

I N D E X

	PAGE
Complaint .....	1
Answer .....	2
Reply .....	6
Notice of Appeal and Reasons .....	7
Amended Grounds of Appeal .....	10
PLAINTIFF'S TESTIMONY:	
Edward C. Cordery—Direct .....	13
Cross .....	32
Re-direct .....	53
Re-cross .....	57
Blanche Cordery—Direct .....	57
Cross .....	61
DEFENDANT'S TESTIMONY:	
Charles H. Orme—Direct .....	63
Cross .....	66
Re-direct .....	67
Percival Armitage—Direct .....	67
Cross .....	71
Howard Wagner—Direct .....	75
Cross .....	76
Joseph G. Fleischauer—Direct .....	78
Cross .....	79

greatly damaged the same, breaking and destroying the said model and the equipment therewith, and also lost and failed to deliver a portion thereof.

4. Plaintiff, because of the premises has sustained great loss and injury.

SECOND COUNT.

10 1. Paragraphs 1, 2 and 3, are hereby made parts of this count the same as if they were herein restated.

2. As a result of the damage aforesaid, the plaintiff was unable to use, or make a proper exhibition of the model aforesaid at Albany, New York, and consequently has suffered great damage by loss of contracts and profits for similar models with various persons.

20 Plaintiff sues for \$1500 damages upon the first count and for \$1495 damages upon the second count.

ELWOOD C. WEEKS,  
*Attorney for Plaintiff.*

ANSWER.

30 The defendant, American Railway Express Company, answering plaintiff's complaint filed herein says that:

1. He denies each and every allegation contained in counts one and two of plaintiff's complaint filed herein.

FIRST AFFIRMATIVE DEFENCE.  
COUNTS ONE AND TWO.

1. That at the time the goods mentioned in plaintiff's complaint were delivered to the defendant for shipment, a contract for said shipment was entered into by the plaintiff; under and by the terms of contract or agreement of shipping, the value of said goods was declared to be fifteen hundred dollars 10 (\$1500.00) and it was agreed that the said goods should be shipped upon the following terms and conditions:

1. The provisions of this receipt shall inure to the benefit of and be binding upon the consignor, the consignee and all carriers handling this shipment, and shall apply to any reconsignment, or return thereof.

2. In consideration of the rate charged for carrying said property, which is dependent upon 20 the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less, and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees that the company shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual 30 weight, for any shipment weighing more than 100 pounds, unless a greater value is stated herein. Unless a greater value is declared and stated herein the shipper agrees that the value of the shipment is as last above set out and that the liability of the company shall, in no event exceed such value.

3. Unless caused by its own negligence or that of its agents, the company shall not be liable for—

A—Difference in weight or quantity caused by shrinkage, leakage or evaporation.

B—The death, injury, or escape of live freight.

10 C—Loss of money, bullion, bonds, coupons, jewelry, precious stones, valuable papers, or other matter of extraordinary value, unless such articles are enumerated in the receipt.

4. Unless caused in whole or in part by its own negligence or that of its agents, the company shall not be liable for loss, damage, or delay caused by—

A—The act or default of the shipper or owner.

B—The nature of the property, or defect or inherent vice therein.

20 C—Improper or insufficient packing, securing or addressing.

D—The Act of God, public enemies, authority of law, quarantine, riots, strikes, perils of navigation, the hazards or dangers incident to a state of war, or occurrence in customs warehouse.

E—The examination by, or partial delivery to, the consignee of C. O. D. shipments.

30 F—Delivery under instructions of consignor or consignee at stations where there is no agent of the company after such shipments have been left at such stations.

5. Packages containing fragile articles or articles consisting wholly or in part of glass must be so marked and be so packed as to insure safe transportation by express with ordinary care.

6. When consigned to a place at which the express company has no office, shipments must be marked with the name of the express station at which delivery will be accepted or be marked with forwarding directions if to go beyond the express company's line by a carrier other than an express company. If not so marked shipments will be refused.

7. Except where the loss, damage, or injury 10  
complained of is due to delay or damage while being loaded or unloaded or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carriers within six months after delivery of the property or, in case of failure to make delivery, then within six months and fifteen days after date of shipment; and suits for loss, damage or delay shall be instituted only within two years and one 20  
day after the date notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof.

8. If any C. O. D. is not paid within thirty days after notice of non-delivery has been mailed to the shipper the company may at its option return the property to the consignor.

9. Free delivery will not be made at points where the company maintains no delivery service; at points where delivery service is main- 30  
tained free delivery will not be made at addresses beyond the established and published delivery limits.

2. The defendant, American Railway Express Company, was not guilty of any negligence in hand-

ling the shipment mentioned in plaintiff's complaint filed herein.

3. That the damage if any was due to the act or default of the plaintiff or his agent.

4. That whatever damages and injuries were sustained by the plaintiff were caused in whole or in part by the improper or insufficient securing or addressing of said shipment.

SECOND AFFIRMATIVE DEFENSE.

That under the terms and conditions of the contract of shipment entered into by the plaintiff with the defendant, part of the terms of which are stated above, it was agreed that the liability of the plaintiff should in no event exceed the declared value of fifteen hundred dollars (\$1500.00).

THIRD AFFIRMATIVE DEFENSE.

That whatever damages and injuries were sustained by the plaintiff, were due to the improper and careless wrapping and packing and securing said shipment which was so delivered to the defendant.

PAUL RIDGWAY,  
Attorney of Defendant.

REPLY.

The plaintiff denies every allegation in the answer.

ELWOOD C. WEEKS,  
Attorney of Defendant.

NOTICE OF APPEAL AND REASONS.  
CIRCUIT COURT OF ATLANTIC COUNTY.

EDWARD C. CORDERY,  
Plaintiff-Appellant,  
v.  
AMERICAN RAILWAY EX-  
PRESS COMPANY, a cor-  
poration.  
Defendant-Appellee.

Action at Law.  
Notice of Appeal and  
Reasons.

10

To Paul Ridgway, Esquire, attorney for defendant.

20

Sir:

Notice that the plaintiff hereby appeals from the whole of the judgment entered in the Atlantic County Circuit Court in the above entitled cause to the Supreme Court of New Jersey, and the reasons therefore are stated as follows:

1. The trial Judge erred in refusing to permit the plaintiff to show the value of the goods in question.

2. The Court erred in refusing to permit the plaintiff to show the value of certain goods which were lost in transit.

3. The Court erred in refusing to permit the plaintiff to submit evidence of expressage charges

30

paid to the defendant for return of goods from Albany, New York, to Pleasantville, New Jersey.

4. The Court erred in refusing to permit the plaintiff to submit his evidence as to the value of a second model, produced by the plaintiff for exhibition, to carry out his contract in connection with the first model.

10 5. The Court erred in refusing to permit the plaintiff to prove in what particulars the second model was a variation from the first model.

6. The Court erred in refusing to permit the plaintiff to submit evidence tending to show that the time and material consumed in the construction of the second model did not exceed the time and material consumed in the construction of the first model.

20 7. The trial Judge erred in charging the jury:  
 (a) "The only damage which the express company is answerable for to this plaintiff is the damage that would compensate the plaintiff for the lost goods and for monies expended by the plaintiff in making repairs and in hiring additional necessary help."

30 (b) "The Court instructs you as a matter of law that there can be no recovery on the part of the plaintiff in this case for any expenses incurred by him in creating and making a new design which was to be exhibited and was exhibited over there at a future time."

8. The Court erred in refusing to charge the jury, although requested by the plaintiff so to do:

(a) "The owner of goods lost or damaged may recover not only the value of the goods but also any special damages naturally and proximately resulting from the loss, provided the peculiar circumstances of the shipment were made known to the carrier at the time of shipment."

(b) "If you find that the defendant knew or ought to have known that the plaintiff was about to carry out a contract which he had with the State of New York to exhibit the goods delivered to the defendant and received by it, and that the goods were lost or damaged in transit without the fault of the plaintiff, then in such case you must allow the plaintiff all of the expenses, supported by proof, which he was put to in carrying out his said contract, including the necessary extra expenses of exhibiting his goods as well as the cost of reproducing the goods, if you find such reproduction was necessary because of plaintiff's contract with the State of New York." 10 20

9. The verdict is against the weight of the evidence.

ELWOOD C. WEEKS,  
*Attorney for and of counsel  
 with the Plaintiff.*

30

Service of a copy of the within notice and reasons is hereby acknowledged this March 29, 1927.

S. PAUL RIDGEWAY,  
*Attorney for Defendant.*

## AMENDED GROUNDS OF APPEAL.

CIRCUIT COURT OF ATLANTIC COUNTY.

EDWARD C. CORDERY,  
 10 *Plaintiff-Appellant,* }  
 v. } *Action at Law.*  
 AMERICAN RAILWAY EX- } *Amended Grounds of*  
 PRESS COMPANY, a cor- } *Appeal.*  
 poration, }  
*Defendant-Appellee.* }

To Paul Ridgway, Esquire, Attorney for Defendant-  
 20 *Appellee:*

Sir:

Notice that the plaintiff-appellant hereby amends his reasons or grounds of appeal by substituting in place of the first six thereof as served upon you heretofore, the following:

The Court erred in refusing to permit the plaintiff to answer the following questions:

- 30 1. "What was the value of the model to you?"
2. "How much do you say that the shafting that was lost and the pulley brackets to which you have referred here are worth?"
3. (a) "What did you pay on the return of the model to Pleasantville?"
- (b) "Except for the damage that happened,

were you to take the model back to Pleasantville?"

4. (a) "Do you know what the departure work, including the material and time on it, amounted to?"

(b) "Do you know whether, if you had reproduced the exact first model without any departure on the second occasion, it would have required more time or less time than was put in on the second model?" 10

ELWOOD C. WEEKS,  
*Attorney for the Plaintiff-Appellant.*

[ENDORSED]

Service of a copy of the above grounds of appeal is hereby acknowledged this April 20, 1927.

*Attorney for Defendant-Appellee.* 20

TESTIMONY.

ATLANTIC COUNTY CIRCUIT COURT.

10 EDWARD C. CORDERY,  
*Plaintiff,*  
 v.  
 AMERICAN RAILWAY EX-  
 PRESS COMPANY, a cor-  
 poration,  
*Defendant.* } Action at Law.

20 (The above entitled case was tried October 25,  
 1926, before HON. WILLIAM H. SMATHERS, Judge,  
 and a jury.)

APPEARANCES:

ELWOOD C. WEEKS, Esq., for the plaintiff.  
 PAUL RIDGWAY, Esq., for the defendant.

30

Mr. Ridgway: If your Honor please, I would like  
 to ask for a continuance of this matter. I have here  
 an affidavit setting forth the reasons.

Discussion—Edward C. Cordery—Direct 13

The Court: I will deny a continuance. Plaintiff  
 is entitled to move its case.

Mr. Ridgway: If your Honor please, I would like  
 to offer the affidavit and ask an exception to your  
 Honor's refusal to grant a continuance.

(The paper offered is received in evidence and  
 marked as an exhibit for the defendant, D1.)

10

(Mr. Weeks opened the plaintiff's case to the  
 jury.)

(Mr. Ridgway opened the defendant's case to the  
 jury.)

EDWARD C. CORDERY, the plaintiff, called as a wit-  
 ness in his own behalf, being sworn, was examined 20  
 and testified as follows:

Direct examination.

By Mr. Weeks:

Q. Mr. Cordery, you are the plaintiff in this suit,  
 are you?

A. Yes, sir.

Q. What is your business?

A. Miniature models and advertisements and dis- 30  
 plays.

Q. How long have you been engaged in the pro-  
 duction of miniature models?

A. Off and on since 1922.

Q. Did you on or about last March, ship any goods  
 by way of the American Railway Express Company?

A. Yes, sir.

Q. From Pleasantville?

A. I did.

Q. And what were the goods that were shipped?

A. Miniature model of New York City, displaying automobile accidents.

Q. By the way, I show you a paper and ask you what that is?

A. This is a bill that the agent gave me and told me that it was insured for \$1500.

Q. At the time that you shipped the goods?

A. At the time he accepted them.

Q. That is what you received from the agent?

A. Yes.

Mr. Weeks: I offer that.

Q. That is your signature?

A. Yes.

20

(The paper offered is received in evidence and marked as an exhibit for the plaintiff P1.)

Q. Now, Mr. Cordery, just tell the Court and jury what you did—first, what these goods consisted of.

A. They consisted of a miniature model, a reproduction of a large city, and was made up in six different sections, five sections carrying the outlines of the city which would demonstrate minor accidents, and the sixth was the miniature of a mountain scene, which was in the form of a railroad accident; twenty-four foot, long six feet wide, five foot high, mounted on a three-and-a-half foot stand. It had a miniature scenery effect of the background and the sky lines, which would represent the ends of streets, so they would not be too short looking; and it had twenty-four pulley brackets underneath with boards.

30

Some pulleys would run from three to eight, and it was placed underneath of each accident, with a 24-foot shaft running the entire length of the model, and a belt that would run from the main shaft to the pulley bracket, which was properly timed, driven by a separate motor; so that when the flashing box would make contact on that point, the motor would get the juice and pull the belt which caused the accident to happen at the proper time.

Q. What do you mean by the flashing box? 10

The Court: Are we interested in the construction of this thing?

Q. How many different accidents was there to be shown by this model?

A. Fifteen; fifteen different accidents.

Q. Will you describe briefly the accidents that you had planned to show on that model?

20

Mr. Ridgway: I object.

The Court: I sustain the objection.

Mr. Weeks: Allow me an exception.

