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THE COMMON CARRIER OF GOODS: ITS LIABILITY IN NEW YORK.

I.

The common law puts upon all common carriers the duty skillfully to conduct their undertakings, and upon common carriers of goods the more onerous duty also to insure goods delivered to them for carriage against loss or injury not caused by the excepted perils.¹ These are affirmative duties and breaches of them are negative torts² which were actionable before breaches of contract were legal wrongs.³

When the conception of contract had developed, the failure of any common carrier in its duty skillfully to conduct its undertaking was recognized and redressed as a broken contract, and its tortious character less emphasized; and today perhaps most actions therefor sound in contract, though the form of action in this State does not matter if the complaint states a cause of action.⁴

Still every common carrier's failure in its undertaking is none the less a tort.⁵ The practical questions are whether or not, and, if so, to what extent, common carriers may by special contracts with their patrons relieve themselves of these common law duties.

At an early day common carriers of goods in this State made the attempt to obviate their duty to insure by notice that they would not do so; and such a notice was held not to limit the

¹*Bissell v. New York Central Railroad Co.*, 25 N. Y. 442, 445, *per*, Selden, J. It is probably the law of New York that a common carrier of passengers by steam train is an insurer of the roadworthiness of its vehicles. *Alden v. New York Central Railroad Co.*, 26 N. Y. 102. See the remarks of Earl, C., in *McPadden v. New York Central Railroad Co.*, 44 N. Y. 478. This duty is not imposed upon common carriers of passengers by any other instrumentality. *Carroll v. Staten Island Railroad Co.*, 58 N. Y. 126.

²A tort is disobedience to a command of the State, and is affirmative or negative, according as the command is negative or affirmative, the tort being in that respect the converse of the command." Langdell, *Classification of Rights and Wrongs*, 13 *Harvard Law Review* 659. *Cf.* Keener, *Quasi-Contracts*, chap. I.

³See Ames, *The History of Assumpsit*, 2 *Harvard Law Review* 1; 53; Bronson, J., in *Hollister v. Nowlen*, 19 *Wend.* 234, 239-240.

⁴Code Civ. Proc. Sec. 481; *Nolton v. Western Railroad Corporation*, 15 N. Y. 444; *Carroll v. Staten Island Railroad Co.*, 58 N. Y. 126. Objections to the contractual theory of the action encountered in *Nolton v. Western Railroad Corporation*, 15 N. Y. 444, have been met by the decision in *Lawrence v. Fox*, 20 N. Y. 268.

⁵*Nolton v. Western Railroad Corporation*, 15 N. Y. 444; *Carroll v. Staten Island Railroad Co.*, 58 N. Y. 126.

goods carrier's liability, as insurer, whether brought home to the owner of the goods or not.⁶

A few years later, the right of common carriers of goods to stipulate away their insurance liability by special contract with a patron to that effect, was denied on the ground that to uphold a bargain of that character would be to hold out to these carriers "* * * a premium for indifference or carelessness, or a want of vigilance in protecting shipments confided to their care," and "* * * every relaxation of the common law in relation to the duties and responsibilities" of common carriers of goods was declared "* * * to be founded in bad policy and detrimental to the general interests of commerce."⁷

Gould v. Hill was overruled a dozen years later,⁸ and the right of a common carrier of goods by special contract to exempt itself of its insurance liability was asserted as a "* * * matter in no way affecting the public morals, or conflicting with public interests."⁹ This result is sound. The insurance liability of a common carrier of goods, upon whatever theory it may be accounted for, is an historical accident.¹⁰

There are, however, the soundest reasons of policy against a contract relieving any common carrier of its duty skillfully to conduct its undertaking. A patron does not deal at arm's length with a common carrier, and it may well be doubted that the ostensible bargain is a true contract.¹¹ In any event, since the public welfare requires that every common carrier be held

⁶*Cole v. Goodwin*, 19 Wend. 251 (1838); *Hollister v. Nowlen*, *semble*, 19 Wend. 234. "These decisions rest on the very satisfactory reasons, that the notice was no evidence of assent on the part of the owner, and that he had a right to repose upon the common law liability of the carrier, who could not relieve himself from such liability, by any mere act of his own." *Per*, Parker, J., in *Dorr v. New Jersey Steam Navigation Co.*, 11 N. Y. 485, 490.

