# New Jersey Court of Errors and Appeals

(No. 9, June Term, 1918.)

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| New York Central Railroad Company, *Plaintiff-Respondent,* *vs.* Frank Petrozzo, *Defendant-Appellant.* | Action at Law. On Appeal from New Jersey Supreme Court. |

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## BRIEF OF PLAINTIFF-RESPONDENT.

This suit was brought to recover the demurrage and storage charges accruing on a shipment of merchandise from Morristown, New Jersey, to Penn Yan, New York. On the trial before Judge William H. Speer, Circuit Judge, with a jury, in the Morris Circuit, a verdict was directed in favor of plaintiff and against defendant for $208.25, and judgment thereupon was entered on May 24, 1917. It is from that judgment that the present appeal is taken, the appellant alleging the action of the Trial Court in directing the said verdict as the sole ground of appeal, and contending that the case should have been submitted to the jury on the questions stated in his brief.

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## I.

The shipment was Inter-State in character, and is therefore governed by the statutes and rules pertaining to such shipments.

*Spada* vs. *P. R. R. Co.*, 86 N. J. L. 187;
*International Watch Co.* vs. *D. L. & W. R. R. Co.*, 80 N. J. L. 553; affd. 82 N. J. L. 528;
10 *Erie R. R. Co.* vs. *Wanaque Lumber Co.*, 75 N. J. L. 878;
*Olivit* vs. *P. R. R.*, 88 N. J. L. 241;
*Standard Combed Thread Co.* vs. *P. R. R. Co.*, 88 N. J. L. 257;
*Adams Express Co.* vs. *Croninger*, 226 U. S. 491; 57 L. Ed. 314;
*B. & M. R. R. Co.* vs. *Hooker*, 233 U. S. 97 58 L. Ed. 868;
20 *L. & N. R. R. Co.* vs. *Maxwell*, 237 U. S. 94; 59 L. Ed. 853.

## II.

Under the filed tariffs in evidence, the demurrage and storage charges accrued, as testified to by the witness Metcalf (Case, pp. 7, 9-10), and as later computed by counsel (Case, p. 25), in accordance with the rules contained therein. We think
30 that the Trial Court correctly stated the law governing the transaction involved and properly directed the verdict (Case, pp. 25, *et seq.*).

*Cases cited supra;*
*Ga. F. & A. Ry.. Co.* vs. *Blish Milling Co.*, 241 U. S. 190; 60 L. Ed. 948;
*M. K. & T. R. R. Co.* vs. *Ward*, 244 U. S. 383; 61 L. Ed. 1213;
*St. L., I. M. & Sou. Ry. Co.* vs. *Starbird*, 243 U. S. 592; 61 L. Ed. 917;
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*Poor Grain Co.* vs. *C. B. & Q. Ry. Co.*, 12 I. C. C. 418;

*Kan. City Sou. Ry. Co.* vs. *Carl*, 227 U. S. 639; 57 L. Ed. 683;

*Tex. & Pac. Ry. Co.* vs. *Mugg*, 202 U. S. 242 ; 50 L. Ed. 1011.

## III.

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It is respectfully submitted that the judgment under review should be affirmed.

VREDENBURGH, WALL & CAREY,
JOHN A, HARTPENCE,
*Of Counsel with Plaintiff-Respondent.*

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# INDEX.

# New Jersey Supreme Court.

NEW YORK CENTRAL RAILROAD CO.,
*Plaintiff,*
*vs.*
FRANK PETROZZO,
*Defendant.*

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Morristown, N. J., May 9, 1917.

Before Hon. William H. Speer, *Judge,* and a jury.

For the Plaintiff, Vredenburgh, Wall & Carey.

George T. Vredenburgh, of Counsel.

For the Defendant, Vreeland & Wilson.

C. F. Wilson, of Counsel. 20

A jury was accepted and sworn.

Mr. Vredenburgh opens the case to the jury.

Mr. Wilson opens the case to the jury.

*Mr. Wilson.* It is stipulated and agreed by and between the attorneys for the plaintiff and defendant, that Frank Petrozzo shipped on November 22, 1912, by car No. 94,404, 1,030 baskets and boxes to Millspough & Smith at Pen Yan, N. Y., and paid the agent of the Lackawanna, $36., the freight charges thereon. 30

*The Court.* What was the date of the shipment?

*Mr. Wilson.* November 22, 1912, your Honor.

CYRUS N. BACON, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*Direct examination* by Mr. Vredenburgh.

Q Where are you employed, Mr. Bacon?

A I beg your pardon? 40

Q Where are you employed?

A Pen Yan.

Q By whom?

A New York Central Railroad Company.

Q In what capacity?

A Freight and ticket agent.

Q What was your employment at the time this shipment arrived?

10 A I was chief clerk there in the freight office.

Q Were you then acting in the capacity of freight agent on account of the sickness of Mr. Walter, the freight agent?

A Yes, sir.

Q Have you records there which show the arrival of this shipment in Pen Yan?

A Yes, sir, December 3rd, 1912.

Q When did the demurrage start to run on that? That is, when was the free time up?

20 A I think I have not that on this paper, but as I remember it, the 3rd of December, 1912, was on Sunday.

Q Have you got it in your papers (handing papers to witness)?

A I don't think it is in either of these.

Q If it arrived December, 1912, when would the free time be over?

A December 3rd, being Sunday, the free time would have—the car would not be placed until Mon-

30 day, consequently it would have Tuesday and Wednesday, free time.

Q And the demurrage would start to run—

A From Thursday morning. I think that Sunday—December 3rd, 1912, fell on Sunday.

Q That is December 7th?

A December 3rd.

Q When was the shipment unloaded from the car?

40 A December 27th, 1912.

Q I mean how many days, not counting Sunday?

A There was eighteen.

Q How many days was it?

A Well, that would be twenty-four days.

Q Where did you unload the shipments?

A Why didn't we?

Q Where?

A In our storehouse. 10

Q How long did it lie in the storehouse?

A It was there until August 12, 1913.

Q Did you then sell it?

A Yes, sir.

Q How much did you sell it for?

A Five dollars.

Q Is that the net proceeds of the sale?

A Yes, sir.

Q Is that the highest bid you could get for it?

A That is the highest bid we could get for it. 20

Q Did you try hard to get a higher bid?

A Yes, sir.

Q Now, when the shipment arrived in Pen Yan, what did you do?

A Notified the consignee that the shipment was there.

Q You mean Mr. Millspough, who is here in court?

A Millspough & Smith consignment.

Q What did he do then? 30

A He wanted to inspect the car before he would accept it.

Q Did you obtain permission from Frank Petrozzo, the defendant, to inspect it?

A Yes, sir.

Q What did Mr. Millspough do then?

A They inspected the car and refused it.

Q In what condition did he find the car?

