CHAPTER 217

GENERAL PROVISIONS RELATING TO CARRIERS

217.01 COMMON LAW LIABILITY NOT TO BE LIMITED.

A warehouseman is liable for negligence, when the loss is established, the burden of proof being upon him to prove the loss did not occur through his negligence. This burden is not merely a burden of going forward with the evidence, nor a shifting burden, but a burden of establishing by a preponderance of the evidence freedom from negligence. Rustad v Great Northern, 122 M 453, 142 NW 727.

The carriers common-law liability as an insurer may be limited by contract. If the shipper agrees to a limitation and this is afforded him, the option of taking the common-law liability, and the contract is just and reasonable and is supported by consideration, the limitation is valid. Rustad v Great Northern, 122 M 453, 142 NW 727.

The contract between the owner of baggage and a transfer company differs from the contract between a passenger and the carrying of his baggage as an incident to the contract of passenger carriage. A common carrier transfer company, carrying under an independent contract a trunk coming on a train as a passenger's baggage, is responsible to the passenger for the loss of the contents of the trunk, though not all baggage as between the railway carrier and the passenger; and it cannot assert for itself the limitation of liability which runs in favor of a passenger carrier. McQuat v Cook's Transfer Co. 145 M 210, 176 NW 763.

Under the uniform sales act, when the seller of goods delivers them to a carrier for transportation to the buyer pursuant to the contract between the seller and buyer, a presumption arises that the property in the goods passes to the buyer. If the bill of lading issued to the seller provides that the goods shall be delivered to him or his order, the property in the goods is reserved to the seller, unless it would have passed to the buyer except for the form of the bill of lading, and in such case the seller retains the property in the goods only to secure the buyer's performance of the contract. Banik v Chgo. M. & St. P. Ry. Co. 147 M 175, 179 NW 899.

The provisions of a railway tariff established under the interstate commerce law must be complied with until changed or abrogated in the manner provided by law, and no act of either the shipper or carrier will release the other from a liability imposed by the tariff. Although the carrier becomes an insurer of safe delivery if he deviates from the designated route without the consent of the shipper, he does not become liable for losses resulting from the inability of the shipper to accomplish some special purpose of which he had no knowledge. Mpls. St. P. & S. S. M. Ry. Co. v Reeves, 148 M 196, 181 NW 335.

Evidence tending to show that, in response to a call by telephone received at defendant's office, a man came to plaintiff's store, and said "Express," took packages of valuable skins and placed them in a wagon lettered "American Express" after writing his initials upon a receipt for the skins in a book furnished by defendant to plaintiff, will support a verdict that the man was defendant's agent. Licht v American Railway, 152 M 154, 188 NW 219.

A carrier by express, which ships property to the wrong destination, where it is not delivered, and later ships it to its usual place of selling unclaimed express, though the consignee is demanding it, and sells it and receives the proceeds after the commencement of an action and before issue is joined, is chargeable with an actual conversion, and is liable for its full value, although the shipment was made on a released value. Sands v American Express, 154 M 308, 197 NW 721.

Carrier of perishable freight is not an insurer that it will be delivered at destination undamaged. His undertaking is to exercise reasonable care to preserve and deliver it in a sound condition, and he is liable only for negligence. Proof of

deterioration while in his possession is prima facie evidence of negligence, but may be rebutted by proof that he is not at fault. The burden of proof does not shift from the shipper to the carrier. McNeil & Scott v Great Northern, 156 M 120, 194 NW 614.

A bill of lading requirement that claims for loss of, or damage to, goods shipped by freight, must be made in writing, is fulfilled by a letter describing generally the lost parcels and listing the contents. It is sufficient if the carrier is given notice of the loss or damage, even though no formal demand for money damages is made. Benson v Davis, 156 M 354, 194 NW 771.

A claim for loss in transit required by an express receipt is sufficient when made by the consignee, although the consignor is the real property in interest. Beltrami v American Express, 160 M 221, 199 NW 568.

A carrier is bound to exercise the highest degree of care toward its passengers. Mardorf v Duluth Transit Co. 199 M 325, 271 NW 588.

The liability of a common carrier of perishable products is based upon failure to exercise ordinary care in the preservation of such products while in the course of transportation. If the shipper gives instructions as to the protective measures that shall be taken to preserve such products, compliance with such instructions is complete protection to the carrier against liability for loss. Sutton v Mpls. & St. Louis, 222 M 233, 23 NW(2d) 561.

Under the demurrage rule established by carriers, which recognizes the validity of agreements in lieu of the written notice required by the rule, a general practice existing at a terminal, for the mutual benefit of consignees and carriers, and generally acquiesced in by the former, is equivalent to an agreement. Where the railroads, state commission, chamber of commerce, and others, to avoid congestion at a terminal, agreed that cars of wheat should be inspected at outside stations, and the manifest forwarded to the shipper should take the place of written notice of arrival required by demurrage rule, a shipper who acquiesced in such practice, and on occasion had paid demurrage, is bound by the custom thus established. Mpls. St. Paul & Sault v Van Dusen, 272 F. 255.

Shipper, in an action by railroad to recover demurrage charges, may set up as a counterclaim a cause of action for negligent breach of duty by the railroad company to furnish cars during times referred to in plaintiff's complaint. Chicago, Milwaukee v Pioneer Grain, 26 F(2d) 90.

