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THE BEGINNING OF LIABILITY OF A CARRIER OF GOODS.

A carrier of goods is a bailee of the goods for the purpose of carriage; and his responsibility as carrier cannot begin until he has become a bailee. And since possession of the bailee is the gist of the bailment, the carrier's responsibility does not begin until the moment when he assumes possession.

The simplest form of such assumption of possession is the actual taking of goods into the hands of an authorized agent of the carrier for carriage. Where this happens, the carrier's responsibility begins from the moment the carrier's agent takes the goods.¹

One who delivers goods to a person purporting to act for a carrier must see to it that the person is actually authorized by the carrier to accept goods on his behalf; the shipper takes the risk of the authority of the person with whom he chooses to deal.²

Thus it is not, or may not be, enough to charge the carrier by coach to show that the goods were handed to the driver;³ to charge an express company, to show that the goods were handed to a clerk in its office;⁴ or to charge a carrier by water, to show

1. *Boehm v. Combe*, 2 M. & S. 172; *Pickford v. Grand Junction Ry.*, 12 M. & W. 765; *British Columbia S. M. Co. v. Nettleship*, L. R. 3 C. P., 499; *Bulkeley v. Naumkeag S. C. Co.*, 24 How. (U. S.) 386; *Green v. Milwaukee & S. P. R. R.*, 41 Ia. 410; *Greenwood v. Cooper*, 10 La. Ann. 796; *Phillips v. Earle*, 8 Pick. (Mass.) 182; *Camden & A. R. R. v. Belknap*, 21 Wend. (N. Y.) 354; *East Line & R. R. Ry. v. Hall*, 64 Tex. 615.

2. *Buckman v. Levi*, 3 Camp. 414; *Missouri Coal Co. v. Hannibal & S. J. R. R.*, 35 Mo. 84; *Elkins v. Boston & M. R. R.*, 23 N. H. 275; *Butler v. Hudson River R. R.*, 3 E. D. Smith (N. Y.) 571.

3. *Blanchard v. Isaacs*, 3 Barb. (N. Y.) 388.

4. *Cronkite v. Wells*, 32 N. Y. 247.

that the goods were handed to a person standing on the wharf⁵ or to a deck-hand or other member of the crew.⁶ It is however sufficient to deliver the goods to a servant of the carrier who is usually employed in receiving and forwarding goods for the carrier; a shipper has a right to assume that such a person has ample authority to deal with him in this matter.⁷

If the carrier consents to send for a parcel at the house of the shipper, it would seem to be clear that he becomes liable at the shipper's house, where his servant accepts the parcel. In one case it was held that the carrier's servant in such a case became the shipper's agent to ship the parcel at the regular office of the company, and that the carrier's liability as such began at that point.⁸ But it was soon after rightly held in such a case that the carrier's liability began at the shipper's house, where the servant of the carrier assumed possession.⁹ So if an express company by its agent receives goods as they arrive at the freight station of a railroad, the express company is liable from that time, though it has not yet brought the goods to its office.¹⁰

Upon the same principle, where a carrier by sea, in a harbor where a vessel cannot reach the wharf to take its cargo, is accustomed to send lighters to the wharf to receive the cargo and bring it to the vessel, the carrier's liability begins as soon as the goods are received on board the lighter.¹¹ Where a carrier by sea was accustomed to receive its cargo while still upon the lighters, the process being to moor a lighter to the vessel and then take charge of the lading from the lighter, responsibility of the carrier was held to begin as soon as the lighter was moved alongside, ready to discharge; and a lighter so moored having broken loose, and its cargo having consequently been damaged, the carrier was held liable.¹²

5. *Buckman v. Levi*, 3 Camp. 414.

6. *Leigh v. Smith*, 1 C. & P. 638; *Trowbridge v. Chapin*, 23 Conn. 595; *Ford v. Mitchell*, 21 Ind. 54; *Gleason v. Goodrich Transp. Co.*, 32 Wis. 85, 14 Am. Rep., 716.

7. *The City of Alexandria*, 28 Fed. 202; *Jordan v. Fall River R. R.*, 5 Cush. (Mass.) 69; *Grosvenor v. New York C. R. R.*, 39 N. Y. 34; *Witbeck v. Schuyler*, 44 Barb. (N. Y.) 469.

