

contract with defendant company to repair a bridge, and while riding on the locomotive of the company's coal train on his way to the work he was killed by reason of the train falling through the bridge. The engineer in charge of the train (there being no conductor) had no authority to take passengers, and had instructions not to allow people to travel on the engine without permission from some competent authority, but the company's officers and servants and other persons authorized by the manager and master mechanic used to ride on the coal train. A few days before the accident Nightingale and the defendants' manager had gone down to the bridge on the engine of a coal train and returned the same way the same day. In an action by Nightingale's representatives to recover damages from the company for his death, the jury held that the company had undertaken to carry Nightingale as a passenger :

Held, on appeal, setting aside judgment in plaintiff's favour that there was no evidence to support such a finding, and that Nightingale was a "mere licensee."

The relation of common carrier and passenger does not exist when a person travels on the locomotive of a coal train without the permission of some officer who has permission to give such authority, and if injured such a person has no right of action unless injured through the *dolus* as distinguished from the *culpa* of the carrier.

Per HUNTER, C.J.: The power which a judge has to take a case away from the jury should be exercised only when it is clear that plaintiff could not hold a verdict in his favour; if the matter is reasonably open to doubt the judge should let the case go to the jury, and then decide, if necessary, whether there is any evidence on which the verdict can be supported.

A. P. Luxton, for defendants. *D. G. Macdonnell*, for plaintiffs.

Book Reviews.

Conditional Sales and Bailment, with Forms, by W. W. Morrill, of the Troy Bar, Albany, N.Y., Matthew Bender, Law Publisher, 1902

This little book of 134 pp. is of special use in the United States; but will also give useful information to those of the profession in the Dominion who may have transactions across the border.

Sociologic Studies of a Medico-Legal Nature. By Louis J. Rosenberg, LL.B., Associate of the Victorian Institute, London, Eng., and N. E. Aronstam, M.D., Ph. G., with introduction by Hon. Clark Bell, LL.D., President of the Medico-Legal Society. G. P. Engelhard & Company, Chicago 1902. 142 pp. \$1.

A collection of interesting essays on crime and its cause—the drink evil—Euthanasia—Stirpiculture—Education of feeble minded children—Premature burial—Amnesia—Tuberculosis.