COMMERCIAL LAW

IX. THE WARRANTIES OF MERCHANDISE

THE rule of law in buying is, *the buyer must look out for himself;* and if things are not what he supposed they were he has no rightful claim against the seller. The maxim of the law is, "*Let the purchaser beware*"—let him take care of himself. The rule of the Roman law was different. It was the duty of the seller to tell the buyer of all the defects known by him in the thing sold, and if he did not he was responsible for any loss caused by any defect or imperfection found after purchasing that was known by the seller before.

The modern principle may be looked at from two points of view. First, *the seller need not make known any defects which the buyer can find out himself.* Suppose a man is thinking of buying a horse that is (though he does not know it) blind in one eye. The law says that the buyer ought to be able to see such a defect quite as readily as the seller, and if he does not the fault is his own. Blindness in one eye is quite as easily seen as would be the lack of an ear or tail. And this principle applies very generally in all purchases. It covers all visible defects. Nor can any one find much fault with this rule, because the buyer generally has as good eyesight as the seller, and if he takes pains, as he should, he is able to discover all ordinary defects. Furthermore, the buyer doubtless often

knows quite as much about the things he purchases as the seller.

But the courts also say that it applies to other defects. Suppose a horse has the heaves or the rheumatism, which is known to the seller but of which the buyer has no knowledge whatever. The seller is not obliged to make known this defect to the buyer, and if he is silly enough to purchase on his own wisdom he must abide by the consequences. If he does inquire and is deceived, that is another thing. But if he asks no questions, or the seller does not deceive him in any way, the seller is not responsible for defects known by him at the time of the sale. This also is a well-understood rule.

The seller, we repeat, *must not deceive the buyer.* In one of the well-known cases a man owned a ship that he was desirous of selling. She was unsound in several places and the seller put her in such a position that her defects could not be readily found out. He did this for the purpose of deceiving the buyer and succeeded. When the buyer learned how he had been tricked he began a legal proceeding to get back a part of the money that he had paid, and won his case. And rightfully, too, for the reason that the seller had deceived him, which he had no right to do.

Another case may be stated of a man who was desirous of purchasing a picture, supposing that it was once in the collection of an eminent man. The seller knew perfectly well that the picture did not come from that collection and that the buyer was acting under a delusion. He did not say that the picture had belonged to the collection or had not; he was silent, although he knew that the buyer would not purchase it if he knew the truth about its former ownership. For some reason or other the buyer did not make any inquiry of the seller, or if he did was not told. But after purchasing the picture the

buyer learned that he was mistaken and that the seller knew this at the time of making the sale. He sought to recover the money he had paid and succeeded, the court saying that a fraud had been practised upon him; that it was the duty of the seller, knowing what was passing in the mind of the buyer, to have told him the truth about the former ownership of the picture.

It will be seen, therefore, that *the seller must not deceive the buyer in any way or practise any fraud on him;* if he does he will be responsible for the loss or injury befalling the other.

What, then, ought a buyer to do in purchasing a horse, for example, in order to guard himself against the unwelcome discovery of disease or other defect? Clearly, *he ought to require the seller to give him a warranty.* A proper way is, if the transaction be an important one, to have the warranty in writing and signed by the seller. It need not be very long; a few words usually are enough.

There is a very important difference that every one ought to understand between words that are spoken at a sale, which are mere representations, and words that form a warranty of the thing sold. If I should go into a store to buy a piece of flannel, and ask the salesman if it was all wool, and he should assure me that it was, and I, ignorant of the quality of the material, and desirous of buying a piece of all-wool flannel, should say to him: "I know nothing about it; I rely entirely on your statement," and he should say: "It is all right; all wool, and no cotton," his words would be a warranty, and if the flannel proved to be made partly of straw or cotton, or something besides wool, I could sue the seller on his warranty, and recover for the loss I had suffered, whatever that might be. But suppose I were a flannel manufacturer myself, and knew at the time he was saying this to me that the flannel was partly cotton; in short, knew a great deal more about it than he did, and was not deceived in any way by what he said, his words would not be a warranty, because my action in buying the flannel would not be influenced by them.

What test, then, is to be applied? Evidently whether or not the buyer acts on the words spoken and is deceived by them. If, relying on them, he buys and is deceived or misled to his loss or injury, then the words will be taken as a warranty and protect the buyer. If, on the other hand, he is not deceived by what is told him, and he buys on his own knowledge and judgment, then the words are not a warranty.