Q. Were the goods delivered to you in New York City or anywhere else?

A. They were delivered in the State Armory at Albany, New York.

Q. And what did you find upon delivery of the goods? 30

A. In very, very bad condition.

Q. Well, describe more in detail what you found about the goods.

A. I found that there were five cases—not exactly crates—but five pieces were badly damaged. One of

the crates was broken open, boards were broken, not just pulled off, but broken. The seventeen braces which hold the legs, which was fastened on the top as a case formation, was gone. The four sections of shafting consisting of twenty-four foot, was gone. There were four of my main pulley brackets which operated the accidents that were gone. I called up the claim agent and asked him about —

10 Mr. Ridgway: I object to any statement made unless they show that he was the claim agent.

Q. Whom did you make the statement to?

A. Well, he was supposed to be the claim agent. He gave me the slip there that you have.

Q. He gave you the slip that you have here?

A. Yes, sir.

20 Mr. Weeks: I offer those several slips in evidence, by consent of counsel.

(The papers offered are received in evidence and marked as exhibits for the plaintiff, P2, P3 and P4.)

Q. Now, I show you one paper which seems to have some figures on it, and ask you whether you received that?

A. This was received in the Armory, the State Armory at Albany, New York.

30 Q. By whom was it delivered to you?

A. The American Railway Express wagon.

Q. By the man who delivered the goods?

A. By the man who delivered the goods.

Q. And I show you another marked P3, and ask you where you got that.

A. This was one piece that they couldn't find.

Q. Where did you get it?

A. From the same man about three hours after.

Q. At the time of delivery?

A. Three hours after the first delivery.

Q. Same man who brought the goods?

A. Yes, sir.

Q. I show you paper P4, and ask you where you got that paper, from what man or what person, as far as you know?

A. This come from the man that called the —

Q. Is that the one you referred to as the agent of 10 the company?

A. As the claim agent of the company.

Q. Claim agent of the company. He gave you that paper?

A. He gave me this one and said he would look up the other stuff.

Mr. Ridgway: I object, and ask that it be stricken.

The Court: Yes, what he said may be stricken. 20

Q. What conversation was had between you and the claim agent?

Mr. Ridgway: I object. There is no proof before the claim agent, the man who delivered them.

The Court: I will sustain the objection and allow you an exception.

Mr. Weeks: Allow me an exception. 30

Q. Now, then, these goods—what goods, if any, were never delivered to you?

A. The seventeen braces, the four sections of shaft, 24-foot, and the four pulley brackets were not delivered.

Q. Now, won't you describe the pulley brackets that were not delivered to you? You say four of them were not delivered. What were they?

A. It was a board. They run various sizes, cut different sizes, that the pulley would be fit on to run different angles; such as the belt would come over from the bottom, go up over the top and over the axle belt and down, which would cause that accident to happen at the proper point and at the proper time.

10 Without those there, one car could come up to the point and wait until the other one would come, which would cause the collision; but on account of those pulley brackets, made and figured out, it was the only way that those cars would meet the point on time and demonstrate the accident.

Q. Could you have replaced those pulley brackets in the time that you had to prepare for this exhibit after getting it in to New York?

20 Mr. Ridgway: I object. That is an improper question in its present form.

The Court: I will permit it.

Q. Answer the question.

A. It was impossible to replace them.

Q. Why?

30 A. Because it would have taken hours and hours of work to make them the first time, in order to get the proper time. It could not be replaced in a three-day exhibit.

Q. I understand that these pulley brackets had been so arranged as to control the timing of the accident; is that so?

A. They were.

Q. And they could not be worked out again without a lot of time?

A. Proper time.

Q. Did you ever get the shafting, 24-foot shafting in this case?

A. Not from the Express Company.

Q. Never got it. What did you then do—by the way, did you have a contract with the State of New York?

A. I did.

Q. And had you also furnished a bond to the State of New York to carry out the contract? 10

Mr. Ridgway: I object to it as immaterial.

The Court: I will permit it.

Mr. Ridgway: Allow me an exception.

A. I did, sir.

Q. Now, then, what did you do in order to carry out your contract and make this exhibit or exhibition 20 of the model?

Mr. Ridgway: I object. I think the contract is immaterial in this case.

The Court: I will permit it.

Mr. Ridgway: Allow me an exception.

A. There is only one thing to do—was to try my 30 best to demonstrate the model at that exhibit.

Q. What did you do?

A. I arranged that I could work it by hand, by tying ropes on the different cars and moving the belts and climbing underneath the section which was only three-and-a-half foot high, wiping the floor up every time the accident would come on, and try to

demonstrate the accident the best that could be shown by hand, which proved very much unsatisfactory.

Mr. Ridgway: I object to the last statement as not responsive.

Q. What was the result of your operating it by hand as you have just described and attempting to produce these accidents, instead of electricity as you had planned? What was the result?

A. Very poor result. The consequence was that I had to build them a new model.

Q. Describe what you did. What happened in trying to carry it out by hand?

A. I had to put ropes on each car, instead of the proper belt, hang it underneath it, pull it down by hand, and let one car come together, and maybe before it would get together it would turn over and the other car would run over it, and all different things like that, which it proved very much unsatisfactory.

Q. Could you operate the cars so as to come together and produce the accidents as planned, by hand?

Mr. Ridgway: I object.

The Court: I will permit it.

A. Not as the contract called for. It was impossible to do it as the electricity would do it, because it was so timed to work by electricity and it could not be worked by hand.

Q. Will you proceed to tell the jury whether you had to have any extra hands to operate these

devices, and, if so, what your expenses in that connection were?

Mr. Ridgway: I object.

The Court: I will permit it.

Mr. Weeks: I will withdraw that question.

Q. Mr. Cordery, what, if anything, did you say to the agent of the Express Company when you delivered the goods, concerning the goods?

Mr. Ridgway: I object. There is a contract in evidence showing the agreement to ship the goods and that contract cannot be changed by oral evidence.

The Court: I will permit it.

Mr. Ridgway: Allow me an exception.

A. I went down to him in the morning and told him that I had a miniature model of New York that had to be shipped that day, and looked at me a while, and he said, "Have you got them marked?" "Well," I said, "that is what I want to find now of you." So he goes and gives me a big, black crayon, and tells me to mark on each box, "E. C. Cordery, Motor Vehicle Department, State Armory, Albany, New York," and the eleven, and also mark it "Show goods." So I asked him when he was coming up after it, and he said it was impossible for him to monkey with it at that time; that if I brought an expressman down there with it, he would see that it got off. Well, I called up another expressman and he come up there in the afternoon and got hold of

the model and took it down to the American Railway Express office. He then said, "Take it over to Lake and Risley and get it weighed," and we goes over there with it, and he brings it back with the receipt stamped on, looks it over, and says, "Take it over to the Reading Railroad and I will be right over." So I takes it over to the Reading Railroad and after eight or nine minutes' wait for the train to come in he said, "We won't bother taking it off your truck  
10 now. Go right to work and back up to the train and shoot it in." All right. The train came along and away went the car, backed up against it, and he looked at each piece as he was taking it off of the truck, marked it and put the labels on it himself right at the car door.

Q. What did he mark on it?

A. Well, he put the bills on, that's all, as it went through.

Q. All right.

20 A. And then that was the end of the shipment until it got—

Q. Did he make any statement then to you or to anyone else there about the goods at the time they were being loaded?

Mr. Ridgway: I object to any statement that he may have made.

The Court: I sustain the objection. He could not  
30 bind the company by any statement he may have made.

Q. What was the condition of the goods as you delivered them to the expressman?

A. In good conditions.

Q. Were they properly crated?

Mr. Ridgway: I object.

A. They were.

Mr. Weeks: Strike it out.

Q. Did you supervise the crating?

A. I did.

Q. You are sure the goods were in good condition?

10

Mr. Ridgway: I object. That calls for a conclusion.

Mr. Weeks: Withdraw it.

Q. Now, state what expense you were put to, or what expense you incurred in showing this exhibit by hand as you say you operated it?

Mr. Ridgway: I object to that.

20

Q. Have you finished naming all the goods that were lost?

A. No, sir.

Q. What other goods were lost that you have not mentioned?

A. Well, the lost parts—does that include the damaged parts?

Q. No; that were not delivered at all.

A. That includes that lost parts—pulley brackets, 30 shafting.

Q. And the various scenes and sections, were they all delivered, all of the sections of this model?

A. The sections were delivered as they were crated, but it was the condition they were in.

Q. What was the condition of these various sections?

A. Well, some of the buildings which we made up, outlined on the compo-board, were properly crated and wrapped with paper—the paintings were scratched up and holes punched through them, one of the crates; and the one main crate of all, which was the mountain scene—the mountain scene is very hard to make, and in order to make it right it must be braced properly in back, or otherwise you get no effect as a mountain scene.

10 Q. What did it show? What accident?

A. It was made up so that an automobile could run through the mountains and run down from the station and across the tract, just as a train would come through the tunnel, coming together and causing a railroad accident with neglect of the driver of the automobile.

Q. Causing an accident between the railroad train and the automobile?

A. And the automobile.

20

Mr. Ridgway: I object.

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

Mr. Ridgway: Allow me an exception.

30 A. (Continuing) Well, after I found out there was only one thing to do, to patch it up and try to work it by hand, I had to get some extra help. The first thing I did was telephone down home to tell the Mrs. which was my wife, to come up.

Q. What did you have to do to operate it? What did you have to do to operate this by hand? What expense?

A. The extra expense, you mean, for the entire accident?

Q. Extra expense.

A. The extra expense for operating that model by hand was \$115.69.

Mr. Ridgway: I object. That is not the measure of proof. It is what would be the reasonable cost, and we are entitled to an itemized statement rather than a lump sum.

The Court: Well, you can cross-examine on it, on the details of it. 10

Mr. Ridgway: Allow me an exception.

Q. How much was it?

A. \$115.69.

Q. And that was made up how?

A. For help and expenses of the help.

Q. Would you have had any of it in connection with your exhibit if you could have operated it electrically? 20

A. No, sir.

Q. Now, then, you told about a contract with the State of New York. Did you then—

Mr. Ridgway: We object to the offering of that contract. It has no relevancy or bearing on the case.

Q. What did you do, if anything, to carry out your contract with the State of New York after the exhibit— 30

A. Built a new model.

Q. After the exhibit of this particular model by hand?

A. Built them a new model.

Q. And can you tell what that cost?

A. Yes, sir.

Mr. Ridgway: I object. That is not the proper measure of damage. The proper measure of damage is the cost of replacing them, not what it would cost to make a whole new model.

The Court: I sustain the objection.

Mr. Weeks: Allow me an exception.

10 Q. What was the value of these brackets which you say were lost, these pulley brackets? What was the value of those brackets?

Mr. Ridgway: I object. I don't think this witness is qualified to testify to it.

The Court: I will permit him to say if he knows.

20 A. The value of those brackets?

Q. Yes.

A. Is the value of the entire model.

Q. What was the value of the entire model?

A. Because it was impossible to work the model and that is why the brackets were worth the full value of the model to fulfil the contract.

Q. What was the sale price of this model?

A. \$1,375.

30 Mr. Ridgway: I object.

The Court: He has answered it. I sustain the objection, but it is on the record.

Mr. Ridgway: Then I ask that the answer be stricken.

Mr. Weeks: Well, let it be stricken.

Q. What was the value of the model to you?

Mr. Ridgway: I object.

The Court: I sustain the objection.

Mr. Weeks: Allow me an exception.

The Court: You may have it.

10 Q. Did you say without the use of the brackets, pulley brackets that you referred to, the model was useless?

Mr. Ridgway: I object. He has already answered that two or three times.

The Court: Well, he may repeat it.

20 A. Without the pulley brackets and the shaft, the model was useless.

The Court: How much would it cost to reproduce the pulleys and shaft that were lost?

The Witness: That is a hard thing to say, Judge; because they had to be worked on and experimented until you got the proper timing and the proper sizes to work upon. You couldn't go right to work to build a new one. You had to start in at the bottom and figure the time. Some would take a short time; 30 others would take two or three days for an accident to hook up, to work on a proper time.

Q. What is your best judgment about the time that would be necessarily involved in making these

brackets and placing the pulley brackets to time the accidents as you had done?

A. Well, the time to do that—everything had to be torn out, and while you were doing that you might as well build a whole new accident, a whole new scene, because the condition of the model coming back was as bad as it was going.

10 Q. In other words, the important thing was the construction of these pulleys to precipitate the accident?

Mr. Ridgway: I object. It is leading.

The Court: I sustain the objection.

Q. Now, tell us how much time, according to your best judgment it would take to replace these pulley brackets that were lost?

20 A. That is a thing that cannot be answered, because you don't know how long it would take to reproduce them.

Q. Can you say how long it would take to reproduce the whole model?

Mr. Ridgway: I object.

Q. What was the value of the shaft that was lost in this case?

30 A. It was not the value of the iron shaft. It was the value of the work that it did, which led up to the value of the model.

Q. And you say that the pulley brackets and the shaft were the value of the model?

A. Yes, sir. Without them the model was no good.

Q. How much was the model worth to you?

Mr. Ridgway: I object.

The Court: That is objectionable, Mr. Weeks. He may say it was worth a million dollars to him. He has already testified it would cost \$1500 to reproduce it, or something like that.

Q. How much do you say that the shafting that was lost and the pulley brackets to which you have referred here were worth to you? 10

Mr. Ridgway: I object.

The Court: I sustain the objection.

Mr. Weeks: Exception.

The Court: How much would it cost you to reproduce it? 20

The Witness: The model?

The Court: Yes.

The Witness: It cost me over \$1500.

Q. Did you reproduce the model?

A. Yes, sir.

Mr. Ridgway: I object. It is immaterial. 30

Q. Was it necessary to reproduce it?

Mr. Ridgway: I object.

A. It was by bond.

Q. And you furnished them how many models in all, to the State of New York?

Mr. Ridgway: I object to that as immaterial.

The Court: I sustain the objection.

Q. I show you a photograph and ask you what that is.

10 A. That is a picture of the first model.

Q. Is that a fair—

Mr. Ridgway: I object, unless it is offered in evidence, and I would like to see it before it is offered.

