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Common Carriers

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--COMMON CARRIERS--
THEIR GENERAL AND SPECIAL DUTIES
AND LIABILITIES AS TO GOODS WHEN THEY HAVE
REACHED THEIR DESTINATION

-THESIS-

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-BY-

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As soon as a common carrier accepts goods for transportation he is responsible for their safe delivery against all accidents except those that arise or such as are attributable to first, the act of God or a public enemy, second, fraud of the bailor, third, inherent defects in the goods themselves, or fourth, the acts of public authorities, and such acts as may be expressly excepted by his contract. Until delivery this liability rests upon the common carrier and therefore it becomes necessary to have an understanding as to the meaning and significance given to the term delivery, and the essentials which constitute a good delivery in the law of bailments in order to ascertain when and how the common carrier's liability is ended. The rule as to delivery in general is that the goods shall be delivered to the proper person at a reasonable time and place and in the proper manner. All of these elements must be present in order to constitute a good delivery, but any of them may be waived by express contract or by the party entitled to the goods, as for instance, where bailee accepts the goods without questioning the mode of delivery. This would bar an action based on an irregularity in delivery and so would any agreement between the common carrier and bailee so far as the consignor is concerned.

There is an old rule which requires a personal delivery of goods except in cases where goods are sent by ship from a foreign port. In this class of cases there was an understood and established custom that the goods were to be carried from

port to port and that when landed at the port of destination no further delivery was necessary, but among all other classes of common carriers a personal delivery to the consignee at his place of residence or place of business was the custom.

The general rule as to the time of delivery is that it shall be reasonable and within business hours. If, however, a reasonable time has elapsed and a common carrier cannot make a delivery by reason of no fault of his own, his liability as common carrier and insurer, ceases, and he becomes a warehouseman. What is a reasonable time and how this liability as insurer is thrown off, will be considered in treating of carriers specifically.

"The manner in which common carriers are required to deliver has now become so well settled by judicial decision that a case would seldom occur which could not be at once determined without resort to proof of usage or custom."

It is still the duty of some classes of common carriers to make a personal delivery of the goods, and when this obligation is imposed upon the carrier, it is his duty to seek the person to whom delivery is to be made and tender the goods and the carrier can be discharged from this duty only by special contract or by proof of an opposite usage.

In cases where the goods are addressed to a particular house or number, the delivery and tender should be made at that place, and if the consignee is not there a reasonably diligent effort should be made to find him, and a question as to what would constitute reasonable diligence is one for the

jury to decide. If after reasonable diligence has been exercised, the consignee yet remains undiscovered, the carrier may relieve himself from his insurance liability by placing the goods in the hands of a warehouseman to hold for the owner.

It has become a well established rule that when carriers by water or railway have deposited the goods consigned to them at the nearest wharf or station to the consignee and have given him notice of their readiness to deliver the goods, that they have for a reasonable time after the removal of the goods by the consignee has elapsed, become absolved from their liability as carriers and are merely warehousemen bound to the exercise of ordinary diligence.

This rule does not apply to express companies who are still required to make a personal delivery. In 55 Barb. 443, Whitbeck vs. Holland, it was held that an express company could not relieve itself from liability for not making a personal delivery of goods entrusted to their charge by notifying the consignee that they had a package addressed to him and describing it. "Nothing short of a personal delivery will suffice." In the case of Fenner vs. The Buffalo & State Line R. R. Co., 44 N. Y. 505, three rules were laid down and are in substance as follows : 1. If the consignee be present upon the arrival of the goods he must remove them without unreasonable delay. 2. If the consignee is not present but lives at or in the immediate vicinity of the place of delivery, the common carrier must notify him of the arrival of

the goods and he then has a reasonable time within which to remove them. 3. If consignee is absent, unknown or cannot be found, the carrier may place the goods in his freight house and if the consignee does not call for them within a reasonable time thereafter, his liability as common carrier ceases.

It seems just and right that a steamboat line or carrier by railway should not be obliged to make a personal delivery. Their mode of conveyance is in one case by means of ships upon water, and in the other by cars upon certain defined tracks and over definite routes. It would be impossible for them to deviate from their regular paths and a personal delivery could only be accomplished by compelling them to employ additional conveyances to carry goods beyond or aside from the main line. This would necessarily extend their business very largely and necessitate an enormous capital.

Neither fraud, imposition or mistake will excuse the delivery of the goods to the wrong person, and it therefore becomes necessary to learn how a common carrier may protect himself in delivering goods consigned to him, and under what circumstances he can be held liable for a failure to deliver.

