time— A. I am not.

Q —of this shipment, you were? A. Yes.

20 Q. There has been introduced in evidence in this case, an express receipt— I believe your Honor has it—that is the ordinary receipt, is it not, for express service? A. Yes, sir.

Q. When a shipper bargains for express service, what is the ordinary kind of service he gets with reference to the kind of train it is attached to?

Mr. Hartpence: Objected to as immaterial and irrelevant and incompetent.

30

The Court: Find out how long he has been in the company's service and what he has been in the habit of doing; he may not know anything about it at all.

Q. How long have you been in that business?

A. From January 20, 1918, up until the consolidation, June 30, 1918.

Q. Yes. And during that time did you—

The Court: How long a time?

40

The Witness: January 20, 1918, until June 30, 1918.

Warren H. Hull, for Plaintiff—Direct

The Court: Six months.

Q. And during that time you were agent at the company's Scranton office? A. Yes.

Q. And handled the company's business? A. Yes.

Mr. Price: Now, I ask the question, your Honor? 10

Mr. Hartpence: I object to it as immaterial, irrelevant and incompetent. I think the contract is the only thing in this case; the livestock contract, the manner in which it shall be carried, and that it was carried some other way would be immaterial and irrelevant.

The Court: I am going to let this come in; but what difference does it make one way or the other? The question is whether the express company has caused this damage. I do not think it makes any difference how it got there. The question is whether the company caused this damage, or whether it was the way in which you loaded the car. 20

Mr. Price: I know the crux of the question is the question of the liability of the defendant on the question of its act.

The Court: I am going to let you ask this question of this gentleman, because he must be to a certain extent an expert; but your other gentleman had nothing to do with it any more than you or I. We wouldn't know anything about such a line of business. 30

Mr. Price: The question was when a person ordinarily contracts for express service, on what kind of a train is it ordinarily attached to?

Mr. Hartpence: Note my objection.

The Court: Confine yourself to livestock. 40

Mr. Phillips: In carload lots.

Warren H. Hull, for Plaintiff—Direct

The Witness: What is the question?

Q. Ordinarily when a person ships livestock—

The Court: In carload lots.

Q. —in carload lots and contracts for express service, what kind of a train is it ordinarily attached to?

10 Mr. Hartpence: I desire my objection noted.

The Court: If this gentleman knows. Only what his experience has been in that line.

A. I can tell you from past experience if you like.

The Court: How much experience have you had in that line?

The Witness: In the express business?

The Court: What kind of express matter have you shipped yourself?

20 The Witness: Not personally. I have shipped it as agent for the express company.

The Court: Well, now—

The Witness: About seven years.

The Court: Where, in Scranton?

The Witness: No; different points.

The Court: Now, you may tell us what your experience has been during those seven years.

30 The Witness: It would be shipped on the fastest train, the first one that came along.

The Court: The fastest?

The Witness: Whatever train would make the best time.

The Court: It wouldn't make any difference, passenger or freight?

The Witness: No; they are shipped on both.

Q. Are they shipped on passenger trains? A.
40 Oh, yes.

Warren H. Hull, for Plaintiff—Direct

Q. What is the benefit derived over freight service? A. Service and efficiency.

Mr. Hartpence: I object on the same ground.

The Court: You may proceed and tell us.

The Witness: Are you talking about carload shipments?

The Court: Yes, carload shipments.

The Witness: The—well, I am not prepared to say as to freight service, because I do not know anything about freight. 10

Q. Your knowledge is limited to express? A. Yes.

Q. So you cannot tell anything about the freight end of it? A. No.

Q. Your experience has been as an Adams Express Company man alone? A. Yes, sir. I don't know anything about the freight business. 20

The Court: In other words, carloads lots of livestock are put through on the first train, the first ones that come along?

The Witness: We always tried to put them through.

Q. Express service, Mr. Hull, with reference to the shipment—I am not very familiar with railroads—but the express cars are very frequently attached to passenger trains, are they not? A. The express cars— 30

Q. Is that correct? A. Yes. Not always.

Q. And the express service gives what in addition to the freight service so far as delivery is concerned, receipt and delivery both?

Mr. Hartpence: That is objected to.

Mr. Phillips: This gentleman knows nothing about what freight service—

40

Warren H. Hull, for Plaintiff—Direct

Q. What difference does the express and freight give, that is as to receipt and delivery? A. As a rule the shipper loads and unloads his own car.

Q. And that is controlled by the receipt in each instance? A. Yes, sir.

Mr. Price: That is all.

10 Mr. Hartpence: I want to offer in evidence the contract marked Exhibit D-1 for identification.

The Court: It may be marked as an exhibit.

Mr. Hartpence: May we have the duplicate marked also, Mr. Price?

Mr. Price: All right.

(Marked Exhibit D-1 and Exhibit D-1 Duplicate).

Mr. Price: We rest.

20 Mr. Hartpence: We move to strike out all the testimony, your Honor, produced and admitted in this case which in any way touched upon or dealt with any conversations or arrangements or discussions between Mr. Bert-holf and Mr. Henning at New Milford, Penn-sylvania, at the time the shipment was made or that was in the case in any way, as verbal evidence outside of the shipping receipt and the livestock contract now offered in evidence
30 on the ground that it is all immaterial and irrelevant and incompetent, and the only evidence that should come into this case and rightfully belongs in the case touching the liability of the defendant is what may be shown by the shipping receipt and the live-stock contract, and so forth.

The Court: I refuse your motion.

Mr. Hartpence: I pray an objection to your Honor's refusal.

40 The Court: Note your objection.

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Mr. Hartpence: We move for a non-suit, if your Honor please, on the ground that the plaintiff has not sustained the allegations of his complaint upon which he bases the alleged right of recovery in this action, and that by the uncontradicted evidence it now appears that under the terms of the livestock contract, it appears by section five of the livestock contract that the shipper agrees that the express company should not be liable for the conduct or the action of the animals to themselves or to each other, such as biting, kicking, goring or smothering, nor for loss or damage arising from the condition of the animals themselves, or which results from their natures or propensities, which results are assumed by the shipper. 10

The Court: Well, that would be a question for the jury, wouldn't it, whether it was a result of that, or a result of something else? 20

Mr. Hartpence: The testimony of the veterinarian is that they died from lack of air, and that would be smothered; that was the cause of the death. Now, the only evidence in the case on the other point is that the shipper loaded the cars himself, that is, his agent did, put them in the car, the car was sealed according to his directions and the asphyxiation followed. 30

Now further, under Section seven, the shipper agrees to load, tranship and unload said animals at his own risk, the express company furnishing the necessary laborers to assist. In this case it was all done by the shipper. The shipper shall take care of, feed and water said animals while being forwarded or transported, whether delayed in transit or otherwise, and the express company shall not 40

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10 be under any liability or duty with reference thereto except in the actual forwarding thereof. The shipper further undertakes to see that all doors and openings in the cars in which said animals are shipped are at all times so closed and fastened as to prevent the escape of any of said animals or injury there-
to, and the express company shall not be liable on account of the escape of any of said animals or any injury thereto resulting from open doors or defective ventilation.

20 Section eight: The shipper agrees that as a condition precedent to recovery hereunder for loss or injury or damage to or delay in delivery of this shipment, such loss, injury, damage or delay shall be proved by the shipper to have been caused by negligence of the carrier.

We submit that the evidence in the case all points the other way that it was the act of the shipper which was the proximate cause of the—

Mr. Hartpence: —of the damage complained of, and that the condition precedent, a prerequisite that the shipper shall show that the negligence was caused by the Adams Express Company.

30 The Court: I will hear you, Mr. Price.

Mr. Price: As to this last proposition?

The Court: As to why I should not grant the motion of non-suit.

40 Mr. Price: Why, in this case, your Honor, I have to smile for the reason that the very important part of this contract which operates in our favor wasn't read. Mr. Hartpence—I don't criticize him in any way—but he started paragraph seven after the first line. The second line starts this way: "The ship-

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per agrees to load, tranship and unload said animals at his own risk, the express company furnishing the necessary laborers to assist."

There is no doubt in this case that if they put a clause like that in the contract and there had been nothing else, no matter whether the shipment had been good, bad or indifferent, no matter whether the express company did all the loading and the shipper said he wasn't going to be responsible for it, of course, we would have no recovery. But listen to the first line:

"Where said animals are accompanied by the owner or an attendant in his employ, the following further conditions shall apply."

In this case we wanted to accompany the cattle and we arranged for transportation on the train on which the information was they were going on. Not a line in this section here applies in this case for the reason that the act of the agent prevented us from going.

The Court: Then you base your action on the fact that the car was taken out before you were notified it was going, sometime later?

Mr. Price: Not only that, your Honor, this: We have arranged for the shipping of certain cattle by express. The agent for the company arranges with our client for the shipping of these cattle, and in the ordinary course where nobody goes down to inquire as to when a certain load is going to be taken so that he can accompany them—but the very purpose which he had contemplated, he makes inquiry of the person who knows and he informs him they will go out on the 28 train. Therefore, under section seven on which they are relying for the responsibility, that has no appli-

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10 cation, your Honor, for the reason that we were not permitted to accompany these cattle. Now, had we accompanied these cattle, mark you, had we accompanied the cattle in this case, there is no doubt that the section seven would have applied, harsh as it may seem. But we were prevented from doing that very thing, and in addition to which the
20 express receipt, which has been offered in evidence, says, unless caused in whole or in part by the negligence of the defendant, the Adams Express Company or its agents, the company shall not be liable for loss or damage in the following named instances; one of them is the act of the shipper. Now, we say at least part, if not the whole, was due to the act of
20 this company, and prevented us from doing the very thing we wanted to do. If our man had gone along with the train upon which our representative would have gone on, he would have had an opportunity to view them while in transit and would have had an ample opportunity to relieve them if necessary, and he says, to put them on the siding and take care of them.

