

sibility, the injury being curable, and not detracting much from the value of the horse, which was denied to be worth \$1,000 as claimed by the plaintiff.

The case was tried before me on the 12th instant, and the evidence disclosed the following facts:—The plaintiff owned a valuable and spirited stallion, which he imported from the United States in April last. On the night of the animal's arrival here, it was taken to the defendant's place (he being the farrier usually employed by Mr. Allan) to be shod, and the defendant was then told that the horse was nervous and rather difficult to shoe. A month or two later, on the 15th of June, the horse was sent again to the same farrier to be shod. It was led into the forge by Crosby, the groom, who was in charge of it, and who held it by the head while being shod; and while the smith had one of its fore feet on his knee, and was in the act of rasping the hoof, the horse reared, whereupon the groom struck him twice with a whip, the strokes, or one of them, causing the animal to spring or swerve suddenly back towards the wall. This wall was made of boards; and instead of the planks of the floor joining closely with the wall, there was an opening between the end of one of them and the bottom board of the wall. This opening was of uncertain width (the evidence making it vary from one and a half to four inches.) The point of the horse's off hind foot must have got into this opening, and the weight of the animal's tread or kick forced or bent back the board in the wall, so as to let the foot in completely, and then the board sprang back again to its old place, and held the foot so firmly round the coronet that a sudden tug of the leg actually pulled the bone of the foot out of the hoof, which, held as in a vice, remained behind with part of the broken bone sticking to it. Mr. Alloway, who had the superintendence of Mr. Allan's stud, got notice of what had happened, and came down immediately, but found the injury so serious that, acting on his own judgment (being a veterinary surgeon), and with his employer's leave, he destroyed the horse. As to the necessity for this step, there is a conflict in the evidence; but the weight of it is to show that a partial cure of the local injury might have been effected, but would not have been worth the cost, as the hoof in its natural form could never

have been reproduced, and the animal, even if it survived, could only have been a shocking sight, and a useless cripple. It is also proved that sometime after the accident, the defendant, speaking to Mr. Alloway, asked him if the matter could not be arranged with the plaintiff, and offered, in the event of a settlement, to shoe Alloway's horses for nothing as long as he lived. The defendant also spoke of the condition of the floor, and said he would have it put right, but not just then, as it would look bad, and the floor, was, in fact, repaired shortly afterwards.

Upon this state of facts, the questions presented would be:—1st. Supposing there is nothing on the plaintiff's side conducive to the accident, what would be the extent of the defendant's responsibility of itself, and also considered with reference to the warning given in April that the horse was difficult to shoe? 2nd. Have we in this case proof of any contributory fault by the plaintiff's groom who had the horse in charge? 3rd. What is the fair and proper meaning and effect upon the case of the defendant's subsequent statements to Mr. Alloway, and the repairing of the floor?

I may disembarrass the case at once of everything extraneous to the principle of responsibility under the circumstances, by saying that, in my opinion, the warning, and the defendant's subsequent statements as proved ought not to affect the decision. As regards the warning in April when the horse, so to speak, was first introduced to the farrier, it seems to me that the defendant must have understood it as referring to the mode of handling the horse by the workman who might shoe him. It was the peculiarities of the horse to which attention was drawn; and the faulty condition of the floor, even if known at the time, would have been equally dangerous to any horse that might tread on that particular spot, without reference to their being unhandy to shoe. Then, the repairs to the floor of the forge, and the statements to Alloway, may safely imply, no doubt, an admission of the faulty state of the premises in that respect, an (admission probably rendered unnecessary by the other evidence); yet I think the offer to shoe the horses *gratis*, if the difficulty could be settled, can hardly be held to mean anything more than anxiety for peace, and for the retention of a valuable customer.