

ance, and exclusively in their power, they are common carriers in such case also. Thus the condition and the liability of common carriers is only suspended during the time when joint possession is taken with the railway company, that is, whilst the parcel is in the carriage with you where you have directed it to be put. But when it is in the possession of the porters in a way in which, and at a time when the company allow their porters to take it, by holding them out as having authority to take it, then it seems to me that it is being conveyed by the company, they are paid for the conveyance of it, and they are common carriers of it.

There is another state of things. You may have your luggage taken on to the station, and you may not be for a time going on your journey; and if suspending your journey, you put your things into a cloak room, you put them there, not for the purpose of being conveyed, but for the purpose of being warehoused. If instead of putting the company into the position of warehousemen, you give the luggage to a porter, or to a bystander, or to anybody else upon the same conditions, the same reasoning applies. If, therefore, you ask a porter to take it under such circumstances that the proper conclusion of fact is that it is not there for the purpose of conveyance, but, for a time, for another purpose, of course you cannot put the railway company into a position of responsibility, and you must look to the porter alone. But that is always a question of fact, and depends upon a considerable number of circumstances. It is not because a person asks a porter "Would this be safe whilst I do a certain thing?" or because a person says to a porter "Will you take care of this?" that that is conclusive. Supposing, for instance, you take your luggage to the station, and the porter takes it from you, and you say "Will this be safe with you whilst I go to the ticket office to take my ticket?" The ticket office may not be open, or there may be ten or twenty people before you in line, and you have to wait your turn, but can anybody say that the transit of your luggage is stopped meanwhile because of these temporary checks, which are not intended to suspend

the journey, but which are incidents of the journey? It would be monstrous to say—that is my opinion—that the porter is exceeding his authority if he holds your luggage for you whilst you take your ticket. I will go further, and ask if he carries it up toward the carriage, and you say "I am going to get a newspaper at the bookstall," and he loses it whilst you are gone for your newspaper at the bookstall, has the whole relation been changed whilst you go to the bookstall? Or if you go to the refreshment room, which has been opened there by the authority of the railway company, and in order that passengers may go to it during their journey, if the porter were to hold your bag whilst you go to the refreshment room, it being your understanding all the time that the journey is going on, and that that is part of it, and an incident in it, I cannot think that the relation between you and him is altered. As long as you do not suspend your journey, your luggage is in the care of the railway company, and they are liable as common carriers, except during a time when you yourself take part possession of your luggage, and although they are not common carriers during that time, that is from the moment when that relation of common control between you and them takes place, yet before you come into that position, they are common carriers, and after that position of common control ceases, they are common carriers. That is my view of the law.

Now it is said that view has been overruled, and decided by a court of equal jurisdiction with this in the case of *Bergheim v. Great Eastern Ry. Co.*, 3 C. P. D. 221.

In *Butcher v. London and South Western Ry. Co.*, 16 C. B. 13; 24 L. J. (C. P.) 137, the plaintiff, a passenger by railway, brought with him into the carriage a carpet bag containing a large sum of money, and kept it in his own possession until the arrival of the train at the London terminus. On alighting from the carriage with the bag in his hand, the plaintiff permitted a porter of the company to take it from him for the purpose of securing for him a cab. The porter having found a cab (within the station), placed the carpet bag on the foot-board thereof, and then re-