The Court: How much of the damage was done before your 6:12 train got there?

30 Mr. Price: We do not have to consider this for this reason: If the cattle had gone on the 6:12 train as represented, our client—nobody can theorize now as to what condition the cattle would have been in later on—but he could have observed them at any point in transit between there and Scranton, and he was prevented from doing that very thing by the act of this company, and we are entitled to go to
40 the jury upon that fact.

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The Court: All right. I shall refuse your motion and allow you an exception.

Mr. Hartpence: We will offer in evidence the tariffs and schedules, your Honor, or so much thereof as may be applicable to this shipment.

Mr. Price: I object on the ground that they have been proven. 10

Mr. Hartpence: They being accompanied by the certificate of the Secretary of the Interstate Commerce Commission, and under the seal of the Interstate Commerce Commission as being the schedule in effect upon the dates specified in the certificate which cover the date involved in this shipment.

Mr. Price: If your Honor please, the same objection obtains. 20

Mr. Hartpence: Just a moment.

Mr. Price: I beg your pardon.

Mr. Hartpence: The offer is made pursuant to section—the last paragraph of Section 16 of the Interstate Commerce Act which provides that copies and extracts from such schedules, classifications, tariffs, agreements, arrangements or reports, made public records as aforesaid, certified by the Secretary under the Commission's seal, shall be received in evidence and of like effect as the original. We offer them under that section in the usual manner. 30

Mr. Price: I had in mind in making my objection that they were in the nature of a public statute which had to be proved by the production of the statute.

The Court: I do not think so under that section.

Mr. Price: That, of course, is the ordinary 40 rule.

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The Court: Oh, yes, that is the ordinary rule; I agree with you there. This seems to be made special.

Mr. Price: Are these part of a statute or made pursuant to the Commission's rule?

10 Mr. Hartpence: The tariffs are made up and submitted, then they are approved by the Commission and become effective thereupon, upon this Interstate Commerce Act; they become public records and are to be received in evidence when certified.

Mr. Price: All right, sir. My objection is withdrawn under those circumstances.

20 Mr. Hartpence: Our idea is offering so much of them as may be applicable, so that in case it should become necessary to use them, we wouldn't be obliged, for instance, to print the whole book, but only such portions as apply to the situation.

The Court: Yes, certainly.

Mr. Price: If your Honor please, I would like to have the objection on the record as to their admissibility, outside of their manner of proof, on the theory they have no relevancy in the case on the question of the damage done to the cattle. May I have an objection to that?

80 The Court: Yes, you may note it.

Mr. Hartpence: Now, if your Honor please, we desire to refer particularly to—has it been marked? (Marked Exhibit D-5).

The Court: And then you may read into the record such portion of it as you think proper, and that will save you if the case ever goes any further.

40 Mr. Hartpence: It will save the printing of that entire volume, so much of it as does not apply to it.

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The Court: And it will put the jury in touch with what you desire. They will never find out anything looking over that whole book unless they want to spend more time in the jury room than I think they do.

Mr. Hartpence: I desire, your Honor, to particularly refer to these portions of the tariffs, marked D-5, without, of course, in any wise limiting ourselves to other portions that might be applicable. The first, the uniform livestock contract on pages 9, 10 and 11 of Official Express Classification No. 25, issued May 15, 1917, effective on July 1, 1917. Two, the uniform express receipt on page 6 of that same classification, Official Classification No. 25, Official Express Classification No. 25. Rule two, paragraph (i) on page 14 of that same classification, which reads as follows: "Shipments bearing special instructions. If shipments are accepted bearing special instructions of the shipper to the Express Company, affecting the handling or delivery of shipments, and calling for service not provided for elsewhere in the tariffs or Classifications of the Express Company, no responsibility for compliance with such instructions will be assumed, nor will claims be paid by the Express Company for failure to observe or comply with such special instructions."

The Court: Well, read that again, won't you please?

Mr. Hartpence: "If shipments are accepted bearing special instructions of the shipper to the Express Company, affecting the handling or delivery of shipments, and calling for service not provided for elsewhere in the tariffs or Classifications of the Express Com-

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pany, no responsibility for compliance with such instructions will be assumed, nor will claims be paid by the Express Company for failure to observe or comply with such special instructions."

The Court: Yes.

10 Mr. Hartpence: Rule 13, paragraph (a) on page 15 of that same Official Express Classification No. 25. "Valuation Charges: Rates named in tariffs governed by this Classification, except as to ordinary live stock, are dependent upon and vary with the declared or released value of the property, and, except as to live stock chiefly valuable for breeding, racing, show purposes, or other special uses, other live animals named and not named herein, live birds, live pigeons, live
20 poultry, and reptiles, are based upon property declared to be of, or released to, a value not exceeding \$50 for any shipment of 100 pounds or less, or not exceeding 50 cents per pound actual weight for any shipment in excess of 100 pounds. When the declared or released value exceeds that above stated, except as to the paintings, pictures, statuary, and wax figures of a declared or released value exceeding \$550, the rates are 10 cents greater for each \$100 or fraction thereof in
30 excess of the value stated above."

Section, or Rule 13, paragraph (c), page 15 of the same classification, which reads as follows: "Rates applicable to live stock (cattle, swine, sheep, goats, horses and mules), chiefly valuable for breeding, racing, show purposes, or other special uses, other live animals named herein, live birds, live pigeons, live poultry, reptiles, and wild animals not
40

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named herein are based upon the following maximum values:

	Each	
Horses, jacks, jennies, mules	\$200.00	
Bulls,	100.00	
Colts, under one year, ponies	75.00	
Cows, calves six months or over, oxen, steers,	75.00	10
Calves under six months, deer, elk, goats, hogs, sheep,	25.00	
Burros, dogs, ostriches,	50.00	
Camels,	200.00	
Elephants,	250.00	
Wild animals not otherwise named,	50.00	

Birds, not otherwise named, cats, ferrets, guinea pigs, hares, mice, monkeys, opossums, pigeons, poultry, prairie dogs, rabbits, rats, skunks, squirrels, reptiles, each \$5.00; maximum value of any shipment not exceeding 100 pounds, \$50, or, when the weight exceeds 100 pounds, 50 cents per pound, actual weight. 20

When the declared or released value exceeds the maximum value stated above the rates will be increased as follows:

Between points where the first-class rate is not over \$2.00 per 100 pounds, 1 per cent. of the excess value.

Between points where the first-class rate exceeds \$2.00 but not \$3.00 per 100 pounds, 1½ per cent. of the excess value. 30

Between points where the first-class rate exceeds \$3.00 but not \$5.00 per 100 pounds, 2 per cent. of the excess value.

Between points where the first-class rate exceeds \$5.00 per 100 pounds, 2½ per cent. of the excess value."

And all tariffs and charges based upon these schedules and classifications as they may appear. 40

Robert H. Peckens, for Defendant—Direct

Mr. Price: What do you mean, in that exhibit?

Mr. Hartpence: No. I mean the specific rates as they appear.

Mr. Price: Well, your Honor, I cannot act upon a matter that is not produced and not in evidence.

10 The Court: It is in that book.

Mr. Price: I asked him if everything was in that book. Is everything that you offer in that book?

Mr. Hartpence: Everything that we offer is in that book.

Mr. Price: I want an objection on the record to the effect that these matters which he has read into the record should not go in evidence until they show they were in force

20 at the time the shipment was made.

The Court: The certificates were produced.

Mr. Price: Does that cover that period?

Mr. Hartpence: Yes.

The Court: The certificate shows that, as I understand. These are practically the same as your contracts?

Mr. Hartpence: Yes, sir.

30 The Court: They were contracts and receipts issued according to that letter?

Mr. Hartpence: Yes, sir. Of course, that makes the contracts a part of the filed tariffs which binds them under the Chicago & Alton against Kirby, the particular case we are relying upon.

40 ROBERT M. PECKENS, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

*Robert H. Peckens, for Defendant—Direct**Direct Examination by Mr. Hartpence:*

Q. Mr. Peckens, what is your business? A. Conductor on the Delaware, Lackawanna & Western Railroad.

Q. Freight conductor? A. Freight conductor; yes, sir.

Q. Now, one of the gentlemen on the jury told us when the jury was drawn that he was a little bit deaf, so if you will speak a little louder, Mr. Peckens. A. All right. 10

Q. So that if the one who has the most trouble to hear can hear, then all the rest will be able to hear you. How long have you been such a conductor? A. 41 years.

