INDEX

Notice of Appeal to Court of Errors and Appeals and Grounds of Appeal.

[Filed: July 3, 1931.]

New Jersey Supreme Court

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff-Respondent,* *vs.* PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law.

To:

PIERSON, SCHROEDER & BRAND, Esquires,
Attorneys for Plaintiff:

TAKE NOTICE, that the defendant appeals to the New Jersey Court of Errors and Appeals, from the whole of the judgment entered in the Supreme Court in the above-stated cause on the following ground, to wit: the Supreme Court, in rendering said judgment, erred in giving judgment for the plaintiff-respondent instead of for the defendant-appellant.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant.

Opinion—Supreme Court.

[Filed: April 2, 1931.]

No. 429. October Term, 1930.

NEW JERSEY SUPREME COURT.

JEFFERSON MACARONI COMPANY,
Plaintiff-Respondent,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellant.

Submitted October 17th, 1930; decided March , 1931.

On appeal from a judgment of the District Court of the City of Hoboken.

Before Justices DALY and DONGES.

For the appellant: WALL, HAIGHT, CAREY and HARTPENCE, Esqs.

For the respondent: PIERSON, SCHROEDER and BRAND, Esqs.

Per Curiam.

This is an appeal from a judgment of the District Court of the City of Hoboken. Plaintiff on May 17th, 1928, delivered to defendant for carriage to Hoboken 200 boxes of macaroni valued at $250. The goods were shipped under a bill of lading delivered by defendant to the plaintiff which recites that the property was delivered to defendant in apparent good order. The defendant delivered the goods to the D. L. & W. Railroad Co. as a connecting carrier to be delivered to the point of destination, to wit, Hoboken. On May 26, 1928, the consignee received notice from the carrier of the arrival of the goods and called at the carrier's office to receive the 200 boxes and pay the freight charges therefor. Eighteen boxes were broken and their contents either missing or damaged. Whereupon consignee declined to take the 18 boxes and declined to pay freight on same, but offered to accept the balance of the shipment and

pay the freight charges on that portion. This offer was refused and the macaroni that was in good condition remained in the hands of the railroad company, which put it in storage on the 31st day of May, 1928, notifying plaintiff of such storage. On October 19, 1928, the shipment was sold for $100 to satisfy storage and freight charges of $100.56. No notice of the sale was given to the plaintiff or to the consignee.

The appellant insists that there was no evidence that the goods were in good condition when received by it, and that, in any event, it was not bound to release its lien on any of the goods until the entire amount of freight charges was tendered.

The statement in the bill of lading that the goods were received in apparent good condition makes out a prima facie case against the carrier that the goods were in good condition and shifted the burden to the defendant. No explanation was offered by defendant as to the condition of the goods when received.

Under the Carmack amendment the initial carrier, this defendant, would be liable for the delivery of the goods whether shipped over its own line or a connecting carrier's line.

Until the carrier was in position to make delivery in the condition in which the goods were shipped, the carrier was not entitled to have its freight charges, and neither the consignee nor the plaintiff was obliged to accept the damaged goods and pay freight therefor, and the consignee was justified in the circumstances in declining to receive the entire shipment upon the refusal of the railroad company to receive freight for the undamaged part and to make delivery thereof or to make allowance for the damage, 10 C. J. p. 447, Sec. 705.

Judgment is affirmed, with costs.

D

Judgment of Affirmance.

[Filed: June 30, 1931.]

NEW JERSEY SUPREME COURT.

JEFFERSON MACARONI COMPANY, a corporation,
Plaintiff-Respondent,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, a corporation,
Defendant-Appellant.

This cause coming on to be heard at the October Term and being argued by Wall, Haight, Carey & Hartpence, of Counsel for the defendant-appellant and Pierson, Schroeder & Brand, of Counsel for the plaintiff-respondent, and after due consideration of the questions brought upon this appeal, and being of the opinion that the judgment of the District Court of the City of Hoboken should be affirmed in all things;

IT IS, THEREFORE, on this 30th day of June, 1931, ORDERED, ADJUDGED and DECREED that the judgment of the District Court of the City of Hoboken be in all things affirmed with costs and that the record and proceedings be remitted to the District Court of the City of Hoboken to be therein proceeded upon according to law and the practice of said Court.

Entered: June 30th, 1931.

On motion of:

PIERSON, SCHROEDER & BRAND,
Attorneys for Plaintiff-Respondent.

Notice of Appeal.

(Filed June 20th, 1930)

District Court of the City of Hoboken

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff*,	
v.	On Contract.
THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant.*	

To Jefferson Macaroni Company, or Pierson, Schroeder & Brand, Esqs., its attorneys:

TAKE NOTICE, that the defendant in the above case, The Pennsylvania Railroad Company, hereby appeals to the New Jersey Supreme Court from the judgment of the District Court of the City of Hoboken rendered in the above-stated action on June 2nd, One Thousand Nine Hundred and Thirty.

THE PENNSYLVANIA RAILROAD COMPANY,
By WALL, HAIGHT, CAREY & HARTPENCE,
Its Attorneys.

Dated: June 20th, 1930.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 20 day of June, 1930.

PIERSON, SCHROEDER & BRAND,
Attorneys for Plaintiff.

Specifications of Error.

(Filed September 12, 1930)

NEW JERSEY SUPREME COURT.

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff-Respondent,* *v.* THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law On Appeal. Brief Specification of Determinations of the Hoboken District Court With Which the Defendant-Appellant Is Dissatisfied in Point of Law.

The case was presented to the District Court on a state of facts agreed upon by the parties hereto (by their respective counsel) and a judgment without opinion rendered in favor of the plaintiff-respondent.

The following is a specification of the determinations of the Hoboken District Court with which the defendant-appellant is dissatisfied in point of law:

1. The Court erred in giving judgment in favor of the plaintiff and against the defendant on the agreed Statement of Facts.

Dated: September 11th, 1930.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant.

Amended Specifications of Error.

(Filed September 18th, 1930)

NEW JERSEY SUPREME COURT.

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff-Respondent,* *v.* THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law. On Appeal. Amended Brief Specification of Determinations of the Hoboken District Court with which the Defendant-Appellant is dissatisfied in point of law.

The case was presented to the District Court on a statement of facts agreed upon by the parties hereto (by their respective counsel) and a judgment without opinion rendered in favor of the plaintiff-respondent.

The following is a specification of the determinations of the Hoboken District Court with which the defendant-appellant is dissatisfied in point of law:

1. The Court erred in giving judgment in favor of the plaintiff and against the defendant on the agreed Statement of Facts.

2. The Court erred in giving judgment in favor of the plaintiff and against the defendant for the sum of $250., which was the total value of the shipment, whereas, the evidence showed that only 18 boxes of macaroni, out of 200 boxes constituting the shipment, were damaged on arrival at destination.

Dated: September 18th, 1930.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant.

Summons.

STATE OF NEW JERSEY, }
HUDSON COUNTY, } SS.:

[SEAL] TO ANY CONSTABLE OF SAID COUNTY: or the Sergeant-at-Arms of the District Court of the City of Hoboken.

SUMMON Pennsylvania Railroad Company, a corporation, to be and appear before the District Court of the City of Hoboken, at the City Hall, Washington Street, City of Hoboken, on the 26th day of December, A. D., 1929, at 10 o'clock in the forenoon, to answer unto Jefferson Macaroni Company, a corporation, in an action in Contract. Damages Five Hundred ($500) Dollars.

WITNESS, WILLIAM J. HANLEY, Esq., Judge of said Court at Hoboken, aforesaid, the 16th day of December, in the year one thousand nine hundred and twenty-nine.

HARRY BENNETT,
Clerk.

PIERSON, SCHROEDER & BRAND,
Attorneys of Plaintiff.

State of Demand.

(Filed December 16, 1929)

DISTRICT COURT OF THE CITY OF HOBOKEN,

Before WILLIAM J. HANLEY, Esq., Judge.

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff*, v. THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant*.	On Contract.

Plaintiff demands of the defendant the sum of Five Hundred ($500) Dollars, for that:

1. Plaintiff is a manufacturer of domestic Italian and Spanish products, and on May 17, 1928, consigned to Domenic Sparvieri, of Hoboken, New Jersey, two hundred (200) boxes of macaroni at $1.25 a box, totalling $250, and which the defendant agreed to transport pursuant to its bill of lading which it issued on that date.

2. Defendant during said time was a common carrier for hire, being engaged in the business of transporting merchandise to and from different points where its railroad runs and also by means of connecting lines to points in other states and especially to the said place of Hoboken, in the

State of Demand

State of New Jersey, and that on the day last aforesaid, plaintiff delivered to the defendant as a common carrier as aforesaid, at a certain station on its said road, to wit, Reynoldsville, Pennsylvania, and defendant then and there received from the plaintiff the said 200 boxes of macaroni of the value of $1.25 per box, and defendant thereupon agreed that it would safely, securely and expeditiously within a reasonable time thereafter, carry and convey same from said station at Reynoldsville and cause the same to be delivered at Hoboken, its agent or connecting carrier.

