

Carriers Act, 1865

Preamble 1 - Carriers Act, 1865

CARRIERS ACT, 1865 CARRIERS ACT, 1865 3 of 1865 14th February, 1865 The defective State of the Law of India in respect of the liabilities of carriers, whether companies or individuals, has for some time past attracted the attention of the Governor General in Council, but it was thought desirable to postpone any enactment on the subject, until it should be seen whether the labours of Her Majesty's Commissioners for preparing a Body of Substantive Law would relieve the Indian Legislature from the necessity of special legislation. Meantime, however, the question has become pressing, from the increase in the numbers of carrying companies, from the transfer of part of the Government carrying business to one of them and from the prospect of Tramways being constructed under Act XXII of 1863 (to provide for taking land for works of public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken). The necessity for prompt legislation has further been urged on the Government in petitions, and by the Government of Madras in an official letter.. The Bill now published by the Viceroy's permission follows the principles, though not the form or language, of the English Statutes regulating the liability of carriers. The earlier sections extend to India the principle embodied in the English Statute 11 Geo. IV and I Will. IV. Chapter 68. They relieve carriers from the extraordinary liabilities which would be imposed on them by the delivery to them, without notice, of articles of peculiar value or perishableness. Any customers, delivering to the carrier any of the articles enumerated in the Schedule, must declare them, and then the carriers may charge at a higher rate for the additional risk, in conformity with a scale to be publicly exhibited in his place of business, under the ordinary law of contract, the carrier might relieve himself from the liability by such a notice but it would be necessary to bring the notice home to the customer by evidence. From the necessity of giving such evidence, the carrier will now be relieved by his enactment. By Section VI it is provided that the carrier shall not rid himself of his liability for articles, neither unusually valuable nor unusually perishable, by any public notice, but (unless he be the owner of a Tramway) he is permitted to modify his legal obligations by special contract. Section VII extends to Tramways constructed under Act XXII of 1863, the same rule which is applied to railways by Act XVIII of 1854. It seems highly expedient that the same law should, if possible, be made to govern both Railways and Tramways. The rule applicable to Indian Railway Companies is contained in Section XI of Act XVIII of 1854, and is as follows:- "The liability of such a Railway Company for loss or injury to any articles or goods to be carried by them other than those specially provided for by this Act, shall not be deemed or construed to be limited, or in anywise affected by any public notice given, or any private contract made, by them, but such a Railway Company shall be answerable for such loss or injury when it shall have been caused by gross negligence or misconduct on the part of their agents or servants. On this Section the Government of Madras observes: The first clause prohibiting any private contract in limitation of liability goes far beyond the Common Law of England and Statutes 17 and 18 Vic., Cap. 31, S. VII, which admits of such contracts if just and reasonable. It is difficult to see why a Railway company in India should be deprived of that power of protecting itself by special contract which a Railway Company in England possesses. If the latter clause of the section. which makes a company liable for gross negligence or misconduct of the agents, is meant to relieve them from liability in all other cases, it would be well to say so by distinct negative words. But it is very questionable whether so wide an exemption from responsibility is desirable or was intended. If, however, the word "only" be supplied after "answerable" in the last line but three of the extract from the Railways Act as printed above, the Section becomes intelligible. It limits the liability of Railways Companies to the consequences of gross negligence or misconduct on the part of their agents or servants but declares that from this liability so limited they shall not be allowed to relieve themselves by any kind of contract. There cannot indeed be much doubt that the intention of the Legislature was to place all Railway Companies in what was once supposed to be the exact position of a carrier who had contracted for himself as favourably as the law of England would permit. It was, in fact, long supposed in England that, while a carrier could by contract relieve himself from most of his

liabilities, his power of doing so slopped short of liability for negligence or misconduct. Such is the view of the law taken by Mr.Justice Storey in his "Commentaries on the Law of Bailnients"

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com