Q. What does the picture represent?

A. It is a picture of the model.

20 Q. Is it a fair representation of the model as it was set up in New York City—I mean in Albany, New York.

A. It is a picture of the model as it was in Albany, New York, but unsatisfactory.

Q. After it was delivered to you in Albany?

A. Yes, sir, after it was repaired to the best possible.

Q. And it is a fair reproduction of representation of the model there delivered or set up?

A. I don't get that word "fair."

30 The Court: Do you object to the photograph going in evidence?

Mr. Ridgway: We have no objection to it.

(The photograph is received in evidence and marked as an exhibit for the plaintiff, P5.)

Q. Have you told us all of the items of expense now in trying to operate this exhibit by hand?

A. I told you the extra expense. What did you pay for expressage?

A. To Albany or from Albany?

Q. Well, what did you pay to Albany, do you know?

A. I don't quite remember. Twenty-eight or thirty; something like that, I think was the expressage it took, because that is what I was figuring. 10

Q. Can you tell by looking at the paper P2?

A. \$24.37; yes, sir.

Q. \$24.37, and what did you pay on the return of the model to Pleasantville?

Mr. Ridgway: I object.

The Court: I sustain the objection.

Q. Except for the damage that happened, were 20 you to take the model to Pleasantville?

Mr. Ridgway: I object.

The Court: I sustain the objection.

Mr. Weeks: Allow me an exception.

The Court: You may have it.

Q. Any other items of expense in operating this 30 machine that you think of?

A. No.

Mr. Ridgway: I object.

The Court: I will permit it.

Mr. Weeks: Cross-examine.

Cross-examination.

By Mr. Ridgway:

Q. Mr. Cordery, what was the composition of the mountain scene?

A. Well, it consisted of everything that was necessary to reproduce a mountain scene, such as  
10 asbestos, paper, glue, wire, wood, nails, paint.

The Court: What was it made out of? What was the main thing, wood, compo-board, or what?

The Witness: Asbestos and paper and glue in back of the forms. The forms were made up first to give the reproduction of a mountain view.

20 Q. Is this some of the material that was made up of, Mr. Cordery, the material in this box?

A. That was some of it. That was patched up.

Q. That is the material it was made of?

A. Yes, some of it.

Mr. Ridgway: I offer this material for identification.

30 (The offer, consisting of wooden box with contents, received in evidence and marked as an exhibit for the defendant for identification, D2.)

Q. What kind of pulleys were these that you were talking about, Mr. Cordery?

A. Different kinds.

Q. Where did you buy them?

A. I had them made at Lake & Risley's and I bought some at Atlantic City.

Q. Wooden pulleys or iron pulleys?

A. Wooden, for to prevent noise in the model.

Q. How many of these wooden pulleys did you have to have made at Lake & Risley's before you finally got one that you could use?

A. I gave the order that I wanted and then worked the pulleys up to where they belonged.

Q. Well, now, this model that you refer to, what  
10 were the buildings made of?

A. Made up of compo-board, the same as the scenery is made, of that kind.

Q. Were they made in a straight sheet of compo-board and the scenery painted on it?

A. Straight sheet of the top cut, to represent the top cornice of a building, and then the scenery painted on it, formed up into four squares.

Q. Were the pictures painted on the side?

A. Not exactly pictures. The windows. 20

Q. The windows and the doors?

A. To represent the buildings.

Q. You didn't have to do the skyscrapers and buildings over when you made this model, did you?

A. What?

Q. You didn't have to make the skyscrapers and mountain scenery over when you built this model?

A. Which model, sir?

Q. You said that you had to rebuild it because you didn't have any pulleys? 30

A. Not exactly built those, no.

Q. You didn't have to do it?

A. Not the pulleys—not the new buildings, no. They had to be torn apart and rebuilt in the condition of the new model.

Q. These automobile accidents happened in the streets, didn't they?

A. Yes, sir.

Q. You didn't have to move the buildings to do that?

A. They couldn't be on the pavements.

Q. What was there in the bottom of the floor or this model in which you say you put pulleys, and springs along there?

A. Grooves cut in the floor; but pulleys placed for the—

10 Q. All you had to make was your floor, wasn't it?

A. No, indeed. The floor has nothing to do with the pulley brackets.

Q. That is where your pulley brackets are?

A. Which causes the accident which directs the accident straight but that has nothing to do with the pulley brackets.

Q. What are the pulley belts composed of?

A. Strong pieces of board.

20 Q. Were any of these pulley brackets made of iron?

A. Oh, no; just had iron braces to hold the pulleys so they would not slip off.

Q. What instructions did you give to Lake & Risley for the making of these wooden belts?

A. I told him how many pulleys I wanted and told him to get them out as quick as he could; that is all.

Q. Did you give them any particular measurement, any particular angle at which they were to be made?

30 A. Two and a half inch pulley with a curve in it.

Q. There are lumber mills in Albany?

A. There was.

Q. Why didn't you go to a lumber mill in Albany and ask for this same kind of pulley in Albany?

A. Because I had three days including the exhibits to make good and it was impossible to re-

produce that goods and to time it to do the work in two days.

Q. Did you go to a lumber mill in Albany?

A. I did not.

Q. Then how do you know you couldn't reproduce it in that time?

A. Because it took me longer to make it up in the beginning new.

Q. You don't the pulleys?

A. I don't make the pulleys but I time them. 10

Q. You testified on your direct examination by Mr. Weeks that it took two or three days to adjust those pulleys?

A. To adjust them.

Q. Do you mean to say that you sat down at one pulley for two or three days and just adjusted it?

A. I mean to say that I sat eighteen or nineteen hours one time, falling asleep over the top of the window, to try to get that accident adjusted on time.

20 Q. Then it was your falling asleep over the window that took so much time?

A. I mean the table. No, it took the proper time to adjust. It was very tedious and hard, work which anyone could not have done.

Q. Well, you could have had those pulleys replaced in a mill in Albany?

A. I could have had those pulleys replaced in a mill in Albany, but not put on the place they belonged.

30 Q. If you got a pulley and someone in Albany could put it the same place that you put it before you sent the model, why wouldn't it work then?

A. Because I had no idea of where those pulleys went. The pulley brackets had not been delivered and there was more than one pulley on the bracket.

Q. Did you have to have pulley brackets connected?

A. I did.

Q. Now, as a matter of fact those pulley brackets wouldn't work in Schenectady, would they?

A. They wouldn't what?

Q. Those pulley brackets wouldn't work on the second model in Syracuse?

A. They wouldn't work on the second model in Syracuse?

10 Mr. Weeks: I object to it as not being proper cross-examination.

The Court: I will permit it.

Q. Those pulley brackets wouldn't work when you had your model in Syracuse, would they?

A. They were not the same pulley brackets. It was a different lay-out altogether, I know that, from what it was before; and they did work in Syracuse.

20 Q. These mountain scenes you had made—mountain scene in Albany?

A. I patched it up.

Q. Well, that is all the work is, patch work, isn't it?

A. If you call it patch work. That is what the money takes—is to do patch work.

Q. Well, you had had mountain scenery in Albany for the exhibit?

A. I had the background, but not in working order.  
30 The railroad accident didn't work as it was first laid out.

Q. This model worked well enough for the New York Commission to pay you for it?

A. Did they receive it?

Q. I am asking you.

A. They paid me by contract so much in the beginning of it before a piece of work was done.

Q. Didn't they pay you over fourteen hundred dollars?

A. Not for that model, no.

Q. How much did they pay you for that model?

A. That model left a balance of \$200.

Q. They paid you \$1175?

A. Yes, at different times of making it.

Q. Then you received \$300 and some at a later date?

A. At different times; yes, sir.

10

Q. Well, how much did you receive altogether from the New York Commission for this model?

A. I never figured it up.

Q. How do you arrive at the damages?

A. Because it took two models to get the price what I got from them.

Q. Now, the only thing damaged according to your testimony are the two brackets—the four brackets which were wood and the iron shaft, and braces around the bottom of the mountain scenery?

20

A. And a few automobiles and minor things that have not been mentioned in here.

Q. Well, you didn't mention them on the hearing on discovery before trial either, did you?

A. I was not asked.

Q. You were not?

A. Not as I remember.

Q. Weren't you asked whether there were any damages outside of those which you have just testified to?

30

A. Yes, but I was told to keep quiet because it was not—that was right by yourself. You told me it had nothing to do with it.

Q. About the automobiles?

A. About the other different things, of the returning shipment, as it come back, in the condition it

come back in; you told me it had nothing to do with it.

The Court: Did you get more from the New York Commission than the contract called for out of your two exhibits.

The Witness: No, sir, not what the contract called for; because the expense money they allowed me had nothing to do with the contract.

The Court: How much did the contract call for?

The Witness: \$1375.

The Court: And you got \$1400?

The Witness: \$1375 for the two of them with expenses.

20 The Court: How much expenses?

The Witness: The expenses was in the neighborhood of about \$200.

The Court: You got about \$1500 out of it?

The Witness: Very near for the two models.

30 Q. Now, you gave an item of \$115. What did that consist of? Those are expenses in Albany?

A. Well, that first consisted of trolley fare, taxi fare, to looking up different materials. It consisted of the railroad fare to bring me—to bring my wife up to Albany to help me out; because she knew the different things; it meant her board there; it meant her meals there, and the boy. It meant another man

I had working for me for five days. It meant the return fare to Pleasantville of the model.

Q. This includes expense of your wife and family?

A. Not my family.

Q. Well, you said a boy.

A. Well, she had to bring him. It also included three days loss of pay which she lost from teaching school, which she had to take off.

Q. Is she here today?

A. She is here today.

10

Mr. Ridgway: If your Honor please, I think if that is what that \$115 item is composed of, it should be stricken.

The Court: No. I will permit it to remain.

Q. Did the motor vehicle department give you the \$200 to bring your wife and family up?

A. Had nothing to do with my wife and family. 20

Q. How much was the carfare to Albany?

A. The carfare I think was \$10.06.

Q. 10.06. That was the board and Albany fare for you and your family?

A. My family had nothing to do with mine.

Q. Didn't you say it included the board?

A. For her alone. That is on the extra expense. My expense has nothing to do with that \$115.69 or \$66, whatever it might have been.

30

The Court: If it was necessary for you to build the whole new model why did you go to the expense of bringing back your first model?

The Witness: Because I used as much of that old model as I possibly could, or otherwise it would have cost more. The first model cost more than the

contract price and the reason the first model cost more was that it might be exhibited and bring more business from the other Commissioners over there.

The Court: It cost more to repair it than it did in the first place?

The Witness: Not exactly to repair it, but it was with the extra expense in Albany and the repairing.  
10 I had the repair list after I was told not to say just now, when I was asked what it cost to rebuild it.

The Court: Well, that is what we are trying to get at.

The Witness: I know the price of the rebuilding of the model.

The Court: What did it cost? That is the measure of damage.  
20

The Witness: The seven weeks' work with overtime was —\$665.26. The extra parts—extra materials and expense was \$531.98, with \$115 and a few cents lost on the model, was the total price of rebuilding of that model.

The Court: How much does that make altogether?

30 The Witness: With the \$200 lost on the contract, which I got \$1175 for, made a total of \$1511.90, some cents.

The Court: It cost \$1300 to build it in the first place?

The Witness: In the first place.

The Court: And \$1500 to repair it?

The Witness: Yes, but the idea was I had to use the old parts and in order to tear out the old parts I could have went and bought new; but I was told by the American Railway and Express agent to use the parts.  
10

Mr. Ridgway: I object.

Q. You say you spent seven weeks time repairing?

A. Yes.

Q. Your time?

A. Mytime.

Q. Is that your value put on the seven weeks' time, \$665.26?

A. The amount of hours in that seven weeks; yes, 20  
sir.

Q. That is, you are figuring—

A. At \$1.50 per hour; yes, sir.

Q. That is over one hundred dollars a week, isn't it?

A. For the amount of time. The ordinary mechanic gets \$1.50 an hour. Can he come in and do the same kind of work?

Q. How many hours did you work a day?

A. Sometimes eight, sometimes six, sometimes 30  
eighteen and nineteen at the end of the model in order to get it completed in time to get up there, and even on Sunday it means double time.

Q. And you are charging all that to us, are you?

A. Who else would I charge it to? Somebody has to pay for it. I haven't got it. I lost it.

- Q. Well, you got \$1500 in the beginning, didn't you?
- A. For one model.
- Q. Sure. You didn't use any of the first model on the second model?
- A. I did.
- Q. How much did you use on the second model?
- A. All that could be used.
- Q. Did you use the automobiles and the persons?
- 10 A. Some of them, and I re-dressed the first one.
- Q. How many persons did you have to re-dress?
- A. All that I used on the second model.
- Q. How many were they?
- A. Well, that is—the numbers can't be given.
- Q. Was it five?
- A. Five?
- Q. Yes.
- A. More like five dozen.
- Q. Well, was it five dozen?
- 20 A. And some more. It is hard to tell the price.
- Q. Well, was it five dozen?
- A. I can't answer the full amount of —
- Q. Well, how do you arrive at the cost of charging us the second time if you can't arrive at what it cost you? And how many you had to do?
- A. It didn't cost me to re-dress the dolls and fix them up. We don't count that. You have my list of what the materials cost me.
- Q. You mean the list Mr. Weeks sent you—or
- 30 sent the American Railway Express?
- A. (No answer.)
- Q. What other expense was there besides dressing the dolls?
- A. A lot of new parts.
- Q. Well, did you have new parts?
- A. Well, it needed new backing, new boards, as

you call them; change of the streets and the pavements.

