

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 libelant.

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 libelant 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.

RIO GRANDE RY. CO. v. GOMILA.

(Circuit Court, E. D. Louisiana. 1886.)

1. COURTS—UNITED STATES COURTS AND STATE LAWS—SALE UNDER A *Fi. Fa.*
—PROBATE.

Where a person died when a judgment recovered by him in the state courts against certain parties was about to be sold with other property by the marshal under a *fi. fa.* for the benefit of the plaintiff by process of the United States courts, and the plaintiff, after causing the legal representatives of the deceased to be made parties to the suit, was proceeding with the sale, *held*, that the United States court could order the suspension of the sale and the property to be turned over to the executor, on motion or petition, for administration in the probate court of the state, and a suit in equity or injunction was not necessary.

2. SAME—JURISDICTION OF UNITED STATES COURT—HOW AFFECTED BY STATE LAWS.

The United States court does not deprive itself of any jurisdictional power by directing that property which has been placed by its order in the hands of the United States marshal for the benefit of a party shall be turned over to the probate court for administration under state laws, preserving whatever right said party may have in law.

Motion for Order to Suspend Proceedings to Sell Land under *Fi. Fa.*
Geo. L. Bright, for plaintiff.
Breaux & Hall, for defendant.

BOARMAN, J. The plaintiff and defendant are citizens of different states. Judgment was obtained in an action for debt in this court. The plaintiff, in endeavoring, by process of law to collect his claim, has presented several interesting questions of law. Last summer the question whether a judgment which Gomila had obtained against certain parties in the state court could be seized and sold by process of this court being decided affirmatively, the marshal was proceeding under a *fi. fa.* to sell the said judgment and other property of Gomila, when the defendant died. On the death of Gomila plaintiff stayed the sale, and caused his legal representatives to be made parties and was again proceeding to sell the said property, when Wiltz, Gomila's executor, applied, by petition or motion, to this court, for an order directing the suspension of the sale; and he, Wiltz, subsequently asked that the property under seizure be turned over to him for the benefit of the succession, to be administered in the probate courts of the state. These matters are now under consideration. The railway company objects to allowing the relief sought by Wiltz, on two grounds: *First*, that the remedy is not by motion or rule, but by a suit in equity and injunction; *second*, that this court has the right to execute judgments rendered by it, and to sell the said property which was under seizure when Gomila died; that the proceedings in execution should go on after the legal representatives are made parties; that the court, having been seized of jurisdiction over the property, cannot now be divested of that jurisdiction.

The motion or petition filed by the executors shows the death of
v.28f.no.6—22