⁷*Gould v. Hill*, 2 Hill 623, *Per*, Cowen, J., quoting the language of Story, J., in *The Schooner Reeside*, 2 Sumn. 567, 575. Nelson, Ch. J., dissented.

⁸*Dorr v. New Jersey Steam Navigation Co.*, 11 N. Y. 485.

⁹*Per*, Parker, J., in *Dorr v. New Jersey Steam Navigation Co.*, 11 N. Y. 485, 493. Mutual assent was apparently found in the significant character in a commercial community of the receipt given by the defendant carrier for the goods, and consideration in a judicially noticed reduction in the rate at which the carrier was bound to transport them. See *Kirkland v. Dinsmore*, 62 N. Y. 171.

¹⁰*Holmes, C. J.*, in *Seaver v. Bradley*, 179 Mass. 329; *The Common Law*, chap. V; *Cf.* Beale, *The Carrier's Liability: Its History*, 11 *Harvard Law Review* 158.

¹¹*New York Central Railroad Co. v. Lockwood*, 17 Wall. 357.

to a strict performance of that duty, a contract that would affect this public right adversely is against public policy and void.¹²

Nevertheless, in this State it has been considered that the policy in favor of freedom of contract overrides the policy favoring every incentive to a common carrier to be careful in the prosecution of its public calling,¹³ and in 1877 the right of a common carrier to “* * * stipulate for exemption from responsibility for the negligence of himself or his servants” was said to have been “* * * so repeatedly affirmed * * * that this question cannot with propriety be regarded as an open one in this State.”¹⁴ The rule of construction, *contra proferentem*, is strictly applied when such a contract is interpreted, and the carrier escapes liability for negligence only when the stipulation against liability therefor is found in terms in the bargain.¹⁵

¹²The weight of authority in this country denies the validity of such a contract. Hutchinson, Carriers (Mechem's 2nd ed.) Sec. 260.

Where a common carrier undertakes a gratuitous carrying there has been no demand for a performance of its common law duty to be skillful. A contract limiting its liability for failure in such an undertaking accordingly does not operate to relieve it of that duty, and is objectionable neither on the ground of duress nor of bad policy. It has so been held in passenger carrier cases. Perkins v. New York Central Railroad Co., 24 N. Y. 196; Ulrich v. New York Central and Hudson River Railroad Co., 108 N. Y. 80; Northern Pacific Railroad Co. v. Adams, 192 U. S. 440. The same reasoning obviously applies to the gratuitous transportation of goods, for the conveyance of goods without consideration is never common carriage. See Saleeby v. Central Railroad of New Jersey, 99 App. Div. 163; 184 N. Y. 597; Citizens' Bank v. Nantucket Steamboat Co., 2 Story, 16.

The same result has been reached in cases of the conveyance, without independent payment therefor, of one who accompanies his goods carried for hire, on the ground that the person accompanying the goods is gratuitously transported. Bissell v. New York Central Railroad Co., 25 N. Y. 442; Hodge v. Rutland Railroad Co., 112 App. Div. 142; 194 N. Y. 570. *Sed qu.* The dissenting opinion of Denio, Ch. J., in the Bissell case seems sound.

A common carrier's employee, when transported on a pass pursuant to the contract of employment, although not a passenger, is not carried gratuitously. Vick v. New York Central and Hudson River Railroad Co., 95 N. Y. 267; Dempsey v. New York Central and Hudson River Railroad Co., 146 N. Y. 290. An express stipulation on the pass so used against liability for negligence would, therefore, be without effect on principle. Even in New York it could have no effect: it would violate the rule that a master cannot by contract with his servant exempt himself from liability for harm done the servant by his negligence. Johnston v. Fargo, 184 N. Y. 379. See Gill v. Erie Railroad Co., 151 App. Div. 131, 135-136, and the cases there cited.

