DEPARTMENT OF CARRIERS AND TRANSPORTATION COMPANIES.

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DEMING & CO. *v.* MERCHANTS' COTTON PRESS.[1] SUPREME COURT OF TENNESSEE.

Loss by Fire of Goods in Storage—Liability of Carrier.

When a carrier has affected an arrangement with a compress company to act as the carrier's agent, and receives cotton in agent's press, and accepts delivery there by the shipper, instead of at the carrier's own depot, and upon such delivery issues the ordinary carrier's bill of lading, stipulating for exemption from loss by fire, it will not be construed to relate to fire in the cotton press.

LIABILITY OF CARRIER FOR LOSS OF GOODS IN STORAGE.

I.

STORAGE BEFORE TRANSPORTATION HAS BEGUN.

1. A carrier is, in general, liable for a loss by fire occurring after the carrier has, by issuing a bill of lading, by giving a receipt or other act, taken exclusive possession of the goods for the purpose of transportation, even though the transportation has not yet begun.

In Forward *v.* Pettard, 1 T. R. 33, a wagoner had received the goods for carriage upon his wagon and had placed it, securely, as he thought, under shelter, until the time should arrive for his departure. In the meantime a fire originated at a considerable distance from it, but spread so rapidly that before the wagon could be removed it was reached by the flames and burned. Lord Mansfield held that the carrier was liable for the loss.

In Southern Express Company *v.* MacVeigh, 20 Grat. 264

[1] Reported in 90 Tenn. 310.

Virginia (1871), it was held that if goods are under the control of parties as forwarders, not as common carriers, and are consumed by an accidental fire in a warehouse, without any fault or negligence on their part, they are not liable; but when goods are delivered to the carrier to be forwarded and transported and the carrier receives compensation for so doing, the goods are in his custody as a carrier, and if he delays the carriage, and the goods are in the meantime destroyed, he is liable.

2. After goods have been delivered to the carrier, but something yet remains to be done by the shipper before they are ready for transportation, or some directions or instructions are to be given, the carrier is not liable, as a carrier, for the loss of the goods by fire while waiting transportation, but only as a warehouseman.

In Pittsb., Cin. & St. Louis Ry. Co. *v.* Barrett, 36 Ohio St. 448 (1881), goods were received by a railroad company to be forwarded in the usual course of business, and were lost by an accidental fire in the carrier's warehouse while awaiting transportation. It appeared that there was a general custom known to the plaintiff, that the company did not issue bills of lading until the goods were actually started, and that they always issued bills of lading containing a clause limiting their liability for loss by fire. It was held that the company was not liable for the loss.

3. A railroad company is not liable as a common carrier for goods destroyed by fire, where the goods have merely been delivered at a station and have not been accepted for transportation by issuing a bill of lading, or receipt or by other act of the carrier.

In Kansas City M. & B. R. R. Co. *v.* Lilly (Miss.), 8 So. 644, which was an action against a company for loss by fire of cotton deposited at a switch where there was neither agent, station nor platform, it was held that an instruction that, if plaintiffs contracted with defendants to furnish a car for shipment of the cotton, and failed to do so, by reason of which the cotton was damaged by fire, defendant is liable, should be refused where there is no evidence connecting the fire with the failure to furnish a car.

4. Where a railroad company receives goods under a bill of lading relieving it from liability for loss by fire, and with the permission of the consignor, stores the goods in its warehouse to await shipment, the company is not liable for the loss of the goods by a fire which occurred without the company's negligence.

In Lancaster Mills *v.* Merchants' C. P. & S. Co. (Tenn.), 14 S. W. 317, a bill of lading of cotton gave the railroad company the privilege of compressing the cotton at its own expense for convenience of carriage, and exempted it from loss by fire while at depots, stations, and warehouses. *Held*, that the company was not liable as carrier for loss of the cotton by fire, not caused by negligence, while stored in a warehouse for compression, though the warehouseman had received the cotton as agent of the railroad company.

II.

Storage During the Course of Transportation.

1. Where goods have been received by a railroad company, to be transported to a point beyond its own line, and after being carried over its own line, while they are stored in its warehouse awaiting transportation by the connecting carrier, the liability of the company is that of a common carrier and not that of a warehouseman.

In Railroad Company *v.* Manufacturing Company, 16 Wall. 318 (1872), goods were delivered to a railroad company to be transported from a point in Michigan to a point in Connecticut. When the goods reached the terminus of a railroad at Detroit they were detained awaiting a steamboat for a period of six days, when they were destroyed by an accidental fire, which burned down the railroad depot. *Held*, that the railroad company was liable for the loss.