3. The defendant did not safely carry and deliver said goods pursuant to its agreement but so negligently and carelessly conducted itself in that behalf that said boxes were broken and wholly destroyed and rendered of no value to the plaintiff to its damage in the sum of $250.

JUDGMENT will be claimed for the sum of Two hundred and fifty ($250) Dollars, together with interest and costs of suit.

PIERSON, SCHROEDER & BRAND,
Attorneys of Plaintiff.

Amended State of Demand.

(Filed May 21, 1930)

DISTRICT COURT OF THE CITY OF HOBOKEN,

Before WILLIAM J. HANLEY, Esq., Judge.

JEFFERSON MACARONI COMPANY, a corporation,
Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY, a corporation,
Defendant.

On Contract.

Plaintiff demands of the defendant the sum of Five Hundred ($500) Dollars, for that:

1. Plaintiff is a manufacturer of domestic Italian and Spanish products, and on May 17, 1928, consigned to Domenic Sparvieri, of Hoboken, New Jersey, two hundred (200) boxes of macaroni which was food stuff and semi-perishable at $1.25 a box, totalling $250, which was the reasonable value thereof, and which the defendant agreed to transport pursuant to its bill of lading which it issued on that date.

2. Defendant during said time was a common carrier for hire, being engaged in the business of transporting merchandise to and from different points where its railroad runs and also by means

of connecting lines to points in other states and especially to the said place of Hoboken, in the State of New Jersey, and that on the day last aforesaid, plaintiff delivered to the defendant as a common carrier as aforesaid, at a certain station on its said road, to wit, Reynoldsville, Pennsylvania, and defendant then and there received from the plaintiff the said 200 boxes of macaroni of the reasonable value of $250.00 and defendant thereupon agreed that it would safely, securely and expeditiously within a reasonable time thereafter, carry and convey same from said station at Reynoldsville and cause the same to be delivered at Hoboken by its agent or connecting carrier.

3. That the defendant delivered to plaintiff the bill of lading upon the delivery of the shipment to it at the said city of Reynoldsville, Pennsylvania.

4. The goods were delivered to the Delaware Lackawanna & Western Railroad as a connecting carrier to be delivered to the point of destination in Hoboken, New Jersey.

5. Notice was duly sent to the consignee upon the arrival of the goods at Hoboken. Upon receipt of said arrival notice consignee called at the freight office of the said Delaware, Lackawanna & Western Railroad ready to receive such shipment and pay the freight charges but upon inspection of the merchandise found that a number of the boxes of macaroni were broken.

6. The defendant did not safely carry and deliver the said goods pursuant to its agreement but so carelessly conducted itself in that behalf that when said shipment arrived at its destina-

tion in Hoboken, part of the merchandise had been damaged, a number of boxes of the macaroni were broken, contents either missing or damaged, and some of the macaroni from said broken boxes collected in paper boxes.

7. Said shipment was refused by the consignee by reason of the goods having arrived in a damaged condition and without any notice to the plaintiff or consignee the merchandise was stored by the defendant in the Hudson Storage & Trucking Company, a warehouse in Jersey City, and by reason of which said merchandise became thereby wholly destroyed and rendered of no value to the plaintiff to its damage in the sum of $250.00.

JUDGMENT will be claimed for the sum of Two hundred and fifty ($250) Dollars, together with interest and costs of suit.

PIERSON, SCHROEDER & BRAND,
Attorneys for Plaintiff.

Agreed Statement of Facts.

(Filed May 21, 1930)

DISTRICT COURT OF THE CITY OF HOBOKEN.

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff*, *v.* THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant*.	On Contract.

This Agreed Statement of Facts appears herewith as part of the State of Case Agreed Upon and for that reason is not printed.

Transcript of Record of Judgment.

(Filed July 7, 1930)

STATE OF NEW JERSEY, }
HUDSON COUNTY, } ss.:

DISTRICT COURT OF THE CITY OF HOBOKEN.

Before: WILLIAM J. HANLEY, Esq., Judge.
HARRY BENNETT, Clerk.

No. 49317

JEFFERSON MACARONI COMPANY, a corporation,
Plaintiff,

v.

THE PENNSYLVANIA RAILROAD COMPANY, a corporation,
Defendant.

Contract, $500.

COSTS	CITY	AL.
Summons, Copy,	1.50	
Service and Return,		.60
Mileage,		.20
Trial Fee,	1.50	
Attorney's fees, 5%		12.50
	3.00	13.30
		16.30

PIERSON, SCHROEDER, BRAND, Plaintiff's Attorneys.

WALL, HAIGHT, CAREY and HARTPENCE, Defendant's Attorneys.

A summons was issued tested December 16, 1929, A. D., returnable December 26, 1929, A. D., at ten o'clock in the forenoon at the Court Room of said court in the City of Hoboken. The Sergeant-at-Arms returned the summons as follows, viz: I served the within Summons, Demand and Notice on the within named Defendant Company, by Jane Patten, Clerk, this 16th day of December, 1929, by reading and leaving a True Copy thereof. John H. Masker, Sergeant at Arms, Constable.

December 16, 1929, plaintiff filed State of Demand.

April 10, 1930, parties appeared and agreed to file briefs and State of Case.

May 21, 1930, plaintiff filed eighteen exhibits in evidence and were marked Pl, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and plaintiff filed Amended State of Demand and Agreed State of Facts.

WHEREUPON, it is on this second day of June, 1930, A. D., by the court considered and adjudged that said Jefferson Macaroni Company, a corporation, plaintiff, recover against said The Pennsylvania Railroad Company, a corporation, defendant, the sum of Two Hundred and Fifty Dollars, debt, and Sixteen Dollars and Thirty Cents, cost of suit.

June 20, 1930, defendant filed Notice of Appeal and Bond on Appeal.

Clerk's Certificate.

I, HARRY BENNETT, Clerk of the District Court of the City of Hoboken, William J. Hanley, Esq., judge, do hereby certify that the foregoing is a true copy of the record of a judgment of said Court.

IN WITNESS WHEREOF, I have hereto set my hand as Clerk of said Court and affixed the seal of said Court, this 27th day of June, one thousand nine hundred and thirty.

HARRY BENNETT,
Clerk.

[SEAL]

Order Extending Time to Agree upon State of Case.

(Filed June 27, 1930)

DISTRICT COURT OF THE CITY OF HOBOKEN.

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff*, *v.* THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant*.	On Contract.

The defendant above named having appealed to the New Jersey Supreme Court from a judgment rendered herein in favor of the plaintiff and against the defendant and it being represented to the Court that the defendant has been and will be unable with due diligence to have its State of the Case agreed upon or settled within the time limited by law;

It is, on this 27th day of June, 1930, on motion of Wall, Haight, Carey & Hartpence, Attorneys for defendant ORDERED that the time within which defendant may have its State of the Case agreed upon or settled be and hereby is extended to and including July 7th, 1930.

WM. J. HANLEY,
Judge of the District Court of the City of Hoboken.

A true copy

HARRY BENNETT,
Clerk.

State of Case Agreed Upon.

(Filed July 7, 1930)

DISTRICT COURT OF THE CITY OF HOBOKEN.

JEFFERSON MACARONI COMPANY, a corporation, *Plaintiff*, v. THE PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant*.	On Contract. On Appeal.

PIERSON, SCHROEDER & BRAND, Attorneys for Plaintiff-Appellee.

WALL, HAIGHT, CAREY & HARTPENCE, Attorneys for Defendant-Appellant.

The parties hereto (by their respective attorneys) submit the following as the state of the case for appeal:

1. On May 17th, 1928, two hundred boxes of macaroni, which was food stuff and semi-perishable, the reasonable value of which was $250.00 was shipped by plaintiff as consignor via Pennsylvania Railroad from Reynoldsville, Pennsylvania, and consigned to Dominick Sparvieri of 78 Grand Street, Hoboken, New Jersey.

2. That the bill of lading which is in the possession of the plaintiff is the original bill of lading, which is marked Exhibit P-1.

3. The goods were delivered to the Delaware, Lackawanna & Western Railroad as a connecting

carrier to be delivered to the point of destination in Hoboken, New Jersey.

4. Arrival notice was duly sent to the consignee upon the arrival of the goods.

5. Upon receipt of said arrival notice, consignee immediately called at the freight office of said railroad in Hoboken ready to receive such shipment and pay the freight charges.

6. On being shown the shipment of macaroni by the agent of the said Delaware, Lackawanna & Western Railroad, consignee noted that eighteen boxes of said macaroni were broken, contents either missing or damaged and some of the macaroni from said broken boxes collected in paper boxes.

7. Consignee informed the agent of the Delaware, Lackawanna & Western Railroad Company that he would not take the eighteen damaged or broken boxes of macaroni or pay the freight charges on them, but would accept only that portion of the shipment which appeared fit for use, to wit: the remaining one hundred and eighty-two boxes, and would pay freight charges on that portion only.

