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CARRIERS - LIMITATION OF LIABILITY FOR NEGLIGENCE -TRUE VALUATION AGREEMENT

CARRIERS — LIMITATION OF LIABILITY FOR NEGLIGENCE — TRUE VALUATION AGREEMENT — Approximately one-seventh of a shipment of cherries in brine was lost owing to improper stowage. Award of damages was resisted on the ground that the bills of lading provided for adjustment of claims "on the basis of the invoice value of the entire shipment adding expenses necessarily incurred,"[1] and that because of favorable market conditions existing at destination the entire

[1] 294 U. S. 494 at 495.

value of the sound cherries exceeded the invoice value. *Held*, the quoted clause was not a genuine limitation agreement, which is valid, but a "true valuation" clause, which, since it may wholly exonerate the carrier from liability for negligence, is illegal and contrary to public policy. *The Ansaldo San Giorgio I v. Rheinstrom Brothers Co.*, 294 U. S. 494, 55 S. Ct. 483 (1935).

The common law imposed an insurer's liability upon the common carrier except for acts of God or of the public enemy.[2] This policy was based on these grounds: first, that the shipper must entrust his goods to the exclusive control of the carrier, whose ways were too complicated to be unravelled; and second, that there was no semblance of equality of bargaining power between the individual shipper and the almost monopolistic carrier.[3] The history of legislation and litigation on this point demonstrates that carriers have been loath to accept the logic of the situation and have sought to whittle away the shippers' rights,[4] although they could have protected both the shippers' and their own interest by the simple expedient of using a base point rate and charging actuarial insurance.[5] Courts in this country have uniformly disallowed contracts excusing negligence absolutely,[6] but where there has been a choice of rates and valuation, the courts have

[2] Coggs v. Bernard, 2 Ld. Raym. 909 at 918, 92 Eng. Rep. 107 (1702). Forward v. Pittard, 1 T. R. 27 at 33, 99 Eng. Rep. 953 (1785); Hollister v. Nowlen, 19 Wend. (N. Y.) 234 (1838). See further, Goddard, "The Liability of the Common Carrier as Determined by Recent Decisions of the United States Supreme Court," 15 COL. L. REV. 399 at 405, n. 21 (1915).

[3] Cole v. Goodwin & Story, 19 Wend. (N. Y.) 251 at 282, 32 Am. Dec. 470 (1838); R. R. Co. v. Lockwood, 17 Wall. (84 U. S.) 357 (1873).

[4] See generally Goddard, "Contract Limitations of the Common Carrier's Liability," 8 MICH. L. REV. 531 (1910), and "The Liability of the Common Carrier as Determined by Recent Decisions of the United States Supreme Court," 15 COL. L. REV. 399, 475 (1915). Hollister v. Nowlen, 19 Wend. (N. Y.) 234 (1838); New Jersey Steam Nav. Co. v. Merchants' Bank, 6 How. (47 U. S.) 343 (1848); R. R. Co. v. Lockwood, 17 Wall. (84 U. S.) 357 (1873); Hart v. Pennsylvania R. R., 112 U. S. 331, 5 S. Ct. 151 (1884); Adams Express Co. v. Croninger, 226 U. S. 491, 33 S. Ct. 148 (1913).

[5] Goddard, "Contract Limitations of the Common Carrier's Liability," 8 MICH. L. REV. 531 at 539 (1910); and "The Liability of the Common Carrier as Determined by Recent Decisions of the United States Supreme Court," 15 COL. L. REV. 399 at 406 (1915). It should be noted that under the present system there is no actuarial correspondence between different rate bases and increased valuation of the goods. Kansas City Southern Ry. v. Carl, 227 U. S. 639, 33 S. Ct. 391 (1913); Nashville Ry. v. Truitt, 14 Ga. App. 767, 82 S. E. 465 (1914); American Silver Mfg. Co. v. Wabash R. R., 174 Mo. App. 184, 156 S. W. 830 (1913).

