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Liability of Carrier For Loss or Damage to International Shipments

Thomas R. Skulina*

THOUGH SHIPMENTS BY TRUCK or rail are usually interstate or intrastate, many such shipments traverse the Mexican and Canadian borders or involve delivery from or to an ocean vessel for international transshipment.

The federal laws which set out the liability of a carrier for interstate shipments are known as the Carmack Amendment and the Cummins Acts.¹ This article will deal with the regulation of the so-called "International Shipment."

A myriad of problems arises in the determination of what law is applicable to a shipment that either originated in or is destined for a foreign nation. Though the Federal statute itself is relatively simple,² the case law has left some unanswered questions.

The original Carmack Amendment of 1906 pertained solely to property in transportation from a point in one state to a point in another state or, in other words, to interstate shipments. There was no provision directly relating to transportation involving a foreign country.

In 1915, the original Carmack Amendment was amended by the first Cummins Act so as to expand to include shipments from any point in the United States to any point in an adjacent foreign country. The present law has left this portion of the first Cummins Amendment unchanged.³

It is apparent that there is a limit to the patterns of movement a shipment can make when it involves movement in some part in the United States.

These may be characterized as:

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¹ 49 U.S.C. § 20(11). Skulina, *Liability of a Carrier for Loss and Damage to Interstate Shipments*, 17 *Clev. Mar. L. R.* 251 (1968); reprinted 14 *The Chronicle* 2-23 (1968); and in *Freight Transportation—Legal, Regulatory & Economic Aspects* (Practicing Law Institute, Commercial Law and Practice No. 21, 1969), pp. 73-94. See also, Skulina, *Law Regarding Liability of a Carrier For Loss Or Damage to Interstate Shipments*, *Freight Transportation*, *id.* at 57-71; Lust, *Loss and Damage Claims* (2d Ed. 1919); Oleck, *Cases on Damages*, 60, 63 (1962); note, *Liability of the Common Carrier for Loss or Damage to Goods in Ohio*, 10 *West. Res. L. R.* 276 (1959).

² *Ibid.*: "Any common carrier . . . subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor . . . for any loss, damage, or injury to such property caused by it or by any common carrier, . . . to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading. . . ."

³ *Id.*

- (1) a totally intrastate movement;
- (2) an interstate movement not involving a foreign nation;
- (3) shipment to an *adjacent* foreign country from the United States;
- (4) shipment from an *adjacent* foreign country to the United States;
- (5) shipment to a *non-adjacent* foreign country from the United States;
- (6) shipment from a *non-adjacent* foreign country to the United States;
- (7) shipments in bond regardless of origin or destination that involve movement in the United States.⁴

From this it would appear that it would be a simple matter to ascertain the origin and destination of a given shipment and then apply the appropriate provision of the Carmack Amendment, as amended. It will be seen, however, that the determination of the proper classification of a movement is not so simple and has led to a split of opinion in the United States Supreme Court.

Interstate and Intrastate Movements

The rules pertaining to intrastate and interstate movements are well settled once the evidence of the case justifies identifying the movement as solely within one state or that between two or more states. The legal effect of this distinction is that latter type of movement is subject to federal rather than state law.

The primary modification of common law afforded by the Carmack Amendment is that a *prima facie* case of negligence is established when it is proven that the shipment was received at the point of origin in good condition and was received in a damaged state at the point of destination. Though many carriers might have been involved in the movement, the plaintiff by reason of the Statute can sue either the initial or the delivering carrier. The shipper does not have to concern himself with the fact that the negligent act might have been performed by an intermediate carrier.

Under state laws, however, the carrier is liable only for its own negligence and, therefore, it is necessary to prove a *particular* carrier received a shipment in good condition and delivered it in damaged condition.⁵

⁴ See *Louisiana Southern Ry. Co. v. Anderson Clayton & Co.*, 191 F.2d 784 (5th Cir. 1951) and, 187 F.2d 908 (5th Cir. 1951). A shipment might also be considered a switching movement. This category of a movement is a further delineation of an intrastate move and also goes to the question whether a particular carrier qualifies as a delivering carrier as contemplated by the Carmack Amendment.