Q. And are you familiar with the run from Binghamton to Scranton? A. Yes, sir.

Q. How long have you been running there over that— A. Well, 30 years, off and on. Running from there to Scranton and from there to Hoboken, for that matter. There was a time when we would run all divisions, you know, run a while on one division, and then we run a while on another division. 20

Q. Well, off and on, how long have you been going over that— A. Well, ever since '79.

Q. Since 1879? A. Yes.

Q. Now, you were a freight conductor on the Delaware, Lackawanna & Western Railroad in May, 1918 then, weren't you? A. Yes, sir. 30

Q. And do you recall, Mr. Peckens, having any thing to do with a carload shipment of cattle from New Milford, Pennsylvania? A. Yes, sir.

Q. On May 21, 1918? A. Yes, sir; I picked up a car of cattle there.

Q. And what train were you running that day?

Mr. Price: Now, your Honor— I will admit that. 40

The Court: Proceed.

Robert H. Peckens, for Defendant—Direct

Q. What train were you running? A. Train 52 we were called. Of course, we had no schedule after leaving Elmira.

Q. And what sort of a train was it, passenger or freight? A. Manifest train.

Q. A manifest freight train? A. Manifest freight train, yes, sir.

10 Q. And can you state what time your train reached Scranton? A. Six—

Q. That day, after picking up the car at New Milford? A. 6:35 p. m.

Mr. Price: You arrived at Scranton at that time, Mr.—

The Witness: Yes, sir.

Q. And you got your orders to pick up that car from whom?

20 Mr. Price: I object as immaterial. This is a suit against the Adams Express Company on a receipt or on a livestock contract which they gave us to safely transport certain cattle to Titusville.

The Court: Does it make any difference, in your opinion, who he got the orders from?

30 Mr. Hartpence: Well, I think it helps to make clear, your Honor, if nothing else; if it is immaterial in that respect, it is certainly relevant in this respect: That after the livestock contract and shipping express receipt were issued, and which put Mr. Bertholf in control, then you see we no longer had control, the Adams Express Company.

The Court: I shall allow this question.

Mr. Price: May I have an objection, your Honor?

The Court: Yes, take your exception.

40 Q. From whom did you get your orders to pick

Robert H. Peckens, for Defendant—Direct

up the car at New Milford? A. From the superintendent.

Q. What superintendent? A. The division superintendent.

Q. Of the railroad company? A. Yes, sir.

Q. And acting upon his orders then, you stopped and picked up this car of cattle? A. Yes, sir. 10

Mr. Price: Just a minute. Your Honor, my point in this case is that the livestock contract covering the shipment of these cattle by the Adams Express Company, the Adams Express Company cannot duck liability by attempting to show the manner in which the car got away from the station. It is up to them.

The Court: I shall allow it.

Mr. Price: May I have an exception? 20

The Court: Take your exception.

Mr. Hartpence: Did you get his answer, Mr. Stenographer?

The Court: The division superintendent.

Now, what time did you pick up the car?

The Witness: That was between four-thirty and four-forty-five. We left there about four-forty-five; it takes about fifteen minutes to pick up a car there. 30

Q. Where did your train start from that day? A. Elmira.

Q. And you were running to Scranton, were you? A. Running to Scranton, yes.

Q. And what sort of a freight was this manifest freight? A. Fast freight.

Q. I understood you to say you were not scheduled to stop after leaving Elmira? A. No, we have no schedule time, only out of Elmira; that 40

William A. Pope, for Defendant—Direct

is the last schedule we have.

Q. Until you reach what? A. Scranton.

Q. Scranton. And you would stop only between those points on special orders, as you received in this case, is that correct? A. Special orders and for water.

Mr. Hartpence: That is all. Cross-examine.

10 Mr. Price: No cross-examination.

WILLIAM A. POPE, sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination by Mr. Hartpence:

Q. Mr. Pope, what is your business? A. Car foreman. Foreman in the Car Department, Lackawanna Railroad Company.

20 Q. Located where? A. Scranton.

Q. Scranton, Pennsylvania? A. Yes, sir.

Q. How long have you been so employed? A. Six years.

Q. You were employed there on May 21st, 1918 then, were you? A. Yes, sir.

Q. In the same capacity? A. The same capacity.

30 Q. And what particular part of the railroad property or railroad yards were you employed in on that date at Scranton? A. Scranton, why, looking after the inspecting of cars, passenger and freight, and repairs.

Q. I say, in what part of their property or yards was it, in the Scranton yards? A. Scranton yards; yes, sir.

Q. Now, do you recall a carload of cattle coming in there that evening? A. I do.

40 Q. That in any way attracted your attention,

William A. Pope, for Defendant—Direct

anything special? A. Yes, I was making my rounds through the yard and discovered them.

Q. What did you discover? A. Speak a little louder, please, Mr. Pope. A. Why, I discovered them almost suffocated, through the noise of passing under the car.

Q. It was the noise in the car that called your attention to it? A. The noise of the cattle in the car, getting their breath, I should surmise. 10

Q. And then what did you do? A. I broke the window lights on the side doors and end doors and opened it as well as I could to give as much room as I dared to keep the cattle in.

Q. How quickly did you do that after you discovered it? A. Oh, it took me maybe five minutes.

Q. Did you have anybody to help you? A. Yes. A few of the switchmen came to my assistance.

Q. Before you did that, what was the outside condition of the car? A. Outside it was—it was sealed; two side doors were sealed and one end door. 20

Q. The car was not broken in any way when you first saw it? A. No, sir.

Q. And you broke open the window lights? A. The window lights were steamed up which drew my attention to it.

Q. And you did that for the purpose of getting air in to the cattle? A. In to the cattle; yes, sir. 30

Q. Well, after you had done that, did you do anything else? A. Why, I got the drill master to take the car up where there was more air, out of the lower yard up to where we could get more ventilation for them.

Q. And was that done? A. Yes, sir.

Q. And what did you do after you got there, to the cattle? A. Why we shoved them down in the yard and we attached a hose to the plugs and put water over the car. 40

Warren H. Hull, for Defendant—Direct

Q. Yes. How about getting oxygen in to them, did you do anything as to that? A. Well, we sprinkled the car was all, and give them all the air we could.

Q. Did you use any artificial means of getting air in to them? A. No, sir.

10 Q. What was done with the cattle then? A. Why, started for the stock chutes; we had orders to take them to the stock chutes.

Q. Will you speak up, please. Took them to the stock chutes? A. Took them to the stock chutes; yes, sir.

Q. That was for the purpose of what? A. Oh, getting the dead one out, I guess.

Q. Unloading the lives ones? A. Unloading the live ones, and—

20 Q. Down in the yard proper there was no place to unload them, was there? A. No, sir.

Q. And they were surrounded by other tracks, weren't they? A. Surrounded by other tracks; yes, sir.

Mr. Hartpence: That is all. Cross examine.

Mr. Price: No cross-examination.

30 WARREN H. HULL, recalled as a witness on behalf of the Defendant, testified as follows:

Direct Examination by Mr. Hartpence:

Q. Mr. Hull, what did you have to do with that shipment of cattle at the Scranton yards when they arrived there, anything? A. I was called up around seven or seven-thirty by the night depot foreman and told that there was a car of cattle in the yard.

Warren H. Hull, for Defendant—Direct

Q. If you speak a little louder, Mr. Hull, it would be better. A. I was called up between seven and seven-thirty and told that there was a car of cattle in the yard and some of the cattle were dead and down, and wanted to know what to do. I told him—

Q. Never mind what you told them. What did you do? A. I immediately came to the depot, the Lackawanna depot, and went down and looked at the car and looked in one end, and see cows down, and thought the best plan would be to unload the car as soon as possible. 10

Q. Now, you did later on unload the car, didn't you? A. We did.

Q. And where did you put the cattle? A. In the stock yards.

Q. And did you, at any time that evening, see Mr. Bertholf? A. Yes. 20

Q. When did he come in, do you know? A. I believe he was at the depot when I came down from the house, around the yard there.

Q. Did he say anything to you about the shipment and his accompanying the shipment? A. I asked him if he was the man in charge, and he said yes.

Q. Did he say anything to you about his going with the shipment or not going with the shipment from its place of origin? A. He said he came down on 28, that he didn't come down with the shipment. 30

Q. What did he say to you about his being with the shipment from the time that the cattle were delivered to the express company until he reached Scranton, anything at all? A. Well, I don't just get your meaning.

Q. Did he say anything to you about his going with the shipment from New Milford, Pennsylv- 40

Warren H. Hull, for Defendant—Cross

vania, to Scranton, anything at all? A. Except he was supposed to come with it; he was coming down on 28 with the shipment.

Q. Did he give you any directions as to what should be done with the cattle after you saw him?

A. Why, it was kind of decided between us what we thought was the best plan to do. I don't know
10 as he exactly told me whether I should or should not do, or what should be done.

Q. And as a result of that, they were taken down to the stock yard and unloaded, is that correct? A. Yes, sir.

Q. What eventually became of them after they were unloaded there in the stock yard? A. The live ones were forwarded on.

Q. When was that done? A. In four or five days; I cannot just say the exact date.

20 Q. Did Mr. Bertholf go with them then? A. He did, I believe; I didn't see the car when it left Scranton proper.

Q. I see. Did he say anything to you at that time about his going on with the car to Titusville, the destination? A. He said he would accompany the car.

The Court: Said he would what?

The Witness: Accompany the car.

Mr. Hartpence: That is all.

