

This brief preliminary exposition of legal principles and legal history may serve to impress the readers with two points quite germane to our present discussion which do not as yet appear to have been brought steadily to view by our State judges. One point is, as our citation in the foregoing note clearly indicates, that there is a close analogy of public policy between the carriage of goods and the carriage of passengers. The other point is that the courts of England and of New York State have departed so widely from the recognized American standard in the limitations allowable by special contract of the carrier that they ought to furnish no criterion for other American tribunals to adopt. And the discussion which now concerns us—one to which the Supreme Court of the United States has not yet clearly committed itself—concerns the extent to which a carrier of passengers, and more especially a railway carrier, may claim lawful immunity for injuries received by a passenger who travels upon a free ticket.

It is admitted that the carriage of passengers is no bailment, in the strict sense of the term. Nevertheless the law of that topic is closely related to bailment law, and presents the strongest analogies. The same transporters, the same organized companies, combine often the business of carrying goods and passengers; and this is notably true of the railway. Public policy regulates the vocation with the same jealous regard for the public welfare in the one instance as the other, and confers like privileges in return. The same obligation is imposed to serve the whole people alike, so as far as the transporter's facilities and the scope of his vocation may permit, making no arbitrary selection of customers; the same right is recognized of collecting all carriage dues in advance and of making one's reasonable recompense the prerequisite of performance.¹ This analogy, moreover, extends to the conduct of the transportation. The passenger carrier, it is true, suffers no such compulsion at the law, is no such insurer against accident, as the carrier of the goods; and yet the standard of liability for human life and limb intrusted to his keeping is set very high; and the later precedents, English and American (departing somewhat, as it would seem, from the earlier ones), hold passenger carriers to the highest degree of practicable care for personal transportation under the circumstances presented. Not satisfied with the usual or "ordinary" means and appliances for safety and comfort in transportation, they usually lay it down that the "utmost" diligence, prudence, and foresight should be applied. In short, for bodily injury occasioned to a passenger that which bailment law terms "slight negligence" on the carrier's part is now becoming the standard.² Such a standard well befits this humane and enlightened age—an age in which the swarming of the people hither and thither is found one of the most remarkable characteristics. From carriers of goods and carriers of passengers as well, therefore, the weightiest of our judicial authorities exact the requirement to-day that nothing unjust or unreasonable shall be attempted on the bailee's part in derogation of the fundamental right of the inhabitants to travel with strong safeguards of legal indemnity against the culpable carelessness or misconduct of the carrier company which holds their lives in jeopardy.³

¹ Schouler Bailments, ss. 622-626.

² *Ib.*, ss. 638-652.

³ Observe the third rule cited from 17 Wall. 397 in our note *supra*.