CHAPTER 13

Carriers Generally

ARTICLE 1

General Provisions

**SECTION 58‑13‑10.** Opening or injuring package, parcel or baggage by employee of carrier unlawful.

 It is unlawful for any agent, servant, baggage master, or other person in the service or employment of a carrier of persons or property for hire, carelessly, negligently, or wilfully to open, break into, or injure a package, parcel, or baggage while in the custody or under the control of the common carrier.

 A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than two years, or both.

HISTORY: 1962 Code Section 58‑10; 1952 Code Section 58‑10; 1942 Code Section 1694; 1932 Code Section 1694; Cr. C. ‘22 Section 640; Cr. C. ‘12 Section 665; 1909 (26) 161; 1972 (57) 2630; 1993 Act No. 184, Section 254, eff January 1, 1994.

CROSS REFERENCES

Criminal offenses involving injury to or destruction of property, etc., see Section 16‑11‑10 et seq.

Regulation of use of name or trade name by household goods carriers in advertising or soliciting intrastate business, see Section 39‑15‑910.

Library References

Carriers 21(1), 397.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 333, 610, 613 to 620.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 3, Common Carriers.

**SECTION 58‑13‑20.** Wilful or reckless injury to baggage by baggage master unlawful.

 Any baggage master or other person whose duty it is to handle, remove or take care of the baggage of passengers who shall wilfully or recklessly injure or destroy any trunk, valise, box, package or parcel while loading, transporting, unloading, delivering or storing it shall be punished by a fine not exceeding fifty dollars or imprisonment not exceeding thirty days.

HISTORY: 1962 Code Section 58‑579; 1952 Code Section 58‑579; 1942 Code Section 1695; 1932 Code Section 1695; Cr. C. ‘22 Section 641; Cr. C. ‘12 Section 666; Cr. C. ‘02 Section 475; G. S. 1450; R. S. 372.

CROSS REFERENCES

Criminal offenses involving injury to or destruction of property, etc., see Section 16‑11‑510 et seq.

Library References

Carriers 21(1), 397.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 333, 610, 613 to 620.

**SECTION 58‑13‑30.** Fraudulently evading toll or fare or riding on train that does not carry passengers unlawful.

 Whoever fraudulently evades or attempts to evade the payment of any toll or fare, lawfully established, for the carrying of passengers, by giving a false answer to the collector of the fare, by traveling beyond the point to which fare has been paid or otherwise attempting to ride without paying the toll or fare, by riding without permission on trains that do not carry passengers or by concealing himself upon or about any train with intent to evade the payment of lawful toll or fare shall be guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than fifty dollars or be sentenced to imprisonment or labor on the chain gang for not more than thirty days. But when the alleged violation of law is based upon riding upon a train or car of a common carrier without permission or authority the punishment for such trespass shall not be greater than imprisonment for five days in the county jail or the payment of a fine not exceeding five dollars. In no case shall any defendant convicted of any such trespass be sentenced to service upon any chain gang in this State.

HISTORY: 1962 Code Section 58‑552; 1952 Code Section 58‑552; 1942 Code Section 1707; 1932 Code Section 1707; Cr. C. ‘22 Section 653; Cr. C. ‘12 Section 678; Cr. C. ‘02 Section 483; G. S. 1517; R. S. 1732; 1898 (22) 776; 1932 (37) 1437.

CROSS REFERENCES

Constitutional provision for regulation of common carriers, see SC Const. Art. IX, Section 1.

Criminal offenses involving fraud, etc., generally, see Section 16‑13‑10 et seq.

Library References

Carriers 22, 249.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 320, 333, 495 to 496, 499 to 502.

NOTES OF DECISIONS

Private actions 1

1. Private actions

A carrier, which acted with unreasonable haste in ejecting a passenger who had mislaid her ticket, is guilty of a delict, for which punitive damages may be recovered. Williams v. Atlantic Coast Line R. Co. (S.C. 1914) 99 S.C. 397, 83 S.E. 604.

In an action for the wrongful ejection of a passenger who had mislaid her ticket, evidence held to take to the jury the question whether it was the exercise of the highest degree of care to eject the passenger so soon after leaving the place of departure. Williams v. Atlantic Coast Line R. Co. (S.C. 1914) 99 S.C. 397, 83 S.E. 604.

In an action by a passenger for damages caused by her wrongful ejection because she had temporarily mislaid her ticket, the charge of the court held free from error. Williams v. Atlantic Coast Line R. Co. (S.C. 1914) 99 S.C. 397, 83 S.E. 604.

**SECTION 58‑13‑40.** Certain provisions not applicable to water carriers.

 The provisions of Section 58‑13‑30 and of Articles 3, 5, 7, 9 and 13 of this Chapter, other than Sections 58‑13‑270 and 58‑13‑280 shall not apply to any common carriers by water routes.

HISTORY: 1962 Code Section 58‑553; 1952 Code Section 58‑553; 1942 Code Section 7161; 1932 Code Section 7161; Civ. C. ‘22 Section 3883; Civ. C. ‘12 Section 2569; 1904 (24) 671; 1912 (27) 630; 1915 (29) 152.

Library References

Ferries 35.

Shipping 169.

Westlaw Topic Nos. 172, 354.

C.J.S. Ferries Section 34.

C.J.S. Shipping Section 402.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 9, Exempt Carriers Under South Carolina Law.

ARTICLE 3

Required Prompt Shipments

**SECTION 58‑13‑110.** Time within which common carriers must transport freight requiring prompt shipment.

 Every common carrier doing business in this State shall, if notice be given it that prompt shipment is required, transport to its destination all freight received by it for transportation within this State within a reasonable time after receipt thereof, to wit: Between points not over one hundred miles apart, seventy‑two hours; between points over one hundred and not over two hundred miles apart, ninety‑six hours and between points over two hundred miles apart, one hundred and twenty hours. The nearest route by railroad shall be taken in each case as the distance between the points. When requested any such common carrier shall insert in the bill of lading the words “prompt shipment required,” which shall be conclusive evidence of such notice and each such common carrier shall extend such notice to its connecting line or be liable for the consequences of its failure to do so.

HISTORY: 1962 Code Section 58‑561; 1952 Code Section 58‑561; 1942 Code Section 7160; 1932 Code Section 7160; Civ. C. ‘22 Section 3882; Civ. C. ‘12 Section 2568; 1904 (24) 671.

Library References

Carriers 96.

Westlaw Topic No. 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 48, Delay in Transportation or Delivery.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Proof of actual sale price of cotton not necessary, in action for damages for unreasonable delay in transportation. Middleton & Co. v. Atlantic Coast Line R. Co. (S.C. 1925) 133 S.C. 23, 130 S.E. 552.

Construction. This section [Code 1962 Section 58‑561] is a penal statute, and is to be strictly, but not unreasonably, construed. Middleton & Co. v. Atlantic Coast Line R. Co. (S.C. 1922) 118 S.C. 351, 110 S.E. 796. Carriers 2

Notice for prompt shipment. Written notice that prompt shipment is required is essential to the applicability of this section [Code 1962 Section 58‑561]. Middleton & Co. v. Atlantic Coast Line R. Co. (S.C. 1922) 118 S.C. 351, 110 S.E. 796.

In an action under Civ.Code 1912, Sections 2568, 2569 (See Code 1942, Sections 7160, 7161), for damages for delay in the delivery of a shipment of goods under bill of lading marked “Prompt shipment required,” recovery might be had without proving the value of the goods. Weinraub v. Southern Ry. Co. (S.C. 1916) 103 S.C. 264, 87 S.E. 1009.

Proof of injury by delay in shipping. Under this section [Code 1962 Section 58‑561] and Code 1962 Sections 58‑562 to 58‑564, the holder of a bill of lading can recover the statutory penalty given by Code 1962 Section 58‑562 without proving any injury by delay in shipping. Muckenfuss Mfg. Co. v. Charleston & W.C. Ry. Co. (S.C. 1909) 82 S.C. 177, 63 S.E. 747.

But it is not necessary that the carrier be required by the shipper to insert in the bill of lading “prompt shipment required,” where there is other evidence of such notice to the carrier. Jamison v. Southern Ry. (S.C. 1907) 77 S.C. 216, 57 S.E. 768.

