

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.

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