INJURIES TO FREE PASSENGERS.

This subject is one of much interest in this country, more so, in fact, than in England, where the practice of giving free passes is less common than it is on this continent. We give our readers the benefit of an able article on this subject from the pen of Mr. James Schouler, of Boston, published in the *American Law Review*.

The writer thus deals with the subject: "If there be any principle which is fundamental, in American law at least, it is that the bailment relation is in the nature of a trust and sedulously guarded by public policy. The party who performs the bailment undertaking may stipulate in various directions; but he cannot so stipulate as to procure absolute immunity from the consequences of his own negligence or misconduct, or that of the servants whom he may have chosen to employ about the business. Admitting that we call public policy swerves from one epoch to another, no bailee, nevertheless, can make a valid contract for exemption against his wilful wrong; and even bailees of the lowest grade of legal responsibility—they who perform an undertaking without the expectation of any benefit whatsoever—are not permitted to undertake performance for a lower grade of negligence than that which the law fixes as the lowest—namely, gross negligence, which is so close to fraud that it always appears culpable.[1] I may, when assuming, out of pure favour to my neighbour, to take custody of his goods, to perform work upon them, or to carry them from one place to another, agree specially with him to do this or that for my own relief; or, if foolish enough, to insure them against accident. But I cannot stipulate so as to put all the risk of loss or injury upon him, regardless of all fault on the part of myself or my servant.

This cardinal principle has been constantly discussed and applied, during the last three-quarters of a century, to the bailment of common carrier; and the strong conclusion of American courts, led by the guiding hand of our Supreme Federal tribunal, in an important case which was decided early in the new era of steam transportation, has been that public policy will not tolerate the exemption of a common carrier from liability to his customers for the consequences of negligence or misconduct on the part of himself or his servants, no matter what contract to that effect he may specially set up; that restriction of his liability as insurer, that exemption against misfortune, is the proper limit of any such special exoneration on his behalf from the hard exactions of the common law respecting his profession.[2] It is true that the strict rule of the common law, which pronounces the carrier liable, by reason of his public vocation, for all losses excepting those occasioned by act of God or act of public enemies,[3] applied only where the carrier was pursuing his business for hire; but even in the exceptional instance of a gratuitous carriage for any one he was considered subject to all the legal restraints of policy at least which attach to any bailee without recompense.

[1] Story Bailments, s. 32; Schouler Bailments, ss. 20, 51, 77.

[2] *New Jersey Steam Nav. Co.* v. *Merchants' Bank*, 6 How. 244; Schouler Bailments, ss. 453, 454.

[3] To which exceptions, as stated in the older books, modern precedent justifies us in adding act of the customer and act of public authority. Schouler Bailments, s. 405.