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BAILMENT-LIMITATION OF LIABILITY-EFFECT OF POSTED NOTICE OR STIPULATION ON RECEIPT

Walter L. Dean
University of Michigan Law School

BAILMENT—LIMITATION OF LIABILITY—EFFECT OF POSTED NOTICE OR STIPULATION ON RECEIPT—Plaintiff deposited a traveling bag in the parcel room at defendant's railroad station, paid a ten cent fee, and was issued in return a numbered check or receipt on which was printed, inter alia, a notice that defendant's liability would be limited to $25 unless an excess valuation were declared and paid for at the time of deposit. Plaintiff testified that he hadn't read the printing on the check and hadn't seen a posted sign which contained the same information. On demand the defendant was unable to redeliver the bag. In an action to recover the value of the bag and its contents, the lower court concluded that defendant's liability was limited to $25. On appeal by the plaintiff, *held,* reversed. The liability of the defendant as bailee was not limited by the stipulations on the check or on the sign, where the bailor had no actual knowledge of those limitations. *Allen v. Southern Pacific Co.,* (Utah 1950) 213 P. (2d) 667.

When a railroad company accepts articles for checking in its parcel room it is acting in its capacity as a warehouseman rather than as a common carrier. As such, the railroad is bound to use as much care in regard to the bailed goods "as a reasonably careful owner of similar goods would exercise," and in the absence of an express limitation of liability it will be liable to the full extent of the damage caused by its omission to do so.[1] The common-law rule, which has been

[1] Fraam v. Grand Rapids & Ind. Ry. Co., 161 Mich. 556, 126 N.W. 851 (1910). Cal. Civ. Code (1949) § 1840 provides: "The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the things deposited to be worth." England v. Lyon Fireproof Storage Co., 94 Cal. App. 562, 271 P. 532 (1928).

adopted by the Uniform Warehouse Receipts Act, prohibits the insertion in a warehouse receipt of terms which "in anywise impair [the] obligation" to exercise that degree of care which is normally required of a bailee.[2] But though a bailee cannot contract to exempt himself from liability arising out of his own negligence, it is generally held that the parties may enter into an agreement limiting his liability to a specified sum unless a higher value is declared and an increased charge is paid.[3] To make such an agreement effective the ordinary requisites for the formation of a contract must be satisfied. Although the mere posting of a notice announcing the limited liability of the bailee will not be enough, if the bailor sees and reads the stipulation or has actual notice of its terms before surrendering the bailed goods, he will be deemed to have accepted them as a condition of his bailment contract.[4] The real question arises, however, where a notice of the limitation is printed on the check or token which the bailor is given in exchange for the bailed goods. It has been argued that the check contains the contract and under ordinary contract principles, when the parties have put the terms of their agreement in writing, neither party can later deny the binding obligation of the written agreement. Thus it is often held as a matter of law by the English courts that the acceptance of the check or receipt containing a printed limitation of liability constitutes an acceptance of the bailee's offer to contract for limited liability.[5] But the bailor may be justified in believing that the stub was given him merely as a means of later identifying the parcel he has deposited with the bailee and not as a contract embodying the terms of the bailment.[6] The instant case is in accord with the prevailing view in this country which holds that the bailor will not be presumed to have agreed to limit the liability for negligence unless it is affirmatively shown that he had actual knowledge of such provisions at the

[2] §3(b); Utah Code Ann. (1943) § 99-0-3(2). See 3 U.L.A. §3 (1922).

[3] 6 WILLISTON, CONTRACTS §1751C (1938), and cases there cited. See, Willis, "The Right of Bailees to Contract against Liability for Negligence," 20 HARV. L. REV. 297 (1907); 86 UNIV. PA. L. REV. 772 (1938). Ordinary terms of bailment may be altered by contract only insofar as reasonable. Noyes v. Hines, 220 Ill. App. 409 (1920).

