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CARRIERS — TERMINAL AND CARFLOAT BRIDGE — WHETHER "TERMINAL" FACILITIES OR "INTERCHANGE" FACILITIES — The New York Central R. R. brought a suit in admiralty to recover damages to its carfloat No. 37 resulting from a collision occasioned solely by the negligence of the Long Island R. R.'s tug Talisman and those in charge of her. At the time of the collision the carfloat No. 37 was moored in a carfloat bridge of the Long Island's terminal at Long Island City where it had been received in connection with the transportation in interstate commerce of freight cars and freight. The New York Central had received a notice that the Long Island would not be responsible for any damage to floating equipment while lying at the above terminal, whether arising through the negligence of the latter company or through other causes. No reply was made to the notice. The court *held* that the terminal and carfloat bridge were not "terminal facilities" the use of which by another carrier could be required "on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required," within the intention of sec. 3, par. 4 of the Interstate Commerce Act; rather, that they were mere interchange facilities and came within the requirement of sec. 3, par. 3 that all carriers shall, according to their respective powers, "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines. . . . " Thus the Long Island R. R. was responsible for its negligence since, as it was not in a position to dictate terms, the New York Central R. R. was under no obligation to repudiate those proposed or to reply in any manner to the notice. *The No. 37*, (U. S. 1933) 53 Sup. Ct. 328.

This decision involves the difference between the use of terminal facilities, on the one hand, and the performance of a transportation service to a connecting carrier, on the other.[1] Carriers in the discharge of their duties to the public owe to shippers of freight destined to points on other railways the duty to deliver to connecting lines for further transportation, and the connecting lines are corres-

[1] See 13 MICH. L. REV. 596 (1915) for a discussion of this difference in regard to switching privileges.

pondingly bound to receive and carry.[2] There was no duty at the common law to provide physical connections to facilitate the interchange of traffic.[3] The Interstate Commerce Act empowered the Commission to require such connections.[4] Some courts hold that a railroad company, having a terminal wharf on a navigable stream or other body of water, cannot grant one steamboat line exclusive access to that wharf to the prejudice of competing lines,[5] but other courts entertain the opposite view.[6] The federal courts seem to consider that if a railroad provides adequate facilities at its regular station and terminal and in addition constructs a line to a wharf, that the wharf does not thereby become public but is a mere private facility or convenience that the carrier does not have to share with the public or with any carriers other than those it may choose for the purpose of effecting further transportation.[7] This opens the door to discrimina-

[2] Railroad Co. v. Manufacturing Co., 16 Wall. (83 U. S.) 318 (1872); Myrick v. Michigan Cent. R. R., 107 U. S. 102, 1 Sup. Ct. 425 (1883); Atchison, T. & S. F. R. R. v. Denver & N. O. R. R, 110 U. S. 667, 4 Sup. Ct. 185 (1884); Dunham v. Boston & Maine R. R., 70 Me. 164, 35 Am. Rep. 314 (1879); Andrus v. Columbia & O. Steamboat Co., 47 Wash. 333, 92 Pac. 128 (1907); McMillan v. Chicago, R. I. & P. Ry., 147 Iowa 596, 124 N. W. 1069 (1910); Wyman, "The Obligations of Public Services to Make Connections," 22 HARV. L. REV. 564 (1909).

[3] Wisconsin, M. & P. R. R. v. Jacobson, 179 U. S. 287, 21 Sup. Ct. 115 (1900); Atchison, T. & S. F. R. R. v. Denver & N. O. R. R., 110 U. S. 667, 4 Sup. Ct. 185 (1884); Wyman, "The Obligations of Public Services to Make Connections," 22 HARV. L. REV. 564 at 571 (1909).

[4] Alabama & V. Ry. v. Jackson & E. Ry., 271 U. S. 244, 46 Sup. Ct. 535 (1926). See United States v. New York Cent. R. R., 272 U. S. 457, 47 Sup. Ct. 130 (1926), for physical connections between the lines of a rail carrier and the dock of a water carrier.

