

been disposed of by the verdict, it is difficult to give any good reason why the measure of liability should be less for the loss of the money under the circumstances than for the loss of what might be strictly called baggage.

The question involved in this case was very fully and ably discussed in the case of *Crozier v. Boston, N. Y. & Newport Steamboat Company*, 43 How. Pr. 466, and in *Macklin v. New Jersey Steamboat Company*, 7 Abb. Pr. 229. The liability of the carrier in such cases as an insurer seems to have been very clearly demonstrated in the opinion of the court in both actions upon reason, public policy and judicial authority. It appears from a copy of the remittitur attached to the brief of plaintiff's counsel that the judgment in the latter case was affirmed in this court, though it seems that the case was not reported.

It was held in *Carpenter v. N. Y., N. H. & H. R. R.R. Co.*, 124 N. Y. 53, that a railroad running sleeping coaches on its road was not liable for the loss of money taken from a passenger while in his berth, during the night without some proof of negligence on its part. That case does not, we think, control the question now under consideration. Sleeping car companies are neither innkeepers nor carriers. A berth in a sleeping car is a convenience of modern origin, and the rules of the common law in regard to carriers or innkeepers have not been extended to this new relation.

This class of conveyances are attached to the regular trains upon railroads for the purpose of furnishing extra accommodations, not to the public at large nor to all the passengers, but to that limited number who wish to pay for them. The contract for transportation and liability for loss of baggage is with the railroad, and real carrier. All the relations of passenger and carrier are established by the contract implied in the purchase of the regular railroad ticket, and the sleeping car is but an adjunct to it only for such of the passengers as wish to pay an additional charge for the comfort and luxury of a special apartment in a special car. The relations of the carrier to a passenger occupying one of these berths are quite different with respect to his personal effects from those which exist at common law between the innkeeper and his guest, or a steamboat company that has taken entire charge of the traveller by assigning to him a state-room.

While the company running sleeping cars is held to a high