[4] BROWN, PERSONAL PROPERTY § 84 (1936); Dietrich v. Peters, 28 Ohio App. 427, 162 N.E. 753 (1928); Madan v. Sherard, 73 N.Y. 329 (1878).

[5] Pratt v. The South Eastern Ry. Co., [1897] 1 Q.B. 718, 66 L.J. (N.S.) 418 (1897); Lyons & Co. v. Caledonian Ry., 46 Scott. L. R. 848 (1909); Terry v. Southern Ry., 81 S.C. 279, 62 S.E. 249 (1908); Mo. Pac. R. Co. v. Fuqua, 150 Ark. 145, 233 S.W. 926 (1921).

[6] "The coupon was presumptively intended . . . to serve the special purpose of affording a means of identifying the parcel left by the bailor. In the mind of the bailor the little piece of cardboard which was undoubtedly hurriedly handed to him and which he doubtless as hurriedly slipped into his pocket, without any reasonable opportunity to read it, and hastened away without any suggestion having been made upon the part of the parcel room clerk as to the statements in fine print thereon, did not arise to the dignity of a contract by which he agreed that in the event of the loss of the parcel . . . he would accept therefor a sum which perhaps would be but a small fraction of its actual value." Healy v. New York Cent. & H. R.R. Co., 153 App. Div. 516 at 519, 138 N.Y.S. 287 (1912), Affd. 210 N.Y. 646, 105 N.E. 1086 (1912). These cases are clearly to be distinguished from cases involving bills of lading and warehouse receipts which are connected with transactions of considerable commercial importance which have some period of time to run and where it would be natural for parties to stipulate the terms of the contract rather than rely on general principles of law to determine the bailee's liability. In such cases, the bailor will be held to have constructive notice of the conditons printed on the receipt. See 22 MICH. L. REV. 154 (1923).

time he deposited the goods.[7] A few courts have gone even further, holding that the limitation on the stub will be inoperative even if read, since it comes to the depositor's knowledge only after the bailment contract is completed and therefore cannot be a part thereof.[8] On the other hand, some courts have said that whether or not a contract limiting liability has been entered into by the parties is a question of fact dependent on the reasonableness of notice given the bailor of the existence of such conditions.[9] Reasonableness of notice will be objectively determined and may depend, among other things, on the visibility of posted signs, or the manner in which the conditions were printed on the parcel checks and the simplicity of the language used.[10] If we admit that the bailee ought to be allowed to limit his liability,[11] since it will be almost impossible ever to prove that the bailor actually read the notice, an objective standard, such as these courts suggest, would seem to be the only workable approach. This view, it is submitted, while avoiding the harshness of the English rule, would not put such a premium on ignorance or pretended innocence by the bailor as results from the rule expressed in the instant case.

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[7] Van Noy Interstate Co. v. Tucker, 125 Miss. 260, 87 S. 643 (1921); Jones v. Great Northern Ry., 68 Mont. 231, 217 P. 673 (1923). No assent to contract of limited liability even where bailor checked parcels at same place before and saw the printed matter on the stub which he didn't read. Brown v. Hines, 213 Mo. App. 298, 249 S.W. 683 (1923).

[8] Brown v. Hines, supra, note 7.

[9] Noyes v. Hines, supra, note 2; Parker v. The South Eastern Ry. Co., 2 C.P.D. 416, 46 L.J. (N.S.) 768 (1877).

[10] "If what they do is sufficient to inform people in general that the ticket contains conditions . . . a particular plaintiff ought not to be in a better position than other persons on account of his exceptional ignorance or stupidity or carelessness." Parker v. The South Eastern Ry. Co., supra, note 9, at 423.

[11] See Willis, "The Right of Bailees to Contract against Liability for Negligence," 20 HARV. L. REV. 297 (1907); 86 UNIV. PA. L. REV. 772 (1938); 2 CONTRACTS RESTATEMENT §§574, 575 (1932).