New Jersey Court of Errors and Appeals

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Charles Albrecht, *Plaintiff-Appellee,* *vs.* The Pennsylvania Railroad Company, *Defendant-Appellant,*	Action at Law. (9 Counts) On Appeal from Hudson County Circuit Court.
Andrew Spada and Dominick Spada, partners doing business as Andrew Spada & Co., *Plaintiff-Appellees,* *vs.* The Pennsylvania Railroad Company, *Defendant-Appellant,*	Action at Law. (9 Counts) On Appeal from Hudson County Circuit Court.

BRIEF OF DEFENDANT-APPELLANT.

There are eight cases involved in these appeals. Six were brought in the Supreme Court of New Jersey, and two in the Hudson County Circuit Court. All are actions at law against the Pennsylvania Railroad Company to recover damages for alleged deterioration of watermelons due to delay in transportation from various points in the South to Jersey City, New Jersey. The cases were consolidated for trial at the Hudson Circuit and were tried before Judge William H. Speer and a jury on June 24, 1916. The testimony applies to all cases. The records, however, are separate, and separate appeals have been taken and perfected in each case. By agreement of counsel for the respective parties, the state of the case has been abridged to the greatest degree consistent with the proper presentation of the record to the court on appeal, pursuant to rule 19 of this court. To that end the pleadings and other proceedings have been printed in full only where necessary, and in the succeeding similar cases they appear merely by reference to the main case. In like manner the printing of the exhibits has been reduced to a minimum by including in the state of the case a complete bill of lading of the kind involved in each of the actions only. Counsel have prepared the book with great care and are confident that the issues presented by the cases are completely but briefly and succinctly set forth in a way that will best serve the convenience of the court as well as of counsel. The index is intended to be exhaustive and refers specifically to the various pleadings and proceedings, all documents introduced in evidence, the exhibits, the direct and cross-examination of all the witnesses, the various motions, charge of the court and exceptions. These cases are numbers 129 to 134 and 146 and 147 on the November Term, 1916, calendar of this court.

The eight cases are submitted on brief and the present brief is to apply to all the cases.

The eight cases involve 73 car loads of watermelons shipped from various points in Delaware, Maryland, North Carolina, South Carolina, Georgia and Alabama, all forwarded during the months of July and August, 1912. Certain counts only were moved in some of the cases (State of case, p. 94), leaving 59 shipments affected by this trial. The defendant, the Pennsylvania Railroad Company, was the terminal carrier, in each instance receiving the car from a connecting carrier, the Philadelphia, Baltimore and Washington Railroad Company, at Edgemoor, Delaware, and transporting the same upon its line from that point to Jersey City, New Jersey. The initial carriers were various Southern lines of railroad, by whom the bills of lading were issued.

On July 9, 1912, a strike occurred among the employees of the defendant company at Piers 27, 28 and 29, New York City, which continued to and including July 18. About 700 men stopped work at these piers, and defendant was unable to handle and deliver freight consigned there. As a result of that situation all east bound freight congested at the defendant's terminus on the New Jersey side of Hudson River in Jersey City, by way of which all freight consigned to New York must pass, eventually filling up all the storage yards of the defendant, and all available trackage, blocking the road west to the Meadows, a point about 9 miles west from the Hudson River, and beyond. (See Exhibit D-1, Case p. 234). While the strike ended on July 18, 1912, congestion resulting therefrom continued until about August 15, and it was not until that time that the road succeeded in resuming normal operations. By reference to the charts in the several cases which were introduced in evidence to show the movements of the respective cars from Edgemoor,

Delaware, to destination, it will appear that in almost every instance the watermelons were carried from Edgemoor, Delaware, to the Meadows Yard within the usual or customary time to transport watermelons by freight trains between those points, which was about seven hours, but from the Meadows to the point of destination, being the delivery yard at Second & Henderson Streets, in Jersey City, delays of varying duration occurred. All the watermelons were delivered or tendered for delivery to the consignes in a partially decayed or spoiled condition, and were sold at depreciated prices.

Plaintiffs allege that the depreciation of the watermelons was due to delay and to defendant's negligence in transportation.

All the shipments were interstate in character and governed by the provisions of the Interstate Commerce Act, and subject to the conditions of the bills of lading which were issued pursuant to Section 20 thereof, commonly called the Carmack Amendment. The material portions of the Act are here quoted.

Section 2 provides as follows:

> "That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is

hereby prohibited and declared to be unlawful."

Section 3 provides, in part, as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 6 provides, in part, as follows:

"That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water, when a through route and joint rate have been established. * * * Nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the

transportation of passengers or property, except such as are specified in such tariffs."

Section 8 in part, provides as follows:

"That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act."

And that portion of Section 20 which is applicable to these shipments, commonly called the "Carmack Amendment," provides—

"That any common carrier, railroad or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby, imposed; *Provided,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad or transportation company issuing such receipt

or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

24 Statutes at Large (U. S.) 379;
25 " 855;
26 " 743;
28 " 643;
34 " 584;
34 " 838;
35 " 60;
35 " 648;
36 " 539;
37 " 566.

See Compilation of said Acts, entitled "The Act to Regulate Commerce (as amended);" etc., published by the Inter-State Commerce Commission, revised to September 1, 1912; Government Printing Office, Washington, D. C.

Defendant denied liability on the following grounds:

A.—No negligence.

B.—The strike.

C.—Congestion or accumulation of freight.

D.—Causes beyond its control.

E.—Failure of plaintiffs to file claims within the time specified in the bills of lading.

Each of these defences, except the first, was stipulated in the respective bills of lading as an excepted cause exempting the defendant from liability. Each case was at issue upon a reply of general denial of the matters set up in the special defences. Those counts in the respective cases in which it appeared that claims had not been filed within the stipulated time, were not

moved at this trial, and that issue is not involved in the present appeal.

See

Carr vs. *P. R. R.*, 88 N. J. Law, 235;
Olivit vs. *P. R. R.*, 88 N. J. Law, 241, 377, 376, 378;
Albrecht vs. *P. R. R.*, 88 N. J. Law, 367;
Spada vs. *P. R. R.*, 88 N. J. Law, 388.

Upon the trial of the cases, plaintiffs proved the shipment of the melons in apparent good order, delivery in a decayed or spoiled condition, and delay as above indicated, then proved their damage and rested. Defendant thereupon proved the strike and the congestion and accumulation of freight as the causes of the delay complained of, and rested. Plaintiff by way of rebuttal proved nothing at all except to reiterate the cause of the delay as shown by defendant in its case, the fact that perishable freight other than watermelons, consigned to Pier 29, New York, had been delivered at the Jersey City Yard, which was the Watermelon Market for that vicinity, during the period of the strike, and the congestion which interfered to an extent with the delivery of the watermelons. In sur-rebuttal defendant showed that there was no other place at the Jersey City end of the railroad except that yard where the freight held back from Pier 29 could be delivered, and that such delivery was made at night, and that the customary time for delivery of the watermelons was during the day. At this point the testimony was closed.

Defendant, at the close of the whole case, moved the Court to direct a verdict in favor of defendant and against plaintiff, upon the following grounds:

a. The defendant having proved that the damage complained of resulted proximately from excepted causes in the bills of lading, the burden of proof was then on the plaintiff to show negligence

of the defendant in handling the situation which had been proved as the proximate cause of such damage, which plaintiff had not shown; and that that burden, then resting upon plaintiff, had not been sustained.

b. There was not sufficient evidence of negligence of defendant in the case to warrant its submission to the jury.

c. There was no evidence of negligence at all in the case which should require the court to submit it to the jury.

d. There was no negligence of defendant shown.

e. Under the circumstances of the case it was the duty of defendant to move more perishable freight first, and that the court, as a matter of law, should say that there could be no negligence on the part of the defendant in moving the peaches and cantaloupes even to the exclusion of watermelons.

f. It did not affirmatively appear in the case that the plaintiff was the owner of the property involved in the suit, or had been owner thereof at the times of shipment thereof or the damage thereto.

Each of which grounds was held by the Court to be erroneous in law, the motion to direct a verdict in favor of the defendant and against the plaintiff was denied, and the cases were submitted to the jury.

The present appeals are to reverse the judgments below, upon the exceptions noted at the trial, which are set forth in the grounds of appeal in the respective cases.

I.

The authorities would seem tc conclusively establish the proposition that, after the defendant had proved the facts which established the strike

or the congestion or the accumulation of freight as the proximate cause of the delay, thus bringing it within the stipulations in the bill of lading, the burden was then on the plaintiffs to establish negligence of defendant. The following cases bear upon that point:

New Jersey Cases.

Michaels v. *Adams Express Co.*, 71 N. J. Law, 41;

Johnson v. *N. J. & S. S. R. R. Co.*, 78 N. J. Law, 529;

Bobbink v. *Erie R. R. Co.*, 82 N. J. Law, 547 at p. 548.

United States Cases.

N. J. Steam Nav. Co. v. *Merchants Bank*, 6 Howard, 344, at p. 384; 12 L. Ed. 465, at p. 483;

Clark v. *Barnwell*, 12 Howard, 272; 13 L. Ed. 985;

Memphis etc. R. R. Co. v. *Reeves*, 10 Wall, 76; 19 L. Ed. 909;

Western Trans. Co. v. *Downer*, 11 Wall, 129; 20 L. Ed. 160;

Cau v. *Tex. & Pac. Ry. Co.*, 194 U. S. 427; 48 L. Ed. 1053 (1904).

And the Federal rules prevail to the exclusion of the State rules and regulations.

Croninger v. *Adams Express Co.*, 226 U. S. 491, 57 L. Ed. 314;

Atchison, T. & S. F. R. Co. vs. *Robinson*, 233 U. S. 173; 58 L. Ed. 901;

Spada et al. vs. *P. R. R. Co.*, 86 N. J. Law, 187;

Olivit v. *P. R. R.*, 88 N. J. Law, 241, *supra*.

A. T. & S. F. R. R. Co. vs. *Harold*, U. S. Adv. ops. 1915, No. 16, p. 665;

Brown v. *Paper Co.*, 69 N. J. Law, 474, 475;

Baldwin v. *Shannon*, 43 N. J. Law, 596;

Impt. Co. v. *Munson,* 14 Wall, 442, 448; 20 L. Ed. 867;
Pleasants v. *Fant,* 22 Wall, 116; 22 L. Ed. 780;
St. L. &c. Ry. Co. v. *McWhirter,* 229 U. S. 265; 57 L. Ed. 1179;
Norfolk &c. R. R. Co. v. *Ferrebee,* 238 U. S. 269; 59 L. Ed. 1303;
Southern R. R. Co. v. *Prescott,* 240 U. S. 632;
Cincinnati &c. R. R. Co. v. *Rankin,* 240 U. S. 319.

We think, therefore, that the trial court erred in refusing to direct a verdict for the defendant, and his rufsal is error, which should work a reversal of the judgments below.

II.

We also think that the charge of the Court in this respect was erroneous in its application to the burden that rested upon the defendant. When the excepted cause is proved, liability is then predicated upon a new issue, namely, did the carrier use reasonable care in handling that excepted cause; and the primary issue of delivery within a reasonable time ceases to be the basis of liability.

The Court charged the jury as follows:

> "You will have observed that I said a few moments ago that the defendant could excuse itself by showing that it came within one of the exceptions stated in the bill of lading,—either that there was a strike, accompanied by violence, which interrupted the due, ordinary and usual course of its business; or that there was a congestion due to causes beyond its control. Those two defenses, gentlemen, are the ones I wish to direct your attention to.

"Now, those, gentlemen, are defences, and the burden of establishing the existence of those defenses rests upon the defendant; and the defendant is obliged to make them out by the greater weight of the evidence. What I mean when I say 'to make them out' is that if the defendant seeks to avail itself of either of those defenses to excuse itself from liability in cases of this kind, it must make that defense out by the greater weight of the evidence. If it makes out either one of those defenses by the greater weight of the evidence, in the case in which it is thus made out it constitutes a complete defense to the action, and the verdict would have to be, under the circumstances, for the defendant.

"If the defendant shall make out by the greater weight of the evidence that there was a strike and that the strike was the cause of the congestion of the freight which resulted, if it did result, in the delay in delivery and the consequent decay of the produce, why, manifestly the defendant has excused itstlf on that ground, unless the plaintiff then took up the burden and showed by greater weight of the evidence that even though there was a strike, the defendant in the handling of the strike, or in the produce, or in dealing with the situation, did not use reasonable care to deliver the goods within a reasonable time to the consignee. If the plaintiff makes that out by the greater weight of the evidence, that amounts to what is known in the law as negligence; and the negligence would render (if that is established by the plaintiff by the greater weight of the evidence) the defendant responsible, notwithstanding the fact of the fact of the strike.

"Now, when I say that the burden of es-

tablishing the negligence rests upon the plaintiff, I do not necessarily mean that the plaintiff is obliged, after the defendant gets through with its evidence, to put more evidence in; because the burden upon the plaintiff is upon the whole evidence, to make the evidence weigh heavier in favor of the negligence of the defendant with respect to the delay of delivery than it does the other way. If the evidence does weigh heavier in favor of the negligence of the defendant company than it does in favor of the freedom from negligence of the defendant company, why, then, of course, the plaintiff is under no obligation to offer any further proof, because then the evidence would preponderate in that particular, and the plaintiff might very well rest at that point, without putting in further proof on that ground. But the burden rested upon the plaintiff to establish the negligence by the greater weight of the evidence. If the plaintiff has thus established it, the plaintiff is entitled to recover upon the ground of negligence.

"Now, the same rule applies with respect to the congestion of the freight due to causes beyond the control of the defendant. The defendant is obliged to make out the fact of the congestion as an excuse by the greater weight of the evidence. If the defendant does make out the fact of the congestion and the consequent delay of the freight, then the plaintiff is obliged to bear the burden of establishing by the greater weight of the evidence that the congestion and the consequent delay was due to the negligence of the defendant; and the remarks I made with respect to the other defense apply equally to this: the plaintiff does not have to go on and introduce proof after the defendant gets

through with its proof, if already there is evidence in the case. Whether there is or not I do not say. I leave that for you to determine,—whether there already is evidence in the case tending in favor of the negligence of the defendant in that particular, as against its freedom from negligence."

III.

It was the duty of the Court to direct a verdict for defendant, and hold, as a matter of law, that it was not negligence for the defendant to move and deliver a highly perishable class of freight first even though some delay resulted in the delivery of less perishable freight.

Sec. 3 of the Inter-State Commerce Act, *supra*, provides that no undue or unreasonable preference shall be given to any particular description of traffic, and that no particular description of traffic shall be subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

And it has been repeatedly held that not only is the carrier excused for giving preference to perishable goods over non-perishable, but that it is its duty to to do so.

2 Hutch, on Carriers (3rd Ed.) Sec. 649, p. 713; and cases cited in notes.

The same reasoning applies as between different classes of perishable freight. The watermelons had no vested right to the Jersey City Yard, to the exclusion of other freight, which was in any way violated by using the yard for the delivery of a highly perishable class of freight like peaches (Case p. 156). To hold that they had such right would be to give them the very preference prohibited by this section; and to deny this right as to peaches is to deny to that class of

freight the very advantage which plaintiffs contend was vested in the watermelons.

IV.

Plaintiffs should have shown affirmatively that they were the owners of the watermelons or had such a special property in them as would warrant their maintaining the actions.

The plaintiffs may have been mere servants or agents of the owners, with no direct interest in the transactions. Under such circumstances they can not maintain the suits.

The following authorities hold that the right to sue for the damage follows title.

Kelsea v. *Mfg. Co.*, 55 N. J. Law, 320, at p. 323;

3 Hutch. on Carriers (3rd Ed.), Sec. 1305, p. 1553;

6 Thomp. on Negligence (2nd Ed., 1905), Sec. 7422, p. 461;

4 Elliot on Railroads (2 Ed.), Sec. 1692, p. 755;

6 Cyc., p. 510;

So. Ry. Co. vs. *Miko,* 136 Ga. 272; 71 S. E. Rep. 241;

Grinnell--Collins Co. vs. *C. M. & St. P. Ry. Co.*, 124 N. W. 377 (Minn.);

Gulf C. & S. F. Ry. Co. vs. *Walston,* 23 S. W. 233 (Texas);

McLaughlin vs. *Martin,* 12 Colo. App. 268;

Madison I. & P. R. R. Co. vs. *Whitesel,* 11 Ind. 55;

Levy vs. *Weir,* 77 N. Y. Supp. 917; 38 Misc. Rep. 361;

So. Ry. Co. v. *Deakins,* 107 Tenn. 522;

Cudahy Pack. Co. vs. *Dorsey,* 63 S. W. 548 (Texas);

Sweeney vs. *Frank &c. Co.*, 39 Wash. 507; 81 Pac. Rep. 1005.

But, aside from this, the controlling factor in these actions as shown *supra,* is and will be the Inter-State Act, Section 8 of which, quoted *supra,* provides that—

> "such common carrier shall be liable *to the person or persons injured.*" ....

Who but the owner is injured? And who can disclose ownership better than plaintiffs? Defendant in certain of the cases endeavored to ascertain by interrogatories, but its effort was unsuccessful through the action of the Court in holding them immaterial (Case, pp. 24-27, etc.). In all of them the point was raised on motion to direct and by request to charge (Case, p. 157, 171).

V.

The court's refusal to charge Defendant's Request 3 was error. It is as follows:

> "Unless it appears that the plaintiffs were the owners of the shipments involved in these cases at the time of shipment and at the time of damage, they are not entitled to recover in these actions."

This is, in effect, the same as the 6th ground for directed verdict, and was fully discussed under paragraph IV of this brief, *supra.*

VI.

The court's refusal to charge Defendant's Request 5 was error. It is as follows:

> "It was the duty of the defendant to move most perishable freight first under the cir-

cumstances in these cases, and the holding back of less perishable freight, viz.: the watermelons, until the peaches were delivered was not negligence."

See page 172 of the State of the Case. It is in effect the same as the 4th ground for directed verdict, and is fully considered under paragraph III of this brief, *supra*.

VII.

Plaintiffs were not entitled to have the freight paid in the shipments, included in the assessment of damages.

This is an exception to the court's refusal to charge (State of the Case, p. 171) as follows:

> "That the plaintiff is not entitled to recover the freight charges paid to defendant on the shipments involved in these cases."

All the cars were carried to destination, and the contents were sold, either by the consignees or by the carrier on a/c of the consignees. Where the property is carried, the freight accrues and must be paid.

> 2 Hutch. on Carriers (3rd Ed.), Sec. 802, p. 890.

The mere fact of its being sold for a greater or less amount cannot operate to change the rule, otherwise freight would be collectible if a certain sum were realized, and not collectible if a lesser sum should be. The carrier's charge is not based upon the success or non-success of the owner's sale. Any other view would be violative of the sections 2 and 6, of the Inter-State Act above quoted and hence not sustainable. In the present cases the carrier is entitled to charge the freight and the plaintiffs' having paid it, cannot now

have it refunded through the medium of the verdict of the jury.

Tex. & Pac. Ry. Co., v. *Abilene Oil Co.*, 204 U. S., 491; 51 L. Ed. 553;
Tex. & Pac. Ry. Co. v. *Mugg*, 202 U. S. 242; 50 L. Ed. 1011;
Kan. C. So. Ry. Co. v. *Carl*, 227 U. S., 639; 57 L. Ed. 683;
Erie R. R. Co. v. *Wanaque Lumber Co.*, 75 N. J. Law, 878;
Ill. Cent. v. *Hooper*, 233 Fed. 135;
Chicago v. *Stein*, 233 Fed. 716;
P. R. R. Co. v. *Quinn & Co.*, 37 N. J. L. J. 47;
Poor Grain Co. vs. *C. B. & Q. Ry.*, 12 I. C. C. 418;
L. & N. R. R. Co. vs. *Maxwell*, 237 U. S. 94; 59 L. Ed. 853;
Armour vs. *U. S.* 209; U. S. 56, 83; 52 L. Ed. 681;
P. R. R. Co. vs. *Int. Coal Mining Co.*, 230 U. S. 184; 57 L. Ed. 1446;
Mitchell vs. *P. R. R. Co.*, 230 U. S. 247; 57 L. Ed. 1472;
Loomis vs. *L. V. R. R. Co.*, 240 U. S. 43; 60 L. Ed. 228.

VIII.

For these reasons it is respectfully submitted that the judgments under review in the eight cases should be reversed, set aside and for nothing holden and new trials granted.

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New Jersey Court of Errors and Appeals

No. 132

OLIVIT BROTHERS, a corporation,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Action at Law. (7 Counts) On Appeal from Supreme Court

No. 133

OLIVIT BROTHERS, a corporation,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Action at Law. (11 Counts) On Appeal from Supreme Court

No. 134

OLIVIT BROTHERS, a corporation,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Action at Law. (13 Counts) On Appeal from Supreme Court

No. 130

DANIEL H. GILBERT,
Plaintiffs-Appellee,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Action at Law. (6 Counts) On Appeal from Supreme Court

No. 129

J. C. LEIB, a corporation,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Action at Law. (9 Counts) On Appeal from Supreme Court

No. 131

ISAAC LOEWENTHAL,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Action at Law. (9 Counts) On Appeal from Supreme Court

No. 146

CHARLES ALBRECHT,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Action at Law. (9 Counts) On Appeal from Hudson County Circuit Court.

No. 147

ANDREW SPADA, *et al,*
Plaintiffs-Appellees,

vs.

THE PENNSYLVANIA RAILROAD COMPANY
Defendant-Appellant.

Action at Law. (9 Counts) On Appeal from Hudson County Circuit Court.

BRIEF FOR PLAINTIFFS-APPELLEES.

These cases were tried together before Judge Speer and a jury at the Hudson Circuit. Separate verdicts were rendered in favor of the plaintiffs and judgments were entered thereon. An appeal was taken to this Court by the defendant from the judgment in each case and the record of all these cases is contained in one State of the Case.

The questions involved on these appeals are precisely the same as those presented to this Court and decided by it in the cases of *Carr* v. *Penn. R. R. Co.*, 96 Atl. 588, and of *Olivit Bros.* v. *Penn. R. R. Co.*, 96 Atl. 589.

All of the cases at bar, except the cases of J. C. Leib & Co., Isaac Lowenthal and Daniel H. Gilbert, were before this Court at the June Term, 1915, and were reversed because the claims for damages as to some of the shipments were not filed within the time required by the bills of lading, and because the trial judge refused to charge certain subject matter covered by those bills of lading. *Olivit Bros.* v. *Penn. R. R. Co.*, 96 Atl. 582.

A retrial was awarded by this Court in respect to those shipments in which the claims were filed within the time required by the bills of lading. On the retrial, a recovery was sought only on such shipments and the instant cases were submitted to the jury on the record (in so far as it applied), which was before the Court in the cases of *Carr* v. *Penn. R. R. Co.*, and *Olivit Bros.* v. *Penn. R. R. Co.*, *supra*. The identical questions which were before this Court in those cases are again presented on these appeals, except in the cases of Charles Albrecht, Isaac Loewenthal and Daniel H. Gilbert, in which no freight was paid by the plaintiffs.

Obviously, the cases at bar are controlled by *Carr* v. *Penn. R. R. Co.*, *supra*, and the judgments should be affirmed.

Respectfully submitted,

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OLIVIT BROTHERS, a Corporation, *Plaintiff.* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant,*	Action at law 7 Counts.

Notice of Appeal.

(Filed August, 12, 1916).

NEW JERSEY SUPREME COURT.

OLIVIT BROTHERS, a Corporation, *Plaintiff-Appellee,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law 7 Counts. On Appeal from Supreme Court of New Jersey.

To QUEEN & STOUT, Esquires,
Attorneys of Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated August 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys of Appellant.

(*Endorsed.*)
Service acknowledged August 11, 1916.
QUEEN & STOUT,
Attorneys of Plaintiff-Appellee.

Grounds of Appeal.

(Filed November 15, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

OLIVIT BROTHERS, a Corporation, *Plaintiff-Appellee,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	On Appeal from the Supreme Court of New Jersey. (7 Counts)

The following are the grounds upon which the defendant-appellant appeals to the New Jersey Court of Errors and Appeals, in the last resort in all causes, from the judgment of the Supreme Court of New Jersey:

1. The Court, upon motion of the plaintiff, struck out, as immaterial, the Interrogatories submitted by defendant to plaintiff, for the purpose of ascertaining before trial, whether or not the plaintiff was the owner of the watermelons involved in the suit at the time they were shipped at the point of origin or at any time prior to the commencement of the action.

2. The Court, at the close of the whole case, refused to direct a verdict in favor of defendant

and against plaintiff, when thereunto moved by defendant.

3. Defendant, at the close of the whole case, moved the Court to direct a verdict in favor of defendant and against plaintiff, upon the following grounds:

a. The defendant having proved that the damage complained of resulted proximately from excepted causes in the bills of lading, the burden of proof was then on the plaintiff to show negligence of the defendant in handling the situation which had been proved as the proximate cause of such damage, which plaintiff had not shown; and that that burden, then resting upon plaintiff, had not been sustained.

b. There was not sufficient evidence of negligence of defendant in the case to warrant its submission to the jury.

c. There was no evidence of negligence at all in the case which should require the court to submit it to the jury.

d. There was no negligence of defendant shown.

e. Under the circumstances of the case it was the duty of defendant to move more perishable freight first, and that the court, as a matter of law, should say that there could be no negligence on the part of the defendant in moving the peaches and cantaloupes even to the exclusion of the watermelons.

f. It did not affirmatively appear in the case that the plaintiff was the owner of the property involved in the suit, or had been the owner thereof at the times of shipment thereof or the damage thereto.

Each of which grounds was held by the Court to be erroneous in law, and the motion to direct a ver-

dict in favor of the defendant and against the plaintiff was denied.

4. The Court refused to charge the jury defendant's request No. 2, as follows:

"That the plaintiff is not entitled to recover the freight charges paid to defendant on the shipments involved in these cases."

5. The Court refused to charge the jury defendant's request No. 3, as follows:

"Unless it appears that the plaintiffs were the owners of the shipments involved in these cases at the time of shipment and at the time of damage, they are not entitled to recover in these actions."

6. The Court refused to charge the jury defendant's request No. 5, as follows:

"It was the duty of the defendant to move most perishable freight first under the circumstances in these cases, and the holding back of less perishable freight, viz.: the watermelons, until the peaches were delivered was not negligence."

