

NEW JERSEY

Court of Errors and Appeals.

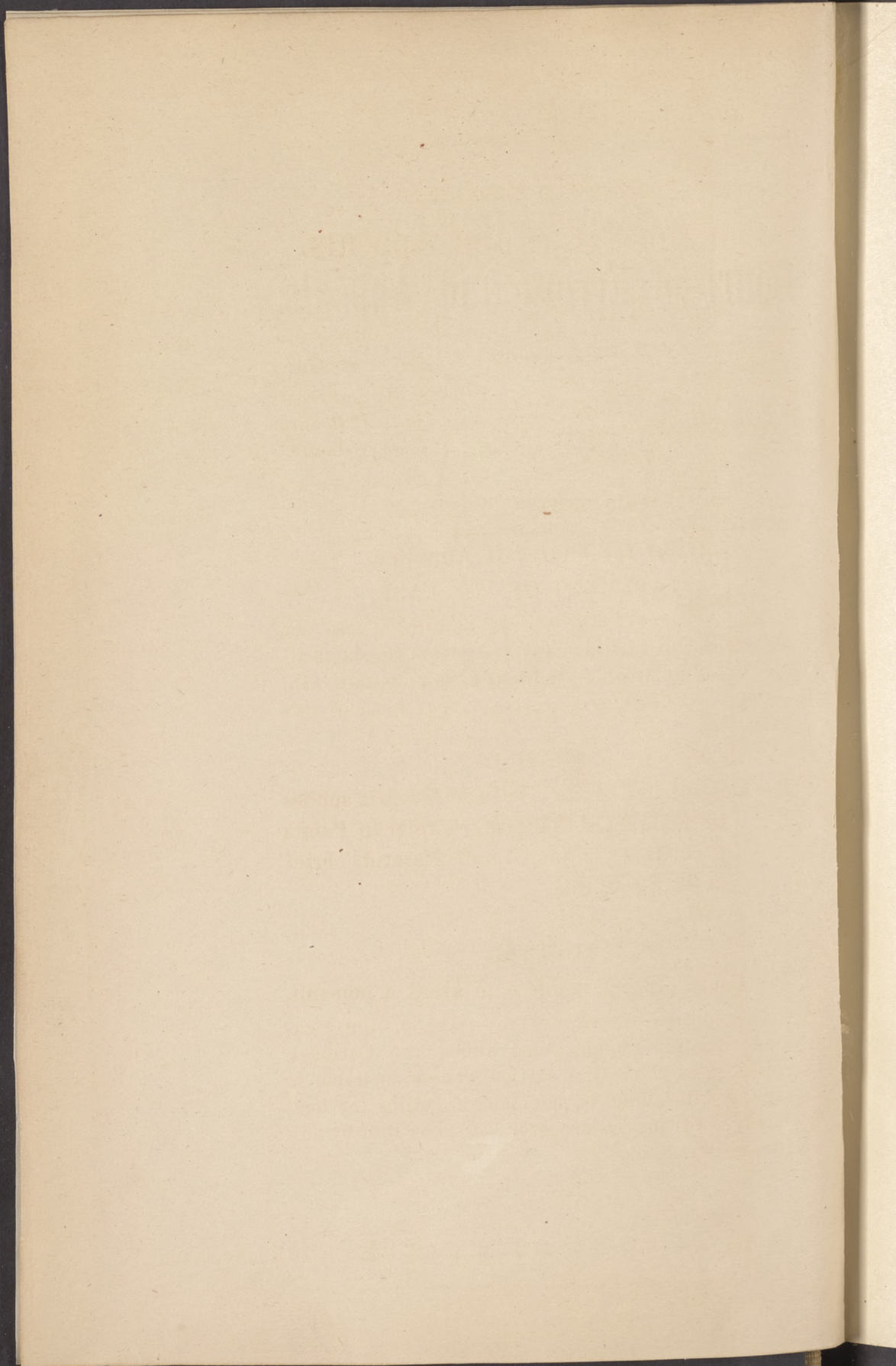
CHARLES ALBRECHT,	} Action at Law. On Appeal from Hudson County Circuit Court.
Plaintiff-Appellee,	
vs.	
THE PENNSYLVANIA RAILROAD	
COMPANY,	
Defendant-Appellant.	

Brief of Defendant—Appellant.

The facts in this case are almost precisely similar to those in the case of *Andred Spada et al., partners trading, &c., Plaintiffs-Appellees, v. The Pennsylvania Railroad Company, Defendant-Appellant*; and the law applicable is the same. The cases differ slightly in that the trial court refused to charge defendant's requests Nos. 3, 4, 5, 6, 7, 8, 10, and 16, only. (State of Case, p. 244.) In all other respects, however, the case was submitted to the jury upon practically the same theory as in the Spada case.

The judgment of the Hudson County Circuit Court should be reversed, set aside, and for nothing holden, and a *venire de novo* awarded, or judgment directed to be entered in favor of the defendant and against the plaintiff.

Respectfully submitted,
VREDENBURGH, WALL & CAREY,
Attorneys for and of Counsel with
Defendant-Appellant.



NEW JERSEY
Court of Errors and Appeals.

CHARLES ALBRECHT,

Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD
COMPANY,

Defendant-Appellant.

*Action at Law.
On Appeal from
Hudson County
Circuit Court.*

Brief for Plaintiff-Appellee.

[STATEMENT OF THE CASE.]

The general facts of the plaintiff's case are similar to those in the case of Andrew Spada et al. vs. The Pennsylvania Railroad Company, No. 113, of the List of Causes of the present term of this Court.

POINT I.

For a discussion of the law, in so far as it applies to the facts of this case, we refer to Points I. II. III. IV. V. and VI. of Plaintiffs' brief in the Spada case.

POINT II.

The Court properly refused to grant a non-suit.

The motion for a non-suit (case, p. 109) was made on the ground that under the Carmack Amendment the initial carrier alone was liable to the lawful holder of the bill of lading for loss, damage or injury to property caused by it or by any connecting carrier.

In the case of *Kansas City S. R. Co. vs. Carl*, 227 U. S., 639, the holder of a bill of lading brought suit against the delivery carrier for loss or damage occurring on its line. It was held that the contract made between the initial carrier and the shipper inured to the benefit of the delivery carrier.

The sole object of the Carmack Amendment was to deny to the initial carrier the former right to make a contract limiting liability to its own line.

Atlantic C. L. R. R. Co. vs. Riverside Mills,
219 U. S., 186.

Pecos & N. T. Ry. Co. v. Meyer, 155 S.
W. 309 (Tex. Civ. app.)

*Harrison Granite Co. v. Grand Trunk Ry.
System*, 141 N. W., 642 (Mich.)

POINT III.

The court did not err in refusing to direct a verdict in favor of the defendant.

(1). Because the plaintiff did not make a claim in writing within ten days.

The bills of lading for the shipments mentioned in counts 4, 5, 6 and 7 of the complaint contain a condition (case, p. 270, l. 31) that; "Claims for loss or damage shall be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than ten days *after the delivery* of the property, or after due time for delivery thereof no carrier hereunder shall be liable in any event."

The court stated its reasons for refusing to direct a verdict and properly held (case, p. 216), that when there was no delivery of the property or when the consignee refused to receive it on the ground that it

was not tendered in proper condition such a stipulation did not apply.

Williamsport Hardwood Lumber Co. v. B. & O. R. Co., 77 S. E., 333 (W. Va.)

Kramer vs. Chicago, etc. R. Co., 101 Iowa, 178.

D. Klass Commission Co. vs. Wabash R. Co., 80 Mo. App., 164.

Gulf etc. R. Co. vs. Golding, 3 Tex. App. Civ. Cas., par. 33.

Galveston etc. R. Co. vs. Ball, 80 Tex., 602.

R. Co. vs. Cumbie, (Ark.) 141 S. W., 939.

Richardson vs. R. Co., 106 N. Y. Sup., 702.

Aull vs. R. Co., 136 Mo. App., 291.

(2). Because the strike was a cause beyond the control of the defendant.

Some of the bills of lading were signed by the shipper and others were not signed by him.

With respect to the bills of lading which were signed by the shipper it was a question of fact for the jury to say whether the excepted cause in the bills of lading was the proximate cause of the delay; with respect to those not signed by the shipper it was for the jury to say whether the bills of lading were so accepted by the shipper as to make them binding contracts and if they were, whether the excepted cause in them was the proximate cause of the delay.

In either class of cases it was for the jury to determine whether there was any negligence on the part of the defendant which contributed to the delay.

POINT IV.

The Court properly refused to charge defendant's
3, 4, 5, 6, 7, 8, 15 and 16 requests.

1. *The third request* (case, p. 244, l. 34).

This request was too broad, for it could only apply to the bills of lading that were proven to be binding contracts, and with respect to those it was for the jury to say whether the results of the strike were beyond the control of the defendant and not as requested to charge by the defendant which assumed as a fact that the strike was a matter beyond the control of the defendant. To the bills of lading which were not binding contracts a strike was no defense.

2. *The fourth request* (case, p. 244, l. 39).

This request could only apply to the bills of lading which contain the provision that damages should be computed on the basis of the value of the property at the place and time of shipment, and then only provided it was found by the jury that the bills of lading had been so accepted by the shipper as to make them binding contracts.

3. *The Fifth Request* (case, p. 245, l. 5).

Before the jury could assess the damages in accordance with the conditions of the bills of lading referred to in this request, it was necessary for the jury to find that the defendant was free from negligence in the transportation of the watermelons because, as stated by the Court in its charge (case, p. 235), "if the watermelons were injured and destroyed by the negligence of the defendant company, it could hardly be said that the company was protecting the interests of the shipper when it sold the results of its own negligence and deducted its

own freight and legitimate expenses from the proceeds."

4. *The Sixth Request* (case, p. 245, l. 9).

The reasons for refusing this request are stated, and the authorities given under Point III.

5. *The Seventh Request* (case, p. 245, l. 17).

This request contains a proposition of law, and assumes that a question of fact has been proven. The law could not be applied until the jury determined whether the evidence showed that the watermelons in question were shipped at the reduced rate of the Southern Classification.

6. *The Eighth Request* (case, p. 245, l. 26).

Rule I. of the Southern Classification provides that the reduced rates only apply when property is shipped subject to the conditions of the so-called carrier's bill of lading, and the higher rates apply when the property is shipped at the carrier's liability. There was no burden cast upon the plaintiff to show that the watermelons were shipped at the higher rate, but it was for the jury to determine from the evidence whether the shipper and the carrier had made a contract limiting the common law liability of the carrier, or whether a contract had been made between them subjecting the carrier to its common law liability.

7. *The Fifteenth Request*. (case, p. 246, l. 31).

There is no presumption that the ten per cent. increased rate or the reduced rate applies. The rate which applies is based upon the limitation of liability under the contract made between the shipper and the initial carrier and before the carrier can apply the higher rate or the reduced rate the liabil-

ity under the contract must be fixed in accordance with Rule I. of the Southern Classification.

8. The Sixteenth Request (case, p. 247, l. 3).

The contract made between the initial carrier and the shipper may be either for the limited liability or for the common law liability. The rate does not fix the liability, but the liability must be agreed upon. If it is for the limited liability the reduced rate must apply and if it is for the common law liability the higher rate must apply.

9. As to the Seventh, Eighth, Fifteenth and Sixteenth Requests.

We have shown under Point I., Subdivision 3, of the brief in the Spada case that the Rules and Regulations of the Watermelon Tariff Rates, which are the reduced rates specified in Rule I. of the Southern Classification apply to watermelon shipments, provide that property can only be shipped subject to the conditions of the so-called carrier's bill of lading when the shipper *expressly releases* the carrier of its common law liability.

W. H. Buckenhurst, an expert on classifications and tariffs, produced by the defendant, testified (case, pages 194, 195, 196, 197) that when the bill of lading contains a notation on it "released" then it is understood that the lower rate applies and that if the bill of lading has a notation, "not released" then the higher rate applies.

POINT V.

There is no error in the charge of the Court referred to in the sixth ground of appeal.

(a). We have pointed out under Point IV., Subdivision 3, that the court charged the jury that the conditions in these bills of lading did not apply if

it were shown that the melons were injured and destroyed by the negligence of the defendant. It was then proper for the Court to charge the jury as he did (case, p. 235, l. 34), "That if these goods were destroyed by the negligence of the defendant company outside of any exception of the conditions beyond their control—which you will read on the back under 'conditions'—then the measure of damages would be the market value of these goods at the time and place when they should have been delivered * * * * *"

Where a shipper delivers goods to a carrier in one state to be transported to another state, and the carrier, without asking the value of the goods, assesses the charges thereon on the minimum value set forth in the schedule filed by the carrier under the Interstate Commerce Act, and the goods are subsequently lost by the *negligence of the carrier*, the shipper has a right of action based on *the negligent breach* of a duty imposed by law on the carrier, and the latter will be liable for the full value of the goods, although the bill of lading limits the liability to the amount stated in the contract as the value of the goods.

Dodge vs. Adams Express Co., 51 Pa. Super. Ct., 481.

(b). (c). (d). The charge of the Court here objected to is found on pages 237 and 238 of the case which applied to the bills of lading not signed by the shipper. We submit that the Court properly stated the law governing these bills of lading.

POINT VI.

The court properly excluded a portion of the testimony of defendant's witness, Christie.

The court permitted this witness to testify to facts within his own knowledge and those gathered by him in the course of his employment as part of the *res gestae* but struck out his testimony relative to the strike gathered from casual conversations with persons not connected with the company and had by the witness when he was not in the prosecution of the business of the company (case, p. 169, l. 36).

POINT VII.

The testimony referred to in the eighth ground of appeal was properly admitted.

The objection to this testimony and the reasons for overruling the objection appear on pages 86 and 87 of the case.

This testimony was admissible to show the measure of damages in case the jury found the bills of lading were not binding contracts.

POINT VIII.

The judgment of the Hudson County Circuit Court should be affirmed.

March Term, 1914.

Respectfully submitted,

QUEEN & STOUT,

Attorneys for and of Counsel with
Plaintiff-Appellee.

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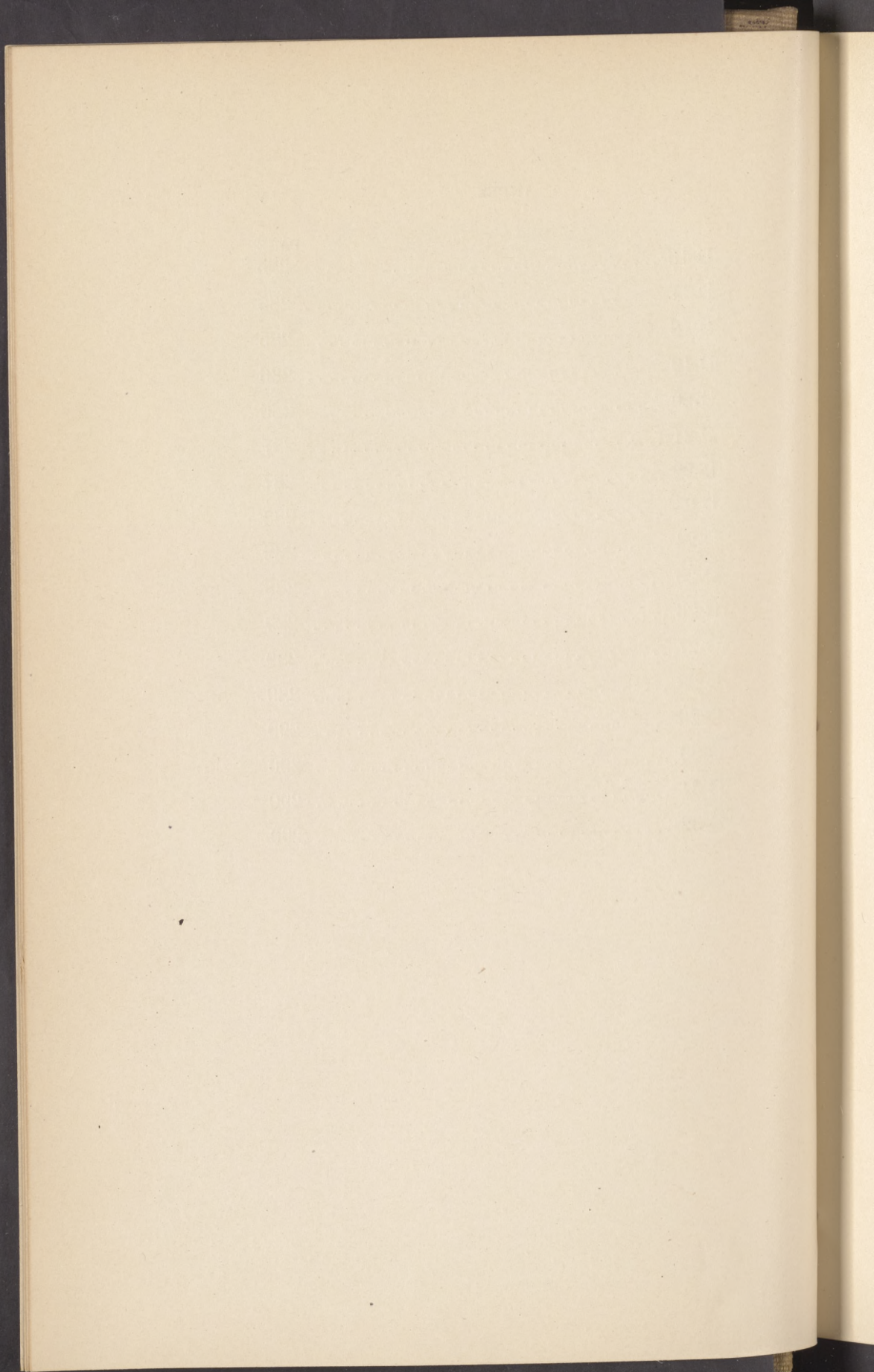
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Notice of Appeal.

Filed Feb. 8, 1914.

Hudson County Circuit Court.

10

CHARLES ALBRECHT,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD
COMPANY.
Defendant-Appellant.

Action at Law.

Notice of Appeal.

20

To

QUEEN & STOUT, *Esq.*,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to
the New Jersey Court of Errors and Appeals, in 30
the last resort in all causes, from the whole of the
judgment entered in this cause.

Dated February 6, 1914.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

40

Notice of Appeal

(Indorsed)

1497

HUDSON COUNTY CIRCUIT COURT.

CHARLES ALBRECHT,

Pltff.-Appellee.

10

vs.

THE PENNSYLVANIA RAILROAD COMPANY,

Appellant.

Action at Law.

NOTICE OF APPEAL.

VREDENBURGH, WALL & CAREY,

Attorneys,

20

1 Exchange Place,

Jersey City, N. J.

(Service Acknowledged February 7, 1914.)

30

40

Grounds of Appeal.

Filed Feb. 16, 1914.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHARLES ALBRECHT,
Plaintiff-Appellee,

vs.

THE PENNSYLVANIA RAILROAD
COMPANY.
Defendant-Appellant.

10

On Appeal from
Hudson County
Circuit Court.

Grounds of
Appeal.

The following are the grounds upon which defendant appeals to the New Jersey Court of Errors and Appeals from the judgment of the Hudson County Circuit Court: 20

First: Said judgment was entered in favor of plaintiff and against defendant, whereas it should have been in favor of defendant and against plaintiff.

Second: Said Circuit Court erred in refusing to grant a non-suit at the close of plaintiff's case, when thereupon moved so to do by defendant. 30

Third: Said Circuit Court erred in refusing to direct a verdict in favor of the defendant and against the plaintiff, at the close of the whole case, as to counts 4, 5, 6 and 7, when thereupon moved so to do by defendant.

Fourth: Said Circuit Court erred in refusing to direct a verdict in favor of the defendant and 40

Grounds of Appeal

against the plaintiff, at the close of the whole case, generally, when thereupon moved so to do by defendant.

Fifth: Said Circuit Court erred in refusing to charge the jury, when thereupon duly requested by defendant, as follows:

10 “3. That the Strike was a matter beyond the control of the defendant, and an excepted clause in the bills of lading, introduced in evidence, and if reasonable efforts were used to relieve the situation, the defendant is not liable.”

 “4. That the damage for which the defendant carrier is liable in this case is to be computed on the basis of the value of the property at the place and time of shipment.”

20 “5. That the measure of damages under the bills of lading introduced in evidence as Exhibits P-3, P-4, P-5 and P-9, is the amount the goods were sold for by the defendant, less the expenses of the sale.”

 “6. That if no claim was filed with defendant at point of delivery for loss or damage to the water melons shipped under the bills of lading marked in evidence as Exhibits P-3, P-4, P-5, P-9, within ten days from date of arrival, that defendant is not liable as to these shipments, and the burden of proving that the claims were filed within that time is on the plaintiff.”

30 “7. That Rule 1 of the classification in evidence provides that the reduced rate specified therein will apply on property shipped subject to the conditions of the carrier's bill of lading, and the evidence showing that the water melons in question were shipped at such reduced rate, therefore the shipments in

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Grounds of Appeal

this suit were shipped subject to the conditions of the bills of lading introduced in evidence."

"8. That the burden is on the plaintiff to show that the water melons in question were shipped at the higher rate and at the carrier's liability, as provided for in Rule 1 of the classification in evidence."

"10. If no express contract between the shipper and carrier is shown by which the shipments were to be governed by the carrier's common law liability at the 10% increased rate provided in the filed tariffs and classifications (and the burden of proving it is upon the plaintiff), then they must be conclusively presumed to have been subject to the reduced rate provisions of the tariffs and classifications and subject to the terms and conditions of the carrier's bill of lading."

"16. The rate fixed by the filed tariffs to be charged by the interstate carriers, in the absence of proof that another rate was expressly agreed upon by shipper and carrier at the time of shipment (and the burden of proving such agreement is upon the plaintiff), fixes and determines the nature of the carrier's liability, and that liability must be according to that specified in the filed tariffs and classifications as the liability which that rate imposes."

Sixth: Said Circuit Court erred in charging the jury in the following respects:

(a) That the sixth condition in the bills of lading marked P-2, P-4, P-5, P-9, and P-3, did not apply to the shipments in this case;

Grounds of Appeal

and that the measure of damages would be the market value of the goods shipped at the time and place when they should have been delivered at Jersey City, except as to the shipment covered by Exhibit P-2.

10 (b) That it was for the jury to say whether the bills of lading covering the remaining four shipments namely, Exhibits P-6, P-7, and P-8, and P-1, were binding upon plaintiff; and that if the same were not binding upon him, the shipment would be under the rules of the common law, making the carrier responsible for any loss or damage to goods in course of shipment except such as may be due to the act of God or the act of the public enemy.

20 (c) That it was for the jury to say whether the bills of lading were binding upon plaintiff.

(d) That it was for the jury to say whether or not the Strike was a defence to the action.

Seventh: Said Circuit Court erred in striking out the testimony of the defendant's witness Christie, as to the existence of a general strike.

30 *Eighth:* Said Circuit Court erred in admitting testimony showing the market value of the water melons in question, in each of the nine shipments involved in the suit, at Jersey City, New Jersey, at the time when they should have arrived at the point of destination.

Ninth: Said Circuit Court erred in divers other respects.

Dated February 16, 1914.

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

Grounds of Appeal

Indorsed.

Filed March 8, 1913.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHARLES ALBRECHT, *Pltff.-Appellee*,

10

*vs.*THE PENNSYLVANIA RAILROAD COMPANY,
Deft.-Appellant.

ON APPEAL FROM HUDSON CIRCUIT COURT,
GROUNDS OF APPEAL.

VREDENBURGH, WALL & CAREY,

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*Attorneys,*1 Exchange Place,
Jersey City, N. J.

(Service acknowledged February 16, 1914.)

Filed February 16, 1914.

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Complaint.

CIRCUIT COURT,

HOLDEN AND FOR SAID COUNTY.

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

10

CHARLES ALBRECHT,
Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD
 COMPANY,
Defendant.

Complaint.

Action at Law.

20

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

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

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

2. The defendant did not transport the said carload of watermelons within a reasonable time but on the contrary unreasonably and negligently

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Complaint

delayed the transportation thereof for a period of nine days and during said delay the said watermelons decayed and spoiled, all to the damage of the plaintiff, five hundred dollars.

Second Count— 1. On July 18th, 1912, at Kline in the State of South Carolina the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire 10 between Kline aforesaid and Jersey City in this State, one carload of watermelons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward.

2. The defendant did not transport the said carload of watermelons within a reasonable time but on the contrary unreasonably and negligently delayed the transportation thereof for a period of 20 ten days during said delay the said watermelons decayed and spoiled, all to the damage of the plaintiff, five hundred dollars.

Third Count— 1. On July 18th, 1912, at Kline in the State of South Carolina the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Kline aforesaid and Jersey City in this State, one carload of watermelons of the value of 30 five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward.

2. The defendant did not transport the said carload of watermelons within a reasonable time but on the contrary unreasonably and negligently delayed the transportation thereof for a period of seven days and during said delay the said water- 40

Complaint

melons decayed and spoiled, all to the damage of the plaintiff, five hundred dollars.

Fourth Count— 1. On July 18th, 1912, at Ulmers in the State of South Carolina the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Ulmers aforesaid and Jersey City in this State,
10 one carload of watermelons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiffs at Jersey City aforesaid within a reasonable time, for a reward.

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

Fifth Count— 1. On July 16th, 1912, at Ulmers in the State of South Carolina the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Ulmers aforesaid and Jersey City in this State, one carload of watermelons of the value of
30 five hundred dollars which the defendant accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward.

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

40 Sixth Count— 1. On July 16th, 1912, at Ulmers

Complaint

in the State of South Carolina the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Ulmers aforesaid and Jersey City in this State, one carload of watermelons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward. 10

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

Seventh Count— 1. On July 16th, 1912, at Ulmers in the State of South Carolina the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Ulmers aforesaid and Jersey City in this State, one carload of watermelons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward. 20 30

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

Eighth Count— 1. On July 17th, 1912, at Allendale in the State of South Carolina the plaintiff caused to be delivered to the defendant, who was 40

Complaint

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

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

Ninth Count— 1. On July 16th, 1912, at Barlow in the State of South Carolina the plaintiff caused
 20 to be delivered to the defendant, who was then and now is a common carrier of goods for hire, between Barlow aforesaid and Jersey City in this State, one carload of watermelons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward.

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

QUEEN & STOUT,
Attorneys for Plaintiff.

Filed Clerk's Office,
 Mar. 8, 1913.

Hudson County, N. J.

40 JOHN F. CROSBY, Clerk.

Stipulation.

Filed April 11, 1913.

It is hereby stipulated and agreed by and between the attorneys for the respective parties,

1. That no affidavit of merits need be filed by the defendant.

2. That the defendant's time to answer be extended to and including April 8th, 1913.

Dated March 24, 1913.

10

QUEEN & STOUT,
Plaintiff's Attys.

VREDENBURGH, WALL & CAREY,
Defendant's Attys.

Filed Clerk's Office,

Apr. 11, 1913.

Hudson County, N. J.

JOHN F. CROSBY, Clerk.

20

Stipulation.

Filed April 11, 1913.

It is hereby STIPULATED AND AGREED by and between the attorneys for the respective parties,

That defendant's time to answer be extended to 30 and including April 11, 1913.

Dated April 7, 1913.

QUEEN & STOUT,
Plaintiff's Attorneys.

VREDENBURGH, WALL & CAREY,
Defendant's Attorneys.

Filed Clerk's Office,

Apr. 11, 1913.

Hudson County, N. J.

JOHN F. CROSBY, Clerk.

40

Answer.

Filed April 11, 1913.

The defendant Corporation answers as follows.

Defendant, a body corporate organized under the laws of the State of Pennsylvania, says that:
First Defence:

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

20 (1) Defendant without admitting that the goods and property were delivered to it and accepted by it, to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so under an express agreement between the plaintiff and the defendant, whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from delay in the transportation and delivery thereof, if such delay was caused by strikes among defendant's employees; and defendant asserts that a strike did take place among its employees and continued from the 9th day of July, 1912, which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

30 VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Filed Clerk's Office,

Apr. 11, 1913.

Hudson County, N. J.

JOHN F. CROSBY, Clerk.

Reply.

Filed April 16, 1913.

The plaintiff denies every allegation in the answer.

QUEEN & STOUT,
Attorneys of Plaintiff.

Filed Clerk's Office,

Apr. 16, 1913.

10

Hudson County, N. J.

JOHN F. CROSBY, Clerk.

Order Striking Out Interrogatories.

Filed June 3rd, 1913.

Due notice having been given of a motion to 20
strike out the interrogatories served on defendant
in the above stated cause on May 16th, 1913, and
said motion coming on to be heard pursuant to
said notice—VREDENBURGH, WALL & CAREY appear-
ing in support of said motion, and QUEEN & STOUT
contra—and the Court having permitted said no-
tice to be amended so as to particularly specify
the interrogatories to which the objections therein
stated refer:

It is, thereupon, on this 23rd day of May, A. D. 30
1913, ORDERED that Interrogatories 1, 2, 3, 4, 5, 11,
20, 29, 38, 47, 56, 65, 74 and 83 be and the same
hereby are stricken out, and that said motion be
and the same hereby is denied as to the remain-
ing, interrogatories, but without costs to either
party as against the other.

AND IT IS FURTHER ORDERED that said defendant
have ten days further time in addition to that al-

Order Striking Out Interrogatories

lowed by law, in which to answer said remaining interrogatories.

WM. H. SPEER,
Judge.

On motion of
VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

10 Filed Clerk's Office,
Jun. 3, 1913.
Hudson County, N. J.
JOHN F. CROSBY, Clerk.

TO:
MESSRS. QUEEN & STOUT,
Attorneys for Plaintiff.

Notice.

20

Filed Sept. 17, 1913.

PLEASE TAKE NOTICE: That on Friday, the 23rd day of May, 1913, we shall move before the HONORABLE WILLIAM H. SPEER, Judge of the above stated court at the Court House, in the City of Jersey City, New Jersey, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard, for an order to strike out the interrogatories in above case served upon the defendant on May 16th inst., on the ground that said interrogatories are irrelevant, incompetent, immaterial and are not necessary to the sustaining of the plaintiff's case, but are directed to matters pertaining to the defendant's case, and pry into matters of defence.

30

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

Dated May 21, 1913.
Filed Clerk's Office,
Sep. 17, 1913.
Hudson County, N. J.
JOHN F. CROSBY, Clerk.

40

Amended Answer.

Filed Sept. 29, 1913.

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

First defense:

10

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

Second defense:

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

20

30

Third defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint avers that if such prop-

40

Amended Answer

erty did come to the hands of the defendant for the purpose of the transportation thereof, it did so under an express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by an accumulation of freight at any
10 point, or to any other causes over which the defendant had no control; and defendant asserts that an accumulation of freight did occur at Jersey City, New Jersey, the point to which the shipments mentioned in the complaint were consigned and at which they were to be delivered, and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, over which accumulation the defendant had no control, and which ac-
20 cumulation was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fourth defense:

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for
30 the purpose of the transportation thereof, it did so under an express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by any cause over which the defendant had no control; and defendant asserts that a strike took place among its employees and continued from the ninth day of July, nineteen hundred and twelve, to the twenty-first day of July,
40

Amended Answer

nineteen hundred and twelve, over which strike the defendant had no control, and which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fifth defense:

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by the said plaintiff within ten days after the delivery of said property, or after due time of the delivery thereof, by the defendant to the plaintiff, although at the time when said goods or property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that in case of loss or damage to said property claim therefor should be so made within the time and at the place and in the manner mentioned. 10 20

Sixth defense:

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the defendant at the point of delivery or at the point of origin of said goods and property by said plaintiff within four months after the delivery of said property, or after a reasonable time for delivery thereof had elapsed, by the defendant to the plaintiff, although at the time when said goods or property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed be- 30 40

Amended Answer

tween the plaintiff and defendant that in case of loss or damage to said property claim therefor should be made within the time and at the place and in the manner mentioned or that, if not so made, the defendant should not be liable for such loss or damage.

10 VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Filed Sept. 29, 1913.

By order of
WM. H. SPEER, Judge.

Notice.

Filed Dec. 22, 1913.

20 TO
QUEEN & STOUT, Esquires,
Attorneys for Plaintiff.

PLEASE TAKE NOTICE:

That we will apply to HON. WILLIAM H. SPEER, Judge of above stated Court, at the Court House in Jersey City, New Jersey, on Friday, December 19th, 1913, at 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an order to discharge the Rule to Show Cause why the verdict
30 rendered in above stated cause should not be set aside and a new trial granted, allowed by said Court in said cause on October 10, 1913, reserving exceptions.

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

Dated December 11, 1913.
Filed Clerk's Office,
Dec. 22, 1913.

40 Hudson County, N. J.
JOHN F. CROSBY, Clerk.

Order to Show Cause.

Filed Dec. 22, 1913.

Application therefor having been made to me within six days after the rendering of the verdict in the above stated cause; it is, on this tenth day of October, 1913, on motion of VREDENBURGH, WALL & CAREY, attorneys for the defendant, ORDERED that the above named plaintiff show cause before this Court on Friday, November seventh, 1913, at ten o'clock in the forenoon, at the Court House in Jersey City, why the verdict rendered in the above stated cause should not be set aside and a new trial granted. 10

AND IT IS FURTHER ORDERED, that the said defendant have leave to reserve its exceptions or objections noted by way of exception.

WM. H. SPEER,

Judge. 20

Filed Clerk's Office,

Dec. 22, 1913.

Hudson County, N. J.

JOHN F. CROSBY, Clerk.

Order Discharging Order to Show Cause.

Filed Dec. 22, 1913.

30

It appearing that a rule to show cause why the verdict rendered in the above stated action should not be set aside and a new trial granted, was granted on the tenth day of October, nineteen hundred and thirteen, and the matter now coming before the court on motion of VREDENBURGH, WALL & CAREY, Attorneys for defendant, on notice to and in the presence of QUEEN & STOUT, Attorneys for plaintiff, for an order to discharge the said rule 40

Order Discharging Order to Show Cause

to show cause and counsel for the respective parties having been heard and the court having considered the matter; and the said parties consenting thereto;

It is on this twenty-second day of December, nineteen hundred and thirteen, on motion of VREDENBURGH, WALL & CAREY, Attorneys for defendant, ORDERED AND ADJUDGED that the said rule to show cause granted on the tenth day of October, nineteen hundred and thirteen be and the same is hereby discharged but without giving any force or effect to the said rule to show cause by reason of this order and without prejudice to any of the rights of the said plaintiff.

WILLIAM H. SPEER,
Judge.

20 Filed Clerk's Office,
Dec. 22, 1913.
Hudson County, N. J.
JOHN F. CROSBY, Clerk.

Order Staying Execution.

Filed Dec. 23, 1913.

30 It appearing that judgment in favor of plaintiff and against defendant has been heretofore entered in the Hudson County Circuit Court in above stated cause; that execution has been issued thereon; and that notice of appeal to the New Jersey Supreme Court from the whole of said judgment has been served and filed—

IT IS THEREUPON ORDERED that said defendant-appellant have ten days from the date hereof within which file recognizance in error or appeal, pursuant to the statute, and that all further pro-

40

Order Staying Execution

ceedings under said execution be stayed until the further order of this court.

IT IS FURTHER ORDERED that uncertified copies of this ordered may be served upon the Sheriff of Hudson County and the attorneys for plaintiff.

Dated December 22, 1913.

F. J. SWAYZE,
J.

10

On Motion of

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

Filed Clerk's Office,

Dec. 23, 1913.

Hudson County, N. J.

JOHN F. CROSBY, Clerk.

20

Judgment.

This action was tried before JUDGE WILLIAM H. SPEER, with a jury at the Hudson Circuit, on September 29th, 1913.

This cause having been heard and submitted to the jury, they return their as follows: They say they find the defendant Guilty as in the plaintiff's complaint is charged upon it, and they assess the damages of the plaintiff on occasion of the premises at the sum of One thousand five hundred and Eighty-eight dollars and Ninety-five cents (\$1,588.95). 30

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of One thousand five hundred and Eighty-eight dollars and ninety-five cents (\$1,588.95) and his costs which I taxed at the sum of eighty-eight and thirty-four cents (\$88.34) making in the whole the sum of One 40

Judgment

thousand Six hundred and seventy-seven dollars
and Twenty-nine cents (\$1,677.29).

Judgment entered this October 4th, 1913.

WILLIAM H. SPEER,

Judge.

Judge.

(Seal.)

Attest:

10 JOHN F. CROSBY,
Clerk.

Return.

20 The answer of William H. Speer, *Esq.*, Judge of
the Circuit Court Holden in and for the County of
Hudson, and within named the record and pro-
ceedings of the plaint whereof mentioned is within
made with all things touching the same, I send to
the Justices of our Supreme Court of Judicature
at Trenton, N. J., at the day and year within con-
tained, in a certain appeal to this writ annexed as
within I am commanded.

WM. H. SPEER,
Judge.

Testimony.

HUDSON COUNTY CIRCUIT COURT.

CHARLES ALBRECHT

vs.

PENNSYLVANIA RAILROAD Co.

10

Tried Monday, September 29, 1913, before
SPEER, J. and a jury.

QUEEN & STOUT for the plaintiff.

VREDENBURGH, WALL & CAREY (Mr. Hart-
pence) for the defendant.

Mr. Hartpence: We have the same motion
with regard to lieve to file an amended answer 20
as we did in the case of Spada v. P. R. R.
Originally we pleaded the general defense and
also a special defense of a strike, which was
an excepted cause in the uniform bill of lad-
ing. We subsequently discovered that all the
bills were not uniform; therefore we desire to
amend our answer so as to plead not only
strike but causes beyond our control, etc. to
make it conform, which really we think is a
matter of verbiage rather than substantial 30
difference.

We also desire to plead the special defense
that no claim for loss or damage was made
by the plaintiffs within the time required by
the bills of lading.

(Amendment allowed.)

Mr. Stout: The plaintiff asks that the
replication originally filed to the answer then
on file stand as a replication to the amended
answer.

40

Motion to Amend Complaint

Mr. Hartpence: The defendant makes no objection to that.

Mr. Stout: We move to amend the complaint in the following particulars:

10 That the first count of the complaint be amended by inserting in the first paragraph of the first count after the word "watermelons", "in car ABA 20917;" insert in the first paragraph of the second count after the word "watermelons," "in car Sou. 32937;" insert in the first paragraph of the third count after the word "watermelons", "in car Sou. 25284;" insert in the first paragraph of the fourth count after the word "watermelons," "in car SAL 24096;" insert in the first paragraph of the fifth count after the word "watermelons", "in car SAL 23256;" insert
20 in the first paragraph of the sixth count after the word "watermelons," "in car SAL 15841;" insert in the first paragraph of the seventh count after the word "watermelons," "in car SAL 22453;" insert in the first paragraph of the eighth count after the word "watermelons," "in car Sou. 38162;" insert in the first paragraph of the 9th count after the word "watermelons," "in car Sou. 35039."

30 Mr. Hartpence: The defendant consents to all those amendments.

Mr. Stout: May it please the Court, depositions were taken in this case. The defendant has consented to waive formalities of notice and proof of the absence of witnesses. All that sort of thing is waived for the purposes of these depositions.

40 Mr. Hartpence: Yes; we consent to that.
(Mr. Stout reads the following deposition:)

Benjamin F. Clute, for Plaintiff—Direct

BENJAMIN F. CLUTE, sworn on behalf of the plaintiff, testified as follows:

Direct-examination by Mr. Stout:

Q. Where do you live? A. I live at 696 Elton avenue, the Bronx.

Q. Bronx where? A. New York City.

Q. How long have you lived there? A. About 10 fifteen years in the Bronx.

Q. Have you lived in New Jersey during the last fifteen years? A. No, sir.

Q. What is your business? A. Fruit and produce, mostly fruit.

Q. What do you have to do with fruit and produce in your business? A. Ship.

Q. Do you do anything else besides ship? A. Yes, I sell besides.

Q. Do you buy? A. Buy and sell, yes, sir. 20

Q. How long have you been engaged in this business of dealing in fruits? A. About thirty-five years.

Q. Where were you during the month of July, 1912? A. In Georgia.

Q. What were you doing there? A. Buying watermelons.

Q. For whom? A. For Charles Albrecht.

Q. What did you do with these melons after you purchased them for him? A. Shipped them to 30 Charles Albrecht, Henderson street, Jersey City, or rather ordered them to be shipped by the agent of the railroad company to him.

Q. I call your attention to car ABA No. 20917; do you remember that car? A. Yes sir, I do.

Q. Where did you purchase that car? A. I purchased that car in the little town of Pavo, Georgia, on the Georgia Northern.

Q. Do you know from whom you purchased that car of melons? A. From a gentleman by the name of Mr. Broome. 40

Benjamin F. Clute, for Plaintiff—Direct

Q. B-r-o-o-m-e? A. Yes sir, I believe that is the way he spells his name.

Q. When did you purchase that car? A. On the 11th day of July.

Q. What year? A. 1912.

Q. Did you supervise the loading of that car? A. I helped to load it.

10 Q. What was the quality of the melons that went into that car? A. They were selects.

Q. What do you mean by "selects"? A. Well, large sized melons.

Q. Does "select" mean anything else besides large size? A. Well, fresh.

Q. What was the condition of the melons that went into that car? A. All sound.

Q. Could you tell how long the melons had been picked? A. They were loaded that same day.

20 Q. Loaded the day they were picked? A. Yes, sir.

Q. Do you know how many melons went into that car? A. One thousand.

Q. Where was the car loaded? A. Right at the depot in Pavo, Ga.

Q. When this car was loaded with melons what did you do next? A. Ordered it to be shipped to Charles Albrecht, Henderson St., Jersey City.

30 Q. That book that you are using there to refresh your memory, was that made up at the time— A. This was made up at the time.

Q. —the car was loaded and ordered to be shipped? A. Yes, sir.

Q. You ordered this car, you say, to be shipped to Henderson St., Jersey City? A. Yes, sir.

Q. To whom did you give that order? A. To the agent.

Q. Agent where? A. At Pavo, Ga.

40 Q. What did you say to him? A. I asked him if he would ship that car to Charles Albrecht, Henderson St., Jersey City, and he said he would.

Benjamin F. Clute, for Plaintiff—Direct

Q. Did he give you this paper at the time (exhibiting to witness a paper)? Look at it carefully.

A. That is the bill of lading that he gave me.

Q. You don't know whether it is a bill of lading or not; it is the paper that he gave you? A. Yes.

Q. Did he call your attention to the conditions on this paper? A. He did not, sir. 10

Mr. Stout: I ask to have this paper marked for identification.

(The same is marked P-1 for identification.)

Mr. Stout: In order to shorten the time in this case we are going to offer these bills of lading in evidence as what they are, not offering them as binding contracts unless the proof so determines. I might also call Your Honor's attention to the fact that further on in the depositions the right is saved to offer these bills of lading in evidence. 20

Q. Did you at that time know the conditions endorsed on this paper marked P-1?

Mr. Hartpence: I object as irrelevant, incompetent and immaterial.

The Court: I will admit it.

A. No sir, I did not.

Q. Did you read this paper marked P-1 at that time? 30

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

The Court: It will be admitted.

A. No sir, I did not.

Q. Did you know at the time this paper marked P-1 was handed to you that there was a strike on of the employes of the Pennsylvania Railroad? 40

Benjamin F. Clute, for Plaintiff—Direct

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

The Court: I will admit that.

A. I did not.

Q. The freight agent did not say anything to you about a strike? A. Not a word.

10 The Court: I admit that, of course, Mr. Hartpence, as tending to show that at the time the shipment was made there could by no possibility have been contributory negligence on the part of the plaintiff in having shipped them under the circumstances if there had been to his knowledge a strike pending. I think all the cases hold that such evidence is clearly admissible, and it is for that ground that I let the last statement in.

20 Mr. Hartpence: Without the formal noting of the objection each time, may it be understood that our objection is noted, or do you wish me to note a formal objection each time?

The Court: Do you mean with respect to a line of testimony or with respect to each particular question?

Mr. Hartpence: With respect to each particular objection that we make.

30 The Court: I think you would better make the objection.

Mr. Hartpence: I mean to note the objection to each particular ruling.

The Court: Oh! That is noted on the record, and that preserves your rights.

Q. The freight agent did not say anything to you about a strike? A. Not a word.

Q. If melons are in the condition that the
40 melons were that were placed in car 20917, how

Benjamin F. Clute, for Plaintiff—Direct

long will they keep in transportation without rotting, during the month of the year when these melons were shipped?

Mr. Hartpence: I object as incompetent, irrelevant and immaterial.

The Court: What is the precise point of your objection, Mr. Hartpence? I do not quite see why it is irrelevant and immaterial. One 10 of the questions in the case is whether these melons were destroyed because of damage arising proximately from delay in delivery. Now it would seem to be a relevant question on that issue.

Mr. Hartpence: The thought that we had in mind in interposing that objection was that the defendant in this suit admittedly is charged with the custody of the melons only from Edgemoor, Delaware, to Jersey City, and 20 this question went to things which occurred prior to the time that they took possession and was so broad in its form as to perhaps impose upon us some liability for which we ought not to answer.

The Court: Still the other side would be entitled to show that under reasonable time in transportation the melons would have been good.

They have a right to show that, so I think 30 I will admit the question.

A. Four or five days.

Q. Now, Mr. Clute, I call your attention to car Sou. 35039; did you purchase the melons contained in that car?

Mr. Hartpence: Objected to on the ground that there is no testimony that there were any melons in the car at that point.

It is rather superficial in the light of the subsequent examination.