In the case of McEntee vs. The N. J. Steamboat Co., 45 N. Y. 34, it was held that an absolute refusal by a carrier to deliver goods to a person entitled to receive them constitutes a conversion of the goods, but if the refusal be qualified and the qualification be reasonable and made in good faith, it does not constitute a conversion. "Common carriers deliver property at their peril and must take care

that it be delivered to the right person, for if delivery be to the wrong person, either by fraud or innocent mistake, they will be responsible, and the wrong delivery will be treated as a conversion." This holding has been followed and expressed in a long line of cases and is well settled. There is no doubt that the carrier has the right to refuse to deliver the goods until he has had a reasonable time in which to satisfy himself as to the true owner, provided the refusal is made in good faith, but he has no ground for refusing if, after a reasonable time has elapsed and the owner has offered to give a bond of indemnity to insure the common carrier against damage by reason of a delivery to a wrong person. Such a refusal would be a conversion. Another way in which the common carrier may be relieved from the responsibility of deciding between conflicting claimants is to commence a suit in the nature of a bill of interpleader against the various claimants and thus have their rights to the property judicially settled.

It was decided in the case of The Gulf C. & S.F.R.Co. vs. Freeman, 16 S.W.109 that a R.R.Co. is not liable for conversion where it refuses to deliver goods to an unidentified consignee, if he fails to produce a bill of lading, though he may offer security.

The common carrier is liable for a misdelivery of goods by reason of an innocent mistake or because of a fraud practiced upon the carrier and an action in trover may be maintained for such wrongful delivery. This has been held in cases

where goods were delivered upon a forged order both with regards to goods shipped as freight and as to the baggage of a passenger.

In the case of Price vs. The Oswego & L.R.R.Co. 50N.Y. 113, it was held that where a common carrier without requiring evidence of identity delivers goods to a stranger, which have been fraudulently ordered by the latter in the name of a fictitious firm and, which have been shipped in complicance with the order to such fictitious firm ; he is liable to the consignor for their value. It has further been held, that althcugh the swindler presented the bill of lading, yet the common carrier should have made inquiries as to his identity and was liable for failure to do so.

There is a line of cases in which the carrier will not be liable for a wrongful delivery as, where the consignor thought that the consignee was another person and has been induced, by fraud, to direct the delivery of the goods to such consignee or, as in another case, where A fraudulently assuming the name of a reputable merchant in a certain town, buys in person goods of another, the property of the goods passes to A and the seller cannot maintain an action against the common carrier, to whom the carriage of the goods is entrusted, for delivering them to A, because the property reached the person to whom the consignor sold and consigned it and the common carrier had delivered it according to directions, thereby fulfilling his contract. The carrier would

have been liable if, knowing of the fraud, he had failed to thwart it, or if proper diligence on his part would have led to its discovery. The rule as deduced from the authorities is that a common carrier is bound to make delivery of goods, put in his hands, according to their addresses, and they are answerable for misdelivery by reason of fraud upon themselves but not for fraud upon the shippers with which they are not chargeable with notice. This rule applies to all classes of common carriers including warehousemen and with particular strictness to express companies.

As to delivery of goods to an agent of the consignee the authorities maintain that a person claiming the right to receive the goods as agent for the consignee, must show the fact of agency, or circumstances, which in the opinion of the jury would justify such delivery, but no other proof of the fact of agency is required than is necessary in other cases. A case in 24 Minn. 269 lays down the test as follows : "A single act of an assumed agent and a single recognition of his authority by the principal, if sufficiently unequivocal, positive and comprehensive in its character, may be sufficient to prove an agency to do other similar acts."

Where goods are consigned to an owner, in care of an agent of the carrier the delivery to the agent will exonerate the carrier if there be a tacit understanding between the parties. If the goods be consigned to the agent of the carrier, it is his duty to make a personal delivery to the

owner if he can be found and if not, to place the goods in a warehouse for the consignee ; but if the warehouseman makes a wrong delivery, the carrier is liable to the consignee.

If goods are misdirected, and for this reason are lost or damaged, the carrier is not liable for such loss or damage unless the proper direction could have been easily ascertained by the carrier or the loss had occurred through his negligence. If the goods be directed to a place that is not in existence, and the carrier accepts them so directed, he is liable until delivery. The carrier would also be relieved from liability in a case where the goods had been misdirected and the owner notified, and while awaiting direction they were consumed by fire or otherwise damaged without negligence on the part of the carrier. He would also be relieved where a wrong delivery had been induced or ratified by the owner, or if the unauthorized delivery had been ratified by the consignee.

As the common carrier is responsible for the safe delivery of goods as long as he remains in the position of a carrier, it is necessary to know just when his carrier liabilities cease and when his responsibility as warehouseman begins. It may be stated, as a general rule, that when the carrier has complied with all the requirements of the law, and for some reason has failed to bring about the delivery and, the goods continue to remain in his possession, he becomes, from that time, a mere warehouseman or depositary.

Having treated of common carriers in general, a more detailed account will be given by treating them specifically.

The common carriers known to the commercial world, have separated themselves into distinct classes and, in order to note the peculiar customs and usages recognized by these different classes, it becomes necessary to examine each separately. The first of these to be considered will be

Carriers by Water.

This class of carriers are excepted from making a personal delivery because the mode of transportation which they employ makes a personal delivery impracticable.

After landing goods they must give the consignee notice of their arrival and, if after this notice has been given, and the consignee refuses to receive the goods, it becomes the duty of the carrier to hold the goods for the owner, but if the consignee is under an obligation to receive the goods, they are at his own risk. In support of the proposition that common carriers by water must give notice of the arrival of goods, there is a line of cases of which 73 Ill. 506 is the leading one, and in which it was held that "Common Carriers by water have always been required to give notice, of the arrival of goods to the consignee, where his place of abode was known and this rule has not been relaxed as it has been with railroads".

Among the chief duties of carriers by water are,that they shall land the goods at a suitable hour and during good

weather, and that they shall provide a suitable place for the goods to be left until the consignee calls for them. The carrier is not justified in abandoning goods or in exposing them to injury, and he is liable if he so acts, but the mode of delivery is largely governed by usage and custom, and a common carrier may justify a delivery on these grounds. The rule is, that a common carrier must deliver according to usage of trade, whether the consignee knows of the usage or not, and the common carrier is also held to this rule whether he is aware of the custom or not, as he impliedly contracts to deliver in the manner recognized among the same class of carriers, under similar conditions.

The common carrier may rid himself of the obligation of giving notice, by special contract, and this is often done by a stipulation in the bill of lading waiving notice. If the contract between the parties contains this provision, it is the duty of the consignee to be ready to receive the goods when they arrive and by his failure to do this the common carrier may land the goods upon the wharf, without giving notice. This does not, however, relieve the carrier of all responsibility as to the goods, and he is still liable if loss occur by reason of his neglect in leaving the goods exposed to peril.

As to what wharf the delivery should be made at is determined largely by each case. If the carrier has a regular route, he is obliged to make delivery at the nearest wharf

to the consignee, or if he has a wharf at which he usually delivers, a delivery at such a place would be sufficient. The consignee may contract, with the carrier, to have the delivery made at a particular place, in which case, the terms of the contract should be complied with. Where the carrier has no usual stopping place, the consignee may direct a reasonable and convenient place where delivery shall be made

Railroads as Common Carriers.

This class of common carriers are not required to make a personal delivery of the goods consigned to them, but the laws as to delivery in general have been modified, to a considerable degree, by the states, and there is no uniformly settled rule throughout the United States.

The rule which is most liberal in its provisions to the carrier is that upheld by the Courts of Massachusetts, Illinois, Pennsylvania, Indiana, Iowa, Georgia, Tennessee, South & North Carolina, Missouri and California. This is called the Massachusetts rule. By its provisions the carrier need not make personal delivery or give notice to the consignee His duty is simply to unload the goods from the cars and place them upon the platform or in a warehouse, and after this has been accomplished, they are relieved from their insurance liability and become warehousemen or depositaries.

To support this broad inclination in favor of the carrier the courts argue that as to giving notice the arrivals of goods are so numerous that it would be a very burdensome task

for the carrier to give notice on the arrival of each consignment of goods, and that the consignees are ordinarily warned by a notice from the consignor that the goods have been shipped. This is a broad assumption as very often the consignor does not notify the consignee that the goods have been shipped or if he has, the train on which they were shipped may have been delayed by reason of a rush of business, or by various other unforseen occurrences. The carrier provides safe and commodious warehouses and these are under the charge of the carrier's servants, and the goods therein exposed to the possibility of theft by the servants with a far smaller chance of detection than when the goods are on the cars, and yet the liability has been decreased.

Water carriers are obliged to hold goods for a reasonable time, until the owner has a chance to examine and remove them, and there does not seem to be any good reason why this rule should be relaxed in favor of land carriers.

