

culpable carelessness in causing the injury was clearly fastened upon the company; and yet the Massachusetts court decided that such a stipulation on the carrier's behalf against all liability whatsoever, which might be against good morals had the passenger been carried for recompense, was not against good morals when he travelled free.

How subtle and difficult becomes this line of distinction between passengers for hire and non-paying passengers when the legal consequences are considered so fundamentally different. Not many years ago the Supreme Court of the United States applied its own doctrine in a case where the inventor of a new coupling device had sent his servant to negotiate with a railway for the use of his patent, and the servant received a pass to see some officer of the road upon this matter; here the court held that he, like the drover, was in effect a passenger for hire and not legally bound by the stipulation expressed in the ticket that he should travel "free" at his own risk.¹ The drover's pass, we have seen, is considered a ticket for recompense, although called "free" and notwithstanding the drover is assigned to a cattle car; yet according to another Massachusetts case, which admits all this, a railway may stipulate that an express agent who travels with a somewhat similar charge of express matter, to the relief of the carrier's burden for such freight, is subject, unlike the drover, to special stipulations like any free passenger.² To say the least, a baggage car should befit any passenger's safety better than a freight train of cattle. And observe, too, with what painful effort the court, in our Connecticut case, remitted the sandwich youth to the category of gratuitous passengers; conceding that the railway company was incidentally benefited by the station restaurant, that its passengers derived a needful refreshment on their journey in consequence, and that, in fact, the railway officials had promised to aid the keeper in every way possible—issuing this very pass to the boy accordingly. We are not aware whether the restaurant keeper paid rent to the company or not; but at all events the court held that the railway had no direct interest either in the restaurant or the boy's peregrinations. And upon so refined a distinction this was concluded to be the case of a literally free passenger.³

In this Connecticut case it is furthermore suggested that our rule of public policy goes very far for the people in making any carrier company liable for the torts or misconduct of its servants as well as for their negligence. And yet under the Roman law of agency any principal is clearly liable for all negligence not wilful on the part of those he employs. Negligence not wilful is the usual concomitant of railway accidents; and to draw the strict line between the negligence and wilful misconduct of a railway's agents in these carrier cases would be intolerable to the public. Nor does the court appear, in this case, to have tried to ascertain

to be sure, the court decided, as in most of the other instances, on the theory that the bailment was one for recompense.

¹ *Railway Co. v. Stevens*, 95 U.S. 635.

² *Bates v. Old Colony R.*, 147 Mass. 255. To be sure, the court found here that riding on the baggage car instead of the passenger cars attached to

the train conduced materially to the accident in question; so that, perhaps, on the ground of the plaintiff's contribution to his own injury the decision stood well enough upon the particular merits of the case.

³ 53 Conn. 371, cited *supra*.