

double right—one to have passenger carriage, and the other to have the baggage carried. Also it is said there is no possible way of the carrier being prejudiced by the ticket purchaser not accompanying his baggage.

It is admitted, however, that there is conflict even among modern cases on this subject and to our mind there are many reasons for the old rule surviving, and we believe there was as much of double right in the old contracts as in the new.

In the first place, we doubt whether the old rule originated in the thought of passengers on a journey watching their baggage. That might be fairly possible in stage coach travel, but in steamboat travel it would be as greatly cut of the question as in railroad travel. In either case it would have been a singular plea for the carrier to make, that the passenger should have watched his baggage and notified the carrier that it was not on board. By the carrier's contract he engaged to put it on board, and carry it as it should be carried. The court's theory of the old rule seems founded more on fancy than on fact.

But there is another consideration the court overlooks. Rates for passenger travel presumes baggage as baggage. One cannot contract for its carriage by paying passenger rates, he and the carrier knowing that there is to be no carriage of the passenger, because it would be illegal to charge any other rate than that prescribed for freight. And even were it the same rate, one might not have the right to demand the fast service, which goes with passenger transportation, for the transportation of freight. This might constitute discrimination. May the purchaser of a ticket obtain by concealment what he would have no right to obtain openly?

Furthermore, all regulation of common carriers goes upon the absolute necessity of both the carrier and the customer entering understandingly into their contracts of transportation. There is more the idea of a relation by the carrier to the public than ever before in the history of transportation. The least departure from this idea is condemned with more emphasis now