8. The agent of the Delaware, Lackawanna & Western Railroad Company refused to deliver a portion of the shipment unless freight charges on the entire shipment were paid. He accordingly refused to deliver the portion of macaroni that was in good condition unless the whole shipment be accepted and the full freight charges paid thereon. This consignee refused to do.

9. The goods not having been removed by the consignee or the party entitled to receive them,

they were on May 31, 1929 placed in storage, at the Hudson Storage & Trucking Co., 17 Maxwell Place, Jersey City, N. J.

10. On the same day that said macaroni was placed in storage notice was thereafter mailed to plaintiff that said shipment of macaroni was unclaimed and had been placed in storage, a copy of which notice is offered by the plaintiff and received in evidence marked Exhibit P-2.

11. The shipment was finally sold at public auction by the storage company on October 19th, 1928, for $100.00 to satisfy storage and freight charges of $100.56.

12. No notice of sale was given to plaintiff or consignee excepting the one referred to, which notice is offered by the plaintiff and received in evidence and marked Exhibit P-3.

EXHIBIT P-1.

(For use in connection with Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1922.) 3rd SHEET

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the 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. ----------

State of Case Agreed Upon

THE PENNSYLVANIA RAILROAD COMPANY

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 Bill of Lading,
at REYNOLDSVILLE, PA. 5-17, 1928.
from JEFFERSON MACARONI CO.
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 (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water 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 not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to DOM. SPARVIERI
(Mail or street address of consignee—For purposes of notification only.) 178 GRANDE ST.
Destination—HOBOKEN CITY
State of N.J.
County of _____
Route D.L.W.
Car Initial P.R.R.
Car No. 516740

State of Case Agreed Upon

No. Packages—200
Description of Articles, Special Marks and Exceptions—Boxes Macaroni
*Weight (Subject to Correction)—4800
Class or Rate_____
Check Column_____

Pennsylvania Railroad
Claim No. M-785680
4178 Reynoldsville, Pa.
Received
May 17 1928

This Shipment is correctly described
Correct Weight is 4800 lbs.
Subject to Verification by the
Trunk Line Freight Inspection Bureau
According to Agreement
Jefferson Macaroni Co.

Loaded by Shipper

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

_____ per _____

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See Section 7 of conditions.)

_____
(Signature of Consignor.)

State of Case Agreed Upon

If charges are to be prepaid write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:
$_____

JEFFERSON MACARONI CO. Shipper.
Per C.L.D.
D. C. HOOK, Agent

Per _____

Permanent post-office address of Shipper_____

[REVERSE SIDE]

CONTRACT TERMS AND CONDITIONS.

SEC. 1. (*a*) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(*b*) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act of default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman only for loss, damage, or delay caused by fire occurring

after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given and after placement of the property for delivery at destination or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on 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 the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(*c*) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though

the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

SEC. 2. (*a*) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(*b*) Claims for loss, damage, or injury to property must be made in writing to the originating or delivering carrier or carriers issuing this bill of lading within six months after delivery of the property (or, in case of export traffic, within nine

months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; provided that if such loss, damage, or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery. Suits for loss, damage, injury, or delay shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed: *Provided,* That in case the claim on which suit is based was made in writing within six months or nine months in case of export traffic (whether or not filing of such claim is required as a condition precedent to recovery), suit shall be instituted not later than two years and one day after notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(*c*) Any carrier or party liable on account of loss of 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: *Provided,* That the carrier reimburse the claimant for the premium paid thereon.

SEC. 3. Except where such service is required as the result of carrier's negligence, all property

shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters 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 prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 4. (*a*) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held 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.

(*b*) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given the carrier may sell the same at public auction, to the highest bidder, at such place as may be designated by the carrier: *Provided*, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: *Provided*, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(*c*) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly the carrier may in its discretion, to prevent deterioration or further deterioration sell the same to the best advantage at private or public sale. *Provided*: That if time

serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(*d*) Where the procedure provided for in the two paragraphs last preceding is not possible it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(*e*) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(*f*) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

SEC. 5. No carrier hereunder 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 classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. 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. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

SEC. 9. (*a*) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(*b*) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(*c*) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or

damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, tranship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(*d*) General average shall be payable according to York-Antwerp Rules, 1890, and, as to any matter not therein provided for, according to the law and usage of the port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo

shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifice, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(*e*) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded an incorporated into the conditions of this bill of lading.

(*f*) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

EXHIBIT P-2.

F.C.A. 18 Revised 6-24 #7

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,

Office of Local Freight Agent at Hoboken City N. J.

Agent's R & U No. 77 5/31/28

State of Case Agreed Upon

Agent's O S & D No. ----------
Agent's Pro No. A 2897. F. C. A. R & U No. 240209.
Agent's Pro Date 5/25/28. F. C. A. O S & D No.—
To Don Sparvieri 78 Grand St Hoboken N J (Name and Address of Consignee or Notify Party).
To Jefferson Macaroni Co Reynoldsville Pa. (Name and Address of Consignor).
To----------(Name and Address of Order Party).
To Freight Agent PRR Reynoldsville Pa. (Address of Originating Agent).
To Mr. W. H. Gaskill—Freight Claim Agent—Scranton, Pa.
The following freight is unclaimed. Invoice or Order No. ------ Consisting of 200 Bx Macaroni.
To whom and how consigned—Don Sparvieri 78 Grand St. Hoboken N J
Shipped from Reynoldsville Pa. Railroad—PRR
Date of shipment—5/17/28. Waybill No. 57 & Date 5/17/28. Car No. & Initial—28060 CT DL.
Rebilled---------- Waybill No. X Car PRR 516740 from---------- & Date----------.
Why undelivered—Unclaimed.
Notice of arrival given to U. S. Mail. Date 5/26/28
Refer to Paragraphs Checked [X]

[ ] 1. It is imperative that you furnish immediate orders for disposal, as this shipment is held under storage charges at our station at owner's risk and expense, due to consignee's failure to remove within the free storage period. If you wish shipment returned or reconsigned, it will be necessary for you to send us the original bill of lading.

State of Case Agreed Upon

[X] 2. Shipment has been placed in public storage with Hudson County Storage & Trucking Co. (Name of Warehouse). 17 Maxwell Place Jersey City N J (Location and Address) where it is held at owner's risk and expense under provisions Section 4, Paragraph A, original bill of lading. Owners should arrange direct with warehouse for disposition of property.

T G Haring:L.
Agent.

F.C.A. 18 Rev. Stub 1.

Scranton, Pa._____19___

Agent at Hoboken City N J Station

Your report No. R & U 77 received and registered at this office. My R & U_____. Any correspondence in the future pertaining to this shipment refer to my number.

W. H. Gaskill,
Freight Claim Agent.

EXHIBIT P-3.

The Hudson County Storage & Trucking,
17 to 33 Maxwell Street,
194 to 198 Railroad Avenue,

Jersey City, N. J. Sept. 18th, 1928.

Mr. Dom. Sparvieri,
178 Grand St.,
Hoboken City, N. J.

Dear Sir,

We have in our warehouse 200 BX Macaroni, consigned to you from the Jefferson Macaroni

Co., and placed in storage with us as overdue freight by the Del. Lac. & Western R.R. on May 31st, 1928. The nature of this freight is perishable, and if charges to date are not paid or goods removed by the twenty fifth of the month we shall sell same for charges. We have had goods in warehouse over three months and we fear they will soon be of no value if not picked up soon.

Charges are,

	Freight	$18.00
	R.R. Storage	.72
4 months at $12.	Storage	48.00
	Carting in	12.00
	Labor	4.80
	Total	$83.52

Kindly let us hear from you at once.

Yours very truly,

(Signed) Will Fitzhenry, Mgr.
HUDSON COUNTY STORAGE & TRUCKING
17 Maxwell St.,
Jersey City, N. J.

Copy to shipper,
Jefferson Macaroni Co.
Reynoldsville, Pa.

(PENNSYLVANIA RAILROAD
Claim No. M-785680)

State of Case Agreed Upon

EXHIBIT P-4.

A.F.&P.R. 17 Receipt 2-24

DUPLICATE DELIVERY RECEIPT

Hoboken City N. J. Station 5/25/28

Consignee—Dom Sparvieri 178 Grand St Hoboken N. J. Freight Bill No. A 2897

Destination_____

Route—PRR K JCT DLW (Point or origin to destination).

Received from THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

Way bill from Reynoldsville Pa.

Way bill date and No. 5/17 57 X.

Full name of shipper—Jefferson Macaroni Co.

Car initials and No.—DL 28062 CT.

Point and date of shipment—_____

Connecting line reference—_____

Previous way bill references—_____

Original car initials and No.—PRR 516740.

Number of packages, articles and marks—200 Bxs macaroni.

Weight—4800.

Kind of weight—_____

Rate—37½.

Freight—18 00

Advances—Coll

Total—_____

COPY

Hob 7110

15 Bxs. Broken Gross Weight 355 lbs.

G. G Haring Agt

5/31/28 per A C

Hudson 5/31/28 200 10:30 a. m. Granjean

Received—Howard Fitz Henry, Consignee.

