own opinion is that the proper course is to retrace the steps taken in that direction, and hereafter to proceed *super antiquas vias.—Central Law Journal.*

NOTES OF CASES IN UNITED STATES COURTS.

IN *Gibbs* v. *Coykendall*, 39 Hun. 141, the plaintiff hired the defendant to pasture cattle on his farm, and they there fell sick and died of Texan fever, which they contracted from the dejections of Texan cattle previously pastured there. The plaintiff did not know of the previous pasturing, and the defendant did not know of this danger of contracting the disease.

Held, that the defendant was not liable. The Court, Haight, J., said: "Counsel for the plaintiff requested the court to charge the jury 'that if the jury believed that Texan cattle had been pastured in the lot, and that Texan fever could be communicated to native cattle pasturing in the lot where Texan cattle had been pastured, that the plaintiff's cattle died of Texan fever communicated to them from the noxious emanations of the Texan cattle pastured before they went into the pasture, then the plaintiff was entitled to recover; that the defendant was bound to furnish a healthy and safe pasture, so far as poisonous substances in the field were concerned.' Plaintiff's counsel also requested the court to charge 'that the effect of the introduction of Texan cattle was a matter of public notoriety; that it had been known since 1868, and had been the subject of public discussion; that commissioners had been appointed by the United States government to investigate it, and that the defendant was bound to know of the effect of pasturing Texan cattle where native cattle were to be pastured from the publicity that had been given to it, and that it was his duty to notify the plaintiff that Texan cattle had been pastured on the lot when the bargain for pasturing was made.' Both of these requests were refused, and the exceptions taken on such refusal present the only questions which we are called upon to determine this appeal. The questions thus presented are somewhat novel, and yet we think they may be properly disposed of upon well recognized principles. An agister of cattle is a bailee for hire, and as such is bound to use ordinary diligence properly to care for and protect the cattle placed in his charge, and is responsible for loss occasioned by his negligence. He is bound to furnish a pasture secure against the ordinary accidents incident to the cattle to be pastured. The field must be properly fenced, and be free from dangerous places or obstacles. A failure in these respects will render him liable for damages occasioned thereby. But he is not an insurer of the property, and unless he is guilty of negligence he would not be liable for injuries that may be suffered through other causes, and over which he has no control. He is bound to use ordinary care, that care which an ordinarily prudent person would exercise over his own property of like character. . . . *Claflin* v. *Meyer*, 75 N. Y. 260; S. C., 31 Am. Rep. 467. Again, it is claimed that he ought to have known of the deleterious influence that such cattle would create. It is true that like trouble had been occasioned in several of the western States, and to some extent in this State, that it had been the subject of investigation by the government, and in some of the States laws had been passed prohibiting the pasturing of Texan cattle. But the liability of native cattle to contract the disease from Texan cattle was but little known or understood in this State. It was not a matter of such public notoriety among our farmers as would justify the court in charging, as a matter of law, that the defendant was bound to have known it. We are consequently of the opinion that the court did not err in refusing to charge as requested."

IN *Boyle* v. *New York, etc., R. Co.*, 39 Hun. 171, it was held that as to cattle trespassing on a railroad track, the engineer, having sounded the whistle to alarm them, is not bound to reduce the speed of the train, and the company is not liable. The court, Baker, J., said:—"The defendant was under no legal obligation to reduce the speed of the train, and there is no evidence that the speed was accelerated after the engineer knew that the horses were on the tracks. The defendant was engaged in operating its road in the usual