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CARRIERS — COLLECTION OF FREIGHT CHARGES — LIABILITY OF CONSIGNEE WHO RECONSIGNS SHIPMENT — The original shipper consigned a shipment of melons, which was subsequently reconsigned to defendant, who in

turn reconsigned the shipment to an Indiana firm over the lines of plaintiff railroad, stating in the diversion order "Protect the through rate. All charges to follow car." The Indiana firm accepted the shipment and paid freight charges with a check, which was dishonored on due presentment, the drawer having gone bankrupt. *Held*, plaintiff may recover freight charges for the whole trip from defendant. *Pennsylvania R. R. v. Seiter*, 61 Ohio App. 497, 22 N. E. (2d) 843 (1939).

An agreement to pay freight charges is ordinarily implied from the consignee's acceptance of property transported under a bill of lading which specifies they are to be paid by him; in any event, the consignee's acceptance of the shipment renders him prima facie liable for the freight charges by virtue of his presumed ownership.[1] When the person named as consignee orders a reconsignment, he must do so either as owner or as a volunteer, in absence of an express showing of agency. The courts will not assume this to be the act of a meddler, and hence they hold the consignee must have accepted the shipment, the reconsignment being such an exercise of dominion over the shipment as would be consistent with ownership. The consignee is therefore liable for freight charges accruing up to the point of reconsignment.[2] As a reconsignor, the consignee is likewise liable for charges for the haul from the point of reconsignment to the new destination, since consignors, impliedly owners of the shipment, ordinarily become liable for freight charges, in absence of explicit provisions in the bill of lading to the contrary.[3] To escape liability for freight charges, the consignee must give the carrier sufficient notice that he is not the owner of the shipment but only an agent.[4] It has been held with almost absolute uniformity that the words "Protect through rate. All charges follow" are insufficient to relieve the consignee of the implication of ownership and liability for freight charges.[5] Even orders to deliver the shipment only on payment of freight by the new consignee are deemed insufficient to relieve the original consignee of liability

[1] 9 AM. JUR. 794 (1937); 13 C. J. S. 753 (1939).

[2] 9 AM. JUR. 797 (1937); also see the excellent annotation in 105 A. L. R. 1216 (1936).

[3] 9 AM. JUR. 792, 797 (1937); 105 A. L. R. 1216 (1936); as to the normal liability of consignors, see Watkins, "Liability of Consignors and Consignees of Interstate Shipments for Unpaid Freight Charges," 6 MINN. L. REV. 23 (1921).

[4] Some courts require very explicit notice of agency here. In Pennsylvania R. R. v. Lord & Spencer, (Mass. 1936) 3 N. E. (2d) 231, the consignee had notified the carrier he was only an agent, having no beneficial interest, and at first refused delivery. Then the consignee reconsigned the shipment without making any mention in the order of the previous notice of agency. The consignee was held by reconsignment to render himself liable for all freight charges.

[5] Wabash Ry. v. Horn, (C. C. A. 7th, 1930) 40 F. (2d) 905; Pennsylvania R. R. v. Rothstein, 116 Pa. Super. 156, 176 A. 861 (1935); New York Central R. R. v. Little-Jones Coal Co., (D. C. Ill. 1938) 25 F. Supp. 337; New York Central R. R. v. Platt & Brahm Coal Co., 236 Ill. App. 150 (1925); Pennsylvania R. R. v. Lord & Spencer, (Mass. 1936) 3 N. E. (2d) 231; New York Central R. R. v. Brown, 281 Mich. 74, 274 N. W. 715 (1937). Contra: Chesapeake & Ohio R. R. v. Southern Coal, Coke & Mining Co., 254 Ill. App. 238 (1929), which distinguishes the Platt & Brahm case, supra, on the ground that there the consignee purchased f. o. b. point of shipment, and hence would be estopped to deny liability for freight charges.

for the freight charges.[6] Orders like these are deemed mere instructions for the benefit of the carrier, not the consignor. The court in the principal case thus had ample authority for its decision. Unfortunately, however, in 1931 in the case of *Erie R. R. v. Price*,[7] this same court had held that the implication of liability for freight charges by giving a reconsignment order was negatived by the words "Protect the through rate; all charges follow." [8] The court in the principal case avoided the authority of the *Price* case by stating that the cause of action in the latter case had accrued in 1926 before the Newton amendment of 1927 to the Interstate Commerce Act [9] had been enacted. Thus the Newton amendment was held to require a finding for the plaintiff carrier in the principal case. On its face, however, the amended portions would seem to apply only to the consignee who receives delivery, and to relieve such consignee only of charges not billed against him at the time of delivery. Two cases [10] have expressly held that the Newton amendment does not apply at all to the case of

