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Limitation as to the Amount of Liability For Loss of Goods by Carriers

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NOTE AND COMMENT.

LIMITATION AS TO THE AMOUNT OF LIABILITY FOR LOSS OF GOODS BY CARRIERS.—A carload of automobiles was shipped by express, under an express receipt limiting recovery to $50, unless a greater value was named and a greater carrying charge paid. The shipper knew of this stipulation, and deliberately chose the restricted liability so as to secure the lower rate. On a suit for loss of the automobiles, recovery was limited to $50. *Geo. N. Pierce Co.* v. *Wells Fargo & Co.*, 189 Fed. 561, commented on in 10 MICH. L. REV. 317. The United States Supreme Court has just affirmed this decision, 35 Sup. Ct. 351.

The United States Supreme Court had been very gradually approaching its conclusion announced in the *Pierce* case, from the *Croninger* case in 1912, 11 MICH. L. REV. 460, through an interesting series of cases reviewed below. Rarely has legislative disapproval of judicial interpretation of a statute been so promptly expressed. The decision in this case was handed down on February 23rd last. On March 4th the CUMMINS ACT (S 4522) had been approved, by the terms of which the carrier is liable "for the full actual loss, damage, or injury to such property * * * notwithstanding any limitation of liability, or limitation of the amount of recovery, or representation or agreement as to value in any such receipt or bill of lading, or in any

contract, rule or regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void." If the goods are hidden from view the carrier may require the shipper to specifically state in writing their value, and shall not be liable beyond the amount so specifically stated.

In the *Carl* case, 227 U. S. 369, the court "laid on one side," as not there involved, every question of intentional connivance between shipper and carrier to secure an illegal rate as the price of a lower valuation. But in *A. T. & S. F. Ry Co.* v. *Robinson*, 233 U. S. 173, that question could not be laid on one side, for the shipper by telephone told the agent of the carrier that he wished to ship "race horses" in time for the races next day. Recovery was limited to $100 for each horse, as fixed by the rates paid for transportation, an absurd value for a race horse. The courts have declined to consider whether the higher rates for full liability are just enough higher to protect the carrier against the greater amount of risk he assumes by reason of the difference in value. In the *Carl* case this is said to be the true principle, but the determination of how much this should be the court regards as an administrative question for the Interstate Commerce Commission. See also *A. T. & S. F. Ry.* v. *U. S.*, 232 U. S. 199, 220; *I. C. C.* v. *U. P. R.*, 222 U. S. 541, 547; *L. & N. R. Co.* v. *U. S.*, 218 Fed. 89. Presumptively the rates now in the tariff sheets filed with the Commission are reasonable, and the courts will not consider this question until it is first passed on by the Commission. *B. & M. R.* v. *Hooker*, 233 U. S. 97, 121; *G. N. Ry.* v. *O'Connor*, 232 U. S. 508, 515, reversing 118 Minn. 223, 139 N. W. 618, 136 N. W. 743. The carrier need make no further inquiry as to value. *Wells Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469; *Robinson* v. *L. &N. R.* (Ky.) 169 S. W. 831, and cases cited; *Wabash R. Co.* v. *Priddy*, (Ind.) 101 N. E. 724; *Zoller Hop Co.* v. *So. Pac. Co.*, (Ore.) 143 Pac. 931; *A. Silver Mfg. Co.* v. *Wabash R.*, (Mo. App.) 156 S. W. 830; *United Lead Co.* v. *Lehigh Valley R. Co.*, 141 N. Y. Supp. 310, 156 App. Div. 525. It has been held, however, that the carrier has the burden of proving that the tariffs are publicly filed. *Adams Exp. Co.* v. *Cook*, (Ky. App.) 172 S. W. 1096 (Feb. 1915). The question is most elaborately argued on both sides in *B. & M. R.* v. *Hooker*, 233 U. S. 97, in which PITNEY, J., dissenting, with great force states an apposite view.

The court in the *Pierce* case regarded the great purpose of the whole Interstate Commerce Act as the prevention of discrimination, to make "but one rate open to all alike, and from which there could be no departure".

Mr. Justice DAY says the principal case "presents the question whether one who has deliberately and purposely, without imposition or fraud, accepted a contract of shipment limiting the amount of recovery to $50, which is the sum named in the filed tariffs as the amount of recovery, in the absence of a declaration of a greater value on the part of the shipper, who is given the privilege of paying an increased rate and having the liability for the full value of the goods, is entitled in case of loss to recover the full value of the property." To the argument that there was no real valuation here,

but merely an arbitrary limitation, the answer is "that the legality of the contract does not depend upon a valuation which shall have a relation to the actual worth of the property." This cuts the Gordan Knot and leaves nothing to discuss. It makes the Act to regulate commerce and its amendments cut the ground from under all those prior cases so long relied upon, which spoke of "an agreed value fairly made". "If the rates were unreasonable it is for the Commission to correct them upon proper proceedings. If this were not so, the Interstate Commerce Act would fail to make effective one of its prime objects, the prevention of discrimination among shippers."

It has required nine years to secure this authoritative and final interpretation of the CARMACK AMENDMENT. It is final for just ten days, and then Congress makes a new attempt to prevent the carrier from reducing his liability to the shipper, as he was permitted to do under this view of the statute. How long will it require to determine the meaning of the CUMMINS ACT? Would it not be better for the carriers to cease this struggle to escape liability, and save the expense of this costly litigation, by cheerfully taking up insurance at a proper charge therefor? We are informed that they are now appearing before the Interstate Commerce Commission to urge that the higher tariffs now on file with the Commission fix proper charges under the CUMMINS ACT but these higher charges bear such widely varied differences from the lower charges in the tariffs of different carriers that they are evidently not fixed on any principle and therefore can scarcely be accepted as properly based. The result should be, it would seem, a scientific attempt by the Commission to determine cost of insurance, and to add this cost to the present prevailing tariffs. E. C. G.