7. The Court charged the jury as follows:

"You will have observed that I said a few moments ago that the defendant could excuse itself by showing that it came within one of the exceptions stated in the bill of lading,—either that there was a strike, accompanied by violence, which interrupted the due, ordinary and usual course of its business; or that there was a congestion due to causes beyond its control. Those two defenses, gentlemen, are the ones I wish to direct your attention to.

Now, those, gentlemen, are defenses, and the burden of establishing the existence of those defenses rests upon the defendant; and the defendant seeks to avail itself of either of the greater weight of the evidence. What I mean when I say 'to make them out' is that if the defendant seeks to avail itself o feither of those defenses to excuse itself from liability in cases of this kind, it must make that defense out by the greater weight of the evidence. If it makes out either one of those defenses by the greater weight of the evidence, in the case in which it is thus made out it constitutes a complete defense to the action, and the verdict would have to be, under the circumstances, for the defendant.

If the defendant shall make out by the greater weight of the evidence that there was a strike and that the strike was the cause of the congestion of the freight which resulted, if it did result, in the delay in delivery and the consequent decay of the produce, why, manifestly the defendant has excused itself on that ground, unless the plaintiff then took up the burden and showed by greater weight of the evidence that even though there was a strike, the defendant in the handling of the strike, or in the handling of the produce, or in dealing with the situation, did not use reasonable care to deliver the goods within a reasonable time to the consignee. If the plaintiff makes that out by the greater weight of the evidence, that amounts to what is known in the law as negligence; and the negligence would render (if that is established by the plaintiff by the greater weight of the evidence) the defendant responsible, notwithstanding the fact of the strike.

Now, when I say that the burden of establishing the negligence rests upon the plaintiff, I do not necessarily mean that the plaintiff is obliged, after the defendant gets through with its evidence, to put more evidence in; because the burden upon the plaintiff is upon the whole evidence, to make the evidence weigh heavier in favor of the negligence of the defendant with respect to the delay of delivery than it does the other way. If the evidence does weigh heavier in favor of the negligence of the defendant company than it does in favor of the freedom from negligence of the defendant company, why, then, of course, the plaintiff is under no obligation to offer any further proof, because then the evidence would preponderate in that particular, and the plaintiff might very well rest at that point, without putting in further proof on that ground. But the burden rested upon the plaintiff to establish the negligence by the greater weight of the evidence. If the plaintiff has thus established it, the plaintiff is entitled to recover upon the ground of negligence.

Now, the same rule applies with respect to the congestion of the freight due to causes beyond the control of the defendant. The defendant is obliged to make out the fact of the congestion as an excuse by the greater weight of the evidence. If the defendant does make out the fact of the congestion and the consequent delay of the freight, then the plaintiff is obliged to bear the burden of establishing by the greater weight of the evidence that the congestion and the consequent delay was due to the negligence of the defendant; and the re-

marks I made with respect to the other defense apply equally to this; the plaintiff does not have to go on and introduce proof after the defendant gets through with its proof, if already there is evidence in the case. Whether there is or not I do not say. I leave that for you to determine,—whether there already is evidence in the case tending in favor of the negligence of the defendant in that particular, as against its freedom from negligence."

8. Said Circuit Court erred in divers other respects.

Dated, November 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant-Appellant.

Recognizance.

(Filed August 15, 1916.)

NEW JERSEY SUPREME COURT.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law 7 Counts.

STATE OF NEW JERSEY, County of Hudson, } ss.:

BE IT REMEMBERED, that on this 14th day of August, A. D. 1916, appeared before me Frank P. McDermott, one of the Supreme Court Commissioners of the State of New Jersey, at Jersey City, in said State, The Pennsylvania Railroad Company, a corporation of the Commonwealth of Pennsylvania, by Albert C. Wall, its attorney-in-fact, on its behalf as principal, and the American Surety Company of New York, a corporation of the State of New York, by Arthur Schneider, its resident Vice-President, on its behalf as surety, who jointly and severally did acknowledge said corporations to be indebted to Olivit Brothers, a corporation, in the sum of twenty-one hundred dollars to be made and levied of their respective goods and chattels, lands and tenements and real estate, if default be made in the following conditions:

WHEREAS, the said Olivit Brothers, a corporation, lately recovered judgment against The Penn-

sylvania Railroad Company in an action at law, in the Supreme Court of New Jersey, for the sum of one thousand dollars and one cent, damages and costs, as by the record thereof will appear; and

WHEREAS, The Pennsylvania Railroad Company has taken an appeal from said judgment to the New Jersey Court of Errors and Appeals in the last resort in all causes;

NOW, THEREFORE, if the said The Pennsylvania Railroad Company shall prosecute the said appeal with effect and also pay and satisfy, if the said judgment be affirmed, all damages and costs in the former judgment, and all costs and damages to be awarded for delay of execution, then this recognizance to be void, else to be and remain in full force.

Taken and acknowledged this 14th day of August, A. D. 1916.

FRANK P. MCDERMOTT,
Supreme Court Commissioner of New Jersey.

THE PENNSYLVANIA RAILROAD COMPANY,
By ALBERT C. WALL,
Attorney-in-Fact.

AMERICAN SURETY CO.
(Seal.) AMERICAN SURETY COMPANY OF NEW YORK,
By ARTHUR SCHNEIDER,
Resident Vice-President.

Attest:
HENRY A. GIEGOLD,
Resident Assistant Secretary.

Approved as to form and sufficiency of surety.
FRANK P. MCDERMOTT,
Supreme Court Commissioner of New Jersey.

Complaint.

(Filed May 2, 1914.)

SUPREME COURT OF NEW JERSEY,

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, vs. THE PENNSYLVANIA RAILROAD COMPANY, *Defendant*.	7 Counts.

Plaintiff, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 355 Washington Street in the City, County and State of New York, says that:

First Count.

1. On July 26th, 1912, at Alford's Siding in the State of North Carolina, the plaintiff caused to be delivered to the defendant, which was a common carrier of goods for hire from Alford's Siding aforesaid to Jersey City in this State, one carload of watermelons, of the value of $500, in car ACL 33226, which the defendant then and there received and accepted, as such common carrier, to be transported, carefully and within a reasonable time, to the plaintiff at Jersey City aforesaid, for reward.

2. The defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons from Alford's Siding aforesaid to Jersey City aforesaid and failed and neglected to transport the same within

a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

Complaint contains six additional counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which, by consent, are enumerated in this form:

Counts	Car Number	Date of Shipment	From
2nd	SAL 22640	July 26, 1912	Pates, N. C.
3rd	ACL 20752	July 30, 1912	Alford's Siding, N. C.
4th	ACL 29638	July 30, 1912	Floral Cottage, N. C.
5th	ACL 30833	Aug. 2, 1912	Dundarrock, N. C.
6th	ACL 30957	July 31, 1912	St. Pauls, N. C.
7th	SAL 22585	July 31, 1912	Wagram, N. C.

Plaintiff demands $500 on each count.

QUEEN & STOUT,
Attorneys of Plaintiff.

Answer.

(Filed June 15, 1914.)

SUPREME COURT OF NEW JERSEY,

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant*.	Action at Law 7 Counts. Case.

Defendant, a body corporate, organized under the laws of the State of Pennsylvania, having a place of business and office at No. 26 Exchange Place, Jersey City, Hudson County, New Jersey, says that:

First Defense:

(1) It denies the truth of the matters contained in the complaint and each and every count thereof.

Second Defense:

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so as to each and every count of said complaint, under the terms and conditions of a certain Bill of Lading, issued to said plaintiffs by the initial carrier of said property, pursuant to the provisions of the Act of Congress of June 20, 1906 (34 Stat. at Large, p. 584, Chap. 3591; U. S. Comp.

Stat. Supp. 1911, p. 1288), and the supplements thereto and amendments thereof, commonly designated as the Inter-state Commerce Act, constituting an express agreement between the plaintiff and the defendant, whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resultig from delay in the transportation and delivery thereof if such delay was caused by a strike or strikes among defendant's employees; and defendant asserts that a strike did take place among its employees and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, which strike was the cause of the alleged delay if any delay at all occurred as alleged in said complaint.

Third Defense:

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so as to each and every count of said complaint, under the terms and conditions of a certain Bill of Lading issued to said plaintiff by he initial carrier of said property, pursuant to the provisions of the Act of Congress of June 20, 1906 (34 Stat. at Large, p. 584, Chap. 3591; U. S. Comp. Stat. Supp. 1911, p. 1288), and the supplements thereto and amendments thereof, commonly designated as the Inter-state Commerce Act, constituting an express agreement between the plaintiff and the defendant, whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from

or occasioned by an accumulation of freight at any point, or to any other causes over which the defendant had no control; and defendant asserts that an accumulation of freight did occur at Jersey City, New Jersey, the point to which the shipments mentioned in the complaint were consigned and at which they were to be delivered, and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, over which accumulation the defendant had no control, and which accumulation was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fourth Defense:

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so as to each and every count of said complaint under the terms and conditions of a certain bill of lading issued to said plaintiff by the initial carrier of said property, pursuant to the provisions of the Act of Congress of June 20, 1906 (34 Stat. at Large, p. 584, Chap. 3591; U. S. Comp. Stat. Supp. 1911, p. 1288), and the supplements thereto and amendments thereof, commonly designated as the Inter-State Commerce Act, constituting an express agreement between the plaintiff and the defendant whereby the defndant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by any cause over which the defendant had no control; and defendant asserts that a strike took place among its employees and continued

from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, over which strike the defendant had no control, and which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fifth Defense:

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by said plaintiff within ten days after the delivery of said property, or after due time for the delivery thereof, by the defendant to the plaintiff, although at the time when said goods and property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that in case of loss or damage to said property, claim therefor should be so made within the time and at the place and in the manner mentioned.

Sixth Defense:

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the defendant at the point of delivery or at the point of origin of said goods and property by said plaintiff within four months after the delivery of said property, or after a reasonable time of delivery thereof had elapsed, by the defendant to the plaintiff, although at the time when said goods or property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if

ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that in case of loss or damage to said property, claim therefor should be made within the time and at the place and in the manner mentioned or that, if not so made, the defendant should not be liable for such loss or damage.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Reply.

(Filed June 17, 1914.)

SUPREME COURT OF NEW JERSEY,

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law 7 Counts. Case.

The plaintiff denies the truth of the matters contained in the second, third, fourth, fifth and sixth defenses of the answer.

QUEEN & STOUT,
Attorneys of Plaintiff.

Order to Amend.

(Allowed March 23, 1915; Filed April 1, 1915.)

NEW JERSEY SUPREME COURT.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law 7 Counts.

Application having been made by the above named defendant, in the trial of this cause, for leave to amend the Answer in said cause;

IT IS ORDERED that said Answer be and the same hereby is amended as follows:

Amend Second Defense by changing the date stated therein as the conclusion of the strike, from the "thirty-first" day of July to the "twenty-first."

Amend Third Defense by changing the date stated therein as the conclusion of the accumulation of freight, from "the thirty-first day of July" to "the fifteenth day of August and beyond."

Amend Fourth Defense by changing the date therein stated as the conclusion of the strike from the "thirty-first" day of July, to the "twenty-first."

By inserting an additional defense as follows:

"*Seventh Defense*:—No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agents of the defendant at the point of

delivery or consignment of said goods and property by said plaintiff, within thirty days after the delivery of said property, or after due time for the delivery thereof by the defendant to the plaintiff, atlhough at the time when said goods and property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that, in case of loss or damage to said property, claim therefor should be so made within the time, at the place and in the manner mentioned."

And It Is Further Ordered that the plaintiff's Reply of general denial to said defenses heretofore filed in said cause, stand as its Reply to the defendant's Answer as hereby amended.

WILLIAM H. SPEER,
Judge.

Dated, March 23, 1915.
Entered, April 1, 1915.
On Motion of
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Postea.

(Filed July 29, 1916.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law 7 Counts. Postea.

The first, third and fifth counts of the above entitled action were tried before Judge William H. Speer, with a jury, at the Hudson Circuit, on June 29th, 1916.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for nine hundred thirty-six dollars and sixty-three cents ($936.63).

WM. H. SPEER,
Judge.

Judgment.

(Entered July 29, 1916.)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of nine hundred and thirty-six dollars and sixty-three cents, and its costs which are taxed at sixty-three dollars and thirty-eight cents, making in the whole the sum of ten hundred dollars and one cent.

Damages	$936.63
Costs	63.38
	$1,000.01

Judgment entered July 29, 1916.

WM. S. GUMMERE,
C. J.

Interrogatories.

(Served November 19, 1914.)

NEW JERSEY SUPREME COURT.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law. 7 Counts.

To OLIVIT BROTHERS, a Corporation, *Plaintiff*:

PLEASE TAKE NOTICE that the defendant demands answers under oath or oaths of such of your officers, agents or employees as have personal knowledge of the facts, to the following interrogatories, within the time required by law:

Interrogatory 1:

Who was the owner of the personal property referred to in each of the Counts of the Complaint in above cause at the time each shipment was made as therein set forth?

Interrogatory 2:

Were the shipments in each and every count in said Complaint made at the times therein set forth to the plaintiff as owner or purchaser thereof, or as agents for the purpose of selling same on commission for the account of the owners or purchasers, respectively?

Interrogatory 3:

If in some of said counts the shipments were

made to the plaintiff as owner or purchaser, and in others, as agents, to sell on commission for the account of the owners or purchasers, state in which counts the shipments were to plaintiff as owner or purchaser, and in which as such agent?

Interrogatory 4:

Who was the owner of the personal property referred to in each of the said counts at the time of the commencement of this action?

Interrogatory 5:

If said personal property was sold by plaintiff after delivery by defendant and before commencement of suit, who received the proceeds?

Interrogatory 6:

Was the plaintiff Olivit Brothers, a corporation, ever the purchaser or owner of the personal property referred to in each of said counts, and if so, state which, and when and in what manner it became such owner or purchaser?

Dated, November 14, 1914.

Yours respectfully,
VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Notice.

(Served November 25, 1914; Filed April 6, 1915.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant*.	Action at Law 7 Counts.

TO MESSRS. VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

TAKE NOTICE that we shall move before the Honorable William H. Speer, Judge, at the Court House, in the City of Jersey City, on Friday, the 4th day of December, 1914, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard, for an order to strike out the interrogatories, served upon the plaintiff on November 19th instant in the above stated action, on the ground that said interrogatories are immaterial and irrelevant and pry into the plaintiff's case and do not relate to the defense of the defendant.

Dated, November 25, 1914.

Yours respectfully,
QUEEN & STOUT,
Attorneys of Plaintiff.

(Continued, by consent, to March 19, 1915.)

Order Striking out Interrogatories.

(Allowed March 19, 1915; Filed April 6, 1915.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
7 Counts.

This matter coming on to be heard in the presence of Queen & Stout, attorneys of plaintiff, and of Vredenburgh, Wall & Carey, attorneys of defendant, on due notice of a motion to strike out the interrogatories served by the defendant upon the plaintiff and the court having heard the arguments of counsel for the respective parties and having considered the same and it appearing to the court that the said interrogatories are immaterial to the issue joined in this action:

It is on this nineteenth day of March, one thousand and nine hundred and fifteen, on motion of Queen & Stout, attorneys of plaintiff, ordered that the interrogatories served by the deefndant upon the plaintiff be and the same are hereby struck out on the ground that the said interrogatories are immaterial to the issue joined in this action.

OLIVIT BROTHERS, a Corporation,
Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
11 Counts.

Notice of Appeal.

(Filed August 12, 1916.)

NEW JERSEY SUPREME COURT.

OLIVIT BROTHERS, a Corporation, *Plaintiff-Appellee,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law 11 Counts. On Appeal from Supreme Court of New Jersey.

To QUEEN & STOUT, Esquires,
Attorneys of Plaintiff.

TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated August 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys of Appellant.

(Endorsed.)

Service acknowledged August 11, 1916.

QUEEN & STOUT,
Attorneys of Plaintiff-Appellee.

Grounds of Appeal.*

Same as *Olivit* v. *P. R. R.* (7 Counts). See p. 4.

*By consent, the pleadings in the cases following are incorporated, where practicable, *mutatis mutandis,* by reference to the case first printed.

Recognizance.

In the sum of $2300. Same as *Olivit* v. *P. R. R.* (7 Counts). See p. 10.

Complaint

(Filed July 2, 1914.)

SUPREME COURT OF NEW JERSEY.

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

11 Counts.

Plaintiff, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 335 Washington Street in the City, County and State of New York, says that:

First Count:

1. On July 15th, 1912, at Pembroke, in the State of North Carolina, the plaintiff caused to be delivered to the defendant which was a common carrier of goods for hire from Pembroke aforesaid

to Jersey City in this State, one car load of watermelons, of the value of $500.00, in car S. A. L. 16082, which the defendant then and there received and accepted, as such common carrier, to be transported, carefully and within a reasonable time, to the plaintiff at Jersey City aforesaid, for reward.

2. The defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons from Pembroke aforesaid to Jersey City aforesaid and failed and neglected to transport the same within a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

Complaint contains ten additional Counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which by consent are enumerated in this form:

Counts	Car Number	Date of Shipment	From
2nd	ACL 34833	July 16, 1912	Penbroke, N. C.
3rd	SAL 17566	July 18, 1912	Laurinburg, N. C.
4th	ACL 26210	July 18, 1912	Laurinburg, N. C.
5th	SAL 18113	July 18, 1912	Laurinburg, N. C.
6th	ACL 32619	Aug. 1, 1912	Maxton, N. C.
7th	ACL 18267	Aug. 1, 1912	Maxton, N. C.
8th	ACL 33493	Aug. 1, 1912	Johns, N. C.
9th	ACL 30276	Aug. 1, 1912	Johns, N. C.
10th	ACL 23150	Aug. 1, 1912	Johns, N. C.
11th	ACL 27576	Aug. 7, 1912	Laurinburg, N. C.

Plaintiff demands $500.00 damages on each count.

QUEEN & STOUT,
Attorneys of Plaintiff.

Answer.

Same as *Olivit* v. *P. R. R.* (7 counts). See p. 14.

Reply

Same as *Olivit* v. *P. R. R.* (7 counts). See p. 19.

Order to Amend Answer

Same as *Olivit* v. *P. R. R.* (7 counts). See p. 20.

Postea

(Filed July 29, 1916.)

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant*.	Action at Law (11 Counts). Postea.

The first, second, sixth, seventh and eleventh counts of the above entitled action were tried before Judge William H. Speer, with a jury, at the Hudson Circuit, on June 29th, 1916.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for ten hundred forty-five dollars ($1045).

WM. H. SPEER,
Judge.

Judgment

(Entered July 29, 1916.)

Whereupon its is adjudged that the plaintiff recover of the defendant the sum of ten hundred and forty-five dollars, and its costs, which are taxed at the sum of sixty-three dollars and thirty-eight cents, making in the whole the sum of eleven hundred and eight dollars and thirty-eight cents.

Damages	$1045.00
Costs	63.38
	$1108.38

Judgment entered July 29, 1916.

WM. S. GUMMERE,
C. J.

Interrogatories.

Notice to Strike Out.

Order Striking Out Interrogatories.

Same as *Olivit* v. *P. R. R.* (7 counts). See pp. 24, 25, 26, 27.

OLIVIT BROTHERS, a Corporation, *Plaintiff,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at law 13 Counts.

Notice of Appeal.

(Filed August 12, 1916.)

NEW JERSEY SUPREME COURT.

OLIVIT BROTHERS, a Corporation, *Plaintiff-Appellee,* *v.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Action at law. (13 Counts.) On Appeal from Supreme Court of New Jersey.

To QUEEN & STOUT, Esquires,
Attorneys of Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated August 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys of Appellant.

(*Endorsed.*)

Service acknowledged August 11, 1916.

QUEEN & STOUT,
Attorneys of Plaintiff-Appellee.

Grounds of Appeal.

Same as *Olivit* v. *P. R. R.* (7 counts). See p. 4.

Recognizance.

In the sum of $700. Same as *Olivit* v. *P. R. R.* (7 counts). See p. 10.

Complaint

(Filed March 13, 1914.)

SUPREME COURT OF NEW JERSEY,

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation,
Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

(13 Counts.)

Plaintiff, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 335 Washington Street in the City, County and State of New York, says that:

First Count.

1. On July 29th, 1912, at Hasty, in the State of North Carolina, the plaintiff caused to be de-

livered to the defendant which was a common carrier of goods for hire from Hasty aforesaid to Jersey City in this State, one car load of watermelons, of the value of $500, in car A.C.L. 25691, which the defendant then and there received and accepted, as such common carrier, to be transported, carefully and within a reasonable time, to the plaintiff at Jersey City aforesaid, for reward.

2. The defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons from Hasty aforesaid to Jersey City aforesaid and failed and neglected to transport the same within a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

Complaint contains twelve additional Counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which by consent, are enumerated in this form:

Counts	Car Number	Date of Shipment	From
2nd	ACL 38229	July 30, 1912	Hasty, N. C.
3rd	ACL 20071	July 20, 1912	Hasty, N. C.
4th	SAL 24553	July 27, 1912	Maxton, N. C.
5th	SAL 21998	July 31, 1912	Maxton, N. C.
6th	SAL 21306	Aug. 2, 1912	Maxton, N. C.
7th	SAL 18311	July 26, 1912	Maxton, N. C.
8th	ACL 27244	July 26, 1912	Maxton, N. C.
9th	SAL 18300	July 31, 1912	Maxton, N. C.
10th	SAL 17579	July 27, 1912	Maxton, N. C.
11th	SAL 16346	July 19, 1912	Maxton, N. C.
12th	SAL 22790	July 27, 1912	Maxton, N. C.
13th	ACL 24216	July 30, 1912	Floral Cottage, N. C.

Plaintiff demands $500 damages on each count.

QUEEN & STOUT,
Attorneys of Plaintiff.

Answer.

Same as *Olivit* v. *P. R. R.* (7 counts). See p. 14.

Reply

Same as *Olivit* v. *P. R. R.* (7 counts). See p. 19.

Order to Amend Answer

Same as *Olivit* v. *P. R. R.* (7 counts). See p. 20.

Postea

(Filed July 29, 1916)

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Postea. Action at law. (13 Counts.)

The thirteenth count of the above entitled action was tried before Judge William H. Speer, with a jury, at the Hudson Circuit, on June 29th, 1916.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for two hundred sixty-two dollars and ninety-eight cents ($262.98).

WM. H. SPEER,
Judge.

Judgment

(*Entered July* 29, 1916.)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of two hundred and sixty-two dollars and ninety-eight cents, and its costs which are taxed at the sum of sixty-three dollars and thirty-eight cents, making in the whole the sum of three hundred and twenty-six dollars and thirty-six cents.

Damages	$262.98
Costs	63.38
	$326.36

Judgment entered July 29, 1916.

WM. S. GUMMERE,
C. J.

Interrogatories.

Notice To Strike Out.

Order Striking Out Interrogatories.

Same as *Olivit* v. *P. R. R.* (7 Counts). See pp. 24, 25, 26, 27.

DANIEL H. GILBERT,
Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
(6 Counts).

Notice of Appeal.

(Filed August 12, 1916.)

NEW JERSEY SUPREME COURT,

DANIEL H. GILBERT, *Plaintiff-Appellee,* *v.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law On Appeal from Supreme Court of New Jersey.

To QUEEN & STOUT, Esquires,
Attorneys of Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated August 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys of Appellant.

(*Endorsed.*)

Service acknowledged August 11, 1916.

QUEEN & STOUT,
Attorneys Plff.-Appellee.

Grounds of Appeal.

Same as *Olivit* v. *P. R. R.* (7 Counts), omitting No. 1. See p. 4.

Recognizance.

In the sum of $3800. Same as *Olivit* v. *P. R. R.* (7 counts). See p. 10.

Complaint

(Filed February 3, 1916.)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

DANIEL H. GILBERT,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

(6 Counts).

Plaintiff, DANIEL H. GILBERT, of Monticello, in the County of Jefferson and State of Florida, says that:

First Count.

1. On or about July 16th, 1912, at Edgemoor, in the State of Delaware, the plaintiff caused to be delivered to the defendant, which was a common carrier of goods for hire from Edgemoor aforesaid to Jersey City, in this State, one carload of

watermelons of the value of $500.00 in car C. N. O. & T. P. 12397, which the defendant then and there received and accepted as such common carrier, and agreed to transport the same carefully and within a reasonable time to Jersey City aforesaid, and there deliver the same to the plaintiff, for reward.

2. The defendant, in violation of its agreement, failed and neglected to carefully transport the said watermelons from Edgemoor aforesaid to Jersey City aforesaid, and failed and neglected to transport the same within a reasonable time; and by reason thereof the said watermelons were wholly lost to the plaintiff.

Complaint contains five additional counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which by consent, are enumerated in this form:

Counts	Car	Number	Date of Shipment	From
2	GS&F	4874	July 16, 1912	Edgemoor, Del.
3	GS&F	4575	July 16, 1912	Edgemoor, Del.
4	Sou	31350	July 16, 1912	Edgemoor, Del.
5	Sou	33803	July 16, 1912	Edgemoor, Del.
6	Sou	39514	July 16, 1912	Edgemoor, Del.

Plaintiff demands $500.00 damages on each count.

QUEEN & STOUT,
Attorneys for Plaintiff.

Answer.

(Filed March 25, 1916.)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

DANIEL H. GILBERT,
Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Defendant, a body corporate, organized under the laws of the State of Pennsylvania, having a place of business and office at No. 26 Exchange Place, Jersey City, Hudson County, New Jersey, says that:

First Defense:

(1) It denies the truth of the matters contained in the complaint, and each and every count thereof.

Second Defense:

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so, as to each and every count of said complaint, under the terms and conditions of a certain Bill of Lading issued to said plaintiff by the initial carrier of said property, pursuant to the provisions of the Act of Congress of June 20, 1906 (34 Stat. at Large, p. 584, Chap. 3591; U. S. Comp. Stat. Supp. 1911, p. 1238), and the supplements

thereto and amendments thereof, commonly designated as the Interstate Commerce Act, constituting an express agreement between the plaintiff and the defendant, whereby the defendant was to be relieved from any and all liability for damage to the said goods and property, resulting from delay in the transportation and delivery thereof, if such delay was caused by a strike or strikes among defendant's employees; and defendant asserts that a strike did take place among its employees and continued from the ninth day to the twenty-first day of July, nineteen hundred and twelve, and beyond, which strike was the cause of the alleged delay, if any delay at all occurred, as alleged in said complaint.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Reply

(Filed April 13, 1916.)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

DANIEL H. GILBERT, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law (6 Counts).