2. Constitutional issues

Interstate shipping. A shipment from a point within this State through a portion of another State to a point within this State is an interstate shipment, and the statute does not apply. Hunter v Charleston & W. C. R. Co., 81 SC 169, 62 SE 13 (1908). Traynham v Charleston & W. C. R. Co., 92 SC 43, 75 SE 381 (1912). Frasier & Co. v Charleston & W. C. R. Co., 81 SC 162, 62 SE 14 (1908).

Constitutionality. This section [Code 1962 Section 58‑561] does not fix an arbitrary standard of what is a reasonable time within which a shipment shall be transported. Middleton & Co. v. Atlantic Coast Line R. Co. (S.C. 1922) 118 S.C. 351, 110 S.E. 796.

This section [Code 1962 Section 58‑561] and Code 1962 Sections 58‑562 to 58‑564 are not invalid in singling out railroads from other common carriers of freight and establishing an unreasonable and arbitrary classification of those who shall be subject to its provisions, in violation of Section 1, Art 14, of the Federal Constitution, since the same regulations could not be applied to transportation of freight by railroads as could be applied to express companies and carriers of goods by water, as what would be a reasonable regulation in one case would not be so in another, because of different conditions and instrumentalities. McCutchen v. Atlantic Coast Line R. Co. (S.C. 1908) 81 S.C. 71, 61 S.E. 1108.

**SECTION 58‑13‑120.** Penalty for failure to transport promptly.

 Any such common carrier failing to comply with the provisions of Section 58‑13‑110, except for good and sufficient cause the burden of proof of which shall be on the common carrier so failing, shall be subject, in addition to the liabilities and remedies otherwise existing for unreasonable delay in the transportation of freight, to a penalty of five dollars per day for every day of delay in excess of the time limited, to be recovered by any cosignee who may be injured in any way by such delay or by the owner or holder of the bill of lading in any court of competent jurisdiction. But the sum of the penalty recovered shall not exceed the value of the goods and transportation charges thereon.

HISTORY: 1962 Code Section 58‑562; 1952 Code Section 58‑562; 1942 Code Section 7161; 1932 Code Section 7161; Civ. C. ‘22 Section 3883; Civ. C. ‘12 Section 2569; 1904 (24) 671; 1912 (27) 630; 1915 (29) 152.

CROSS REFERENCES

Proof of injury by delay in shipping, see Section 58‑13‑110.

Library References

Carriers 20(1).

Westlaw Topic No. 70.

C.J.S. Carriers Section 332.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 52, Connecting Carriers.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Loss of freight. This section [Code 1962 Section 58‑562] does not apply to loss of freight. Action cannot be maintained for penalty by consignee after accepting compensation for loss. Macon v Southern Ry. Co., 81 SC 167, 62 SE 6 (1908). Cousar Mercantile Co. v Southern Ry. Co., 82 SC 307, 64 SE 391 (1909).

The value of the goods lost need not be proven by the plaintiff. Weinraub v. Southern Ry. Co. (S.C. 1916) 103 S.C. 264, 87 S.E. 1009.

In an action against a carrier for delay in delivering a shipment, evidence held not to show wantonness or willfulness of the carrier in failing to trace the goods after they were lost. Green v. Atlantic Coast Line R. Co. (S.C. 1909) 83 S.C. 498, 65 S.E. 639.

Special damages cannot be recovered for delay of a carrier in shipping goods unless notice of the circumstances by reason of which special damages would result from delay was given the carrier at the time of shipment. Green v. Atlantic Coast Line R. Co. (S.C. 1909) 83 S.C. 498, 65 S.E. 639.

2. Constitutional issues

Constitutionality. This section [Code 1962 Section 58‑562] does not violate US Const, Art 14, Section 1, or SC Const, Art 1, Section 15 (now Art 1, Section 9). Sanford v Seaboard Air Line Ry., 79 SC 519, 61 SE 74 (1908). McCutchen v Atlantic Coast Line R. Co., 81 SC 71, 61 SE 1108 (1908).

This section [Code 1962 Section 58‑562] does not contravene the Fourteenth Amendment, prohibiting states from making any law abridging the privileges or immunities of citizens, or depriving any person of property without due process of law, or denying the equal protection of the law. Thweat v. Atlantic Coast Line R. Co. (S.C. 1910) 67 S.E. 15. Carriers 2; Constitutional Law 2926

Nor is this section [Code 1962 Section 58‑562] unconstitutional as contrary to public policy on the ground that it promotes dishonesty. Thweat v. Atlantic Coast Line R. Co. (S.C. 1910) 67 S.E. 15.

This section [Code 1962 Section 58‑562] has no application to interstate shipments. Moore v. Atlantic Coast Line R. Co. (S.C. 1910) 85 S.C. 19, 67 S.E. 11.

**SECTION 58‑13‑130.** Carriers not liable for certain delays.

 If any such common carrier shall prove that no delay in violation of this chapter occurred in the transportation of such freight after receipt thereof by it, that it extended the notice that prompt shipment was required to its connecting line and that, by the exercise of due diligence, it was unable to discover the cause of delay or the name of the common carrier responsible therefor, it shall be excused from liability under this chapter.

HISTORY: 1962 Code Section 58‑563; 1952 Code Section 58‑563; 1942 Code Section 7161; 1932 Code Section 7161; Civ. C. ‘22 Section 3883; Civ. C. ‘12 Section 2569; 1904 (24) 671; 1912 (27) 630; 1915 (29) 152.

Library References

Carriers 98.

Westlaw Topic No. 70.

**SECTION 58‑13‑140.** Statement as to delays furnished on demand.

 Any such common carrier shall, within ten days after demand in writing therefor by any consignee of delayed freight or the owner or holder of the bill of lading, furnish a statement in writing, specifying the date of its receipt of such freight, the cause of delay and the name of the common carrier responsible therefor. Any common carrier failing to furnish such statement shall forfeit to the person demanding it one dollar a day for each day in default, to be recovered in any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑564; 1952 Code Section 58‑564; 1942 Code Section 7161; 1932 Code Section 7161; Civ. C. ‘22 Section 3883; Civ. C. ‘12 Section 2569; 1904 (24) 671; 1912 (27) 630; 1915 (29) 152.

Library References

Carriers 98.

Westlaw Topic No. 70.

ARTICLE 5

Liability for Loss of or Damage to Goods

**SECTION 58‑13‑210.** Common carrier liable for loss of or injury to goods delivered for transportation notwithstanding public notice or declaration to contrary.

 No public notice or declaration shall limit or in any way affect the liability at common law of common carrier for or in respect of any goods to be carried by them but they shall be liable, as at common law, to answer for the loss of or injury to any articles and goods delivered to them for transportation, any public notice or declaration by them made and given contrary hereto or in anywise attempting to limit such liability to the contrary notwithstanding.

HISTORY: 1962 Code Section 58‑571; 1952 Code Section 58‑571; 1942 Code Section 7159; 1932 Code Section 7159; Civ. C. ‘22 Section 3881; Civ. C. ‘12 Section 2567; Civ. C. ‘02 Section 1709; G. S. 1333; R. S. 1436; 1864 (13) 262.

CROSS REFERENCES

Motor carrier being liable for baggage only when checked, see Section 58‑23‑1040.

Library References

Carriers 108, 147.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 412, 414, 420, 444 to 445, 448 to 449.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 49, Loss of or Injury to Property.

S.C. Jur. Carriers Section 51, Limitation of Liability.

