to be justified in declining to recognize minute distinctions within the intermediate zone of culpable conduct, which distinctions are only designated by such terms as "wantonness," "wilfulness," and "recklessness," all of uncertain meaning and import.[21] It is very doubtful whether any valid distinction can be drawn between the "wanton or wilful" clause of the amendment and the "reckless disregard" clause of the original Act even on the basis of terminology since the terms are often used as synonomous.[22]

It is submitted that any distinction between the courts' definitions of the type of conduct to which liability attaches under the staute as originally enacted and under the statute as amended are more imaginary than real. The court justifiably declined to multiply the shadows in what is now a twilight zone in the law, and although the legislature must be assumed to have intended to change the existing law, that result has not been reached.

CARRIERS

LIMITATION OF TORT LIABILITY BY CONTRACT

Plaintiff, while a passenger on defendant's steamship, deposited cash and jewelry in the amount of $13,360 in defendant's safe-deposit box. Her ticket contained a contract limiting the carrier's liability to $250; however, insurance was offered at the rate of 1% of the excess, upon a written declaration of value, delivered to the carrier. Plaintiff did not take out any insurance, and upon demand defendant failed to return her property. Plaintiff brought action for the full value of the property, charging breach of the bailment contract and conversion. The court granted the defendant's motion for a directed verdict of $250 in favor of the plaintiff, in accordance with the special contract. Plaintiff appealed. Held, judgment affirmed. Reichman v. Compagnie Generale Transatlantique, ——N.Y.——, 49 N.E. (2d) 474 (1943).

The case first raises a question as to the circumstances under which a carrier may limit by contract its liability for negligence.[1] At

21. The cases are legion in which courts have attempted to define and distinguish these terms. See 36 Words and Phrases 489-509; 45 Words and Phrases 186-271; 44 Words and Phrases 589-623. One writer on this subject has pointed out that " . . . the terms most commonly used in automobile law may be arranged in the following ascending order of culpability: Negligence, Gross Negligence, Heedlessness, Recklessness, Wantonness, Wilfulness, and Intentional Acts. . . ." Appleman, "Wilful and Wanton Conduct in Automobile Guest Cases" (1937) 13 Ind. L. J. 131, 133-134. Any attempt to classify culpable conduct into so many types would appear only to create confusion and uncertainty.

22. For instance see Restatement, "Torts" (1934) §500 and the "special note" following; Harper, "Law of Torts" (1933) §151; Berry, "Law of Automobiles" (7th ed. 1935) §2.340.

1. Under the law of bailments, failure to return goods bailed establishes a prima facie case of negligence, and bailee must show that loss or damage was caused without fault on his part. Hackney et al. v. Perry, 152 Ala. 626, 44 So. 1029 (1907); Employers'

common law a common carrier was liable as an insurer for the goods intrusted to its care and for the baggage of its passengers, except for damages occasioned by the act of God or the king's enemies.[2] Early American cases first adhered to the common law rule, precluding exemptions from negligence liability, on the basis of public policy.[3] But later cases, apparently influenced by the "freedom of contract" doctrine manifest during the later 19th century, introduced an element of diversity, by holding such contracts to be valid and enforceable.[4] At the present time, however, it is generally accepted that a carrier may not impose a limitation against liability for loss or damage of goods or baggage caused by its own negligence.[5]

But this rule is not without its qualifications. The exception to the general rule, and a method almost universally adopted by carriers, is that a limitation based upon the agreed valuation of the goods or property is valid, even as to negligence.[6] Certain conditions are gen-

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Fire Insurance Co. v. Consolidated Garage and Sales Co. et al., 85 Ind. App. 674, 155 N.E. 533 (1927). It would therefore follow that if, in the absence of proof rebutting the presumption of negligence, the defendant's contract did not limit its liability as to negligence, the judgment should have been for the plaintiff.

2. Coggs v. Bernard, 2 Ld. Raym. 909, 91 Eng. Rep. R. 25 (K.B. 1703); Forward v. Pittard, 1 T.R. 27, 99 Eng. Rep. R. 953 (K.B. 1785).