Q. That was not damaged?

A. Not when it got there; but it was damaged when it got back.

Q. That is what you are claiming the damage for, for the damage coming back from Albany?

A. It had to be replaced.

Q. Is that what you are—is that what you are doing, claiming the damages because of injury coming back from Albany to Pleasantville? 10

A. I am claiming the damage for the entire model that was damaged, going and coming.

Q. Going and coming?

A. Yes, sir.

Q. And that is what you base your figure on?

A. Yes, sir.

Q. Did you try to get the shaft, the iron shaft in Albany? 20

A. I tried to get it from the so-called man—claim agent; yes, sir.

Mr. Ridgway: I ask that that be stricken.

Q. Did you try to get it in any blacksmith shop or any place in Albany?

A. It was impossible.

Q. Where did you get that iron shaft in Atlantic City?

A. Now, I don't know; because I bought it among other things in different places. 30

Q. How many models of New York did you make?

A. Two.

Q. And you can't remember how much the shaft in this particular model cost?

A. The second model didn't use the same kind of

shaft as in the first model, and didn't use the same arrangement as the first one.

Q. Therefore, was the second shaft different from the first?

A. Altogether different.

Q. Well, how?

A. Because it ran different, and was made of pipe instead of —

10 Q. How much did that cost?

A. That only cost me ten cents a foot.

Q. 24 foot; that is \$2.40 it cost you for that shaft?

A. But it was not 24 foot.

The Court: If this first model ran—it was perfect, wasn't it?

The Witness: Yes.

20 The Court: Why did you change all the design in making the second?

The Witness: Well, I will tell you, Judge. Here is the idea; when the model come back it was supposed to be sent back to rebuild and be put in perfect condition as it was before. When it arrived back the platform, it was called, the top,—there was holes punched into it and badly damaged.

30 The Court: But you don't answer my question. Why didn't you use the same design?

The Witness: Your whole bases had to be torn out, all those tacking and all those pulleys on the top and guides had to be torn off, just the same as rebuilding a new table. I notified the motor vehicle department that that had all to be done, so they made a few new plans of what they would like on

the new model and there is where the price come in over \$1375, by making those changes over the other contract. Being it was tore apart they thought I might as well make it that way.

Q. Now, you bought piping at ten cents a foot?

A. Yes, sir.

Q. Did you try to get piping in Albany?

A. No, I didn't try to get it because it was no use.

Q. You made the mountain scene, didn't you? 10

A. I patched it.

Q. And you used it?

A. Temporarily.

Q. And you were paid \$1175 for it?

A. Not at that time.

Q. Well, at some time?

A. At different times the model was being built—not rebuilt but built.

Q. By the time you were exhibiting your model in Albany you had \$1175 for it, didn't you? 20

A. I did.

Q. Now, when you took it to Syracuse you didn't operate that by electricity, did you?

A. I didn't?

Q. No.

A. Oh, yes; I did.

Q. Isn't that the reason the New York Commission wouldn't accept it?

A. They did accept it in Syracuse.

Q. They accepted it because they paid you all the money? 30

A. Didn't tell me that.

Q. They had paid you all the money by the time it was in Syracuse?

A. No, they had not.

Q. How much did they owe you?

A. The last payment on the contract for the first model.

Q. How much was that?

A. That was I think \$175 or \$180.

Q. Then the \$300 was on the second model, wasn't it?

A. The \$300?

Q. Yes.

A. There was \$125 paid on the second model; that  
10 was the extra part; \$125.

(Recess at 1.45 P. M.)

AFTER RECESS.

EDWARD C. CORDERY, recalled.

20 Cross-examination. (Continued.)

By Mr. Ridgway:

Q. When was the Syracuse Fair to be held, Mr. Cordery?

A. In March; but the dates I got twisted.

Q. The Syracuse fair?

A. The Syracuse fair—no, sir; no, sir. I am  
wrong. In August.

30 Q. When was the fair in Albany over?

A. The Safety Congress?

Q. Yes.

A. It was in March.

Q. Fifteenth of March?

A. No, 11th, 12th and 13th.

Q. But it was over on the fifteenth of March?

A. It was over on the fifteenth of March.

Q. Now, you didn't need this new model until August, did you?

A. No, sir.

Q. How many months is it from the fifteenth of March to August?

A. Eight months—six months.

Q. Six weeks?

A. Six months.

Q. And you didn't need to charge this double time on Sunday for working on this model if you had six  
10 months to make it in?

A. I only charged for double time the last two weeks which was necessary to work on Sunday.

Q. But you had six months to make this model?

A. Yes, but I didn't have the money to make it.

Q. What did you do with \$1175 you got from the Commission?

A. That went on the first model, which didn't cover the full expense of it.

Q. That is the reason you are charging up double  
20 time, because you didn't have any money?

A. No, not exactly that. It was the time that I really put in it.

Q. Why did you have to work on Sunday and charge this double time and overtime and work nineteen hours a day if you had six months to make it in?

A. I didn't have six months to make it in.

Q. That is what you just told me, didn't you?

A. There was six months in that time, but it didn't  
leave me six months to make the model. 30

Q. Well, how long did it leave you?

A. Seven weeks.

Q. What did you do after the fair which ended on March fifteen in Albany?

A. Went back home to my shop.

Q. And the fair in Syracuse didn't start until August?

- A. No.
- Q. And you say that is six months?
- A. Yes.
- Q. Now, how much did the painting on this model cost?
- A. Which model?
- Q. The model you are claiming damages for?
- A. The painting according to the painters cost \$125.
- 10 Q. Who was the painter?
- A. I don't know him by name but I tell you where his place of business is.
- Q. Will you tell the jury where his place of business is?
- A. It is in Pleasantville, right this side of the Orange Drug Store.
- Q. Do you know his name, would you know his name if you heard it?
- A. Yes.
- 20 Q. Is it on Main Street?
- A. It is on Main Street.
- Q. Right next to the drug store?
- A. Right next to the Orange Drug Store.
- Q. Is his name Mr. Orme?
- A. Mr. Orme is the gentleman's name.
- Q. You testified in your preliminary examination before Mr. Voorhees that you paid him \$75?
- A. No; I did not.
- Q. How much did you pay?
- 30 A. I told him his price was about \$125.
- Q. Now, as a matter of fact he only charged \$88, didn't he?
- A. Not that I know of.
- Q. And you only paid him \$44 and some cents, didn't you?
- A. I only paid him \$40.
- Q. Didn't you testify in your hearing before Mr.

Voorhees, discovery before trial, that you paid him \$75?

A. I don't remember saying I paid him \$75; no.

Q. See if I can find that testimony and refresh your memory. You say that man's name was Mr. Orme?

A. I think it was.

Q. Do you remember when I asked you this question before Mr. Voorhees: "Q. What was the cost of painting the model and how do you arrive at \$125?" and your answer was "What was that?" And my question was: "Q. Cost of painting the model?" The answer was: "New model?" "Well whichever model this refers to, how much did you pay him?" "Paid him more than I should pay him on a job." "How much did you pay him?" "I paid him \$125—I paid him \$75 and the rest I owe him." Do you recall making that statement before Mr. Voorhees in the preliminary hearing?

A. I don't remember that; because I know I only paid him \$40.

Q. Then you were mistaken in this hearing that you only paid him \$75?

A. If I said anything like that I must have been mistaken; because I knew that I only gave him \$40.

Q. Do you see Mr. Orme in the court room now?

A. I do.

Q. Would that have any effect on changing your testimony from \$75 to \$40?

A. It would not; because I can give you the entire price of the whole painting.

Q. Now, in which crate was the iron shaft that you refer to?

A. It was on the top of the legs, of the braces.

Q. Will you describe that crate?

A. You mean outside of it or inside or both?

Q. Both.

A. Well, the crates had legs three-and-a-half foot high, which completed the stand, with the seventeen braces on the top, with a piece of one by four yellow pine across and down the side and fastened to the top of the legs forming a brace to hold it there, with the iron shaft in the middle of it, with a one by four yellow pine board—

Q. Are you testifying the way it was set up or as it was in the box?

10 A. I am saying as it left my place.

Q. All right. Proceed.

A. On the ends of it was a one by four yellow pine board to keep the shafting from slipping out. There was one by four yellow pine boards which is used in all cratings, down the sides of the legs to hold them in shape so they would not be working loose or getting lop-sided. There was an inside brace run from the top of the crate down to the bottom in case it would be hit on its end to keep from breaking loose.

20 That was the entire crate.

Q. Who made the crate?

A. I made it myself.

Q. How much space was between the boards?

A. Between the boards?

Q. Yes.

A. A space of a board; from four to six inches; because there was nothing in there to be punctured in any way.

30 Q. Was there anything to hold these iron rods in place?

A. Yes, the sides of the stripping and the ends on the board. They couldn't move.

Q. You took this shipment to the American Express Company's office in Pleasantville, didn't you?

A. I had to.

Q. Well, you took it there, didn't you?

A. Yes.

Q. When you took it there what did you say?

A. Told him here was the shipment.

Q. Is that all you said?

A. That was all was necessary because I was talking with him that morning.

Q. Is that all you said?

A. That is all I was saying to him because I made arrangements in the morning with him.

Q. What arrangements did you make in the morning?

A. Well, as I told you once before, I went down to him about eight-thirty or nine o'clock in the morning and told him that I had a miniature model of New York City that had to be in Albany by the tenth, and asked him if I should—and asked him what I should do about it. He said: "Is it marked?" I said: "No." He said: "Well here is a crayon. Take it up and put the name and address on it and how many pieces is in that shipment," which was eleven, and the value of it and what it is, which he

20 told me to say: "Show goods." I then got the expressman when he refused to come after it, when he told me to go get a man for myself and bring it down to him and he would see that it would be sent on that train; because he didn't have time to monkey with it. I goes and gets my expressman and tells him to be up at that time. When he came up there I handed him the crayon and told him just what the American Railway Express agent told me to do and had him address it and marked it: "Show goods,"

30 and take it down with me.

Q. Then you don't know whether "Show goods" was marked on that box?

A. I do, because I was right on the side of him when he was writing it.

Q. Did you tell the expressman that you had the contract in Albany?

A. I did several times when he delivered stuff to me, when he delivered the little automobiles and different things.

Q. I mean, did you tell Mr. Fleischauer, the representative of the American Railway Express, that you had a contract with the New York State Commission?

A. Oh, I did, and I told him if he didn't handle that with care I would lose my contract. That is 10 why he told me to mark it "Show Goods."

Q. That is all was on it, "Show Goods?"

A. On those plain crates, yes; but the crate that had the mountain scenery was marked "Handle with care. This side up." And you could see what everything was because there was a space.

Q. Well, that was a very fragile substance?

A. Certainly was. That was the first piece that he spoke of.

Q. You had that mountain scene packed—it was 20 put in the crate and the crate built around it by you?

A. With braces to hold it three and a half to four inches away from the crate so it would not give in any way or would not touch the side of the crate.

Q. That substance that the mountain scene was made of was this, wasn't it? (Indicating.)

A. That was the finished coat.

Q. You had that nailed to boards at the top, didn't 30 you?

A. No, indeed.

Q. What did you have it nailed to?

A. Why, the glue alone was what held it there.

Q. It was glued at the top?

A. The gluing in the material itself, which all mountain scenes are made that way.

Q. How long have you been in this business of making models of New York?

A. Not exactly models of New York, but since around 1922.

Q. How many models have you made?

A. Two models of this kind and helped reproduce a miniature Boardwalk of Atlantic City.

Q. And that is all the miniature work you have done?

A. Outside of miniature floats and designing for Mr. A. T. Nichols and Mr. Thomas Endicott.

Q. Well, they are rather large floats? 10

A. Well, it is all miniature work.

Q. How large was the crate which held the shafting and the braces?

A. About three and a half foot high; fifteen and a half to sixteen foot long and about eighteen inches deep.

Re-direct examination.

By Mr. Weeks: 20

Q. You told Mr. Ridgway on his cross-examination of you that you had charged for double time upon the second model and you charged a greater rate of earning to that double time. Can you tell how many hours altogether you charged for—that you worked, not hours that were counted as double time?

Mr. Ridgway: I object. I think the witness has 30 shown on his cross-examination that he set a price on the value of his time which I do not think is competent. It is the jury's duty to determine what his services are worth per hour.

The Court: You covered all that in your direct examination. I do not think it is re-direct examination.

Mr. Weeks: I don't think we had it by hours; at least, that is my recollection.

The Court: Do you know how many hours?

The Witness: I don't just remember the amount of hours.

Q. Have you any record here which you can refresh your memory from?

10 A. Yes, sir; right in the book, the ledger laying right there.

Q. Will you take the book and determine how many hours you put on the second model?

Mr. Ridgway: I object.

The Court: I will permit it.

Mr. Ridgway: Allow me an exception.

20

Q. Tell us how many hours you put in regardless of whether it was charged for double time or not.

The Court: You estimated in dollars that it was six hundred and some odd.

A. \$1.50 per hour, seven weeks, which meant overtime. You see, here is the book will show day after day, the amount of hours that were spent and the amount of hours per week and how much per week was drawn out for expenses.

30

The Court: What is the importance of the hours?

Mr. Weeks: Well, as it stands now his testimony is not as to the number of hours put in, and his

counsel, of course, is making a big point as to the charge for double time for some of those hours.

The Court: Didn't you testify you only worked one Sunday at double time?

The Witness: Two Sundays.

The Court: Two Sundays?

The Witness: Yes, sir. 443 hours and a half.

10

Q. Now, Mr. Cordery, had you ever testified that there was some departure from the old model, the first model, and the reproduction of the second? Do you know what the departure work, including material and time on it amounted to?

Mr. Ridgway: I object. The measure of damages is the cost of restoring it to its condition as it was before the alleged damage.

20

The Court: I sustain the objection.

Q. Do you know whether or not it required more time to produce the second model than it would have required if you produced the first model exactly?

