1891

The Liability of the Common Carrier as Insurer

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THE LIABILITY OF THE COMMON CARRIER AS INSURER;
ITS ORIGIN, EXTENT AND LIMITATIONS.

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1891.
CONTENTS.

Introduction. -------------------------------- 1.

I. Who are Common Carriers?

The "holding out" test -- The "liability of law" test -- A comprehensive definition. -------------- 2.

II. The Common Carrier an Insurer.

Origin of the rule -- Ancient exceptions to the rule -- Modern exceptions to the rule. ---------- 6.

III. When does Liability Begin?

Acceptance -- When goods are in the Carrier's possession -- Local usages and customs. -------------- 11.

IV. Limitations of Liability.

V. **Special Contracts.**

Introduction of Steam -- Its effect in England and in the United States -- Conclusions by Redfield -- How Special Contracts are made. -------------- 16.

VI. **When does Liability Cease?**

Delivery to Consignee -- Non-acceptance by Consignee -- English Rule -- Delivery to Connecting Carrier. ------ 24.

**Concluding Remarks.** ------------------------------- 26.
INTRODUCTION.

The Law of the Common Carrier covers an extensive field in the world's jurisprudence. Springing up with the dawn of civilization; growing in importance as the conditions of the race improved; developing side by side with the inventive genius of mankind; ever expanding as the commerce of the world increased; abounding in questions which no court has yet satisfactorily answered; it is a field teeming with interest to the student of Law, and pregnant with lessons for all thinking men. The entire field of the Law of the Common Carrier would be far too broad for the limits of a paper like this, and we shall confine our discussion to the consideration of a single question, viz. : "The Liability of the Common Carrier as an Insurer." Moreover, since the general rules governing carriage of goods by land and water are essentially the same, we shall, for the most part, limit our conclusions to the liability attaching to the carriage of goods by land.
THE LIABILITY OF THE COMMON CARRIER AS INSURER.

I. Who are Common Carriers?

A common carrier has usually been defined as "one who undertakes, for hire or reward, to transport the goods, of such as choose to employ him, from place to place." (Parker, J., in Dwight v. Brewster, 1 Pick. 50; 11 Am. Dec. 133.) But Judge Story says, that to bring a person within the description of a common carrier, he must exercise it as a public employment. "He must undertake to carry goods for all persons generally, and he must hold himself out as ready to engage in the transportation of goods for hire as a business, and not as a casual occupation. Savage, C. J., in Orange Bank v. Brown, (3 Wend. 161) says, "every person who undertakes, for hire, to carry the goods of all persons indifferently, is, as to liability imposed, a common carrier."

Since it is with this element of liability, that we have to do in our further discussion, it may be well at the
outset, to ascertain, by what criterion the courts determine who are common carriers and subject to the exceptional liability imposed on that class, and who are only private carriers and, as such, liable only for ordinary care.

It is not always an easy question to determine whether a person in a particular case has so held himself out to the world, by his professions or course of dealing, as to constitute him a common carrier rather than a private carrier for hire. "The usual criterion", says Hutchinson in his work on Carriers, "is that he has held himself out as being ready and willing, for hire, to carry particular classes of goods, for all who desire transportation of such goods, to or from the places between which he professes, in this way, his readiness and willingness to carry."

But Nesbit, J., in an early case in Georgia, held that "the obligation of law to carry is essential to constitute the vocation of the common carrier, and the liability to an action for a refusal to carry is, perhaps, the safest criterion of the character of the carrier." (Fish v. Chapman, 2 Ga. 349.)

The courts very generally accepted this standard
set up by Judge Nesbit, and it has become one of the elementary principles of the law of carriers. (Citizens Bank v. Nantucket Steamboat Co., 2 Story, 17; Satterlee v. Groat, 1 Wend. 272; Dwight v. Brewster, 1 Pick. 50; Riley v. Home, 5 Bing. 217; Fish v. Clarke, 49 N. Y. 122; Sammis v. Stewart, 20 Ohio, 69.)