The plaintiff denies the truth of the matters contained in the second defense of the answer.

QUEEN & STOUT,
Attorneys for Plaintiff.

Postea

(Filed July 29, 1916.)

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

DANIEL H. GILBERT, *Plaintiff,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at law. (6 Counts).

The above entitled action was tried before Judge William H. Speer, with a jury, at the Hudson Circuit, on June 29th, 1916.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for one thousand eight hundred fifty-two dollars and fifty cents ($1852.50).

WM. H. SPEER,
Judge.

Judgment

(*Entered July* 29, 1916.)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of eighteen hundred and fifty-two dollars and fifty cents, and his costs, which are taxed at the sum of forty-seven dollars and thirty-eight cents, making in the whole the sum of eighteen hundred and ninety-nine dollars and eighty-eight cents.

Damages	$1852.50
Costs	47.38
	$1899.88

Judgment entered July 29, 1916.

WILLIAM S. GUMMERE,
C. J.

J. C. Leib & Co., a Corporation,
Plaintiff,

vs.

The Pennsylvania Railroad Company,
Defendant.

Action at Law
(9 Counts).

Notice of Appeal.

(Filed August 12, 1916.)

NEW JERSEY SUPREME COURT.

J. C. Leib & Co., a Corporation, *Plaintiff-Appellee,* *vs.* The Pennsylvania Railroad Company, *Defendant-Appellant.*	Action at Law On Appeal from Supreme Court of New Jersey.

To Queen & Stout, Esquires,
Attorneys of Plaintiff.

Take Notice, that the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated August 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys of Appellant.

(*Endorsed.*)
Service acknowledged August 11, 1916.
QUEEN & STOUT,
Attorney Plaintiff-Appellee.

Grounds of Appeal.

Same as *Gilbert* v. *P. R. R.* See p. 48.

Recognizance.

In the sum of $4700. Same as *Olivit* v. *P. R. R.* (7 counts). See p. 10.

Complaint

(Filed October 1, 1915.)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

J. C. LEIB & Co., a Corporation,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

(9 Counts).

Plaintiff, J. C. LEIB & Co., a Corporation of the State of Maryland, having a place of business at No. 210 Light Street, Baltimore, Maryland, says that:

First Count.

1. On July 30, 1912, at Baltimore, in the State of Maryland, the plaintiff caused to be delivered to the defendant which was a common carrier of

goods for hire from Baltimore aforesaid to Jersey City in this State, one carload of watermelons of the value of $500 in car A. C. L. 31290, which the defendant then and there received and accepted as such common carrier and agreed to transport the same carefully and within a reasonable time to Jersey City aforesaid, and there deliver the same to J. H. Bahrenburg Bro. & Co. for reward.

2. The defendant, in violation of its agreement, failed and neglected to carefully transport the said watermelons from Baltimore aforesaid to Jersey City aforesaid, and failed and neglected to transport the same within a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the said J. H. Bahrenburg Bro. & Co., at Jersey City aforesaid, in a bad and damaged condition.

Complaint contains eight additional counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which by consent are enumerated in this form:

Counts	Car Number	Date of Shipment	From
2	A. C. L. 27308	July 30, 1912	Baltimore, Md.
3	" 33762	"	"
4	" 36521	"	"
5	" 24466	"	"
6	" 31539	"	"
7	" 18478	"	"
8	" 30931	"	"
9	" 23432	"	"

QUEEN & STOUT,
Attorneys of Plaintiff.

Answer

Same as *Gilbert* v. *P. R. R.* See p. 50.

Reply

Same as *Gilbert* v. *P. R. R.* See p. 52.

Postea

(Filed July 29, 1916)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

J. C. LEIB & Co., a Corporation,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
(9 Counts).
Postea.

The above entitled action was tried before Judge William H. Speer, with a jury, at the Hudson Circuit, on June 29th, 1916.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for two thousand two hundred fifty-three dollars and ninety cents ($2,253.90).

WM. H. SPEER,
Judge.

Judgment

(Entered July 29, 1916.)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of two thousand and two hundred and fifty-three dollars and ninety cents, and its costs which are taxed at the sum of forty-seven dollars and thirty-eight cents, making in the whole the sum of two thousand and three hundred and one dollars and twenty-eight cents.

Damages	$2253.90
Costs	47.38
	$2301.28

Judgment entered July 29, 1916.

WM. S. GUMMERE,

C. J.

ISAAC LOEWENTHAL,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
(9 Counts).

Notice of Appeal.

(Filed August 12, 1916).

NEW JERSEY SUPREME COURT.

ISAAC LOEWENTHAL, *Plaintiff-Appellee.* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law On Appeal from Supreme Court of New Jersey.

To: QUEEN & STOUT, Esquires,
Attorneys of Plaintiff.

TAKE NOTICE: That the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated, August 11, 1916.

VREDENBURG, WALL & CAREY,
Attorneys of Appellant.

(Endorsed)
Service acknowledged Aug. 11, 1916.
QUEEN & STOUT,
Atty. Pltff.-Appellee.

Grounds of Appeal.

Same as *Gilbert* v. *P. R. R.* See p. 48.

Recognizance.

In the sum of $5700. Same as *Olivit* v. *P. R. R.* (7 counts). See p. 10.

Complaint

(Filed July 31, 1915).

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

ISAAC LOEWENTHAL,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

The plaintiff who resides in the City, County and State of New York says that:

First Count:

1. On July 11th, 1912, at Statesboro, in the State of Georgia, the plaintiff, caused to be deliv-

ered to the defendant, which was a common carrier of goods for hire from Statesboro aforesaid to Jersey City in this State, one carload of watermelons of the value of $500.00, in car S. A. L., 22991 which the defendant then and there received and accepted, as such common carrier, and agreed to transport the same carefully and with a reasonable time to the plaintiff at Jersey City aforesaid for reward.

2. The defendant, in violation of its agreement, failed and neglected to carefully transport the said watermelons from Statesboro aforesaid to Jersey City aforesaid, and failed and neglected to transport the same within a reasonable time; and by reason thereof the said watermelons were wholly lost to the plaintiff.

Complaint contains eight additional counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following which by consent are enumerated in the following form:

Counts	Car Number	Date of Shipment	From
2	S. A. L. 18116	July 12, 1912	Statesboro, Ga
3	" 21313	"	"
4	" 17285	July 13, 1912	"
5	" 22460	"	Stilson, Ga.
6	C. of Ga. 11648	"	Andersonville, Ga.
7	S. A. L. 16236	July 16, 1912	Stilson, Ga.
8	" 24361	July 17, 1912	Statesboro, Ga.
9	" 17307	July 18, 1912	"

Plaintiff demands $500.00 damages on each count.

QUEEN & STOUT,
Attorneys of Plaintiff.

Answer.

Same as *Gilbert* v. *P. R. R.* See p. 50.

Reply

Same as *Gilbert* v. *P. R. R.* See p. 52.

Postea

(Filed July 29, 1916)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

ISAAC LOEWENTHAL,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
(9 Counts).
Postea.

The above entitled action was tried before William H. Speer, with a jury, at the Hudson Circuit, on June 29th, 1916.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for two thousand seven hundred seventy-eight dollars and seventy-five cents ($2778.75).

WM. H. SPEER,
Judge.

Judgment

(Entered July 29, 1916)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of two thousand seven hundred and seventy - eight dollars and seventy-five cents, and his costs which are taxed at the sum of forty-seven dollars and thirty-eight cents, making in the whole the sum of two thousand eight hundred and twenty-six dollars and thirteen cents.

Damages	$2778.75
Costs	47.38
	$2826.13

Judgment entered July 29, 1916.

WM. S. GUMMERE,
C. J.

CHARLES ALBRECHT,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
(9 Counts).

Notice of Appeal.

(Filed August 12, 1916)

HUDSON COUNTY CIRCUIT COURT.

CHARLES ALBRECHT, *Plaintiff-Appellee,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Action at law. On Appeal from the Hudson County Circuit Court.

To:

QUEEN & STOUT, Esquires,
Attorneys of Plaintiff:

TAKE NOTICE: That the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated August 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys of Appellant.

(Endorsed)

Service acknowledged Aug. 11, 1916.

QUEEN & STOUT,
Atty. Pltff.-Appellee.

Grounds of Appeal.

(Filed November 15, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHARLES ALBRECHT, *Plaintiff-Appellee,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	On Appeal from the Hudson County Circuit Court. (9 Counts).

The following are the grounds upon which the defendant-appellant appeals to the New Jersey Court of Errors and Appeals, in the last resort in all causes, from the judgment of the Supreme Court of New Jersey:

1. The Court, at the close of the whole case, refused to direct a verdict in favor of defendant and against plaintiff, when thereunto moved by defendant.

2. Defendant, at the close of the whole case, moved the Court to direct a verdict in favor of defendant and against plaintiff, upon the following grounds:

a. The defendant having proved that the damage complained of resulted proximately from excepted causes in the bills of lading, the burden of proof was then on the plaintiff to show negligence of the defendant in handling the situation which had been proved as the proximate cause of such damage, which plaintiff had not shown; and that that burden, then resting upon plaintiff, had not been sustained.

b. There was not sufficient evidence of negligence of defendant in the case to warrant its submission to the jury.

c. There was no evidence of negligence at all in the case which should require the court to submit it to the jury.

d. There was no neglience of defendant shown.

e. Under the circumstances of the case it was the duty of defendant to move more perishable freight first, and that the court, as a matter of law, should say that there could be no negligence on the part of the defendant in moving the peaches and cantaloupes even to the exclusion of the watermelons.

f. It did not affirmatively appear in the case that the plaintiff was the owner of the property involved in the suit, or had been the owner thereof at the times of shipment thereof or the damage thereto.

Each of which grounds was held by the Court to be erroneous in law, and the motion to direct a verdict in favor of the defendant and against the plaintiff was denied.

3. The Court refused to charge the jury defendant's request No. 2, as follows:

> "That the plaintiff is not entitled to recover the freight charges paid to defendant on the shipments involved in these cases."

4. The Court refused to charge the jury defendant's request No. 3, as follows:

> "Unless it appears that the plaintiffs were the owners of the shipments involved in these cases at the time of shipment and at the time of damage, they are not entitled to recover in these actions."

5. The Court refused to charge the jury defendant's request No. 5, as follows:

> "It was the duty of the defendant to move

most perishable freight first under the circumstances in these cases, and the holding back of less perishable freight, viz.: the watermelons, until the peaches were delivered was not negligence."

6. The Court charged the jury as follows:

"You will have observed that I said a few moments ago that the defendant could excuse itself by showing that it came within one of the exceptions stated in the bill of lading,—either that there was a strike, accompanied by violence, which interrupted the due, ordinary and usual course of its business; or that there was a congestion due to causes beyond its control. Those two defenses, gentlemen, are the ones I wish to direct your attention to.

Now, those, gentlemen, are defenses, and the burden of establishing the existence of those defenses rests upon the defendant; and the defendant is obliged to make them out by the greater weight of the evidence. What I mean when I say 'to make them out' is that if the defendant seeks to avail itself of either of those defenses to excuse itself from liability in cases of this kind, it must make that defense out by the greater weight of the evidence. If it makes out either one of those defenses by the greater weight of the evidence, in the case in which it is thus made out it constitutes a complete defense to the action, and the verdict would have to be, under the circumstances, for the defendant.

If the defendant shall make out by the greater weight of the evidence that there was a strike and that the strike was the cause of the congestion of the freight which resulted, if it did result, in the delay in delivery and the consequent decay of the produce, why, mani-

festly the defendant has excused itself on that ground, unless the plaintiff then took up the burden and showed by greater weight of the evidence that even though there was a strike, the defendant in the handling of the strike, or in the handling of the produce, or in dealing with the situation, did not use reasonable care to deliver the goods within a reasonable time to the consignee. If the plaintiff makes that out by the greater weight of the evidence, that amounts to what is known in the law as neglience; and the neglience would render (if that is established by the plaintiff by the greater weight of the evidence) the defendant responsible, notwithstanding the fact of the strike.

Now, when I say that the burden of establishing the neglience rests upon the plaintiff, I do not necessarily mean that the plaintiff is obliged, after the defendant gets through with its evidence, to put more evidence in; because the burden upon the plaintiff is upon the whole evidence, to make the evidence weigh heavier in favor of the neglience of the defendant with respect to the delay of delivery than it does the other way. If the evidence does weigh heavier in favor of the neglience of the defendant company than it does in favor of the freedom from neglience of the defendant company, why, then, of course, the plaintiff is under no obligation to offer any further proof, because then the evidence would preponderate in that particular, and the plaintiff might very well rest at that point, without putting in further proof on that ground. But the burden rested upon the plaintiff to establish the negilgence by the greater weight of the evidence. If the plaintiff has thus es-

tablished it, the plaintiff is entitled to recover upon the ground of neglience.

Now, the same rule applies with respect to the congestion of the freight due to causes beyond the control of the defendant. The defendant is obliged to make out the fact of the congestion as an excuse by the greater weight of the evidence. If the defendant does make out the fact of the congestion and the consequent delay of the freight, then the plaintiff is obliged to bear the burden of establishing by the gerater weight of the evidence that the congestion and the consequent delay was due to the neglience of the defendant; and the remarks I made with respect to the other defense apply equally to this: the plaintiff does not have to go on and introduce proof after the defendant gets through with its proof, if already there is evidence in the case. Whether there is or not I do not say. I leave that for you to determine,—whether there already is evidence in the case tending in favor of the negligence of the defendant in that particular, as against its freedom from negligence."

7. Said Circuit Court erred in divers other respects.

Dated, November 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant Appellant.

Recognizance.

(Filed August 15, 1916)

HUDSON COUNTY CIRCUIT COURT.

CHARLES ALBRECHT,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant

Action at Law

STATE OF NEW JERSEY, County of Hudson, } ss.:

BE IT REMEMBERED, that on this 14th day of August, A. D., 1916, appeared before me Frank P. McDermott, one of the Supreme Court Commissioners of the State of New Jersey, at Jersey City, in said State, THE PENNSYLVANIA RAILROAD COMPANY, a corporation of the Commonwealth of Pennsylvania, by Albert C. Wall, its attorney-in-fact, on its behalf as principal, and the AMERICAN SURETY COMPANY OF NEW YORK, a corporation of the State of New York, by Arthur Schneider, its Resident Vice-President, on its behalf as surety, who jointly and severally did acknowledge said corporations to be indebted to CHARLES ALBRECHT, in the sum of twenty-one hundred dollars to be made and levied of their respective goods and chattels, lands and tenements and real estate, if default be made in the following conditions:

WHEREAS, the said Charles Albrecht lately recovered judgment against The Pennsylvania Rail-

road Company in an action at law, in the Hudson County Circuit Court for the sum of Nine hundred fifty-seven and 13/100 dollars, damages, and costs, as by the record thereof will appear; and

WHEREAS, The Pennsylvania Railroad Company has taken an appeal from said judgment to the New Jersey Court of Errors and Appeals in the last resort in all causes;

NOW, THEREFORE, if the said The Pennsylvania Railroad Company shall prosecute the said appeal with effect and also pay and satisfy, if the said judgment be affirmed, all damages and costs in the former judgment, and all costs and damages to be awarded for delay of execution, then this recognizance to be void, else to be and remain in full force.

Taken and acknowledged this 14th day of August, A. D. 1916.

FRANK P. MCDERMOTT,
Supreme Court Commissioner of New Jersey.

THE PENNSYLVANIA RAILROAD COMPANY,
By ALBERT C. WALL,
Attorney-in-fact.

AMERICAN SURETY COMPANY OF NEW YORK,
(American Surety Co. Seal.)
By ARTHUR SCHNEIDER,
Resident Vice-President.

Attest:
HENRY A. GIEGOLD,
Resident Assistant Secretary.

Approved as to form and sufficiency of Surety.
FRANK P. MCDERMOTT,
Supreme Court Commissioner of New Jersey.

Complaint

(Filed March 8, 1913)

CIRCUIT COURT

HOLDEN IN AND FOR SAID COUNTY.

CHARLES ALBRECHT,
Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

} Action at Law

STATE OF NEW JERSEY, }
County of Hudson. } ss.:

The Defendant was summoned to answer unto said Plaintiff therein in an action at Law upon the following complaint.

Plaintiff, Charles Albrecht, who resides in the Borough of Brooklyn in the City and State of New York says that:

First Count— 1. On July 11th, 1912, at Pavo in the State of Georgia the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Pavo aforesaid and Jersey City in this State, one carload of water melons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward.

2. The defendant did not transport the said

carload of water melons within a reasonable time but on the contrary unreasonably and negligently delayed the transportation thereof for a period of nine days and during said delay the said water melons decayed and spoiled, all to the damage of the plaintiff, five hundred dollars.

Complaint contains eight additional counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which, by consent, are enumerated in this form:

Count.	Date of Shipment	From
2nd	July 18, 1912	Kline, S. C.
3rd	July 18, 1912	Kline, S. C.
4th	July 18, 1912	Ulmers, S. C.
5th	July 16, 1912	Ulmers, S. C.
6th	July 16, 1912	Ulmers, S. C.
7th	July 16, 1912	Ulmers, S. C.
8th	July 17, 1912	Allendale, S. C.
9th	July 16, 1912	Barlow, S. C.

QUEEN & STOUT,
Attorneys for Plaintiff.

Amended Answer.

(Filed September 29, 1913).

Defendant, a body corporate, organized under the laws of the State of Pennsylvania, having a place of business and office at No. 26 Exchange Place, Jersey City, Hudson County, New Jersey, says that:

First defense:

(1) It denies the truth of the matters contained in the complaint and each and every count thereof.

Amended Answer

Second defense:

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so under and express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from delay in the transportation and delivery thereof if such delay was caused by a strike or strikes among defendant's employees; and defendant asserts that a strike did take place among its employees and continued from the ninth day of July nineteen hundred and twelve, to the twenty-first day of July, nineteen hundred and twelve, which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Third defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so under an express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by an accumulation of freight at any point, or to any other causes over which the defendant had no control; and defendant asserts that an accumulation of freight did occur at Jersey City, New Jersey, the point to which the ship-

ments mentioned in the complaint were consigned and at which they were to be delivered, and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, over which accumulation the defendant had no control, and which accumulation was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fourth defense:

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so under and express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by any cause over which the defendant had no control; and defendant asserts that a strike took place among its employees and continued from the ninth day of July, nineteen hundred and twelve, to the twenty-first day of July, nineteen hundred and twelve, over which strike the defendant had no control, and which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fifth defense:

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by the said plaintiff within ten days after the delivery of said property, or after due time of the delivery thereof, by the defendant to

the plaintiff, although at the time when said goods or property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that in case of loss or damage to said property claim therefor should be so made within the time and at the place and in the manner mentioned.

Sixth defense:

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the defendant at the point of delivery or at the point of origin of said goods and property by said plaintiff within four months after the delivery of said property, or after a reasonable time for delivery thereof had elapsed by the defendant to the plaintiff, although at the time when said goods or property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that in case of loss or damage to said property claim therefor should be so made within the time and at the place and in the manner mentioned or that, if not so made, the defendant should not be liable for such loss or damage.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Filed Sept. 29, 1913.
By order of
WM. H. SPEER,
Judge.

Order to Amend.

(Allowed March 23, 1915.)

HUDSON COUNTY CIRCUIT COURT.

CHARLES ALBRECHT, *Plaintiff*, vs. THE PENNSYLVANIA RAILROAD COMPANY, *Defendant*.	Action at Law (9 Counts).

Application having been made by the above named defendant, in the trial of this cause, to amend the amended answer in said cause;

IT IS ORDERED that said Amended Answer be and the same hereby is amended as follows:

By inserting an additional defense as follows:

"*Seventh Defense*: No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by said plaintiff, within thirty days after the delivery of said property, or after due time for the delivery thereof by the defendant to the plaintiff, although at the time when said goods and property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that, in case of loss or damage to said prop-

erty, claim therefor should be so made within the time, at the place, and in the manner mentioned."

AND IT IS FURTHER ORDERED that the plaintiff's Reply of general denial to said defenses heretofore filed in said cause, stand as its Reply to the defendant's Amended Answer as hereby amended.

WILLIAM H. SPEER,
Judge.

Dated March 23, 1915.
Entered April 3, 1915, on motion of
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Reply.

(Filed April 16, 1913).

The plaintiff denies every allegation in the Answer.

QUEEN & STOUT,
Attorneys of Plaintiff.

Judgment

(Entered July 6, 1916.)

HUDSON COUNTY CIRCUIT COURT.

CHARLES ALBRECHT,
Plaintiff,

vs.

PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Damages $957.13
Costs .. 174.38

Total ..$1131.51

QUEEN & STOUT, Attorneys.

Judgment on verdict in the above entitled cause was entered in this Court on the sixth day of July in the year of our Lord one thousand nine hundred and sixteen in favor of the Plaintiff Charles Albrecht and against the Defendant Pennsylvania Railroad Company in a plea of Action at Law for the sum of nine hundred and fifty-seven dollars and thirteen cents damages and one hundred seventy-four dollars and thirty-eight cents cost of suit.

Judgment entered and signed this 6th of July, 1916.

WM. H. SPEER,
Judge.

ANDREW SPADA, et al., etc., trading as ANDREW SPADA & COMPANY,

Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY,

Defendant.

Action at Law
(9 Counts).

Notice of Appeal.

(Filed August 12, 1916)

HUDSON COUNTY CIRCUIT COURT.

ANDREW SPADA and DOMINICK SPADA, partners doing business as ANDREW SPADA & Co., *Plaintiffs-Appellees,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law On Appeal from Hudson Circuit Court.

To:

QUEEN & STOUT, Esquires,
Attorneys of Plaintiffs:

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals, in the last resort in all causes, of New Jersey, from the whole of the judgment entered in this cause.

Dated August 11, 1916.

VREDENBURGH, WALL & CAREY,
Attorneys of Appellant.

(Endorsed)

Service acknowledged August 11, 1916.

QUEEN & STOUT,
Attys. Pltff.-Appellees.

Grounds of Appeal.

Same as *Albrecht* vs. *P. R. R.* See p. 74.

Recognizance.

In sum of $4,400. Same as *Albrecht* vs. *P. R. R.* See p. 79.

Complaint

(Filed March 8, 1913).

STATE OF NEW JERSEY, }
County of Hudson. } ss.:

CIRCUIT COURT.

HOLDEN IN AND FOR SAID COUNTY.

ANDREW SPADA and DOMINICK partners doing business as ANDREW SPADA & Co.,
Plaintiffs,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

The defendant was summoned to answer unto said plaintiffs therein in an action at Law upon the following complaint.

Plaintiffs, Andrew Spada and Dominick Spada, partners doing business as Andrew Spada & Co. who resides in the City and State of New York say that:

First Count—1. On July 18th, 1912 at Oaktown in the State of Georgia the plaintiffs caused to be

delivered to the defendant, who was then and now is a common carrier of goods for hire between Oaktown aforesaid and Jersey City in this State, one carload of watermelons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiffs at Jersey City aforesaid within a reasonable time, for a reward.

2. The defendant did not transport the said carload of watermelons within a reasonable time but on the contrary unreasonably and negligently delayed the transportation thereof for a period of three days and during said delay the said watermelons decayed and spoiled, all to the damage of the plaintiffs, five hundred dollars.

Complaint contains eight additional Counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which, by consent, are enumerated in this form:

Counts	Date of Shipment	From
2nd.	July 9, 1912	Cherokee, Ga.
3rd.	July 12, 1912	Ashford, Ala.
4th.	July 12, 1912	Cairo, Ga.
5th.	July 13, 1912	Cairo, Ga.
6th.	July 13, 1912	Cairo, Ga.
7th.	July 13, 1912	Cairo, Ga.
8th.	July 19, 1912	Cairo, Ga.
9th.	July 20, 1912	Pinepark, Ga.

QUEEN & STOUT,
Attorneys of Plaintiff.

Order to Amend.

Same as *Albrecht* v. *P. R. R.* See p. 86.

Reply

Same as *Albrecht* v. *P. R. R.* See p. 87.

Judgment

(Entered July 6, 1916).

HUDSON COUNTY CIRCUIT COURT.

ANDREW SPADA and DOMINICK partners doing business as ANDREW SPADA & Co., *Plaintiffs,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY,	Damages, $2115.23 Costs ..... 164.59 Total ..$2279.82

QUEEN & STOUT,

Attorneys.

Judgment on verdict in the above entitled cause was entered in this Court on the sixth day of July in the year of our Lord one thousand nine hundred and sixteen in favor of the plaintiffs Andrew Spada and Dominick Spada, partners doing business as Andrew Spada & Company and against the Defendant Pennsylvania Railroad Company in a plea of Action at Law for the sum of Two thousand one hundred & fifteen dollars and twenty-three cents damages and one hundred sixty-four dollars and eighty-two cents costs of suit.

Judgment entered and signed this 6th of July, 1916.

WM. H. SPEER.

Judge.

Testimony.

NEY JERSEY SUPREME COURT.

OLIVITT BROTHERS, a corporation,
vs
PENNSYLVANIA R. R. CO. (3 cases)

J. C. LEIB & CO., a corporation,
vs
PENNSYLVANIA R. R. CO.

DANIEL H. GILBERT
vs
PENNSYLVANIA R. R. CO.

ISAAC LOEWENTHAL
vs
PENNSYLVANIA R. R. CO.

ANDREW SPADA & CO.
vs
PENNSYLVANIA R. R. CO.

CHARLES ALBRECHT
vs
PENNSYLVANIA R. R. CO.

Eight cases tried together June 29, 1916, before Speer, J. and a jury.

Queen & Stout for the plaintiff.

Vredenburgh, Wall & Carey for the defendant.

Counsel open to the jury.

