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EXPRESS COMPANIES AS COMMON CARRIERS.

(*Continued from p.* 463.)

WE had proceeded thus far in our subject, when our attention was accidentally directed to a decision, in which the very point under discussion was involved, and decided contrary to the views we have advanced. We refer to the case of *Hooper* v. *Wells, Fargo & Co.*, determined in the Supreme Court of California, and reported *ante*, p. 16. The facts are, in every substantial particular, the same as those in our article supposed. The contract is identical with that adopted for our argument, excepting only the name of the customer and the value of the package. That action was brought by Hooper against Wells, Fargo & Co. to recover the sum of ten thousand dollars and upwards, which had been lost under precisely the circumstances assumed by us.

The court holds that expressmen are to be regarded as common carriers, as well in respect to the carriage of bullion, as of other goods. They also agree with other decisions in holding that common carriers may limit their common law liability by special agreement. The contract before them contained the following stipulation, which, as before stated, is contained in nearly all the contracts of that company, to wit: "It is nevertheless agreed, and it is a part of the consideration of this contract, that Wells, Fargo & Co. are not to be responsible except as forwarders," and the court holds the stipulations to be valid. But that tribunal also decides that forwarders are responsible for the loss of property

while in their charge, resulting from the carelessness of themselves, their servants or agents; that the bullion, at the time of the loss, was on the steam-tug in the special charge of the messenger of Wells, Fargo & Co., who was confessedly their servant; that the stipulation in the contract did not protect, and was not intended to protect, the defendants from losses resulting from the carelessness or negligence of their agents or servants; that the engineer of the steam-tug became in law the servant or agent of the defendants, and consequently that the stipulation did not save them from the consequences of his default. Thus, the whole case is made to turn on the point that the relation of *principal and agent or master and servant* subsisted between the company and the engineer of the steam-tug.

The court, after correctly distinguishing between common carriers and forwarders, and their respective liabilities, proceeds thus: "In view of these principles governing the liabilities of carriers and forwarders, what is the effect of the disputed clause in the contract under consideration upon the rights of the parties? What is the extent of the restriction upon the common law liabilities of the defendants?" For the purpose of solving this question, the court resorts to the maxim that "the language of the contract must be taken most strongly against the defendants;" inasmuch as the contract must have been drawn up with care, in language selected by the defendants, and the restriction clauses were for their benefit. This maxim of law, however, finds its just application only when so much doubt exists, that, without having recourse to it, the court cannot gather the meaning of the contract. It ought not to be resorted to until all the ordinary canons of interpretation have proved unavailing, and the mind still remains in uncertainty respecting the true meaning of the language under examination. Then, as a last recourse, the maxim may be invoked: Broom's Legal Maxims 464. But there is no doubt about the meaning of the contract, no doubt about the intention of the parties, and no doubt that they have used proper language to express such intention. The difficulty, so far as it respects the reasoning of the court and the conclusions to which they come, lies not in the interpretation of the contract, but in the application of the contract to the particular circumstances after it is interpreted. When the parties stipulated that the defendants should be liable only "as forwarders," they agreed that the rules of law,

by which forwarders are governed in their business, should be applied to the defendants in this particular transaction. The court says that the defendants "were undoubtedly common carriers, and not forwarders, in the technical sense of the terms." Why is it material whether they were the one or the other? Whatever they were, the rule by which their liability in this particular instance was to be treated, was fixed by the contract. And the meaning of the stipulation, that the defendants shall not be liable, *except as forwarders*, is just as plain and significant to the comprehension of business men and in law, as if it had declared that the defendants should not be liable, except for the carelessness or negligence of themselves, their agents or servants. And this is in truth the interpretation which the court itself gives to this clause. "The exception," it says, "fixes the limit of responsibility by referring to another class of bailees, whose responsibilities are different from those of carriers; and the meaning, as we construe the restrictive clause, is, that they will be governed in respect to their liabilities by the same principles as those applicable to forwarders." How was it possible for the court, after the enunciation of this doctrine, to hold that the defendants were governed by other principles than those which are applicable to forwarders? According to these principles, the defendants were most clearly not liable, after having forwarded the package by the usual mode of conveyance. The bare fact that the defendants took precautions unusual and extraordinary for forwarders to secure the safe transit of the package, after their duties as forwarders had ceased, ought certainly not to enhance their responsibility. The reasoning of the court on this point in the case must necessarily lead to the strange conclusion that if a man take more care of goods intrusted to his charge than the law requires he thereby incurs liability, when he otherwise would not be liable. Such a notion, assuredly, can find no sanction in law.

