

U. S. Rep.] MICHIGAN CENTRAL R. R. Co., v. MINERAL SPRINGS MAN. Co. [U. S Rep-

to goods on deposit in the depots of the company awaiting delivery. It is a distinct announcement that all goods and merchandise are at the risk of the owners thereof while in the company's warehouses, except for such loss or injury as may arise from the negligence of the agents of the company. The notice was doubtless intended to secure immunity for all losses not caused by negligence or misconduct during the time the property remained in the depots of company, whether for transportation on their own line or beyond, or for delivery to consignees. And such will be the effect if the party taking the receipt for his property is concluded by it. The question is therefore presented for decision, whether such a notice is effectual to accomplish the purposes for which it was issued.

Whether a carrier when charged upon his common law responsibility can discharge himself from it by special contract, assented to by the owner, is not an open question in this court, since the cases of the *New Jersey Steam Navigation Co. v. The Merchants' Bank* (6th Howard), and *York Company v. Central Railroad* (3 Wallace). In both of the cases the right of the carrier to restrict or diminish his liability by special contract, which does not cover losses by negligence or misconduct, received the sanction of this court. In the case in Howard the effect of a general notice by the carrier seeking to distinguish his peculiar liability was also considered, and although the remarks of the judge on the point were not necessary to the decision of the case, they furnish a correct exposition of the law on this much controverted subject.

In speaking of the right of the carrier to restrict his obligation by a special agreement, the judge said: "It by no means follows that this can be done by any act of his own. The carrier is in the exercise of a sort of public office, from which he should not be permitted to exonerate himself without the assent of the parties concerned. And this is not to be implied or inferred from a general notice to the public, limiting his obligation, which may or not be assented to. He is bound to receive and carry all goods offered for transportation, subject to all the responsibilities incident to his employment, and is liable to an action in case of refusal. If any implication is to be indulged from the delivery of the goods under the general notice, it is as strong that the owner intended to insist upon his rights, and the duty of the carrier, as it is that he assented to their qualification. The burden of proof lies on the carrier, and nothing short of an express stipulation by parol or in writing

should be permitted to discharge him from duties which the law has annexed to his employment."

These considerations against the relaxation of the common law responsibility by public advertisements, apply with equal force to notice having the same object, attached to receipts given by carriers on taking the property of those who employ them into their possession for transportation. Both are attempts to obtain, by indirection, exemption from burdens imposed in the interests of trade upon this particular business. It is not only against the policy of the law, but a serious injury to commerce to allow the carrier to say that the shipper of merchandise assents to the terms proposed in a notice, whether it be general to the public or special to a particular person, merely because he does not expressly dissent from them. If the parties were on an equality in their dealings with each other, there might be some show of reason for assuming acquiescence from silence, but in the nature of this case equality does not exist, and, therefore, every intendment should be made in favour of the shipper when he takes a receipt for his property with restrictive conditions annexed, and says nothing, that he intends to rely upon the law for the security of his rights.

It can readily be seen, if the carrier can reduce his liability in the proposed terms, he can transact business on any terms he chooses to prescribe. The shipper as a general thing, is not in a condition to contend with him as to terms, nor to wait the result of an action at law in case of refusal to carry unconditionally. Indeed such an action is seldom resorted to, on account of the inability of the shipper to delay sending his goods forward. The law in conceding to carriers the ability to obtain any reasonable qualification of their responsibility by express contract, has gone as far in this direction as public policy will allow. To relax still further the strict rules of common law applicable to them, by assuming acquiescence in the conditions on which they propose to carry freight when they have no right to impose them, would, in our opinion, work great harm to the business community.

The weight of authority is against the validity of the kind of notices we have been considering. See 2 Parsons on Contracts, p. 238, note n, 5th edition, and the American note to *Coggs v. Bernard*, 1 Smith's Leading Cases, 7th American edition; Redfield on Law of Railway, p. —, 16 Michigan; *McMillan v. M. S. & C. I. R. R. Co.*, p. 109, and following. And many of the