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## BAILMENTS - RIGHT OF BAILEE FOR HIRE TO LIMIT HIS LIABILITY BY CONTRACT WITH THE BAILOR

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BAILMENTS — RIGHT OF BAILEE FOR HIRE TO LIMIT HIS LIABILITY BY CONTRACT WITH THE BAILOR — Plaintiff, a guest of the defendant hotel, left his trunk at the hotel check room and received a receipt which stated on the back that the defendant would not be liable in excess of \$25 for any loss resulting

from its negligence. When the plaintiff called for the trunk, it could not be found. *Held*, the defendant is liable for the full value of the trunk, since a bailee for hire cannot limit his liability for his own negligence. *Oklahoma City Hotel Co. v. Levine*, (Okla. 1941) 116 P. (2d) 997.

The question whether or not a bailee for hire can limit his liability by contract has received various answers.<sup>1</sup> Many courts have given an affirmative answer on the basis of the right of freedom of contract,<sup>2</sup> or because no statute prohibits it.<sup>3</sup> This seems to be the common-law rule of England,<sup>4</sup> although it has been subjected to some statutory changes.<sup>5</sup> The courts in this country which refuse to allow such contracts base their decisions on public policy<sup>6</sup> or statutory interpretation.<sup>7</sup> The question arises most frequently in regard to printed limitations on tickets or stubs which a bailee issues to a bailor.<sup>8</sup> The rule in Eng-

<sup>1</sup> *American Laundry Co. v. Hall*, 27 Ga. App. 717, 109 S. E. 676 (1921); *Red-Cross Laundry v. Tuten*, 31 Ga. App. 689, 121 S. E. 865 (1924); *Van Noy Interstate Co. v. Tucker*, 125 Miss. 260, 87 So. 643 (1921); *Noyes v. Hines*, 220 Ill. App. 409 (1920); *Kaye v. M'Divani*, 6 Cal. App. (2d) 132, 44 P. (2d) 371 (1935); *Missouri P. Ry. v. Fuqua*, 150 Ark. 145, 233 S. W. 926 (1921); *Interstate Compress Co. v. Agnew*, 168 C. C. A. (8th) 199, 255 F. 508 (1919); *World's Columbian Exposition v. Republic of France*, (C. C. 7th, 1899) 96 F. 687; *Kravitz v. Parking Service Co.*, 240 Ala. 467, 199 So. 731 (1941); *C. F. Thompson v. Mobile Light & R. R.*, 20 Ala. App. 163, 101 So. 175 (1924). See also 6 C. J. 1112 (1916); 27 A. L. R. 157 (1923); 30 MICH. L. REV. 979 (1932).

<sup>2</sup> *Interstate Compress Co. v. Agnew*, 168 C. C. A. (8th) 199, 255 F. 508 (1919); 86 UNIV. PA. L. REV. 772 (1938). See *Munger Auto Co. v. American Lloyds of Dallas*, (Tex. Civ. App. 1924) 267 S. W. 304, where the court held that the due process clause of the state constitution guaranteed the right of a garage-keeper to make a contract limiting liability.

<sup>3</sup> *Interstate Compress Co. v. Agnew*, 168 C. C. A. (8th) 199, 255 F. 508 (1919).

<sup>4</sup> 7 A. L. R. 1234 (1920); 1 HALSBURY, LAWS OF ENGLAND, § 1240 (1931).

<sup>5</sup> 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 1001 (1911).

<sup>6</sup> *Wendt v. Sley System Garages*, 124 Pa. Super. 224, 188 A. 624 (1936); *Downs v. Sley System Garages*, 129 Pa. Super. 68, 194 A. 772 (1937); *Pilson v. Tip-Top Auto Co.*, 67 Ore. 528, 136 P. 642 (1913); *Sporsem v. First Nat. Bank*, 133 Wash. 199, 233 P. 641 (1925); 8 C. J. S. 261 (1938).

<sup>7</sup> *Morse v. Imperial Grain & Warehouse Co.*, 40 Cal. App. 574, 181 P. 815 (1919); *Renfroé v. Fouche*, 26 Ga. App. 340, 106 S. E. 303 (1921); *Scott Auto & Supply Co. v. McQueen*, 111 Okla. 107, 226 P. 372 (1924). Compare *Gesford v. Star Van & Storage Co.*, 104 Neb. 453, 177 N. W. 794 (1920), in which case a contrary result was reached.