*Mr. Wilson.* I object. It does not appear, 40

if your Honor please, that the condition, or anything, of the car, or that his refusal has anything to do with this suit, so far as I can see. In other words, it is immaterial what Millspough & Smith refused to do. It so seems to me.

*The Court.* Suppose Millspough & Smith had refused to accept the shipment from you?

10 *Mr. Wilson.* Well, maybe I am a little previous in my objection, because it does not yet appear what they told us.

*The Court.* I think I will permit the answer.

(Question read.)

A Bad condition.

Q Did he then refuse to accept it?

A Yes, sir.

Q Did he state why he refused to accept it?

20 A The contents were not worth the charges.

Q Were you later informed by the Delaware, Lackawanna & Western agent that the charges on the car should have been billed collect instead of prepaid?

*Mr. Wilson.* I object to that, not what it should have been; what it was.

*Mr. Vredenburgh.* I will put it what it was first. Strike that out.

Q Did the way bill, when you received it, read

30 "charges collect?"

A Yes, sir.

Q Were you later informed by the agent in Morristown that the charges had been prepaid?

A Yes, sir.

Q Did you so inform Mr. Millspough?

A Yes, sir.

Q Did he then refuse to receive the shipment?

A Yes, sir.

40 Q Why?

A On account of the condition of the baskets and boxes.

Q Did he say anything to you about having to pay for the baskets when he took them?

*Mr. Wilson.* I object.

*The Court.* If this was a part of the refusal, I think he could state it. He may state what was said by Millspough at the time he refused to receive the baskets at the second time when he was informed that the charges were prepaid. (Question read.) 10

A Yes, sir.

Q What did he say?

A I couldn't tell you exactly what he said, but he said—

*The Court.* If you cannot tell us, then do not try.

Q Did he say anything about having to pay for them? 20

*Mr. Wilson.* That is leading, if your Honor please. I object to it.

*The Court.* That is. I sustain the objection to it.

Q Did you then inform your superior in New York City, Mr. Calkins, why the shipment had been refused?

A Yes, sir. 30

*Cross examination* by Mr. Wilson.

Q Mr. Bacon, you say the goods were kept on storage from December 27th, 1912, to August 12, 1913?

A They were in the storehouse from December 27, until August, 1913.

Q In the storehouse on December 27th?

A Yes, sir.

Q That was twenty days after December 27th? 40

A Yes, sir, if you figure that way.

Q How many days does the railroad figure the car was on the track from December 7 until December 27?

A Why, it was twenty days.

Q How were the consignees notified of the arrival?

A By postal notice.

10 Q And when was that notice sent?

A December 4th.

Q How soon after that did you see either Millspough or Smith?

A On the same day.

Q On December 4th?

A Yes, sir.

Q How long after that was it before request was made for inspection?

A The same day.

20 Q And how was that made?

A By word.

Q To whom?

A The agent at Morristown.

*Mr. Vredenburgh.* Is this on December 24th, you say?

Q December 4th, you say?

A Yes, sir.

Q Was permission given to inspect the car?

30 A Yes, sir.

Q When was that received

A (Referring to papers) December 11th.

Q Mr. Bacon, is this your signature (showing paper to witness)?

A Yes, sir.

(Paper marked D. 1 for identification.)

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PERCIVAL METCALF, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*Direct examination* by Mr. Vredenburgh.

*Mr. Vredenburgh.* I offer in evidence the storage tariff which has been certified by the Interstate Commerce Commission. The demurrage tariff I could not obtain an extra copy of to have certified, so I have the original copy, which the railroad company has together with the certification or rather the certificate that it is the one, a copy of the one which was originally filed. That is sufficient.

Q I show you first the storage tariff and second, the demurrage tariff. (Handing papers to witness.) Where are you employed, Mr. Metcalf?

A Employed by the New York Central Railroad Company, in the freight tariff bureau.

Q How long have you been so employed?

A About twelve years in the tariff bureau.

Q Is reading tariffs your business?

A Well, I compile tariffs and check freight charges and quote rates.

Q From the demurrage tariff you have, which is the copy of the one on file in Washington, and applicable to this shipment, will you kindly state what demurrage charges accrued on this car at Pen Yan, N. Y., from December 7th to December 27th, 1912, December 7th being Thursday?

A I think perhaps I had better read from the tariff first, the clause from the tariff, and then we can figure it afterwards, if that is—

Q No, you just figure what the charges are?

A Well, during that period, isn't that covered by demurrage?

Q Did I say storage?

A You said between December 7th and 27th, was it?

*Mr. Wilson.* What was the demurrage charge for that time?

*Witness.* I have not the demurrage tariffs here. The storage does not accrue until afterwards.

10 Q You have both of them?

A No, I have the storage, unless what you have given me right here is the demurrage. Well, I have never seen these before. You just handed these to me. I had the storage tariff, which would apply after the property was unloaded from the car, put in storage.

(Copy of letter dated January 8, 1913, marked P. L.)

*Witness.* I am afraid I will have to have a
20 calendar on account of the Sundays.

Q I see December 7 was Thursday and December 25 was Christmas.

*Mr. Wilson.* While he is figuring, if you Honor please, we will offer in evidence some exhibits, documentary. Mr. Vredenburgh may mark them. They are ours. He may mark them as his own, I suppose, if he wants to.

(Telegram from R. L. Calkins to Frank
30 Petrozzo, dated December 13, marked P. 2.)

(Telegram, R. L. Calkins to Frank Petrozzo, dated December 11th, marked P. 3.)

(Telegram, Frank Petrozzo to R. L. Calkins, dated December 12th, marked P. 4.)

(Telegram, R. L. Calkins to Frank Petrozzo, dated December 26th, marked P. 5.)

(Telegram, Vreeland & Wilson to Robert L. Calkins, dated December 28th, marked P. 6.)

(Telegram, R. L. Calkins to Vreeland & Wil-
40 son, December 31, marked P. 7.)

(Telegram, Vreeland & Wilson to Robert L. Calkins, dated December 31, marked, P. 8.)

(Letter, C. N. Bacon, agent, to Frank Petrozzo, dated December 6, 1913, marked P. 9; this having been previously marked D. 1. for identification.)

Q How much is it?

A Well, figuring from December 7th to the 27th, I find there is three Sundays and Christmas, and legal holidays. And Sundays are excluded, no charges made for demurrage, and that would leave sixteen days, and the charge is a dollar per day. It would be $16. 10

Q Now, according to the storage tariff you have there, what are the storage charges at Pen Yan, from Deecmber 28th, 1912, to August 12th, 1913?

A August 12th was that, please?

Q To August 12th, 1913, from December 28th? 20

A A calendar is very useful in figuring these things.

*Mr. Vredenburgh.* Have not you got a calendar?

(Calendar handed to witness.)

Q Is that this year's calendar?

A I have not this year's, but I think I can figure it from that.

(Witness figures.)