It was not a new rule of law however, being known in England in the days of Chancellor Kent, (2 Kent Com. 599) and some American courts have held, that this test was not so applicable in this country of changing conditions, as it was in hide-bound England. A leading case so holding is Gordon v. Hutchinson (37 Am. Dec. 464), the facts in which case were these: A farmer occasionally did carting for merchants. It was not his regular or usual occupation. He did not hold himself out as ready to do carting, for all persons indifferently. He solicited from specific merchants this employment. Some goods being lost while in his possession, he was sued for negligence, it being alleged that he was a common carrier. And the court held that he was a common carrier, although neither the "holding out" test nor the "obligation of law to carry" were present in the case. And this seems also to have been the law of South Carolina.
(McClure v. Hammond, 1 Am. Dec. 598.)

Wide apart as the terminal points in the pendulum's arc, are the decisions of the courts on this important question. But this disagreement, although most inconvenient, need not discourage us in our efforts to find some haven of safety in which to cast our anchor and rest secure, since in no department of our jurisprudence are the courts agreed in their decisions of cases involving substantially the same essential facts. We must frame a definition which shall include all the essential characteristics involved in the leading cases,—excluding so far as may be the non-essentials,—and then in our practice square the particular case to this specific standard, and stand or fall by the result.

Such a definition seems to be this: that "a common carrier is one who by virtue of his calling undertakes, for hire, to transport persons or personal property, from one place to another, for all who choose to employ him."
II. The Common Carrier an Insurer.

Having now a criterion by which we may generally determine who is a common carrier, we may pass to the inquiry: What are his liabilities, while acting in that capacity, for loss of or injury to goods? Here we find in the earlier cases, a unanimity of opinion that is somewhat startling, because not found in any other branch of jurisprudence where interests of like importance are at stake. "He is an insurer", say the courts of England, with one accord, "and liable for all loss or injury to goods, except such as may be caused by the act of God or of the public enemy." "He is an insurer", echo the courts of our own land, "except as affected by the act of God or of the public enemy, or the misconduct of the consignor."

We may well pause, to consider the source and justice of such severity, when we remember the distinguished services rendered to the cause of progress and civilization by the common carrier in the recent past. The plow would stand still in the furrow; the wheels of manufacture cease their busy whirling; the hum of indus-
try run out to stillness; and the hands of labor be palseied should the common carriers throughout the world lay down their burdens and retire their employment from the industries of the race. After the first steps from barbarism had been taken by mankind, the entire development of civilization depended on the efficiency of this branch of human industry. Along the arteries of trade,—art, science and culture,—with all that that word implies,—warmed into life and budded into beauty; drew from those arteries the essentials to their existence and development; and owe to them the rich and varied fruitage that has fallen to bless and elevate the human race. The whistle of the locomotive sounds amid the solitudes of the West and, as by magic, the plains are dotted with peasant homes; waving grains supplant luxuriant wild-growth, and rumbling wheels bear eastward, the ripened fruitage, to feed the contented artisan who labors by the Sea. Debt beyond measure, is that which civilization owes to the common carriers of the past.

Let us trace now the line of treatment which they have received at the hands of the public, as administered by its agents, the courts of law. Prior to the foundation of the Roman Empire, the carrier was unknown to
the administrators of law. Nothing worthy of comment can be found in the civil law of Rome touching carriage by land, although the class of bailment to which this belongs, viz. "locatio operis mercium vehendarum", was well known to the Romans.

Our first glimpse of the common carrier in English history reveals a horseman, lightly laden with parcels, money and letters, whose chief peril was that of being set upon by thieves and robbed in some lonely place. (Encyc. Britt., Carriers.) And even down to the time of Elizabeth, inland transportation, on its most extensive scale was by strings of horses. (Encyc. Britt.) Then came the rude wagon, and in the latter part of the eighteenth century the comfortable stage coach, which had long been known in and about London, began to rattle through the quiet inland vales. But up to that time, the inland roads of England were beset by highwaymen, and so great was the danger of collusion between them and the carriers, that in the time of Elizabeth the King's Bench decided that, "a carrier implicitly undertaketh the safe delivery of goods delivered to him, and therefore he shall answer for the value of them if he be robbed of them." (2 Co. Litt. 89.) So, too, Lord
Holt, in Queen Anne's reign, pronounced that famous opinion, which has been so closely followed even down to our own day,—"The law charges this person, thus entrusted to carry goods, against all events, except the act of God or of the enemies of the King. For though a multitude should rob him, nevertheless he is chargeable." (Coggs v. Bernard, 2 Ld. Raym. 909.)

