

The Carriers Act, 1865

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Act 3 of 1865

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009.

Statement of Objects and Reasons.-The defective state of the Law of India in respect of the liabilities of carriers, whether companies or individuals, has for some time past attracted the attention of the Governor General in Council, but it was thought desirable to postpone any enactment on the subject, until it should be seen whether the labours of Her Majesty's Commissioners for preparing a Body of Substantive Law would relieve the Indian Legislature from the necessity of special legislation. Meantime, however, the question has become pressing, from the increase in the numbers of carrying companies, from the transfer of part of the Government carrying business to one of them, and from the prospect of Tramways being constructed under Act XXII of 1863 (to provide for taking land for works of public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken). The necessity for prompt legislation has further been urged on the Government in petitions, and by the Government of Madras in an official letter. The Bill now published by the Viceroy's permission follows the principles, though not the form or the language, of the English Statutes regulating the liability of carriers. The earlier sections extend to India the principle embodied in the English Statute II, Geo. IV, and 1 Will. IV, cap. 68. They relieve carriers from the extraordinary liabilities which would be imposed on them by the delivery to them, without notice, of articles of peculiar value or perishableness. Any customer, delivering to the carrier any of the articles enumerated in the Schedule, must declare them, and then the carriers may charge at a higher rate for the additional risk, in conformity with a scale to be publicly exhibited in his place of business under the ordinary Law of Contract, the carrier might relieve himself from the liability by such a notice, but it would be necessary to bring the notice home to the customer by evidence. From the necessity of giving such evidence, the carrier will now be relieved by this enactment. By section VI it is provided that the carrier shall not rid himself of his liability for articles, neither unusually valuable nor unusually perishable, by any public notice, but (unless he be the owner of a Tramway) he is permitted to modify his legal obligations by special

contract. Section VII extends to Tramways constructed under Act XXII of 1863, the same rule which is applied to Railway by Act XVIII of 1854. It seems highly expedient that the same law should, if possible, be made to govern both Railways and Tramways. The rule applicable to Indian Railway Companies is contained in section XI of Act XVIII of 1854, and is as follows:—"The liability of such a Railway Company for loss or injury to any articles or goods to be carried by them other than those specially provided for by this Act, shall not be deemed or construed to be limited, or in anywise affected by any public notice given, or any private contract made by them; but such a Railway Company shall be answerable for such loss or injury when it shall have been caused by gross negligence or misconduct on the part of their agents or servants." On this section the Government of Madras observes:—"The first clause prohibiting any private contract in limitation of liability goes far beyond the Common Law of England, and Statutes 17 and 18 Vic., cap. 31, section VII, which admits of such contracts if just and reasonable. It is difficult to see why a Railway Company in India should be deprived of that power of protecting itself by special contract which a Railway Company in England possesses. If the latter clause of the section, which makes a company liable for gross negligence or misconduct of their agents, is meant to relieve them from liability in all other cases, it would be well to say so by distinct negative words. But it is very questionable whether so wide an exemption from responsibility is desirable or was intended." If, however, the word "only" be supplied after "answerable" in the last line but two of the extract from the Railways Act as printed above, the section becomes intelligible. It limits the liability of Railway Companies to the consequences of gross negligence or misconduct on the part of their agents or servants, but declares that from his liability so limited, they shall not be allowed to relieve themselves by any kind of contract. There cannot indeed be much doubt that the intention of the Legislature was to place all Railway Companies in what was once supposed to be the exact position of a carrier who had contracted for himself as favourably as the Law of England would permit. It was, in fact, long supposed in England that, while a carrier could by contract relieve himself from most of his liabilities, his power of doing so stopped short of liability for negligence or misconduct. Such is the view of the law taken by Mr. Justice Story in his "Commentaries on Law of Bailments," section 549 and such is understood to be still the law in America. But a series of decisions in the English Courts overturned the older doctrine, and it was settled that a carrier could, by a properly framed contract, deliver himself from liability even for misconduct or negligence. The liberty thus conceded was, however, found to be a practical evil, and the English Legislature intervened by 17 and 18 Vic., cap. 31. The nearly contemporaneous enactment of the Indian Legislature, embodied in section XI of Act XVIII of 1854, is obviously aimed at the same object. It seems very undesirable to adopt the rule contained in section VII of 17 and 18 Vic., cap. 31, which permits companies to contract themselves, on certain conditions, out of their liability for negligence. The section in question has been severally condemned by the present Lord Chancellor of England on the ground both of obscurity of expression and of difficulty of application:—(*Peek v. The North Staffordshire Railway Company*, 32 Law Journal, N.S. Q.B. 241). On the other hand the rule of the Indian Legislature is comparatively simple; it would probably be sustained by the general sense of the mercantile community, and it is especially applicable to a country in which there exists considerable difference of opinion as to the general liabilities of carriers. [14th February, 1865] An Act relating to the rights and liabilities of Common Carriers. Preamble.—Whereas it is expedient not only to enable common carriers to limit their liability for loss of, or damage to property delivered to them to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of