One or two other points may be briefly noticed. The law says that *the seller always warrants the title to the thing sold* — in other words, that he is the owner. He may not say one word about the matter, but the law implies that he is the owner and would not sell a thing that did not belong to him. If he should prove not to be the owner, the buyer could recover for his loss.

Another point about adulterations. The common law does not regard an article as adulterated, giving the buyer the right to claim something back, unless it has been materially changed by the foreign substance. All, or nearly all, of the States have made statutes within recent years, or re-enacted old ones, holding sellers strictly responsible for the quality, especially of provisions, sold. These statutes generally require the seller to sell absolutely pure articles, and he cannot shield himself by saying that he was ignorant and innocent of their nature if they proved to be other than pure articles. If a grocer should sell cotton-seed oil for olive oil, even though doing so ignorantly, without any intention to deceive, he would nevertheless be held liable under the statutes that now exist in most of the States; and public opinion strongly favours the strict execution of these statutes.

COMMERCIAL LAW

X. COMMON CARRIERS

What is meant by a common carrier? A person or company that is obliged to carry merchandise or passengers for a price or compensation from place to place. A common carrier cannot select his business, like a private carrier, but *must* carry all merchandise that is offered; or, if he is a carrier of persons, all persons who desire to go and are willing to respect all reasonable regulations that relate to carrying them. *The principal common carriers are railroads, steamboats, and canal companies.*

The liability of common carriers is very important to all who travel or send merchandise. A common carrier is liable for all losses not happening by the act of God or by the public enemy. By "act of God" is meant unavoidable calamity, such as lightning and tempests, and by "public enemy" is meant a nation at war with another. Once these were the only exceptions. Carriers were therefore insurers of the goods left with them to be carried to some other place.

This early rule of law fixing their liability has been greatly changed. Carriers can now make a contract relieving themselves of all liability for losses in carrying goods except those arising from their own negligence. The courts in a few cases have said that they can relieve themselves even from this, but this is not generally the

law. They can, though, by special contract relieve themselves from all other liability. A railroad company, therefore, can make a contract for carrying wheat from Chicago to New York, relieving itself from all liability for loss by fire unless this shall be caused by its negligence. If a fire should occur without any negligence on the part of the company and goods on the way should be destroyed, it could not be held responsible for the loss if there was such a contract between the shipper and carrier. *A carrier is no longer an insurer for the safe carrying of goods.*

The courts have permitted carriers to thus lessen their liability because they are willing to take goods at lower prices than they would if they were to be responsible for all losses. They now virtually say to the shippers: "If you are willing to be your own insurers, or insure in insurance companies, and hold us for no losses except those arising from our own negligence, we are willing to carry your goods at a much lower rate." And, as shippers are willing to take the risks themselves for the sake of getting lower rates, the practice has become universal for lessening the liability of carriers in the manner described.

Suppose that goods are burned up by fire. The shipper must be the loser unless he can show that it was caused by the negligence of the carrier. As he often can show this, he imagines that the carrier is still living under the old law and is liable as he was in the early days of railroad and steamboat companies. In truth, this is not so. His liability is measured by his contract, and there can be no recovery for any loss unless negligence on the carrier's part is clearly shown, and in many cases this is not easily done.

Though common or public carriers are obliged to take and transport almost everything, *they may make reasonable regulations about the packing, etc., of merchandise.* Suppose a shipper were to come to a railroad company's

clerk with a quantity of glass not in boxes, and should say to him, "I wish this glass to be carried to New York"; and the clerk should say to him that the rules of the company required all glass to be packed in boxes lined with straw, and that the rule could not be set aside, however short might be the distance. Very likely the shipper would say to the agent: "This is expensive; I wish you to take it as it is." And if he should say to the agent that he was willing to run the risk of breakage, then, perhaps, the clerk might take it in; yet, even on those terms, some carriers would not. At all events, if the clerk should insist on following the rules, the shipper could not justly complain, for this rule is a very reasonable one, as the courts have many times declared.

Suppose a shipper should ask a carrier to take a load of potatoes or apples to Montreal in very cold weather. The carrier says to him: "There is danger of the apples being frozen. I am unwilling to carry them unless you will take the risk of their freezing." He could insist on these terms, because it would be unreasonable to require carriers to transport such merchandise and keep their cars heated. They are not made in that way and every shipper knows it, nor are carriers required to heat them.

