

Wright, 6 E. & B. 891, 899; *Beal v. South Devon R.W. Co.*, 5 H. & N. 875, 881, 3 H. & C. 337, 341, 342; *Lord v. Midland R.W. Co.*, L.R. 2 C.P. 339, 344; *Giblin v. McMullen*, L.R. 2 P.C. 317, 336, 337; *Palin v. Reid*, 10 A.R. 63, 67; *Leggo v. Welland Vale Manufacturing Co.*, 2 O.L.R. 45, 49.]

The facts of the damage, as I find them, giving such weight to the evidence of the viva voce witnesses as I think, from having seen them at the trial, their evidence should have, are as follow:—

The trunk was placed in the baggage-room of the defendants . . . which was heated by a closed hot water system. The boiler had been bought from a Buffalo concern, the American Radiator Company, and was installed by the defendants' own men some three years before the accident. The relief valve and steam gauge were taken away each summer, including the summer of 1910, and tested—at least, they were taken away for that purpose.

In the system there was a tank at the top of the room which let down water through a three-inch pipe into the boiler—then the water went into a one and a quarter inch pipe, which ran through the whole station, and ultimately back into the three-inch pipe. On the boiler was a gauge, and on the tank a safety valve tested to 30 lbs.

The 24th December had been a very mild day, as was the 25th. The night operator, whose duty it was to look after the furnace from 7 p.m. to 7 a.m., put on fresh fuel at about 12.30 a.m., making a moderate fire; and at about 4.30 a.m. he had slightly checked the fire, then just a moderate fire, by pulling out the damper; there was then between 10 and 15 lbs. of steam in the boiler, and the gauge seemed to be working properly. At about 5 a.m. an explosion occurred. The pipes could not have frozen and had not frozen, but two sections of the boiler burst. This did not set fire to the building, but it damaged the plaintiffs' property.

Some attempt was made at the trial to shew that the closed system is not a proper system; but the evidence was not given in a satisfactory manner, and I am satisfied that the closed system employed by the defendants is a safe system, no less safe than the open system advocated by the witness whose evidence I do not attach value to. It had, moreover, been used for years by the defendants over their system, and was not found dangerous.

It is wholly impossible to find anything like the "gross negligence," for which alone a gratuitous bailee is responsible.