8. *Boys v. Pink*, 8 C. & P. 429.

9. *Davey v. Mason*, Car. & M. 45.

10. *Southern Exp. Co. v. Newby*, 36 Ga. 635.

11. *Bulkeley v. Naumkeag S. C. Co.*, 24 How. (U. S.) 386; *The Bark Edwin*, 1 Spr. 477; *The Oregon*, Deady, 179; *The City of Alexandria*, 28 Fed. 202.

12. *Campbell v. The Sunlight*, 2 Hughes, 9.

It sometimes becomes important to determine at what moment goods delivered to the carrier by tackling or other mechanical device pass into the possession of the carrier. Where goods are taken out of the vehicle in which they are brought to the conveyance of the carrier, the tackling by which the transfer is effected usually belongs to, or at least is operated by the carrier; and in that case the carrier's responsibility begins as soon as the goods are attached to the tackling.¹³ The leading case was that of a warehouseman who provided a crane in which goods to be stored were hoisted into the warehouse. A bale had been attached to the crane, but fell from it and was injured. Lord Ellenborough held that the possession passed to the warehouseman when the bale was in the crane, and lifted from the cart; when the warehouseman took them into his own hands, which was the moment he applied the tackle to them, his liability began. It was urged that the bale fell because the slings used were not strong enough, and that the warehouseman offered the carman sufficient slings which he declined to use. But Lord Ellenborough charged that if this was the case the warehouse man was not excused; he should have insisted on the use of better slings, or if that was refused he should have declined to accept the goods.¹⁴

The determining fact in such a case is the control of the machinery. "Much will depend upon the manner in which they receive goods for transportation, the provision they make for raising heavy articles into their cars, and the active participation of the agent of the company in reference to the same."¹⁵

Where grain or liquid is shipped in bulk, it is usually delivered through a pipe or chute; and it may be important to determine the moment during delivery when the liability of the carrier begins. In such a case an elevator was delivering grain to a carrier through a pipe, the bottom of which was attached to the hatch of the carrier's boat; the grain was allowed to drop into the pipe from the elevator, control over it being exercised by a slide or valve at the top. The pipe became accidentally loosened from the hatch, and much grain was spilled into the water. The court held (following the doctrine laid down in the case of delivery by a crane) that the carrier, having control of the mouth of the pipe, was responsible for the grain.¹⁶ But it would seem that the same re-

13. *The Cordillera*, 5 Blatch. 518; *Merritt v. Old Colony & N. Ry.*, 11 Allen (Mass.) 80.

14. *Thomas v. Day*, 4 Esp. 262.

15. Dewey, J., in *Merritt v. Old Colony & N. Ry.*, 11 Allen (Mass.) 80, 83.

16. *The R. G. Winslow*, 4 Biss. 13, Fed. Cas. No. 11,736.

sult might be reached on a more general ground. As soon as goods are allowed to fall freely into a receptacle provided by the carrier, like coal passing from the mouth of a chute or, in this case, the grain falling past the cut-off at the top of the pipe, the shipper has completely lost control and the carrier, it would seem, has accepted possession. At that moment then the bailment and the carrier's liability begins.

It is not sufficient delivery to the carrier merely to place the goods in a place where he may conveniently get them;¹⁷ as at the wharf from which he sails¹⁸ or the inn from which his coach starts,¹⁹ or the station from which his train starts.²⁰

If however the carrier consents to receive goods when they have been placed in a certain spot, he may become responsible for goods as soon as they are placed there, without further act of acceptance by any person acting for him. A common instance of this sort is the posting of a letter in the box placed by the post-office department to receive it. So where a railroad company made an express agreement to accept cotton-seed when placed beside its track at a point between stations, it was held that its responsibility as carrier began as soon as the seed was deposited in accordance with the agreement.²¹ The court in the course of its opinion said: "Parties having freight to be transported by rail cannot make a good delivery to the railroad company by simply depositing the goods along the line anywhere and everywhere; but where by agreement freight is deposited at a given point on the line of railway for the purpose of immediate transportation, there seems to be no good reason why such deposit should not constitute delivery to the carrier, whose liability would commence from the time the goods were deposited at the place agreed on."