Benjamin F. Clute, for Plaintiff—Direct

The Court: If you insist upon the objection I will sustain it, because it does contain an unwarranted assumption of fact, that there were melons in the car. If, however, it appears later that there were melons in the car and that he talked about it, I suppose the objection would be of no particular substance. If
 10 you insist upon it I will sustain the objection.
 • Mr. Hartpence: We insist on it.
 The Court: I will sustain it.

Q. What were you doing on the 16th of July, 1912? A. Buying watermelons for Charles Albrecht.

Q. Where? A. In South Carolina.

Q. You bought watermelons on that day? A. Yes sir, I did.

20 Q. At what place? A. You are talking about 35039?

Q. Yes. A. I purchased that car from Mr. Ziegler, I think his name is.

Q. For whom did you purchase those melons? A. For Charles Albrecht.

Q. Did you supervise the loading of the car? A. Not all of it.

Q. Did you examine the melons in the car? A. I did, sir.

30 Q. What was their quality? A. Fresh and selects.

Q. And what was their condition? A. Sound.

Q. Do you know how many melons were put in this car? A. Nine hundred and seventy-five.

Q. Where was this car loaded? A. This car was loaded about a mile and a half from Allendale village, on the Southern road.

Q. Was it at Barlow, or don't you know the place of shipment? A. I don't know the place of shipment, I know it is a mile and a half from
 40 Allendale village, about.

Benjamin F. Clute, for Plaintiff—Direct

Q. After this car was loaded what did you do next? A. Ordered it to be shipped to Charles Albrecht, Henderson St., Jersey City.

Q. To whom did you give the order? A. To the agent at Allendale.

Q. Are you sure that that was shipped from Allendale? A. I gave the order from there.

Q. At the time that you gave the order did you 10 receive this paper from the freight agent (showing witness paper)? A. Mr. Ziegler brought this down to me from the conductor. I think he brought it from the conductor.

Mr. Stout: I ask to have this paper marked for identification.

(The same is marked "P-2 for identification".)

Q. At the time— A. (continuing) Excuse me, 20 Mr. Stout; I am not certain but I think he brought that down from the conductor; I couldn't go up there and attend to it myself and the conductor was to pick that car up along the road that night.

Q. At the time you gave the order to the freight agent to ship this car did he say anything to you about any strike of the employees of the Pennsylvania Railroad?

Mr. Hartpence: Objected to as irrelevant, 30 incompetent and immaterial.

The Court: I will permit it.

Mr. Stout: I offer the bill of lading in evidence.

The Court: Do you object to these bills of lading?

Mr. Hartpence: No, sir.

The Court: Why not put them all in?

Mr. Hartpence: We do not object to the admission of Exhibits P-1 to P-9 for identification.

Benjamin F. Clute, for Plaintiff—Direct

The Court: Very well, they may be marked in evidence.

(Papers marked P-1 to P-9 for identification by the Referee, marked in evidence P-1 to P-9 respectively.)

10 A. No sir, there was nothing said to me about any strike.

Q. At the time this paper, marked exhibit P-2, was handed to you were the conditions endorsed on it called to your attention?

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

The Court: I will permit it.

A. No sir, my attention wasn't called to anything on the back of it.

20 Q. Did you read this paper marked exhibit P-2 when it was handed to you?

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

30 The Court: I think, in order to state once and for all the reason why I rule on these objections as I do rule, it is that the whole attitude of mind of the party receiving the paper with respect to the paper at the time he received it, the matters that were called to his attention with respect to it and his entire knowledge and conduct with respect to it are admissible in evidence on the issue as to whether he did or did not know, or ought or ought not to have known, what was in the paper; and it is for that reason that I overrule the objections heretofore overruled with respect to these papers and it is for that reason that I do overrule them in the future when I do overrule them.

40 A. No, sir.

Benjamin F. Clute, for Plaintiff—Direct

Q. I call your attention to car SAL No. 22453. What were you doing on July 16, 1912? A. Buying watermelons for Charles Albrecht.

Q. Where? A. South Carolina, Allendale.

Q. Did you buy a carload of melons on that day? A. On the 16th? Yes, I did.

Q. From whom did you buy them? A. I bought that off of Mr. Weekley. 10

Q. W-e-e-k-l-e-y? A. Yes, I think that is the way he spells his name.

Q. Were the watermelons that you purchased from Mr. Weekley contained in this car No. 22453? A. Yes, they were.

Q. For whom did you purchase those melons? A. Charles Albrecht.

Q. Did you see this car loaded? A. Yes sir, I did.

Q. What was the quality of the melons in this car? A. It was selects and fresh and in good condition. 20

Q. Do you know how many melons were put in this car? A. Nine hundred and seventy-five.

Q. Where was this car loaded? A. It was loaded at Ulmers, South Carolina.

Q. Do you know the name of the initial carrier? A. No sir, I haven't got it down here.

Q. After this car was loaded what did you do next? A. Ordered it to be shipped by the freight agent to Charles Albrecht, Henderson St., Jersey City. 30

Q. That was on the day that the car was loaded? A. On the day the car was loaded.

Q. Did you have any conversation further than that with the freight agent about the shipment of this car? A. No other conversation with him.

Q. At the time you ordered this car to be shipped did you receive this paper from the freight agent (showing paper to witness)? A. I did, sir. 40

Benjamin F. Clute, for Plaintiff—Direct

Mr. Stout: I ask to have that paper marked for identification.

(The same is marked "P-3 for Identification".)

Q. Did you examine this paper marked exhibit P-3 when it was handed to you?

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

The Court: All right; for the reasons that I stated before I overrule the objection and admit the paper.

A. I did not, sir.

Q. Were the conditions endorsed on the back of this paper marked P-3 called to your attention by the freight agent?

20 Mr. Hartpence: I object as irrelevant, incompetent and immaterial.

The Court: I will permit it to go in.

A. It was not, sir.

Q. Did you know what this paper, marked P-3, contained?

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

30 The Court: The objection is overruled and the question admitted.

A. I did not, sir.

Q. Did you know at the time this shipment was made and this paper, exhibit P-3, was handed to you that there was a strike among the employees of the Pennsylvania Railroad?

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

The Court: I will admit that for the reasons stated when I admitted the previous similar question.

40

Benjamin F. Clute, for Plaintiff—Direct

A. I did not, sir.

Q. I call your attention to car SAL 15841; do you know what that car contained? A. It contained watermelons.

Q. Do you know where those watermelons came from? A. They weren't far from the station.

Q. I mean, what were you doing on the day this car was loaded with melons? A. Why, I bought 10 this car of melons.

Q. You bought it? A. Yes, sir.

Q. On what day did you buy it? A. Bought it on the 16th.

Q. 16th of July, 1912? A. Yes, sir.

Q. Do you know from whom you bought it? A. From Mr. Weekley.

Q. For whom did you purchase it? A. For Charles Albrecht.

Q. Did you see the car loaded? A. Yes sir, I 20 did.

Q. What was the quality? A. The quality was selects and fresh.

Q. Do you know how many melons were contained in this car? A. In car 15841?

Q. Yes. A. Nine hundred melons.

Q. Where was this car loaded? A. At Ulmers, South Carolina.

Q. When was it loaded? A. Loaded on the 30 15th. I purchased it on the 16th.

Q. That is, of July, 1912? A. Yes, sir.

Q. Do you know the name of the initial carrier? A. No, I haven't got that down here.

Q. After this car was loaded what did you do next? A. Ordered it to be shipped to Charles Albrecht.

Q. Where? A. Henderson street, Jersey City.

Q. To whom did you give that order? A. To the agent.

Q. Freight agent? A. Freight agent at Ulmers. 40

Benjamin F. Clute, for Plaintiff—Direct

Q. Did you receive this paper at the time you gave the order to the freight agent? A. I did sir; my name is signed there.

Mr. Stout: I ask to have this marked for identification.

(The same is marked "P-4 for identification".)

10

Q. At the time this paper, marked exhibit P-4, was handed to you did the freight agent call to your attention the conditions endorsed on the back of it?

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

The Court: Objection overruled and the question is permitted.

20 A. He did not, sir.

Q. Did you read this paper marked exhibit P-4 before you signed it?

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

The Court: Objection overruled.

A. No, sir.

Q. Did you know the conditions contained in this paper marked exhibit P-4 at that time?

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

The Court: Do you contend, Mr. Hartpence, that if he had said "Yes" that the answer would have been irrelevant, incompetent and immaterial?

40 Mr. Hartpence: No, sir; the basis of our objection on the ground of irrelevancy, incompetency and immateriality is that the mere acceptance of the bill of lading by the shipper at the time of the shipment binds him to its

Benjamin F. Clute, for Plaintiff—Direct

contents regardless of whether or not the conditions were called to his attention or any specific situation was discussed under them or not.

The Court: That flies directly against Hill vs. U. S. Express Co., 53 Vroom, where the Court of Appeals says that while presumptively it will effectively bind him, still at the 10 same time it is not conclusive upon him, and that the other party may show the contrary.

Mr. Hartpence: We understand that, but our further contention is, of course, that the case of Hill against the Express Company does not apply to these shipments.

The Court: And the reason for that is that you think the Interstate Commerce Act of the United States applies and renders the Hill case inapplicable? 20

Mr. Hartpence: Yes.

The Court: Now that we have the whole reason out, I adhere to my ruling. I think the Hill case does apply.

A. I did not.

The Court: At any rate, Mr. Hartpence, the Hill case applies at present, because there is absolutely nothing to militate against it, and I am admitting the evidence at present. Of 30 course I must deal with the situation as it develops. Manifestly your objection as you state it is bad now, so I overrule the objection.

Q. Did you know at the time this paper marked exhibit P-4 was handed to you that there was a strike among the employes of the Pennsylvania Railroad?

Mr. Hartpence: Objected to as irrelevant, incompetent and immaterial. 40

Benjamin F. Clute, for Plaintiff—Direct

The Court: I will admit all that line of testimony, Mr. Hartpence. You may have a general exception to the admission of such testimony at this stage of the case.

Mr. Hartpence: It is the same form of objection on each count.

10 The Court: Well, I will rule in advance that your objections to all testimony on this phase of the case, before any evidence is interposed, are overruled and you may have a general exception on the record.

A. I did not, sir.

Q. I call your attention to car SAL 23256; what did that car contain, if anything? A. 950 water-melons.

20 Q. Did you purchase the melons contained in that car? A. I purchased the carload of melons.

Q. I did not ask you that; did you purchase the melons that were contained in this car 23,256?

A. Yes, sir, I did.

Q. Where did you purchase that? A. At the same place, Ulmers, South Carolina.

Q. And from whom? A. From Mr. Weekley.

Q. For whom did you purchase those melons?

A. For Charles Albrecht.

30 Q. Did you see this car of melons loaded? A. I did, sir.

Q. What was the condition of these melons?

A. They were selects and in elegant condition.

Q. Do you know how many melons were put in this car? A. 950.

Q. Now, when were these melons purchased?

A. On the 16th of July, 1912.

Q. Where was the car loaded? A. Right on the track.

Q. Track where? A. At Ulmers.

40 Q. After this car was loaded what next did you

Benjamin F. Clute, for Plaintiff—Direct

do? A. Ordered it to be shipped to Charles Albrecht, Henderson street, Jersey City.

Q. To whom did you give that order? A. To the freight agent.

Q. Where? A. At Ulmers.

Q. At the time you gave this order to the freight agent did you receive this paper (exhibiting to witness a paper)? A. I did, sir. 10

Mr. Stout: I ask to have that marked for identification.

(The same is marked P-5 for identification.)

Q. Did you read this paper marked exhibit P-5 for identification before you signed your name?

A. I did not, sir.

Q. Were the conditions endorsed on the back of this paper marked exhibit P-5 called to your attention by the freight agent before you signed it? 20

A. No, sir.

Q. Did you know what this paper contained when you signed it? A. I did not, sir.

Q. Did you know, at the time this paper marked exhibit P-5 was handed to you by the freight agent, that there was a strike among the employees of the Pennsylvania Railroad? A. I did not, sir.

Q. I call your attention to car Sou 38162; what did that car contain on the 17th day of July, 1912, if you know? A. One thousand select watermelons and fresh. 30

Q. Did you purchase the melons contained in this car No. Sou 38162? A. Yes, sir, I did.

Q. From whom did you purchase them? A. From Mr. Stoney.

Q. How do you know it is Mr. Stoney? A. He is in Allendale. I helped to load that car myself.

Q. Where were these melons loaded? A. Right in Allendale village. 40

Benjamin F. Clute, for Plaintiff—Direct

Q. For whom did you purchase those melons?
A. For Charles Albrecht.

Q. Did you say that you saw the car loaded yourself? A. I did, sir, and helped to load some of them myself.

Q. You say there were a thousand melons in this car? A. One thousand melons in that car.

10 Q. Do you know the name of the initial carrier?
A. I do not, sir.

Q. After this car was loaded what did you do next? A. Order it to be shipped by the agent of Allendale depot.

Q. Shipped where? A. To Henderson street, Jersey City.

Q. You gave that order to the freight agent at Allendale, South Carolina, did you? A. I did, sir.

20 Q. And did you receive this paper at the time you gave the order (showing paper to witness)?
A. I did, sir.

Mr. Stout: I ask to have it marked for identification.

(The same is marked P-6 for identification.)

30 Q. At the time this paper, marked exhibit P-6 for identification was handed to you by the freight agent did he call to your attention the conditions endorsed on the back of it? A. He did not, sir.

Q. Did you know what the paper contained?
A. I did not.

Q. Did you know at the time you received this paper marked exhibit P-6 that there was a strike among the employes of the Pennsylvania Railroad? A. I did not, sir.

Q. I call your attention now to car Sou 25284; do you know what that car contained on July 18,
40 1912? A. 925 watermelons.

Benjamin F. Clute, for Plaintiff—Direct

Q. What was the condition of those melons on July 18, 1912? A. They were fresh and in elegant condition.

Q. What was their quality? A. Selects.

Q. Did you purchase the melons contained in that car? A. I did, sir.

Q. Where did you purchase them? A. At a place called Kline, South Carolina. 10

Q. From whom did you purchase them? A. From a gentleman by the name of Boynton, I think.

Q. For whom did you purchase them? A. For Charles Albrecht.

Q. Did you see this car of melons loaded? A. I did, sir.

Q. How many melons did you say were contained in this car? A. 925 watermelons.

Q. Where was the car loaded? A. At Kline, S. C. 20

Q. After this car was loaded what next did you do? A. Well, these two was all together.

Q. Take this one first and we will talk about the other one later. What did you do after this car was loaded; did you go to the freight agent?

A. Well, I got the two bills of lading at once, Mr. Stout.

Q. All right, but you can testify to one at a time, can't you? A. Yes, I can do that. I didn't go to the freight agent until I got both of them. 30

Q. What did you do next? A. Went to the freight agent and ordered them to be shipped to Charles Albrecht, Henderson street, Jersey City.

Q. This car and another car? A. This car and another car, yes.

Q. You gave that order to the freight agent at Kline, S. C.? A. I did, sir.

Q. And did you receive this paper from the freight agent (showing paper to witness)? A. Yes, sir, I did. That is his signature on there. 40

Benjamin F. Clute, for Plaintiff—Direct

Mr. Stout: I ask to have it marked for identification.

(The same is marked P-7 for identification.)

10 Q. At the time this paper marked Exhibit P-7 for identification was handed to you by the freight agent did he call your attention to the conditions endorsed thereon? A. He did not, sir.

Q. Did you know the conditions contained in this paper marked Exhibit P-7 when it was handed to you? A. I did not, sir.

Q. Do you know what this paper marked Exhibit P-7 contains? A. No, sir, I do not.

20 Q. Did you know at the time this paper marked Exhibit P-7 was handed to you that there was a strike among the employes of the Pennsylvania Railroad? A. I did not, sir.

Q. The freight agent at Kline, S. C., did not tell you that there was a strike among the employes of the Pennsylvania Railroad at the time this paper marked Exhibit P-7 was handed to you? A. No, sir.

30 Q. I call your attention to car Sou 32937; do you know what that car contained on the 18th day of July, 1912? A. (Referring to memorandum book) I don't know whether this is a 9 or 8; I think it is 950.

Q. Go to the light if you can't see it. A. (The witness goes to the light) Nine hundred and fifty.

Q. It contained 950 what? A. Selects and fresh watermelons.

Q. Did you purchase the watermelons contained in that car? A. I did, sir.

Q. From whom did you purchase them? A. From the same gentleman I did the car above that.

Q. Mr. Boynton? A. Yes, sir.

40 Q. For whom did you purchase those melons? A. Charles Albrecht.

Benjamin F. Clute, for Plaintiff—Direct

Q. This car was purchased at the same time as car Sou. 25284 was purchased? A. Yes, sir, I think it was.

Q. Did you see this car Sou. 32937 loaded? A. I did, sir.

Q. Where was this car loaded? A. Loaded at Kline, S. C.

Q. After this car was loaded what next did you do? A. I ordered it to be shipped by the agent.

Q. Where? A. At Kline, S. C.

Q. To where? A. Henderson St., Jersey City, Charles Albrecht.

Q. Did you receive this paper at the time you gave the order to the freight agent to ship this car? A. I did, sir.

Mr. Stout: I ask to have the paper marked for identification.

(Same is marked Exhibit P-8 for identification.)

Q. Were the conditions endorsed on this paper marked Exhibit P-8 called to your attention by the freight agent at the time you received it? A. No, sir, it was not.

Q. Did you know what it contained. A. I did not, sir.

Q. Did you know, at the time this paper marked Exhibit P-8 was handed to you, that there was a strike among the employes of the Pennsylvania Railroad? A. No, sir, I did not.

Q. I call your attention to car SAL 24096; what did that car contain on July 18, 1912? A. 950 watermelons, fancy selects and fresh.

Q. Did you purchase the melons that went into that car? A. I did, sir.

Q. From whom? A. From Brant & Wilkinson.

Q. For whom did you purchase them? A. For Charles Albrecht.

Benjamin F. Clute, for Plaintiff—Direct

Q. Did you see this car loaded? A. I did, sir; helped to load some of it myself.

Q. Do you know how many melons were contained in this car? A. 950.

Q. Where was this car loaded? A. This car was loaded at Ulmers, S. C.

10 Q. After this car was loaded what next did you do? A. Ordered it to be shipped to Charles Albrecht, Henderson St., Jersey City, by the agent at Ulmers.

Q. At the time you gave the order to the freight agent at Ulmers did you receive this paper (exhibiting paper to the witness)? A. I did, sir; I signed it.

Mr. Stout: I ask to have this paper marked for identification.

20 (The same is marked Exhibit P-9 for identification.)

Q. Were the conditions endorsed on the back of this paper marked Exhibit P-9 called to your attention before you signed it? A. No, sir.

Q. Did you know the conditions endorsed on the back of this paper? A. I did not, sir.

30 Q. Did you know, at the time this paper was handed to you, that there was a strike among the employes of the Pennsylvania Railroad? A. No, sir, I did not.

Q. Were all of these cars that you have testified about delivered to the initial carrier for shipment on the day the bill of lading bears date? A. Yes, it was to go out that night of the day I ordered it to be shipped.

Q. Was that on the day that you purchased them? A. Yes, sir, on the day that I purchased them.

40 Q. Charles Albrecht, that you have named in your testimony is the plaintiff in this suit against the Pennsylvania Railroad? A. Yes, sir.

Benjamin F. Clute, for Plaintiff—Cross

Q. Mr. Clute, beginning now with car ABA 20917, the first car, when was that car ordered to be shipped? A. On the 11th of July, 1912.

Q. When was Sou. 35039 ordered to be shipped? A. On the 16th of July, 1912.

Q. That was when you gave the order to the freight agent? A. Yes, sir.

Q. When was car SAL 22453 ordered to be 10 shipped? A. July 16, 1912.

Q. That is when you gave the order to the freight agent at Ulmers? A. Yes.

Q. When was car SAL 15841 ordered to be shipped? A. July 16, 1912.

Q. That was the date you gave the order to the freight agent at Ulmers, S. C., to ship it? A. Yes, sir.

Q. When did you give the order to the freight agent at Ulmers, S. C., to ship car SAL 23256? 20 A. July 16, 1912.

Q. When did you give the order to the freight agent at Allendale, S. C., to ship car Sou 38162? A. On the 17th of July, 1912.

Q. When did you give the order to the freight agent at Kline, S. C., to ship car Sou 25284? A. July 18, 1912.

Q. When did you give the order to the freight agent at Kline, S. C., to ship car Sou 32937? 30 A. July 18, 1912.

Q. When did you give the order to the freight agent at Ulmers, S. C., to ship car SAL 24096? A. July 18, 1912.

Cross-examination by Mr. Hartpence (Read by Mr. Hartpence):

Mr. Hartpence: Were you going to offer your freight bills?

Mr. Stout: No, I was not going to offer 40

Benjamin F. Clute, for Plaintiff—Cross

them; simply had them marked for identification.

Mr. Hartpence: How can you offer evidence when my opportunity for cross-examining this witness is gone?

10 Mr. Stout: I don't see why you can't cross-examine how now on the facts he has testified to. I think that is permissible, and if later on I offer them in evidence, why your testimony stands in reference to them.

Mr. Hartpence: Well, all right.

Q. Mr. Clute, how did you come to be down in Georgia and purchase that car ABA 20917? A. I went down there for Charles Albrecht, as his agent.

20 Q. For the purpose of doing what? A. Buying watermelons.

Q. And that car ABA 20917 was purchased by you as his agent, in pursuance of that authority which he gave you? A. Yes, sir.

Q. How much of that car did you help load? A. I don't know; I can't say—a great many of them, sure.

Q. When did you first see the melons that were loaded in that car? A. The day that I purchased the car.

30 Q. How long before you finished loading the car was it when you first saw them? A. I stayed there until the car was finished loading.

Q. Well, where were the melons when you first saw them? A. In the car.

Q. Oh, you purchased them as they stood in the car? A. No, sir, I purchased them as they were being put in the car, after the balance was in the car.

40 Q. Where were those that weren't in the car when you purchased them? A. Drawn from the patch to the car.

Benjamin F. Clute, for Plaintiff—Cross

Q. And where did you first see them? A. In the car and in the wagons.

Q. Well, did you see any in the patch? A. No, sir, I did not.

Q. How far away from the car was the patch? A. Oh, I should judge about a mile and a half or two miles, as near as I can judge.

Q. And the first you saw of them, was when they came up to the car in wagons; is that correct? 10

A. Saw them in the car and being loaded out of the wagons into the car, both.

Q. Put when you first saw those melons it was right there at the car? A. Saw them taken out of the wagons and loaded into the car.

Q. You didn't see them over in the patch or over in the country? A. No, they were drawn from the patch to the car in wagons.

Q. Now, the others had already been placed in the car when you saw them? A. Yes, but I saw them. 20

Q. How long before you saw them had they been placed in the car? A. That morning, I suppose.

Q. Do you know? A. Do I know they were loaded in that car that morning?

Q. Yes. A. I do, sir.

Q. How do you know? A. By the freshness of them.

Q. You did not see them loaded? A. If you will allow me to explain: They don't load watermelons two or three days ahead. 30

Q. Did you see them loaded in the car? A. I saw them loaded in the car, yes, sir—I saw them loaded in the car.

Q. All of them? A. Not all of them.

Q. Well, how about those that were in the car at the time you first saw them? A. I saw those that were loaded in the car and I saw the balance that was loaded in the car also. 40

Benjamin F. Clute, for Plaintiff—Cross

Q. Yes, but you didn't see those that were loaded in the car before they were put there?

A. I saw them in the car afterwards.

Q. You don't know how long before that they had been placed in there? A. They were placed in there that morning, up until the car was full.

Q. How do you know that? A. By the freshness of the melons.

Q. That is the only way you know? A. That is the only way I know.

Q. You didn't see them put in? A. I tell you I saw the biggest part of them put in—saw the majority of the melons put in the car.

Q. But those that you didn't see put in the car—those that were already in the car when you first saw them—you don't know when they were put there, of your own knowledge? A. I examined them and they were fresh and in good condition; they wasn't put in there until that morning.

Q. That is the only reason you are able to say that, from your examination of them? A. Yes.

Q. You didn't see them put in, did you? A. No, but I examined them.

Q. How did you examine them? A. Why, with my two eyes and hands.

Q. Did you look at every one of them? A. Don't have to look at all the watermelons; you can look down from one tier into the other and examine the stems of them—the butt ends and the tops.

Q. That is the way you examined them? A. Yes, sir.

Q. After they were loaded in the car in tiers and only one melon to a tier? A. Four tiers.

Q. Yes, and how many melons in each tier?

Mr. Stout: In depth, he means.

A. They would run eight and nine, eight and eight and so on.

Benjamin F. Clute, for Plaintiff—Cross

Q. In each tier? A. In a row.

Q. No, I don't mean that; I mean as the melons are placed in these four tiers how many are piled one upon another in each tier? A. Well, they pile them in rows, in rotation, and they run eight and nine in a tier and there are four tiers.

Q. And do they pile more than one melon deep in each tier? A. Yes, they pile more than one. 10

Q. How many? A. Eight or nine; they don't pile them on top of one another.

Q. That isn't the question I asked you— A. I tell you they pile eight and nine in a row.

Q. Yes, you have told me that eight or nine times and I have learnt it by heart. Here's what I'm getting at, Mr. Clute: You say they are loaded in four tiers? A. There's a shelf right here (indicating); I will explain it to you: Here's a row of melons at the bottom here and there are four tiers—four melons on top of one another. There is one melon on a tier and four tiers. 20

Q. How do you determine that a melon is sound? A. By the looks of it.

Q. Can you tell by looking at the outside of a melon what its condition inside is? A. I had ought to.

Q. What is your method of determining whether or not they are fresh when you look at them? A. Well, I can tell whether they come from the vine to-day or the next day. 30

Q. How do you do it? A. By the stem and by the color of the melon.

Q. What is the color of the stem of a melon? A. The stem is green when it is fresh.

Q. What color is it when it isn't fresh? A. It is brown.

Q. How long does it take for the stem to turn from that fresh green color to the brown? A. Four or five days. It first turns yellow and then brown. 40

Benjamin F. Clute, for Plaintiff—Cross

Q. How do you know that the melons in that car were picked the same day that you purchased them? A. How do I know? When a melon is drawn from the patch in a wagon I know it is drawn from the patch; it isn't taken from any other place.

10 Q. You did not see these melons picked, did you? A. No, sir, but they don't draw a melon to the car except they pick it from the patch.

Q. It is merely your judgment, then, that they were picked that same day because of a custom?

A. From what I saw I know that they were drawn from the patch and loaded that day.

Q. Could you see a mile and a half from the car? A. No, sir, I could not, but I know they are not going to draw any melons to load in a car except it is picked from the patch that day.

20 Q. Suppose, as a matter of fact, they did, how would you have known it? A. By the color of them.

Q. You can tell by the color just how long they have been picked? A. Yes; they first turn yellow.

Q. What would be the color of the stem if they were picked two days? A. It wouldn't be as green as the first day they were picked; it would be brown.

30 Q. What would be the color of the stem if they had been picked a half a day before you saw them? A. Half a day?

Q. Yes. A. Pretty near the same as when they were picked; wouldn't be very much difference—only a shade different.

Q. And it is possible, you say, for you to determine just how long a melon has been picked by looking at the color of the stem; is that true?

40 A. If a melon is loaded to-day from the patch—cut fresh and loaded into the car from the patch, the stems are green.

Benjamin F. Clute, for Plaintiff—Cross

Q. But so far as your personal knowledge and observation are concerned you don't know whether they were picked that day or several days before, do you? A. I am positive that they were picked that day.

Q. But simply from your examination of the melon? A. That is sufficient for me; I can tell by examining the melons. 10

Q. What kind of a car was car ABA 20917? A. It was a car that had a vent in the side and each end, I think. Georgia Northern, I think the car was.

Q. Did you order the car? A. The car was there loading.

Q. When you bought it? A. Yes, sir, started to load that morning.

Q. What sort of a car was it? A. Well, it was a vent car on both sides, as I just mentioned, and 20 a vent on each end.

Q. Was it a refrigerator car? A. No, sir, it was not; they don't load any refrigerator cars.

Q. How soon after you purchased the car did you deliver it to the agent at Pavo? A. That afternoon.

Q. What time of the day was it? A. I couldn't say; it was that afternoon.

Q. What do you mean by "selects"? A. The first choice from the patch. 30

Q. The first choice why? A. Of melons.

Q. Why first choice, on account of their size, appearance, or what? A. Size and quality.

Q. You think those melons should have kept in good condition four or five days after you purchased them? A. Yes, sir.

Q. Would they have kept that long right there at Pavo, Georgia? A. Yes, sir.

Q. Did you see the car completely loaded? A. I did, sir, and helped to close the door. 40

Benjamin F. Clute, for Plaintiff—Cross

Q. How soon after that was it delivered to the agent at Pavo, Ga.? A. That I couldn't say; just as soon as I had time I delivered it to the freight agent, after I got through talking with the gentleman that I purchased it from.

Q. How near were you to the freight agent at that time? A. Oh, about a quarter of a block.

10 Q. Did you receive back from the agent at that time this paper marked P-1 for identification? A. I did, sir.

Q. How long have you been shipping fruit in this way, Mr. Clute? A. From the South?

Q. Yes. A. About two years.

Q. Have you ever shipped from that same place before, Pavo, Ga.? A. No, sir, I did not.

Q. Anywhere in that section? A. No, sir.

Q. That was your first experience, was it? A. 20 Yes, sir.

Q. How long have you been purchasing and shipping fruit? A. From the South?

Q. From any point, by railroad? A. Oh, off and on about eight or ten years, I guess.

Q. And when you make those shipments you always receive back a paper, do you not, a shipping receipt or bill of lading, from the company?

Mr. Stout: I have entered an objection, but I withdraw it.

30

A. Yes, sir; I do.

Q. And you are familiar with the fact that those bills of lading always contain certain conditions and terms of shipment, are you not, Mr. Clute?

A. No, sir, I am not.

Q. Don't you ever examine those shipping receipts? A. I do not, sir.

Q. All the time you have been shipping by railroad you receive these pieces of paper and never 40 examine them? A. Never examine them.

Benjamin F. Clute, for Plaintiff—Cross

Q. You can read, can you not, Mr. Clute?

A. Very little.

Q. You can read, however, can you not? A. Well, not much of any account. My experience is more in the line of business than anything else—in buying.

Q. You mean to say that you cannot read?

A. Very little.

10

Q. Have you had any difficulty in reading from your memorandum book this morning? A. These are figures.

Q. Figures that you made yourself? A. That I had, yes.

Q. Did you make that memorandum yourself that you have testified from? A. No, sir, I did not.

Q. Who made it? A. A gentleman friend of mine in South Carolina.

20

Q. And you are reading his writing? A. Gentleman friend in Georgia, I should say.

Q. (By Mr. Stout) They were made in your presence, were they? A. They were made in my presence.

Q. You are reading from his memorandum, are you? A. Yes, sir, from my own memorandum, made in my presence.

Q. And the testimony that you have given here in regard to this car ABA 20917 has been from that memorandum? A. No, it is from my own eyesight.

30

Q. You have used that memorandum, have you not, continually during the giving of your testimony? A. Not altogether, no, sir.

Q. But you have used it in your testimony? A. Yes.

Q. And you have refreshed your memory by the use of that memorandum? A. Yes, I had to have something to refresh my memory from.

40

Benjamin F. Clute, for Plaintiff—Cross

Q. And you have read that memorandum without difficulty, haven't you? A. Well, I can read figures, yes, but it is a little bit difficult with my eyesight; my eyesight is poor.

Q. You don't mean to say you cannot read or write? A. I can sign my name.

Q. Is that all you can do? A. I can't do much
10 more.

Q. How much more can you do? A. Well, I told you just now that I couldn't.

Q. Do you ever write any letters in your business? A. No, sir.

Q. Never? A. No, sir, always employ a book-keeper.

Q. Do you ever read any letters that come to you in your business? A. No, sir.

Q. How do you ascertain the contents of any
20 letters you receive? A. Have a personal friend of mine, if I think they are honest enough, to do it for me.

Q. All of your letters are read to you, are they? A. Yes, sir.

Q. Do you ever read a newspaper? A. No, sir.

Q. At the time you received Exhibit P-1 for Identification from the agent at Pavo, Ga., did you tell him that you couldn't read? A. No, sir, I did not.

30 Q. As a matter of fact, you could have read it if you had tried, could you not? A. No.

Q. Why? A. Because I couldn't read it.

Q. It was plainly printed, was it not? A. My eyesight was poor.

Q. How do you know that you purchased car ABA 20917 at Pavo, Ga., on July 11, 1912? A. I paid for it.

Q. How do you know it was car ABA 20917, is the question. A. The car was put down in this book; I brought a slip of paper and had it with me
40 and had it put down on that paper.

Benjamin F. Clute, for Plaintiff—Cross

Q. And your ability to state that it was car ABA 20917 this morning is based upon your ability to read that from your memorandum book, isn't it? A. I know that is the car number.

Q. And you know that from the memorandum? A. I got that outside of the memorandum.

Q. Didn't you use the memorandum at all to state the number and the initials of the car? A. I 10 believe I did.

Q. How many melons were in that car ABA 20917, without looking at your memorandum?

A. Nine hundred and fifty.

Q. Now look at your memorandum and refresh your recollection. A. No, one thousand was in this car.

Q. And you state that after reading your memorandum? A. Well, I have to read this because I have it put down here. I can't remember 20 a thing that I purchased, you understand, if I don't have it in the book that I could fetch home for the man that I was buying stuff for. He wants to know where his money goes and he has got to have it down in this book.

Q. And that is the reason that you know how many melons are in the car? A. Yes.

Q. And it isn't because you carry that in your memory? A. Perhaps sometimes I can carry it 30 in my memory for a day.

Q. But you haven't carried all these figures in your memory up to the present time? A. No. I have it in the book.

Q. And the reason why you can state these figures is because they are in that book? A. It was put down in the book when I bought the car. I ain't going to buy a car and then wait a week; I'm going to put it down that same day.

Q. Now, without referring to your memorandum, from whom did you purchase car ABA 40

Benjamin F. Clute, for Plaintiff—Cross

20917? A. From Mr. Broome, and I ate a good dinner with him, too.

Q. You remember that part of it, don't you, Mr. Clute? A. Oh, yes.

Q. That fixes it in your memory, doesn't it? A. I remember a good many things.

Q. Your examination of the melons in the car
10 simply consisted of an examination by eyesight; isn't that right? A. By being a good judge of fruit, which I am, wherever I buy it and whoever I buy it from.

Q. Well, what did you rely upon? A. Upon my eyesight and my judgment.

Q. What is your judgment based on? A. When I purchase a car of watermelons it has got to be fresh and select before I purchase it.

Q. How do you determine that? A. By the
20 stem and by the color of the melon.

Q. And by your examination of it with your eyes? A. Yes, that God Almighty gave me.

Q. You think you are a pretty good judge of fruit, do you? A. I had ought to be; I have been in the business for thirty-five years.

Q. Your eyesight is good in judging fruit, but when it comes to reading of course it is not? A. No, sir, it is not.

Q. It is all right to make you a first class judge
30 of fruit, but your eyesight isn't any good when it comes to reading figures? A. No, sir, it is not.

Q. Your eyesight, then, for certain purposes is all right and for other purposes it is not good; is that correct, Mr. Clute? A. Not all the time; sometimes I can see pretty well.

Q. To whom did you deliver that car ABA 20917 on July 11, 1912? A. I gave it to the agent.

Q. What agent? A. The agent at Pavo.

Q. Whose agent was he? A. That I couldn't
40 say; railroad's agent.

Benjamin F. Clute, for Plaintiff—Cross

Q. What railroad? A. I suppose the Georgia Northern.

Q. Now, did you purchase any other watermelons for Mr. Albrecht in the South about that time? A. I did, sir, a little later than that.

Q. When was it? Can you tell me without referring to your memorandum? A. In that section I did, yes. 10

Q. Can you tell me without referring to your memorandum? A. No.

Q. Now refer to your memorandum and tell me if you can when you next purchased any melons in that section, say in South Carolina. A. I purchased some in South Carolina on the 13th of July, but that hasn't anything to do with this suit.

Q. Well, did you purchase any in South Carolina on the 16th of July? A. I did, sir.

Q. Now, just turn away from your memorandum book, if you will please, I want to ask you a question. Where did you purchase a car on July 16, 1912, in South Carolina? 20

Mr. Stout: If you can't answer that question without referring to your memorandum, refer to your memorandum.

A. No, I have got to refer to this memorandum now.

Q. From your own recollection, then, you can't tell, can you, where you purchased such a car? 30

A. I cannot, but I know it was a mile and half from Allendale village.

Q. Do you remember what you did purchase at that time? A. One car of watermelons.

Q. Do you remember what car that was? A. Car 39—(pause)

Mr. Stout: You can't remember, can you?

A. No, I cannot.

Benjamin F. Clute, for Plaintiff—Cross

Mr. Stout: It is an impossible test that you are putting him to.

Mr. Hartpence: No, I am testing him for something you are not cognizant of.

A. (continuing) That I can't tell you without looking at my book.

10 Q. Now, look at your book and tell me what car it was. A. Sou. 35039.

Q. What did you do with that car? A. Ordered it to be shipped to Charles Albrecht.

Q. And where were the melons when you purchased that car? A. The most of them was loaded in the car.

Q. And did you see them loaded in the car? A. Yes, I saw a great many of them loaded in the car; the patch was only a half mile from the car.

20 Q. Those that were already in the car when you purchased it, did you see those put in the car? A. I did, sir.

Q. How long before you purchased them were they put in the car? A. They were put into the car that morning.

Q. How long before you purchased them? A. About an hour or so, I guess.

Q. Was the car empty when you first got there? A. No, sir.

30 Q. Some were in when you got there? A. Yes.

Q. You didn't see those put in? A. They were just taking them out of the wagon.

Q. But you didn't see those put in that were already in the car when you got there? A. They were taking them out of the wagon.

Q. Didn't you say that there was some already in the car? A. They were taking them out of the wagon when I was there.

Q. Then you didn't see them put in the car?

40 A. I could see them from the road.

Benjamin F. Clute, for Plaintiff—Cross

Q. Then you did see them put in? A. Yes, sure.

Q. What time of the morning was that? A. I bought that car about eight o'clock in the morning.

Q. And did you see it completely filled? A. Yes, sir, I did.

Q. What time was that when it was filled?

A. I couldn't say about the time.

Q. When did you deliver it to the agent? A. It 10
was delivered to the agent the night it was loaded.

Q. Do you remember whether you delivered it to the agent or not? A. It was delivered to the agent by the man that I purchased it from.

Q. Who was that? A. I think Mr. Ziegler delivered it to the agent or to the conductor.

Q. You did not deliver it to the agent yourself, then? A. The bill was brought down to us.

Q. But you didn't deliver it yourself? A. It 20
was delivered for me.

Q. You didn't do it yourself? A. No.

Q. You don't know when it was delivered, as a matter of fact? A. It was delivered that night.

Q. How do you know? A. Because it went out that night; it wasn't there when I went up there.

Q. You didn't see it delivered by him? A. I saw the engine pulling it along.

Q. But you didn't see it delivered by the man you bought it from? A. No, but I saw the engine 30
pulling it along.

Q. And all you know about its delivery, aside from that, is the fact that Ziegler came back to you and handed you this paper marked "P-2 for Identification" and told you it was delivered? A. Well, he was to deliver it, and he handed me the paper and the conductor was there to pick it up.

Q. Is that correct or not? Is that all you know about the delivery? A. I saw it being pulled 40
along by the engine; I know it was delivered.

Benjamin F. Clute, for Plaintiff—Cross

Q. How was it that you didn't deliver that yourself? A. Well, it was a mile and a half from the Allendale village and I didn't feel like going back there and incurring two dollars for a horse and carriage and waiting for the conductor to come along and pick it up.

Q. You said it was shipped on July 16, 1912?
10 A. Yes, sir, that is when I ordered it to be shipped.

Q. To whom did you deliver that order? A. To Mr. Ziegler, I think, or to the agent down at the depot.

Q. And Mr. Ziegler did the rest, didn't he, so far as you know? A. He ordered the car to be shipped, according to my orders.

Q. And you told him how to ship it? A. I told him how to ship it and gave him the directions
20 to give to the conductor.

Q. (By Mr. Stout) How do you know that?
A. I don't know whether he did or not.

Q. Then you don't know whether it was ever delivered according to your instructions, do you?
A. The engine pulled it out. When an engine takes hold of a car it takes hold of it to pull it out, doesn't it?

Q. That is merely your conclusion? A. It is no conclusion at all. The moment an engine takes
30 hold of a car it takes hold of it to deliver it, to be shipped to the consignee.

Q. Where were you when the engine took hold of the car? A. I saw it coming down from Allendale.

Q. In what way? A. I didn't pay any particular notice; I saw the car hitched to the engine with the other cars they had.

Q. How many other cars were there? A. I can't say.

40 Q. What was there about this car that was dif-

Benjamin F. Clute, for Plaintiff—Cross

ferent from the other cars? A. I says, that is a car of fancy watermelons; I hope it will arrive in good condition so that I can make some good money on it.

Q. Whom did you say that to? A. To myself.

Q. Ziegler acted for you in the delivery of that car, didn't he? A. No, he just said he would get the bill of it from the conductor to me and bring 10 it down to town.

Q. Do you know what railroad that was delivered to? A. Southern.

Q. Southern what? A. Of South Carolina.

Q. Southern Railway Company? A. Yes, sir.

Q. Do you know whose signature that is on Exhibit P-2 for identification at the foot on the left hand side? A. Might be the conductor's; I don't know whose it is.

Mr. Stout: If you don't know whose it is, 20 say so.

A. (Continuing) I don't know whose it is.

Q. Do you know whose signature that is that I have indicated? A. No, sir, I do not.

Q. What are your initials, Mr. Clute? A. It ain't mine; I can't see it.

Q. Can you read that? A. No, sir, I cannot.

Q. What are your initials? A. That is my 30 initials there (indicating); they are B. F.

Q. And that is your name there, isn't it? A. Yes, sir, that is my name.

Q. What is the name right underneath? A. I don't know; I can't see it.

Q. Try again. A. No, I can't see it.

Q. Is it P. J. Ziegler? A. I can't see it.

Q. But you can see yours up there, "B. F. Clute"? A. Yes. These glasses are very poor.

Q. Now, Mr. Clute, what is it that makes you think that all those watermelons in that car were sound? A. I examined them. 40

Benjamin F. Clute, for Plaintiff—Cross

Q. In what way did you examine them? A. I examined them with my two eyes and my hands.

Q. What sort of an examination did you make of them with your hands? A. To see if they were sound and in good condition.

Q. What sort of an examination is that? A. To see whether they are rotten or not and fit to go
10 on their errand.

Q. How did you do that with your hands? A. With my eyes that God Almighty gave me.

Q. How did you do it with your hands? A. My friend, you ask me a question and I will answer you, if you will permit me to do so, the best I can.

Q. Well, I am not interfering with you; I am anxious to get the information. A. I examined these watermelons with my two eyes and hands,
20 to find out whether they were sound or not sound.

Q. When you examined them with your hands what did you do to determine whether they were sound or not sound? A. If I see a watermelon that is specked I am not going to take it.

Q. There you depend on your eyesight for that? A. I depend on my eyesight, yes, sir.

Q. Now when you examined them with your hands just what did you do? What do you do with the melons with your hands when you examine them? A. I examine them with my hands to
30 see whether they are large or small and they have got the right color.

Q. But you use your eyes to see whether they have the right color, don't you? A. I use my eyes and my hands both.

Q. What have your hands got to do with reference to determining their color? A. I judge of a melon by weight with my hands.

Q. You lift them up and sort of weigh them with your hands; is that right? A. Yes, sir.

40 Q. What else do you do with your hands for

Benjamin F. Clute, for Plaintiff—Cross

the purpose of determining whether they are sound or not? A. I don't go by my hands altogether; I go by my eyesight.

Q. In other words, you can tell by looking at a melon whether it is sound or not? A. I don't have to use my hands to find out whether they are sound or not; I can tell by my eyesight.

Q. And you want us to understand, do you, that 10
whenever you look at a watermelon and observe its color you can then determine whether it is sound or not and in good condition, and that is the end of it? Is that right? A. When I look at it with my eyesight and it has got the color and cut fresh from the patch I know it is in good condition. If it has lain five days I know it ain't in good condition, or six days, or seven days.

Q. I suppose it is true, is it not, that what you 20
have said about the examination of the melons in these two cars and their position, and the manner in which you have determined that, is true generally of all the other cars which you have testified about; is that right? A. Yes, sir.

Q. And when you say that the melons in these different cars were selects and fresh and in elegant condition you mean that you determined that from your examination of them by your eyesight as they were in the car or as they were being 30
loaded in the car? A. Yes, sir, as they were being loaded also.

Q. Do you recall about how much time you spent in examining each car as the melons were being loaded? A. No, not exactly.

Q. Did it just consist of a glance up and down the tiers of melons? A. Sometimes I might spend an hour on a car.

Q. Examining the melons? A. Yes.

Q. All that time? A. If they were loading them 40
in the car I would.

Benjamin F. Clute, for Plaintiff—Cross

Q. Suppose one of these cars you found already loaded, how long do you recall you spent in examining the melons? A. Oh, perhaps a half an hour.

Q. You would stand there and examine them all the time? A. Yes.

Q. Looking up and down the tiers? A. Looking
• 10 up and down the tiers and in piling them up and looking at them.

Q. But you did not see any of the melons in these cars actually picked from the patch? A. I saw them all loaded.

Mr. Stout: Answer his question.

A. (continuing) No, sir, I did not.

Q. Nor you didn't see any of the melons in any of these cars carted all the way from the patch to
20 the cars in which they were loaded, did you? A. I did.