NOTES OF DECISIONS

In general 1

1. In general

For additional related cases, see Edwards v Cheraw & D. R. Co., 32 SC 117, 10 SE 822 (1890). Wallingford v Columbia & G. R. Co., 26 SC 258, 2 SE 19 (1887). Piedmont Mfg. Co. v Columbia & G. R. Co., 19 SC 353 (1883). Brown v Atlanta & Charlotte Air Line R. Co., 19 SC 39 (1883). Ex parte Benson & Co., 18 SC 38 (1882). Spears & Colton v Spartanburg, Union & C. R. Co., 11 SC 158 (1878). Bamberg v South Carolina R. Co., 9 SC 61 (1877). Faust v South Carolina R. Co., 8 SC 118 (1877). Levy v Southern Exp. Co., 4 SC 234 (1873). Porter v Southern Exp. Co., 4 SC 135 (1873). Porcher v Northeastern R. Co., 14 Rich (48 SCL) 181. Wardlaw, Walker & Burnsides v South Carolina R. Co., 11 Rich (45 SCL) 337. Kayle v Laurens R. Co., 10 Rich (44 SCL) 382. Burnside v Union Steamboat Co., 10 Rich (44 SLC) 113. Baker v Brinson, 9 Rich (43 SCL) 201. Maybin v South Carolina R. Co., 8 Rich (42 SCL) 240. Lipford v Charlotte & S. R. Co., 7 Rich (41 SCL) 409. Nettles v South Carolina R. Co., 8 Rich (42 SCL) 190. Dill v South Carolina R. Co., 7 Rich (41 SCL) 158. Shaw & Austin v South Carolina R. Co., 5 Rich (39 SCL) 462. Cameron & Co., v Rich, 5 Rich (39 SCL) 352. McClenaghan v Brock, 5 Rich (39 SCL) 17. McCall v Brock, 5 Strob (36 SCL) 119. Peixotti v McLaughlin, 1 Strob (32 SCL) 468. Singleton v Hillard, 1 Strob (SC) 203. Swindler v Hilliard & Brooks, 2 Rich (31 SCL) 286. Ross & Bellinger v English, 2 Spears (29 SCL) 393. Littlejohn v Jones, 2 McM (27 SCL) 365. Goodwyn, Harrington & Co. v Douglas, Cheves (25 SCL) 174. Faulkner v Wright, Rice (24 SCL) 107. Patton v Magrath, Dud (23 SCL) 59. Smyrl v Niolin, 2 Bail (18 SCL) 421. Ewart v Street, 2 Bial (18 SCL) 157. Campbell v Morse, Harp (16 SCL) 300. Bason v Charleston & C. Steamboat Co., Harp (16 SCL) 170. McDonald v Clark, 4 McC (15 SCL) 223. Gaither v Barnet, 2 Brev (4 SCL) 488. McClures v Hammond, 1 Bay (1 SCL) 99.

Rule of State Public Service Commission insofar as it attempted to limit liability of motor vehicle carrier for lost baggage to less than its value was invalid. Code 1942, Sections 7159, 8516, rule 79, 8523, 8524. Kirby v. Carolina Stages (S.C. 1946) 209 S.C. 326, 40 S.E.2d 165.

Liability. Where carrier transports car of horses without issuing bill of lading or inquiring about value or notifying shipper of limitations put on value for rate named to him on inquiry, and when it is not shown that classification and rates published by railroad commission were brought to attention of shipper, liability of carrier is at common law. Faulk v. Columbia, N. & L.R. Co. (S.C. 1909) 82 S.C. 369, 64 S.E. 383.

To make carrier liable for damages resulting from refusal to carry melons in iced cars, it is not necessary for jury to find that carrier failed to furnish cars after holding itself out or having agreed to do so. Mathis v. Southern Ry. Co. (S.C. 1903) 65 S.C. 271, 43 S.E. 684.

**SECTION 58‑13‑220.** Carriers shall trace lost or damaged property and advise as to cause of loss or damage.

 In every case of loss, damage, destruction or failure to deliver any property by a common carrier shipped over its line or any connecting line, the initial, every intermediate and the terminal carrier, upon notice of such loss, damage, destruction or failure to deliver, shall within forty days trace such property lost, damaged or destroyed and inform the person so notifying it when, where and by which carrier the property was lost, damaged or destroyed. Every carrier, failing or refusing to trace such property and inform the notifying party as above stated, within forty days after such notice, shall be liable for the full amount of the claim for loss, damage, destruction or failure to deliver, in the same manner and to the same extent as if such loss, damage, destruction or failure to deliver occurred on its line, and, in addition thereto, a penalty of fifty dollars upon each claim, to be recovered in any court of competent jurisdiction in the same action with the claim or in a separate action. The claimant shall also be entitled to recover interest on his claim from the date of filing it. If such initial, intermediate or terminal carrier upon the trial of the case shall prove that it exercised due diligence and was unable to trace the property and inform the person notifying it as above provided, it shall thereupon be excused from liability under this section. The action authorized hereunder may be commenced in any county in the State in which the carrier with which the claim is filed is engaged in business.

HISTORY: 1962 Code Section 58‑572; 1952 Code Section 58‑572; 1942 Code Section 7164; 1932 Code Section 7164; Civ. C. ‘22 Section 3886; Civ. C. ‘12 Section 2572; Civ. C. ‘02 Section 1710; 1894 (21) 822; 1910 (26) 717.

Library References

Carriers 20(1), 122.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 332, 411.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

The Carmack Amendment to the Interstate Commerce Act, imposing a liability for damage to goods shipped upon the initial carrier, and providing that it shall not deprive the owner of any right which he had under the existing law, does not deprive a consignee of his right to a penalty for failure of the terminal carrier to pay the damages to a shipment or to inform the consignee of which carrier caused the damage, given by this section [Code 1962 Section 58‑572], since the two statutes refer to the liability of different carriers. DuPre v Columbia, N. & L. R. Co., 98 SC 468, 79 SE 310 (1913). Meetze v Southern Exp. Co., 91 SC 379, 74 SE 823 (1912).

For additional related cases, see Bradley v Northwestern R. Co., 77 SC 317, 57 SE 1101 (1907). Charles v Atlantic Coast Line R. Co., 78 SC 36, 58 SE 927 (1907), affirmed in 216 US 122, 30 S Ct 378, 54 L Ed 411 (1910). Seegers Bros. v Seaboard Air Line Ry., 73 SC 71, 52 SE 797 (1905), affirmed in 207 US 73, 28 S Ct 28, 52 L Ed 108 (1907). Johnson v Southern Ry. Co., 69 SC 322, 48 SE 260 (1904).

As to what contracts this section [Code 1962 Section 58‑572] referred to, as it appeared in the Code of 1902, see Venning v Atlantic Coast Line R. Co., 78 SC 42, 58 SE 983 (1907). Mayfield v Southern Ry. Co., 84 SC 393, 66 SE 405 (1909). Willett v Southern Ry. Co., 66 SC 477, 45 SE 93 (1902). Moody v Southern Ry. Co., 79 SC 297, 60 SE 711 (1908). Cave v Carolina Midland Ry. Co., 53 SC 496, 31 SE 359 (1898).

Effect of delivery to connecting line. Where a court found that goods were never delivered to defendant, a connecting carrier, the shipper could not recover penalty under this section [Code 1962 Section 58‑572] for failing to adjust the loss, because the bill of lading introduced as a contract of shipment did not provide that the responsibility of any carrier should cease on delivery to the connecting line in good order. McMeekin v. Southern Ry. Co. (S.C. 1910) 85 S.C. 381, 67 S.E. 745. Carriers 20(1)

Opinion of witness as to whether forty days allowed for tracing lost freight is sufficient is incompetent. Moody v. Southern Ry. Co. (S.C. 1908) 79 S.C. 297, 60 S.E. 711.

Charge that omits so much as exonerates carrier if it is unable to trace line upon which damage occurred, is defective. If information furnished consignee of freight at time of delivery is the same as he would have received from terminal carrier after due diligence, jury may relieve terminal carrier of liability. Winslow Bros. & Co. v. Atlantic Coast Line R. Co. (S.C. 1908) 79 S.C. 344, 60 S.E. 709.

Failure of terminal carrier to comply with this section [Code 1962 Section 58‑572] renders it liable for goods lost from a consignment over its line, whether lost on its own road or not. Burress v. Atlantic Coast Line R. Co. (S.C. 1908) 79 S.C. 250, 60 S.E. 692.

Presumption that terminal carrier damaged goods delivered in bad condition is not affected by this section [Code 1962 Section 58‑572]. Willett v. Southern Ry. Co. (S.C. 1903) 66 S.C. 477, 45 S.E. 93.

2. Constitutional issues

Congress has so far taken over the subject of carrier’s liability for loss or damage to interstate shipments by Act June 18, 1910, and Act June 29, 1906, amending sections 1, 20, Act Feb. 4, 1887, 49 U.S.C.A. Section 1, as to invalidate Civ.Code S.C.1912, Section 2573, subjecting terminal carrier to penalty for failure to pay promptly claims for damages to interstate shipment. Charleston & W.C. Ry. Co. v. Varnville Furniture Co. (U.S.S.C. 1915) 35 S.Ct. 715, 237 U.S. 597, 59 L.Ed. 1137, Am.Ann.Cas. 1916D,333.

Section not in conflict with interstate commerce. This section [Code 1962 Section 58‑572] does not regulate, burden or materially interfere with interstate commerce. Skipper v. Seaboard Air Line Ry. (S.C. 1906) 75 S.C. 276, 55 S.E. 454, 117 Am.St.Rep. 901, 9 Am.Ann.Cas. 808.