Mr. Ridgway: I object. The evidence given is that it was not necessary to produce the second model because of the four articles that were damaged in Albany; and that some articles were damaged in the re-shipping which is not part of this suit.

30

The Court: I sustain the objection. You may have an exception.

Q. Were you allowed by the State of New York for the extra work which you have mentioned in this case on the second model, that was not on the first?

Mr. Ridgway: I object to testimony on the second model because there was a departure in that model from the first.

10 The Court: As the case stands now I do not propose to let the jury have the question of the cost of the construction of this second model, as to the measure of damage; because this witness has testified that he built an entirely different model. You cannot bind this express company because over in New York you chose to contract with the New York State Commissioners to come back home and build another model and bring it back at another period of time. I think you should confine your testimony to  
20 the actual damage done to the model in transit or by the failure to deliver parts of it. That is what the Court is going to instruct the jury.

Q. (Repeated by the stenographer). Were you allowed by the State of New York for the extra work which you mentioned in this case on the second model, that was not on the first?

30 The Court: I sustain the objection to that question and you may have an exception.

Q. Do you know whether, if you had reproduced the exact first model without any departure on the second occasion, it would have required more time or less time than was put in on the second model?

Mr. Ridgway: I object.

The Court: I sustain the objection.

Mr. Weeks: Allow me an exception.

Re-cross examination.

By Mr. Ridgway:

Q. You started another suit in this Court for seven  
10 thousand dollars, besides this one?

Mr. Weeks: I object to that.

The Court: I will sustain the objection.

Mr. Ridgway: That is all.

(Witness excused.)

20

BLANCHE CORDERY, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Weeks:

Q. What relation are you to Mr. Cordery who  
30 just left the witness stand?

A. I am his wife.

Q. Did you some time in March last, go to Albany, New York, in connection with an exhibition that he was to give?

A. Yes, sir.

Q. And what caused your going there?

A. Mr. Cordery sent me a telegram.

Q. You knew that your husband was to make an exhibit of a model over there?

A. Yes, sir.

Q. At the State armory at Albany?

A. Yes, sir.

10 Q. Had you planned or was it planned on the part of your husband for you to go over there and assist him in the exhibition?

A. No, sir.

Q. Beforehand?

A. No, sir.

Q. When you got over in Albany what did you find concerning the condition of the exhibit?

A. I found Mr. Cordery trying frantically to patch it up, fix it up as best he could, and it was partly up by the time I got there.

20 Q. He was setting it up, was he?

A. He was setting it up.

Q. Do you know how the model had been planned to operate?

Mr. Ridgway: I object.

A. Yes, sir.

Mr. Ridgway: I think that is immaterial.

30 The Court: She has answered it.

Q. How was it supposed to operate in the beginning before you found it in Albany?

A. It was supposed to run electrically.

Q. How was it actually operated?

A. Well, Mr. Cordery got in underneath and had

to pull cords and strings while I explained to the people outside what really should have happened.

Q. You sort of gave a lecture course there at the outside?

A. Yes.

Q. And that was the way, the exhibit was operated, by pulling cords, was it?

A. Yes, sir.

Q. Had you seen the exhibit operate electrically before it was shipped to New York? 10

A. Yes, sir.

Q. How did the operation, before it was shipped, electrically, compare with the operation as you have described, pulling cords?

A. Well, there is not any comparison.

Q. What happened when you pulled the cords, tried to operate it that way.

A. Well, sometimes one automobile he didn't pull exactly at the same time; he couldn't pull with the same amount—you see, he had it all timed on a timer, and the things should have smashed together like that, and both objects should have come together. Sometimes when he pulled one cord naturally his hand pulled stronger than one hand maybe than another, and the length of the cord was different, and when they came together, some of them went over and some of them didn't come together, and naturally it wasn't nearly as effective. The people laughed. It was quite a laugh for the people outside, but it wasn't much of a joke, your Honor, 20 for us. 30

Q. What is your business?

A. I am a school teacher.

Q. You left your school to go over there?

A. Yes, sir.

Q. And how long were you in New York?

A. Well, I went up on Wednesday morning. I think it was the nine something train or the ten something; I don't know which it was—nine something, I think it was. I got up there around five o'clock in the afternoon.

Q. How many days were you in New York?

A. Well, I started on Wednesday, Thursday, Friday, Saturday—and we left early Sunday morning.

10 Q. Was your stay all that time necessary in connection with this exhibit?

Mr. Ridgway: I object.

A. It certainly was.

Mr. Ridgway: The jury is entitled to decide that.

Q. Your maintenance, of course, was in New York during that time?

20 A. Surely.

Q. Do you know whether or not your husband had other persons employed in connection with the exhibit which would not have been necessary had there been no damage or loss to the exhibit?

A. There was a young man he employed while he was up there. He had him employed before I got there.

Q. Was he employed when you got there?

A. Yes.

30 Q. Working?

A. Yes, sir.

Q. How long did he work as far as you know?

A. Well, he worked all the time I was there.

Cross-examination.

By Mr. Ridgway:

Q. How much did he pay the young man who was working there?

A. I think it was four dollars a day.

Q. You think it was four dollars a day, and he required his services three days?

A. No; about four or five. 10

Q. Well, the exhibit was only there five days—three.

A. The exhibit was there three. But you remember we had to put that up.

Q. Well, then, it was four and a half days at how much a day?

A. It was five days at four dollars a day.

Q. How old is your son?

A. He is five years old.

Q. You didn't have him up there to help run this 20 exhibit?

A. No; but I had to take him with me.

Q. Was Wednesday the first day of the exhibit when you got there?

A. No. Wednesday was the first day I went up.

Q. When did the exhibit commence?

A. Thursday, I think was the day.

Q. And the next day the exhibit started?

A. Yes.

Q. Did you go down to the Syracuse fair? 30

A. I did.

Q. And that that run by electricity?

A. It did.

The Court: Didn't the school authorities pay you for the time you were away?

The Witness: No, sir.

The Court: Took it out of your pay?

The Witness: They certainly did.

Q. How much did they pay you a day?

A. Well, they didn't take what I get. They took what they gave the substitute. They gave the substitute six dollars a day and I was away three days. So I lost eighteen dollars besides my carfare and train fare.

Q. What were they?

A. \$10.06 I think it is to Albany; two ways there—one way there and back.

Q. That is \$20.12?

A. Yes.

Q. How much was your board there?

A. I think it was—we had European plan; three dollars a night, and we tried to live within three dollars a day for food.

Q. Well, that was about six dollars a day expenses?

A. For my own expenses.

Q. And you were there three or four days, as you testified?

A. That was Wednesday night—about four days.

(Witness excused.)

30

PLAINTIFF RESTS.

Mr. Ridgway: If your Honor please, I move for a direction of verdict as to the second count.

Mr. Weeks: I think I have lost out on the second count. There has been no proof touching the second count.

The Court: I will take care of it at the conclusion of the case.

10

## DEFENDANT'S CASE.

CHARLES H. ORME, called as witness on behalf of the defendant being sworn, was examined and testified as follows:

Direct examination.

By Mr. Ridgway:

20

Q. Mr. Orme, what is your business?

A. Painting and paperhanging and decorating.

Q. Where are you engaged in business?

A. Where?

Q. Yes.

A. 118 South Main Street, next to the Orange Drug Company.

Q. Did you see this model of Mr. Cordery, the plaintiff in this action?

A. Yes, sir.

Q. When did you see it?

A. Why, I saw it —

30

The Court: Don't let us have a hundred preliminary questions.

Q. Did you paint this exhibit?

A. I had two men paint it; yes, sir; two painters

Q. What did you do there?

A. Time and material.

Q. How much was that?

A. And the bill came to \$88.

Q. Did you hear Mr. Cordery testify that you charged \$125?

A. I did. That is an untrue statement.

10 Q. Have you been paid the full \$88?

A. No, sir; I have been paid \$40.

Q. What was the nature of the painting which you did to the exhibit?

A. Well, it was very rough painting to start on, and the buildings were made out of compo-board, set in each one of these sections with three pieces; that is, a front section and two side sections. Those were to represent the large buildings in New York, and it took a man that could paint that kind of work; that is, I had a man that worked with a sign company over here that was very good to do that work. I afterward heard a report that that was not satisfactory to this man Cordery, but if he had found anything unsatisfactory at the time —

20 Q. No, don't go into that. Did you notice any patch work on the buildings, or what was the quality of the work on the buildings?

A. What do you mean, the building, itself?

30 Q. Yes; that is, these models of New York buildings. What was the character of the compo-board?

A. Of course, that had to be done by the painting; the effect had to be gotten solely through the painting of it. It was just square pieces of compo-board nailed up to represent a house after it was painted over the different floors and windows.

Q. Was any of that patched together?

A. No; there wasn't anything patched on this—

Q. What was patched?

A. Well, the only thing was patched was on the front sections, instead of using the full sheet with board at the top and using the up and down pieces between the partitions, which would be about ten inches wide, there were pieces at the bottom about a foot, right at the bottom where it would be noticeable; and, of course, that was explained. That was a very sad thing to overcome with paint. You can't 10 hide a joint right in plain view with paint or anything like that; and also around the panels.

Q. When did you do that painting?

A. Last February.

Q. Did you do any other painting since then?

A. Not for him.

Q. That is I mean on this model?

A. No. The painting we done right until it was shipped away.

Q. But that was around February or March? 20

A. Around February or March.

Q. And you never did any painting after that?

A. No.

Q. Did you paint the mountain scenery?

A. This man painted that, I believe.

Q. His men?

A. No, my man.

Q. What was the composition of which the mountain scenery was made?

A. That I am not positive of, unless it was as- 30 bestos or something of that kind.

Q. Was it a fragile substance?

A. It was very easily broken.

Cross-examination.

By Mr. Weeks:

Q. Have you sent any bill to Mr. Cordery since you did this painting?

A. I went to him several times.

Q. Have you sent him any bill?

A. No; I didn't send him a bill.

10 Q. Now, as a matter of fact, you borrowed \$40 before the job was done, or, at least, you got Mr. Cordery to advance \$40 on account of the painting to pay your men with?

A. No; at the end of the time, time was charged, time and material, and I explained to Mr. Cordery by hiring these extra men at the time I wasn't in position to pay them, and if he was willing after one week's time to pay up to that date I would take it that way, and that is how he paid me. He paid me up to date on what was done, not in advance.

20 Q. In other words, he paid you the \$40 to be paid to your men as wages?

A. Yes, sir; that was the idea.

Q. And didn't you tell him beside the \$40 that he paid you that there would be \$85 more?

A. Never told him that; no, sir; I didn't.

Q. You are hostile to Mr. Cordery because he has not paid you the balance of his bill?

A. Not necessarily so.

30 Q. Didn't you say yesterday that unless he paid you the balance due you you would come here and do what you could against him?

A. I told you frankly —

Q. You said that?

A. Yes; I said that. I will admit it.

Re-direct examination.

By Mr. Ridgway:

Q. Mr. Weeks tried to bring out something about the payment of the bill. Will you explain when you were to get the balance?

Mr. Weeks: I object.

10

Mr. Ridgway: All right; that is all.

(Witness excused.)

PERCIVAL ARMITAGE, called as a witness on behalf of the defendant, being duly sworn, was examined and testified as follows:

20

Direct examination.

By Mr. Ridgway:

Q. What is your business, Mr. Armitage?

A. I am in-freight clerk and bad order man.

Q. For the American Railway Express?

A. For the American Railway Express, Albany, New York.

Q. Did you see this shipment?

30

A. I did.

Q. Where did you see it?

A. In our in-freight terminal, Water Street, Albany.

Q. Will you describe the packing of the boxes that

has been referred to as containing a shaft and the braces?

10 A. Yes, sir. The shipment consisted of a crate about six feet long and about eighteen inches long and about three and a half or four feet high, open crate at the end, and contents were placed in loosely, in no way bound when it came into our hands. Also the sides of the crate had in a piece of beaver board running half way the length of the crate, and these pulley wheels, slats and boards, et cetera, were in  
 20 between these beaver boards but loose, and the weight of these pulleys, boards, et cetera, in transportation, had settled greatly until the most of them were in the bottom of the crate, wedging the boards apart that held the side of the crate at the bottom, which probably accounted for the loss of the iron bars. But these separate pieces that were in the crate were not properly packed, properly placed in the crate, properly fastened to the sides of the crate.  
 20 Had these separate pieces that were in the crate been properly packed, properly placed in the crate, properly fastened to the sides of the crate, this couldn't have happened. Any shipment of loose material moving in a railway train has to stand a certain amount of vibration and this vibration, and these pieces being loose, and altogether of considerable weight, was what caused the damage to the crate, owing to the fact that the material used in the crate and nails used were not heavy enough to hold the crate together.

30 Q. How far apart were the boards in the crate?

A. They were not uniform. Some of them may have been six inches apart—four inches apart; some of them may have been a few more.

Q. Was there any marking on any of the crate boxes or cartons saying that they were fragile goods or "Handle with care?"

A. I don't recall seeing any, especially, other than on that particular crate that I am describing.

Q. Now, there wasn't any on that crate?

A. No, sir.

Q. Now, on the crate containing the mountain scenery, was there any mark on that?

A. No "Fragile" labels; no "Fragile" labels. In the express business that is what we look for in a fragile shipment, is a fragile label.

10 Mr. Weeks: I object to that and move it be stricken from the record.

The Court: All right.

Q. How was the mountain scenery packed and what was the condition—the composition?

A. The composition was a form of asbestos and I should say plaster-Paris composition. I am not a thorough judge of that, but that is what I should  
 20 say it was.

Q. Is this some of the composition?

A. Yes, sir; it is. (Referring to plaintiff's exhibit 2 for identification.)

Mr. Ridgway: I offer this in evidence.

(The offer, heretofore marked Exhibit for the plaintiff for identification P2, is received in evidence as an exhibit for the defendant.)

