

Co., lately decided by the Court of Queen's Bench, it was held that a telegraph company cannot stipulate for immunity from the negligence of its servants. By art. 1676 carriers are not permitted to limit their responsibility so as not to be liable for their own fault, and the same principle would apply to innkeepers and others. —Arts. 989 and 990, 2 Sourdut, Nos. 995 and *seq.* I am therefore of opinion that defendants are responsible as necessary depositaries, and that they have failed to prove, what the law required them to prove, to be released from such responsibility. I am also of opinion that they were guilty of negligence, and that what has been proved regarding the notice on the checks does not protect them. Judgment must therefore go against them for the amount demanded with costs. I express no opinion as to defendants' responsibility as common carriers."

Notes.

We think it may not be out of place to take a glance at the source of our modern laws upon the responsibility of innkeepers and this class of bailees generally.

At Rome previous to the Edict *Nautæ Caupones Stabularii*, the liabilities of *nautæ* etc., were dependant on the ordinary principles of contract recognized in the civil law. This Edict has been incorporated into the French Code; mainly through the authority of Pothier, and it also lies at the root of the English law of bailments and the Scotch law of reparation so far as applicable to these and other persons in the like exceptional position of trust.

EXTRACTS FROM THE EDICT.

DIG. IV. IX.—*Nautæ Caupones Stabularii ut recepta restituant.*

FR. 1. (*Ulpian on the Edict*).

(*Trans.*)

The prætor announces: "I will grant an action against shipmasters, innkeepers, and stable-keepers if they fail to restore to any person any property of which they have undertaken the safe keeping."

3. Certain officers on a ship are appointed for the very purpose of superintendence—*e. g.*, pursers and stewards. If a person in such a position receives goods, I am of opinion that an action should be granted against the employer of the ship, because by appointing him to such

duties, he sanctions the delivery of things into his charge, even though it is the practice of the employer or master to signal with his hands. Even if the sign is not given, still the employer will be liable for what he has received.

4. There is no express provision with reference to raftsmen and boatmen; but Iabes thinks the same rules should be applied, and that is the law now in observance.

6. The prætor's words are: "any thing of which they have undertaken the safe keeping;" that means any article or merchandise whatever which they have received. Hence an opinion is reported by Vivian that the edict covers everything which is accessory to the merchandise, such as clothes for use on the voyage and other every day necessities.

8. In my opinion the master undertakes the safe-keeping of everything put on board his vessel, and must answer for the acts of the passengers as well as of the crew.

FR. 3. (*Ulpian on the Edict*).

. Pomponius also observes, that where the master has once accepted things, the risk is on him, though they have not been taken on board, but have perished on shore.

1. Under the edict, he who has received goods is responsible in every case for any loss or damage that ensues, though there be no fault on his part, except it be due to a *damnum fatale*. Accordingly, Labeo remarks, that where the loss is caused by shipwreck, or an attack by pirates, the master must in fairness be allowed to plead this defence, and the same is true of inevitable accident occurring in a stable or an inn.

FR. 6. (*Paul on the Edict*).

3. An innkeeper is responsible in the action on the case for all who make a stay in the inn; but he is not liable for one who is entertained in passing, as a traveller.

FR. 7. (*Ulpian on the Edict*).

. If the employer of the ship has given notice that all passengers are to take care of their own effects, and that he will not be responsible for loss or damage, and if the passengers have assented to the notice, no proceedings can be taken against him.

DIGEST XLVII. 5.—*Furti adversus nautas caupones stabularios.*

1. (*Ulpian on the Edict*).

4. If the shipmaster or innkeeper undertakes the safe keeping of the thing, it is he, and not the owner of the other property who can bring the action for theft, because his undertaking makes him answerable for the safety of the thing.

Although these titles make no direct reference to the defence of contributory negligence on the part of the plaintiff, that is doubtless an accidental omission, for the doctrine on the subject was thoroughly elaborated by the Roman jurists—*e. g.* in the title: *Ad legem Aquilianam* (D. 19, 2).