

### **Agency--Shipping Agent--Authority to Make Valuation Agreement with Carrier (Northern Assur. Co., Limited, of London v. B. A. W. Trucking Co., Inc., 252 App. Div. 323 (1st Dept. 1937))**

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## RECENT DECISIONS

AGENCY—SHIPPING AGENT—AUTHORITY TO MAKE VALUATION AGREEMENT WITH CARRIER.—This is an action by a shipper against a common carrier to recover the value of goods lost in transportation. Prior to the shipment in question, the parties entered into an oral agreement whereby the carrier undertook to transport at fixed rates such goods as the shipper should from time to time deliver to it. Nothing was said with respect to limiting the carrier's liability nor was any choice of rates offered to the shipper. The plaintiff's shipping agent accepted a receipt from the carrier containing a provision which limited the liability of the carrier to \$50 unless greater value was declared and an extra charge paid. No value was declared nor was an extra charge paid. The agent had often accepted such receipts but the shipper was unaware of the practice. The trial court limited the plaintiff's recovery to the amount stated in the receipt on the ground that the agent had authority to bind his principal by entering into the valuation agreement. *Held*, reversed. The shipper is entitled to recover the full value of the goods since his agent had no authority to modify the terms of the contract made previously between himself and the carrier. *Northern Assur. Co., Limited, of London v. B. A. W. Trucking Co., Inc.*, 252 App. Div. 323, 299 N. Y. Supp. 308 (1st Dept. 1937).

Ordinarily, a shipping agent has implied authority to make reasonable terms concerning the shipment.<sup>1</sup> Such authority extends to the making of contracts limiting the liability of the carrier.<sup>2</sup> Thus, where the vendee of an expensive mirror directed the vendor to ship it, and in shipping the mirror the vendor accepted a receipt limiting liability in case of breakage, it was held that the vendee was bound by the agreement made by the vendor with the carrier.<sup>3</sup> Where a drover accompanied a shipment of hogs it was held that while on the way he could agree with the carrier for limited liability.<sup>4</sup> Nor does it seem to be material that the agent was not aware that by accepting the receipt he was entering into a valuation agreement.<sup>5</sup> In these cases there was no prior contract between the principal and the carrier.

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<sup>1</sup> *Jennings v. G. T. R. R.*, 127 N. Y. 438, 28 N. E. 394 (1891).

<sup>2</sup> *Shelton v. Merchants' Dispatch Trans. Co.*, 59 N. Y. 258 (1874); *Root v. New York & New England R. R.*, 76 Hun 23, 27 N. Y. Supp. 611 (1894); *Jones v. New York, L. E. & W. R. R.*, 3 App. Div. 341, 38 N. Y. Supp. 284 (2d Dept. 1896); *Smith v. Southern Express Co.*, 104 Ala. 387, 16 So. 62 (1894); *Adams Express Co. v. Byers*, 177 Ind. 33, 95 N. E. 513 (1911); *Stubblefield v. St. Louis & S. F. R. R.*, 194 Mo. App. 396, 184 S. W. 149 (1916).

<sup>3</sup> *Nelson v. The H. R. R.*, 48 N. Y. 498 (1872).

<sup>4</sup> *Squire v. New York Central R. R.*, 98 Mass. 239 (1867); *cf. Gulf, C. & S. F. R. R. v. White* (Tex. Civ. App. 1895) 32 S. W. 322 (employee sent along with a shipment of cattle cannot be assumed to have authority to make contract limiting liability of a connecting carrier).

<sup>5</sup> *Lansing v. New York Central & H. R. R. R.*, 52 Misc. 334, 102 N. Y. Supp. 1092 (1907).

Under such circumstances it is clear that the agent can enter into a valuation agreement binding on his principal.<sup>6</sup>

In those cases in which the shipper has already made some arrangements with the carrier, nothing being said about limiting liability, the question arises whether under all the circumstances a binding contract has been created, or whether it was the intent of the parties that the shipper's agent should have the power to stipulate for the terms of shipment. If the principal has entered into a binding agreement, the agent cannot modify it.<sup>7</sup>

The problem is illustrated by several cases the facts of which are strikingly similar to each other. In these cases a hotel guest notifies the carrier to take his trunk. Before checking out of the hotel the guest notifies some person there to see to it that the carrier receives the trunk. The carrier then gives a receipt to the person tendering the trunk, which receipt limits liability unless greater value be declared and paid for. Does the valuation agreement bind the guest? Several New York cases hold that it does;<sup>8</sup> a New Jersey case holds that it does not.<sup>9</sup> Apparently, these cases treat as a question of law the problem whether or not a prior contract has been made between the guest and carrier, holding the latter to his strict common law liability. Whether or not an agreement has been reached between the shipper

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<sup>6</sup> *Addoms v. Weir*, 56 Misc. 487, 108 N. Y. Supp. 146 (1907) (hotel guest directed bell boy to bring package to carrier and ship it); see notes 3, 4, *supra*.