30 Q. How was that attached to the crate?

A. It was attached to the top of the crate by small boards and nails. This composition itself was in sheets about three feet square, attached to small pieces of wood about half an inch wide or maybe

half or quarter inch thick—and they were rather square—and these pieces ran the entire length of the top of the sections. It looked as if when they went together they were one placed top of the other, but when they were in the crate they were side by side this way and attached to the cleat running across the top of the crate, with very fine nails driven across the top of the crate into the pieces that were holding these pieces upright.

10 Q. Now, did this material have any other packing than just the way it is here in this exhibit?

A. It did not. That is just as it is as far as I could see.

Q. Would the ordinary vibration of the train—from the ordinary vibration of the train would that material stand up?

A. It would not, because it was rigidly into the crate. It had no chance to give or take vibration.

Q. And there was no board back of it?

20 A. No, sir.

Q. And there were just little half-inch pieces of wood at the top?

A. Cleats at the top to hold it into the crate.

Q. Do you think any vibration would cause that to crumble and fall?

Mr. Weeks: I object to what he thinks.

The Court: I sustain the objection.

30 The Witness: Well, I handled the crate myself.

Q. You have handled this line of material before, haven't you?

A. Yes, sir.

Q. And you have made that kind of material?

A. I have used it.

Q. Do you think that that can be shipped in the form that it was?

Mr. Weeks: Objected to.

The Court: I sustain the objection.

Q. Now, do you live in Albany?

A. I do.

Q. Are there any lumber mills that you could get 10 these pulleys that the plaintiff talks about?

A. There are several mills there, but I never had any dealings with them; but without doubt they can be gotten.

Q. There are lumber mills there?

A. Very much of them; do all kinds of work.

Q. And places where you can buy iron pipe?

A. Yes.

Q. And flanges for the side?

A. Yes, sir. 20

Q. What would have been a proper way to send mountain scenery?

Mr. Weeks: I object to that. He has not qualified as an expert.

Mr. Ridgway: That is all.

Cross-examination.

By Mr. Weeks: 30

Q. Mr. Armitage, you say the boxes which you have described had no markings on—the crate which you just described?

A. The only mark I seen was the name and address of the consignee.

Q. But the name and address on it had nothing— had the name and address on it but nothing else?

A. Not that I remember seeing.

Q. You are sure it didn't have any such words as "Show goods" on it?

A. I don't remember seeing it.

Q. Was it on the crate?

A. I didn't see it.

Q. Well, was it there?

10 A. I looked the crate over and saw every part of the crate and didn't see it.

Q. Then you are in position to say it was not there?

A. I didn't see it.

Q. When these goods got out of the crate as you suggest by the crate coming apart, why weren't they held intact with the shipment?

A. Why weren't they held intact with the shipment?

20 Q. Yes. How could they get separated from the shipment?

A. I have no way of telling. The shipment was handled at different points.

Q. Do you know what would be the duty of the express company—do you think it would be the duty of the express company to keep it with the rest of the shipment, if this iron got out of the crate, etc.?

A. If it was noticed in time; yes, sir.

Q. When did you first see the shipment?

30 A. When it arrived at my place of work.

Q. In Albany?

A. Yes, sir.

Q. And you say that the packing in this box was loosely done?

A. Yes.

Q. That is the way you found it?

A. Yes, sir.

Q. But you don't know what had happened or what usage had been given the crates between Pleasantville and Albany, do you?

A. Why, I can only judge from the inside of the crate.

Q. Well, you don't know, do you? The answer is yes or no.

A. I can judge from the inside of the crate. 10

Q. Do you know or do you not?

A. I can't answer that question unless you let me answer it right as I saw it.

Q. Well, you don't know as a matter of fact, do you? You weren't with the shipment?

A. Will you kindly make it plain what you want to know?

Q. Do you know what usage this shipment got or what handling between Pleasantville, New Jersey, and Albany, New York? 20

A. Why, I know the usual course of procedure, yes.

Q. Yes, but you don't know what happened to this shipment. Now, you said there were fine nails used. How fine were they?

A. Why, just about—I should say less than half an inch long.

Q. Less than half an inch long.

A. Yes. In the one crate of mountain scenery; but it was easy—they attached the mountain scenery to the crate, made it solid in the crate. 30

Q. I thought you said there were fine nails used in the crate from which the iron or steel shaft had been lost.

A. I did say that there were small nails used, smaller than they should be.

Q. How small were they?

A. Well, those nails in that crate were different sizes.

Q. How small was the smallest of them?

A. Some of them were shingle nails; some of them a little larger than a shingle nail.

Q. That would be about how long?

A. Ranging from three-quarters of an inch to an inch and a quarter.

Q. How big were the largest?

A. Well, some of them may have been an inch and three-quarters.

Q. Inch and three-quarter long was the largest nail used in that crate?

A. Yes.

Q. What size lumber was used in the crate?

A. Inch.

Q. Inch.

A. Mostly inch material.

Q. An inch and three-quarter nails through inch lumber?

A. Yes, sir.

Q. And that is your statement?

A. Yes, sir.

Q. Are you the person who handed to the plaintiff in this case exhibit marked P4? Just look at it.

A. (Examining paper.) No, sir. I never had anything to do with that.

Q. You never had anything to do with that?

A. No, sir.

(Witness excused.)

HOWARD WAGNER, called as a witness on behalf of the defendant, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ridgway:

Q. You are employed by the American Railway Express, are you? 10

A. Yes, sir.

Q. What do you do?

A. Driver.

Q. Did you deliver this shipment to the armory at Albany?

A. Yes, sir.

Q. Did you notice any markings on any of the boxes stating that the contents were fragile or "handle with care?" 20

A. No, sir.

Q. Did you notice any statement on there saying they were "show goods?"

A. No, sir.

Q. Did you get a receipt from Cordery?

A. Yes, sir.

Q. And is this a delivery receipt?

A. Yes.

Q. Did he make any complaint then about the damage? 30

A. Yes, sir; he did.

Q. And what was the condition of those goods?

A. Why, he said there was some parts missing, especially two or three iron bars and four or five sticks, and he complained about the way the stuff was shipped, the way it was received up there.

Q. Had Mr. Cordery seen the goods before they were delivered?

A. Had he seen them?

Q. Yes, had Mr. Cordery seen the goods before they were delivered?

A. No, sir; he did not. The first thing he said to me, "I bet those iron bars are missing," before he even looked at the goods.

10 Q. Before he even saw in the case he said: "I'll bet the iron bars are missing?"

A. Yes, sir.

Mr. Ridgway: That is all.

The Witness: He also said he sent the shipment there once to the express company and it had been refused, and then he had to take it back and repack it again.

20 Cross-examination.

By Mr. Weeks:

Q. When he said that he guessed that his iron bars were missing, do you know what had become of the crates at that time? Had you unloaded them?

A. No sir; they were still on the wagon.

Q. Still on the wagon. Was there one crate open?

A. No; there wasn't any crate that was open.

30 Q. Torn or fallen to pieces?

A. It was falling apart. It was nailed together the best it could be nailed without breaking the contents any more than it was broken.

Q. And that is what made him say he bet the iron bars were missing?

A. He had not seen it.

Q. He had not seen the crate?

A. No; he had not seen the crate, because the crate was on the back end of the wagon and he was looking towards the front end.

Q. He looked at the front, but had not looked at the back?

A. From the front end of the wagon. He was still inside the doorway.

Q. Where was this crate which was broken open, which was supposed to contain iron bars? What 10 position on your wagon?

A. Standing upright on the wagon.

Q. Way back of all the other crates?

A. No, sir.

Q. Where was it?

A. It took the full length of the wagon up, from the seat to the tail board of the wagon.

Q. Then the end of it was visible at the rear of the automobile, wasn't it, or truck?

A. Yes, sir.

20

Q. And before they were unloaded Mr. Cordery made the assertion that he bet the iron bars were missing?

A. Yes, sir.

(Witness excused.)

30

JOSEPH G. FLEISCHAUER, called as a witness on behalf of the defendant, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ridgway:

- 10 Q. You are the Pleasantville agent of the American Railway Express, are you?  
 A. Yes, sir.  
 Q. Had you this shipment of Mr. Cordery?  
 A. Yes, sir.  
 Q. Did it have any marks or any notice on it that they were fragile goods?  
 A. No, sir.  
 Q. Did it have "Handle with care" on any of them?  
 A. No, sir.  
 20 Q. Did it have "Show Goods" marked on the side?  
 A. I won't answer that because we have had no time to look at it.  
 Q. When did you first see these goods, Mr. Fleischauer?  
 A. About a quarter or ten minutes to four.  
 Q. And what time did the train leave?  
 A. 4.12.  
 30 Q. Where did you first see the goods?  
 A. At the express office.  
 Q. Did Mr. Cordery talk to you about shipping before, about shipping?  
 A. In the morning.  
 Q. And when was that?  
 A. Around about I should judge half past eight or

nine o'clock, when he told me he had a shipment to go out.

Q. Were they on his wagon or your wagon?

A. It was at his place.

Q. At his place. Did he bring them to the place before or was this the first time?

A. Never before; no, sir.

Q. Who brought them?

A. O. & O. Express; Mr. Webber, driver.

10

Cross-examination.

By Mr. Weeks:

Q. Mr. Fleischauer, you say the goods didn't have any such wording as "Fragile" on them?

A. I said I would not answer that because I did not have time—I didn't recall it now.

Q. You don't know whether they did or not?

A. No.

20

Q. Do you know whether they had the words "Show Goods" on them?

A. No; because I didn't have the time to examine it.

Q. I say do you know that they had the words "Show Goods?"

A. I wouldn't say it did or didn't because I had no time to examine the goods in loading them into the train.

30

(Witness excused.)

DEFENDANT RESTS.

## PLAINTIFF'S REBUTTAL.

EDWARD C. CORDERY, recalled in rebuttal, having been previously sworn, was examined and testified as follows:

Direct examination.

10

By Mr. Weeks:

Q. Mr. Cordery, it has been testified here that the nails used in the packing box for the iron or steel shafts and brackets, etc., were very small nails. Will you tell the Court and jury what was the smallest nail you used?

A. The smallest nail in packing the crate was eight-penny.

20

Q. How long would that be?

A. I should judge about two and a quarter inches; two and a half inches at the longest.

Q. Were there any such nails used as inch or three-quarter inch, or lath nails?

A. Not in the crating of it, no. In the building of the model there were nails of that kind used, but not in the crating of it, because you couldn't get a lath nail through a one and a quarter yellow pine board to do any holding.

30

Cross-examination.

By Mr. Ridgway:

Q. There was no testimony that there were any inch nails used in the crating, was there?

A. That is the way I understood it.

Q. You are referring to the testimony of Mr. Armitage, aren't you?

A. I don't remember what the gentleman's name was. 10

Q. Well, the second witness who was on the stand?

A. I think it was the first witness, the agent, or the one who claimed that the lath nails were used, or half-inch nails were used.

Q. Wasn't he testifying to this composition being nailed inside of the packing box? Wasn't he testifying to this being nailed on inch and a half boards inside the crate?

A. I don't know what he was talking about. Even 20 a half-inch nail wouldn't hold that on the boards.

Q. You said you glued it on?

A. I told you that the substance was made with glue, and as it was placed on the proper places in which it would form the mountain scene would stick there itself.

Q. No, I am not talking about the mountain scenery. I am talking about the crate that the——

A. I am talking about that stuff and how it was held on. That didn't touch the crate; had nothing 30 to do with touching the crate.

Q. How did you get it there?

A. Because it was properly crated. It didn't lean up against the sides.

Q. You aren't telling me how it was properly crated.

A. I tried to do it at different times today.

The Court: How much was the amount you said it cost you for additional help in making repairs? \$130?

The Witness: \$115 and sixty some cents.

(Witness excused.)

10

ALFRED WEBBER, called as a witness in rebuttal on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Weeks:

20 Q. W<sup>r</sup>. Webber, were you present when a shipment of goods was made consisting of the model, last March sometime, by Mr. Cordery, and delivered to the American Railway Express?

A. I was.

Q. Do you know who did the marking on those crates?

Mr. Ridgway: I object. Is this proper rebuttal?

30 The Court: I think it is part of the main case; but go ahead.

A. I done the marking myself.

Q. Will you tell us what was put on the crate—markings?

A. If I can remember right it was, "E. Cordery, State Armory, Albany, New York," and his return

address at Pleasantville was marked on there also; and "Show Goods" was marked on the crating.

Q. "Show goods?"

A. Yes, sir.

Q. Do you know whether that was marked on all the crates or not?

A. That was marked on all of them, yes.

Q. Were you present when the goods were actually delivered at the Railway Express Company?

A. Yes, sir. 10

Q. In what kind of condition were they?

A. They were in good condition.

Cross-examination.

By Mr. Ridgway:

Q. What date were they shipped?

A. Well, that I cannot tell you.

Q. Now, you say they were in good condition? 20

A. Yes, sir.

Q. How do you know they were in good condition?

A. Because I was there when they were loaded on and when they were loaded in the train.

Q. You didn't see inside of the crate?

A. The crate was strong. There was nothing rattling.

Q. You didn't see them packed, either?

A. No. 30

Q. Well, how do you know they were in good condition?

A. They were in good condition when I got done handling, when they were given to me. I could tell if they were in good condition then; because there was nothing broke on the outside.

Q. You could tell——

A. That is immaterial to me.

Q. Well, you don't know whether they were in good condition if you couldn't see on the inside?

A. Not on the inside, no.

Q. All you are talking about is the outside?

A. That is the only thing I can tell you anything about.

Q. How did you mark these goods, "Show Goods?"

10 A. Just "Show Goods."

Q. Was anything else marked on the crate?

A. Nothing besides his name.

Q. And "Show Goods?"

A. That is all.

Q. There was nothing marked on there showing they were fragile?

A. No.

Q. And nothing marked on there, "Handle with care?"

20 A. No.

Q. On any of the crates?

A. Not that I can remember.

(Witness excused.)