¹³See the remarks of Earl, C., in Cragin v. New York Central Railroad Co., 51 N. Y. 61, 64.

¹⁴Mynard v. Syracuse, Binghamton and New York Railroad Co., 71 N. Y. 180, 185-186. *Per*, Church, C. J. See the earlier cases there cited.

¹⁵Considerations based upon public policy and the nature of the carrier's undertaking influence the application of the rule, and forbid its operation, except where the carrier's immunity from the consequences of negligence

A qualification announced in some of the earlier passenger carrier cases,¹⁶ the existence of which has several times been squarely raised, but, apparently, nowhere fairly met, would withhold from common carriers the right to contract against responsibility for personal negligence. A late case repudiates the qualification.¹⁷ The repudiation is a dictum, but the effect of the decision, it would seem, is to render the distinction negligible for practical purposes. The holding was that the negligent use of a defective rail “* * * was that of the servants of the defendant who relaid the rails and had charge of repairing the track.”¹⁸

is read in the agreement *ipsisimis verbis*.” *Per*, Gray, J., in *Kenney v. New York Central and Hudson River Railroad Co.*, 125 N. Y. 422, 425, where the cases are collected.

In the application of the rule no distinctions are made between the so-called degrees of negligence: the carrier may contract for exemption from liability for negligence in any degree. *Perkins v. New York Central Railroad Co.*, 24 N. Y. 196. It seems to be taken for granted that the contract could not operate to relieve the carrier from liability for willful misconduct. *Anderson v. Erie Railroad Co.*, 157 N. Y. Supp. 740; 171 App. Div. —. Irrespective of considerations of policy it would seem that an agreement that the carrier should not be responsible for willful misconduct, since it would obligate the carrier to do nothing, could not be an enforceable promise.

¹⁶*Perkins v. New York Central Railroad Co.*, 24 N. Y. 196; *Smith v. New York Central Railroad Co.*, 24 N. Y. 222; *Bissell v. New York Central Railroad Co.*, 25 N. Y. 442. The *Smith* case may be soundly explained on the ground that, since the contract did not in terms exempt the carrier from liability for negligence, it could not have that effect. Note 15, *supra*. *Ulrich v. New York Central and Hudson River Railroad Co.*, 108 N. Y. 80, where the negligence was assumed to be that of the carrier, is not in point. The plaintiff in that case was being carried gratuitously. Note 12, *supra*.

¹⁷*Anderson v. Erie Railroad Co.*, 157 N. Y. Supp. 740; 171 App. Div. —.

¹⁸The decision is, therefore, against what has commonly been thought to be the distinction.

“But nevertheless there is such a thing as negligence imputable to the carrier, whether a corporation or not, as distinguished from the negligence of its agents. For example, a railroad company is bound to provide a road-bed, rails, ties, engines, cars, and appliances of all kinds, of the best character and description that can reasonably be procured, and that are by other railroad companies recognized as desirable and proper to be used. It is not bound to try experiments, but it is bound to keep up with the process of invention, as tested by experience, and if its agents fail to fulfill the duty thus devolved upon the carrier, the breach of this duty is treated as the carrier’s personal negligence.” *Wheeler, Modern Law of Carriers*, 78.