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Q According to the storage tariff of the company, which was in effect at the time this shipment was held at Pen Yan, it provides for charges on less carload shipment and on carload shipments, which this was one, the tariff provides that on carload shipments which are unloaded by the company for the purpose of releasing needed equipment, they are subject to a storage charge the same as would have accrued under car demurrage rules, had the freight remained in the car. There is not 40

a special charge for the storage, and they apply the demurrage rules in a case of that kind on carload property; that throws us back into the demurrage tariff, and I figured it up as well as I could—I think it is about accurate—from the calendars I have here, and I figure during the period from December 28th, 1912, to August 12, 1913, there were 227 days, and the tariff provides for a deduction, or no charge for Sundays or holidays, and on Mondays, which follow a Sunday, and deducting those thirty-four Sundays, five holidays, and thirty-four Mondays, a total of seventy-three, would leave 154 days on which the demurrage should be charged, at the rate of $1.00 per day, as provided for in the tariff. That would make a charge of $154.

Q You are talking about thirty-four Mondays, are you?

A Yes, I took out thirty-four Sundays.

Q And that provision is, you only took out Monday, where the holiday comes on Sunday?

A I didn't read it that way. I may be mistaken.

*Mr. Vredenburgh.* I offer this letter in evidence.

(Letter marked P. 10.)

(Answer to letter marked P. 10, marked P. 11.)

*Witness.* I stand corrected. I am wrong about the Mondays. As you say, the tariff provides, on reading the rules more carefully, that the Monday is not counted, except where it falls after a Sunday, a holiday falling on Sunday, so that would count out the Mondays and bring that down to a total of 227 days, deducting thirty-four Sundays and five holidays, leaving a net number of days of 188, at a dollar per day, $188.

*Mr. Vredenburgh.* That is all.

*Witness.* I am sorry that I made that mistake. The tariff is very complicated.

Q Is your certificate attached, the New York Central certificate?

A Yes.

*Mr. Vredenburgh.* I offer these two tariffs in evidence, New York Central and Hudson River Railroad Co., West Shore Railroad Co. 10

(Marked P. 12 and P. 13.)

BLOOMFIELD PHILHOWER, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*Direct examination* by Mr. Vredenburgh.

Q You work for the Delaware, Lackawanna & Western Railroad?

A Yes, sir. 20

Q In what capacity?

A Freight agent.

Q Were you employed in 1912?

A Yes, sir.

Q How long have you been employed?

A About sixteen years in Morristown.

Q Are you familiar with the customs of the merchants in Morristown, who receive consignments of fruit?

A Yes, sir. 30

Q In baskets and boxes, such as the ones in this case?

A Yes, sir.

Q From your experience with such shipments, what is the custom in returning the boxes from the man in Morristown to the out of town man who shipped in the fruit?

*Mr. Wilson.* I object, if your Honor please; the custom of fruit shippers here does not apply to this defendant, insofar as I can see. 40

*The Court.* Why not?

*Mr. Wilson.* What the custom is would not bind the plaintiff at all. Suppose he had a special contract?

*The Court.* Well, if he did have a special contract, the custom would not apply. If he did not, the custom would apply.

10 *Mr. Wilson.* It seems to me immaterial, because he said in his opening they had a contract.

*The Court.* What is your point about it?

*Mr. Vredenburgh.* My point is that I want to show the custom and the relationship.

*The Court.* What is the point about it when you get it in; what is the value of it? If you opened that you had a special contract, why, custom enters into it none at all.

20 *Mr. Vredenburgh.* I withdraw that question. That is all, Mr. Philhower.

STEPHEN B. MILLSPOUGH, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*Direct examination* by Mr. Vredenburgh.

Q What is your business, Mr. Millspough?

A Well, I have not any special just now; dealing a little.

30 Q What was your business in 1912?

A Produce business.

Q Did you ship any boxes mentioned in this case, crate loads to Mr. Petrozzo?

A Yes, sir.

Q Will you state to the jury what your understanding or agreement was with Mr. Petrozzo with regard to the return of the boxes and baskets?

A Well, my agreement called for the trays would be returned.

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Q The trays?

A Trays and boxes would be returned, for which I would pay him ten cents a piece for them.

Q You would pay him ten cents a piece for them?

A Yes, sir.

Q Before you paid the ten cents, did that belong to you or belong to Mr. Petrozzo?

A They belonged to Mr. Petrozzo. They were figured right in with his bill. 10

Q When they were shipped back to you at Pen Yan, if you received them, then you would pay the ten cents apiece for them?

A That is, in the crate for them.

Q I show you what appears to be a bill on the letter-head of Frank Petrozzo addressed to Messrs. Millspough & Smith, dated November 25, 1912 (reading). Did you receive that letter from Mr. Petrozzo? 20

A Yes.

Q Are the baskets and boxes referred to the baskets and boxes in this shipment?

A Yes, sir.

Q Is that the original bill of lading?

A That is the one he sent.

*Mr. Vredenburgh.* I offer those in evidence.
(Letter of November 25, 1912, marked P. 14.)
(Bill of Lading marked P. 15.) 30

Q When these boxes arrived in Pen Yan, were you so notified by Mr. Bacon?

A Yes, sir.

Q Did you then, after obtaining permission to examine them, did you do so?

A Yes, sir.

Q In what condition were they?

A They were all broken, most of them worthless baskets; there was only a very few trays which I saw intact in the car, perhaps a dozen. 40

Q If you had accepted delivery of this consignment, would you have had to pay Mr. Petrozzo $103?

A $130.

Q I think the bill reads—

A Oh, yes, I guess it was $103.

Q In your opinion, in the business, what were those boxes worth?

10 A Why, perfectly worthless to use again.

Q For your purpose?

A Yes, sir.

Q Mr. Bacon says he sold them again for $5.00. Do you think that is the best price he could have got around there?

A Why, I would not have given that for it. I told Mr. Bacon, when I looked at them, they was not worth throwing out of the car for kindling wood.

20 Q Were you first informed by Mr. Bacon there were freight charges due?

A Yes, sir.

Q Were you later informed the freight charge was paid and not due?

A Yes, sir.

Q Did you still refuse to accept them?

A Certainly.

Q Why?

A Because they were worthless and I did not

30 want to pay the money out for something that was not any good.

*Cross examination* by Mr. Wilson.

Q Were you a partner of Smith's in 1912, December, 1912?

A Yes, sir—no, no. I think that I was in November, but I think I bought him out in the same month, in November, I think. I think I bought him out the 25th of November; something like that.

40 Q 1912?

A Yes, sir.

Q When did you notify Petrozzo that you did not want to take the boxes and baskets?

A I never notified him.

Q What did you do with the bill that you received? Did you write to him or communicate with him about it?

A No, sir.

Q After that time did you ever have any communication with Petrozzo? 10

A No, sir.