Truck No.—___Delivered, Time—___M. Date_____

192___ Delivery Clerk

Receipt must be signed on delivery of freight.

Sign name in full, (initials will not do) (Over)

State of Case Agreed Upon

EXHIBIT P-5.

DOMINICK SPARVIERI.
PURE
FOOD PRODUCTS,
78 Grand Street,

Hoboken, N. J., May 29, 1928.

Jefferson Macaroni Co.
Reynoldsville, Pa.

Gentlemen,

Your last shipment macaroni arrived on May 29 ins., and were in very bad condition on Railroad, and I refuse same. I was willing to accept the good cases only, but they refused.

I would like you to repeat the same order at once.

Yours Very Truly,

(Signed) D. Sparvieri.

(PENNSYLVANIA RAILROAD
CLAIM No. M-785680)
(DL&W RR Co.
CLAIM No. G-290246
FREIGHT CLAIM

State of Case Agreed Upon

EXHIBIT P-6.

DOMINICK SPARVIERI.
PURE
FOOD PRODUCTS,
78 Grand Street,

Hoboken, N. J., June 2nd, 1928.

Jefferson Macaroni Co. Inc.
Reynoldsville Pa.

Gentlemen,

Please refer to my letter of May 29th, relative to on order for 200 Cases of Macaroni.

Kindly be advised that, this merchandise arrived at the Railroad Station in a very bad condition, and I was willing to accept, the good cases only.

The agent at the Station advised that this could not be done and that I should take them all.

Upon these circumstances I refused the entire order, and not as the Railroad authorities write on these Claim Sheet, that this merchandise was not claimed.

I am attaching hereto the claim sheet of the Railroad Company and that you take this matter into your hands.

Very Truly Yours

(Signed) D. Sparvieri.

(PENNSYLVANIA RAILROAD
CLAIM NO. M-785680)

State of Case Agreed Upon

EXHIBIT P-7.

THE PENNSYLVANIA RAILROAD,
TRAFFIC DEPARTMENT.

PHILADELPHIA
June 25, 1928.

Claim M-785680 Jefferson Macaroni Co. $250.00
Jefferson Macaroni Co.,
General Delivery,
Reynoldsville Pa.

Gentlemen:

Referring to your claim dated June 6, 1928, as above recorded, touching a shipment of 200 boxes macaroni consigned by you May 17, 1928 to Dominick Sparvieri, Hoboken, N. J., permit me to state our investigation discloses the shipment was delivered to the consignee on June 5, 1928, as evidenced by the copy of delivery receipt hereto attached. As we understand the matter, the entire shipment of 200 boxes macaroni was delivered at destination and while it appears that nine boxes checked broken as evidenced by the notation on the attached copy of delivery receipt, gross weight thereof 215 pounds, we have been advised that the damaged boxes were also delivered to consignee. In the light of such circumstances, I regret, we have been unable to confirm the amount of your claim as presented.

However, if you will forward to us a corrected bill amended to the proper basis, favoring the carriers with proper salvage allowance, we will take pleasure in according the matter further consideration. In forwarding to us such document, please show in detail the manner in which the

amount has been determined and also include any additional documentary evidence in your possession. Please give reference in your transmittal to our claim number as above recorded.

Yours truly,

(Signed) H. J. Freeman,
Freight Claim Agent.

JWC MW

EXHIBIT P-8.

6/26/28

H. J. Freeman,
Freight Claim Agt.
Penna. Railroad Co.

Claim M-785680

Philadelphia, Pa.

Dear Sir:—

We are returning herewith duplicate delivery receipt covering shipment of 200 boxes macaroni to Dominick Sparvieri, 78 Grand St., Hoboken, N. J.

You will note this shipment was made on June 5th and delivery was made on June 15th, while the shipment covered by our claim was made on May 17th and was for the same number of boxes.

When the consignee did not get delivery of the shipment of May 17th, he requested us to make a duplicate shipment which we did on June 5th.

We would kindly ask you to verify the above and if you find correct let us have a settlement of the claim at your earliest convenience.

Yours very truly,

Jefferson Macaroni Co.

State of Case Agreed Upon

EXHIBIT P-9.

DOMINICK SPARVIERI,
Pure Food Products,
78 Grand Street,

Hoboken, N. J., September 19, 1928

Jefferson Macaroni Co.
Reynoldsville, Pa.

Gentlemen,

Including you will find a letter received from Hudson County Storage and Trucking Co. regarding the 200 Cases of macaroni refuse from me to the D. L. & W. R. R. Co. on end of May.

Please give instruction for what to do,

Very Truly Yours,

(Signed) D. SPARVIERI.

(PENNSYLVANIA RAILROAD
CLAIM No. M-785680)

State of Case Agreed Upon

EXHIBIT P-10.

THE PENNSYLVANIA RAILROAD.
Traffic Department.

Philadelphia
October 9, 1928.

Claim M-785680
Jefferson Macaroni Co.

$250.00

Jefferson Macaroni Co.,
General Delivery
Reynoldsville, Pa.

Gentlemen:—

Referring to your letter June 26th, 1928, in connection with your claim as above recorded, permit me to state our investigation now reveals that the shipment of May 17, arrived at destination and consignee was properly notified. The property remaining on hand undelivered at the expiration of the free time period, it was placed in public storage at owner's risk and expense, as evidenced by the copy of delivery receipt hereto attached. In this connection, we find you were duly advised at such time. In this connection, we do not find that this shipment was refused by consignee account damage, the carriers receiving no advice from him whatever to this effect.

As all due diligence was observed by the carriers in the handling of the property, I regret that we are unable to assume any responsibility in the premises and claim is respectfully disallowed.

In this connection, however, in a desire to assist you in the matter, we will be very glad to forward

to the storage company any orders you may desire to give for disposition of the property.

Yours truly,

HLK:CD

(Signed) H. J. FREEMAN,
Freight Claim Agent.

EXHIBIT P-11.

9/20/28

Mr. H. J. Freeman,
Freight Claim Agt.
P. R. R. Co.

Philadelphia, Pa.

Dear Sir: Claim M-785680. Amount $250.

Will you kindly let us know what is holding up the above claim.

We are anxious to get the matter closed up and would greatly appreciate a prompt settlement of same.

Yours very truly,

JEFFERSON MACARONI CO.

State of Case Agreed Upon

EXHIBIT P-12.

10/29/28

Claim M-785680

Jefferson Macaroni Co.

$250.00

H. J. Freeman,
Freight Claim Agt.
Philadelphia, Pa.

Dear Sir:—

Enclosed find an affidavit by the consignee in support of the above claim.

We must insist on proper consideration being given this claim.

The consignee offered to accept the part of this shipment that was in good order abd the agent refused to let him have it, therefore this shipment should never have gone to storage.

Will you kindly go into this matter thoroughly and advise us the results as soon as possible.

Yours very truly,

JEFFERSON MACARONI CO.

State of Case Agreed Upon

EXHIBIT P-13.

THE PENNSYLVANIA RAILROAD,
TRAFFIC DEPARTMENT.

PHILADELPHIA
Nov. 30, 1928.

Claim M-785680 Jefferson Macaroni Co., Inc.
$250.00

Jefferson Macaroni Co. Inc.
Reynoldsville, Pa.

Gentlemen:

Referring to your letter Oct. 29, 1928, and returning the documents submitted in support of your claim as above recorded, permit me to state we have again taken this matter up with agent at destination, but I regret that we are unable to confirm consignee's contention that this shipment was refused account of damage and am very sorry indeed that in the absence of any negligence on the part of the carriers, in the handling of this shipment, we are not placed in a position to give favorable consideration to the claim.

In this connection, I would respectfully direct your attention to the fact that the shipment is still in storage at owner's risk and expense.

Yours truly,

(Signed) H. J. Freeman,
Freight Claim Agent

hlk/nm

EXHIBIT P-14.

12/26/28

Mr. T. G. Haring,
D. L. & W. Freight Agt.
Hoboken City, N. J.

Dear Sir:–

Our Mr. Ross was in your office a few days ago relative a shipment of macaroni consisting of 200 boxes which were placed in storage; the shipment was consigned to Dom. Sparvieri, 78 Grand St. Hoboken, N. J. your waybill No 57-shipment was made from Reynoldsville, Pa. on 5/17/28 and arrived at your station 5/26/28.

This shipment arrived in a damaged condition and Mr. Sparvieri reported that he called for the goods and offered to accept the part of the shipment that was not damaged and upon being informed that he would have to accept all the shipment or none he refused it.

Mr. Ross reports that in conversation with you and Mr. Allen that you confirmed Mr. Sparvieri's statement of the transaction.

Will you kindly let us know if this report is correct and also give us any further information you may have, in order that we determine what disposition to make of the matter.

Thanking you in advance for this favor, we are

Yours very truly,

Jefferson Macaroni Co.