[6] New York Central R. R. v. Warren Ross Lumber Co., 234 N. Y. 261, 137 N. E. 324, 24 A. L. R. 1160 at 1163 (1922); New York Central R. R. v. Frank H. Buck Co., 2 Cal. (2d) 384, 41 P. (2d) 547 (1935).

[7] 11 Ohio L. Abs. 656 (1931). The reconsignor here was not the consignee under the original bill of lading, but was the indorsee of the bill of lading and had it in his possession. That such a person ordinarily becomes liable for freight charges on reconsignment, see C. L. Hils Co. v. Louisville & Nashville R. R., 28 Ohio App. 459, 162 N. E. 761 (1928).

[8] The court relied principally on Louisville & Nashville R. R. v. Central Iron & Coal Co., 265 U. S. 59, 44 S. Ct. 441 (1924), which holds that delivery of goods for shipment does not necessarily import an obligation of the shipper to pay freight charges. There the bill of lading was not signed by the shipper, the consignee was not the shipper, there was no express agreement by shipper to pay freight, the goods were sold to consignee under an agreement that the latter pay freight, and the consignee's transferee received delivery. The shipper was held not primarily liable.

[9] 44 Stat. L. 1447 (1927), 49 U. S. C. (1934), § 3(2). The controlling portions of the amendment are: "Where carriers . . . are instructed by a shipper or consignor to deliver property . . . to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made."

[10] Pennsylvania R. R. v. Lord & Spencer, (Mass. 1936) 3 N. E. (2d) 231; Pennsylvania R. R. v. Rothstein & Sons, 109 Pa. Super. 96, 165 A. 752 (1933). The court in the latter case stated that the portions of the amendment referring to reconsignment and diversion do not refer to the liability of a reconsignor, but to the fact of a reconsignment; the liability defined is still that of the consignee who actually takes delivery.

the consignee who reconsigns shipment and does not receive delivery, but only to cases where the ultimate consignee is a mere agent such as a commission merchant. In this situation, then, if the carrier has due notice of such fact of agency, this type of consignee is held liable only for freight and demurrage charges billed against him at time of delivery and no others.[11] On perusal of the wording of the amendment, it would seem that the latter view is correct and that the Ohio Court of Appeals misconstrued the amendment,[12] even though such construction was deemed necessary to attain the result most other courts are reaching. It will be interesting to observe in the future the case in which a consignee reconsigns with orders to let the charges follow the car, and where no interstate shipment is involved in any of the successive consignments, and then to note whether the Ohio court will feel constrained to follow *Erie R. R. v. Price*, or whether it will expressly overrule, or treat as overruled, that case.[13]

[11] Such cases were New York Central & Hudson River R. R. v. York & Whitney Co., 256 U. S. 406, 41 S. Ct. 509 (1920); Pennsylvania R. R. v. Titus, 216 N. Y. 17, 109 N. E. 857 (1915), noted 27 HARV. L. REV. 83 (1913). In these cases the carrier by mistake collected less charges than were actually due. After the commission merchants had remitted the proceeds of the sale to the consignors, the commission merchants were held liable for the previously unknown balance due on freight charges, and the courts cited here held the commission merchants liable for such balance irrespective of contract and as a matter of law. It is probably this situation the Newton amendment was intended to correct.

[12] In Pennsylvania R. R. v. United Collieries, Inc., 59 Ohio App. 540, 18 N. E. (2d) 1000 (1938), which had facts identical to those of the principal case and was decided the same way, the Ohio court apparently had such construction of the Newton amendment in mind, for it disregarded the authority of cases reaching a contrary result on the ground that they were decided before the enactment of that Amendment. In this case, however, Erie R. R. v. Price, 11 Ohio L. Abs. 656 (1931), was not brought to the consideration of the court.

[13] In the principal case, the court used language indicating that it no longer approved the result of the Price case and deemed it contrary to the best authority; it is not at all unlikely that in the future in a proper case, the court will expressly overrule the Price case.