

One of the judges in this case also expressed an opinion that although no new by-law had been enacted by the municipality under sec. 6, sub-sec. 6, of 32 Vic. cap. 32 (Ont.), the applicant was bound to have paid for the license, which he had in fact obtained, the amount due under the by-law then in force, and that the payment, after complaint, but before judgment, of the sum fixed by the latter act did not enure to make the license valid from its date.

In the other case that we refer to (*Reg. v. King*), the conviction being under the above act, and stating the time and place of the sale of the liquor, the conviction was considered sufficient, though it did not specify the kind and quantity of the liquor sold.

Shopkeepers would do well to note an additional part of the judgment in this case, to the effect that the *owner* of the shop is criminally liable for any unlawful act done therein, in his absence, by his clerk or assistant; as, for instance, in this case, for the sale of liquor without license by a female attendant. But it might be otherwise if it appeared that the act of sale was an isolated one, wholly unauthorized by him, and out of the ordinary course of his business.

The informer is a competent witness in cases arising under 32 Vic. ch. 32 of the Ontario Statutes.

LIABILITY FOR ACCIDENTS.

We have read with much interest a pamphlet sent to us some time since on "The Evils of the Unlimited Liability of Masters and Railway Companies for Accidents arising from the negligence of Servants, especially since Lord Campbell's Act." The paper is written by Joseph Brown, Esq., Q.C., and was read before the Social Science Association.

The view most favorable to masters and railway companies is advocated very strongly and very ably, but we cannot but feel that the zeal of the writer in the cause he upholds has led him into enunciating some opinions which can scarcely be sustained.

One evil that he complains of is—"the great number of such actions and the length of time which the trial of them occupies, to the hindrance and delay of commercial and other important business"—is certainly not felt in this country as such a hardship as requires any serious consideration.

There is however, much truth in the following remarks:—

"The great evils, however, which I have mentioned, serious as they are, are not those to which I have undertaken to call the attention of the Society. The great and crying evil belonging to the class of actions in question is this—that the penalty of the act of negligence, even when it is proved ever so clearly, almost always falls on one who is perfectly innocent of any blame. A servant carelessly drives a cart over the plaintiff and breaks his leg; but the servant can't pay anything—his master can—therefore the law makes the master pay the damages. Of course the servant in ninety-nine cases out of a hundred is wholly unable to repay his master. The result is that the master is punished, and the servant who did the mischief goes scot free."

But his language is, it seems to us, extravagant when he says:—

"If a tradesman who has saved £10,000 by a life of industry and frugality, sets up a brougham, and his coachman happens in a moment of carelessness to drive over and kill a merchant who is making £2,000 a-year, the master may be mulcted of his whole fortune in damages, though he was entirely blameless."

He argues that the rule *respondet superior* is only applicable with justice where the servant has followed his master's orders in doing the very act complained of, and that it ought never to be applied where the act done is beyond or contrary to orders; and in support of his contention he calls in the analogy of the criminal law, and cites the institutes of Menu, "the oldest system of law known to us," where it is laid down that,—

"Where a carriage has been overturned by the unskilfulness of the driver, then, in case of any hurt, the master shall be fined 200 panas; that if the driver shall be skilful but negligent the driver alone shall be fined, and those in the carriage shall be fined each 100, if the driver be clearly unskilful."*

He continues: "The rule which thus approved itself to the mind of the Indian lawgiver 3,000 years ago, rests upon the immutable distinction of justice and reason, that in the one case the master is to blame, and in the other he is not. He must of necessity employ servants to do a multitude of things which he can't do himself: he does his best to employ skilful and careful servants; this is all he can do, and, when he"

* "Institutes of Menu," by Sir W. Jones, p. 181, 229, 294, last edition.