Q About this matter?

A No, sir.

Q You and Petrozzo had some dispute about this matter, did you not?

A Yes, sir.

Q When was it, if you can remember, that the plaintiff notified you the freight was paid?

A It was some time in December; I couldn't just tell when. Oh, that the plaintiff notified me? 20

Q Yes?

A He never notified me.

Q The plaintiff is the New York Central, Mr. Millspough?

A Oh, yes, they notified me in December.

Q Was it before or after Christmas?

A I couldn't say just about that. I think it was before.

Q How long before; can you tell? 30

A I would not say positively when it was. It is so long ago I have forgotten.

Q Now, is it not true that your agreement with Petrozzo was, when you sold these crates, that the boxes and baskets should be charged in the bill at ten cents apiece, and when returned, the amount should be credited?

A The boxes were; no baskets; nothing said about baskets in the contract whatever. 40

Q Have you the contract?

A Yes, sir.

Q With you?

A I think so (witness produces paper).

Q Looking at the contract, do you now say it was boxes?

A Yes, sir, it was boxes.

Q Have you anything by which you can fix the date when you were notified by the Central Railroad Company that the freight was paid?

A No, sir, I have not. I might tell on my books at home, if I looked them up.

Q But you cannot tell us now?

A No, sir.

*Re-direct examination* by Mr. Vredenburgh.

Q Will you tell the jury the distinction that you made between baskets and boxes? Explain it to them?

A Well, the boxes and trays that I was to take back were made of wood, like they always put crates in, and these baskets were Mr. Petrozzo's; said that he had made arrangements with Mr. Wise at Pen Yan that I could have what trays I wanted, and when I went to see Mr. Wise, he had made no arrangement there whatever, and I couldn't get any trays to ship them in, and I wired Mr. Petrozzo about it, and he said, "Put them in baskets," that he would accept them in baskets. That is the way we came to ship baskets.

Q You were to pay ten cents a piece for these when returned?

A No, sir, only just for the trays and boxes.

Q You were to pay ten cents a piece for the trays?

A Yes, sir.

*Re-cross examination* by Mr. Wilson.

Q Mr. Millspough, prior to this carload being received by you, is it not true that Petrozzo had shipped you another carload—

*Mr. Vredenburgh.* I object.

*Mr. Wilson.* Wait until I finish the question.

Q —shipped you on November 26th, 1912, another carload of baskets, trays and boxes, which you had received? 10

A Yes, sir.

*Mr. Vredenburgh.* Let it go.

Q And in that carload, was not there 433 bushel baskets, 1,320 bound baskets, 165 trays, and 284 boxes?

A Yes, sir, but the boxes that were in there, was enough to pay for the freight that I paid on them. And— 20

*Mr. Wilson.* That is all.

FRANK PETROZZO, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*Direct examination* by Mr. Vredenburgh.

Q Did you ship these boxes to Mr. Millspough, Mr. Petrozzo?

A Yes, sir.

Q Were you later notified that the boxes had been refused by the consignee? 30

A No.

Q You never knew anything about it? Did you not take to Mr. Wilson a telegram which you had received and tell him to answer it for you?

A Not from Millspough.

Q I did not say Mr. Millspough. I asked you if you were notified?

A From the railroad, yes. 40

Q Did you then take the telegram to Mr. Wilson and ask him to answer it for you?

A Yes.

Q And to take charge of other correspondence that came in?

A Yes.

Q To deal with it as your attorney, your representative?

10 A Yes.

*Mr. Vredenburgh.* That is all.

*Mr. Vredenburgh.* Your Honor, that is my case, except for the letters and telegrams.

*The Court.* Well, you had better read them to the jury.

(Mr. Vredenburgh reads letters and telegrams to the jury.)

20 *Mr. Vredenburgh.* Your Honor, I ask for a direction.

*The Court.* All right. Go ahead and ask.

*Mr. Vredenburgh.* Your Honor, I ask that the jury be directed to find a verdict in favor of the plaintiff, either from the day of the receipt of the first telegram notifying him of the charges which accrued—I mean, from the receipt of the first telegram notifying Mr. Petrozzo that the baskets had been refused on account not worth charges.

30 *The Court.* How could you claim one from the first day? The railroad company makes a mistake and puts the charges up against the consignee, and then expects the consignor to pay damages for its mistake in making the charges, when they were prepaid?

*Mr. Vredenburgh.* The one ground of that is, as a matter of fact, there was a bill for $103 on the shipment; and that the reason they were refused was that they were not worth anything; and the

40 reason they were refused first was, if he took them

he would have to pay, possibly, the $103; and the only reason for their refusal is the damaged condition of the lading.

*The Court.* That does not appear in the case positively and absolutely, the fact. It must be indisputably in the case before I can direct a verdict upon that theory.

*Mr. Vredenburgh.* It appears indisputably from Mr. Millpough's testimony, after he had been informed that the freight charges had been paid, that he, nevertheless, then—and there were no charges on them—that he, nevertheless, refused to take them. 10

*The Court.* Oh, yes, after he had been informed that the freight charges were paid. What date was that?

*Mr. Vredenburgh.* Well, then, if you will not direct a verdict for that amount, I ask you to direct a verdict for the storage charges that accrued after January 8, 1913, when the defendant was informed of the true reason why the lading had been refused. 20

*The Court.* I will hear the other side on that.

*Mr. Wilson.* If your Honor please, I think it is clearly a question for the jury as to whether or not this man did refuse on account of the freight charges.

*The Court.* There is no evidence that he did not, that I can see. 30

*Mr. Wilson.* The evidence, if your Honor please, is that we are told that is the reason. And they are bound by that. Just listen to this telegram.

*Mr. Vredenburgh.* I object to these telegrams, because I am asking from this letter of April 8th.

*The Court.* The letter is not the only evidence in the case. He has a right to show that there is something that contradicts that letter.

*Mr. Wilson.* It is just this: That the defendant has not been told anything anywhere that contra- 40

dicts the statement made to the New York Central Railroad Company, that Messrs. Millspough & Smith refused this first shipment because of the $36.00 freight charges.

*The Court.* What about the letter of January 8th?

*Mr. Wilson.* Well, that letter never said a word about the freight charges, if your Honor please. It does not mention it. The telegram does.

*The Court.* If it does not, it still goes on to indicate clearly the reason why Millspough & Smith refused to accept the goods was because they were so damaged they could not take them. They were not worth anything.

*Mr. Wilson.* Let us see, if your Honor please. The telegram on which we rely says that Millspough & Smith refused, claims not worth charges, freight amounts to $36. That is the telegram they sent to Frank Petrozzo.

*The Court.* The telegram preceded the letter.

*Mr. Wilson.* Yes, I am coming to that. Mr. Millspough on the stand says, "I don't know when they told me it was a mistake about the freight. I can't tell you that date."

