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Carriers--Contractual Limitation of Time in Which to File Claim for Loss Where Carrier Misdelivers Goods (Lefcort et al. v. Railway Express Agency, Inc., 154 Misc. 630 (Mun. Ct. 1935))

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employment of the brokers by the defendants. The brokers throughout were acting merely as intermediaries for the owner to offer proposals and transmit acceptances. There was no evidence that defendants had agreed, expressly or impliedly, to pay commissions or that the parties ever contracted with reference to commissions, or even contracted at all. Whether a contract of employment of the broker by prospective purchasers arises, in addition to that of the broker by the owner, depends in the last analysis on the facts of each case.[4]

H. S.

CARRIERS—CONTRACTUAL LIMITATION OF TIME IN WHICH TO FILE CLAIM FOR LOSS WHERE CARRIER MISDELIVERS GOODS.—Plaintiff delivered to defendant in New York merchandise for transportation and delivery to a consignee in another state. Defendant admittedly misdelivered the goods. Plaintiff filed a claim with defendant fifteen months after the loss occurred. The uniform express receipt, under which the merchandise was shipped, stipulated that such claims must be filed within six months and fifteen days after the date of shipment.[1] *Held,* as the conceded misdelivery, unexplained, constituted negligence on the part of the carrier, the stipulation is void, for the requirement of the filing of a claim with the carrier, as a condition precedent to an action for a loss occurring in transit through the carrier's negligence, violates the Interstate Commerce Act.[2] *Lefcort et al.* v. *Railway Express Agency, Inc.,* 154 Misc. 630, 278 N. Y. Supp. 238 (Mun. Ct. 1935).

Even prior to the enactment of the original Interstate Commerce Act,[3] stipulations that written notice of a claim for loss of, or damage to, goods shipped shall be given within a designated time were held

[4] Thus, in McKnight v. McGuire, 117 Misc. 306, 191 N. Y. Supp. 323 (1st Dept. 1921) the following statement made by the prospective lessee was held to bind him to a contract, breach of which resulted in a recovery by the broker; "If you can get that house for two years for $250 a month I will take it." In James v. Home of the Sons and Daughters of Israel, 153 N. Y. Supp. 169 (App. T. 1st Dept. 1915) where the prospect told the broker to get the property at a certain price, after the owner had agreed to the price, and the prospect refused to proceed, the broker was awarded damages for breach of contract.

[1] Clause 7 of the uniform express receipt provided in part: "* * * as conditions precedent to recovery claims must be made in writing to the originating or delivering carriers * * * in case of failure to make delivery * * * within six months and fifteen days after date of shipment * * *."

[2] As amended (44 STAT. 1448 [1927], 49 U. S. C. A. §20 [11] [1928]) it provides in part: "* * * if the loss * * * was due to * * * negligence while the property was in transit * * * then no * * * filing of claim shall be required as a condition precedent to recovery * * *."

[3] 24 STAT. 386 (1887), 49 U. S. C. A. §20 (11) (1928).

to be invalid, where the loss or damage was caused by the negligence of the carrier.[4] After the passage of the Act, the requirement of written notice, where there was negligence on the part of the carrier, was still generally held to be inoperative, for such a requirement was deemed to constitute an unjust exemption from liability for negligence.[5] But at least one decision reached the opposite conclusion, based on the view that these provisions are not a limitation of the common law liability of the carrier, but a reasonable protection to the carrier, working no hardship on the shipper, and benefiting the shipper as well as the carrier.[6] Although this line of reasoning has been occasionally adopted by the federal jurisdiction in recent cases,[7] and although an interstate shipment is involved here, nevertheless, the court, in the instant case, had ample precedent, drawn from the United States Supreme Court, to read the Act literally,[8] and hold that the admitted misdelivery, unexplained, constituted negligence, as a matter of law, on the part of the carrier,[9] and that, consequently, the requirement of filing was void.

B. D. B.

CONDITIONAL SALE—TEN DAYS TIME FOR REDEMPTION—AND TEN DAYS NOTICE OF RESALE MAY RUN CONCURRENTLY.—Plaintiff's assignor purchased a number of taxicabs from the defendant's assignor. After default had been made in payment, and at a time when more than fifty per cent of the purchase price had been paid, the defendant's assignor retook possession of the taxicabs. Fourteen

[4] Westcott v. Fargo, 61 N. Y. 542, 19 Am. Rep. 300 (1872); Vroman v. American M. U. Exp. Co., 2 Hun 512, 5 Thomp. & C. 22 (N. Y. 1874).

[5] Security Trust Co. v. Wells Fargo & Co. Exp., 178 N. Y. 620, 70 N. E. 1109 (1904); Richardson v. N. Y. C. & H. R. R. Co., 122 App. Div. 120, 106 N. Y. Supp. 702 (4th Dept. 1907); Sheldon v. N. Y. C. & H. R. R. Co., 61 Misc. 274, 113 N. Y. Supp. 676 (Sup. Ct. 1908).

[6] Osterhoudt v. Southern P. R. R. Co., 47 App. Div. 146, 62 N. Y. Supp. 134 (3d Dept. 1900). The court closely followed the reasoning and ruling laid down in the leading Federal Supreme Court case, decided before the Act was passed, Southern Exp. Co. v. Caldwell, 88 U. S. 264, 22 L. ed. 556 (1874). However, the Osterhoudt case appears to have been tacitly overruled, in New York, by the decisions following it.

[7] In particular, Georgia, F. & A. R. R. Co. v. Blish Co., 241 U. S. 190, 36 Sup. Ct. 541 (1914); Chesapeake & O. R. R. Co. v. Martin, 283 U. S. 209, 51 Sup. Ct. 453 (1931); Clegg v. St. Louis & S. F. R. R. Co., 203 Fed. 971 (C. C. A. 8th, 1913). These cases also derive their rule of expediency from Southern Exp. Co. v. Caldwell, 88 U. S. 264, 22 L. ed. 556 (1874). Moreover, they stress the contractual element, holding that notice of the character under consideration is a condition precedent to recovery, in the nature of an estoppel.

[8] Barrett v. Van Pelt, 268 U. S. 85, 45 Sup. Ct. 437 (1924); Davis v. Roper Lumber Co., 269 U. S. 158, 46 Sup. Ct. 28 (1925); Chesapeake & O. R. R. Co. v. Thompson Mfg. Co., 270 U. S. 416, 46 Sup. Ct. 318 (1926); Missouri P. R. R. Co. v. Hartley Bros., 290 U. S. 576, 54 Sup. Ct. 271 (1934).

[9] Barr & Shoulberg v. Yellow Taxi Corp., 152 Misc. 293, 273 N. Y. Supp. 754 (1st. Dept. 1933).