"In case any passenger on any railroad shall be injured while on the platform of a car, or in any baggage, wood, or freight car, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside of its passenger-cars then in the train, such company shall not be liable for the injury. Provided, said company at the time furnished room inside its passenger-cars sufficient for the proper accommodation of its passengers."

This provision is by the 57th section of the same act made applicable to all existing railroads in this state: Ibid., p. 438. Under this section the exemption of the company is made to depend upon a violation by the passenger of the printed regulations posted up in the passenger-cars only. They are not required to be posted up in a baggage-car: it is presumed that no passenger will ever be found there. There was evidence in the case tending to prove that the provision of the statute had been complied with on the part of the defendant; but the printed forms used had been changed since that time, and no copy of the former cards had been found, and on proof made of the loss of them, secondary evidence was offered to prove their contents. This evidence was excluded as irrelevant and having no bearing upon the case. In the view we have taken of this statute, the evidence was certainly very material and should have been admitted. It is true such notice would have given this party no information, for the reason he did not go in the passenger-car; the evidence tended to show that he was in fact well acquainted with these regulations; and this consideration, so far from weighing anything in his favour, would rather tend to strengthen the inference that he was not a passenger at all. This statute proceeds again upon the general principles of law in relation to contributory negligence, and it supposes that a passenger who has had the warning of this notice, and yet has placed himself in a situation so dangerous as a baggage-car, is to be considered as contributing by his own negligence to produce the injury, and therefore that the company is not to be held liable in such cases.

We think that the first and second instructions asked for by defendant should have been given, and that the fifth, sixth, and seventh instructions asked for by the plaintiff should have been refused It is not deemed necessary more particularly to notice the other instructions.

The judgment is reversed and the cause remanded.

The other judges concur.

(Note by Editor of American Law Register.)

The foregoing opinion seems to us to present several interesting practical points, in a very judicious and sensible light. It is sometimes difficult to determine with exact precision, when a person ceases to be an employee of the road and becomes a passenger. There is perhaps no fairer test than the one presented in this case, to allow his own claim and conduct at the time, and the acquiescence of the company, to determine that question. At the time, one who has recently been in the employment of the company, has a motive to claim the privileges of the employment, by passing without the payment of fare. And if he claims the privilege, and it is acceded to by the officers of the company, there is great injustice in allowing the person at the same time to hold the company up to the higher responsibility which it owes to passengers, from whom it derives revenue. It should, therefore, be made to appear, that one who passes in the character of an employee of the road, was really a passenger, before he can fairly be allowed to demand the indemnity which passengers may by law require. If the person assumes one character for advantage, and the company accede to the claim, he ought not to be allowed the benefits of any other character, unless it is very clear that such was his real position, and that this was understood by the company.

The effect of free passes, and of the passenger being out of his place in the carriages, is very fairly presented, as it seems to us, in the foregoing opinion, and the principal cases are referred to upon all the points.

I. F. R.

CORRESPONDENCE.

A few vexed questions on Division Courts practice.

To the Editors of the Law Journal.

Gentlemen, — By the amended Division Courts Act, passed in 1863, viz., 27 Vic. chap. 19, it is enacted, that it is desirable to lessen the expenses of Division Courts suits, and "that any suit cognizable in a Division Court may be entered and tried and determined in the court, the place of sitting whereof is *the nearest to the residence* of the defendant or defendants, and such suit may be tried and determined, irrespective of where the cause of action arose, and notwithstanding that the defendant or defendants may at such time reside in a county or division other than the county or division in which such Division Court is situate and such list entered."

I am aware that in your *Law Journal*, in 1864 (vol. x. p. 286), you published a valuable circular or comment upon this act, by Judge Hughes, of the county of Elgin, but yet I am also aware that some County Court Judges do not agree with him in his construction of the act; I mean particularly where he says that, on construing the word "nearest," we must understand distance as "the crow flies."

Some judges hold that the meaning is, by "the nearest travelled or available road." Thus it is quite possible for a court in a—to him—foreign county to be nearer the defendants residence than the nearest court of his own county, as the crow flies; yet if the distance be travelled by the only roads opened or available to the defendant, the distance to the first-named court would be much greater