3. Gould et al. v. Hill et al., 2 Hill 623 (N.Y. 1842); Cole v. Goodwin and Story, 19 Wend. 251 (N.Y. 1834).

4. See Nicholas et al. v. New York Central & H.R.R.R., 89 N.Y. 370, 372 (1882); Mynard et al. v. Syracuse, B. & N.Y.R.R., 71 N.Y. 180, 185 (1877); cf. Thayer v. St. Louis, A. & T.H. R.R., 22 Ind. 26 (1864), which recognized a distinction between degrees of negligence and held that a carrier could not exempt itself from liability for gross negligence, but conceded the right as to ordinary negligence. Contra: Railroad Co. v. Lockwood, 17 Wall. 357 (U.S. 1873) (federal rule); Steel v. Townsend, 37 Ala. 247 (1861); Ohio & Miss. Ry. v. Selby, 47 Ind. (1874) (overruled Thayer v. St. Louis, etc. R.R., supra); Fillebraun v. Grand Trunk Ry., 55 Me. 472 (1867); Empire Transportation Co. v. Wamsutta Oil Co., 63 Pa. St. 14 (1869).

5. Bank of Kentucky v. Adams Exp. Co., 93 U.S. 174 (1876); Railroad Co. v. Lockwood, 17 Wall. 357 (U.S. 1873); Saunders v. Southern Ry., 128 Fed. 15 (C.C.A. 6th, 1904); The Oregon, 133 Fed. 609 (C.C.A. 9th, 1904); Franklin v. Southern Pac. Co., 203 Cal. 680, 265 Pac. 936 (1928); Knight v. Carolina Coach Co., 201 N.C. 261, 159 S.E. 311 (1931); see Phoenix Ins. Co. v. Erie & West. Transportation Co., 117 U.S. 312, 317 (1886).

6. Hart v. Pennsylvania R.R., 112 U.S. 331 (1884), the principal case, like most cases subsequent, declared the common law rule, but admitted the exception in case of an agreed valuation, distinguishing this rule on the ground that it had no tendency to exempt from liability for negligence. Anomalously enough, the Hart decision at 341 appropriated the public policy argument used heretofore to substantiate the common law rule, to support the agreed valuation rule: "It is repugnant to the principles of freedom of contract and in conflict with public policy if a shipper should be allowed to reap the benefit of the contract if there is no loss and to repudiate it in case of loss." Also see Squire et al. v. New York Central R.R., 98 Mass. 239 (1867); Kopetzky et al. v. Cunard S.S. Co., 131 Misc. 599, 227 N.Y. Supp. 539 (N.Y.

erally imposed as prerequisite to the application of the rule: (1) the rate must be graduated according to the value of the property, and (2) the shipper must have the privilege of full coverage.[7] There seems to be no deviation from the rule that an effort to limit liability by a uniform, predetermined valuation, arbitrarily fixed, and without any reference to actual value of the property is void.[8] Some cases have prescribed alternative rates, fairly based upon valuation,[9] or an essential choice of rates,[10] so that the passenger or shipper might have secured full coverage or protection for his property by payment of a higher rate for the carriage.[11] It follows that an attempt at total exemption from liability for negligence is void.[12] The same result is reached where a bill of lading contains an express agreement as to valuation, but where such valuation appears to be a standard, predetermined limitation upon goods of that nature, set by the carrier, and no choice of rates is given.[13] Nor are the word "reduced fare," when printed on the ticket, sufficient to sustain a limitation where it appears to be the full and only fare.[14] On the other hand, where there is no reference to reduced fare in the clause purporting to limit liability, the court will not assume that a reduced rate was given as ground for giving effect to the limitation of liability.[15]

In regard to the prerequisite of complete coverage, this has been held to exclude limitations as to invoice value of goods,[16] and also to render invalid attempts to limit value to that of time and place of shipment, even though a higher valuation was placed on goods.[17] But where no declaration of value was given or requested, it has been held

City Ct. 1928); Belger v. Dinsmore, 51 N.Y. 166 (1872); Culbreth v. Martin et al., 179 N.C. 678, 103 S.E. 374 (1920). But cf. Zetler v. Tonopah & Goldfield R.R., 35 Nev. 384, 129 Pac. 299 (1913), aff'd on rehearing, 37 Nev. 486, 143 Pac. 119 (1914), which held such a limitation unavailable, where the carrier had wilfully taken or withheld baggage from the passenger, or negligently delivered it to the wrong person.