*The Court.* Well, we all know absolutely that it was before the 8th of January, because the letter indicates that positively.

*Mr. Wilson.* It indicates that, and I think, if your Honor please, there is not anything to bind this man for holding on to this stuff for the mistake of the railroad company.

*The Court.* Oh, well, there was no mistake of the railroad company after they sent in the letter of January 8th. There was no mistake then. The mistake was cleared away.

*Mr. Wilson.* There is no evidence in the case to show that the railroad company has ever told my client, or notified him in any way, that they had

discovered the error in their charge for freight and that they had told Millspough & Smith.

*The Court.* What is the letter?

(Paper handed to the Court.)

*Mr. Wilson.* There is nothing in it at all to indicate it.

*The Court.* Oh, well, it says in so many words, Mr. Wilson, the consignees will not accept, claiming that the baskets were to be delivered in good condition and that they are refused on account of damage, not on account of charges. 10

*Mr. Wilson.* There is no evidence we ever received the letter, sir.

*The Court.* There is not any evidence you have received the letter?

*Mr. Wilson.* No, sir, not at all. I cannot find that we have ever received the letter.

*The Court.* What do you say to that? 20

*Mr. Vredenburgh.* Why, Mr. Wilson admitted—

*Mr. Wilson.* That they wrote it.

*Mr. Vredenburgh.* That the letter had been mailed.

*The Court.* Addressed to Mr. Petrozzo at his post office address.

*Mr. Wilson.* Addressed to us.

*Mr. Vredenburgh.* Addressed to Vreeland & Wilson.

*Mr. Wilson.* I admit that part. 30

*The Court.* Well, the presumption of law is, if the letter is mailed to an appropriate address, with the postage prepaid, that it reached its destination. If it did not reach it, you have to prove that. There is no difficulty about that fact at all. The law presumes a letter, put in the post office, properly addressed, with the postage prepaid, reached its destination, and if you want to overcome that presumption, you have to show you did not get it.

*Mr. Vredenburgh.* There is a letter dated April 40

23rd from their office which shows they were still considering the matter.

*Mr. Wilson.* That is an answer to another letter. I admit that.

*The Court.* I shall hold, if you admit this letter was put in due course of mail and addressed to you at Morristown, that, in the absence of anything to the contrary, you got it.

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*Mr. Wilson.* Well, I will not testify, because I do not know. I simply cannot find it in the files with the papers. I have looked for it. I cannot find any letter in answer to it.

*The Court.* I have no doubt about the proposition at all. It seems to me to be perfectly plain that when they say to you, and your client says at the time of the receipt of that letter you represented him, that the reason why the goods were—charges were accruing, and the reason why they were refused was because they were in a damaged condition, that is quite sufficient, to say the least, to put you on inquiry about the situation and to compel you to ascertain what the real cause was, if you had any doubt about it.

20

*Mr. Wilson.* Now, if your Honor please, all the way through, they refer to the owners of these goods, and I think it is a question for the jury to find as to who owned those boxes and trays from the testimony.

30

*The Court.* There is absolutely nothing in the case to show that Mr. Petrozzo does not own them; absolutely nothing. The evidence in the case was that all the trays and boxes were to be returned and that the title of them was given Mr. Petrozzo, until they were accepted by Millspough & Smith. That is the express testimony of Mr. Millspough.

*Mr. Wilson.* I did not so get his evidence.

*The Court.* Oh, yes, I wrote it down when he said it. The trays and boxes were to be returned,

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for which he was to pay him ten cents a piece, when they were accepted back. Until they were returned, they were his property. That is what he swore when he stated it.

*Mr. Wilson.* I wrote it down, credit.

*The Court.* Yes. But he distinctly said they were his property. So, I think, Mr. Wilson, so far as I can see, that I would have a direct verdict.

10

*Mr. Wilson.* Well, now, on the other point, if your Honor please, there is not any evidence here at all showing the necessity for unloading the car. Mr. Metcalf has testified (I want to call your Honor's attention particularly to that, because I followed it closely) that he had no way here of figuring what the storage charge was except by figuring a demurrage charge, and he figured the demurrage charge, where a car was unloaded, because it was necessary to use it, the circumstances of the case required that it be immediately unloaded. Now, he has figured here a charge of one dollar a day, which is a demurrage charge, just the same as if it had stood on the track all the time, and he has never told your Honor or the jury what the storage charge would be if it was unloaded. And there is not any evidence at all to show anything about the circumstances requiring its being unloaded.

20

*Mr. Vredenburgh.* Mr. Wilson is now arguing the reasonableness of the charge, which is not a question for this Court to determine.

30

*The Court.* The tariff fixes a price of one dollar a day for storage.

*Mr. Wilson.* If your Honor please, that it not what the witness testifies to, as I understand it.

*The Court.* The tariff itself shows it. The tariff is in evidence.

*Mr. Wilson.* Yes, but he said the tariff showed that—

*The Court.* I do not care what he said. I am

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saying what the tariff shows. The tariff is in evidence.

*Mr. Wilson.* The tariff shows a demurrage charge of one dollar a day, sir.

*The Court.* No, the demurrage sheet shows a demurrage charge of one dollar a day.

*Mr. Wilson.* He also said—

10 *The Court.* I do not care what he said. It is a matter of utter indifference, what he said. The tariff, as filed in this case, as required by law, is figured at one dollar a day. I know all about this, because I have been through it so often in other cases. I have not any difficulty about that at all.

*Mr. Wilson.* Your Honor knows a great deal more about it than I do. I have never had any experience with those tariff charges at all. But what I did want to call your Honor's attention to—maybe I am a little too slow in getting it to your Honor—

20 is this: That he is charging for storage, these goods in the storage warehouse of the company in Pen Yan; that he says, where the goods are unloaded out of a car, because the circumstances then required the unloading of the car speedily, then the same rate shall be charged, the tariff says, as if it had stood in the car. But what I wanted to call your Honor's attention to is that there is not a word of testimony to show that there was any circumstances requiring unloading.

30 *The Court.* What difference does it make whether there was or not, if the storage charge is the same as the demurrage charge? What difference does it make whether it stood in the car or warehouse?

*Mr. Wilson.* Well, the storage charge is a great deal less than the demurrage charge.

*The Court.* What is the storage charge, Mr. Wilson?

*Mr. Wilson.* I do not know.

40

*The Court.* Then how do you know it is less than the demurrage?

*Mr. Wilson.* Otherwise, they would put in the demurrage.

*The Court.* How do you know? This is a good guess. We are not going to try a case on guess.

*Mr. Wilson.* They are entitled under that act to whatever the tariff fixes.

*The Court.* That is exactly what they are entitled to. 10

*Mr. Wilson.* And what I am calling your Honor's attention to is that they have not laid the foundation to come within it.