⁵ *Ibid.*

International Movements

With respect to the remainder of categories of movement enumerated earlier, that is, outside of interstate and intrastate movements, it is difficult to state a general rule.⁶

It would appear that the simplest situation is where a shipment is made from a point in the United States to a point in an adjacent foreign country. Justice Frankfurter considered this problem in the case of *Mexican Light & Power Co. v. Texas Mexican Ry. Co.*⁷ which involved a shipment from Sharon, Pennsylvania to a point in Mexico. The damage occurred on a Mexican railroad. Suit was brought against the Texas Mexican Railroad, which was the last carrier in the United States to handle the shipment. (The movement from Pennsylvania to Laredo, Texas, the point where the defendant received the shipment, involved the use of a series of carriers.)

The shipper sued the Texas railroad as it had issued a second and new bill of lading at its yards. It had then processed the goods through customs and delivery to the last carrier, namely, the National Railways of Mexico, upon whose lines the damage was incurred.

Justice Frankfurter, in the majority opinion, reasoned that the Carmack Amendment sought a unity of responsibility. Under this Act, as amended, the bill of lading determines the rights of the consignee. Under the law the initial carrier is liable for damage done on the lines of connecting carriers.

Thus the Carmack Amendment was held to be applicable here even though a second bill of lading had been issued. No matter what convenience the consignee obtained, the Court decided that unless the connecting carrier issuing the second bill of lading receives consideration in addition to its proportion of the through rate, the second bill of lading is of no weight.

Chief Justice Vinson dissented and was joined by Justice Reed. They argued that the second bill of lading helped to clear customs and thereby constituted consideration. They felt that the record showed that this form of expedition would promote the export business of the Texas Mexican Railway.

Hence, under the majority opinion, the recourse of the shipper was to bring his action against the initial carrier who accepted the shipment in Pennsylvania rather than a connecting carrier, which the Texas railroad was determined to be under the facts. The original bill of lading established the initial carrier under the Act and the second one was not

⁶ Miller, *Law of Freight Loss and Damage Claims* 87 (2d ed. 1961). Miller attempts to state a general rule, namely: "Generally the Carmack Amendment and the liability it imposes upon common carriers have no application to foreign shipments, that is, shipments originating at or destined for points outside the United States." He qualifies this rule by: "This is subject to a certain amount of qualification, however."

⁷ 331 U.S. 731, 67 S. Ct. 1440 (1947).

to be considered. This is important as both the majority and the dissent agree that the bill of lading determines the type of movement. The disagreement among the members of the Court in the *Mexican Light and Power Co.* case was over the issue whether in fact the chain of commerce had been broken upon the issuance of the subsequent bill of lading thereby making its issuer an initial carrier rather than a mere connecting carrier.⁸ There was apparently a unanimity of opinion that the language of the Act with respect to its application to shipments from this country to an adjacent country controlled, once a shipment is clearly characterized as a through shipment moving in the aforementioned fashion.

Hence, it is clear that where a carrier issues a through bill of lading for goods that will travel from the United States to either Mexico or Canada, its liability as an initial carrier under the Carmack Amendment continues even though the damage occurs in either Mexico or Canada, and it should also be pointed out that a through bill of lading will keep a shipment interstate even though a subsequent bill without consideration is issued.⁹

The next question then is whether the Carmack Amendment applies to a shipment that arrives in this country *from* one of the *adjacent* countries.

Earlier cases take the position that the Carmack Amendment does not apply to damage that occurs while the lading is being shipped from a point in Canada or Mexico to a point in the United States on a through bill of lading.¹⁰ The United States Supreme Court, however, has not ruled on this precise point.¹¹

There is, however, an earlier United States Supreme Court decision which raises an approach to these cases that casts some doubt on the status of the law.

