

Carriers - Uniform Bill of Lading - Usual Place of Delivery

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CARRIERS—UNIFORM BILL OF LADING—USUAL PLACE OF DELIVERY.—The plaintiffs were consignees of two carloads of lumber shipped under a uniform bill of lading, not negotiable, by the terms of which the defendant railroad company was required "to carry (freight) to its usual place of delivery at said destination." The plaintiffs had previously leased premises adjoining a spur track which was under the control of the defendant and to which the plaintiffs had no trackage rights. The defendant had from time to time, as a matter of courtesy, placed cars consigned to the plaintiffs on this side track for unloading, but because the plaintiff had not paid their freight bills promptly and because the plaintiffs had permitted piles of lumber to stand too close to the track so as to make it dangerous for defendant's employees to shunt cars over it, the defendant refused to "spot" the two cars of lumber on the spur track; instead, it placed them on its own team track and notified plaintiffs of their arrival. The plaintiffs refused to pay the freight unless the cars were "spotted" on the side track adjacent to their factory. Finally, the cars were unloaded on the team track. The plaintiffs sued for the conversion of the lumber. The defendant counterclaimed for freight and demurrage charges. Judgment for the plaintiffs less the freight charges. On appeal, *held*, judgment reversed. Delivery on the team track and notice to the plaintiffs is delivery within the meaning of the bill of lading. The railroad company is entitled to freight and demurrage charges. *McDonald v. Chicago & N. W. Ry. Co.*, (Wis. 1936) 266 N.W. 246.

Demurrage is a maritime term now used to designate the right of a carrier to compensation because of an unreasonable detention of cars in which goods are shipped. *Southern Ry. Co. v. Melton*, 133 Ga. 277, 65 S.E. 665 (1909). Delivery to the consignee at destination is considered a condition precedent to the right to charge demurrage. *Wooley v. Chicago & N. W. Ry. Co.*, 150 Wis. 183, 136 N.W. 616 (1912). So, the sole question which arises in the instant case is: what is the meaning of the term *usual place of delivery* as it is used in the uniform bill of lading here under consideration? The court, in the principal case, starting upon the premise that it is impossible for railroad equipment to move beyond the railroad tracks, reached the conclusion that the usual place of delivery is one of the ordinary facilities or places in the care of the railroad company so used as a place of depositing goods after transit, that is, freight depots and warehouses in the case of light freight, team tracks in the case of heavy freight. Such a place must be one which by its character, location, supervision or care imports that freight stored there will receive protection against the ordinary hazards to unstored goods. *Chicago Great Western Ry. Co. v. Davis*, 1 F. (2d) 729 (N.D. Iowa, 1924). However, special circumstances may alter such interpretation of the meaning of the term *usual place of delivery*. There may be a special contract between the parties designating a place of delivery other than the ordinary one, in which case the carrier is bound by the contract. *Gulf Compress Co. v. Alabama Great Southern Ry Co.*, 100 Miss. 582, 56 So. 666 (1911); *Erie R. Co. v. Wanaque Lumber Co.*, 75 N.J.L. 878, 69 Atl. 168 (1908). The consignee may waive his right to have the goods delivered at the usual place of delivery as he does, for example, when he refuses to receive freight consigned to him. *Central of Georgia Ry Co. v. Montmollen*, 145 Ala. 468, 39 So. 820 (1905). Also, where the carrier maintains merely a "flag station" and there is no depot nor agent, and there is an express understanding that such place shall be the destination of the freight, delivery on a siding or platform shall be considered sufficient. *Hill v. St. Louis S. W. Ry. Co.*, 67 Ark. 402, 55 S.W. 216 (1900). Further, if the consignee has knowledge of the place of delivery, that there is no agent nor depot, then even though there be no

express agreement, it has been held that an agreement by implication arises and that delivery on such a side track or platform is sufficient. *South and North Alabama R. Co. v. Wood*, 66 Ala. 167, 41 Am. Rep. 749 (1880). Supporting a delivery not made at a warehouse, depot, or team track, the reason is given that such a delivery is the best the carrier can make under the circumstances and that such delivery is within the contemplation of the parties. *Louisville & N. R. Co. v. Gilmer*, 89 Ala. 534, 7 So. 654 (1890). Delivery must also be at a place where it is suitable and convenient for the consignee to unload before demurrage charges may be collected. *B. & O. R. Co. v. James Fisher & Son*, 5 Ohio S. & C. P. 659, 3 Ohio N. P. 122 (1896). As to delivery by the carrier upon the consignee's privately owned side track, the courts generally hold that the carrier has a duty, when the freight is so consigned, to deliver it upon the private siding before any demurrage charges can be collected. Note (1919) 1 A.L.R. 1425.

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CHattel MORTGAGES—STOCKS OF GOODS TO BE SOLD IN TRADE—FRAUDULENT CONVEYANCES AND PREFERENCES.—The debtor was engaged in the retail hardware business. He owed the furnace company \$272 on open account for furnaces and furnace equipment purchased from the company for sale through the hardware shop. Without additional consideration, and at the furnace company's request, the debtor executed and delivered to the company to secure its open account a note and a chattel mortgage covering the debtor's stock in trade. The mortgage was filed within several days. Three months thereafter the debtor made an assignment for the benefit of creditors. The trustees for the creditors took possession of the store with all the fixtures, book accounts, and stock of goods, including the property covered by the chattel mortgage. The trustees refused to recognize the furnace company's claim for preference. Thereupon the furnace company took possession of the goods covered by the mortgage, apparently with the trustees' consent, and the trustees began this action, described as a replevin action, against the furnace company. The case was tried by the court. The trial judge found that the proceeds derived from the sale of goods in the course of business had not been applied on the mortgage debt, that no replacements to the stock had been made by the debtor, and that the proceeds had been used by the debtor for his own purposes. The court concluded that the mortgage was void as to creditors and ordered judgment for the trustees for possession of the goods or in the alternative for the sum of \$600. On appeal, *held*, judgment reversed and a new trial ordered; until it could be determined that the mortgagee had originally agreed to the debtor's unrestricted use of the proceeds of sales, or that the mortgagee had knowingly permitted such use, the security device was not a fraudulent conveyance. *Wymelenberg v. Badger Furnace Co.*, (Wis. 1936), 265 N.W. 718.

A chattel mortgage on a stock of goods to be sold in trade is a precarious security device. The physical security is disposed of by the debtor in the regular course of business. Replacements to the stock are after acquired chattels and a mortgagor cannot mortgage that which he does not have. *Chynoweth v. Tenney*, 10 Wis. 397 (1860). Such was the common law rule which has been changed by statute in Wisconsin as it pertains to stocks of goods to be sold in trade. WIS. STAT. (1935) § 241.14; *cf.* (1935) 19 MARQ. L. REV. 257. The debtor and creditor must, however, comply literally with the provisions of the statute or the security device is void. The mortgage is not merely ineffective against