

Damages—Exposure to Contagious Disease.

Held:—That a person who knowingly permits the child of another to be exposed to infection from a contagious disease (small-pox) existing in her house, is responsible for the loss and damages thereby occasioned to the father of the child.—*Gelineau v. Brossard*, Torrance, J., June 26, 1886.

Will—Usufruct—Substitution—Caducité.

A testator having made his will as follows:—

“I give, devise and bequeath all my real estate and personal property and effects of every nature, kind and description, and wherever situate, to my beloved wife, Ann Bain, for and during the term of her natural life, and after her death, to my nephew W. E. Phillips, and to his heirs and assigns for ever,”—and the nephew having died during the life of the widow:

Held:—That this did not give the usufruct to the widow, and the *nue propriété* to the nephew and his heirs, as the latter contended, nor did it create a substitution in favor of the nephew only, which became *caduque* on his death before the opening of the substitution on the death of the widow, as contended by her,—but that it created a substitution which continued in favour of the heirs of the nephew after his death waiting the opening of the substitution on the death of the widow.—*Phillips et al. v. Bain*, Loran-ger, J., March 14, 1885.

QUO WARRANTO.

In a very recent case ⁽¹⁾ the Supreme Judicial Court of Massachusetts has discussed the functions and operation of the writ of Quo Warranto, or of the nature thereof, and refused to apply that remedy to the relief of a private person upon whose relation the information was filed.

The facts were that Kenney, finding the operations of the gas company in digging up the street and laying pipes, inconvenient to his business as a brewer, caused the informa-

tion to be filed upon his relation by the Attorney General.

The court held, that the plaintiff had mistaken his remedy, that the law will not accord the benefit of this extraordinary writ unless it shall appear that the desired relief cannot be obtained through ordinary processes. On the general subject, the court says:

“We have no doubt that the court has jurisdiction, in proper cases, to restrain acts like those now complained of, upon the information of the attorney general, either on behalf of the commonwealth, or at the relation of a private individual.⁽²⁾ But in determining whether a proper case has been made out, all the circumstances are to be looked at. In England, in cases like the present, where the court has refused to interfere by way of injunction, special significance has been attached to the circumstance that the informations were not brought in behalf of the public, but merely at the relation of parties privately interested, who might themselves have instituted legal proceedings, if any special damage had been inflicted upon them.⁽³⁾ In the former case,⁽⁴⁾ Lord Cranworth went so far as to say: “I cannot but come to the conclusion that the attorney general and the public here are a mere fiction, and that the real parties concerned are only those that were parties to the first suit.” Page 313. This, however, is not a controlling consideration; and, if an information is brought, in cases where the principal interest involved is a private one, the introduction of a relator is proper, in order that he may be liable for costs.⁽⁵⁾ But, while not doubting that cases might exist in which the interposition of the court would be properly sought to restrain the digging up of streets, we see no occasion for such interference here. In a very recent case it has been declared that “the court will not interfere

(2) *Attorney General v. Jamaica Pond Aqueduct Corp.*, 133 Mass. 361; *District Attorney v. Lynn & B. R. R.*, 16 Gray, 242.

(3) *Attorney General v. Sheffield Gas Consumers' Co.*, 3 De Gex, M. & G. 304; *Attorney General v. Cambridge Consumers' Gas Co.*, 4 Ch. App. 71, 81, 82, 84, 87.

(4) *Attorney General v. Sheffield, etc., Co.*, *Supra*.

(5) Pub. St. c. 189, § 19; 1 Daniell, Ch. Pr. (4th Amer. Ed. 1416.

(1) *Kenney v. Consumers' Gas Co.*, and *Attorney General v. Same*, Sept. 11, 1886, 8 N. East. Rep. 138.