COMMENT.

AN ELEVATOR NOT A COMMON CARRIER.

The New York Court of Appeals has recently decided that a passenger-elevator is not to be regarded as a common carrier. The question was unique and the decision of it important; for hitherto the tendency in that State has been to the contrary view; and, indeed, it was only by the heroic measure of overruling the Supreme Court of the State, and repudiating some of its own *dicta*, that the Court of Appeals has set the matter at rest.

It happened that a gentleman by the name of Griffin was descending in an elevator from the eighth floor to the first, when the car escaped control, fell through the shaft, struck the buffers and rebounded. At almost the same moment the balance-weights, which had meanwhile got detached, came crashing through the roof of the car, struck the passenger and inflicted instant death. In seeking to recover damages from the owner of the building, Mrs. Griffin, administratrix, put in evidence at the trial substantially nothing but this story, alleging negligence but proving none; and the question thus arose whether proof was necessary.

Now with common-carriers of passengers the law is very exacting. Of them it requires not merely that reasonable care which, in most walks of life, furnishes the test of legal liability, but it holds them to the utmost zeal of vigilance in throwing safeguards about their patrons. Their undertaking is "to carry with safety as far as human care and foresight can go." (*Taylor* v. *Grand Trunk R. R.*, 48 N. H.) And in all such appliances as relate to the motive power and control of the vehicle, in distinction from mere accessory matters, like means of exit, they must keep abreast of the times and avail themselves of the newest and the best. (*Meier* v. *Penn. R. R.*, 64 Pa. St.) So, for all defects of such a nature that the consequences may be terrible, not only negligence, but even trifling negligence lays them open to claims for damages. In a suit against a carrier, therefore, the burden rests upon himself to explain away

the accident; and, until he does that, the plaintiff need do no more than show his injury to be the result of the accident—such an accident as would not naturally occur in the absence of at least some degree of negligence. Upon proof of so much, a rebuttable presumption arises in favor of the plaintiff. (*Griffin* v. *Manice* and cases cited, *post.*)

All this is old law. In the case of Mr. Griffin, therefore, it only remained to establish its applicability to those who operate elevators; and this is what the trial-judge attempted in his charge, of which the following is a part: "As to the machinery and appliances by which an elevator is moved and controlled in its ascent and descent, an owner is bound to use the utmost care as to any defect which would be liable to occasion great danger or loss of life, and he is, in that respect, subject to the same rule that applies to a railroad company in regard to its roadbed, engine, and other similar machinery." This charge was approved by the Appellate Division. (*Griffin* v. *Manice*, 47 Appel. Div. Sup. Court, N. Y.) Indeed, except for a change of mood, from the subjunctive to the indicative, it was taken verbatim from an opinion of the Court of Appeals itself. For in the case of *McGrell* v. *Buffalo Office Company* (153 N. Y.), that Court had said in these very terms that such *might* be the rule; sparing the defendant in that case, however, because the defect there alleged had no bearing on the motive power or control of the elevator, but pertained only to the means of exit. But when this, its own, though non-committal language, was served up to it with approval by the Appellate division of the Supreme Court, the Court of Appeals replied (speaking through Judge Cullen): "I think sufficient security is afforded the public when owners or occupants of a building are required to use reasonable care. The stairways are always open to those who deem this degree of diligence inadequate for their protection." From this view two judges dissented.

This entire question is one of public policy. (*Taylor* v. *Grand Trunk*, *supra.*) The business of carrying passengers by rail is of such extraordinary hazard, that for a wholesome stimulus to care and diligence, it is coupled with extraordinary liability. And before New York found these considerations inapplicable to elevators, California had arrived at the opposite conclusion. Said the Supreme Court of that State: "Such responsibility attaches to all persons engaged in employments where human beings submit their bodies to their control by

which their lives or limbs are put in hazard." (*Treadwell* v. *Whittier*, 80 Cal.)

Here is a flat-footed difference. Where New York denies that the elevator-man receives, like the common-carrier, any consideration for his services, California calls attention to the advantage which accrues to his business. Where New York calls attention to the stairway, California denies the use, in a sky-scraper, of this contrivance, to the aged and infirm; and might have added, had the New York opinion been extant at the time, that the turnpike should make as good a defense for the common-carrier as the stairway for the elevator-man. It is curious to note that the conservative court is old and eastern, and the radical, young and western. And since the question at issue is one of policy—that is, of expediency—for the solution of which common sense is as efficient as judicial training, it will not be strange if the States divide upon it, perhaps east and west.