

turned to the platform to get some other luggage belonging to the plaintiff, when the cab disappeared, and the carpet bag and its contents were lost. Now what was there the case? It is obvious that there, some of the luggage was in the van, and the porter went back to take it out. "*Held*, that this was a loss by the negligence of the company, for which they were responsible in damages." I note the word "negligence," but I take it they were held liable as common carriers, because it cannot be said that it was negligence to put a thing on the foot-board of a cab, which was the very place where it was to be put.

In *Richards v. London, Brighton and South Coast Ry. Co.*, 7 C. B. 839; 18 L. J. (C. P.) 251, it was proved that the plaintiff's wife, accompanied by a female servant, took places for London in a first-class carriage on the defendants' railway at the Woodgate station, near Bognor, bringing with them a considerable quantity of luggage, which was weighed, and the excess beyond the quantity allowed to first-class passengers paid for. On their arrival at the terminus at London Bridge, the lady, who was an invalid, was assisted to a hackney coach, into and upon which the luggage was placed by certain servants of the company, who upon the maid attempting to remove the small articles from the railway carriage to the coach, desired her not to trouble herself, as they (the porters) would see to the luggage. Upon reaching the residence of the plaintiff, it was for the first time discovered that part of the luggage, viz., a dressing-case containing trinkets and jewelry, which had been placed by the driver of the fly which conveyed the plaintiff's wife and her servant from Bognor to the Woodgate station, under the seat of the railway carriage, was missing. "*Held*, that the duty of the defendants as common carriers continued until the luggage was placed in the hackney carriage." There is a case directly in point, only it relates to the other end of the journey. I should mention also *Leach v. South Eastern Ry. Co.*, 34 L. T. (N.S.) 134, which seems to me to come to the same thing. Are they overruled by *Bergheim v. Great Eastern Ry. Co.*, 3 C. P. D. 221? In my opinion they are not. As I say, whilst

the thing is in the carriage with you, or in the carriage where you have directed it to be put, inasmuch as you have taken part control during the time that you do so, the company are not common carriers, although they are carriers. That I take to be the law. The question must always be whether the facts bring it within that view of the law. In my opinion, therefore, the question must be a question of fact. Had this lady, who had the control over the thing at the time, given this luggage to the porter for the purpose of suspending the journey, so that it should be in his custody, not for the purpose of holding it for a time whilst she suspended the journey? It seems to me it was open to the County Court judge to say she brought it there and gave it to the porter at the commencement of the journey, and that she only asked him whether it would be safe in his custody whilst she proceeded to take a step in that very journey which had then commenced, namely, to go to the ticket office and take the ticket. Under those circumstances, until it was in the carriage where she told him it was to be put, whether it was ticketed or not, the porter, according to his usual habit, as authorized by the company, had taken it into his possession for the company, and it was in the possession of the company for the purpose of the transit. The transit was all the time proceeding, although, of course, subject to the ordinary delays, and therefore they held this bag as common carriers.

With regard to the question of liability being limited by the ticket. If the company authorized its servant to take possession of the luggage before a ticket was obtained, what is on the ticket cannot affect the matter. Whether this luggage was carried under the ticket taken by the husband at Moorgate street, or under the ticket given to the wife, is a problem which I do not care to solve. If the latter is the case, the bag was lost before that ticket was given. If the former, no evidence of what that ticket was was laid before the County Court judge; and further, a ticket taken in Moorgate street could not be any notice with regard to luggage which was put in at Paddington.

I am of opinion that there was evidence