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Art. IV—THE LAW OF CARRIERS.

A Treatise on the Law of Carriers of Goods and Passengers by Land and by Water By Joseph K. Angell. London Benning & Co.

MR. ANGELL has acquired a high reputation in America as the author of several valuable treatises on important branches of law Nor is his reputation unknown to, nor unappreciated by, those of our lawyers who make themselves acquainted with the writings of American Jurists. The works of the late Mr Justice Story, Chancellor Kent, Professor Greenleaf and others, and the decisions of most of the courts of the several States, exhibit such sound and close reasoning, such full and copious investigation of the subjects which engage their attention, that an English lawyer or an English judge cannot fail to derive advantage from referring to them. We therefore make no apology, on account of the work being an American production, for bringing it before the notice of our readers.

There is no branch of our law on which the fullest and most accurate information is more required than that on the law of Carriers, and there is certainly no English treatise which supplies that information. Mr. Jeremy's Essay on the Law of Carriers, Innkeepers, Warehousemen, and other Depositaries of Goods for Hire, published in 1815, useful as it was, and reflecting great credit on its author, did not exhaust, nor did it profess to exhaust, the subject. The same observation may be applied to the treatise of Mr. G. F Jones, "Of the Law concerning the Liabilities and Rights of Common Carriers," and to the "Notes of References on the Subject of Carriers, Innkeepers, Warehousemen, and other Bailees," and an Essay on the Law of Coach Proprietors and Carriers, added by Mr. Theobald to his edition of Sir William Jones's Essay on the Law of Bailment, published in 1834. The law of Carriers is so comprehensive a subject, that the author of a treatise on it, in order to perform what he promises by its title, must be familiar with, and must make his readers familiar with, many other important branches of law Amongst these are the law of bailment, of lien, and the right of stoppage in transitu.

Mr Angell judiciously commences his work with a preliminary view of the Law of Bailments, and he continues it in his second chapter on Carriers without hire. The great prin-

ciples expounded by Lord C. J Holt, in his celebrated judgment in Coggs v Bernard, as reported in 2 Lord Raym. 99, by Sir Wm. Jones in his Law of Bailments, and the late Mr Justice Story, in his Commentaries on the Law of Bailments, are stated fully and accurately, and they are illustrated by the numerous cases in England and the States of America, in which they have been discussed and applied. After stating the nature and various degrees of negligence which may be committed, and of the diligence required from the bailee, to the question in what manner the law applies them, the author gives this answer

"When the bailment is for the sole benefit of the bailor the law requires only *slight* diligence on the part of the bailee, and he is consequently responsible for nothing less than *gross* neglect. When the bailment is for the sole benefit of the bailee, an extraordinary degree of care is demanded, and the bailee is therefore responsible for *slight* neglect. When the bailment is reciprocally beneficial to both parties, as in the case of the carriage of goods for hire, such care is exacted of the bailee as every prudent man commonly takes of his own goods, or, in other words, the law requires *ordinary* diligence on the part of the bailee, and makes him responsible for *ordinary neglect;* such are the rules recognized by the common law A like division of the degrees of responsibility is to be found in the civil law, and the same rules are found in the French and Scotch law, and may be deemed, indeed, the general result of the law of Continental Europe. But it is often difficult to mark the lines of distinction between the different degrees of negligence, so as to show precisely where the one ends and the other begins. Therefore by the common law it is left to the jury upon the nature of the subject-matter, and the particular circumstances of each case, to say whether the particular case is within one or the other."

The learned author having treated of private carriers for hire, proceeds to define who are common carriers, and wherein their liability exceeds that of private carriers for hire. He enumerates and explains the liabilities of all those who properly belong to this class, namely, coachmasters, proprietors of stage coaches, and railroad cars, &c., and in this part of his treatise he has noticed the opinion held by Lord Abinger in Brind v Dale, 8 C. & Payne's Rep. 207, that a town carman whose carts ply for hire near the wharfs, and who also lets the same out by the hour, or day or job, is not a common carrier. He cites the opposite opinions entertained by Mr Justice Story, Mr. Chancellor, and the Court of Appeals in Kentucky, as well as to the opinion of Lord Kenyon in Hyde v Trent and Mersey Navigation Company, 5 T R. 389.

He then treats of carriers by water, between whom, and

carriers by land, there exists no distinction under the law of England or America. The latter head admits a large class of persons—hoymen, bargemasters, shipmasters—in internal and external navigation. There is an interesting inquiry how far a common carrier is in that character bound to carry, and is responsible for, the carriage of money It will be found that the grounds on which a liability may on this account be incurred are stated with great accuracy and precision. He then treats of the liability of the proprietors of coaches, steam boats, railways, for the baggage of passengers, as established by the English and American cases.

