

to the apartments of hotels, and the employees of the company to hotel attendants, etc.; that passengers intending to lie down on the beds which can be substituted for the seats are obliged to bring certain articles of night toilet, and this baggage constitutes a "necessary deposit."

But although there may exist certain analogies between sleeping-cars and inns, and especially those of an inferior class, where sometimes there are several beds in a room, it by no means follows that there is identity between an inn and a sleeping-car, and this identity must be complete in order that articles 1952 *et seq.* of the Civil Code may apply.

In order to render these articles inapplicable to the present case, it is sufficient that there be differences between an inn and a sleeping-car, and recourse must therefore be had to the common law; for such is the method adopted by both doctrine and jurisprudence in cases of loss of articles in establishments more or less analogous to inns, such as *cafés*, restaurants, baths and lavatories which are frequented by the public and who bring articles there.

It is by an abuse of words that the night effects brought in to sleeping-cars by passengers are stated to be a "necessary deposit." "Necessary deposit" in its proper legal sense is that which the depositary is obliged to afford, through urgency, to the first person at hand, on account of some accident: fire, ruin, pillage, shipwreck or other unforeseen occurrence of which he is a victim.

It is certain that the fact of traveling in a sleeping-car, an incident foreseen and even desired by the traveler, has in it nothing analogous to those unfortunate and unforeseen events which give rise to the "necessary deposit"

which the Roman law rightly designated by the name of *depositum miserabile*.

The differences between sleeping-cars and inns are numerous; thus a sleeping-car is essentially moveable, and is only occupied while moving, whereas the inn is stationary and is only used by people who are sojourning in its locality. In sleeping-cars the compartments contain two or four beds, which is not the case with, and would not be tolerated in, an hotel frequented by respectable people. Neither in an inn or hotel would the promiscuity necessary in a sleeping-car, be tolerated. The sleeping compartments of a sleeping car cannot be locked on the outside with a key, so that were the passenger alone in his compartment, he could not carry away the key or hand it to the employee in charge, which is exactly the reverse of the state of affairs which exists in hotels or inns, where rooms can be locked and the keys either retained by the occupiers, or left with the innkeeper who keeps watch over them.

It is maintained that these distinctions are not essential, and that their extent can be modified by assimilating sleeping-car compartments, for which the passengers pay very dear, to such rooms as contain several beds, or rooms in an inn, or furnished rooms on a ground flat, the occupants of which possess little or nothing, and who are exposed only to very slight losses, thus engendering but little responsibility upon their landlords.

But there exist other distinctions which are essential and conclusive. In effect, the innkeeper, subjected as he is to exceptional responsibility, is always in his inn, and can exercise an incessant watchfulness in order to prevent the loss or theft of the property of his guests. He can notably select his guests, by refusing to entertain persons