7. Franklin v. Southern Pac. Co., 203 Cal. 680, 265 Pac. 939 (1928).
8. Everett v. Norfolk & S. R.R., 138 N.C. 68, 50 S.E. 557 (1905).
9. Cin., New Orleans & T.P. Ry. v. Rankin, 241 U.S. 319, 327 (1916).
10. Pierce Co. v. Wells, Fargo & Co., 236 U.S. 278 (1915).
11. Hartzberg v. New York Central R.R., ——Misc.——, 41 N.Y.S. (2d) 345 (Sup. Ct. N.Y. Co. 1943).
12. Straus & Co. v. Canadian Pac. Ry., 354 N.Y. 407, 173 N.E. 564 (1930).
13. Union Pac. R.R. v. Burke, 255 U.S. 317 (1921); Georgia R.R. & Banking Co. v. Keener, 93 Ga. 808, 21 S.E. 287 (1894).
14. Southwestern Transportation Co. v. Poye, 194 Ark. 982, 110 S.W. (2d) 494 (1937).
15. Moore v. American Scantic Line, 121 F. (2d) 767 (C.C.A. 2d, 1941).
16. Kilthau v. International Mercantile Marine Co., 245 N.Y. 361, 157 N.E. 267 (1927).
17. Straus & Co. v. Canadian Pac. Ry., 254 N.Y. 407, 173 N.E. 564 (1930). The general rule is that a carrier is liable for negligence for the value of goods at destination.

that the shipper's acceptance of a receipt containing provisions limiting liability made the provision binding.[18]

The agreed valuation doctrine has been rationalized on the basis of estoppel,[19] upon the basis of liquidated damages,[20] and upon the basis of a "release tied to the rate."[21] Statutory enactments have in general incorporated the general theory and given it universal application, not only to railroads, but to steamship companies,[22] to motor carriers,[23] to telegraph companies,[24] and to warehousemen.[25] Both the Harter Act of 1893,[26] regulating shipping, and the second Cummins Amendment of 1916[27] to the Hepburn Act, regulating interstate carriers, made provisions for limitations of liability according to the declared value of freight and baggage.

It would seem, therefore, from the point of view of both statutes and judicial decisions, that the contract accepted by the plaintiff in this case met the prerequisites of a valid contract limiting the liability of the carrier by an agreed valuation, inasmuch as an opportunity was provided for full coverage of the property at rates corresponding to the value declared. It was reasonable in its terms and was authorized by the settled law of the jurisdiction.[28] Plaintiff's omission to take advantage of the complete coverage provisions restricted her to a limited recovery.

The dissenting opinion construed the acceptance by the defendant of the property as a separate bailment contract for a special purpose, unaffected by the defendant's limitation of liability as a carrier. While it is true that cases have held that valuation agreements apply only to property regularly checked, both as to steamships[29] and to railroads,[30] there can be little doubt that the property

