Carriers—Uniform Bill of Lading—Liability as Insurer or Warehouseman

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Court of Appeals, to review each case largely on its merits, rather than rigidly to fetter the court with prior decisions without regard to actual justice?  

—M. T. V.

CARRIERS—UNIFORM BILL OF LADING—LIABILITY AS INSURER OR WAREHOUSEMAN.—This was an action to recover for an interstate shipment of goods consigned under a uniform bill of lading, requiring forty-eight hours, after notice to the owner of arrival, before liability as insurer ceased and that of warehouseman began. Notice had been given, but the time period for removal had not expired when the goods were destroyed. Held, the carrier was liable as insurer for the value of the property. Del Signore v. Payne, Director General of Railroads. 109 S. E. 232 (W. Va. 1921.)

There are three distinct views as to the liability of a carrier for loss occurring after arrival and before delivery of a consignment. The Massachusetts court applies the doctrine that insurance liability, ipso facto, terminates when the shipment arrives at its destination and is placed in the warehouse. Norway Plains v. Boston & Maine R. Co., 1 Gray 263, 61 Am. Dec. 423. New Hampshire enforces the rule that a reasonable time for removal should elapse before the carrier is discharged from its extraordinary liability. Moses v. Boston & Maine R. Co., 32 N. H. 523, 64 Am. Dec. 381. The third rule, enunciated by the New York Supreme Court, holds that the insurance liability of the carrier continues until the consignee has been notified of the arrival of the goods, and has had a reasonable time to take them away after such notification. McDonald v. Western R. Co., 34 N. Y. 497. The various state courts seem to be in irreconcilable conflict as to the application of these rules. Each doctrine has its advocates, who claim that a certain one represents the sounder view. A North Carolina case says, "Not only does the great weight of authority in this country sustain the view of Judge Cooley (N. Y. rule), but such is the English and Canadian law." Poythress v. Durham & Southern R. Co., 148 N. C. 391, 62 S. E. 515, 18 L. R. A. (N. S.) 427 and note. England applies the rule requiring notice. Mitchell v. Lancashire etc. R. Co., L. R. 10 Q. B. 256, Chapman v. Great Western R. Co., L. R. 5 Q. B. Div. 278.

The same doctrine is applied by the courts of Canada. *Richardson v. Canadian Pacific R. Co.*, 19 Ont. 369. The West Virginia court has consistently adhered to the rule allowing a reasonable time for removal before changing the liability from insurer to that of warehouseman. *Berry v. West Virginia & Pittsburgh R. Co.*, 44 W. Va. 538, 30 S. E. 143; *Hutchinson v. Express Co.*, 63 W. Va. 128, 59 S. E. 949; *Hurley v. Norfolk & Western R. Co.*, 68 W. Va. 471, 69 S. E. 904; *Stefan Annese v. Baltimore & Ohio R. Co.*, 87 W. Va. 588, 105 S. E. 807. The principal case does not show an intention to relinquish the established rule in so far as it applies to shipments not governed by special contract, that is, in the absence of stipulations in the bill of lading providing for notice and a reasonable time thereafter for removal before limiting the liability to that of warehouseman. In all jurisdictions, however, the common law liability of a carrier as insurer is subject to reasonable modification by contract. The question therefore in the principal case is whether the modification of the common law liability is reasonable and enforceable. This question has been answered in the affirmative by the Supreme Court of the United States in a recent case, involving the construction of the Uniform Bill of Lading. The court reached the same conclusion as that given in the principal case. *Michigan Central R. Co. v. Mark Owen & Co.*, 65 L. Ed. 690, 41 Sup. Ct. R. 554. Justice McReynolds, dissenting, said, "The Uniform Bill of Lading is in common use, and the opinion of the court will be far-reaching." The extended use of the special contract will probably bring the question before many of the state courts. Jurisdictions applying the Massachusetts rule might be inclined to consider the change in degree of liability unreasonable, as the Uniform Bill of Lading would impose insurance liability for 48 hours after notice, whereas they have only recognized the liability of a warehouseman. Whatever may be the extent of the application of the doctrine of the principal case in our own or other jurisdictions, it is submitted that the rule requiring notice and a reasonable time for removal before changing insurance liability to that of warehouse liability, is sound and reasonable. It works no hardship on the carrier to give notice; it does not subject the consignee to loss for causes over which he has no control; it promotes uniformity of decisions; and it is more in consonance with equity and justice between all parties.

—C. P. H.