**SECTION 58‑13‑230.** Only one penalty recoverable on same cause.

 Only one penalty shall be recoverable under the provisions of Section 58‑13‑220 upon the same cause of action.

HISTORY: 1962 Code Section 58‑573; 1952 Code Section 58‑573; 1942 Code Section 7164; 1932 Code Section 7164; Civ. C. ‘22 Section 3886; Civ. C. ‘12 Section 2572; Civ. C. ‘02 Section 1710; 1894 (21) 822; 1910 (26) 717.

Library References

Carriers 20(1).

Westlaw Topic No. 70.

C.J.S. Carriers Section 332.

**SECTION 58‑13‑240.** Connecting lines of common carriers defined and their liability fixed.

 All common carriers for transportation, over whose lines or parts thereof any freight, baggage or other property received by another such carrier for through shipment or transportation by such carriers on a contract for through carriage recognized, acquiesced in or acted upon by such carriers, shall in this State, with respect to the undertaking and carrying out of such transportation, be considered and construed to be connecting lines and each of such carriers, including the initial recipient of such property, shall be deemed and held to be the agents of each of the others and shall be held and deemed to be under a contract with each other and with the shipper, owner and consignee of such property for the safe and speedy through transportation thereof from the point of shipment to its destination and such contract as to the shipper, owner or consignee of such property shall be deemed and held to be the contract of each of such common carriers. In any of the courts of this State any through bill of lading, way bill, receipt, check or other instrument issued by any of such carriers or other proof showing that any of them has received such freight, baggage or other property for such through shipment or transportation shall constitute prima facie evidence of the subsistence of the relations, duties and liabilities of such carriers as herein defined and prescribed, notwithstanding any stipulations or attempted stipulations to the contrary by such carriers or any of them.

HISTORY: 1962 Code Section 58‑574; 1952 Code Section 58‑574; 1942 Code Section 7168; 1932 Code Section 7168; Civ. C. ‘22 Section 3890; Civ. C. ‘12 Section 2574; 1903 (24) 1.

Library References

Carriers 169, 177.

Westlaw Topic No. 70.

C.J.S. Carriers Section 458.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 52, Connecting Carriers.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

For additional related cases, see Marion Cotton Oil Co. v Atlantic Coast Line R. Co., 109 SC 150, 95 SE 336 (1918). Glenn v Atlantic Coast Line R. Co., 96 SC 357, 80 SE 898 (1914), affirmed in 239 US 388, 36 S Ct 154, 60 L Ed 344 (1915). DeLorme v Atlantic Coast Line R. Co., 79 SC 370, 60 SE 440 (1908). Willett v Southern Ry. Co., 66 SC 477, 45 SE 93 (1902).

Filing of claim. Where a bill of lading required filing of claim against carrier within four months after delivery of property, the filing of the claim against the delivering carrier (not as agent of initial carrier) was insufficient to support an action against the initial carrier, “filing of claim” being different than “notice of loss” under this section [Code 1962 Section 58‑574]. Kershaw Oil Mill v. Northwestern R. Co. of South Carolina (S.C. 1925) 133 S.C. 226, 130 S.E. 647.

Liability for nondelivery. Connecting carriers, being by this section [Code 1962 Section 58‑574] made agents of each other in case of an intrastate shipment, so that the terminal carrier is estopped to deny, as against the consignee, receipt by the initial carrier of all the goods for which it issued a bill of lading, proof that the terminal carrier did not receive part of such goods does not relieve it of liability to the consignee for nondelivery thereof. Daughty v. Northwestern R. Co. of South Carolina (S.C. 1912) 92 S.C. 361, 75 S.E. 553. Carriers 177(4)

The fact that a part of a delay in delivering freight occurred while it was in the possession of a terminal company at destination, would not relieve the delivering carrier from liability, though such carrier charged and collected for delivery at the place of delivery and actually delivered it there, under this section [Code 1962 Section 58‑574]. Farmers’ & Spinners’ Co. v. Atlantic Coast Line R. Co. (S.C. 1911) 89 S.C. 398, 71 S.E. 991. Carriers 176

Notice of claim for loss of goods, served on the agent of the terminal carrier, was notice to the initial carrier, issuing its through bill of lading. Smith & Co. v. Southern Ry. Co. (S.C. 1909) 84 S.C. 167, 65 S.E. 1029.

Liability for initial carrier’s error. Connecting carrier, acting on through bill of lading, is responsible for the error of the initial carrier. Reynolds & Craft v. Seaboard Air Line Ry. (S.C. 1908) 81 S.C. 383, 62 S.E. 445.

Liability as connecting carrier. Where terms of bill of lading are not disclosed by record, Supreme Court cannot assume it furnished no evidence of defendant’s liability as connecting carrier. Abrahams v. Columbia, N. & L.R.R. (S.C. 1906) 73 S.C. 542, 53 S.E. 819.

2. Constitutional issues

Constitutionality. This section [Code 1962 Section 58‑574] is an infringement on the interstate commerce clause of the Federal Constitution, but is not in contravention of SC Const, Art 1, Section 5 (now Art 1, Section 3), or of the Fourteenth Amendment. Venning v Atlantic Coast Line R. Co., 78 SC 42, 58 SE 983 (1907), distinguishing Skipper v Seaboard Air Line Ry., 75 SC 276, 55 SE 454 (1906). Winslow Bros. & Co. v Atlantic Coast Line R. Co., 79 SC 344, 60 SE 709 (1908). Harter v Charleston & W. C. R. Co., 85 SC 192, 67 SE 290 (1910). Burress v Atlantic Coast Line R. Co., 79 SC 250, 60 SE 692 (1908).

**SECTION 58‑13‑250.** Liability of connecting carriers; recovery from carriers actually responsible.

 For any damages for injury or damage to, or loss or delay of, any freight, baggage or other property sustained anywhere in such through transportation over connecting lines, or any of them, as defined in Section 58‑13‑240, any of such connecting carriers which the person sustaining such damages may first elect to sue in this State therefor shall be held liable to such person and such carrier so held liable to such person shall be entitled in a proper action to recover the amount of any loss, damage or injury it may be required to pay such person from the carrier through whose negligence the loss, damage or injury was sustained, together with costs of suit.

HISTORY: 1962 Code Section 58‑575; 1952 Code Section 58‑575; 1942 Code Section 7169; 1932 Code Section 7169; Civ. C. ‘22 Section 3891; Civ. C. ‘12 Section 2575; 1903 (24) 2.

Library References

Carriers 177.

Westlaw Topic No. 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 52, Connecting Carriers.

NOTES OF DECISIONS

In general 1

1. In general

Penalties not recoverable under this section [Code 1962 Section 58‑575]. Marion Cotton Oil Co. v. Atlantic Coast Line R. Co. (S.C. 1918) 109 S.C. 150, 95 S.E. 336.

Attorney’s fees are not recoverable. Glenn v. Atlantic Coast Line R. Co. (S.C. 1914) 96 S.C. 357, 80 S.E. 898, affirmed 36 S.Ct. 154, 239 U.S. 388, 60 L.Ed. 344.

**SECTION 58‑13‑260.** Measure of damages for conversion of property by common carrier.

 If any common carrier shall convert and appropriate to its own use any property of another held by it on consignment or in course of transportation, it shall be liable to the consignee or other owner of such property, not only for the value of such property, but for an additional amount, as a penalty for such conversion, equivalent to five times the value of the property so appropriated to its own use and it shall be further liable to the consignee or other owner of such property for such special damages as may have been suffered in consequence of such conversion and such punitive or exemplary damages as may be recovered in an action against such common carrier. There may be recovered in the same action, and included in the same verdict, all the amounts above provided for. But so much of this section as provides for a penalty of five times the value of the property converted shall have no application when the common carrier has converted such property in consequence of a wreck of the car in which the property being transported was contained, when the conversion was in consequence of the property being so damaged in transportation as to render it unfit for the purpose intended or when the common carrier through error delivers the property being transported to the wrong consignee.

HISTORY: 1962 Code Section 58‑576; 1952 Code Section 58‑576; 1942 Code Section 7162; 1932 Code Section 7162; Civ. C. ‘22 Section 3884; Civ. C. ‘12 Section 2570; 1902 (23) 1052; 1906 (25) 108.

Library References

Carriers 135.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 429, 435 to 436.