18. Coos Bay Amusement Co. v. Amer. Ry. Exp. Co., 129 Ore. 216, 277 Pac. 107 (1929); Huddy v. Railway Exp. Agency, 181 S.C. 508, 188 S.E. 247 (1936).
19. Union Pac. R.R. v. Burke, 255 U.S. 317 (1921).
20. Everett v. Norfolk & S. R.R., 138 N.C. 68, 50 S.E. 557 (1905).
21. Union Pac. R.R. v. Burke, 255 U.S. 317 (1921). The reduced rate is construed as consideration for the release.
22. The City of Norfolk, 13 F. Supp. 511 (D. Md. 1936).
23. Peninsula Transit Corp. v. Jacoby, ——Va.——, 26 S.E. (2d) 97 (1943).
24. Primrose v. Western Union Tel. Co., 154 U.S. 1 (1894).
25. Cleveland, C., C. & St. L. R.R. v. Dettlebach, 239 U.S. 588 (1916). This case was decided under the Hepburn Act, 34 Stat. 584 (1906), 49 U.S.C. §20 (11) (1940), and held that the duty of warehouseman was one of the services rendered by a carrier within the meaning of the Act, and hence the limitation would apply in the case of goods delivered but not called for by the consignee.
26. 16 Stat. 440, 458-459 (1871), 46 U.S.C. §181 (1940).
27. 41 Stat. 456, 491 (1920), 49 U.S.C. §20 (11) (1940).
28. See Kilthau v. International Mercantile Marine Co., 245 N.Y. 361, 365, 157 N.E. 267, 268 (1927).
29. Holmes v. North German Lloyd S.S. Co., 184 N.Y. 280, 77 N.E. 21 (1906).
30. Hasbrouck v. New York Central & H.R.R.R., 202 N.Y. 363, 95 N.E. 808 (1911).

in the present case was checked in accordance with facilities offered and provided by the defendant for that purpose, and accepted and held in the exclusive possession of the defendant in its capacity as a carrier.[31] The majority opinion was a correct statement of the law, and there seems little ground in support of the minority view.

CONSTITUTIONAL LAW

FEDERAL IMMUNITY FROM STATE INSPECTION LAWS

The Florida Commercial Fertilizer Law[1] requires an inspection fee for all commercial fertilizers used in the state, and unless each bag sold bears the stamp of approval, it is made subject to seizure and destruction by the sheriff of the county where found.[2] For purposes of carrying out the National Soil Conservation Program,[3] the United States, acting through the Secretary of Agriculture, bought fertilizer outside Florida and shipped it into the state for distribution without state inspection. The Florida Commissioner of Agriculture ordered county agricultural associations to stop distribution. The United States was given an injunction in the district court[4] and defendants appeal. Held, affirmed. The Florida regulation was made in the exercise of its police power and as such, it does not extend to the Federal government; its property and transactions are immune from state police power. Mayo et al. v. United States, 63 Sup. Ct. 1137 (1943).

There can be no doubt that a state can, in the exercise of its general police power, pass regulatory acts providing for inspection fee[5] so long as the fees are reasonably proportionate to the expenses

31. The dissenting opinion cites Hasbrouck v. New York Central & H.R.R.R., 202 N.Y. 363, 95 N.E. 808 (1911), as sustaining its argument to the effect that there was a bailment for a special purpose, not subject to the contract limitation. Here a suitcase was intrusted to a trainman to set off at the next stop. When the plaintiff later opened the bag she found some of her property had been stolen. Held, the valuation agreement did not apply. Possession of defendant was not that of a carrier, because the suitcase had not been checked as baggage nor intrusted to it for the journey, but only for the special purpose of aiding a passenger to get the train. Similarly it has been held that the contract provisions in a steamship ticket did not apply to baggage intended to be taken by the passenger to her stateroom for use during the voyage, but applied only to baggage left in exclusive control of the carrier, for which insurance liability existed at common law. Holmes v. North German Lloyd S.S. Co., 184 N.Y. 280, 77 N.E. 21 (1906). But cf. Cleveland, C., C. & St. L. R.R. v. Dettlebach, 239 U.S. 588 (1916), cited supra note 25.

1. Fla. Stat. (1941) c. 576. See particularly §576.11.
2. Id. §576.15.
3. Soil Conservation and Domestic Allotment Act, 49 Stat. 163, 16 U.S.C.A. 590 (1935).
4. United States v. Mayo et al., 47 F. Supp. 552 (N.D. Fla. 1942).
5. U.S. Const. Art. I, §10. " . . . no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing