UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 8 | Number 4 Article 13

6-1-1930

Carriers -- Allowance of Set-Off Against Freight Charges

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3. The court might render judgment for the holder for the whole amount of the check with leave to the drawer to satisfy it by assigning to the holder a portion of his deposit claim against the drawee bank equal to the amount of the check which has been dishonored. By this plan the case would be finally disposed of at once, and the amount of the plaintiff's recovery would be determined with mathematical accuracy. The loss which the plaintiff stood to suffer would be the exact amount intended by the Negotiable Instruments Law. And as the rule would have all the merits of speed and simplicity, it would seem a desirable substitute for jury guesses. The innovation might be put in force by a statute.[28]

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Carriers—Allowance of Set-Off Against Freight Charges

A shipper, sued for freight charges, attempted to set off damages arising from negligence and delay in shipment. A federal District Court held that he was not entitled to plead set-off.[1]

Defendant shipped grapes over plaintiff's line. Plaintiff delivered without collecting freight and brought suit for the charges. Defendant set up loss due to delay and negligent handling and asked for a set-off which was allowed by the United States Supreme Court.[2]

[28] The problem might be solved by an amendment adding the following to §186 of the N. I. L.: "Provided, however, that when such check is found not to have been presented within a reasonable time, and the drawer had the right at the time of presentment, as between himself and the drawee, to have the check paid, the drawer shall be entitled to be fully discharged from liability thereon by assigning to the holder thereof the portion of his claim against the drawee equal to the amount of the check."

This is somewhat similar to §74 of the English Bills of Exchange Act, which after stating, in effect, §186 of the N. I. L., adds: "The holder of such check as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such banker, to the extent of such discharge, and entitled to recover the amount from him."

This result may possibly be reached without an enabling statute by judicial decree at the time of trial. See Hawes v. Blackwell, 107 N. C. 196, 12 S. E. 245 (1890). However, constitutional objections might well be raised against such procedure.

There might be some ground for extending the language of the amendment above proposed to include also domiciled demand notes. See Note (1930) 8 N. C. L. REV. 184.

[1] Michigan Cent. R. Co. v. Carl & W. J. Piowaty, Inc., 36 F. (2d) 604 (N. D. Ill. 1929).

[2] Chicago & N. W. Ry. Co. v. Lindell, 50 Sup. Ct. 200 (1930).

These two cases, though representing opposing views, were decided only two months apart, the second being the first holding of the Supreme Court upon the question. Both the district courts and the various state courts have been nearly evenly divided in opinion.[3] The only decision[4] in a Circuit Court of Appeals forms the basis for the adverse holding of the first case here considered. It is there maintained that to allow a set-off would controvert the intention of Congress as expressed in the Interstate Commerce Acts to enforce uniform collection and prevent discrimination. Congress has attempted to destroy the practice of discriminating by means of rebates and allowances of claims for damages.[5] One device used in granting such rebates was for the shipper to file fictitious claims for damages.[6] Under the act of Congress a carrier cannot accept in payment for the transportation of interstate commerce anything but cash. If the shipper be allowed to set off claims for damages, the court must undertake the impossible task of holding the carrier to diligence and good faith in preparing and presenting its defense, in order to prevent the granting and receiving of rebates by insidious agreement between the parties.[7] So important is it that the collection of freight charges be uniform and above suspicion of favoritism that it seems against public policy to permit a counterclaim of this kind to be pleaded.[8]

The Supreme Court could not see that this manner of pleading was any more subject to collusion than any other and upheld the practicability of faster settlement of claims by the use of set-off and counterclaim.

The act[9] prohibiting carriers from refunding any part of charges does not prevent shipper from setting up counterclaim.[10] There is nothing in the letter or the spirit of this chapter which prevents the

[3] Pennsylvania R. Co. v. South Carolina Produce Ass'n., 25 F. (2d) 315 (E. D. S. C. 1928).