Q. How many? A. Oh, several wagon loads in different places.

Q. You were out to some of the patches, were you? A. I could see them as I went along the road.

Q. Which of them did you see as you went along the road, do you remember? A. Well, Ziegler's was one; Stoney, two; Boynton was three.
30

Q. Now, how far were those patches from the cars where they were loaded? A. Ziegler's was about a half a mile.

Q. How far was Stoney's? A. About a mile for all I know.

Q. How far was Boynton's? A. About a half a mile.

Q. And you have no actual knowledge, so far as your real actual knowledge is concerned aside from your judgment, how long these melons were
40 picked before you purchased them? A. I am

Benjamin F. Clute, for Plaintiff—Cross

positive they were all picked on the same day they were shipped.

Q. You have no positive knowledge aside from your judgment? Have you? A. Yes, I saw them loaded.

Q. But you have no positive knowledge aside from your judgment when they were picked? A. They were loaded the same day they left. 10

Q. I will repeat once more, you have no positive knowledge, have you, aside from your judgment, of when they were picked? A. They were picked the same day and loaded the same day.

Q. Have you or have you not any positive knowledge of that, aside from your examination of them? A. I saw every one of them loaded.

Q. And that is your reply, is it, to my question? A. Yes.

Q. And that is the best reply that you can give, 20 is it? A. That is about as near as I can give.

Q. And you can't say positively, aside from your judgment from your examination of them, just when they were picked? A. They were picked and loaded the same day.

Q. But you base that upon your judgment rather than from your actual knowledge of it? A. No, sir, no judgment at all.

Q. Well, what do you base it upon? A. Upon my eyesight and knowledge—what I saw. 30

Q. What did you see? A. I saw them loaded.

Q. But you didn't see them picked? A. Not all of them.

Q. How many of them? A. I just told you.

Q. Well, how many? A. I can't say how many cars.

Q. How many melons did you see picked? A. I saw them loaded in the wagon.

Q. How many of them did you see picked? A. That I could not say. 40

Benjamin F. Clute, for Plaintiff—Cross

Q. Did you see any? A. I saw them picked from the patch and put in the wagon but I couldn't say how many.

Q. Can you give us any idea? A. No, sir, I could not.

Q. How many of the patches were you actually in? A. I rode by the patches.

10 Q. You were not in them? A. No.

Q. And you don't know whether those that you saw in the patches were the ones that were loaded in the cars or not? A. Yes, I could see them.

Q. You were half a mile away, weren't you? A. I could see them.

Q. I am trying to find out whether you saw them picked? A. Not all of them, no.

Q. Can you state how many of them you did see picked? A. No, I could not. They didn't load a
20 melon except they were picked that day.

Q. That is the reason why you say they were picked that day, is it? A. It is.

Q. Do you remember what kind of a car it was, or can you tell by referring to your memorandum, Sou. 35039? A. South Carolina, is it?

Q. Yes, that is the Ziegler car. A. Vent car on both sides and vent on the ends.

Q. Wasn't it a refrigerator car? A. No, sir; none of them were.

30 Q. How about the third car, SAL 22453; what kind of a car was that? A. That was a vent car.

Q. And you have a memorandum of that, have you? A. I got it in my head.

Q. Does that appear in your memorandum? A. Well, I mean the car.

Q. Does it appear in your memorandum? A. I saw the car.

Q. Does it or does it not appear in your memorandum? A. I saw the car.

Q. You are testifying from your memory of
40 them, are you? A. From my memory.

Benjamin F. Clute, for Plaintiff—Cross

Q. Take the next car, SAL 15841; what kind of a car was that? A. That was a vent car on both sides and a vent on the ends.

Q. Have you a memorandum of that? A. No, sir.

Q. Take the next car SAL 23256; what sort of a car was that? A. That was a vent car also.

Q. And the next car, Sou. 38162 shipped from 10 Allendale, Mr. Stoney's car; what sort of a car was that? A. That was a vent car also. I helped load that car myself.

Q. Have you a memorandum of that? A. In my mind.

Q. Take the next car, Sou. 25284, Boynton car from Kline; what sort of a car was that? A. Vent car.

Q. Now, take the next car, Sou. 32937; what sort of a car was that? A. Vent car. 20

Q. And the next one, SAL 24096, shipped from Ulmers, Brant & Wilkinson; what sort of a car was that? A. Vent car. I helped to load that. Wouldn't accept no car unless it is a vent car.

Q. Most of these cars were loaded when you purchased them, weren't they? A. No, sir.

Q. Some of them were, weren't they? A. No, sir.

Q. Well, they were partially loaded, weren't they? A. Well, some of them were partially 30 loaded.

Q. Do you remember whether car 22,453 that you purchased from Weekley was loaded when you got it or not? A. Yes, sir, that was loaded.

Q. That was loaded when you bought it? A. Yes, sir; loaded the day before I bought it, I think.

Q. How do you know but what it might have been loaded three days before you got it if you didn't see it loaded? A. I know the watermelons 40

Benjamin F. Clute, for Plaintiff—Cross

were fresh, and I know the gentleman that I bought it from wouldn't tell me no story, and I know it was loaded the day before.

Q. You know that because he told you so?

A. Well, people don't tell any stories.

Q. That is what you are basing it upon, because you don't think he would tell you any stories?

10 A. Well, it was fresh, because I wouldn't purchase it except it was fresh.

Q. Now, do you know to whom car SAL 22453 was delivered? A. I delivered it to the agent there.

Q. Where? A. At Ulmers.

Q. What railroad company was that delivered to? A. Seaboard.

Q. I show you Exhibit P-3 for identification, which refers to that car. I think you said you
20 signed that? A. Yes, I signed that.

Q. That is your signature there (showing witness P-3 for identification)? A. Yes, sir.

Q. You signed that, too? A. Yes, sir, I signed that.

Q. That is your signature there? A. Yes, sir.

Q. Now SAL 15831; to whom was that delivered? A. That was delivered to the agent there also.

Q. And to what company? A. Seaboard.

30 Q. I show you D-4 for identification and ask you if that is your signature? A. Yes, sir.

Q. And SAL 23256; to whom was that delivered? A. To the same agent.

Q. At Ulmers? A. Yes, sir.

Q. And to what company? A. Seaboard.

Q. And I show you Exhibit P-5 for identification and ask you if that is your signature?
A. Yes, sir.

Q. You signed that, too? A. Yes, sir, I signed
40 that.

Benjamin F. Clute, for Plaintiff—Cross

Q. Sou. 38162; refer to that if you will; that was Mr. Stoney's car. Where was that delivered?

A. That was delivered to the agent at Allendale depot.

Q. And to what company? A. To the Southern.

Q. Southern railway company? A. Yes, sir.

Q. I show you Exhibit P-6 for identification and ask you if that was the paper you received? A. I 10 think it is.

Q. Now take Sou 25284, the Boynton car; to whom was that delivered? A. That was delivered to the Kline, S. C., agent.

Q. And to what railroad company? A. To the Southern.

Q. And I show you exhibit P-7 for identification and ask you if that is the paper that you received at that time? A. Yes, sir.

Q. Take car Sou. 32937 and let me know where 20 that car was delivered. You may refer to your memorandum if you wish to. A. Southern.

Q. Delivered to the Southern Railway Company? A. Yes, sir.

Q. At what point? A. Kline.

Q. And I show you exhibit P-8 for identification and ask you if that is the paper you received? A. That is the paper.

Q. SAL 24096, Messrs. Brant & Wilkinson; where was that car delivered? A. That was de- 30 livered to the Seaboard at Ulmers.

Q. And you delivered that, did you? A. I did, sir, to the agent.

Q. And I show you exhibit P-9 for identification and ask you if that is the paper which the agent gave you at that time? A. Yes, sir.

Q. Is that your signature? A. That is my signature.

Q. And each of these nine cars to which you have referred in your testimony, did you pay the freight on them, Mr. Clute? A. No, sir, I did not. 40

Benjamin F. Clute, for Plaintiff—Cross

Q. Who did pay it?

Mr. Stout: The freight charges haven't been paid.

Q. Who did pay the freight charges? A. That I don't know.

Q. Who was to pay the freight charges?

10 Mr. Stout: I object to that as immaterial, irrelevant and incompetent.

Mr. Stout: I withdraw the objection.

A. I suppose the gentleman that shipped it up to Charles Albrecht, if they stated it that way—if it was understood they were to pay the freight.

Q. Now, at the time you delivered each of these nine cars and you received back these various papers—shipping receipts or bills of lading—
20 which have been marked from P-1 to P-9 for identification, what arrangement, if any, did you make with the receiving agents regarding the rate of freight to pay? A. I made no arrangement with them at all.

Q. Wasn't Mr. Albrecht to pay the freight at the point of destination? A. Yes, sir.

Q. Nothing was said by you, at any rate, in regard to the rate that was to be paid on the shipment of any of these cars? A. Nothing said to
30 me at all.

Q. Nothing was said by you to the agents about the rate? A. No, sir, I never asked the agents anything only to ship my stuff.

Q. Your directions were to them to ship the stuff and that was all? A. That was all.

Q. Now these various deliveries that you have referred to of cars, just how did you make those deliveries, Mr. Clute, what was the method that you followed to make a delivery of a car to the
40 agent?

Benjamin F. Clute, for Plaintiff—Redirect

Mr. Stout: In other words, what did he say to the agent.

A. What do you mean, when I shipped a car?

Q. When you shipped a car and say you delivered it to the agent just what did you do to deliver it? A. I went to the agent and says, "I have got two cars to ship to Henderson street, 10 Jersey City, to Charles Albrecht."

Q. And would you state to him where those cars were located? A. Right on the track there. He knew where they were himself.

Q. And then at that time you would receive back these various bills of lading or shipping receipts? A. I received the bills of lading when I gave the instructions.

Q. In your delivery of the car did you not state when delivering it that there was a car located at a certain place which you desired to have him send that night to Albrecht in Jersey City? A. Yes. 20

Q. And in each one of these nine cars you are prepared to state to us that you made or effected that delivery in the way you have said and on the same day that you purchased the respective cars? A. From the places that I bought the water-melons.

Q. In other words, whenever you purchased any one of these cars you delivered it the same day? 30

A. Yes, the agent delivered the cars and I told him, "I have two cars here and two cars there to ship."

Q. And you directed him where to ship those cars? A. Yes.

Redirect-examination by Mr. Stout (Read by Mr. Stout):

Q. In reference to this memorandum that you have used to refresh your memory, do you know 40

Benjamin F. Clute, for Plaintiff—Recross

that the items contained in that memorandum or book are correct? A. Yes, sir, I do.

Q. Were the entries made at the time these various cars were shipped? A. Yes, sir, they were.

Q. How much schooling did you have, Mr. Clute?

10 Mr. Hartpence: I object to the question.

Mr. Stout: I will withdraw it.

Q. In reference to this car Sou. 35039, the Ziegler car, did you say anything to the agent about shipping that car? A. I couldn't say now whether I gave that to the Allendale agent or whether I gave it to Ziegler, as I stated before.

Q. But as to all the other cars you gave the orders direct yourself? A. I gave the orders
20 direct myself.

Recross-examination by Mr. Hartpence:

Q. And in regard to that car you instructed Ziegler what to do and he did it for you; isn't that correct? A. I told him I couldn't get up there and for him to tell the conductor to take the car.

Q. And then he brought the shipping receipt back to you? A. I am not sure whether he
30 brought it back to me or whether I got it at Allendale depot later on.

Q. At any rate, you got it? A. I got it that day, yes.

Mr. Stout: Certain interrogatories were propounded by the plaintiff in this case and answered by the defendant. I will read these
40 interrogatories and their answers.

Interrogatories by Plaintiff to Defendant

Did you, during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car ABA 20917 containing watermelons to be transported to Charles Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. Yes, the connecting carrier was the Philadelphia, 10
Baltimore and Washington Railroad Company, and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July 17, 1912, at 6:55 o'clock A. M.

Were you, at the time when you received and accepted said car ABA 20917 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted said car ABA 20917 to Jersey City aforesaid? A. Yes. 20

Did you as a common carrier for hire transport the said car ABA 20917 to Jersey City aforesaid from the point where you received and accepted it? A. Yes.

Did you deliver or tender delivery of said car ABA 20917 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at Pennsylvania Railroad delivery yard, Second and Henderson streets.

When and where in Jersey City aforesaid did you place said car ABA 20917 for delivery to said Charles Albrecht? A. On July 23, 1912, on the public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets. 30

The next is omitted.

What was the usual or customary time to transport by freight train, without delay in transportation a car of watermelons over your line of railroad from said point where you received and accepted said car ABA 20917 to Jersey City afore- 40

Interrogatories by Plaintiff to Defendant

said? A. Under the most favorable circumstances about seven hours.

Did you sell or dispose of the watermelons contained in said car ABA 20917? A. Yes, upon refusal of Charles Albrecht, on July 23, 1912, said watermelons were sold.

15th. Did you, during the month of July, 1912,
10 receive and accept from a connecting carrier at any point on your railroad a car Sou. 32937 containing watermelons to be transported to Charles Albrecht at Jereys City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. Yes, the connecting carrier was the Philadelphia, Baltimore and Washington Railroad Company and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July
20 24, 1912, at 2:45 o'clock A. M.

Were you, at the time when you received and accepted said car Sou. 32937 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted said car Sou. 32937 to Jersey City aforesaid? A. Yes.

Did you as a common carrier for hire transport said car Sou. 32937 to Jersey City aforesaid from the point where you received and accepted it?
30 A. Yes.

Did you deliver or tender delivery of said car Sou. 32937 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at the Pennsylvania Railroad delivery yard, Second and Henderson streets.

When and where in Jersey City aforesaid did you place said car Sou. 32937 for delivery to said Charles Albrecht? A. On July 31, 1912, on the public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets.
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Interrogatories by Plaintiff to Defendant

What was the usual or customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of railroad from said point where you received and accepted said car Sou. 32937 to Jersey City aforesaid? A. Under the most favorable circumstances, about seven hours.

Did you sell or dispose of the watermelons 10 contained in said car Sou. 32937? A. Yes, upon refusal of Charles Albrecht, on July 31, 1912, said watermelons were sold.

24th. Did you, during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car Sou. 25284 containing watermelons to be transported to Charles Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. 20 The connecting carrier was the Philadelphia, Baltimore and Washington Railroad Company, and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July 22, 1912, at 12:05 o'clock A. M.

Were you, at the time when you received and accepted said car Sou. 25284 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted said car Sou. 25284 to Jersey City aforesaid? 30 A. Yes.

Did you as a common carrier for hire transport the said car Sou. 25284 to Jersey City aforesaid from the point where you received and accepted it? A. Yes.

Did you deliver or tender delivery of said car Sou. 25284 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at the Pennsylvania Railroad delivery yard, Second and Henderson streets.

Interrogatories by Plaintiff to Defendant

When and where in Jersey City aforesaid did you place said car Sou. 25284 for delivery to said Charles Albrecht? A. On July 27, 1912, on the public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets.

10 What was the usual and customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of railroad from said point where you received and accepted said car Sou. 25284 to Jersey City aforesaid? A. Under the most favorable circumstances about seven hours.

Did you sell or dispose of the watermelons contained in said car Sou. 25284? A. Yes, upon refusal of Charles Albrecht, on July 27, 1912, said watermelons were sold.

20 33rd. Did you, during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car SAL 24096 containing watermelons to be transported to Charles Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. Yes, the connecting carrier was the Philadelphia, Baltimore and Washington Railroad Company, and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July 22, 1912, at 12:05 o'clock A. M.

30 Were you, at the time when you received and accepted said car SAL 24096 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted said car SAL 24096 to Jersey City aforesaid? A. Yes.

Did you as a common carrier for hire transport the said SAL 24096 to Jersey City aforesaid from the point where you received and accepted it? 40 A. Yes.

Interrogatories by Plaintiff to Defendant

Did you deliver or tender delivery of said car SAL 24096 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at the Pennsylvania Railroad delivery yard, Second and Henderson streets.

When and where in Jersey City aforesaid did you place said car SAL 24096 for delivery to said Charles Albrecht? A. On July 26, 1912, on the public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets. 10

What was the usual or customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of railroad from said point where you received and accepted said car SAL 24096 to Jersey City aforesaid? A. Under the most favorable circumstances about seven hours. 20

Did you sell or dispose of the watermelons contained in said car SAL 24096? A. Yes, upon refusal of Charles Albrecht, on July 27, 1912, said watermelons were sold.

42nd. Did you, during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car SAL 23256 containing watermelons to be transported to Charles Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. Yes, the connecting carrier was Philadelphia, Baltimore and Washington Railroad Company, and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July 20, 1912, at 8:05 o'clock P. M. 30

Were you, at the time when you received and accepted said car SAL 23256 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted 40

Interrogatories by Plaintiff to Defendant

said car SAL 23256 to Jersey City aforesaid?
A. Yes.

Did you as a common carrier for hire transport the said car SAL 23256 to Jersey City aforesaid from the point where you received and accepted it? A. Yes.

Did you deliver or tender delivery of said car
10 SAL 23256 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, the Pennsylvania Railroad yards, Second and Henderson streets.

When and where in Jersey City aforesaid did you place said car SAL 23256 for delivery to said Charles Albrecht? A. On July 25, 1912, on the the public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets.

20 What was the usual or customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of railroad from said point where you received and accepted said car SAL 23256 to Jersey City aforesaid? A. Under the most favorable circumstances about seven hours.

Did you sell or dispose of the watermelons contained in said car SAL 23256? A. Yes, upon refusal of Charles Albrecht, on July 26, 1912, said
30 watermelons were sold.

51st. Did you, during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car SAL 15841 containing watermelons to be transported to Charles Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. Yes, the connecting carrier was the Philadelphia, Baltimore and Washington Railroad Company, and the
40 car was received by the Pennsylvania Railroad

Interrogatories by Plaintiff to Defendant

Company, at Edgemoor, Delaware, on July 21, 1912, at one o'clock P. M.

Were you, at the time when you received and accepted said car SAL 15841 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted said car SAL 15841 to Jersey City aforesaid? A. Yes.

10

Did you as a common carrier for hire transport the said car SAL 15841 to Jersey City aforesaid from the point where you received and accepted it? A. Yes.

Did you deliver or tender delivery of said car SAL 15841 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at the Pennsylvania Railroad delivery yard, Second and Henderson streets.

20

When and where in Jersey City aforesaid did you place said car SAL 15841 for delivery to said Charles Albrecht? A. On July 27, 1912, on the public delivery tracks of the Pennsylvania Railroad Company, at Second and Henderson streets.

What was the usual or customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of railroad from said point where you received and accepted said car SAL 15841 to Jersey City aforesaid? A. Under the most favorable circumstances about seven hours.

30

Did you sell or dispose of the watermelons contained in said car SAL 15841? A. Yes, upon refusal of Charles Albrecht, on July 27, 1912, said watermelons were sold.

60th. Did you, during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car SAL 22543 containing watermelons to be transported to Charles

40

Interrogatories by Plaintiff to Defendant

Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. Yes, the connecting carrier was the Philadelphia, Baltimore and Washington Railroad Company, and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July 21, 10 1912, at one o'clock P. M.

Were you, at the time when you received and accepted said car SAL 22453 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted said car SAL 22453 to Jersey City aforesaid? A. Yes.

Did you as a common carrier for hire transport the said car SAL 22453 to Jersey City aforesaid from the point where you received and accepted it? A. Yes. 20

Did you deliver or tender delivery of said car SAL 22453 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at the Pennsylvania Railroad delivery yard, at Second and Henderson streets.

When and where in Jersey City aforesaid did you place said car SAL 22453 for delivery to said Charles Albrecht? A. On July 26, 1912, on the 30 public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets.

What was the usual or customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of railroad from said point where you received and accepted said car SAL 22453 to Jersey City aforesaid? A. Under the most favorable circumstances about seven hours.

Did you sell or dispose of the watermelons contained in said car SAL 22453? A. Yes, upon re- 40

Interrogatories by Plaintiff to Defendant

fusal of Charles Albrecht, on July 26, 1912, said watermelons were sold.

69th. Did you, during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car Sou. 38162 containing watermelons to be transported to Charles Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and 10 where you received and accepted said car. A. Yes, the connecting carrier was the Philadelphia, Baltimore and Washington Railroad Company, and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July 21, 1912, at 3:20 o'clock A. M.

Were you, at the time when you received and accepted said car Sou. 38162 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted 20 said car Sou. 38162 to Jersey City aforesaid? A. Yes.

Did you as a common carrier for hire transport the said car Sou. 38162 to Jersey City aforesaid from the point where you received and accepted it? A. Yes.

Did you deliver or tender delivery of said car Sou. 38162 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at the Pennsylvania Rail- 30 road delivery yard, Second and Henderson streets.

When and where in Jersey City aforesaid did you place said car Sou. 38162 for delivery to said Charles Albrecht? A. On July 26, 1912, on the public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets.

What was the usual or customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of rail- 40 road from said point where you received and ac-

Interrogatories by Plaintiff to Defendant

cepted said car Sou. 38162 to Jersey City aforesaid? A. Under the most favorable circumstances about seven hours.

Did you sell or dispose of the watermelons contained in said car Sou. 38162? A. Yes, upon refusal of Charles Albrecht, on July 26, 1912, said watermelons were sold.

- 10 78th. Did you during the month of July, 1912, receive and accept from a connecting carrier at any point on your railroad a car Sou. 35039 containing watermelons to be transported to Charles Albrecht at Jersey City, N. J.? If yes, state the name of the connecting carrier and when and where you received and accepted said car. A. Yes, the connecting carrier was the Philadelphia, Baltimore and Washington Railroad Company, and the car was received by the Pennsylvania Railroad Company, at Edgemoor, Delaware, on July 21, 1912, at 3:20 o'clock A. M.

Were you, at the time when you received and accepted said car Sou. 35039 and at the time of bringing this action, a common carrier for hire from the point where you received and accepted said car Sou. 35039 to Jersey City aforesaid. A. Yes.

- 30 Did you as a common carrier for hire transport the said car Sou. 35039 to Jersey City aforesaid from the point where you received and accepted it? A. Yes.

Did you deliver or tender delivery of said car Sou. 35039 to Charles Albrecht at Jersey City aforesaid? If yes, state at what place in Jersey City aforesaid. A. Yes, at the Pennsylvania Railroad delivery yard, Second and Henderson streets.

- 40 When and where in Jersey City aforesaid did you place said car Sou. 35039 for delivery to said Charles Albrecht? A. On July 26, 1912, at the public delivery tracks of the Pennsylvania Railroad Company, Second and Henderson streets.

Charles Albrecht, for Plaintiff—Direct

What was the usual or customary time to transport by freight train, without delay in transportation, a car of watermelons over your line of railroad from said point where you received and accented said car Sou. 35039 to Jersey City aforesaid? A. Under the most favorable circumstances about seven hours.

Did you sell or dispose of the watermelons contained in said car Sou. 35039? A. Yes, upon refusal of Charles Albrecht, on July 26, 1912, said watermelons were sold. 10

CHARLES ALBRECHT, sworn.

Direct Examination by Mr. Stout:

Q. Mr. Albrecht, you are the plaintiff in this suit against the Pennsylvania Railroad? A. Yes, sir. 20

Q. Where do you live? A. Brooklyn.

Q. What place in Brooklyn? A. Nostrand avenue.

Q. How long have you lived in Brooklyn? A. 20 years.

Q. What is your business? A. Fruits.

Q. What kind of fruits? A. Watermelons and grapes, in season. 30

Q. Do you operate a watermelon business in the Henderson street yard, Jersey City, during the watermelon season? A. Yes, sir.

Q. Were you engaged in the watermelon business in the Henderson street yard, Jersey City, during the month of July, 1912? A. Yes, sir.

Q. Did you on the days that the Pennsylvania Railroad Company tendered to you delivery of the melons contained in the cars involved in this suit, examine them? A. Yes, sir. 40

Charles Albrecht, for Plaintiff—Direct

Q. How extensive was your examination? A. Rotten.

Q. How extensive was your examination? A. I don't understand you—what do you mean by extensive?

Q. I mean how carefully did you examine them? A. Well, as far as I could examine them I examined them.

Q. And what was the condition of the melons? A. Rotten.

Q. Can you say in what proportion the melons were rotten—one third, one half or how many? A. A majority.

Q. A majority of them? Who examined these watermelons with you? A. A young man that was working for me by the name of Mr. Merino.

Q. Is he here in court? A. Yes, sir.

Mr. Stout: Stand up.

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

Q. Do you know what the market value of watermelons of the kind contained in car ABA 20917 was, if in sound condition, on July 18, 1912, at the Henderson street yard, Jersey City?

Mr. Hartpence: I object on the ground that it is incompetent, irrelevant and immaterial because we presume it is offered in evidence for the purpose of fixing the measure of damages, and under the bill of lading in evidence in the suit the measure of the damages was the value at the point of shipment as evidenced by the invoice price at that point.

The Court: I overrule the objection upon this ground: that it will be in all likelihood, or may be, for the jury to say when the evidence is all in, whether the bill of lading ever became binding upon the shipper or not with respect to the limitations of liability con-

Charles Albrecht, for Plaintiff—Direct

tained on the back of the bill of lading. If the bill of lading never became binding upon the shipper, then I shall hold that the measure of damages for a car that was entirely rotten, for instance, and valueless, would be the value of the watermelons at the point of destination, and of course at the time when they should have been delivered. If the jury 10 shall determine that the bill of lading was binding upon the shipper, then the measure of damages will be the measure declared in the bill of lading and will be the value at the point of shipment. So that I admit it.

A. \$275.

Q. What could you have received for the melons in car ABA 20917, the same car, if in sound condition, on July 18th, 1912, at the Henderson street 20 yard, Jersey City? A. \$275.

Q. After you learned of the condition of the melons in this car what did you do? A. Went upstairs and refused it.

Q. Whom did you see? A. Mr. Halleck.

Q. What did you say to him. A. I told him I have to refuse this car of melons; it is in a rotten condition, it was delayed.

Q. Did you sign a refusal slip? A. Yes.

Q. Now I call your attention to car Sou. 32937. 30 A. 32937?

Q. Yes. What is that book you have there?

A. It is the day book.

Q. In whose handwriting? A. Mine.

Q. Well, did you put those entries in that book?

A. The day a car arrives.

Q. And those were put in there on the days the cars arrived? A. When it is on the track.

Q. What was the condition of the watermelons in this car on its arrival? A. Rotten condition. 40

Charles Albrecht, for Plaintiff—Direct

Q. After you examined it what did you do? A. Went upstairs and refused it.

Q. Did you sign a refusal slip? A. Yes, sir.

Q. When you say you went upstairs you mean to the freight agent's office? A. Yes, sir.

Q. Do you know what the market value of watermelons of the kind and variety contained in
10 this car, if in sound condition, on July 25, 1912, was at the Henderson street yard, Jersey City? A. \$300.

Q. Could you have received \$300 for this car-load of melons— A. Yes, sir.

Q. Just a minute. —if it had arrived in sound condition on July 25, 1912? A. Yes, sir.

Q. I call your attention to car 25284—

Mr. Hartpence: One moment. May I have
20 my objection noted to the measure of damages in all nine cars without interposing a formal objection?

The Court: Yes; it will be understood that you interpose the objection with respect to each car and that I rule with respect to each other car as I did with respect to the first and that your objection is noted.

Q. Did you examine this car on the day that delivery was tendered to you by the Pennsylvania
30 Railroad? A. Yes, sir.

Q. What hour of the day? A. Well, probably seven or eight o'clock in the morning.

Q. And is that so as to the other cars as to the time of the day? A. Yes.

Q. What was the condition of the melons contained in this car? A. They were in a rotten condition.

Q. How careful was your examination? A. As close as I could examine.

Q. Was the majority of the melons rotten? A.
40 Yes, sir.

Charles Albrecht, for Plaintiff—Direct

Q. After you ascertained their condition what did you do next? A. Went upstairs and refused it.

Q. To the freight agent? A. Yes, sir.

Q. Did you sign a refusal slip? A. Yes, sir.

Q. What was the market value of watermelons of the kind and variety contained in this car, if in sound condition, on July 25, 1912— A. Twenty 10 what?

Q. July 23, 1912—at the Henderson street yard, Jersey City? A. \$275.

Q. Could you have received \$275 for this carload of melons if it had arrived in sound condition on July 23, 1912? A. Yes.

Q. I call your attention to car SAL 24096; did you examine this car on the day that delivery was tendered to you by the Pennsylvania Railroad? A. Yes, sir. 20

Q. At what time of the day? A. 7 or 8 o'clock.

Q. What was the condition of the melons contained in this car? A. Rotten condition.

Q. After you ascertained their condition what did you do? A. Went upstairs and refused it.

Q. Signed a refusal slip? A. Yes, sir.

Q. What was the market value of watermelons of the kind and variety contained in this car, if in sound condition, on July 23, 1912, at the Henderson street yard, Jersey City? A. \$275. 30

Q. Could you have received \$275 for this carload of melons if in sound condition, at the Henderson street yard on July 23, 1912? A. Yes, sir.

Q. I call your attention to car SAL 23256. A. Yes.

Q. Did you examine the watermelons in this car on the day that delivery was tendered to you by the Pennsylvania Railroad Company? A. Yes, sir.

Q. What hour of the day? A. 7 or 8 o'clock. 40

Charles Albrecht, for Plaintiff—Direct

Q. What was the condition of the melons in this car? A. In a rotten condition.

Q. After you ascertained their condition what did you do? A. Went upstairs and refused it.

Q. Signed a refusal slip? A. Yes, sir.

Q. What was the market value of watermelons of the kind and variety contained in this car, if in sound condition, on July 21, 1912, at the Henderson street yard, Jersey City? A. \$275.

Q. Could you have received \$275 for this carload of melons on July 21, 1912, if in sound condition? A. Yes, sir.

Q. I call your attention to car SAL 15841. A. Yes, sir.

Q. Did you examine the watermelons contained in this car on the day that delivery was tendered to you by the Pennsylvania Railroad Company at the Henderson street yard? A. Yes, sir.

Q. At what hour of the day? A. 7 or 8.

Q. What was the condition of these watermelons? A. Rotten condition.

Q. After you ascertained their condition what did you do? A. Went upstairs and refused it.

Q. Signed a refusal slip? A. Yes, sir.

Q. What was the market value of watermelons of the kind and variety contained in this car, if in sound condition, on July 21, 1912? A. 22nd?

Q. July 22nd—at the Henderson street yard, Jersey City, N. J.? A. \$250.

Q. Could you have received on July 22nd, 1912, \$250 for these watermelons if they had been delivered in sound condition at the Henderson street yard? A. Yes, sir.

Q. Car Sou. 22453. Did you examine the watermelons in this car on the day that delivery was tendered to you by the Pennsylvania Railroad Company at the Henderson street yard? A. Yes, sir.

Charles Albrecht, for Plaintiff—Direct

Q. At what hour in the day? A. 7 or 8 o'clock.

Q. What was the condition of the melons contained in this car? A. Rotten.

Q. How many were rotten? A. The majority of them.

Q. After you ascertained their condition what did you do next? A. Went up in the office and refused them. 10

Q. Signed a refusal slip? A. Yes, sir.

Q. What was the market value of watermelons of the kind and variety contained in this car on July 23, 1912, if the watermelons were in sound condition, at the Henderson street yard, Jersey City? A. \$275.

Q. Could you have received \$275 for this carload of melons if in sound condition on July 23, 1912? A. Yes, sir.

Q. I call your attention to car Sou. 38162. Did you examine the watermelons contained in this car on the day that delivery was tendered to you by the Pennsylvania Railroad Company at the Henderson street yard? A. Yes, sir. 20

Q. What was the condition of these melons? A. Rotten condition.

Q. What did you do after you ascertained their condition? A. Went upstairs and refused it.

Q. Signed a refusal slip? A. Yes, sir.

Q. What was the market value of watermelons of the kind and variety contained in this car, if in sound condition, on July 22, 1912, at the Henderson street yard, Jersey City? A. \$250. 30

Q. Could you have obtained \$250 for this car of melons on July 22, 1912, if the car had been delivered in sound condition at the Henderson street yard? A. Yes, sir.

Q. Car Sou. 35039. A. Yes, sir.

Q. Did you examine the watermelons contained 40

Charles Albrecht, for Plaintiff—Direct

in this car on the day that delivery was tendered to you by the Pennsylvania Railroad Company, at the Henderson street yard, Jersey City?

A. Yes, sir.

Q. What was the hour of the day? A. 7 or 8 o'clock.

Q. What was the condition of these melons?

10 A. Rotten condition.

Q. Whom did you notify after you ascertained their condition? A. Upstairs—Mr. Halleck.

Q. Did you sign a refusal slip for this car? A. Yes, sir.

Q. What was the market value on July 22, 1912, of watermelons of the kind and variety contained in this car, if in sound condition, at the Henderson street yard, Jersey City? A. \$250.

20 Q. Could you have obtained \$250 for this car of melons on July 22, 1912, if the melons were in sound condition? A. Yes, sir.

Q. Now you have testified that the melons on all of these cars were in rotten condition? A. Yes.

Q. How many were rotten, a majority? A. The majority.

Q. And you examined the contents of these cars on the date that delivery was tendered of them by the Pennsylvania Railroad? A. Yes, sir.

30 Q. How did you get notice of their arrival? A. Well, I am in the yard every day, and they tell me when I get there that they are there.

Q. So you were in the yard during every working day of July, 1912? A. Yes, sir.

40 Q. How is the watermelon business carried on in the Henderson street yard, Jersey City? A. Well, if I come in there in the morning there is speculators there and they come and try to buy it, and each one makes you a different offer on the goods. Well, the man that bids you the most money and you see you can't get any more, you sell it to him.

Charles Albrecht, for Plaintiff—Cross

Q. You open them—you offer them at public sale in the Henderson street yards? A. Yes.

Q. In carload lots? A. Carload lots, and if I can't sell it by the carload I retail them myself.

Q. These prices that you have mentioned, is that carload lot or retail? A. That is what I surely could have received for them in carload lots,—sure. 10

Q. In this Henderson street yard are these certain tracks designated for watermelons? A. Yes, sir.

Q. Do you know the number of those tracks? A. Well, from 14 to about 20—20 I know is the last track.

Q. And that was where these cars were delivered, on these watermelon tracks? A. The day I seen them, yes, on these watermelon tracks. 20

Cross-examination by Mr. Hartpence:

Q. Mr. Albrecht, did you ever see any of these nine cars that you have referred to with these particular shipments of watermelons in them, prior to the respective days on which delivery was tendered in the Second and Henderson street yards in Jersey City? A. Did I see them before, did you say? I did not see them till they came in the yard.

Q. You never saw them before that? A. Not 30 till they came in the yard.

Q. Did you buy them? A. Sir?

Q. Did you buy those carloads of melons? A. A man down south buys them.

Q. You did not go south and buy them yourself, did you? A. I had a man down south.

Q. Oh, you had a man down south who bought them for you, is that right? A. Yes.

Q. All nine of these cars? A. Yes.

Q. He was your agent in the south for that purpose, wasn't he? A. Yes. 40

Charles Albrecht, for Plaintiff—Cross

Q. And what was his name? A. Mr. Clute.

Q. Mr. B. F. Clute? A. Yes.

Q. And is that the same gentleman whose testimony was taken regarding those cars and read here this morning? A. Yes.

Q. Well, how did you know there were any cars there for you? A. When I came there in the morning and asked "Anything here for me?" the young man tells me "Yes," and he tells me the tracks they are on.

Q. Now whom do you ask in the morning? A. Well, they have a party by the name of Dominick there and another party, Tom—I do not know their last names.

Q. They are employes of the railroad company, are they, in the yard? A. Yes.

Q. And that is the way you get notice of the arrival of the cars, isn't it? A. Well, they send me a notice too—they send me a notice too, a postal card home where I live.

Q. When do they send that postal card, do you know? Do you get that before you go in the morning or later on? A. Well, that postal card I might get in the morning, and when I come in the yard the cars might be there; I will see them when I get home at night.

Q. Yes; and you depend upon the cars that are there, or getting notice of them, by going in and asking each morning, don't you? A. I get information in the yard, my car is in the yard.

Q. Well, now did you know that these cars were on their way north to you before you found them in the Jersey City yard? A. Did I know they were on the way? Yes.

Q. All of them from time to time? A. Yes.

Q. How did you know that? A. Well, I get a letter from my man every time he ships a car.

Q. You mean Mr. Clute? A. Yes; Mr. Clute

Charles Albrecht, for Plaintiff—Cross

gives me a letter every time he ships a car and telegraphs me that same night.

Q. Yes; and do you get anything else from him? A. Only the line of watermelons.

Q. Do you get anything else besides the letter?

A. Well, what I call a shipping receipt is in the letter, yes.

Q. Yes; each time you get a letter from Clute 10 this shipping receipt is in the letter and you got that shipping receipt for all these cars, didn't you? A. Yes.

Q. I show you these exhibits from P-1 to P-9 inclusive and ask you if those are shipping receipts that you have referred to for these cars? A. I don't hear you.

(Question repeated.) A. Whether these are?

Q. Yes. A. Yes.

Q. Did you personally look after the sale of 20 watermelons here at the Second and Henderson street yard in your business? A. Personally look at the sale?

Q. Did you personally look after the sale of watermelons in your business here at the Second and Henderson street yard? A. My own stuff.

Q. You sold that yourself, didn't you? A. I couldn't sell this.

Q. No—in your business? A. Yes.

Q. You looked after the sale of melons there 30 generally, didn't you, in your business? When they were sold in the morning in the carload lots from time to time during the season to these speculators that you talk about, you looked after that yourself, didn't you, the offering of the melons for sale? A. I sold that myself, yes.

Q. And you sent Clute south to look after the purchasing of them down there in the south?

A. Yes, sir.

Q. That is correct, is it? A. Yes.

Charles Albrecht, for Plaintiff—Cross

Q. You did not accept any of these nine cars of melons, did you? A. No, sir.

Q. Refused them all? A. Yes, sir.

Q. And you signed a refusal slip at the time you reported the car to the agents there at the freight station, didn't you? A. Yes.

10 Q. I show you a paper and ask you if that is your signature signed to it? A. Yes.

Q. And is that the refusal slip that you signed for car ABA 20917? A. Yes.

(Marked D-1 for identification.)

Q. And I show you eight other papers purporting to be refusal slips for cars Sou. 32937; Sou. 25284; SAL 24096; SAL 23256; SAL 15841; SAL 22453; Sou. 38162; Sou. 35039; and ask you if those are the refusal slips that you signed for
20 those other eight cars? A. Yes, sir.

Q. And is that your signature on each one of those eight slips? A. Yes, sir.

(Papers marked D-2, D-3, D-4, D-5, D-6, D-7, D-8, and D-9 respectively for identification.)

Q. Mr. Albrecht, after you refused to accept these nine cars as they came in and were tendered for delivery to you, did you ever say anything
30 further to the Pennsylvania Railroad Company or any of its agents there at Second and Henderson street regarding those cars; did you ever take it up with them afterwards in any way? A. Yes.

Q. In what way? A. In a claim.

Q. Claim for what? A. For these melons.

Q. Did you do that in writing or just verbally?

A. In writing.

Q. What sort of a writing? A. Writing.

Q. Did you write a letter about it? A. Yes.

40 Q. You did write a letter? A. Wrote a letter

Charles Albrecht, for Plaintiff—Cross

and sent bills of ladings along with it and stating the condition the melons were in.

Q. Is that (showing witness a paper) a letter you wrote about that matter to the Pennsylvania Railroad Company? A. Yes.

Q. And is that your signature to the letter? A. Yes.

(Paper marked D-10 for identification.) 10

Q. Did the Railroad Company ever give you freight bills for these nine shipments? A. No, sir.

Q. You have never paid that freight? A. No, sir.

Q. I show you another paper and ask you if that is another communication that you sent to the Pennsylvania Railroad Company regarding these cars you claim damage for? A. Yes. 20

Q. And is that your signature to that letter? A. Yes, sir.

(Marked D-11 for identification.)

Q. I show you what purport to be nine bills upon bill heads of Charles Albrecht, to Pennsylvania Railroad Company, and ask you if those are what you refer to as the claims in writing that you put in to the company for these nine cars? A. These here? 30

Q. Keep them in that same order, please. A. These are what I mentioned in my claims, yes, sir.

(Marked for identification D-12 to D-20 inclusive, for identification.)

(Recess.)

Q. Can you tell me, Mr. Albrecht, to which car this first claim, D-12 for identification, applies? A. Which car number? 20917. 40

Charles Albrecht, for Plaintiff—Cross

Q. And can you tell me which car this second claim marked D-13 for identification applied to? A. There was two of them, they are both alike,—25284.

Q. And can you tell me which one D-14 for identification referred to? A. 32937.

Q. And can you tell me which one D-15 for
10 identification applied to? A. 24096.

Q. And can you tell me which D-16 for identification referred to? A. 15841.

Q. And can you tell me which car D-17 for identification referred to? A. 23256.

Q. And can you tell me which car D-18 for identification referred to? A. 22453.

Q. And will you tell me which car D-19 for identification applied to? A. 38162.

Q. And will you tell me which car D-20 for
20 identification applied to? A. 35039.

Q. And did those claims state the amount for which you looked to the Pennsylvania Railroad Company for reimbursement for the damage to those melons? A. That was just the cost without any expense attached to it.

Q. And the cost at what places? A. South—South Carolina.

Q. At the various places of shipment in the south? A. At the shipping places in the south.

30 Q. Now on what date was the first car, ABA 20917, delivered to you or delivery tendered? A. What number?

Q. 20917. A. On the 23rd.

Q. 23rd of what? A. The 7th, 23rd—July.

Q. And on what date was the delivery of the second car, 32937, tendered? A. July the 31st.

Q. And on what day was the delivery of car Sou. 25284 tendered at Jersey City? A. July
40 the 27th.

Charles Albrecht, for Plaintiff—Cross

Q. And on what day was the delivery of car SAL 24096 tendered at Jersey City? A. 24096?

Q. 24096. A. July 27th.

Q. And on what day was the delivery of car SAL 23256 tendered? A. July 25th.

Q. And on what day was the delivery of car SAL 15841 tendered? A. July 27th.

Q. On what day was delivery of car SAL 22453 10 tendered? A. July 26.

Q. And on what day was delivery of car Sou. 38162 tendered? A. July 26th.

Q. And on what day was the delivery of car Sou. 35039 tendered? A. July 26th.

Q. Were these claims marked D-12 to D-20 for identification presented on the dates which they bear on the billhead? A. Yes, sir.

Q. They were? A. On the day of them bills, 20 yes.

Q. You mean by that that they were presented to the Pennsylvania Railroad Company on those days or dates? A. Yes.

Q. How do you know that the market value of melons like those that were in car ABA 20917 was \$275 per carload on July 18th, 1912? A. Well, it was on that grade of goods.

Q. How do you know it? A. Well, I know it.

Q. Well, how do you know it? A. Well, it was on that grade of goods, that's all I can tell you. 30

Q. How did you learn that was the market price? A. Well, I know that from my experience.

Q. Were they selling for that price there at Second and Henderson street? A. If there was that kind of goods had been there it would have brought that price.

Q. Did you see any sold there that day for that price? A. Not that I can remember.

Q. Then how do you know they would have 40

Charles Albrecht, for Plaintiff—Cross

sold for that much? A. This grade of goods would have brought that much.

Q. How do you know they would? A. I know they would.

Q. If you saw none sold there for that price, how do you know they would have brought that?

A. There was none of that grade of goods there.

10 Q. Oh! There were none of that grade of goods there at all? A. Not of that grade.

Q. Well, then, tell us how you made up your mind that if there had been melons there of that grade they would have brought that sum? A. If there had been melons that grade there? Well, I can't answer that question if they ain't there.

Q. Well, then, how did you answer the question by saying that they were worth \$275? A. That grade of melons would bring \$275.

20 Q. Now you say you could not answer that question as to how you reached that amount—A. I don't know what anybody else's melons is; I look at my own.

Q. Then when you say that those melons would have brought \$275 a car on July 18, 1912, it is a mere supposition on your part, isn't it? A. No, sir; I know the melons would have brought that money.

30 Q. Well, how do you know it? A. I have told you that I am sure that melons of that grade would have brought that money.

Q. You are sure they would have brought that? A. That grade would have brought that money.

Q. But you did not see any others like them sold that day? A. I did not see any others of that grade.

Q. And did you hear any offers made there that day for melons of that grade? A. Not that I can remember.

40 Q. How long, Mr. Albrecht, have you been fre-

Charles Albrecht, for Plaintiff—Cross

quentering that watermelons market in the Pennsylvania Railroad yard in Jersey City? A. You mean how long I have been in business?

Q. There. A. I have been in the business around 17 years.

Q. And how long have you been frequenting the market in Jersey City? A. Well, I don't know is it nine or ten years. 10

Q. And during the watermelon season are you there, or were you there pretty nearly every day during the season? A. There every day.

Q. During these last nine or ten years? A. Yes, sir.

Q. Now in your experience there at that market and in the fruit business, have you any knowledge of a publication called the Producers' Price Current? A. No, sir.

Q. Have you never seen it? A. No, sir. 20

Q. Never had occasion to refer to it? A. No, sir.

Q. How did you from time to time inform yourself concerning the market prices of watermelons? A. On according to what it would bring.

Q. Well, how would you know what it would bring? A. I know the good stuff always brings more than the stuff that isn't in a class with it. 30

Q. And you based your knowledge then upon other sales, did you not, at that place? A. I placed my knowledge on good quality—on good stuff.

Q. Yes, but you based that nevertheless in relation to sales made of other melons, did you not, at that place? A. What do you mean?

