tiff in this action appeared in the district court and made no objections to the regularity of the proceedings therein. Furthermore, upon the trial of this action, it was stipulated, in open court, that such a proceeding was instituted for the purpose of dispossessing the plaintiff, and that on the 17th of August, 1892, a judgment was entered, in favor of the petitioner, that he have possession of the premises, and that a warrant issue to remove him therefrom. There was then no claim or suggestion that any of the proceedings which resulted in that judgment were irregular, or that the judgment was invalid. We think, when properly construed, this stipulation must be regarded as an admission that a proper and valid judgment was entered in favor of the petitioner. Under the circumstances, we are of the opinion that the plaintiff is not in a position to raise any question as to the regularity or validity of that judgment. Moreover, no such objections were taken to the judgment upon the trial of this action, and it is a well-settled rule in this court that a question which was not raised on the trial will not be considered for the first time on appeal. Oatman v. Taylor, 29 N. Y. 649, 662; Sterrett v. Bank, 122 N. Y. 659, 25 N. E. 913; Blair v. Flack, 141 N. Y. 53, 56, 35 N. E. 941; Oliphant v. Burns, 146 N. Y. 218, 236, 40 N. E. 980; Adams v. Bank, 116 N. Y. 606, 614, 23 N. E. 7.

We think the judgment of the general term was right, and should be affirmed, with costs. All concur. Judgment affirmed.

ADAMS v. NEW JERSEY STEAMBOAT CO.

(Court of Appeals of New York. Dec. 8, 1896.)

CARRIERS OF PASSENGERS--STEAMBOATS--LIABILITY AS INNKEEPERS.

Where money for traveling expenses, carried by a passenger on a steamboat, is stolen from his stateroom at night, without negligence on his part, the carrier is liable therefor, without proof of negligence; his liability being analogous to that of an innkeeper. 29 N. Y. Supp. 56, affirmed.

Appeal from common pleas of New York city and county, general term.

Action by Harry C. Adams against the New Jersey Steamboat Company. Judgment for plaintiff at trial term, which was affirmed by the general term (29 N. Y. Supp. 56), and an appeal by defendant allowed. Affirmed.

W. P. Prentice, for appellant. Westmoreland D. Davis, for respondent.

O'BRIEN, J. On the night of the 17th of June, 1889, the plaintiff was a cabin passenger from New York to Albany on the defendant's steamer Drew, and for the usual and regular charge was assigned to a stateroom on the boat. The plaintiff's ultimate destination was St. Paul, in the state of Minnesota, and he had upon his person the sum of $160 in money for the purpose of defraying his expenses of the journey. The plaintiff, on retiring for the night, left this money in his clothing in the stateroom, having locked the door and fastened the windows. During the night it was stolen by some person, who apparently reached it through the window of the room. The plaintiff's relations to the defendant as a passenger, the loss without negligence on his part, and the other fact that the sum lost was reasonable and proper for him to carry upon his person to defray the expenses of the journey, have all been found by the verdict of the jury in favor of the plaintiff. The appeal presents, therefore, but a single question, and that is whether the defendant is, in law, liable for this loss without any proof of negligence on its part. The learned trial judge instructed the jury that it was, and the jury, after passing upon the other questions of fact in the case, rendered a verdict in favor of the plaintiff for the amount of money so stolen. The judgment entered upon the verdict was affirmed at general term, and that court has allowed an appeal to this court.

The defendant has, therefore, been held liable as an insurer against the loss which one of its passengers sustained under the circumstances stated. The principle upon which innkeepers are charged by the common law as insurers of the money or personal effects of their guests originated in public policy. It was deemed to be a sound and necessary rule that this class of persons should be subjected to a high degree of responsibility in cases where an extraordinary confidence is necessarily reposed in them, and where great temptation to fraud and danger of plunder exists by reason of the peculiar relations of the parties. Story, Bailm. § 464; 2 Kent, Comm. 592; Hulett v. Swift, 33 N. Y. 571. The relations that exist between a steamboat company and its passengers, who have procured staterooms for their comfort during the journey, differ in no essential respect from those that exist between the innkeeper and his guests. The passenger procures and pays for his room for the same reasons that a guest at an inn does. There are the same opportunities for fraud and plunder on the part of the carrier that was originally supposed to furnish a temptation to the landlord to violate his duty to the guest. A steamer carrying passengers upon the water, and furnishing them with rooms and entertainment, is, for all practical purposes, a floating inn, and hence the duties which the proprietors owe to the passengers in their charge ought to be the same. No good reason is apparent for relaxing the rigid rule of the common law which applies as between innkeeper and guest, since the same considerations of public policy apply to both relations. The defendant, as a common carrier, would have been liable for the personal baggage of the plaintiff, unless the loss was caused by the