The consent of the carrier to receive goods when placed in a certain place may be established by evidence of a special custom to that effect. In such a case the extent of the carrier's responsibility would be determined by the nature of the custom. If a custom can be shown for the carrier to be in charge and undertake responsibility for the goods from the moment of deposit, then he will undergo the legal liability of carrier from the mo-

17. *O'Bannon v. Southern Exp. Co.*, 51 Ala. 481.

18. *Buckman v. Levi*, 3 Camp. 413.

19. *Selway v. Holloway*, 1 Ld. Ray. 46.

20. *Slim v. Great Northern Ry.*, 14 C. B. 647.

21. *Georgia S. & F. Ry. v. Marchman*, 121 Ga. 235, 48 S. E. 961.

ment of deposit in accordance with the custom, even though he has no notice of the deposit.²²

This often happens in the case of a union station, where goods arriving by one carrier are to be delivered by it to a second carrier for further carriage. Under these circumstances it is frequently the custom for the first carrier to deposit the goods in a part of the station appropriated to the second carrier, and for the latter then to be in charge of the goods without notice. In such a case the liability of the second carrier begins at the moment of deposit, even though the deposit is made at night or some other time when the second carrier has in fact no servants at hand to receive and care for the goods thus deposited.²³ Where such a custom is proved to place goods in a freight car on a siding, the carrier is responsible as such from the moment the car is loaded and ready for the carrier to take it,²⁴ and if the custom is to take charge of goods deposited beside the track ready for shipment, the carrier's responsibility begins from the moment of such deposit.²⁵

The custom established is however quite likely to be a custom to take charge of goods left in a certain place only after notice to the carrier that they are in the customary place ready for carriage. A custom thus limited must be followed exactly according to its terms; and unless the custom goes so far as expressly to prove consent of the carrier to receive goods placed in the place provided for them without notice to the carrier, a deposit in the usual place without notice to the carrier will not render him liable.²⁶ Indeed it was asserted by the Supreme Court of New York, that a delivery in accordance with any custom must always be accompanied by notice to some authorized agent of the company.²⁷ This opinion, as has been seen, goes too far; but it is clear that a custom of the nature under consideration usually requires notice to the carrier.

22. *Montgomery & E. Ry. v. Kolb*, 73 Ala. 396; *Merriam v. Hartford & N. H. R. R.*, 20 Conn. 354; *Evansville & T. H. R. R. v. Keith*, 8 Ind. App. 57, 35 N. E. 296; *Green v. Milwaukee & S. P. R. R.*, 38 Ia. 100; *Meyer v. Vicksburg S. & P. R. R.*, 51 La. Ann. 639.

23. *Converse v. Norwich & N. Y. T. Co.*, 33 Conn. 166.

24. *St. Louis, I. M. & S. Ry. v. Murphy*, 60 Ark. 333, 30 S. W. 419; *Evansville & T. H. R. R. v. Keith*, 8 Ind. App. 57, 35 N. E. 296.

25. *Montgomery & E. R. R. v. Kolb*, 73 Ala. 396; *Illinois C. R. R. v. Smyser*, 38 Ill. 354.

26. *Trowbridge v. Chapin*, 23 Conn. 595; *Wright v. Caldwell*, 3 Mich. 51; *Packard v. Getman*, 6 Cow. (N. Y.) 757; *Ball v. New Jersey S. B. Co.*, 4 Daly (N. Y.) 491.

27. *Packard v. Getman*, 6 Cow. (N. Y.) 757.

The carrier will however not be liable under the custom, without express assent and assumption of actual possession, unless the custom is strictly followed out by depositing the goods in the customary and reasonable place. Thus where a cutter was placed upon the platform of a freight station and the proper agent notified, but it was carelessly placed so that it projected over the tracks and was struck and injured by a passing train, the court held that "the delivery was not as perfect and complete as it should have been," and that the carrier had never come into possession of the cutter. "Suppose," the court continued, "the servant had left the cutter on the track of the railroad, and notified the agent, would the defendant have been responsible? Clearly not, for the apparent reason that there was no delivery upon the premises, no surrender of the property into the possession of the agent. Until it was actually delivered, the agent was under no obligation to take charge of the property, even if notified. It is apparent that the plaintiff was in fault in not delivering the property to the defendant, and in leaving it in an exposed condition, which caused its destruction; and, having failed to establish this material part of his case, should have been nonsuited."²⁸

While the decision in the case was doubtless influenced by the fact that the plaintiff was negligent in leaving the cutter where he did, and while it is not clear that a custom existed which would make a deposit with notification effective, it is still clear that the court held that a delivery by deposit and notification, to be effectual, must be made in the exact customary spot; and that this must be a place where the goods might be safely left until the time came for the carrier to assume actual control. This view appears to be entirely sound.