Q. Well, when you made up your mind that melons of a certain quality were worth a certain sum you did that because you knew other melons were selling for some other price; isn't that right, 40

Charles Albrecht, for Plaintiff—Cross

and that these would bring more or less than the other melons? A. I say the good quality will always bring more than some that ain't as good as it.

Q. Yes, but when you made up your mind that melons of good quality would bring a certain sum, you made up your mind to that because you saw
10 what other melons were selling at; didn't you? A. Well, I may see at times what other melons are selling for.

Q. And then you make up your mind what these melons are worth? A. What good stuff would bring.

Q. Now there were melons of different grades sold there in that yard? A. Yes, sir.

Q. Some sold for one price and some sold for another; is that right? A. I suppose so.

20 Q. Do you know whether any record was ever kept of the selling price of melons from day to day? A. I don't make no record of them.

Q. Do you know whether any record was made by anybody? A. I don't know.

Q. Don't you know, Mr. Albrecht, that in the Producers' Price Current for July 18, 1912, Georgia and South Carolina Watermelons per
carload were quoted at from \$150 to \$225, and not at \$275, which you say was the market price?

30 A. Well, it might have been a poorer grade.

Q. It might have been? A. It was a poorer grade.

Q. Well, can you think of any reason why they would have quoted the price on one grade and not on the other? A. A car of good quality melons will always bring \$50 to \$75 more than a poorer grade. That is according to buyers.

Q. But can you think of any reason why they would quote the price on one grade and not on the other? A. I do not know. We don't go ac-
40 cording to the quotations—not in the yard.

Charles Albrecht, for Plaintiff—Cross

Q. And do you base your statement of the respective amounts at which these different cars would have sold on the dates you referred to—
A. What do you mean?

Q. Do you base your statement that these different cars would have sold for the different sums that you have said in your direct examination, on the— A. They would have sold for what I said 10
they would.

Q. Do you base that upon the same basis as you have already testified to in regard to this first car? A. Yes.

Q. Just the same? A. Yes.

Q. In other words, you have a sort of sixth sense which tells you just what the price of watermelons will be on any given day; is that right? A. What do you mean,—a sixth sense?

Q. Well, you sort of have an instinct—instinct- 20
ively you determine what melons of a given quality are worth on a given day? A. Always worth more than a different grade of melons not good quality.

Q. And do you remember whether you saw any other melons of that same type or variety as contained in car Sou. 32937 sold on July 25, 1912?
A. No, sir.

Q. And is that true of all the other melons on their respective dates? A. Yes, sir. 30

Q. And don't you know, Mr. Albrecht, that on the date on which you said the melons like those contained in car Sou. 25284 were selling for \$275, that the price quoted in the Producers' Price Current was from \$25 to \$50 less than the price you stated? A. Well, it is extra good quality I had here.

Q. And don't you know that the same situation existed with regard to car SA 24096 on the day that you said they were worth \$275? A. That grade that I had, yes. 40

Charles Albrecht, for Plaintiff—Cross

Q. And that on the day you said the melons in SAL 23256 were worth \$275? A. Yes.

Q. What were they selling for on that day? A. 23256?

Q. Yes. A. \$275.

Q. And what day was that? A. On the 21st.

Q. Of July, 1912? A. Yes, sir.

10 Q. Did they sell watermelons there on Sunday? A. What?

Q. Did they have a market there on Sunday?

A. No.

Q. Don't you know that July 21st, 1912, fell on Sunday? A. I would have—I don't know. I don't know whether I have got that down—well, I don't remember. I don't remember that car, that is as far as the date is.

20 Q. But the market price that you have given on that car is for July 21, 1912. A. That is what I have got it here.

Q. How about car 15841? A. That was on the 22nd.

Q. And you stated that the market value that day for melons was \$250? A. \$250.

Q. And don't you know that they were quoted in the Producers' Price Current at \$200 to \$250? A. Well, on that grade.

30 Q. What grade was quoted there, do you know? A. I don't know.

Q. Then you do not know whether it was this grade or not, do you? A. I know this was a good grade of melons I had here.

Q. How about car 22453? A. That was on the 23rd.

Q. 23rd. A. \$275.

40 Q. And don't you know that on that day they were quoted in the Producers' Price Current at \$200 to \$250? A. I don't know what was quoted there. We don't go according to quotations.

Charles Albrecht, for Plaintiff—Cross

Q. You don't know, then? A. We don't go according to quotations.

Q. Car 38162? A. That was on the 22nd.

Q. And your statement of the market value is \$250? A. \$250.

Q. And don't you know that they were quoted at \$200 in the Producers' Price Current on that day? A. I do not know what they were quoted at. 10

Q. Car 35039? A. That was on the 22nd.

Q. And the market price was \$250 you stated, and don't you know it was quoted in the Producers' Price Current on that same day— A. It might have been quoted at \$200.

Q. What kind of cars were these melons in when you saw them in the Jersey City yards in these nine cars? A. Ventilated cars.

Q. All nine cars were ventilated cars? A. Yes.

Q. Usual watermelon car, were they not? A. 20
Yes, sir.

Q. Were there any good melons at all in any of the cars? A. Sir?

Q. Were there any good melons at all in any of the cars? A. Well, there might have been.

Q. Did you look to see? A. I did.

Q. Well, what did you see? A. The majority of them was rotten.

Q. The majority of them were rotten? A. Yes, 30
sir.

Q. What sort of an examination did you make of them besides looking at them to see? A. Well, I could not do no more than look at them, could I?

Q. Well, did you do anything else? A. I looked at them and seen them on top, rotten, and lifted up a few and seen they were rotten in under.

Q. And did you go all through the cars doing that? A. No, I did not go all over the car.

Q. Where did you do it, in what part of the car? A. Right at the door. 40

Charles Albrecht, for Plaintiff—Redirect

Q. So you examined right at the day in that way— A. And seen further ahead.

Q. And saw further ahead. Well, they were packed in tiers, weren't they, in the cars? A. Yes.

Q. Were there shelves in the cars? A. No; they were right on top of one another.

Q. How high? A. Four high.

10 Q. Four high in all those cars, and you just moved a few of them around near the doors and saw they were rotten? A. I could see right along this side of the door (indicating) and that said of the door (indicating)—that they were rotten.

Q. But you could not see under the top layer that they were rotten? A. I could pull up a few and see that they were rotten underneath.

Q. But you only did that at the door, didn't you? A. Right alongside the door.

20 Q. Did you make any actual count of the number of good melons or spoiled melons in the cars? A. No, sir, I did not handle them.

Redirect-examination by Mr. Stout:

Q. Mr. Albrecht, from your experience in handling watermelons, could you tell from the examination that you made whether a majority of the watermelons were affected or not? A. Yes, sir.

30 Q. And when there are a number of watermelons in a carload that are rotten or decayed, what effect does it have on the other melons? A. You mean if there is any good ones?

Q. Yes, what effect does it have on those which are apparently good?

Mr. Hartpence: I object.

A. Well, the heat of the rotten ones—

Mr. Hartpence: I object. The question is in general terms as to whether or not he can tell from his experience if melons in the car are rotten what the effect would be on other

40

Charles Albrecht, for Plaintiff—Redirect

melons. Now I think the question should be directed to the melons in these particular cars and if he could tell how the presence of certain melons in those cars what the effect was on the other melons in those cars.

The Court: What is the objection to limiting him to that?

Mr. Stout: There isn't any objection. I 10 will ask this question:

Q. Could you tell from your experience whether the melons in these nine cars which were apparently in good condition were affected by the rotten melons? Were they affected? A. Well, the heating of the rotten melons creates a disease on the good ones.

Q. And so when there are a number of rotten melons in the car those which are apparently 20 sound are not what you would call good melons? A. No, sir.

Q. During the month of July, 1912, you sold watermelons of the kind and variety contained in these cars in the Henderson street yard, Jersey City? A. Yes, sir.

Q. And what were the market conditions for select watermelons of the kind contained in these cars if in sound condition during the month? A. 30 You mean the whole month?

Q. Yes. A. During the whole month?

Q. Yes. A. Well, on July 12 I sold a car for \$360.

Q. Did you sell any cars for any higher price than that?

Mr. Hartpence: I object.

A. I can't remember that.

Mr. Hartpence: The testimony shows the market value of the melons in these particu- 40

Charles Albrecht, for Plaintiff—Recross

lar cars at a certain figure, and I don't see what the—

The Court: I think it is irrelevant myself and immaterial.

Mr. Stout: I withdraw the question.

Q. I call your attention to car SAL 23256.

10 A. What is that?

Q. Car 23256. A. Yes, sir.

Q. What could you have obtained for that car if the melons had been in sound condition, on July 22, 1912? A. \$250.

Recross-examination by Mr. Hartpence:

Q. Why do you say that the market value would have been \$250 on that car on July 22?

A. Well, I figure that is what it would have
20 brought.

Q. Well, how do you figure it? A. It would have brought that that day.

Q. And why did you say it would have brought \$275 on July 21st? A. Well, the market called for it.

Q. And yet July 21 was Sunday, was it not? A. What?

Q. July 21 was Sunday? A. Well, I may have made a mistake in putting this car down for that
30 date. I may have made a mistake in putting that car down that day.

Q. And yet you were very positive, were you not, that that was the market value of that car load of melons on that day? A. Well, it could not be on a Sunday.

Q. Then why are you so positive of it on the 22nd, that it was \$250? A. Well, I was there and know the conditions of the market.

Q. And I suppose that would have been the
40 basis of your fixing the market value on all of

Motion for Non-Suit

these different dates, would it not? A. I fixed the value of the market on my melons because they were good melons,—extra melons.

Q. Did you ask anybody on those respective dates how much they would have given you for them if they had been in good condition? A. There was no use asking anybody.

10

Mr. Stout: I call for the refusal slips which have been marked for identification from D-1 to D-9.

Mr. Hartpence: We produce them.

Mr. Stout: I offer them in evidence.

Mr. Hartpence: We have no objection.

(D-1 to D-9 inclusive for identification marked in evidence P-1 to P-9.)

20

PLAINTIFF RESTS.

Mr. Hartpence: We move for a non-suit on the ground that the evidence conclusively shows that the Pennsylvania Railroad, the defendant in this suit, was not the initial carrier in any of the nine shipments referred to in this action, and that under section 20 of the Federal Interstate Commerce Act, commonly called the Carmack Amendment, the initial carrier along is liable to the holder of the bill of lading for any loss or injury caused to the property shipped under those bills of lading, that section reading that any common carrier, railroad or transportation company, receiving property for transportation from a point in one State to a point in another State shall issue a receipt or a bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage 40

30

Motion for Non-Suit

or injury to such property caused by it or by any connecting carrier, railroad or transportation company, and so forth.

The Court: What have you gentlemen to say about it?

10 Mr. Stout: I have this to say, your Honor, that it is a question for the jury to determine whether these so-called bills of lading or shipping receipts were issued by the initial carrier in conformity with this Act; in other words, whether the consignee does not still retain his right to bring his action against the delivery carrier under the common law liability. I think it is for the jury to determine—

20 The Court: What? Determine whether a law is applicable or not? I never heard of such a proposition.

Mr. Stout: No; for the jury to determine whether the bills of lading have been accepted by the shipper so as to make them operative under—

30 The Court: What have the bills of lading got to do with it? It says that any common carrier shall be liable, and so on. It does not say anything at all about whether he issues a bill of lading or whether he does not.

Mr. Stout: But that is not exclusive; it does not say that the delivery carrier is not liable,—at least as I read it.

40 The Court: Well, Mr. Stout, I will deny the motion, and I will deny the motion for these reasons: First of all, the statute itself provides that any common carrier, railroad or transportation company receiving property, and so on, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, and so on.

Motion for Non-Suit

It does not at all indicate that every other person who may have anything to do with the shipment of it may not also be liable for the same thing; and you will also find if you will read the case of the Railroad Company v. Carl, a case which I cited at the last trial [Spada v. P. R. R.] and which the attorney for the railroad company has now in his possession,—that case distinctly states that the same rights and same liabilities that attach to the initial carrier attach to all the subsequent and connecting carriers. They have the right to avail themselves of the same advantages, and they in all likelihood will be bound by the same burdens; but leaving that out of the question, I am entirely satisfied that this is simply a fastening of liability upon a certain number of carriers and is not exclusive of others, and upon that ground I deny the motion. 20

Mr. Hartpence: I desire to have our objection noted.

The Court: Oh, yes. I might say that there is another reason which may be added to this decision, and that is that the Carmack Amendment itself provides in a subsequent clause that the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company on whose line the loss, damage or injury shall have been sustained, the amount of said loss, damage or injury as it may be required to pay to the owners of such property, as evidenced by any receipt, judgment or transcript thereof. It seems perfectly clear that the object of the Act was to fasten the liability on the person who was 30
40

John R. Pedrick, for Defendant—Direct

responsible for it, and in order to avoid circuity of action it would seem to be perfectly plain that you could sue the initial carrier or any subsequent carrier into whose possession the goods came and who was responsible for the loss of or damage to them.

10 The proviso of the so-called Carmack amendment to the Interstate Commerce Law is as follows: "Provided that nothing in
20 this section shall deprive any holder of any such receipt or bill of lading of any remedy or right of action which he has under existing law," which is a provision which completely covers the situation now presented to the Court, and especially as that amendment has been construed in the case of Adams Express Co. v. Croninger, decided in the United States Supreme Court on the 6th of January, 1913, where it is said that such proviso, the 20th section, is evidently only intended to continue in existence such other rights or remedies for specific redress of such wrong or injury, whether given by interstate commerce act or state statute or common law, not inconsistent with the rules and regulations prescribed by the provisions of this Act,—which completely
30 covers the present case.

DEFENDANT'S CASE.

JOHN R. PEDRICK, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Conductor on the Pennsylvania Railroad, between Edgemoor
40 and Jersey City.

John R. Pedrick, for Defendant—Direct

Q. And were you in that position in July of 1912? A. Yes, sir.

Q. What was your general custom or duty in the ordinary course of your employment with regard to making and preserving records of cars and trains that came to your custody and were carried by you? A. Well, my custom was to take the numbers off the cars into what we call a car record book and then copy from the car record book into what we call a report—what we commonly call a Riley. 10

Q. What became of the Riley? A. I believe you have it in your possession.

Q. What became of it in the ordinary course of your business, what did you do with it after you made it up? A. We pin them together and send them in to the car record office.

Q. How about the original record that you made; where is that? Have you that with you? A. Yes, sir; I have the book here. 20

Q. And does that record show a notation of the shipment or movement by you on July 17, 1912, of car AB&A 20917? A. Yes, sir.

Q. Where did you get that car? A. Got that car at Edgemoor, Delaware.

Q. At what time did you receive it? A. I left Edgemoor, Delaware, at 6:55 A. M.

Q. 6:55 A.M.? A. July 17, 1912. 30

Q. What did you do with that car after you took it at Edgemoor? A. I brought the car to the Meadows, Jersey City.

Q. And does your record show what time you reached the Meadows? A. On July 17, 1912, at 7:30 P. M.

Q. And what did you do with the car then? A. I left the car on the Meadows. That is as far as I took the car. 40

Edward B. Ammerman, for Defendant—Direct

Cross-examination by Mr. Stout:

Q. Where are the Meadows? A. About three miles from Harsimus Cove. It lays between Harsimus Cove and Newark, or Manhattan Transfer, as we call it—Meadows, N. J.

Q. Do you know how long it would take to run a train in from Meadows to the Henderson street yard? A. Well, it would depend on circumstances.

Q. Well, I mean if you had a clear track. A. Well, they ought to run in—a clear track, ought to run in in 35 to 40 minutes.

EDWARD B. AMMERMAN, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Freight conductor.

Q. For what company? A. Pennsylvania Railroad.

Q. And were you in that position in July, 1912? A. Yes.

Q. And where did you run? A. From Trenton to Jersey City—Harsimus Cove.

Q. Did you keep any record of the trains that you had charge of? A. Yes, sir, I kept such a record.

Q. And will that record show at what time and where you took possession of car Sou. 32937 on July 24, 1912? A. Yes, sir.

Q. Have you that record with you? A. Yes, sir.

Q. Where did you take possession or control of that car? A. I took possession of that car at Waverly.

Q. And where is Waverly? A. Waverly is about eight miles from Harsimus Cove—ten miles probably—ten miles from Harsimus Cove.

Q. In what direction? A. West.

Charles E. Linn, for Defendant—Direct

Q. Is that towards Edgemoor, Delaware? A. Yes, sir.

Q. What time did you take possession of that car? A. I took possession of that car at 12:15 July the 24th.

Q. 12:15 A. M. or P. M. A. P. M.

Q. And what did you do with it after that?

A. Took the car to the Meadows yard. 10

Q. Meadows, Jersey City? A. Meadows, yes, sir—Hackensack Meadows.

Q. What time did you reach there? A. At 1:50 P. M. July 24th.

Q. What did you do with the car? A. Left it on the Meadows.

(No cross-examination.)

20

CHARLES E. LINN, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Freight conductor on the Pennsylvania Railroad.

Q. Were you in that position in July of 1912? A. Yes, sir.

Q. Where did you run? A. From Edgemoor, Del., to Jersey City.

Q. Did you keep a record of your movements of trains and cars that came to your custody as freight conductor? A. Yes, sir. 30

Q. Have you that record with you? A. Yes, sir.

Q. Will you produce it, please, and state whether or not it shows the record of the movement of car Sou. 25284 on July 21, 1912? A. Yes, sir.

Q. And where did you get custody of that car at that time? A. At Edgemoor, Delaware. 40

Alfred Ackeroyd, for Defendant—Direct

Q. What time did you leave Edgemoor, Delaware, with that car? A. July 22, 12:05 A. M.

Q. And where did you take that car? A. Meadow yards.

Q. What time did you reach Meadow yards with it? A. July 22, at 7 o'clock A. M.

Q. You mean by that, Meadows, Jersey City?

10 A. Yes, sir.

Q. What did you do with the car after you got to Meadows? A. Left it in the Meadows yards.

Q. And does your record also show the movement of car SAL 24096? A. Yes, sir.

Q. Where did you get that car? A. I got that car at Edgemoor, Delaware.

Q. And when did you leave Edgemoor with it?

A. That was in the same train with the other, July 22, 12:05 A. M.

20 Q. And where did you take it? A. To the Meadows yard.

Q. And what time did you reach there? A. 7 o'clock A. M., the 22nd.

Q. That same day, July 22nd? A. Yes, sir.

Q. And what did you do with the car? A. Left it in the Meadows yard.

ALFRED ACKEROYD, SWORN.

30

Direct-examination by Mr. Hartpence:

Q. What is your employment or occupation?

A. Conductor, Pennsylvania Railroad.

Q. Freight conductor? A. Yes, sir.

Q. Were you in that position in July, 1912?

A. Yes, sir.

Q. Where did you run? A. Edgemoor to Jersey City.

Q. Do you keep a record of the movements of
40 your trains and cars? A. Yes, sir.

Alfred Ackeroyd, for Defendant—Cross
John S. Jones, for Defendant—Direct

Q. Have you that record with you? A. Yes, sir.

Q. Produce it, please, and state whether or not it shows the movement of car SAL 23256 on July 20, 1912? A. Yes, sir, I have that record.

Q. Where did you get that car? A. Edgemoor, Delaware.

Q. What time did you leave there? A. July 20, 10 8:35 P. M., on July 20, 1912.

Q. Where did you take the car? A. Meadows.

Q. Meadows, Jersey City? A. Jersey City, yes, sir.

Q. What time did you reach Meadows? A. 12:15 P. M., July 21.

Q. What did you do with the car? A. Left it on the Meadows.

Cross-examination by Mr. Stout: 20

Q. When did you leave Edgemoor? A. 8:35 P. M., July 20.

Q. And when did you reach the Meadows? A. 12:15 P. M., July 21.

Q. July 21? A. Yes, sir.

JOHN S. JONES, SWORN.

30

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Freight conductor, Pennsylvania Railroad.

Q. Were you a freight conductor on the Pennsylvania Railroad in July, 1912? A. Yes.

Q. Where did you run? A. Between Jersey City and Edgemoor.

Q. Did you keep a record of the movements of your trains and cars which came into your possession? A. Yes, sir.

40

John S. Jones, for Defendant—Cross

Q. Have you that record with you? A. Yes.

Q. Will you produce it and state whether or not it shows any movement on July 21, 1912, of car SAL 15841? A. Yes, sir.

Q. Where did you receive that car that day? A. Edgemoor, Del.

Q. And what time did you leave Edgemoor, Delaware, with it? A. 1 P. M. July 21, 1912.

Q. And where did you carry the car? A. The Meadows, Jersey City.

Q. What time did you reach Meadows with it? A. 10:30 P. M. July 21, 1912.

Q. What did you do with the car when you got to the Meadows yard? A. Left it in the Meadows yards.

Q. And does your record also show the movement on that same date, July 21, 1912, of car SAL 22453? A. Yes, sir.

Q. Where did you get that car? A. Edgemoor, Del.

Q. And what time did you leave with it? A. 1 P. M. July 21, 1912.

Q. And where did you carry that car? A. To Meadows yard, Jersey City.

Q. What time did you reach there? A. 10:30 P. M. July 21, 1912.

Q. What did you do with the car after you reached Meadows? A. Left it in the Meadows yard.

Cross-examination by Mr. Stout:

Q. Did you say July 31 or 21? A. 21.

Redirect-examination by Mr. Hartpence:

Q. You mean July 21 at the Meadows? A. Yes, sir.

John H. Wilkinson, for Defendant—Direct

JOHN H. WILKINSON, SWORN.

Direct-examination by Mr. Hartpence:

Q. Mr. Wilkinson, what is your occupation?

A. Freight conductor, Pennsylvania Railroad, between Edgemoor and Jersey City.

Q. Were you in that position in July of 1912?

A. Yes, sir.

10

Q. Did you keep a record of the movements of cars and trains that came to your custody as such conductor? A. Yes, sir.

Q. Have you that record with you? A. Yes, sir.

Q. Will you produce it and state whether or not it shows the movement on July 21, 1912, of car Sou. 38162? A. Yes.

Q. Where did you get possession of that car? A. At Edgemoor, Del.

20

Q. And does it show what time you left Edgemoor, Delaware, with the car? A. Yes, sir; 3:20 A. M.

Q. On what date? A. July 21.

Q. 1912? A. Yes, sir.

Q. And where did you carry the car? A. Meadows, Jersey City.

Q. What time did you arrive at Meadows with it? A. 3:10 P. M. July 21.

Q. 1912? A. Yes, sir.

30

Q. Now what did you do with the car after you reached Meadows with it? A. Left it in the Meadows yard.

Q. Does your record also show the movement on that same day of car Sou. 35039? A. Yes, sir.

Q. Where did you receive that car? A. Edgemoor, Delaware.

Q. Where did you carry it? A. Meadows, N. J.

Q. What time did you leave Edgemoor? A. 3:20 A. M. July 21, 1912.

40

John L. Coman, for Defendant—Direct

Q. And what time did you arrive at Meadows?
A. 3:10 P. M. July 21, 1912.

Q. What did you do with the car when you reached Meadows with it? A. Left it at the Meadows.

(No cross-examination.)

10

J. L. COMAN, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Freight conductor, Pennsylvania Railroad.

Q. And were you in that same position in July, 1912? A. Yes, sir.

20 Q. And where were you stationed or where did you run? A. I run between the Meadows and Harsimus Cove.

Q. Did you keep a record of the car movements of cars and trains that you handled? A. No, sir.

Q. Did you make any note or memorandum of the cars that were moved by you?

The Court: He kept a Riley. Don't you remember?

30 Q. You kept a Riley, didn't you, Mr. Coman?
A. Yes, sir.

The Court: A Riley is a record.

Q. What is a Riley, Mr. Coman? A. Well, that's a thing that goes to the transportation—superintendent of transportation.

Q. Is this paper which I show you now such a Riley? A. Yes, sir.

Q. Have you ever seen that before? A. Yes,
40 sir.

David Whittick, for Defendant—Direct

Q. Who prepared it, do you know? A. That is my own handwriting.

Q. Is that your own handwriting? A. Yes, sir.

Q. What does the memorandum show? A. Well, it shows runs between the Meadows and Harsimus Cove—cars that I took from there.

Q. And on the date that it is dated? A. Yes, sir, July 21, 1912. 10

Q. Did you make that memorandum at the time you handled the cars that are mentioned in it? A. Yes, sir.

Q. Will you show whether or not it shows the movement on July 21, 1912, of car ABA 20917? A. Yes, sir.

Q. Does it show where you received that car? A. Yes, sir.

Q. Where did you get it? A. Got it on the Meadows. 20

Q. Meadows near Jersey City? A. Yes, sir.

Q. And what time did you get it on that date, July 21? A. 9:30 P. M.

Q. And where did you take it? A. To Harsimus Cove.

Q. And what time did you reach Harsimus Cove with it? A. 11:55 P. M.

Q. That same date? A. Yes, sir.

Q. What did you do with it? A. Left it in Harsimus Cove. 30

(No cross-examination.)

DAVID WHITTICK, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Freight conductor, Pennsylvania Railroad Co.

Q. Were you in that position in July, 1912? A. Yes, sir. 40

David Whittick, for Defendant—Direct

Q. Where did you run at that time? A. Between the Meadow yards, Jersey City, and Harsimus Cove.

Q. And did you keep any record or memorandum of the cars— A. No, sir.

Q. —that came to you— A. No, sir.

Q. —and were moved by you from the Meadows
10 to Harsimus Cove? A. No, sir.

Q. Did you keep a Riley? A. We make out a record that is printed for that purpose for the company's use, a car record report.

Q. You make a memorandum or report, do you, for that purpose? A. Yes, sir.

Q. This paper that I show you, is that such a report as you were in the custom of making out at that time? A. Yes, sir.

Q. Who made out that report? A. I did.

20 Q. Is that in your handwriting? A. Yes, sir.

Q. What is it a report of? A. A record of the movement of cars from the Meadow Yards to Harsimus Cove on July 28, 1912.

Q. And did you make that at the time the cars were moved from Meadows to Harsimus Cove? A. Yes, sir.

Q. Does it show the movement on that date of car Sou. 32937? A. Yes, sir.

30 Q. Where did you get the car? A. Meadow yards.

Q. And when did you get it? A. 6:40 P. M. July 28, 1912.

Q. And what did you do with the car after you got it? A. Took it to Harsimus Cove.

Q. What time did you reach Harsimus Cove with it? A. 7:55 P. M. July 28, 1912.

Q. What did you do with the car when you got to Harsimus Cove with it? A. Left it in Harsimus Cove.

40

(No cross-examination.)

Walter R. Reynolds, for Defendant—Direct

WALTER R. REYNOLDS, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Assistant freight yardmaster for the Pennsylvania Railroad Company at Mancha.

Q. Are you familiar with the usual course of procedure or of the system employed in the Pennsylvania Railroad Company of making reports or records of the movements of cars, freight cars and freight trains? A. I am, yes.

Q. What is the usual procedure in that respect? A. The conductor uses two forms, the one form CT1026, a book record that he keeps for his own reference, termed a car record book, and a loose leaf form CT1033B, called the car record report, sometimes called a Riley for the sake of ready reference, after the name of the man to whom it at one time was sent.

Q. Who prepares the Riley? A. The conductor.

Q. And after that Riley has been prepared what is done with it by the conductor? A. It is deposited with the yardmaster at the end of his trip and the yardmaster sends it to the office of the superintendent of transportation.

Q. Do you from time to time see those reports or Rileys? A. Yes, they come into our office and are forwarded from there.

Q. Did you ever know a freight conductor of the Pennsylvania Railroad Company named Huddle,—B. B. Huddle? A. Yes, he ran to our end of the division.

Q. And did he run into Harsimus Cove? A. From Mancha to Harsimus Cove, yes.

Q. Is he alive now? A. No; dead.

Q. Did you ever see his handwriting? A. Yes.

Q. Are you familiar with his handwriting? A. I am.

William A. George, for Defendant—Direct

Q. I show you what purports to be a freight conductor's report such as you have referred to, and ask you if you can state in whose handwriting that is? A. That is in the handwriting of Conductor B. B. Huddle.

Q. And what is the nature of the paper? A. A report of the movement of his train N-6 starting
10 July 22.

Q. What year? A. 1912.

Q. And does that show the movement on that date of car SAL 23256? A. Yes, from Meadows to Harsimus Cove.

Q. Is that Meadows near Jersey City? A. Yes, sir.

Q. At what time did it leave Meadows? A. It left the Meadows at 6:55 A. M. of July 23, 1912.

Q. To what point was it carried? A. To Har-
20 simus Cove.

Q. And it reached there at what time? A. At 11:30 A. M. of the same date.

Q. And does that report show what further, if any, disposition was made of that car? A. Nothing further.

(No cross-examination.)

30 WILLIAM A. GEORGE, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Freight conductor of the Pennsylvania Railroad.

Q. Were you freight conductor on the Pennsylvania Railroad in July, 1912? A. Yes, sir.

Q. And where did you run at that time? A. Between the Meadows and Jersey City, Harsimus Cove.

40 Q. Did you in the usual course of your employ-

William A. George, for Defendant—Direct

ment keep any record at all of the movements of the cars and trains that came to your custody as such conductor? A. I kept no record of my own, no.

Q. Did you make any memorandum of them?

A. No; I made no memorandum. I made out a train report, which we turn in at the end of our trip.

10

Q. And what did that report show? A. That report showed all cars which were handled in that train on that one trip.

Q. I show you a paper and ask you if that is such a report as you refer to? A. Yes, sir.

Q. Did you ever see that report before? A. Yes, sir.

Q. Who made out the report? A. I did.

Q. Is it in your handwriting? A. Yes, sir.

Q. What does it show? A. It shows the movement of the trains between the Meadows and Harsimus Cove. 20

Q. On what day? A. On July 25, 1912.

Q. Does it show the movement of car Sou. 25384? A. Yes, sir.

Q. And SAL 24096? A. Yes, sir.

Q. And SAL 15841? A. Yes, sir.

Q. Does it show where you received those cars? A. Yes, sir.

Q. Where? A. At the Meadows. 30

Q. Were they all in the same train? A. Yes, sir.

Q. What time did you get them at the Meadows?

A. 7:25 P. M.

Q. What date? A. July 25th.

Q. 1912? A. 1912.

Q. And where did you take them? A. To Harsimus Cove.

Q. What time did you get there with them? A. 8 P. M. of that same day. 40

William A. George, for Defendant—Cross
William H. Blodgett, for Defendant—Direct

Q. What did you do with them after you got to Harsimus Cove? A. We did not do anything with them after we got to Harsimus Cove.

Q. Just left them there? A. Just left them there.

10 *Cross-examination by Mr. Stout:*

Q. Do you know anything about the movement of these cars after you left them at Harsimus Cove? A. No, sir.

WALTER H. BLODGETT, SWORN.

Direct-examination by Mr. Hartpence:

20 Q. What is your occupation? A. Freight conductor on the Pennsylvania Railroad.

Q. And were you in that position in July, 1912? A. Yes, sir.

Q. Where did you run at that time? A. From Jersey City to Philadelphia and from Philadelphia to Jersey City.

Q. Did that carry you at any time from Meadows, near Jersey City, in to Harsimus Cove? A. Yes, sir.

30 Q. Did you keep any kind of record or memorandum or report of the movements of your cars and trains? A. Yes, sir.

Q. What sort of memorandum or record did you keep? A. What we call a car record book and—

Q. A car record book? A. Yes, sir, a book with the initials and numbers.

Q. And does that car record book show the places at which you took control or possession of cars and where you carried them and what became of them? A. Yes, sir.

40

William H. Blodgett, for Defendant—Cross
William V. Phillips, for Defendant—Direct

Q Have you that record with you? A. I have.

Q. Produce it, please, and state whether or not it shows the movements on July 24, 1912, of cars SAL 22453— A. Yes.

Q. And Sou. 38162? A. Yes, sir.

Q. And Sou. 35039? A. Yes, sir.

Q. Where does that record show that you received those cars? A. At the Meadows yards. 10

Q. And where are the Meadows yards? A. Right out here about three miles.

Q. Near Jersey City? A. Yes, west of Jersey City.

Q. What time did you receive them there?

A. 7:10 A. M. on 7th, 24th—July 24th, 1912.

Q. Were they all in the same train? A. They were, yes, sir.

Q. What did you do with them after you received them there? A. I left them at Harsimus Cove. 20

Q. What time did you get to Harsimus Cove?

A. 7:25 A. M. July 24th.

Q. What did you do with them after you left them at Harsimus Cove? A. Just left them there, that's all.

Cross-examination by Mr. Stout:

Q. You knew nothing of the movement of these cars after you left them at Harsimus Cove? 30

A. No, sir.

WILLIAM V. PHILLIPS, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your occupation? A. Agent of the Pennsylvania Railroad, Jersey City.

William V. Phillips, for Defendant—Direct

Q. How long have you been in that position?
 A. Since the first of February this year, 1913.

Q. How long have you been employed by the Pennsylvania Railroad Company? A. About 18 years.

Q. And where have you been employed during that time? A. Until May 1st, 1912, I was employed at piers 27, 28 and 29, New York.

Q. And since then at Jersey City? A. At Jersey City.

Q. And are you familiar with the conditions that exist in the freight yard at Jersey City, of the Pennsylvania Railroad Company? A. Well, one yard connected with the station, known as the ball ground yard.

Q. And is that the freight yard at Jersey City?

A. That is the freight delivery yard.

Q. Were you there in Jersey City in July, 1912? A. Yes, sir.

Q. At that time, during July, 1912, were there any conditions of congestion? A. There was.

Q. Out of the ordinary? A. There was.

Q. What was the nature of those conditions?

A. Well, all cars were blocked up, due to a strike on the New York piers.

Q. And in what way were they blocked up?

A. Well, the cars formerly delivered at those piers had to be delivered—a part of them had to be delivered at Jersey City.

Q. And what was the effect of that on the Jersey City yard? A. It had a tendency to block and back up all cars arriving.

Q. And to what extent was there a blocking up?

A. Well, I could not answer that question possibly to your satisfaction. It made a block all along the line.

Q. To what extent was there congestion in the Jersey City yard? A. Well, it would not allow

William V. Phillips, for Defendant—Direct

us to bring all our cars in the yard to make delivery, for one thing, we delivering during a period of ten days on an agerage of 100 cars every night consigned for New York piers.

Q. During that period was the amount of traffic in the Jersey City yard increased? A. Yes, it was.

Q. When did that condition first start? A. I 10
was first advised of that on the evening of July 9th between 10 and 11 o'clock P. M.

Q. And what were you advised of? A. I was advised there was a strike at piers 27, 28 and 29, New York, and requested to make delivery of as many of their cars of peaches as possible.

O. And how long did that strike continue? A. Until July the 20th.

Q. Did that condition of congestion continue all through that period? A. Yes, sir. 20

Q. Did it continue after that period? A. Yes.

Q. When was that condition overcome? A. Well, I don't know that I can give you the exact date—

Q. About? A. But it continued for two or three weeks anyway.

Q. And after that period of two or three weeks did you get back to a normal condition? A. I'll say yes.

Q. What did you do in the Jersey City freight delivery yard at that time, at the time of this strike— A. What did I do? 30

Q. What did you do, or what was done there by the Pennsylvania Railroad Company, to handle the extra traffic that came in, if anything? A. Well, in addition to placing cars in the yard to its fullest capacity, every outlying station was also used for that purpose during the night.

Q. Was it in this Jersey City freight yard that you have referred to that watermelons were delivered, consigned to Jersey City? A. Yes, sir. 40

William V. Phillips, for Defendant—Direct

Q. And where were watermelons delivered, consigned to New York on the Pennsylvania Railroad? A. All watermelons are delivered in Jersey City, being in bulk.

Q. And is that the general watermelon market in this vicinity? A. It has been for a number of years.

10 Q. Do you know about how many years? A. Eight or ten; I can't just tell how long.

Q. And what do you mean by its being the watermelon market? A. Well, I might say all cars arriving over the Pennsylvania Railroad—all cars of watermelons loaded in bulk, can't be handled at New York stations, therefore are delivered at our station in Jersey City.

Q. And Jersey City consignments also? A. Yes.

20 Q. Are they sold there at the Jersey City yards? A. Yes, sir.

Q. By whom? A. Well, commission merchants and speculators to whom they turn over the cars.

Q. And they all resort there to the freight yard for that purpose, is that true? A. They do.

Q. Does the Pennsylvania Railroad Company furnish employes at that point for the purpose of delivering or unloading those cars of watermelons consigned in bulk? A. Not for the unloading, but for taking receipt and making—

30 Q. What do you mean by taking receipt? A. Taking receipt for the car. That is the only form of delivery.

Q. That is clerical, is it not? A. Yes.

Q. How do the watermelons get in there for the use of the consignees? A. Well, I don't know that. I just understood that—they get in the same as—

Q. How do they get there? Where are they placed when the consignees are to take possession?

40 A. On delivery tracks in the Jersey City freight yard so that teams can drive between the tracks—back up to the car.

William V. Phillips, for Defendant—Direct

Q. Do you know where those cars come from immediately before being placed on the delivery tracks? A. Well, we know at the time they are placed.

Q. Well, where do they come from? A. Well, various points in the south—in fact they start from Florida and Georgia and the Carolinas and on up—we get some from New Jersey. 10

Q. Just before they are placed on the delivery tracks in the Jersey City yard from what point are the cars moved—the immediate point? A. Well, they are delivered from Harsimus Cove yard.

Q. Where is the Harsimus Cove yard as compared with the Jersey City yard? A. Well, it is just north of the Second and Henderson street yard.

Q. And as a matter of fact it is all one whole large collection of tracks in together, isn't it? A. Yes. 20

Q. How many tracks are there in the freight yard at Second and Henderson streets for the delivery of watermelons during the watermelon season? A. Ten tracks.

Q. Do you remember their numbers? A. 11 to 20.

Q. And is that where they are placed for the use of the consignees, on those tracks? A. Yes. 30

Q. They go in with teams to those places? A. Yes.

Q. And then when the clerical force of the railroad company has taken the receipt for the car, is any further aid furnished by the railroad company for the disposition of the cargo? A. Not for the disposition of the cargo.

Q. Who removes it? A. Consignees or representatives.

Q. What were the sidings that you referred to 40

William V. Phillips, for Defendant—Direct

as having been made use of in addition to those tracks during the continuance of the strike? A. They were sidings that branched off of our regular delivery yard, known to us as the track to the Atlantic & Pacific Tea Company, and also to the Martin Refrigerating Company and Butler Brothers' siding.

10 Q. Were they private sidings? A. Well, they are used by private concerns during the day. We took advantage of them at night for the delivery of peaches.

Q. And where do they run, those sidings from your yard,—to what point?

The Court: They run to the plants of these concerns, don't they?

A. They run to these plants; one of them is
20 down on Washington street.

Q. Is there any outlet from those sidings other than through the freight yard? A. No.

Q. Do you recall whether there were any other sidings used than those you have just mentioned? A. I think that was all outside of the delivery yard?

Q. Did the railroad company make any other effort, to your knowledge, to handle the congestion at that time, other than by the use of those
30 extra sidings? A. Well, I can't answer what they did elsewhere.

Q. In the yard at Jersey City what else, if anything, was done to relieve that situation of congestion? A. That was about all we could do; that was all the space we had.

Q. And you utilized every siding that you could for that purpose? A. Yes, sir.

Q. Did it entail any extra service upon the men of the railroad company employ in any respect?

40 A. Yes; many of them worked over time.

William V. Phillips, for Defendant—Direct

Q. How much over time? A. Well, there was many of them that worked twelve or fourteen hours during that time.

Q. Was there a night force on as well as a day force? A. Yes.

Mr. Stout: I object to this. I think he is leading the witness right along.

The Court: It was leading, but I will permit it to stand. 10

Q. Were there any extra service men put on during that period? A. Yes.

Q. In what department? A. In the delivery department.

Q. Do you know whether or not any extra motive power was placed in the freight yard for the purpose of moving the congestion? A. Well in a general way, but I can't say just how much. 20

Q. Did you have charge of that? A. I did not.

Q. Do you know Mr. Charles Albrecht, the plaintiff in this suit? A. I do.

Q. Have you seen him at any time in the freight yard at Jersey City in the melon exchange? A. Almost daily during the melon season.

Q. Do you know whether or not there were any cars consigned to Mr. Albrecht at that period of strike to which you have referred in July, 1912? A. I believe there were nine cars refused by him during that time. 30

Q. And have you any knowledge or any record with you of the cars that were refused by Mr. Albrecht at that time? A. Yes; I have freight bills with me covering those nine cars.

Q. Do you know what became of those nine cars that were refused by Mr. Albrecht? A. They were sold by the Pennsylvania Railroad or their representative. 40

William V. Phillips, for Defendant—Direct

Q. Who was their representative? A. Phillips & Sons, Commission Merchants, New York.

Q. And do you know when they were refused and when they were sold? A. I think I can give you the dates of all of them.

Q. Will you state generally between some period and some other period if you cannot give the exact
10 dates? A. I think it was between the 20th and 30th of July, 1912.

Q. Could you say it was between the 10th and the 30th? A. Well, the strike started on the 10th, but I was under the impression that these cars were sold about the 20th. I have not looked at the records. I have them here.

Q. Have you any records with you that will show the exact dates? A. I have memorandums made from the records—I believe you have the
20 refusal slips.

Q. Did you make these records that you have? A. Not personally.

Q. Did you make the memorandum that you have there? A. I did not make this memorandum, the clerk did.

The Court: Would the refusal slips show the date? A. Yes, sir; they show.

The Court: You have those in evidence already.

30

Q. Were they sold on the same days that they were refused by Mr. Albrecht in the ordinary course? A. The majority of them were; possibly all.

Q. Now, who had charge of the sale of those cars after they were refused by Mr. Albrecht? A. Phillips & Sons, commission merchants, Washington street, New York City.

Q. And do you know what person had charge of that for them? A. Yes, a party by the name
40 of Hellman.

William V. Phillips, for Defendant—Direct

Q. Do you know where Mr. Hellman is now?

A. I have not inquired in the last five days; he was then west, at Chicago, I believe.

Q. You testified at a former trial, did you not, a few days ago, in this court? A. At that time he was in Chicago.

Q. Have you heard from him since then? A. I have not.

10

Q. When those cars were sold by Phillips & Co. did the Pennsylvania Railroad Company receive any account of sales from Phillips & Company?

A. The usual account sales rendered us with check for the proceeds of the car.

Q. And what became of those accounts sales?

A. I have them with me.

Q. Were they preserved by the company in their office as records? A. They were.

Q. Have you the account sales with you from Phillips & Co. for the sale of the nine cars involved in this suit? A. The nine cars. (Witness hands counsel papers.)

20

Mr. Hartpence: We desire to offer these account sales in evidence.

Mr. Stout: We have no objection to the receipt of these account sales in evidence, and furthermore we have no objection to counsel reading into the record the account of sales.

(Papers marked D-21 to D-29 inclusive.)

30

Q. I show you exhibit D-27 and ask you if that shows the amount for which car ABA 20917 was sold? A. It does.

Q. And for what amount was it sold? A. Sold for \$40.

Q. And was that the net proceeds of the sale?

A. No, less commission of \$3.20, leaving net proceeds of \$36.80.

Q. I show you exhibit D-21, and ask you if you

40

William V. Phillips, for Defendant—Direct

will state the amount for which car Sou. 32937 was sold and the net proceeds? A. Sold for \$50, less commission of \$4. Net proceeds \$46.

Q. I show you exhibit D-22 and ask you to state the amount for which car—

Mr. Stout: If it will hasten matters we will consent that they be read.

10 The Court: Read them right off.

Mr. Hartpence: D-22, car 25284, sold for \$40, less commission of \$3.20, net proceeds, \$36.80.

The Court: The commission is 8% on the sales?

The Witness: Yes, sir.

The Court: In all cases?

The Witness: Well, in a majority of cases there.

20 Mr. Hartpence: Exhibit D-24, car 24096, sale price \$50; commission \$4; net proceeds \$46.

Exhibit D-26, car 23256; sale price \$40; commission \$3.20; net proceeds \$36.80.

Exhibit D-23, car 15841; sale price, \$30; commission \$2.40; net proceeds \$27.60.

Exhibit D-25, car 22453, sale price \$30; commission \$2.40; net proceeds \$27.60.

30 Exhibit D-29, car 38162, sale price \$40; commission \$3.20; net proceeds \$36.80.

Exhibit D-28, car 35039, sale price \$40; commission \$3.20; net proceeds \$36.80.

Q. Do you know whether or not the freight on those cars was paid by the consignee, Charles Albrecht? A. They were not.

The Court: It has been admitted by the other side that the freight was not paid.

40 Q. And can you state what was done with the

William V. Phillips, for Defendant—Cross

proceeds of the sales, the net proceeds of the sales of these respective cars? A. Applied to the freight charges covering those cars.

Q. Do you know whether or not in any of the cars involved in this suit the net proceeds from the sale of the car was sufficient to pay all the freight charged against that car? A. I do not think it paid the charges on any of those nine 10 cars.

Cross-examination by Mr. Stout:

Q. The statements on these account of sales as to the condition of the cars is correct, is it not?

A. I do not think they state the condition of the car.

Q. It says there "very rotten." A. I could not answer that, because I did not sell them.

Q. But you testified to the authenticity of these 20 account of sales, did you not? A. As rendered by Phillips & Son.

Q. If it is correct in other respects don't you think it is correct as to the condition of the melons? A. I would think so, yes.

Q. Another (indicating)—very rotten. And those statements were made up to the best of your knowledge by Phillips & Sons? A. Yes, sir.

Q. This strike that you speak of at piers 27, 28 and 29 was among the employes of the Pennsylvania Railroad, was it not? A. Among the labor- 30 ing force.