**SECTION 58‑13‑270.** Carriers denying liability shall return papers connected with claim.

 Common carriers doing business in this State with whom a claim has been filed for loss of, or damage to, freight, when the carrier denies liability, or fails to notify claimant of its disposition of claims as required by law, shall return to the claimant with the letter or statement denying liability the claim and all papers connected therewith filed by the claimant or copies thereof. The carrier may retain copies thereof, which at the time of the return of such papers the claimant may be required to admit in writing to be true copies. The claimant shall give thirty days’ notice in writing to the carrier that he demands the return of all papers filed with the claim. Any common carrier violating the provisions of this section shall forfeit and pay to the party aggrieved the sum of fifty dollars to be recovered in any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑577; 1952 Code Section 58‑577; 1942 Code Sections 8424, 8425; 1932 Code Sections 8424, 8425; Civ. C. ‘22 Sections 4972, 4973; 1921 (32) 162.

Library References

Carriers 125.5.

Westlaw Topic No. 70.

**SECTION 58‑13‑280.** Other rights of claimant not affected by carrier’s failure to return papers promptly.

 Nothing in Section 58‑13‑270 shall be construed to affect any other rights that the claimant may have against the carrier arising from its failure to return promptly any or all of such papers.

HISTORY: 1962 Code Section 58‑578; 1952 Code Section 58‑578; 1942 Code Section 8426; 1932 Code Section 8426; Civ. C. ‘22 Section 4974; 1921 (32) 162.

Library References

Carriers 125.5.

Westlaw Topic No. 70.

ARTICLE 7

Collection and Adjustment of Freight Charges

**SECTION 58‑13‑410.** Lien of carriers on goods or chattels for carrying charges; enforcement.

 All persons hauling, moving, transporting or carrying goods or chattels from place to place in this State or from a point without this State into this State shall have a lien on such goods or chattels to the extent of such carrying charges as have been agreed upon or, in case no carrying charges have been agreed upon, for reasonable charges for such services. Such lien shall exist for a period of ten days after the delivery of such goods or chattels and be enforced by attachment as provided by law in cases of nonresident and absconding debtor attachments. But this lien shall not affect the rights of innocent parties, nor shall this section abridge any right or repeal any law allowing railroad carriers to collect such charges as they may be entitled to for handling or carrying freight.

HISTORY: 1962 Code Section 58‑591; 1952 Code Section 58‑591; 1942 Code Section 7210; 1932 Code Section 7210; 1923 (33) 123.

CROSS REFERENCES

As to limitation of actions by motor carriers for charges and against motor carriers for overcharges, see Sections 15‑3‑580, 15‑3‑590.

Library References

Carriers 197.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 483 to 485.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 16, Other Regulation.

S.C. Jur. Carriers Section 27, Liens.

**SECTION 58‑13‑420.** Notification of charges; delivery of freight on payment.

 Each such common carrier shall inform any consignee or consignees of the correct amount due for freight, according to such classifications and rates. And upon payment or tender of the amount due on any shipment or on any part of any shipment which has arrived at its destination, according to such classifications and rates, such common carrier shall deliver the freight in question to the consignee or consignees. Any failure or refusal to comply with the provisions hereof shall subject each carrier so failing or refusing to a penalty of fifty dollars for each such failure or refusal, to be recovered by any consignee or consignees aggrieved by suit in any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑592; 1952 Code Section 58‑592; 1942 Code Section 7163; 1932 Code Section 7163; Civ. C. ‘22 Section 3885; Civ. C. ‘12 Section 2571; 1903 (24) 81.

Library References

Carriers 195.

Westlaw Topic No. 70.

C.J.S. Carriers Section 480.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 16, Other Regulation.

NOTES OF DECISIONS

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1. In general

For additional related cases, see Fennell Infirmary v Southern R. Co., 101 SC 134, 85 SE 237 (1915). Weinberg v Atlantic Coast Line R. Co., 83 SC 470, 65 SE 637 (1909). Rhame v Southern Exp. Co., 83 SC 547, 65 SE 821 (1909).

Action against carrier’s receivers.‑An action for the penalty imposed by this section [Code 1962 Section 58‑592] is maintainable against receivers of a carrier without previous leave of the court appointing them. Huguelet v. Warfield (S.C. 1909) 84 S.C. 87, 65 S.E. 985.

2. Constitutional issues

Constitutionality. This section [Code 1962 Section 58‑592] is not in violation of SC Const, Art 3, Section 17, in that the title and the body of 1903 Act No 1 [1903 (24) 1] relate to different subjects, one relating to the payment of freight rates to the carrier, and the other relating to the payment of loss or damage to freight by the carrier to the customer. Aycock‑Little Co. v Southern Ry. Co., 76 SC 331, 57 SE 27 (1907). McTeer v Southern Exp. Co. (SC), 58 SE 930 (1907), affirmed in 216 US 122, 30 S Ct 378, 54 L Ed 411 (1910).

**SECTION 58‑13‑430.** Settlement of freight charges by common carriers.

 All common carriers doing business in this State shall settle their freight charges according to the rate stipulated in the bill of lading if the rate therein stipulated be in conformity with the classifications and rates made and filed with the Interstate Commerce Commission, in case of shipments from without this State, and with those of the Public Service Commission and the Office of Regulatory Staff, in case of shipments wholly within this State, by which classifications and rates all consignees shall in all cases be entitled to settle freight charges with such carriers.

HISTORY: 1962 Code Section 58‑593; 1952 Code Section 58‑593; 1942 Code Section 7163; 1932 Code Section 7163; Civ. C. ‘22 Section 3885; Civ. C. ‘12 Section 2571; 1903 (24) 81; 2006 Act No. 318, Section 99, eff May 24, 2006.

Library References

Carriers 189, 195.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 468 to 470, 472, 480.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 16, Other Regulation.

S.C. Jur. Carriers Section 26, Overcharge.

**SECTION 58‑13‑440.** Time and place in which freight adjustments shall be made; liability of carrier.

 Every claim for freight overcharged or for loss of or damage to property and baggage while in the possession of such common carrier shall be adjusted and paid within thirty days, in the case of shipments wholly within this State, and within forty days, in case of shipments from without this State, after the filing of such claim with the agent of such carrier at the point of destination of such shipment and when there is no agent at such point such claim may be filed with the agent at the nearest station to such point of destination having an agent. But no such claim shall be filed until after the arrival of the shipment, or of some part thereof, at the point of destination or until after the lapse of a reasonable time for the arrival thereof. In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject the common carrier so failing to a penalty of fifty dollars for each and every such failure, to be recovered by any consignee aggrieved in any court of competent jurisdiction. But unless such consignee recovers in such action the full amount claimed no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid.

 No common carrier shall be liable under this section for property which never came into its possession if it complies with the provisions of Section 58‑13‑220.

HISTORY: 1962 Code Section 58‑594; 1952 Code Section 58‑594; 1942 Code Section 7165; 1932 Code Section 7165; Civ. C. ‘22 Section 3887; Civ. C. ‘12 Section 2573; Civ. C. ‘02 Section 1711; 1897 (22) 443; 1903 (24) 81; 1908 (25) 1077; 1910 (26) 719.

Library References

Carriers 20(4), 125.5, 192.5, 200.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 470, 486, 488.

NOTES OF DECISIONS

In general 1

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1. In general

Application of last paragraph. This section [Code 1962 Section 58‑594] imposes no liability to which the last paragraph can be applied. Venning v Atlantic Coast Line R. Co., 78 SC 42, 58 SE 983 (1907). Atlantic Coast Line R. Co. v Mazursky, 216 US 122, 30 S Ct 378, 54 L Ed 411 (1910).

For additional related cases, see Sauls‑Baker Co. v Atlantic Coast Line R. Co., 109 SC 285, 96 SE 118 (1918). Wichman v Atlantic Coast Line R. Co., 100 SC 138, 84 SE 420 (1915). Brooks v Southern Ry. Co., 96 SC 427, 81 SE 151 (1914).

But it is also held that this section [Code 1962 Section 58‑594] is construed to apply only to loss or damage to freight occurring on line of carrier sued in this State, and as thus construed is not violative of the interstate commerce clause of the Federal Constitution. Venning v Atlantic Coast Line R. Co., 78 SC 42, 58 SE 983 (1907). Charles v Atlantic Coast Line R. Co., 78 SC 36, 58 SE 927 (1907), affirmed in 216 US 122, 30 S Ct 378, 54 L Ed 411 (1910).

