

suspicion was very slender, he requested that cautious and careful inquiry should be made to see whether possession of the property could be traced to S., and that, in view that S. might be quite innocent, the inquiry should be so conducted as not to injure him unless evidence of his guilt could be obtained.

The chief constable sent this letter to B., who, just before S. and his master were leaving Newcastle, told the master privately the contents of it. The master shortly after discharged S. on the ground that he could not have in his employ a person on whom any suspicion of dishonesty had fallen.

Wills, J., at the trial told the jury that the communication was not privileged, and the jury found a verdict for S.

LINDLEY, L.J., and KAY, L.J., held that it was the moral and social duty of B. to inform the master of the suspicion that had fallen upon S., and the occasion was privileged; and, there being no evidence of malice, judgment ought to be entered for the defendant.

LOPES, L.J., was of opinion that B. was not justified, having regard to the very cautious character of the information that he had received, in acting as he had done; that the occasion was not privileged, and the verdict and judgment ought to stand.

UNITED STATES SUPREME COURT,
May 25, 1891.

UNION PACIFIC RY. CO. v. BOTSFORD.*

Evidence—Physical Examination of Party.
The courts of the United States have no power, in an action for personal injuries, to order before the trial an examination of the body of the injured person.

In error to the Circuit Court of the United States for the district of Indiana.

The original action was by Clara L. Botsford against the Union Pacific Railway Company for negligence in the construction and care of an upper berth in a sleeping car in which she was a passenger, by reason of which the berth fell upon her head, bruising and wounding her, rupturing the membranes of the brain and spinal cord, and causing a concussion of the same, resulting in great

* 11 Sup. Ct. Rep. 1000.

suffering and pain to her in body and mind, and in permanent and increasing injuries. Answer, a general denial. Three days before the trial (as appeared by the defendant's bill of exceptions) "the defendant moved the court for an order against the plaintiff, requiring her to submit to a surgical examination, in the presence of her own surgeon and attorneys, if she desired their presence, it being proposed by the defendant that such examination should be made in manner not to expose the person of the plaintiff in any indelicate manner, the defendant at the time informing the court that such examination was necessary to enable a correct diagnosis of the case, and that without such examination the defendant would be without any witnesses as to her condition. The court overruled said motion, and refused to make said order, upon the sole ground that this court had no legal right or power to make and enforce such order." To this ruling and action of the court the defendant duly excepted, and after a trial, at which the plaintiff and other witnesses testified in her behalf, and which resulted in a verdict and judgment for her in the sum of \$10,000, sued out this writ of error.

GRAY, J. The single question presented by this record is whether, in a civil action for an injury to the person, the court, on application of the defendant, and in advance of the trial, may order the plaintiff, without his or her consent, to submit to a surgical examination as to the extent of the injury sued for. We concur with the Circuit Court in holding that it had no legal right or power to make and enforce such an order. No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley: "The right to one's person may be said to be a right of complete immunity; to be let alone." Cooley, Torts, 29. For instance, not only wearing apparel, but a watch or a jewel, worn on the person, is for the time being privileged from being taken under distress for rent, or attachment on mesne process or execution for