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Liability of Connecting Carriers for Injuries to Passengers and Damage to Freight

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LIABILITY OF CONNECTING CARRIERS FOR INJURIES TO
PASSENGERS AND DAMAGE TO LUGGAGE.

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THESIS PRESENTED BY
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FOR THE DEGREE OF MASTER OF LAWS.

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CORNELL UNIVERSITY.

SCHOOL OF LAW.

1895.
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PASSENGERS AND DAMAGE TO FREIGHT.

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Since the introduction of steam as a means of transportation there is no little confusion and contradiction of authority respecting the rules which govern the rights and liabilities of the parties who either desire themselves to be transported as passengers or put goods in the course of transportation to different places through connected lines associated in business of common carriers.

The subject will, as a matter of convenience, be treated in the converse order from that above named, considering first the subject of transportation of goods as freight. The disposition of the English courts since the establishment of the railway has seemed to be to regard carriers who receive goods, and book them for a certain destination as responsible throughout the entire route. Since the first case which assumed this position there has not been any manifest disposition to recede from it. The case was that of Luschemp v. Lancaster Junction R. R. Co., 3 H. & W. 421 in which it appears, a parcel was delivered at Lancaster to the Lancaster and Preston Junction R. R. Co. directed to a person at a place
in Derbyshire. The sender offered to prepay all charges for the entire distance but was advised by the booker to send it "collect" which directions were followed. The Lancaster and Preston Junction R. R. Co. were the proprietors of the line as far as Preston where the railroad united with North Union line and that afterwards with another line and so on into Derbyshire. The parcel was lost between Preston and Derbyshire. In an action against the Lancaster and Preston Junction R. R. Co. for the loss of the same the plaintiff was allowed to recover.

The judge in the course of his opinion says that if the party brings a parcel to a railroad station, knowing that the company only carries to a particular place and if the railroad receive and book it to another place to which it is directed, prima facie they undertake to carry to that other place and must therefore be liable for its loss wherever it may occur.

Following this decision and confirming it is the case of Watson v A. N. & E. R. R. Co., 15 Jurist 443 holding that where a railroad company receive goods at one terminus to carry them to another they are answerable for any loss that may occur between such points although it may be on a line of railway that does not belong to such company, and the receipt
of the goods is prima facie evidence of such liability.

This rule has been carried so far in the English courts that even where the loss is shown to have occurred upon one of the subsequent roads in the route it is held that the contract is exclusively with the first company and that there is no right of action in favor of the owner against any subsequent companies on the route.

A case supporting this extreme view is that of Bristol & Exeter R. R. Co. v. Collins, 7 H. of L. 104 in which it appears that, the station of Bath on the line of the Great Western R. R. Co., goods were received for the purpose of being forwarded to Torquay. The line of that company ends at Bristol, at which place the line of the Bristol and Exeter Co. begins. The goods would have had to have been put on a third road before reaching Torquay. The Great Western road received the carriage money for the whole distance from Bath to Torquay, and upon the arrival of the goods at Bristol they were put on the line of the Bristol and Exeter Co. where they were destroyed by fire. In an action against the latter company to recover compensation for the loss it was held that the contract was with the Great Western Company alone, and that the Bristol and Exeter Co. were not liable.
The difficulty and apparent injustice of this rule seems to have arisen out of the extreme views adopted in the case of Muschamp v The Lancaster and Preston Junction R. R. Co. and other cases above commented upon but the rule however being so firmly established by these leading decisions must be accepted as sound law in England.

The rule however as laid down in the Muschamp case has not been sanctioned by the weight of authority in this country. There are however many decisions in the several states in support of this rule. The reasons urged in favor of the same are various and forcible. It is said that the consignor cannot be supposed to know in the case of a continuous line who are the owners of its different portions. He may fairly assume that the first carrier owns the whole route or that he intends to represent and contracts upon that basis. Further it is argued that it is neither reasonable or just to construe the agreement as a contract with several different companies and to force the consignor to seek his remedy against the carrier on whose line the loss occurred. Any rule which should have the effect to defeat or embarrass the consignor's remedy would be in direct conflict with the principles and whole policy of the common law. A consignor com-
pelled to seek out the negligent carrier would find his task often difficult and sometimes impossible. He could hope for little aid from associate carriers and might be obliged to assert his claim for compensation against a distant party among strangers and in circumstances such as would discourage a prudent man and induce him to bear the loss rather than incur the expense and risk of pursuing his legal remedy under another rule.