In Condict *v.* Grand Trunk Ry. Co., 54 N. Y. 500 (1873), goods were detained at the end of the first railroad company's line for six days, awaiting transportation by a connecting line of a railroad, when they were destroyed by a fire in the first company's depot. It was held that the company was liable for the loss.

In Miller *v.* Steam Navigation Co., 10 N. Y. 431, the carrier had deposited goods upon a float, or floating warehouse, for further transportation by another carrier. A fire broke out a quarter of a mile distant, and very soon afterwards a gale of wind suddenly sprung up and blew the fire in the direction of the float; which, in a few minntes, it reached, and the goods were consumed by it. It was held that the carrier was liable for the loss.

2. Where goods are awaiting re-shipment to their destination in a carrier's warehouse, and the bill of lading. exempts the carrier from liability for loss by fire, the owner of the goods cannot recover, unless he proves that the company was negligent.

In Denning *v.* Norfolk & West. R. R. Co., 16 Am. & Eng. R. R. Cas. 232 (1884), a railroad company received cotton from a preceding carrier on the line of transportation. The bill of lading exempted the company from liability for loss by fire occurring either while the cotton was in actual transit or in store awaiting transit. The company carried the goods and tendered them at the wharf of a steamship company next in the line of carriers. The company had no knowledge that the steamship company could not at once transfer the cotton, but place it at the latter's request on the latter's wharf and in its warehouse. While so stored the cotton was destroyed by fire. *Held*, that the railroad company was not liable for the loss.

In Hornthall *v.* Roanoke, N. & B. Steamboat Co. (N. C.), 11 S. E. 1049; 107 N. C. 76 (1891), which was an action against a carrier for goods destroyed by fire in a carrier's warehouse, where they were awaiting re-shipment to the point of their destination, it was held that plaintiff could not recover under a bill of lading exempting the carrier from liability for such loss, unless he proved negligence, and, in order to rebut the imputation of negligence, it was competent for the carrier to show that there was an accumulation of freight in the warehouse which could not be moved on account of the low stage of water; and, that on account of such accumulation, plaintiff's goods were detained in the warehouse until the occurence of the fire.

3. Where goods are on cars in actual course of transportation under a bill of lading containing no limitation on carriers' liability and are destroyed by fire, the carrier is liable for the loss.

4. Where goods are on cars in actual course of transportation under a bill of lading, relieving a carrier from liability for loss by fire, and the goods are destroyed by fire, the carrier is not liable unless the fire originated from the carrier's negligence: York Co. *v.* Central R. R., 3 Wall. 107 (1865).

III.

Storage After Transportation is Completed.

1. Where goods delivered to a railroad company for shipment have reached their destination, and after notice to the consignee, or with his consent, have been stored in a warehouse of the company, the railroad company is liable as a warehouseman for hire, and not as a common carrier; and if the goods are destroyed by fire while in the warehouse, without negligence on the part of the company, the railroad company is not liable.

In Turrentine *v.* Wilmington & Weldon R. R. Co., 100 N. C. 375 (1888), a railroad company, after the carriage of goods over its road was complete, had them in its warehouse with the owner's consent. A fire broke out near the warehouse, but not in the property of the company. While the fire was burning, plaintiff asked permission to remove the goods, but was refused, because the officers of the company were afraid that if the warehouse was opened much of the property therein would be stolen, also because there did not seem to be immediate danger. The fire reached the warehouse and the goods were destroyed. *Held*, that the plaintiff could not recover the value of the goods.

In Wald *v.* Louisville, E. & St. L. R. Co. (Ky.), 18 S. W. 850 (1891), plaintiff's agent, a passenger on defendant's road, on arriving at his destination, left plaintiff's trunks of samples in the care of defendant's agents, and they were put in the station. The same evening a traction-engine was put off defendant's cars at this place, and was moved about forty-five feet from the station, but was still on defendant's ground.

Those in charge of the engine filled the boiler with water, which defendant's agent probably observed. About two hours after the arrival of the engine defendant's agents closed the station, and went home, and no watchman was left on the premises. About midnight the engine was moved away by steam. Before morning the station was discovered to be on fire at the end nearest to the place where the engine had been, and the station, together with plaintiff's trunks, were destroyed. There was no evidence that defendant's agents had any reason to believe that the station was endangered by the engine's proximity to it. *Held*, that no negligence on the part of defendant was shown, its responsibility being that of a warehouseman for hire, and not that of a common carrier.

