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Delivery of Carload Freight as a Defense to Liability as a Carrier

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RECENT CASES

DELIVERY OF CARLOAD FREIGHT AS A DEFENSE TO LIABILITY AS A CARRIER

The defendant, a railroad, spotted four carloads of freight consigned for the plaintiff, an oil company, on the plaintiff's private spur track. The spur was enclosed by a wire fence, the gates of which had to be opened in order to be accessible to the defendant. The freight was not unloaded immediately, and early the next morning a fire broke out in the plaintiff's mill and destroyed the four cars with their contents intact. The shipment was made under the Uniform Bill of Lading, which provides for 48 hours of free time for unloading before demurrage charges begin. Held, that the defendant was liable as an insurer until the expiration of the free time allotted by the bill of lading. The basis of this decision was one of intent of the parties as expressed in the bill of lading, a contractual relationship. The dissenting judge held that the defendant was not liable either as an insurer or a warehouseman, as the goods had been placed in the custody and control of the plaintiff, which constituted an actual delivery by the defendant. On rehearing, after consideration of the issue of delivery, *Held,* that the defendant was still in possession of the goods as they were still within the cars when they were destroyed. *Red River Cotton Oil Co. et al. v. Texas and P. Ry. Co.,* 44 So. (2d) 101 (La. 1949).

The court relied heavily upon *Michigan Cent. R. Co. v. Mark Owen & Co.*[1] as controlling authority for its decision. The decision of the latter case was also based upon the construction given to a bill of lading with provisions almost identical to those[2] in the instant case. The Supreme Court of the United States held that the property in question had not been delivered, but that only access was given to remove the property, and that 48 hours was given for this purpose, and by necessary implication until the expiration of the 48 hour period the railroad company was an insurer of the property not removed. The cars in this case were placed on a public delivery track and not on a private spur.

The common law rule, as to the liability of the common carrier for the loss or injury of property received by it for transportation, is in the absence of a

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1. 256 U.S. 427, 41 Sup. Ct. 554, 65 L. Ed. 1032 (1921).
2. Sec. 1 (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

   Sec. 4 (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charges for storage. Accord, forms 1584 and 1585 of the Union Pacific Railroad Co. (Uniform Domestic order and straight bills of lading, adopted by Carriers in Official, Southern, Western and Illinois classification Territories, March 15, 1922, as amended August 1, 1930, and June 15, 1941).

special contract that of an insurer.[3] This liability commenced when the goods were delivered to the carrier for shipment, and it continued until the carrier had made an actual or constructive delivery of the goods to the consignee.[4] This rule was imposed by law for the protection of the shipper, and in order to prevent fraud and deception by the carrier.[5]

Previous to the decision of the *Michigan Central* case, placement of the cars on the consignee's private siding has been held to be a sufficient delivery to terminate the liability as an insurer.[6] Delivery by the carrier has generally been conceived as having four essential requisites. They are as follows: (a) must be made to the proper person, (b) in a reasonable time, (c) at the proper place, and (d) made in the proper manner.[7] With reference to the facts of the instant case these essentials have apparently been fulfilled.

The last duty to be performed by the carrier under a contract of carriage is that of delivery of the goods.[8] The interpretations of the decision in the *Michigan Central* case have been indeed relatively few in number in view of the general proposition that the construction given to interstate bills of lading by the Federal courts should govern the state courts.[9] Some courts have grasped the naked proposition set out in the *Michigan Central* case which is that of liability as an insurer until the liability of warehouseman attaches without regard to the intent of the parties.[10]

The Supreme Court of the United States did make a distinction in a case[11] some five years later from the proposition in the *Michigan Central*. In this case imposition of liability as a carrier was attempted on the ground that the carrier remained liable for 48 hours after notification of arrival was given the consignee, and therefore, it was liable as a garnishee irrespective of the fact that the carrier had surrendered possession and control of the carload of goods to the consignee before service of garnishment papers. It was held that section 4 (a) of the Uniform Bill of Lading was not applicable to this situation, and that nowhere does the bill of lading state that once the carrier has surrendered control and custody of the goods to the consignee upon the payment of the freight charges does it have any right to repossess the goods.