Though there are many American decisions in harmony with the holding of Muschamp v The Railway, supra, I think there is none in which the rule has been carried to the extent of holding that the owner cannot come on any carrier by whose fault the loss or damage occurred. There are however numerous authorities in the United States in support of the general rule of that case that the receipt of the goods marked for a place beyond the line of the carrier who receives them, implies a contract to carry them to their final destination though no connection in business is shown with other carriers beyond, and though the transportation through is not paid in advance.

The rule was approved and adopted in the case of the Central Railroad v Johnson, 55 Ill. 333 in which it was do-
eided that where a carrier receives goods to carry marked for a particular place he is bound under an implied agreement from the mark or direction to carry and deliver to that place though it be a place beyond his own line of carriage. Also in Angel v Mississippi & Missouri R. R., 9 Iowa 437 it was decided that where a carrier receives goods marked for a particular place beyond the terminus of his route unaccompanied by any direction as to their transportation and delivery except as may be inferred from the marks by way of direction, he is prima facie bound to carry and deliver them according to such directions.

In New York a statute passed in 1847 and contained in Chapter 270 of the laws of that year provides that "Wherever two or more railroads are connected together, any company owning either of said roads, receiving freight to be transported to any place on the line of either of said roads so connected shall be liable as common carrier for the delivery of such freight at such place. In case any such company shall become liable to pay any sum by reason of the neglect or misconduct of any other company or companies, the company paying such sum may collect the same of the company or companies by reason of whose neglect or misconduct it became so liable."
In short it may be said that the rule in Muschamp v The Railway, supra, has been adopted and approved in general in the following states; Florida, Tennessee, Kentucky, Illinois, Iowa, Georgia, New Hampshire and New York. While in Kansas and South Carolina it is difficult to say whether the English rule has been followed or not, the decisions being very conflicting.

It is however argued in favor of the contrary doctrine or that which is sometimes known as the American doctrine, that it is neither just or equitable that the implied contract which was made by law for the parties, should be inconsistent and unreasonable to the occupation and usages of the trade of the receiving company. Carriers are often called upon to carry goods for every dealer and retailer and for many consumers, throughout the wide extent of the country. To hold him responsible for the goods of others with whom he has no connection and over whom he has no control and make him liable as common carrier for the safety of each of these parcels until it reaches its ultimate destination would be the short way to ruin him.

It would be impossible for him to carry on his business under the operation of such a rule. By the same principle
which would render a carrier liable for a short distance would continue such responsibility indefinitely. The just construction would be to limit the carrier's liability to his own route which he controls, on which he selects his own servants and provides the facilities for caring for and guarding the goods.

After this line of argument this doctrine has been sanctioned in North Carolina, Minnesota, Maine, Vermont, Pennsylvania, Rhode Island, Mississippi, Massachusetts, Michigan and Maryland.

A company, contracting to deliver goods at a certain place beyond its terminus, within a certain time will render itself responsible for delay in transportation over connecting roads.

Gray v Jackson, 5 N. H. 2.
Root v Railroad, 45 N. Y. 532.

By the weight of authority also, in those states where the acceptance of goods by the carrier marked to a destination beyond its own line, is held to render him responsible for their through transportation, it is competent for him by
special contract to limit his liability to his own line. His full duty is discharged in such a case when he delivers the goods to the connecting carrier.

INFERRENCE OF THROUGH CONTRACT.

It may be inferred from certain circumstances as from the naming of the destination that the contract is one to carry throughout to the place of delivery.

Collender v Darmore, 55 N. Y. 200.

This of course is a rebuttable presumption and may be overcome by evidence tending to show that the contrary was the true intent of the parties. Also a presumption arises that the receiving carrier intended to render itself responsible for the entire route, by the fact of its receiving freight charges for the whole distance, providing however there be no stipulation limiting its liability.

It is said in Railroad v. Pratt, 22 Wall. 123, that ordinarily it is the duty of the carrier in the absence of any special contract to carry safely to the end of its line and to deliver to the next carrier on the route beyond. In reference however to contracts for transportation over other lines such intention may be shown by express undertaking or by showing that the company held itself out as a carrier for
the entire distance, or receive freight charges for the entire
distance, or other circumstances indicating an understanding
that it was to carry throughout the entire route.

B. & P. Steamboat Co. v Brown, 54 Pa. 77.


It seems however that where the first company of several
lines contract to carry goods over the whole line, but at-
tempt to limit their liability by inserting in the bill of
lading, a clause, that the loss shall fall upon the road
where the damage occurs, will nevertheless, render all the
companies jointly liable.

