

RAND v. THE MERCHANTS' DISPATCH TRANS. CO.

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Common carriers may, by express contract, limit their common-law liability.

ASSUMPSIT, against the defendants, as common carriers of merchandise. Facts found by a referee.

The plaintiff delivered the property in question to the defendants, to be transported from Nashua to Cresco, Iowa, and received a bill of lading which contained the contract between the parties, and in which the defendants excepted from their liability the dangers of fire. The merchandise was destroyed by fire while on the way, without fault of the defendants.

Rolfe, for the plaintiff.

Stevens & Parker, for the defendants.

STANLEY, J. Common carriers may, by express contract, limit their common-law liability. *Moses v. B. & M. R. R.*, 24 N. H. 71, 90; *York Co. v. Central R. R.*, 3 Wall. 107; *Pemberton Co. v. N. Y. C. R. R.*, 104 Mass. 144; *Grace v. Adams*, 100 Mass. 505; Scho. Bailm. 454, and notes. The referee has found that by the contract of the parties the defendant was not to be liable for damage caused by fire, and that the defendant was without fault.

Judgment for the defendant.

FOSTER and ALLEN, JJ., did not sit: the others concurred.

GITCHELL v. ANDOVER.

Leave to file a claim against a town, under Gen. Laws, c. 75, s. 9, may be granted without a full trial of the merits of the claim, when the petitioner has suffered substantial damage, intends in good faith to try the question of his right to recover, introduces evidence tending to prove all material facts, and was unavoidably prevented from filing his claim within ten days; and justice manifestly requires he should have an opportunity to prosecute it.

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PETITION, under Gen. Laws, c. 75, s. 9. The petitioner alleged that he received the injury of which he complained, Nov. 17, 1878; and, subject to the defendants' exception, the court allowed the petition to be amended by striking out 17 and inserting 18.