*The Court.* All right. I think they have. Now, have you figured out, Mr. Vredenburgh, what the amount is, figuring from the 8th of January, 1913?

*Mr. Vredenburgh.* $175, minus the $5 for which they sold the lading. $175, interest thereon from August 12th to May 12th, $38.25. 20

*Mr. Wilson.* Now, if your Honor please, here is something else.

*The Court.* Well, let us get through with it. I thought you were through.

*Mr. Wilson.* I do not see how you can get away from that. There is a letter from the New York Central agent, saying that the total charge on December 13th, is $18.

*The Court.* What does that prove? I am not allowing anything for the demurrage charge in the car. That is what that is. That is car charge. It is not storage charge at all. It has nothing to do with this thing. I cut the demurrage charge out long ago. 30

Have you figured the interest?

*Mr. Vredenburgh.* The interest is three years and nine months, $38.25, making $208.25.

*The Court.* Well now, in this case I am satisfied that a shipper who contracts for the service of a 40

carrier in transporting interstate commerce freight is primarily liable for the charges, the charges of the shipment, the charges for demurrage, and charges for storage. That is a settled principle of law. I am satisfied, furthermore, in this case, of a special contract and shipper is liable for freight charges due, after receiving notice to accept a shipment. Now, in this case, it seems to be perfectly clear to my mind that Mr. Petrozzo either personally, or through his agent, had no letter to date than the 8th of January, 1913, received a notification from the railroad company, through its appropriate agent, that this property was on hand, that they had been compelled to unload the same in their warehouse, at the risk and expense of the owner, and they then informed him that the shipment was then held subject to a storage charge of one dollar per day, exclusive of Sundays and legal holidays, and they also further informed him, or his attorneys, in no uncertain terms of the exact ground on which the consignee refused to accept the goods, for they said to him in these words, "The consignee will not accept, claiming that the baskets were to be delivered in good condition," and that they were refused on account of damage. And they then informed Mr. Petrozzo that he was to please forward prompt orders for disposition with bill of lading, if re-consignment is desired. That was an express notice to Mr. Petrozzo that if they told the truth in that letter he had a fight on his hands, and that fight was not with the railroad company at all. That fight was with Millspough & Smith who had refused to accept this consignment. It practically told him that if the law required them to take the consignment in the condition in which it was when it was sent, that they had refused to comply with that condition and, they, under the law, being primarily liable for the charge and price of the ship-

ment and for demurrage and for storage, that so long as Millspough & Smith stood out in their refusal to receive the goods, that primary obligation still remained against Mr. Petrozzo, and would continue to accumulate for storage, unless he gave notice of what disposition he desired to make of the shipment. In this case, the notice that he gave, as I state now, just from recollection, was by a telegram, that the goods belonged to Millspough & Smith, and that he would have nothing whatever to do with them, and, therefore, the railroad company was obliged to act under those circumstances and in the light of that fact. Now, that would be enough, it would seem to me, to warrant the railroad company in taking those goods out of a car and putting them in a storage warehouse, if there was nothing else in the case, because the railroad company is under no obligation to keep those goods in a car, when the reasonable common sense of mankind knows that cars are to be used for shipping and not as storage warehouses and, therefore, they were entitled, I say, to take those goods out of the car and put them in a storage warehouse and charge tariff charges for such storage. Now Mr. Petrozzo had been informed of what those tariff charges would be, that they would be a dollar a day, exclusive of Sunday and holidays, and having been informed of that, he chose rather to rely upon his conflict later with Millspough & Smith rather than to take the goods and stop the run of all those charges. Now, in this case, I think that the tariff just filed, unless it differs from any other tariffs that exist anywhere, that I have seen, and I have seen a great many of them, provides for a charge for storage when goods have been taken from a car and held at the risk of a consignee or owner, a tariff charge of a dollar a day, with the exclusion of Sundays and holidays; and it is upon

10 20 30 40

that theory that I am in this case directing a verdict against Mr. Petrozzo and assessing his damages at the sum of $170 for a principle, being the storage charges from January 8th, 1913, down to the time that the goods were eventually sold—$175, rather, and deducting from that $5 for the amount that the goods were sold at when the railroad company sold them, in accordance with their right and, I think, probably, in accordance with their duty, and also for $38.25 interest, from that time until the time of this trial, making in all, $208.25. So I direct a verdict for these reasons for that amount, and you may have an objection to this ruling.

*Mr. Wilson.* I pray an exception to your Honor's ruling.

*The Court.* Oh, yes, you may have that. If I am wrong, I should be reversed.

The jury, by direction of the Court, found a verdict for the plaintiff and against the defendant in the sum of $208.25.

EXHIBIT P. 3.

26 N. Y. D 43 DH
UD New York Dec 11th.
Frank Petrozzo, Morristown, N. J.

At Penn Yan, N. Y., refused account inspection not allowed N. Y. C. 94404 baskets and boxes. Understand you are shipper. Wire disposition sending bill of lading by first mail if reconsignment desired. 10

Tracer 80569 PDL

R. L.CALKINS.

8.04 P. M.

EXHIBIT P. 4.

December 12th, 1912.

To R. L. Calkins, Claim Agent, N. Y. Co., H. R. R.
New York, N. Y. 20

Wired freight agent N. Y. Co. R. R. Penn Yan N. Y. yesterday to allow inspect N. Y. C. 94404 car.

FRANK PETROZZO.

EXHIBIT P. 2.

29 NY MJ D 80 DH 8 EX 8.39 P. M.
UD New York Dec. 13th.
Mr. Frank, Petrozzo, Morristown, N. J. 30

Your wire 12th regarding NYC 94404 baskets and boxes at Penn Yan for Millspaugh and Smith. Car inspected and now refused account claims not worth charges. Freight amounts to $36.00 wire immediate disposition sending bill of lading by first mail if reconsignment desired or will be compelled to unload at risk and expense of owners without further notice. File HD.

R. L. CALKINS.
Freight Claim Agent N. Y. C. & H. R. R. R. 40

EXHIBIT P. 5.

51 NY D 73 DH
New York Dec. 26th,
Frank Petrozzo, Morristown, N. J.

Our wire Dec. 13th yours 12th regarding NYC 94404 baskets and boxes at Penna Yan for Millspaugh and Smith. We are about to unload at near-
10 est available point at risk and expense owners. Have you any orders to give before we take this action. Must know at once Penn Yan 471.

ROBERT L. CALKINS.
F. C. A. N. Y. C. & H. R. R.

10.35 P. M.

EXHIBIT P. 6.

Morristown, N. J., Dec. 28th, 1912.

20 To Robert L. Calkins, Esq.
F. A. C. N. Y. C. & H. R. R. New York City.

Your telegram of December 26, to Frank Petrozzo is received. The Baskets and Boxes at Penn Yan for Millspaugh and Smith belong to them and you may do as you are advised with them.

VREELAND & WILSON.