The courts have said that any reasonable regulations respecting the merchandise to be carried, the packing, etc., must be respected. A carrier could refuse positively to carry dynamite or powder unless it was packed in a very careful manner. Doubtless many things are carried in ways quite contrary to the regulations, without the knowledge of the carrying companies. Packages are rarely examined and things may be put within, out of sight, of which carriers know nothing.

A carrier is not required to have cars enough to carry all goods on unusual occasions. But it must have enough to carry without delay all that come from day to day.

COMMERCIAL LAW

XI. THE CARRYING OF PASSENGERS

MILLIONS ride on steamboats, in the street-cars, and by steam-railways, and the question is an important one with them. *What are the rights and duties of company and passenger? First, it is the duty of a company carrying passengers to provide every one with a seat.* This rule does not apply to street-cars but it does to steam-railways. In some cases it is said of the street-car passengers that those who use the straps pay the money from which dividends are paid. But the rule is otherwise that applies to railway companies. They must furnish seats for their passengers and cannot demand fares until seats are secured.

Having taken him on board and seated him, what degree of care must the company use in carrying the passenger? It may seem strange to say that the company is not obliged to use as much care as in carrying a barrel of apples or an animal. Goods must be moved, kept dry, perhaps, and cared for in other ways. An animal must be fed. In carrying cattle stops must be made for rest. But the passenger takes care of himself. He gets in and out and provides his own rations. Therefore the law puts on the carrier the duty of using only a reasonable degree of care in taking him from place to place. In other words, the railway is not an insurer of life, as it is of goods or other merchandise. As passen-

gers are of themselves able to get around and use some care with respect to their own movements, the law lessens the responsibility.

Perhaps the reader would like to know *what the company must do in carrying a passenger's baggage.* This is a very practical question. If he takes his grip in the seat with him, he alone is responsible for its safety. If some one should get in the seat beside him and in going out should take the grip along with him, the owner could not ask the company to make good his loss. On the other hand, if he delivers his grip to the company, then the company is bound by the same rule as when carrying other goods and merchandise. The price paid for his ticket is also enough to pay the cost of carrying his trunk or other baggage, therefore the carrier cannot escape paying for its loss when having possession ot it on the ground that the service is purely voluntary and without compensation. As the company gets compensation it must pay for any loss while taking baggage from one place to another unless the loss or damage should be due to no fault or negligence of the company.

Every now and then we receive a cheque for a trunk or other piece of baggage stating that in the event of loss the company will not be responsible beyond a certain amount—$50, or $100, or other sum. Is that statement on the cheque worth anything? The courts have held that if one of these cheques is taken by a passenger and he reads it he is bound thereby. This is a contract between carrier and passenger, consequently he is bound by the figures mentioned under ordinary circumstances. This rule is just and is based on a good reason. As every one knows, whenever a trunk is lost it is very difficult for the carrier to get any proof of the real value of its contents. All the evidence is in the hands of the passenger. If he is without a conscience and apparently

proves that the things in it were worth $200 or $300, he may succeed in getting this much, although it might have been full of shavings. It is because of much experience of this kind that carriers have tried to limit the amount for which they will be responsible, and so long as they do this in a fair, open way the law regards their conduct with favour. If, however, a passenger receives such a cheque and at once puts it in his pocket and does not know its true nature, then the courts have held that he was not bound by any limit of this kind.

Again, a person has no business to put diamonds and rubies and jewellery and the like in his trunk. If he does and they are lost, he cannot compel the carrier to pay for them. The courts have said that passengers have no right to put such things in their trunks expecting to make carriers pay for them when they are lost. If there are things of unusual value in a trunk, the carrier should be informed or else the owner should assume the risk.

One word more. An express company is a common carrier and is bound by the same rules as other carriers except so far as such rules may be changed by definite contract. When a definite contract is made, then the rules of ordinary carriers do not apply.

COMMERCIAL LAW

XII. ON THE KEEPING OF THINGS

THERE are some principles of everyday importance relating to the keeping of things.

