

his wife. They returned to the spot where the wife had left the porter standing by the luggage. The portmanteau and hamper had been put in the van, but the porter and the bag were not to be found. The County Court judge at Marylebone gave judgment for the plaintiffs, and since then the case has produced a variety of opinion on the bench. In the Queen's Bench Mr. Justice Day was in favour of the defendants, Mr. Justice Smith in favour of the plaintiffs. In the Court of Appeal Lord Esher and Lord Justice Lindley were in favour of the plaintiffs, and Lord Justice Lopes against them. In the House of Lords the Lord Chancellor and Lords Watson, Herschell, and Macnaghten were in favour of the plaintiffs, but Lord Bramwell against them.

The case concerns not only travellers by rail in England, but all the world over, as the bag that goes in the carriage is a universal institution. In the United States and on the Continent the system of registering, adopted hardly at all in England, is not applied to handbags, and in countries like Italy, where a high charge is made for luggage, the handbag assumes abnormal dimensions. The judgments are the better reading because they were not unanimous, for judgments, like matrimony, are the better for a little aversion, which, if the majority were too sympathetic, was admirably supplied by Lord Bramwell's judgment. Besides the decision of the very common incident of the platform before the House, contributions were made to the law and philosophy of railway travelling in general; and a point highly interesting to English lawyers, whether the companies are common carriers of personal luggage, was touched upon in a way which considerably disturbs the opinion in the negative which obtains now by a decision of the highest Court but one. Lord Bramwell does not deal with this question on the present occasion; but he was party to the decision of *Bergheim v. The Great Eastern Railway Company*, 47 Law J. Rep. Q. B. 318, which is the decision referred to in which judgment was delivered by Lord Justice Cotton and concurred in by Lord Justice Brett. In regard to this case the Lord Chancellor said: "I must express my opin-

ion that the views expressed by Lord Truro, Chief Justice Jervis, Mr. Justice Williams, Mr. Justice Crowder, Mr. Justice Willes, Mr. Justice Keating, and Mr. Justice Montagu Smith do not appear to have had sufficient weight given to them (see *Richards v. The London, Brighton, and South Coast Railway Company*, 18 Law J. Rep. C. P. 251; *Talley v. The Great Western Railway Company*, 40 Law J. Rep. C. P. 9; and *Butcher v. The South-Western Railway Company*, 24 Law J. Rep. C. P. 137)." Lord Watson's view is still more decided, for he adds: "I think the contract ought to be regarded as one of common carriage, subject to this modification—that, in respect of the passenger's interference with their exclusive control of his luggage, the company are not liable for any loss or injury occurring during its transit to which the act or default of the passenger has been contributory." This view is accepted by the Lord Chancellor as the result of the cases previous to *Bergheim's Case*. Lord Herschell is disposed to agree with it; and Lord Macnaghten, perhaps, goes further than all of the consentient lords when he says that, if the reasoning in that case "seems to lead to a different conclusion, with all deference I am unable to concur in it, and I prefer the view expressed by Mr. Justice Willes in *Talley v. The Great Western Railway Company*, 40 Law J. Rep. C. P. 9." The facts in *Bergheim's Case* are hardly distinguishable from the present. The same colloquy took place between the porter and the passenger, but the bag was placed in the passenger's carriage instead of being left on the platform. Lord Macnaghten makes some weighty observations on the anomaly and inconvenience of the distinction created by that case when he says that "it was contended by the appellants that in receiving a passenger's luggage, railway porters, though in the service of the company, and forbidden to accept any payment from the public, must be taken to be acting on behalf of the passenger and as his agents, and that this relation continues as regards van-luggage until it is labelled for the journey, and as regards hand-luggage until it is placed in the carriage in which the passenger intends to travel. Further, it was contended that the contract as regards van-luggage is