

The Legal News.

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CARRIER—CONTRACT FOR SLEEPING CAR—BREACH—DAMAGES.

The plaintiff engaged two berths in a sleeping-car, telling the porter that he wanted them for himself and two ladies. He then went back to the passenger coach and returned with his mother and his wife. When the conductor came through the car, the two ladies were seated together, and the wife paid for a berth. The plaintiff was then in the other berth, and when the conductor came to him he also paid for one. When she had put his mother to bed, the plaintiff's wife went over to the berth to which he had retired. She was partly undressed. The porter observed this, and pulled the curtains aside, saying that the company did not allow such proceedings. Being told that the lady was the plaintiff's wife, the porter called the conductor, and the two pulled the curtains aside, exposing to view the plaintiff and his wife undressed. They insisted that she leave the berth, which she did, returning to the other. *Held*, that there was no breach of contract. No question can exist, remarked Henry, J., in delivering judgment, with regard to the right of the husband and wife to occupy the same berth in a sleeping-car. At the same time, the proprietors of such conveyances imperatively owe to the travelling public the duty of seeing that men and women who do not occupy to each other that relation shall not occupy the same one. Usually there need exist no difficulty about preserving and enforcing both the right and the duty. When a berth is contracted for by the husband, either with the express understanding that it is engaged for the joint occupancy of himself and wife, or under circumstances that are not misleading within themselves, the refusal to permit such joint occupancy, without other reason than the difference of sex, and when such refusal would be a breach of contract, would give the injured party a right of action for damages, in which might be considered circumstances of insult and aggravation attending the breach.

In this case, the wife, with the consent of her husband, made a contract for one berth, while he made one for another. Unquestionably, the wife acquired the right to occupy the one for which she paid, and an unexcused expulsion of her from that would have been a breach of contract, for which plaintiff could have recovered damages. Unless she acquired by contract the right to occupy, at the same time, two berths, it is evident that the refusal to permit her to occupy the one paid for by her husband would not be a breach of any contract. As it cannot be claimed that the evidence shows a contract for the wife to occupy more than one berth, it results that a case is not shown for the recovery of damages for the breach of a contract. There is no assault or battery; nor is there a cause of action stated for defamation. It may be admitted that there was nothing improper in the conduct of the plaintiff and his wife, when their relationship to each other is considered; and yet it cannot be affirmed that their actions were not, under the circumstances, calculated to excite the suspicion, and arouse the vigilance, of defendant's servants, and make it their duty to investigate the matter, and apply a remedy for the wrong, if one was found to exist. It was a duty which defendant owed to plaintiff and his wife, as well as to the other passengers on the coach, that the investigation should be conducted without rudeness or greater publicity than was absolutely necessary. The evidence indicates that the defendant's servants did not discharge their duty in this manner, but that on the contrary they were guilty of great rudeness. Such conduct would properly be considered and given weight, in estimating the amount of damage, if a cause of action otherwise existed. But we have been unable to find a precedent for holding that there exists in favor of plaintiff a cause of action growing out of the manner alone in which the servants of defendant discharged an apparent duty. *Tex. Sup. Ct. Dec. 2, 1890. Pullman Palace Car Co. v. Bales.*

LOAN OR PARTNERSHIP.

The recent admirable Act codifying the law of partnership, which came into operation on January 1 in this year, has not interfered