<sup>8</sup> Bills of lading and warehouse receipts should be treated separately because of their peculiar nature as contracts with printed conditions which bailee is expected to receive and notice. But see *Dieterle v. Bekin*, 143 Cal. 683, 77 P. 664 (1904), where the court held such a contract void; *Wilson v. Crown Transfer & Storage Co.*, 201 Cal. 701, 258 P. 596 (1927), where the court held such a contract void, because the purpose of allowing limited liability was to protect the warehouseman when he did not know the value of goods, but the court held that when he had knowledge of value the rule fails and he must give goods the care required and charge according to the value if he wants to.

land makes the limitations binding on the bailor<sup>9</sup> as a matter of law<sup>10</sup> or fact,<sup>11</sup> or conditions the validity of the limitation on the reasonableness of the notice given to the bailor.<sup>12</sup> No case in the United States goes as far as the English courts in holding that these limitations are binding as a matter of law, but some courts have used the reasonableness of notice test.<sup>13</sup> Most courts, however, hold that actual notice of the limitation must be given to the bailor and assented to by him.<sup>14</sup> Some courts reach a similar result by holding that the bailment contract is complete when the bailee hands the check to the bailor, regardless of any limitations printed on the check, and that any new contract of limited liability must be entered into separately from this first bailment.<sup>15</sup> The decisions which invalidate these contracts because of statutes establishing the degree of care to be exercised by a bailee are subject to the observation that such statutes are merely declaratory of the common law and have nothing to do with the limitation of liability.<sup>16</sup> From the view point of the bailor, no contract limiting liability should be allowed unless expressly assented to by him; but on behalf of the bailee it can be said that unlimited liability should not be presumed of all bailees for hire.<sup>17</sup> This conflict is a result of the clash of the desirability of freedom of contract with considerations of public policy.<sup>18</sup> In regard to businesses affected with a public interest it may well be held that public policy arguments against permitting the limitation of liability outweigh freedom of contract principles because of the superior bargaining power possessed by such businesses due to their quasi-

<sup>9</sup> See note 4, *supra*.

<sup>10</sup> *Van Toll v. S. E. Ry.*, 12 C. B. (N. S.) 75 (1862); *Lyons & Co. v. Caledonian Ry.*, 46 Scott. L. R. 848 (1909).

<sup>11</sup> *Parker v. S. E. Ry.*, 46 L. J. Q. B. (N. S.) 768 (1877).

<sup>12</sup> *Harris v. G. W. Ry.*, 45 L. J. Q. B. (N. S.) 729 (1876). Compare *Richardson, Spence & Co. v. Rowntree*, [1894] A. C. 217; *Stephen v. International Sleeping-Car Co.*, 19 T. L. R. 621 (1903).

<sup>13</sup> *Noyes v. Hines*, 220 Ill. App. 409 (1920). Cf. *Cunningham v. International Committee of Y. M. C. A.*, 51 Cal. App. 487, 197 P. 140 (1921), where the question of negligence was not raised, but notice was deemed sufficient. See also *Terry v. Southern Ry.*, 81 S. C. 279, 62 S. E. 249 (1908).

<sup>14</sup> *Van Noy Interstate Co. v. Tucker*, 125 Miss. 260, 87 So. 643 (1921); *Jones v. Great Northern Ry.*, 68 Mont. 231, 217 P. 673 (1923); *Dodge v. N. C. & St. L. Ry.*, 142 Tenn. 20, 215 S. W. 274 (1919); 7 A. L. R. 1229 (1920). Cf. *Denver Union Terminal R. R. v. Cullinan*, 72 Colo. 248, 210 P. 602 (1922).

<sup>15</sup> *Brown v. Hines*, 213 Mo. App. 298, 249 S. W. 683 (1923); *Hotels Statler v. Safier*, 103 Ohio St. 638, 134 N. E. 460 (1921). *Contra*, *Cunningham v. International Committee of Y. M. C. A.*, 51 Cal. App. 487, 197 P. 140 (1921).

<sup>16</sup> Some courts apparently interpret these statutes as being declaratory only. See 2 Mont. Rev. Code (1921), § 7661: "A depositary for hire must use at least ordinary care for the preservation of the thing deposited." In *Jones v. Great Northern Ry.*, 68 Mont. 231, 217 P. 673 (1923), the court made no mention of the statute. See also *Ga. Code Ann.* (1935), § 12-103 (3470), and *American Laundry Co. v. Hall*, 27 Ga. App. 717, 109 S. E. 676 (1921).

<sup>17</sup> 20 IOWA L. REV. 680 (1935).

<sup>18</sup> CONTRACTS RESTATEMENT, § 574 (1932); 2 PAGE, CONTRACTS, 2d ed., 766-768 (1920).

monopolistic position.<sup>19</sup> Although this doctrine could be used to justify the principal case, it is apparent that doing so necessitates stretching the doctrine to its limits, and overlooks the fact that innkeeping is a common calling which must extend its services to all who demand them. Since the hotel cannot refuse to assume liability when its services as a bailee are demanded, it would seem that, as a matter of protection, it should be permitted to limit its liability.<sup>20</sup>

<sup>19</sup> 30 MICH. L. REV. 979 (1932); Willis, "The Right of Bailees to Contract Against Liability for Negligence," 20 HARV. L. REV. 297 (1907). For a general treatment of common carriers and special contracts, see GODDARD, BAILMENTS AND CARRIERS, 2d ed., §§ 249-275 (1928).

<sup>20</sup> It could be argued that this would encourage negligence, but it is doubtful if the business man of today would abuse the right. The profit motive and competition would still demand that he give better service than his competitor. See comment in 86 UNIV. PA. L. REV. 772 at 776 (1938).