[6] R. R. Co. v. Lockwood, 17 Wall. (84 U. S.) 357 at 384 (1873); Kansas City Southern Ry. v. Carl, 227 U. S. 639 at 650, 33 S. Ct. 391 (1913); Boston & Me. R. R. v. Piper, 246 U. S. 439 at 445, 38 S. Ct. 354, Ann. Cas. 1918E 469 (1918). It has generally been held valid for a private carrier to contract against ordinary negligence. 10 C. J., § 249 (1917). But the later cases show a tendency to deny the right to contract against any kind of negligence, although some courts insist on finding the act "willful and wanton" in order to create liability. N. Y. Cent. R. R. v. Mohney, 252 U. S. 152, 40 S. Ct. 287 (1919); Sabol v. Chicago & N. W. Ry., 255 Mich. 548, 238 N. W. 281 (1931), cert. den. Chicago & N. W. R. R. & Sabol, 284 U. S. 688, 52 S. Ct. 265 (1931); and see generally 30 MICH. L. REV. 979 (1932). The Harter Act modifies

held valid agreements limiting liability for negligence to a stipulated amount.[7] In the instant case the Supreme Court, while recognizing certain advantages in the idea, held invalid and against public policy a true valuation clause, distinguishing it from a limitation clause and reasoning as follows: since a true valuation clause sets a fixed basis from which damages are to be computed (here the invoice value), it may happen that prices will so appreciate by the time set for arrival [8] that a part only of the shipment will be equal to the full "true value" (the invoice here), with the consequent result that the carrier could injure or convert the remainder of the shipment without liability for his fault.[9] But similar reasoning might also be applied to the true limitation agreement, because a limitation of six cents might be set, allowing the carrier to damage or convert goods to the value of thousands of dollars at the cost of six cents. Therefore, it is submitted that while there is a subtle distinction between limitation and true value agreements, sound policy and justice must inevitably dictate that both be discarded in favor of liability under an actuarial insurance scheme.

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the carriers' liability so as to place American shipping on an equal footing with the British. HUGHES, ADMIRALTY, 2d ed., §§ 190, 191 (1920); Evans, "The Harter Act and Its Limitations," 8 MICH. L. REV. 637 (1910). In England, however, the common carrier can expressly contract against liability for negligence. Peninsular & Oriental Steam Nav. Co. v. Shand, 12 L. T. Rep. 808 (1865); Marriott v. Yeoward Bros., [1909] 2 K. B. 987. Canada reluctantly adopted the English rule, yielding to the weight of English precedents but expressing "the impression that they are contrary to the public policy so frequently enunciated and so much lauded in the older cases." Hamilton v. Grand Trunk Ry., 23 Up. Can. Q. B. 600 (1864).

[7] GODDARD, BAILMENTS AND CARRIERS, 2d ed., § 270 (1928). Hart v. Pennsylvania R. R., 112 U. S. 331 at 343, 5 S. Ct. 151 (1884); Boston & Me. R. R. v. Piper, 246 U. S. 439, 38 S. Ct. 354, Ann. Cas. 1918E 469 (1918); Union Pac. R. R. v. Burke, 255 U. S. 317 at 323, 41 S. Ct. 283 (1921).

[8] The accepted measure of value from which damages are computed is the arrived market value. N. Y., Lake Erie & Western R. R. v. Estill, 147 U. S. 591 at 616, 13 S. Ct. 444 (1892).

[9] The Ansaldo San Giorgio I v. Rheinstrom Bros. Co., 294 U. S. 494, 55 S. Ct. 483 at 485. This reasoning is particularly interesting inasmuch as it suggests a turning back to the common law rule of insurer liability, because previous decisions had held true valuation clauses valid. Shaffer & Co. v. Chicago, R. I. & P. Ry., 21 I. C. C. 8 (1911); 1 HUTCHISON, CARRIERS, 3d ed., § 430 (1906), where some cases to the contrary are also cited. See also Phoenix Ins. Co. v. Erie & Western Transp. Co., 117 U. S. 312 at 322, 6 S. Ct. 750 (1886); Gulf, Colorado, etc. Ry. v. Texas Packing Co., 244 U. S. 31 at 36, 37 S. Ct. 487 (1916). In Duplan Silk Co. v. Lehigh Valley R. R., (C. C. A. 2d, 1915) 223 F. 600, the Circuit Court of Appeals refused to distinguish between a true limitation and a true valuation clause, although the District Judge had done so. A true valuation clause was held invalid under the Cummins Amendment. Chicago, M. & St. P. Ry. v. McCaull-Dinsmore Co., 253 U. S. 97, 40 S. Ct. 504 (1920). See generally, 35 COL. L. REV. 602 (1935).