(Pennsylvania Railroad
Claim No. M-785680)

EXHIBIT P-15.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

Hoboken City, N. J.—Dec. 28th, 1928.
File GJA-68575

Jefferson Macaroni Co.,
Reynoldsville, Pa.

Gentlemen:—

Acknowledging receipt of your letter of Dec. 26th which has reference to a shipment of 200 boxes of macaroni consigned to Dom. Sparvieri, Hoboken, N. J., which shipment is covered by Reynoldsville, Pa. waybill 57 of May 17th.

Your Mr. Ross called at our Office several days ago and requested full information regarding the handling of this particular shipment, at which time Mr. Austin, Chief Claim Clerk and myself advised Mr. Ross that we had no record of the consignee having refused to accept this shipment, nor of making a proposition to him that he would accept the part of shipment that was not damaged. Although the consignee had received proper notice of arrival by U. S. Mail previous to placing shipment in storage, we endeavored to communicate with him by 'phone, advising what action we intended to take, and in his absence this information was imparted to his wife, and I believe the shipment is still in storage.

Mr. Ross' statement is in error if he has advised you that we confirmed Mr. Sparvieri's statement that we would refuse to deliver part of the shipment. At the time of his visit to the Office I

did advise Mr. Ross that from a legal standpoint if any shipment was received by Carrier at destination in a damaged condition, that under the law the consignee was obligated to take the entire shipment and file a claim for the actual loss that he sustained, and I made it very plain to Mr. Ross that this statement did not apply to this particular transaction.

Trusting that this information will be acceptable to you, I beg to remain

Yours truly,

(Signed) T. G. Haring,
Freight Agent

TGH:AMB
(Pennsylvania Railroad
Claim No. M-785680)

EXHIBIT P-16.

12/31/28

Mr. T. G. Haring, Freight Agt.,
D. L. & W. R. R.
Hoboken City, N. J.

File GJA—68575

Dear Sir:

We are in receipt of your letter of the 28th regarding shipment of 200 boxes macaroni consigned to Dominick Sparvieri covered by Reynoldsville, Pa., waybill 57 of May 17th.

We notice what you say regarding what your records show and also we have a copy of the

record but Mr. Sparvieri contends that he called for the shipment and found it damaged, that upon refusal to give him the part of the shipment not damaged he refused the shipment, this he supports by affidavit of both himself and his driver—also he does not deny your calling him on the phone and giving him notice but states as above that the shipment was refused on account of damage.

The fact that Mr. Sparvieri wired us immediately that he had refused the shipment on account of damage and requested us to duplicate the order would lead us to believe that he is correct in his contention.

Will you kindly take the matter up with who ever handled this matter with him and we are sure he will recall the circumstances, then let us know the result of your investigation.

This shipment should have been marked refused on account of damage, instead of unclaimed.

Yours very truly,

JEFFERSON MACARONI CO.

(PENNSYLVANIA RAILROAD
CLAIM No. M-785680)

State of Case Agreed Upon

EXHIBIT P-17.

Hoboken City, N. J., January 14, 1929.

File—GJA 68575.

Jefferson Macaroni Company,
Reynoldsville, Pa.

Gentlemen:

Acknowledging receipt of your letter of December 31st in reference to shipment of 200 boxes of macaroni consigned Dom. Sparvieri—Mr. Sparvieri called at this office on Thursday, January 10th, and, from his conversation, I learned that he did not pick up the original freight bill nor pay freight charges covering this shipment, and that he called at the station and examined the shipment while on platform and stated that he found several boxes that were damaged. It is quite evident that he did not render the necessary report to this office that he had refused shipment.

The proper procedure for picking up freight at any freight station is for the consignee to call at the Cashier's office, pay the freight charges and then request delivery. It is also evident that he never did call at the office, inasmuch as the original delivery receipt is on file and freight charges were paid only by the Storage Warehouse Company.

It appeals to me that, other than to the actual damage to the property, this question should be adjusted as between you and Mr. Sparvieri.

Yours truly,

Lackawanna Railroad,
(Signed) T. G. Haring,
Freight Agent.

TGH:LM
(Pennsylvania Railroad
Claim No. M-785680)

State of Case Agreed Upon

EXHIBIT P-18.

DOMINICK SPARVIERI.
PURE
FOOD PRODUCTS,
78 Grand Street,

Hoboken, N. J., January 19th, 1929.

Jefferson Macaroni Co., Inc.
Reynoldsville, Pa.

Attention of Mr. E. W. Henter.

Dear Sir:

In reply to your letter of January 17th relative to the 200 cases of mararoni that were refused on account of being damaged.

Please be advised that I called at their office and spoke to one of their agents, not Mr. Haring, telling him that I would accept the cases that were not damaged in the shipment and he refused me this request.

Trusting that this information is sufficient for your purposes I remain,

Yours very truly,

DS/RJD (Signed) D. SPARVIERI.
(PENNSYLVANIA RAILROAD
CLAIM No. M-785680)

A judgment was rendered for the plaintiff in the sum of $250.00, and the parties hereto submit the foregoing as the state of the case for appeal.

PIERSON, SCHROEDER & BRAND,
Attorneys for Plaintiff-Appellee.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant.

New Jersey Court of Errors and Appeals

JEFFERSON MACARONI COMPANY, a corporation,
Plaintiff-Respondent,

vs.

PENNSYLVANIA RAILROAD COMPANY, a corporation,
Defendant-Appellant.

BRIEF FOR THE DEFENDANT-APPELLANT.

Statement of the Case.

On May 17th, 1928, at Reynoldsville, Pennsylvania, plaintiff delivered to defendant, a common carrier, 200 boxes of macaroni of the value of $250.00 for transportation to Hoboken, New Jersey, consigned to Dominick Sparvieri. Defendant on receipt of said shipment, issued to plaintiff a uniform straight bill of lading covering said shipment, and thereafter, in the regular course of transportation, delivered said shipment to the Delaware, Lackawanna & Western Railroad as connecting carrier for delivery at destination. Upon the arrival of the shipment of macaroni at Hoboken, the consignee was duly notified and called at the Freight Office of the Delaware, Lackawanna & Western Railroad to receive the shipment. Upon examination, the consignee noted that 18 boxes of the 200 boxes were damaged. On this account the consignee refused to accept the

shipment and pay the freight charges due thereon, but made an offer to the Freight Agent to take the 182 boxes of macaroni that were not damaged, and to pay the proportional freight charges on said undamaged portion only. The Agent advised that the shipment would either have to be accepted or refused, and that he could not permit a proportional acceptance of the shipment without payment of the full freight charges. He accordingly refused to deliver the 182 undamaged boxes unless the whole shipment was accepted and full freight charges paid thereon. This, the consignee refused to do.

Thereafter, on May 31st, 1928, the goods not having been removed by the consignee or the party entitled to receive them, they were placed in public storage under the provisions of the bill of lading covering the shipment, Section 4a (State of Case, p. 23). On that same day plaintiff was notified of such action and advised to arrange direct with the warehouse for disposition of the property (Ex. P-2, pp. 29, 30, 31).

More than three months later, on September 18th, 1928, not having received instructions, the storage company notified plaintiff that if the charges were not paid or the goods removed by the 25th of that month, they would be sold to satisfy charges (Ex. P-3, pp. 31-32).

Finally, but not until October 19th, 1928, plaintiff not yet having removed the macaroni from the storage company, it was sold at public auction for $100.00 to satisfy storage and freight charges of $100.56.

Plaintiff thereafter brought suit against the defendant in the Hoboken District Court, on con-

tract, for the loss of the entire shipment of 200 boxes. The case was submitted to the Court on an agreed statement of facts together with certain exhibits. A judgment without opinion for $250.00 damages was rendered in favor of the plaintiff and against the defendant. Defendant appealed from said judgment to the New Jersey Supreme Court where the judgment was affirmed (State of Case, p. B). Thereupon the present appeal to this Court was taken.

Questions Involved.

1. Should not the consignee or shipper have accepted the damaged interstate shipment and made claim for its loss?

2. Was not the Railroad Company obliged under the Interstate Commerce acts to demand full payment of the freight without rebate?

3. Should not judgment be directed to be entered in favor of the appellant?

4. Should not judgment at most be limited to the agreed value of the damaged portion of the shipment?

Grounds of Appeal.

Defendant-appellant relies upon the Grounds of Appeal included in the Notice of Appeal (State of Case, page A) to wit: the Supreme Court, in rendering said Judgment, erred in giving judgment for the plaintiff-respondent, instead of for the defendant-appellant.

Lindley v. Brown & Co.
93 N.J. Law 469

ARGUMENT.

I.

The measure of damages at most should have been limited to the agreed value of the 18 damaged boxes.

If the case made out by the plaintiff as submitted to the Court on the Agreed Statement of Facts was sufficient to charge defendant with liability for the damage to the 18 boxes, then it is urged that plaintiff's damage should at most have been limited to the value of said 18 boxes and it was error to give judgment in favor of the plaintiff for $250.00, which was the total value of the shipment, when only 18 out of 200 boxes constituting the entire shipment, were damaged.

