one gold ring blue stones opened with hand, one ring set in pearls, two plain gold rings, one locket with portrait in military costume, on the back a tombstone inlaid in pearls, one large oval brooch, three shades of light hair set in pearls, five small gold lockets, one large gold band bracelet with stones turquoise." This is the list of articles which the declaration owns "to have *belonged to the plaintiff, and part of which were family jewels, and therefore highly prized by her as such, apart from its intrinsic value; the whole of the value of* £120," "and which amongst other goods and effects were contained in a certain large trunk, the said trunk part of her baggage." This description and enumeration by no means appear to be of "the usual general conveniences of a traveller," or "what is usual for him to travel with and are usually contained in the ordinary traveller's trunk," or "articles of clothing which include all things necessary to the toilet," or "clothing and every thing required for the passenger's personal convenience." They are very much more than these, and do not seem to fall within that description of luggage protected by the common law responsibility of the carrier as passenger's luggage. But if they were actually luggage to be carried with her, the question remains, does the Shipping Act relieve the ship-owner in such case as this?

It is conformable to the principle of the common law that responsibility of a carrier may under it be abridged by the special terms of the acceptance of the goods. Exemptions which leave the common law rule in force as to all besides, and it being the business of the carrier to bring his case distinctly within them, they are to be strictly interpreted. If the goods are lost or damaged whilst in the control of the master, the *onus probandi* is upon him to prove that the loss was occasioned by some cause for which the law will excuse him; *prima facie* the obligation of safety is upon him. The common law is thus well put by Molloy, B., "The master is answerable if any of the goods are lost or purloined, or sustain any damage, hurt or loss, whether in the haven or just before or upon the seas when she is on her voyage." See Plander's notes. "If there be any exception to this responsibility at sea, it proceeds from the special provisions in the charter party or bill of lading, and not from any suspension of the rule; such exemption is strong evidence of the acknowledged law which rendered them necessary. In short it must be regarded as a settled point in English law that the masters and owners of vessels are liable in port and at sea, and abroad, to the whole extent of inland carriers, except so far as they are exempt by the exemption in the contract, charter party, or bill of lading, or *by statute*." Both the modern and ancient writers admit the possible abridgment of the common law responsibility of carriers by sea and land, either in contracts implied or understood between the parties, or by the operation of Statute laws. The common carrier has two distinct liabilities, the one for losses by accidents or mistakes where he is liable as an insurer, the other by default or negligence where he is answerable as an ordinary bailee: he may restrict his liabilities as insurer, and protect himself against misfortune, but by the public policy of the common law he cannot do so for negligence. The carrier's restriction by express or special contract rests upon the common law, and is productive of no evil consequences. So if the Statute makes the restriction, that is the contract between them; there is no implication or inference in this act which is specific and certain as a contract, there can be no controversy between the parties. It is manifest that the Shipping Act has intervened betwixt the ship-owner and the common law, and has to a certain extent made a restrictive contract in his favour. What is the construction to be put upon its provisions? There are but very few reported cases upon this Act, but the language is so precise and at the same time so general, that difficulty of construction need not arise. No owner of a sea-going ship shall be liable to any extent whatever, for loss or damage that may happen without his actual privity or fault, or to any of the following things, gold, silver, diamonds, watches, jewels, or precious stones, taken on board. The object of the Act, observes Lord Ch. B. Abinger, in *Gillis* v. *Potter*, 10 M. & W., 72, was to impose upon the shipper the *onus* of giving notice to the ship-owner of the nature of the goods intrusted to him to carry, and Alderson, B., "there can be no doubt that under this Statute parties are required to state in their bill of lading, &c., the true nature and value of the goods which they carry, provided these consist of gold, silver, watches, jewels, &c.," and further Martin, B., remarked, "otherwise we should put a most refined and artificial construction on very plain words." "What the Legislature pointed out there was, that the ship-owner was to have full notice of what was the value that the other party put upon this property. By the Carriers' Act the carrier is to be made acquainted with the estimated value of the article, in order that he may, by charging the increased rate, protect himself. At all events the Statute requires the party to state the nature and value &c., it is impossible but that we ought to give every statute, as far as we can, a construction consistent with the obvious sense of its language. The Legislature has pointed out two things to be stated, &c." It has been already observed that the Carriers' Act restricted the responsibility without notice to £10 of value; the Shipping Act gives the full relief from *any extent whatever*. The preamble the limiting responsibility section employs the general words, "the following things." By the first clause of the section, the owner's limitation of responsibility is given for goods, merchandize, or other things lost by fire on board. This is as general as possible, and passenger's luggage is not excepted. By the 2nd clause of the section, the same limitation of responsibility is extended to him for particular effects, set out in terms as general, gold, watches, jewels, &c. Effects of these descriptions are *goods*, *merchandize*, and *things*, as well as articles of personal use, and yet there is no exception in favour of passengers losing them. The limitation is strengthened by the requirement upon the *owner* or *shipper* to insert the nature and value not alone in the bill of lading, a purely mercantile document, but in some written declaration made by the owner or shipper. The effect of the statement in the bill of lading or in the written declaration is to deprive the ship-owner of the excuse or relief from responsibility, to keep the effects safely at all events; the failure or omission of the passenger to make the statement on the other hand, presumes him to have taken the risk upon himself so far as the ship-owner is concerned. As remarked above, by the common law, *prima facie*, the obligation of safety is upon the carrier, but, where the Statute gives him the exemption, the common law to that extent is controlled and done away. Upon full consideration of this matter, the demurrer cannot be sustained and must be rejected; the case rests upon facts the proof of which may or may not support the declaration. The plea cannot be rejected as bad in law.

Demurrer dismissed.

Torrance & Morris, for plaintiff.

Rose & Ritchie, for defendants.

VICE ADMIRALTY COURT.

(Before the Hon. H. Black, C. B., J., Vice Admiralty Court.)

The "James McKenzie."

Rule of Navigation with regard to steam vessels approaching each other on different courses.

A steamer going up the St. Lawrence at night, on a voyage from Quebec to Montreal, saw the light of another steamer coming down the river, distant about two miles: and when at the distance of rather more than half a mile took a diagonal course across the river in order to gain the south channel, starboarding her helm, and then putting it hard to starboard. The steamer coming down having ported her helm on seeing the other, a collision ensued.

Held, That the vessels were meeting each other within the meaning of the act regulating the navigating of the Waters of Canada, (22 Vict. c. 19), and the steamer going up the river was solely to blame for the collision in not having ported her helm.

(31th August, 1862.)

This was a cause of damage brought by Pierre Plante, the owner of the steamer *Fashion* against the steamer *James McKenzie*, to obtain compensation for a loss arising from a collision between these two vessels in the river St. Lawrence, about three quarters of a mile above Lavaltrie island.

The following was the judgment of the court.

On the 27th June, 1861, the steamer *Foshion*,, of 200 tons burthen, and about forty-five horse power, owned by and in charge of Pierre Plante, the promoter, as master, left Montreal at about nine o'clock in the evening, without cargo, and drawing about five or six feet water; having on board Joseph Paquin, a L anch pilot for and above the harbour of Quebec, as pilot, and having the lights by law in the position which the act requires. In the pros-