Q. Do you know what class of laboring men they were? A. Principally Italian labor.

Q. And what is known as longshoremen? A. Yes.

Q. During this period of the strike which you say lasted from July 9th to July 20th, peaches which were billed to pier 29, which was the pier for peaches, those peaches were delivered at the 40

William V. Phillips, for Defendant—Cross

Henderson Street yard, Jersey City, were they not? A. During that period, yes, sir.

Q. And watermelons were not delivered at pier 29 during July, 1912? A. No, sir.

Q. And for seven or eight years prior thereto? A. No, sir.

Q. So during the period of this strike these
10 peaches were delivered to the Henderson street yard on the watermelon tracks, were they not? A. During the night peaches were delivered.

Q. And not during the daytime? A. No, sir.

Q. Then how did the delivery of peaches in the Henderson street yard, Jersey City, interfere with the delivery of watermelons? A. It extended over so far in the day that it delayed the sale.

Q. Then it did prevent the delivery in the early hours of the morning? A. It prevented the
20 delivery in the early hours of the morning in drilling the cars to and from those tracks.

Q. But the placing of the peaches that were billed to pier 29 on these watermelon tracks did delay the coming in of the watermelons? A. Yes.

Q. On what tracks were the watermelons generally placed? A. Between tracks 11 and 20.

Q. During the period prior to this strike peaches were not delivered at the Henderson street yard? A. Except those that were consigned
30 to Jersey City.

Q. And usually they were taken on floats to New York? A. That is the peaches you refer to, yes.

Q. During the period of this strike the peaches that were billed to New York City were delivered at the Henderson street yard? A. Yes, sir.

Q. The commission merchants or dealers in watermelons used their own employes to unload the watermelons, used their own employes to
40 load the cars? A. Well, I can't just say that;

William V. Phillips, for Defendant—Redirect

they come consigned to commission merchants who resell them to various speculators.

Q. Well, the employes of the Pennsylvania Railroad Company have nothing to do with the unloading of watermelon cars? A. No, sir.

Q. But they do have to do with the unloading of peach cars? A. Not at Jersey City.

Q. At New York? A. At New York they do. 10

Q. And these men who were on strike were men who usually unloaded the peach cars at pier 29?

A. That's right.

Q. During the period of this strike was there any non-perishable freight in the Henderson street yard, Jersey City? A. No; we did not take any of the non-perishable.

Q. There was not any non-perishable freight there during that period? A. Not in our delivery yard. 20

Q. Not in the Henderson street yard. Have you a storage yard there also? A. Well, the Harsimus yard referred to here would cover that.

Q. Do you know whether there was any non-perishable freight in the Harsimus yard? A. I did not control that; I cannot just say that I know. There was freight there, yes.

Q. Non-perishable? A. Yes.

Q. And these watermelons could not be delivered in the Harsimus yard; that was not a delivery yard? A. That was not a delivery yard. 30

Q. They had to be brought to the Henderson street yard and placed on the tracks there to be delivered? A. Yes.

Redirect-examination by Mr. Hartpence:

Q. Mr. Phillips, aside from tracks 11 to 20 in the Jersey City yard, what are the other tracks used for? A. Well, for the delivery of all kinds of freight, both merchandise and perishable. 40

William V. Phillips, for Defendant—Redirect

Q. And where are the less than carload lots delivered? A. For Jersey City?

Q. Yes. A. Well, they are usually placed on the freight-house tracks, drilled in the ends of the platforms on tracks 1, 2, 3 and 4.

Q. And what are the tracks that you referred to as delivery tracks? The direct to teams?

10 Q. Yes. A. From 5 over to 20 are known as team delivery tracks.

Q. And during the period of this strike where were the less than carload lots delivered? A. The Jersey City less than carload lots were unloaded from tracks 1, 2, 3 and 4—we unload all less than carload freight.

Q. So that you did receive and unload and deliver non-perishable freight, did you not, at the Jersey City yard? A. Of our own freight, yes sir,
20 and also many cars of perishable freight consigned to Jersey City.

Q. But the non-perishable was all confined to the freight house tracks? A. Not all of the non-perishable—only the less than carload.

Q. And when you referred to the non-delivery of non-perishable freight on the delivery tracks what did you mean by that? A. Well, it is non-perishable freight in carloads delivered on some of those other tracks.

30 Q. Was anything except peaches delivered at night in the perishable fruit line in Jersey City during that period of strike? A. Well, there was peaches and cantaloupes included in pier 29 freight that we delivered, delivering on an average of 100 cars a night during that period. Also from 100 to 150 cars of various kinds of vegetables from Delaware and New Jersey points consigned direct to Jersey City.

Q. And do you know about how many water-
40 melon cars were handled at the Jersey City yard

William V. Phillips, for Defendant—Recross

at that time per day? A. I could not answer that. I don't—I should say—you mean delivered?

Q. Delivered on the delivery tracks? A. Well, there were many cars placed there that were not delivered the same day; possibly from 15 to 30 cars delivered, but there are many cars placed there that are not delivered the same day; the merchants don't take them the same day. 10

Q. When you say not delivered the same day you mean their contents are not removed the same day? A. That is the idea. They are carried along sometimes for six days. I do not say that they were at that time; I haven't the records with me.

Q. But that is a matter which the consignee himself attends to, does he not? A. That is the idea.

Q. To your knowledge was there any non-perishable freight consigned to New York which was diverted and delivered to Jersey City during the period of that strike A. There was not. 20

Recross-examination by Mr. Stout:

Q. Mr. Phillips, these carloads that were delivered at the Henderson street yard during the period of this strike, if there had not been a strike would have gone to New York, would they not? A. Yes.

Q. And so with the other non-perishable stuff, most of it,—vegetables? 30

The Court: You mean perishable stuff?

Mr. Stout: Yes.

The Court: You said non-perishable stuff.

A. No, only cantaloupes and peaches would have gone to pier 29. Those were the only two commodities that we handled for pier 29. The other perishable freight that I mentioned was regular Jersey City freight consigned to our station. 40

William V. Phillips, for Defendant—Recross
William F. Taylor, for Defendant—Direct

Q. During the period of this strike Charles Albrecht was in the yard most every day, was he not, inquiring about his stuff? A. Well, I can't say how many inquiries were made, but he was there during the entire melon season.

10 Q. Do you know whether he made any inquiries or not? A. I can't recall that he made any from me personally, but I believe that he did.

Q. In what way did the delivery of the peaches in the Henderson street yard interfere with the delivery of watermelons? A. Well, as I mentioned before, it delayed the placing of watermelon cars again in the morning. We had to remove the watermelon cars in the evening from the delivery tracks to place the peaches and cantaloupes.

20 Q. That would not delay the delivery four or five days, would it? A. No, not in the yard proper.

Q. Well then, why were these cars held back in the Meadows and Harsimus Cove for four or five days? A. Because there was not room in the yard to place them.

Q. Well then, you did not bring in each day the full quota of watermelon cars? A. They were arriving too fast and congested too much to bring in all that arrived.

30 Q. On account of putting your peaches in there and other perishable freight? A. Well, it was added to by the strike in general.

(Adjourned to September 30.)

WILLIAM F. TAYLOR, SWORN.

Direct-examination by Mr. Hartpence:

40 Q. Mr. Taylor, what is your business? A.

William F. Taylor, for Defendant—Direct

Yardmaster for the Pennsylvania Railroad at Jersey City.

Q. And as yardmaster at Jersey City what are your duties generally? A. Handling the yard in general, making proper disposition of the arrival of cars, looking after the work in general.

Q. And how long have you been in that position? A. Nine years. 10

Q. Are you familiar with the arrangement and layout of the Jersey City freight yard of the Pennsylvania Railroad Company? A. Yes, sir.

Q. With respect to freight consigned from points south and west to New York and Jersey City, does that freight in any way pass through or involve the Jersey City yard? A. All such freight arriving in Harsimus Cove yard, where the trains are classified, such cars as belong in the Jersey City yard are billed to it. 20

Q. And what is the Harsimus Cove yard? A. It is the receiving yard for all freight destined to Jersey City and New York stations and Brooklyn stations.

Q. And where is that located with reference to the Jersey City freight yard? A. Harsimus Cove yard is between 5th and 6th streets on Henderson, while the Jersey City yard the entrance to it is Second and Henderson street.

Q. And so far as delivery of freight at Jersey City is concerned, is the Harsimus Cove yard used for that purpose? A. Only to control cars from the Harsimus Cove yard to the Jersey City yard. 30

Q. And then you draw a distinction, do you not, between Harsimus Cove yard and the Jersey City yard? A. Yes.

Q. And just what is the Jersey City freight yard? A. The Jersey City freight yard is the delivery yard for such freight as is destined to Jersey City. 40

William F. Taylor, for Defendant—Direct

Q. And what do you mean by the delivery yard? A. Unloaded.

Q. Is that where the cars are placed for delivery? A. Placed for delivery, yes sir.

Q. How large an area does the Harsimus Cove yard cover, generally? A. The capacity is about 1,500 cars.

10 Q. And are there railroad tracks there? A. Yes, sir.

Q. Do your duties in any way pertain to the placing of cars in the Jersey City delivery yard which come into Harsimus Cove? A. Yes, my crews place those cars there.

Q. And just what course do you pursue when cars come to Harsimus Cove yard to place them at their destination? A. If the Jersey City yard is in condition to take all such cars as they arrive,
20 we drill them right from the elevation to this Jersey City yard.

Q. And upon whose order or direction is that done? A. That is controlled by myself as to whether there is room for any more.

Q. And how are you guided as to whether or not there is place for them in the Jersey City yard? A. Knowing whether the tracks are filled or not.

Q. How do you gain that knowledge? A. Personal observation.
30

Q. Do you know where the Meadows yards are located? A. Yes, sir.

Q. Where? A. About three miles from the waterfront, Jersey City.

Q. West? A. West.

Q. And what is the nature of Meadows yard? A. It is a receiving yard for mixed trains that come to the Meadows to stop and be classified. Further than that, it is frequently used for cars
40 that cannot be taken into Harsimus Cove.

William F. Taylor, for Defendant—Direct

Q. For storage you mean? A. For storage, yes, sir.

Q. Do you know what the area or extent or capacity of Meadows yard is? A. No sir, I do not.

Q. Do you have anything to do in your official capacity with the moving of cars which have been stored at the Meadows into Harsimus Cove yard? A. None, except to notify my train master that we are in position to take so many cars from the Meadows into Harsimus Cove—that we have room on the storage tracks in Harsimus Cove for them. 10

Q. And then what does your train master do after you have so notified him? A. He notifies the train master of the New York Division, which the Meadows comes under, to forward such cars to Harsimus Cove. 20

Q. So that the movement of cars from the Meadows into Harsimus Cove is really at your primary direction, is that not true? A. Yes, sir.

Q. Now do you recall, Mr. Taylor, any occurrence out of the ordinary in July, 1912, with regard to the movement of traffic in the yard over which you have control? A. Yes, sir.

Q. What was it? A. Labor troubles at the New York piers.

Q. The New York piers of what? A. Stations of the Pennsylvania Railroad. 30

Q. What are those piers? A. Piers 27, 28 and 29, piers 4 and 5, pier 1, 37th street station.

Q. Now how is freight consigned to New York moved, through Harsimus Cove? A. It is moved through Harsimus Cove to the float bridges and then floated to the different stations.

Q. Is that the gateway for that purpose? A. Yes, sir.

Q. Is there any other place in Jersey City that 40

William F. Taylor, for Defendant—Direct

it can be moved through and transported over?
A. In our old Jersey City yard, which is located over at the passenger station, we do some of it from that point.

Q. And that is all within the area of one general yard, is it not? A. I have charge of it all, yes sir.

10 Q. When did that trouble begin? A. July 9th, I think. (Witness consults memorandum.) —July 9th.

Q. And do you know how long it continued? A. Until July the 20th.

Q. And what resulted so far as the conditions in the Jersey City yard and Harsimus Cove yard are concerned, from that labor disorder to which you have referred? A. It caused a very bad congestion, a large accumulation of freight.

20 Q. How bad a congestion? A. The congestion was so bad that we were compelled to hold a lot of cars back on the Meadows.

Q. And did your Harsimus Cove yard fill up too? A. That was the cause of filling up. We already had all we had standing room for in Harsimus Cove yard.

Q. Are you in any way familiar with the perishable fruit and watermelon market, through your experience there as yard master? A. Only
30 in handling it and disposing of it as it comes to me.

Q. Do you know whether or not at the time you have referred to, between July 9 and July 20,—do you know what the condition of the melon market was at that time? A. No sir, I do not.

Q. Do you know whether it was a slack season or the rush season of the melon market? A. No, I do not.

Q. What did you do to relieve that accumula-
40 tion or congestion in New York? A. When we

William F. Taylor, for. Defendant—Direct

were notified that they could take this freight at pier 29 we gave it to them as fast as they could take it.

Q. They did take some then, did they? A. Yes, sir; very little.

Q. Do you know what nature of freight they took at pier 29? A. Merchandise and slow freight. 10

Q. In just what manner was this congestion or accumulation most noticeable? A. I do not quite understand that question.

Q. What species of freight did you find congested or accumulated? A. All commodities.

Q. And was there any extraordinary accumulation? A. Peaches for pier 29—that was the principal noticeable commodity.

Q. And were they handled at the Jersey City yard? A. Yes, sir. 20

Q. Anything else handled at the Jersey City yard? A. That belonged at the New York stations? No, sir.

Q. What steps did you take to handle that extraordinary accumulation? A. Placed all the cars that possibly could be placed, utilizing different sidings that were never used before.

Q. What do you mean by those different sidings? A. Individual sidings, sidings that run along different plants adjoining our yard. 30

Q. You mean you arranged with those people for the use of those sidings? A. I do not know whether there was any arrangement made with them or not; I think they simply took them.

Q. At any rate you used them, did you? A. Yes, sir.

Q. What can you say about extra hours or extra service people in handling the situation? A. It was necessary to use some of the power that we usually used at other parts of the yard to assist 40

William F. Taylor, for Defendant—Direct

in the handling of this Jersey City yard. On account of not using so much of the power at the float bridges we transferred some of that power to the ball ground or Jersey City delivery yard.

Q. Did it entail any extra clerical service, to your knowledge? A. Not on my part. The only addition which I recollect was an assistant yard master.

Q. Do you keep records of the arrival and delivery of cars and trains that come into Harsimus Cove? A. I keep the record of the arrivals.

Q. And do you keep a record of the time it is transferred over to the Jersey City yard? A. Yes, sir.

Q. Have you any records which will show the time of placing the cars involved in this suit in the Jersey City yard for delivery? A. Yes, sir.

20 Q. Now just produce your records and state whether or not they will show the time that car ABA 20917 left your hands and was placed for delivery in the Jersey City yard. A. That car arrived in my yard at 12:05 A. M. July 22, and was drilled to the delivery yard, Jersey City, on the early morning of the 23rd.

30 Q. Now at what time was car Sou. 32937 drilled to the delivery yard at Jersey City? A. Arrived at my yard at 8:05 P. M. July 28 and was drilled to the delivery yard on the early morning of the 31st.

Q. Now will you state what time car Sou. 25284 was drilled to the delivery yard, confining your answer to my question, what time was Sou. 25284 drilled to the delivery yard at Jersey City? A. In the early morning of July 27.

Q. And at what time was car SAL 24096? A. In the early morning of the 27th.

40 Q. And at what time was car SAL 23256 drilled to the delivery yard at Jersey City? A. On the morning of July 25th.

William F. Taylor, for Defendant—Cross

Q. And what time was car SAL 15841? A. The morning of July 27th.

Q. And what time was car SAL 22453 drilled to the delivery yard, Jersey City? A. In the morning of July 26th.

Q. At what time was car Sou. 38162 drilled to the delivery yard at Jersey City? A. On the morning of July 26th. 10

Q. And what time was car Sou. 35039 drilled to the delivery yard at Jersey City? A. The morning of July 26th.

Q. Do you know, Mr. Taylor, or do you not, what efforts were made or what action was taken to relieve the congestion to which you have referred in the Jersey City delivery yard proper besides what you have already stated? A. Only except to place all cars that could be placed, that there was standing room for. 20

Q. Where does your jurisdiction over cars end, your control over the cars? A. My jurisdiction with cars destined to this Jersey City yard ends in drilling the car to that yard.

Cross-examination by Mr. Stout:

Q. Mr. Taylor, the Jersey City yard that you spoke of in your direct examination, is that the delivery yard at Henderson and Second streets? A. We have been talking about that yard, Second and Henderson street, yes sir. 30

Q. And that is the yard over which you have supervision? A. Only in drilling cars to that yard. Then my jurisdiction ends once I drop the car to that yard.

Q. You drill them from where? A. From the receiving tracks.

Q. From the receiving tracks, Harsimus Cove? A. Yes, sir.

Q. And after the cars leave the Harsimus Cove 40

William F. Taylor, for Defendant—Cross

tracks or the tracks at Harsimus Cove, coming in to the Jersey City freight yard, Henderson and Second streets, your supervision then ends, does it not? A. Yes, sir.

Q. And you do not know when the cars are actually placed on the delivery tracks in the Henderson and Second street yard? A. No, sir.

10 Q. Now this Harsimus Cove yard during the period of this strike, from July 9th to July 20th, what kind of freight was in that yard? A. All kinds of freight.

Q. Perishable and non-perishable? A. Yes, sir.

Q. These peaches that were billed to pier 29 would not have gone through the Jersey City delivery tracks at Henderson and Second street if there had not been a strike? A. No, sir.

Q. They were taken from Harsimus Cove to the
20 wharf and then floated over to piers 27, 28 and 29?
A. Yes, sir.

Q. So in the usual course of transportation these peaches would not have reached the freight yard at Henderson and Second street? A. If there had not been this labor trouble.

Q. Now this labor strike was a strike among the employes of the Pennsylvania Railroad at pier 29? A. Well, I do not think that I should answer that question because I am in no position to know
30 just what it was. I know there was a strike there.

Q. Well, do you know whether they were your employes or not, or the employes of the Pennsylvania Railroad? A. No sir, I do not.

Q. You do not know of your own knowledge? A. No, sir.

Q. But you were informed that there was a strike there? A. I heard so.

Q. And among the longshoremen? A. I heard
40 so, yes sir.

William F. Taylor, for Defendant—Cross

Q. During the period of this strike was there any non-perishable freight in the freight yard at Henderson and Second streets? A. Now I could not state positively—there is always some there.

Q. Well, you had supervision over the drilling of cars into that yard, did you not? A. Yes, sir.

Q. And did you not know what kind of freight was going into that yard? A. No, I would not 10 know. I know nothing about the consignees or the lading except to drill it to that yard.

Q. What is your system as to moving cars; why do you move a certain car into that yard? Is it on request of someone? A. The top of the ticket shows the destination of the car as being a car for Jersey City delivery.

Q. Then you did not know during this period whether there were a number of cars in the Harsimus Cove yard that contained watermelons? A. 20 Oh, yes.

Q. You did? A. Yes, sir.

Q. How did you know that there were cars that contained watermelons and did not know what the other cars there contained? A. Well, we took it from the tickets.

Q. Where do you get these tickets? A. The conductor brings them in with the train.

Q. Well, you do not move these cars in haphazard; you would have some system about it; 30 you would certainly move perishable freight before non-perishable would you not? A. Yes.

Q. What is your system with reference to the movement of freight from the Harsimus Cove yard into the delivery yard at Second and Henderson streets? A. They assign certain tracks for the delivery of watermelons. We fill up those certain tracks to their capacity. Then after that we are notified to hold other melons out until there is room for them.

William F. Taylor, for Defendant—Cross

Q. Then during the period of this strike did you fill up the watermelon tracks to their capacity with watermelons before you brought in any other freight? A. Not at all times they were not, no.

Q. You used these watermelon tracks for peaches, did you not? A. In the early part of the night, yes.

10 Q. What are those watermelon tracks? A. 15 to 20 inclusive.

Q. You only used those tracks, you say, during the night for peaches? A. Yes, sir.

Q. Then how did that interfere with watermelons? A. Those tracks had to be drilled in the morning after they had stopped unloading peaches; then we filled them up with watermelons.

Q. So by placing peaches on those tracks it delayed the bringing in of the watermelons? A. We
20 made every effort to get the melons—

Q. I ask you if it did or did not? A. There was some delay.

Q. Weren't these watermelons held in the Harsimus Cove and in the Meadow yard from four to five days? A. I cannot answer that question. Held in the Harsimus yard? No, I do not think they were held in the Harsimus Cove yard.

Q. Well, in the Meadows four or five days? A. I cannot answer that question because I would not
30 know when they arrived at the Meadows.

Q. Well, if you had clean tracks in the delivery yard at Henderson street for watermelons, naturally the watermelons would be brought in from the Meadows in to the Harsimus Cove Yard and on into the delivery yard? A. If the tracks were all clear and ready for these melons they would not stop the melons.

Q. Well, then, the placing of the peaches on the watermelon tracks in the Henderson street yard
40 did interfere with the delivery of watermelons? A.

William F. Taylor, for Defendant—Cross

I cannot answer that question; I do not know just what time they claim that the placing of melons would interfere with the delivery of them.

Q. Well, those watermelons were held back, there is no question about that, is there? A. The watermelons were held back; there was watermelons held back in Harsimus Cove, yes, sir.

Q. And if these delivery tracks in the Hender- 10
son and Second Street yard which are customarily used for watermelons, had not been used for other freight during the period of this strike, the watermelons would have got in much more quickly, would they not? A. Oh, in the watermelon season there is always cars held up on the storage—

Q. Yes or no? A. Not always, but a good big part of the time there is a surplus of carloads of melons.

Q. Then you want us to understand that the 20
strike did not have anything to do with delaying the bringing in of these watermelons? A. No, sir, I do not.

Q. It was the principal reason, the reason for the delay in the transportation of the melons, wasn't it? A. That was the cause of the congestion in the yard.

Q. Yes; and kept the watermelons out? A. Well, I do not know whether the melons would not have been kept out if we had not had a strike, because, 30
as I say, they are frequently held up when there are no labor troubles.

Q. Then I understand, according to your statement, that the placing of the peaches on the watermelon tracks did not have anything to do with the congestion or the delaying of the watermelons. If that is so, what did, if you know?

Mr. Hartpence: I object.

The Court: I overrule the question, because 40

William F. Taylor, for Defendant—Cross

10 he is not obliged to confirm your understanding of it. It is his own we are getting at. You make a statement of your understanding and ask him a question at the end of it which would validate your understanding if he answered it and does not give him a chance to say whether your understanding is correct or not.

Mr. Stout: I withdraw the question.

Q. The placing of the peaches on the watermelon tracks in the Henderson street yard, what effect did it have upon keeping out watermelons?
A. As I answered before, it may have caused some delay in placing melons, but if we hadn't had these labor troubles there probably would have been melons on the storage tracks in Harsimus Cove the same as there frequently is.

20 Q. As much as three or four days? A. I cannot answer. Three or four days? I don't know how long.

Q. So there might have been a delay in the transportation of watermelons even if there had not been a strike? A. There may have been a delay in placing them, yes sir. They run so many at times that it is impossible to place all of them when they arrive.

30 Q. Well, previous to this strike were watermelons billed to pier 29 placed on the watermelon tracks in the Henderson street yard?

Mr. Hartpence: I object.

The Court: What was the question?

(Question repeated.)

Mr. Stout: Peaches, I meant.

Mr. Hartpence: I withdraw the objection.

A. No, sir.
40 During the period of this strike and prior for

William F. Taylor, for Defendant—Redirect
Horace W. Winney, for Defendant—Direct

a number of years watermelons were not billed to pier 29? A. Watermelons were not billed to pier 29, no sir.

Q. The Henderson street yard, Jersey City, was the delivery yard for watermelons? A. Yes, sir.

Q. So during the period of this strike you were using the delivery yard at Henderson street for the delivery of peaches, were you not, which were billed to pier 29? Yes or no? 10

Mr. Hartpence: Answer the question, yes or no, please.

A. We were using the same tracks.

Redirect-examination by Mr. Hartpence:

Q. Mr. Taylor, did the congestion that you refer to continue in any degree after the 20th, which you refer to as the end of the trouble? A. Yes, 20 sir.

Q. How long after that was it before the normal condition in the yard was restored? A. About August the 1st before we had a normal condition.

Q. And at whose direction, if anyone's, do you move the cars from Harsimus Cove yard into the Jersey City freight yard? A. The agent—the freight agent.

Q. The freight agent at Jersey City, he notifies you when he is ready for cars? A. Yes, sir. 30

Q. And then you move them according to his request? A. Yes, sir.

HORACE W. WINNEY, SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your business? A. Yardmaster, Pennsylvania Railroad.

Q. Where are you located? A. Meadows yards. 40

Horace W. Winney, for Defendant—Direct

Q. Where is Meadows, N. J., located? A. About three miles outside of Jersey City.

Q. In what direction? A. West.

Q. And what supervisions, if any, do you have over the Meadows yard in your position of yardmaster? A. Supervising the movement of all cars from that yard.

10 Q. Do you keep any record or keep track in any way of cars that come into the Meadows yard from the west? A. Yes, sir.

Q. And do your duties require you to also note the departure of those trains on the way east? A. Yes, sir.

Q. How large an area do the Meadows yards cover, generally? A. It has a capacity of about 2300 cars.

20 Q. And for what purpose are those tracks used in the Meadows yard? A. For classifying freight for different points east of Newark, storing freight when necessary, classifying the empties going west.

Q. And when you refer to a capacity of 2300 cars you mean a storage capacity of 2300 cars?

A. That is the capacity of the whole yard, standing there.

Q. How many thoroughfare tracks are there—
A. Two.

30 Q. —on the way to Jersey City? A. Two for freight.

Q. One eastbound and one westbound track?
A. Yes, sir.

Q. And all cars that go in from Meadows to Jersey City or come back from Jersey City to Meadows, must pass over those two thoroughfare tracks? A. Yes, sir.

40 Q. Do you recall any extraordinary conditions of congestion in the Meadows yard in the month of July, 1912? A. Yes, there was.

Horace W. Winney, for Defendant—Direct

Q. What was that condition? A. From the 10th of July for the balance of the month the yard was filled, as I remember it, to the full capacity at all times.

Q. How long did you say? A. From the 10th until the end of the month.

Q. In what way was the yard congested? A. Storing different classes of freight which we had 10 orders to hold back.

Q. Who controlled the movement of cars from Meadows yard into Harsimus Cove and Jersey City? A. It was moved only by the orders from our freight train master.

Q. Who was the freight train master? A. M. F. Tomlinson.

Q. And where is he stationed? A. At Jersey City.

Q. And you mean by that that you awaited his 20 orders before moving any cars in from the Meadows yard? A. For those points, yes, sir.

Q. What efforts were made at your yard, if any, to handle that congestion between July 10 and the end of the month, 1912? A. We had extra power in moving everything for the different classes such as the D. L. & W. and the Erie and the Lehigh valley Railroad to keep it moved up as close as possible to make room to handle the yard classes 30 as promptly as possible.

Q. Did it involve any extra service men? A. It involved extra engines, which involved extra men.

Q. Can you state generally about how much extra motive power and how many extra men it involved? A. We had one engine all the time and it also involved an engine which was used part of the time.

Q. How about the regular men, did it entail any extra service upon the regular men? A. No.

Q. Any extra hours? A. No extra hours on the regular men. 40

Thomas J. Christie, for Defendant—Direct

Q. Your actions then in the handling and moving of the freight cars and freight trains there in the Meadows was dependent upon your orders from the freight train master, is that correct?

A. Yes, sir.

10 Q. And did you or did you not move those cars during this period from July 10 to the end of the month of July, 1912, according to the directions of the train master? A. We moved them according to his directions.

(No cross-examination.)

THOMAS J. CHRISTIE, SWORN.

Direct-examination by Mr. Hartpence:

20 Q. What is your occupation? A. Dock superintendent, piers 27, 28 and 29, New York.

Q. And by what company are you employed? A. Pennsylvania Railroad.

Q. How long have you been in that position? A. Three and a half years.

Q. How long have you been in the railroad service? A. 20 years.

Q. In what locality? A. The same locality.

30 Q. Are you familiar with the arrangement and conditions at piers 27, 28 and 29 of the Pennsylvania Railroad in New York? A. Yes.

Q. Do you recall whether or not in the month of July, 1912, there was any difficulty with the— A. Yes, sir.

Q. —labor employed at piers 27, 28 and 29? A. Yes, sir.

Q. What was that difficulty? A. On the night of July 9th our night force refused to work. On the morning of July 10th our day force done the
40 same thing, refused to work.

Thomas J. Christie, for Defendant—Direct

Q. Had they previous to those times that you have just indicated communicated to you in any way their intention to refuse to work at this time?

A. No communication of any kind.

Q. Had you previous knowledge of their intention to stop work at that time? A. No knowledge at all; that was an entire surprise to us.

Q. Had the men employed there previous to 10 that time made any demand upon you for benefits of any kind in addition to what they were receiving? A. No, sir, no demand of any kind.

Q. How long did the difficulty last? A. Till the morning of the 17th of July. They returned to work in the same way in which they went out, and on the night of the 17th the night men returned. We had two shifts, a night and a day shift.

Q. For what compensation or wages did they return, with regard to the compensation that they 20 were receiving when they left? A. No compensation at all. They just returned the way they went out.

Q. At their regular wages? A. At their regular wages.

Q. And regular hours? A. Regular hours.

Q. Do you know why they stopped work at that time? A. No, we did not know, but from the way the men were parading up and down the waterfront, there was a strike on hand at the same time, 30 prior to that, among the seamen and the stokers of the steamships lines.

Q. Was that a general longshoremen's strike?

A. Well, it finally got to that after a while? The longshoremen were going in sympathy with them.

Q. Do you know just why your men stopped work at that time? A. No, we do not know why they stopped, but a day or so after the strike was on our men—we could see our men across the street, gathered in bunches; some were willing to 40

Thomas J. Christie, for Defendant—Direct

return to work and others were holding them back, and we went out—I went out myself and spoke to the men. They surrounded me and got me in a pocket out there, and the police came over, and I talked to a few of the men and asked them what was the matter, and why they did not come in to work.

10 Q. Did any of them state to you at that time why they did not come in to work? A. Why yes, they stated—some of them stated that they though they ought to have twenty-five cents an hour, and others stated that they thought that they ought to have 22 cents an hour at least, and others thought that they ought to have 30 cents an hour for the night work on account of the night work being unpopular.

20 Q. Well, did they communicate any such request for extra money to you or to the agent of the company? A. No, there was no request of any kind made, and that was the only request that was made, and I explained to the men that I thought it was a peculiar way for them to act, and I told them if they had any grievance or wished to secure more money, the proper way for them would have been to have a committee of some kind tand to wait upon the station and
30 explain their grievance, and then have given the station, or the Pennsylvania Railroad Company, time enough in which to make a reply, and then if they saw fit to go on a strike, why it would be a different proposition.

Q. Well, what was the real reason why they went on strike? A. Well, they did not seem to know.

Q. Well, what was it? A. I don't know.

Q. Don't you know why they went on strike?

A. Well, other than for more money.

40 Q. Well, they did not communicate that to you,

Thomas J. Christie, for Defendant—Direct

did they? A. No, we had no communication of any kind, as I said before.

Q. Why didn't they come back during those times you have spoken of? A. Well, they started to come back; they started to follow me across the street, when two delegates of this Seamen's Union made some remarks in a foreign tongue that I did not know anything about, and they were about half way across the street and they turned right around and left. They commenced to holler and hoot and left me and continued on down West street to some other place, I do not know just where they went; and I came on across the street. 10

Q. Were there any demonstrations of violence during the continuance of that strike? A. Why, yes, there was two that I saw personally.

Q. Violence against whom? A. Against one of the truck drivers. They got ahold of him and pummeled him up pretty bad and they sent for an ambulance and took him away. We had two demonstrations of that, and one of our own men had a skull and crossbones tacked on his door. 20

Q. Well, did any of these men who had been employed prior to the 9th over there and who left on the evening of the 9th and the morning of the 10th communicate to you at any time their fear of continuing to work or coming back or anything of that sort? A. Why, I spoke to some of them at the time and asked them what was the matter. They said they were willing to work, they could not afford to lay idle, but they were afraid to come in for fear these other fellows would get after them and possibly do them bodily injury. It was a common thing along West street to hear of somebody being beaten up. 30

Q. Day and night? A. Day and night, yes, sir.

Q. Well, then, so far as you know, Mr. Christie, what was the real reason why the men struck?

A. No more than—

Thomas J. Christie, for Defendant—Direct

Q. Was it because of anything which you had done at your place or because of something which had happened somewhere else? A. They had no grievance of any kind with us. They made no demand on us or anything else, but I suppose some of their ringleaders thought it a good opportunity to assemble the men and gather them together and
10 felt it would be a good time to strike.

Q. What effort was made at your piers there, if any, to handle the situation which resulted from the men striking? A. Men were secured from employment agencies through our superintendent, Mr. Krick, who secured men along the track and from the quarries and almost any place he could get them from.

Q. How many men ordinarily were employed? A. Why, we had about 425 at night and about 340
20 in the day time.

Q. You mean prior to the strike? A. Prior to the strike.

Q. And about how many did you have during the strike? A. Well, we would have 400 some days.

Q. And did you succeed in moving the freight with those men? A. Well, no, we moved part of it. The men were unfamiliar with that kind of work and they done the best they could.

30 Q. They were not experienced in that sort of thing? A. Not experienced in that line, no, sir.

Q. Why didn't you have experienced men to take the place of the strikers? A. Why, we were unable to get them. All the experienced men were on strike.

Q. And the experienced men would not come back to work for you during that strike? A. No, no; some of them were willing to come back, but owing to fear, why, they stayed out.

40 Q. Did any congestion result in the handling

Thomas J. Christie, for Defendant—Direct

of the freight from that strike? A. Why, we had no congestion in our place other than we had cars laying around there on floats that we were unable to handle, and as we did handle it, why then we ordered from the trainmaster more cars. As we cleaned it up we kept ordering more all the time.

Q. Well, was any freight diverted from those piers for delivery at other points? A. Why, there was an embargo placed on pier 29 perishable—perishable fruit for pier 29 delivery. 10

Q. Was any particular part of piers 27, 28 and 29 devoted to the handling of perishable freight? A. Why, pier 29 was devoted—and the westbound bulkhead extending from 27 to 29 in the streets, and the bonnets and everything else was used for it.

Q. Is that the market for perishable fruit in New York? A. That is the market for fruit and vegetables in New York. 20

Q. Well, during the strike did any perishable fruit come in to pier 29? A. No; we had no fruit come in; we placed an embargo upon it.

Q. The market ceased during that time? A. Yes, the market ceased.

Q. What became of it? A. Why, the men re-consigned to Jersey City and took delivery of it over there by team.

Q. When did you resume the handling of this perishable fruit at pier 29? A. On the night of Sunday, the 21st. 30

Q. How long was it after that before normal conditions were restored? A. Oh, it was probably the 15th of August before we had cleared up the accumulation and the back freight that was laying around, and then all of our regular men did not return; some of them went away and secured positions other places out of town; some of them we have not seen yet. 40

Thomas J. Christie, for Defendant—Direct

Q. How did the men come to return, do you know, after they struck? A. Why, they just made up their minds that they would come back to work.

Q. How did they announce that fact to you? A. Why, they just assembled right there at the gate that morning and signified their willingness to go to work.

10 Q. Was the general strike over then, do you know? A. Why, it was breaking up at different points.

Q. Did the strike affect all the piers, 27, 28 and 29? A. 27, 28 and 29, yes, sir.

Q. Did you have any difficulty in getting these men to take the place of the strikers? A. Well, that I could not say. I did not procure any of them. They were sent to us on ferryboats, tugboats; they were secured from our superintendent, Mr. Krick.

20 Q. You did not personally secure the men yourself? A. No; I only handled the men after they got there.

Q. Did you have any difficulty in handling them, additional to what you ordinarily had with the experienced men? A. Why, yes, considerable, because they did not know the territory and they did not know just exactly where to go and we were hampered from the want of clerks. Our clerks

30 even went out with them.

Q. Who took their place? A. Well, our superintendent furnished us clerks from these different departments to fill in and help out. It caused extra hours and detail and everything else on all of those that were there at the time, which were very few.

Q. Do you recall just how long it took you after the men left on the ninth before you got anybody to work at all? A. Well, the next morning we

40 got some men.

Thomas J. Christie, for Defendant—Cross

Q. About how many? A. Oh, I should judge about 90; and then they—

Q. How long was it before you had them organized into a working force? A. Well, three or four days.

Q. When did the market re-open there? O. On Sunday night of the 21st.

10

Cross-examination by Mr. Stout:

Q. What was the nature of the employment of these employes of the Pennsylvania Railroad that went on this strike? A. The movement of freight from cars and depositing them into certain locations as assigned.

Q. At these piers 27, 28 and 29? A. At the piers.

Q. Pier 29 was used for perishable produce? A. Yes.

20

Q. Peaches largely, wasn't it? A. No; we handled no peaches on 29. Peaches were handled on the westbound bulkhead; they were handled there, and all unloaded by one o'clock in the morning, so by six or seven o'clock in the morning when the day men came in to handle the westbound that was all cleared away.

Q. That was the bulkhead adjacent to pier 29?

A. The bulkhead adjacent to it.

Q. What other perishable fruit was handled there? A. Why, cantaloupes.

30

Q. And during the period of this strike do you know where those peaches and cantaloupes billed to the bulkhead adjacent to pier 29 were sent?

A. Why, they were re-billed to Jersey City, by the commission merchants. They could not make a delivery there and they wired their agents to consign them to Jersey City.

Q. You do not know that of your own knowledge, do you? A. Well, I know the cars went there. I seen them there.

40

Thomas J. Christie, for Defendant—Cross

Q. You saw the cars in the Jersey City yard?

A. I saw the cars in the Jersey City yard.

Q. There was an embargo placed upon perishable produce to the bulkhead at pier 29? A. Yes, sir.

Q. What do you mean by an embargo? A. Why, we notified them that there was a strike on and we
10 were unable to handle it.

Q. These strikers of the Pennsylvania, what was their nationality? A. Why, there was Irishmen and there was Italians.

Q. Largely Italians, were they not? A. Yes, mostly Italians.

Q. Known as longshoremen? A. Known as longshoremen.

Q. And during the period of this strike you had almost as large a force as before the strike, did
20 you not? A. We had a larger force.

Q. This kind of employment is not skilled labor, is it? A. Well, no, it is not what you term skilled labor; a man has got to have some degree of intelligence.

Q. Yes; and he has also got to have physique and muscle, has he not? A. Yes.

Q. That is one of the chief characteristics required? A. Yes.

Q. You say that this strike started among the
30 employes of the steamship lines? A. Among the seamen and the oilers and stokers and one thing and another.

Q. How do you know that those men on strike were in the employ of the steamship lines? A. Why, they had a meeting—they had a meeting place just a few doors below our place and they would parade down in the morning.

Q. Were you at this meeting? A. No; I was not at the meeting.

40 Q. How do you know what took place at the

Thomas J. Christie, for Defendant—Cross

meeting? A. I don't know anything about the meeting. I have not said anything about a meeting.

Q. You do not know as to these men of your own knowledge whether they were in the employ of the steamship lines, but it is what some one told you? A. No; I seen the men.

Q. Could you identify a man as being formerly 10 in the employ of the steamship line? A. No.

Q. Then how do you know they were in the employ of the steamship line? A. It was known by everybody as they came down the street.

Q. Well, from what everybody said? A. Yes; the same as we would know anything.

Q. You testified on your direct examination that one of these strikers had a skull and crossbones tacked on his door; did you see that? A. No, sir; 20 but the man reported it to me.

Mr. Stout: I think that most of this man's testimony with reference to the strike among the employes of other lines is hearsay.

Mr. Hartpence: He has brought it out on his cross-examination, all that the man has testified to.

Mr. Stout: No; the direct examination was that there was a strike among the employes of various steamship lines. Now on cross-examination he says it is from what other 30 people said, what he heard, and so forth.

The Witness: It was conceded by everybody that there was a strike.

Mr. Stout: I move to strike out the testimony of this witness as to the strike among the employes of other lines than the Pennsylvania railroad.

Mr. Hartpence: According to his testimony it was all reported to him and stated to him as the general movement of the strike pro- 40

Thomas J. Christie, for Defendant—Cross

gressed, and it seems to me that it is all part of that general picture.

The Court: You don't get pictures by people running in and telling you about a thing.

Mr. Hartpence: During the excitement of the progress of the strike.

10 The Court: If this was anything connected with the transaction of the business with which he had some concern I can conceive that it was part of the *res gestae*. I cannot see that what people told him as he ambled from place to place is part of the *res gestae*; it is a general conversation. They could have told him all these things at their own homes or written it to him from Chicago, and under your argument it would be part of the *res gestae* because it happened while the strike was in progress. There cannot be any such rule.

Mr. Hartpence: That was not my argument.

30 The Court: But it is your argument drawn out to its logical conclusion. You simply state it happened during the progress of the strike and that it was part of a general picture. I do not see that there are any lines in the picture or any pigments put in the picture by the necessities of the case in carrying on the business.

Mr. Hartpence: This man testified he was superintendent of the dock, and he would have conversations from time to time with the men who had been in his employment and he would seek to find out why they did not come back, and the man would say, "I can't come back because I am afraid to. I found a skull and crossbones on the door this morning." Why isn't that relevant?

40 The Court: That is relevant. Nobody has

Thomas J. Christie, for Defendant—Cross

moved to strike that out. You have been guilty of what they call in logic an *ignoratio elenchi*. We are arguing on the question as to whether we should strike out what was testified with respect to the other men in other places going out, and when we talk that over for a few minutes you say, “Why shouldn’t we leave in what was said by his own men?” 10 which has nothing to do with what we are arguing at all.

Mr. Hartpence: Why isn’t that other situation on the same footing? He is out talking to the other men—

The Court: When he is talking to his own men in seeking to get them back, what they say to him in part of the *res gestae* of his own business; what other people come in and tell him is not part of the *res gestae* at all. 20

Mr. Hartpence: As I recall the testimony, some of the things that were told him as he mingled with the men were that they could not return, that they were afraid because of the strikers in other places.

The Court: If there is anything like that it will be permitted to stand, but mere casual conversations had with other people outside, not in respect to this company’s business, will be stricken out. 30

Mr. Hartpence: Now the whole tenor of my position is that the motion of the other side is a sort of general motion to strike out all of certain testimony, and it seems to me they make it rather vague.

The Court: Only so much of the testimony will be stricken out as repeated casual conversations with persons not connected with this company and had by this man when he was not in the prosecution of the business of 40

W. H. Buckenhurst, for Defendant—Direct

the company or forwarding its business. That much is stricken out and that much only.

Q. These men of the Pennsylvania Railroad on this strike, did they say anything to you about a raise in salary or wages? A. Not until after they struck, after I went out and asked them what was
10 the matter with them that they did not come in to work.

Q. And then they said they wanted more money? A. But they did not know what they wanted.

W. H. BUCKENHURST, SWORN.

20 *Direct-examination by Mr. Hartpence:*

Q. What is your occupation? A. Clerk in the auditing and traffic department, Pennsylvania Railroad, at Broad street, Philadelphia.

Q. And what are your duties in that position? A. An examination of the charges and extensions on the revenue waybills.

Q. For shipments of what? A. For shipments of perishable freight and non-perishable from points on the Seaboard Air Line and Atlantic
30 Coast Line and connections in the south.

Q. How far south? A. From Florida north.

Q. How long have you been in that position? A. About five years.

Q. Are you familiar from your experience there with the schedules and classification and tariffs or charges for freight transportation? A. Yes, sir.

Mr. Hartpence: I should like to offer in evidence at this time the classifications of tariffs known generally as the Southern classification
40 on file with the Interstate Commerce Commis-

W. H. Buckenhurst, for Defendant—Direct

sion, certified under the hand of the Secretary of the Interstate Commerce Commission as the classification and tariffs governing the shipments in these cases, and specifically rule 1 of the Southern classification on page 1.

Mr. Stout: I object to the receipt of this classification in evidence. There is no evidence before your Honor that the goods in question were shipped under the Southern classification, and that is the classification that Mr. Hartpence wants particularly to have admitted; and secondly these supplements—I admit that I do not know very much about these classifications, but the certificate shows that some of these supplements were filed subsequent to the shipments in question, supplements filed on August 19, 1912, and on February 20, 1913, and I do not know until it is more specifically pointed out to me where these schedules at this time are material. 10 20

The Court: What do you say to that, Mr. Hartpence?

Mr. Hartpence: If the Court please, the particular schedule which applies to these shipments—the certificates are in that form for the purpose of showing that that schedule was assigned to that point. It must have covered the particular shipment. There was no change in the schedule or tariff from the time when the classification or tariff affecting that shipment was filed, covering that period down to the time of the strike. 30

The Court: What have you to say about the point taken that there is no evidence in the case yet to indicate that these shipments were pursuant to the Southern classification?

Mr. Hartpence: Only the general statement, if the Court please, that these are 40

W. H. Buckenhurst, for Defendant—Direct

offered as the classification and tariff which do govern the shipments in question.

The Court: They do not govern the shipments in question unless there is some evidence to show that the parties adopted a rate by agreement or in some concrete way which brought them within the classification.

10 Mr. Hartpence: These tariffs, however, are filed with the Interstate Commerce Commission and speak for themselves.

The Court: So does everything else that is filed with the Interstate Commerce Commission, and very much that is filed there has nothing to do with this case, and that is the objection now.

Mr. Hartpence: These speak for themselves as governing the shipments—

20 The Court: How do they speak for themselves?—because there are two classifications, as I understand it, under which shipments may be made, and there are two sets of liabilities which will attach as one or the other classification is adopted, and you have not yet shown anything that I have seen that fastens up these shipments to either one or the other classification and consequently brings it under one or the other legal doctrine.