This exposition of the carrier's common-law liability was sturdily maintained in England down to a recent date. Transplanted to the American Colonies and taking deep root, the same doctrine has prevailed in the United States. Courts, and judges, because of its reverend age, have blindly done it honor. The reason for the rule as given by Lord Holt, in the case above cited, was "public policy." Not by reason of his hire; not by reason of his contract; not by reason of his employment; but because of his opportunity to "undo all persons with whom he had to deal, by collusion with thieves." Sad comment on the integrity of early England! For opportunity must go hand-in-hand with inclination or evil never results. And yet under this standard the courts of England and of the United States have rallied for centuries, although the suspicion, even, of collusion
with thieves has not been whispered in our own land for more than half a century. No more ground for suspecting collusion exists to-day, so far as the public carrier is concerned, than lurks behind the doors of every mercantile enterprise.

But without entering at this point into the ethics of this rule of law, we will proceed to examine, in the light of actual cases, its practical workings, and the limitations thereto, allowed by custom and the decisions of the courts.

It may here be stated that although at common law, the carrier was allowed to discriminate between customers, he was not allowed to refuse the goods or wares of any one, of such sort as he ordinarily carried. Nor was he allowed to charge an unreasonably high tariff. But he was permitted to carry for whom he chose, at an unreasonably low rate, which was practically the right of discrimination. Still he might not afford one customer better facilities than another; and he certainly could not give to any one a monopoly of the carriage facilities. (McDuffee v. Portland R. R. Co., 52 N. H. 430; Messenger v. Penn. R. R. Co., 37 N. J. L. 531.) And injunction is sometimes granted to prevent discrimination.
(Western R. R. v. Sutton, L. R. 4 H. of L. 226.) And in the United States the customer can to-day compel acceptance of proper goods by mandamus. (28 Hun, 543; 68 Pa. St. 370; 55 Ill. 95; 27 Fed. R. 529.) But the carrier may, in case of mob violence, refuse to accept goods, even though the mob consist of former employees out on a strike. (102 N. Y. 563; 13 S. W. 191.) And he may decline to accept beyond capacity to carry safely (99 Mass. 508); or goods of a different kind than those he customarily carries (6 Wend. 335; 4 Excheq. 387); or where the goods offered are dangerous, or unfit for transportation. (107 Mass. 568.)

III. When does Liability Begin?

But goods not within the above restrictions the carrier was bound to accept, when offered him for immediate transportation, together with the regular tariff or hire. And upon acceptance his liability as common carrier arose, if nothing further remained to be done by the consignor. And the liability continued the same, though the property remained in the warehouse of the
carrier and was not loaded for transit. (Griffith v. Ladue, 25 N. Y. 367; Coyle v. Western R. R., 47 Barb.)

But if anything remains to be done by the consignor before the goods are ready for transportation, though it be no more than attaching an addressed tag; or if any orders, directions or instructions were to be given before the goods were to be forwarded, the liability of insurer does not attach. (R. R. Co. v. Barrett, 36 Ohio, 458.) Or if a receipt is to be taken before delivery is completed. (Gilbert v. N. Y. Cent. R. R., 4 Hun, 380)

It was held in a case in 39 N. Y., 37, that a package received outside the office did not make the carrier liable. Same holding in 20 Ct., 354. But if a carrier's authorized agent comes to a man's residence or place of business for the goods, he is liable. (Phillips v. Earl, 8 Pick. 182.) And in 106 N. Y., 215, it was held that a carrier may become liable before goods come into his possession. Finch, J. goes even further, in Bank of Batavia v. R. R. Co. (106 N. Y. 195), and holds that a carrier can become liable for goods never delivered,—as where a bill of lading is made out and negotiated to an innocent third party. But this extreme doctrine is not sustained by the U. S. Supreme Court.
From a cursory glance at the foregoing cases one would be led to think that the rule of acceptance was the caprice of the court. But a closer investigation reveals the fact that local usages and customs play a very important part in the determination of nearly every case.

