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CARRIERS; EXCEPTIONS IN BILL OF LADING. In *Fairbanks & Co.* v. *Cincinnati, N. O. & T. R. Ry.*, 81 Fed. 289 (Ohio), (May 17, 1897), it was held that a common carrier's exemption from liability for loss from "accidents to boiler and machinery" did not cover the case of a broken axle.

It is well settled that exemptions in favor of a common carrier in bills of lading are to be strictly construed against the carrier, and that any doubt or ambiguity therein is to be resolved in favor of the shipper: *Black* v. *Transportation Co.*, 55 Wis. 319; 13 N. W. 244; *Railway Co.* v. *Talbot*, 39 Ark. 524; *Norman* v. *Binnington*, 25 Q. B. D. 475, 477; *Taylor* v. *Steam Co.*, L. R. 9 Q. B. 546, 549; *Burton* v. *English*, 12 Q. B. D. 218, 224; *Cream City R. R. Co.* v. *Chi., M. & St. P. Ry. Co.*, 63 Wis. 93; 23 N. W. 425. "And when the particular dangers or risks against which the carrier has specifically guarded himself in his receipt are followed by more general and comprehensive words of exemption, the latter are to be construed to embrace only occurrences *ejusdem generis* with those previously enumerated, unless there be a clear intent to the

contrary:" Hutch. Carr. §§ 275, 276; *Hawkins* v. *Railway Co.*, 17 Mich. 57; *The Caledonia*, 157 U. S. 124; 15 Sup. Ct. 537.

Light is thrown on the meaning of the phrase "accidents to boiler and machinery," when we note that the bill of lading applies to carriage by sea and land. The juxtaposition of the words "boiler" and "machinery" shows that machinery refers to the group of mechanical parts connected with the boiler and steam supply by which power is generated and applied and the vessel is propelled through the water. The term must have the same limitations when applied to a train of cars. Hence "machinery only includes the mechanical instrumentalities present in the locomotive or directly connected therewith and necessary for the propulsion of the train. An axle of a car certainly cannot be included within the term.

Judgment in court below for defendant reversed, and new trial ordered.

TAXATION; EXEMPTION OF RAILROAD PROPERTY. It has been said that property, indispensably necessary to the operation of a railroad, is exempt from taxation in the absence of any provision contained in the charter of the corporation. Applying this test, the Superior Court of Pennsylvania held—reversing the decree of the court below—repair shops of a railroad used exclusively for repairs, and in which no new stock was built, exempt from local taxation: *Western N. Y. and Pennsylvania Railway Co.* v. *County of Venango*, 5 Pa. Superior Ct. R. 304 (July 23, 1897).

The reasoning by which the court arrived at this conclusion is indicated by the following excerpt from the opinion of Mr. Justice Orlady. "Public policy requires that everything which tends to increase the danger of travel upon railroads should be prevented. The propelling power used in hauling the numerous freight and passenger trains at a high rate of speed; the responsibility for safe roadbed, engines, and cars, require that the railroad company shall have as means to meet these responsibilities, and to discharge these duties, the fullest opportunities with the freest use which is deemed necessary to the safe management of the road. Given an engine or car derailed, or parts of an engine or car broken, then repair shops as such, and storage-houses for duplicate parts of engines and cars, necessary machinery and appliances, become as indispensably necessary to the proper exercise of the corporate franchises of the railroad company, in the discharge of their duty to the public, as are passenger, freight, and water stations, tanks, and tool-houses along the line of their roads:" *Schuylkill Bridge Co.* v. *Frailey*, 13 S. & R. (Pa.) 422 (1825); *Worcester* v. *Western R. R. Co.*, 4 Met. (Mass.) 564 (1842); *R. R.* v. *Berks County*, 6 Pa. 70 (Woodward dissenting), 1847; *Vermont Cent. R. R. Co.* v. *Burlington*, 28 Vt. 193 (1855); *Illinois Cent. R. R. Co.* v. *McLean County*, 17 Ills. 296 (1855); *Shamokin Valley R. R.* v. *Livermore*, 47 Pa. 465 (1864); *Worcester Co.* v. *Worcester*, 116 Mass. 193 (1874);