EXHIBIT P. 7.

30 25 NY. X 337 P 50 DH
UD New York 31 Dec. 1912.
Vreeland and Wilson, Morristown, N. J.

Your wire 28th regarding N. Y. C. 94404 baskets at Penn Yan refused. Please explain your connection with shipment your wire evidently bulled. Who does car belong to and what have they advised should be done with baskets file Penn Yan R-71 PDL.

R. L. CALKINS.
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EXHIBIT P. 8.

Morristown, N. J., Dec. 31st, 1912.

To Robert L. Calkins,
Freight Claim Agent, N. Y. C. & H. R. R.,
New York City.

As telegraphed December 28th, baskets at Penn Yan belong to Millspaugh & Smith and you may do as you are advised by them. 10

VREELAND & WILSON,
Attorneys for Frank Petrozzo.

EXHIBIT P. 1.

Jan. 8, 1913.

Penn Yan R 71

Vreeland & Wilson, Attorneys,
Morristown, N. J.

Gentlemen:— 20

Referring to your wire of Dec. 31st regarding baskets in car NYC 94404 consigned Millspaugh & Smith, Penn Yan, N. Y.:

This property remaining on hand we have been compelled to unload same in our storehouse at risk and expense of owners, and the shipment is now held subject to a storage charge of $1.00 per day, exclusive of Sundays and legal holidays, and in addition to the freight and car service.

The consignees will not accept, claiming that the baskets were to be delivered in good condition and that they are refused account of damage. 30

Please forward prompt orders for disposition with bill of lading, if reconsignment is desired, and oblige,

Respectfully,
ROBERT L. CALKINS,
Freight Claim Agent.

L FS

(Copy) 40

EXHIBIT P. 10.

April 16, 1913.

Penn Yan R 71

Messrs. Millspaugh & Smith,
Penn Yan, N. Y.

Gentlemen:—

10 In regard to the shipment last November of baskets and boxes from Frank Petrozzo, Morristown, N. J., which we hold at Penn Yan refused by you account of condition:

It is not our intention at this time to enter into a discussion of the disagreement between you and the shipper, but we do wish to call your attention to the length of time which we have been obliged to hold this shipment and to inform you that we will, if this shipment is allowed to remain on hand, be 20 compelled, without further delay, to arrange to sell this property to protect the interests of all concerned and if the proceeds of sale do not cover the accumulated freight, car service and storage charges, we will, of course, also be compelled to collect the deficit from the owners.

It occurs to us that as you use such material you could no doubt realize the greatest value and we would suggest that you arrange to take immediate delivery.

30 Respectfully,

ROBERT L. CALKINS,

L FS Freight Claim Agent.

Copy for the information of
Vreeland & Wilson, Attys.,

Morristown, N. J.

Please note. The above shipment was the subject of our exchange of wires. Please note the action

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which will be taken and let us have orders for disposition without further delay.

R. L. CALKINS.

Copy for the information of
Mr. Frank Petrozzo, Morristown, N. J.

R. L. CALKINS.

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EXHIBIT P. 11.

JOHN B. VREELAND C. FRANKLIN WILSON

April 22nd, 1913.

Robert L. Calkins, Esq.,
Freight Claim Agent,
Grand Central Terminal,
New York City.

Dear Sir:—

Your favor of April 16th, 1913 File Penn Yan R. 71 is received. The property in question belongs to Millspaugh & Smith. We and our client have no interest therein.

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Very truly yours,

VREELAND & WILSON,

CFW/J. By C. F. Wilson.

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EXHIBIT P. 9.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY

NEW YORK CENTRAL LINES

Penn Yan, N. Y., Dec. 6, 1913.

Mr. Frank Petrozzo,
Morristown, N. J.

Dear Sir:—

We are outstanding in our accounts 18.00 car service assessed against N. Y. C. 94404 Baskets & Boxes consigned Millspaugh & Smith—shipped by you Nov. 1912. Car was refused by consignees on account of poor condition of contents and $18.00 car service accrued before shipment was finally unloaded and placed in our storehouse. Please remit so that we may clear our accounts.

Yours truly,

C. N. BACON, Agt.

MORRIS COUNTY SUPREME COURT.

| | |
|---|---|
| NEW YORK CENTRAL RAILROAD COMPANY, *Plaintiff,* *vs.* FRANK PETROZZO, *Defendant.* | *Action at Law.* *Stipulation.* |

10

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties to the above entitled action that in lieu of printing in the Case on Appeal to the New Jersey Court of Errors and Appeals, the plaintiff's tariffs filed with the Interstate Commerce Commission and admitted in evidence as Exhibits "P. 12" and "P. 13," upon the trial of the above case, that said tariffs applicable to the charges claimed in this case fixed the demurrage charge at one dollar ($1.00) per day and the storage charge at one dollar ($1.00) per day excepting that no charge should be made for Sundays or holidays or on Mondays which followed a Sunday which was a holiday, and that Exhibits 14 and 15 need not be printed.

20

Dated, November 6th, 1917.

VREELAND & WILSON,
*Attorneys for Defendant.*

30

VREDENBURGH, WALL & CAREY,
*Attorneys for Plaintiff.*

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# New Jersey Supreme Court.

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|---|---|
| NEW YORK CENTRAL RAILROAD COMPANY, *Plaintiff-Appellee,* *vs.* FRANK PETROZZO, *Defendant-Appellant.* | *Action at Law.* *On Appeal.* *Notice of Appeal.* |

10

TAKE NOTICE, That the defendant, Frank Petrozzo, appeals from the whole of the judgment entered in this cause, on the following grounds:

Because the trial judge, upon the trial of the said cause, directed a verdict in favor of the plaintiff and against the defendant, over the objection of the said defendant, whereas the said trial judge should have submitted the case to the jury for its verdict.

20

Dated July 28, 1917.

VREELAND & WILSON,
*Attorneys for Defendant.*

To Messrs. Vredenburgh, Wall & Carey,
Attorneys for Plaintiff,
or to whom it may concern.

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# New Jersey Court of Errors and Appeals

| | |
|---|---|
| NEW YORK CENTRAL RAILROAD COMPANY, *Plaintiff-Appellee,* *vs.* FRANK PETROZZO, *Defendant-Appellant.* | *Action at Law.* *On Appeal.* *Grounds of Appeal.* |

10

The above named defendant-appellant, Frank Petrozzo, assigns the following grounds of appeal from the judgment of the New Jersey Supreme Court in the above case:

Because the trial judge, upon the trial of said action at law, directed a verdict in favor of the plaintiff and against the defendant, over the objection of the said defendant, whereas the trial judge should have submitted the case to the jury for its verdict.

20

Dated July 28, 1917.

VREELAND & WILSON,
*Attorneys for Defendant-Appellant.*

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NEW JERSEY SUPREME COURT.