In estimating the result reached in the *Anderson* case it should be remembered that, since the intestate was a passenger, the derailment of the vehicle was *res ipsa loquitur*; *Edgerton v. New York and Hudson River Railroad Co.*, 39 N. Y. 227; *Loudoun v. Eighth Avenue Railroad Co.*, 162 N. Y. 380; and that the carrier is responsible for defects due to the negligence of the manufacturers of the machinery or materials used in the structure or operation of the road, whether discoverable by the

Between a contract designed conventionally to limit the liability of a common carrier of goods for failure in its duty skillfully to conduct its undertaking, and a contract for an antecedent valuation of the goods at an amount beyond which the carrier is not to be held in the event of loss of or injury to them, there is a clear distinction. Contracts of the latter kind are soundly sustained because they have no tendency adversely to affect the manner of the performance by a common carrier of goods of its public service duty to be skillful.¹⁹ A contract for an antecedent valuation of the goods relieves the common carrier of liability in an amount greater than the stated value where the loss of the goods is caused by negligence, despite the absence of an express stipulation therein against liability therefor.²⁰ Indeed, under such a contract, the common carrier is not answerable in any amount over the agreed valuation even where the goods are stolen by its employees.²¹

exercise of due care on the part of the carrier's immediate agents or not. *Hegeman v. Western Railroad Co.*, 13 N. Y. 9.

Sec. 42^a of the Railroad Law is a modification of the fellow-servant doctrine and without significance in this connection.

¹⁹*Tewes v. North German Lloyd S. S. Co.*, 186 N. Y. 151, and the cases there cited. The owner's statement of the value of his goods should bind him on plain principles of estoppel. See the remarks of Werner, J., in the *Tewes* case, p. 157. He is held to the stated value, however, on the ground that he has contracted against a contrary attitude. *Belger v. Dinsmore*, 51 N. Y. 166.

Where the offer looking to a contract for such an antecedent valuation of the goods does not move from the shipper, there is no contract therefor for the want of mutual assent, unless that element of the bargain is made out from the significant character of the receipt which the carrier gives for the goods. See the dissenting opinion of Haight, J., in the *Tewes* case; Note 9, *supra*.

That the shipper's promise to hold the carrier for nothing more than the value announced is supported by a sufficient consideration will, it seems, be assumed. All common carriers are required to file with the Public Service Commission schedules of rates for the transportation of passengers and property. Public Service Commissions Law, Sec. 28. Rates thus scheduled are apparently judicially noticed to be lower than those a common carrier could impose for performance of its common law duties. *Gardiner v. New York Central and Hudson River Railroad Co.*, 201 N. Y. 387. The scheduled rates cannot be reduced in a particular case. Railroad Law, Sec. 37, *et seq.*; Public Service Commissions Law, Sec. 26, *et seq.*

²⁰*Tewes v. North German Lloyd S. S. Co.*, 186 N. Y. 151.

²¹*D'Utassy v. Barrett*, 157 N. Y. Supp. 916; 171 App. Div. —. An effort to sustain contracts seemingly intended conventionally to limit the liability of a common carrier of goods as if they were contracts for an antecedent valuation of the goods is to be noticed. *Gardiner v. New York Central and Hudson River Railroad Co.*, 201 N. Y. 387.

The New York common law doctrines upon the liability of a common carrier for loss of or injury to baggage are dealt with in II for convenience.

II.

The Carmack Amendment to the Hepburn Bill, amending the Interstate Commerce Act,²² and the decisions of the Federal Courts thereon, in so far as they regulate the liability of a common carrier of goods for failure in an undertaking to perform an interstate carrying, supersede the New York common law doctrines on that subject.²³

These New York common law doctrines as previously stated operate today, then, only to define the liability of a common carrier of goods for failure in its undertaking to perform an intra-state carrying. And in this narrower field these common law doctrines to a great extent have been modified by Section 38 of the Public Service Commissions Law. That statute provides:²⁴

1. Every common carrier, baggage company, transfer company, railroad corporation and street railroad corporation shall, upon demand, issue either a receipt or bill of lading for all property delivered to it for transportation. *No contract, stipulation or clause in any receipt or bill of lading shall exempt or be held to exempt any common carrier, baggage company, transfer company, railroad corporation or street railroad corporation from any liability for loss, damage or injury caused by it to property from the time of its delivery for transportation until the same shall have been received at its destination and a reasonable time shall have elapsed after notice to consignee of such arrival to permit of the removal of such property.*

2. Every common carrier, baggage company, transfer company, railroad corporation and street railroad corporation shall be liable for all loss, damage or injury to property caused by delay in transit due to negligence while the same is being *carried* by it, but in any action to recover for damages sustained by delay in transit the *burden of proof* shall be upon the defendant to show that such delay was not due to negligence.

²²24 U. S. Stat. at Large, 386, Sec. 20, as amended by 34 *id.* 593, 595, Sec. 7; *Id.* 838, Res. No. 47.

²³*People v. New York Central and Hudson River Railroad Co.*, 163 App. Div. 79; *Barnet v. New York Central and Hudson River Railroad Co.*, 167 App. Div. 738, where decisions of the Federal Courts to the same effect are cited.

²⁴The section is here paragraphed and parts thereof italicized by the writer. Independently of Federal legislation this statute does not affect the liability of a common carrier of goods for failure in its undertaking occurring outside this state. *Shapiro v. Weir*, 128 App. Div. 245 (failure in freight carrying); *Hasbrouck v. New York Central and Hudson River Railroad Co.*, 202 N. Y. 363, 377 (failure in baggage carrying).

3. Every common carrier, baggage company, transfer company, and railroad corporation shall be liable for loss, damage and injury to property *carried as baggage whether in connection with the transportation of the owner or not*, up to the full value and *regardless of the character thereof*, but the value in excess of one hundred and fifty dollars shall be stated upon delivery to the carrier, and a written receipt stating the value shall be issued by the carrier, who may make a reasonable charge for the assumption of such liability in excess of one hundred and fifty dollars and for the carriage of baggage exceeding one hundred and fifty pounds in weight upon a single ticket or receipt.

4. Nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

Wherein has this statute modified the New York common law heretofore stated?

(a) BY THE FIRST PARAGRAPH.

It is undoubtedly still the law that common carriers of goods may by special contracts with their patrons stipulate against their common law insurance liability.

Special contracts between a common carrier of goods and its patron limiting the liability of the former for failure in its duty skillfully to conduct its undertaking, are, it would seem, prohibited. The phrase "by it" was probably not used by the legislature with reference to the distinction between the carrier's personal negligence and that of its servants.²⁵

The right of a common carrier of goods by special contract with its patron antecedently to value the goods at an amount beyond which the carrier is not to be liable in the event of loss of or injury to them, is, it would also seem, not denied.

This paragraph probably does not apply to express companies. It is addressed to "Every common carrier", and express companies are defined as common carriers.²⁶ Yet these considerations are not controlling on the question.²⁷ The express company is the modern substitute for the old wagon carrier and its route runs from the door of the consignor to that of the consignee.²⁸

²⁵See notes 16, 17, 18, *supra*.

²⁶Public Service Commissions Law, sec. 2.

²⁷*Morgan v. Woolverton*, 203 N. Y. 52, 56-57.

²⁸*Baum v. Long Island Railroad Co.*, 58 Misc. 34, 41-42 and the cases there cited.

Its liability, as common carrier, does not end when property carried by it "* * * shall have been received at its destination and a reasonable time shall have elapsed after notice to consignee of such arrival to permit of the removal of such property."²⁹

(b) BY THE SECOND PARAGRAPH.

This declares the rule put down by early New York cases that "* * * A carrier who seeks to be excused for non-delivery of goods caused by the act of God must show that no negligence of his concurred in or contributed to the damage of the goods."³⁰ The contrary rule of the Federal courts by which the carrier is excused although its negligence contributes with an act of God has thus been stated: "* * * Where the proximate cause of damage to goods in the hands of a carrier is an act of God, the carrier is excused from liability, although his own negligence or delay may have contributed to the loss or damage as a remote cause thereof."³¹ It has been suggested that this New York rule no longer applies where the carrier would be excused for his failure to deliver an interstate shipment in such circumstances, although Federal legislation on the subject of interstate commerce does not provide in the matter.³² The word "carried" here undoubtedly has its legal comprehension and is not limited to the physical movement of the goods.³³

²⁹The language quoted is declaratory of the common law rule fixing the time at which the common carrier of freight becomes warehouseman. *Fenner v. Buffalo and St. Louis Railroad Co.*, 44 N. Y. 505. See, *Jones v. Wells Fargo Express Co.*, 83 Misc. 508.

³⁰*Per*, Howard, J., dissenting, in *Barnet v. New York Central and Hudson River Railroad Co.*, 167 App. Div. 738, 744-745, citing *Michaels v. New York Central Railroad Co.*, 30 N. Y. 564; *Read v. Spaulding*, 30 N. Y. 630.

³¹*Per*, Howard, J., dissenting, in *Barnet v. New York Central and Hudson River Railroad Co.*, 167 App. Div. 738, 745, citing the Federal decisions. See also, *Denny v. New York Central Railroad Co.*, 3 Gray (Mass.) 481.

³²" . . . Congress having taken over the whole subject of interstate commerce, the rules of the Federal Courts developed before, as well as those enunciated since, the statute, must control this subject-matter." *Per*, Howard, J., dissenting, in *Barnet v. New York Central and Hudson River Railroad Co.*, 167 App. Div. 738, 744. The New York statute is not noticed in the *Barnet* case.

³³*Fenner v. Buffalo and St. Louis Railroad Co.*, 44 N. Y. 505; see note 29, *supra*.

The employment of the phrase "Burden of proof" is unfortunate in view of the indiscriminate use of it by the courts to designate: (1) the burden of establishing the proposition in issue; (2) the burden of going forward with evidence at different stages of a trial. See Thayer, *Preliminary Treatise. Upon Evidence*, 355, 368-371, 376-381, 383-389.

(c) BY THE THIRD PARAGRAPH.

By many New York common law decisions, "baggage" is defined as a passenger's fair concomitant for comfort and convenience on his journey as determined by his station in life and the purpose of the journey.³⁴ By the same test is determined what is personal paraphernalia properly retained by a passenger under his own control within the passenger vehicle.³⁵ The common carriage of goods being a true bailment, the passenger carrier is not an insurer of such paraphernalia; and apparently insures baggage only until it is ready to be delivered upon the passenger's demand.³⁶ Although the common carrier of baggage, like every other common carrier, may by special contract with its patron relieve itself of its common law duties skillfully to carry the baggage and also to insure it until ready for delivery, an ordinary railroad ticket could not contain such a contract.³⁷

The third paragraph of the New York statute has, it seems, no reference to a common carrier's liability for loss of or injury to a passenger's paraphernalia kept with him in the passenger vehicle, as distinguished from his baggage.

Read down to the saving clause, this paragraph would appear to prohibit special contracts intended to limit a common carrier's liability for loss of or injury to a passenger's baggage.

Does the paragraph apply to express companies? Does it render the common law definition of baggage no longer important? Is it a condition precedent to a common carrier's liability in excess of one hundred and fifty dollars for loss of or injury to

³⁴These cases are collected in the annotations to Sec. 66 of the Railroad Law, Cummings & Gilbert's New York Consolidated Laws. Although this concomitant may be baggage where the passenger does not go with it on the same train, it is probably freight where he precedes or follows it so long before or after it is checked that it cannot fairly be held to have been intended by him for use on the journey. See *Moffat v. Long Island Railroad Co.*, 123 App. Div. 719.

³⁵*Weeks v. New York, New Haven and Hartford Railroad Co.*, 72 N. Y. 50; *Knierem v. New York Central and Hudson River Railroad Co.*, 146 App. Div. 661; 201 N. Y. 47.