30

Cross Examination by Mr. Price:

Q. Mr. Hull, the doctor who was on the stand the other day from Scranton, the doctor of the express company— A. Yes.

Q. What is his name? I have forgotten. A. Doctor Lyett.

Q. Doctor Lyett, who was on the stand for the express company, stated that it was at his advice
40 that the cattle were detained for those three or

Warren H. Hull, for Defendant—Cross

four days there; that was correct, was it? A.
Yes, sir.

Mr. Price: That is all.

Mr. Hartpence: We will offer D-2; I guess it is for identification; offer it in evidence.

Mr. Price: I would object to this, if your Honor please. It is a mere matter of form, however, to the effect that the defendant cannot make evidence for himself by offering in evidence—this is a statement of Doctor Herker after he made an examination for the defendant company. It is not evidence against the plaintiff. 10

The Court: Do you object to it?

Mr. Price: I do.

Mr. Hartpence: The circumstances are these: Doctor Herker was a witness produced by the plaintiff. 20

The Court: Yes.

Mr. Hartpence: And Doctor Herker made a statement in his direct examination to this effect: That the cattle showed the effect of lack of food and lack of water, and they looked a though they had had a hard experience. Now, on cross examination, I submitted this letter to Doctor Herker, and he said that he had written it and that it undoubtedly contained the true facts as they existed, because he had made it at the time that he had made his examination. I therefore offer it on that ground. 30

The Court: No. The objection is sustained.

Mr. Hartpence: I pray an objection.

The Court: You might have offered it to contradict him. There isn't anything to show he hasn't testified to the true facts on the stand.

Mr. Hartpence: I ask my objection be 40

Judge's Charge

noted on your refusal to admit it.

The Court: It may be noted. I would like to ask Mr. Pope a question.

Mr. Pope, what time was it when you found this car?

Mr. Pope: About six-fifty p. m.

10 Mr. Hartpence: We offer D-4 for Identification in evidence.

Mr. Price: Satisfactory, sir; I have no objection.

The Court: It may be marked.
(Marked Exhibit D-4.)

Mr. Hartpence: We rest.

Mr. Price: No rebuttal.

Mr. Hartpence: We move for a direction of a verdict in favor of the defendant.

The Court: The motion is refused.

20 Mr. Hartpence: On the same ground as stated on the motion for non-suit.

The Court: Yes. Motion is refused.

Mr. Hartpence: Your Honor will permit me to note my objection?

The Court: Yes, note your objection.

Mr. Hartpence summed up the case to the jury on behalf of the Defendant.

(Recess.)

After Recess. 2:00 o'clock, p. m.

30 Mr. Price summed up the case to the jury on behalf of the Plaintiff.

Charge.

Cutler, J.:

Gentlemen of the Jury, in May 1918, a Mr. Bertholf purchased cows and calves for the
40 Purity Farms, a corporation of this State, and

Judge's Charge

entered into negotiations with the Adams Express Company to have them transported from New Milford to Pennington, New Jersey. As the cattle were to be carried from one state to another, the laws governing such shipments applied to the transaction. The shipper did not inform the agent of the express company the number of cattle he expected to ship, but asked for a car. 10
A large car was provided. It was a kind that was generally used for shipping horses. The agent of the farm had been in the cattle business shipping cattle for many years. He accepted this car furnished by the express company as a suitable one for his purpose, and without any protest or objection, personally superintended the loading of this car, closing the doors, opening the ventilators, and left the car ready for transportation. He then went to the office of the company and entered into a written contract or agreement in reference to the moving of these cows and calves. Up to that time there was no liability on the part of the express company, as the stock had been under the exclusive care and in the custody of the agent and representative of the farms corporation. 20

The liability of this express company is set out in this agreement. You will have it before you and you can read it in your jury room as it has been offered in evidence. The company in substance agreed to transport the stock from New Milford to Pennington, New Jersey, under the care of an agent of the plaintiff, who was to care for the stock in transit, look after the doors of the car to see that none escaped, and to oversee the loading and unloading of the stock. 30

The plaintiff contends that the stock was injured while in this car from lack of ventilation, and brings this suit to recover damages for such injury. Unless there was some negligence on the 40

Judge's Charge

part of the express company, the plaintiff cannot recover, for by the fifth paragraph of the shipping agreement, it releases the company. That passage or section of the contract reads as follows:

“Section 5: The shipper agrees that the express company shall not be liable for the conduct or acts of the animals to themselves or to each
10 other, such as biting, kicking, goring or smothering, nor for loss or damage arising from the condition of the animals themselves or which results from their natural propensity which risk is assumed by the shipper. The shipper hereby releases and discharges the express company from all liability for delay, injury or loss of said animals and paraphernalia from any cause whatever, unless such delay, injury or loss shall be caused by
20 the express company, or by the negligence of its agent or employes. In such event, the express company shall be liable only to the extent of actual damages sustained, but in no event to an amount for an animal or paraphernalia in excess of the value declared above.”

So, you see, gentlemen, that contract entered into between these parties was a contract under which this express company took charge of these cows and calves. But the plaintiff contends that while the contract does not stipulate when the car
30 was to be moved, he was informed by the company's agent that it would be attached to the 6:12 train, and that he came to the station as this train was pulling in and found that the car had been attached to a previous train; that he took this 6:12 train to Scranton, and arrived there something about eight o'clock and found the car in the yard. The windows and doors had been
40 smashed and broken in and water put upon the cattle. The cattle were in a very bad condition, some of them dead from the lack of ventilation,

Judge's Charge

and the company's employes were doing what they could to relieve the situation. You see that that had already been begun before the agent of the company arrived, and there is nothing to show that the treatment of these cattle by the employes of the company on their discovering their condition was not a proper one. Veterinaries have been produced and there is no evidence that the treatment of the cattle by the employees of the railroad and express company after they arrived in Scranton was not a proper treatment. The cattle were injured because of lack of proper ventilation. 10

The Plaintiff contends that if its agent had been on the train, this condition would not have occurred. The Plaintiff assumed the responsibility of loading, and if the damage to these cattle was the result of loading, there can be no recovery by the Plaintiff. 20

After the car was loaded, it was left by the agent of the farms' company on a track unattended from some time between four and four-fifteen o'clock. Was it during the time that the car was unattended that the injury was done to the cattle? If the injury was caused by the negligence of the agent of the farms company, there can be no recovery. There was nothing mentioned in the contract as to when the car was to leave. It was to go by express, and the evidence is that carloads of livestock are sent by the first fast train, be it freight, milk or passenger. 30

The agent of the Plaintiff says that he was informed by the express agent that the car would be attached to this 6:12 train. Mr. Bertholf was in the business of shipping cattle. The car was under his care as soon as the contract was signed. Did he use the care that he should in leaving the car and going to his house and staying there for some two hours? If his conduct was the cause of 40

Judge's Charge

this damage, the Plaintiff cannot recover.

There was no delay in the transportation of the cattle. The car was sealed between four and four-fifteen o'clock, if you believe the evidence of the agent. It was picked up between four-thirty and four-thirty-five and arrived at Scranton about six-thirty-five, and was opened and the cattle cared
10 for at six-fifty; and that, gentlemen, is the undisputed evidence in this case, as to the care that the express company gave to this car. There is no evidence that the cattle were injured by the handling of the railroad, but the lack of ventilation that was fixed by the agent of the owner of the cattle himself seems to have been the cause. Would or would not the running of the car attached to this freight train give the cattle more air than
20 they would have had had they remained in the New Milford Yard until 6:12? The agent of the Plaintiff did not see them from four o'clock or four-fifteen, and did not expect to see them until some time on the way to Scranton, when the train stopped at some of the stations, and then he expected, he testified, to have visited the car and examined the cattle. That would have been after six-twelve o'clock, because according to his own
30 statement, he left the car with no one watching it between four and four-fifteen, or between four-fifteen and four-thirty, and did not return and look at the car, or expect to see it until he went to the station at 6:12. If this car had been allowed to stand in the New Milford yard until the 6:12 train came along and picked up both the car and the agent, could the damage to the cattle have been prevented by the agent being on that car?

If the failure of the express company to do something it was required to do under the contract was the proximate cause of the injury to the cattle,
40 then there could be a recovery.

Judge's Charge.

The Plaintiff must establish its case by a fair preponderance of the evidence. It must show you by the evidence that the express company caused the damage, and the amount of the damage. No value of the cattle is stated in the livestock contract, but the value is placed on it in the receipt, and that value was considered in fixing the charge to be paid to the express company. This being the case, if the Plaintiff can recover, it is entitled to be compensated for its loss. Ten cows died and four calves, and they are entitled, if entitled to anything, to the loss it sustained by the death of those ten cows and four calves. There has been some evidence as to what those cattle were worth, what they cost; but you will recall the fact that they paid for a cow and calf a certain sum. Ten cows died and only four calves, so you must fix the value of those cows and calves that died.

In addition to that, they are entitled to such loss as happened to the remaining cows and calves. There is no evidence that the calves were damaged or injured. There is some evidence that the remaining cows were injured by their being in this car. The Plaintiff, if entitled to recover anything, is entitled to recover that loss; that is, the difference between what the cows were worth if they had not been injured, and what they were worth when they arrived at their place of destination, and there has been some evidence on that point. But, in determining that, gentlemen, you must remember that the price given as the price paid for those cows included the calves by their side. They were not all, as I recall the evidence, accompanied by calves. Twenty-one or twenty-three—whatever there was, a certain number had calves with them; twenty-three at least. The others did not have calves. But you should take that into consideration in determining the value

Judge's Charge

of the cows in the loss of the Plaintiff.

