

whose presence in his inn might be a source of danger. This is not the case with the sleeping-car companies, who, by the terms of their agreements with the railroad companies are not at home (so to speak) in their own cars, the management and construction of these being, in a certain measure, controlled by the railroad company. Again, sleeping-car companies are obliged to accept all persons who demand and pay for a place in their cars, whether they are suspected to be dangerous or not.

This obligation to receive without any distinction all passengers who apply, and to retain them the whole of their journey, is imposed upon the company by all its contracts, and especially by that with the Orleans Railway Company in the organization of its Southern Express, which binds it to furnish the latter with the necessary dining and sleeping-cars for the making up of its special *trains de luxe* running between Calais, Paris, Madrid and Lisbon and *vice-versa*.

This contract reads as follows: "Places in the Southern Express trains shall be granted without favour to the first passengers applying therefor, until the car is filled. A passenger desiring a place in these trains shall pay: 1st, to the railway company the price of a first class ticket for the journey he wishes to make; 2nd, to the sleeping-car company an extra payment at the rate of 50 p. c. of the amount of the first class ticket."

In addition, it must be observed that the sleeping-car company are obliged to allow the employees of the railroad company to enter their cars and keep watch over their general management.

Therefore it is certain that the sleeping-car companies are not hotel or innkeepers, and hence articles 1952 *et seq.* applicable to that class only, cannot be applied to them.

Thus the theory that a passenger in a sleeping-car enters into two contracts, one of carriage with the railroad company and another of hostelry with the sleeping-car company, herein fails; —that a contract of hostelry cannot exist with the sleeping-car company, for they are not innkeepers. In reality there are not two contracts different as to their nature, but two contracts of carriage; one which gives the passenger a first class journey, the other affording him, in consideration of an extra paid to the "sleeper" company, which they share with the railroad company, a journey in a sleeping-car.

The truth is, that the sleeping-car company is but a common carrier acting in concert with the railroad company whose lines and traction they hire, thus procuring for passengers who make application and pay an extra price, luxurious compartments of a special nature, and who in fact substitute themselves for the Southern Express trains of the railway company, excepting as regards the traction and its auxiliaries, and guaranteeing within certain ascertained conditions, service as common carriers; whence it follows that, like the railway company, it is not responsible for hand baggage which the passengers have not had checked and left in their care, but which they have kept themselves and at their own risks. Appeal allowed.