Construction. This section [Code 1962 Section 58‑594], being a penal statute, must be strictly construed. C.E. Rippy & Co. v. Southern Ry. Co. (S.C. 1908) 80 S.C. 524, 61 S.E. 976.

The last paragraph has no application to carriers into whose possession goods have come. Charles v. Atlantic Coast Line R. Co. (S.C. 1907) 78 S.C. 36, 58 S.E. 927, 125 Am.St.Rep. 762, affirmed 30 S.Ct. 378, 216 U.S. 122, 54 L.Ed. 411.

Purpose. The design of the statute was to bring about reasonably prompt settlement of all proper claims and to compensate the claimant for the trouble and expense of suit which the carrier’s unreasonable delay and refusal made necessary. Best v. Seaboard Air Line Ry. (S.C. 1905) 72 S.C. 479, 52 S.E. 223.

2. Constitutional issues

Constitutionality. This section [Code 1962 Section 58‑594] is unconstitutional as applied to interstate shipments in so far as it attempts to impose a penalty for failure to pay a claim within the prescribed time. Charleston & W. C. Ry. Co. v Varnville Furniture Co., 237 US 597, 35 S Ct 715, 59 L Ed 1137 (1915). Spence v Southern Ry. Co., 101 SC 436, 455, 85 SE 1058 (1915).

Common carriers are not denied the equal protection guaranteed by the Fourteenth Amendment by the provisions of this section [Code 1962 Section 58‑594], where there can be no award of a penalty under the statute unless there is a recovery of the full amount claimed. Seaboard Air Line Ry. v. Seegers (U.S.S.C. 1907) 28 S.Ct. 28, 207 U.S. 73, 52 L.Ed. 108.

3. Filing claims

Sufficiency of filing claim. Filing claim with soliciting freight agent at destination is sufficient filing with agent of common carrier at destination of shipment. Bell v Southern Ry. Co., 77 SC 78, 57 SE 689 (1907). Harter v Charleston & W. C. R. Co., 85 SC 192, 67 SE 290 (1910).

Substantial compliance with this statutory provision is all that is needed. If the claim is filed within time and gives the carrier reasonable notice of the character of the demand, it is sufficient. Victor Fertilizer Co. v. Southern Ry. Co. (S.C. 1943) 202 S.C. 294, 24 S.E.2d 499.

Claims may be included in one letter. Where several penalties are claimed, it is not necessary that each claim be on a separate piece of paper, but all may be included in one letter. Victor Fertilizer Co. v. Southern Ry. Co. (S.C. 1943) 202 S.C. 294, 24 S.E.2d 499.

Where plaintiff filed with defendant’s railroad agent the bill of lading, invoice of goods, and a list of the shortage as a claim, there was a sufficient filing, and it was immaterial that the agent filed the claim himself, it being done at the request and in the presence of plaintiff, and no form for setting out the claim being prescribed by the statute. Goldstein v. Southern Ry. Co. (S.C. 1908) 80 S.C. 522, 61 S.E. 1007.

Where defendant railroad not only waived the right to have a claim filed, but promised to pay it, it could not thereafter contend that the claim was not filed. Goldstein v. Southern Ry. Co. (S.C. 1908) 80 S.C. 522, 61 S.E. 1007.

Filing claim with another officer or carrier, and by him, in discharge of his official duties, forwarded to agent at destination of freight ninety days before action brought, is not such filing as is requisite to entitle consignee to penalty. Bell v. Southern Ry. (S.C. 1907) 77 S.C. 78, 57 S.E. 689.

4. Claims and penalties

Penalty could not be recovered under this section [Code 1962 Section 58‑594] unless jury found fact of loss of goods while they were in defendant’s possession. Venning v Atlantic Coast Line R. Co., 78 SC 42, 58 SE 983 (1907). Burress v Atlantic Coast Line R. Co., 78 SC 250, 60 SE 692 (1908).

Loss is presumed to have occurred on terminal carrier. Colleton Mercantile & Mfg. Co. v Atlantic Coast Line R. Co., 82 SC 121, 62 SE 6 (1909). Cooper v Seaboard Air Line Ry., 78 SC 81, 58 SE 930 (1907).

Liability of receivers to penalty. Receivers appointed by Federal courts are liable to penalty. Huguelet v. Warfield (S.C. 1909) 84 S.C. 87, 65 S.E. 985.

Recovery of one‑half cent less than amount for which claim filed entitles plaintiff to recover the penalty. B. & M. White Laundry Co. v. Charleston & W.C. Ry. Co. (S.C. 1909) 83 S.C. 209, 65 S.E. 239, 18 Am.Ann.Cas. 690.

Place of payment. Carrier must seek claimant and make payment within time fixed by statute to prevent penalty of attaching, but carrier may relieve itself of hardship of seeking claimant by requiring him to designate on claim the place where he desires payment made, and tender at that place will relieve of penalty. Berley & Kyzer v. Columbia, N. & L.R. Co. (S.C. 1909) 82 S.C. 232, 64 S.E. 397.

Delay in shipment of freight. This section [Code 1962 Section 58‑594] does not apply in case of delay in shipment of freight or damages to consignee because of such delay. Cousar Mercantile Co. v. Southern Ry. Co. (S.C. 1909) 82 S.C. 307, 64 S.E. 391.

Effect of tender of goods after statutory period. Carrier is not liable to consignee for the value of goods and penalty, where goods are tendered after the time limited by statute for adjusting the loss or damage, even if carrier was negligent in tracing them. Bullock v. Charleston & W.C. Ry. Co. (S.C. 1909) 82 S.C. 375, 64 S.E. 234.

Recovery of judgment for full amount of claim. Under the express terms of this section [Code 1962 Section 58‑594], a carrier is not liable for the penalty prescribed for its failure to adjust a claim for lost freight, unless the claimant recovers judgment for the full amount of such claim. C.E. Rippy & Co. v. Southern Ry. Co. (S.C. 1908) 80 S.C. 524, 61 S.E. 976. Carriers 20(1)

Liability for loss. Carrier is liable whether goods were lost by conversion or otherwise. Wilson & James v. Atlantic Coast Line R. Co. (S.C. 1908) 79 S.C. 198, 60 S.E. 663.

Waiver. Consignee of freight cannot recover penalty after he accepts, after time provided in section, amount claimed for loss of freight before bringing action for penalty. Best v. Seaboard Air Line Ry. (S.C. 1905) 72 S.C. 479, 52 S.E. 223.

5. Procedure

It is permissible to join in the one action a claim for several penalties growing out of an alleged violation of this section [Code 1962 Section 58‑594]. Victor Fertilizer Co. v. Southern Ry. Co. (S.C. 1943) 202 S.C. 294, 24 S.E.2d 499.

Under a statute entitling a shipper to penalty for delay in payment of a claim for damages, provided he recovered the full amount of his claim held, on a general verdict in action for damages for delay, for damages to the goods, and for the penalty, that the court could not say but that all of it was for the delay, and also, that, as there was no evidence that when the claim was filed the shipment or some part of it had arrived, defendant was entitled to judgment. Price v. Charleston & W.C. Ry. Co. (S.C. 1913) 93 S.C. 576, 77 S.E. 703.

Venue. This section [Code 1962 Section 58‑594] seems to require one who claims a penalty to set it up in the action for the loss or damage. As the penalty can be recovered only in the county where it or some part of the cause of action arose, and the damage and loss may be recovered in any county where the railroad company does business and has an agency for the delivery of freight, including the county where the cause of action arose, it seems to follow that the law contemplates that a suit for the loss or damage and the penalty must be brought in the county which is the proper venue for both claims. L.D. Riley & Son v. Southern Ry. Co. (S.C. 1908) 81 S.C. 387, 62 S.E. 509.

Actions. Claims for loss or damage and for penalty may be sued in separate actions commenced at same time, but judgment for penalty cannot be rendered until judgment for full amount claimed as damages. Jenkins v. Atlantic Coast Line R. Co. (S.C. 1909) 84 S.C. 343, 66 S.E. 409.

**SECTION 58‑13‑450.** Returns and remittances on C. O. D. shipments.

 All common carriers doing business in this State and making collections on C. O. D. shipments for shippers or other persons designated by the shipper shall pay over to such shipper or person designated by such shipper the returns or moneys collected on C. O. D. shipments within fifteen days after the date of such collection from the consignee. Every carrier failing or refusing to make payment or remittance within the time stipulated above shall be liable for the full amount of the C. O. D. collection and in addition thereto a penalty of twenty‑five dollars, to be recovered in any court of competent jurisdiction, either in the same suit on the claim or in a separate action.