Another conclusion of the court is not less remarkable. "It is manifest," says the court, "that it was not intended by this clause that all responsibility should cease as soon as the package was started upon its passage from the office of the defendants at Los Angeles; for the receipt also contains the clause, 'in no event to be liable beyond our route as herein receipted.'" We venture to say that it has never before been urged as a reason why a carrier should be held liable for a loss occurring on his route that he

had stipulated with his customer that he should in no event be liable beyond such route. Nor does the remark which follows soon after help the difficulty. "Evidently," say the court, "it was contemplated that defendants might be liable for a loss occurring on their route." Of course, the defendants would have been liable if their messenger had stolen the bullion, or had thrown the package containing it overboard, or had personally been guilty of any other default. But this liability would have been the result of the relation of principal and agent, which unquestionably subsisted between the defendants and the messenger. As they employed, directed, and controlled him, his default would have been, in contemplation of law, their default. The maxim, *respondeat superior*, would have applied. Their liability would not have depended in the least on the question whether the defendants were common carriers or forwarders; whether they had stipulated not to be liable beyond their route, or otherwise; but it would have rested simply on the facts that they were ordinary bailees for hire, and that the person through whose default the loss occurred, was their agent. Forwarders are responsible for the omission of ordinary care by themselves and their immediate agents and servants, whether the goods remain in their warehouse or are elsewhere in their custody. It is, however, quite a different matter to make them liable for the negligence of the engineer of a steamer, though the goods may have been on board such steamer under the immediate supervision of their messenger.

The court proceeds to say: "If it was intended to release themselves (defendants) from all responsibility while the package was in transit, the clause would doubtless have been made to read —'in no event to be liable after leaving our office at Los Angeles,' or some other language of equivalent import." But it was not intended to release them from all responsibility while the package was in transitu. Liability for the misfeasance or nonfeasance of their acknowledged messenger remained. That was a liability which it was not intended to avoid, and in this view the whole contract becomes consistent. The company stipulated for the liability of forwarders. They agreed to send a messenger with the package, the universal usage in this respect being equivalent to the insertion of a clause to that effect in the contract. It was the duty of the messenger to use a proper degree of care to secure the safety of the package; and if it should be lost through his

incompetency, carelessness, fraud, or theft, the liability of the company would attach. But if it were the intention of the owner to send the package beyond the termination of the routes of the company, their liability would cease at that point. In this view all the clauses of the contract are consistent not only with each other, but with the universal custom of the company to send messengers in charge of valuable property such as bullion; and thus the first principle of construction applicable to every agreement, viz., to so read it as to harmonize apparently conflicting clauses, and render them consistent with the usual mode of transacting the particular business to which the contract relates, is exemplified and maintained.

The court further say: "There was no point at which defendants were mere forwarders, in the technical sense of the term, or in which they were warehousemen." What difference does that make? The defendants contracted to perform certain services, and their customer agreed that, in default of such performance, he would hold them responsible only for such negligence, occurring under such circumstances, as would make a *forwarder* liable; or, in other words, the customer would expect of them and their servants only ordinary diligence, and would hold them responsible for corresponding neglect. To hold them liable further than this, does away with the entire force of the clause which was intended to make them stand under the responsibility of *forwarders*. Indeed the court in terms accedes to this conclusion, for it says: "They (the defendants) could not be liable in a character which they never occupied, and their contract that while they are carriers they shall only be liable as forwarders, in connection with the language of the instrument, can only mean that the liability shall be governed by the principle of law applicable to forwarders; that is, that they shall only be liable for losses arising from a want of ordinary care on the part of themselves, their agents and employees." Notwithstanding this clear admission by the court of the degree of liability for which the parties stipulated, it holds the defendants liable for negligence occurring under circumstances which would impose no responsibility whatever on a forwarder, or one subject to the duties of a forwarder. Who ever heard of a forwarder being made liable for the negligence of the engineer of a steamer, on which he had shipped goods in the ordinary mode of transportation?