This, at least, seems settled law: That when the customer presents, for immediate transportation, only such goods as the carrier holds himself out as willing and ready to carry; has the goods properly packed (and, in certain cases, acquaints the carrier in some way of facts, not patent on inspection, which would increase the usual risks of transportation); does not deceive as to the true nature of the contents of the package; yields up possession and immediate control of the property to the carrier, the liability of an insurer arises, and continues until delivered to the consignee, subject only to certain limitations which we will next proceed to examine.
IV. Limitations of Liability.

1. -- Act of God.

Act of God has been defined to be "such inevitable accident as cannot be prevented by human care, skill and foresight; but results from natural causes, such as lightning and tempest, floods and inundations". (McHenry v. Phila. R. R. Co., 4 Hun, 449.) But it is evident that there might be an inevitable accident which no human skill or foresight could prevent, -- as a collision in a fog at sea, -- which would still not be an act of God. Judge Wright says, "An act of God denotes a natural accident which could not happen by the intervention of man. It excludes all human agency. Moreover, to excuse a common carrier, the act of God must be the immediate and not the remote cause of the loss." (Merritt v. Earle 29 N. Y. 117. Also Michaels v. N. Y. Cent. R. R. 30 N. Y. 571.)

We may conclude, then, that loss or injury attributable, -- while the carrier pursues his line of duty, -- to lightning, tempest, earthquake, flood or sudden death, relieve the carrier absolutely from liability. Damage
caused by rain, snow, freezing and similar natural agents may ordinarily be foreseen and guarded against by prudent men; yet, under certain circumstances, losses resulting from those causes are regarded as acts of God, and as such excuse the carrier.

But losses due to natural decay, deterioration, and waste of things carried, are always excusable. So, too, where meats taint, oranges rot, peaches decay or butter grows stale, the loss is due to the inherent character of the property and it is regarded as resulting from the act of God.

2.--- Act of the Public Enemy.

A public enemy, as referring to the undertaking of a common carrier, applies to foreign nations with whom there is open war, and to pirates, who are considered at war with all mankind. It does not include thieves, robbers, rioters or insurgents, whatever their violence, or native Indians. (Southern Ex. Co. v. Womack, 1 Heisk, 269; State v. Moore, 74 Mo. 418; League v. Rogan, 59 Texas, 434.)

3.--- Act of the Consignor.

This is a cause for exemption now thoroughly recognized, though apparently unknown to the early writers on
this subject. Briefly stated, whenever the consignor has occasioned or procured the loss complained of, the carrier is excused from liability therefor. (Choate v. Crowinshield, 3 Cliff. 184.)

So, too, if there be some hidden defect in the packing, and damages ensue, it is deemed the act of the consignor, and the carrier is absolved from liability. (Cougar v. Chicago R. R., 24 Wis. 157; Stimson v. Jackson, 58 N. H. 138.)

V. Special Contracts.

Such, then, was the liability of the carrier, down to a comparatively recent date, as defined by the courts of law. Compelled to accept and compelled to carry. Forced to stagger on under a burden of responsibility such as no other industry was forced to carry, and yet leading the van of progress. An infant Hercules, slumbering upon his rights, while the twin serpents Conservatism and Injustice wind their stifling coils around him. Or, better perhaps, a sturdy youth of mighty frame, unconscious of the marvellous powers latent within him, plod-
ding patiently on, though hampered at every step, by the swaddling clothes of his babyhood.