HISTORY: 1962 Code Section 58‑595; 1952 Code Section 58‑595; 1942 Code Sections 7166, 7167; 1932 Code Sections 7166, 7167; Civ. C. ‘22 Sections 3888, 3889; 1914 (28) 593.

Library References

Carriers 90.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 404 to 406.

NOTES OF DECISIONS

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1. In general

Effect of consolidation. American Railway Express Company, organized under contract with director general to take over the business and property of previously independent companies, being liable for claims against such company, is also liable for penalties under this section [Code 1962 Section 58‑595] for the failure of such company to account for proceeds of C.O.D. shipments. Terry Packing Co. v. Southern Exp. Co. (S.C. 1927) 143 S.C. 1, 141 S.E. 144, certiorari denied 48 S.Ct. 118, 275 U.S. 559, 72 L.Ed. 425.

ARTICLE 9

Disposition of Unclaimed or Refused Freight

**SECTION 58‑13‑610.** Public sale of unclaimed or refused freight.

 Any railroad, steamboat, express or other transportation company which shall have had unclaimed or refused freight, not perishable, in its possession for a period of sixty days in the case of unclaimed freight or thirty days in the case of refused freight, may, after having given the consignor and the consignee, when known, written notice, by United States mail or otherwise, of its intention so to do, proceed to sell such freight at public sale at such point as it may deem to the best interests of all parties concerned and out of the proceeds may retain the charges of transportation, storage and demurrage on such freight and all other lawful charges assessed against it, as well as the expenses of advertising, when it has been advertised, and sale thereof. The expenses incurred in advertising, if advertised, shall be a lien upon such freight in a ratable proportion, according to the number of articles, packages or parcels, if more than one.

HISTORY: 1962 Code Section 58‑601; 1952 Code Section 58‑601; 1942 Code Sections 7214, 7215; 1932 Code Sections 7214, 7215; Civ. C. ‘22 Sections 3928, 3929; Civ. C. ‘12 Sections 2610, 2611; Civ. C. ‘02 Sections 1735, 1736; G. S. 1663, 1664; R. S. 1444, 1445; 1887 (19) 858; 1913 (28) 140.

Library References

Carriers 197(7).

Westlaw Topic No. 70.

C.J.S. Carriers Section 484.

**SECTION 58‑13‑620.** Perishable freight.

 In case such refused or unclaimed freight shall be in its nature perishable, then in order to protect the interests of all concerned, it may be sold as soon as it can be. The proceeds of such sale shall be applied to the charges of transportation, storage and demurrage on such freight and all other lawful charges assessed against it, as well as any legitimate expense connected with the sale thereof, and the balance shall be accounted for to the rightful owner, upon satisfactory proof of ownership.

HISTORY: 1962 Code Section 58‑602; 1952 Code Section 58‑602; 1942 Code Section 7216; 1932 Code Section 7216; Civ. C. ‘22 Section 3930; 1913 (28) 140.

Library References

Carriers 197(7).

Westlaw Topic No. 70.

C.J.S. Carriers Section 484.

**SECTION 58‑13‑630.** Livestock.

 In case such refused or unclaimed freight is livestock, then, in order to protect the interests of all concerned, it may be sold after ten days’ notice in writing to the consignor and the consignee, when known, by United States mail or otherwise. The proceeds of such sale shall be applied to the charges of transportation and demurrage and to the expenses incurred in caring for such livestock and all other lawful charges assessed against them, as well as any legitimate expense connected with the sale thereof, and the balance shall be accounted for to the rightful owner upon satisfactory proof of ownership.

HISTORY: 1962 Code Section 58‑603; 1952 Code Section 58‑603; 1942 Code Section 7217; 1932 Code Section 7217; Civ. C. ‘22 Section 3931; 1913 (28) 140.

Library References

Carriers 204.

Westlaw Topic No. 70.

**SECTION 58‑13‑640.** Records of sales; disposition of surplus.

 Such railroad, steamboat, express or transportation company shall keep books of record of all such sales as aforesaid containing copies of such notices, proofs of advertisements and postings when required to be made, affidavits of sale, with the amount thereof, the total amount of charges against such freight and the amount held for the owner. Such books shall be open for inspection by the claimants at the principal office of the company and at the office where the sale was made. At any time within five years thereafter such company shall refund any surplus so retained to the owner of such freight, his heirs or assigns, on satisfactory proof of such ownership. If no person shall claim such surplus within five years it shall be paid into the State Treasury.

HISTORY: 1962 Code Section 58‑604; 1952 Code Section 58‑604; 1942 Code Section 7218; 1932 Code Section 7218; Civ. C. ‘22 Section 3932; Civ. C. ‘12 Section 2613; Civ. C. ‘02 Section 1738; G. S. 1666; R. S. 1446; 1887 (19) 858; 1913 (28) 140.

Library References

Carriers 197(7).

Westlaw Topic No. 70.

C.J.S. Carriers Section 484.

ARTICLE 11

Transportation of Explosive Compounds

**SECTION 58‑13‑710.** “Explosive compound” defined.

 By the words “explosive compound,” as used in this article, shall be understood gun cotton or nitroglycerine or any other compound of either thereof, and fulminate or, generally, any substance intended to be used, by exploding or igniting it, to produce a force to propel missiles or to rend apart substances, except gunpowder.

HISTORY: 1962 Code Section 58‑611; 1952 Code Section 58‑611; 1942 Code Section 8394; 1932 Code Section 8394; Civ. C. ‘22 Section 4942; Civ. C. ‘12 Section 3247; Civ. C. ‘02 Section 2156; G. S. 1510; R. S. 1708; 1882 (17) 830.

**SECTION 58‑13‑720.** Packing, marking and giving notice of explosive compound delivered for transportation.

 No person shall deliver for transportation to any railroad corporation, or other person engaged in the transportation of passengers within this State or take or place upon or in any car, boat or other vehicle of any such corporation or person, with intent that it shall be carried or transported on such car, boat or other vehicle, any explosive compound unless it is packed and marked as herein provided and notice of the dangerous nature thereof is expressly given to the agent, servant or person to whom it is delivered or to the agent, servant or person having at the time the management and control of the car, boat or other vehicle in or upon which it is to be carried or transported. And any common carrier may decline to receive for transportation any such explosive compound in any manner whatever.

HISTORY: 1962 Code Section 58‑612; 1952 Code Section 58‑612; 1942 Code Section 8389; 1932 Code Section 8389; Civ. C. ‘22 Section 4937; Civ. C. ‘12 Section 3242; Civ. C. ‘02 Section 2151; G. S. 1505; R. S. 1704; 1882 (17) 829.

Library References

Carriers 21(1), 38(1).

Westlaw Topic No. 70.

C.J.S. Carriers Sections 311 to 314, 316 to 324, 333.

**SECTION 58‑13‑730.** Railroads and others transporting passengers shall not transport unmarked explosive compound.

 No railroad corporation or other person engaged in the transportation of passengers within this State shall knowingly transport within the territorial limits of this State or transport into such limits, for sale, storage or use therein, any explosive compound in quantities exceeding the amounts fixed by the rules hereinafter referred to in any vehicle containing passengers, or in any vehicle attached to any railroad train or vehicle conveying passengers nor in any case, unless such explosive compound be plainly and legibly marked with the name of such compound and the words “Explosive ‑ Dangerous.” The Public Service Commission, from time to time, shall make such rules fixing the maximum amounts of various explosive compounds which may be so carried in any public vehicle, in a railroad train containing passengers or in a vehicle attached to such train. Such rules shall also define the method of packing such compounds to ensure the greatest safety and shall prescribe how they shall be carried as freight on railroads and steamboats and by common carriers generally.

HISTORY: 1962 Code Section 58‑613; 1952 Code Section 58‑613; 1942 Code Section 8388; 1932 Code Section 8388; Civ. C. ‘22 Section 4936; Civ. C. ‘12 Section 3241; Civ. C. ‘02 Section 2150; G. S. 1504; R. S. 1703; 1882 (17) 826; 1935 (39) 25.

Library References

Carriers 21(1), 38(1).

Westlaw Topic No. 70.

C.J.S. Carriers Sections 311 to 314, 316 to 324, 333.