In Black *v.* Ashley (Mich.), 44 N. W. 1120, it was held that where a common carrier is accustomed to deliver goods transported by it to a warehouseman, who was independent of the carrier, and by whom the consignees are notified of the arrival of such goods, and the consignees are aware of the custom, and have long acquiesced in it, the liability of the carrier ends with the delivery of the goods to the warehouseman, and no recovery can be had against the carrier for their subsequent destruction by fire.

2. It has been held in some cases that even where no notice has been given to the consignee of the arrival of the goods, the company upon storing the goods relieves itself from liability as a common carrier.

In Butler *v.* East Tenn. & Virg. R. R. Co. (Tennessee), 9 Am. & Eng. R. R. Cas. 249 (1881), it was held that the liability of a common carrier ceased when the freight was deposited in a warehouse, and was not intended by the Act of 1870, ch. 17 (Code, § 1993), requiring the company to give a prescribed notice to the consignee.

In East. Tenn. Virginia & Georgia R. Co. *v.* Kelly (Tenn.), 17 L. R. A. 691 (1892), it was held that a railroad company is not liable as a common carrier for goods destroyed by fire after they are unloaded and stored in its depot, although the consignee had repeatedly called for them and been told that they were not there.

In Hilliard *v.* Wilmington & Weldon R. R. Co., 6 Jones (N. C.) 343, it was held that where an article was carried on a railroad and the consignee lived sixteen miles from the road, and no agent was present to receive it at the depot where it was to be delivered, and it was deposited in a warehouse belonging to the company, the company's liability ceased as a common carrier, and it was only bound as a warehouseman for ordinary neglect.

In Neal *v.* Wilmington & Weldon R. R., 8 Jones (N. C.) 482, it was held that where goods are carried on a railroad from one station to another, if the owner is not ready to receive them at their destination, the duty of a railroad company as a carrier is discharged by putting the goods in the warehouse of the company without giving notice to the consignee or owner, who lives at a distance.

3. A railroad company is ordinarily liable as a common carrier for the loss of goods by fire where the goods have reached their destination, but have not been unloaded from the company's cars.

In Dunham *v.* Boston & A. R. Co., 46 Hun. 245, it was held that a railroad company is liable for goods destroyed in its cars by fire on the night after their arrival, if the consignee, immediately on notice of their arrival, begins to remove them, using a reasonable number of teams, and discontinues his labors only at the end of the usual working hours of the day.

In Missouri Pac. Ry. Co. *v.* China Manufg. Co., (Tex.) 14 S. W. 785, 79 Tex. 26, cotton was destroyed while on two cars standing on a side track near a compress. It did not appear what effort was made to save the cars, nor what precautions had been taken for the protection of cotton in cars on the side track. It was held that the evidence did not show that the loss occurred without fault on the part of the carrier.

In Draper *v.* Delaware & H. Canal Co., 23 N. E. 131, 118 N. Y. 118, a railroad company received goods for transportation, and gave a bill of lading, which stated that, after arriving at their destination, the goods should be held under the liability of a warehouseman, when they were placed in the storeroom, or were to be taken from the car by the consignee.

They were kept in a freight car for several days after reaching their destination, and were then destroyed by fire. Before the fire the owner's agent had been wrongly informed that they had been unloaded, at which he expressed regret, and requested the company to store the goods for a few days. *Held*, that the company was not liable as a common carrier.

4. Where goods have been delivered to a railroad company in loaded cars to be transported to a side track on its road, where they are to be unloaded by the consignee, the company is not liable as a common carrier for the destruction of the cars by fire after they have been placed on the side track designated.

In Peoria & P. U. Ry. Co. *v.* United States Rolling-Stock Co. (Ill.) 27 N. E. 59 (1891), it was held that where a railroad company which receives loaded cars to be transported to a certain side track on its road, there to be unloaded by the consignee of the cargo, and then to be transported by the company to its yard, is not liable for the cars as a common carrier when destroyed by fire while they are standing on the side track to be unloaded.

IV.

On Connecting Lines.

1. In the United States a carrier is not ordinarily liable for a loss by fire occurring on the line of a connecting carrier.

In Balt. & Ohio R. R. Co. *v.* Schumacher, 29 Md. 168 (1868), the court citing Redfield on Railways, said: "The general rule of the American courts is, that in the absence of special contract, the rule laid down in the earlier English cases, that the carrier is only liable for the extent of his own route, and for the safe storage and delivery to the next carrier, is the more just and reasonable one." In this case there was a loss of oil by leakage, and a connecting carrier where negligence caused the loss was held liable.