The chief objection to the decision is, that it makes the whole case turn on the assumption that the engineer of the steam-tug was the *agent or servant* of the defendants, and consequently that *his negligence was their negligence.* This is apparent from what the court subsequently say: "In what manner are forwarders responsible? Of what kind is that liability? They are not insurers like carriers, but they are liable for losses resulting from negligence of themselves, their agents and employees, while the goods are in their custody. If the liability of these defendants under this contract is to be similar to that of forwarders—if it is of the same kind—if they are to be responsible in the same manner, then they are liable for any loss resulting from the negligence of themselves, their agents or employees, while the bullion was in their custody or control, and that custody, without doubt, continued up to the moment of the loss, and would have continued but for the loss up to the time whon it would have reached its destination and been delivered to "address." The fact that defendants made use of various public conveyances, their messenger with the treasure travelling a part of the way by stage, a part of the way by steam-tug and lighters, and a part by ocean steamers, makes no difference as to their liability. "For defendants' purposes the managers of these various conveyances were their agents and employees." Thus it is seen that the court rests the liability of the defendants entirely on the ground that the engineer of the tug stood in the relation to them of a servant or agent. According to this doctrine, not only was the engineer of the steam-tug the agent or servant of the defendants; not only would every employee on board of the tug have been their servant, but every stage-driver, and every person employed in the ocean steamer would also have become their agent or servant.

Is not this extending the liability of a forwarder far beyond what the law warrants? The whole reasoning of the court proceeds on the doctrine that if the defendants had merely forwarded the package by way of the same steam-tug in the usual mode, they would not have been liable; but as they sent a messenger with it, in whose immediate custody it continued, such custody made not only the messenger but the engineer of the steam-tug their agent or servant, for whose negligence they became responsible. "The messenger of the defendants," says the court, "was

in the actual custody of the treasure during the transit. Suppose by the carelessness of the messenger in transferring the treasure from the steam-tug to the steamer, it had been dropped into the ocean and lost, can it be pretended that the defendants would have been exempt from liability under the restriction clause of their contract under consideration? Would it be claimed in such case that the liability of defendants ceased as soon as the treasure left their office at Los Angeles? We do not think any such construction would be claimed for the stipulation. If the defendants would not be protected by the exception against loss from the negligence of one of their servants, why should it protect them against the negligence of another, who, as to the same matter, is in law their servant or agent? "Both are in contemplation of law the agents of the defendants, and the acts of both are the acts of defendants; and the language of the restrictive clause under consideration no more excludes the liability resulting from the negligence of one than from that of the other."

It is thus seen that the court deduces the conclusion that because the defendants would have been liable for the tortious or negligent acts of the messenger who was employed by them, who was subject to their orders, and who could at any moment be discharged by them; therefore they must be liable for the acts of the engineer who was not selected by them, who was not subject to their orders, and the period of whose service they could neither limit nor enlarge. In truth, the officers of the tug were no more the agents of the defendants than they would have been the agents of the plaintiff, had he personally superintended the transportation of the bullion. They were no more the agents of the defendants than an omnibus driver is the agent of the passengers seated in his omnibus, when he happens to run over a child in the street. They were no more such agents than a shipmaster who maltreats a passenger, is the agent of every passenger on board. If such relation subsisted, then it necessarily follows the engineer of the tug would be liable over to the defendants as his *superior* in contemplation of law. But the engineer was responsible only to the master or owners of the tug as his *superiors*.

In the relation of principal and agent, or master and servant, he could not have two *superiors*. See *Blake v. Ferris*, 1 Seld. 48, and cases cited. The relation of the engineer of the tug to the defendants was not different from his relation to every other

shipper. Unless, therefore, it can be maintained that every shipper of merchandise on board a steamer is responsible as principal for the conduct of the officers and crew, the proposition that the relation of principal and agent existed between defendants and the engineer must be untenable.

It must be borne in mind that the case of *Bush* v. *Steinman*, cited on page 296 (note) of Dunlap's Paley on Agency, has been several times virtually overruled. See *Blake* v. *Ferris*, 1 Seld. 62, 63, 64, above cited. The question whether the engineer of the tug was the agent of the defendants, must depend solely on the relations formed by those two parties with each other, and cannot be deduced as a fact from the contract made between the plaintiff and the defendants. Nor can it be of any importance that the messenger who accompanied the treasure, held the key of the safe in which it was deposited at the time of the explosion. His custody of it was the same as that which a passenger has of his baggage. Suppose a passenger had lost his carpet-bag by the same explosion, could he have recovered the value of it in an action against the engineer on the ground that the relation of master and servant or principal and agent existed between himself and that employee on the tug? That he might have had his action against the master and owners of the vessel, and that they might have had their action over against the engineer, are entirely different propositions.