Mr. Stout: I move the trial of the 13th count of the 13-count case of Olivitt Brothers against the Pennsylvania Railroad Company; the 1st, 2nd, 6th, 7th and 11th counts of the 11-count case of Olivitt Brothers against the Pennsylvania Railroad Company; the 1st, 3rd, 4th and 5th counts of the 7-count case of Olivitt Brothers against the Pennsylvania Railroad Company; the 1st, 2nd, 3rd,

5th, 6th, 7th, 8th and 9th counts in the case of Andrew Spada against the Pennsylvania Railroad Company; the 1st, 2nd, 3rd, 8th and 9th counts of the case of Charles Albrecht against the Pennsylvania Railroad Company; the case of Isaac Loewenthal against the Pennsylvania Railroad Company; the case of J. C. Lieb and Company against the Pennsylvania Railroad Company; the case of Daniel H. Gilbert against the Pennsylvania Railroad Company. These cases are numbers 171, 172, 173, 175, 176 and 177 of the Supreme Court issues and 490 and 491 of the Circuit issues for this term.

I also move that these eight cases be tried together and that the testimony taken apply to each case in so far as it is applicable.

Mr. Hartpence: We consent for the defendants to that motion.

Mr. Stout: May it please the court and jury, the plaintiffs and defendants in each of these cases have stipulated as to various facts. I now offer these stipulations in evidence.

(Stipulations marked in evidence P-1 to P-9 inclusive.)

Mr. Stout: I now offer in evidence the bills of lading in these cases.

(Bills of lading marked P-10.)

Mr. Stout: I will now read rule 1 of the Southern Classification referred to in the stipulations, page 85. "The reduced rate specified in this classification will apply only on property shipped subject to the conditions of the carriers' bill of lading. Property carried not subject to the conditions of the carriers' bill of lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states in so far as they apply. Property thus carried will be charged ten per

cent higher, subject to a minimum increase of one cent per hundred pounds, than if shipped subject to the conditions of the carriers' bill of lading."

Mr. Stout: It is stipulated between counsel that where the word "damaged" appears in the seventh paragraph of the stipulations it should be changed to "decayed."

Plaintiff Rests.

DEFENDANT'S CASE.

Defendant offers in evidence a map, which is marked D-1.

ROBERT FENN, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your business? A. I am employed by the Pennsylvania Railroad at Second and Henderson Streets, Jersey City, in the perishable freight department.

Q. How long have you been employed there? A. Ten years.

Q. What was your position there in the months of July and August, 1912? A. Clerk in the same department.

Q. Mr. Fenn, I show you stipulation, P-1, and call your attention particularly to the blueprint, and also P12, P-3, P-4, P-5 and P-6, the blueprints on those exhibits, calling your attention to those blueprints, and ask you whether or not you have examined those blueprints or replicas of them before this trial? A. I have.

Q. Do you keep any records in your work at

the Pennsylvania Railroad freight department? A. I keep all these records.

Q. What records do you keep? A. Records of the delivery, placing of all cars of watermelons, perishable freight.

Q. That come in to the Jersey City yard? A. To the Jersey City yard, yes, sir.

Q. How long have you done that? A. About five years.

Q. Mr. Fenn have you any recollection of a strike or any labor disorders in the month of July, 1912, at pier 29, Pennsylvania Railroad, New York? A. Yes, sir.

Mr. Stout: I would like to ask the witness whether he knows of his own knowledge.

The Court: You may ask him that.

Mr. Stout: Do you know this of your own knowledge, Mr. Fenn?

The Witness: Yes, sir.

Mr. Stout: Were you at pier 29?

The Witness: No, sir.

Q. Did that strike in any way, to your knowledge, affect the general situation in the freight delivery yard of the Pennsylvania Railroad at Second and Henderson Streets?

Mr. Stout: I object to that. I think he ought to testify as to the results of the strike, if there was a strike, or how—

The Court: That is what the effects are, the result.

Mr. Stout: He says, "Did it affect?"

The Court: Yes; that is what affect means.

Mr. Stout: I will withdraw the objection.

A. Yes, sir; it did affect the delivery of freight in the Jersey City yard.

Q. Will you tell us in what way it affected it? A. Well, we had to deliver peaches consigned to

New York that would have gone to pier 29, we had to deliver them there in Jersey.

Q. Did it in any way affect the handling of your watermelon cars? A. Yes, sir.

Q. In what way did it affect them? A. Well, these peaches were delivered at—

Q. In what way did it affect the watermelon cars? A. Well, the watermelons were delivered in the day and the peaches were delivered at night, and everything got blocked, congested, that is watermelons could not get in fast enough.

Q. And what became of them when they could not get in? A. Well, they were blocked up several places along the road, in the storage yard; they took their turn to come down to the ball ground.

The Court: By the ball ground you mean Second and Henderson Streets?

The Witness: Yes, sir.

Q. Now, Mr. Fenn, were the cars which are enumerated in the blueprints which I have shown to you, attached to exhibits P-1, 2, 3, 4, 5 and 6, affected in the way you have stated? A. Yes, sir.

Q. All of them? A. Yes, sir.

Cross Examination by Mr. Stout:

Q. How long did the so-called labor disorder last? A. The strike itself lasted from July 9th to July 21st.

Q. And how frequently during the period from July 9th to July 21st, 1912, were you at pier 29? A. I was not at pier 29 at any of that time.

Q. How did you know that there was a strike or labor disorder at pier 29? A. Well, it had been rumored some time before, and the papers were full of it, the newspapers.

Mr. Stout: I think on that ground I will

move to strike out his testimony as to the strike. It seems to me all he knows is rumors and newspaper reports.

The Witness: Well, I had a great deal of extra work to do.

The Court: What is your answer to the motion made now, Mr. Hartpence?

Mr. Hartpence: I did not understand that Mr. Fenn had completed his answer when Mr. Stout broke in. If he had, of course that is different.

The Court (To the witness): You had answered all you wanted to say about it, hadn't you?

The Witness: Now, when I say I had plenty of more extra work to do, yes, sir.

The Court: But you had not seen any part of the strike with your own eyes, had you?

The Witness: Not in New York, no, sir.

The Court: You had not?

The Witness: No, sir.

The Court: Then all that evidence with respect to the fact of the strike will be stricken out. The fact that there was extra work at that time he may prove. The fact that cars were congested along the track he may prove.

Mr. Hartpence: Yes, sir; I think that will cover it.

The Court: All those things undoubtedly he may swear to, if he knows them, but the fact of the strike goes out, because he had no knowledge of it.

Mr. Hartpence: Yes, sir. Do I understand that that portion of his testimony which relates to the congestion of cars may stand, but the mere fact that it was due to the strike is stricken out?

The Court: I see no objection to letting the

evidence that there was congestion of those cars on the track and all that sort of evidence stand, but the fact that there was a strike and that this congestion was due to a strike will be stricken out, because he does not know anything about that.

Mr. Hartpence: All right.

Q. During the period from July 9th to July 21st, 1912, you were employed at the Second and Henderson Streets freight station of the Pennsylvania Railroad? A. Yes, sir.

Q. And what were your hours? A. From seven until six.

Q. Seven in the morning till six in the evening? A. Some nights I put in longer hours—yes, sir.

Q. And during that period of the day no peaches were handled, were they? A. No, sir; they were generally handled at night.

Q. So then how can you testify that peaches were put on these tracks during the night if you were not there? A. I had to keep the record of them. The night people turned that all over to me every morning.

Q. Have you a record of it? A. Yes, sir.

Mr. Stout: Then I move to strike out his testimony on the ground that the record, if he is going to testify from such evidence, is the best evidence of what was done.

The Court: Well, if the only knowledge he has is the record, I suppose the record is the best evidence of it.

Mr. Hartpence: We are not particularly concerned with that portion of the testimony where he referred to the delivery of peaches.

The Court: Then I will strike that part out, if that is what your motion is, Mr. Stout.

Mr. Stout: Yes.

The Court: All right.

Q. How long did this congestion which you speak of last? When did it begin and when did it end? A. Well, the congestion started right after the strike started.

Q. Well, give us dates. A. Well, about July 10th.

Q. And lasted until when? A. All summer.

Q. You mean up to the first of September? A. Yes, sir.

Q. And during the period of this so-called congestion you delivered watermelons to the various consignees on the tracks in the yard at Second and Henderson Street? A. I delivered cars, in the office, to them, yes, sir.

Q. Did you know anything about the condition in the yard from your own knowledge? A. Yes, sir.

Q. In what way? A. Well, I used to go out in the yard quite frequently.

Q. You went out what time in the day? A. All times.

Q. All times in the day; what conditions did you see in the yard? A. Every track was filled.

Q. Filled with what? A. Cars of watermelons; cars of freight.

Q. Do you know as a matter of fact that there were certain tracks in that yard designated during the watermelon season as watermelon tracks? A. Yes, sir.

Q. Do you know the numbers of those tracks? A. Yes, sir.

Q. What are the numbers of those tracks? A. 20, 19—

Mr. Hartpence: I object unless it is limited to the time of the congestion.

Q. During the period of 1912.

The Court: From the 9th to the 21st of July, 1912, is the time he has testified to.

New Jersey State Library

Mr. Hartpence: He did testify that the congestion lasted till about September 1st.

Mr. Stout: Yes; he said from about the 10th of July to the 1st of September.

The Court: Well from the 9th of July to September 1st.

A. (continuing)—18, 17, 16.

Q. Not 15? A. Well, it might have been; I am not positive.

Q. And during this period of congestion these tracks were used for peaches billed to Pier 29, New York City? A. At night.

Mr. Hartpence: That is objected to on the ground that Mr. Stout has already stricken from the record this witness' testimony on the point because he had no knowledge of it.

The Court: Mr. Stout asked to have it stricken out because he did not have the record. If your objection now is that this is not the best evidence of it I will sustain the objection.

Mr. Hartpence: I will object to it on the ground it is not competent.

Mr. Stout: He has since testified that he was in the yard off and on.

The Court: And the reason why I struck it out was because you asked him if they were billed there, and the best evidence of where they were billed is the record.

Q. Do you know whether there were any cars in the Second and Henderson Street yard during the period of this congestion which were billed to pier 29; do you know of your own knowledge? A. What do you mean; in the day time?

Q. Yes. A. Sure there was; there was cars there to be re-iced.

Q. What? A. There were cars there to be re-iced.

Q. Re-iced cars billed to pier 29? A. Cars there to be re-iced; the ice-house is in that yard.

Q. My question is, do you know whether they were billed to pier 29? A. Yes, sir.

Mr. Hartpence: I object as not cross examination.

Q. How do you know that? A. I saw the tickets on them.

The Court: What is the point of your objection?

Mr. Hartpence: Not proper cross examination. The examination of this witness in chief, as I understand it now was limited to his statement that there was a congestion in the freight and that it continued from a certain date to a certain date and affected all the cars in question. Now it seems to me that the cross examination is leading up into the plaintiff's case rather than to any matter which we have set up in defense.

The Court: But he has a perfect right to find out what he knows of the congestion by finding out what cars were there, where the cars were going to, and what the intimacy of that knowledge is with respect to those cars. He has a right to show that. Now he says that he knows there were cars on those tracks and they were billed to pier 29, because they had tickets on them, and he saw them. Now counsel has a right to show any fact which tends to indicate the intimacy of his knowledge with respect to the condition that was present at that time.

Mr. Hartpence: Yes, sir; I cannot object to that, but your Honor will recall Mr. Stout's opening; he stated that he would show that

perishable fruit of other kinds was delivered from the congested yards, and it seems to me that was a part of his case and that he cannot bring it out now on the defense by cross examination of a witness who was not interrogated upon that point in the examination in chief.

The Court: That may be so, but the point of your objection does not reach that. The point of your objection simply amounts to this, that this evidence, which is clearly relevant, as being a probing of the mind of the witness with respect to the intimacy of his knowledge has also another effect. I do not see how that can make it bad.

Mr. Hartpence: My objection of course goes to the ground that I have stated.

The Court: I understand.

Q. The delivery of peaches on these watermelon tracks in the Second and Henderson Street yard prevented the delivery of watermelons, did it not?

Mr. Hartpence: Now I object on several grounds, which I will state. First, that there is no evidence, as I recall it, thus far, that peaches were delivered from watermelon tracks at the congested yard. The most that I recall is that cars were billed to pier 29, which this witness saw.

The Court: And that those cars that were billed to pier 29 were there to be re-iced, and that they were on those watermelon tracks.

Mr. Hartpence: Yes, sir; and Mr. Stout's question assumes they were delivered on the watermelon tracks.

Mr. Stout: I will withdraw the question and put it this way:

Q. Did these cars of peaches and other cars

which were on the watermelon tracks prevent the delivery of the watermelons? A. In some cases, yes, sir.

Q. And wasn't the whole congestion due to the fact that commodities which were billed to pier 29 were during the period of this congestion brought to the Second and Henderson Street yard; wasn't that the cause of the congestion? A. What do you mean; what commodities?

Q. Commodities which were billed to pier 29. A. Only peaches.

Q. And so work down to the result that the commodities which were billed to pier 29, being brought to the Second and Henderson Street yard, brought about this congestion? A. Yes, sir.

The Court: I suppose you would be willing to admit that?

Mr. Hartpence: I made no objection to it. Yes, sir, I will admit it.

WILLIAM WATSON, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your occupation? A. General foreman, Pennsylvania Railroad freight station, Jersey City, Second and Henderson Street yard.

Q. How long have you been employed there? A. I have been employed at that station for about twenty-six years.

Q. What was your position there in the months of July and August, 1912? A. General foreman.

Q. As general foreman what were your duties? A. Well, general supervision of the work down stairs and in the yards.

Q. Are you familiar with the yard? A. Yes; I think I am.

Q. And the trackage and the arrangement of the building and so forth there? A. Yes, sir.

Q. When are you on duty, night or day? A. That depends a great deal on the conditions.

Q. In July and August, 1912, when were you? A. I was on duty all day and some of the time at—

Q. Was the day your regular time? A. My regular time is day work, yes, sir.

Q. From what time in the morning until what time at night? A. From about seven until six at night.

Q. Now, Mr. Watson, do you recall any unusual condition of congestion or accumulation of freight in the Jersey City yard during the months of July and August, 1912? A. Yes, sir; I do.

Q. What was that condition? A. The congested condition was brought about—

Q. Now, Mr. Watson, if you will excuse me, please; I am not asking you what brought it about, unless you know of your own knowledge; if you do, state it; but otherwise tell us, if you will, please, what that condition of congestion was. A. The condition of work that was brought to the ball ground yard for delivery?

Q. In what way did that congest the situation there? A. It added to the general work in the ball ground sufficiently to back up the yard stuff; we couldn't get it.

Q. When you say "back up" what do you mean by that? A. I mean we had to take care of more perishable freight first, which consisted principally of canteloupes and peaches, and the watermelons finally backed up until—

Q. When you use the term "backed up" what do you mean by that; backed up where? A. I mean that we had more of the highly perishable than we could handle with our watermelons.

Q. And what became of the watermelons? A. Thy were put on storage tracks in Harsimus Cove yard and in the Meadows.

Q. Is that what you mean by backing them up? A. Yes, sir.

Q. You mean they were held back from the delivery tracks? A. That is exactly what I mean, yes, sir.

Q. How long did that period of congestion last? A. Well, it began about the 10th of July, and I do not think we were fully over it before the 15th of August.

Cross Examination by Mr. Stout:

Q. Do you know Mr. Andrew Spada? A. Yes, sir.

Q. And do you know Mr. Charles Albrecht? A. Yes, sir.

Q. Do you know Mr. Collins, who was in the employ of Olivit Brothers during 1912? A. Yes, sir.

Q. These men were in the yard every day during that period, looking after their watermelons? A. I believe they were, yes, sir.

Q. And you say that the congestion in the ball ground, or the delivery yard at Second and Henderson Street, was due to the fact that peaches and other commodities billed to pier 29, New York City, were delivered at Second and Henderson Street during this congestion? A. Yes, sir.

Redirect Examination by Mr. Hartpence:

Q. When you speak of commodities, what do you mean by commodities in railroad terms? A. I didn't—in my direct examination I did not mention commodities; I mentioned cantaloupes and peaches.

Mr. Hartpence: I will ask the Court to strike that out as not responsive to the question.

The Court: That may be stricken out.

Mr. Hartpence (To the stenographer) Now will you repeat the question?
(Question repeated.)

A. Is that the question you want me to answer?
Q. Yes. A. Well, commodity would mean anything that we had to handle.

Recross Examination by Mr. Stout:
Q. So the peaches and cantaloupes billed to pier 29 being delivered at Second and Henderson Street, brought about this congestion—peaches and cantaloupes? A. That was largely responsible for that condition, yes, sir.

WILLIAM B. PHILLIPS, sworn.

Direct Examination by Mr. Hartpence:
Q. What is your business? A. Freight agent of the Pennsylvania Railroad, at the Second and Henderson Street yards, Jersey City.
Q. How long have you been in that position? A. Since February the 1st, 1913.
Q. And what was your position there prior to that time? A. Between the dates of May 1st, 1912, and January the 1st, 1913, I was assistant to the former agent, Mr. E. Butler.
Q. As the assistant to Mr. Butler what were your duties generally? A. Well, as assistant to him, and looking after the workings of the station and all lines I might say.
Q. Did your duties in any way call upon you to do any work outside of the office? A. Oh, yes.
Q. In what way? A. Well, in looking after the deliveries, the placing of cars.

Q. In the yard? A. In the yard.

Q. And by deliveries you mean what? A. Supervising the delivery of all kinds of freight.

Q. To whom? A. From cars to consignees.

Q. Do you recall any unusual conditions in the yard during the months of July and August, 1912? A. Well, there was a great congestion there during that summer.

Q. Just what time during the summer did that occur? A. Between the first of—well, I might say there was a congestion commencing about July the 9th and lasting to some date about the middle of August; I would not just like to say what date.

Q. What sort of a congestion was that? A. Well, we were advised—I say "we"; I was advised—

Mr. Hartpence: I will consent that that portion be stricken out.

The Court: It will be.

Q. What was the nature of the congestion? Just what happened there? A. There were more cars than we could handle in the yard.

Q. More cars, coming from where? A. From the south, cars of perishable freight, I might put it that way.

Q. And coming in on the regular freight line from the south? A. Coming in over our line.

Q. From what direction? A. Most of the freight comes from the south; in fact all of it, over our line.

Q. Is that the westerly or easterly direction, generally speaking, on your line; freight moving east or west? A. It would be moving east.

Q. What became of the cars that came in too fast for you to handle? A. They were simply held up either in the storage yards or in transit.

Q. Storage yards where? A. Well, there was one storage yard that—they were held up at Har-

simus Cove, just outside of our yards; also held up at the Meadows; those are the only two that we had record of.

Q. Do you know the capacity of the Harsimus Cove yard? A. I do not.

Cross Examination by Mr. Stout:

Q. The cause of this congestion was due to the bringing to the Second and Henderson Street yard of peaches and canteloupes which were billed to pier 29? A. Yes; that is what started the congestion.

Q. The delivery yard at Second and Henderson Street has certain tracks known as the watermelon tracks during the watermelon season, isn't that so? Tracks where you deliver watermelons? A. Tracks that we deliver watermelons from, yes, sir.

Q. During the period of this strike, or congestion, rather, peaches that were billed to pier 29 were put on those watermelon tracks? A. They were during the night.

Q. Yes, but you did not always get them out in time to get the watermelons in in the morning, did you? A. Well, that was impossible to do that.

Q. Yes; sometimes it was ten o'clock in the morning before you got them pulled out of the way? A. On a few occasions, yes.

Q. And under normal conditions watermelons are put on these tracks ready for delivery about seven o'clock in the morning; isn't that so? A. Yes.

Q. How are watermelons unloaded, by the consignees or owners of the watermelons, or by employees of the Pennsylvania Railroad? A. Handled entirely by the consignees or their representatives.

Q. So that your men have not anything to do with the unloading of watermelons? A. No, sir.

Q. And where these watermelon tracks are is sort of a market place, is it not, for the watermelons? A. It is known as a watermelon market.

Q. Yes; a watermelon market for, you might say, New York and vicinity, is it not? A. Yes, sir.

Q. The consignees or owners of the watermelons sell them right there in the yard to retailers, do they not? A. Usually to speculators.

Q. Well, speculators or retailers; they have an auction there? A. Yes.

Q. During the period of this congestion what tracks in the Second and Henderson Street yard were used for the delivery of watermelons? A. We used as many tracks as we were able to between tracks 11 and 20.

Q. In addition to 20 to 15? A. Between 11 and 20, as many tracks as we could use.

Redirect Examination by Mr. Hartpence:

Q. Were the peaches and canteloupes that you referred to in your cross examination brought over from pier 29 to the Jersey City yard? A. Only on the first night of July the 9th, a number of those cars were on floats alongside of that pier, and they had to be brought back to our yard for delivery.

Q. And after that were peaches and canteloupes brought over from pier 29 for delivery to the Jersey City yard? A. Not to my knowledge. They were stopped on the way and put in our yard.

Q. What do you mean by being stopped on the way? A. In transit, or between, so to speak, the tracks of arrival and pier 29.

Q. Do they pass through the Jersey City yard

or the Harsimus Cove yard on the way over to pier 29? A. Yes, sir.

Q. And how are they taken from the Harsimus Cove yard or Jersey City yard to pier 29; what is the method? A. They are delivered by floats from Jersey City to pier 29.

Q. Carried across the river on floats; and the peaches and canteloupes which you refer to, after those which were brought over from pier 29 on the first night, were simply peaches and canteloupes that were held for delivery in the Jersey City yard instead of being floated over to pier 29, is that right? A. Some of them were held; others were turned over to us immediately on arrival.

Q. That is what I mean; they were simply stopped; instead of being carried across the river on floats to pier 29, they were stopped at the Jersey City yard and there delivered; is that right? A. Exactly.

JOSEPH MIFFLIN, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your occupation? A. Freight agent, Pennsylvania Railroad, piers 27, 28 and 29.

Q. Where are piers 27, 28 and 29 located? A. North River, New York, between Desbrosses and Cortlandt Street.

Q. How long have you been freight agent there? A. May 16, 1910.

Q. You were in that position then during the months of July and August, were you, of 1912? A. Yes, sir.

Q. Do you recall in July of 1912 any labor disturbance—— A. Yes.

Q. (continuing)—that took place at piers 27, 28 and 29? A. Yes, sir.

Q. What was that disturbance? A. The men had a strike—or the men refused to go to work.

Q. When did that happen? A. July 9th, at night.

Q. How long did it continue? A. Well, the men refused to come back until the 17th or 18th of July. The effects of the strike were operative until the 22nd of the month.

Q. Were you at piers 27, 28 and 29 during that period, personally? A. During that period?

Q. Yes. A. Yes, sir.

Q. Day or night? A. Both, very largely. Every day and a number of nights.

Q. Did you observe any disorder or violence there at the piers at that time? A. Not directly at our piers, no.

Q. Did you see any outside? A. Quite a lot of it on the streets, resulting from the strike.

Q. Well, on the part of whom was that disorder or violence? A. On the part of whom was the disorder?

Q. Yes. A. Well, it was always deemed, if not proven, that it was people who objected to the men working, that were assaulting the men who were taking the jobs; in many cases on the part of former employees.

Mr. Stout: I object to that as not competent. He cannot testify to assumptions.

The Court: The assumption part may go out. The fact that he actually knows about may stand of course. I do not know just what part that is. You will have to make that clear.

Q. To what extent, if any, do you know that it was on the part of the men who were interfering with your men? A. What is that?

(Question repeated.)

A. Well, I possibly could not say that I positively know. The rumors were general; we had one or two cases where men were brought back after starting for home, that were assaulted on the way home.

Q. Your men?

Mr. Sout: I again object to testifying to rumors.

The Court: The rumor goes out, but the fact that one or two men had started for their homes and were brought back, who had been assaulted in the streets, I will let stand.

Mr. Stout: But the testimony, I believe, that that was from rumor also.

The Court: You saw the men who were brought back?

The Witness: Yes, sir. In one or two cases we had to summon the ambulance to take them to the hospital.

Mr. Stout: You saw them?

The Witness: Saw the men and knew they were assulted and knew that the ambulance was summoned.

Mr. Stout: All right.

Q. How many men ordinarily were employed on piers 27, 28 and 29 under your charge? A. You mean on this market operation?

Q. How many men would you ordinarily have on those piers? A. At night we would have practically four hundred; in our day operation we would have two hundred and fifty to three hundred, at that season of the year.

Cross Examination by Mr. Stout:

Q. These men who left your employ either on July 9th or July 10th, 1912, were longshoremen, were they not? A. Freight laborers.

Q. And they were employed by the Pennsyl-

vania Railroad Company to unload freight at these piers? A. Yes, sir.

Q. And peaches and canteloupes were delivered at pier 29? A. Peaches and canteloupes, yes, sir.

Q. At pier 29? A. My hearing is a little bad. It will be better if you speak a little louder.

Q. Watermelons were delivered at pier 29 during the year 1912? A. No, sir; except very occasionally there would be some in packages.

Q. I mean carload lots. A. No, sir.

Q. And had not been for how many years previous to 1912? A. Not at any time since I have been agent there.

Q. How long have you been agent there? A. May 16, 1910.

Q. These men who walked out, had they made any demand on the Pennsylvania Railroad Company, if you know, for higher wages? A. They had not.

Q. Do you know the cause of their leaving? A. Sympathetic strike in conjunction with a strike that started on the steamboats.

Q. How do you know that there was a strike with the steamboats?

Mr. Hartpence: I object on the ground that this witness has testified on cross examination as to the causes of the strike being a sympathetic strike. It seems to me that this question now leads to a refutation of the testimony brought out by Mr. Stout by his own question.

The Court: No; he simply asks him the reason: "How do you know there was a sympathetic strike?"

Mr. Hartpence: I withdraw my objection.

Q. How do you know that there was a strike among the employees of the ship men; do you know it of your own knowledge? A. I could easily an-

swer, how could I escape knowing it? You could not be in New York in the freight business and not know it.

Q. Just answer my questions. Do you know of your own knowledge that there was a strike among the employees of the ship men? A. Yes, sir.

Q. You do? A. Yes, sir.

Q. From what source did you get that knowledge? A. Well, I got it from associating with the agents and got it from almost hourly inquiry of the various stations as to what shape they were in.

Q. You were making inquiry in reference to it? A. Making inquiry almost hourly to know what men I had and what steps to take to get them, and when the old men returned, and all that.

Q. Did these men come back into the employ of the Pennsylvania Railroad Company without increase in wages?

Mr. Hartpence: Objected to as immaterial and irrelevent.

The Court: What is the relevancy of that?