The Plaintiff would also be entitled to such profit as he would have made on the milk from these cattle, but for only such a reasonable time as it would take the Plaintiff to get other cattle to take their place. They are not entitled to profits for an indefinite length of time. They would only be
 10 entitled to the loss for such time as it would take them to obtain other cattle to take their place as milkers on that farm.

Now, gentlemen, it is a case for you to determine. If you find that this loss was due to the negligence of this express company, then the Plaintiff can recover. If, on the contrary, you find that it was not occasioned by the negligence of this company, but was occasioned by the way the cows were loaded by their agent and by the negli-
 20 gence of their agent, then, of course, they cannot recover; because Mr. Bertholf was their agent, and they are responsible for his acts.

There has been a motion to direct a verdict, and a motion to non-suit, but that has nothing whatever to do with your dealing with this case. That is simply a decision of the Court that it is a case for you to decide and not one to be taken away from you under the law.

Let an officer be sworn.

80 I refuse to charge otherwise than I have charged.

Let the Jury retire.

(The jury retired.)

The Court: You may take exception, Mr. Price, to my failure to charge your requests.

Mr. Price: Yes. I want to take exception to your Honor's refusal to charge the requests to charge.

40 The Court: Yes.

Mr. Price: In addition, I want to take exception

Judge's Charge

to that portion of your Honor's charge wherein you said that if the jury found that the damages arose from the manner of loading, then there can be no recovery, on the theory that under Section 7 of the livestock contract, the responsibility of the shipper or the risk assumed by him did not exist until such animals were accompanied by the owner or by the shipper. 10

The Court: You may take exception to what I did say.

Mr. Price: Exception to your Honor's charge on that point where you said that the cattle were under the control of the shipper as soon as the contract was signed, under the theory that under the livestock contract, such risk or assumption of responsibility did not exist until such time as the cattle were actually accompanied by the shipper. 20

The Court: You may take exception to what I said on that subject.

Mr. Price: Also, wherein you said that if you find that the damage arose from lack of ventilation due to the manner of loading, then there can be no recovery, on the theory that the responsibility of the shipper for loading did not exist until such time as the cattle had actually been accompanied by him.

Also take exception to that portion of your Honor's charge where you said that the evidence was that Mr. Bertholf testified that he didn't expect to see the cattle until sometime at a station between New Milford and Scranton, on the theory that the testimony was that he intended to view them prior to the train leaving New Milford. 30

The Court: Where do you find any such evidence as that?

Mr. Price: Mr. Bertholf, I understand, testified to that effect. May I have an exception to your Honor's charge? 40

The Court: No, look and see if he did say so.

Judge's Charge

If he did, I will call them back. Never mind about that; I will call them back and tell them what you think.

Mr. Hartpence: We desire to except to the following portions of your Honor's charge, where you ask the question: Would there have been more air in the car attached to the train enroute to
 10 Scranton than in the yard at New Milford and if the car had been left in the New Milford yard, could the damage have been prevented.

And, also, if the damage resulted from the failure of the express company to perform any part of its contract, then there can be a recovery.

Also, to that portion where you instructed the jury and charged the jury that if the plaintiff was entitled to recover, was entitled to recover such profit as would have resulted to it, or it would
 20 have made on the milk from the cows.

The Court: What I said on that subject.

Mr. Hartpence: What you said on that subject, I take exception to.

The Court: Yes.

Mr. Hartpence: Our theory being, of course, that that isn't an element of damage.

And then, where you charged that it was a case for the jury to determine.

The Court: Yes.

30 Mr. Hartpence: On the theory that it was for the Court to determine and not for the jury.

The Court: Yes.

Mr. Hartpence: Also, where you charged the jury that if the damage complained of was due to the negligence of the Adams Express Company, then the Plaintiff can recover.

The Court: All right. Now, ask that jury to come back a moment, please.

(The jury returned.)

40 The Court (To jury): Gentlemen, there seems

Judge's Charge

to have been some question raised as to whether or not Mr. Bertholf expected to see the cattle in the New Milford yard when he arrived at 6:12 o'clock; so that is a question for you to determine; whether he testified to that fact or not, or whether he did not expect to see them until at some station along the line. All the evidence is for you to determine; not what the Court may have recalled; 10
not what counsel may have recalled; but you are to be the sole judges of all the evidence, and determine this case from the evidence that has been offered, as you understand it and heard it on the stand. That is all.

(The jury retired.)

Mr. Hartpence: If your Honor please, I also desire to except to what your Honor has just now said.

The Court: You may. 20

Mr. Hartpence: The expectation of the agent Bertholf when he reached the station, and also, if I may, to what your Honor previously charged.

The Court: You may have both.

Mr. Hartpence: With regard to his intention.

The Court: All right; you may have both, if you want it.

Mr. Hartpence: And his expectation along the line between New Milford and Scranton.

The Court: All right. You may take both. 30

Plaintiff's Requests to Charge.

The Plaintiff's requests to charge as originally submitted to the Court are as follows:

- 10 1. It is uncontradicted in this case that defendant's agent knew that the plaintiff's agent desired to accompany the cattle and misrepresented to him the time when the car would leave New Milford, and if you find that the damage would not have occurred but for such misrepresentation, then your verdict should be in favor of the plaintiff.
2. If you find that the said negligence or misrepresentation was in part the cause of the damage, then the defendant company is liable under clause 4 of the uniform express receipt. (Exhibit P-1.)
- 20 3. The shipper is not responsible for any damage that may have occurred from poor ventilation for the reason that under Section 7 of the livestock contract, such responsibility did not arise unless the shipper or his agent accompanied the cattle on the train.
4. The shipper is not responsible for any damage that may have occurred from loading the car for the reason that under Section 7 of the livestock contract, such responsibility did not arise unless the shipper or his agent accompanied the cattle on the train.
- 30 5. If you find the plaintiff is entitled to a verdict, it can recover the value of the cattle lost, the damage to the remaining cattle, and the loss of milk production from the remainder.
6. The plaintiff's agent had the right to rely on the statement of the defendant's agent as to the time when the car would leave.

r Tax: (Statement omitted from this form)

Exhibit P-1

UNIFORM EXPRESS RECEIPT

The Company will not pay over \$50, in case of loss, or 50 cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared and charges for such greater value paid.

Receiving Form 321
November 1917.

AMERICAN EXPRESS COMPANY.

(June, 1917.)

NON-NEGOTIABLE RECEIPT.

EXPRESS COMPANY
(Incorporated)

New Milford, Pa. 8503 5/21

1918

Received from E. D. Bertholf

subject to the Classifications and

tariffs in effect on the date hereof, car cows & calves (30 cows 23 calves)

, value herein declared by shipper

be \$3600.00

dollars.

(See footnote.)

Consigned to Erick L. Lagerquist

Titusville, N. J.

Charges, War Tax

Which the Company agrees to carry upon the terms and conditions printed on the back hereof, to which the shipper agrees, and as evidence thereof accepts and signs this receipt.

E. D. Bertholf

Shipper.

John F. Henning

For the Company.

NOTE.—The Company's charge, except upon ordinary live stock, is dependent upon the value of the property, as declared or released by the shipper. If the shipper desires to release the value to \$50 for any shipment of 100 pounds or less, or not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, the value may be released by inserting "not exceeding \$50," or "not exceeding fifty cents per pound," in which case the company's liability is limited to an amount not exceeding the value so declared or released.

Shipping Receipt.

EXHIBIT P-1.

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Exhibit P-2

Office Titusville, N. J. Date May 25, 1918

Mr. ERICK L. LAGERQUIST

To ADAMS EXPRESS COMPANY, Dr.

For transportation of the following described Shipment:

Pieces	Article	Weight	From Ed Bertholf	Advanced charges	\$
[°] 30	Cows	12857	New Milford Pa.		
+ 23	Calves	2300	Consigned to c/o Purity Farms	This Co.'s charges.....	144.16
[°] 9	Cows died en route		Erick L. Lagerquist	War Tax	7.21
	1 Escaped while unloading		At	Amount of C. O. C.....	
+ 3	Died en route 1 died while unloading at dest.		Titusville, N. J.	TOTAL.....	\$151.37

184

RECEIPT
For Shipper or Consignee

Received Payment:
W. H. HART

FORM LIVE STOCK CONTRACT FOR THE TRANSPORTATION OF ANIMALS OTHER THAN ORDINARY LIVE STOCK.
NOTICE TO SHIPPERS.—The Shipper must state the value of the shipment, which value must be in full of the value of the animals at the time of shipment.

said animals, and the same is not paid at once, the Shipper agrees that the Express Company may, at the option of the Shipper, the carrier or the consignee, pay charges for transportation both ways and all other expenses.

Section 7. Where said animals are accompanied by the owner or an attendant in his employ, the following further conditions shall apply, viz.: The Shipper agrees to load, transship and unload said animals at his own risk, the Express Company furnishing the necessary laborers to assist. The Shipper shall take care of, feed and water said animals while being forwarded or transported, whether delayed in transit or otherwise, and the Express Company shall not be under any liability or duty with reference thereto except in the actual forwarding thereof. The Shipper further undertakes to see that all doors and openings in the cars in which said animals are shipped are at all times so closed and fastened as to prevent the escape of any of said animals or injury thereto, and the Express Company shall not be liable on account of the escape of any of said animals or any injury thereto resulting from open doors or defective ventilation.