The general rule is that where goods entrusted to a carrier for shipment are injured through causes for which the carrier is responsible, the owner of the goods is entitled to recover the difference between the value of the goods at the time and place of delivery in an uninjured condition, and their value in the depreciated condition in which they were delivered, less the freight charges to the point of destination if they have not already been paid.

New York, etc. R. Co. v. *Estill,* 147 U. S. 591; 34 L. ed. 292;
Higgins v. *U. S. Express Co.,* 83 N. J. L. 398;
10 Corpus Juris 396, Sec. 606;
Railway Co. v. *Arnett,* 126 Fed. 75;
Hutchinson "Carriers", Sec. 1362.

It is not in dispute that only 18 boxes out of 200 comprising the shipment were damaged. Further, it is stipulated that the value of the 200 boxes is $250. (State of Case, p. 14). Allowing to plaintiff the full value of the damaged boxes would not entitle it to more than $22.50 by simple calculation; nor does this take into consideration the duty of the plaintiff to minimize the ultimate damage by disposing of the injured goods for the best price obtainable.

10 Corpus Juris 402.

II.

After notice of consignee's refusal to accept the goods, plaintiff was not justified in abandoning them and suing for their full value.

It was the duty of the consignee to accept the damaged shipment, pay the freight according to the tariff, and present his claim, minimize the damage by sale of the merchandise at the best reasonable price, and the shipper upon notice of consignee's refusal to so accept, is under a like duty, and should give shipping directions accordingly.

Higgins v. *U. S. Express Co.*, 83 N. J. L. 398;

Block v. *U. S. Express Co.*, 75 N. J. L. 455;

N. Hampshire Wholesale Fruit Co. v. *Payne*, 80 N. H. 540; 120 Atl. 78;

10 Corpus Juris 404, Sec. 622, Carriers;

Parsons v. *U. S. Express Co.*, 123 N. W. 776; 25 L. R. A. (U. S.) 842, and note;
Shaw v. *South Carolina R. Co.*, 5 Rich. L. 462, 57 Am. Dec. 768;
Hutchinson's "Carriers", Sections 1365, 1372.

The case above cited (*Higgins* v. *U. S. Express Co.*) involved unreasonable delay rather than injury, but, as it is said in *McGrath* v. *Charleston, etc., R. Co.*, 91 S. C. 552:

> "Indeed, on the point under discussion it is impossible * * * to distinguish in principle between damage due to delay and damage due to impairment of value by physical injury to the goods. Neither the actual injury nor the delay in transportation amounts to conversion as long as the goods retain a substantial value."

In this later case the principle was further expounded by the Court in the following language:

> "A carrier having goods in possession for transportation acquires no title to them as the goods remain the property of the owner. His right of action against the carrier is for the entire value of the goods if lost or made *entirely* worthless by the carrier's default. On the other hand, if the value is merely *impaired* by actual injury in the hands of the carrier, or by delay in the carrier, the consignee is bound to receive the goods, and his right of action is limited to the impairment of value due to delay in carriage or injury to the goods."

In the *Higgins* case, Justice MINTURN, speaking for the Supreme Court said:

> "The measure of damages, therefore, under such a status, is not the *value* of the goods, since the bailor still retains his ownership, but the loss proximately caused by the delay" Citing—Scovill vs. Griffith, 12 N. Y. 509; Fox vs. Railroad Co., 148 Mass. 220; "The Caladonia", 157 U. S. 124.

Hutchinson on Carriers, Section 1365, succinctly reiterates it thus:

> "As a general rule, the doctrine that where goods are injured the owner may abandon them as for a total loss and sue for their value does not apply to contracts of affreightment. The fact, therefore, that the goods are injured upon the journey, through causes for which the carrier is responsible, does not of itself justify the consignee in refusing to receive them, but he must accept them and hold the carrier responsible for the injury."

III.

The carrier was not bound to release any portion of the goods until the entire amount of its freight charges was tendered or paid.

Although there was no opinion rendered by the District Court Judge and the demand was on contract, it would seem that the decision must have proceeded upon the theory of a conversion by the carrier of the entire shipment, including the undamaged boxes, and the loss of the shipment resulting proximately therefrom. To justify such a finding, it must be made apparent that the carrier wrongfully exerted an act of dominion over the goods of the plaintiff or the person legally

entitled to receive them, in denial of or inconsistent with its right therein. Because of the damage to 18 boxes, the consignee refused to accept and pay the legal freight charges on the shipment consigned to him. The consignee offered, however, to accept and receive 182 boxes that were undamaged and pay the proportional freight charges thereon. It is submitted that the refusal of such an offer was legally justified. Contained in the bill of lading issued to plaintiff is this provision:

> "* * * No carrier by railroad ~~should~~ shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid." (Bill of Lading, Ex. P. I, Sec. 7, p. 26).

The case of *St. Louis A. & T. R. Co.,* v. *Johnson,* 13 South West. 1096, was a suit to recover a penalty for failure to deliver freight upon tender of charges. It covered a shipment of four wagons shipped in parts as one consignment of freight, the bill of lading calling for the list of articles which went to make up the four wagons, one of which arrived in a damaged condition. The consignee refused to receive the damaged wagon or to pay the proportion of the freight charges due on said damaged wagon, but demanded the other three and tendered three-fourths of the amount of freight due under the bill of lading, which offer the railroad declined. It was held that the

facts did not sustain a recovery and a judgment against the carrier was reversed. In passing on the offer of qualified acceptance the Court said:

> "Four wagons were billed and charged for as one shipment of freight, and they were offered for delivery at their destination; one was in a damaged condition, and the injury may have occurred through the fault of the carrier. But it was still of value as a wagon, and was capable of being made a whole at a trifling expense. The merchant had no right therefore to abandon it to the carrier and hold the latter liable as for conversion. In such a case the owner of the property has his action for damages for the injury."

The soundness of the rule that the carrier has a lien for its freight charges cannot be disputed. *Wabash R. Co.* v. *Pearce,* 192 U. S. 197; 48 L. ed. 397, and *Hartshore* v. *Johnson,* 7 N. J. L. 108. The rule is stated precisely in Hutchinson on Carriers, Volume 2, Section 870.

> "In other words, the whole amount of the freight is a lien upon all and every part of the goods, where they are capable of separation and of being separately delivered; and if a part of them have been delivered the carrier may retain the balance until his entire freight has been paid and the owner can not insist that the lien shall be apportioned according to the quantity still retained by the carrier."

IV.

The shipment being refused, the carrier acted strictly in conformance with the provisions of the bill of lading.

Plaintiff's State of Demand indicates its action is predicated on contract. It is conceded that if the defendant has been in default in any of the terms or conditions of its contract (evidenced by the bill of lading) respecting the handling of the goods after their arrival at destination and the ultimate loss of the shipment resulted proximately therefrom, there might possibly be a theory of liability for the entire shipment, but the agreed statement of facts and the evidence is nowhere even suggestive of such a default.

The shipment being refused by the consignee and the free time having elapsed the goods were removed to a warehouse pursuant to Section 4 (a) of the bill of lading. Section 4 (a) provides:

> "Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination * * * has been given and after placement has the property for delivery at destination has been made, * * * at the option of the carrier, may be removed to and stored in

> a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges including a reasonable charge for storage."

The shipment being an inter-state shipment, the provisions of the Bill of Lading, whether issued and accepted or not, are binding alike upon consignee, shipper and carrier, and undeniable.

> *Interstate Watch Co.* v. *D., L. & W.*, 80 N. J. Law 553; aff. 82 N. J. Law 528 and cases cited *infra.*

Plaintiff's conduct in neglecting to claim its goods after notification of their removal to storage amounts to a virtual abandonment of them.

It is not disputed that plaintiff was duly notified the very same day the goods were placed in storage (Ex. P. 2, at p. 33). Thereafter plaintiff made no effort to remove the goods or arrange for their disposition. It is noteworthy that the shipment was not sold until four months after they were placed in storage. Storage company notified plaintiff goods would be sold to pay charges if not removed. (Ex. P. 3).

It is submitted that the plaintiff's own negligence in failing to remove its property was the proximate cause of its loss.

V.

The carrier was bound by the Interstate Commerce Act and the filed tariffs, and the latter being unalterable, the refusal to waive any part of the freight charges was without alternative.

Irrespective of any principle or rule of law which may have impelled the Trial Court to find that the carrier was not justified in requiring the payment of the full amount of the freight charges on the shipment as a whole, the carriage being interstate in character, such charges as accrued were governed exclusively by the Interstate Commerce Act, 49 U. S. C. A., (United States Code Annotated) Sections 1-41, and the tariffs filed with the Interstate Commerce Commission in pursuance thereof.