Mr. Stout: I want to show that this was just a mere walkout and not a strike as I understand a strike. A walkout, as I understand it, is where a body of men leave the employ of their employer without making any demands, or on the ground of any decrease in salary, or anything of that kind, just merely walk out. That is a walkout; but a strike has the further element that they have demanded something or have some grievance which they have expressed against the employer.

The Court: All right; I will let you ask this question. If you want to prove it actually was a strike, go ahead and ask your question.

(Question repeated.)

A. There was no increase made at the time they returned.

Q. That's all.

The Court: Now where do we get on that? That simply may mean one of two things; it may mean that they made a demand and that it was not granted, or it may be that they went out whimsically, without any reason on earth, and that they walked back in the same way. That does not get us anywhere. It does not prove anything.

Mr. Stout: I will ask a few further questions.

Q. Do you know whether any demand was made upon the Pennsylvania Railroad Company for increase of salary prior to their walking out? A. I am very credibly informed that there was not, and I know that there was none made through me.

Q. Did they before they left your employ, or afterwards, assert that they had any grievance against the Pennsylvania Railroad Company? A. I will answer one at a time. Not before they left our employ.

Q. Did they afterwards? A. Well, we had a number of negotiations with them and they made all manner of excuses for having gone out and made several different demands before they would come back.

Q. That's all. A. But, by the way, their coming back was not influenced at all by any demand they made.

Redirect Examination by Mr. Hartpence:

Q. When you state that the effects of the unusual conditions there at the pier lasted until the 22nd of the month, you mean the effects on your piers; is that correct? A. Yes, sir.

GEORGE F. SPENCER, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your business? A. Inspector of Police, Pennsylvania Railroad Company.

Q. How long have you been employed in that capacity? A. Eleven years.

Q. What are your duties as inspector? A. I have charge of the police work on the piers, and around the New York territory and Jersey City.

Q. During the months of July and August, 1912, did you do any work on piers 27, 28 and 29, in New York? A. Yes, sir.

Q. Anywhere else during that time A. Jersey City.

Q. What part of Jersey City? A. Harsimus Cove.

Q. Anywhere else? A. Greenville.

Q. Anywhere else? A. Harlem River and Brooklyn.

Q. Where is Harlem River? A. 125th Street.

Q. Did you go westerly as far as the meadows? A. No, sir; my territory only extends to Waldo Avenue yards.

Q. And Waldo Avenue yards are located where? A. Just the other side of the trestle, Newark Avenue.

Q. How near is that to the Harsimus Cove yard? A. It joins it—it is in the Harsimus Cove district; the two divisions separate right near Waldo Avenue yard.

Q. About how far back from the river? A. From which river?

Q. From the Hudson River? A. From the Hudson River I should say about half a mile or three quarters of a mile.

Q. During those months, July and August, Mr. Spencer, what work did you do at piers 27, 28 and

29? A. Why, on the 8th of July I was notified that there was labor trouble along the river front.

Q. By whom were you notified? A. By one of the men who has charge of that territory under me, and I immediately investigated my self, and on the 9th I stationed men around the different piers, pier 1, 4 and 5.

Q. Are they Pennsylvania piers also? A. Yes, sir; and 27, 28 and 29 and 37th Street. I stayed myself at 27, 28 and 29th from the 9th of July until the 21st of July.

Q. Were there any unusual conditions there at those piers between the 9th and the 21st? A. Yes; the laborers had all gone out on strike.

Q. Which laborers? A. Men employed on pier 28—27, 28 and 29.

Q. Pennsylvania Railroad piers? A. Yes, sir.

Q. What unusual conditions did you notice there yourself? A. There was disorder there continually, to such an extent that on the 10th of the month I had about fifteen men with me. I had to send and have men brought from the other divisions, from Pittsburg, Harrisburg, Altoona, Trenton, Philadelphia and Atlantic City. I had about fifty men then altogether with me.

Q. What kind of men? A. Police officers.

Q. In the department's service? A. Yes, sir.

Q. What did you do with them? A. I distributed them around the different piers, in the front of the piers. It grew to such an extent that the superintendent instructed me to take their places, and I communicated with different labor employment bureaus and had men put there, and if they would go out to eat or anything they would be assaulted on the street.

Q. Assaulted by whom? A. By some of our own men and different other steamship piers along the river front.

Q. Where were these men congregated, when you speak of the disorder you saw? A. They congregated in front of the piers.

Q. What piers? A. 28 and 29, and 1, 4 and 5; and they had headquarters on West Street between Beach and North Moore; and I went to that headquarters one night and heard the chief speakers speak. I went in there. I was supposed to be one of the strikers, and I heard them tell the men to stay out.

Q. Did you know any of the men that were there that night? A. Yes; there was some of our own men and men from other piers along the river front.

Q. Were those men at that time out on strike? A. Yes, sir.

Q. What, if any, occurrences of violence did you see yourself on the piers? A. I saw Mr. Schell there too, stabbed in the jaw, and he ran down, I think it was through Laight Street. The crowd attacked him.

Q. What was his position at that time? A. He was foreman in one of the yards; he was brought over there to assist on the piers, because they did not have men enough there to work to relieve the condition.

Q. Piers 27, 28 and 29? A. Yes, sir.

Q. Who assaulted him, do you know? A. There was a crowd stood on West Street, some of the men I had previously seen in the strike headquarters; and another night we had sent over—the men could not go out to get anything to eat, and they would assault them; and we sent to a restaurant, Bradley's on West Street near Desbrosses, and I used to send three of my men over, and as a rule three city officers; I had to go to the Police Commissioner and have men detailed there, and to Inspector Daly, who was in charge of

that inspection district. This officer here, Inspector Quinn, who was connected with the city police department on the night in question, they threw bottles at our men who went over to get sandwiches and coffee. One of them, Frank Belvurdo, I think, was the man arrested for striking the man who took the place of one of the strikers, he struck the man on the head with a bottle. He was arrested by Officer Quinn and fined by Magistrate Cottrell ten dollars in the night court.

Q. During that time, between July 9th and 21st, did you see disturbances at any other points along the water front than at piers 27, 28 and 29? A. Yes; I visited all along the piers there, at all the piers, the Clyde Line, the Morgan Line, Savannah Line, all the piers along there.

Q. Did you visit there? A. Yes, sir; I went to see what the conditions were there. They were the same as our own.

The Court: Did you ascertain what the cause of the strike was?

A. So far as I could find, your Honor, there was—I think it was the Morgan Line went out first, and then they sent up representatives and influenced our men.

JOHN J. QUINN, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your occupation, Mr. Quinn? A. A police officer of the City of New York and Borough of Manhattan.

Q. How long have you been an officer there? A. About eight years.

Q. What is your particular position? A. I am

acting detective sergeant in the City of New York, Borough of Manhattan.

Q. What was your particular position in July and August, of 1912? A. A patrolman.

Q. Where were you stationed? A. West Street, from Canal as far as Laight, in the Borough of Manhattan.

Q. Does that cover the territory in which the piers 27, 28 and 29 of the Pennsylvania Railroad are located? A. Yes, sir.

Q. Any other piers of the Pennsylvania along there? A. No, sir.

Q. In your territory at that time? A. No, sir.

Q. Any other piers of any kind along in your territory? A. Yes, sir.

Q. What others were there? A. There was the People's Line, pier 32, foot of Canal Street; pier 31 New York Central; Desbrosses Street ferry; the Day Line at the foot of Desborsses Street, and pier 29, foot of Laight Street, or at least Vestry Street; pier 28, foot of Laight Street, and pier 27, at foot of Hubert Street.

Q. Officer, did you notice or see any unusual conditions during the month of July, 1912, along the water front? A. Yes, sir.

Q. What did you see? A. There was a strike in pier 27, 28 and 29 about 7 A. M. in the morning. I was on post there when I saw a number of men, about five hundred men employed by the Pennsylvania Railroad Company. I went up to some of them and asked them what was the trouble, and they told me they were out on strike.

Q. Where were they at that time? A. On the sidewalk and in the middle of the street, on West Street. Now West Street is very wide; we call one part of West Street the farm.

Q. What part is that? A. That is the part west of the car tracks, to the bulkhead.

Q. Toward the river? A. Towards the river.

Q. Well, what happened? A. Well, about seven thirty in the morning I saw Mr. Mifflin and Mr. Christie standing among five hundred men, and I was right alongside of Mr. Mifflin when I heard him say, "Why don't you go to work, and I will see the people higher up, if there is any trouble, and we will settle this trouble." And the men said, "no, sir, we will not."

Q. Who was Mr. Christie? A. The gentleman on the stand a minute ago.

Q. Mr. Christie? A. Mr. Mifflin. Mr. Christie is the superintendent, I think, of the railroad.

Q. Had you ever seen him on the piers before? A. I seen him going up and down, when I was on post there. I know his name.

Q. After that did you see any other disorder? A. We were ordered down there.

Q. By whom? A. By the police captain. He had extra men along the river front there, and once in a while we had to make an arrest. I made three arrests down there during the strike.

Q. For what? A. Well, there was about half a dozen non-union men was carrying some food, sandwiches, from Bradley's restaurant right at the corner of Desbrosses and West, and this Italian that I locked up threw a bottle. I locked him up and he was fined ten dollars by Magistrate Cottrell night court.

Q. Those non-union men you refer to, where were they working at that time? A. Pennsylvania Railroad.

Q. On the piers? A. Inside, yes, sir.

Q. 27, 28 and 29? (No answer.)

Q. Who else did you arrest? A. I arrested two more Italians at the corner of Watt and West Street for assaulting a man on his way home.

Q. What kind of a man was he? A. Well, he

was working on the pier. He came out and was on his way home, when they attacked him, corner of West and Watt.

Q. These men who attacked him, do you know who they were, where they came from? A. They were men—I found out afterward off one of them, that he was employed there and was out on strike.

Q. Had been employed there? A. Had been there.

Q. Did you arrest anybody else? A. No, sir; only the three men. There was other men arrested by other officers.

Q. Did you see any other men arrested by any other officers? A. Yes; Officer Kane ordered some men off the corner of Desbrosses and West Street and he placed them under arrest when they refused to move.

Q. At what precinct were you stationed? A. The eighth precinct at that time.

Q. Do they keep a record of the arrests and the cause of arrest? A. Yes, sir.

Q. Have you a record that was kept there at that time? A. Yes, sir.

Q. What do you call that? A. A police blotter; day and arrest blotter.

Q. And that record is kept, is it, of all arrests, and shows the cause of arrest? A. Yes; the cause of arrest.

Q. Just turn to the record of the arrests at that time you speak of, during the strike, and state what arrests it shows were made of men engaged in it. A. Here is one arrest here on July 10, 1912; disorderly conduct; Lucio Nuzio, 58 Sullivan Street; 34; white; Italy; laborer; married; arrested by myself, Quinn, John J., 2820, my shield number then.

Q. Is that one of the men you referred to? A. One of the men I refer to. Another man here was

arrested July 10, 1912, at 12.05 P. M.; disorderly conduct; Tona Rosso, 18 Marcy Avenue, Brooklyn; 27; white; Italy; laborer; married; arrested by same officer, John J. Quinn, 2820.

Q. Is that another one of the men you arrested? A. Yes, sir; arrested corner Watt and West Street, interfering with pedestrians, annoying and striking them as they were going to work; prisoners on strike; also used loud and boisterous language. Fined five dollars by Magistrate Cottrell in the tenth district court; that is the night court.

Q. How many others do you find there? Without enumerating them. A. Another one here on July 12, 1912, at 8.45 P. M.; disorderly conduct, Frank Beforke, 58 Sullivan Street; 23; white; Italy; laborer; single; arrested by same officer, John J. Quinn.

Q. Is that one of the men you refer to? A. Yes, sir. Arrested at West and Desbrosses Street and charged by the officer with throwing a glass bottle at a number of workmen on the farm in front of pier 29. There was no persons injured. Fined ten dollars by Magistrate Cottrell, night court.

Q. Do you find any other record of any other arrest made by other officers growing out of the strike, and if so how many? Without reading them all through, how many do you find? A. Officer Kane is one.

Q. Did you say you found one by Officer Kane? A. Officer Kane; and there was about half a dozen more, all in that vicinity; I don't know if they were on account of the strike or not.

Q. The one by Officer Kane is the one you spoke about in your testimony? A. Yes, sir.

Cross Examination by Mr. Stout:

Q. Officer, you say that some of these men had been in the employ of the Pennsylvania Railroad Company? A. Yes, sir.

Q. How did you know that? A. They told me themselves when I arrested them, in the night court. I asked them what was the trouble; they said, "We are out for more money." I asked them how long they had worked there, and one of them told me he had worked there a year.

Mr. Stout: I move to strike out the testimony of this witness as to what these men said with reference to their employment.

The Court: I will strike that out.

Q. And that is the only source of your knowledge as to who had employed these men previous to the strike, what they told you? A. That's all.

Recess.

JOSEPH MIFFLIN, recalled.

Direct Examination by Mr. Hartpence:

Q. Mr. Mifflin, where was the peach market in New York, if you know—peaches that come in over the Pennsylvania railroad to pier 29, where was the peach market? A. It is commonly called pier 29, but the actual location is on the bulkhead on pier 29 and 28, all under the one covering, the one station.

Q. Is that out in the street? A. No; it is under the covered bulkhead, the bulkhead shed.

Q. The covered bulkhead? A. Yes, sir.

Q. Was that peach market continued during the strike that you have referred to over there; was that kept up as the peach market during that time? A. The privileges were allowed the public, but we could not get any peaches there.

Q. Why not? A. On account of the labor, we could not handle them there; could not handle them with the kind of labor and the quantity of labor that we could get.

Q. What did you do then when you found that you could not handle them at pier 29? A. Well, locally, as an agent, I merely notified our superintendent, and then it did not devolve upon me to take steps for the divergence and so on; that fell on others to inform the receivers they could not get labor, and they were allowed the privilege of divergence to Jersey City.

Q. That was because you could not handle them there at the pier, is that right? A. We notified them that we could not get help over there, could not get help enough, and they took advantage of it and had it diverted to Jersey City.

(No cross examination.)

W. F. Tomlinson, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your business? A. I am freight trainmaster of the New York Division, Pennsylvania Railroad.

Q. How long have you occupied that position? A. About eight years.

Q. Where are you located? A. Jersey City.

Q. As freight trainmaster of the New York Division what are your duties, generally? A. To look after the freight movement between Philadelphia and Jersey City.

Q. Both ways? A. Yes, sir.

Q. After a freight movement reaches Jersey City, running east, consigned through to New York, in what manner is that disposed of? A. It is disposed of by another division.

Q. Who is the trainmaster of the Manhattan Division? A. Mr. A. B. Plant.

Q. You have nothing to do with the transporting of it then across the Hudson River to pier 29? A. Nothing, no, sir.

Q. Are you familiar with the Harsimus Cove yard and the freight yard at Jersey City, at Second and Henderson Street? A. I was very familiar with it when I had charge of it, but for the last four or five years I am not familiar with the changes that have been made in it.

Q. How long were you in charge of that yard? A. As trainmaster some three years, and as assistant trainmaster about twelve.

Q. At what time? When was that? A. Assistant trainmaster from about 1895 to 1907, and from about 1907 to 1910 as trainmaster.

Q. Do you know whether there were any material changes between 1910 and 1912? A. I do not think there is. I have been through Harsimus Cove since and I have not noticed any material changes.

Q. Are you familiar with the line west out as far as Meadows? A. Yes, sir.

Q. I show you a blueprint, which it is admitted by counsel represents the Harsimus Cove yard and the Henderson Street yard and their tracks west as far as Meadows——

Mr. Stout: Yes.

Mr. Hartpence: I will ask that it be marked D-1.

Q. I ask you if that map is familiar to you or if you can read it? A. I can recognize it as a map of Harsimus Cove yard.

Q. Will you indicate on this map just where the Harsimus Cove yard is located? A. The delivery yard, you mean?

Q. The Harsumus Cove yard itself, the storage tracks. A. This (indicating) is where the trains enter the yard and run over the elevated structure to this point at Henderson street, and each line here indicates tracks; these are the float bridges, 5, 6 and 7.

Q. Is that where the cars are put on floats to be taken across the river? A. Either there or at these bridges three and four. The yard takes in all of this—storage tracks.

Q. Where is the freight yard proper, the Second and Henderson Street yard? A. There (indicating).

Q. At that point? A. Yes, sir.

Mr. Hartpence: Indicated by two X's.

Q. The Harsimus yard is indicated by H. H.; is that correct? A. Yes, sir.

Q. Now running west how far is it from the Harsimus Cove yard to the Meadows? A. I cannot say exactly, but about five miles, from the water front to the Meadows yard.

Q. Will you show just how the tracks run out to Meadows? A. Leaving Harsimus Cove and going to the Meadows you would follow out here over the elevation to about Waldo Avenue, when you strike the ground and follow on out here beyond Marion—this is the connection with the Erie Railroad; go on out here and enter the meadows yard here (indicating).

Q. Will you show where the meadows yard extends? A. From here to here (indicating).

Q. Just east of Manhattan Transfer? A. Yes, sir.

Q. This is marked "M." A. The meadows yard extends from here where all eastward trains enter, to this point where you pull out of the yard and route east. The westward trains pull in the yard here, and the classification is done between these two yards and they pull out over here.

Q. Now running from Meadows to Harsimus, how many tracks are there? A. Two freight tracks.

Q. One each way? A. Yes, sir.

Q. One east and one west? A. Yes, sir.

Q. Now, Mr. Tomlinson, do you know the storage capacity of the Harsimus Cove yard, how many freight cars can be placed there and kept there? A. I do not, sir.

Q. Can you state the storage capacity of the Meadows yard, if you know? A. We can get in the Meadows yard approximately two thousand cars, but you could scarcely operate the yard if you had that many cars in it. Every track would be filled up.

(No cross examination.)

LEVI M. HILDUN, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your occupation? A. I am the agent of the Ocean Steamship Company of Savannah, of New York.

Q. Where are you located? A. Pier 35, North River, New York.

Q. How long have you been in that position? A. Not quite twelve years.

Q. Were you on duty during the months of July and August, 1912? A. Yes, sir.

Q. Have you any recollection or knowledge of any unusual labor condition at that time at your pier? A. Yes, sir, there was a strike at that time, in the early part of July.

Q. What time in July?

Mr. Stout: I cannot see the materiality of this line of testimony, a strike as I understand it among the employees of the Savannah Steamship Line. It seems to me the strike involved in this suit would be the strike among the employees of the Pensylvania line.

(Objection overruled.)

A. I do not know how to answer that question exactly.

Q. When did it begin, so far as you know? A. Well, the strike began before my knowledge, with firemen and seamen on the ships; I do not know when that commenced.

Q. When did it commence—— A. But the strike of the longshoremen was commenced on the morning of the first day of July.

Q. And where did it commence on the first of July, with your observation of it? A. It commenced on our pier.

Q. How long did it continue after that? A. With our men it continued until the—part of them came back on the fourth of July, and practically all of them came back on the fifth of July following.

Q. Did you observe the strike anywhere else except at your pier. A. On the same day, on the afternoon of the first of July, as I recollect, the men on the Clyde and Mallory lines, next door, the next two piers adjacent to us, they stayed out, and perhaps a week later the Morgan Line men struck. Following that there were strikes all along the river front. I do not know of my own recollection now just where they were.

Q. Can you state from your recollection about when they ended? A. Along in the latter part of July.

Q. Did you have any negotiations with the men during that time? A. Yes, sir, constantly.

Q. To what extent? A. I was trying to make some arrangement with them to try to get them back all of the time they were out.

Q. Did they have a spokesman? A. They had men—a sort of committee.

Q. Did you interview them? A. Yes, sir.

Q. Who was the ringleader of that, do you know? A. I could not say; there wasn't any ringleader amongst our men. There were several ringleaders.

Q. Who were they so far as you saw? A. I could not name them; I did not know their names.

Q. Can you identify them in any other way besides by name? A. I could identify them if I were to see them. I know them by sight and number, not by names.

Q. Have you any way of designating them now? A. No, I have not.

Q. By nationality or otherwise? A. Yes; there were two or three Poles and two or three Jews and a couple of Irishmen. They sort of made up their committee in that way, each nationality had one or two spokesmen.

By the Court:

Q. These men, did not come from your work, did they? A. Yes, sir.

Q. These ringleaders you are talking about? A. Yes, sir.

Q. They all did? A. That is the only ones I know anything about. I did not have any dealings with any others. That is what he asked me.

By Mr. Hartpence:

Q. Do you know who the real agitator of the strike was? A. Why, the strike started with, as I said first, with the firemen and seaman on the ships. The man who was leader at that time was named Videll—James Videll.

Q. What nationality, do you know? A. He was a Spaniard, I believe.

Q. What did you observe about his actions in

respect to the strike? A. I did not see anything of him, except by hearsay, reading the newspapers.

Q. During the time that you say the strike continued to your knowledge did you have occasion or did you go up and down West Street? A. Every day, yes, sir.

Q. At other points besides your own piers? A. Every day, yes, sir. I go from the Pavonia Ferry, from Chambers Street ferry back and forth every day.

Q. Did that take you down town also? A. Yes, sir, that is down town.

Q. How far? A. That is about a mile down town.

Q. Did you observe any occurrences of disorder or violence among these men on those occasions? A. I did not.

Q. You did not yourself? A. There were strikes all along there, men standing out there, I did not see any disturbance.

Q. In small number or large? A. Oh, a great many of them.

(No cross examination.)

EDWARD A. KELLEY, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your occupation? A. I am the agent of the Clyde and Mallory Steamship Companies.

Q. Located where? A. Pier 45 North River.

Q. New York? A. New York.

Q. How near is that to pier 29, the Pennsylvania Railroad pier? A. About a mile and a half.

Q. You know where pier 29 is, do you? A. Yes, sir.

Q. How long have you been employed with the Clyde Line? A. About twenty years with the Clyde Line.

Q. What was your position in July of 1912? A. Agent.

Q. The same as your position now? A. Yes, sir.

Q. What were your duties, generally, as agent? A. Why, in charge of the loading and discharging of the steamers and the delivery and receiving of freight and other terminal operations.

Q. Did you have many men with you on the pier? A. About six or seven hundred.

Q. Longshoremen? A. Longshoremen and foremen.

Q. Did you have any trouble with them during the month of July, 1912? A. Yes; there was a strike.

Q. Among your men? A. Yes.

Q. Anywhere else, to your knowledge? A. At the Southern Pacific, during perhaps the second week of July; it commenced with them, and the Savannah Line the first part of July.

Q. Where did it originate, do you know? A. Well, so far as the coastwise lines are concerned it first broke out at the Savannah Line, so far as I know.

Q. So far as your best knowledge of it? A. My best knowledge of it, the morning of July 1st.

Q. Did it extend any farther to your knowledge than you have already stated? A. Yes; it extended generally along the water front.

Q. All the longshoremen involved in it? A. Yes, sir.

Q. What did you see about it from time to time while it continued? A. What did I see about it?

Q. Yes, that indicated to your mind that there was a strike? A. Well, the men refused to work

and they interfered with other men whom we hired in their places.

Q. Did you see any disorder along West Street? A. Ocassionally, yes.

Q. To what extent did you traverse West Street while that continued? A. Well, I had to go up and down West Street for about a mile and a half several times a day. Our piers run from 36 to 45, that is 36, 37, 38 and 45, which is quite a distance, and I had to cover that distance.

Q. How long did that trouble last? A. It lasted with us during the entire month of July.

Q. How long did it last as far as you observed along the water front further down? A. That was about the extent of it.

Q. Did you see any occurrences of violence during that time? A. Yes; I stated I did.

Q. What sort of occurrences were they? A. Why, assaults on certain men; I do not know who they were.

Q. Do you know whether those men were workmen or not along the waterfront? A. Do I know if they were workmen? I assume that—some of them were workmen and some perhaps were delegates of the men.

By the Court:

Q. Were the men in your employ at that time, Mr. Kelly, unionized? A. No; they were not.

Q. Was there an effort to unionize them at that time? A. That was the idea.

Q. That was the idea, was it? A. That was the idea.

(No cross examination).

THOMAS A. CAVANAGH, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your business? A. Chief Clerk,

Baltimore & Ohio Railroad, pier 22 North River, New York.

Q. How long have you been there? A. June 5th, 1913.

Q. Where were you before that? A. Chief Clerk, 26th Street station, same company.

Q. How long have you worked for the company? A. Nine years.

Q. Where were you located in July and August of 1912? A. 26th Street station.

Q. 26th Street? A. North River.

Q. What pier is that, do you know? A. Well, there is no pier there. There is a freight station; it is about 65—between 65 and 67.

Q. What were your duties during July and August, 1912, generally, as Chief Clerk? A. Supervision.

Q. Supervision of what? A. Clerical force.

Q. Did you have anything to do with the laboring men employed there? A. No, sir.

Q. Where you were you could see them, observe them? A. Yes, sir.

Q. How many did you have there, approximately? A. At 26th Street we only had about a dozen.

Q. Did you have any trouble with them during July and August, 1912? A. Not at 26; at pier 22.

Q. Where is that located? A. At the foot of Jay Street.

Q. Is that south of pier 29? A. Yes, sir.

Q. Do you know where pier 29 is, the Pennsylvania Railroad pier? A. Yes, sir.

Q. What trouble was there that you saw down at pier 22? A. Well, all the laboring men went out on strike.

Q. How long were they out, do you know? A. They say they were out about a fortnight.

Q. What say? A. They say they were out about a fortnight.

Q. When did they go out? A. About the first of July.

Q. What was the cause of the strike, do you know? A. Well, they wanted more money.

Q. Do you know where it originated—I will withdraw that question—do you know whether it extended any farther than your line? A. Oh, yes; it went to the Savannah, Mallory, Clyde, Pennsylvania; I am not sure about the Erie or the Lehigh Valley.

Q. Who were out on strike, what class of men? A. Laborers only.

Q. Longshoremen? A. Longshoremen.

Q. Do you know what the cause of the strike was, generally? A. Well, they were agitating for more money.

Q. Do you know where it originated? A. Savannah Line, I believe.

Q. Did you have occasion to go up and down the waterfront during the time you saw it there? A. Yes.

Q. How long did it continue generally along the waterfront? A. From the beginning of July toward the end of the same month.

Q. They were still out in some places, were they, when your men went back? A. They were out on some piers, and then back in others.

Q. After they had gone back on your pier, 22, some others were still out? A. Yes, sir.

Q. What did you see as you went up and down West Street waterfront to indicate that there was a strike? A. Well, the strikers were out and assembled around and now and then the throwing of missiles, and the police tried to stop that.

