tention incompatible with the general intention, the particular intention shall be considered as an exception: " Per Best, C. J. in *Churchill* v. *Crease*, 5 Bing. 480-492. It is true that by the 91st section the Federal Parliament exclusively has the power to tax in every mode, but sec. 92 gives specifically to the Local Legislatures the power of direct taxation, then according to the above rule direct taxation must be considered by section 92 as being excepted from the monopoly given in general terms, by the 91st section to the Federal Parliament. The same rule is applicable to the construction of the other paragraphs of these two sections. Thus, although by the 91st section the Federal Parliament has the exclusive power of taxing in every mode, and of regulating trade and commerce, shop, saloon, tavern, auctioneer licenses and other licenses of the same kind come within the jurisdiction of the Local Legislatures, and that because the power is given specifically by the 92nd section, and *vice versa*, although the 92nd section gives the power of direct taxation and of indirect taxation by means of the licenses just mentioned the Federal Parliament has also the power of direct taxation and indirect taxation by means of said licenses, because the 91st section gives them the power specifically of imposing all kinds of taxes, which is one of the essential elements of sovereignty, and at the same time giving an exclusive control over the regulation of trade and commerce. The concurrent legislative authority over these subject matters by the Federal Parliament and the Local Legislatures can only exist as to direct taxation and the granting of "shop, saloon, tavern, auctioneer and other licenses, *ejusdem generis*. It is not however necessary for me to consider in this cause the different questions which may arise from the concurrent powers given to these legislative bodies, as I am of opinion for the reasons I have before given, that the licenses imposed on the insurance companies cannot be said to be a direct tax, and are not comprised in the words "shop, saloon, tavern, auctioneer, and other licenses."

It was stated on the argument that municipal taxes are somewhat in a similar position as these. Without wishing to express an opinion in one sense or the other, as to the constitutionality of any legislation relating to the municipal system I will say that it is quite possible that such legislation would come within a different class of subject matters and within certain other sections of the Imperial Statute, which I have had occasion to refer to. I allude to the 129th section which declares that the existing laws before Confederation in each Province, shall continue to remain in force, and gives power to the Dominion Parliament and to the Local Legislatures to repeal, alter or modify them according to their respective jurisdiction, as well as by paragraph 8 of the 92nd section which puts the municipal system under the control of the Local Legislatures. But I will repeat, it is not necessary for us to express any opinion on this portion of the Imperial Statute.

By this suit the Attorney-General for the Province of Quebec, *pro Regina*, claims from the Defendant's company a penalty of one hundred and fifty dollars for issuing three insurance policies without having affixed to them the stamps required by the Statute passed by the Legislature of the Province of Quebec. The Superior Court has decided that this Act passed by the Legislature of Quebec is unconstitutional and has dismissed the plaintiff's action. I am of opinion that this judgment ought to be confirmed.

# UNITED STATES REPORTS.

## SUPREME COURT OF MISSOURI.

Smith *v.* the St. Louis, Kansas City, and Northern Railway Company, Appellant.

*Continuation of note to this case from the "American) Law Review," from p. 173 ante.)*

§ 5. *Application of these Principles to Railway Service.*—From the foregoing principles it is obvious that it cannot be stated without qualification that "it is the duty of railroad companies to keep their road and works, and all portions of their track, in such repair, and so watched and tended, as to insure the safety of all who may lawfully be upon them, whether passengers, or servants, or others;" that "they are bound to furnish a safe road and sufficient and safe machinery or cars;" and that "the legal implication is, that the roads will have to keep a safe track, and adopt all suitable instruments with which to carry on their business." The court in the principal case was clearly right in disapproving these statements of doctrine, when taken literally and without qualification. So far from being an *insurer* of the safety of its servants, as the above language would indicate, a railway company is not even an insurer of the safety of its passengers.

It is to be observed, however, that this expression did not originate with Judge Wagner. It is found, in substance, in a celebrated judgment of Bigelow, C. J., of the Supreme Judicial Court of Massachusetts, in *Snow* v. *Housatonic R. Co.*, a case which has been much cited and followed by other courts. This case has never been understood as holding that a railway company is an insurer, as to its servants, of the safety of its roadway, rolling stock, and other instrumentalities. It simply meant to declare that it is under an obligation similar in kind, if not in degree, to its servants to that which the law imposes upon it as to its passengers. And there is manifest sense in