District Court of Philadelphia. January, 1856.

JENNESON *vs.* THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY.

1. A nonsuit will not be taken off which has been granted by reason of a discrepancy between the allegations in the narr. and the proof at the trial.
2. *Semble*, That where a carrier receives goods marked for a particular destination, beyond the route for which he professes to carry, and beyond the terminus of his road, he is bound only, in the absence of any special agreement, to transport and deliver such merchandise according to the established usage of the business, and is not liable for losses beyond his own line.
3. Construction of a special bill of lading.

The *narr.* in this case, is in *assumpsit*. It contains several counts, in each of which a contract is stated to have been made by the defendant, with the plaintiff, to carry a chest, containing wearing apparel of the plaintiff, from *Burlington, New Jersey*, to the town of *Camden*, in the State of OHIO.

A witness for the plaintiff proved the delivery, by the plaintiff, to the defendants at Burlington, New Jersey, of the chest in question—of an offer to pay the freight, and that it was declined, the agent of defendants saying it might be settled for at the end of the line.

The following receipt was then given by the defendant's agent to the plaintiff.

CAMDEN AND AMBOY RAILROAD
AND
TRANSPORTATION COMPANY,
FOR THE
Conveyance of Merchandise and Produce of all kinds, To Philadelphia, New York, and intermediate places.

Marks and Numbers.	*Burlington, Feb'y* 3, 1854.
1 chest, marked Matthew Jenneson, Camden, Ohio.	RECEIVED from Matthew Jenneson, 1 chest, marked and numbered as per margin, which we promise to deliver at our office in New York, upon payment of freight therefor, at the rate of 26¼ cents per 100 lbs.
To be shipped for Camden, Ohio, from New York.	J. L. DOBBINS, *For the Company.*

The plaintiff offered this receipt in evidence. The defendants objected that it did not agree with the undertaking averred in the *narr*; that the *narr.* stated that the chest was to be carried from Burlington, New Jersey, where the chest was received, to Camden, in the State of *Ohio;* whereas, by the receipt, it was to be carried merely to New York, the *terminus* of the defendant's line and means of conveyance.

The Court inquired whether it was intended to follow up this receipt with any other evidence showing that it was agreed to carry the chest to *Camden, Ohio*, as laid in the declaration. Plaintiff's counsel said he had no other evidence; that he relied upon the receipt, and called the attention of the court to the words written on the margin of it, "*to be shipped for Camden, Ohio, from New York.*"

Whereupon the receipt was rejected, and there being no other evidence, a *nonsuit* was ordered by the court. The plaintiff now moves to take off the nonsuit.

Mr. *Frederick C. Heyer*, for the motion.
Messrs. *Fish* and *Mallery*, contra.

The opinion of the Court was delivered by

STROUD, J.—The only question is whether this receipt contained an undertaking by the defendants to carry the chest beyond the *terminus* of their line, or rather, beyond the place named in the receipt, the "*office of the defendants, in New York.*"

The language of the receipt is plain and positive—"which we promise to *deliver at our office in New York*, upon payment of freight therefor at the rate of 26¼ cents per 100 lbs." For what purpose the memorandum, "*To be shipped for Camden, Ohio, from New York,*" was made, we are not called upon to determine. We do determine that it did not enlarge the defendant's promise, as set forth in the body of the instrument: that it does not import an agreement by the defendants, that they would transport the chest to *Camden, Ohio*, and *then* deliver it to the plaintiff, which is the

allegation in the declaration. It was admitted by the plaintiff's counsel that the chest was safely carried to New York, that it had been put in the way of transportation to its destination, by delivery to a proper railway transportation company for that purpose, but what became of it afterwards could not be ascertained.

Questions very similar to that which has here arisen, have occurred several times in England, and in some of our sister States. *Muschamp* vs. *The Lancaster and Preston Junction Railway Company*, 8 Mees. & Wels., 421, was the case of a parcel delivered at *Lancaster*, addressed to a place in *Derbyshire*, beyond the line of the Lancaster and Preston Railway. Baron ROLFE, before whom the cause was tried, told the jury, that a carrier who takes into his care a parcel directed to a particular place, and *does not by positive agreement limit his responsibility* to a part only of the distance, undertakes *prima facie* to carry the parcel to its destination, and that the rule was not varied by the fact that that place was beyond the limits within which the carrier professed to carry. This ruling was sanctioned by the court in *banc*.