Hudson County.

| | |
|---|---|
| NEW YORK CENTRAL RAILROAD COMPANY,<br>*vs.*<br>FRANK PETROZZO, | *Judgment Record.*<br>*Action at Law.*<br>*On Postea.* |

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Vredenburgh, Wall & Carey, Attorneys.

Frank Petrozzo, the defendant in this cause, was summoned to answer unto New York Central Railroad Company, the plaintiff therein, in an action at law upon the following complaint:

(Summons issued April 6, 1916.)

20 The plaintiff, a corporation organized under the laws of the State of New York, and a common carrier for hire, says that:

(1) On or about November 22, 1912, plaintiff's connecting carrier received from defendant at Morristown, New Jersey, a shipment of baskets and boxes for transportation to Penn Yan, New York, and delivery thereat to Millspough & Smith, which shipment was so transported and notice of arrival given to said consignee.

30 (2) Said consignee refused to accept delivery of said shipment and notice of said refusal was sent to defendant, who thereupon refused and since has refused to give disposal order for said shipment.

(3) On December 27, 1912, said shipment, being still refused by consignee, was unloaded by plaintiff into its storehouse, and on August 12, 1913, said shipment was sold to the highest bidder for $5.00, in order to defray the charges that had accrued

40 against it.

(4) Thirty days prior to said dates, plaintiff had filed with the Interstate Commerce Commission, tariffs showing the rules, regulations and charges for the detention and storage aforesaid, and computed in accordance therewith, the charge for said detention amounted to $18, and the charge for said storage amounted to $195, which amounts are due and unpaid, except for the $5 received at the sale of the property aforesaid, and which defendant, although often thereunto requested, has failed and refused to pay. 10

Plaintiff demands as damages, the sum of $208.00, together with costs of this suit.

VREDENBURGH, WALL & CAREY,
*Plaintiff's Attorneys.*

(Filed April 14, 1916.)

Defendant, residing at Morristown, New Jersey, says that: 20

1. Defendant denies the allegations contained in paragraph one of the complaint.

2. Defendant denies the allegations contained in paragraph two of the complaint.

3. Defendant has no knowledge of the allegations contained in paragraph three of the complaint.

4. Defendant denies the allegations contained in paragraph four of the complaint. 30

VREELAND & WILSON,
*Attorneys for Defendant.*

(Filed May 11, 1916.)

This case was tried before Judge William H. Speer, with a jury, at the Morris Circuit, on May 9th, 1917.

The jury by direction of the trial judge rendered a general verdict against the defendant and in 40

favor of plaintiff for two hundred and eight and twenty-five one-hundredths ($208.25) dollars.

| | |
|---|---|
| Damages | $208.25 |
| Costs | 48.38 |
| | $256.63 |

Whereupon it is adjudged that the plaintiff, New
10 York Central Railroad Company, recover of the defendant, Frank Petrozzo, the sum of two hundred and eight dollars and twenty-five cents and its costs, which are taxed at the sum of forty-eight dollars and thirty-eight cents, making in the whole the sum of two hundred and fifty-six dollars and sixty-three cents.

Judgment entered May 24, 1917.

WM. S. GUMMERE,
*C. J.*

20

I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this eighth day of March, A. D., nineteen hundred and eighteen.

30 ENOCH L. JOHNSON,
(SEAL.) *Clerk.*

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# POINTS

## 1

**The evidence presented—jury questions —(1) whether consignees refused to accept the goods because of a demand for freight charges, or because of the condition of the goods; and (2) whether the plaintiff kept them an unreasonable time before selling for storage charges.**

## 2

**It was error for the Court to direct a verdict.**

*McCormack* v. *Williams, 95 At. Rep. 978.*
*Doney* v. *M. C. T. Co., 99 At. Rep. 118.*
*Nell* v. *Godstrey, 101 At. Rep. 50.*
*Dickinson* v. *Erie R. R. Co., 85 N. J. L. 586.*
*Clark* v. *P. S. El. Co., 86 N. J. L. 144.*
*Schmidt* v. *Marconi W. T. Co., 86 N. J. L. 183.*
*Tilton* v. *P. R. R. Co., 86 N. J. L. 709.*
*Keeney* v. *D., L. W. R. R. Co., 87 N. J. L. 505.*
*Tonsellito* v. *N. Y. C. & H. R. R. Co., 87 N. J. L. 651.*

# ARGUMENT

Plaintiff sued to recover for storage charges upon contents of a car shipped by defendant from Morristown on November 22, 1912, consigned to

Millspaugh & Smith, Pen Yan, New York.

Defendant paid the freight charges at the time of shipment.

The car arrived at Pen Yan, December 3, 1912.

Consignees were notified on December 4, 1912, that the car had arrived, and they requested permission to examine contents, and permission was granted on December 11, 1912.

On December 13, 1912, plaintiff notified defendant that consignees refused to accept goods, claiming goods not worth freight charges amounting to $36.00

On January 8, 1913, plaintiff claims to have written attorneys for the defendant that the consignees would not accept goods on account of damaged condition, and on April 16, 1913, plaintiff claims to have written Millspaugh & Smith a letter and claim to have sent a copy to the attorneys for defendant.

The foregoing is all evidence in the action.

The testimony shows that after consignees inspected the car they refused to accept it on account of bad condition and the contents were not worth the freight charges (Case, page 3, lines 37 and 38, page 4, lines 16, 18 and 19).

The evidence likewise shows that consignees refused to accept the goods because they were required to pay $36.00 freight charges.

This evidence presented a question for the jury.

If the jurors believed the evidence, consignees refused to accept the goods because the plaintiff demanded $36.00 freight charges.

The freight had been prepaid and there were no charges due on it.

The defendant had a right to have the jurors say whether or not consignees would have accepted the shipment if the plaintiff had not attempted to collect $36.00 for freight charges.

The evidence shows that consignees never re-

fused to accept the car until after inspecting its contents.

It was after the contents of the car had been inspected by consignees that plaintiff notified defendant that the consignees refused to accept the goods on account of freight charges amounting to $36.00

It was for the jury to say whether or not this was the truth.

It was also for the jury to say whether or not plaintiff kept the goods on storage an unreasonable time. 10

The goods were stored on December 27, 1912, and were sold on August 12, 1913.

Defendant had knowledge that the goods were not worth $36.00 (Case, page 4, line 20; Case, page 14, lines 17, 18 and 19).

According to the testimony plaintiff kept these goods on storage from December 27, 1912, to August 12, 1913, with knowledge that the goods were "not worth throwing out of the car for kindling wood," and claimed $208.00 for storage charges thereon, which seems to be rather unconscionable. 20

And it is respectfully submitted that the judgment should be reversed and a new trial granted.

VREELAND & WILSON,
*Attorneys of Defendant-Appellant.* 30

C. FRANKLIN WILSON,
*of Counsel.*

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