In the absence of the agreement or custom, placing goods in the place where the carrier usually receives them does not render the carrier liable as such. So, if in answer to a request of a shipper a carrier leaves a car on a track to be loaded by the shipper, who places the goods in the car and leaves the car to be attached by the carrier to the next train, the carrier is not responsible, in the absence of a special custom to that effect, or special agreement between the parties.²⁹ So the deposit of goods beside a railroad track, as upon a platform provided to receive them, though they are so deposited for immediate shipment ready to be loaded upon

28. *Grosvenor v. New York C. R. R.*, 39 N. Y. 34.

29. *Tate v. Yazoo & M. V. R. R.*, 78 Miss. 842, 29 So. 392, 84 Am. St. Rep., 649; *Houston & T. C. Ry. v. Hodde*, 42 Tex. 467; *Yoakum v. Dryden* (Tex. Civ. App.), 26 S. W. 312.

the freight train when it arrives, is not, in the absence of special custom, enough to render the carrier liable.³⁰

This principle was involved in a case of water carriage on the Mississippi river. The carrier was engaged in the transportation of wheat in bulk in barges, which are taken in tow by its steamboat. A barge was left at a certain wharf; the shipper (without notice to the carrier) loaded the barge with wheat, filled out a blank bill of lading, and handed the bill to a clerk of the carrier, who however did not know that the barge had been loaded or that the bill covered wheat in the barge. The barge sank before it was actually taken in tow by the defendant's steamboat; and the carrier was held not to be responsible, in the absence of a custom "that the barge when loaded, was considered in the custody of the steamer without notice to any of her officers."³¹

In these cases there is some authority for holding that a deposit in the regular place for receiving goods followed by notice to the carrier is enough to make the carrier responsible as such, even without proof of a special custom to that effect.³² In one case it was even said that in such a case the goods were in possession of the carrier as warehouseman until notice, and thereafter in his possession as carrier.³³ This is an untenable contention which, another court said, no one would make.³⁴ The true doctrine seems to be that mere notice could not in such a case impose liability on the company; but that acquiescence of an authorized servant of the company at the time of receiving the notice would amount to an express acceptance of the goods.

Where the owner of the goods goes along with them and exercises some degree of care and watchfulness over them, it sometimes becomes a question whether the carrier is responsible. In the leading case it appeared that the defendant was a common lighterman, and that it was the usage of the plaintiff, the East India Company, to send in the lighters by means of which their vessels were loaded, an officer, called a guardian, who as soon as the lighter was loaded put the company's lock on the hatches and went with the goods to see them safely delivered at the ware-

30. *Wilson v. Atlanta & C. Ry.*, 82 Ga. 388, 9 S. E. 1076; *Wells v. Wilmington & W. R. R.*, 6 Jones L. (N. C.) 47.

31. *The Keokuk*, 9 Wall. 517.

32. *Illinois C. R. R. v. Smyser*, 38 Ill. 354; *Rogers v. Long Island R. R.*, 2 Lans. (N. Y.) 269; *contra, Anderson v. Mobile & O. R. R.*, 38 So. 661. (Miss. 1905).