This case, namely, *Galveston, Harrisburg & San Antonio Ry. Co. v.*

⁸ *Id.* Both the majority and dissenters did disagree over the application of Missouri, Kansas & Texas R. Co. v. Ward, 244 U.S. 383, 37 S. Ct. 617 (1917). This case involved a subsequent bill of lading issued on a solely interstate movement and the dissent felt that it was not applicable. Justice Frankfurter relied upon it and held that the Mexican Power Light Co. case was even stronger for the principle of no consideration since in the Ward case it was at least alleged that a special rate approved by the Interstate Commerce Commission would govern the second bill of lading, however, no proof had been entered that it affected the through rate on the original bill of lading.

⁹ Missouri, Kansas & Texas R. Co. v. Ward, *supra* n. 8.

¹⁰ Strachman v. Palmer, 177 F.2d 427 (1st Cir. 1949); Alwine v. Pennsylvania R. Co., 141 Pa. Super. 558, 15 A.2d 507 (1940).

¹¹ In Reider v. Thompson, 339 U.S. 113, 70 S. Ct. 499 (1949); rehear. den. 339 U.S. 936, 70 S. Ct. 663 (1949), the majority opinion distinguished the Alwine case (n. 86) from the case before it, but stated that it did not need to determine in the Reider case whether the Alwine case was correctly decided. Reider involves a separate bill of lading at port. Alwine involves a through bill.

Woodbury,¹² was decided by the Court shortly after the passage of the Cummins Amendment. It is peculiar in that it involves a round trip that started from Canada to Texas, with a stopover there, and a return to Canada. The plaintiff was a passenger and lost her baggage on the return leg of her trip. She had made no declaration of value and the carrier contended that under federal law she was bound by the limitation in the tariff. The plaintiff argued that because of the type of move she made, from an adjacent foreign country and returning to the same country, it was not covered by the Carmack Amendment. She contended further that Texas law should apply. Under this law no declaration of value was necessary, a carrier was forbidden to limit his liability for baggage loss and the tariff requirements as to stated value were void.

The Court ruled that the federal law applied. Reference was made to § 1 of the Transportation Act,¹³ which is the underlying declaration of the entire Act of which the Carmack Amendment is a part. This decision demonstrates that the various provisions of the Act should be read together to achieve an overall purpose of a uniform policy of transportation. Since § 1 provides that the Interstate Commerce Act applies to all shipments whether to or from any foreign country insofar as the transportation takes place in the United States, the Court held that the test to be applied is not the direction of the movement, but the field of the carrier's operation. Hence, since the transportation was subject to regulation, both parties were subject to the published tariffs. Since the carrier was permitted by the Cummins Amendment to limit its liability and had done so in the tariff, the Court ruled against the plaintiff.

This case does not offer a blanket rule that the Carmack Amendment applies to shipments that originate in an adjacent foreign country, but rather that the movement of commerce within the United States under the aforementioned circumstances is regulated by the Interstate Commerce Act and, therefore, carrier and shipper alike must adhere to the lawfully published tariffs and the bill of lading which was issued in accordance with the tariffs.

The *Woodbury* case leaves an area of confusion when viewed in light of later Supreme Court decisions. This conflict comes over its ultimate reference to the Cummins Amendment which permitted the limitation. Actually, as it will be shown, the liability stems from the contract of carriage. Since the movement was regulated at the time damage was sustained the fact that the bill of lading was in accord with the authorized tariff would be basis enough to settle the differences between the

¹² 254 U.S. 357, 41 S. Ct. 114 (1920).

¹³ 49 U.S.C. § 1(1) Carriers subject to regulation . . . (b) ". . . From one State . . . to any other state . . . or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation or transmission takes place within the United States."

parties and there was no need to stretch the thin membrane of the Carmack Amendment to cover the situation.

It appears, however, that where a shipment originates in another country and a domestic bill of lading is issued in this country, the Carmack Amendment applies.¹⁴ If, on the other hand, only one "straight" bill of lading is issued in the country of origin the Carmack Amendment would not apply.¹⁵

The next situation to be considered is the shipment which originated in this country for ultimate destination to a non-adjacent foreign country.