30 Mr. Hartpence: There are three general classifications. One is known as the official classification, which governs shipments, I think, north of the Potomac River and east of the Mississippi; there is the Western classification, which apparently covers the territory west of the Mississippi, and there is the Southern classification, which covers shipments to and from points south of the Potomac River and east of the Mississippi;
40 those three general classifications. Now as to

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the rates prescribed, or the tariffs prescribed, there are two tariffs. I do not understand those to be two classifications.

The Court: Well, let's call them tariffs; that probably is the more accurate statement. Which tariff is this under, and what evidence in the case shows it was under one or the other tariff?

10

Mr. Hartpence: Rule 1 of the classification which is referred to particularly will show the classification under which the shipment is made. The rule says that the reduced rates specified in this classification will apply only on property carried subject to the conditions of the carrier's bill of lading, and property carried not subject to the conditions of the carrier's bill of lading will be carried at the carrier's liability upon an extra charge of 20 10%. Now the tariffs which are offered, or the classification which is offered is a classification which being filed with the Interstate Commerce Commission speaks for itself as the classification governing the shipments from the points where these shipments were made to the points to which they were sent.

The Court: Is it your contention that all of these bills of lading come under this Southern classification?

30

Mr. Hartpence: Yes.

The Court: If you will look at the bottom of all of them you will find a statement that if the bill of lading is not signed by the shipper it is carried subject to the carrier's liability.

Mr. Hartpence: Yes, but that is still the Southern classification.

The Court: It is not. According to what you have just read it is just exactly the reverse of that.

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Mr. Hartpence: All that is found in the Southern classification.

The Court: All what is found? You have just read me that if it is not carried according to the lower tariff that then it is carried according to the carrier's liability.

10 Mr. Hartpence: Yes, but that is not a classification.

The Court: I did not say it was a classification. I am talking about a rate, and the parties themselves can stipulate whether it shall be according to the bill of lading issued by the carrier or whether it shall be at the carrier's liability.

Mr. Hartpence: But they cannot stipulate whether it shall be according to the Southern classification—

20 The Court: They can stipulate it by fixing the rate.

Mr. Hartpence: Not according to the Southern classification. The classification is the book that is filed with the Interstate Commerce Commission and binds everybody.

The Court: Yes, it binds everybody, but it gives them the option of taking one rate or the other, but what fastens it up to show that they have taken one rate or the other?

30 Mr. Hartpence: But that option is set forth in the classification which we now offer in evidence.

The Court: There are in evidence here a lot of bills of lading and not a solitary one of them indicates anything about a rate; and in fact there is a place fastened for the rate right on top of the page, and not a word is said about the rate. Nobody knows what the rate is.

40 Mr. Hartpence: I will withdraw the offer at

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the present time of the Southern classification.

The Court: I think you will have to have some evidence to show that this was shipped under that rate. You simply offer bills of lading, and the place is left blank to put the rate in, and there is not a word said by anybody, and then you have a column there to put in the rate and there is not a word set down 10 to indicate what the rate is. Now how do we know what the rate should be in there?

Q. I show you exhibits P-1 to P-9 inclusive, purporting to be bills of lading covering the nine shipments involved in this suit, and ask you whether you can state upon an examination of them what the tariff or freight rate would be upon those respective shipments and how you would determine it? 20

Mr. Stout: I object to that question on the ground that the bills of lading themselves speak for themselves.

The Court: Won't you just take them and read them to the jury and show what the rate is if they speak for themselves? Take any one of them.

Mr. Stout: I understand if they don't—

The Court: No; you say they do speak. Now I ask you to show to the jury what they 30 say on the subject of rate. You say they fix the rate; now what is it?

Mr. Stout: I meant that this witness is asked to read something into these bills of lading that is not there.

The Court: No; he is simply to say what such a bill of lading means if no rate is specified. He is asked to say when his company gets such a bill of lading in that way what it means to him as a tariff expert of that 40

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10 company. If he cannot tell it there is not a living soul on earth—that is, assuming that he is an expert—who can tell it. You can't tell it; I can't tell it; there is not a soul around this room that can tell it unless he can, because it is absolutely blank there as to what that rate is. Now nobody knows, nobody has been told yet, nobody has hinted a word as to how much would be charged from these things, and no one can find out, except one man, and he said when the forced sale took place after refusal that the amount of the charge for freight was subtracted. Well, of course the only way he could know that would be by taking the rate and figuring the charge according to that rate and subtracting from it the amount received on the sale. Outside 20 of that no one knows anything. Now it might be a wise plan, inasmuch as this jury have to pass on this question, to let them know what the rate is. It may not bind you; it may turn out immensely to your advantage when you come to cross-examine the man with respect to what he knows about the rate and how he can possibly tell that one rate rather than another fastens here, but we ought to have some information on it.

30

(Question repeated.) A. Yes, sir; I can give you the rates on these shipments. Take first the shipment from Pavo, Georgia—

Q. Can you state what the rate is on that first shipment? A. By looking up the tariff I can.

Q. And how would you look up the tariff? A. Well, there are tariffs supplied to the clerks in the employ of the company handling certain districts of the business, and in those tariffs that are on file with the Interstate Commerce Commission are 40 the rates from these various points.

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Q. Now I hand you a document, or series of documents, and ask you whether or not the tariff to which you referred in your previous answer is contained in those documents? A. Yes, sir.

Mr. Stout: I object to that. How does this witness know it is filed in reference to these shipments? And in the second place he is being permitted to testify to a schedule not 10 in evidence.

The Court: No; he is asked if the rate he is going to testify about is in there.

Mr. Stout: How does he know it is in there unless he examines it?

The Court: Maybe he has.

Mr. Stout (to the witness): Have you examined—

Mr. Hartpence: I object to that question.

The Court: The objection is sustained 20 to the question that is now going to be asked, because it is out of the line of the examination; and the objection to the original question you asked is overruled and the question is permitted.

Mr. Stout: May I be permitted to cross-examine this witness as to his knowledge of these schedules?

The Court: Not yet. He is simply asked 30 if it is in there. When you come to cross-examine I will permit you to ask him. He is not identifying the schedules; he is simply asked if he knows what is in them.

Q. Will you designate which of those documents is the tariff to which you have referred? A. It is watermelons tariff No. 2, issued by E. H. Hinton, Agent, Atlanta, Ga., and the Interstate Commerce Commission file number is ICC No. A-38, and 40 copies of these are furnished to our office and are

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supposed to be on file at the forwarding station.

Mr. Stout: Now may I be permitted to cross-examine this witness?

The Court: He has not asked him to do anything but tell us what this is.

Mr. Stout: He says it is supposed to be on file.

10 The Court: It cannot hurt you if it is only supposed to be there.

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

(Marked D-30 for identification.)

Q. And does that tariff schedule, D-30 for identification, to which you have just referred, contain the tariffs or freight rates upon the shipments involved in all nine of those exhibits P-1 to P-9?

20 A. No, sir; this tariff applies only to the shipment—no, applies on the shipment from Pavo, Ga., P-1.

Q. Look at the other bills of lading, from P-2 to P-9, and state what tariff or tariff schedule applies to those various shipments. A. On P-2 the same tariff applies as P-1. On P-3 there is another tariff applies.

Q. And is that tariff in the documents which I now show you? A. Yes, this one here (indicating).

30 Q. Which one is that? A. The Seaboard Air Line watermelon tariff No. 2.

(Marked for identification D-31.)

Q. And how as to exhibit P-4? A. P-4 is the same tariff covering P-3.

Q. And how as to P-5? A. P-5 is the same tariff.

Q. How as to P-6? A. ICC A-38 covers it, the same one as covering P-1.

40 Q. How as to P-7? A. Covered also by ICC 38,

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the same as P-1. P-8, the same as P-1. P-9 the same as P-3.

Q. Now will you refer to exhibits D-30 and D-31 for identification, the tariff schedules which you say govern the respective shipments involved in exhibits P-1 to P-9, and tell me whether or not those tariffs are governed by any particular classification, and if so, what? A. The tariff exhibit D-30 is governed by the Southern classification No. 37, Agent W. R. Powe, ICC No. 13. 10

Q. How as to exhibit D-31? A. D-31 is governed by Southern classification 38 issued by W. R. Powe, ICC 15.

Q. Will you tell me whether or not among those documents you can find the classifications to which you have just referred? A. Yes.

Q. Look at them and examine them. A. Here is the Southern classification No. 38. 20
(Marked D-32 for identification.)

Q. Is there any other classification in there referred to in your tariffs? A. No; that is the only one.

Q. Can you state whether Southern classification No. 37 is among those documents? A. No; No. 37 is not here, but No. 38 cancels Southern classification No. 37.

Q. And does it take the place of 37? A. It takes the place of 37. 30

Q. Will you state whether or not the tariffs, exhibits D-30 and D-31 for identification, and classification D-32 are the tariffs and classifications which govern the nine shipments covered by exhibits P-1 to P-9? A. Yes, sir.

Mr. Hartpence: Now I will offer in evidence the tariff No. 2 marked D-30 for identification; tariff No. 2 marked D-31 for identification; and Southern classification No. 38, 40

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marked D-32 for identification, all of which have been certified under the seal of the Interstate Commerce Commission, and have the signature of the Secretary pursuant to the provisions of the Interstate Commerce Law.

The Court: Now you may cross-examine, Mr. Stout.

10

Cross-examination by Mr. Stout:

Q. Mr. Buckenhurst, for these classifications to become operative a copy must be filed at the shipping station, must it not?

Mr. Hartpence: I object as incompetent, irrelevant and immaterial and the law has been declared to be just the other way.

The Court: That calls for a conclusion of law from this witness.

20

Mr. Stout: He said, "I suppose that they are filed at the shipping point."

The Court: You do not ask him as to that; you ask him if it is supposed to be.

Mr. Stout: I will withdraw the question.

Q. Do you know whether the schedules with reference to the Southern classification have been filed at the shipping points in these cases?

30

Mr. Hartpence: I object as irrelevant, incompetent and immaterial.

The Court: Where is the provision of law that requires that?

Mr. Stout: Only what the witness testified to.

Mr. Hartpence: He said he supposed they were filed.

The Court: If he did say it in response to your question I will permit him to examine about it.

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(Former answer repeated: "They are supposed to be filed at the forwarding station.")

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Q. Do you know in reference to these nine shipments whether schedules under the Southern classifications have been filed?

Mr. Hartpence: I object.

The Court: I will permit it.

A. No, I do not.

Q. Doesn't the tariff between certain points, the 10 shipping point and point of destination, depend upon the route? If you go by a circuitous route won't the tariff be more than if you go in a nearer direct line?

Mr. Hartpence: I object as not proper cross-examination.

The Court: Why?

Mr. Hartpence: There is nothing in concerning the tariff now.

The Court: He is testing his knowledge 20 when he says that these rates actually do apply to these shipments.

Mr. Hartpence: There are no rates he has testified to.

The Court: He says these rates apply contained in these books. He has a right to cross-examine if he knows.

Mr. Hartpence: It seems to me he should first testify as to what rates do apply.

The Court: No; I will permit him to be 30 questioned as to his knowledge if these rates do apply. If he does not know, then the testimony is not permissible.

(Question repeated.)

Mr. Hartpence: Now I object unless it is specifically stated which shipments are referred to and which route is referred to, because as the general question now stands it might refer to shipments to California or Nebraska.

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The Court: These shipments, he said. These shipments. We are only talking about nine shipments.

Mr. Hartpence: Now I would like the question repeated.

(Question again repeated.)

10 The Court: Add the words "on these shipments."

A. These are the only rates that would apply on these shipments, no matter what route they traveled.

Mr. Stout: I ask that that answer be stricken out as not responsive.

The Court: I will overrule your motion and permit it to stand.

20 Q. How do you know that these shipments could only be made by a certain route?

The Court: He has not said he did. He said this rate would apply no matter what route they took, not that they could only go by a certain route.

Q. Then you mean to say that if these shipments went a roundabout way, the tariff would be just the same as if they went in a direct line?

30 A. Yes, sir.

Q. If they went around by California it would be just the same? A. Yes, sir.

Q. Then the tariff does not depend upon distance?

Mr. Hartpence: I object. It does not lie in the mouth of this witness to state what it depends upon.

40 The Court: I do not think there is any doubt with any of us what he means. The

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witness is standing up for the proposition that once a tariff applies it applies whether you go by way of Honolulu or England or wherever you go. That is what the witness is trying to indicate. Isn't it, Mr. Witness?

The Witness: Yes.

Q. You do not know of your own knowledge 10
except from examination of these bills whether
these shipments were made according to the
Southern classification? A. That is all.

Q. Only from your examination of those bills?

A. Yes.

Q. They might be made according to some other
classification?

Mr. Hartpence: I object on the ground that
that is calling for a conclusion of law.

The Court: Well, it is calling for a conclu- 20
sion that an expert ought to be able to give.
I will permit it.

A. The Southern classification is the only
classification governing shipments coming from
the south.

Q. It would be impossible for a shipment to be
made under any other classification? A. Coming
from the south.

Q. Coming from the south; it could not be made 30
under the watermelon classification? A. There is
no watermelon classification.

Q. Isn't there a watermelon classification in
those schedules? A. There is a watermelon tariff,
watermelon rates.

Q. Well, watermelon rates? A. Yes, water-
melon rates. Rates and classifications are two
separate things.

Q. Is the watermelon rate included under the
Southern classification? A. The rules in the
classification govern the use of the tariff. 40

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Q. How is that again? A. The rules in the classification govern the use of the rate tariff.

Q. Well, do you know then as a matter of fact that shipments can only be made from these points involved in this suit by the Southern classification and cannot be made in any other way? A. Southern classification.

10 Q. The shipper hasn't the right to contract with the initial carrier to carry it according to any other classification than the Southern classification?

Mr. Hartpence: I object because the law—

20 The Court: I will answer that question for you, that you are absolutely right in your question. He cannot do it any other way. Once the tariff is filed and the classification is filed they are absolutely bound by it. If they attempted to charge anything less than that it would be a discrimination to the shipper; if they attempted to charge any more it would bind neither the shipper nor the carrier, and the very object in having the rate is to do away with discrimination. That is the very reason for the tariff. Otherwise all this filing of rates with the Interstate Commerce Commission would be a useless thing.

30 You see this whole situation grew, Mr. Stout, out of the effort on the part of the Congress of the United States to make uniform rates and to do away with rebates with discriminations and secret arrangements and all that sort of thing, and therefore they permitted a railroad company to file, or any concern that was a carrier to file, a classification and then to file a rate which would be adopted with the classification, and once that thing is filed it is absolutely and conclusively binding and it

40 is conclusively presumed to be known by

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everybody that makes a shipment, and if the carrier attempted to charge less than that rate it would be an unjust discrimination as against every other person than the one to whom he gave that rate and would be unfair; if he attempted to charge more the shipper could say, "Your rate is filed; you are bound by it, and the effect of filing the rate was to 10 bind you to it; therefore I will pay no more." That is what the law has held in all these cases, of *Croninger vs. the Express Co.* and *Karl vs. the Railroad* and innumerable other cases that have been decided. That is the constant language of the courts.

Mr. Stout: But must there not be proof that the initial carrier has filed those schedules?

The Court: Well, Mr. Hartpence is endeavoring to establish that now by producing the 20 schedules themselves, certified under the hand of the Secretary of the Interstate Commerce Commission, which as I understand the law—I have not had a chance to look at it—but as I understand the law it is the method by which those documents are to be authenticated whenever they are to be used anywhere as evidence. Now he produces those things and says, 30 "Here are the schedules and here is the classification, and these two things are certified by the Secretary of the Interstate Commerce Commission as being the classification and rates, and I offer those in evidence." Now my difficulty was not at all with the question as to whether or not the rates once proven to have been filed were conclusive. I have never had any doubt on that point. My doubt has been, all through these cases, whether or not 40 the railroad company has brought itself with-

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10 in this rating by showing that such dealings took place between the railroad company and the shipper as to bring them within the tariff, —because there are two ratings. There is only one classification; that is the Southern classification, and the rate under that classification, which governs, is the watermelon rate under the evidence. Now that watermelon rate fixes a certain tariff, but there are two kinds of rates, one ten per cent lower than the other, and the question in my mind all the way through has been to find out how any-
 20 one knew whether the higher rates was being charged or the lower rate. I had no doubt at all, and have no doubt now, that the tariff as filed, if properly filed, fixes the rate, but whether it was the watermelon rate or the 10% higher rate I have not yet had made manifest to me. That as I understand is your argument, isn't it, Mr. Hartpence?

Mr. Hartpence: That is the whole tenor of the contention.

30 The Court: There isn't any question about the fact that if this rate is filed by the initial carrier it operates to the benefit of every connecting carrier clear through to the final carrier, and every advantage that he would have under the rate filed by him inures to the benefit of every succeeding carrier. That is absolutely determined by the United States Supreme Court, and consequently the Pennsylvania Railroad Company in this case would be entitled to take advantage of the rates and classifications that were filed by the Georgia Northern Railroad or the Southern Railroad or the Seaboard Air Line in the south, be-
 40 cause it is in the direct and consecutive line of transportation. Therefore this benefit in-

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ures to them. That is perfectly settled everywhere, in all the cases. Then the next question is whether or not these goods are shipped under the watermelon rates or under the ten per cent higher rate. That is the thing I want to see determined. Then we have some other important questions in this case. (It might be said in passing that this is not an easy 10 case. It involves about as much difficulty as I have ever seen in any case in this court.) And another question which is going to confront you gentlemen in a few moments is with respect to these bills of lading which are signed by Mr. Clute. Now those bills of lading contain in addition to a receipt the elements of a contract, and as I understand the law in this State it is perfectly settled that when a man, in the absence of fraud, signs a 20 paper containing the elements of a contract he is conclusively presumed to have known, understood and assented to the provisions of the contract; and here we have in five out of nine of these bills of lading Clute's signature. Now it is true that you offered some evidence to show that Clute did not read very well. It is true that you offered some evidence to show that Clute did not know what was in these bills 30 of lading, but the law is absolutely settled in this State by the Court of Errors and Appeals, to mention a few cases in passing—*Fivey vs. P. R. R.*, 38 Vr., is authority for the proposition in the very words I have just stated. Then another case, *Williams vs. Leisen*, 43 Vr., where the man said, "I thought I was signing a recommendation of some books so that people would buy upon my statement that they were good books and for all those who liked that kind of books that was 40

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the kind of book they liked. I didn't read it." And the Court said, "You will not be let to make a statement like that, because you were trying to impose upon the public by signing a thing that you did not know anything about in the expectation that they would rely upon what you said. It was your business to read it;" and if you come down to Bishop on Contracts, an elemental work on the subject, you will find that "one is never required to, and never should be required to, accept a written instrument without being acquainted with its contents. He should read it if able, or if illiterate have it read to him, and when he signs a written contract the law presumes that he has discharged his duty. Therefore, whether in fact he did it or chose to waive the privilege, his signature binds him." Now there are other cases,—*Alexander vs. Brogley* and *Alexander vs. Bedford*—all of them speaking the same uniform language with respect to the law governing such a conjecture of circumstances, and they all say that when a man signs a paper containing the elements of a contract if he did not read it, and wasn't imposed upon in signing it, that ends it; he is bound to have conclusively consented to the contract. Now it is admitted in this case by the testimony of the plaintiff himself that Mr. Clute was his agent to purchase these watermelons and ship them north, and all the things that necessarily were involved in carrying out that function or agency were involved in the agency itself; and therefore when Clute attempted to make the shipment and signed the bill of lading he bound the plaintiff in the action, and consequently if that bill of lading contains limitations of the carrier's liability

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which are not contrary to the law—for this law, the Interstate Commerce Act, fastens just what a carrier may limit his liability to. For instance he cannot limit his liability so as to absolve himself from the consequence of his own negligence. He could not do it before the Act and he cannot do it now—but as I say, so far as the law permits him to limit his liability, if he signs the bill of lading he does limit it. And then you will find in looking through these classifications and schedules that they say that if the lower rate is adopted, then the carriage of the watermelons is subject to the carrier's bill of lading. That is an express provision in the tariff itself, or prefacing the tariff itself. Now of course here is a carrier's bill of lading; here is a classification, assuming now that it is in evidence. I am not stating that it is in or not. If it is in, why then the carrier's bill of lading applies. Now here are the bills of lading handed to Mr. Clute at the time he made the shipment. Now one thing more and then I am going to stop this very interesting discussion—to me, whatever it may be to anybody else.—If these tariffs were filed and if this classification was filed and thus govern this case, then our case of *Hill vs. Adams Express Co.* has no more bearing upon this case than the wind that blows outside the window, because in the case of *Kansas City Southern Railway Co. vs. J. M. Carr*, a case that is reported in the opinions of the United States Supreme Court, the Court says: "The valuation the shipper declares determines the legal rate where there are two rates based upon valuation. He must take notice of the rate applicable and actual want of knowledge is no excuse. The rate

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10 when made out and paid is notice and its effect is not lost although it is not actually posted in the station." So you see that meets the point you were talking about a moment ago with this witness, as to whether or not these rates were posted at the point of shipment, because the law seems to be settled in this Carr case that the rate when made out and filed—that is all—is notice and its effect is not lost although it is not actually posted in the station. In other words, when the rate is filed it becomes just the same as a deed which is recorded, notice to all the world of its contents.

20 I thought it wise to go so far into what seems to me to be the law governing the case so that we may not be groping around at cross purposes when you make your objections. Now we will proceed.

Mr. Hartpence: The exhibits were offered at the time of the cross-examination.

The Court: I understood Mr. Stout was cross-examining and you made an objection and in the course of deciding the objection I took occasion to make these few remarks.

30 Mr. Stout: I renew my objection to the receipt of these schedules in evidence, on the ground that there isn't any evidence yet whether it was under the one rate or the other rate,—the 10% higher or the 10% lower.

The Court: You were cross-examining; you were not objecting to the offer. You have completed your cross-examination?

By Mr. Stout:

Q. How do you know that these schedules are the same as the schedule filed with the Pennsylv-
40 ania Railroad which you have seen?

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Mr. Hartpence: I object. The witness has testified that these schedules which have been offered are the schedules that govern, and I cannot see what difference it would make whether they are the same as the schedules filed with the Pennsylvania Railroad Company which he has seen.

The Court: I suppose that the reason for 10 that question, and the reason that validates the question, is that he says he is familiar with these rates, and counsel has a right to find out how he got his familiarity. Of course if they are not the same rates as were filed with the Pennsylvania Railroad Company the next question would be how did he know that these are the tariffs that govern.

A. By the Interstate Commerce Commission file 20 number—

Q. What is that? A. By the Interstate Commerce Commission file number on the tariff.

Q. That is the way you identify these schedules with the ones you have seen before, by just the number? A. By the Interstate Commerce Commission number.

Q. Further than that you do not know? A. I know by using them.

Q. You have not compared these schedules with 30 the schedules on file with the Pennsylvania Railroad? A. No.

Q. Then you do not know of your own knowledge whether they are the same schedules? A. No.

Mr. Hartpence: I object to the form of the question. It is a declaration of counsel, and not a question.

Q. Do you?

The Court: He has put the interrogative part in by saying "Do you?".

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A. They must be the same, because they are all—

Q. Do you know whether they are the same or not? Yes or no? A. No; I would not swear to that.

10 The Court: I suppose as a matter of fact if you mean identical, they are not the same, because these are the ones that are being offered in evidence and the ones in Philadelphia are the ones being used by the Pennsylvania Railroad.

Q. I mean similar. Have you made such a comparison of these schedules with the ones on file with the Pennsylvania Railroad so that you can testify that they are similar, on different paper, etc., but that they are similar? A. I can.

20 Q. What is the source of your knowledge? A. By reference to the tariff that I handle at my desk.

Q. You can recall the tariff from your memory, can you? A. I can.

Q. And what is the tariff on a shipment of watermelons from Pavo, Georgia, according to the Southern Classification?

Mr. Hartpence: I object. This witness has not said he can tell what a specific rate is.

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The Court: And I do not suppose anyone on earth can unless you give him the weight. There is a minimum weight of 24,000 pounds according to the schedule, and under that a certain rate is charged and over that I suppose something different in proportion to the excess. Now you say "What is the rate on watermelons?" If it is 50,000 pounds it would be one charge and if 24,000 pounds or less it would be another, so consequently your question is unanswerable.

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Q. Well, on 28,000 pounds.

Mr. Hartpence: I object. This witness has not testified he can state from memory what the freight rate is; he has said he recalls the tariff, but I think he means the book which is technically known as the tariff.

The Court: I will permit the question.

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A. What was the question?

(Question repeated.)

Mr. Hartpence: I object because there is no point of destination stated in the question.

Q. From Pavo, Georgia, to Jersey City? A. I can tell you that by referring to the tariff.

Q. But without referring to it you cannot tell?

A. I can from memory but I can show you in the tariff. I know what it is from memory. 20

The Court: Don't let us waste any time.

First of all, if the rate is filed with the Interstate Commerce Commission and the Pennsylvania Railroad Company uses, for instance, schedule 38 of rates, or whatever the name of the schedule is, and they have that there, certified by the Interstate Commerce Commission, and then a rate is offered here certified by the same Commission, and it is the same rate as the one shown in the schedule, why isn't that sufficient? Of course no man can say of his own knowledge. 30

Q. Can you say of your own knowledge whether these shipments were made under the higher rate or under the lower rate? A. From what I see here they are made under the lower rate.

Mr. Hartpence: I object as irrelevant as cross examination at this point.

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The Court: I will permit it. I think it tends to probe his knowledge of what the rate was.

Mr. Hartpence: He is not now under cross examination. I have not concluded my direct examination yet.

The Court: I will permit it.

10

Q. What do you see there that makes that fact known to your mind? A. As a rule when they are shipped under the higher rate they are stamped on the bill of lading "Carrier's risk is not released."

Q. You say "as a rule;" but it is not always done, is it? A. On every case I have ever seen.

By the Court:

Q. Suppose that is so, what does it mean on this
20 Southern bill of lading where it says "Released"?

A. That is what I say,—"Released." The rate used there applies.

Q. And if it is not stated "Released" the rate given there does not apply? A. No; if it is noted on the bill of lading "Not released."

Q. Then it applies? A. Then the 10% higher rate applies. It has to be noted on the bill of lading "Not released."

Q. Then suppose there is nothing on the bill of
30 lading at all? A. Then we take it for granted that is it released.

Q. Why do you take that for granted? A. Simply because he did not put on "Not released."

Q. Then apparently your notion as to whether the tariff rate applies depends upon what the agent of the carrier does at the point of shipment? A. He is the man who makes out the bill of lading.

Q. And with that apparently the shipper had nothing whatever to do? A. Well, the shipper
40 makes that agreement with him.

W. H. Buckenhurst, for Defendant—Cross

Q. But if he puts nothing on, then there is no agreement, is there? A. Simply the straight bill of lading then. The straight bill of lading applies.

Q. Then if the straight bill of lading applies, the Southern rate is not charged, is it? A. Yes, the regular rate is charged, the rate published in this tariff. Now if it is entered on here "Not released," then—

10

Q. Then is there anything in the classification or in the schedule that you know of that bears upon the question of saying "Released" or "Not released" on the bill of lading and thus determining whether one or the other rate is the one adopted? A. I don't know whether I can just put my hand on that or not.

Q. Because if there is, that would settle it and then we would know just exactly what applied. A. Yes sir; I have it here.

20

Q. What is it? Let us hear it. A. Shall I read it to you?

Q. Read it out. A. "The reduced rate specified in this classification will apply only on property shipped subject to the conditions of the carrier's bill of lading. Property carried not subject to the conditions of the carrier's bill of lading will be at the carrier's liability, limited only as provided by the common law and by the laws of the United States and of the several states in so far as they apply. Property thus carried will be charged 10% higher, subject to a minimum increase of 1% a hundred pounds, than if shipped subject to the conditions of the carrier's bill of lading.

30

Q. That is all right, but where is the part of the rules that indicates which one you adopt? A. If the shipper did not agree to this I should not think he would sign this.

Q. Well, if he did not sign it? He did not sign half of them. Then your notion as an expert is

40

W. H. Buckenhurst, for Defendant—Cross

that if he does not sign it he does not agree to it, and consequently the lower rate applies? A. We have to take it that way.

10 Mr. Stout: I now renew my objection to the receipt of these schedules in evidence on the ground that the rate under which these shipments were made has not been proven so that the classification can be determined.

20 The Court: Well, we have gotten this far in the evidence, that if there is a bill of lading signed by the agent of the carrier and the shipper and it is suggested on that bill of lading that the things shipped are released, that then the lower rate does apply, but that if the shipper does not sign the bill of lading, why then it does not apply. Now we have both classes of bills of lading here and consequently your objection to the admission of these tariffs is not well taken, because the tariff will apply, so far as the evidence now goes, to those that were signed, but will not apply to those which were not. That is the logic of the situation so far as I get it from the evidence of the witness.

30 Mr. Stout: Then I object to the receipt of the schedules or tariffs in evidence as to the four bills of lading that were not signed by the shipper.

The Court: Well, I let them in evidence and then I will have to limit the application of them, upon your request to me to charge or in some such way, that they are inapplicable, when the time comes.

(D-30, D-31 and D-32 for identification received in evidence.)

40 The Court: So as to get it down clearly on the record, won't you tell us again in just a few words, when that watermelon rate ap-

W. H. Buckenhurst, for Defendant—Cross

plies? Just in your own words put that right down.

A. Well, this watermelon rate applies when the bill of lading is made out, ordinary bill of lading made out and signed by the agent and by the shipper, then the rate quoted in the tariffs on file is the rate that applies. 10

The Court: And you also told us when the bill of lading contains on it a notation,—to what effect?

A. If the bill of lading has a notation "Not released," then we must apply the 10% higher rate in accordance with the Southern classification.

The Court: And when the bill of lading contains a notation on it "Released," then it is understood that the lower rate applies? 20

A. The lower rate applies.

The Court: And that the transportation is subject to the carrier's bill of lading?

A. Yes.

By Mr. Hartpence:

Q. Now will you turn to the tariff and classification governing the shipment from Pavo, Ga., to Jersey City, of car No. ABA 20917, covered by the bill of lading marked P-1, and state what the tariff is on that shipment? A. The rate from Pavo, Ga., to Jersey City is 47 cents per hundred pounds, subject to a minimum of 24,000 pounds. 30

By the Court:

Q. By a minimum you mean, I suppose, that any shipment of freight up to 24,000 pounds goes according to that rate? A. Yes, sir. 40

W. H. Buckenhurst, for Defendant—Cross

Q. And after 24,000 pounds, that is above that, you charge additional for the excess. A. Yes; actual weight.

Q. So much a hundred pounds additional? A. Yes, sir.

By Mr. Hartpence:

10 Q. And will you in the same manner state the tariff upon the shipment from Barlow, S. C., to Jersey City, N. J., covered by exhibit P-2, car Sou. 35039? A. Is that Bartow, Ga.?

Q. It looks to me like Bartow. A. Barton, S. C. The rate from Barton, S. C., to Jersey City is 35 cents per hundred pounds, subject to a minimum of 24,000 pounds.

Q. And will you in like manner state the tariff upon the shipment of car Sou. 38162 from Allendale, S. C., to Jersey City, covered by exhibit P-6, which I show you? A. The rate from Allendale, S. C., to Jersey City is 35 cents per hundred pounds, subject to a minimum of 24,000 pounds.

Q. And will you in like manner state the tariff on car SAL 22453 covered by exhibit P-3 shipped from Ulmers, S. C., to Jersey City, N. J.? A. The rate from Ulmers, S. C., to Jersey City is 34½ cents per hundred pounds, subject to a minimum of 24,000 pounds.

30 Q. And will you in like manner state the tariff upon the shipment from Kline, S. C., to Jersey City, covered by exhibit P-7, car Sou. 25284? A. The rate from Kline, S. C., to Jersey City, 35 cents per hundred pounds, subject to a minimum of 24,000 pounds.

Q. Will you likewise state the tariff upon the shipment from Ulmers, S. C., to Jersey City, N. J., of car SAL 24096, covered by exhibit P-9? A. The rate from Ulmers, S. C., to Jersey City is 34½

W. H. Buckenhurst, for Defendant—Cross

cents per hundred pounds, subject to a minimum of 24,000 pounds.

By the Court:

Q. Did you state the rate on that one (indicating), P-7? A. Yes, sir—Kline.

Q. What did you say the rate was? A. 35.

Q. How do you make that out? That is an unsigned bill of lading and you said that the rate was 10% per cent higher on the unsigned bill of lading. A. Well, I was quoting the rates here. 10

Q. I know you were quoting the rates, but you were not quoting them right, according to the testimony. It would be 10% higher, wouldn't it? It would be 38½ cents, wouldn't it? A. In that case the shipment from Kline would be 38½ per hundred.

Q. And the same would be true, would it not, of these other ones you have been talking about that are unsigned? That would be true of P-6? A. Yes; that would be 38½ cents a hundred pounds. 20

Q. And the same would be true of P-2, would it not? A. Yes, sir—no; that is signed.

Q. Oh! P-2 is signed. It would be true of P-1, from Pavo, Ga.? A. Pavo was 47, and 10%—it would be 51.7 cents.

By Mr. Hartpence:

Q. Will you likewise state the tariff upon the shipment from Ulmers, S. C. to Jersey City, N. J., of car SAL 15841, covered by exhibit P-4? A. The rate is 34½ cents a hundred pounds, subject to a minimum of 24,000 pounds. 30

Q. And will you likewise state the rate upon a shipment from Ulmers, S. C., to Jersey City, N. J., of car SAL 22356 covered by exhibit P-5? A. 34½ cents per hundred pounds, subject to a minimum of 24,000 pounds. 40

W. H. Buckenhurst, for Defendant—Cross

Q. Will you likewise state the rate upon the shipment from Kline, S. C., to Jersey City, N. J., of car Sou. 32937, exhibit P-8? A. That would be 38.5 per hundred pounds, subject to a minimum of 24,000 pounds.

By the Court:

10 Q. That would be 41½? A. No; the original rate is 35.

Q. Oh! You have added your 10% on that? A. Yes, sir. Now these bills of lading do not come into our office. The receiving agent has these. Now we get what we call a revenue waybill that has the charges on it and from that is what we check our rates and extensions.

By Mr. Hartpence:

20 Q. Now will you likewise state what would be the tariff on a shipment from Pavo, Ga. to Jersey City of car AB&A 21907 covered by exhibit P-1 if shipped at the reduced rate mentioned? A. You mean at the released rate?

Q. At the reduced or released rate? A. The rate would be 47 cents per hundred subject to a minimum of 24,000 pounds.

Q. And will you likewise state what would be the tariff upon the shipment from Kline, S. C., to
30 Jersey City, N. J., of car Sou. 32937 covered by exhibit P-8 at the reduced or released rate? A. 35 cents per hundred pounds, subject to a minimum of 24,000 pounds.

Q. And will you state likewise the tariff from Kline, S. C., to Jersey City of car Sou. 25284 covered by exhibit P17 at the reduced rate or released rate? A. 35 cents per hundred pounds, subject to a minimum of 24,000 pounds.

Q. Will you likewise state the tariff upon the
40 shipment from Allendale, S. C., to Jersey City,

Thomas A. Kavanagh, for Defendant—Direct

N. J., of car Sou. 38162 covered by exhibit P-6 at the reduced or released rate? A. 35 cents per hundred pounds, subject to a minimum of 24,000 pounds.

Cross-examination by Mr. Stout:

Q. You in your experience have not made up the rates from bills of lading, have you? 10

Mr. Hartpence: I object.—I withdraw the objection.

A. No.

The Court: He has already told you that he made them from waybills—from revenue waybills.

Q. Do those waybills to which you have referred contain the point of origin and the point of destination—do they when you receive them? A. 20
Yes, sir.

Q. Just the same as the bills of lading? A. Yes, sir.

Mr. Hartpence: I should like to offer the claims filed by Mr. Albrecht in this case which were marked for identification.

Mr. Stout: No objection.

(D-12 to D-20 inclusive received in evidence.)

Mr. Hartpence: We also offer exhibits D-10 30 and D-11 for identification, which were proved on the plaintiff's case.

Mr. Stout: No objection.

THOMAS A. KAVANAGH, SWORN.

Direct-examination by Mr. Hartpence:

Q. Where do you live? A. 1008 Park Avenue, Hoboken.

Thomas A. Kavanagh, for Defendant—Direct

Q. What is your occupation? A. Terminal Chief Clerk of the Baltimore & Ohio Railroad, pier 22, New York.

Q. How long have you been in that position? A. Since June 5, 1913.

Q. How long have you been in the railroad company's service? A. Seven years.

10 Q. And in what capacity? A. Various capacities from 1906 down.

Q. And where have you been located during that period? A. Pier 27, East River; Pier 7 North River; 22, North River, 26 North River, back to 22 North River.

Q. During that period of six or seven years? A. Seven years.

Q. Do you recall any labor disorders in 1912 in July at the pier where you were stationed? A.
20 The B. & O. Railroad, I do.

Q. What was the nature of that disorder? A. Why, the laborers wanted more money per hour and they went out on strike in order to get it.

Q. Do you know when they went out at your pier? A. July 12.

Q. How long did the strike continue? A. About a fortnight.

Q. Do you know whether it existed at any other place besides the B. & O. pier? A. It existed at
30 the West Shore, the Morgan Line and the Pennsylvania to my knowledge.

Q. And what was the cause of the strike, do you know, at these places? A. It originated—

Q. I will withdraw that question. What do you mean by the Morgan Line? A. It is connected with the Southern Pacific Company—coastwise steamships.

Q. Do you know where the strike originated? A. At the Morgan Line.

Q. You mean the Morgan Steamship line? A.
40 The Morgan coastwise steamships.

Thomas A. Kavanagh, for Defendant—Direct

Q. And what was the extent of the strike to your knowledge along the North and East Rivers, New York? A. Well, the laborers of the Morgan line—or rather the seamen—went out first, and then it got onto the freight handlers on the Morgan Line, and the other laborers, with the Pennsylvania, the West Shore and the B. & O. going out in sympathy with them.

10

Q. Do you know about how long it was before the general strike subsided? A. About a fortnight.

Q. Where were you during that fortnight? A. Well, my occupation at that time was chief clerk at the 26th street station, North River, and I had to come down to pier 22 at various intervals in order to clear up shipments and it necessitated my going along the waterfront in a radius of from Duane street to Canal. Within that radius these piers 20 are located.

Q. When did you go, in the daytime or at night?

A. In the daytime, of course.

Q. Were you over there at all at night? A. Not at night—that is, after 5:30.

Q. During the time that you were there and went up and down as you have stated, did you notice any demonstration of violence or disorder? A. Why, they were all talking loud and seemed to be not with the various companies that they were out on; they seemed to be wrangling among themselves and trying to create disorder with those various lines that employed them to do the work.

30

Q. And whom do you mean by “they”? A. The strikers.

Q. And where were they congregated? A. In front of the various piers and on the sidewalk of West street.

Q. And is West street a street that runs along the border of the shore line? A. Yes; the piers 40 are right on the margin of the street.

Abraham B. Plant, for Defendant—Cross

Q. Was there any unusual gathering of men at those times? A. Oh, yes.

Q. How many? A. Oh, some hundreds.

Q. How did it subside when the strike ended; in what manner, suddenly or gradually? A. Yes, it came suddenly.

Q. How did it subside or end? A. Well, the men
10 went back to work.

Q. And were there any evidences of disorder or confusion after they went back to work or did it stop suddenly? A. It stopped suddenly.

(No cross-examination.)

ABRAHAM B. PLANT, SWORN.

20 *Direct-examination by Mr. Hartpence:*

Q. Mr. Plant, what is your business? A. I am freight train master of the Pennsylvania Railroad, Jersey City.

Q. And what are your duties as freight train master? A. I have charge of the terminal yards and the floating of freight to and from New York.

Q. Terminal yards where? A. Greenville, Jersey City, Harsimus Cove; also New York and Brooklyn.

30 Q. Do you have any clerical force under your supervision? A. Yes; I have an office force on pier D at Jersey City.

Q. And that is where you are located? A. Yes, sir.

Q. Are you familiar with the conditions and surroundings of the terminal yard at Jersey City and the piers of the Pennsylvania Railroad Company in New York? A. Yes, sir.

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

40 Q. How long have you been in the position

Abraham B. Plant, for Defendant—Direct

which you now hold? A. Why, in my present position about five years—five years next February.

Q. Where were you prior to that time? A. Prior to that time I was chief train dispatcher for the New York Division in Jersey City.

Q. How long have you been in the service of the Pennsylvania Railroad? A. 28 years.

Q. Now, Mr. Plant, do you have any recollection of a labor disorder or strike which affected the Pennsylvania Railroad Company in Jersey City and New York in July, 1912? A. Yes, sir; on the night of July 9th I was notified at my home about 7:15 by my night representative that there was a strike at piers 27, 28 and 29 and they would not be able to handle any perishable freight there, and immediately I went to the office, reaching there, to the best of my knowledge, about 9 o'clock, at which time I got in communication with the firm of Stillman, Ferry, Head and Ferris to procure some men, and they in turn told me that they had got some Italian on the east side of New York, Peregrini I think his name was, and between the following morning and the following night they furnished about 150 men which we sent to New York by tugboat, picking them up on the East River, sending them to piers 27, 28 and 29. In addition to that during the several days following there were a number of men brought from different points on the road such as trackmen and quarrymen from the Trenton division, brought over, whom I sent to the pier on tugboats to work, and also looked after the housing of our men over in Jersey City, where we housed the men and fed them, and we also took care of a number of the men on ferryboats and tugboats and transported them back and forth on tugs and covered lighters.

Q. Why did you transport them back and forward by tugboats? A. Our advice from our agent

Abraham B. Plant, for Defendant—Direct

in New York was that it would not be at all safe for these men to go to their homes through the streets; there were bodies of men who were presumed to be strikers in front of the doors who might interfere with them, and we did not want to take any chances with them, and consequently we took care of them on the Jersey City side and
10 brought them on ferryboats.

Q. About how many men during all that time did you procure for that purpose? A. I personally had to do with the hiring of 133 men. I made the agreement with the concern to pay them so much for furnishing the men.

Q. How soon after you were notified on July 9th did you procure those 133 men? A. To the best of my memory the first lot of men, about 60,
20 were sent over to the pier the following morning, possibly 8 or 9 o'clock, and seventy some the following evening, Tuesday evening, possibly about 6 o'clock.

Q. And were those men experienced freight handlers? A. Not from my understanding they were not; they were simply picked up from around the east-side of New York, anyone they could get. From what I saw of them a good many of them were not big enough to handle the work.

Q. Did you make any efforts to procure experienced men? A. No, I did not make any effort to
30 procure experienced men. All I wanted to get was men of some kind to attempt to handle this business we had on our hands.

Q. And these different persons or concerns that you have referred to that you got men from, what sort of concerns were they? A. The only one I had any dealings with, as I stated before, was this Pelegrini, I think his name was, located on the east side of New York. I am not familiar with his
40 address. He was brought to my office by a mem-

Abraham B. Plant, for Defendant—Direct

ber of the firm of Stillman, Dolly, Head and Ferris, and I made an agreement with him to pay him \$5 a man for all the men he could get.

Q. And those men were understood to be what?

A. There was not any understanding about it; we simply asked for men.

Q. And did you state what you wanted to use them for? A. Yes; they were known to be strike- 10
breakers.

Q. Did they understand at the time they were employed that this strike was in progress and they were to be put to work on those piers? A. The party of whom we employed them understood that; I do not know what the men understood.

Q. What did you do, if anything, with regard to the management of these men after you sent them over to the piers? A. Nothing whatever. 20
After they got to the pier they were under the direct charge of the pier agent and the superintendent of the piers. I had charge of transporting the men, of taking them to and fro across the river at night and also looking after them to a certain extent as to housing and feeding them.

Q. And for how long a period did you continue to do that? A. Well, I was at my office continuously from Wednesday night, when the strike broke out, until the following Sunday night. I slept at the office and did not go home at all, and 30
the following Monday morning I think—from the time I came to the office on Monday morning I was not home once during the week until the strike was over, which was about the 17th or 18th as near as I can remember, and we resumed our normal operations at the pier on Sunday night so far as the peach market was concerned. Of course we were congested with the ordinary class of freight owing to the uses that were being made of the pier during that period and the accumulation 40

Abraham B. Plant, for Defendant—Direct

was not entirely cleared up until about the 4th or 5th of August, I should judge, when we got down to a normal basis.

Q. What do you mean by the ordinary class of freight? A. Why, such as merchandise and slow freights that normally went to New York.

10 Q. Non-perishable freight? A. Non-perishable freight—a very little of it of course sent over there.

Q. Where did the non-perishable freight go that went from Jersey City to New York? A. During the period of the strike?

Q. No; ordinarily. A. Do I understand you to refer to piers 27, 28 and 29?

Q. Well, I was merely asking you if you knew where it went? A. During the time of the strike?

20 Q. No; during the ordinary course of business to what point in New York would non-perishable freight going from Jersey City go? A. We send non-perishable freight to New York to the 37th street station, to piers 27, 28 and 29, piers 1, 4 and 5 on the North River.

Q. Do you know to what point in New York perishable freight ordinarily went that went eastward from Jersey City over the Pennsylvania? A. Yes, pier 29, New York.

30 Q. Did all perishable fruit go to pier 29 consigned to New York, or aren't you familiar with that? A. To the best of my knowledge, all perishable freight is consigned to pier 29. We do have perishable freight go to Wallabout Market in the way of vegetables. During the vegetable season there are a large amount of vegetables, peaches, sent to Wallabout station for Wallabout Market, but that is small compared to pier 29.