Adams Express Co. v. *Croninger,* 226 U. S. 491; 56 L. ed. 315;
Boston & Maine v. *Hooker,* 233 U. S. 97; 58 L. Ed. 868 L. R. A. 1916, B. 450; 34 Sup. Ct. 526;
Louisville & Nashville v. *Maxwell,* 237 U. S. 94; 59 L. Ed. 494;
Spada v. *Pennsylvania R. R.,* 86 N. J. L. 187;
International Watch Co. v. *D., L. & W. R. R.,* 80 N. J. Law 553; aff. 82 N. J. Law 528;
Wanaque Lumber Co. v. *Erie R. R.,* 75 N. J. L. 878.

It is at once apparent that in sanctioning such informal adjustments between carrier and consignee, or carrier and shipper, as the case may be,

the door would be opened wide to the very evils which the promulgation of the Interstate Commerce Act sought to eradicate. It is conceded that there have been isolated decisions in which either set-off or recoupment against freight charges have been allowed, in actions against the carrier for injury to the goods shipped; but the weight of authority is decidedly to the contrary.

Chicago & N. W. Ry. Co. v. *Stein Co.*, 233 F. 716;
Ill. Cent. R. Co. v. *Hoopes*, 233 F. 135;
Pennsylvania R. Co. v. *South Carolina Ass'n*, 25 F. (2d) 315.

If, as it is seen, the policy of the Courts has been to disfavor methods of balancing accounts between shipper and carrier or consignee, even where such dealings have had the protection of being done publicly in open court as a matter of record, much more so should be condemned such a theory advanced by the plaintiff in the instant case.

The sections of the Interstate Commerce Act (49 U. S. C. A.) applicable to the question involved, are as follows:

Sec. 2. "SPECIAL RATES AND REBATES PROHIBITED. If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him

or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

Sec. 3, Par. (2) "PAYMENT OF FREIGHT AS PREREQUISITE TO DELIVERY. No carrier by railroad subject to the provisions of this chapter shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination."

Sec. 6, Par. (7) "TRANSPORTATION WITHOUT FILING AND PUBLISHING RATES FORBIDDEN; REBATES; PRIVILEGES. No carrier, unless otherwise provided by this chapter, shall engage or participate in the transportation of passengers or property, as defined in this chapter, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any ship-

> per or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

The facts set forth appearing in evidence on the trial in the District Court, it was incumbent on that Court to find in favor of defendant. The freight rate accrued automatically and the Court, under the law applicable, had no choice but to so find. The statute is inexorable. No other sustainable course was open. The tariff rule applied *ex propria vigore.*

Sec. 6 of the Interstate Commerce Act *supra,* provides for the preparing and filing of tariffs of rates and charges, and when filed, directs that the carrier shall not deviate therefrom, nor refund or remit in any manner or by any device any portion of the rates, fares and charges so specified.

Once the tariffs and regulations are thus filed with the Interstate Commerce Commission they become as fixed and unalterable as the laws of the Medes and Persians and neither shipper nor carrier can deviate therefrom in any particular, so long as the Interstate Commerce Commission shall not declare them to be unreasonable. Indeed, they become part of the statute itself.

> *Poor Grain Co.* v. *C. B. & Q. Ry.,* 12 I. C. C. 418.

The rule is summarized in the case of *Louisville & Nashville Railroad Co.* v. *Maxwell,* 237 U. S. 94, 35 Sup. Ct. 494, 59 L. Ed. 853, L. R. A. 915 E, 665, as follows:

> "Under the Interstate Commerce Act, the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers

> are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is undeniably strict, and it obviously may work hardship in some cases; but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination."

In *Armour* v. *U. S.*, 209 U. S. 56, 83; 52 L. Ed. 681; 28 Sup. Ct. Rep. 438, the U. S. Supreme Court said:

> "The tariff, so long as it was of force, was, in this respect, to be treated as though it had been a statute, binding as such upon railroad and shipper alike. If, as a fact, the rates were unreasonable, the shipper was nevertheless bound to pay, and the carrier to retain what had been paid, leaving, however, to the former the right to apply to the Commission for reparation."

And again, in *P. R. R.* v. *International Coal Mining Co.*, 230 U. S. 184; 57 L. Ed. 1446; 33 Sup. Ct. Rep. 893, the Supreme Court said:

> "*The statute required the carrier to abide absolutely by the tariff. It did not permit the company to decide that it had charged too much and then make a corresponding rebate;* nor could it claim that it had charged too little and insist upon a larger sum being paid by the shipper."

Boston & Maine R. R. v. *Hooker*, 233 U. S. 97; *supra.*

The great purposes of the act to regulate commerce were to prevent unjust and unreasonable rates, to secure equality of rates to all and to destroy favoritism.

N. Y. & H. R. R. Co. v. *I. C. C.*, 200 U. S. 361, at p. 391.

As was said in the case last cited by Mr. Justice WHITE, ~~the present~~ later Chief-Justice:

> "In view of the positive command of the second section of the Act, that no departure from the published rate shall be made, 'directly or indirectly' how can it in reason be held that a carrier may take itself from out the statute in every case by simply electing to be a dealer and transport a commodity in that character? For, of course, if a carrier has a right to disregard the published rates by resorting to a particular form of dealing, it must follow that there is no obligation on the part of a carrier to adhere to the rates, because doing so is merely voluntary. The all embracing prohibition against either directly or indirectly charging less than the published rates shows that the purpose of the statute was to make the prohibition applicable to every method of dealing by a carrier by which the forbidden result could be brought about. If the public purpose which the statute was intended to accomplish be borne in mind, its meaning becomes, if possible, clearer. What was that purpose? It was to compel the carrier, as a public agent, to give equal treatment to all."
>
> "The rates were fixed by the tariff filed and could not be departed from. The law did not intend that the railroad and shipper could alter these charges, because that would do

> away altogether with the purpose sought by the act. It was known by the Steel Company what the charges were, and the law was violated by reducing those charges by the settlement between the railroads and the Steel Company, thus allowing the carrier and the shipper to determine in each case whether the tariff should be observed or not."

Geraty v. *Atlantic Coast Line,* 211 Fed. 10, p. 227. Not only are shipper and carrier prohibited from in any way nullifying or disregarding the tariff provisions but courts and juries are likewise bound by the regulations when once filed with the Interstate Commerce Commission.

Otherwise, the invariableness of the law, which is the pole star in its administration, would be left to the possible variance of a jury's finding or a court's ruling. The whole object and purpose of the act would thus be set at naught.

In *Texas* v. *Mugg,* 202 U. S., p. 242, 50 L. Ed., p. 1011, the U. S. Supreme Court said:

> "The carrier's lien on the goods is by force of the Act of Congress for the amount fixed by a public schedule of rates and charges, and this lien, can be discharged and *the consignee can become entitled to the goods only by the payment or tender of payment of such amount.* Such is now the Supreme Law, and by it, this and the Courts of all other States are bound."

And again in *Kansas Southern Ry.* v. *Carl,* 227 U. S. 629, the same Court said:

> "The shipper's knowledge of the lawful rate is conclusively presumed, *and the car-*

rier may not be required to surrender the goods carried upon the payment of the rate paid, if that was less than the lawful rate, until the full legal rate has been paid."

Boston & Maine R. R. v. *Hooker,* 233 U. S. 97, *supra.*

An express company is bound to collect the rate on an interstate shipment fixed by the tariffs and rules filed with the Interstate Commerce Commission regardless of any agreement to the contrary between the parties.

Wilson v. *American Railway Express Co.,* 197 New York State, 606.

An express company cannot estop itself from collecting the established tariff rate filed with the Commission by any statement made by its local agent, *Id.*

No device to defeat the enactment of Congress with regard to discriminatory freight rates can be upheld. *State Line* v. *Lehigh Valley R. Co.,* 120 Atl. (Pa.) 829.

A carrier is charged by law with collecting the freight charges contained in its tariffs filed with and, approved by, the Interstate Commerce Commission, and any agreement by it to vary therefrom is void. *Lexington Express and Oil Mill Co.* v. *Yazoo, etc.,* 131 Miss. 49, 95 S. 92.

The Supreme Court erred in affirming the judgment of the District Court and we contend the judgment should be reversed with direction to enter judgment for defendant.

VI.

It is respectfully submitted, therefore, that the judgment of the Supreme Court affirming the judgment of the Hoboken District Court, should be reversed, set aside and for nothing holden, and that judgment should be directed to be entered in favor of the defendant and against the plaintiff, or the judgment for plaintiff, at most, limited to the value of the 18 boxes damaged.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for and of Counsel with Defendant-Appellant.

New Jersey Court of Errors and Appeals

JEFFERSON MACARONI COMPANY, a corporation, Plaintiff-Respondent, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, a corporation, Defendant-Appellant.	Action at Law. On Appeal.

BRIEF FOR PLAINTIFF-RESPONDENT.

Statement of Facts.

This is an appeal from a judgment entered in the Supreme Court affirming a judgment of the Hoboken District Court rendered in favor of the plaintiff and against the defendant upon an agreed statement of facts.