**SECTION 58‑13‑740.** Penalties.

 A person who knowingly violates, causes, or permits the violation of any provision of this article, or knowingly transports, causes, or permits the transportation of any explosive compound in any manner other than in conformity with the rules made by the commission, is guilty of a felony and, upon conviction, must be fined not less than fifty dollars nor more than five thousand dollars or imprisoned not more than five years.

HISTORY: 1962 Code Section 58‑614; 1952 Code Section 58‑614; 1942 Code Section 8390; 1932 Code Section 8390; Civ. C. ‘22 Section 4938; Civ. C. ‘12 Section 3243; Civ. C. ‘02 Section 2152; Cr. C. ‘22 Section 663; G. S. 1506; R. S. 1705; 1882 (17) 830; 1935 (39) 25; 1993 Act No. 184, Section 84, eff January 1, 1994.

Library References

Carriers 21(1), 38(1).

Westlaw Topic No. 70.

C.J.S. Carriers Sections 311 to 314, 316 to 324, 333.

**SECTION 58‑13‑750.** Magistrates may issue search warrants for explosive compound.

 Upon complaint made under oath to a magistrate that the complainant has probable cause to believe, and does believe, that an explosive compound is had, kept or to be found in any city, town or other place within the jurisdiction of such magistrate by any railroad corporation, contrary to law, a warrant may issue directed to the sheriff of the county or his deputy or to any constable of such city or town, commanding him to enter any building, vehicle, ship or other vessel specified in the warrant and there make diligent search for and seize such explosive compound and to make return of his doings to such magistrate forthwith.

HISTORY: 1962 Code Section 58‑615; 1952 Code Section 58‑615; 1942 Code Section 8391; 1932 Code Section 8391; Civ. C. ‘22 Section 4939; Civ. C. ‘12 Section 3244; Civ. C. ‘02 Section 2153; G. S. 1507; R. S. 1706; 1882 (17) 830.

Library References

Searches and Seizures 102.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 176 to 179.

**SECTION 58‑13‑760.** Forfeiture of explosive compound after seizure.

 Any explosive compound had, kept or transported contrary to the provisions of this article and seized under Section 58‑13‑750 may be adjudged forfeited after due notice and hearing and may be ordered to be destroyed in such manner as the court or magistrate may direct.

HISTORY: 1962 Code Section 58‑616; 1952 Code Section 58‑616; 1942 Code Section 8392; 1932 Code Section 8392; Civ. C. ‘22 Section 4940; Civ. C. ‘12 Section 3245; Civ. C. ‘02 Section 2154; G. S. 1508; R. S. 1707; 1882 (17) 830.

Library References

Forfeitures 50.

Westlaw Topic No. 180.

C.J.S. Forfeitures Sections 1, 22 to 29.

C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) Section 47.

**SECTION 58‑13‑770.** Action for damages for injury caused by explosive compound.

 Any person who shall suffer injury by the explosion of any explosive compound while it is being kept or transported contrary to the provisions of this article or the ordinances, rules or bylaws made in conformity thereto may recover damages for the injury thus sustained in an action against the person so violating the provisions of this article or the ordinances, rules or bylaws made in conformity therewith.

HISTORY: 1962 Code Section 58‑617; 1952 Code Section 58‑617; 1942 Code Section 8393; 1932 Code Section 8393; Civ. C. ‘22 Section 4941; Civ. C. ‘12 Section 3246; Civ. C. ‘02 Section 2155; G. S. 1509; R. S. 1708; 1882 (17) 830.

Library References

Carriers 19, 36.

Explosives 7.

Westlaw Topic Nos. 70, 164.

C.J.S. Carriers Sections 244 to 248, 331.

C.J.S. Explosives Sections 12, 18 to 19, 54 to 73, 77 to 78, 84 to 89, 92 to 94.

NOTES OF DECISIONS

In general 1

1. In general

Contract exempting railroad from liability for fires communicated from trains in consideration of extension of side track held valid. Civ.Code 1922, Sections 4910, 4917 (See Code 1942, Sections 8362, 8369). Palmetto Lumber Co. v. Southern Ry. (S.C. 1929) 154 S.C. 129, 151 S.E. 279.

ARTICLE 13

Special Officers and Constables

**SECTION 58‑13‑910.** Appointment of special officers or constables for protection of common carriers.

 Upon the application of the superintendent or manager of a railway or other common carrier doing business in this State, the Governor shall certify special officers or constables for the protection and safety of all property and interest of the common carrier, if the officers and constables are paid by the common carrier applying for their certification. Special officers or constables appointed pursuant to the laws of another state for protection of interstate shipments, passengers, and employees of railroad companies commissioned as railroad police officers in another state in which the common carrier operates and who meet all law enforcement training standards required in this State must be certified under the doctrine of full faith and credit with capacity in this State to enforce the laws for the protection of interstate shipments, passengers, and employees of railroad companies. The capacity may not be interpreted as a state commission but exists by virtue of the State of South Carolina under the doctrine of full faith and credit recognizing and giving full force and effect under our laws to the legal capacity created in the complying state.

HISTORY: 1962 Code Section 58‑631; 1952 Code Section 58‑631; 1942 Code Section 7172; 1932 Code Section 7172; Civ. C. ‘22 Section 3894; Civ. C. ‘12 Section 2578; 1911 (27) 157; 1989 Act No. 146, Section 1, eff June 8, 1989.

Library References

States 46.

Westlaw Topic No. 360.

C.J.S. States Sections 88, 158 to 161, 163 to 165, 195.

Attorney General’s Opinions

An appointment as constable pursuant to section 58‑13‑910 would constitute a state office; an out‑of‑state resident could not be appointed to such a position inasmuch as he would not meet the requirements to be an elector in this State. An individual appointed as a state constable pursuant to sections 58‑13‑910, et seq . who takes up residence out of this State vacates his office as constable by operation of law. Employees of railroad carriers appointed as constables pursuant to section 58‑13‑910 should reapply for new commission each time a new Governor is elected. 1988 Op.Atty.Gen., No. 88‑24, p 79 (1988 WL 383507).

Reappointment of special constables after merger or consolidation. Where two railway companies merge or consolidate, special constables for the constituent railroads appointed under this section [Code 1962 Section 58‑631] should be reappointed upon application by the resultant railroad company. 1963‑64 Op.Atty.Gen., No 1671 p 113 (1964 WL 8297).

**SECTION 58‑13‑920.** Term and powers, duties and responsibilities of special officers or constables.

 Such special officers or constables shall have all the powers, duties and responsibilities of deputy sheriffs and other police officers, and their commissions shall continue so long as they are employed in such capacity by the railway or other common carrier. But the Governor shall revoke their commissions upon request of the superintendent or manager of the railway or other common carrier upon whose application they were appointed and the Governor may also at any time revoke such commissions for cause.

HISTORY: 1962 Code Section 58‑632; 1952 Code Section 58‑632; 1942 Code Section 7173; 1932 Code Section 7173; Civ. C. ‘22 Section 3895; Civ. C. ‘12 Section 2579; 1911 (27) 157; 1943 (43) 317; 1963 (53) 214.

CROSS REFERENCES

Powers, duties, etc., of constables, generally, see Section 22‑1‑10 et seq.

Library References

States 51, 70.

Westlaw Topic No. 360.

C.J.S. States Sections 88, 151, 153, 169 to 170, 224 to 225.

**SECTION 58‑13‑930.** Bond.

 Each special officer or constable appointed under the provisions of this chapter shall be required to enter into a good and sufficient bond in the sum of five hundred dollars, conditioned for the faithful performance of his duties, such bond to be approved by the Attorney General.

HISTORY: 1962 Code Section 58‑633; 1952 Code Section 58‑633; 1942 Code Section 7174; 1932 Code Section 7174; Civ. C. ‘22 Section 3896; Civ. C. ‘12 Section 2580; 1911 (27) 157.

Library References

States 80(1).

Westlaw Topic No. 360.

C.J.S. States Sections 235 to 236.

**SECTION 58‑13‑940.** Liability of carrier.

 Nothing herein shall limit the liability of any common carrier for any trespass or tort of such special officer or constable.

HISTORY: 1962 Code Section 58‑634; 1952 Code Section 58‑634; 1942 Code Section 7175; 1932 Code Section 7175; Civ. C. ‘22 Section 3897; Civ. C. ‘12 Section 2581; 1911 (27) 157.

Library References

Carriers 283(1) to 284.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 534, 536.