In Miller v Douglass, 13 Fed. Rep. 37, where three rail-
road companies having connecting lines of road, contract to
transfer goods over the entire line, and said goods were de-
stroyed while in the custody of one of the companies, it was
held that the companies were jointly liable, notwithstanding
a clause in the bill of lading, providing that, that company
alone should be liable in whose charge the goods might be at
the time that the injury occurred.

**BURDEN OF PROOF.**

As to burden of proof in the case of loss of freight, the
weight of opinion seems to be that if there be evidence of
delivery to the first carrier and evidence of non-delivery at
the terminus the burden of proof is on the first carrier to
show that the loss did not occur while he had possession of
the same. He will be liable however in default on his part
of such evidence.

In the case of Dixon v The Richmond and Danville R.R. Co.
74 N.C. 538, the above proposition finds support, the facts
of which were; a piano was shipped in good order from Boston
to Greenboro, N.C. over several connecting lines. It was
in good order when it arrived in New York but was greatly
damaged when it was delivered by defendants, the last carrier
on the line at Greenboro. Under these circumstances it was
held that the burden of proving that the piano was injured on
some other of the connecting lines than their own was upon
defendants, and having failed to show this, they were liable
for the damage.

To precisely similar effect is the case of Laughlin v
Chicago and W. W. R. R. Co., 23 Wis. 204. Here goods in a
box were shipped over connecting lines, consisting of three
successive carriers and finally on delivery to the consignee
the box was found to have been opened and some of the articles
taken out. It was the holding of the court that in absence
of evidence to the contrary the jury might presume that the box remained unopened until it came into the custody of the last carrier and that while in his custody the loss occurred. The last carrier was accordingly held liable.

The New York authorities are of the same holding. It has been expressly decided that where goods are delivered to a railroad company to be transported by it and other connecting lines to the point of destination it was enough for the owner in an action against the last carrier for an injury occasioned to the goods in transit to show a delivery of them in good order to the first carrier. The defendant can then only escape liability by proving affirmatively that the loss did not occur on his line.

Smith v M. Y. C. R. R. Co. 43 Barb. 223.

As a result therefore of the foregoing review of the authorities of both England and this country upon the liability of connecting carriers for injury to or loss of freight the law may be stated substantially as follows: In England, from the earliest cases to the present day the holding seems to be, that the receiving company shall be held liable for any loss or damage wherever it may occur, and this is so, whether the receiving company accept freight charges for the
entire distance or not.

Also that the receiving company is liable to the exclusion of any of the subsequent carriers, notwithstanding that evidence is produced tending to show that the injury or loss actually occurred on some subsequent carrier's line.

This latter proposition is a severe and extreme view and has never been followed, I think, by any courts in this country. Nevertheless it has been the holding of many of our courts that the receiving company is liable for any loss or injury wherever it may occur where the evidence seems to show that it was the intention of the receiving company to render itself responsible for the entire distance.

There is however another line of authority in which it is held that that company is liable only, upon whose line the injury or loss actually occurred. This will be seen to be in direct conflict with the English decisions and many of the holdings in the United States. This doctrine however, has been recognized as the proper solution by the greater weight of authority. This of course, is the holding in cases where no stipulation has been made either way between the parties, in case of loss, and it follows therefore that in those jurisdictions where the law says the receiving company shall
be liable, such company may nevertheless protect itself by stipulation to that effect.

As a matter of fact, however, there is scarcely a contract to carry goods beyond the terminus of the line of the receiving company but that a provision is inserted as to where the liability shall fall in case of injury or loss, and the courts therefore at present are seldom required to do more in reaching a decision than to fairly construe the contract entered into between the parties.
LIABILITY OF CONNECTING CARRIERS
FOR INJURIES TO PASSENGERS.

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As the general duty of common carriers of passengers is different from that of common carriers of goods, so the implied contract resulting from the sale of through tickets for passengers is different. In the case of goods we have seen that taking pay and giving tickets or checks through binds the first company ordinarily for the entire route. But as to carrying passengers the rule is different. These through tickets in form of coupons which are purchased of the first company and which entitle the person holding them to pass over successive roads, sometimes for thousands of miles, in this country import commonly no contract with the first company, whereby such company will be liable for injury beyond its own line.