Attendants when transported free will be permitted to ride only in the car in which the animals are transported or in smoking cars, or second-class cars of the train, when furnished.

Section 8. The Shipper agrees that as a condition precedent to recovery hereunder for loss or injury or damage to or delay in delivery of this shipment, such loss, injury, damage or delay shall be proved by the Shipper to have been caused by negligence of the carrier, and in consideration of the free carriage of a person or persons as his agent or agents in charge of said animals where permitted under the Terminal and Switching Charges Tariff I. C. C. No. A-2095, supplements thereto and reissues thereof, to indemnify and save harmless the Express Company from all claims, liabilities and demands of every kind, nature and description by reason of personal injuries sustained by said person or persons so in charge of said animals whether the same be caused by negligence or otherwise.

Section 9. Upon the arrival of said animals and paraphernalia at destination, the Shipper or consignee shall forthwith receive said animals and paraphernalia and pay the charges due thereon, and if the Shipper or consignee shall fail or refuse to duly receive the same and pay any such charges, the Express Company, or the connecting carrier having said animals and paraphernalia in charge, may, as the Agent of the Shipper, have said animals and paraphernalia put and provided for in some suitable place at the cost and risk of the Shipper or consignee, and at any time or times thereafter may sell the same or any number of them, at public or private sale, with or without notice, as the said agent may deem necessary or expedient, and apply the proceeds arising therefrom, or so much as may be needed, for the payment of any freight or charges that may be due, and other necessary and proper costs and expenses.

Section 10. Claims for loss, damage or delay must be filed with the carrier at the point of delivery or at the point of origin within four months after delivery, or, in case of failure to deliver, after a reasonable time for delivery has elapsed, unless the loss, damage or injury was due to delay or damage while being loaded or unloaded or damaged in transit by carelessness or negligence of the Company.

Suits must be instituted within two years after the delivery, or, in case of failure to deliver, after a reasonable time for delivery has expired.

Unless claims are so filed and suits so brought the carrier shall not be liable.

Section 11. The provisions of this contract shall inure to the benefit of and be binding upon the consignor, the consignee and all carriers handling this shipment, and shall apply to any reconsignment or return thereof.

Signed in
TriPLICATE.

ADAMS EXPRESS COMPANY. }
By John F. Henning Agent. } Party of the
 } first part.
E. D. Bertholf }
(Owner or duly authorized agent of the Owner.) } Party of the
 } second part.

ATTENDANTS' CONTRACT.

THIS CONTRACT, made at the same place at which the annexed Live Stock Contract was executed and on the same date upon which said Live Stock Contract was made, Witnesseth:

WHEREAS, the annexed Live Stock Contract has been made for the transportation of certain animals as described therein; and

WHEREAS, it is necessary that the owner, or some person on his behalf, shall accompany and take charge of said animals;

In consideration of the free transportation of the undersigned attendant or attendants, where permitted under the Terminal and Switching Charges Tariff I. C. C. No. A-2095, supplements thereto and reissues thereof, upon the same train or trains wherein animals referred to in the foregoing contract are forwarded or transported, which said animals are to be under the charge of the undersigned, said transportation being performed at the instance and request of the undersigned, and it being made known to each of the undersigned that each respective express company does by contract agree to hold each of the railroad companies over which the undersigned is being transported as herein set out harmless against any injury or damage to the undersigned while being transported as herein set forth, each of the undersigned agrees that each of the carriers or railroad companies mentioned in the foregoing contract as to the transportation of the undersigned attendants is to perform a service not required of a carrier of passengers and not required of a common carrier and as to such transportation each of said carriers, express companies and railroad companies is and shall be liable only as a private carrier, and each of the undersigned attendants does severally agree to assume all risks of accident or damage to himself and does hereby release and discharge said ADAMS EXPRESS COMPANY and any connecting express company and any railroad company which may at any time be engaged in transporting, carrying or forwarding said animals or any of them and said attendants or any of them from any and all claims, liabilities and demands of every kind, nature and description for and on account of any injury or damages to person or property of any kind or nature sustained by him, whether the same be sustained while in, upon or about said cars or passing over or along the tracks or grounds of any of said railroad companies and whether caused by negligence or otherwise; and said attendants and the undersigned owner or owners do each for himself, his heirs and representatives agree to protect and hold said ADAMS EXPRESS COMPANY and any connecting express company and any of the said railroad companies harmless from all claims, liabilities and demands of every kind, nature and description by reason of any such injury or loss of life or property.

WITNESS the hands and seals of the parties hereto on the date aforesaid.

..... (Seal) Attendant.	(Owner or duly authorized agent of the owner.) (Seal)
..... (Seal) Attendant.	E. D. Bertholf (Seal) Attendant.
..... (Seal) Attendant.	 (Seal) Attendant.

STATEMENT.

REQUIRED OF SHIPPERS OF LIVE STOCK BY EXPRESS UNDER REGULATIONS OF UNITED STATES DEPARTMENT OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY.

This is to Certify that the 30 cows and 23 calves (Description of Stock)
delivered by me this day to the ADAMS EXPRESS COMPANY and consigned to Erick L. Lagerquist (Consignee)
at Pennington, N. J. (Destination) are not affected with glanders, or any other contagious, infectious or communicable disease.
(Signed) E. D. Bertholf (Shipper)

Date at New Milford, Pa., May 21st, 1918

INSTRUCTIONS TO AGENTS:

Live Stock Contracts must be executed in triplicate, each copy to be signed by the Agent of this Company, by the Shipper or his agent, and by any attendants accompanying; the original to be forwarded to the Superintendent or General Agent of the Division from which the shipment is made, the duplicate to be given to the Shipper, and the triplicate to accompany the waybill to destination.

Agents must refer to the latest issue of "Terminal and Switching Charges" tariff for the regulations governing the free carriage of attendants with carload shipments of live stock, live animals, etc., and enter in spaces provided below the number of such attendants entitled to free transportation with this shipment; and similar information must be shown on the original waybill for the shipment.

ATTENDANTS WILL BE CARRIED FREE WITH THIS SHIPMENT AS FOLLOWS:

..... Trainer and..... Attendants From..... To.....
..... Trainer and..... Attendants From..... To.....
..... Trainer and..... Attendants From..... To.....

EXHIBIT D-4.

F. E. Moore, Mgr. Telephone 60 Pennington, N. J.

PURITY FARMS, Pennington, N. J.

July 5, 1918.

10 R. W. Daniels, Esq.,
Claim Agent, Adams Express Company,
32 Trinity Place, New York City.

Dear Sir:

20 We have not received a reply to the claim which we put in on the 11th instant, your number K-78183-C, for \$1787.42, on account of shipment of cattle forwarded from New Milford, Pennsylvania, to our place at Titusville, New Jersey, on May 21st. We wrote you about it, formally presenting our claims on June 11th. We have heard nothing from you except the acknowledgment of our claim. Please let us know when this claim is going to be settled, as otherwise we shall be obliged to place the matter in the hands of our attorneys for action.

We are

Yours very truly,
PURITY FARMS,

30 By Erik L. Lagerquist.
518 Washington Avenue,
Brooklyn, New York.

EXHIBIT D- 5.

Inter-State Commerce Tariffs and Schedules.

(See excerpts read into the record at pp. 159,
160, 161.)

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New Jersey Court of Errors and Appeals

PURITY FARMS, a Corporation of
the State of New Jersey,
Plaintiff-Respondent,

vs.

ADAMS EXPRESS COMPANY,
Defendant-Appellant.

Action at
Law.

On Appeal
from
Supreme
Court. 10

BRIEF OF DEFENDANT-APPELLANT.

This is an action at law, brought in the Supreme Court of New Jersey, Bergen Circuit, for damages alleged to have resulted from the negligence of defendant in the transportation of 30 cows and 23 calves from New Milford, Pennsylvania, to Pennington, New Jersey. The shipment was made in pursuance of the uniform Live Stock Contract (Exhibit D-1; Case, p. 185), and accompanying Shipping Receipt (Exhibit P-1; Case, p. 183). Plaintiff's real ground of complaint is that defendant "agreed" with plaintiff that the car containing the cattle should be attached to Passenger Train No. 28, at New Milford, scheduled to leave at 6:12 P. M., but that it was attached to a freight train and sent out earlier than the passenger train, and because thereof plaintiff's agent was not given an opportunity to accompany the cattle, which it had been his intention to do for the purpose of looking after the welfare of the cattle *en route* (Complaint, Par. 6-10; Case, p. 9, 64). Plaintiff further complains (*Id. Sec. 11*) that—

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10 "11. By reason of the improper ventila-
 "tion of said car, that said car was improper
 "for the shipment of cattle, and that said
 "cattle were without an attendant, upon the
 "arrival at Scranton of said stock in said
 "baggage express car, eight cows and three
 "calves were found dead, one cow died after-
 "wards as the result of the poor ventilation
 "and because of lack of an attendant and one
 "escaped while the cattle were being unload-
 "ed at Scranton. Another of the calves died
 "enroute from Scranton to Titusville. As
 "the result of the aforesaid negligence of the
 "defendant the remainder of the cattle were
 "found to be in bad physical condition."