In Phillips *v.* North Carolina R. R. Co., 78 N. Car. 294 (1878), it was held that in the absence of a special contract where goods are delivered to railroad company for transportation, though worded for a place beyond its own terminus, the carrier discharges its duty by safely conveying over its own road, and then delivering to the next connecting carrier in the

direct and usual line towards the point of ultimate destination. See also to the same effect: Harris *v.* Ry. Co., 371; Grover & Bader Co. *v.* Ry. Co., 70 Mo. 672; McConnell *v.* R. R. Co., 86 Va. 248; Clyde *v.* Hubbard, 88 Pa. 358, Myriell *v.* R. R. Co., 107 U. S. 102, and numerous other cases cited in Hutchinson on Carriers, § 149 (2d Ed., 1891).

2. In Virginia the carrier is liable, unless he is released from liability in writing by the shipper.

Code of Virginia (1887), § 1295: Prior to the code the liability of the carrier was limited to a loss occurring on its own line, unless there was an express contract to carry the goods to their ultimate destination: McConnell *v.* Norfolk & West. R. R. Co., 86 Va. 248 (1889).

V.

Act of God or Public Enemy.

A carrier is not liable for the loss of goods by fire, where the fire was caused by the act of God or the public enemy: Hutchinson on Carrier's, §§ 170-a and 203 (2d Ed.) 1891.

VI.

Where Carrier is Relieved by Special Contract.

1. A carrier may stipulate for exemption from liability, in case the goods are lost or injured by fire; and if he does so, the measure of his obligation is ordinary diligence; but if the fire is caused by his negligence, or if he negligently places or leaves the goods in a place of danger, he cannot, by such a stipulation, escape liability: Hutchinson on Carriers, § 248-b, citing Little Rock, etc., Ry. Co. *v.* Daniels, 49 Ark. 352; Rand *v.* Transportation Co., 59 N. H. 363; Louisville, etc., R. Co. *v.* Manchester Mills, 14 S. W. Rep. 314; McFadden *v.* Railway Co., 92 Mo. 343. See also to the same effect: York Co. *v.* Central R. R. Co., 3 Wall. 107 (1865).

2. In Virginia and West Virginia the value of the goods shipped may be fixed in the bill of lading, as a limit of the liability of the carrier in the case of loss through its negligence. It is otherwise in Ohio.

In Richmond & Danville R. R. Co. *v.* Payne, 86 Va. 481, (1890) horses were shipped under a bill of lading, fixing the

value of each horse at $100. The court held that the shipper could not recover more, although the horses were injured by the railroad company's negligence. Lewis, P. J., said: "When the shipper signs a bill of lading, not exempting the carrier from liability for the negligence of himself or his servants, but limiting the amount in which the carrier shall be liable, in consideration of the goods being carried at reduced rates, such a contract fairly entered into, is valid and binding, and we see no reason, when its terms are just and reasonable, it should not be."

In Zoust *v.* Chesa. & Ohio Ry. Co., 17 L. R. A. 116 (1892), the facts were similar, and the court reached the same conclusion.

In Hart *v.* Pennsylvania R. R. Co., 112 U. S. 331, the carrier assumed liability in a live stock contract for "horses and mules, not exceeding $200 each." The court held that the shipper could not recover an amount exceeding $200 for each of the five horses shipped, although it appeared that they were valuable race horses.

In Muser *v.* Holland, etc., 17 Blatchf. 412, the shipper took a receipt exempting the company from loss by fire and from liability beyond $50. *Held*, that the shipper could not recover an amount in excess of $50.

3. In Ohio the carrier is liable to the full extent of the value of the goods, where the loss has occurred through his negligence, although there is a limitation on the value of the goods in the bill of lading.

In United States Express Co. *v.* Backman, 28 Ohio St. 144, whisky was accepted by a carrier, and the value stated in the bill of lading was $20 per barrel.

ASHBURN, J., said: "This company cannot stipulate against its own negligence; such a stipulation would be contrary to public policy. But in all other respects a common carrier may limit his liability in case of loss by special contract. If the defendant lost this whisky by its own negligence, it cannot restrict its liability to $20 a barrel; if as may be admitted, it was advised of the nature and value of the article to be transported, and if this whisky was, in fact, worth more than $20 a barrel at the time. W.