<sup>7</sup> *Dudley v. Perkins*, 235 N. Y. 448, 139 N. E. 570 (1923) (agent with duty of supervising performance of contract has no authority to modify its terms); *McPherson v. Cox*, 86 N. Y. 472 (1881) (captain of vessel has no authority to alter terms of charter party agreed on by shipper and owner of vessel). In *Hooper v. Taylor*, 4 E. D. Smith 486 (N. Y. 1855), principal agreed to perform work for another, nothing being said about compensation; his agent was told that the work done must not exceed \$200. Principal recovered the reasonable value of his work which was greater than \$200; *Northern Assur. Co., Ltd., of London v. B. A. W. Trucking Co., Inc.*, 252 App. Div. 323, 299 N. Y. Supp. 308 (1st Dept. 1937); *Atchison, T. & S. F. R. R. v. Watson*, 71 Kan. 696, 81 Pac. 499 (1905), where father made oral contract with carrier for shipment of cattle; son went along to look after cattle. Father recovered full value of cattle destroyed, notwithstanding his son accepted a receipt limiting liability.

<sup>8</sup> *Barter v. Barrett*, 186 App. Div. 715, 174 N. Y. Supp. 779 (1st Dept. 1919) (maid accepted receipt); *Knapp v. Wells, Fargo & Co.*, 134 App. Div. 712, 119 N. Y. Supp. 134 (3d Dept. 1909) (hotel clerk accepted receipt); *Miller v. Taylor*, 100 Misc. 18, 164 N. Y. Supp. 823 (1917) (under the circumstances the hotel clerk was constituted the agent to ship, and therefore had the power to stipulate for limited liability).

<sup>9</sup> *Stickel v. United States Express Co.*, 85 N. J. L. 285, 89 Atl. 23 (1913) (the natural inference is that the company assumed its common law liability). Compare *Donovan v. Standard Oil Co.*, 155 N. Y. 112, 49 N. E. 678 (1898) (carrier offered to carry goods; shipper wrote back, "We accept your offer." The court held that this constituted preliminary arrangements and that the full contract was made when the shipper's agent accepted a receipt limiting liability), with *Jennings v. G. T. R. R.*, 127 N. Y. 438, 28 N. E. 394 (1891), where the shipper by mail agreed to send his potatoes at fixed rates and his agent accepted a receipt limiting liability, the court held that the shipper was warranted in assuming that the prior agreement controlled.

and carrier should be treated as a question of fact to be determined by the evidence.<sup>10</sup>

In the instant case the question of fact was settled in favor of the plaintiff. He had made a prior oral agreement with the defendant, but no choice of rates was offered to him. To find for the defendant would be to nullify the rule requiring the carrier to afford the shipper a choice of rates in order to limit his common law liability. To find for the plaintiff is to reaffirm the well established rule that an agent has no authority to modify a contract made by his principal.<sup>11</sup>

T. G.

CHARITABLE SUBSCRIPTIONS—ASSIGNABILITY—CONSIDERATION—SUFFICIENCY OF COMPLAINT.—The following subscription was signed and delivered by the defendant to the plaintiff's assignor: "To aid and assist the Beth Israel Hospital Association in its humanitarian work, and in consideration of others contributing to the same purposes the undersigned does hereby promise to pay to the order of the Beth Israel Hospital Building \* \* \* the sum of \$5000 \* \* \*. The undersigned further requests each and every other contributor to make his contribution in reliance upon the contribution of the undersigned herewith made." The plaintiff alleges that the hospital "upon said subscription \* \* \* proceeded with its humanitarian work, obtained other like subscriptions, expended large sums of money and incurred large liabilities. \* \* \*" Defendant contends (1) that the complaint is insufficient as the subscription does not allege specific acts of consideration and being merely a general donation should not be enforced by the courts of this state;<sup>1</sup> (2) that such agreements are not assignable. On appeal, *held*, judgment for plaintiff affirmed. There is an implied request that the hospital continue with its humanitarian work. Such request constitutes an offer of a unilateral contract, which, when accepted by the charity by incurring liability in reliance

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<sup>10</sup> In *Waldron v. Fargo*, 170 N. Y. 130, 62 N. E. 1077 (1902), the plaintiff sued to recover the value of horses destroyed in transportation. The defendant carrier set up a valuation agreement, claiming to have made it with the plaintiff's shipping agent. Notwithstanding that the plaintiff gave evidence of a prior oral agreement by which the defendant assumed his common law liability, the trial court directed a verdict in favor of the defendant. The Court of Appeals reversed, holding that it was for the jury to find whether or not the prior agreement claimed by the plaintiff had been made.

<sup>11</sup> See note 7, *supra*.

<sup>1</sup> *Trustees of Hamilton College v. Stewart*, 1 N. Y. 581 (1848) (a donation "the interest of which shall be applied to the payment of the officers" of Hamilton College was held unenforceable on the ground of lack of consideration); *Hammond v. Shepard*, 29 How. Pr. 188 (N. Y. 1865) (an agreement to apply the money for college purposes was not considered sufficient consideration for a promise to pay the trustees of the college a specified sum).