But this condition of things could not continue forever. The old carrier dozed upon his box one muggy summer's day, and dozing dreamed that the quivering flanks of his jaded steeds grew steady and firm as steel. A tireless vigor and resistless power coursed suddenly through their veins. Their shaking manes seemed clouds of smoke, and steam from their nostrils poured. The wagon-ruts, stretching toward the horizon far, gleamed like lines of polished steel. Their flying feet seemed circling wheels, as with noiseless stroke they sped over the shining way. His lumbering coach a palace seemed, resting on cushions of air. The carrier woke and rubbed his eyes. There were the same jaded steeds, with quivering flanks; the dusty road; the jolting coach. It was all a dream. But he told that dream to his infant son, and ere that son to manhood grew, it had materialized, and the iron horse, with tireless feet and resistless power, had supplanted the carrier's panting steeds. A new era was at hand!

With the introduction of steam as a motive power, it became manifest that something must be done to relieve
the carrier, or only a limited benefit would accrue, where wide-spread advantages might be gained, and the question arose, whether the carrier might not by special contract, stipulate for further exemptions than those allowed by the fixed rules of law.

It was not, in England at least, a new question. Long before, it had troubled the courts in that land. Lord Coke and Sir Matthew Hale had already intimated that such stipulations would be valid. (Southcodes Case, 4 Co. 89.(n.); Mars v. Slue, 1 Vent. 190.) Lord Kenyon and Lord Mansfield also emphasized this view. (Anonymous v. Jackson, Peake’s Add. Cas. 185; Hide v. T. & M. Nav. Co., 1 Esp. 36.) And at the beginning of the nineteenth century this opinion was well settled throughout England, and the carriers did, by special contracts, free themselves from various other risks than those allowed under the exemptions before enumerated.

This was a movement in the right direction, and yet the courts expressed regret that Parliament had lent the color of its sanction to such contracts! (Nicholson v. Willan, 5 East. 507.)

As a mighty ocean steamer anchored in the Mersey, swings helplessly around at the turn of the tide, so the
English courts, answering to the mighty undercurrent of popular demand, oscillated from the position that "public policy" should govern the liability of the carrier, to the opposite one, that the particular contract should govern the bailment transaction, and he be liable only for fraud, misconduct or gross negligence, whenever by special contract, the consignor waived his ancient rights. (Anon. v. Jackson, supra.)

This change was completed in 1830 by the so-called Carriers' Act, and by 1850 it was as definitely settled that by a proper notice to his customer, the carrier might stipulate for entire exemption from legal liability. (Hinton v. Dibbin, 2 Q. B. 649; Carr v. Lancashire R. R. 7 Ex. 707.)

This was a change as radical as its former position had been unjust, and, of course, not unattended with evil results. Railroad corporations, under the impetus of increasing foreign traffic, were rapidly growing in wealth and power. The "opportunity" came now to the "wool sacks", and if one may be permitted to judge by the decisions rendered about this time, the inclination to profit thereby was present also. Even Parliament became alarmed at the favoritism shown, and in 1854 pas-
sed the so called Railway and Canal Traffic Act, with the intent to neutralize if possible the policy of the courts, and make the carrier liable, in all cases, for neglect or default of the company or its servants. In some cases the courts allowed this Act some weight. In others it was utterly ignored, (Wise v. Great West. R. R., 1 H. & N. 63; McManus v. Lancashire R. R., 4 H. & N. 327) and no one to-day, can definitely state, what is the exact position, of the common carrier in England. This much is clear, however, that a perfect revolution of feeling has taken place, and the sympathies of the courts are now wholly with the carrier.

This same question had to be met by the American courts, although the agitation began at a somewhat later date than in England. But the struggle was not less severe, and the pressure brought to bear, measured by the moneyed interests of the carriers and the keenness of their advocates, was infinitely greater than in England. "And yet", says Schouler, "we find no judicial eccentricity manifested by the courts, in dealing with the rights of companies organized for the carriage of freight, that the legislatures felt called upon to correct." There was no radical swing from east to west.
upon the subject. With a judicial calmness worthy of
the mighty interests involved, and a consistency which
commands the respect of all thinking men, they proceeded
to adjust the ancient rules, to the changed conditions
of modern trade.

State Courts were generally conservative and, until
the adjudication by the U. S. Supreme Court in the case
of the New Jersey Steamship Co. v. Merchants' Bank (6
How. 344), were loth to commit themselves to a new and
untried policy. But that decision practically settled
all local controversies, and its doctrine was fairly
accepted as conclusive, "that the carrier's right to
qualify his risks to a reasonable extent, under fitting
circumstances, was an undeniable one."