Prior to discussing that case it should be noted that before it was decided a Fourth Circuit United States Court of Appeals case took the same approach as did the Supreme Court in the *Woodbury* case.¹⁶ That case occurred at the time when the railroads were being run by the government. A shipment of coal bound for export to a non-adjacent foreign country was appropriated by the government for the railroad's use. It was held that the limitations of value in the bill of lading did not apply since the Carmack Amendment does not pertain to exports to non-adjacent countries. Actually, the shipper could have recovered under the rule that limitations of value in a bill of lading do not apply where the carrier converts the goods to its own use, but the court chose to talk in terms of the Cummins Amendment rather than referring to the contract of carriage and the common law rule that eliminates limitations of liability under these circumstances.

In *Missouri Pacific Railroad Co. v. Porter*,¹⁷ the carrier issued an export bill of lading in two parts, namely, one part for the inland route from Earle, Arkansas to Brunswick, Georgia and the second part for the ocean voyage to Liverpool, England. The bill contained an exemption of liability for fire occurring in Brunswick. A fire not caused by the carrier damaged the cotton lading. Under Arkansas law such a limitation of liability would be invalid.

The Court held categorically that the Carmack and Cummins Amendments did not apply to shipments on a through bill of lading originating with interstate rail transportation and continuing on ocean transportation to a non-adjacent foreign country. The Court referred to § 1(6)¹⁸ of the Act which relates to the general regulation of issuance, form and substance of bills of lading. The Court held that provision of the Act is broad enough to give validity to the provision exempting the

¹⁴ *Yeckes-Eichenbaum v. The Texas Mexican Railway Co.*, 165 F. Supp. 204 (S.D. Texas 1957).

¹⁵ *Condakes v. Smith*, 281 F. Supp. 1014 (D. Mass. 1968).

¹⁶ *Dexter & Carpenter v. Davies*, 281 F. 385 (4th Cir. 1922).

¹⁷ 273 U.S. 341, 47 S. Ct. 383 (1927).

¹⁸ 49 U.S.C. § 1(6).

carriers in this instance. Since Congress had entered the field of regulation the state law has no application. Thus, the effect of the Carmack Amendment was felt even though technically it did not apply. Interestingly enough, despite this decision of applicable regulatory law, no act of Congress or of the Interstate Commerce Commission had prescribed a bill of lading for this kind of move.¹⁹

To this point all the various types of movements have been discussed except the situation of an import from a non-adjacent foreign country and the specialized situation of a shipment in bond.²⁰ The law is clear that once a shipment is designated as being in bond while it is in this country, and where subsequently there is no delivery or change of title but merely a series of different carriers assisting in a continuous transportation from one country to another, the federal regulatory acts discussed in this paper do not apply.²¹ This is true even if the property came from an adjacent foreign country for transferral to a point in an adjacent foreign nation.²²

With respect to imports from non-adjacent countries, the United States Supreme Court was faced with the problem in the case of *Reider v. Thompson*.²³ This case arose upon appeal from a district court's dismissal of an action on the grounds that the Carmack Amendment did not apply. The United States Fifth Circuit Court of Appeals²⁴ affirmed the trial court and the United States Supreme Court reversed with Justice Frankfurter dissenting.

The facts of the case were that a shipment of skins and wool had been shipped from Buenos Aires, Argentina to Boston, Massachusetts by way of the port of New Orleans, Louisiana. The holder of the bill of lading sued the railroad which received the goods at New Orleans. He claimed the essentials of a prima facie case under the Carmack Amendment, namely, the goods were in good condition when received in New Orleans and were found damaged on arrival in Boston.

The ocean bill of lading indicated the Port of Discharge as New Orleans and also showed that the lading was shipped to the order of The First National Bank of Boston. Notice of arrival was to be addressed to Rudolph Reider, the plaintiff, at Boston, Massachusetts, if the goods were consigned to "Shipper's Order." The domestic bill of lading issued by the railroad at New Orleans recited that the goods were received

¹⁹ In the Matter of Bills of Lading, 64 I.C.C. 347.