Q. Did you see anybody struck by the things thrown? A. I saw some, but I did not wait to see the finish of it.

Q. What did you do? A. I went on about my business.

The Court: You did what they call "beating it," I suppose?

The Witness: Yes, sir.

Cross Examination by Mr. Stout:

Q. You say that some of the employees of the Pennsylvania Railroad Company were on this strike? A. Yes, sir.

Q. How did you know they were employees of the Pennsylvania Railroad Company? A. They were all outside of pier 29 and we were inquiring as to what roads were out at the time. We were trying to find out what roads were in it besides the Baltimore and Ohio.

Q. Can you designate any particular men who were in the employ of the Pennsylvania that were on this strike? A. No, sir.

Q. From whom did you make your inquiry? A. Well, it was generally known at that time. I could not name any certain man.

Mr. Stout: I think that this witness is not competent to testify as to the employees of the Pennsylvania Railroad Company participating in this strike.

The Court: Well, I think that is probably true with respect to this witness. I will strike it out.

CORTLANDT N. GAVITTE, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your occupation? A. Freight agent of the New England Steamship Company, piers 14 and 15 North River.

Q. How long have you been in the employ of the company? A. Twenty years.

Q. How long have you been the freight agent at those piers? A. Oh, pardon me; I have been in the employ of the company thirty-nine years; I have been freight agent twenty years.

Q. At piers 14 and 15. A. At piers 18 and 19, and 14 and 15.

Q. Where were you in July and August, 1912? A. At piers 18 and 19 North River.

Q. As freight agent what were your duties generally? A. Well, the duties of freight agent are to superintend the receiving and delivery of freight and the direction of the piers.

Q. Did you have any men working for you there on those piers? A. Yes.

Q. How many? A. Three hundred.

Q. Did you have any trouble with them during July and August, of 1912? A. We had a strike in July, 1912.

Q. A strike of your men? A. Yes, sir.

Q. When did they go out? A. July the 5th, I think.

Q. Do you know how long they were out? A. Two weeks.

Q. Do you know whether or not there was a strike anywhere else than at your piers at that time? A. Yes.

Q. What do you know about it; how far did it extend to your knowledge? A. At that time there was a strike pretty generally along the North River, the coastwise lines, some of the rail lines, and ourselves.

Q. Who were striking? A. The longshoremen.

Q. Do you know why they struck? A. Why, primarily I presume for an increase in wages.

Q. Well, anything else? A. Why, not that I know of.

Q. How long did your men stay out? A. Two weeks.

Q. And did the strike continue anywhere else after that, to your knowledge? A. I do not recall; I think that we were the last.

Q. During that time did you have occasion to go up and down West Street, the river front? A. Yes.

Q. How far? A. Well, somewhere between the Battery and Fourteenth Street.

Q. What piers are located at 14th Street, the foot of 14th Street? A. I do not know; I could not answer.

Q. Did you have occasion to go up by the Pennsylvania Railroad piers, 27, 28 and 29? A. Yes.

Q. Are they located north or south of your piers? A. 27, 28 and 29 are north of our piers.

Q. Are they south of 14th Street? A. Yes, sir.

Q. Well, as you went up and down the waterfront during that time, what did you see that indicated there was a strike? A. The presence of men congregated in front of the various piers, that to my mind indicated trouble or the presence of a strike.

Q. Any loud noise or any violent actions or anything of that sort? A. No, no unusual noise, and no particularly violent actions that I remember.

Q. Any demonstrations of any kind, any speech-making or anything of that sort? A. Oh, yes; they were all talking.

Q. What were they talking about? A. They all had—

Q. What were they talking about, do you know? A. I do not.

Q. Did you interview any of them personally? A. No.

Q. At your piers, did you? A. No.

Q. You did not carry on negotiations with the

strikers yourself? A. In a measure. The negotions were under the direction of the General Manager.

(No cross examination.)

MALCOLM TOWNSEND, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your occupation? A. Freight agent, Pennsylvania Railroad, pier 4 and 5, North River.

Q. How long have you been there in that capacity? A. Five years.

Q. Were you on duty in July and August, 1912? A. I was.

Q. Did you have any trouble there with your men? A. We did.

Q. What sort or trouble was it? A. A committee—may I first——

Q. Answer the question, if you please. A. The committee waited upon me and stated that they wanted twenty-three cents an hour.

Q. A committee of whom? A. The committee of the labor.

Q. From which pier? A. From our pier. The wages then were 19.1. I told them I would have to communicate with the superintendent, and they gave me to the next morning, and if I did not have an affirmative answer the men would go out. They reported the next morning; I had no reply; I could not alter the wage, and they went out.

Q. How long did they stay out? A. Until—that was the 11th of July, and they stayed out till the 16th.

Q. How many men did you have on your pier? A. About one hundred and forty.

Q. During that time that they were out, to your

knowledge was there a strike anywhere else there along the river front? A. Yes, sir. I was not a witness, but as Secretary of the Local Freight Agents' Association I personally interviewed every freight agent from the Clyde Line down to our pier and made a report of that as Secretary of the Local Freight Agents' Association to the Association, and the resolution was to the effect it should not be entered on the minutes but it should be part of the secretary's records for any member of the association to examine or make a copy of it.

Q. As a result of your investigation did you find that there was a strike anywhere else except at your pier? A. Yes, sir, from the Clyde Line down, including pier 2.

Q. How far up is the Clyde Line? A. Thirty-two piers.

Q. Is that north of the Pennsylvania piers, 27, 28 and 29? A. Yes.

Q. Do you know where it originated? A. Yes; the Savannah Line, July 1st.

Q. Did you see anything in the way of violent occurrences or demonstrations during that time? A. Only opposite the stations I have charge of, because I was at our station from the time it started until its finish, from six o'clock in the morning until eight or nine at night, and I saw former employees, one particularly I remember, who was an employee of pier 28 when I was agent at that point, shaking his fist toward our pier, toward some of the men who were working on the bulkhead, but we had the section in there so well policed, the police compelled these people to keep moving, and the result of it was there was no demonstration. It was reported to be going on upon the side streets, but I did not see it.

Q. You were once agent at pier 28? A. Twenty-five years, yes, sir.

Q. Down to what time? A. 1910.

Q. You were succeeded by Mr. Mifflin? A. I was.

Cross Examination by Mr. Stout:

Q. When was this demand made for the increase in wages by this committee? A. July 1st.

Q. July 1st? A. July 11th.

Q. July 11th? A. Yes, sir.

ABRAM B. PLANT, sworn.

Direct Examination by Mr. Hartpence:

Q. What is your business? A. Freight trainmaster, Manhattan Division, Jersey City.

Q. Pennsylvania Railroad? A. Yes, sir.

Q. You heard Mr. Tomlinson testify, did you not, a little while ago? A. I did, yes, sir.

Q. Are you the one in charge of the Manhattan Division that takes control of the eastbound freight shipments of the Pennsylvania Railroad after they reach Jersey City? A. I have charge of the Harsimus Cove, Jersey City and Greenville freight terminus, yes.

Q. And your jurisdiction extends to what point? A. To a point known as The Cut, near Waldo Avenue yard at Harsimus Cove.

Q. And to transport the east-going freight to what point from Greenville and Jersey City? A. You mean from the New York Division into Harsimus Cove yard?

Q. No; after it reaches Harsimus Cove yard. A. It is transported then by float to New York, such freight as is consigned to New York.

Q. You have charge then of the transportation

of east ward freight after it reaches Harsimus Cove, is that correct? A. Yes.

Q. Are you familiar with Harsimus Cove yard? A. Yes, sir.

Q. How long have you been the trainmaster there, Mr. Plant? A. About six and one-half years.

Q. Is that blue print, D-1 intelligible to you? A. Yes, sir.

Q. What does it show? A. It shows Harsimus Cove yard, and also Jersey City yard, and the tracks leading from a point near the Cut in to those yards.

Q. Can you state which are the freight tracks and which are the passenger tracks there in the yard at the extreme right? A. Yes.

Q. Where are the passenger tracks? A. The passenger tracks are in here (indicating), running to Jersey City in the lower yard.

Q. That lower line? A. This lower line here are the passenger tracks.

Q. Will you indicate the line which separates the passenger tracks from the Harsimus freight tracks in this portion of the yard here, in the yard itself? A. From this point north, known as Harsimus Cove—

Q. From the freight shed north? A. From the freight shed north.

Q. And the passenger yard is located—— A. The passenger yard is located south of that.

Q. From the freight shed itself? A. No; we have a freight yard in here (indicating); this is the freight yard at Jersey City—the passenger yard is in here (indicating).

Q. Will you please indicate by some pier or street which will show approximately the line? A. From Pearl Street north to Morgan Street is the Jersey City freight yards, and from Pearl

Street south to the southerly side of the train shed is the passenger.

Q. Do you know what the storage capacity of Harsimus Cove yard is? The freight yard? A. The working capacity of Harsimus Cove yard is approximately fifteen hundred cars. The entire storage capacity would be about two thousand.

Q. You have to have some open space to work the cars? A. You have to have some open space for working.

(No cross examination.)

Defendant Rests.

REBUTTAL.

PETER S. COLLINS, sworn.

Direct Examination by Mr. Stout:

Q. Where do you live? A. Brooklyn, New York.

Q. What is your business? A. Salesman in the produce business.

Q. Were you employed by Olivit Brothers during July and August, 1912? A. Yes, sir.

Q. In what capacity? A. In selling their watermelons; their other produce as well.

Q. Did that bring you to the Second and Henderson Street yard of the Pennsylvania Railroad every day, during those two months? A. I think every day, yes, sir.

Q. What condition did you find in the Second and Henderson Street yard during the months of July and August, 1912? A. Well, after about the middle of July I found a very congested condition.

Q. There are certain tracks in the Second and Henderson Street yard used for the delivery of watermelons? A. Yes, sir.

Q. And that yard is the watermelon market for New York and vicinity, is it not? A. Yes, sir.

Objected to as not rebuttal. Objection sustained.

Q. During the period from the middle of July on into August were there any other commodities placed on these watermelon tracks other than watermelons?

Mr. Hartpence: Objected to as not rebuttal. It is in evidence in the main case that there were other commodities placed on these tracks, and we made no particular objection to it as I recall.

The Court: I do not know whether the purpose of this evidence is not to show that there was plenty of room for the watermelon cars to have been brought in and their cargo unloaded if you had wanted to do it. In other words, when you say there was a great congestion there he wants to show that it was not the congestion that caused the delay but something else. Is that the object.

Mr. Stout: Yes; and I will further then ask that the plaintiff's case might be opened to put in this testimony. I assumed that this was to meet their defense that the strike was the cause of the delay and congestion, and so forth—

The Court: Well, the strike was the cause of the congestion and the congestion was the cause of the delay; that is their case.

Mr. Stout: And we have a right to show how matters were manipulated in the Second and Henderson Street yard, showing whether they did all that they could under the circumstances.

The Court: I think you have a right to

show that, but as I understood it the objection was that this testimony did not tend to show that. There isn't any doubt about your right to do that.

(Question repeated.)

A. Not during the day.

Q. At what time were the watermelons usually placed on these tracks for delivery? A. They were usually placed about seven o'clock in the morning.

Q. During this period you went to the yard and reached there about seven o'clock in the morning? A. About seven to half past seven; between seven and eight.

Q. Would you find watermelons on these tracks as usual? A. Not always, no, sir.

Q. What would you find there? A. Well, we would find them drilling out and drilling them in; drilling out empty cars some mornings.

Q. Did you during this period find any peaches on these tracks? A. Not to my knowledge. I found empty cars; I do not know what they had contained.

Q. I see. How was the watermelon business carried on in this yard? A. We sell our watermelons in the yard.

Q. At auction? A. Not exactly at auction; we sell them to the highest bidder in a private way.

Q. How was this market continued during this period of congestion? A. The market was greatly demoralized.

Cross Examination by Mr. Hartpence:

Q. How late in the morning would you stay around? A. It all depended on how much business I had to do. Sometimes I left possibly about nine or ten o'clock, and sometimes one or two in the afternoon.

Q. That is during the period that this congestion continued that you referred to? A. Yes, sir.

Q. Did you always wait till your watermelons came in? A. Well, if I knew they were due or if I had any word of them, I did, yes, sir.

Q. Did you ever leave during that period before they did get in? A. Not to my knowledge.

Q. They always came in sooner or later during the day, did they not? A. Well, we knew these cars were on what they call their storage yard. We did not always sell these watermelons on the working track.

Q. Sometimes you sold them from the storage yard? A. Sometimes sold them on what they call their storage yard, what we call the hill. It is their storage yard.

By the Court:

Q. What was this congestion that you are talking about; what do you mean by that? A. To me, are you talking?

Q. Yes; I am talking to you. In this yard? A. Well, we had more stuff due to arrive than they could give us; in other words, we had advices and bills of lading for melons that we—

Q. In other words, your stuff didn't come; that is what you mean? A. (continuing)—expected in four or five days. We would wait seven or eight; we did not get them.

Q. You do not call that congestion; that is delay, isn't it? A. Delay, yes, sir.

Q. What do you mean by congestion? You have been talking about congestion; I want to find out what you mean by that? A. What I mean by congestion, they had so much stuff that they could not handle it; that is what I mean.

Q. That is what you mean? A. Yes, sir.

ANDREW SPADA, sworn.

Direct Examination by Mr. Stout:

Q. What is your business, Mr. Spada? A. Commission merchant.

Q. You are one of the plaintiffs in the suit of Andrew Spada and Dominick Spada against the Pennsylvania Railroad Company? A. Yes, sir.

Q. During the months of July and August, 1912, in what business were you engaged? A. In the watermelon business.

Q. And during that period did you have occasion to come to the Second and Henderson Street yard at Jersey City? A. Yes, sir.

Q. What condition did you find there in the yard? A. Well, the condition I found in the yard there, that I used to go there every day to sell my watermelons, and when I used to go—and as a rule every time at seven o'clock in the morning we were selling out melons, and I used to go there and instead of finding my melons on the track I would find a carload of peaches and other kinds of produce, and then when we would inquire about it, inquire about our cars, they would tell us—tell me that——

Mr. Hartpence: I object to that.

A. (continuing)—the cars had not arrived.

Q. Who would tell you this? A. Mr. Phillips, the agent of the Penn Railroad.

The Court: You do not object to that, I suppose?

Mr. Hartpence: No, sir.

The Court: All right.

Q. These peaches that you found on these watermelon tracks, do you know where they were billed to? A. Yes, sir.

Q. How do you know that? A. Because that

was marked on the outside of the car with white chalk, pier 29, and that is the system they use; when they come to Jersey City they would mark "To Jersey City," if they came from outside where the cars was billed, most of the cars.

Q. And you found that condition existing from the 9th of July up until about the middle of August? A. Well, I think about until the end of July.

Q. The end of July? A. Yes, sir.

Q. That they were using these watermelon tracks for peaches? A. Yes, sir.

Q. Had they previous to this time in July, to your knowledge, used these tracks for that purpose? A. No, sir.

Q. Watermelons are unloaded by the consignees or owners of the melons, is that true? A. Yes, sir.

Q. What is done to the watermelons after they are delivered to the consignees or owners in the yard at Second and Henderson Street? A. Sold—sell.

Q. Sell them; and then they are trucked away? A. They truck away, yes. The buyers come in the yard there and buy the melons and truck them away.

Q. The putting of the peaches on these watermelon tracks, what effect did that have upon the watermelon market? A. Well, it would have considerable effect.

Q. Well, in what way? A. Because they would deliver the peaches instead of watermelons. We would go there for watermelons and find peaches. We could not sell what we didn't have there.

Q. And when the watermelons were delivered, why, they were in a rotten condition? A. Yes, sir.

(Objected to as leading. Objection sustained and the answer stricken out.)

Q. Well, what was the condition of the melons when they were delivered? A. In a decayed condition.

Cross Examination by Mr. Hartpence:

Q. What time in the morning did you usually get there during this time you have referred to in July, 1912? A. Anywhere from six to half past.

Q. And you did not always find your watermelons ready for you, you say? A. No, sir.

Q. You always found the yard full of cars did you, on those occasions? A. Yes, sir.

Q. But your watermelons were not there? A. Yes, sir.

Q. Well, what did you do then? A. I would stay in the yard all day waiting—

Q. What say? A. I would stay in the yard all day to find out, to see if our cars would come in.

Q. All day? A. Yes, sir.

Q. How many times did you stay around all day? A. Well, every day I did during the melon season.

Q. Every day during the melon season? A. Yes, sir.

Q. How long does the melon season last? A. Oh, it lasts from, I think, from about the 25th of May until the latter part of September anyway, but at times when I would get through with my selling naturally I would go out; when I had nothing else there I would certainly go home. I would not stay in the yard and watch other people, certainly; it is understood, that.

Q. Well, didn't any melons come to you at all during that period in July you have referred to, and August? A. Yes, sir.

Q. Well, what time of day did you get them? A. Sometimes nine o'clock; sometimes ten; sometimes afternoon, and any kind of a time.

Q. Well now, you got some of them at nine o'clock in the morning, didn't you? A. Well, very seldom.

Q. You got some, didn't you? A. Possibly I had one or two cars.

Q. And you got some at ten o'clock? A. Well, I cannot exactly tell the hour, but anyway from nine to two or three o'clock in the afternoon; I could not say.

Q. Well, I say you got some at nine, some at ten, and some at two or three in the afternoon? A. Yes, sir.

Q. And then you would unload them and dispose of them, is that right? A. That's it.

Q. Ordinarily you used to get them about seven in the morning? A. Yes, when we would go there at seven o'clock we would find our cars placed for the day.

Q. That was the usual delivery hour, seven o'clock; you did not expect them before that did you? A. Well, no.

Q. And how long did you say that continued? (No answer.)

Q. How long did you say that continued? A. Oh, since the middle part of July, you know, until the end.

Q. You mean to the end of July? A. Yes, sir.

Q. You handle simply watermelons, do you? A. Oh, I handle different kind of produce, but during that time of the year I handle nothing but melons; possibly an odd car of potatoes, you know.

Q. And you say you would go for your watermelons and you would find peaches on the track? A. Yes, sir.

Q. And those cars were moved out after a while, and then your cars came in; is that correct? A. Well, some time.

Q. Sometimes your cars would come in between

nine and two without the peaches being moved out; is that correct? A. No.

Q. They always got through with the peaches before yours came in, did they? A. Yes, sir.

Charles Albrecht, sworn.

Direct Examination by Mr. Stout:

Q. Mr. Albrecht, you are the plaintiff in the suit against the Pennsylvania Railroad? A. Yes, sir.

Q. What was your business in July and August, 1912? A. Watermelon business.

Q. During those months you came to the Second and Henderson Street yard, Jersey City? A. Yes, sir.

Q. What condition did you find in the Second and Henderson Street yard during those months in reference to the delivery of watermelons? A. The delivery of watermelons to me?

Q. Yes. A. What condition I found them?

Q. Yes. A. I found them in rotten condition.

Q. The watermelons? A. Yes.

Q. What hour of the morning would you come to this yard, about what time in the morning? A. About seven o'clock.

Q. What was the usual time for watermelons to be put on these tracks? A. Well, they would put them on tracks during the night.

Q. But you found them there at seven o'clock in the morning? A. Well, not—er—at the time of the strike I did not find them.

Q. You did not find them there during the strike, but before that you did? A. We found them there, yes.

Q. Did you find or see anything on these tracks other than watermelons? A. They took the water-

melons out nights and delivered other stuff, put other stuff on the tracks and delivered that.

Q. Did you see any of that stuff there? A. Oh, yes.

Q. What was it? A. Peaches and stuff like that—vegetables.

Q. What effect did the placing of peaches on these tracks have upon the watermelon market there? A. After they cleaned those cars out they took those cars out and brought ours back again that they took out during the night, they would bring them back about nine or ten in the morning.

Q. That delayed the delivery of your cars? A. Certainly.

(No cross examination.)

Plaintiff Rests on Rebuttal.

SURREBUTTAL.

ABRAM B. PLANT, recalled.

Direct Examination by Mr. Hartpence:

Q. Mr. Plant, you know about the delivery of peaches at the Henderson and Second Street yard during the strike that has been testified to? A. Yes, sir.

Q. When they were held back from pier 29, where else could they have been delivered at the Jersey City end of this line, excpt at that yard? A. The yard known at the Henderson Street yard and the private sidings leading therefrom were the only available point that we had where we could deliver them. Not only the Henderson Street yard

but also the private sidings were used to the extent of the sidings to deliver peaches on.

Q. That was done at night time, was it? A. That was done at night time.

Q. At times of congestion what is the rule about delivery of perishable freight, or the degrees of perishable freight?

Object to as immaterial. Question withdrawn.

Cross Examination by Mr. Stout:

Q. There would have been room to have held these peaches that were billed to pier 29 out in the Meadow yard, would there not? A. I do not know what room there was in the meadows yard; I do not have charge of the Meadows yard.

Q. Did you have charge of any other yard or know anything about it? A. I have charge of Harsimus Cove yard and Jersey City freight yard and Greenville yard.

Q. The Harsimus Cove yard would have been large enough to have stored these peaches, would it not rather than to put them on the delivery tracks? A. There were possibly tracks where peaches could have been placed, but they could not have been delivered. They were not delivery tracks; they were not team tracks.

Q. But you had yard space enough there to have stored these peaches if you had not delivered them at the Henderson street yard? A. Doubtless we could have stored them where we had watermelons.

Q. In other words, you could have stored them where the watermelons were stored? A. Yes, sir.

By Mr. Hartpence:

Q. What would have been the effect of storing them there, holding them, instead of delivering them as you did at night time? A. The peaches would have doubtless spoiled.

Q. Are they highly perishable fruit? A. Highly perishable.

The Court: I guess we will all admit that, won't we?

Mr. Stout: Yes.

Testimony closed.

A Juror (in the absence of the Court): That bill of lading from the Pennsylvania Railroad, where it says that the railroad aren't responsible for perishable fruit, that's only coming on to destination from where it is sent from, ain't it?

Mr. Stout: I would suggest that when the court comes in that question be asked of him.

Mr. Hartpence: Now I move for a direction of a verdict in favor of the defendant in each of the several cases on the grounds, first, that the burden of proof is on the plaintiff to show the negligence of the defendant in the handling of the strike, the strike having been proved as the proximate cause of the delay and the congestion, and that causing the damage to the property which is the subject matter of these respective suits, and that that burden has not been sustained, and that therefore a verdict should be directed in favor of the defendant.

The Court: In logic that is asking me to direct a verdict because the burden of proof has not been sustained. If there is any evidence it should be left to the jury to say it.

Mr. Hartpence: That brings me to my second point, and that is that there is not sufficient evidence of negligence in the case to require its submission to the jury, and under the federal rule, which I think I have already argued to you in the other case, the insuffi-

ciency of evidence is enough to warrant the trial court's directing a verdict; and we think there is not sufficient evidence to warrant its submission.

The Court: In so far as I am required to decide the matter I think there is sufficient evidence to require me to submit it to the jury—if that is a matter of fact for me to determine.

Mr. Hartpence: Third, that there is no evidence of negligence at all in the case which should require the court to submit it to a jury.

The Court: Which would make it a question of law?

Mr. Hartpence: Yes. Fourth, that there is no negligence shown, and for that reason the court should direct a verdict.

On the further ground that under the circumstances of this case it was the duty of the defendants to move more perishable freight first, and that the court should as a matter of law say that there could be no negligence on the part of the defendant in moving the peaches and canteloupes even to the exclusion of the watermelons.

The Court: That point was distinctly passed upon by the court of errors and they held that my disposition of it was right, and I follow them, of course.

Mr. Hartpence: On the further ground that it does not affirmatively appear in the cases that the respective plaintiffs are the owners, or were the owners, of the property at the respective times of shipment and the damage thereto.

The Court: I think I determined previously that that matter was settled by the terms of

the bill of lading itself, and the court of appeals sustained that undoubtedly as being the correct ruling, and you now want to raise it for the federal court.

You may have an objection now to it.

The Court: Was there any question any juror wanted to ask me?

A Juror: I wanted to know if it was on a bill of lading where they said the railroad was not responsible for any goods or perishables sent over the road. I wanted to know if it said that on the bill of lading.

The Court: I do not quite catch the meaning of that.

The Juror: As I understand it it said on the bill of lading that the railroad was not responsible for any goods sent over another railroad, perishable. I wanted to know if it was supposed to be covered by law.

The Court: The railroad company was obliged to use the degree of care which I will indicate in my charge with respect to the transportation of this line of perishable freight. I will cover that in my charge, and if you have any inquiry after that I will answer it.

COURT'S CHARGE TO THE JURY.

Gentlemen of the Jury:

You are now trying eight cases, and, of course, under the circumstances you will have to render eight separate verdicts if you find in favor of the plaintiffs in this suit. The cases were tried together because in effect they were of the same genral nature, and the same issues were involved in all of them, and it tended to save time and not to interfere with justice to try them all together. Therefore, what I have to say in a general way will be applicable to all the cases.

When you come to determine, however, the amount of the verdict, if any, which shall be given in each case, that you will figure from the memoranda that have been furnished you by counsel on both sides. That memoranda I have here, and it is in order to facilitate your labors that these figures have been made up, so that you will have them with you and it will tend to shorten your labors very much to have the figures before you as what counsel contends they are; and as you find either in favor of the contention of the plaintiff or the defendant, you will take the figures furnished by the one or the other, as the case may be, and find a verdict in accordance with them. I have had those figures given you because it would be humanly impossible for a jury to carry them all in their heads, where there is such a tremendous number of them and they are all applicable to different cases.

Now, the general rules I desire to give to you to enable you to decide the case in accordance with what I conceive to be the rules of law are these: First of all, these eight cases are all brought against the same defendant, Pennsylvania Railroad, which was the final carrier of some watermelons that were shipped from points in the South, about the watermelon belt, so called, to Henderson and Second streets, in Jersey City.

The object of the suits is to recover damages for the alleged delay which the plaintiffs say took place in the shipment, and which resulted, as the plaintiffs claim, in the deterioration of some of the melons and the destruction of others. The precise claim made by the plaintiffs in all of the cases is well set forth by reading a count in one of them; that count is set forth in one of the Olivitt cases.