The reasoning of the court reduced to a syllogism is this: the contract does not exonerate the company from the consequences of a loss occasioned by the negligence of their servants; the engineer of the tug was a servant of the company—therefore the company is not exonerated from the consequences of the loss which was occasioned by the negligence of the engineer. The error in this conclusion is found particularly in the unwarranted assumption of the minor proposition, that the engineer was, in respect to the loss, the *servant* of the company.

The only cases cited by the court in their opinion are the following: *Wells* v. *Steam Nav. Co.*, 8 N. Y. (4 Seld.) 375; 6 Johns. 180; *Alexander* v. *Green*, 7 Hill 544; 5 Rawle 189; *Sager* v. *P. S. and P. E. R. R. Co.*, 31 Maine 238–9; *De Rothschild* v. *Royal Mail Steam Packet Co.*, 7 Exchequer Reps. 734; *New Jersey Steam Nav. Co.* v. *Merchants' Bank*, 6 How. S. C. Reps. 344. None of these authorities have any bearing on the main point on

which the court decided the case under consideration, viz., the assumption that the engineer was the servant or agent of the defendants; nor do they establish the other proposition, that the law will not permit the defendants to stipulate for immunity from the consequences of the engineer's negligence, even if he were in contemplation of law their servant or agent. Besides, the terms of the company's contract are so entirely different from those of the respective contracts which underwent consideration in these cases, that but little, if any, light is thrown by them on the construction of the contract before the court. They are supposed to have some bearing on the following conclusion at which the court arrive: "We think," they say, "it cannot be said that the contract in question in clear and unequivocal terms necessarily evinces an intention on the part of both parties, or of either party, that defendants shall be exonerated from any loss resulting from negligence on the part of those employed by them in the transportation of the treasure committed to their care. If such had been the intention it certainly could and doubtless would have been expressed in language about which there could be no misapprehension by either party. Nothing is said about negligence. The language used is not such as necessarily expresses or as men would ordinarily employ to express the idea now claimed for it, and if so used it would be likely to mislead a party to whom it is tendered ready executed upon the receipt of his property for transportation."

This method of inferring the meaning of what parties have actually expressed in their contract, from what the court conceives they might have expressed, constitutes but a delusive rule of construction. We all know that the modes of expression which different persons use to convey the same idea are as diverse as their features. And to construe a contract, not according to the fair and natural import of the language used, but by assuming that the omission by the parties to use phrases or terms which the court may think would have better suited the occasion, is the most deceptive and unsatisfactory of all modes of interpretation.

The court concludes its opinion by summing up the result of its reasoning as follows: "Holding as we do that the exception in the contract for the reasons stated does not exempt the defendants from the negligence of those in charge of the steam-tug, it becomes unnecessary to determine the more difficult question in

the present state of the authorities as to the power of common carriers by special contract to exonerate themselves from liabilities arising from the negligence of their agents and servants."

Four of the five judges constituting the court concurred in the reasoning of this opinion and in the conclusion. The Chief Justice, however, dissented in a separate opinion.

The doctrine of the court in this case resolves itself into the following propositions:

1st. The defendants being an express company, publicly engaged in the transportation of freight from one place to another for hire, were in law common carriers, and subject to all the responsibilities of that relation, except so far as a modification may have legally been made by them in the special agreement.

2d. That their responsibilities were wholly unaffected by the fact that they used other vehicles, vessels, or means of convey ance than their own for the purpose of such transportation.

3d. That as common carriers the defendants could by contract limit the liability imposed on them by the common law to a certain extent; but that they did not, in the contract made by them, relieve themselves, their agents or servants, from the exercise of ordinary care in the discharge of their duties; and that if the treasure was lost through their negligence, or the negligence of any of their agents or servants, the defendants were responsible for the loss.

4th. That, as the defendants shipped the treasure on board of the steam-tug, and there was an explosion occasioned by the negligence of the engineer by which the treasure was lost, the defendants were liable, because, so far as the test of their liability to the plaintiff is concerned, they made the steam-tug their vessel, and the persons in charge of her their agents and servants, notwithstanding they may have had no authority in the management or control of the steam-tug or those in charge of her.

5th. That the contract was not sufficiently broad to exempt the defendants from liability for the negligence of the engineer, inasmuch as he was to be deemed in law their *servant or agent.* Thus the court makes the whole case depend on the assumption that the engineer was the *servant or agent* of the defendants.

