Railway to fix its course with respect to this so-called common carrier in conformity with all the requirements of the law. There appears to be some question whether the 34-cent rate has been legally established from Bellamy and concurred in by the Sumter & Choctaw Railway. But inasmuch as the rate from Lilita, where the shipment reached the Southern Railway, is also 34 cents per 100 pounds, this is not a question in which the complainant has any real interest.

For these reasons the complaint must be dismissed, and it will be so ordered.

No. 3088.

ALPHA PORTLAND CEMENT COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted May 26, 1910. Decided June 10, 1910.

The consignor noted on the bill of lading a route and also a rate which was legally in force only over another route; *Held*, That the initial carrier ought to have forwarded the shipment by the route over which the specified rate applied instead of by the named route which carried a higher rate.

Louis H. Porter for complainant.

Clyde Brown for New York Central & Hudson River Railroad Company.

John L. Seager for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

On August 8, 1909, the complainant shipped two carloads of cement, weighing in the aggregate 129,200 pounds, from Martins Creek, in the state of Pennsylvania, to Brockton, in the state of Massachusetts. In delivering the shipment to the initial carrier, the principal defendant herein, a shipping clerk in the employ of the complainant erroneously or inadvertently noted on the bill of lading directions to forward the

cars to destination over the lines of the Lehigh Valley, West Shore, and Boston & Albany Railroads. But in two places on the bill of lading the through rate of freight was stated at $2.25 per net ton; and this was in fact the legal joint rate over a through route composed of the principal defendant's line in connection with the New York, New Haven & Hartford Railroad and certain intermediate lines. In this form the bill of lading was executed by the initial carrier's agent, who without inquiry billed the cars forward over the specified route; and they moved in accordance with the billing, over the most direct route available in connection with the lines named, as far as South Framingham, where the Boston & Albany, which does not reach Brockton by its own rails, delivered the cars to the New York, New Haven & Hartford for movement to destination, a short distance beyond. The charges were collected at a rate of $2.25 per ton to South Framingham, plus the last named company's local rate of 10 cents per 100 pounds, which is equivalent to $2 per ton, beyond. As the goods were sold on a delivered basis the complainant has therefore sustained a loss to the extent of $2 per ton, or in the sum of $129.20, by reason of the higher charges assessed as the result of the erroneous movement.

Upon similar facts the Commission on April 6, 1909, made the following informal ruling, which is published as Rule 159, Bulletin No. 4:

> A bill of lading showed both a rate and a route, but the rate did not apply over the route named; *Held,* That in all such cases the shipment should be forwarded via the route over which the stated rate applies unless the rate via the specified route makes lower, in which event the specified routing must be followed.

This ruling, which we now adhere to, together with our ruling of June 8, 1909, which is of similar import and is reported as Rule 186, Bulletin No. 4, must be regarded as controlling in this case. Upon the facts as stated we therefore find that in view of the conflict between the routing instructions and the through rate as specified on the bill of lading, it was the duty of the initial carrier to forward the shipment by the cheaper route or to obtain further and definite directions from the consignor. Because of its failure to pursue either course we think it must be held liable to the complainant for the additional transportation charges resulting from the misrouting. It follows that the complainant is entitled to reparation in the sum of $129.20, with interest from October 14, 1909.

An order will be entered accordingly.