Q. Where was the perishable fruit market in New York generally? A. Pier 29, New York.

40 Q. And what can you say as to watermelons be-

Abraham B. Plant, for Defendant—Direct

ing consigned to New York? A. Why, a carload of watermelons in bulk consigned to New York would be delivered in Jersey City freight yard.

Q. Was that the market for watermelons for New York market? A. Yes, and to the best of my knowledge for the last fourteen years there has not been any watermelons sent in bulk to pier 29, but I have seen on the pier some barrels of watermelons early in the season before the melons in bulk would start to be moved. 10

Q. They would be less than carload lots? A. Yes, sir.

Q. What efforts beside procuring and caring for these men that you have referred to were made to your knowledge to handle the situation or move the freight that came to Jersey City at that time? A. Well, the checkers over at pier 29, as I recall it, or at least I was advised so, a number of them went out, and I sent some clerks from our office and also some clerks employed on our float bridges and along there, and sent them over for checkers, and of course there were a large number of men sent through the superintendent's department who were sent there that I did not procure. They were secured by the superintendent's chief clerk and through his department. 20

Q. What was the effect upon the movement of freight consigned to Jersey City and New York on the Pennsylvania of that labor disorder? A. Why, it resulted in congesting our yards with various kinds of freight for the New York piers, making it necessary to hold this business back at the Meadows yard. After possibly the third day of the strike, as near as I can remember, we had to hold this business back in the Meadows on account of the Harsimus Cove yard being badly congested. 30

Q. Was any extra motive power put on or any 40

Charles W. Glenn, Jr., for Defendant—Direct

extra service men, to relieve the congestion? A. Not at Harsimus Cove. Our float bridge operation was very much reduced; we practically did not have anything at all there and it resulted in using the pier usually used for floats for other operations in the yard.

10 Q. So that there was extra power occupied in moving freight? A. Of course I cannot testify that from my personal knowledge, only from my conversation with Mr. Taylor, the yardmaster in charge of the yard at that time.

Q. And is Mr. Taylor in your department? A. He is under my supervision.

Q. And the details of that— A. The details of the yard operation he is entirely familiar with.

20 Q. Do you know how long after the strike itself ended that condition of congestion continued? A. As I said a few minutes ago, to the best of my knowledge I think it was about July 3rd or 4th when our yards began to begin to assume a normal condition.

The Court: Do you mean that?

A. About August 3rd I should say.—Excuse me.
(No cross-examination.)

30

CHARLES W. GLENN, JR., SWORN.

Direct-examination by Mr. Hartpence:

Q. What is your business? A. Chief clerk to the division superintendent.

Q. Pennsylvania Railroad? A. Yes.

Q. Where are you located? A. Pennsylvania Station, New York City.

40 Q. Who is the division superintendent? A. C. S. Krick.

Charles W. Glenn, Jr., for Defendant—Direct

Q. How long have you been in that position?

A. A little over three years.

Q. Did you have any railroad experience with the Pennsylvania Railroad prior to that time? A. I had.

Q. How long? A. 29 years—that is 29 altogether.

Q. And where have you been located generally during that period? A. Philadelphia prior to coming to New York. 10

Q. When did you come to New York? A. June, 1910.

Q. You have been stationed in New York ever since that time? A. I have.

Q. Have you any knowledge of any labor disorder or strike at the Pennsylvania Railroad piers in New York, 27, 28 and 29 in the month of July, 1912? A. I have. 20

Q. What was the nature of the disorder? A. Well, I was called at the house about near midnight and told that the laborers had gone out on strike.

Q. What did you do then? A. I came into the office and found that arrangements had been made to get hold of some men, and then we got all the trackmen we could get together, both from our division and the New York division—that is the track laborers—and got them to work on the piers, after which we got in touch with some labor organizations, that is agencies who furnish strike-breakers. 30

Q. Where were they located? A. Well, there was one firm in Philadelphia, some in New York, and one up on the Belvidere Division, now known as the Trenton Division.

Q. And as a result of those efforts did you procure any men to take the place of the strikers at the piers? A. Oh yes; we procured all the men that we could use. 40

Charles W. Glenn, Jr., for Defendant—Direct

Q. How many did you get, do you know, about?

A. Well, we got close on to five hundred men.

Q. And what did you do with them after you got them? A. The agencies—or at least these strike-breakers, they were told just where to send the men to. Some were sent to Jersey City and there taken care of by the trainmaster, that is distributed from there to pier 28 or wherever we had any trouble.

Q. And how long did the trouble continue? A. Well, these fellows returned to work on I think it was about the 8th day.

Q. And did the disturbance continue after that in any way? A. No disturbance, but it was a considerable long time before we got everything cleaned up, everything in working order.

Q. What do you mean by cleaned up and in working order? A. Well, there was a considerable congestion of freight.

Q. Where? A. For pier 28.

Q. Where was the congestion? A. The congestions were on the Jersey side.

Q. Do you know when that congestion was cleaned up? A. Not the exact date; it was some time around the middle of August.

Q. What did you personally do, Mr. Glenn, if anything, in the way of extra service during the time that labor disorder continued? A. Well, I was on duty continuously from the time I got in after midnight when I first heard of the strike until the following Sunday.

Q. And how about after that? A. I put in almost continuous time after that until the men returned to duty.

Q. And did that in any way affect your office force? A. Oh yes; we worked the men overtime. Ordinarily we close at 5:30, but during the continuance of the strike we were open all night—day and night.

Charles W. Glenn, Jr., for Defendant—Direct

Q. And how as to the men in charge of the department connected with this strike, were they performing any extraordinary service in the effort to reduce it and to handle the freight? A. Yes—that is as far as the clerical force do you mean?

Q. The clerical force and heads of departments. A. All heads of departments were working overtime, that is working day and night. 10

Q. Doing what? A. Supervising at pier 28 and wherever we had any trouble—in other words, they were working a good deal overtime in order to get everything in good working shape.

Q. And what were they doing with regard to moving the freight, relieving the situation, in that time,—making any efforts at all to do that? A. They were. I think that the freight train master probably could answer those questions from a transportation standpoint. In a general way I have a general knowledge of everything that went on. 20

Q. Well, was everybody hard at work trying to relieve the situation? A. Everybody was working hard.

Q. And did you see any of these men that were procured through these agencies after you got them and they were directed where to report? A. The laboring class?

Q. Yes. A. Yes; I took a walk down to pier 28 and saw those fellows working for a couple of nights, well, between 9 and 12. 30

Q. When you refer to pier 28 you mean the general location? A. 27, 28 and 29, yes.

Q. Do you know what portion of piers 27, 28 and 29 were devoted to perishable fruit? A. I do not. The agent I think can tell you that.

Motion for Direction of Verdict

Mr. Hartpence: We ask your Honor to take judicial notice of the fact that July 21, 1912, fell on Sunday.

The Court: All right.

(Recess.)

10 Mr. Hartpence: I call Mr. Shirley. (No response.)

(Testimony closed.)

Mr. Hartpence: We desire to move for a direction of a verdict in favor of the defendant and against the plaintiff, first, as to the 4th, 5th, 6th and 7th counts of the complaint, which refer to the
 20 shipments of melons in cars 22453, 15841, 23256 and 24096 and covered by bills of lading P-3, P-4, P-5 and P-9. Those bills of lading contain the condition that claim for any loss or damage shall be presented to the carrier at point of destination within ten days after the refusal of the cars in question. The undisputed testimony in the case is that the car referred to in the 4th count was refused on the 27th day of July, 1912, and in the 5th count on the 25th day of July, 1912, and in the
 30 6th count the 27th of July, 1912, and the 9th count the 26th of July, 1912, so that July 27th was the last day in the case of any one of those four cars on which the cars were refused, and the earliest date, according to the evidence, upon which claim was presented in writing was September 3, 1912, which was beyond the ten days period, and it seems to us that the evidence is so conclusive in respect to those cars that the plaintiff has failed
 40 that he is entitled to go to the jury.

Motion for Direction of Verdict

The Court: Well, what do you gentlemen say about that?

Mr. Stout: We first say that the refusal slips signed by the plaintiff in reference to these cars may amount to a claim, and if so they were made on the day the goods arrived at the point of destination. The law in reference to such stipulations as I find it is that such a stipulation in a bill of lading is not applicable to depreciation in the property due to delay in transportation nor to a case where the consignee refuses to receive the property on the ground that it is not tendered in proper condition. The Commission Co. v. Flatbush R. R., 80 Missouri, and the Gulf, etc. v. Golden, 3 Texas Appeals—

The Court: What is the provision of the bill of lading on that point?

Mr. Stout: "Claim for loss or damage shall be made in writing to the agent at the point of delivery promptly after arrival of the property, and if delayed for more than ten days after delivery of property or after due time for delivery thereof, no carrier hereunder shall be liable in any event." The cases hold in those instances where a piece of property, say machinery or something of that kind, has been delivered, that the consignee cannot take that piece of machinery or property that has been damaged in transportation and hold it for two or three or four months and then notify the carrier. In other words, the reason for the rule is that the carrier should have notice of the injury. Now in all these cases the carrier did have notice on the day of arrival of all these shipments. We say first that under the law it does not apply, and the reason for it would exclude the application to nonsuit in reference to those cars; and then furthermore the question is to be determined whether these are binding contracts in order to make any of the conditions applicable.

Motion for Direction of Verdict

The Court: Are they signed?

Mr. Hartpence: Yes, sir; all four are signed.

The Court: If they are signed they are binding. There is no escape from that.

Mr. Stout: I would like to be heard on that.

The Court: I will hear you on that, but I do not care to hear you on that branch of it now, because
 10 I am going to determine this particular motion on another ground. I think, Mr. Hartpence, that this provision of the bill of lading is not at all applicable to the present case. The very wording of the section of the bill of lading upon which you rely is that the claim shall be made within ten days after delivery. In this case there never was a delivery. There was an absolute refusal to accept any delivery; consequently the provision of
 20 the bill of lading never became effective or operative as against these parties, and of course the reason, as suggested by Mr. Stout, is plain: a shipper ought not to let all the evidence get out of the way after he has taken the goods and strip the carrier of the ability to prove the situation when they were received; when all the facts are fresh in the minds of the parties and when they can be easily and immediately verified. Manifestly under such circumstances it is reasonable that there
 30 should be a claim put in within such time as that fresh evidence could be obtained by the carrier in order to rebut the claim; but where the carrier has a notice served upon him that a delivery will not be accepted, why it is perfectly manifest that it would be nonsense to make a claim that you intend to sue him for the price of the goods when he already knows that you refuse to receive them. The very object of the notice is served by the fact of the refusal, and therefore the language of the provision will be construed most strongly against
 40 the carrier under all the decisions. It is his own

Argument

bill of lading, his own provision, and it will receive a strict and literal interpretation, and when he says within ten days after delivery and there is not a delivery, the stipulation will not apply. So I will deny the motion on that ground.

Mr. Hartpence: It also says within ten days after delivery or due time.

The Court: If they are refused, manifestly there 10 never can have been a delivery and the reason for the provision fails.

Mr. Hartpence: We move for a directed verdict against the plaintiff and in favor of the defendant generally on the ground that the evidence of delay in these shipments in this case, while admittedly showing a delay, conclusively shows it to have been due to a strike, which was a cause beyond the control of the defendant, and that in the bills of lading which were issued at the times of the 20 various shipments involved in this suit contained the express exception relieving from liability the carrier in case of loss, damage or delay resulting from riot or strikes.

The Court: Those are the unsigned bills on which that section occurs. If you look at the Seaboard Air Line bills of lading you will find no such provision as that at all, nothing assimilating to it.

Mr. Hartpence: That is as to the counts which are covered by exhibits P-1, P-2, P-6, P-7 and P-8; 30 and as to causes beyond the control of the defendant—and we hold that the strike was a cause beyond the control of the defendant—

The Court: You *hold* that?

Mr. Hartpence: We submit in our argument that that is a cause beyond our control, as to shipments covered by exhibits P-3, P-4, P-5 and P-9 which contain the express exception that the carrier shall not be liable to certain mentioned causes or to any other causes over which the carrier has no control.

Argument

The Court: Has *no* control.

Mr. Hartpence: Now our position in regard to that point is that the evidence as we view it is really undisputed to the effect that the delay beyond the ordinary time of carriage was due to no other cause than the congestion resulting from the strike in question.

10 The Court: What are the causes mentioned that are beyond the control?

Mr. Hartpence: That the carrier shall not be liable for any injury to or decay of fruits and vegetables or other perishable freight, due to the retention or delay occasioned by an accumulation of freight at any point, or to the breaking down of engines or cars or to any other causes over which the carrier has no control. Those four bills are signed.

20 The Court: Of course that can only mean, as laid down in the Granger case,—“causes beyond the control of the carrier” can only mean causes in which the carrier’s negligence does not participate.

Mr. Hartpence: Now the particular point involved in this may be stated in this way, that once the evidence shows the establishing of the excepted cause in the bill of lading, then the burden is upon the plaintiff to show that the defendant, the carrier, was negligent; (Clark v. Brownwell) and
30 there is no evidence in this case to show the negligence of the Pennsylvania Railroad Company with respect to these shipments.

We move for a direction of a verdict against the plaintiff and in favor of the defendant upon the further ground that it conclusively appears that the Pennsylvania Railroad Company was not the initial carrier, and as urged in the motion for nonsuit at the close of the plaintiff’s case, section
40 20 of the Interstate Commerce Act, the so-called

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Carmack amendment, subjects the initial carrier to liability to the holder of the bill of lading, and our argument in that respect is that not only is the effect of that amendment to subject the initial carrier to liability to the lawful holder of the bill of lading but it subjects the initial carrier alone to liability.

The Court: How do you get over these cases 10
you have handed me in which the initial carrier is not sued at all? Take for instance the Carl case; the initial carrier in that case was the Rock Island and the carrier sued was the connecting carrier, the Kansas Southern Railway.

Mr. Hartpence: But the point was not raised in that case.

The Court: No. The reason it was not raised was because the proviso in the Act provides that all the remedies that existed prior to that law 20
should be preserved.

Mr. Hartpence: But our contention is that that proviso simply refers to the remedies that might then have existed with regard to situations that then existed, and that the common law which gave the right of action against the subsequent carrier was wiped out.

The Court: The difficulty with that argument is that in the case of *Granger v. Adams Express Company* they distinctly lay down that that is not the meaning of it at all, and on page 10 of this little decision that you hand me the court distinctly deals with the situation and states what it is that is preserved, and it is the ancient remedy. 30

Mr. Hartpence: If I recall the decision correctly, the court held that if there was anything that was preserved it was what might be known as the Federal common law.

The Court: There is no such thing as a Federal common law, and I cannot assume that the United 40

Argument

States Supreme Court says a thing is preserved which does not exist.

Mr. Hartpence: They do say that. They say "if anything it would be construed to mean the Federal common law."

10 The Court: They do not say that at all. I have looked at that with a great deal of care. They do not say any such thing about the Federal common law. The Court said it was evidently only intended to continue in existence such other rights or remedies for specific redress of such wrong or injury, whether given by Interstate Commerce Act or State statute or common law, not inconsistent with the rules and regulations prescribed by the provisions of this Act."

20 Mr. Hartpence: But the Interstate Commerce Law does not continue in effect any portion of the common law applicable to interstate shipments.

The Court: Why not? It surely does. It surely provides distinctly in the thing you have read yourself that if the 10% rate is charged the common law is still in existence with respect to the shipment.

Mr. Hartpence: But that creates a new liability.

30 The Court: Not at all. The decision states in so many words that the common law liability shall exist.

Mr. Hartpence: They simply by this constitute a new liability.

The Court: No; they continue another one, because they say in so many words that the remedies are continued. It says "Nothing in this provision shall deprive any owner of such bill of lading of any right he has under existing law." That is a law existing at the time the Act is passed.

40 Mr. Hartpence: In the Kroninger decision they say: "It could not in reason be construed as con-

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tinuing in the shipper a common law right the existence of which would be inconsistent with the provisions of this Act."

The Court: There is no question about that. All that means, to reduce it and boil it down to plain popular English, is that if a provision of the common law was inconsistent with the provisions of this Act it was thereby repealed, and all that were 10 consistent with it were preserved. That is all it means, in plain language, but there is nothing that you have read there which says it was intended to preserve the provisions of the United States common law. I cannot conceive the United States Supreme Court saying any such thing as that.

Mr. Hartpence: Our position is that when the United States Supreme Court used the words "Federal law," it did not mean to confine it 20 merely to Federal statutes but perhaps to the decisions of the United States Supreme Court which become Federal rules, the Federal law, and that was perhaps what was intended to be preserved by that proviso.

The Court: Decisions of what? The United States Court will follow the State procedure, and if it is construing a statute the decision becomes a part of the statute in legal effect and is always read with it. I do not see what they are going 30 to preserve, because there is nothing to preserve. There is no Federal common law at all. I think what the Court meant to say there was that in '87 the original Interstate Commerce Act was passed, and this Carmack amendment was passed in '96, and the existing Federal law in that case was the existing Interstate Commerce Act. I don't see any difficulty with the situation at all.

Mr. Hartpence: Further our motion to direct in favor of the defendant and against the plaintiff 40 generally is upon the ground that the undisputed

Argument

evidence is that the bills of lading were issued for each shipment involved in this suit; that Clute was the agent of the defendant Albrecht in the south to purchase and ship melons; that he had been in that position several years, always receiving bills of lading for his shipments, and that Albrecht had been doing the same thing for years, always receiving bills of lading, and that he admitted that these bills of lading offered in evidence, exhibits P-1 to P-9, were received by him for these shipments from Clute in the south, and these bills of lading were put in evidence by the plaintiff himself; that aside from this, the issuance and acceptance of the bills of lading without the shipper specifically repudiating the terms and conditions of those bills subjects the shipper to the carrier's conditions in accordance with the rate set forth in the filed tariffs applicable to those shipments, and that this rate, in the absence of affirmative proof on the part of the plaintiff that a higher rate was paid for the shipment in order to secure the benefit of the carrier's liability, can only be the lower rate specified, and that therefore the shipper, the plaintiff in this case, is bound by the terms of the various bills of lading which have been put in evidence. The undisputed evidence also shows that Clute never made any special arrangement with the agent at the time of making the shipment. Having proved the expected causes set forth in these bills, I submit that the plaintiff is bound absolutely by those terms and conditions, and no evidence having been produced by the plaintiff to satisfy or discharge the burden that is upon him of showing the negligence of the defendant, once the excepted cause is established, we feel that the evidence is in such shape as to warrant this court in taking the case from the jury and directing a verdict in favor of the defendant.

Argument

The Court: How do you get around the evidence of Mr. Buckenhorn, who was produced by you and accredited as an expert, and who indicates clearly that the whole practice of the railroad company in respect to determining what the rate shall be on a bill of lading is determined by whether it is released or not, and the fact of release is stated on the bill of lading.

10

Mr. Hartpence: Well, whatever effect might be given to it, I do not think that Mr. Buckenhurst's testimony can change the law.

The Court: No; his testimony can't change the law, but it can change the facts to which the law is applicable, and he says that that is the practice of that railroad with respect to bills of lading. He is an expert on it, and you produce him and accredit him as an expert on it.

Mr. Hartpence: He said he understood that was the effect of it.

20

The Court: No; he said that was the effect. Everybody, the Court and everyone, has to understand a thing before he can say it. He did not give me any notion that he was doubtful about it. He gave as an expert the evidence that that was what it meant. So there might not be any doubt about it or any notion that it was a mere impression that he had, I put it down. I said, "So as to get it down clearly on the record, won't you tell us again in just a few words, when that watermelon rate applies? Just in your own words put that right down. A. Well, this watermelon rate applies when the bill of lading is made out, ordinary bill of lading made out and signed by the agent and the shipper, then the rate quoted in the tariffs on file is the rate that applies. Q. And you also told us when the bill of lading contains on it a notation,—to what effect? A. If the bill of lading has a notation "Not released," then we must apply

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40

Argument

a 10% higher rate in accordance with the rules in the Southern classification. Q. And when the bill of lading contains a notation on it "Released," then it is understood that the lower rate applies?

A. The lower rate applies. Q. And that the transportation is subject to the carrier's bill of lading?

10 A. Yes." There was no misunderstanding about it; he simply stated that flat-footed as being the thing that indicated whether it was to apply or not.

Mr. Hartpence: But he further stated during the course of his testimony that the word "released" was not always written on the bill of lading, and that as a matter of fact if it was not shipped at the 10% higher rate it was generally stamped across the bill of lading itself, and later upon further examination, that he had never seen
20 any bills of lading which were subject to the 10% increased rate unless it did have that stamped across the billing.

The Court: I do not remember any such testimony.

Mr. Hartpence: He said he had never seen any, in response to cross-examination.

The Court: He said that their bills for freight were made out from waybills. But, however that
30 may be, whether he had ever seen them or not, he was brought here by you as one who knew the practice, and whether he had seen them or not he had knowledge of them, so he said.

Now, Mr. Stout, I think you want to be heard on the question of the binding effect of a bill of lading when it is signed by the shipper.

Mr. Stout: The evidence in the case shows that Mr. Clute was the agent of Mr. Albrecht in the south to turn these various shipments over to the initial carrier for transportation. Mr. Clute tes-
40 tifies that he never read a bill of lading; he did

Argument

not know what it contained, and that the conditions on the bill of lading were not called to his attention; all he did, as his testimony shows, was to go to the freight agent of the initial carrier and say "Here is a car of watermelons I desire to ship to Charles Albrecht at Jersey City." There is not anything in Clute's testimony that he knew that he was making a contract with the initial 10 carrier.

The Court: What do you think he thought he was doing?

Mr. Stout: Why, he thought—

The Court: Any man who pretends to go down south and buy watermelons and ship them north and to be business man enough to perform that function, who does not know that he is receiving a bill of lading and signing a bill of lading, must be a frightful idiot, in my judgment. It is perfectly absurd to say that a man simply signs his name to every old thing that comes along. He might have signed a bill of sale for the car. 20

Mr. Stout: But the testimony shows that he did not know what he was doing; and the intent enters into it. I think there is a question for the jury to determine whether when he placed his name on that paper he intended to sign a contract. I think it is laid down in Bishop on Contracts that the signing must be with intent to execute the instrument as a contract. 30

The Court: Yes; and it is laid down in *Fivey v. P. R. R.* that the intent will be conclusively presumed, if he is not misled by fraud. The intent must of course always exist, but whether the intent exists or not is determined by the acts of the party and not by his talk.

Mr. Stout: That in my opinion is a question for the jury.

The Court: Not in mine.

Argument

Mr. Stout: Take the case of Williams—

The Court: When the Court of Appeals decision says in so many words that when a man signs a paper containing the elements of a contract and is not misled by fraud in the other party in signing it, he is conclusively presumed to know what is in it, what question am I going to leave
10 to the jury?

Mr. Stout: In *Williams v. Levinson*, 72 N. J. Law, in a decision by Justice Dixon, there the court based its decision upon the fact that the party attempted to be bound knew the nature of the transaction, that they were negotiating for the sale of books, and when he signed the paper it was presumed that he knew he was signing a paper for those books,—a contract.

The Court: No, nothing of the kind. He swore
20 positively himself in that case that he thought he was signing a recommendation to other people. That was what the court said.

Mr. Stout: But he had in mind the nature of the transaction of buying books.

The Court: He knew the transaction he was engaged in, but he affected not to know the thing he was signing. Now it says here with respect to the matter that you are now talking about: "In the present case the statement said to have been made
30 by the agent notified the defendant that he was about to sign a document which directly involved the duty of examination. The statement did not itself indicate with any degree of precision the nature of the document; it related only to the purpose of the agent in obtaining the defendant's signature, and that object might be accomplished either by the defendant becoming a purchaser of the books or by his recommending them."

Mr. Stout: Yes, but he was placed there under
40 duty to examine that paper.

Argument

The Court: Why, it is everybody's duty to examine a paper before signing it, and this court will never hold anything to the contrary until we get a decision of our court to the contrary.

Mr. Stout: Then I won't press it any further.

The Court: Just think what a situation the business men of this country would be in if the proposition you are contending for were adopted, 10 the proposition that after a man had put his name to a paper, without having been misled by fraud or misrepresentation by the other party, he could say "I didn't know what it was; I didn't know what I was signing; I thought I was signing a child's playbill." What a beautiful situation that would be for securing the integrity of written contracts! That would put a man in the position of being a mere perambulating child in the business world, and whenever he came into court he could 20 say, "My intent was not to sign a contract; my intent was to sign an agreement I was to go to the theatre on Tuesday night, and therefore I can't be bound by the contract." Now, to do away with any such contingency as that, our Court of Appeals in the Fivey case, 38 Vroom, has said that when a man signs such a paper, without misrepresentation of the other party, he is conclusively presumed to know the contents of it and to assent 30 to them and to be bound by them, and any other doctrine, our court says, would simply throw chaos into the business world and written documents would not be worth as much even as word of mouth. I do not see how we can possibly contend that where a man has been buying watermelons for ten years and shipping them north and knowing that there were such things in the business world as a bill of lading—for we will presume he knows that, for his own testimony says that he has been shipping these goods for nine 40

Argument

years—when he knew he was signing that kind of a paper for nine years, then comes in the doctrine you have invoked from Mr. Bishop's book, that "one is never required to, and never should, execute any written instrument without becoming fully acquainted with its contents. He should read it if he is able; if illiterate have it read to him."

- 10 It would be absurd to say that a man could ship goods and sign a paper which he knew was for some legitimate purpose connected with a water melon and then say "Why, I didn't know what it was." And Bishop says he should get some one to read it to him. Now in this state we have a case which deals with a situation where a man was imposed upon, who could not read. If your situation was that Mr. Clute had gone to the agent and the agent had said "This paper which you are to
- 20 sign is a mere formality for the benefit of the railroad company to describe where the cars are going; put your name there," thereunder the case of *Alexander v. Bedford*, in 34 Vroom, the court says that that fact would destroy the contract or prevent the contract from attaching. There in the case of *Fivey* against the Pennsylvania Railroad the one exception comes in, that in the absence of fraud the thing is binding. There would be fraud; there would be misrepresentation; but
- 30 here is nothing of that kind; simply a man saying "I didn't know it. For nine years I took these papers and I never knew." Why, to give a man a license to ramble around with an atmosphere of ignorance like that surrounding him is to turn loose upon the business world a regular juggernaut for doing away with all stability of contracts. You could not carry on business under such a situation as that. Men would not be bound by anything unless their intention came in.

Mr. Stout: Only the fact that a bill of lading

40 partakes of a receipt and also a contract.

Argument

The Court: Precisely.

Mr. Stout: And whether he signed his name there to the receipt or to the contract.

The Court: The law is that he signed his name to whatever was there and is conclusively presumed to know its contents, and if part is a contract he is bound by it because he is held to have assented to it. 10

Mr. Stout: Furthermore, I contend that a direction of a verdict in favor of the defendant in reference to these bills of lading signed by Clute should not be made. My contention is that the question as to whether the Pennsylvania Railroad Company has been negligent is a question for the jury.

The Court: Now what do you think is the evidence of negligence in this case with respect to these bills of lading that were signed by Clute? 20

Mr. Stout: Why, the evidence is that peaches that were billed to pier 29 during the period of this strike were placed on the watermelon tracks in the Henderson street yard. Now the question of whether the Pennsylvania Railroad should not have embargoed these peaches from coming into the Henderson street yard and taking up the watermelon tracks there it seems to me is a question for the jury.

The Court: What would the peach man have said then,—the consignee of the peaches? 30

Mr. Stout: The peach man had a right to look for the delivery of his stuff at pier 29. That was the place where his freight was billed to. The watermelon man had a right to bill his watermelons to Henderson street, and therefore that was his market. It seems to me it is a question for the jury to determine whether the Pennsylvania Railroad had a right to do that, and furthermore whether the Pennsylvania Railroad Com- 40

Argument

pany should not have embargoed even the shipment of watermelons to Henderson street, that is give notice. Understand, there was not a shipment made here but what came into the possession of the Pennsylvania Railroad after this strike was on, but it did not notify the shipper that the strike was on; in other words, it held out its arms and
 10 let it come, saying, "We'll do what we can with them." I say that is a question of negligence.

The Court: There is a case, Mr. Stout, which crossed my mind while you were arguing, to which I called your attention in arguing the other case that was tried (*Spada v. P. R. R.*). It is the case of *Joynes v. Pennsylvania Railroad Co.*, 83 Atlantic Reporter, at page 1016. It says in the third syllabus, "when an emergency arises and the carrier unexpectedly has more business than it
 20 can accommodate and it receives goods without notice to the shipper of the probable delay and fails to obtain his assent, express or implied, to the delay, it is bound to transport the goods within a reasonable time notwithstanding the emergency." That would seem to be favorable to you. I just read it to you as bearing upon the subject.

Mr. Stout: For those reasons—

The Court: With those few remarks you will re-
 30 sume your seat, I suppose.

Well, Mr. Hartpence, and Mr. Stout, I shall dispose of this case in this way: I shall deny the motion of the attorney for the defendant for a direction of a verdict, and I shall submit the case to the jury to determine these questions:

Judge's Charge

First of all, I have no doubt, and shall so instruct the jury, that the bills of lading which are signed by the shipper through his agent as well as by the agent of the carrier, are binding contracts between the plaintiff in this suit and the carrier, and that the carrier then has the burden cast upon it of showing that one of the excepted—that he is exempted from one of the liabilities by reason of 10 this clause with respect to strikes and riots and with respect to causes beyond the control of the carrier, and that when the carrier has done as it has done by showing that there was a strike, that then the question as to whether or not there was negligence in the handling of the situation in the light of the strike depends upon the question as to whether or not they were negligent in doing so, and if they were negligent that then the exemption does not apply? If they were not negli- 20 gent the exemption does apply and constitutes a complete defense to the action, and that whether there was negligence or not must be established by the plaintiff by the greater weight of the evidence. That applies to those shipments in which there were bills of lading signed by the shipper.

With respect to those cases in which there were bills of lading not signed by the shipper, I shall charge the jury from the case of *Hill v. Adams Express Co.* with respect to whether or not that 30 bill of lading was binding upon the shipper because of his lack of knowledge of its contents and so on, as I charged the other day in the *Spada* case, and that if it was binding then they are to determine whether or not the company has made out the exemption under the clause of strikes and so on, and if so whether the plaintiff has shown by his evidence that he was released because of lack of knowledge of the clauses and conditions in the bill, and then I will charge them furthermore in respect 40

Judge's Charge

to the measure of damages that the damages are measurable at the place of shipment if the bills of lading are applicable, and if not, at the time and place of destination.

I do not see that there is anything more I need say about it. I will deny the motion for the reasons implied in the matter I have just stated.

10 Mr. Hartpence: And we will ask to have an objection noted on the record.

The Court: Yes; you may have an objection noted on the record.

Gentlemen of the Jury: This suit is brought by Charles Albrecht against the Pennsylvania Railroad Company, and the object of it is to recover damages for injuries which the plaintiff says he suffered by reason of the negligent delivery of watermelons which had been consigned to him
20 from various points in the south, over connecting lines of railroad, to be delivered finally by the Pennsylvania Railroad Company to him at the Henderson street yard in Jersey City.

Now first of all you will have observed already in the evidence in the case that the Pennsylvania was not what is called the initial carrier. It was not the company that first took the freight. The companies that first took the freight were, as you
30 will see when you look at the bills of lading, in some cases the Seaboard Air Line, in other cases the Southern Railway and in other cases the Georgia & Northern Railway Company. Now then, it becomes quite important to ascertain first of all what are the rights of a consignee against a carrier which does not deliver, as it is required by law to do, within a reasonable time freight which is shipped to the consignee over connecting or successive lines, and the law upon that point is settled without any question, and it is as follows:

40 "Where goods are transported by two or more

Judge's Charge

successive carriers it is the prevailing doctrine in this country that if it be shown that the goods were delivered to the initial carrier in good condition and that they were subsequently delivered to the consignee by the connecting or terminal carrier in bad condition, the presumption of the law is, when such last named carrier is made defendant, that the goods were received by such carrier in the 10 same condition as they were delivered to the initial carrier, and the burden is upon the defendant carrier of proving that such goods came to its possession in a damaged condition, by way of defense."

In other words, to popularize that, if I can popularize it for you, it simply means this: that if goods were shipped, for instance, over the Northern Georgia Railway lines and a bill of lading were given whereby the goods were to be delivered from 20 the point in Georgia at which they were shipped to Jersey City, and if it is proven by the plaintiff—and the burden rests upon the plaintiff so to prove it—that the goods when delivered to the Northern Georgia Railway Company were in good condition and that when they were received here by the consignee, or were offered to him at the point to which they were shipped, they were in bad condition, the law presumes that the goods were 30 received by the final carrier, the Pennsylvania Railroad Company in this case, in the condition in which they were originally delivered to the initial carrier, and that the bad condition in which they were delivered or offered for delivery was due to the negligence of the Pennsylvania Railroad Company, the final carrier. Now I say the burden is upon the plaintiff in this case. Mr. Albrecht, to make out by the greater weight of the evidence that when these goods were shipped in Georgia, or Florida, or wherever it is proven they were 40

Judge's Charge

shipped, they were delivered to the initial carrier in good condition. If he shall have proven that, then the burden rests upon the defendant company to show that it is not responsible for the bad condition in which they were at the time of delivery, if they were in bad condition at that time, or at the time when they were offered for delivery.

- 10 Now in this case, gentlemen, there are several shipments of melons, nine in all. Four of these shipments were shipped with the Seaboard Air Line Railway as the initial carrier, and one other of them particularly to which I direct your attention now, being P2, marked here in evidence, was shipped over the Southern Railway, and these bills of lading are all signed by Mr. B. F. Clute, who was admittedly the agent of Mr. Albrecht, the shipper: and they are also signed by Mr. Hauser, who
- 20 is the agent of the Southern Railway Company, and by W. M. Harley, who is the agent of the Seaboard Air Line Railway. Now when bills of lading are thus signed and contain in addition to the acknowledgment of the receipt of the freight the elements of a contract with respect to carriage, those bills of lading, in the absence of fraud proven upon the part of the railroad company in causing the signature of the agent of the shipper, are conclusively presumed to bind the shipper.
- 30 That is the law in this State and at this time of day can admit of no dispute; and therefore with respect to those five shipments, being marked at the top of the page that you may look at them, P-2, P-4, P-5, P-9 and P-3, those I say bind the shipper to the conditions which appear upon the face and upon the back of the bills of lading. Now then with respect to these five bills of lading, there is one condition written upon the back of the green
- 40 ones, the Seaboard Air Line bills of lading, to

Judge's Charge

which the counsel for the railroad company directed your attention, of which I desire to speak for a moment; and that is the sixth condition, which reads as follows:

"If any carrier transporting this shipment shall deem it necessary to dispose of same en route or after delivery has been tendered to and refused by the consignee, in order to protect the interest of the owner, for the charges of transportation, such carrier is hereby empowered to act as the agent of the owner in the transaction and will not be held responsible for more than the net proceeds of the sale after deducting all legitimate expenses."

Now I charge you that with respect to those four bills of lading that condition does not apply to the shipments in this case, and the reason for that is this: that these shipments were perishable freight, and when these melons were injured and destroyed, if they were injured and destroyed by the negligence of the defendant company, it could hardly be said that that company was protecting the interests of the shipper when it sold the results of its own negligence and deducted its own freight and legitimate expenses from the proceeds. Therefore I say that that sixth condition does not apply to these shipments over the Seaboard Air Line Railway. We are then brought up to the question, if that does not apply what is the rule of damages, if the plaintiff is entitled to recover on those four bills of lading, which will govern in this case? I charge you that the measure of damages would be this: that if these goods were destroyed by the negligence of the defendant company, outside of any exception of conditions beyond their control—which you will read on the back under "Conditions"—then the measure of damages would be the market value of these goods at the time and place when they should have been de-

Judge's Charge

livered at Jersey City, to wit, at the Henderson street watermelon yards.

The other bill of lading, which is P-2, of the Southern Railway Company, contains a different condition with respect to the measure of damages, and that is as follows:

“Section 3: The amount of any loss or damage
 10 for which any carrier is liable shall be computed on the basis of the value of the property, being the bona-fide invoice—that is the bill for them at the place where they were shipped—if any, to the consignee, including the freight charges if paid, at the place and time of shipment under this bill of lading.”

Now that you will observe makes not the place of destination and their market value there the place at which and the basis upon which the dam-
 20 ages shall be measured, but it makes it the time and place of shipment as appears by the invoice to Mr. Albrecht at the time the goods were purchased.

Now those are the five bills of lading that were signed, and those five bills of lading I charge you, by reason of the fact that they are signed by the shipper and that no fraud is shown to have operated in bringing about the signature to them, are
 30 binding upon Mr. Albrecht, and the conditions likewise are binding upon him.

We then come to the other four bills of lading. These four bills of lading are three of them over the Southern Railway Company, being exhibits P-6, P-7 and P-8, and the fourth one is over the Georgia Northern Railway Company's line and is bill of lading P-1; and the question comes up with respect to these four, because they differ from the rest in not being signed by the agent of the ship-
 40 per, as to whether or not they are binding upon the shipper with respect to the conditions that ap-

Judge's Charge

pear on the back of them, and that bears, gentlemen, upon the inquiry that you have got to make as to whether or not the shipper knew and can be held in the law to have assented to this bill of lading at the time of the shipment and the delivery of the bill of lading to him by his agent; and upon that question the law has laid down these rules:

"The delivery by a railway company to a shipper and his acceptance without dissent of a shipping receipt containing a clause of limited liability based on value—or as in this case based upon the rate of transportation—will raise a presumption that the shipper knew of and assented to the restriction, in which latter case he would be bound by it, but such presumption is not conclusive and may be rebutted by evidence negating such knowledge and assent."

The question therefore for you with respect to these four bills of lading is this: whether or not in the light of the rule which I have just read you the shipper in this case has overcome and rebutted the presumption which arises from the receipt by his agent without dissent of these bills of lading that he had knowledge of their contents and assented to them, and the burden is upon the shipper to overcome that presumption. If he has not done so, why the bills of lading are binding upon him and the conditions are binding upon him. If he has overcome it by the greater weight of the evidence, why then the conditions are not binding upon him and the shipment would be under the rules of the common law, and those rules are simply these, so far as they are applicable to these shipments; that the carrier is responsible for any loss or damage to goods in course of shipment except such loss or damage as may be due to the act of God or the act of the public enemy.

Now those are the rules which will govern you

Judge's Charge

with respect to determining the binding force of these nine bills of lading. Now then, if these bills of lading are binding, and you should so determine under the rules which I have given you, you then come to the question as to whether or not the railway company has made out an excuse for the delay in delivery which the plaintiff charges was unreasonable and negligent under the conditions contained in the bills of lading, or whether the delay was due, as it is phrased in some of the bills of lading, to conditions beyond the control of the carrier. Now the burden of making out that the delay in delivery, if there was any, was due to one or the other of those situations exempting them from liability under the bills of lading rests upon the defendant company, and it must make that out by the greater weight of the evidence. If it does make out that the delay was due to a strike, for instance, or to conditions beyond the control of the defendant company, then the burden is shifted over on the shipper to make out that such delay was either unreasonable or negligent under the circumstances; and even if there were a strike, if the plaintiff, the shipper, makes out that the delay, although due to the strike, was nevertheless due to the negligence of the defendant company in the handling of the strike or in the handling of the freight during the strike, why, under such circumstances the plaintiff would be entitled to recover notwithstanding the claims of exemption in the conditions of the bills of lading.

Now those are the rules, gentlemen, that I think you will need to have in order to enable you correctly to settle these cases under the laws that are applicable to them.

Now I have been requested by the defendant, the railway company, to charge you certain requests, and I charge you some of them and others I shall refuse.

Judge's Charge

Firstly, I am requested to charge, and I do charge you that the law is:

That if the delay was due to a strike which was an excepted cause in the bills of lading introduced in evidence as exhibits P-1, P-2, P-6, P-7 and P-8, and if no negligence on defendant's part was shown, then the defendant is not liable, and the burden of proving such negligence is on the plaintiff. 10

That is the law, and I have already charged you that thing.

Second: That if the delay was due to causes beyond the defendant's control and therefore within the exception in the bills of lading introduced in evidence as exhibits P-3, P-4, P-5 and P-9, if no negligence of defendant be shown, then the defendant is not liable, and the burden of proving such negligence is on the plaintiff. 20

I charge you that to be the law.

I refuse to charge number three.

Number four I charge in a modified form. The request is,

That the damage for which the defendant carrier is liable in this case is to be computed on the basis of the value of the property at the place and time of shipment.

I have already charged you in respect to that, and that only refers to those bills of lading in which the condition sets out that that shall be the measure of damages, and then only if it shall be proven that the bills of lading are binding upon the shipper. 30

Number five I refuse.

Number six I refuse.

Number seven I refuse.

Number eight I refuse.

I charge you number nine:

That the shipments involved in this action are 40

Judge's Charge

interstate shipments and are governed solely by the Acts of Congress of the United States, commonly designated as the Interstate Commerce Acts.

I charge you number ten:

That when classifications and tariffs are filed by a carrier with the Interstate Commerce Commission, or a carrier has signified its intention to become a party to them, shippers and carriers are charged conclusively with notice of what they contain, and when made out and filed they are conclusive notice whether they are posted in the carrier's stations or expressly brought to the shipper's attention or not.

That of course is so, but the burden rests upon the defendant company to show that the shipment was under one or the other classification and according to one or the other tariff.

I charge you further, number eleven:

That the carrier at the time of accepting goods for interstate transportation is bound to issue a bill of lading therefor to the shipper, and its issuance will be conclusively presumed in the absence of proof to the contrary; and the burden of proving that none was issued is upon the plaintiff.

In this case there is not very much material application to that request because the bills of lading are here and they were issued, and whether they are applicable to these shipments or not will depend upon how you determine the case under the rules which I have already given you with respect to the bills of lading.

Twelfth, I am requested to charge:

That acceptance of a bill of lading by the person delivering goods to the carrier for interstate transportation is an acceptance of the terms and conditions of such bill of lading and is binding upon the shipper and his assigns unless it is shown

Judge's Charge.

that such conditions were not accepted, and the burden of showing such non-acceptance is upon the plaintiff.

I have already charged you that in effect and in very nearly the same language from the case of Hill against the Adams Express Company.

Thirteenth, I charge you:

That the Interstate Commerce Acts of Congress 10 supersede all State regulations, policies and rules governing interstate shipments and bring all interstate shipments under the uniform rules provided by the acts of Congress.

Fourteenth, I charge you:

That the connecting or terminal carrier is the agent of the initial carrier and all the rights to which the initial carrier is entitled inure to the benefit of the connecting or terminal carrier, the defendant in this action. 20

The fifteenth I refuse to charge.

The sixteenth I refuse to charge.

The seventeenth I will charge you—what I meant to say before—

That the defendant is not liable as an insurer as to perishable freight, such as contained in the nine cars involved in this action, but is required only to exercise reasonable care and diligence to protect the goods while in its custody and to deliver the same with reasonable despatch under the circumstances. 30

Now those are the rules, gentlemen, which will govern you in determining this action, and you will take the case and decide it.

Mr. Hartpence: I desire to note some objections to the charge.

We desire our objection noted to that portion of the charge which stated that the condition in the four bills of lading which provide that if the property is sold en route or upon refusal the carrier 40

Judge's Charge

should not be held liable for more than the net proceeds, does not apply to these shipments.

The Court: Oh yes; you ought to have an exception to that. That is an important point.

Mr. Hartpence: And that the measure of damages would be the market value at the time of delivery.

10 The Court: Precisely. I suppose your point about that is, even if that section does not apply you want still to contend, as you did in the other case (*Spada v. P. R. R.*) that the rule which does apply would be the value at the time and place of shipment?

Mr. Hartpence: Yes. That is also true as to the fifth bill, P-2, where you stated that the measure of damages would be the market value at the time and place of shipment.

20 The Court: Yes, I stated that correctly. That was the white bill that went with the four green ones because it was signed.

Mr. Hartpence: Then as to those not signed, that portion of the charge which referred to P-6, P-7, P-8 and P-1, where the Court left it to the jury practically under *Hill v. Adams Express Co.* as I recall it, to say whether or not the bill of lading was issued to the shipper under such circumstances as bound the shipper or whether or not the
30 presumption was overcome by the testimony.

The Court: You know you requested me to charge that same rule, in different words, precisely the same rule, and I charged it from your own request, the twelfth request to charge.

Mr. Paterson: It is a little different.

The Court: I tell you: you want to take an exception to that anyhow, because something that I omitted from that request to charge you haven't yet noticed, but I will call your attention to it. I
40 omitted what you had inserted in it, the word "ex-

Judge's Charge

pressly." That makes a difference. You were getting in the words of one of these cases where it said that the thing would be binding unless he expressly dissented.

Mr. Hartpence: The real point is—

The Court: That the Interstate Commerce Act governs and not the State law?

Mr. Hartpence: —that unless there is an express arrangement at the time between the agent and the carrier— 10

The Court: And then according to all the argument of the last two days that would not be binding because that would be different from the established rate which is conclusively held to be binding upon all parties.

Mr. Hartpence: No; the express contract for the 10% increase—unless there was an express contract for the 10% increase. 20

The Court: Put that in the record. But you did not say in the request, "unless there shall be an express consent."

Mr. Hartpence: We have that in one of the other requests. That was the real point of difference I had in mind.

The Court: I refused the other one where you had the express consent.

Mr. Hartpence: We also desire our objection noted to that part of the charge which left it generally to the jury to determine whether or not the bills of lading were binding. 30

The Court: Well, I did not leave it generally to them. I hedged it all about with certain rules and restrictions by which they must determine before they can decide it was binding,—except the signed ones, and those I held were binding.