On May 17, 1928, at Reynoldsville, Pennsylvania, the plaintiff delivered to defendant, a common carrier, 200 boxes of macaroni, which is a foodstuff of semi-perishable nature and which was of the value of $250.00, to be securely and safely carried from said point of delivery to the City of Hoboken, Hudson County, New Jersey, consigned to Dominick Sparvieri (page 14 of State of Case). The said goods were shipped under a bill of lading delivered by the defendant to the plaintiff at said Reynoldsville, upon the delivery of said goods to the carrier. Said bill of lading recites that the said property was delivered to

the defendant in apparent good order (page 17 of State of Case). The defendant delivered the said goods to the Delaware, Lackawanna & Western Railroad, as a connecting carrier, to be delivered to the said City of Hoboken, the point of destination (page 14 of State of Case). On May 26, 1928, the consignee received notice from the carrier of the arrival of the said goods at their destination and he immediately called at the carrier's freight office ready to receive 200 boxes of macaroni shipped by the plaintiff and to pay the freight charges therefor. Eighteen boxes of the 200 boxes were broken and their contents were either missing or damaged and some of the macaroni from the broken boxes was collected in paper boxes. Because of this fact the consignee refused to accept the said 18 boxes, but offered to take the remaining boxes of macaroni and offered to pay the freight charges on the undamaged boxes which were fit for use. The carrier refused to deliver the undamaged boxes of macaroni unless the freight charges on the entire shipment on 200 boxes were paid, and this the consignee refused to do (page 15 of State of Case). On May 31, 1928, the carrier placed all of the said goods in storage and on the same day, but subsequent to the placing of the goods in storage, the carrier mailed a notice to the plaintiff that the shipment was unclaimed and had, therefore, been placed in storage (page 16 of State of Case). The goods were finally sold at public auction by the Storage Company on October 19, 1928, for the sum of $100 to satisfy storage and freight charges of $100.56.

Questions Involved.

On the agreed statement of facts the only questions before the Court are "until the defendant

carrier was in a position to make delivery in the condition in which the goods was shipped (a) was the carrier entitled to be paid its freight charges, (b) was the consignee or plaintiff under a duty to accept the damaged goods and pay freight charges therefor, (c) was the consignee justified in declining to receive the entire shipment upon the refusal of the defendant Railroad Company to receive freight charges for the undamaged part and to make delivery thereof or to make allowance for the damage?''

POINT I.

Plaintiff was entitled to recover for the full value of the shipment of 200 boxes of macaroni.

In the case at bar it is admitted that the defendant did not tender to the consignee the full shipment of 200 boxes of macaroni in good condition. It is also admitted that the carrier refused to deliver the 182 boxes which were in good condition unless its demand for the full amount of the freight for transporting the 200 boxes was first paid, despite the fact that its inability to deliver the total shipment in good condition was due to its own fault for which it was liable.

Counsel for the defendant-appellant on pages 7-10 of their brief respectively cite a provision in the bill of lading and cite legal precedents for the proposition that the carrier has a lien for the full amount of the freight upon all and every part of the goods and is not required to relinquish its said lien on any part until the full freight charges are paid. We respectfully submit that these authorities refer only to a case where the

carrier is able to tender a complete delivery of the goods, but does not refer to a case where through its own fault it is only able to tender a part of the shipment to the consignee.

In *10 C. J.*, p. 447, Sec. 705, the rule is stated as follows:

> "As the carrier has a lien for its charges, its duty to deliver the possession of the goods at the end of the transportation, and the consignee's duty to pay, are concurrent; but the carrier is not bound to receive freight money for a part of the goods as they are discharged. *Until the carrier is ready to make complete and final delivery of possession to the consignee, it is not entitled to its freight.* The consignee must ordinarily tender the freight before he will be entitled to possession of the goods in the absence of a waiver of this requirement, and even though excessive freight is demanded, the amount due should be tendered, unless the extortionate charge is made under such circumstances as to make it clear that a tender of the lawful charges would be refused, or unless the carrier refuses unequivocally to accept any amount less than that demanded, under which circumstances the shipper is excused from making a formal tender before treating the carrier's refusal to deliver as a conversion, as the law does not require one to do a vain thing." (Italics ours.)

Furthermore, in *10 C. J.*, p. 448, Sec. 706, it is said:

> "As against the carrier's claim for freight, the consignee may offset damages for which the carrier is liable and may recover over for any excess. This right is in no way affected by the provisions of the Hepburn Act which prohibit a common carrier from accepting anything but money in payment of charges for carriage."

In fact the consignee tendered to the carrier for the undamaged goods a greater part of the freight than it was entitled to since he would be entitled to a deduction for the full value of the 18 boxes of macaroni which was greater than a proportionate share of the freight charges for the transportation of the damaged part of the order. The carrier, however, demanded more than it was entitled to since it refused to make any allowance to the consignee for the damaged goods or freight thereon, and by this action it not only violated the terms of the contract embodied in the bill of lading which it issued to the consignor, but also became a converter of the full shipment of the goods and thereby lost its lien. The defendant's right to exercise the privileges granted to it under provision 4-A of the bill of lading can be brought into operation only in a case where the amount of freight which it claims is justly due and owing, and the storage and sale of the goods under any other conditions would constitute the carrier a converter.

Counsel for defendant appellant on page 4 of their brief, cite cases for the proposition that the general rule is that where goods are injured through causes for which the carrier is responsible, the owner of the goods is entitled to recover the difference between the value of the goods at the time and place of delivery in an uninjured condition and their value in the depreciated condition in which they were delivered, *less the freight charges to the point of destination if they have not already been paid.* (Italics ours.)

None of these cases cited stand for this proposition. Even if we assume that they did support the said proposition, the cases are not applicable to the facts of this matter. In *New York, etc. R. Co.* vs. *Estill,* 147 U. S. 591 (cited in Appellant's Brief),

a suit was instituted to recover damages caused by the carrier's negligence in shipping cattle. The cattle were accepted and received by the plaintiffs. In the present case the carrier *refused* to deliver the undamaged 182 boxes and accept payment for the shipment of the said 182 boxes. The consignee was willing to pay the freight charges for shipment of the undamaged boxes.

As was stated before, the only questions before the Court on the agreed statement of facts are "until the carrier was in a position to make delivery in the condition in which the goods were shipped, was the carrier entitled to have its freight charges, was the consignee under a duty to accept the damaged goods and pay freight charges therefor, and was the consignee justified in declining to receive the entire shipment upon the refusal of the carrier to receive freight for the undamaged part and to make delivery thereof or to make allowance for the damage?" The District Court and the Supreme Court answered these questions in favor of the plaintiff and against the defendant appellant.

Points 1, 2, 3, 4 and 5 of the appellant's brief do not touch the aforementioned questions. In fact, all the appellant's points assume that the defendant-appellant was entitled to receive all of the freight charges without regard to the condition of the goods at the time delivery was offered to the consignee. The cases cited under Point 2 of appellant's brief do not apply to the facts of this case. Furthermore, these cases do not support the proposition for which they are cited. *Higgins* vs. *U. S. Express Co.*, 83 N. J. L. 398, and *Block* vs. *U. S. Express Co.*, 75 N. J. L. 455 (cited in Appellant's Brief), obviously do not uphold any such principle as set forth under this point. Not one of the cases here deal with the question whether

or not the consignee was under a duty to pay freight for the delivery of goods damaged due to the carrier's fault. The same is true of cases cited under Points 3, 4 and 5 of the appellant's brief. Referring to Point 5, appellant's brief correctly and accurately indicates that the great purpose of the Interstate Commerce Act to regulate commerce, was to prevent unjust and unreasonable rates and to secure an equality of rates to all and to destroy favoritism (Appellant's Brief, p. 17). On its face, therefore, Point 5 of appellant's brief does not apply when the carrier is *not* entitled to receive freight charges. The question of favoritism is not in issue under the agreed statement of facts.

Throughout its brief, defendant appellant states that the consignee abandoned and refused to accept the shipment. A reading of the agreed statement of facts will correct this impression. The consignee was always ready and willing to accept 182 undamaged boxes and pay the freight charges therefor. The defendant-appellant refused to deliver the undamaged portion of the shipment unless freight charges on the entire shipment were paid. (State of Case, p. 15.)

Conclusion.

The defendant carrier having failed to carry out its contract, as set forth in its bill of lading, to carry the 200 boxes of macaroni safely and securely to their destination, should not be permitted to claim to be entitled to a freight charge for the 18 boxes of macaroni which it did not carry safely and securely, nor should it be entitled to claim any more than the charge for the safe carriage of the 182 boxes less the value of the 18

boxes which were destroyed. The carrier having demanded a sum in excess of that amount, and having even refused to accept from the consignee the freight charge for safely carrying the 182 boxes without any deduction for the value of the 18 boxes destroyed, thereby became a converter and violated its contract to deliver the goods to the consignee, and is for that reason not entitled to claim the protection of Provision 4-A of the bill of lading.

We respectfully submit that the judgment of the Supreme Court affirming the judgment of the Hoboken District Court, should be affirmed with costs.

PIERSON, SCHROEDER & BRAND,
Attorneys for Plaintiff-Respondent.

WILLIAM A. KAUFMANN,
Of Counsel with Plaintiff-Respondent.