In Hartan v Eastern R. R. Col., 114 Mass. 44, it was held that though the first company may bind itself for the entire route, the mere sale of a ticket will not have that effect. Also in Straton v New York & New Haven R. R. Co., 2 E.D. Smith 184 it was held that each company is liable only for losses on its own line.
Knight v Portland etc. R. R. Co., 50 Me. 254.
Sprague v Smith, 20 Vt. 421.

But it seems that consolidated lines of travel consisting of different companies or natural persons originally, where the entire fare is divided ratably, and all losses are deducted, they constitute such a partnership, that in case of an injury, the several roads forming such combination are jointly liable and not the one simply upon whose line the accident occurred.

Champion v Bostwick, 11 Wendell 572.

But there are authorities to the effect that where several proprietors of different portions of a through line, by agreement among themselves, appoint a common agent at each end of the route to receive the fare and give through tickets, this does not of itself constitute them partners, as to passengers, so as to render each one liable for losses occurring on any portion of the route.

Ellsworth v Taritt, 20 Ala. 733.
Briggs v Tanderbilt, 19 Barb. 222.

The law as found in the English reports seems also to
differ from that of this country in case of injury to passengers, as we have seen it did in the case of freight.

In the Great Western R. R. Co. v Blako, 7 H. & N. 337, which seems to state the law as it exists at present in England, that where the first company sold a ticket through an entire line composed of different companies working in connection and the same carriage going through, they thereby assumed the responsibility of assuring the tracks to be kept in working condition throughout the entire route and that where a passenger was injured upon the track of another company by the train coming into collision with a stationary engine left on the track by the servant of that company, without fault of the owner of the train, it was held that the first company was liable.

And in a later case in the Exchequer Chamber, it was considered that the company issuing the ticket was responsible for any negligence which ensued throughout the journey, without regard to their being any business connection between the companies.

The American courts seem to follow the English view as in the liability in case of injury to passengers where the company issuing the tickets, used the track of another company,
by running the entire train over such road. It seems that
where the transportation is carried on between two points,
under such circumstances and the train is under the exclusive
control of the company's servants, upon whose road-bed the
train is run, the latter company, that is the owner of the
road will be liable. But on the contrary, if the train is
under the exclusive control and management of the first com-
pany, it assumes the responsibility for any injury from what-
ever source. And it further seems to be true that both com-
panies will be jointly liable where the train is run and man-
aged by the servants of both companies.

Nashville etc. R. R. Co. v Carroll, 6 Heisk. (Tenn.) 347.
Harper v Newport etc. R. R. Co., 143 S. W. 346. (Kt. 1890)

A company moreover which allows another railway company
to use its tracks is not liable for injuries resulting
from its own negligence in the care of the road-bed and
tracks, but is liable for injuries to its own passengers even where
the result of the negligence of the other company.

A leading case in Georgia seems to be in support of the
above view in which it holds, that a railroad company which
permits other companies or persons to exercise the franchise
of running cars over their road, the company owning the road
will be liable for any injury to its own passengers, though it occur by reason of the negligence of the company so using its tracks, as if the injury had resulted from its own negligence. In other words, the company so permitting the use of its road will be absolutely liable for any injury to its own passengers whether it result from its own negligence or that of the other company.


And as to the liability of one company permitting another company to use its tracks, for injuries to passengers of such other company by reason of the first company's negligence in keeping the tracks and road-bed in repair, seems to be supported in the early case of Murch v Concord R.R. Co in which 29 N.H. 3, we find the proposition of law established that seems to hold good by the weight of authority at the present day. It was held in that case, that a railroad company which permits another company to use its tracks is not duty bound to keep its tracks in repair, such as will render them liable for injuries sustained by passengers of the company so using the tracks and the company so leasing its road do not bind itself to keep the tracks in repair nor to change its existing state. A company so contracting to let another company--
use its tracks is under no obligation or duty to the passengers of such other railroad. The claim of such passenger if injured is on the company with whom the contract was made.

In England therefore, it seems that the company with which the contract to carry the passenger is made will be held liable for any injury wherever it may occur, while in this country the contrary is the general holding of the courts. That is, the mere selling of a ticket entitling a person to transportation beyond the terminus of the road so issuing the ticket will not, ipso facto, render it liable beyond such terminus. However a company may stipulate as to where the liability will rest in case of an injury, which will be binding on all concerned.

It has been my purpose in the above production to review the authorities upon the subject and to extract if possible, the law as to the liability of connecting carriers in case of loss of freight or injury to passengers as the weight of authority seemed to dictate, without going into a detailed consideration of this broad branch of the law or attempting to reconcile many decisions in apparent conflict.

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