Mr. Hartpence: Our position may be somewhat radical and we may not be able to sustain it, but we feel that the presumption is in favor of the 40

Defendant's Requests to Charge

issuing of the bill of lading, because the Act compels it, and it is in favor of the binding effect of the bill the moment it is accepted by the shipper, and there is nothing left for the jury to pass upon.

Mr. Hartpence: Then as to the requests to charge: we ask that an objection be noted particularly and especially to Your Honor's refusal to
 10 charge each request which you omitted to charge, and that an objection be noted particularly and especially to each charge as you modified it from our request.

The Court: All right.

Defendant's Requests to Charge

20 1. That if the delay was due to a strike which was an excepted cause in the bills of lading introduced in evidence as exhibits P-1, P-2, P-6, P-7 and P-8, and if no negligence on defendant's part was shown, then the defendant is not liable, and the burden of proving such negligence is on the plaintiff.

2. That if the delay was due to causes beyond the defendant's control and therefore within the exception in the bills of lading introduced in evi-
 30 dence as exhibits P-3, P-4, P-5, P-9, if no negligence of defendant be shown, then the defendant is not liable, and the burden of proving such negligence is on the plaintiff.

3. That the strike was a matter beyond the control of the defendant, and an excepted cause in the bills of lading introduced in evidence, and if reasonable efforts were used to relieve the situation, the defendant is not liable.

4. That the damage for which the defendant car-
 40 rier is liable in this case is to be computed on the

Defendant's Requests to Charge

basis of the value of the property at the place and time of shipment.

5. That the measure of damages under the bills of lading introduced in evidence as exhibits P-3, P-4, P-5 and P-9 is the amount the goods were sold for by the defendant less the expenses of the sale.

6. That if no claim was filed with defendant at point of delivery for loss or damage to the water- 10
melons shipped under the bills of lading marked in evidence as exhibits P-3, P-4, P-5, P-9 within ten days from date of arrival that defendant is not liable as to these shipments and the burden of proving that the claims were filed within that time is on the plaintiff.

7. That Rule 1 of the classification in evidence provides that the reduced rate specified therein will apply on property shipped subject to the conditions of the carrier's bill of lading, and the evidence showing that the watermelons in question 20
were shipped at such reduced rate, therefore the shipments in this suit were shipped subject to the conditions of the bills of lading introduced in evidence.

8. That the burden is on the plaintiff to show that the watermelons in question were shipped at the higher rate and at the carrier's liability, as provided for in rule one of the classification in evidence. 30

9. The shipments involved in this action are interstate shipments and are governed solely by the Acts of Congress of the United States, commonly designated as the Interstate Commerce Acts.

10. When classifications and tariffs are filed by a carrier with the Interstate Commerce Commission, or a carrier has signified its intention to become a party to them, shippers and carriers are charged conclusively with notice of what they con- 40

Defendant's Requests to Charge

tain, and when made out and filed they are conclusive notice whether they are posted in the carrier's stations or expressly brought to the shipper's attention or not.

11. The carrier at the time of accepting goods for interstate transportation is bound to issue a bill of lading therefor to the shipper, and its issuance will be conclusively presumed in the absence of proof to the contrary; and the burden of proving that none was issued is upon the plaintiff.

12. Acceptance of a bill of lading by the person delivering goods to the carrier for interstate transportation is an acceptance of the terms and conditions of such bill of lading and is binding upon the shipper and his assigns unless it is shown that such conditions were expressly not accepted, and the burden of showing such non-acceptance is upon the plaintiff.

13. The Interstate Commerce Acts of Congress supersede all State regulations, policies and rules governing interstate shipments and bring all interstate shipments under the uniform rules provided in the Acts of Congress.

14. The connecting or terminal carrier is the agent of the initial carrier and all the rights to which the initial carrier is entitled inure to the benefit of the connecting or terminal carrier, the defendant in this action.

15. If no express contract between the shipper and carrier is shown by which the shipments were to be governed by the Carrier's Common Law Liability at the 10% increased rate provided in the filed tariffs and classifications (and the burden of proving it is upon the plaintiff), then they must be conclusively presumed to have been made subject to the reduced rate provisions of the tariffs and classifications and subject to the terms and conditions of the Carrier's Bill of Lading.

Defendant's Requests to Charge

16. The rate fixed by the filed tariffs to be charged by the interstate carriers, in the absence of proof that another rate was expressly agreed upon by shipper and carrier at the time of shipment (and the burden of proving such agreement is upon the plaintiff) fixes and determines the nature of the carrier's liability, and that liability must be according to that specified in the filed 10 tariffs and classifications as the liability which that rate imposes.

17. The defendant is not liable as an insurer as to perishable freight, such as contained in the nine cars involved in this action, but is required only to exercise reasonable care and diligence to protect the goods while in its custody and to deliver the same with reasonable despatch under the circumstances.

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30

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Stipulation.

(Filed February 3rd, 1914.)

NEW JERSEY SUPREME COURT.

10	CHARLES ALBRECHT, <i>Plaintiff-Appellee,</i>	Action at Law.
	<i>vs.</i>	
	THE PENNSYLVANIA RAILROAD COMPANY, <i>Defendant-Appellant.</i>	On Appeal from Hudson Circuit Court.
		Stipulation.

20 IT IS HEREBY STIPULATED by and between the at-
torneys for the respective parties to the above
stated suit, that the appeal from the Hudson
County Circuit Court to the New Jersey Supreme
Court, heretofore taken by the above named de-
fendant in above stated cause, be dismissed with-
out costs and without prejudice to either party,
and that a rule to that effect may be entered in
the Minutes of the said Supreme Court; provided
the said defendant take an appeal from the judg-
ment in said Hudson County Circuit Court, in
30 said cause, to the Court of Errors and Appeals
of the State of New Jersey, without delay, and
bring the same on for argument, or submission
on brief, at the March Term, 1914, of said Court
of Errors and Appeals.

IT IS FURTHER STIPULATED, that the recogniz-
ance on appeal heretofore filed by said defend-
ant in the Hudson County Circuit Court in said
cause, be regarded as and stand for a sufficient
and legal recognizance on said appeal to the Court
40 of Errors and Appeals, without the necessity of

Stipulation

entering into other or further recognizance on said appeal.

Dated January 31, 1914.

QUEEN & STOUT,

Attorneys for Pltff.

VREDENBURGH, WALL & CAREY, 10
Attorneys for Deft.

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PLAINTIFF'S EXHIBITS.**Exhibit P-1.**

Standard Straight Form.

GEORGIA NORTHERN RAILWAY COMPANY

This Shipping Order must be legibly filled in,
in Ink, in Indelible Pencil in Carbon and retained
10 by the agent.

Shipper's No.....

Agent's No.

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order.

at Pavo, Ga., 7/12, 1912, from B. F. Clute, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked,
20 consigned and destined as indicated below, which said Company agree to carry to its usual place of delivery at said destination, if on its line or road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all
30 the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of freight from _____ to _____,
is in Cents per 100 Lbs.

If Times, 1st Class, —

If 1st Class, —

If 2d Class, —

If Rule 25, —

40 If 3d Class, —

Exhibit P-1

If Rule 26, —

If Rule 28, —

If 4th Class, —

If 5th Class, —

If 6th Class, —

If Class A, —

If Class B, —

If Class C, —

10

If Class D, —

If Class E, —

If Class H, —

Per Bbl. if Class F, —

If Special Per —

(Mail address—Not for purposes of delivery)

Consigned to C. Albrecht, Henderson St.

Destination, Jersey City, State of N. J., County of

Route, —

Car Initial, A. B. A.

20

Car No. 20917.

No. Packages, —

Description of Articles and Special Marks—Mel-

ons. S. L. C.

Weight (Subject to Correction), —

Class or Rate, —

Check Column, —

If charges are to be prepaid, write or stamp here,

"To be prepaid." —

Received \$. to apply in prepayment of the

30

charges on the property described hereon.

. Agent or Cashier.

Per

The signature here acknowledges only the

amount prepaid.

Charges Advanced: \$.

P. J. SMITH, Agt.

B. CLUTE, Shipper.

Agents must detach and retain this Shipping
Order and must sign the Original Bill of Lading
and Memorandum.

40

Exhibit P-1

NOTE.—Unless this Shipping Order is signed by the shipper, this shipment will be carried at the carrier's liability, limited only as provided by law; but subject to the terms and conditions of the Bill of Lading in so far as they are not inconsistent with such common carrier's liability.

10

CONDITIONS

SECTION 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any
20 loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for ex-
30 port) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession, the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes; or for country damage on cotton. When
40 in accordance with general custom, on account of

Exhibit P-1

the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence.

In case of quarantine the goods may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations, or authorities, or for the carrier's despatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when goods are so discharged, or goods may be returned by carriers at owner's expense and risk to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to goods shall be borne by the owners of the goods or be a lien thereon. The carriers shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required by quarantine regulations or authorities, even though same may have been done by carrier's officers, crew, agents or employees, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law.

SEC. 3. No carrier is bound to transport said

Exhibit P-1

property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

10 The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, 20 unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification of tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after 30 delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

40 SEC. 4. All property shall be subject to neces-

Exhibit P-1

sary coopeage or baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder. 10

SEC. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. 20 30

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law 40

Exhibit P-1

or as setting aside any local rule affecting service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or
10 delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated
20 value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight, and average if any, and all other lawful
30 charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such
40 water carriage shall be performed subject to the

Exhibit P-1

liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, or for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from 10
vermin, leakage, chafing, breakage, heat, frost, wet, explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing; or unseaworthiness, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer 20
to transship, to lighter, to load and discharge goods at any time, and assist vessels in distress, and to deviate for the purpose of saving life or property. Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors when performed 30
by the rail carrier, and the liability for such lighterage shall be governed by the other sections of this instrument.

SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall 40
be enforceable according to its original tenor.

Exhibit P-2.

FORM 407.

SOUTHERN RAILWAY COMPANY
Straight Bill of Lading—ORIGINAL—Not Ne-
gotiable.

Shipper's No.....

Agent's No.....

- 10 Received, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,
at Barton, S. C., July 16th, 1912.
From B. F. Clute, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to
- 20 carry to its usual place of delivery at said destination, if on its line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions
- 30 on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.
The Rate of Freight from.....
to is in Cents per 100 Lbs.
If Times, 1st Class, —
If 1st Class, —
If 2d Class, —
If Rule 25, —
If 3d Class, —
If Rule 26, —
If Rule 28, —
40 If 4th Class, —

Exhibit P-2

If 5th Class, ———
 If 6th Class, ———
 If Class A, ———
 If Class B, ———
 If Class C, ———
 If Class D, ———
 If Class E, ———
 If Class H, ——— 10
 Per Bbl. if Class F, ———
 If Special Per.....
 (Mail address—Not for purposes of delivery)
 Consigned to C. Albrecht.
 Destination, Jersey City, State of
 Route, ——— Car Initial, Sou.
 Car No. 35039.
 No. Packages, 1.
 Description of Articles and Special Marks, Car
 L. Melons; Released. 20
 Weight (Subject to Correction), 24000.
 Class or Rate, ———
 Check Column, ———
 If charges are to be prepaid, write or stamp here.
 "To be prepaid." ———
 Received \$. to apply in prepayment of
 the charges on the property described hereon.

 Agent or Cashier.
 Per 30
 (The signature here acknowledges only the
 amount prepaid.)
 Charges Advanced: \$.
 C. H. HANSEN, Agent.
 Per
 B. F. CLUTE, Shipper.
 Per P. J. ZEIGLER.
 (This Bill of Lading is to be signed by shipper
 and agent of carrier issuing same).
 Conditions—Same as P-1. 40

Exhibit P-6.

7-15-'11—4000M G—I-4651

Form 407

Standard Form Straight Bill of Lading

SOUTHERN RAILWAY COMPANY

- This Memorandum* is an acknowledgment that a Bill of Lading has been issued and is not the
- 10 Original Bill of Lading, nor a copy or duplicate, covering the property named herein and is intended solely for filing or record.

Shipper's No..... Agent's No.....

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original at Allendale, S. C., 7/17/1912
Bill of Lading,

- 20 from B. F. Clute, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of
- 30 said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from.....

tois in Cents, per 100 lbs.

If Times, 1st Class, —

- 40 If 1st Class, —

Exhibit P-6

If 2d Class, ——
 If Rule 25, ——
 If 3d Class, ——
 If Rule 26, ——
 If Rule 28, ——
 If 4th Class, ——
 If 5th Class, ——
 If 6th Class, —— 10
 If Class A, ——
 If Class B, ——
 If Class C, ——
 If Class D, ——
 If Class E, ——
 If Class H, ——
 Per Bbl. if Class F, ——
 If Special Per.
 (Mail address—Not for purposes of delivery)
 Consigned to Chas. Albrecht. 20
 Destination, Jersey City, State of N. J.
 Route, —— Car Initial, Sou. Car No. 38162.
 No. Packages, 1.
 Description of Articles and Special Marks, C. W.
 Melons.
 Weight (Subject to Correction), 24000.
 Class or Rate, ——
 Check Column, ——
 If charges are to be prepaid, write or stamp
 here, "To be prepaid." 30
 Received \$. to apply in prepayment of
 the charges on the property described hereon.

 Agent or Cashier.
 Per
 (The Signature here acknowledges only the
 amount prepaid.)
 Charges Advanced: \$.
 P. J. FULMER, Agent.
 Conditions—Same as P-1. 40

Exhibit P-7.

Form 407

SOUTHERN RAILWAY COMPANY

Straight Bill of Lading—ORIGINAL—Not Negotiable.

Shipper's No..... Agent's No.....

- 10 Received, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,
 at Kline, S. C., July 18th, 1912, from B. F. Clute, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its own line, otherwise to deliver to
 20 another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the
 30 shipper and accepted for himself and his assigns.

The Rate of Freight from.....
 tois in Cents per 100 Lbs.

- If Times, 1st Class, ——
 If 1st Class, ——
 If 2d Class, ——
 If Rule 25, ——
 If 3d Class, ——
 If Rule 26, ——
 If Rule 28, ——
 40 If 4th Class, ——

Exhibit P-7

If 5th Class, ———
 If 6th Class, ———
 If Class A, ———
 If Class B, ———
 If Class C, ———
 If Class D, ———
 If Class E, ———
 If Class H, ——— 10
 Per Bbl. if Class F, ———
 If Special Per.
 (Mail address—Not for purposes of delivery)
 Consigned to C. Albrecht.
 Destination Jersey City, State of N. J. Hender-
 son St.
 Route, ——— Car Initial, Sou. Car No. 25284.
 No. Packages, 1.
 Description of Articles and Special Marks, C. L. 20
 Melons. Watsons, 850, S. L. & C.
 Weight (Subject to Correction), ———
 Class or Rate, ———
 Check Column, ———
 If charges are to be prepaidd, write or stamp
 here, "To be prepaid."
 Received \$. to apply in prepayment of
 the charges on the property described hereon.

 Agent or Cashier. 30
 Per
 (The Signature here acknowledges only the
 amount prepaid.)
 Charges Advanced: \$.
 J. C. McKAY, Agent.
 per.
, Shipper.
 per
 (This Bill of Lading is to be signed by the ship-
 per and agent of the carrier issuing same.)
 Conditions—Same as P-1. 40

Exhibit P-8.

Form 407

SOUTHERN RAILWAY COMPANY

Straight Bill of Lading—ORIGINAL—Not Negotiable.

Shipper's No. Agent's No.....

- 10 Received, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,
 at Kline, S. C., 7/18th, 1912,
 from B. F. Clute, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination,
 20 if on its line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

30 The Rate of Freight from.....
 to is in Cents per 100 lbs.

If Times, 1st Class, —

If 1st Class, —

If 2d Class, —

If Rule 25, —

If 3d Class, —

If Rule 26, —

If Rule 28, —

If 4th Class, —

40 If 5th Class, —

Exhibit P-8

If 6th Class, ——
 If Class A, ——
 If Class B, ——
 If Class C, ——
 If Class D, ——
 If Class E, ——
 If Class H, ——
 Per Bbl. if Class F, —— 10
 If Special Per ——
 (Mail Address—Not for purposes of Delivery)
 Consigned to Albrecht.
 Destination, Jersey City, State of N. J. Hender-
 son St.
 Route, —— Car Initial, Sou. Car No., 32937
 No. Packages, 1.
 Description of Articles and Special Marks, C. L.
 Melons. Watsons, 960 S. L. & C.
 Weight (Subject to Correction), —— 20
 Class or Rate, ——
 Check Column, ——
 If charges are to be prepaid, write or stamp
 here, "To be prepaid."

 Received \$...... to apply in prepayment of
 the charges on the property described hereon.

 Agent or Cashier.
 Per 30
 (The signature here acknowledges only the
 amount prepaid.)
 Charges advanced: \$......
 J. C. McKAY, Agent.
 Per
, Shipper.
 Per
 (This Bill of Lading is to be signed by the
 shipper and agent of the carrier issuing same.)
 (Conditions same as P-1.) 40

Exhibit P-3.

8-10-09. 50 M. B 98236. Form 345—Green
 Bill of Lading for Vegetables, Fruits and Melons
 Shipper's No..... Agent's No.....

SEABOARD AIR LINE RAILWAY

10 S. Davies Warfield, R. Lancaster Williams and
 E. C. Duncan, Receivers
 ATLANTA AND BIRMINGHAM AIR LINE RAILWAY
 S. Davies Warfield, R. Lancaster Williams and
 E. C. Duncan, Receivers
 CATAWBA VALLEY RAILWAY, TALLAHASSEE, PERRY
 AND SOUTHEASTERN RAILWAY PLANT CITY, AR-
 CADIA AND GULF RAILWAY, FLORIDA
 WEST SHORE RAILWAY
 L. E. CHALENOR, General Freight Agent.
 W. L. STANLEY, General Claim Agent.
 20 Portsmouth, Va.

Received, subject to the classifications and
 tariffs in effect on the date of issue of this
 Original Bill of Lading,
 at Ulmers, S. C., July 16, 1912, from B. F.
 Clute, the property described below, in ap-
 parent good order, except as noted (contents
 and condition of contents of packages unknown),
 marked, consigned and destined as indicated be-
 30 low, which said Company agrees to carry to its
 usual place of delivery at said destination,
 if on its road, otherwise to deliver to another
 carrier on the route to said destination. It is
 mutually agreed, as to each carrier of all or any
 of said property over all or any portion of said
 route to destination, and as to each party at any
 time interested in all or any of said property,
 that every service to be performed hereunder
 shall be subject to all the conditions, whether
 printed or written, herein contained (including
 40 conditions on back hereof) and which are agreed

Exhibit P-3

to by the shipper and accepted for himself and his assigns.

The Rate of Freight from.....
to is in Cents

Per 100 Pounds —

Per Standard Barrel —

Per Standard Basket —

Per Standard Box —

10

Per Standard Crate —

Per car of lbs. —

Per

(Mail Address—Not for purposes of Delivery)

Consigned to C. Albrecht.

Destination, Jersey City, State of N. J.

Route, — Car Initial, S. A. L. Car No., 22453

No. Packages, 1.

Description of Articles and Special Marks, C. L.

Melons. Rel. S. L. & Co.

20

(Copy)

Weight (Subject to Correction), 24000.

Rate, —

Check Column, —

If charges are to be prepaid, write or stamp here, "To be prepaid."

.....
Received \$...... to apply in prepayment of
the charges on the property described hereon.

30

.....
Agent or Cashier.

Per
(The signature here acknowledges only the
amount prepaid.)

Charges advanced: \$......

Receive, carry and deliver the articles above
subject to the conditions on the face and back
hereof, all of which are agreed to.

W. M. HARVEY, Agent.

Per..... 40

Exhibit P-3

B. F. CLUTE, Shipper.

Per.....

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

NOTE—Unless this Bill of Lading is signed by the shipper, this shipment will be carried at the carrier's liability, limited only as provided by
 10 law; but subject to the terms and conditions of this bill of lading in so far as they are not inconsistent with such common carrier's liability.

CONDITIONS

1. In consideration of the rate at which the freight is taken for carriage, and the special
 20 service to be performed, it is agreed by and between the carriers and the shipper, as owner or agent for owner, that the said freight is not to be carried and delivered for or with reference to any particular market or market hour at destination, nor in any specified time, but only with such reasonable despatch with reference to other business of the carrier as the general business permits; that the carriers shall not be liable for any injury to, or decay of, fruits and vegetables
 30 or other perishable freight, due to detention or delay occasioned by an accumulation of freight at any point, or to the breaking down of engine or cars, or to any other causes over which the carriers have no control; nor for damage or deterioration in value due to detention at any point, where such detention is due to or incurred at the request of the consignor, the consignee or their agents or representatives.

2. It is agreed by the shipper, as owner or
 40 agent for owner, that in issuing this bill of lading

Exhibit P-3

through to destination, when such destination is on or over connecting lines, the initial carrier acts only as agent, and assumes no liability as principal as to the carriage of said freight beyond its own lines; and that the liability of said initial carrier in regard to the said freight shall terminate upon delivery thereof, in good order and within a reasonable time, to the next succeeding 10 carrier. In case of loss or damage liability therefor shall be attached to only that carrier in whose custody the said freight was at such time of loss or damage.

3. No carrier shall be responsible for any loss or damage resulting directly or indirectly from change of route or destination made under the provisions of this contract. If any such change in route or destination shall be made, the shipper, owner or consignee shall pay, in addition to the 20 rate named herein and the charges advanced, all expenses incurred thereby, including freights for transportation over lines and parts of lines not included in the route for which said rate is named.

4. If all or any part of said property is carried by water, such water carriage shall be performed subject to statutory acts and to all conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier 30 by water shall be liable for any loss or damage resulting from explosion, accidents to boilers or machinery, or from any latent defects in hull, machinery or appurtenances, existing before, at the time, or after shipment or sailing on the voyage, or unseaworthiness, provided the owners have exercised due diligence to make the vessel seaworthy; nor shall negligence be presumed against any carrier.

5. No carrier shall be liable for loss or damage 40

Exhibit P-3

arising from legal process, claims or ownership by third parties; want of proper cooperage, or insufficiency of packages in strength or otherwise, nor for the condition of packages or deficiency in contents thereof if receipted for by the consignee in good order; nor for wrong carriage or wrong delivery of goods imperfectly marked.

- 10 All property shall be subject to necessary cooperage, boxing and repairs at owner's cost.

6. If any carrier transporting this shipment shall deem it necessary to dispose of same en route, or after delivery has been tendered to and refused by consignee, in order to protect the interest of the owner and the charges of transportation, said carrier is hereby empowered to act as the agent of the owner in the transaction, and will not be held responsible for more than net
20 proceeds of sale, after deducting all legitimate expenses.

7. This bill of lading is signed for the different carriers who may engage in the transportation, severally but not jointly, each to be bound by, and have the benefits of, the provisions thereof; and in accepting this bill of lading the shipper, owner and consignee of the goods and the holder of the bill of lading agree to be bound by
30 all of its stipulations, exceptions and conditions, whether printed or written.

8. Claims for loss or damage shall be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than ten days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event.

Exhibit P-4.

8-10-09. 50 M. B 98236. Form 345—Green

Bill of Lading for Vegetables, Fruits and Melons
 Shipper's No. Agent's No.

SEABOARD AIR LINE RAILWAY

S. Davies Warfield, R. Lancaster Williams and
 E. C. Duncan, Receivers 10

ATLANTA AND BIRMINGHAM AIR LINE RAILWAY
 S. Davies Warfield, R. Lancaster Williams and
 E. C. Duncan, Receivers

CATAWBA VALLEY RAILWAY, TALLAHASSEE, PERRY
 AND SOUTHEASTERN RAILWAY PLANT CITY, AR-
 CADIA AND GULF RAILWAY, FLORIDA
 WEST SHORE RAILWAY

L. E. CHALENOR, General Freight Agent. 20
 W. L. STANLEY, General Claim Agent.
 Portsmouth, Va.

Received, subject to the classifications and
 tariffs in effect on the date of issue of this Orig-
 inal Bill of Lading,
 at Ulmers, S. C., July 16th, 1912, from B. F.
 Clute, the property described below, in appar-
 ent good order, except as noted (contents and
 condition of contents of packages unknown), 30
 marked, consigned and destined as indicated be-
 low, which said Company agrees to carry to its
 usual place of delivery at said destination, if on
 its road, otherwise to deliver to another car-
 rier on the route to said destination. It is
 mutually agreed, as to each carrier of all or any
 of said property over all or any portion of said
 route to destination, and as to each party at any
 time interested in all or any of said property,
 that every service to be performed hereunder
 shall be subject to all the conditions, whether 40

Exhibit P-4

printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from.....
to is in Cents
Per 100 Pounds ——
10 Per Standard Barrel ——
Per Standard Basket ——
Per Standard Box ——
Per Standard Crate ——
Per car of lbs. ——
Per
(Mail Address—Not for purposes of Delivery)
Consigned to C. Albrecht.
Destination, Jersey City, State of N. J.
Route, —— Car Initial, S. A. L. Car No., 15841
20 No. Packages, 1.
Description of Articles and Special Marks, Car
Melons. S. L. & C.
(Copy)
Weight (Subject to Correction), 24000.
Rate, ——
Check Column, ——
If charges are to be prepaid, write or stamp
here, "To be prepaid."

30 Received \$...... to apply in prepayment of
the charges on the property described hereon.

.....
Agent or Cashier.

Per

(The signature here acknowledges only the
amount prepaid.)

Charges advanced: \$......

40 Receive, carry and deliver the articles above

Exhibit P-4

subject to the conditions on the face and back hereof, all of which are agreed to.

W. M. HARVEY, Agent.

Per.....

B. F. CLUTE, Shipper.

Per.....

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.) 10

NOTE—Unless this Bill of Lading is signed by the shipper, this shipment will be carried at the carrier's liability, limited only as provided by law; but subject to the terms and conditions of this bill of lading in so far as they are not inconsistent with such common carrier's liability.

(Conditions same as P-3.) 20

30

40

Exhibit P-5.

8-10-09. 50 M. B 98236. Form 345—Green
 Bill of Lading for Vegetables, Fruits and Melons
 Shipper's No..... Agent's No.....

SEABOARD AIR LINE RAILWAY

10 S. Davies Warfield, R. Lancaster Williams and
 E. C. Duncan, Receivers

ATLANTA AND BIRMINGHAM AIR LINE RAILWAY
 S. Davies Warfield, R. Lancaster Williams and
 E. C. Duncan, Receivers

CATAWBA VALLEY RAILWAY, TALLAHASSEE, PERRY
 AND SOUTHEASTERN RAILWAY PLANT CITY, AR-
 CADIA AND GULF RAILWAY, FLORIDA
 WEST SHORE RAILWAY

20 L. E. CHALENOR, General Freight Agent.
 W. L. STANLEY, General Claim Agent.
 Portsmouth, Va.

Received, subject to the classifications and
 tariffs in effect on the date of issue of this Orig-
 inal Bill of Lading,
 at Ulmers, S. C., July 16th, 1912, from B. F.
 Clute, the property described below, in appar-
 ent good order, except as noted (contents and
 condition of contents of packages unknown),
 30 marked, consigned and destined as indicated be-
 low, which said Company agrees to carry to its
 usual place of delivery at said destination, if on
 its road, otherwise to deliver to another car-
 rier on the route to said destination. It is
 mutually agreed, as to each carrier of all or any
 of said property over all or any portion of said
 route to destination, and as to each party at any
 time interested in all or any of said property, that
 every service to be performed hereunder shall
 40 be subject to all the conditions, whether printed

Exhibit P-5

or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from.....
tois in Cents

Per 100 Pounds —

Per Standard Barrel —

Per Standard Basket —

10

Per Standard Box —

Per Standard Crate —

Per car of lbs. —

Per

(Mail Address—Not for purposes of Delivery)

Consigned to C. Albrecht.

Destination, Jersey City, State of N. J.

Route, — Car Initial, S. A. L. Car No. 23256.

No. Packages, 1.

Description of Articles and Special Marks, Car 20
melons. Rel S. L & C.

Weight (Subject to Correction), 24000.

Rate, —

Check Column, —

If charges are to be prepaid, write or stamp here, "To be prepaid."

.....
Received \$...... to apply in prepayment of
the charges on the property described hereon.

30

.....
Agent or Cashier.

Per
(The signature here acknowledges only the
amount prepaid.)

Charges advanced: \$......

Receive, carry and deliver the articles above
subject to the conditions on the face and back
hereof, all of which are agreed to.

W. M. HARVEY, Agent.

Per 40

Exhibit P-5

B. F. CLUTE, Shipper.

Per.....

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

10 NOTE—Unless this Bill of Lading is signed by the shipper, this shipment will be carried at the carrier's liability, limited only as provided by law; but subject to the terms and conditions of this bill of lading in so far as they are not inconsistent with such common carrier's liability.

(Conditions same as P-3.)

Exhibit P-9

20 8-10-09. 50 M. B 98236. Form 345—Green
Bill of Lading for Vegetables, Fruits and Melons
Shipper's No..... Agent's No.....

SEABOARD AIR LINE RAILWAY

S. Davies Warfield, R. Lancaster Williams and
E. C. Duncan, Receivers

30 ATLANTA AND BIRMINGHAM AIR LINE RAILWAY
S. Davies Warfield, R. Lancaster Williams and
E. C. Duncan, Receivers

CATAWBA VALLEY RAILWAY, TALLAHASSEE, PERRY
AND SOUTHEASTERN RAILWAY PLANT CITY, AR-
CADIA AND GULF RAILWAY, FLORIDA
WEST SHORE RAILWAY

L. E. CHALENOR, General Freight Agent.
W. L. STANLEY, General Claim Agent.
Portsmouth, Va.

40 Received, subject to the classifications and

Exhibit P-9

tariffs in effect on the date of issue of this Original Bill of Lading,
 at Ulmers, S. C., July 18, 1912, from B. F. Clute,
 the property described below, in apparent good
 order, except as noted (contents and condition of
 contents of packages unknown), marked, con-
 signed and destined as indicated below, which
 said Company agrees to carry to its usual place
 of delivery at said destination, if on its road,
 otherwise to deliver to another carrier on the
 route to said destination. It is mutually agreed,
 as to each carrier of all or any of said property
 over all or any portion of said route to destina-
 tion, and as to each party at any time interested
 in all or any of said property, that every service
 to be performed hereunder shall be subject to all
 the conditions, whether printed or written, herein
 contained (including conditions on back hereof) 20
 and which are agreed to by the shipper and ac-
 cepted for himself and his assigns.

The Rate of Freight from.....
 to is in Cents
 Per 100 Pounds ———
 Per Standard Barrel ———
 Per Standard Basket ———
 Per Standard Box ———
 Per Standard Crate ———
 Per car of lbs. ——— 30
 Per
 Consigned to C. Albrecht.
 Destination, Jersey City, State of N. J.
 Route, ——— Car Initial, S. A. L. Car No. 24096.
 No. Packages, 1.
 Description of Articles and Special Marks, Car
 melons. Rel S. L & C.
 Weight (Subject to Correction), 24000.
 Rate, ———
 Check Column, ——— 40

Exhibit P-9

If charges are to be prepaid, write or stamp here, "To be prepaid."

Received \$. to apply in prepayment of the charges on the property described hereon.

10 Per Agent or Cashier.

(The signature here acknowledges only the amount prepaid.)

Charges advanced: \$.

(Mail Address—Not for purposes of Delivery)

Receive, carry and deliver the articles above subject to the conditions on the face and back hereof, all of which are agreed to.

W. M. HARVEY, Agent.

20 Per
B. F. CLUTE, Shipper.

Per

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

NOTE—Unless this Bill of Lading is signed by the shipper, this shipment will be carried at the carrier's liability, limited only as provided by law; but subject to the terms and conditions of this bill of lading in so far as they are not inconsistent with such common carrier's liability.

(Conditions same as P-3.)

Exhibit P-11.

Jersey City, N. J., July 23, 1912.

E. Butler, Agt.

I hereby refuse to accept AB&A 20917 lading Watermelons, account of rotten condition of lading and inability to realize freight charges.

C. ALBRECHT.

10

Exhibit P-12.

Jersey City, N. J., July 26, 1912.

Mr. E. Butler, Agt.

I hereby refuse to accept Sou 35039 lading Watermelons account of rotten condition and inability to realize freight charges.

C. ALBRECHT.

20

Exhibit P-13.

Jersey City, N. J., 7/26, 1912.

Mr. E. Butler, Agt.

I hereby refuse to accept SAL 22453 lading Watermelons account of rotten condition of lading and inability to realize freight charges.

C. ALBRECHT.

30

Exhibit P-14.

Jersey City, N. J., July 27, 1912.

Mr. E. Butler, Agt.

I hereby refuse to accept SAL 15841 lading Watermelons account of rotten condition of lading and inability to realize freight charges.

C. ALBRECHT.

40

Exhibit P-15.

Jersey City, N. J., 7/26, 1912.

Mr. E. Butler, Agt.

I hereby refuse to accept SAL 23256 lading Watermelons account of rotten condition of lading and inability to realize freight charges.

C. ALBRECHT.

10

Exhibit P-16.

Jersey City, N. J., July 26, 1912.

Mr. E. Butler, Agt.

I hereby refuse to accept Sou 38162 lading Watermelons account of rotten condition and inability to realize freight charges.

C. ALBRECHT.

20

Exhibit P-17.

Jersey City, N. J., July 27, 1912.

E. Butler, Agt.

I hereby refuse to accept Sou 25284 lading Watermelons, account of same being in rotten condition of lading and inability to realize freight charges.

C. ALBRECHT.

30

Exhibit P-18.

Jersey City, N. J., July 31, 1912.

Mr. E. Butler, Agt.

I hereby refuse to accept Sou 32937 lading Watermelons, account of rotten condition and inability to realize freight charges.

C. ALBRECHT.

10

Exhibit P-19.

Jersey City. N. J., July 27, 1912.

Mr. E. Butler, Agt.

I hereby refuse to accept SAL 24096 lading Watermelons account of rotten condition of lading and inability to realize freight charges.

C. ALBRECHT. 20

30

40

DEFENDANT'S EXHIBITS.

Exhibit D-10.

CHAS. ALBRECHT

Produce Commission Merchant
110 Nostrand Avenue

Water Melons a Specialty.

10

Brooklyn, N. Y., Sept. 3, 1912.

Gentlemen,

I beg to inform you that I will enter claim on
the following nine cars of Melons shipped from
South Carolina.

Car No.

35039.

26501 transferred to car 39170.

23256.

20

22453.

38162.

25284.

24096.

15841.

32937.

C. ALBRECHT.

30

40

Exhibit D-11.

CHAS. ALBRECHT

Produce Commission Merchant
110 Nostrand Avenue

Water Melons a Specialty.

Brooklyn, N. Y., Oct. 22, 1912.

Gentlemen,

10

Dear Sir,

In reply to your letter, I wish to inform you, that I handed you the Original invoice, with each Car when I entered claim, this car was bought from the same man, Mr. G. S. Boynton, Car No. 25284, cost 120.00 and Car No. 32937, 120.00. Both Cars are from the same man, and shipped same day.

Yours,

C. ALBRECHT.

20

Exhibit D-12.

Brooklyn, N. Y., Sept. 2, 1912.

M Penn. R. R. Co.,

Bought of CHAS. ALBRECHT,
Produce Commission Merchant.

110 Nostrand Avenue, bet. Park and Myrtle Aves. 30

Bills must be paid promptly every week.

1 Car of Mels.....	100.00
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Claim Department Register No. 10071, Pennsylvania R. R., Jersey City, Freight Station.
586764 Sept. 11, '12.

Exhibit D-13.

(Same bill head as D-12.)

Brooklyn, N. Y., Sept. 12, 1912.
M Penn. R. R. Co.,

Sept. 12, 1 Car W. Mels..... 120.00

10 Claim Department Register No. 10200, Penn-
sylvania R. R., Jersey City, Freight Station.
590958 Sept. 19, '12.

Exhibit D-14.

(Same bill head as D-12.)

20 Brooklyn, N. Y., Sept. 12, 1912.

Sept. 12, 1 Car W. Mels..... 120.00

Claim Department Register No. 10201, Penn-
sylvania R. R., Jersey City, Freight Station.
590957 Sept. 19, '12.

30

Exhibit D-15.

(Same bill head as D-12.)

Brooklyn, N. Y., Sept. 6, 1912.
M Penn. R. R. Co.,

1 Car W. Mels..... 80.00

40 Claim Department, Register No. 10126, Penn-
sylvania R. R., Jersey City, Freight Station.
589161 Sept. 16, '12.

Exhibit D-16.

(Same bill head as D-12.)

Brooklyn, N. Y., Sept. 6, 1912.

M Pennsylvania Railroad Co.,

1 Car of Melons.....	85.00	10
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Claim Department, Register No. 10125, Penn-
sylvania R. R., Jersey City, Freight Station.
589162 Sept. 16, '12.

Exhibit D-17.

(Same bill head as D-12.)

Brooklyn, N. Y., Sept. 6, 1912. 20

M Penn. R. R. Co.,

1 Car of W. Mels.....	85.00
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Claim Department, Register No. 10121, Penn-
sylvania R. R., Jersey City, Freight Station.
589163 Sept. 16, '12.

Exhibit D-18.

30

(Same bill head as D-12.)

Brooklyn, N. Y., Sept. 6, 1912.

M Pennsylvania Railroad Co.,

1 Car of Melons.....	72.50	40
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Claim Department, Register No. 10124, Penn-
sylvania R. R., Jersey City, Freight Station.
589164 Sept. 16, '12.

Exhibit D-19.

(Same bill head as D-12.)

Brooklyn, N. Y., Sept. 6, 1912.

M Pennsylvania Railroad Co.,

10	1 Car of Melons.....	80.00
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Claim Department, Register No. 10122, Penn-
sylvania R. R., Jersey City, Freight Station.
589165 Sept. 16, '12.

Exhibit D-20.

(Same bill head as D-12.)

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Brooklyn, N. Y., Sept. 6, 1912.

M Pennsylvania Railroad Co.,

30	1 Car of Melons.....	112.50
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Claim Department, Register No. 10127, Penn-
sylvania R. R., Jersey City, Freight Station.
589167 Sept. 16, '12.

30

Exhibit D-21.

Tel. 4200 Cortlandt

Established 1867

PHILLIPS & SONS,

Commission (38) Merchants

Importers & Exporters

277 Washington Street

New York

Cable Address:—PRENDIDO

10

Received via Car 32927

Sold for and on account of Penn. R. Ry. Co.

C. ALBRECHT

Received Aug. 1st, Car W. Melons.... 50.00

Commission 4.00

Net Proceeds 46.00

20

Exhibit D-22.

(Same bill head as D-21.)

Received via Car 25284

Received July 29th, Car W. Melons.. 30.00

2/3 worthless, rotten.

Commission 3.20 30

Net Proceeds 36.80

Exhibit D-23.

(Same bill head as D-21.)

Received via Car 15841

	Received July 29th, Car W. Melons..	30.00
	2/3 worthless, rotten.	
	Commission	2.40
10	Net Proceeds	27.60

Exhibit D-24.

(Same bill head as D-21.)

Received via Car 24096

20	Received July 29th, Car W. Melons...	50.00
	Rotten.	
	Commission	4.00
	Net Proceeds	46.00

Exhibit D-25.

30 (Same bill head as D-21.)

Received via Car 22453

	Received July 27th, Car W. Melons...	30.00
	Very rotten.	
	Commission	2.40
	Net Proceeds	27.60

Exhibit D-26.

(Same bill head as D-21.)

Received via Car 23256

Received July 27th, Car W. Melons..	40.00	
Rotten.		
Commission	3.20	
Net Proceeds	36.80	10

Exhibit D-27.

(Same bill head as D-21.)

Received via Car 20917

Received July 24th, Car Melons.....	40.00	20
Commission	3.20	
Net Proceeds	36.80	

Exhibit D-28.

(Same bill head as D-21.)

Received via Car 35039

		30
Received July 27th, Car W. Melons...	40.00	
Very rotten.		
Commission	3.20	
Net Proceeds	36.80	

Exhibit D-29.

(Same bill head as D-21.)

Received via Car 38162

Received July 27th, Car W. Melons...	40.00
Very rotten.	

Commission	3.20
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10	Net Proceeds	36.80
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Exhibits D-30, D-31, D-32.

Classifications and Tariffs on file with Interstate Commerce Commission.

Extract from Southern Classification, No. 38.

20

SOUTHERN CLASSIFICATION.*General Rules.*

1. The reduced rates specified in this classification will apply only on property, shipped subject to the conditions of the Carrier's Bill of Lading.

30 "Property carried not subject to the conditions of the Carrier's Bill of Lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states, in so far as they apply. Property thus carried will be charged ten (10) per cent. higher (subject to a minimum increase of one (1) cent per hundred pounds) than if shipped subject to the conditions of the Carrier's Bill of Lading."

EXHIBITS D-30, D-31, D-32.

FURTHER EXTRACTS FROM CLASSIFICATIONS AND
TARIFFS ON FILE WITH INTERSTATE COMMERCE
COMMISSION.

Watermelon Tariff No. 2 (I. C. C. No. A-38)
Rules and Regulations, Note 4:

"The rates shown herein are conditioned on
the execution by shippers of release shown in
bill of lading for melon shipments. When 10
this is not done the charge for transportation
will be 20 per cent greater than the rates
shown herein."

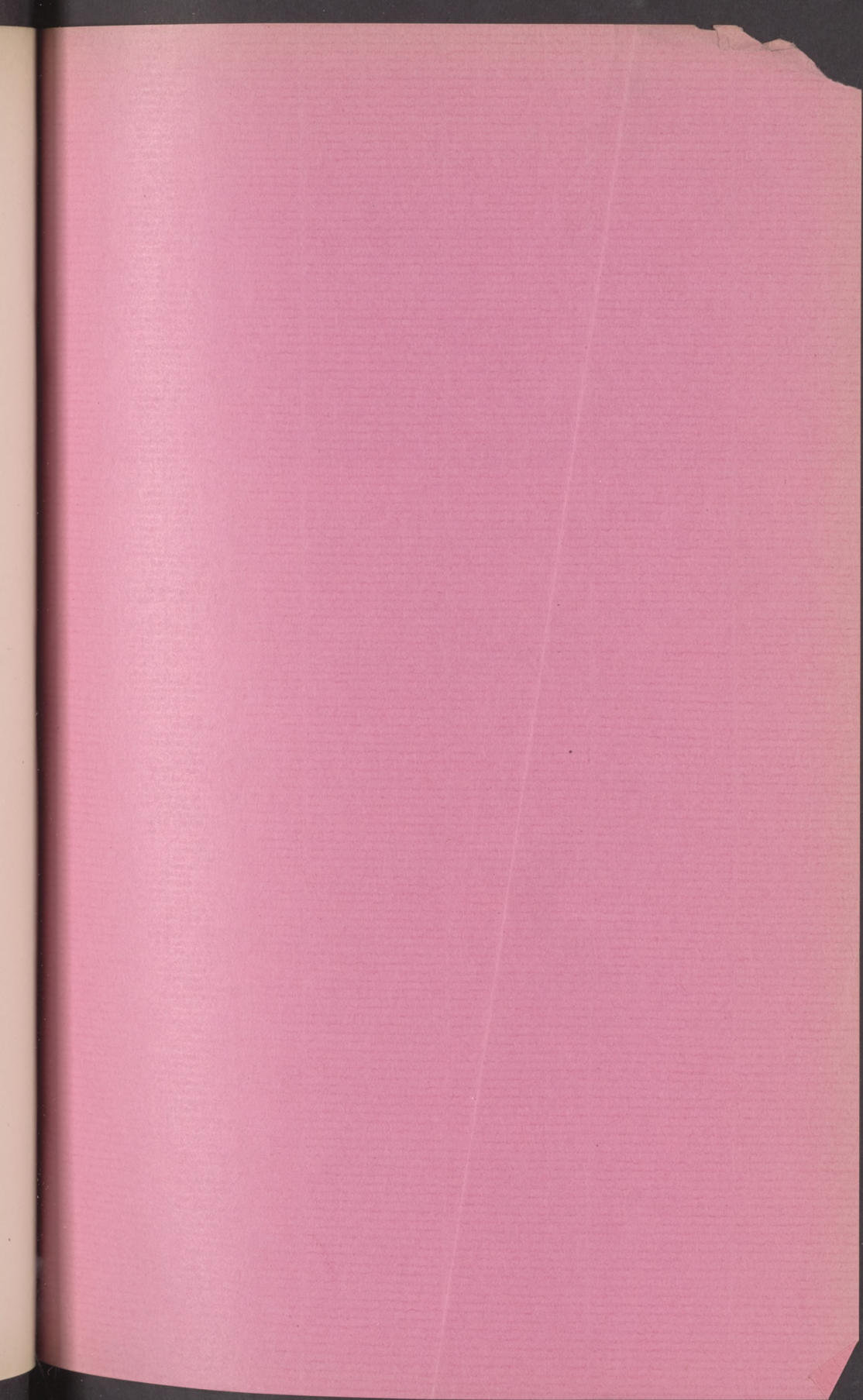
Headline on pages 4 to 47:

"Rates on Watermelons, released, mini-
mum weight 24,000 pounds."

Southern Classification Rule 6:

Where the classification provides for a re-
duced rate, based on a certain fixed valuation, 20
the following special release, containing the
agreed valuation, must be written and signed
by the shipper or owner on the face of the bill
of lading or shipping receipt:

"The value of the shipment covered by this
contract is fixed by the shipper at _____;
which is accepted by the carrier as the real
and true value thereof and the rate of freight
is charged in accordance therewith, and the 30
carrier assumes liability only to the extent of
such valuation and no further."



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