The next departure from the general rules of delivery to be considered is the rule laid down in New Hampshire, Alabama, Wisconsin, Vermont, Kentucky, New Jersey, Louisiana, Kansas and Ohio. This may be called the New Hampshire rule, which was laid down in 32 N.H.,523, and which held that the carrier was not obliged to give notice to the consignee of the arrival of the goods, but if he leaves the goods in the cars or puts them in his warehouse, he is liable as a common carrier until the consignee has had a reasonable time in

which to inspect and remove the goods. This seems to be a more just rule than that laid down by the Massachusetts courts.

New York, Michigan and Minnesota require the carrier to give the consignee notice of the arrival of the goods and hold the carrier responsible for the goods as carrier until the consignee has had a reasonable time in which to remove them. This is a general statement of the rule, but a more minute description is as follows. If the consignee be present upon the arrival of the goods, he must take them away without unreasonable delay ; if he is not present but lives at or in the immediate vicinity of the place of delivery, the carrier must notify him of the arrival of the goods and then he has a reasonable time in which to remove them ; if he is absent, unknown,or cannot be found the common carrier may store them and if after notice of the arrival of the goods, the consignee has had a reasonable time in which to remove them and does not, he cannot hold the common carrier as an insurer. This is also the English rule.

Custom and usage may modify the requirements as to the mode and place of delivery, as for instance, where the carrier has no warehouse at a small station, and has been in the habit of leaving goods on the platform of the station. If such could be shown to be the custom, it would be a defence to a suit brought for damages caused by reason of such delivery

The consignee is regarded as living in the immediate

vicinity of the depot and no indulgence as to the time allowed for the removal of goods will be granted to him. He must remove with reasonable diligence and by sufficient means. The carrier is the insurer of the goods while removal is taking place, provided it is done with diligence. The carrier may charge storage in addition to his fees for carrying if the goods be left in his warehouse after a reasonable time has elapsed. During the removal the carrier should facilitate the removal as much as possible, by giving the consignee entrance and egress to the place where the goods are, and if the consignee is obliged to take the goods from the cars, the carrier should place the cars in such a position as to make the removal convenient.

Express Companies.

In this branch of carriers where so many small and valuable articles are carried, it would be impractical to apply the same rules as are used to govern other carriers, such as notice to the consignee of the arrival of the goods, and provisions relating to the maintenance of suitable warehouses for the reception of goods after their arrival ; consequently a personal delivery is required. This requirement of personal delivery is somewhat relaxed in instances where goods are sent to some small way station, where there is not business enough to necessitate the employment of messengers and delivery wagons. In such instances goods may be left at the station a reasonable time until called for. In

order to defend such a delivery it must be shown that the consignee knew this to be the established custom and furthermore he must have received prompt notice of the arrival of the goods. The obligations of an express company as to delivery may sometimes be modified considerably by custom, but the courts are very reluctant to allow them to go beyond the ordinary rules as to delivery. An express company as a common carrier is bound to account for all goods given into its hands for carriage and can only excuse a failure to make a proper delivery by showing that the property was lost through an act of God or of a public enemy.

In case goods are tendered to the consignee by the express company and refused, a very much debated question arises as to what are the duties of the carrier.

Some cases in Tennessee and a few early New York cases hold that after goods have been tendered and refused the duty of the carrier is to place the goods in a warehouse. The contract of carriage is at an end, and the carrier now assumes the responsibility of a warehouseman. As there is no extra compensation, he is liable only for gross negligence. These decisions do not require the carrier to notify the owner or consignor.

A case in 5 Wallace 481 and an Illinois case hold the opposite view and require the carrier to give notice to the owner of the goods and to hold them for a reasonable time.

If the consignee is absent from his place of residence,

is unknown or cannot be found, and the carrier does all in his power to effect a delivery and is unable to, the carrier is discharged in case of loss.

The carrier may always infer that the consignee is the owner, unless there are facts brought to his knowledge which would compel him to know otherwise. This would occur if the goods were sent C.O.D., in which case the carrier would be bound to know that the consignor was the owner and would be obliged to give him notice if the consignee refused to receive the goods or if he was unknown, or for any reason could not be found.

This obligation to give notice is only imposed upon such classes of carriers as are required to make a personal delivery or to give notice of the arrival of goods.

Among express companies there is a peculiar custom which seems to be entirely confined to this class of carriers and this is the custom of sending goods C.O.D. The contract that a consignor makes with the express company, when he sends goods C.O.D., is that the carrier will carry as in all other cases, but further that he will collect a certain amount of money from the consignee before he delivers to him the goods, and that he will return this money to the consignor.