33. *Basnight v. Atlantic & N. C. R. R.*, 111 N. C. 592, 16 S. E., 323

34. *Yoakum v. Dryden* (Tex. Civ. App.), 26 S. W. 312.

house. This usage having been followed, part of the goods were lost. Lord Raymond, Chief Justice, "was of opinion this differed from the common case, this not being a trust in the defendant, and the goods were not to be considered as ever having been in his possession, but in the possession of the company's servant, who had hired the lighter to use himself." The plaintiff was accordingly nonsuited.³⁵

If however the shipper merely goes with the goods and has an eye on them for greater security, while the carrier has the possession or general control, the carrier becomes responsible as such upon assuming possession. Such is the case when a drover accompanies cattle to feed and water them. So where a servant of the shipper went along with the carrier on account of the carrier being a stranger to the shipper, this was held not to negative the carrier's responsibility; the case being distinguished from the usage of the East India Company, "who never intrust the lighter-man with their goods, but give the whole charge of the property to one of their officers."³⁶ Where the shipper himself furnished the cars and brakemen, this was held not to affect the liability of the carrier, the entire train while on the route being under the control and management of the conductor and other servants of the carrier.³⁷

In a case in the Supreme Court of the United States the carrier was engaged in transporting a body of soldiers and their baggage. The soldiers packed their own baggage in a car selected by themselves, and it was asserted that an armed guard accompanied the baggage.³⁸ Mr. Justice Field, speaking for the court said: "If it were admitted that a special guard was appointed for the car on the route, the admission would not aid the company or relieve it of liability. The control and management of the car, or of the train, by the servants and *employees* of the company were not impeded or interfered with; and where no such interference is attempted it can never be a ground for limiting the responsibility of the carrier that the owner of the property accompanies it and keeps a watchful lookout for its safety."

35. *East India Co. v. Pullen*, 1 Stra. 690.

36. *Robinson v. Dunmore*, 2 B. & P. 416. This distinction is further illustrated by *Brind v. Dale*, 8 C. & P. 207.

37. *Mallory v. Tioga R. R.*, 39 Barb. 488. In the somewhat similar case of *Coup v. Wabash S. L. & P. R. R.*, 56 Mich. 111, the carrier was held not liable as such; but that was on account of other special circumstances, not merely because the shipper's servants accompanied the goods.

38. *Hannibal & S. J. R. R. v. Swift*, 12 Wall. 262.

Where a passenger takes with him in the vehicle in which he is carried small articles of personal baggage, it may be difficult to determine how far the responsibility of the carrier extends to them. It was clearly stated in an early English case that the carrier would be responsible for it: "If a man travel in a stage-coach and take his portmanteau with him, though he has his eye upon the portmanteau, yet the carrier is not absolved from his responsibility but will be liable if the portmanteau be lost."³⁹ This doctrine has been extended to the case of railway carriage. If the railway porter takes luggage to carry for a passenger and places it in the train or in a cab, and it is lost before it is redelivered to the passenger, the carrier is doubtless liable as such;⁴⁰ the responsibility beginning when the luggage is delivered to the porter. The language used in several cases goes further and appears to hold that where the luggage is placed by the porter in the carriage with the passenger the carrier continues responsible as such, being still in the possession of the luggage.⁴¹ That this would be true if the luggage is placed in the carriage of the passenger, not at the request of the latter, but for the carrier's convenience, is of course clear; and this would be even more obvious if the passenger objected to such disposition of the luggage;⁴² but the English courts go further: "It is the everyday practice of passengers by railway to carry cloaks and such like articles with them in the carriages, with the consent of the company, and it cannot be said that the company have on that account parted with their custody of them as carriers."⁴³ It is however clear that the carrier is not under such circumstances an insurer and that the amount of care required of it is materially lessened by the fact that the passenger is in actual control.⁴⁴

In this country (very likely because of a different usage as to the matter, the railroad company here not taking charge of personal luggage, as a matter of course, by its porters or other servants) it has never been supposed that the railroad company as-

39. *Chambre, J.*, in *Robinson v. Dunmore*, 2 B. & P. 416, 419.

40. *Richards v. London & B. Ry.*, 7 C. B. 839, 18 L. J. (C. P.) 251; *Butcher v. London & S. W. Ry.*, 16 C. B. 13, 24 L. J. (C. P.) 137; *Le Conteur v. London & S. W. Ry.*, 6 B. & S. 961; L. R. 1 Q. B. 54.

41. *Munster v. South Eastern Ry.*, 4 C. B. (N. S.) 676, 27 L. J. (C. P.) 308; *Le Conteur v. London & S. W. Ry.*, 6 B. & S. 961, L. R. 1 Q. B., 54; *Talley v. Great Western Ry.*, L. R. 6 C. P., 44.