No other American writer has made a more thorough
and exhaustive study of this subject of special contracts
than Judge Redfield, so widely known through his "Collection of Railroad Cases", and instead of quoting from the
utterances of the various courts, as we hitherto have
done,—in order to reach a conclusion,—let us examine his
propositions, reached after years of research, and draw
our conclusion from them.

"It being clearly established", he says, "that com-
mon carriers have public duties which they are bound to
discharge impartially, we must conclude, that they cannot,
by special contract, release themselves from the perform-
ance of these duties, even by the consent of those who
employ them. From a careful study of the entire field,
I have arrived at the following conclusions:

(A) A common carrier cannot lawfully stipulate for
exemption from responsibility when such exemption is not
just and reasonable in the eyes of the law.

(B) That it is not just or reasonable, in the eyes
of the law, to stipulate for exemption from negligence
of himself and servants.

(C) That these rules apply both to carriers of
goods and carriers of persons, and with special force to
the latter class."

I think we may accept that doctrine as fairly set-
tled, and the case, in which the American courts would
protect a carrier from the results of his own negligence,
must be a very exceptional one, -- although we would not
say that such a case could not arise.

In this hurrying age, time would not permit the
haggling over terms between customer and carrier. Some
speedier way had to be provided which, meeting the ap-
proval of an intelligent public, and securing the sanction of the law, would be equally fair and binding. So the common carrier, by means of notices, conspicuously posted in this places of business; or otherwise brought to the attention of the customer, was allowed to state the conditions, under which he was willing to carry specific goods. A customer who, with a knowledge of these published conditions, -- which knowledge was sometimes implied by law, -- delivered to the carrier goods of the kind described, was held to have assented to the conditions, and the contract was complete and binding on him.

But the Courts of the United States have watched with jealous eyes the practical workings of this rule of implied offer and acceptance. Their sympathies have all been on the side of the consignor, and every attempt to overreach or coerce the customer has been met by a sting- ing and effective rebuke. They have allowed the carrier to stipulate by conditions printed on "Bills of Lading", "Way-Bills" and "Receipts", but such printed conditions, in order to release the carrier, must have been delivered to the consignor before the bailment was com-

pleted. (Doles v. See, N. J. Sup. Ct., 40 A. L. J. 383.)

So it may be seen that in a very limited way the
common carrier in the United States, may extend by special contract the exemptions allowed at common law. But no striking change in public sentiment, looking toward the relief of the carrier, is apparent from the position of our courts.

VI. When does Liability Cease?

With the act of acceptance on the part of the carrier, a broad departure was made from the general rules of bailment liability; but when the work of transporting is completed, the old bailment rules once more apply, and the carrier's liability ceases, as soon as he has delivered the property entrusted to him, over to the designated party at the end of his route, in pursuance of the terms of his undertaking. When goods are not accepted by the consignee, the carrier must put them in a place of safety; and when he has done so he is no longer liable on his contract of affreightment. (Richardson v. Goddard, 23 How. 28.)

The English rule is that the carrier is bound to deliver goods to the consignee, provided the latter appear
within reasonable time to receive them, and until such reasonable time has expired he cannot deliver them over to himself or another as warehouseman. (Gatcliffe v. Bonnie, 4 Bing. N. C. 314.) This rule was adopted in 5 Wallace, 481, and may be said to prevail generally in the United States to-day. (Sherman v. Hudson R. R. Co., 64 N. Y. 254; Moses v. Boston R. R. Co., 32 N. H. 523; Wood v. Crocker, 18 Wis. 345; Onnuit v. Henshaw, 35 Vt. 605; Kidd v. Ala. R. R. Co., 35 Ala. 209; Graves v. Hartford Steamboat Co., 38 Conn. 143; McMillan v. Michigan R. R. Co., 16 Mich. 79; Maignon v. New Or. R. R. Co., 24 La. 333.)