In a subsequent case, *Watson* vs. *The Ambergate, Nottingham and Boston Railway Company*, 3 Eng. Law & Eq. Reports, 497, the decision in *Muschamp* vs. *The Lancaster, &c.*, was approved.

In this country, the courts have held, that when goods are delivered to a carrier, marked for a particular place, but unaccompanied by any other directions for their transportation and delivery except such as might be inferred from the marks themselves, the carrier is only bound to transport and deliver them according to the established usage of the business in which he is engaged, whether that usage were known to the party from whom they were received or not. *Van Santvoord* vs. *St. John*, 6 Hill, (N. Y.) Rep., 157. *Farmers and Mechanics Bank* vs. *Champlain Trans. Co.*, 18 Verm. R., 140, and 23 ib., 209.

In *Nutting* vs. *Connecticut River R. R. Co.*, 1 Gray, 502, a receipt was given of this description: "Northampton, Mass., received of Ebenezer Nutting, for transportation to New York, 9 boxes, marked," &c. *Two* of these boxes were lost between Springfield, Mass., and New Haven, Conn., being beyond the *terminus* of the defendant's

road. No connection in business was shown to exist between the defendants and the proprietors of the connecting road, nor was pay taken for the transportation beyond Springfield, which was the *terminus* of the defendant's road.

The Supreme Court of Massachusetts held, that the true construction of this contract was, that the goods should be safely carried to the *terminus* of the defendant's road, and there delivered to the carriers on the connecting road, to be forwarded to their proper destination.

This decision was made upon *a case stated*. *Muschamp* vs. *Lancaster and Preston Junction Railway*, 8 M. & W. 421, was cited on behalf of the plaintiff, but the court disapproved of that decision, and held that, to bind a company under the circumstances of this case, the burden was upon the plaintiff to show *a special contract* by the company to carry the goods beyond the terminus of its own railway.

There is another case which was cited on the argument before us, by the counsel of the defendant. In this it was decided by a divided court, that, where a passenger paid the fare to a point several miles beyond the *terminus* of the defendant's railroad, receiving from the conductor of the cars a ticket in this form:

"New Haven and Northampton Company—Conductor's Ticket—New Haven to Collinsville, *by stage* from Farmington,"

that the company was not responsible for any injury sustained by the passenger on the *stage road* between Farmington and Collinsville. The case was tried twice. A new trial was granted after the first trial, on a ground corresponding with that taken in *Nutting* vs. *The Connecticut River Railroad Company*, 1 Gray, 502; but, after the *second* trial, in which the verdict was, as it had been on the *first*, for the plaintiff, the court, in setting aside the *second* verdict, rested its opinion on the ground that the conductor had no authority to bind the company to carry beyond the limits of its railway, because the company itself could not make any such binding contract. *Hood* vs. *N. Y. & N. H. R. R. Co.* 22 Conn. R. 1, 502.

The case before us does not require, in support of the conclu-

sion to which we have come, the adoption of the rulings in any of the cases in our sister States, which have been referred to. The *nonsuit* on the trial was placed distinctly upon the principle that the *evidence* did not support the *declaration;* that the *allegata* and *probata* did not agree. The declaration alleged that the goods were to be carried from *Burlington, New Jersey*, to Camden, *Ohio:* whereas the receipt was express, that they were to be delivered at the Company's office at *New York*, and the charge of freight was to *New York* only, and not beyond.

Motion dismissed.

