

All this humane and sensible provision of the law applies, it may be said, only to the carriage for hire of goods or of passengers. Granting this to be literally true, bailment law with its analogies does not cease to regard public carriage as a public trust. Even they who are taken gratuitously may demand to be treated with the tenderness of fellow-beings. If carelessly injured or killed, the individual is wrong and the whole human brotherhood suffers a compassionate shock; and if the unrecompensed carrier of a cow or a cask of cement who destroys the property by his gross negligence or misconduct, or by that of his agents, must make good the loss, why is it not equally good law that the unrecompensed carrier of his fellow-man should respond correspondingly, at least, in damages when he has maimed and mangled that fellow-being by negligence or misconduct similarly gross? Where public policy abhors a special contract seeking to divest the carrier in the one case, so ought it none the less in the other. For this age is presumed an age of benevolence in advance of all earlier ones.

We are glad to see a disinclination in most American courts to permit passenger carriers to regulate at their own unfettered discretion by any special stipulations the momentous responsibility which is incumbent upon them: whatever may be the leniency allowable in the lesser concern of insuring a person's inanimate baggage. The Supreme Court of the United States, it is true, carefully avoids a premature announcement in this matter of free passengers—aware, doubtless, of the contradictory precedents it must encounter when the subject comes up;¹ but the whole spirit of that sympathetic opinion pronounced by the late Justice Bradley in *Railroad Company v. Lockwood* certainly impels in the true humane direction. That great case laid down the law unhesitatingly for the case of "drovers' passes"—of passes which were called "free," but which the court decided were really given upon consideration, thus making that particular question one of a paying passenger's rights. The Supreme Court standard—and, we may safely add, the true American standard—is therefore diametrically opposed to the English and New York precedents here, as in the public carriage of goods, aside from legislation. English and New York courts had ruled that, with respect to any one who travelled in charge of cattle upon a "drover's pass" the railway carrier might, by the terms of the ticket thus issued, throw upon the person who used it the whole practical risk of bodily injury, no matter how morally culpable might be the servants of the company.²

We are not dealing so much, therefore, with English or New York precedents for guidance. They prove too much for the argument that no transcendent obligation exists to carry free passengers carefully, honourably and, humanely; for they extend the principle to persons who in reality are passengers for hire. Their ground was taken before our Federal court of final appeal had pronounced

¹ See *Railway Co. v. Stevens*, 95 U. S. 655; *per curiam*.

² For the English rule to this effect, see *McCawley v. Furness R.L.R.*, 8 Q.B. 57. For the New York rule, see *Wells v. N.Y. Central R.*, 24 N.Y. 181; 25 N.Y. 142.

That English and American law conflict at this day with regard to the carriage of goods, in cases not covered by positive legislation, see 42 Ch. Div. 321; 129 U.S. 397.