> "On August 4, 1912, at Maxton, in the state "of North Carolina, the plaintiff caused to "be delivered to the defendant, which was a "carrier of goods for hire from Maxton afore- "said to Jersey City, in this state, one car- "load of watermelons of a certain value, "which the defendant then and there re- "ceived and accepted as such carrier, to be "transported carefully and within a reason- "able time, to the plaintiff at Jersey City "aforesaid, for reward or pay."

The plaintiff charges that the defendant in violation of its undertaking and duty failed and neglected to carefully transport the said watermelons from the point aforesaid in the South to Jersey City aforesaid, and failed and neglected to transport the same within a reasonable time, and by reason thereof a large number of said watermelons was wholly lost to the plaintiff, and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

That is the general nature of the complaint that is made in all the cases by the plaintiffs against the defendant.

The defendant sets up some defenses in these cases against the claim. It does not deny that it was a common carrier for hire; it does not deny that as the final carrier these goods were received

by it at a place called Edgemoor in Delaware, were transported by the defendant company from Edgemoor in Delaware to Jersey City. It does not deny that there was some delay over the usual time under ordinary circumstances in the delivery of the goods, and it does not deny that some of the goods were damaged, and, as I understand it, it does not deny that some of them were destroyed.

It claims, however, that the conditions under which the deliveries were made were such as to excuse the defendant company, in contemplation of law, from liability because of that damage and destruction.

The first claim made by the defendant in its excuse is that the delay was caused by a strike, accompanied by demonstrations of violence over which it had no control, and against which it was impotent to contend while the strike lasted; that, therefore, the strike having caused the delay in the transportation, it comes directly within one of the provisions of the bill of lading, which is the contract between the parties in this case, which excepted the company from liability in cases of delay or injury or destruction caused by strike.

Its second claim is that there was some congestion of freight, and that that condition was due to causes beyond the defendant's control, and t[illegible] that comes within one of the exceptions in the contract between the shipper and the defendant company, of which exception in the bill of lading the defendant company has the right to take advantage, even though the exception was incorporated in a bill of lading made with the initial carrier in the South; because the Carmack amendment, so-called, to the federal statute provides that a bill of lading made with the initial carrier inures to the benefit of the carriers all along the

line of transportation; and, therefore, it says that there was a congestion due to causes beyond its control, to wit: a strike accompanied by violence, and that that cause beyond its control, having caused that delay, excused the delivery without the ordinary or usual time which would have been consumed in the transportation of the goods if it had not been for that unexpected and insuperable obstacle which intervened.

And then it claims in some of the cases, by way of defense, that a party who has the right to make a claim for destruction or deterioration of goods due to delay, was required by the provisions of the bill of lading to make those claims within ten days in some cases—

Mr. Hartpence: That is out.

The Court: That is left out because it does not apply to the cases here.

Now, those, as I understand it, are the defenses interposed by the defendant in the cases against the claim of the plaintiffs. These suits are rested upon bills of lading, and those bills of lading are the contracts between the parties in the case; and the cases are grounded upon what is called popularly the Carmack amendment.

Of course, you understand, gentlemen, just by way of illustration of the situation, that some federal statutes, when they are passed, take the names of the persons who introduced them, and when they become statutes they retain those names; and this Carmack amendment was an amendment introduced by Senator Carmack in the United States Senate, and subsequently passed into and became a law, and the Carmack amendment, when I mention it, means the bill which afterwards became a statute and bore his name.

The Carmack amendment is an amendment to the Constitution of the United States with respect

to interstate shipments, and the object of the amendment is to make a uniform rule, applicable to shippers and railroad companies alike all over the Union, so that there will be no longer any uncertainty due to state legislation and state decisions, and federal legislation and federal decisions, which differ in various places and with respect to various kinds of shipments.

What is meant by that, to make it plain, is that the Constitution of the United States gives to Congress the right to regulate interstate commerce, and when the legislature of the federal government has acted upon a subject matter of this kind its action becomes exclusive, and solely controls the situation to the exclusion of regulations by states; and, therefore, when the Carmack amendment was passed, as I have said here, the object was to give uniformity to the regulations of shipments all over the Union, and to do away with all the uncertainties and inconsistencies that might arise from having forty-eight different state juridictions trying to legislate upon the same subject matter.

The object is to establish a uniform rule, and, therefore, the courts have held that the Carmack amendment supersedes all state legislation upon the subject, and the contract between the parties, wherever the bill of lading is not inimicable to the federal law, is the binding contract between these parties, and is not in any way changed or amended, nor modified or qualified by any state legislation or state decisions upon the subject.

Now, as bearing upon that subject, the Court of Appeals in our own state used this language with respect to that amendment. The Court says: "One of the dominating features of the Carmack "amendment is its mandatory requirement that "the initial carrier shall issue to the shipper a re-

"ceipt or bill of lading for property received by "it for transportation from one state to another. "Such receipt or bill of lading is in form and es- "sence a contract, and when issued constitutes the "agreement between the shipper and the carrier "which regulates and defines their respective "rights and liabilities, except as to stipulations "therein which are repugnant to that amendment "or other federal law. By force of that amend- "ment the delivery to and acceptance by the ship- "per of such bill of lading constitutes it a binding "contract on his part, so far as the valid provi- "sions thereof are concerned, even if he does not "know of the stipulations contained therein and "has not by any act, except the mere acceptance "of the bill, signified his content with them; and "not only are the valid stipulations of the bill of "lading binding upon the shipper to the initial "carrier who issues it, but they also inure to the "benefit of every common carrier along the route "over which the goods are forwarded. The con- "tract is made at the point of shipment between "the shipper and the initial carrier, and the pro- "visions of that contract inure to the benefit of "every carrier along the line over which that ship- "ment is carried."

That is the decision of our courts upon that subject.

The Court, in the case I have just read here, also held that the stipulations in the bill of lading with respect to the requirement as to filing all claims within a specified time, and with respect to the delay due to causes over which the carrier had no control, such as strikes or congestion of freight due to causes beyond the control of the carrier, were valid stipulations and were not in antagonism either to the amendment of the law (that is, the Carmack amendment) or to any other

valid law. They are valid stipulations of which the defendant has the right to avail itself and, if it brings itself within them, to have you say that it is free from liability.

That brings us, then, to consider what is the duty of a common carrier with respect to the carriage of goods that are offered to it, or to some prior carrier in the line of carriage and eventually coming into its charge and possession and control for transportation. What duty does it owe the shipper with respect to those goods? The law has been laid down, gentlemen, with respect to that in these words:

"A carrier of goods is bound to exercise reasonable care and diligence in transportation, to transport within a reasonable time so as to prevent loss, or damage, or delay. Its reasonable diligence in transporting goods must depend upon the circumstances of the particular case, the carrier having the right to discriminate in favor of perishable goods when the exigencies require it. In the absence of a special contract or special circumstances to take the case out of the general rule, a carrier is not bound to use extraordinary means to forward even perishable freight, as the shipper must be presumed to have contemplated carriage by regular train, at their usual schedule."

That, I state to you, gentlemen, states the law with respect to that subject; and as bearing upon it further, the Court says this:

"The duty of the defendant as a forwarding carrier, and as well the duty of all connecting carriers, is to exercise reasonable care and diligence in transportation, to transport in a reasonable time, without unnecessary delay; to prevent, so far as reasonable and practicable, and so far as reasonable care will effectuate that re-

"sult, any loss or damage which may be occasion-
"ed by delays in transit. What is reasonable dili-
"gence in this class of cases, as in all others where
"reasonableness is the standard, must depend up-
"on the circumstances of the particular case. It
"has been held that the carrier may discriminate
"under some circumstances between different
"classes of goods where the exigencies require it,
"as where one class is perishable and the other is
"not. In such case, if unable to carry both classes
"at the same time, a carrier may give priority of
"carriage to the perishable goods, and to other
"emergencies which may call for discrimination.

"On the other hand, in the absence of a special
"contract or special circumstances which take the
"case out of the general rule, the carrier is not
"bound to use extraordinary means to forward
"even perishable freight. It is not bound to make
"up special trains or perform special service. The
"shipper must be understood to contemplate car-
"riage by the regular trains on the ordinary
"schedules. If he desires special service, he may
"contract for it."

Now, that is the rule, gentlemen, which the law has laid down with respect to the duty which rests upon the carrier in the transportation of goods, with respect to that phase of the case that has to do with delay in their transportation.

As bearing upon this phase of the case, I have been requested by the defendant to charge certain things. I think, however, before I charge them I may go a step further in the discussion of the case with you.

You will have observed that I said a few moments ago that the defendant could excuse itself by showing that it came within one of the exceptions stated in the bill of lading,—either that there was a strike, accompanied by violence, which in-

terrupted the due, ordinary and usual course of its business; or that there was a congestion due to causes beyond its control. Those two defenses, gentlemen, are the ones I wish to direct your attention to.

Now, those, gentlemen, are defenses, and the burden of establishing the existence of those defenses rests upon the defendant; and the defendant is obliged to make them out by the greater weight of the evidence. What I mean when I say "to make them out" is that if the defendant seeks to avail itself of either of those defenses to excuse itself from liability in cases of this kind, it must make that defense out by the greater weight of the evidence. If it makes out either one of those defenses by the greater weight of the evidence, in the case in which it is thus made out it constitutes a complete defense to the action, and the verdict would have to be, under the circumstances, for the defendant.

If the defendant shall make out by the greater weight of the evidence that there was a strike and that the strike was the cause of the congestion of the freight which resulted, if it did result, in the delay in delivery and the consequent decay of the produce, why, manifestly the defendant has excused itself on that ground, unless the plaintiff then took up the burden and showed by the greater weight of the evidence that even though there was a strike, the defendant in the handling of the strike, or in the handling of the produce, or in dealing with the situation, did not use reasonable care to deliver the goods within a reasonable time to the consignee. If the plaintiff makes that out by the greater weight of the evidence, that amounts to what is known in the law as negligence; and the negligence would render (if that is established by the plaintiff by the greater

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weight of the evidence) the defendant responsible, notwithstanding the fact of the strike.

Now, when I say that the burden of establishing the negligence rests upon the plaintiff, I do not necessarily mean that the plaintiff is obliged, after the defendant gets through with its evidence, to put more evidence in; because the burden upon the plaintiff is upon the whole evidence, to make the evidence weigh heavier in favor of the negligence of the defendant with respect to the delay of delivery than it does the other way. If the evidence does weigh heavier in favor of the negligence of the defendant company than it does in favor of the freedom from negligence of the defendant company, why, then, of course, the plaintiff is under no obligation to offer any further proof, because then the evidence would preponderate in that particular, and the plaintiff might very well rest at that point, without putting in further proof on that ground. But the burden rested upon the plaintiff to establish the negligence by the greater weight of the evidence. If the plaintiff has thus established it, the plaintiff is entitled to recover upon the ground of negligence.

Now, the same rule applies with respect to the congestion of the freight due to causes beyond the control of the defendant. The defendant is obliged to make out the fact of the congestion as an excuse by the greater weight of the evidence. If the defendant does make out the fact of the congestion and the consequent delay of the freight, then the plaintiff is obliged to bear the burden of establishing by the greater weight of the evidence that the congestion and the consequent delay was due to the negligence of the defendant; and the remarks I made with respect to the other defense apply equally to this: the plaintiff does not have

to go on and introduce proof after the defendant gets through with its proof, if already there is evidence in the case. Whether there is or not I do not say. I leave that for you to determine,—whether there already is evidence in the case tending in favor of the negligence of the defendant in that particular, as against its freedom from negligence.

Those are the rules, gentlemen, that, stated in a general way, will govern you in arriving at a determination of the question of liability or non-liability in these cases.

I have been requested by the defendant to charge certain requests, and I am going to charge them. They are these: (and I state to you they state the rules of law as I charged them to you)

1. That the defendant was not bound to carry or transport the watermelons by any particular train, nor within any particular time, nor in time for any particular market, nor otherwise than with reasonable despatch. (That applies to all of the cases; and with reference to other business of the defendant, as its general business permitted, that applies to the bills of lading, for ten and thirty days.)

I am also requested to charge that provisions in the bill of lading are for the benefit of the Pennsylvania Railroad Company as well as the original carriers in the South, and the Pennsylvania Railroad Company is entitled to the benefit of all their provisions from the point where it took the shipments to the point of destination. I charge you that that is the law and will govern you in the determination of this case.

Now, the parties have furnished, gentlemen, as I have indicated to you at the outset of this charge, certain figures that are applicable to the several cases that have been tried before you; and on

the one furnished by the plaintiff I put off in the right-hand corner the indication "Plft." meaning plaintiff; and on the one furnished by the defendant I put off in the left-hand corner the legend "Deft.", meaning defendant.

The plaintiff in the compilation of figures made by him with respect to these several cases has figured in the interest on the claim made by him. The defendant has not figured in any interest, and the reason for that, gentlemen, is this: that in these cases I charge you that it is the law that if the defendant is liable the plaintiffs are entitled to recover the freight paid by them as a part of their damages. The bills of lading in question contain a provision that the amount of any loss or damage for which the carrier is liable shall be computed on the basis of the value of the property, being the *bona fide* invoice price to the consignee, including freight charges, if prepaid, at the place and time of shipment; and, therefore, the freight charges would be entitled to be included in your computation of damages in the cases if you find for the plaintiffs.

Now, is there anything which either of you gentlemen desire to have said further?

Mr. Stout: Except that those two statements are the same with the exception of the freight. It practically amounts to a direction that the computation of the plaintiff, if the figures are correct, must be what the jury find, if they find at all.

The Court: My last statement—I think that clarifies the statement somewhat, and I charge it to you—my last statement in respect to charging you that it was your duty to include the freight, because the bill of lading provides for them, means that if you find for the plaintiffs in these cases under the rules I gave you, you will find in each case the amount which has been given

here on this paper with the legend "Plft." in the upper right-hand corner.

Now you will take the case under these rules and decide it.

(The jury retired.)

Mr. Hartpence: We desire to have our several objections noted to the Court's refusal to charge each of the requests Numbers 2, 3 and 5.

We also desire an exception to that portion of the charge which charged the jury that if they found for the plaintiff they should find the amount as set forth in the plaintiff's computation.

The Court: All right, you may have that.

Mr. Hartpence: We also desire an exception to your Honor's charge to the jury where you said that these defenses of strike and congestion were affirmative defenses, and that the burden was on the defendant to make them out by the greater weight of the evidence.

The Court: Yes.

Mr. Hartpence: And also to that portion with regard to both strike and congestion; (you took them up separately) that if the weight, however, with respect to the negligence of the defendant in failing to deliver is heavier than the evidence in favor of the opposite view, whatever it was, the plaintiff was not necessarily bound to put in other evidence to sustain his part of the burden.

The Court: Yes.

Mr. Hartpence: That objection goes to where your Honor said that, both with respect to the strike and as to the congestion.

The requests of the defendant to charge which the Court refused to charge are as follows:

That the plaintiff is not entitled to recover the freight charges paid to defendant on the shipments involved in these cases.

Unless it appears that the plaintiffs were the

owners of the shipments involved in these cases at the time of shipment and at the time of damage, they are not entitled to recover in these actions.

It was the duty of the defendant to move most perishable freight first under the circumstances in these cases, and the holding back of less perishable freight, viz: the watermelons, until the peaches were delivered was not negligence.

PLAINTIFF'S EXHIBITS.

Car— Initial & Number.	Edgemoor— Received from P.B.&W.R.R.	Waverly Transfer— Arrived	Waverly Transfer— Left.	Meadows Arrived.	Meadows Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson. Ready for Del'v'y.	Remarks.
A.C.L. 33226	July 28—6:20 AM.	—	—	July 23— 6:40 PM.	July 31—2:35 AM.	July 31— 1:30 AM.	July 31—8:25 AM.	Diverted to Newark, N. J., Aug. 6th.—by consignee.
S.A.L. 22640	July 29—6:10 AM.	—	—	July 29— 3:50 PM.	Aug. 2—5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3—7:50 AM.	
A.C.L. 20752	Aug. 1—6:05 AM.	—	—	Aug. 1— 4:40 PM.	Aug. 5—9:50 AM.	Aug. 5— 1:15 PM.	Aug. 6—7:00 AM.	
A.C.L. 29638	Aug. 1—3:00 AM.	—	—	Aug. 2— 1:35 PM.	Aug. 2—8:25 AM.	Aug. 6—11:25 AM.	Aug. 8—8:25 AM.	Diverted to Trenton, N. J., Aug. 8th.—by consignee.
A.C.L. 30833	Aug. 3—6:10 PM.	Aug. 4—6:20 AM.	Aug. 4—7:20 AM.	Aug. 4—10:55 AM.	Aug. 9—8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10—8:45 AM.	
A.C.L. 30957	Aug. 3—6:10 PM.	Aug. 4—6:20 AM.	Aug. 4—7:20 AM.	Aug. 4—10:55 AM.	Aug. 9—8:05 AM.	Aug. 9— 9:25 AM.	Aug. 12—7:00 AM.	Diverted to Wallabout, Brooklyn, NY., Aug. 12th—by consignee.
S.A.L. 22585	Aug. 5—5:00 PM.	—	—	Aug. 6— 4:00 AM.	Aug. 9—6:10 PM.	Aug. 9— 9:05 AM.	Aug. 12—7:00 AM.	

Stipulation.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

OLIVIT BROTHERS, a corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law (7 Counts)

IT IS HEREBY STIPULATED by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent.

1. During the months of July and August, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Deleware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks

at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading , at the time shown on the chart hereto annexed, respectively, except as therein noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the said receipts or bills of lading, except as to those shipments in which the bills of lading require claims to be filed within ten or thirty days.

9. The value of said watermelons at the place and time of shipment was $1500.00 and the plaintiff sold them at the place of delivery for $915.00,

which was the best price it could obtain for them owing to their damaged condition.

10. The plaintiff, on delivery to it by the defendant of the said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $667.97.

11. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commissions and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Car— Initial & Number.		Edgemoor— Received from P.B.&W.R.R.	Waverly Transfer— Arrived	Waverly Transfer— Left.	Meadows Arrived.	Meadows Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson. Ready for Del'v'y.	Remarks.
S.A.L.	16082	July 19—5:20 AM.	—	—	July 19— 3:15 PM.	July 22— 3:30 AM.	July 22— 4:30 AM.	July 24—7:00 AM.	
A.C.L.	34833	July 19—8:10 AM.	—	—	July 19— 4:10 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23—7:00 AM.	
S.A.L.	17566	July 22—5:25 AM.	(July 22—3:50 PM. (Elizabeth	July 22—3:50 PM.))	July 22— 5:55 PM.	July 26— 3:30 PM.	July 26— 4:20 PM.	July 27—7:00 AM.	
A.C.L.	36210	July 21—3:20 AM.	—	—	July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26—7:00 AM.	Designated in complaint as A.C.L. 26210
S.A.L.	18113	July 21—3:30 AM.	—	—	July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26—7:00 AM.	
A.C.L.	32619	Aug. 3—6:10 PM.	Aug. 4—6:20 AM.	Aug. 4—7:20 AM.	Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 12—7:00 AM.	
S.A.L.	18267	Aug. 4—5:25 PM.	—	—	Aug. 5— 5:35 AM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8—8:20 AM.	
A.C.L.	33493	Aug. 3—6:10 PM.	Aug. 4—6:20 AM.	Aug. 4—7:20 AM.	Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10—8:50 AM.	
A.C.L.	30276	Aug. 3—6:10 PM.	Aug. 4—6:20 AM.	Aug. 4—7:20 AM.	Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10—8:45 AM.	
A.C.L.	23150	Aug. 3—6:10 PM.	Aug. 4—6:20 AM.	Aug. 4—7:20 AM.	Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10—8:50 AM.	
A.C.L.	27576	Aug. 9—6:55 PM.	—	—	Aug. 10— 7:15 AM.	Aug. 11—11:45 PM.	Aug. 12— 2:45 AM.	Aug. 15—9:15 AM.	

Stipulation.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

OLIVIT BROTHERS, a corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law. (11 Counts).

IT IS HEREBY STIPULATED by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent:

1. During the months of July and August, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoore, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets,

Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively, except as therein otherwise noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the said receipts or bills of lading, except as to those shipments in which the bills of lading require claims to be filed within ten or thirty days.

9. The value of said watermelons at the place and time of shipment was $2,375.00 and the plaintiff sold them at the place of delivery for $1,520.00,

which was the best price it could obtain for them owing to their damaged condition.

10. The plaintiff, on delivery to it by the defendant of the said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $939.92.

11. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission, pertaining to said shipments, which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Car— Initial & Number.		Edgemoor— Received from P.B.&W.R.R.	Waverly Transfer— Arrived	Waverly Transfer— Left.	Meadows Arrived.	Meadows Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson. Ready for Del'v'y.	Remarks.
A.C.L.	25691	Aug. 1— 5:50 PM.	—	—	Aug. 2— 6:30 AM.	Aug. 5— 9:50 AM.	Aug. 5— 1:15 PM.	—	Diverted to Wallabout, Brooklyn, NY., Aug. 6 —by consignee.
A.C.L.	38229	Aug. 2— 6:45 PM.	Aug. 3—7:30 AM.	Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	—	Diverted to Wallabout, Brooklyn, NY., Aug. 7 —by consignee.
A.C.L.	20071	July 24— 2:45 AM.	July 24—9:45 AM.	July 24—12:15 PM.	July 24— 1:50 PM.	July 26— 9:55 PM.	July 27— 2:40 AM.	July 29—7:00 AM.	
S.A.L.	24553	July 30— 2:50 AM.	—	—	July 30— 1:30 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug 3—8:15 AM.	
S.A.L.	21998	Aug. 3—12:59 PM.	—	—	Aug. 4—12:05 AM.	Aug. 9— 8:05 PM.	Aug. 9— 9:25 AM.	Aug. 10—7:30 AM.	
S.A.L.	21306	Aug. 5—12:05 AM.	Aug. 5—11:10 AM.	Aug. 5—11:30 AM.	Aug. 5—12:50 PM.	Aug. 9— 6:15 PM.	Aug. 9— 9:05 PM.	Aug. 12—8:45 AM.	
S.A.L.	18311	July 29— 6:10 AM.	—	—	July 29— 3:50 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3—7:50 AM.	
A.C.L.	27244	July 29— 6:10 AM.	—	—	July 29— 3:50 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3—7:50 AM.	
S.A.L.	18300	Aug. 3—12:59 PM.	—	—	Aug. 4—12:30 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10—7:30 AM.	
S.A.L.	17579	July 30— 2:50 AM.	—	—	July 30— 1:30 PM.	Aug. 2— 5:30 AM.	Aug. 2— 7:40 AM.	Aug. 3—8:15 AM.	
S.A.L.	16346	July 22—11:35 AM.	—	—	July 22—10:35 PM.	July 26— 3:30 PM.	July 26— 4:20 PM.	July 27—7:00 AM.	
S.A.L.	22790	July 30— 5:33 PM.	—	—	July 31— 4:20 AM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3—7:50 AM.	
A.C.L.	24216	Aug. 2— 3:00 AM.	—	—	Aug. 2— 1:35 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8—8:20 AM.	

Stipulation.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

OLIVIT BROTHERS, a Corporation, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law (13 Counts.)

IT IS HEREBY STIPULATED by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent.

1. During the months of July and August, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets,

Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively, except as therein otherwise noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time specified by the said receipts or bills of lading, except as to those shipments in which the bills of lading require claims to be filed within ten or thirty days.

9. The value of said watermelons at the place and time of shipment was $3,025.00 and the plaintiff sold them at the place of delivery for $2,080.00,

which was the best price it could obtain for them owing to their damaged condition.

10. The plaintiff, on delivery to it by the defendant of the said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $1,182.47.

12. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission, pertaining to said shipments, which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Car— Initial and Number		Edgemoor— Received from P.B.&W.R.R.	Meadows— Arrived	Meadows— Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson, Ready for Del'v'y.	Remarks.
C.N.O.&T.P.	12397	7–21–12, 3:20 AM.	7–21–12, 3:10 PM.	7–24–12, 7:10 AM.	7–24–12, 11:35 AM.	7–26–12, 7:00 AM.	
G.S.& F.	4874	7–18–12, 6:15 AM.	7–18–12, 4:50 PM.	7–19–12, 3:20 PM.	7–19–12, 3:36 PM.	7–22–12, 7:00 AM.	
G.S.& F.	4575	7–18–12, 6:15 AM.	7–18–12, 4:50 PM.	7–19–12, 3:20 PM.	7–19–12, 3:36 PM.	—	(Wallabout, 7–22, 6:00 PM. by order of consignee.)
Sou.	31350	7–18–12, 6:15 AM.	7–18–12, 4:50 PM.	7–19–12, 3:20 PM.	7–19–12, 3:36 PM.	7–22–12, 7:00 AM.	
Sou.	33803	7–19–12, 4:20 PM.	7–19–12, 11:10 PM.	7–22–12, 3:30 AM.	7–22–12, 4:30 AM.	7–23–12, 7:00 AM.	
Sou.	39514	7–18–12, 6:15 AM.	7–18–12, 4:50 PM.	7–19–12, 3:20 PM.	7–19–12, 3:36 PM.	7–22–12, 7:00 AM.	

Stipulation.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

DANIEL H. GILBERT,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law.
(6 Counts.)

IT IS HEREBY STIPULATED by and between the parties hereto that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent.

1. During the month of July, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at

its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignee in said bills of lading, at the times shown on the chart hereto annexed, respectively, except as therein noted.

4. The usual or customary time during the month of July, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a decayed condition when delivery was tendered by the defendant to the plaintiff at defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. The plaintiff refused to accept delivery of said watermelons when tendered by the defendant, owing to their damaged condition.

9. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the receipts or bills of lading.