PLAINTIFF RESTS.

DEFENDANT RESTS.

30 (Mr. Weeks opened the plaintiff's case to the jury.)

(Mr. Ridgway summed up the defendant's case to the jury.)

(Mr. Weeks summed up the plaintiff's case to the jury.)

COURT'S CHARGE TO THE JURY.

SMATHERS, J.: Ladies and gentlemen of the jury: In this case the plaintiff seeks to recover damages from the Express Company, alleging that by reason of the company's negligence in the handling of certain expressed goods, the plaintiff was damaged by the loss of certain goods and suffered loss by damage to other goods that were delivered. 10

At the outset, if you find as a fact that these goods were not properly packed by the plaintiff or were of such a nature that they couldn't be transported by the Express Company by the use of care, then, of course, you need go no further in your deliberations than return a verdict of no cause for action; because if the goods were delivered to the Express Company improperly packed, or if they were such goods as would not stand being transported by the Express Company by the use of proper care, then, of course, there could be no recovery against the Express Company in this case. 20

On the other hand, if you are satisfied that the goods were properly packed and could have been transported by the Express Company had they been handled properly, then you pass to the question of the negligence of the company in handling the goods.

In that connection the Court charges you that if the goods in question were lost or damaged through the negligence of the defendant—and negligence is presumed from such loss or damage, and the burden of proving negligence would not therefore be upon the plaintiff, it is presumed from the fact that the goods were lost while in transit or were damaged 30

while in transit. The Express Company under the circumstances was a common carrier, and as such it became liable for the loss or injury of these goods while they were being transported by it, unless it be shown that the loss or the injury resulted from an act of God or the act of the consignor, or the act of a public enemy.

In this case the Court instructs as a matter of law if you are satisfied that there is liability on the part of the defendant the plaintiff can recover only damages to compensate him for the value of the lost goods and for moneys expended by him in the repairing and in the hiring of additional help necessary to operate this model, as has been testified in the case; in other words, the Court instructs you as a matter of law that there can be no recovery on the part of the plaintiff in this case for any expenses incurred by him in creating and making a new design which was to be exhibited and was exhibited over there at a future time. The only damage which the Express Company is answerable for to this plaintiff is the damage that would compensate the plaintiff for the lost goods and for moneys expended by the plaintiff in making repairs and in hiring additional necessary help; and the amount so expended by the plaintiff was testified by him as being \$115.69. The Court therefore instructs the jury as a matter of law that if you have been satisfied by a fair preponderance of the evidence of the plaintiff's right to recover in this case against the defendant, such recovery should be the amount that you find will compensate the plaintiff for the loss of the goods and for any expense incurred by him in replacing the goods up to the sum of \$115.69.

You may retire.

(The jury retired.)

Mr. Weeks: I except to that portion of the charge of the Court in which he said that damages must be limited to the value of the goods lost and the expenses in repairing the exhibit, or words to that effect.

Further, to the charge that no recovery can be had for creating a new design or model.

Mr. Ridgway: I take exception to that part of the charge which said that a common carrier will not be excused from liability for the loss or injury of goods which it undertakes to transport for hire, except it be caused by an act of God, of the public enemy, or of the consignor; as the contract in this case provides that if the goods were of fragile nature it was the duty of the plaintiff, the shipper, to mark them as such.

Also to the refusal of the Court to charge defendant's requests.

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#### PLAINTIFF'S REQUEST TO CHARGE

##### LIABILITY.

1. The complaint charges that the goods in question were lost or damaged through the negligence of the defendant; and negligence is presumed from such loss or damage and burden is not, therefore, upon the plaintiff to prove negligence.

2. A common carrier will not be excused from liability for the loss or injury of goods which it has undertaken to transport for hire, except by an act of God, the public enemy or the consignor.

MEASURE OF DAMAGES.

1. If the goods in question had no marked value then you are to take into consideration their real value to the owner.
2. The owner of goods lost or damaged may recover not only the value of the goods, but also any special damages naturally and proximately resulting from the loss, provided the peculiar circumstances of the shipment were made known to the carrier at the time of shipment.
3. If you find that the defendant knew or ought to have known that the plaintiff was about to carry out a contract which he had with the State of New York to exhibit the goods delivered to the defendant and received by it, and that the goods were lost or damaged in transit without the fault of the plaintiff, then in such case you must allow the plaintiff all of the expenses, supported by proof, which he was put to in carrying out his said contract, including the necessary extra expenses of exhibiting his goods as well as the cost of reproducing the goods, if you find such reproduction was necessary because of plaintiff's contract with the State of New York.

30 DEFENDANT'S REQUESTS TO CHARGE.

It was the duty of the plaintiff to mitigate and lessen the damages of the defendant as much as possible and if the plaintiff could replace the articles damaged it was his duty to do so.

(See *Ramsey v. Perth Amboy Co.*, 72 N. J. Eq. 165.)

RULE FOR JUDGMENT.

NEW JERSEY SUPREME COURT.

EDWARD C. CORDERY, <i>Plaintiff-Appellant,</i> v. AMERICAN RAILWAY EX- PRESS COMPANY, <i>Defendant-Appellee.</i>	On Appeal. 10 Reversal & Remittitur.
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This cause was argued at the May Term, 1927, and judgment below was reversed.

Whereupon it is adjudged that the judgment entered in the Atlantic County Circuit Court be in all things reversed; that the plaintiff-appellant do recover his costs and that the cause be remitted to the Atlantic County Circuit Court.

Entered August 1, 1927.

On motion of

ELWOOD C. WEEKS,  
*Of Counsel for the Plaintiff-Appellant.*

NEW JERSEY SUPREME COURT.  
No.84, May Term, 1927.

EDWARD C. CORDERY, :  
Plaintiff-Appellant. :  
vs. :  
American Railway Express Co. :  
Defendant-Appellee. :

Appeal from Atlantic County Circuit.  
For appellant- Elwood C. Weeks.  
For Appellee S. Paul Ridgway.  
Before Justices Parker and Campbell.

PER CURIAM:

The action was for the purpose of recovering damages arising out of breakage and damage to a model to be used to show accident scenes. In addition to breakage some parts were lost. The shipment was made from Pleasantville, N.J. to Albany, N.Y.

Appellant was under contract to construct, deliver and exhibit the model in Albany, for which he was to receive a stipulated lump sum of \$1375.00. Because of the lost and damaged parts, he was unable to completely and satisfactorily perform his contract. Instead of operating the device by electricity he was obliged to do so by hand.

He was also obliged to return the model to his shops at Pleasantville, N.J. and rebuild it. His extra expense in operating by hand power and the express charges to Albany amounted to \$115.69 for which amount he has a verdict and judgment.

From this judgment he appeals assigning four amended reasons for reversal in place of the original reasons one to six inclusive.

These grounds for reversal relate to alleged erroneous rulings of the trial judge in overruling the following questions:

1. "What was the value of the model to you?"

Respondent contends that this is not properly before us because no exception was taken to the ruling excluding it. This question, however, appears twice. First on pages 24 and 25 of the State of case, where an exception was taken and again on page 26 where no exception was taken. The ruling was neither harmful nor prejudicial, under the circumstances, which were that appellant was paid in full the amount of his contract with the State of New York, with the exception of \$200.00 and that he constructed the model, the cost of which work, etc. he testified to at page 38.

2. "How much do you say that the shafting that was lost and the pulley brackets to which you have referred here are worth?"

This question as it appears in the State of case has added to it the words "to you" so as to call for a value to appellant.

This ruling was not erroneous for the reason already expressed and further because immediately following the ruling excluding this question the witness testified that it cost him over \$1500 to reproduce the model.

#2.

3. (a) "What did you pay on the return of the model to Pleasantville?"

The ruling excluding this question from being answered was erroneous because it appears to have been necessary to return the apparatus to appellant's shops at Pleasantville in order to make the necessary repairs and therefore such cost was an element of damage.

(b) "Except for the damage that happened were you to take the model back to Pleasantville?"

The ruling excluding this question was also erroneous.

4. (a) "Do you know what the departure work, including the material and time on it amounted to?"

(b) "Do you know whether, if you had reproduced the exact first model without any departure on the second occasion, it would have required more time or less time than was put in on the second model?"

Both of these questions were proper and it was an error to exclude them because appellant had already testified what the cost of rebuilding was and that certain changes were made in the second model. In order to show a necessary and perhaps large item of loss he was entitled, if he could, to make answer to these questions.

The next ground for reversal is number 7 of the original grounds filed and is directed at the following portions of the court's charges:

(a) The only damage which the express company is answerable for is the damage that would compensate the plaintiff for the lost goods and for moneys expended by the plaintiff in making repairs and hiring additional necessary help."

(b) "The court instructs you as a matter of law that there can be no recovery on the part of the plaintiff in this case for any expenses incurred by him in creating and making a new design which was to be exhibited and was exhibited over there at a future time."

The except "A" above set out must be added the following to make the quotation of the judicial instruction complete and exact, namely-  
"and the amount so expended by the plaintiff was testified by him as being \$115.69"

Such instruction was erroneous. Appellant was entitled not only to this sum of \$115.69, but also to the cost of restoring the model to its original condition, including the cost of transportation back to his shop and the loss of his original contract which was \$200.00. He was not, of course, entitled to recover the expense of changes in the second model wherein it was different from the first.

Ground eight is directed at the refusal of the trial court to charge appellant's requests, but there seems to have been no exceptions taken to his action.

The final ground is number nine, that the verdict is against the weight of the evidence. This is not a proper ground of appeal.

The judgment is reversed with costs.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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EDWARD C. CORDERY,  
*Plaintiff-Appellee,*

v.

AMERICAN RAILWAY EXPRESS COMPANY,  
a corporation,  
*Defendant-Appellant.*

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ON APPEAL.

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BRIEF FOR DEFENDANT-APPELLANT.

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FACTS.

On or about March 5th, 1926, while the plaintiff, Edward C. Cordery, delivered to the defendant, American Railway Express Company, at Pleasantville, New Jersey, a miniature model of accident scenes in and about New York City to be delivered by the defendant, American Railway Express Company, under written agreement to Albany, New York.

The model was made of asbestos, paper, glue, compositing-board, wood and other fragile materials and, according to the contention of defendant, was im-

properly packed for shipping by the plaintiff so that when the model was delivered to the plaintiff in Albany, New York, seventeen braces which were the legs of the model, four sections of the shafting, twenty-four feet in length and four main pulleys were missing.

In spite of the above missing parts, the plaintiff was able to replace them at the Fair and the model was used at the Fair in Albany, New York, by the plaintiff, which Fair lasted from March 11th, 1926, to March 15, 1926.

The model was used in the State Armory at Albany, New York, as an exhibit of the Safety Department of the New York Motor Vehicle Commission for which the Motor Vehicle Commission was to pay the sum of thirteen hundred and seventy-five dollars.

As a result of the loss of the pulleys, shafting, etc., the plaintiff operated his model by hand and the entire expenses for so doing was \$115.69 (State of Case, page 25, line 2), which sum included trolley fare, taxi fare in looking up different materials, railroad fare of plaintiff, his wife and boy from Pleasantville, New Jersey, to Albany, New York, the meals and board of plaintiff and his family in Albany, New York, the hire of a man to operate the model by hand and return fare to Pleasantville of the model (State of Case, page 39, line 2). It also included three days' loss for the plaintiff's wife, who was employed as a teacher in Pleasantville, New Jersey (State of Case, page 39, line 6).

The amount of the contract of plaintiff with the New York Commission was \$1375.00, of which plaintiff received \$1175 at or before the delivery of the model to Albany, New York (State of Case, page 45, line 20), and \$125.00 paid on the second model

built by plaintiff and used about six months later at the Syracuse Fair (State of Case, page 46, line 10).

The defendant's complaint claims damages for shipment of the model from Pleasantville, New Jersey, to Albany, New York, but the model was not shipped back from Albany, New York, to Pleasantville, New Jersey, by the defendant and while the model was being returned from Albany, New York, to Pleasantville, New Jersey, after the Albany Fair, the model was further damaged (State of Case, page 28, line 6; State of Case, page 43, line 14). The plaintiff claimed damages for injuries to his model while being shipped from Albany, New York, to Pleasantville, and while not in the possession of the defendant carrier.

Upon the plaintiff's return to Pleasantville, New Jersey, he notified the New York Commission of the condition of the model and they submitted a few new plans of what they would like on the new model and after the new model was made and changes made in the old one, the model was used at the Syracuse Fair.

When the goods were delivered to the defendant carrier's agent at Pleasantville, New Jersey, plaintiff did not notify the defendant's agent of the contract with the New York State Commission and did not state the character of the contract or of the amount, or that the goods contained in the shipment were of a fragile nature. The only notice given to the defendant carrier were the words "show goods" marked on the crates; according to the contention of the plaintiff, which was denied by the defendant. The defendant's defense was that the model was not properly packed and was made of fragile material and could not properly be shipped and no notice was given to the shipper.

The case was submitted to the jury by the lower Court, who instructed the jury that their verdict should not be for more than \$115.69 if they found the defendant guilty of negligence, and the jury rendered a verdict in favor of the plaintiff in the sum of \$115.69, from which the plaintiff-appellee, Edward C. Cordery, appealed to the New Jersey Supreme Court and the New Jersey Supreme Court reversed the decision of the lower Court, from which decision, the appellant, now appeals to this Court.

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ARGUMENT.

