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WHEN A RAILROAD BECOMES A WAREHOUSE MAN

The extraordinary liability of a carrier as an insurer where goods committed to its charge for carriage are injured or lost in the course of transportation is everywhere admitted. But the contract of a carrier being not only to carry, but also to deliver, it follows that the custody of the goods by the carrier must extend beyond as well as precede, the period of their transit from the place of consignment to that of destination.

The responsibility of the carrier for goods awaiting transportation depends upon the nature of their delivery. Where the goods are delivered to the carrier for immediate transportation and nothing remains to be done by the shipper, the liability of the carrier as such attaches at once; that is, when the shipper surrenders the entire custody of his goods and the carrier receives complete control of them for shipment at the earliest practical opportunity, the extraordinary liability of a common carrier begins. "If there remains anything to be done by the shipper before the goods are ready for transportation, the storage of them in the carrier's warehouse is an accommodation and convenience to the shipper, and the carrier is liable only as a warehouseman." *Alsop v. Southern Esp. Co.*, 104 N. C. 278.

The arrival of goods at their destination does not at once terminate the carrier's responsibility as such. Generally speaking, the duty of a common carrier is to convey and deliver safely and securely, and its responsibility as a carrier continues until it has made an actual delivery, or done that which may be considered an equivalent or a substitute for delivery. The mere arrival of goods at their destination is not sufficient to reduce the liability of the carrier to that of warehouseman. So long as anything remains to be done by the carrier as carrier, before the goods are ready for acceptance by the consignee, the carriers' liability continues, and not until the completion of this duty of carrier with reference to the transportation of goods does any question as to the reduction of the carrier's liability to that of warehouseman arise.

Where then does the liability of the railroad as carrier of goods terminate and that of warehouseman begin?

There are three conflicting views as to how soon after the arrival of goods at its destination, a railroad's responsibility changes from that

of the common carrier to that of warehouseman, but no one of them has been so generally accepted as to become the prevailing rule of court.

The so-called Massachusetts doctrine, so ably set forth by Chief Justice Shaw in *Norway Plains Co. v. Boston & Maine R. R. Co.*, 1 Gray 263, and the rule that prevails in that and other states today is, "that a common carrier is relieved of its extraordinary liability as an insurer, whenever it has the goods intrusted to it safely deposited in a safe warehouse." This doctrine proceeds on the theory that "the deposit of goods in the carrier's warehouse is a quasi delivery to the consignee's agent and absolves the carrier from all further liability to the goods, except such as is assumed by its new relation; such a delivery to itself as the consignee's warehouseman being in lieu of the actual delivery required by common law." *United Fruit Co. v. N. Y. & B. Transp. Co.*, 104 Md. 567. Such a rule has the merits of being definite and of easy application, and in many cases avoids controversy, but it is sharply criticised on the ground that it puts an end to the carrier's responsibility as such, just where that responsibility is of the highest value to the shipper; for are there not as many or more opportunities for collusion among the employees of the carrier when the goods are in the warehouse, as when they are in a sealed car in transit? It is for this and other reasons that the Massachusetts doctrine is so strongly opposed. The opposing authorities, although disagreeing as to the necessity of notice, are mutually concordant that the carrier's responsibility as such continues after goods are placed in carrier's warehouse, and until the consignee has had reasonable time in which to remove the goods. In *Moses v. Boston & Maine R. R. Co.*, 32 N. H. 523, it was held, "that the same broad principles of public policy and convenience upon which the common law liability of the carrier is made to rest, have equal application after the goods are removed into the warehouse as before, until the consignee can have that opportunity to remove the goods; and the same necessity exists for encouraging the fidelity and stimulating the care and diligence of those who thus continue to retain them in charge by holding they shall continue subject to the risk." This in substance is the New Hampshire rule and is also the one followed in Missouri today. *Bell v. St. Louis and I. M. R. Co.*, 6 Mo. App 363; *Gashweiler v. Wabash*, 83 Mo. 112. The reason for this rule is "that the exact moment of the arrival can seldom be known to the consignee, even if he does have notice of the shipment; and it is unreasonable to compel him to remain at the carrier's depot awaiting the arrival of goods or to assume all the risks of the uncertainties in the delay of transportation and time of arrival."

