

Case No. 7,059.

THE IONIC.

{5 Blatchf. 538.}<sup>1</sup>

Circuit Court, S. D. New York.

Nov. 21, 1867.

COMMON CARRIER—"BAGGAGE"—LIABILITY FOR.

1. A gold watch and chain, gold ornaments for presents, and American coin, are not "baggage," as between a passenger and a carrier of such passenger.

{Cited in *Fraloff v. New York Cent. & H. R. R. Co.*, Case No. 5,026.}

2. Where a passenger by a vessel from abroad, on leaving it at quarantine, his trunk remaining on board, was asked by the captain if he had any money in his trunk, and replied that he had nothing but clothing, and the trunk was lost, containing wearing apparel, a gold watch and chain, gold ornaments and American coin: *Held*, that the vessel was not liable for the trunk or for any of its contents.

{Cited in *Norfolk & W. R. Co. v. Irvine*, 84 Va. 556, 5 S. E. 532; *Hamburg-American Packet Co. v. Gattman*, 127 Ill. 606, 20 N. E. 662.}

{Appeal from the district court of the United States for the Southern district of New York.}

This was a libel in rem, filed in the district court, against the barque Ionic, to recover damages for the loss of a trunk and its contents which the libellant brought with him as a passenger on board of the barque, from Laguna, in Yucatan, to New York, and which were lost after her arrival at quarantine at New York. The district court dismissed the libel [case unreported], and the libellant appealed to this court.

Thomas J. Glover, for libellant.

Charles Donohue, for claimant.

NELSON, Circuit Justice. There were several articles in the libellant's trunk which are not comprehended within the meaning of the term "baggage," as expounded in determining the extent of the liability of the carrier, such as a gold watch and chain, of the value of \$471, gold ornaments for presents, of the value of \$450, and American coin, to the amount of \$60. The rest of the contents were wearing apparel, and comes fairly within the carrier's liability.

But a point was made on the part of the defence, in the court below, which controlled the judgment of that court and led to a dismissal of the libel. It is this: At the time the libellant left the vessel at the quarantine, in company with the captain and another passenger, he was, inquired of by the captain if he had any money in his trunk, to which he replied that he had not anything but clothing. The object of this inquiry was apparent, and must have been well understood by the libellant, namely, that if he had money or other valuable articles in his trunk, they ought to be taken care of. The

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answer was disingenuous and tended to mislead the captain, who, if the truth had been stated, might, and probably would, have protected his vessel from the responsibility for the loss, by putting the trunk in a place of security. I concur, therefore, with the court below, and affirm the decree.

<sup>1</sup> [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]