Having enumerated the various persons who are comprehended in the description of common carriers, the author treats of the duty of the common carrier to receive the goods which are offered to him for carriage, and of the circumstances which will justify his refusal to receive them. He then explains when the carrier's responsibility commences, that is, what is a complete delivery to and acceptance by him of the goods. The various cases in the courts of England and the States of America, in which the question, whether there has been a delivery to or acceptance of the goods, has been the subject of judicial investigation and decision, are fully and perspicuously stated.

The responsibility of the carrier having commenced by the delivery to and acceptance by him of the goods, the author defines the nature and extent of that responsibility at the common law

"That a common carrier is answerable," he says, "for all losses which do not fall within the excepted cases of the act of God and the king's enemies, has been the settled law of England for ages. The policy of imposing an extraordinary degree of responsibility upon common carriers was suggested by the edict of the Prætor in the Roman law, before which carriers were not put under any peculiar obligation which did not belong to other bailees for hire. The edict referred to did not extend in terms to carriers on land, but in most, if not in all modern countries, the rule which it prescribes has been practically expounded so as to include them. But the rule in the civil law in respect to extraordinary responsibility was not carried to the severe extent of the English common law It did not make the carrier liable for superior or irresistible force, and it accounted robbery among the cases of irresistible force, and this act of violence came within the damnum fatale of the civil law, which exempted the carrier. In the modern countries, where the civil law has exercised its influence (France, Spain, Holland, Louisiana, Scotland, and the German States), the same rule is generally, if it is not invariably, adhered to."

From the numerous decisions to which he refers, it appears

that the jurisprudence of the States of America generally adopts the rule of the English law

The author then examines in what sense the excepted case, "the act of God," is to be understood. He quotes Lord Mansfield's definition in Foward v Pittard (1 T. R. 33), "that the act of God, in its legal sense, and as applied to common carriers, means something in opposition to the act of man, for every thing is the act of God that happens by his permission, every thing by his knowledge." He is thus led to distinguish those cases in which, although the loss may have been sustained, yet the want of adequate care and attention on the part of the carrier may have brought the property within the reach of the power and influence of that irresistible physical cause which occasioned the loss. Thus there may have been negligence on the part of the master of a vessel in bringing her into a position in which she became exposed to that violence of the tempest which caused her destruction. So where a vessel was wrecked in consequence of the wind, there may have been negligence on the part of the master in sailing so near the shore under a light variable wind that a failure in coming about would cast her aground.

This chapter, which treats of the responsibility of the common carrier, and of the particular cases in which the common law exempts him from that responsibility, and of those acts of the carrier which may preclude him from claiming the benefit of this exemption, and leave him responsible, is written with great care and diligence, and he has brought forward the principal cases decided in England and America on the various questions which have arisen, whether the deviation of the master, or any act of negligence, or want of requisite skill or attention on his part,—whether defects in the vessel, or in any part of its equipment, have deprived him of the benefit of the exemption to which he would otherwise have been entitled.

In the seventh chapter of his work Mr. Angell treats of the limitation, qualification or restriction to which the carrier's liability at common law may be subject, either by special contract or by statute. That the carrier may, by a special contract with the party entrusting him with the carriage of his goods, qualify and limit the responsibility which he would without such special contract incur, has been the admitted law of England from the earliest times. But this qualified acceptance of the goods, which the law authorized when it was under a special contract, gave rise to the attempt to establish a limitation of the common law responsibility by means of a contract, to be implied by means of written or printed notices given by common carriers in the course of their public employment, and distributed or posted up,

announcing that the carrier would not be accountable for property of more than a specified value unless the owner paid an additional premium for it.

"This practice in England grew out of the advancement of commerce, the increase of personal property, and the consequent frequency with which articles of great value and small bulk were transmitted from one place to another. Carriers thinking it reasonable, began to insist that their employers should in such cases pay a rate of remuneration proportionable to the risk undertaken, and they did so by the means just mentioned.

"But however long-continued may have been the practice of giving such notices, their legal validity was not fully established until a comparatively recent period. In the year 1793, Lord Kenyon, in considering the obligations created by operation of law, and those created by a party's own act, puts the case of common carriers, and said, they could not discharge themselves by an act of their own, 'as by giving notice, for example, to that effect.'"—Hyde v. Proprietors of Trent and Mersey Navigation, 1 Esp. Rep.