10. The value of said watermelons at the place and time of shipment was $1,500.00.

11. All of said shipments were interstate ship-

ments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said Commission, pertaining to said shipments, which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys for Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Car— Initial & Number.	Edgemoor— Received from P.B.&W.R.R.	Waverly Transfer— Arrived	Waverly Transfer— Left.	Meadows Arrived.	Meadows Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson. Ready for Del'v'y.	Remarks.
A.C.L. 31290	7–31–12, 8.30 A.M.	7–31–12, 3.00 P.M.	8–1–12, 4:05 AM.	8–1–12, 9:45 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	—	Diverted to Wallabout, by direction of consignee.
A.C.L. 27308	7–31–12, 1.20 P.M.	8– 1–12, 1.30 A.M.	8–1–12, 2:00 AM.	8–1–12, 7:25 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	8–5–12, 8:40 AM.	
A.C.L. 33762	7–31–12, 8.30 A.M.	7–31–12, 3.00 P.M.	8–1–12, 4:05 AM.	8–1–12, 9:45 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	8–5–12, 8:40 AM.	
A.C.L. 36521	7–31–12, 1.20 P.M.	8– 1–12, 1.30 A.M.	8–1–12, 2:00 AM.	8–1–12, 7:25 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	8–5–12, 8:40 AM.	
A.C.L. 24466	7–31–12, 1.20 P.M.	8– 1–12, 1.30 A.M.	8–1–12, 2:00 AM.	8–1–12, 7:25 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	—	Diverted to Wallabout, by direction of consignee. 8–5–1912.
A.C.L. 31539	7–31–12, 8.30 A.M.	7–31–12, 3.00 P.M.	8–1–12, 4:05 AM.	8–1–12, 9:45 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	8–5–12, 8:40 AM.	
A.C.L. 18478	7–31–12, 8.30 A.M.	7–31–12, 3.00 P.M.	8–1–12, 4:05 AM.	8–1–12, 9:45 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	8–5–12, 8:40 AM.	
A.C.L. 30931	7–31–12, 8.30 A.M.	7–31–12, 3.00 P.M.	8–1–12, 4:05 AM.	8–1–12, 9:45 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	8–5–12, 8:40 AM.	
A.C.L. 23432	7–31–12, 8.30 A.M.	7–31–12, 3.00 P.M.	8–1–12, 4:05 AM.	8–1–12, 9:45 AM.	8–2–12, 11:50 PM.	8–3–12, 1:45 AM.	8–5–12, 8:40 AM.	

Stipulation.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

J. C. LEIB & Co., a Corporation,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
9 Counts.

IT IS HEREBY STIPULATED by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent.

1. During the months of July and August, 1912, and at the time of the bringing of this action the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its

delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignee in said bills of lading, at the times shown on the chart hereto annexed, respectively, except as therein noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a decayed condition when delivered by the defendant to the plaintiff and accepted by it at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the said receipts or bills of lading.

9. The value of said watermelons at the place and time of shipment was $2,250 and the plaintiff sold them at the place of delivery for $1,305, which was the best price he could obtain for them owing to their decayed condition.

10. The plaintiff, on delivery to him by the de-

fendant of the said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $882.49.

11. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission, pertaining to said shipments, which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Car— Initial & Number.	Edgemoor— Received from P.B.&W.R.R.	Waverly Transfer— Arrived	Waverly Transfer— Left.	Meadows Arrived.	Meadows Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson. Ready for Del'v'y.	Remarks.
S.A.L. 23991	7–15–12, 9:50 AM.	—	—	Through.	Through.	7–15–12, 3:40 PM.	7–18–12, 9:30 AM.	
S.A.L. 18116	7–16–12, 5:00 PM.	—	—	7–16–12, 11:30 PM.	7–19–12, 3:40 AM.	7–19–12, 6:10 AM.	7–20–12, 8:30 AM.	
S.A.L. 21313	7–16–12, 5:00 PM.	—	—	7–16–12, 11:30 PM.	7–19–12, 3:40 AM.	7–19–12, 6:10 AM.	7–20–12, 8:30 AM.	
S.A.L. 17285	7–18–12, 6:15 AM.	—	—	7–18–12, 4:50 PM.	7–19–12, 3:20 PM.	7–19–12, 3:36 PM.	7–22–12, 7:00 AM.	7–21–12 was 'Sunday'.
S.A.L. 22460	7–19–12, 5:20 AM.	—	—	7–19–12, 3:15 PM.	7–22–12, 3:30 AM.	7–22–12, 4:30 AM.	7–24–12, 7:00 AM.	
C. of Ga. 11648	7–18–12, 6:15 AM.	—	—	7–18–12, 4:50 PM.	7–19–12, 3:20 PM.	7–19–12, 3:36 PM.	7–22–12, 7:00 AM.	
S.A.L. 16236	7–21–12, 10:30 AM.	—	—	7–21–12, 9:40 PM.	7–24–12, 7:10 AM.	7–24–12, 11:35 AM.	7–25–12, 10:40 PM.	
S.A.L. 24361	7–22–12, 5:25 AM.	—	—	7–22–12, 5:50 PM.	7–26–12, 3:30 PM.	7–26–12, 4:20 PM.	7–27–12, 7:00 AM.	
S.A.L. 17307	7–24–12, 2:45 AM.	—	—	7–24–12, 2:00 PM.	7–26–12, 9:55 PM.	7–27–12, 2:40 AM.	7–29–12, 7:00 AM.	

Stipulation.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

ISAAC LOEWENTHAL,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant.

Action at Law
9 Counts.

IT IS HEREBY STIPULATED by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent.

1. During the month of July, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson

Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignee in said bills of lading, at the times shown on the chart hereto annexed, respectively, except as therein noted.

4. The usual or customary time during the month of July, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a decayed condition when delivery was tendered by the defendant to the plaintiff at defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. The plaintiff refused to accept delivery of said watermelons when tendered by the defendant, owing to their damaged condition.

10. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the receipts or bills of lading.

11. The value of said watermelons at the place and time of shipment was $2,250.

12. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate

tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said Commission, pertaining to said shipments, which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Car— Initial & Number.		Edgemoor— Received from P.B.&W.R.R.	Waverly Transfer— Arrived	Waverly Transfer— Left.	Meadows Arrived.	Meadows Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson. Ready for Del'v'y.	Remarks.
A.B.A.	20917	July 17— 6:55 AM.	—	—	July 17— 7:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23— 7:00 AM.	
Sou.	32937	July 24— 2:45 AM.	—	—	July 24— 1:50 PM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 31— 7:00 AM.	
Sou.	25284	July 22—12:05 AM.	—	—	July 22— 7:00 AM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 27— 7:00 AM.	
S.A.L.	24096	July 22—12:05 AM.	—	—	July 22— 7:00 AM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 26— 7:00 AM.	
S.A.L.	23256	July 20— 8:35 PM.	—	—	July 21—12:15 PM.	July 23— 6:55 AM.	July 23—11:30 AM.	July 25— 7:00 AM	
S.A.L.	15841	July 21— 1:00 PM.	—	—	July 21—10:30 PM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 27— 7:00 AM.	
S.A.L.	22453	July 21— 1:00 PM.	—	—	July 21—10:30 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	
Sou.	38162	July 21— 3:20 AM.	—	—	July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	
Sou.	35039	July 21— 3:20 AM.	—	—	July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	

Stipulation.

HUDSON COUNTY CIRCUIT COURT.

CHARLES ALBRECHT, *Plaintiff,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law (9 Counts.)

IT IS HEREBY STIPULATED by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent.

1. During the month of July, 1912, and at the time of the bringing of this action the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the nine cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the

watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively.

4. The usual or customary time during the month of July, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard, Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons, all of which were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence, and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivery was tendered by the defendant to the plaintiff at defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. The plaintiff refused to accept delivery of said watermelons when tendered by the defendant owing to their damaged condition.

9. The defendant sold the said watermelons for

$350.00 after the plaintiff refused to accept them.

10. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the said receipts or bills of lading, except as to those shipments in which the bills of lading require claims to be filed within ten or thirty days.

11. The value of the said watermelons at the place and time of shipment was $1,375.00.

QUEEN & STOUT,
Attorneys of Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Car— Initial & Number.		Edgemoor— Received from P.B.&W.R.R.	Waverly Transfer— Arrived	Left.	Meadows Arrived.	Left.	Harsimus Arrived.	Jersey City— 2nd. & Henderson. Ready for Del'v'y.		Remarks.
A.C.L.	30943	July 13—12:30 PM.	—	—	—	—	July 13— 8:30 PM.	July 14—	AM.	4 mo.
A.C.L.	35449	July 13— 9:00 PM.	—	—	—	—	July 14— 3:50 AM.	July 17—	AM.	4 mo.
A.C.L.	30698	July 17— 6:55 AM.	—	—	July 17— 7:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23—	AM.	4 mo.
A.C.L.	34794	July 16— 5:00 PM.	—	—	—	—	July 17— 4:50 AM.	July 20—	AM.	10 days
A.C.L.	24480	July 17— 6:55 AM.	—	—	July 17— 7:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23—	AM.	
A.C.L.	23761	July 17— 3:50 PM.	—	—	July 18— 3:20 AM.	July 19— 3:20 PM.	July 19— 3:36 PM.	July 22—	AM.	
A.C.L.	18316	July 17— 8:25 AM.	—	—	July 17— 6:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23—	AM.	
A.C.L.	25968	July 24— 5:15 AM.	—	—	July 24— 2:20 PM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 29—	AM.	
A.C.L.	28548	July 24— 2:45 AM.	—	—	July 24— 2:20 PM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 31—	AM.	4 mo.

Stipulation.

HUDSON COUNTY CIRCUIT COURT.

ANDREW SPADA and DOMINICK SPADA, partners, doing business as ANDREW SPADA & COMPANY, *Plaintiff*, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law (9 Counts.)

IT IS HEREBY STIPULATED by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent.

1. During the month of July, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the nine cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jer-

sey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively.

4. The usual or customary time during the month of July, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons all of which were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence, and the plaintiffs were at the time of the bringing of this action and still are the lawful holders of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivery was tendered by the defendant to the plaintiffs at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. The plaintiffs accepted delivery of four of said cars of watermelons, numbers A. C. L.

30943, A. C. L. 34794, A. C. L. 23761 and A. C. L. 25968, and sold them for $680.53, which was the best price they could obtain for them owing to their damaged condition. The value of said four cars of watermelons at the place and time of shipment was $925.00.

9. The plaintiffs refused to accept delivery of five of said cars of watermelons, numbers A. C. L. 35449, A. C. L. 30698, A. C. L. 24480, A. C. L. 18316 and A. C. L. 28548, when delivery was tendered by the defendant owing to their damaged condition and the defendant sold them for $206.80 after the plaintiffs refused to accept them. The value of said five cars of watermelons at the place and time of shipment was $1,125.00.

10. Claims for damage to the said watermelons were made in writing by the plaintiffs to the defendant at the point of delivery within the time required by the receipts or bills of lading, except as to those shipments in which the bills of lading require claims to be filed within ten or thirty days.

11. The amount of freight charges paid by the plaintiffs to the defendant on the delivery of the said four cars of watermelons which were accepted by the plaintiffs was $549.29.

QUEEN & STOUT,
Attorneys of Plaintiff.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Stipulation.

HUDSON COUNTY CIRCUIT COURT.

ANDREW SPADA and DOMINICK SPADA, partners doing business as Andrew Spada & Co., *Plaintiffs,* *vs.* THE PENNSYLVANIA RAILROAD COMPANY, *Defendant.*	Action at Law

It is hereby stipulated by and between the parties hereto that the following facts are admitted in evidence at the trial of this action without formal proof:

1. In respect to the fourth, fifth, sixth, seventh and eighth counts of said action claims for damage to the said watermelons were made in writing on July 31st, 1912, by the plaintiff to the defendant at the point of delivery.

2. The numbers of the cars of the said watermelons for which the above claims were made, the value of the said watermelons at the place and time of shipment, the best price the plaintiffs could obtain for the said watermelons owing to their damaged condition, the cars of said watermelons which were refused by the plaintiffs owing to their damaged condition, the damage to said watermelons based upon their value at the place and time of shipment and the freight paid by the plaintiff to the defendant on the delivery of the said watermelons are respectively as follows:

Car Nos.	Value	Sold for	Damage to Watermelons	Freight
A. C. L. 34794	$250.00	$165.53	$84.47	$121.55
A. C. L. 24480	200.00	refused	200.00	.....
A. C. L. 23761	200.00	165.00	35.00	136.98
A. C. L. 18316	200.00	refused	200.00	.....
A. C. L. 25968	175.00	125.00	50.00	156.62

3. The letters hereto annexed show that said claims were refused or declined.

4. The said letters shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiffs.

VREDENBURG, WALL & CAREY,
Attorneys of Defendant.

THE PENNSYLVANIA RAILROAD CO.

General Office, Broad Street Station,

Philadelphia, November 8th, 1912

R. L. Franklin,
Freight Claim Agent.
J. H. Baer,
Asst. Freight Claim Agent.

35449	Claim	578865-F	Andrew Spada & Company	$ 220.30
34794	"	578872-F	Andrew Spada & Company	$ 58.74

Andrew Spada & Company,
Fruit Auction Bldg.,
New York City.

Gentlemen:

Returning herewith all papers presented by you in support of the above numbered claims against this company on various shipments of melons consigned to you at New York, I desire to state that there was no negligent delay to the shipments in question, inasmuch as no particular time or market is guaranteed. You will, therefore, readily appreciate that we cannot give these claims favorable consideration.

Yours truly,
R. L. FRANKLIN,
Freight Claim Agent.

McI-k W. J.

PENNSYLVANIA RAILROAD COMPANY

Freight Station, Corner Henderson & Second Sts.

E. Butler
Freight Agent

Jersey City Nov. 15, 1912.

Reg. 9745	Reg. 9743
RLF 578868	RLF 581614
Reg. 9747	Reg. 9910
RLF 987873	RLF 583395

30943 Claim—578868-F A. Spada & Co., $125.00
25968 Claim—578873-F A. Spada & Co., $81.62
24480 Claim—583395-N A. Spada & Co., $50.00
30698 Claim—581614-F A. Spada & Co., $90.00

Messrs. A. Spada & Co.,
204 Franklin St.,
New York, N. Y.

Gentlemen:

In further reference to the above mentioned claims entered by you for alleged loss account delay to melons, which arrived at this station during the melon season, beg to advise you that our Freight Claim Department, has investigated the movement of these various cars in question, and today, we are advised that there was no negligent delay in the transportation, no special time guaranteed by the carriers, and the only delay resulting from the extremely heavy movement of melons which brought about a conjection, due to the receivers being unable to unload cars as fast as they were received.

We are therefore, respectfully requested to decline payment of claims in question, and all papers supported by you in connection with these claims, are returned herewith.

Yours truly,

E. BUTLER,
Agent.

THE PENNSYLVANIA RAILROAD CO.

General Office, Broad Street Station,

Philadelphia, November 19th, 1912

R. L. Franklin,
Freight Claim Agent.
J. H. Baer,
Asst. Freight Claim Agent.

35449	Claim	578865-F	Andrew Spada & Company	$ 220.30
34794	"	578872-F	Andrew Spada & Company	$ 58.74

Andrew Spada & Company,
204 Franklin Street,
New York City.

Gentlemen:

Responding to your communication of the 11th instant touching the above claims and returning the documents enclosed therewith, I wish to state the investigation which we have made in this case shows these cars were promptly transported from point of shipment to destination. We were unable, however, to promptly effect delivery owing to the large number of similar cars on hand which the consignees were not promptly unloading and releasing.

With this state of affairs we certainly cannot assume responsibility and I regret very much we cannot give favorable consideration to the claims.

Yours truly,

R. L. FRANKLIN,
Freight Claim Agent.

P*K

Exhibits

PENNSYLVANIA RAILROAD COMPANY

Freight Station, Corner Henderson & Second Sts.

E. Butler
Freight Agent

Jersey City Nov. 21, 1912.

Reg. 9909
RLF 583340

SUBJECT: Claim of Andrew Spada & Co., for $40.00

Messrs. Andrew Spada & Co.,
Cor. Washington & Franklin, Sts.,
New York, N. Y.

Gentlemen:

In further reference to the above mentioned claim entered by you for alleged loss account delay to car ACL 18316, from Cairo, Ga. July 13.

Our Freight Claim Department has investigated claim in question and today we are advised that as there was no negligent delay on the part of the carriers, and as no particular time or market was guaranteed in the transportation of freight, and as there was no negligent delay on our part we are respectfully requested to decline payment of this claim in question.

The only delay that resulted was from the extremely heavy movement of melons which brought about a conjestion due to the receivers being unable to unload cars promptly upon arrival. All papers in connection with same is herewith returned, with advice that same is therefore declined.

Yours truly,

E. BUTLER,
Agent.

FR/WM

PENNSYLVANIA RAILROAD COMPANY

Freight Station, Corner Henderson & Second Sts.

E. Butler
Freight Agent

Jersey City Nov. 27, 1912.

Claims of Andrew Spada & Co.

Reg. 9745—Claim.—578868-F.—for	$125.00
Reg. 9747—Claim.—578873-F.—for	81.62
Reg. 9743—Claim.—581614-F.—for	90.00
Reg. 9910—Claim.—583395-N.—for	50.00

Messrs. Andrew Spada & Co.,
204 Franklin St.,
New York, N. Y.

Gentlemen:

In further reference to the above claims and your letter of Nov. 16, same was referred to our Freight Claim Department for further consideration. Today we are advised that our previous letter of Nov. 13 is final.

They state that they cannot see that your argument has changed the conditions to such an extent that we could render any different decision on these claims and as stated before the only delay was the result of the conjestion, and this was not caused by any negligence on our part and therefore cannot pass claim for payment.

We again return papers to you in support of same.

Yours truly,

E. BUTLER,
Agent.

FR/WM

PENNSYLVANIA RAILROAD COMPANY

Freight Station, Corner Henderson & Second Sts.

E. Butler
Freight Agent

Jersey City Dec. 5, 1912.

Reg. 9911
RLF 584272

SUBJECT: Claim of Andrew Spada & Co., for $24.48

Messrs. Andrew Spada & Co.,
204 Franklin St.,
New York, N. Y.

Gentlemen:

In further reference to the above mentioned claim entered by you for alleged loss account delay to car ACL 23761, from Cario Ga. July 13.

Beg to state our Freight Claim Department has investigated claim in question and today we are advised that they cannot entertain same as car moved within reasonable dispatch and there was no negligent delay in transit and no special time was guaranteed for delivery. The only delay that resulted was from the extremely heavy movement of melons which brought about a congestion, as the receivers were unable to unload cars promptly upon their arrival and papers supported by you in connection with this claim are returned herewith, same being declined by our Freight Claim Department.

Yours truly,

E. BUTLER.
Agent.

FR/WM

New Jersey State Library

PENNSYLVANIA RAILROAD COMPANY

Freight Station, Corner Henderson & Second Sts.

E. BUTLER
Freight Agent

Jersey City, Dec. 18, 1912.
Reg. 9748
RLF 578630

SUBJECT: Claim of Andrew Spada & Co., for $65.00.

Messrs. Andrew Spada & Co.,
204 Franklin St.,
New York City.

Gentlemen:

In further reference to the above claim entered by you for loss to melons in car ACL 28548, from Pine Park, Ga., July 20.

Our Freight Claim Department has investigated claim. Our investigation has shown that there was no negligent delay in transit, no special time was guaranteed and the only delay that resulted in this case was due to the extremely heavy movement of melons which brought about a congestion, due to receivers being unable to unload cars promptly upon their arrival. All papers supported by you in connection with this claim are returned herewith, and claim being respectfully declined by our Freight Claim Department.

Yours truly,

E. BUTLER,
Agent.

FR/WM

Exhibit P-10.

Bills of lading covering all the shipments involved in the eight cases, as moved in this trial, marked as one exhibit, all of which are of the following tenor:

(4 Months Bill) Form 156

STANDARD FORM STRAIGHT BILL OF LADING

Shipper's No.....

ATLANTIC COAST LINE RAILROAD COMPANY

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

Agent's No.....

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

at ....PARKSON N.C. 7/31 1912

from.....T. J. LANCASTER the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its own line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from.....

to .....is in cents per 100 Lbs.

If Times 1st Class	IF 1st Class	IF 2d Class	IF Rule 25	IF 3d Class	IF Rule 26	IF Rule 28	IF 4th Class	IF 5th Class	IF 6th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	IF Class H	Per Barrel IF Class F	If Special per

(Mail Address Not for Purposes of Delivery.)

Consigned to OLIVIT BROS.

Destination.....JERSEY CITY State of.....N. J. County of .....

Route .....Car Initial.....ACL Car No. 18352

No. Packages	Description of Articles and Special Marks	WEIGHT (Subject to Correction)	CLASS or Rate	CHECK Column
1	CAR WMELONS	20000	10/31	

If charges are to be prepaid, write or stamp here "To be Prepaid."

.....

Received $..... to apply in prepayment of the charges on the property described hereon.

.....
Agent or Cashier.

Per .....
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$.....

D. C. HALL.....Agent

Per .....

CONDITIONS.

Section 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage or delay, caused by fire occurring after forty-eight hours (exclusive of legal holidays), after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession, the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or resulting from a defect or vice in the property, or from riots or strikes; or for country damage on cotton. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars), shall be liable only for negligence.

In case of quarantine the goods may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when goods are so discharged, or goods may be returned by carrier at owner's expense and risk to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to goods shall be borne by the owners of the goods or be a lien thereon. The carriers shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required by quarantine regulations or authorities, even though same may have been done by carrier's officers, crew, agents or employees, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and, except as otherwise provided by law, acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable despatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given, may be kept in car, depot or place of delivery of the carrier, or warehouse, subject to reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder, and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves or landings, shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

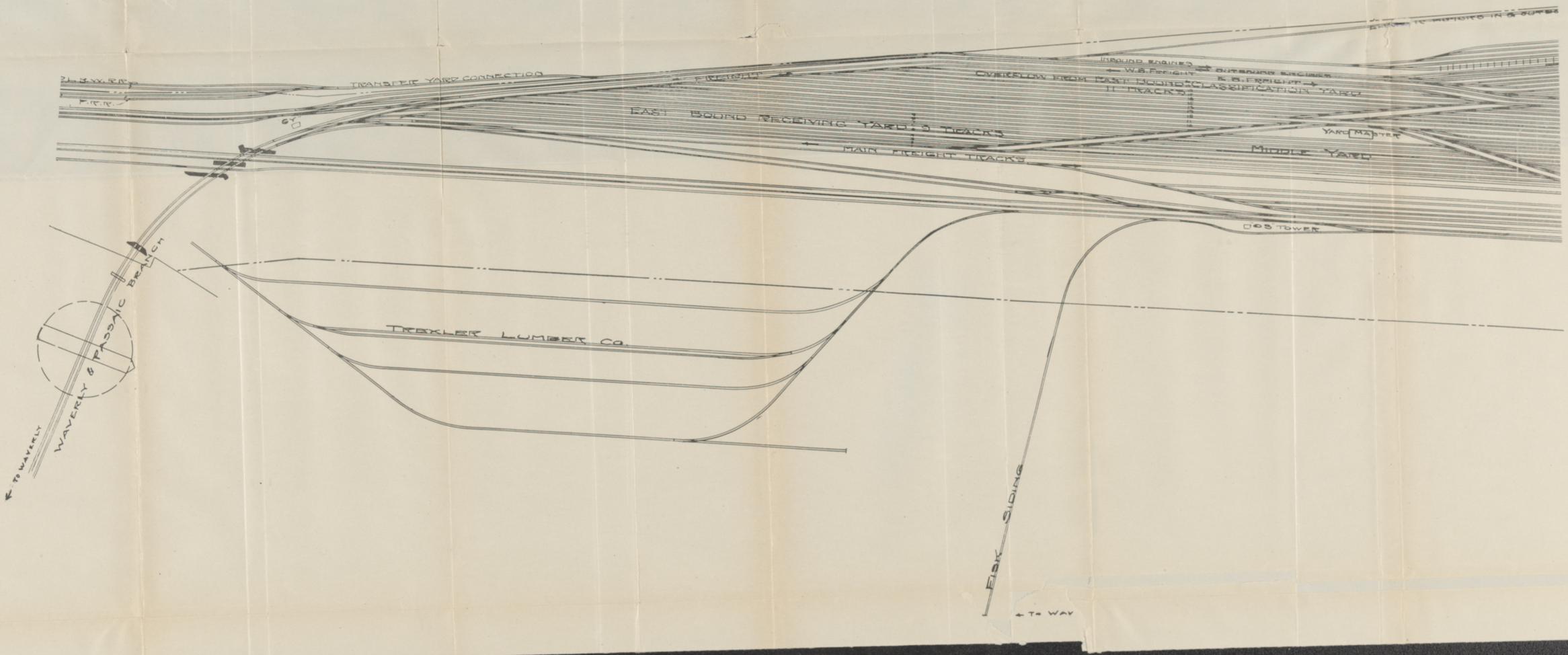
Sec. 8. The owner or consignee shall pay the freight, and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in Section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, or for any loss or damage resulting from the perils of the lakes, sea or other waters; or from vermin, leakage, chafing, breakage, heat, frost, wet, explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, whether existing prior to, at the time or, or after sailing; or unseaworthiness; or from collision, stranding or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, to tranship, to lighter, to load and discharge goods at any time, and assist vessels in distress, and to deviate for the purpose of saving life or property. Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors when performed by the rail carrier, and the liability for such lighterage shall be governed by the other sections of this instrument.

Section. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill of lading shall be enforceable according to its original tenor

DEFENDANT'S EXHIBITS.


TRANSFER YARD CONNECTION
EAST BOUND RECEIVING YARD: 9 TRACKS
MAIN FREIGHT TRACKS
OVERFLOW FROM EAST BOUND CLASSIFICATION YARD
11 TRACKS
INBOUND ENGINES
W.S. FREIGHT
OUTBOUND ENGINES
E.B. FREIGHT
MIDDLE YARD
YARD MASTER
TOWER
TRAXLER LUMBER CO.
WAVERLY & PASSAIC BRANCH
TO WAVERLY
FORK SIDING



OFFICE
STORAGE SHED
BOILER SHOP
BOILER ROOM
MACHINE SHOP
WHEEL SHOP
SMITH SHOP
PAINT STORE
BUNK HOT
STABLE
PLANING MILL
LUMBER SHED
DRY KILN
ENGINE STORAGE
EAST BOUND CLASSIFICATION YARD
WEST BOUND YARD
REPAIR YARD
TROLLEY
TURNPIKE
COAL STORAGE YARD
E.&W.B. MAIN FREIGHT
DRAW BRIDGE
DRAW BRIDGE
W.B.
HACKENSACK
HACKE

W

P.R.R. - NEW JERSEY DIV.
NEW YORK DIV.

JERSEY CITY WATER FRONT

ESSEX ST. TO SEVENTH ST.

AUG. 14, 1907 SCALE 1"=200'

Rev. 9-23-08
" 4-8-12
" 8-15-14