

whom B. has contracted to deliver the goods does not create in favour of the servants of B. who are to handle the vehicles an obligation on A.'s part to examine the vehicles in order to ascertain whether they are in a safe condition for the additional journey. If we could suppose that the controlling factor was that there was a gratuitous loan of the vehicles, we should at once have an intelligible basis of differentiation, for, upon the principle to be noticed below (IX.), the first carrier could not be held liable to the servants of the second except for such injuries as resulted from defects in the wagons which were actually known at the time of the transfer and not disclosed to the transferee. This view of the situation is not distinctly negatived by anything said on the opinions (g), nor are the prior decisions establishing the principle in question even referred to; but it seems to supply the simplest solution of the issues raised by the evidence. Another possible standpoint would be to regard the two cases as illustrating the antithesis between the positions of one who is invited and of one who is not invited to use a chattel (h). The rule which this construction would suggest is that the bailor of chattels is liable, independently of contract for injuries caused by discoverable defects in such chattels, where the injured person is one who used them on the bailor's premises to execute work in which he had an interest, but not where such person was using them merely by the bailor's permission for the accomplishment of some object in which he had no interest—especially where the loan involves the removal of the chattels from the bailor's premises. But as their Lordships have not thought fit to explain what they consider to be the true relation of this most unsatisfactory decision to those with which it comes in contact, both these theories as to its meaning must remain mere matters of surmise.

XI. In the doctrines so far noticed the consideration which, as was pointed out at the beginning of the article, furnishes the only

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(g) Lord Shand considered that it was immaterial whether the vehicles were lent gratuitously or for a valuable consideration, as in either case the contract would be *res inter alios acta*, and could not be taken advantage of by strangers, such as the servants of the second carrier. But this remark seems to be merely a reaffirmation of the well established doctrine that the servants of the second carrier could not sue on the contract of their master with the defendant. See IV. ante.

(h) That a person who merely gives a contractor permission to use certain machinery, does not, by reason of such permission, incur any obligation to see that it may be safely used by the contractor's servants, has been expressly held in Massachusetts. *Pingree v. Leyland* (1883) 135 Mass. 398.