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# Carriers--Disaffirmance of Valuation Agreement by Infant (The Leviathan, *Sherbo v. United States*, 72 F.2d 286 (2d Cir. 1934))

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## RECENT DECISIONS

*Faculty Advisor*—PROFESSOR FREDERICK A. WHITNEY

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**CARRIERS—DISAFFIRMANCE OF VALUATION AGREEMENT BY INFANT.**—The libelant, a minor, took passage on the defendant's steamship and received a ticket which she failed to read. On its face was a statement to the effect that baggage would be carried free and that the value thereof should be deemed to be no more than £20, unless the value in excess of that sum should be declared by the passenger and an extra charge paid for any amount in excess of £20. On the reverse side was a statement which gave further details in reference to the stipulation contained on the face of the ticket. The negligence of the defendant's employees resulted in actual damage to the libelant's baggage of more than £20. Her recovery in the lower court was limited to £20. On appeal, *held*, affirmed. The infancy of the passenger cannot operate to relieve her from an otherwise valid agreement to limit liability for loss or damage, since her rights are based on a contract and it is elementary that an infant cannot disaffirm one part of a contract and at the same time assert rights acquired under another part of it. *The Leviathan, Sherbo v. United States*, 72 Fed. (2d) 286 (C. C. A. 2d, 1934).

A carrier of baggage may not enter into a contract to exempt itself from liability for loss or damage resulting from its own negligence,<sup>1</sup> but it may properly limit its liability to an agreed sum.<sup>2</sup> Whether the passenger will be held to the valuation agreement where he failed to read it is dependent upon the circumstances of each case. If they are such as to negative an intent to limit liability, the failure to read a receipt which contains a provision limiting liability will not prevent the passenger's later suing to recover the full value of his baggage.<sup>3</sup> On the other hand, failure to read a provision in a baggage receipt which limits the carrier's liability will not nullify the provision which, nevertheless, will bar a suit to recover the full value of the baggage if the stipulation is on the face of the ticket or is contained in tariff rates filed pursuant to law.<sup>4</sup> Reasonable stipulations on the face of a steamship ticket which limit liability for loss of or damage to baggage and require that claims for damages for

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<sup>1</sup> RICHARDSON, BAILMENTS (1930) §235.

<sup>2</sup> *Railroad Co. v. Fraloff*, 100 U. S. 24 (1879); *Hart v. Pennsylvania R. R. Co.*, 112 U. S. 331, 5 Sup. Ct. 151 (1884); PUBLIC SERVICE COMMISSIONS LAW §38.

<sup>3</sup> *Madan v. Sherard*, 73 N. Y. 329 (1873).

<sup>4</sup> PUBLIC SERVICE COMMISSIONS LAW §28; *Boston & Maine Railroad v. Hooker*, 233 U. S. 97, 34 Sup. Ct. 526 (1914); *Gardiner v. N. Y. C. & H. R. R. Co.*, 201 N. Y. 387, 94 N. E. 876 (1911).

personal injuries be filed within a stated time will generally be held binding on the passenger although he failed to read them.<sup>5</sup>

The plea of infancy may be raised by a minor, but as a condition to the disaffirmance of a contract he will be required to return the consideration received and restore the other party to the *status quo*.<sup>6</sup> He will also be held to the performance of any conditions or stipulations contained in the contract if he desires to avail himself of the benefits of the contract.<sup>7</sup> The fact that he is unable to enter into a binding contract for things which are not necessities will not permit him to disaffirm the contract in part and enforce it in part.<sup>8</sup> He must either stand upon his contract or disaffirm it in its entirety. In the instant case the infant's right to have her baggage transported arose out of her contract of passage. If she wishes to recover damages for negligence in carrying out a part of the contract, she must submit to the conditions and limitations surrounding the contract.<sup>9</sup>

J. F. M.

CONSTITUTIONAL LAW—STATUTE FORBIDDING THE PAYMENT OF OBLIGATIONS IN GOLD CONSTITUTIONAL—IMPAIRMENT OF CONTRACTS BY CONGRESS.—The plaintiff brought an action to recover \$22.50 in gold coin of the United States of America or its equivalent due on a bond and coupon issued by the defendant company.

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<sup>5</sup> *Tewes v. North German Lloyd S. S. Co.*, 186 N. Y. 151, 78 N. E. 864 (1906); *Murray v. Cunard S. S. Co.*, 235 N. Y. 162, 139 N. E. 226 (1923); *cf. The Majestic*, 166 U. S. 375, 17 Sup. Ct. 597 (1897) (notice to passenger printed on back of ticket and not called to his attention is not binding upon him); *Baer v. North German Lloyd*, 69 F. (2d) 88 (C. C. A. 2d, 1934) (printed condition on back of form affixed to ticket relating to claims for damages for personal injuries held not part of contract and not binding on passenger because not called to his attention).

<sup>6</sup> *Rice v. Butler*, 160 N. Y. 578, 55 N. E. 275 (1899).

<sup>7</sup> *O'Laughlin v. Union Central L. Ins. Co.*, 11 Fed. 280 (C. C. E. D. Mo. 1882); *Mead v. Phoenix Ins. Co.*, 68 Kan. 432, 75 Pac. 475 (1904); *Western Union Tel. Co. v. Greer*, 115 Tenn. 368, 89 S. W. 327 (1905); *WILLISTON, CONTRACTS* (1924) §236.

<sup>8</sup> A stipulation in a contract permitted a person to attend an educational institution provided that the student might be dismissed at any time without any reason being given by the institution. Such a provision is binding on the student even though she be a minor. She may not sue for specific performance of the contract to afford her the educational facilities of the institution and at the same time disaffirm a condition attached to the contract. *Anthony v. Syracuse University*, 224 App. Div. 487, 231 N. Y. Supp. 435 (4th Dept. 1928).

<sup>9</sup> See *Evelyn v. International Mercantile Marine Co.*, 35 F. (2d) 47 (E. D. N. Y. 1929), where it was held that an infant who had failed to present her claim for damages for personal injuries within the time provided in the steamship ticket was prevented from suing the carrier at a later date. Her right to sue was based on her contract with the company and it must be exercised in conformity therewith.