plaintiff with the commission of crimes according to what he, the defendant, actually said—the undisclosed intention of the defendant in this respect having nothing to do with the question, and being wholly immaterial.

Heyd and *Williams* for the plaintiff.

Fullerton and *Segsworth* for the defendant.

Div'l Court.]

PEARCE *v.* SHEPPARD.

Negligence—Agister of horses—Bailee for hire—Liability—Onus.

Held, that the judgment of nonsuit in this action must be set aside and a new trial ordered.

The action was for damages for injuries received by the plaintiff's mare through the alleged negligence of the defendant, who had received her on a contract of summer-agistment, *i.e.*, to permit her to graze and depasture on his ground. The mare fell through the plank covering of a well in the defendant's yard, to which yard there was access out of the field in which the mare was at pasture.

Per BOYD, C.: Persons who take horses or cattle for hire into their fields to graze during the summer, or into their barn or stockyards to feed during the winter, are responsible for accidents to them which they could reasonably guard against, and slight evidence of want of proper care may be sufficient for this purpose. The test is not necessarily the care which the agister may exercise as to his own animals, for they may be accustomed to a place of danger to which a strange horse would be unused, and he may choose to take risks as to his own property which would be unwarrantable as to that of another for which he is to be paid. The test in general is not what any particular man does, but what men as a class would do with similar property as a class.

Per FERGUSON J.: The degree of diligence required by law of the defendant was what is called and known as ordinary diligence. A person receiving a horse to pasture for hire is only bound to the use of reasonable care of the property, and only becomes liable for loss or injury to such property where there is a want of such reasonable care. In this case the plaintiff gave sufficient evidence to cast the onus on the defendant to show that the mare was killed without any want of reasonable diligence on his part, and the case should not have been withdrawn from the jury.

Per MEREDITH, J., dissentiente: An agister is not an insurer. He is bound to take reasonable care, but the onus of proof or neglect of such his duty by the defendant was on the plaintiff; and the evidence given in this case that the mare broke through the well and was killed, and that some of the boards which formed part of the covering of the well appeared afterwards to be rotten, was not sufficient evidence of want of reasonable care on the defendant's part to make him answerable in damages for the loss which the plaintiff sustained by the death of his horse.