

tion. The plaintiffs' man looked after the horses and fed them, but there was no one on behalf of the plaintiffs in charge of the horses during the night. The stable was at the same time used by the defendants for horses in transit during shipment over the railway and no particular stalls were allotted for the plaintiffs' horses. One night one of the plaintiffs' horses, a heavy draft animal, broke through the flooring of the stall it occupied and was so injured that it died. The defendants' agent in charge of the stable had requested the plaintiffs' stableman to report to him any defects in the flooring he might notice and had several times made repairs on receiving such reports, but there was no agreement by the plaintiffs that they would make such reports.

Held, that the relationship of the parties was either that of bailor and bailee or licensor and licensee, and not that of landlord and tenant, and that the defendants were under a duty to have the stable reasonably fit for its purpose, and so were guilty of negligence in not keeping it in proper repair and were therefore liable to the plaintiffs in damages for the loss of their horse.

Searle v. Laverick, L.R. 9 Q.B. 122; *Brabant v. King*, [1895] A.C. 632; *Stewart v. Cobalt*, 19 O.L.R. 667, and *Francis v. Cockrell*, L.R. 5 Q.B. 501, followed.

RICHARDS, J.A., dissented.

W. L. Garland, for plaintiffs. *Curle*, for defendants.

KING'S BENCH.

Robson, J.]

[Feb. 5.]

RE ST. BONIFACE BY-LAW NO. 800.

Practice—Summons to quash by-law—Grounds of application should be stated—Amendment—St. Boniface Charter—Application by summons or notice of motion.

Held, 1. Under s. 517 of St. Boniface Charter, 7 & 8 Edw. VII. c. 57, an application to quash a by-law of the city for illegality is properly made by summons and not by notice of motion.

2. Although the statute does not expressly provide that the grounds intended to be set up should be stated in the summons, yet, to avoid injustice, such requirement should be implied. In this case the omission to state the grounds in the summons was by inadvertence, and permission was given the applicant,