42. *Munster v. South Eastern Ry.*, 4 C. B. (N. S.) 676, 27 L. J. (C. P.) 308.

43. *Lush, J.*, in *Le Conteur v. London & S. W. Ry.*, *supra*.

44. *Talley v. Great Western Ry.*, L. R. 6 C. P. 44.

sumed possession of personal luggage taken into its train by a passenger; and it has therefore never been held liable for such luggage as carrier.⁴⁵

In the case of a ferry, the fact that the owner usually goes along with the goods and often retains the entire charge and management of them (as for instance where he drives a horse on the ferry boat and manages him while on the boat) materially modifies the relation of carrier and shipper so that the carrier may not be responsible for any injury caused by defect in placing or managing the property;⁴⁶ but this does not affect the position of the ferryman as carrier. While his liability is less in amount, it is the same in kind as that of an ordinary carrier, and the time of its beginning is settled upon the same principle.⁴⁷

The carrier's liability begins at once on the receipt of goods for transportation,⁴⁸ though the goods have not yet been placed in the carrier's vehicle for transportation⁴⁹ and even though no bill of lading has been issued for them,⁵⁰ and the freight has not been prepaid.⁵¹

If however goods are received by the carrier, not for immediate transportation, but to be held until further orders of the shipper, the carrier holds the goods, pending such orders, as a warehouseman, not as a carrier.⁵² Thus where shipping directions are to be sent later, the carrier until such directions are received, hold the goods as a warehouseman only;⁵³ and so where the goods are not to be sent until the shipper appears to go with

45. *Tower v. Utica & S. R. R.*, 7 Hill, 47.

46. *White v. Winnisimmet Co.*, 7 Cush. (Mass.) 155; *Wyckoff v. Queens County Ferry Co.*, 52 N. Y. 32; *Wilson v. Hamilton*, 4 Ohio S. 722.

47. *Wilson v. Hamilton*, 4 Ohio S. 722. Some of the language in *White v. Winnisimmet Co.*, and *Wyckoff v. Q. C. F. Co.*, *supra*, appears to deny the liability as carrier; but the court was in reality passing only upon the amount of liability.

48. *Nichols v. Smith*, 115 Mass. 332; *Rogers v. Wheeler*, 52 N. Y. 262; *Clarke v. Needles*, 25 Pa. 338.

49. *Grand Tower Co. v. Ullman*, 89 Ill. 244; *Fitchburg & W. R. R. Co. v. Hanna*, 6 Gray (Mass.) 539; *Moses v. Boston & M. R. R.*, 24 N. H. 71; *Blossom v. Griffin*, 13 N. Y., 569.

50. *Snow v. Caruth*, 1 Sprague 324; *Lakeman v. Grinnell*, 5 Bosw. (N. Y.) 625; *East Line & R. R. Ry. v. Hall*, 64 Tex. 615.

51. *Wood v. Devin*, 13 Ill., 746; *Evansville & T. H. R. R. v. Keith*, 8 Ind. App. 57, 35 N. E. 296.

52. *White v. Humphery*, 11 Q. B., 43; *Barron v. Eldridge*, 100 Mass. 455; *Schmidt v. Chicago & N. W. Ry.*, 90 Wis. 504, 63 N. W. 1057.

53. *St. Louis A. & T. H. R. R. v. Montgomery*, 39 Ill. 335; *Michigan S. & N. I. R. R. v. Shurtz*, 7 Mich. 515; *Spade v. Hudson R. R. R.*, 16 Barb. (N. Y.) 383.

them.⁵⁴ And so where a railroad had been seized by the government for the transportation of troops, goods might be accepted to be held until the government relinquished control of the railroad and then carried; and in that case the railroad would be liable as warehouseman only until the government relinquished control.⁵⁵

Where the goods are to be transported at a certain time named the carrier would hold them as a warehouseman until that time, and as carrier at once as soon as the stated time arrived⁵⁶ If the goods are detained before transportation, not by request of the shipper, but from his failure to furnish legible or adequate shipping directions, the carrier, not being able to transport at once, is responsible only as a warehouseman.⁵⁷