Mr. Angell points out in strong terms the mischiefs which have ensued from permitting common carriers to limit their responsibility by these notices. He justly observes, that it has proved as fruitful a source of legal controversy as the subject of an acknowledgment of debt, or a new implied promise, under the statute of limitations and the policy of the law has been defeated as much by extravagant equitable constructions in respect to the former subject, as in respect to the latter. He refers his readers to two cases in the appendix at the end of the volume, in which the old principle of the common law is vindicated by the mischievous consequences of its relaxation, as illustrated and enforced by Mr Justice Bronson and Mr. Justice Cowen in delivering the judgment of the Supreme Court of the State of New York in May, 1838.

It is impossible here to follow our author through all the branches of the subject he has treated on. We can extract only passages from some of those likely to be most generally interesting. The following is upon the duty of a common carrier to deliver safely —

"The undertaking of a common carrier to transport the goods to a particular destination necessarily includes the duty of delivering them in safety, and his obligation is to deliver safely at all events, excepting the goods be lost by the act of God or the public enemy It is not enough that the goods be carried in safety to the place of delivery, but the carrier must, and without any demand upon him, deliver, and he is not entitled to freight until the contract for a complete delivery is performed.

"When the carriage is by land, and in the absence of any established usage, or any special contract to the contrary, the goods must be carried to the residence of the consignee, so that coach proprietors, for example, are not released from responsibility by having the goods left at the coach office, or at an inn at which the coach usually stops.

"In England, when goods are brought by ships from foreign countries, the bill of lading is merely a special undertaking to carry from port to port, and in such case it has been considered that, according to the established course of trade, a delivery on the usual wharf is such a delivery as will discharge the shipowner. Buller, J., in Hyde v Trent and Mersey Navigation Company, says, 'When goods are brought here from foreign countries they are brought under a bill of lading, which is merely an undertaking to carry from port to port. But the prima facie obligation of the carrier to make an actual delivery to the consignee personally may be effected by a well established and generally well known custom and usage.'

"The carrier is bound in all cases to make a proper delivery *with reasonable expedition*, if no particular time be fixed upon, for the duty to deliver within a reasonable time is a term ingrafted, by legal implication, upon a promise or duty to carry generally.

"But if by any accident or misfortune, not amounting to the act of God or the act of the public enemy, the transportation of the goods is obstructed and delayed, the carrier will not be answerable for the delay so occasioned if he has used a reasonable degree of exertion and diligence in the transportation. A temporary unavoidable obstruction only suspends, and does not avoid the contract."

Mr. Angell thus treats on the question of stoppage in transitu

"The principal question to be determined, when the inquiry is as to the extent of the vendor's power to stop in transitu, is the duration of the transit of the goods sold. The authorities which have been reviewed on the subject of delivery established the proposition, that in all cases of the sale and transmission of goods the transitus is at an end when the property comes either into the actual possession of the vendee, or arrives at that place where by his authority it is destined for his use, or to await his orders. The consignee must have taken such actual or constructive possession of the goods as owner in order to constitute a determination of the transit.

"If the owner of the goods merely accompanies them in their transit it will not excuse a non-delivery unless he has the exclusive custody of them.

"If a man be in the habit of using the warehouse of another, whether that of a carrier or wharfinger, as his own, making it the depository of his own goods, and disposing of them there, the transit terminates with the arrival of the goods at such depository But this must be understood as extending only to the instances where a delivery into the warehouse has been perfected, or the consignee has obtained entire control over the goods prior to his insolvency

"A mere commencement of delivery, not so far completed as to enable the consignee to take actual possession, cannot be construed into a determination of the transit."

"If an agent be merely clothed with a specific and limited authority to forward the goods to a particular destination, the transit is not determined until the goods have reached the place named by the buyer to the seller as such destination, for in such case the warehouse of the agent is the mere resting-place for the goods."

"The delivery to an agent not invested with any direction as to the further transit of the goods may be rendered incomplete by conditions annexed by the vendor at the time of the delivery For although upon an absolute delivery of goods to a packer for a purchaser who has no warehouse of his own, the transit is in general at an end, yet if the goods be delivered to him upon the understanding that they are to be paid for in ready-money, he becomes a trustee for the vendor, and it would contravene his duty to deliver them to the purchaser until paid for accordingly But in the instances in which it has been said the goods must come to the corporeal touch of the vendee in order to oust the right of stoppage in transitu, it is a figurative expression, rarely, if ever, true. If it be predicated of the vendee's actual touch or of the touch of any other person, it comes in each instance to a question, whether the party to whose touch they actually come be an agent so far representing the principal as to make a delivery to him a full, effectual and final delivery to the principal, as contradistinguished from a delivery to a person virtually acting as a carrier or mean of conveyance to or on account of the principal, in a mere course of transit towards him. If the transit be once at an end, the delivery is complete, and the transitus for this purpose cannot commence de novo merely because the goods are again sent upon their travels towards a new and ulterior destination."