20 The car was loaded by plaintiff's agent Bertholf
 at New Milford, and, at his direction, all the doors
 were closed, and all but one were sealed (Case,
 pp. 53, 54). Right after this had been done,
 (about 4:30 p. m.) the Live Stock Contract and
 the Shipping Receipt were executed (Case, p. 52),
 and Bertholf then left the car in the railroad
 yard unattended and went home, returning to the
 station just in time to board No. 28, (Case p. 34,
 59, 61, 64). He then learned that the car load of
 cattle had been sent on the earlier freight (Case,
 p. 35). The freight train was a D. L. & W. train,
 30 and known as a "Manifest Freight",—that is a
 fast, through train,—and was not scheduled to
 stop between Elmira, New York, and Scranton,
 Pennsylvania, except on railroad orders, (Case,
 pp. 127, 164-166). It left New Milford about
 4:45 P. M. and reached Scranton about 6:35 P. M.
 (Case, pp. 124, 131, 164), which was shortly after
 the time No. 28 left New Milford. No. 28 was a
 local passenger train, and did not reach Scranton
 until about 8:30 P. M. (Case, p. 59). Carload ex-
 40 press shipments were sent out by passenger and
 freight trains indifferently. (Case, pp. 132, 133,

134.) The express charges were assessed according to the filed tariffs and classifications (Case, pp. 86, 135).

While the car was in the Scranton Yards, where it was necessary to transfer it to another train for further transportation to destination, the cattle were discovered to be in distress from lack of air, and the doors and windows were broken open, and later the cattle were removed. A number were dead, one escaped, and damage 10 resulted to others (Case, pp. 37, 38, 167). This was due to lack of air and improper ventilation (Case, p. 81).

Defendant's chief contention was that the shipment, being inter-state in character, was governed entirely by the filed tariffs and classifications, and the Live Stock Contract and Shipping Receipt, which were part thereof; that they could not be departed from or varied; that parol evidence of the alleged arrangement between Ber- 20 tholf and the express agent at New Milford was inadmissible to vary either the contract or the tariffs; that whatever was said between them could not bind defendant, and the statements of the express agent were not made within the scope of his authority, and were purely gratuitous remarks; that the plaintiff could not claim the right to shipment on any particular train; that under the terms of the contract the agent of shipper was in charge of the car from the time of loading 30 and issuance of the Contract and Shipping Receipt, and that the responsibility for the loss complained of fell upon plaintiff.

Motions were made for non-suit and direction of verdict for defendant, which were refused (Case, pp. 153, 172).

The jury found a verdict in favor of plaintiff and against defendant for \$1200., for which sum judgment was entered (Case, pp. 22, 23, 24).

From that judgment the present appeal is 40 taken.

I.

By the live stock contract (Exhibit D-1), defendant undertook "to forward, subject to the classification and tariffs" the shipment in question. (See Section 1.)

By Section 5 the defendant was relieved from liability "for the conduct or acts of the animals to themselves or to each other, such as biting, 10 kicking, goring or smothering".

Section 7 provides as follows:

"Where said animals are accompanied by
 "the owner or an attendant in his employ,
 "the following further conditions shall apply, viz: The shipper agrees to load, transport and unload said animals at his own risk, the Express Company furnishing the necessary laborers to assist. The shipper shall take care of, feed and water said animals while being forwarded or transported, 20 whether delayed in transit or otherwise, and the Express Company shall not be under any liability or duty with reference thereto except in the actual forwarding thereof. The shipper further undertakes to see that all doors and openings in the cars in which said animals are shipped are at all times so closed and fastened as to prevent the escape of any of said animals or 30 injury thereto, and the Express Company shall not be liable on account of the escape of any of said animals or any injury thereto resulting from open doors or defective ventilation".

The Live Stock Contract was part of the filed tariffs (Case, p. 159).

The tariffs (Ex. D-5) also contained the following provisions, which were read into the record 40 at the trial in order to avoid the printing of the

entire schedules in case of appeal (Case, pp. 159):

“Shipments bearing special instructions.
 “If shipments are accepted bearing special
 “instructions of the shipper to the Express
 “Company, affecting the handling or deliv-
 “ery of shipments, and calling for service
 “not provided for elsewhere in the tariffs or
 “classifications of the Express Company, no
 “responsibility for compliance with such in- 10
 “structions will be assumed, nor will claims
 “be paid by the Express Company for failure
 “to observe or comply with such special in-
 “structions.”

The contract was not subject to variation nor could it be added to or altered by parol evidence.

Naumberg v. Young,
 44 N. J. L. 331.

Not only did the filed tariffs fail to provide for special contracts, available to all shippers, but on the contrary specifically forbade them. 20

C. & A. RR. Co. v. Kirby,
 225 U. S. 155; 56 L. Ed. 1033.

In the Kirby case, Mr. Justice Lurton, speaking for the Supreme Court of the United States, said, quoting from *Armour Packing Co. v. U. S.*, 209 U. S. 57; 52 L. Ed. 681— 30

“That the broad purpose of the Commerce Act was to compel the establishment of reasonable rates and the uniform application. That purpose would be defeated if sanction be given to a special contract by which any such advantage is given to a particular shipper as that contracted for by the defendant in error. To guarantee a particular connection and transportation by a particular train was to give an advantage or 40

preference not open to all, and not provided for in the published tariffs.' ”

And further:

10 “That the defendant in error did not see and did not know that the published rates and schedules made no provision for the service he contracted for is no defence. For the purposes of the present question he is presumed to have known

“The judgment was rested upon the damages resulting from the breach of the special contract, and not at all upon the liability of the carrier otherwise.

20 “For the error in not holding the special contract invalid under the Interstate Commerce Act, the judgment must be reversed and the case remanded for such further proceedings as are not inconsistent with this opinion.”

See also the following cases in which the Kirby case has been subsequently cited and followed:

M. K. & T. Ry. v. Harriman,
227 U. S. 657, at 671.

Kan. Sou. Ry. v. Carl,
227 U. S. 639, at 652.

B. & M. R. Co. v. Hooker,
233 U. S. 97, at 111.

30 *L. & N. R. R. v. Maxwell*,
237 U. S. 94, at 98.

Sou. R. Co. v. Prescott,
240 U. S. 632, at 638.

G. F. & A. Ry. v. Blish Co.,
241 U. S. 190, at 197.

II.

That the shipment involved is subject to and governed by the Interstate Commerce Act and the decisions thereunder is well settled.

Spada v. Penna.

86 N. J. L. 187.

Olivit v. Penna.

88 N. J. L. 241.

*International Watch Company v. D. L. 10
& W. R. Co.*

80 N. J. L. 553 (Aff. in 82 N. J. L.
528)

P. C. C. & St. L. R. R. Co. v. Fink,
250 U. S. 577.

*Wells Fargo & Co. v. Neiman-Marcus
Co.*

227 U. S. 469.

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III.

In the *Fink* case, *supra* the Court said:

“It is alleged that a different rule should be applied in this case because Fink, by virtue of his agreement with the consignor, did not become the owner of the goods until after the same had been delivered to him. There is no proof that such agreement was known to the carrier, nor could that fact lessen the obligation of the consignee to pay the legal tariff rate when he accepted the goods Nor can the defendant in error successfully invoke the principle of estoppel against the right to collect the legal rate. Estoppel could not become the means of successfully avoiding the requirement of the act as to equal rates, in violation of the provisions of the statute.”

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In the *Prescott* case, *supra*, the Court said:

10 "It is also clear that, with respect to the service governed by the Federal statute, the parties were not at liberty to alter the terms of the service as fixed by the filed regulations. . . . This is the plain purpose of the statute in order to shut the door to all contrivances in violation of its provisions against preferences and discriminations. No carrier may extend 'any privileges or facilities,' save as these have been duly specified. And as the terminal services incident to an interstate shipment are within the Federal act, and the conditions of liability while the goods are retained after notice of arrival are stipulated in the bill of lading under the filed regulations, the conditions thus fixed are controlling, and the parties cannot substitute therefor a special agreement."

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In the *Blish Milling Co.* case, *supra*, the Court said:

30 "It is urged, however, that the carrier, in making the misdelivery, converted the flour and thus abandoned the contract. But the parties could not waive the terms of the contract under which the shipment was made pursuant to the Federal act; nor could the carrier by its conduct give the shipper the right to ignore these terms which were applicable to that conduct, and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations. A different view would antagonize the plain policy of the act and open the door to the very abuses at which the act was aimed We are not concerned in the present case with any question save as to the applicability of the provision, and its validity, and as we find it to be both

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applicable and valid, effect must be given to it."

In the *Neiman-Marcus* case, *supra*, the Court said:

"The court of civil appeals, while not in express terms denying the validity of such a stipulation limiting recovery, did so in effect, for it seems to have placed its judgment of affirmance upon the rule requiring 10 the company's agents to ask the shipper to declare the value, and if no value is stated, that the package should be stamped 'Value asked and not given.' This was not done. Therefore, said the court, 'the company's agent failed to perform a plain duty . . . and it is in no attitude to complain that the shipper did not state the value.'