Delivery and payment are concurrent acts and the letters C.O.D., which simply mean "collect on delivery" imply that the carrier shall not deliver up the goods until they are paid for and if he does, he is liable for conversion in the same man-

ner as if he had made a wrong delivery. This wrongful delivery may be ratified by the consignor and the carrier released. When goods are delivered by the carrier with an instruction to collect on delivery, the consignee has a right to inspect the goods and ascertain that they are what he expected. In such a case if the carrier is paid and the consignee finds on examination that the goods are not satisfactory, he may recover the money paid to the carrier. If, when the goods are tendered by the carrier, the consignee is for some reason unable to pay for them at the time, the carrier should allow the consignee a reasonable time in which to pay for and remove the goods. During the time that he thus holds the goods, the carrier is a warehouseman, but if the goods are refused by the consignee for other cause, the carrier should return the goods to the consignor or give him notice of the refusal.

The consignee being the implied owner of the goods, may direct the carrier as to where the goods are to be delivered, but if the carrier knows that the consignee is not the owner, he should refuse to deliver in any manner different than that directed by the owner and is liable for conversion if he fails to do this.

Non-Delivery.

There are certain situations in which the carrier is excused from making delivery and perhaps the most important of these is where property is taken from the carrier under legal process as by attachment.

The carrier is excused from making a delivery when he is overpowered by a public enemy and it seems equally just that he should be relieved from responsibility when goods are taken by the authority of the law.

The courts of Massachusetts in a case 104 Mass.159, laid down the rule that the proceeding under which the goods are seized must be against the owner of the goods. If the goods were seized on a writ against the consignor for a debt which he owes and it should turn out that the goods were the property of the consignee, such seizure would be no defence of the common carrier for non-delivery. The seizure in such a case would be a trespass on the part of the officer who made it and an infringement upon the rights of the true owner of the goods to which the carrier is not bound to yield, and if he does he is liable to the owner. In a later case the rule was carried still further, and in 117 Mass.591, it was decided that the carrier must not yield to an execution levied upon goods, which are by statute exempt from execution, and that he is liable even if the goods are taken against his will or without fraud or collusion on his part, or even if he is ig-

norant of the character of the goods.

The process under which the goods are seized must be legal and valid and a seizure made under an illegal attachment or execution is regarded as a trespass. If the carrier knows the owner of the goods seized it is his duty to give him prompt notice in order that he may have a chance to recover or protect his property and carriers by water are obliged to take appropriate measures to protect the owner's interest for a reasonable time until he can be notified and assume the burden of the litigation.

In Massachusetts a railroad company can be served with trustee or garnishment process and may be summoned and charged as a trustee. In such a case the company could set this up as a defence when sued for non-delivery. This question came up in another form in 47 Ill. 402 and was as follows : "Can a railroad company be liable to judgment on a process of garnishment merely on the ground that it may have had property in-transitu, on its route consigned to one who may be a debtor at the time of issuing and serving the writ"? It was held that the railroad company could not be so liable and especially not if the goods were out of the county where they were received by the carrier. "It would be unreasonable to subject the company to the cost, vexation and trouble of such a process merely because it had received to be carried that which the law compelled it to receive and carry".

Whenever the carrier or any other bailee becomes satis-

fied that the bailor is not the true owner of the goods, he may surrender them on demand to the true owner, but the carrier cannot set up an adverse title of his own motion as an excuse for withholding the goods from the bailor.

There is a strong presumption of ownership being in the bailor which the carrier must rebut and the adverse claim must be asserted by claimant or by his authority. If the claimant notifies the common carrier that he has a superior title and requests him not to make a delivery, it seems that the carrier would be safe in withholding delivery, but if the claimant should be afterwards shown not to have a superior title, the carrier would then be held liable to conversion for withholding the goods. This leaves the carrier in a delicate situation,for whichever course he pursues he is likely to incur liability. To relieve himself of the responsibility of deciding between the rival claimants, he may bring the parties into court, as defendants, on a bill of interpleader and thus have their rights judicially settled.

In any case where demands are made on the carrier by persons claiming to have a superior title to the goods, he may have a reasonable time in which to decide on the merits of the demands, provided that he acts in good faith.

Another excuse which the carrier may set up as a defense for failure to make delivery is where the consignor exercises his right of "Stoppage in-transitu", but this subject is so extensive that it cannot be given a more full description in this discussion.

With the foregoing description of the various excuses which the carrier may set up as a defense for non-delivery, this discussion ends, having traced the rules as to delivery and carriage from the common law to the present time and including the principal statutory modifications and exactions.