For that doctrine we venture to say there is no authority, and this case, as a leading one on the subject, is by no means satisfactory. The late cases in New York, such as *Wells* v. *The New*

York Central Railroad Co., 24 N. Y. 181; *Perkins* v. *The Same*, Id. 196; *Smith Ham* v. *The Same*, Id. 122; and *Bissell* v. *The Same*, 25 N. Y. 442, establish the doctrine in that state, that a railroad company may, by express contract, exempt itself from all liability for the negligence or misconduct of its subordinate agents and servants, leaving, however, undetermined the question whether there may not be certain agents so directly and immediately connected with the corporation that a contract relieving it from liability for their negligence would be illegal. (See opinion by Judge SELDEN, in case last cited, page 446.) On the other hand, the cases of *Davidson* v. *Graham*, 2 Ohio State (Warden) 133; *Camden and Amboy Railroad Co.* v. *Baldauf*, 16 Penna. State Rep. 77; *Pennsylvania Railroad Co.* v. *McCloskey's Administrators*, 23 Penna. State Rep. 523; and *Sager* v. *The Portsmouth S. and P. and E. Railroad Co.*, 31 Maine 228, seems to go the length of holding that a common carrier cannot by any agreement escape from liability for the negligence of his servants or agents; that any such contract would be against the policy of the law, and be therefore void. Respecting the power of a common carrier to make such a contract, a distinction has been suggested founded upon the consideration whether the servants or agents are immediate or remote in their relation to the carrier. The former are those who are directly employed by him; who are engaged in his business exclusively, and are of his own selection; who are paid by him, and are subject only to his will. The latter class of servants or agents are those who are not directly selected and employed by the carrier, and are not in any respect under his control, but who are selected, employed, and paid by other parties, to whom alone they owe obedience, and who have no concern in the business of the carrier and are in no just sense subordinate to him. To the former class of servants or agents the carrier occupies the position of a principal in fact as well as in law, and that relation is the true ground upon which the doctrine of *respondeat superior* is founded; but the carrier's relation to the latter class is not that of principal or master, and the maxim *qui facit per alium facit per se* does not apply in any just sense. On the contrary, in respect to them, the carrier occupies a position analogous to that of insurer only, and therefore no rule of public policy precludes him from protecting him self by express contract against the risk of their acts.

It cannot be claimed with any reason that negligence on the part of persons in charge of public conveyances, such as railroad trains, steamers, and stage-coaches, may be induced by the fact that a contract exists between two strangers to the effect that one will take upon himself the risk of their conduct in respect to the transportation of a particular shipment of goods, and that the other shall be exempted from that risk. The transaction is too remote, and can possibly have no bearing or effect on the conduct of the parties in charge of the conveyances. To say that the engineer of the steam-tug was less careful in the performance of his duty, by reason of the contract made between the plaintiff and the defendants, of which he knew nothing, is to assert a proposition which is contrary to reason.

Had the treasure been lost through the negligence of the defendants' messenger and immediate agent, there might be some reason for holding them liable on grounds of public policy, notwithstanding the agreement. But no sound reason can be given, why the defendants should not be permitted to contract for indemnity against losses resulting from defects in the public conveyances used by them in the prosecution of their business, and against the negligence of the persons having such conveyances in charge. A loss thus happening is not the result of their fault or neglect, within the intent and meaning of the rule of public policy which is invoked. The business in which expressmen are engaged, as well as the mode in which it is transacted, had no existence at the time when the rule governing the responsibilities of carriers became a part of the common law, and the changed conditions presented by the use of remote agencies foreign in all their appliances to the old system of transacting business, not only justify but demand that the strictness of that always very severe and onerous rule, should be modified in the particular which we have been discussing, in favor of this new and important interest which advancing civilization and extending commercial exigencies have introduced.[1]

[1] In our examination of this question we have carefully considered the following authorities of late date. The older cases furnish but little assistance in discussing a question which arises out of a modern mode of transacting business. We had included in this article, as originally written, a full analysis of each of the authorities, but they extended it to so great a length that we have been induced to retain only the titles. These we subjoin by way of note. *Sager* v. *The Portsmouth S*