"But the shipper, in accepting the receipt reciting that the company 'is not to be held 20 liable beyond the sum of \$50. at not exceeding which sum said property is hereby valued, unless a different value is hereinabove stated,' did declare and represent that the value did not exceed that sum, and did obtain a rate which he is to be assumed to have known was based upon that as the actual value."

In the *Maxwell* case, *supra*, the plaintiff after 30 interviews and correspondence with the representative of the railroad company, purchased two passenger tickets from Nashville, Tennessee, to Salt Lake City, Utah, going by one route and returning by another. He paid for each ticket the sum of \$49.50. He was informed, in the correspondence referred to, that he could make the trip on reduced rates one way, and return another; and when he finally purchased the tickets, he stated to the agent the routing he desired, and 40

was given the tickets in question at the rates mentioned. As a matter of fact, he could have gone to Salt Lake City and returned at the rate which he paid, but by different routes than those given. Under the published rates filed pursuant to the Interstate Commerce Act, the fare over the route actually traveled aggregated fifty-eight dollars and thirty cents more than the amount paid by Maxwell for the tickets in question. He was in
 10 no way at fault in the matter. He merely told the agent the points to which he wished to go. The agent fixed the routing in the tickets and named the fare, and Maxwell paid without further question. The railroad brought an action for the difference, but judgment was rendered in favor of the defendant. In reversing this judgment, and holding that the railroad was entitled to recover in accordance with the provisions of the filed tariffs, the Court said:

20 “Under the Interstate Commerce Act, the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is
 30 undeniably strict, and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of Interstate Commerce in order to prevent unjust discrimination . . .

40 “The Supreme Court of the State fully recognized the established principle, but stated that the majority of the court were of the opinion that it was not controlling here, for the reason that Mr. Maxwell could have gone to the point of destination, Salt

Lake City, on one route, and have returned on another route, at the price actually paid for the tickets, and, that, therefore, 'the mere misrouting of the ticket by the railroad company' was not a discrimination. In thus holding the assumption was that there was an error on the part of the railroad company in the routing, by which he was misled, and that, as it is said, Mr. Maxwell 'could have gone to Salt Lake City at the price paid over 10 other routes,'

"We are unable to reach the conclusion that this ground of decision was available under the findings of fact. according to the findings, he was not entitled at the rate which he paid to make the trip through Chicago and Denver, returning as he desired, through Stamford, Texas. We are not concerned with the reasons for the differences in rates on the various routes, but merely with 20 the fact that they existed under the applicable tariffs as filed. Under these tariffs, the findings of fact show that the amount paid was less than the amount due over the route selected."

"The judgment is reversed."

IV.

Appellant respectfully submits therefore, that it was error for the trial court to admit any evidence of a special arrangement between the Agent of the shipper and the Agent of the Express Company at the time of the shipment; and of the intention of the Shipper's agent, had he accompanied the cattle from New Milford to Scranton; in permitting the witnesses Henning and Hull to testify in regard to the transportation of the cattle by freight or passenger train; and in submit- 30 40

ting the case to the jury. The motion to strike out the objectionable evidence (Case, p. 152) should have been granted, and verdict in favor of defendant directed.

The specific objections set forth in the Grounds of Appeal (Case, pp. 2 to 7) are corollary to these propositions and are not therefore discussed in detail.

10 The proximate cause of the damage complained of was the failure of Bertholf, the shipper's agent, to remain with the car after he had finished loading the cattle, and after the contract of shipment had been executed. From that moment it was at the risk of the shipper in the respects mentioned in the contract. Any statement made by the Express Agent with regard to the transportation of the car could not affect that risk nor the liability of the shipper, and he was not shown
20 to be authorized to bind defendant by such statements.

King v. At. C. Gas Co.,

70 N. J. L. 679; at 671, where the Court said:

30 "In the case of *Huebner v. Erie Railroad Co.*, 40 *Vroom* 327, this court has recently had occasion to reiterate the rule that in a suit against a master testimony as to declarations made by a servant is irrelevant and inadmissible as hearsay unless made in pursuance of a special authority. The illustrative cases cited in that opinion show that where one authorizes another to speak for him he may be confronted by testimony as to what his representative said within the scope of his authority; but where the employment is purely mechanical the master is not bound by what his servant may choose to say while at work."

Standard Oil Co. v. Linol Co.,

40 75 N. J. L. 294.

In the *Standard Oil Co.* case, *supra*, the Court said:

“From the brief of counsel for the defendant, rather than from the state of the case, it is to be gathered that what the defendant wanted to prove was a series of statements made by persons not authorized to bind their employer by volunteer declarations or narratives touching the master’s affairs. It can not be too often pointed out that the mere fact that one employs others to work for him does not make him chargeable with what they may say about him or his affairs while in his employ; if he employs them to talk for him a different case may be presented.” 10

The filed tariffs and schedules are controlling. The livestock contract was a part of the filed tariffs. The parties were bound thereby, even though they had not special knowledge of their contents and provisions. 20

Under the *Kirby* case, *supra*, and others cited, any special contract not provided for in the tariffs would be void; and in the present case such special arrangements were specifically forbidden.

V.

It is respectfully urged, therefore, that the judgment of the Supreme Court under review should be reversed, set aside and for nothing holden, and that judgment should be directed to be entered in favor of the defendant-appellant and against the plaintiff-respondent, with costs. 30

Respectfully submitted,

JOHN R. PHILLIPS, JR.,
WALL, HAIGHT, CAREY & HARTPENCE,
Of Counsel with Defendant-Appellant. 40

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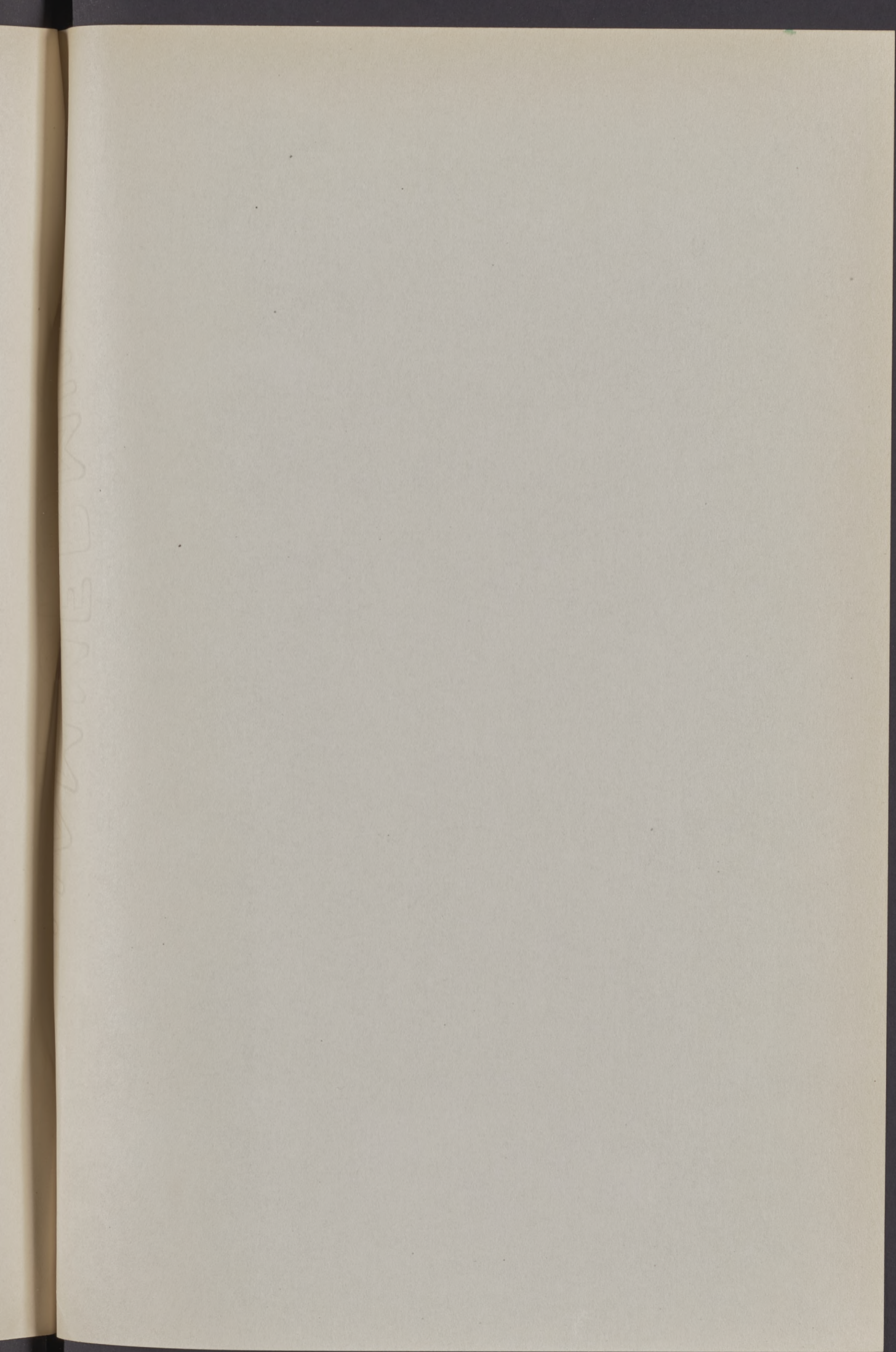
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