act of God or the public enemies; and a reasonable sum of money for the payment of his expenses, if carried by the passenger in his trunk, would be included in the liability for loss of baggage. Merrill v. Grinnell, 30 N. Y. 594; Merritt v. Earle, 29 N. Y. 115; Elliott v. Rossell, 10 Johns. 7; Brown, Carr. § 41; Redf. Carr. § 24; Ang. Carr. § 80. Since all questions of negligence on the part of the plaintiff, as well as those growing out of the claim that some notice was posted in the room regarding the carrier's liability for the money, have been disposed of by the verdict, it is difficult to give any good reason why the measure of liability should be less for the loss of the money, under the circumstances, than for the loss of what might be strictly called baggage. The question involved in this case was very fully and ably discussed in the case of Crozier v. Steamboat Co., 43 How. Prac. 466, and in Macklin v. Steamboat Co., 7 Abb. Prac. (N. S.) 229. The liability of the carrier in such cases as an insurer seems to have been very clearly demonstrated in the opinion of the court in both actions, upon reason, public policy, and judicial authority. It appears from a copy of the remittitur attached to the brief of plaintiff's counsel that the judgment in the latter case was affirmed in this court, though it seems that the case was not reported.

It was held in Carpenter v. Railroad Co., 124 N. Y. 53, 26 N. E. 277, that a railroad running sleeping coaches on its road was not liable for the loss of money taken from a passenger while in his berth, during the night, without some proof of negligence on its part. That case does not, we think, control the question now under consideration. Sleeping-car companies are neither innkeepers nor carriers. A berth in a sleeping car is a convenience of modern origin, and the rules of the common law in regard to carriers or innkeepers have not been extended to this new relation. This class of conveyances are attached to the regular trains upon railroads for the purpose of furnishing extra accommodations, not to the public at large, nor to all the passengers, but to that limited number who wish to pay for them. The contract for transportation, and liability for loss of baggage, is with the railroad, the real carrier. All the relations of passenger and carrier are established by the contract implied in the purchase of the regular railroad ticket, and the sleeping car is but an adjunct to it only for such of the passengers as wish to pay an additional charge for the comfort and luxury of a special apartment in a special car. The relations of the carrier to a passenger occupying one of these berths are quite different, with respect to his personal effects, from those which exist at common law between the innkeeper and his guest, or a steamboat company that has taken entire charge of the traveler by assigning to him a stateroom. While the company running sleeping cars is held to a high degree of care in such cases, it is not liable for a loss of this character, without some proof of negligence. The liability as insurers which the common law imposed upon carriers and innkeepers has not been extended to these modern appliances for personal comfort, for reasons that are stated quite fully in the adjudged cases, and that do not apply in the case at bar. Ulrich v. Railroad Co., 108 N. Y. 80, 15 N. E. 60; Car Co. v. Smith, 73 Ill. 360; Woodruff Co. v. Diehl, 84 Ind. 474; Lewis v. Car Co., 143 Mass. 267, 9 N. E. 615.

But, aside from authority, it is quite obvious that the passenger has no right to expect, and in fact does not expect, the same degree of security from thieves while in an open berth in a car on a railroad as in a stateroom of a steamboat, securely locked, and otherwise guarded from intrusion. In the latter case, when he retires for the night he ought to be able to rely upon the company for his protection with the same faith that the guest can rely upon the protection of the innkeeper, since the two relations are quite analogous. In the former the contract and the relations of the parties differ at least to such an extent as to justify some modification of the common-law rule of responsibility. The use of sleeping cars by passengers in modern times created relations between the parties to the contract that were unknown to the common law, and to which the rule of absolute responsibility could not be applied without great injustice in many cases. But in the case at bar no good reason is perceived for relaxing the ancient rule, and none can be deduced from the authorities. The relations that exist between the carrier and the passenger who secures a berth in a sleeping car or in a drawing-room car upon a railroad are exceptional and peculiar. The contract which gives the passenger the right to occupy a berth or a seat does not alone secure to him the right of transportation. It simply gives him the right to enjoy special accommodations at a specified place in the train. The carrier by railroad does not undertake to insure the personal effects of the passenger which are carried upon his person against depredation by thieves. It is bound, no doubt, to use due care to protect the passenger in this respect; and it might well be held to a higher degree of care when it assigns sleeping berths to passengers for an extra compensation than in cases where they remain in the ordinary coaches, in a condition to protect themselves. But it is only upon the ground of negligence that the railroad company can be held liable to the passenger for money stolen from his person during the journey. The ground of the responsibility is the same as to all the passengers, whether they use sleeping berths or not, though the degree of care required may be different. Some proof must be given that the carrier failed to perform the duty of protection to the passenger that is implied in the contract, before the question of responsibility can arise, whether the passenger be in one of the sleep-