States v. *Middle Twp.*, 38 N. J. L. 270 (1876). While the decisions cited uphold the conclusion reached by the court, cases are not wanting in which such exemption has been denied; it cannot be said, therefore, that the exemption is sustained by weight of authority: *Phila. R. R.* v. *Burgess*, 2 Gill (Md.), 355 (1844); *Louisville, etc., Canal Co.*, v. *Com.* 7 B. Mon. (Ky.), 160 (1846); *Providence R. R. Co.* v. *Wright*, 2 R. I. 439 (1853); *Marine R. R. Co.* v. *Portland*, 57 Me. 444 (1854); *R. R.* v. *Connelly*, 10 Ohio, 160 (Sutliff dissenting) (1859); *Burlington R. R.* v. *Spearman*, 12 Ia. 112 (1861); *Orange, etc. R. R. Co.*, v. *Alexander*, 17 Gratt. (Va.) 176 (1867); *Boston R. R. v. Lowell R. R.*, 124 Mass. 368 (1878); *People* v. *Comm'rs of Taxes*, 82 N. Y. 460 (1880); *P. C. & R.* v. *Vandyke*, 137 Pa. 249 (1890).

EQUITABLE ASSIGNMENT. In *Clark* v. *Ligna Iron Co.*, 81 Fed. 310 (June 1, 1897), the Circuit Court of Appeals has made a very broad application of the doctrine of equitable assignment. The Ligna Iron Company, being a debtor to one Clark, and a creditor of one Vandevort and others of its stockholders, made a contract with Clark, for a present consideration, to undertake to collect the amount due by Clark by litigation, if necessary, to be placed in the hands of Clark's attorney. It was also argued in the contract that, if any money was collected by the company from Vandevort, it should be paid to Clark, and that, if any judgment was obtained against Vandevort, it should be assigned to Clark on request.

Clark then appointed an attorney, who brought suit against Vandevort in the name of the iron company, and obtained a judgment. At this time the company was placed in the hands of a receiver, and after that the attorney collected the amount of the judgment and paid it to Clark. The receiver sued Clark to recover the judgment, and Clark's defence was that the contract made by the iron company was an equitable assignment of its claim against Vandevort. The judgment below was for the plaintiff.

The Court of Appeals said that, according to the contract made, not a dollar of the claim collected by the judgment was to come into the company's hands, but that, after the judgment was recovered, the plaintiff was bound to assign such judgment to Clark, as a mere formal duty to clothe Clark with the legal ownership, for the equitable ownership already vested in him.

As the judgment was not an asset of the company, it could not be relieved of its duty to Clark by the appointment of a receiver.

The former English doctrine was that an order payable out of a particular fund would operate as an assignment of the fund, but that a mere promise to pay out of such a fund would not: *Bradley's Case*, Ridgeway, 194 (1744); Bispham's Equity (Fifth Edition), pp. 249–50.

This rule has been followed in America: *Christmas* v. *Russell*,

14 Wall. 69 (1871). In that case it was held that a mere promise, though of the clearest and most solemn kind, to pay a debt out of a particular fund, is not an assignment of the fund even in equity. To make an equitable assignment there should be such an actual or constructive appropriation of the subject-matter as to confer a complete and present right on the party meant to be provided for. If the holder of the fund retain control over it, that is fatal to its being an equitable assignment.

Christmas v. *Russell* (*supra*) has been generally followed in this country, and the lower court, in the case under discussion, relied upon it in giving judgment for the plaintiff for want of a sufficient affidavit of defence. According to the terms of the agreement between Clark and the iron company, it is a promise to use every effort to collect the amount due, to let Clark appoint an attorney to sue, if necessary, and to pay over to Clark all the money collected by the iron company from its stockholders. The suit is brought in the name of the promisor, the iron company, and the company is to collect the judgment by its attorney and pay it to Clark, and, therefore, the lower court held that the control had not passed from the company, but that the agreement was purely executory, as an intention to create a present assignment could not be inferred from the terms expressed; and, therefore, according to the rule of *Christmas* v. *Russell* (*supra*), this was not an equitable assignment.