At common law, common carrier, with certain exceptions, is liable, whether negligent or not, if it fails to deliver goods, and a presumption exists that carrier's failure to deliver goods was through its fault. To effectually claim exemption from liability, operator of a barge line, under exemption clause in contract of carriage, is required to show exemption for shortage claimed was within terms of contract and not caused by its negligence. Inland Waterways v Hallet, 52 F(2d) 13.

Limitation of carriers liability; agreed valuation; estoppel. 6 MLR 157.

Liability for loss or delay on misdirected goods. 8 MLR 161.

Conversion by carrier; limitation of liability to agreed valuation. 8 MLR 537.

Measure of damages for loss of goods in transit. 9 MLR 140, 153.

Limitation of liability; agreed valuation as fixing ratio of recovery on partial loss of interstate baggage. 10 MLR 249.

Conflict of laws; validity of agreement exempting carrier from liability for negligence; effect of stipulation that contract be governed by foreign law. 10 MLR 530.

Liability of carrier for loss caused by act of God occurring after negligent delay in shipment. 11 MLR 679.

Counsel fees and expenses as an element of damages. 15 MLR 619.

217.02 BILLS OF LADING; LIABILITY OF CARRIER ISSUING, CONNECTING CARRIERS.

The evidence is sufficient to sustain a verdict that the bailee's negligence in the ventilation and stowage of the cargo and in its failure to remove snow from the deck caused the damage to a cargo of corn stored for the winter in its ship at Milwaukee for transportation to Buffalo at the opening of navigation. Cargill v Cleveland-Cliffs, 182 M 516, 235 NW 268.

Defendant, which as owner of a coal dock and as agent for the owner and shipper received for storage and forwarding a cargo of coal, receipting for the same on a shipping bill presented by the master of the ship, which showed the cargo to be consigned to the shipper in care of defendant, did not have such interest in the coal as rendered it liable for the freight. Great Lakes v Seither, 220 F. 28.

A captain engaged in navigating the waters of Lake Superior cannot, as a matter of law, be said to be free from negligence in colliding with an uncompleted extension of a government breakwater in an important harbor in that lake, where he had means of ascertaining the conditions, which if known, would have prevented the collision. Davidson v United States, 27 SC 480, 205 US 187.

217.04 PREFERENCES FORBIDDEN.

A contract by which a railroad company agrees to charge a rate of not less than $2.40 per ton to all persons shipping less than 100,000 tons of coal a year over its road, and to make a rate of $1.60 per ton to all shippers of over 100,000 tons, is void; the discrimination being so gross as to be contrary to public policy. Burlington v Northwestern Fuel, 31 F. 652.

Carrier accepting check for freight charges is not relieved from loss, resulting from delay in presenting check, by the general requirement that carrier's charges must be paid in cash. The requirement that carrier's charges be paid in cash is intended solely to prevent rebates and insure observance of tariff rates. Fullerton v Chicago, Milwaukee, 51 SC 227, 282 US 520.

Giving of credit by public service corporations as a discrimination. 5 MLR 153.

Right to grant exclusive privilege of soliciting cab and baggage business at station. 5 MLR 223.

Damages recoverable for discrimination in rates. 6 MLR 519.

Public utilities duty to serve without discrimination. 13 MLR 104.

217.09 ACCIDENTS AND WRECKS; REPORTS TO COMMISSION.

Reports filed by railroad companies under section 217.09 are open for public inspection. Reports made by investigators of the commission are open to public inspection, unless in the opinion of the commission such publicity might jeopardize litigation pending or to be instituted. Such reports and work sheets and exhibits may be withheld from inspection until offered in evidence. OAG Aug. 7, 1947 (851-i) (371-a).

217.15 COSTS AND ATTORNEY'S FEES.

Allowance for expenses in rate cases. State v Tri-State Telephone Co. 204 M 516, 284 NW 294.

217.17 UNUSED TICKETS; REDEMPTION OF.

L. 1893, c. 66, an act to regulate the sale and redemption of transportation tickets of common carriers, and to provide punishment for violation of the same, is constitutional. State v Corbett, 57 M 345, 59 NW 317; State v Manford, 97 M 173, 106 NW 907.

217.30 APPEALS TO SUPREME COURT.

Where the district court has reversed a rate-fixing order of the commission, an appeal by the state and the applicant does not stay entry of judgment unless so

directed by either the district or supreme court. State ex rel v District Court, 189 M 487, 250 NW 7.

Section 216.19 which provides that a tariff made by the commission shall be deemed prima facie reasonable in all courts, in view of the provisions of section 216.25 does not limit the discretionary power of the court to order a stay of the commission's order fixing maximum rates pending appeal therefrom if there is evidence before the court from which it may reasonably conclude that a multiplicity of suits might follow in event the stay was denied. State v Northern Pacific, 221 M 400, 22 NW(2d) 569.

217.41 REMEDIES CUMULATIVE; ATTORNEY'S FEES.

Under Minnesota statute providing that statutory remedies relating to railroad and warehouse commission and to common carriers shall not abridge common-law remedies, the fact that the shipper claiming that the defendant railroad had erroneously collected joint rates over a connecting railroad had no statutory remedy before the commission for overcharge did not authorize the shipper to review the commission's determination establishing joint line rates in a common-law action against defendant carrier for collecting excessive rates. Watab Paper v Northern Pacific, 58 F. Supp. 926.