In treating on the rules established to avoid collision of vessels, and which furnish grounds of excuses for damage in case of accidents, the following passage occurs with regard to steam vessels —

"They must always back their engines when hailed in a fog. The steamer Perth was going in a fog with unabated speed on a track frequented by coasters, and there was no order given when she was hailed to stop her engines, and she was held liable to the amount of damages and costs in a suit against her for a collision which ensued. In the case of the James Watt, it was held that where a steamer coming down a river in a dark night meets a sailing vessel beating up the river, and the master of the steamer is in doubt what course the sailing vessel is upon, it is the duty of the master of the steamer to ease her engines and to slacken her speed until he ascertains the course of the sailing vessel. As a steam vessel has greater power and is more under command, she is bound always to give way to a sailing vessel. A steamer is indeed generally deemed as always sailing with free and fair wind, and is therefore bound to do whatever

a common vessel going with free or fair wind would, under similar circumstances, be required to do in relation to any other vessels which it meets in the course of the navigation. In the case of the Columbine, it was held that if a steamer and a sailing vessel are approaching each other, and there is a probability of a collision, the general rule of navigation must be strictly adhered to, and neither haziness, nor the sailing vessel being first descried from the starboard side of the steamer, affords a sufficient justification for the conduct of the steamer in departing from the rule."

"Two steamers may be sailing in opposite directions, and there may be a reasonable probability, if they continue their course, of their coming in collision. The regulation of the Trinity House in such case is drawn up with great precision, and is not difficult to comprehend, it is as follows,—'When steam vessels on different courses must unavoidably or necessarily cross so near that, by continuing their respective courses, there would be risk of coming in collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other.'"

"The owner of a vessel, which through the fault or negligence of one on board injures another vessel, by running foul of her, is liable to the injured party although there is a pilot on board, who has the entire control and management of the vessel. It is more convenient, it is held, that the owner of such vessel should seek his remedy against the pilot whom he has selected for this service than that the injured party should. It is also, it is held, more conformable to the general spirit of the law, for although the pilot holds his commission under government, yet in many respects he is the servant of the owner who employs him, and in regard to the time of sailing is undoubtedly under the direction of the owner. The master in such case would not be liable, for he is answerable only in respect of his authority, which authority is entirely suspended by that of the pilot when the vessel is under sail within pilot ground."

Mr. Angell's apparent anxiety to leave no branch of the subject which he was discussing incomplete has occasionally fallen into repetitions of that which he had previously fully stated. This however is a failing of which the practical lawyer who wishes to obtain at once all the information bearing on the subject of his inquiry will be the last to complain. We wish also that Mr. Angell had more frequently supplied those illustrations which the civil law and the jurisprudence of the different states of Europe would have enabled him to afford, and with which we believe him to have been familiar. We consider it a great recommendation of this work that it contains a body of decisions by the different courts in America on the several subjects of which this work treats. They are added to the decisions of our English courts on this subject, and they will not suffer by a comparison. The greater part of the judgments delivered by the judges in

America exhibit vigorous, acute and sound reasoning, and an intimate familiarity with all the cases both in England and in America which have decided or can assist in deciding the question before them. These learned persons do not confine themselves to the mere adoption of a former decision, but whenever the necessity arises, they investigate the principles on which it was founded.

We are persuaded an English advocate will find in these judgments much to assist him in discussing before an English tribunal the subjects involved in those judgments. We know they cannot be quoted in an English court as authorities, but the day is past when a judge would interrupt a counsel who was citing a foreign writer as affording an illustration of the principle for which he contended. We can recollect the noble and learned lord who presided on the trial of Colonel Despard interrupting Mr. Serjeant Best, who in his defence cited a powerful passage from the writings of Montesquieu. We have too high an opinion of the enlarged and enlightened minds which are to be found on the benches of our superior courts, to doubt their readiness to receive assistance from cultivated and enlightened judges, in whatever part of the world they administered justice. It may be added, that the very frequent intercourse by water between different parts of the extensive territories of the United States, in addition to the great intercourse between the United States and distant foreign states, has perhaps furnished a greater variety of questions and more numerous decisions on the duties and liabilities of carriers by water, and the rights and remedies of passengers, than have arisen in England hence from those decisions much valuable assistance may be derived.