The Supreme Court reversed the lower Court because of the exclusion of the following question being amended grounds of appeal number 3a of plaintiff's appeal (State of Case, page 10, line 34). "What did you pay on the return of the model?" (State of Case, page 31, line 13). The plaintiff, when asked this question, was testifying as to what the return fare or expressage of his model would be from Albany, New York, to Pleasantville, New Jersey, and said question was properly excluded because the jury, in their verdict, allowed the plaintiff the return fare of his model and the plaintiff suffered no damage as the plaintiff had already testified as to the return fare of his model before the question was asked (State of Case, page 39, line 1), what the item of \$115.00 consisted of, he stated among other things, "It meant the return fare to Pleasantville of the model."

The Court erred in overruling the lower Court because of the rejection of the question known as appeal number 3b. "Except for the damage that hap-

pened were you to take the model to Pleasantville" (State of Case, page 31, line 20). The only purpose which this question could be asked would be for the purpose of showing the return fare of the model to Pleasantville and, as stated above, could not prejudice plaintiff's rights as he recovered the return fare of his model to Pleasantville, N. J.

In the verdict of the jury, the Court erred in reversing upon amended grounds of appeal number 4a, because no exception was taken by the plaintiff to the ruling of the lower Court (State of Case, page 55, line 18).

The Court further erred in reversing the lower Court because of the exclusion of the following question number 4b of the amended grounds of appeal. "Do you know whether, if you had reproduced the exact first model without any departure on the second occasion, it would have required more time or less time that was put in on the second model?" (State of Case, page 56, line 32).

The plaintiff had testified that the only parts not delivered to him were the braces, shafting and four pulleys (State of Case, page 17, line 34), and also testified that the model had been further damaged on the return to his shop in Pleasantville (State of Case, page 28, line 6).

The plaintiff had testified fully as to the entire costs of reproducing his second model when questioned by the Court (State of Case, page 70, line 20), and testified (State of Case, page 43, line 8) that he was claiming damages because of injuries caused to his model while being returned to Pleasantville from Albany, New York.

The defendant carrier was not liable for damages inflicted upon the model while it was being returned by another carrier and was not the natural and prob-

able consequence of his model being shipped to New York, for which plaintiff is claiming damages.

The next ground of reversal stated by the lower Court is reason number 7 of the original ground of appeal (State of Case, page 8, line 20), which refers to charge of the lower Court to the jury. The sum of \$115.69, as awarded by the jury and as charged by the Court, for which the case was tried, fully covered the value of the lost goods and other incidental expenses which naturally and proximately resulted from the loss or injuries complained of.

The plaintiff testified that the amount of his contract with the New York State Commission was \$1375.00; that he received \$1375.00 for the models with expenses (State of Case, page 38, line 18) and that the expenses were in the neighborhood of \$200.00 (State of Case, page 38, line 23) so that the plaintiff received the full amount of his contract and more. The verdict of \$115.69, which plaintiff recovered, included the expressage or fare of his model back to his shop in Pleasantville (State of Case, page 39, line 1) so that the sum of \$1375.00 received on the contract, and \$200.00 extra expenses allowed by the New York Commission, and the verdict of the lower Court of \$115.69, gave the plaintiff approximately \$1700.00 for his models, which amply covered the cost of replacing the model to its original condition and costs of transportation back to plaintiff's shop.

What the plaintiff is endeavoring to recover from defendant is the damage caused to his model while being shipped back to his shop and for which the defendant is not liable, as the goods were not transported back to plaintiff's shop by the defendant-carrier and consequently the defendant is not liable for such damages.

The plaintiff is also endeavoring to recover for changes made in the plans for the building of an entirely new model which was different from the original model.

It is the contention of the defendant that the defendant was not given notice of the special circumstances of the shipment and is not liable for special damages and that any other verdict than the one given by the jury in the lower Court would have been special damages which were not in the contemplation of the parties at the time the shipment was made.

The only statement made to the defendant concerning the contract with the New York State Commission was that the plaintiff had a contract with the New York State Commission and if the defendant did not handle the case with care, the plaintiff would lose his contract (State of Case, page 51, line 10). There is nothing in the case which shows that the defendant was ever told or notified that the plaintiff could be required to make an entirely new model in the event any of the parts were missing and the only statement made to the defendant, was that the plaintiff had a contract with the State of New York and that the plaintiff would lose the contract, if the goods were not handled with care. There is nothing in this statement which shows when it was necessary to deliver the goods in Albany, New York and there is nothing in the testimony indicating that a loss of a few of the parts would require a new model to be built.

This case is analogous to the case of *Hadley v. Baxendale*, an English case cited in the case of *Walcott v. Mount*, 36 N. J. L. 270, in which case the plaintiff, the owner of a flour mill, sent a broken iron shaft to the defendants, who were common car-

riers to be conveyed by them to certain millwrights. The defendants' clerks were told at the time of the shipment that the mill was stopped and that the shipment must be delivered immediately and that a special order should be given to hasten its delivery. The delay in the delivery by the carrier caused the closing of the mill for some days and resulted in a loss of profits to the mill owner. These profits were held not to be recoverable in an action for the breach of the contract for the reason that said circumstances of the case, namely; that the mill owner was depending upon the return of the shipment for the purpose of continuing profits at the mill had not been communicated to the carrier at the time of the shipment.

So, in the case at bar, the fact that the pulleys, shafting and braces were lost, would require an entire new model to be built at a cost greater than the old model, was not communicated to the carrier at the time of shipment.

The case of *Chapman v. Fargo*, 223 New York Reports No. 2, which is a case very similar to the facts in this case. The plaintiff, Chapman, brought an action to recover damages for unreasonable delay in the transportation of moving-picture films. The plaintiff, who was the owner of a theatre in New York, stated that he had specially advertised the exhibition of the films for Christmas Day and because the films were not delivered, a large number of people stayed away from his business, with the result that the plaintiff lost a large sum of money in the operation of his theatre. The films were shipped in a leather hand-bag and, pasted on the back, was the word "rush" and the words "motion-picture films." The messenger who delivered the package to the defendant express company told the

agent that the package contained films and should be rushed on account of showing. The New York Court held, in an opinion by Chief Justice Hiscock, that the above notice was not enough to lay the basis for recovery of special damages and that before the defendant could be held to special damages, it must appear that the defendant had, at the time of delivery, notice of the particular circumstances attending the shipment and which would probably lead to special damages if he defaulted. The Court held that it was not sufficient to recover special damages that the carrier should know of the general purposes for which the films were to be used and that the carrier should have been notified of the particular circumstances and purposes making important their delivery upon a certain day.

So, in the case at bar, there was not sufficient notice given the defendant as to what would be the consequences, if any parts of the model were lost.

In the cases of *Fox v. Harding*, and *Masterton v. Mayor of Brooklyn*, cited in case of *Wolcott v. Mount*, *supra*, it was held that the profits that might be realized from independent and collateral agreements entered into on the faith of the principal contract, were too remote to be taken into consideration.

In the case of *Koury v. Adams Express Co.*, 40 N. J. L., page 372, the plaintiff was not allowed special damages, even though the express company had been notified that the plaintiff had a contract to furnish goods to a convention in a certain specified time. The Court held that the plaintiff could not recover for alleged loss of rental because the defendant had no notice of the character of plaintiff's contract, the plaintiff merely having told defendant's agent, before shipment, that he had a contract to

furnish goods at the convention on May 22nd without disclosing the nature of the contract.

See also *Higgins v. United States Express Company*, 83 N. J. L. 398.

In addition to the fact that the defendant had no notice of the peculiar circumstances of the shipment, the damages which the plaintiff may have sustained as a result of building a new model, are too remote and speculative to be considered by the jury and could not be determined with the reasonable degree of certainty required under the decisions in this State and a verdict for more than \$115.69 would have been speculative and merely a guess upon the part of the jury as to what damages were actually caused by the defendant, as the only damage to the plaintiff, at time of delivery at Albany, New York, was the loss of the braces, shafting and pulleys and when the model was returned to the shop of the plaintiff in Pleasantville, it had received other damages while being transported back to Pleasantville so that it was impossible to determine what these damages were and what bearing they had on the construction of the new model as the testimony now stands.

It is, therefore, respectfully urged that the judgment of the Supreme Court should be reversed with costs and that the Atlantic County Circuit Court should be affirmed.

Respectfully submitted,  
S. PAUL RIDGWAY,  
*Of Counsel for Defendant-Appellant.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

EDWARD C. CORDERY,  
*Plaintiff-Appellee,*

v.

AMERICAN RAILWAY EXPRESS COMPANY,  
*Defendant-Appellant.*

ON APPEAL.

BRIEF FOR THE APPELLEE.

FACTS.

The action was brought for the purpose of recovering damages arising out of the loss of very valuable portions of a model constructed for use in demonstrating how accidents occur on the highway between motor vehicles, etc., and was built to be electrically operated, the loss having occurred during transportation from Pleasantville, N. J., to Albany, N. Y. The appellee was under contract to deliver and exhibit the model to and before the Commissioner of Motor Vehicles of the State of New York at Albany, for which he was to receive \$1375.00. Because of the lost portions of the model, which are

hereafter referred to more in detail, he was unable to perform his contract, but did attempt to operate what remained of the device by hand instead of by electricity. He had been paid upon his said contract all of the price except \$200.00 (p. 40, l. 30), but it was necessary as a result of the loss aforesaid to rebuild the model, which was done at a cost of \$1500. The verdict, under instructions of the trial Judge, was limited to \$115.69, representing certain expenses in an effort to operate the model by hand.

Upon the appeal of the plaintiff below the Supreme Court reversed the judgment and appeal therefrom is taken to this Court.

#### ARGUMENT.

The reasons of the appellant are alleged to be, "The Supreme Court erred in reversing the judgment of the Atlantic County Circuit Court."

Of course, if the position of the Supreme Court is sustainable in a single point this Court will affirm the determinations thereof.

There was evidence that it had cost the appellee \$1500 to reproduce the model, with some slight changes, and he attempted to define the departures from the original model and to arrive at his costs of reconstruction with an allowance for such changes, if any were due. The trial Court precluded this effort on the part of the appellee, which the Supreme Court has held was error. The general rule of law as to the liability of the common carrier is stated in Volume 10, *Corpus Juris*, page 400, as follows:

*"The carrier is liable for the value of the goods and any other incidental damages which*

naturally or proximately result from the loss or injury complained of."

There appears to be no denial by the Courts of this State of the right to recover special damages where the action is against the carrier for loss of goods, especially where the circumstances of the shipment were made known to the defendant at the time it engaged to deliver the goods.

In *Wolcott v. Mount*, 7 Vroom 270, Mr. Justice Depue held, adopting the language of *Hadley v. Baxendale* (9 Exch. 341), that the damages recoverable in such cases is:

"Such as might arise naturally, i. e., according to the usual course of things, from the breach of the contract, or such as might reasonably be supposed to have been in contemplation of both parties at the time they made the contract, as the probable result of the breach of it."

Appellant contends that such facts were made known to defendant at the time of the contract as that it ought to have contemplated the incidental damages contended for as natural and probable in case of breach. At least this became a jury question. The receiving agent of defendant was informed that plaintiff had a contract with the New York State Commission and that loss might arise thereunder if the goods were not properly handled (p. 52, l. 8). The loss arising was wholly natural and the character thereof might have been contemplated from the information conveyed to defendant. True, plaintiff did not state just what portion of the model if lost would prevent performance of the contract; but if the carrier knew anything in this

respect it knew from its information that if proper delivery were not made the contract might not be performed and damages would result. The law will be reasonable and it would exact too much to require that all details be stated—as that pulleys, pulley brackets or shafting or other parts are vital to this model and if any are lost so much money will be lost under the contract.

However, aside from the question of “special damages,” there was evidence that the value of the lost shafting with pulleys and pulley brackets, worked out and placed as to exactly time the occurrence of the various accidents, was equal to the value of the model (p. 26, l. 20). The loss of these parts was the loss of the model. If the heart and vitals be lost the person is lost. Yet, the effect of this testimony was nullified by the instructions of the Court.

The principal part of the model was a main shafting, 24 feet long (p. 15, l. 1; p. 18, l. 4) about which, at intervals were built up shoulders to receive belts working over pulleys—one for each of the different accidents—and by the building up of these shoulders upon the shafting and the proper placing of the various pulleys upon brackets the several accidents had been very ingeniously timed; so that the very heart and vitals of the model were in the shafting together with the pulleys, and by their functioning the several electric motors were periodically thrown into operation and the several accidents were precipitated.

The main shafting and four main pulley brackets (the pulleys were *placed* upon these brackets) were lost (p. 17, l. 33). The worth of these was substantially the value of the model (p. 26, l. 20). The pulleys were spaced and set at determined angles upon the brackets and required much work in their con-

struction (p. 18, l. 4); and as a result of the lost parts the plaintiff could only give a miserable exhibit of his model (or the remainder of it) by operating it by hand instead of electrically (p. 59, l. 18). It was necessary to reproduce the model for the State of New York, which was substantially done (p. 25, l. 29). The only evidence of damages in returning the model from New York is that new backing, boards, streets and pavements were made necessary (p. 43, l. 1); all of which was insignificant since the whole model must be rebuilt because of damages in transporting same to New York (top p. 28).

The plaintiff was not bound to assume the losses occasioned by the defendant's defaults and he should have been allowed to recover the sum of \$200.00 lost upon his contract as aforesaid, and the proper cost of rebuilding the model, besides the sum of \$115.69 expended in connection with the exhibition as aforesaid. It is difficult to see any proper differentiation between the item allowed as expenses in operating the model by hand and other consequential losses which were disallowed. It must not be overlooked that the verdict of \$115.69 includes nothing for the lost portions of the model (p. 38, l. 30). Clearly, the trial Court was wrong in this respect. The Supreme Court quite properly held that the limitations imposed by the trial Judge were erroneous.

It is submitted that the findings of the Supreme Court should be affirmed.

Respectfully,  
ELWOOD C. WEEKS,  
*Of Counsel for the Plaintiff-  
Appellee.*