[5] Indian River Steamboat Co. v. East Coast Transp. Co., 28 Fla. 387, 10 So. 480, 29 Am. St. Rep. 258 (1891); Macon, D. & S. R. R. v. Graham & Ward, 117 Ga. 555, 43 S. E. 1000 (1903); Coeur d'Alene & St. Joe Transp. Co. v. Ferrell, 22 Idaho 752, 128 Pac. 565 (1912); 43 L. R. A. (N. S.) 965 n. (1913); West Coast Naval Stores Co. v. Louisville & N. R. R., (C. C. A. 5th, 1903) 121 Fed. 645, aff'd (C. C. A. 5th, 1904) 128 Fed. 1020; Oregon Short Line & U. N. Ry. v. Ilwaco Ry. & Nav. Co., (C. C. W. D. Wash. 1892) 51 Fed. 611. See also Hobart-Lee Tie Co. v. Stone, 135 Mo. App. 438, 117 S. W. 604 (1909).

[6] Louisville & N. R. R. v. West Coast Naval Stores Co., 198 U. S. 483, 25 Sup. Ct. 745 (1905), reversing (C. C. A. 5th, 1903) 121 Fed. 645 and (C. C. A. 5th, 1904) 128 Fed. 1020. *Cf.* Southern Pac. Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, 31 Sup. Ct. 279 (1911); Weems Steamboat Co. of Baltimore City v. People's Steamboat Co., 214 U. S. 345, 29 Sup. Ct. 661, 16 Ann. Cas. 1222 (1909); Ilwaco Ry. & Nav. Co. v. Oregon Short Line & U. N. Ry., (C. C. A. 9th, 1893) 57 Fed. 673, reversing (C. C. W. D. Wash. 1898) 51 Fed. 611 (In this case the Ilwaco Ry. & Nav. Co. owned both the railway and the steamship line connecting with the wharf in question); Alexandria Bay Steamboat Co. v. New York Cent. & H. R. R. R., 18 App. Div. 527, 45 N. Y. S. 1091 (1897). See also 2 HUTCHINSON, CARRIERS, 3d ed., sec. 946 (1906); 37 HARV. L. REV. 377 (1924).

[7] Louisville & N. R. R. v. West Coast Naval Stores Co., 198 U. S. 483, 25 Sup. Ct. 745 (1905); Ilwaco Ry. & Nav. Co. v. Oregon Short Line & U. N. Ry., (C. C. A. 9th, 1893) 57 Fed. 673. For a related problem see United States v. Baltimore & O. R. R., 231 U. S. 274, 34 Sup. Ct. 75 (1913).

tion.[8] Connections between railroads by means of carfloats were involved in the instant case rather than connections between water carriers and railroads. The facilities used to bring about this interchange of traffic are more closely analogous to those involved in switching operations (which under some conditions are considered to be transportation facilities that railroads are bound to extend equally to all)[9] than to those used in the interchange between vessels and cars. The surrounding circumstances must be taken into account to determine whether the arrangement is in its essence a use of terminal facilities or a mere transportation service by a connecting carrier. The Long Island R. R.'s terminal and carfloat bridge constituted the place and means long used for such interchange and the only place at which the New York Central R. R. could tender the traffic.[10] The more willing the courts are to consider connecting equipment to be mere interchange or transportation facilities, the more the policy of preventing discrimination will prevail over that of maintaining the right of private property.[11]

H. I. S.

[8] In view of the fact that one of the main purposes of the Interstate Commerce Act is to prevent discrimination, there is much to be said for the decisions of the lower federal courts. See n. 5, supra.

[9] 13 MICH. L. REV. 596 (1915).

[10] For other circumstances that have been given weight see 13 MICH. L. REV. 596 (1915).

[11] See further in this connection 13 MICH. L. REV. 596 (1915).