The Court of Appeals, in reversing this decision, seems to have gone over to the later English doctrine, as expressed in *Rodick* v. *Gandell*, 1 DeG. M. & G., 763 (1851), a promise to pay out of a particular fund does operate as an assignment. The Court of Appeals says: "As against Vandevort the legal ownership and right of action had remained in the trustees, but when the right of action was merged in the judgment—and that, too, by the action of attorneys of *cestui que trust*—the iron company was a mere dry trustee, whose sole remaining duty was to assign such judgment on request," thereby considering that the duty of the iron company to assign *in futuro* was sufficient to constitute a valid present equitable assignment.

FOREIGN CORPORATIONS; SERVICE OF SUMMONS ON OFFICER TEMPORARILY WITHIN THE JURISDICTION. In the case of *Farrell* v. *Oregon Gold Mining Co.*, 49 Pac. 876 (July 31, 1897), the Supreme Court of Oregon held, that a foreign corporation doing business in Oregon is subject to its laws, and hence, as there is no special law relative to service upon it, a service upon its president is *prima facie* sufficient, though the return does not show he was authorized to represent the corporation, in view of the statutes providing for such service upon domestic corporations.

The question was raised on a motion to vacate a judgment entered against the defendant corporation by default. It does not appear whether the corporation was actually doing business in the State

at the time of the service, but the court seems to treat it as a fact. At any rate, the court disregards the question whether the president was in the State on the business of the corporation or not, and seeks to draw an analogy between a domestic and foreign corporation, so far as the president's authority to receive service is concerned. The principle laid down is rather broader than the facts of the case warrant.

There is considerable confusion in the law on this question. The distinction would seem to be, that so long as a corporation confines its operation to the State within which it is created, it cannot be sued in a State where it has no office or transacts no business, by serving process on its president or other officer when accidentally present within such State: Thompson on Corporations, § 7994; *Moulin* v. *Trenton Mut., etc., Co.*, 24 N. J. L. 221; *Camden Rolling Mill Co.* v. *Swede Iron Co.*, 32 N. J. L. 15 (1867); *U. S.* v. *American Bell Telephone Co.*, 29 Fed. 17 (1886). But when a foreign corporation sends its officers and agents into another State, and establishes its business there, it is liable to be brought into the courts of such State by a service of process upon such officers so acting for it: *St. Clair* v. *Cox*, 106 U. S. 350 (1882).

Sometimes the amount of business done by a foreign corporation in a State, where it is sought to be held by service on its president or other officer, is important: *Clews* v. *Woodstock Iron Co.*, 44 Fed. 31 (1890).

In some jurisdictions it has been held, that, under various legislative acts, service upon the president or other officer of a foreign corporation is good even though that officer be in the State temporarily and on no business of the corporation: *Pope* v. *Terre Haute Car Co.*, 87 N. Y. 137 (1881); *Hilles* v. *R. R.*, 70 N. Y. 223 (1877); *Iron Co.* v. *Construction Co.*, 14 Am. & Eng. Corp. Cases, 16 (Mich., 1886); *First Nat'l Bank* v. *Burch*, 80 Mich. 242 (1890). In Pennsylvania such service is not good unless the corporation has an actual place of business within the State: *Phillips* v. *Library Co.*, 141 Pa. 462 (1891). See also *U. S. Graphite Co.* v. *Pacific Co.*, 68 Fed. 442 (1895). By far the greater weight of authority is in favor of the proposition that service on an officer of a foreign corporation who is temporarily in the jurisdiction not on business for the corporation is valid: *St. Clair* v. *Cox*, 106 U. S. 350 (1882); *Fitzgerald, etc., Co.* v. *Fitzgerald*, 137 U. S. 98 (1890); *Goldey* v. *Morning News*, 156 U. S. 518 (1894); *Rust* v. *Waterworks Co.*, 70 Fed. 129 (1895); *Middebroke* v. *Ins. Co.*, 14 Conn. 301 (1841); *Latimer* v. *R. R.*, 43 Mo. 105 (1868); *Peckham* v. *North Parish*, 16 Pick. 274 (1834); *Minnesota* v. *Imp. Co.*, 26 Minn. 233 (1879); *Ins. Co.* v. *Carrugi*, 41 Ga. 671 (1871); *Fox* v. *Hale, etc., Co.*, 41 Pac. 308 (Cal., 1895); *Gravely* v. *Southern Ice Machine Co.*, 16 So. Rep. 866 (Louisiana, 1895).