and P. and E. R. Co., 31 Maine Rep. 228, decided in 1850; *The Pennsylvania Railroad Co.* v. *McCloskey's Administrator*, 23 Penna. State Rep. 526, decided in 1854; *The Camden and Amboy Railroad Co.* v. *Baldauf*, 16 Penna. State Rep. 77, decided in 1851; *Wilcox* v. *Parmelee*, 3 Sandf. Sup. C. Rep. 610, decided in 1850; *Russell* v. *Livingston & Wells*, 19 Barb. 346, decided in 1855; *Sherman* v. *Wells*, 28 Barb. 403, decided in 1858; *Dorr* v. *New Jersey Steam Co.*, 1 Kern. 485, decided in 1854; *Moore* v. *Evans*, 14 Barb. 524, decided in 1852; *Sweet* v. *Barney*, 24 Barb. 533, decided in 1857; *Baldwin* v. *The American Express Co.*, 23 Illinois Rep. 198, decided in 1859; *Stadhecker* v. *Combs*, 9 Richardson S. Car. Rep. 193, decided in 1856; *Phillips* v. *Clark*, 5 J. Scott, (N. S.) 881–94, Eng. Com. Rep. 881, decided in 1859; *Garton* v. *The Bristol and Exeter Railway Co.*, 1 Ellis, Best & Smith 112, 101 Eng. Com. Law Rep. 112, decided in 1861; *Judson* v. *Western Railroad Co.*, 6 Allen, Mass. 486, decided in 1863; *Haskam* v. *The Adams Express Co.*, 6 Bosworth N. Y. Sup. Court Rep. 235, decided in 1860; *Place* v. *The Union Express Co.*, 2 Hilton 19, decided in 1858; *Rend* v. *Spalding*, 5 Bosw. 396, decided in 1859; *The Mercantile Mutual Insurance Co.* v. *Chase et al.*, 1 E. D. Smith 115, decided in 1850; *Hayes* v. *Wells, Fargo & Co.*, 23 Cal. Rep. 185, decided in 1863; *Adams* v. *Blankestein*, 2 Cal. Rep. 413, decided in 1852; *Mallory* v. *The Tioga Railroad Co.*, 39 Barb. 488; *Harsfield* v. *Adams*, 19 Barb. 577; *Kreuder* v. *Wolcot*, 1 Hilton 223; *Teall* v. *Sears & Griffith*, 9 Barb. 317; *Hart* v. *Renssalaer and Saratoga Railroad Co.*, 4 Seld. 37; Redfield on Railways 240, 241, 281, 282, 277, note 272, 273; *Coggs* v. *Bernard*, 1 Smith's Leading Cases 268, 280; Chitty on Carriers 455, 518; British Railway and Canal Traffic Act of 1854; 1 Parsons on Contracts 707, 708, 652, note, 717, note; *McCall* v. *Brock*, 5 Strobhart 119, 124; *Plaisted* v. *Boston Navigation Co.*, 27 Maine Rep. 133, 138; Angell on Carriers, § 75, 226; *Blossom* v. *Griffen*, 3 Kern. 571, decided in 1856; *Muschamp* v. *Lancaster Railroad Co.*, 8 Mees. & Wels. 428; *De Rothschild* v. *Royal Mail Steam Packet Co.*, 7 Exchequer (Wels. Hurls. & Gord.) 734, decided in 1852; *Atwood* v. *The Reliance Trans. Co.*, 9 Watts 88; *Airey* v. *Merrill*, 2 Curtis C. C. Rep. 8, decided in 1854; Story on Bailments, § 570; 2 Greenleaf on Evidence, § 218; Edwards on Bailments, p. 483, 575; Pierce's American Railroad Law 422; *Austin* v. *The Manchester, Sheffield, and Lincolnshire Railway Co.*, 20 Law J., cited in 1 Pars. on Con. 716, note, and reported in full in 5 Eng. Law & Eq. 329; *Welsh* v. *The Pittsburgh, &c., Railroad Co.*, 10 Ohio State 72, decided in 1859; *New Jersey Steam Nav. Co.* v. *Merchants' Bank*, 6 How. (U. S.) 344; *Reno* v. *Hogan*, 12 B. Monroe 63, decided in 1851; *Davidson* v. *Graham*, 2 Ohio State (Warden) 133, decided in 1853; *Parks* v. *Alta Cal. Tel. Co.*, 13 Cal. 422; *May* v. *Hanson*, 5 Cal. R. 360. *Peck* v. *North Staffordshire Railroad Company*, 10 House of Lord's Cases 473, 553, 566.

In addition to the above authorities we might cite several others, but the preceding embrace the most recent cases that have come under our observation upon the law of common carriers, and we have been thus particular in examining and citing them, not because they all bear directly on the question which we are discussing, but for the purpose of showing that no authority has as yet gone so far as to hold that the relation of *principal and agent or master and servant* exists between expressmen and the inferior servants and agents of such instrumentalities as they generally use in their business.

L.