[4] Fullerton Lumber Co. v. Chicago, M., S. P. & P. R. Co., 36 F. (2d) 180 (C. C. A. 8th, 1929).

[5] Pennsylvania R. Co. v. South Carolina Produce Ass'n., *supra* note 3.

[6] Illinois Cent. R. Co. v. W. L. Hoopes & Sons, 233 Fed. 135 (S. D. Iowa, 1916).

[7] Chicago & N. W. Ry. Co. v. William S. Stein Co., 233 Fed. 716 (D. Neb. 1915); Johnson-Brown Co. v. Delaware, L. & W. R. Co. 239 Fed. 590 (S. D. Ga. 1917).

[8] *Supra* note 6.

[9] 28 U. S. C. A. §724 (Conformity of federal procedure to that of state in which district court is held); 49 U. S. C. A. §6 (7) forbidding carrier to refund in any manner any portion of charges does not prevent shipper setting up loss recoverable under par. 20 (11) as counterclaim.

[10] *Supra* note 2.

shipper from setting off damages of shipment against freight charges.[11] If in an action by the carriers for charges, a shipper cannot counterclaim for a cause of action ordinarily pleadable as such, then as a corollary, in an action by the shipper the carrier should not be permitted to counterclaim. There is no ground for differentiating or for treating suits by one wherein the other counterclaims as presumptively collusive.[12] It must be assumed that, when litigants come into a court, they are submitting a real controversy for settlement.[13] Adjustments of demands by counterclaims rather than by independent suit serves to avoid circuity of action and is encouraged by law.[14] Commendable economy and efficiency in judicial procedure would seem to justify the disposition of the entire related controversy in one action.[15]

G. A. LONG.

Conflict of Laws—Death by Wrongful Act—Limitations on Right of Action

Under the Florida laws, an action for damages for wrongful death may be brought at any time within two years after the death occurred.[1] The North Carolina wrongful death statute[2] specifies that the action must be brought within one year. More than one year, but less than two years, after a cause of action accrued in Florida, suit was instituted in North Carolina. *Held,* action barred.[3]

When common law actions are involved, the general rule is that the law of the place governs the right, and the law of the forum governs the remedy.[4] Since general statutes of limitation are procedural in nature, it follows that the limitation of common law actions is governed by the *lex fori.*[5] Thus, if action is barred by the statute of limitations of the forum, no action can be maintained

[11] Battle v. Atkinson, 9 Ga. App. 488, 71 S. E. 775 (1911); Pennsylvania R. Co. v. Bellinger, 101 Misc. Rep. 105, 166 N. Y. S. 652 (1917).
[12] Chicago & N. W. Ry. Co. v. E. C. Tecktonius Mfg. Co. 262 Fed. 715 (E. D. Wis. 1920).
[13] Wells Fargo & Co. v. Cuneo, 241 Fed. 727 (S. D. N. Y. 1917).
[14] North Chicago Rolling Mill Co. v. St. Louis Ore & Steel Co., 152 U. S. 596, 615-616, 14 Sup. Ct. 710, 715-716, 38 L. ed. 565 (1894).
[15] Payne, Director General v. Clark, 271 Fed. 525 (S. D. Cal. 1921).
[1] FLA. REV. GEN. STAT. (1920), §§4960-61, 2930 (6).
[2] N. C. CONS. STAT. ANN. (1919), §160.
[3] Tieffenbrun v. Flannery, 198 N. C. 397, 151 S. E. 857 (1930).
[4] Scudder v. Union Nat. Bank, 91 U. S. 406, 23 L. ed. 245 (1875); 1 WOOD, LIMITATIONS (4th ed. 1916) 62.
[5] McElmoyle v. Cohen, 13 Pet. 312, 10 L. ed. 177 (1839); Patton v. Lumber Co., 171 N. C. 837, 73 S. E. 167 (1916); Note (1900) 48 L. R. A. 625.