

or if either fraud or imposition has been practiced by or through the party benefited, the intoxicated party may institute a suit in equity for the cancellation or rescission of the obligation; but before a court of equity will grant the relief the party seeking this aid must return the consideration he has received. Intoxication may be pleaded by the intoxicated party, his personal representative or heirs, but cannot be pleaded by a third person."

*THE ANCIENT RULE THAT BAGGAGE IS NOT SUCH
UNLESS IT ACCOMPANIES A PASSENGER.*

The Supreme Court of Alabama held, that, where one purchases a passenger ticket and by it procures the checking of his baggage to the destination named in the ticket, it is not necessary that he go upon the same train or go upon the ticket at all for the baggage to be deemed baggage in the same sense as had be gone. *Alabama G. S. R. Co. v. Knox*, 63 So. 538.

In this case the baggage was lost and the railroad claimed that, as to a gratuitous bailee the evidence shewed no liability, verdict should have been for defendant, because baggage is carried only in performance of a contract to carry the passenger to whom it belongs, or who is its bailee.

The court speaks of the persistent clinging by text writers to the ancient rule that, in order to fix liability upon a carrier for the loss or destruction of baggage, as a carrier of baggage, as distinguished from a carrier of freight, the owner must be a passenger and accompany his baggage.

It was said the old rule was upon the theory of the owner of baggage being able to keep his eye on it and point it out along the journey and when the check system and separate cars were not used, as in steamboat and stage-coach travel. It is said that now, the reason of the rule having ceased, the rule itself should cease—the passenger having really no opportunity to see his baggage at all and it not being a mere matter of grace now, as was probably the case formerly, for a passenger to have his baggage carried. Now it is said the purchase of a ticket gives a