In our last lecture was mentioned the carriage of merchandise by common carriers. They not only carry merchandise — they also keep it. When merchandise reaches its destination and shippers have had a reasonable time to take it away, but neglect to do so, a common carrier is no longer liable for its safe keeping as a common carrier but only as a warehouseman. What do we mean by this? As we have seen, a common carrier, unless he makes a special contract for carrying the merchandise, is liable for everything lost or injured except "by the act of God or the public enemy"; or, as we have already said, he is an insurer for safely taking and keeping the merchandise while it is in his charge. When the merchandise has reached the final station, and the person to whom it is shipped or sent has had ample time to take it away and does not do so, the carrier still keeps the merchandise in his warehouse or depot, but he is no longer liable as a carrier for keeping it but simply as a warehouseman. In other words, if goods are kept by him for this longer period, he is liable for their loss only in the event of gross negligence on his part. If a fire should break out and the goods be burned, unless it happened

by his own gross negligence, he would not be liable for the loss. So, too, if a thief should break into his warehouse and steal the goods, he would not be liable for the theft unless it was shown that he was grossly negligent in not providing a safer building. If the rats and mice should destroy the goods while they were in the common carrier's building, the same rule would apply; or if they were injured or destroyed in any other manner, he would not be responsible for the loss unless gross negligence was shown.

Different rules apply, depending on whether the keeper, or bailee, gets any compensation for storage. In our lecture relating to sales we stated that the seller would not be liable for the loss of anything intrusted to his keeping after it had been bought of him unless he was grossly negligent, for the reason that no reward or compensation is paid to him for storage. There are, therefore, two rules which govern many cases. If a person keeps a thing for a reward or compensation, then he is bound by a stricter rule of diligence than in those cases in which he receives nothing for his service. This accords with the common reason of mankind. Evidently if a person keeps a thing simply as an act of kindness, he ought not to be responsible in the same sense that one is held responsible who is paid a fixed price for such service.

Another good illustration is that of a bank which keeps the bonds of a depositor in its safe for his accommodation. The bank does not pretend to be a safe-deposit company or anything of the kind, but it has a large vault and wishes to accommodate its customers by keeping their stocks and bonds and other articles for them while they are off on vacations or for other reasons. It is a common thing for a customer to go to his bank, especially in the country, and ask the cashier to keep his valuables during his absence. The cashier is willing to comply, and

the things are intrusted to him; but as the bank receives no compensation for this service it is not responsible for their loss unless it is grossly negligent in the matter. Suppose they are put in the safe among other valuables belonging to the bank and a robber breaks in and takes them away — is the bank responsible? Certainly not. On the other hand, if the customer should leave his valuables at a safe-deposit company, a different rule would apply, because that company charges him for keeping the articles. It is therefore bound by a stricter rule than the bank. It must use the greatest care, and if neglectful in any respect it is responsible for the consequences.

Suppose a person should say to me: "Will you be good enough to leave this package with a jeweller on your way down street?" I say to my friend: "Certainly, with the greatest pleasure." What degree of care must I use in carrying that package? Only ordinary care. Suppose in going along the street a thief, without my knowledge, should walk beside me and slip his hand into my pocket and take the package, and on my arrival at the jewellery store I should find that it was gone. Should I be responsible for the loss? Certainly not, because I had neither received nor expected to receive any reward for taking the package to the store. Of course, if it could be shown that I was unnecessarily negligent in carrying the parcel, the owner might be justified in claiming damages.

One thing more may be added. If a bailee should be a scoundrel and sell the thing left with him for safe-keeping and receive the money, the true owner could, nevertheless, claim the thing wherever he could find it. The owner would not get a good title. This rule of law applies to everything except negotiable paper. A person who buys that in good faith, honestly, not knowing that it was stolen, and pays money, gets a good title. *This is the only exception to the above rule in the law.*

COMMERCIAL LAW

XIII. CONCERNING AGENTS

VERY many persons act as agents for others. Much of the business of modern times is carried on by persons of this class. All the managers of corporations are agents of the railways, banks, manufacturing companies, and the like. They are to be seen everywhere. Every salesman is an agent. In short, *the larger part of the modern commerce of the world is done by agents.*

AGENTS ARE OF TWO KINDS, SPECIAL AND GENERAL; and there are important differences between the two. A GENERAL AGENT is a person who transacts all the business of the person hiring or appointing him, called a principal, or all his business of a particular kind. A principal might have several general agents for the different kinds of business in which he was engaged. Suppose he has a cotton-factory and a store and a farm; he might have three general agents, each managing one of these enterprises.

A general agent may be appointed in different ways. This may be done by a written contract. Very often, however, no such contract is made, and the person comes to act in a different way. A cashier of a bank, for example, is a general agent to transact its business, but the mode of appointing him rarely consists of anything more than a resolution of the board of directors. More