There is an interesting discussion of the question before us, which I shall not stop to read, in Tinker v. New York, Ontario, and Western R. R. Co., 71 Hun 431.

There may have been some reason for it, but in the questions put to the jury, a most material one, which lay at the root of the question of the liability of defendants, was not included. I refer to the question whether the pile of ties was calculated to frighten horses and so constituted a nuisance in the public highway.

Without a finding of that kind, there might have been some difficulty, if we had been of a different opinion, in giving effect to plaintiff's motion.

The motion is dismissed with costs.

WINCHESTER, Co.J. JANUARY 11TH, 1905.

COUNTY COURT OF YORK.

IERZINO v. TORONTO GENERAL HOSPITAL TRUSTEES.

Master and Servant—Liability of Master for Theft of Servant —Scope of Employment — Bailment — Hospital—Charity Patient.

Action to recover $160, which the plaintiff alleged had been taken from him while an inmate of defendants' hospital by defendants, their servants or agents, to the use, benefit, and advantage of defendants, their servants or agents.

R. W. Eyre, for plaintiff.

H. D. Gamble, for defendants, contended that they could not be made liable as bailees, for, if this was a bailment, defendants were gratuitous bailees, and to make them liable gross negligence must be shewn, whereas upon the evidence no negligence whatever had been proved. In answer to the charge that the money had been stolen by one of the servants of defendants, he contended that defendants could only be made liable where the tort of the servant was within the scope of the employment, and referred to Cheshire v. Bailey, 21 Times L. R. 130. He further submitted that defendants could not be made liable by any analogy to inn-keepers, inn-keepers being one of the exceptions to the rule that bailees are not insurers of the goods in their custody. Among other cases he referred to Cayle's Case, 1 Sm. L. C., 11th ed., p. 119. He also submitted that boarding-house keepers not being responsible for the loss of their lodgers' property, defendants were in a very much stronger position, inasmuch as the institution was a charitable one, making no profit