

degree of care in such cases, it is not liable for a loss of this character without some proof of negligence. The liability as insurers which the common law imposed upon carriers and innkeepers has not been extended to these modern appliances for personal comfort, for reasons that are stated quite fully in the adjudged cases and that do not apply in the case at bar: *Ulrich v. N. Y. C. & H. R. RR. Co.*, 108 N. Y. 80; *Pullman Co. v. Smith*, 73 Ill. 360; *Woodruff Co. v. Diehl*, 84 Md. 474; *Lewis v. R. R. Co.*, 143 Mass. 267.

But aside from authority, it is quite obvious that the passenger has no right to expect, and in fact does not expect, the same degree of security from thieves while in an open berth in a car on a railroad as in a stateroom of a steamboat, securely locked and otherwise guarded from intrusion. In the latter case, when he retires for the night, he ought to be able to rely upon the company for his protection with the same faith that the guest can rely upon the protection of the innkeeper, since the two relations are quite analogous. In the former the contract and the relations of the parties differ at least to such an extent as to justify some modification of the common law rule of responsibility.

The use of sleeping cars by passengers in modern times created relations between the parties to the contract that were unknown to the common law, and to which the rule of absolute responsibility could not be applied without great injustice in many cases. But in the case at bar no good reason is perceived for relaxing the ancient rule and none can be deduced from the authorities. The relations that exist between the carrier and the passenger who secures a berth in a sleeping car or in a drawing-room car upon a railroad are exceptional and peculiar. The contract which gives the passenger the right to occupy a berth or a seat does not alone secure to him the right of transportation. It simply gives him the right to enjoy special accommodations at a specified place in the train.

The carrier by railroad does not undertake to insure the personal effects of the passenger which are carried upon his person against depredation by thieves. It is bound, no doubt, to use due care to protect the passenger in this respect, and it might well be held to a higher degree of care when it assigns sleeping berths to passengers for an extra compensation than in cases where they remain in the ordinary coaches in a condition to pro-