

## THE R. E. LEE.

{2 Abb. U. S. 49; 2 Chi. Leg. News, 397; 3 Am. Law T. Rep. U. S. Cts. 168; 5 Am. Law Rev. 181; 2 Leg. Gaz. 298.}<sup>1</sup>

District Court, S. D. Mississippi. June Term, 1870.

## CARRIERS—LIABILITY FOR BAGGAGE—IN CUSTODY OF PASSENGER.

The liability of a carrier of passengers, as such, for the baggage of a passenger, is limited to such property as is delivered to the care and custody of the carrier, or his agents and servants, during the transportation. It does not extend to articles which the passenger retains in charge. Thus, where jewelry usually worn by two lady passengers upon a steamboat, as a part of their apparel, was left by them in their stateroom in a carpet-bag, with other articles 520 of personal use, and was stolen while they were at supper,—held, that the steamer was not liable therefor.

[Cited in *Gleason v. Goodrich Transp. Co.*, 32 Wis. 92.]

{This was a libel by George F. King and wife against the owners of The R. E. Lee to recover the value of jewelry lost while on board the vessel.} The cause was submitted upon an agreed statement or facts, the substance of which is stated in the opinion.

HILL, District Judge. This cause is submitted upon the following agreed facts:

The libelants and their daughter took passage on the steamer against which the libel is filed, at New Orleans, for Vicksburg. They paid the usual passage fare, and delivered their trunks, &c, to the baggage master, and retired to the state-rooms assigned them, taking with them a small leather hand-bag, or companion, in which the ladies carried their combs, brushes, and articles of immediate necessity in traveling. In the evening, the ladies made their toilet for tea, leaving in the hand-bag or companion, jewelry usually worn on their persons, as part of their apparel,

worth one hundred and five dollars. This companion was hung on a hook, on the side of the state-room. When the ladies left the room they closed the door, and on returning from tea found that during their absence some one had entered the room and abstracted the jewelry. Notice of the theft was immediately given to the officers of the boat, who made inquiries for the property, but did not recover any portion of it. Payment of its value was then demanded of the officers of the boat, but was refused.

Whether or not the boat was liable for the loss under these circumstances, is the only question to be decided. The amount claimed is small, but the question is an important one to travelers and common carriers, and therefore demands serious inquiry.

That the steamer is liable, as a common carrier, for the libelants' ordinary baggage, committed to the care of the officers in charge, is admitted; but that this hand-bag, or companion, with its contents, was committed to their charge, is denied by the respondent, and the facts, as stated, do not show that any actual delivery thereof was made, or intended to be made, but that it was retained by the ladies in their own possession.

The rule in England, and, perhaps, in this country, before the invention of steamboats and railroads, was very strict upon common carriers, and rendered them liable for the loss of the baggage of passengers conveyed by them; one reason given was, that often there was a conspiracy between the coachman and the robber; but under our recent modes of travel, this rule has been very properly modified, and the carriers are only held responsible for such portion of the passenger's baggage as may have been delivered to them, or to the agent whose business it is to receive and take care of the same. This delivery must be complete. See *Blanchard v. Isaacs*, 3 Barb. 383; *Kent*, Comm. 604; *Packard v. Getman*, 6 Cow. 757. In *Tower*

v. Utica, etc., B. Co., 7 Hill, 47, it was held by Nelson, C. J., that a passenger who retains his overcoat in his seat, cannot recover against the company for its loss. Again, Mr. Story, in his work on Contracts (section 70(3), holds that in this country, if a passenger does not surrender his baggage to the carrier, but retains it in his own possession, and it is lost he cannot recover against the carrier therefor. Other authorities might be referred to, but these are sufficient

I am referred by libelant's proctor to *Mississippi R. Co. v. Kennedy* [41 Miss. 671] as sustaining the adverse proposition, but that is not a case in point. It is true, it holds that jewelry usually worn as part of personal apparel, does constitute a portion of a traveler's baggage, but in that case the trunk in which the articles were placed was delivered to the baggage master.

I am also referred for the same purpose to the case of *Macklin v. New Jersey Steamboat Co.*, reported in 7 Abb. Pr. (N. S.) 229. This case was decided by the court of common pleas, New York. This was a case in which the passenger was given the key of his state-room, and took his valise with him. The substance of the ruling is, that this was a delivery to the officers of the boat who, if they did not intend to become liable, should have notified him of the fact. The ruling of the court in that case, from the authorities cited, was based upon the older cases, and is not sustained by reason or the modern cases.

I am also referred to the case of *Epps v. Hinds*, 5 Cush. 657. This was a suit against an inn-keeper. The guest requested the innkeeper to send his trunk to his room. The guest placed the money given him by his father to pay his traveling expenses and his tuition at the University at Oxford, to which he was going, in the trunk, and locked it. Some time afterward, the inn-keeper placed in the same room another guest, who, during the night, broke open the trunk, took the

money, and left. The inn-keeper was properly held liable; for he had no right, after having assigned the guest to his room, to intrude another into it without his consent. Again, the trunk had been delivered to the inn-keeper, who was only requested to remove it to another room, and, if he was not willing to take the risk, should have notified the guest.

These cases, when properly considered, do not support the claim of the libelants. The baggage for which the carrier is responsible, must be such as can, with propriety, be placed in the baggage room, or must be delivered to the clerk of the boat, or some other officer authorized to receive it, and not such articles as the passenger necessarily 521 keeps in his possession, such as the handbag or companion stated in this case. I am satisfied, from a careful examination of authorities, and the agreed state of facts, that the claim of the libelants in this case cannot be sustained. The libel will, therefore, be dismissed, at the cost of libelants. Libel dismissed.

<sup>1</sup> [Reported by Benjamin Vaughan Abbott, Esq., and here reprinted by permission. 5 Am. Law Rev. 181, contains only a partial report.]

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