NOTE.—It is a question of much practical importance whether carriers by railroad who have received merchandise to be taken according to its address to a point beyond the line of the road which receives it, and beyond the point to which their own means of conveyance extends, are liable as common carriers, for losses which occur beyond that point, or are to be considered as having contracted to carry to the end of their own line, and then employing other connecting lines at its termination as fresh agents to complete the carriage. It is quite clear, that a carrier may contract to transport beyond his own line, and may make connecting lines his agent, and thus become responsible to the owners of merchandise for its loss at any period or any place while it is in transit. Story on Bailm. § 558; Shelford on Railw., 486; 3d ed. same book, Am. ed. Judge Bennett's notes; Hodges on Railw., 614, 615, notes 2d ed.; Smith's Mer. Law, 367, 3d ed. notes by Am. eds.; *Fowles* vs. *The Great Western Railw. Co.*, 7 Ex. 698; *Weed* vs. *The Sar. & Schen. R. R.*, 19 Wend. 334; *Muschamp* vs. *The Lancaster, &c.*, 8 M. & W. 421, 2 Eng. Railway Cases, 444; *Watson* vs. *The Ambergate, &c.*, 3 Eng. Law & Eq. R., 497; *Noyes* vs. *The Rutland Railway Co.*, supra 231, per Redfield, Ch. J.; *Van Santvoord* vs. *St. John*, 25 Wend. 669; 6 Hill, 157, S. C.; *Farmers & Mechanics Bank* vs. *Champlain Trans. Co.*, 18 Verm. 140, and 23 Verm. 209; *Erne* vs. *New York & Erie R. R.*, in New York Marine Court before Phillips J., MS.; *Ackley* vs. *Kellog*, 8 Cow. 223; *Hood* vs. *New York and New Haven R. R. Co.*, 22 Conn. 1, 14, 15, 508–512; Edwards on Bailm. 528; *Scotthorn* vs. *The South Staffordshire Railw. Co.*, 8 Exch. 341, 18 Eng. L. & Eq. R., 553; *Crouch* vs. *The London and North-Western Railw. Co.*, 14 C. B. 255; 25 Eng. Law & Eq. R. 287; *Wilcox* vs. *Parmlee*, 3 Sandford R. 310.

But the case most difficult of solution is, where the shipper delivers his merchandise addressed to a point beyond the route to whose custody it is delivered, and it is received without agreement of any kind, except that which the law creates by the mere delivery and receipt. This question was much discussed in the leading English case of *Muschamp* vs. *The Lancaster, &c.*, cited and commented on by Judge Stroud, p. 236; *Watson* vs. *The Ambergate, Nottingham, and Boston Railw. Co.*, was the case of certain models or plans of a machine to load colliers, sent by the plaintiff from Grantham to Cardiff to compete for a prize of one hundred guineas, and which

arrived too late for the competition, by which the plaintiff lost his chance of success. When the package was delivered to the storing master at Grantham, he said he could take pay only to Nottingham, as he had no rates beyond, and he erased the words "paid to Bristol," and substituted "paid to Nottingham," without the knowledge of the plaintiff. The original direction was left on the package, which was detained at Bristol and did not arrive at Cardiff until the day after the award was made. In the opinions of the court this contract is treated as a contract to carry from Grantham to Cardiff, and the rule laid down by Baron Rolfe held to apply.

The Court of Exchequer in *Scotthorn* vs. *The South Staffordshire Railw. Co.*, 8 Exch. 341; 18 Eng. L. & Eq. R. 553, affirmed *Muschamp* vs. *The Lancaster, &c.*, and held that where a carrier received goods to carry from one station to another, he was liable for the loss during any part of the transit, though it may happen on the line of railway belonging to another company. And in *Crouch* vs. *The London and North-Western Railw. Co.*, 14 C. B. 255; 25 Eng. Law & Eq. R. 287, the Court of Common Pleas after elaborate arguments, held, affirming the preceding decisions, that a common carrier, professing to carry to a place which is beyond the realm, was still subject to the common law liability of a carrier for hire, and was bound to perform all the duties assumed and implied by that relation.

The doctrine of the English courts must be considered as settled, that carriers by railroad, who receive merchandise to be transported beyond the line of their own route without any special agreement, do not limit their liability to their own route only, but are held liable for losses which may occur beyond it, or perhaps, to speak more accurately, they are held liable upon the exact contract made, which is in general, a question of fact, and is to be determined by the finding of a jury; and in the absence of any special agreement, the presumption which arises from bare proof of the delivery of the goods to the carrier addressed to a place beyond the limits of the carrier's own route is, that he undertakes the delivery at that place.