themselves, their servants or agents; It is enacted as follows:-

1. Short title .-This Act may be cited as The Carriers Act, 1865.

2. Interpretation-clause .-In this Act, unless there be something repugnant in the subject or context-

"Common carrier".-"common carrier" denotes a person, other than the Government, engaged in the business of transporting property under multimodal transport document or of] transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately:"Person".-["person"] [Cf. definition in Section 3(42) of the General Clauses Act, 1897 (10 of 1897).] includes any association or body of persons, whether incorporated or not.[* * *] [The paragraph relating to 'number' repealed by Act 10 of 1914.]

3. Carriers not to be liable for loss of certain goods above one hundred rupees in value, unless delivered as such .-No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the Schedule to this Act, unless the person delivering such property to be carried, or some person duly authorised in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.

4. For carrying such property payment may be required at rates fixed by carrier .-Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix:

Proviso .-Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

5. The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage .-In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

6. In respect of what property liability of carrier not limited or affected by public notice. Carriers, with certain exceptions, may limit liability by special contract .-The liability of any common carrier for the loss of or damage to any [property (including container, pallet or similar article of transport used to consolidate goods) delivered] to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of [Act 22 of 1863] [Now see the Land Acquisition Act, 1894 (1 of 1894), Section 2.](to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken) may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorised in that behalf by such owner, limit his liability in respect of the same.

7. [Liability of owner of railroad or tramroad constructed under Act 22 of 1863, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or damage

].-The liability of the owner of any railroad or tramroad constructed under the provisions of the said [Act 22 of 1863] [Now see the Land Acquisition Act, 1894 (1 of 1894), Section 2.], for the loss of or damage to any [property (including container, pallet or similar article of transport used to consolidate goods) delivered] [Substituted by Act 28 of 1993, Section 31 and Sch., for " property delivered" (w.r.e.f. 16.10.1992).] to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a Criminal Act on his part or on that of his agents or servants.

8. Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent .-Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any [property (including container, pallet or similar article of transport used to consolidate goods) delivered] to such carrier to be carried where such loss or damage shall have arisen from the [* * *] [The words " negligence or" repealed by Act 13 of 1921, Section 2.] Criminal Act of the carrier or any of his agents or servants and [shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of section 3 apply and in respect of which the declaration required by that

section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants.] [Inserted by Act 13 of 1921, Section 2.]

9. Plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or Criminal Act .-In any suit brought against a common carrier for the loss, damage or non-delivery of [goods (including container, pallet or similar article of transport used to consolidate goods) entrusted] to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or Criminal Act of the carrier, his servants or agents.

10. [Notice of loss or injury to be given within six months]

.-No suit shall be instituted against a common carrier for the loss of, or injury to, [goods (including container, pallet or similar article of transport used to consolidate goods) entrusted]] [Substituted by Act 28 of 1993, Sections 31 and Sch., for " goods entrusted" (w.r.e.f. 16.10.1992).] to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

11. [State Government to add to the Schedule

.-The State Government may, by notification in the Official Gazette, add to the list of articles contained in the Schedule to this Act, and the Schedule shall, on the issue of any such notification, be deemed to have been amended accordingly.]

Schedule

Gold and silver coin. Gold and silver in a manufactured or unmanufactured state. Precious stones and pearls. Jewellery. Time-pieces of any description. Trinkets. Bills and hundis. Currency notes of the Central Government, or notes of any Bank, or securities for payment of money, English or Foreign. Stamps and stamped paper. Maps, prints and works of art. Writings. Title-deeds. Gold or silver plate or plated articles. Glass. China. Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials. Shawls and lace. Clothes and tissues embroidered with the precious metals or of which such metals form part. Articles of ivory, ebony or sandal-wood. [Art pottery and all articles made of marble. Furs. Government securities. Opium. Coral. Musk, itr, sandal-wood oil, and other essential oils used in the preparation of itr or other perfumes. Musical and scientific instruments. Feathers. Narcotic preparations or hemp. Crude India-rubber. Jade, jade-stone and amber. Gooroochand or Gooroochandani. Cinematograph films and apparatus. Zahir Mohra Khatai.] [Inserted by

Notification No. 5299, dated 14.10.1922.][Platinum.Iridium.Palladium.Radium and its preparations.Tantalum.Osmium.Ruthenium.Rhodium.] [Added by Notification No. 5299, dated 14.10.1922.][Agarwood.] [Added by Notification No. 5299, dated 14.10.1922.]