Short Notes of New Books.

Bayley on Bills of Exchange. The Sixth Edition, by George Morley Dowdeswell, Esq., of the Inner Temple, Barrister at Law London Benning & Co. 1849.

THE excellence and utility of the original work have reappeared in this edition, inasmuch as all the subsequent decisions of importance are marshalled in their proper places, and are thus made to support, illustrate or modify the text as occasion requires, with great precision and skill. The difficulty of doing this, as Mr Dowdeswell observes in his Preface, has been greatly increased by the manner in which cases on bills usually arise, and which are presented usually through the medium of the pleadings, mixed with formal matters and technicalities, so as to render it difficult to extract principles or abridge the cases themselves. Thus embarrassed, Mr Dowdeswell has shown much wisdom in confining himself to leading cases as much as possible. He has had the opportunity of adding many of those notes collected by the author in his life time, and transmitted to him in manuscript, of this privilege he has availed himself perhaps too largely, from a natural deference for their source. The fault of the book is that it is *overnoted.* It would have been better for the practitioner had the original part been amplified and remodelled, for, occasionally, we find results spread over several pages of notes which might have been more usefully embodied in as many paragraphs in the text, these are, however, by no means frequent amplifications. This edition deserves, and will assuredly obtain, a large sale.

A Treatise on the Law of Contracts, and Rights and Liabilities ex Contractu. By C. G. Addison, Esq., of the Inner Temple, Barrister at Law Second Edition. In 2 vols. London Benning & Co. 1849.

THIS work deserves, and will receive, a distinct and longer notice at our hands, suffice it to say, that it has grown into a complete treatise on this all-important and daily more important branch of law. It is in all respects very greatly improved.

The Law of Property as arising from the relation of Husband and Wife. By Sidney Smith Bell, Esq., of Lincoln's Inn, Barrister at Law London A. Maxwell & Son. 1849.

THIS is a very useful work, written with great care, and the latest as well as the standard authorities seem to have been consulted and digested with much care and ability

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The Monthly Law Reporter. New Series. Vol. II. No. I. Edited by Stephen H. Phillips. May, 1849. Boston Charles C. Little and James Brown. New York John S. Voorhies.

THE legal constitution of the American system is unquestionably its finest development, and the names of Kent, Story, and Greenleaf, have given an interest and authority to American jurisprudence in all countries where law is studied and practised as a science. We always experience pleasure in opening an American law book, we feel as if we are about to receive instruction, and to discover some principle of our own law illustrated by enlarged and original views.

The Monthly Law Reporter seems an excellent publication. Its form of compilation is to us novel, but it is interesting, and must be useful, it is true to its name, and has reporting as its object, but each number opens with a discourse on the law as laid down in one or more of the cases which follow, by which means the mind is prepared for duly appreciating the ruling of the court. It also contains reports of English decisions; and it commends itself to our particular regard by frequent notices of the Law Magazine. The May number is a good one.

A Selection of Leading Cases in Equity, with Notes, by Frederick Thomas White and Owen Davies Tudor, of the Middle Temple, Esqrs., Barristers at Law London Maxwell & Son.

THIS is a selection of Equity Cases, with notes, prepared on the plan of Mr. Smith's clever work of Leading Cases, which at once so eminently raised that late distinguished writer and lawyer into favour with the profession. Mr. Smith's cases, as it is well known, are chiefly confined to those of common law, and therefore there was ample room for a similar work on equity cases. The present editors have, we think, discharged their task admirably, both in the choice and arrangement of the cases, and in the excellency of the notes thereon, which are very appropriate, and closely resemble in style those of the late Mr. Smith. We hope on a future occasion to be able to recur to them more at large.

A Treatise on the Principles of Evidence and Practice as to Proofs in Courts of Common Law, with Elementary Rules for conducting the Examination and Cross-Examination of Witnesses. By W M. Best, A.M. LL.B., of Gray's Inn, Esq., Barrister at Law London. Sweet.

THIS work is the production of the author of the deservedly-esteemed treatise on Presumptions of Law and Fact, which we reviewed at length in the first number of the New Series of this Magazine, and which has since been so favourably noticed by the Bench, and we only regret that it has come to our hands too late to enable us to do it adequate justice. It appears to be the very work which has been often wanted on the subject, more particularly by students, for its design, Mr. Best tells us in his preface, is "not to add to the *practical* treatises by which the subject has been illustrated, but to examine the *principles* on which its rules are founded, tracing them to their sources and showing their connexion with each other." We shall examine it more closely, and give it a longer notice in our next number.