The same thing is true if the goods are, by agreement, placed in the carrier's care, but without liability as carrier on his part until he chooses to begin transportation.⁵⁸ On this principle it has been held that where cattle were by the permission of a railroad company placed in its pens, by the shipper's servants and remained in their charge, the carrier had not become responsible;⁵⁹ and the same decision was reached in a case where the shipper retained the right to remove the cattle from the pens to feed and water them.⁶⁰

If the carrier has not undertaken to transport immediately, but is authorized to carry, if he chooses, or to wait until a later time, it has been held in a Massachusetts case that the carrier is liable only as warehouseman until he chooses to transport. The plaintiff was shipping a lot of 1000 corn-planters, of which 900 had already been delivered to the carrier. The carrier was authorized, but not required, to carry at once the part delivered to him. The court held that the carrier was not liable as such for the part delivered, which they were holding until the delivery of the rest. "If the convenience of doing the business required the defendant to carry the whole lot together instead of dividing the business into

54. *Little Rock & F. S. Ry., v. Hunter*, 42 Ark. 200.

55. *Illinois C. R. R. v. Ashmead*, 58 Ill., 487; *Illinois C. R. R. v. Hornberger*, 77 Ill. 457.

56. *Illinois C. R. R. v. Tronstine*, 64 Miss. 834.

57. *Finn v. Western R. R.*, 102 Mass. 283; *O'Neill v. New York C. & H. R. R. R.*, 60 N. Y. 138.

58. *Otis Mfg. Co. v. The Ira B. Ellems*, 50 Fed. 934; *Fitchburg v. W. R. R. v. Hanna*, 6 Gray, 539 (*semble*).

59. *Fort Worth & D. C. Ry. v. Riley* (Tex. App. 1886) 1 S. W. 446.

60. *Chicago, B. & Q. R. R. v. Powers*, 103 N. W. 678 (Neb. 1905).

different jobs, to be done at different times, and this was known to the plaintiff, and he delivered the separate parcels at the depot to be stored till the whole lot should arrive, the goods would be stored in warehouse, although the plaintiff should have been willing that they should be carried in many small parcels, and should have given the defendants authority to carry them in that manner."⁶¹

It will be noticed that the opinion makes the position of the carrier depend upon the shipper's knowledge of the carrier's intention; and that this might perhaps be taken to constitute a special contract between the parties. But the correctness of this view may be doubted. The liability of the carrier as such must, it would seem, depend upon his possession, with the obligation to transport, and the right (though not necessarily the obligation) to transport immediately. Thus where goods are offered to a railroad company at an unreasonably long time before the train starts—as where, for instance, baggage is offered in the evening for carriage in a train the next morning—if the carrier takes the goods he becomes responsible at once as a carrier, although the shipper knows that according to the time-table the goods will not be carried until a later time.⁶² And where a horse was delivered to a railway before the train was prepared, and was put by the railway company into a horse-box and killed before it was put on board the train, the railway was held liable.⁶³

In a case which seems to be on all fours with the Massachusetts case, the Supreme Court of Minnesota reached an opposite conclusion. The shipper gave a trunk to the railroad to carry and on inquiry he said he did not care whether the trunk was carried immediately or not, since he should not need it at its destination until several days later, when he himself should arrive there. The trunk was lost while waiting transportation; and the carrier's liability as such was held to have attached.⁶⁴

It sometimes happens that a parcel is given to the servant of a carrier under such circumstances that it seems doubtful whether the servant or the master becomes the bailee and carrier. It is quite possible for the servant of a carrier to take and carry goods independently of his master, and when this is alleged to be the case all the circumstances must be examined to determine the question.

61. Chapman, J., in *Watts v. Boston & L. R. R.*, 106 Mass. 466.

62. *Hickox v. Naugatuck R. R.*, 31 Conn., 281; *Camden & A. R. R. v. Belknap*, 21 Wend. (N. Y.) 354.

63. *Moffat v. Great W. Ry.*, 15 L. T. Rep. 630.

64. *Shaw v. Northern Pac. R. R.*, 40 Minn. 144.