²⁰ See 19 U.S.C. § 1551, which authorizes the Secretary of the Treasury to designate a carrier that has made application to be a carrier of bonded merchandise. See also 19 U.S.C. §§ 1552, 3, 4, 5 and 6.

²¹ *United States v. Philadelphia & R. Ry. Co.*, 188 F. 484 (D.C.E.D. Pa. 1911).

²² *Canales v. Galveston, Harrisburg & San Antonio Ry. Co.*, 37 I.C.C. 573 (1916).

²³ *Supra* n. 12.

²⁴ 176 F. 2d 13 (5th Cir. 1948).

from H. P. Lambert & Co. and consigned to same at Boston. The Fifth Circuit considered this movement as one made under a through bill of lading, or, in other words, a "through foreign shipment."²⁵ The Appellate Court then applied the doctrine of *Missouri Pacific Rd. Co. v. Porter*,²⁶ which was discussed earlier.

The Supreme Court majority held that the characterization of the shipment as foreign or domestic was made to determine liability. The Court held that the bill of lading was not a through bill from Buenos Aires to Boston. The contract for ocean carriage terminated at New Orleans and the subsequent bill of lading was not a "supplement," but a new bill of lading. It was pointed out that: "The test is not where the shipment originated, but where the obligation of the carrier or receiving carrier originated."²⁷

The Court stated that the carrier here is not held responsible for the negligence of the ship, if any, since it was necessary for the plaintiff to prove as a part of his prima facie case that the goods were in good condition when received by the railroad. The Court reiterated that: "The purpose of the Carmack Amendment was to relieve shippers of the burden of searching out a particular negligent carrier from among the often numerous carriers handling an interstate shipment of goods."²⁸

Justice Frankfurter dissented and relied on the *Porter* case. He argued that the Court had considered the regulatory scheme of the Interstate Commerce Act in its entirety and arrived at the conclusion that the Carmack Amendment does not apply to an unbroken transaction of commerce with a non-adjacent foreign country. He opposed taking the Carmack Amendment out of context of the regulatory scheme and remarked that: "A legal faggot ought not to be broken into verbal sticks."²⁹

Conclusion

The Supreme Court has in effect amended the Carmack Amendment once any justification lies for positing the obligation of a carrier as beginning in this country. There is left, therefore, the problem of guessing which shipments may be considered by the Court as through shipments as opposed to those movements of commerce which the Court decides to view as segments rather than a single movement.

It is true that the contract of carriage, namely, the bill of lading, should determine the liability of the parties. This bill, as long as it co-

²⁵ *Id.*

²⁶ *Supra* n. 17.

²⁷ *Reider v. Thompson, supra* n. 11.

²⁸ *Id.*, 119.

²⁹ *Id.*

incides with the authorized published tariff, should, in accordance with the Interstate Commerce Act, govern the issue or damage where an interstate movement is made, or where a foreign country is involved. The bill of lading actually will incorporate most of the Carmack Amendment among its provisions.

That is not to say that the Carmack Amendment should be utilized in every instance. Congress indicated its clear intention to limit the application of this provision. Without a change in the Act itself, a shipment from a foreign country destined for a point in the United States should invoke the Carmack Amendment only when a domestic bill of lading is issued.

Whether the Carmack Amendment applies should concern even parties who have a bill of lading that in effect reiterates the Amendment for a serious question of jurisdiction might arise if the grounds for jurisdiction in a federal court is that the action is governed by a federal statute.

The lawyer, therefore, who represents either a carrier or a shipper in a matter involving loss or damage to an international shipment, must carefully review the shipping documents and satisfy himself as to the character of the move and the applicability of federal law.³⁰

³⁰ One type of movement not discussed is that involving prison-made goods. See 49 U.S.C. § 60.