

NEW YORK MARINE COURT

Rathbun v. Citizens' Steamboat Co. of Troy

1 N.Y. City Ct. Rep. 107 (1875) · Decided November 15, 1875

SUMMARY

The court holds that a carrier receiving goods marked C.O.D. acted improperly by delivering them in exchange for the consignee's uncertified check rather than collecting cash. The plaintiffs ratified the carrier's conduct by accepting and depositing the check without objection, thereby exonerating the carrier absent bad faith, and judgment was entered for the defendants. The text states that the decision was affirmed on appeal.

CASE DETAILS

COURT	New York Marine Court
WRITING FOR THE COURT	MoAdam, J.
JURISDICTION	New York
DECIDED	November 15, 1875
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs sued the carrier for damages after the carrier delivered a C.O.D. package upon receiving the consignee's uncertified check rather than money. The trial court entered judgment for the defendants.
PRECEDENTIAL VALUE	Published state trial-level opinion

TOPICS

contracts commercial commercial litigation breach of contract remedies

PRACTICE AREAS

commercial law contract law carriers and transportation agency and ratification

QUESTIONS PRESENTED

1. Whether a carrier that agreed to deliver merchandise C.O.D. breached its duty by delivering the package upon receipt of the consignee's uncertified check rather than money.
2. Whether the consignors ratified the carrier's unauthorized acceptance of the consignee's check by accepting and depositing the check without objection.
3. Whether that ratification relieved the carrier from liability for the unpaid check absent bad faith.

HOLDINGS

1. A C.O.D. instruction requires the carrier to collect the specified amount before delivery; receiving the consignee's uncertified check instead of money is unauthorized and does not constitute payment.
2. A consignor ratifies a carrier's unauthorized acceptance of a consignee's check by voluntarily receiving and depositing the check without objection.
3. The plaintiffs' ratification exonerated the carrier from liability for the unpaid check because no bad faith was charged.

KEY QUOTATIONS

“These letters and figures have a well-understood meaning among shippers, and indicate that the carrier is to collect the amount specified upon the package before delivering it” (1 N.Y. City Ct. Rep. at 107)

“The plaintiffs were under no obligation to accept the consignee’s check, and they might, by declining to receive it, have held the carrier for the money ; they? however, voluntarily elected to receive the check, and by so doing they ratified the unauthorized act of their agent (the carrier), and adopted the transaction as their own” (1 N.Y. City Ct. Rep. at 108)

“This act exonerated the carrier, in the absence of bad faith, and none is charged in the present case.” (1 N.Y. City Ct. Rep. at 108)

FACTUAL BACKGROUND

The defendants were common carriers transporting merchandise between New York and Troy. They accepted the plaintiffs' package marked C.O.D. for \$94.28 and agreed to collect that amount before delivery, but delivered the package after receiving the consignee's uncertified check payable to the plaintiffs' order. The carrier later delivered the check to the plaintiffs, who accepted and deposited it without objection; after the check was returned unpaid, the plaintiffs first repudiated the carrier's conduct and sued for damages.

PROCEDURAL HISTORY

The carrier delivered the package in exchange for the consignee's uncertified check. The plaintiffs accepted and deposited the check, later repudiated the carrier's acceptance when the check was returned unpaid, and commenced the action. The court held that the plaintiffs' acceptance of the check ratified the carrier's conduct and entered judgment for the defendants. The decision was later affirmed by the New York Common Pleas at general term and by the New York Court of Appeals, as reported at 57 How. Pr. 191.

DISPOSITION

other

CASES CITED

- Collender v. Dinsmore, 55 N.Y. 200
- Commercial Bank of Buffalo v. Warren, 15 N.Y. 577

OPINION

MOADAM, J.

MoAdam, J. The defendants are common carriers of merchandise for hire and reward, running freight boats between New York and Troy, upon the Hudson. They received a package from the plaintiffs, directed to R. A. Van Alstine, Troy, N. Y., marked C. O. D., \$94.28, which they receipted for and agreed to deliver C. O. D. These letters and figures have a well-understood meaning among shippers, and indicate that the carrier is to collect the amount specified upon the package before delivering it (*Collender v. Dinsmore*, 55 N. Y. 200).

The carrier in the present case disregarded this duty, and delivered the package upon receiving the consignee's uncertified check to the plaintiffs' order. This was unauthorized, and if the plaintiffs had not by their subsequent conduct ratified the carrier's unauthorized act, the plaintiffs' right to recover would seem clear. Upon the return of the boat to New York, however, the carrier delivered the check to the plaintiffs, who accepted it without objection, deposited it in their bank, and upon its return from Troy, protested for non-payment, the plaintiffs for the first time repudiated the defendant's act in receiving the check, instead of money, and thereupon commenced the present action -to recover the damages suffered in consequence.

The plaintiffs were under no obligation to accept the consignee's check, and they might, by declining to receive it, have held the carrier for the money; they? however, voluntarily elected to receive the check, and by so doing they ratified the unauthorized act of their agent (the carrier), and adopted the transaction as their own (*Commercial Bank of Buffalo v. Warren*, 15 N. Y. 577; *Dunlap's Paley's Agency*, 4 Am. ed. of 1856, notes on p. 171; *Story on Agency*, 8 ed. §§ 254-256).

This act exonerated the carrier, in the absence of bad faith, and none is charged in the present case. The defendants are, therefore, entitled to judgment. The above decision was, upon appeal, affirmed by the Hew York common pleas at general term, and by the Hew York court of ap^r peals (see report of case in 57 How. Pr. 191).

As to ratification, see also 18 Moak's English R. 317, where the authorities are collated.