³⁶*Gausman v. New York Central and Hudson River Railroad Co.*, 63 Misc. 200; 134 App. Div. 989. The Gausman case would give a law definition for a situation formerly dealt with as fact. Judicial legislation of this sort had its ablest exposition in *Lorenzo v. Wirth*, 170 Mass. 596, *per*, Holmes, J.

³⁷*Rawson v. Pennsylvania Railroad Co.*, 48 N. Y. 212, 217. But a railroad ticket may be so formal an instrument as to contain a contract. See *Anderson v. Erie Railroad Co.*, 157 N. Y. Supp. 740; 171 App. Div. —; *Tewes v. North German Lloyd S. S. Co.*, 186 N. Y. 151. An ordinary baggage transfer check is not of itself a contract. *Blossom v. Dodd*, 43 N. Y. 264.

baggage while carried by it, that the passenger state such excess value upon delivering the baggage to the carrier?

As the statute was originally enacted³⁸ the third paragraph did not contain the words "whether in connection with the transportation of the owner or not." That language was, however, read into the paragraph by implication in a case holding the paragraph, in the words of the original enactment, applicable to an express company.³⁹ The Court of Appeals later took a contrary view without noticing the earlier decision.⁴⁰ Then the statute was amended⁴¹ to incorporate into the third paragraph the phrase "whether in connection with the transportation of the owner or not." The language of the amendment probably was intended to overcome the Court of Appeals decision in *Morgan v. Woolverton* and to make the paragraph applicable to express companies. There seems to be no other explanation for putting into the paragraph expressly the very words the Appellate Division had by implication found there when it decided *Meister v. Woolverton*.

The Court of Appeals in *Morgan v. Woolverton* did not consider that the phrase "regardless of the character thereof" was intended in any way to impair the fundamental idea behind the common law definition of baggage.⁴² In *Meister v. Woolverton* the Appellate Division plainly intimated a contrary conception of the purpose and effect of that phrase. The force of *Morgan v. Woolverton* as a precedent has been weakened by the amendment of 1913, and that of *Meister v. Woolverton* strengthened, and so the question as to the present importance of the common law definition of baggage goes unanswered.

Must a passenger speak of the higher value of his baggage if he would hold the carrier to whom he delivers it for transportation for more than the amount named in the statute when the baggage is lost or harmed in transit? A lower Court has decided that a passenger, from whom a carrier accepts baggage without inquiring the value thereof, may recover the full amount of damage thereto occurring in transit, although the passenger does not state the value of the baggage upon delivery thereof to the carrier and receives at that time, without dissent therefrom,

³⁸Laws, 1907, ch. 429.

³⁹*Meister v. Woolverton*, 140 App. Div. 926.

⁴⁰*Morgan v. Woolverton*, 203 N. Y. 52.

⁴¹Laws, 1913, ch. 344.

⁴²*Per*, Hiscock, J., 203 N. Y. at p. 55.

a non-contract check reciting that the value of the baggage is limited to one hundred and fifty dollars.⁴³ Somewhat contrary opinions of this situation have been expressed,⁴⁴ and the Court of Appeals decision thereon is yet to come.

It is unfortunate that so many matters in the business of every day intra-state common carriage of goods admit of no more definite statement.

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⁴³*Dazey v. New York Central and Hudson River Railroad Co.*, 150 N. Y. Supp. 58 (Supreme Court, Appellate Term). See also, opinions of Miller and Scott, JJ., in *Robinson v. New York Central and Hudson River Railroad Co.*, 145 App. Div. 391; 203 N. Y. 627.

⁴⁴*Gardiner v. New York Central and Hudson River Railroad Co.*, 201 N. Y. 387; Dowling, J., dissenting, in *Robinson v. New York Central and Hudson River Railroad Co.*, 145 App. Div. 391. And so the Supreme Court of the United States in construing a similar provision of the Carmack Amendment. *Boston and Maine Railroad Co. v. Hooker*, 233 U. S. 97, Mr. Justice Pitney, dissenting.