Leavenworth R. R. Co. v. Maris, 16 Kan. 333. If the goods have arrived and been unloaded into the carrier's warehouse at night, the consignee cannot have known when they arrived or in what condition they were in, and as the same persons—the servants of the company—continue in exclusive possession and control of the goods as when they were in transit, it is not only reasonable but an absolute necessity that the carrier's responsibility continues until the consignee has had a reasonable time to call for the goods.

"But, the rule being generally adopted today and furthermore supported by the text-writers as the most consonant with sound reason, is that the liability of a carrier continues until the consignee has had a reasonable time in the common course of business to take them away after such notification." *McDonald v. W. R. R. Corp.*, 34 N. Y. 497; 2 *Hutchinson on Carriers*, p. 792. This rule, continuing the carrier's liability as such until the consignee has had reasonable time after notification to take away his goods, is traceable to certain English decisions having reference to carriers by water, whose mode of doing business resembles that of railroad companies in the inability to proceed with their vehicles to every man's door and there deliver his goods. And actual delivery to the consignee being impossible, the land carriers for their own convenience and to facilitate traffic have erected warehouses in which to place goods awaiting demand by the consignee. But while holding these goods for delivery, is it just and reasonable that the carrier should, without notice to the consignee, terminate its liability as a carrier and press upon the consignee its services as a warehouseman? The consignee cannot be in constant attendance at the depot, and as stated by Mr. Justice Cooley in *McMillan v. M. S. & N. I. R. Co.*, 16 Mich 103, "to require the consignee to watch from day to day the arrival of trains, and to renew his inquiries respecting the consignment, seems to me to be imposing a burden upon him without in the least relieving the carrier. For, it can hardly be doubted that it would be less burdensome to the carrier to be subjected to the numberless inquiries and examination of his books, which would otherwise be necessary especially at important points." In order therefore to avoid this burden, and at the same time to impose diligence upon both the shipper and carrier without inconvenience to either, we find the weight of authority recognizes certain rules governing the delivery of goods at their place of destination, and these may be summarized as follows: "If the consignee is present upon the arrival of the goods, he must take them without unreasonable delay. If he is not present, but lives at or in the immediate vicinity of

the place of delivery, the carrier must notify him of the arrival of the goods and has a reasonable time to take and remove them. If he is absent, unknown, or cannot be found, then the carrier may place the goods in some warehouse, and, after keeping them a reasonable time, if the owner does not call for them, its liability as a common carrier ceases, but if after the arrival the consignee has a reasonable opportunity to remove them and does not, he cannot hold the carrier as an insurer." *Fenner v. Buffalo & State Line R. R. Co.*, 44 N. Y. 511.

Notice need not be served personally on the consignee, for it is sufficient to deposit such notice in the postoffice properly addressed. "If such notice is given to the wrong person, even if the latter personates and falsely and fraudulently represents himself to be the consignee, such notice will not reduce the liability of the carrier to that of warehouseman." *Cavallaro v. Texas & P. Ry.*, 110 Cal. 348. The necessity of giving notice is governed by general practice and usage at the destination of the goods, and also by such contract as the shipper and carrier may make in regard to notice, but in the absence of a complete understanding between the parties, the consignee must be notified of the arrival of the goods and be given a reasonable time in which to carry them away.

What constitutes a reasonable time, must of course vary with the circumstances of each particular case, but it has been held that the convenience of the consignee will never be considered, nor will his inability to carry away his goods. When the facts are agreed upon or undisputed, it becomes a question to be determined by the court as one of law; but where they are disputed and unsettled, the question must be submitted to a jury.

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