It may be added, that where the carrier is to forward goods over another line, the simple duty remains, to notify the connecting carrier of their arrival, and deliver over to him within a reasonable time. With the delivery of the property to the consignee, the warehouseman or the connecting carrier, his liability ceases.
Concluding Remarks.

Such, then, has been the liability of the common carrier, from the time when the courts first summoned him to appear before them, down to the present day. An insurer of goods against accident or loss, excepting such as resulted from the act of God or of the public enemy. To these, modern jurisprudence has added the "wrongful acts of the consignor" and "stipulations by special contract." But these exceptions only lighten the burden to a very limited extent. Even the "stipulations by special contract" has been so hedged in by the courts, that its practical workings are a nullity, speaking in a general way. And yet the needed relief must come in this way if it come at all.

There can be little doubt that at the time it was imposed, the burden of insurance was a salutary measure. It was a needed check on the spirit of brigandage which then prevailed. But conditions have changed. That spirit has passed away, and one of sterling honesty has taken its place. A high standard of morality rules today in commercial centers. Heading the list of direc-
tors, of every great carrying corporation, are names symbolic of integrity,—a standing guarantee, that customers will be justly dealt with. May it not well be questioned, whether in retaining this rule of indemnity, after the ground that gave it origin had long passed away, the American courts, have subserved the best interests of the public? Untramelled right to limit liability in the carriage of ordinary goods, means cheaper freight rates, and consequently lower prices. And that, too, without lessening the profits of the producers or the middlemen. And it does not follow, that a train of evils resulting from negligence of the carrier, would immediately accrue. That there is an unwarranted hostility to moneyed corporations in the minds of the working classes no one will question. It naturally follows, that when an accident or loss occurs, whether with or without the carrier's fault or negligence, the jury, composed of working men, will in every case, mulct the corporation through unconscionable damages. The presumption is against the carrier, always; the burden of proof to show absence of negligence rests on him; while he confronts a prejudiced jury. Is it any wonder, then, that money seeks other and less exacting fields in which to serve its owner?
What results? One line of rails, where two would otherwise have been. One corporation to dictate terms and collect high freights, instead of competing corporations and the consequent reduction of tariff. Now, with competing lines, does any one doubt that scrupulous care would be exercised, and losses be reduced to a minimum? How else could custom be obtained and held? Does not this principle invariably hold in other industries? Why, then, shall it not be equally applicable to the carriage of freight? If it be said, that in sparsely settled districts, competing lines cannot be maintained, we reply, that it is the duty of the courts and legislatures to promote the general good; that with a swelling native population, and an increasing tide of immigration, sparsely settled districts shall not exist, even in this great land, in a future not widely remote.

To-day, it is claimed, that carrier and consignor do not stand on equal grounds; that the former unduly coerces the latter; that were it not for this rule of law, the minister would become our master. Are we not standing the pyramid upon its apex? If there be any force whatever in the claim, is not the "minister become the master" because of this very rule of law, which
frightening away capital, limits the extension of carrying facilities, and thereby shuts out competition? We should cut quite to the line, before we decide where the right rests in this matter. Let us not forget, that what the circulatory system is to our natural bodies, the facilities of carriage are to the bodies politic. Let circulation become sluggish and defective, and our bodies decline and die. Let the arteries of trade be unduly constricted, and civilization halts; progress ceases; and a decline sets in. Inventive genius, for want of a field in which to flourish, droops and dies. We should remember, not alone the massive profits of the carrier; but the immeasurable debt we owe him for comforts already ours. We should mete out to him the justice long deserved, and receive the greater blessings which he can secure.

Where human lives are at stake, the case is different. Then let the carrier be held to a rigid observance of the utmost care and diligence known to prudent men. If through accident, which might by the exercise of the highest diligence have been prevented, human life or limbs be lost, let the courts by heavy damages visit upon the carrier its condemnation, since the lives of its
citizens belong not to themselves alone, but to their country also. But in matters where personal property alone is involved, with which each may do as best pleases himself, let greater freedom be allowed. Give to carrier and consignor the absolute freedom of contract allowed in other industries. Then let our courts, when their aid is invoked, sympathizing with neither, render to each impartial justice.

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