But the rule to be deduced from the American decisions may be stated in the language of Judge Stroud, "that when goods are delivered to a carrier, marked for a particular place, but unaccompanied by any other directions for their transportation and delivery except such as might be inferred from the marks themselves, the carrier is only bound to transport and deliver them according to the established usages of the business." *Van Santvoord* vs. *St. John; Farmers Bank* vs. *Champ. Trans. Co.; Hood* vs. *New York & New Haven R. R.; Nutting* vs. *Conn. River R. R.*

In the case of *Hood* vs. *The N. Y. & N. Haven R. R. Co.*, Ellsworth, J., dissented from the English doctrine, and held the following language:

"We are aware that in the cases cited from the English books, it seems to be held that if a railroad company receives at its depot goods marked to be forwarded beyond its own road, and even beyond any other railroad, this is *prima facie* evidence of a contract to carry the goods to the place of destination. We will not say that in these English cases, since there was no evidence on the part of the defendants to disprove the *prima facie* case, the defendants were not rightly subjected in damages for a loss beyond their road. Indeed, the judges intimate that there may have been a partnership throughout the route.

But if more than this is meant, and that a railroad company, by receiving freight at its depot, became responsible to carry it, as it were, by guaranty or insurance, to the place of destination, at any distance from the road, and that this is an inference which cannot be disproved by showing the facts, as in this case, we are not prepared to give it our assent. We think it an unnatural inference, and a contract not, of course to be drawn from the fact, that a chartered company of limited extent has taken goods to carry over its road.

But if we are wrong in this, it does not follow that the doctrine of the English cases, as to *freight*, is to be applied to *passengers;* passengers take care of themselves. And even as to freight, were such a question before us, we believe the true doctrine to be this: where goods are delivered to a carrier, marked for a particular destination, without any directions as to their transportation and delivery, save such as may be inferred from the marks themselves, the carrier is only bound to transport according to the established usage of business in which he is engaged, whether the consignor know of the usage or not. The carrier becomes a mere forwarder of the goods to the end of his own portion of the route, and is then bound to use due diligence in seeking for and handing over the goods to the next carrier."

Van Santvoord vs. *St. John*, 6 Hill, 157, was the case of a box marked "J. Petre, Little Falls, Herkimer Co.;" it was delivered to the Swiftsure line, and the following receipt given, "Rec'd from St. John on board Ontario, one box merchandise, marked J. Petre," &c. This was the contract. The usage to deliver to the next carrier was shown. And the construction of this contract was held to be, that the box had been delivered to the carrier with the intention that he should transport it in the usual and customary way, and that the usage of the business must be considered as one of the elements of the contract, and the shipper could not avail himself of his ignorance of this usage, it being his business to inform himself.

In the *Farmers Bank* vs. *The Champ. Trans. Co.*, 18 Verm. 140, Kelly, J., commenting on *Van Santvoord* vs. *St. John*, says "the doctrine of that case is in substance this; that where goods are delivered to a carrier marked for a particular place, without any directions as to their transportation and delivery except such as may be inferred from the marks themselves, the carrier is only bound to transport and deliver them according to the established usage of the business in which he is engaged, whether the consignor knew of such usage or not. With the reasoning and authority of that case we are well satisfied. It is founded in good sense, and sustainable upon principle."

In *Nutting* vs. *Conn. River R. R.*, Metcalf, J., cites and applies the ruling in *Van Santvoord* vs. *St. John*, 6 Hill, 157, and takes occasion to dissent from the broad doctrine of the Court of Exchequer in *Muschamp* vs. *The Lancaster, &c.*, and Queen's Bench in *Watson* vs. *The Ambergate, &c.* The courts of New York, Vermont, Connecticut and Massachusetts, have all dissented from this doctrine, and have enunciated the rule stated by Judge Stroud, p. 236, which must now be considered the better and safer opinion, in this country at least.—*Eds. Am. L. R.*