ing berths, or in a seat in the ordinary car. The principle upon which the responsibility rests is the same in either case, though the degree of care to which the carrier is held may be different. That must be measured by the danger to which the passenger is exposed from thieves, and with reference to all the circumstances of the case. The carrier of passengers by railroad, whether the passenger be assigned to the ordinary coaches or to a berth in a special car, has never been held to that high degree of responsibility that governs the relations of innkeeper and guest; and it would perhaps be unjust to so extend the liability, when the nature and character of the duties which it assumes are considered. But the traveler who pays for his passage, and engages a room, in one of the modern floating palaces that cross the sea or navigate the interior waters of the country, establishes legal relations with the carrier that cannot well be distinguished from those that exist between the hotel keeper and his guests. The carrier in that case undertakes to provide for all his wants, including a private room for his exclusive use, which is to be as free from all intrusion as that assigned to the guest at an hotel. The two relations, if not identical, bear such close analogy to each other that the same rule of responsibility should govern. We are of the opinion, therefore, that the defendant was properly held liable in this case for the money stolen from the plaintiff, without any proof of negligence. The judgment should be affirmed. All concur. Judgment affirmed.

SCIOLINA v. ERIE PRESERVING CO. STEVER v. NEW YORK CENT. & H. R. R. CO. NIENDORFF v. MANHATTAN RY. CO.

(Court of Appeals of New York. Dec. 1, 1896.)

APPEAL—ALLOWANCE—COURT OF APPEALS.

Under Code Civ. Proc. § 191, subd. 2 (as amended by Laws 1896, c. 559), prohibiting appeals to the court of appeals from a judgment of affirmance in an action to recover for personal injuries, where the decision of the appellate division is unanimous, unless an appeal is allowed by a judge of the court of appeals, an appeal will not be allowed where the errors to be reviewed affect at most only the parties to the suit, without being of public interest.

Actions by Antonio Sciolina against the Erie Preserving Company, by Jacob E. Stever against the New York Central & Hudson River Railroad Company, and by Otto Niendorff against the Manhattan Railway Company. Certificates in behalf of the respective defendants, certifying that in the opinion of the appellate division a question of law was involved which ought to be reviewed by the court of appeals, were denied, and defendants applied to a justice of the court of appeals for the allowance of an appeal. Denied.

Simon Fleischmann, for appellants. John C. Hubbell, for respondents.

ANDREWS, C. J. The three cases above entitled are actions brought to recover damages for personal injury caused by negligence, in each of which a verdict was recovered, and the several judgments entered thereon have been affirmed on appeal, by unanimous decision of the appellate division of the supreme court in the departments, respectively, in which the cases were pending. 39 N. Y. Supp. 916, 944, and 38 N. Y. Supp. 690. After such affirmance, application was made, in behalf of the respective defendants, to the proper appellate division for a certificate certifying that in its opinion a question of law was involved, which ought to be reviewed by the court of appeals, and in each case the application was denied. The respective defendants have now applied to me, under subdivision 2 of section 191 of the Code of Civil Procedure, as amended by chapter 559 of the Laws of 1896, for leave to appeal to the court of appeals. I am of opinion that these applications should be denied for reasons which I shall briefly state.

The amended section of the Code under which the application is made declares that no appeal shall be taken to the court of appeals in certain specified cases, and, among others, from a judgment of affirmance in an action to recover damages for a personal injury, "when the decision of the appellate division is unanimous, unless such appellate division shall certify that in its opinion a question of law is involved, which ought to be reviewed by the court of appeals, or unless in case of refusal to so certify, an appeal is allowed by a judge of the court of appeals." The public history which preceded the enactment of this amendment of section 191 of the Code reflects light upon its interpretation. The new constitution had recently come into force. One of the serious problems which confronted its framers was how to arrange the judicial establishment of the state so as to secure the greatest efficiency and the highest usefulness of the courts, and at the same time bring the appellate business within the ability of the judiciary to dispose of it with reasonable promptness. The scheme finally adopted was to establish, in each of four departments into which the state was to be divided for judicial purposes, an appellate court consisting of judges selected from the judges of the supreme court for the hearing of appeals in the first instance, and to make the decision of the appellate division final in certain cases. The scheme embodied in the constitution for the organization of the appellate divisions constituted them courts of great dignity and authority, and it was the expectation that their decisions would in many cases be accepted and acquiesced in by litigants, even when further appeal might be taken. Having constituted these courts of appeal, the convention continued the existing court of appeals, but limited its jurisdiction. The judiciary article expressly confines its general jurisdiction to the review of questions of law. It prohibited the court from reviewing a unanimous decision of an appellate division