

THE SYSKONEN v. LOGAN and others.¹

(District Court, E. D. Pennsylvania. July 7, 1886.)

CARRIER—OF GOODS BY VESSEL—FREIGHT.

The ship Syskonen received a cargo under bills of lading which provided for its delivery to "order or assigns, he or they paying the freight." A. & Co. contracted with B., an indorsee of the bills of lading, for the cargo, agreeing to pay the stipulated price on delivery to them. The cargo was delivered into lighters belonging to A. & Co., who receipted to the ship for it. Payment of the freight was sought of B., but failing in this, and finding him probably insolvent, recourse was had to A. & Co. *Held* that, as A. & Co. were neither assignees of the bills of lading nor owners of the cargo until after delivery, they were not liable for the freight, and that the bill must be dismissed, with costs to respondents.

In Admiralty.

Charles Gibbons, for libelants.

Flanders & Pugh, for respondents.

BUTLER, J. The cargo was received by the ship under bills of lading which provided for its delivery at Philadelphia, to "order or assigns, he or they paying freight." The bills were indorsed to Gardeicke, who, on the ship's arrival in Philadelphia, ordered her to a discharging berth, where the cargo was delivered into lighters sent to receive it. The lighters belonged to the respondents, who had contracted with Gardeicke for it, undertaking to pay the stipulated price on delivery to them. Gardeicke had it thus delivered, in pursuance of his contract, directly from the ship, the respondents receipting to the ship for it. The ship knew no one in the transaction but Gardeicke, and supposed she was delivering to him, or some one representing him, and accordingly called on him for the freight immediately after. Failing to obtain payment from him, and finding him probably insolvent, she resorted to the respondents. In view of the facts, the libel cannot be sustained. The respondents were neither assignees of the bills of lading, nor owners of the cargo, until after its delivery.

The bill must be dismissed, with costs to respondent.

¹Reported by C. B. Taylor, Esq., of the Philadelphia bar.

THE HISTORIAN.

BARES *v.* THE HISTORIAN.

(*Circuit Court, E. D. Louisiana. June 15, 1886.*)

CARRIERS—OF GOODS—LOSS—BURDEN OF PROOF.

When the bill of lading shows that the package containing the goods carried was in good condition when shipped, and it being proved that the goods were well and properly packed, the burden is upon the carrier to account for the injury and damage, and excuse the ship from fault.

Admiralty Appeal.

Charles Louque, for libellant.

Geo. L. Bright, for claimants.

PARDEE, J. The bill of lading in this case shows that the case containing the piano came to the possession of the steamer *Historian* in good order and condition. The evidence shows that it was in good condition; the piano being well and properly packed. The burden is on the claimant to account for the injury and damage, and to excuse the ship from fault. It seems clear to me, under the evidence in the case, that this was not done. The injury to the top could not have come from within the case. There must have been violence from the outside; probably capsizing the case, and giving it a heavy fall. The theory that the lid covering the key-board was left unlocked and unfastened, and that all the injury resulted from that, is not possible, nor sustained by the evidence. The keys could not have fallen out even if the lid was unfastened, unless the case was upside down and then jolted. No theory of the matter that does not include a fall of the case, or of some heavy object on top of the case, will explain the curved top. The evidence in the district court left some doubt as to whether the piano was in fact properly packed for shipping; but the additional evidence, taken since the appeal, makes that point clear. The damage to the piano was at least half its value, and its value, including freight and duties, would have been \$250.

The libellant should recover \$125, and costs of the district court; but, as he failed to bring sufficient evidence as to the manner in which the piano was actually packed, until the case was appealed to the circuit court, he should not recover, but pay, costs of the circuit court. As both parties complained of the decree of the district court, and appealed therefrom, the costs of the transcript will be divided.

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.