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3. 9 Am. Jur. 813, Oregon Short Line R. Co. v. Blyth, 19 Wyo. 410, 118 P. 649, Ann. Cas. 1913E 288 (1911).
4. 9 Am. Jur. 821, North Pennsylvania R. Co. v. Commercial Nat. Bank, 123 U.S. 727, 8 Sup. Ct. 266, 31 L. Ed. 287 (1887).
5. 13 C.J.S. 135.
6. Brennfleck v. Mobile & O. R. Co., 184 Ala. 545, 63 So. 954 (1913); Arkansas Midland R. Co. v. Premier Cotton Mills, 109 Ark. 218, 158 S.W. 148 (1913); Massee & Felton Lumber Co. v. Southern Ry. Co., 40 Ga. App. 326, 149 S.E. 427 (1929); Reid & Beam v. Southern Ry. Co., 149 N.C. 423, 63 S.E. 112 (1908).
7. Hutchinson on Carriers 398 (2d ed., Mechem, 1891)
8. Id. at 396.
9. James E. Tamsett, Appt. v. Walker D. Hines, Director General of Railroads, 207 Ala. 97, 91 So. 788, 22 A.L.R. 875 (1921).
10. Alton R. Co. v. Tucker et al., 138 F. 2d 796 (1943); Del Signore v. Payne, Director General of Railroads, 89 W. Va. 275, 109 S.E. 232 (1921); Mangelsdorf Seed Co. v. Missouri Pac. R. Co., 128 Kan. 729, 280 P. 896 (1929).
11. Chicago & N. W. Ry. Co. v. Alvin R. Durham Co., 271 U.S. 251, 46 Sup. Ct. 509 (1926).

Many of the state courts have not been prone to give the *Michigan Central* case an interpretation as in the instant case. In a Virginia case, where a writ of certiorari was denied, the carrier was held liable to the shipper for conversion of the goods as the carrier's agent had pointed out the carload of goods consigned to the consignee's agent who proceeded to unload the car without presenting the bill of lading. The court held that where a carload of freight is placed upon a delivery track and the consignee's agent is permitted to open it and commence unloading it that such constitutes a final and complete delivery even though the goods were returned.*12* A Missouri case held that a final delivery of the car terminated the carrier's liability as an insurer because the carrier's contractual obligations had ceased. A final delivery was held to be spotting the cars at the convenience of the consignee.*13* A Massachusetts case held that the delivery of a car to a private siding for partial unloading was sufficient to terminate the liability of the carrier.*14* A Kentucky case held that where the consignee has assumed full control over the carload of goods and such goods have been left in the carrier's car that it constitutes a final and complete delivery to the consignee and terminates the liability of the carrier.*15*

The instant case is an apt example of imposing liability as an insurer after the contract of carriage has been performed by the carrier. On rehearing, it also sets up the proposition that the carrier was in possession of these goods as the goods were still in the carrier's cars when destroyed even though the carrier no longer had access to these cars, nor any right to recapture the actual possession of the cars. The Supreme Court of the United States remarked in a later case*16* in regard to its decision in the *Michigan Central* case that there was not a delivery of the goods which would terminate the liability of the carrier. Accordingly, the defense of delivery of the goods as terminating the carrier's liability is apparently still available. The custody and control of the goods to the exclusion of the carrier whether within or without the carrier's cars should be sufficient to terminate the carrier's liability.

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RIGHT OF ACTION OF CHILD FOR PRE-NATAL INJURIES

A personal injury action was brought for injuries received due to the negligence of the defendant in the operation of its bus line. Plaintiff at the time of the injury was a viable child existing in the womb of his mother. *Held,* that injries wrongfully inflicted upon an unborn viable child capable of existing independently of his mother are injuries done him in his "person" within the meaning

12. Norfolk & W. Ry. Co. v. Aylor, 153 Va. 575, 150 S.E. 252, cert. denied, 282 U.S. 847, 51 Sup. Ct. 26, 75, L. Ed. 751 (1929).
13. Southern Advance Bag & Paper Co. v. Terminal R. Ass'n. of St. Louis, 171 S.W. (2d) 107 (St. Louis Court of Appeals 1943).
14. Rice & Lockwood Lumber Co. v. Boston & M. R. R., 308 Mass. 101, 31 N.E. (2d) 219 (1941).
15. Gus Datillo Fruit Co. v. Louisville & Nashville R. Co., 251 Ky. 566, 65 S.W. (2d) 683 (1933).
16. See note 11 supra.