If the shipper is aware that the carriage is a private matter, for the private gain of the servant, he cannot hold the master liable;⁶⁵ and so if he delivers to the servant to be carried gratuitously, as a matter of friendship, since such an arrangement is not a business arrangement and could hardly be supposed by the shipper to be made on the master's account;⁶⁶ but the mere fact that by an arrangement between the carrier and his servant the latter was to receive the compensation would not absolve the carrier from liability to the shipper.⁶⁷ The question is often solved by determining whether the goods are of a sort which the carrier is accustomed to accept for carriage. Thus, dogs never having been received as of right by a carrier on a passenger train, dogs delivered to the baggage master are not in the hands of the railroad.⁶⁸ The question often comes up in the case of the carriage of packages of money by the master or purser of a steamboat, or by the driver of a stage. If the carrier has never undertaken to carry money and the only usage (even though known to the carrier) is for the servant to take, the carrier is not responsible for money taken by the servant;⁶⁹ while if there is a general usage to receive the money on behalf of the carrier, the latter will be responsible when it is taken by the servant.⁷⁰

On this principle it was held that where a street-car company had become accustomed to receive parcels on the front platform of its cars, it became responsible as a carrier of goods when a parcel was so received by one of its drivers.⁷¹

Since a bailment is required before the carrier of goods becomes responsible as such, it must be clear that without such bailment one cannot be a carrier of goods. It sometimes happens that a bill of lading is issued by the servant of a carrier without a delivery to the carrier of the goods named in the bill. Such issue of a bill of lading does not make the carrier responsible as

65. *Butler v. Basing*, 2 C. & P. 613.

66. *Suarez v. The Washington*, 1 Woods, 96; *Mechanics & T. Bank v. Gordon*, 5 La. Ann. 604; *Choteau v. Steamboat St. Anthony*, 16 Mo. 216.

67. *Dwight v. Brewster*, 1 Pick. (Mass.) 50; *Bean v. Sturtevant*, 8 N. H. 146; *Mayall v. Boston & M. R. R.*, 19 N. H. 122; *Farmers' & M. Bank v. Champlain T. Co.*, 23 Vt. 186.

68. *Lee v. Burgess*, 9 Bush (Ky.) 652; *Honeyman v. Oregon & C. R. R.*, 13 Ore. 352.

69. *Citizens' Bank v. Nantucket S. B. Co.* 2 Story 16; *Mechanics' & T. Bank v. Gordon*, 5 La. Ann. 604; *Choteau v. St. Anthony*, 16 Mo. 216; *Allen v. Sewell*, 6 Wend. (N. Y.) 335.

70. *Hosea McCrory*, 12 Ala. 349.

71. *Levi v. Lynn & B. R. R.*, 11 Allen (Mass.) 300.

a carrier for the goods described in the bill.⁷² In some jurisdictions it has, to be sure, been held that if a bill of lading was issued by the proper agent of the carrier and was indorsed for value to a bona fide purchaser the carrier could not as against him dispute the receipt of the goods;⁷³ and where a carrier issued two bills of lading for the same goods, and the two bills came into the hands of two holders for value and without notice, it was held that the carrier could not dispute the receipt of two lots of goods.⁷⁴ But this is based on the doctrine of estoppel; the carrier is not responsible as such on real facts, but in this particular case the real facts cannot be shown.

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72. *Grant v. Norway*, 10 C. B. 665; *Schooner Freeman v. Buckingham* 18 How. (U. S.) 182; *Pollard v. Vinton*, 105 U. S. 7; *The Loon*, 7 Blatch. 244; *Fellows v. The Powell*, 16 La. Ann. 316; *Baltimore & O. R. R. v. Wilkins*, 44 Md. 11; *Sears v. Wingate*, 3 Allen (Mass.) 103; *Louisiana Nat. Bank v. Lavielle*, 52 Mo. 380; *Williams v. Wilmington & W. R. R.*, 93 N. C. 42; *Dean v. King*, 22 Ohio S. 118.

73. *Wichita Sav. Bank v. Atchinson T. & S.F.R.R.*, 20 Kan. 519; *Sioux City & P. R. R. v. First Nat. Bank*, 10 Neb. 556; *Armour v. Michigan C. R. R.*, 65 N. Y. 111; *Brooke v. New York L. E. & W. R. R.*, 108 Pa. 529.

74. *Coventry v. Great Eastern Ry.*, 11 Q. B. D. 776.