As the act of the servant was clearly outside the scope of his duty, the master would not be liable from the point of view of the law of agency. *Morier* v. *St. Paul, etc., Ry. Co.*, 31 Minn. 351. But although no decision upon the exact point decided has been found, the result seems to be in accord with the trend of recent cases. Modern decisions tend to hold a carrier liable for all torts of its servants committed against a passenger during the carriage, on the ground that the contract imposes upon the carrier a duty of protection: *Chicago, etc., Ry. Co.* v. *Flexman*, 9 Ill. App. 250. As an innkeeper bears a somewhat similar relation toward his guests, it would seem that, by analogy, his contract imposes a like duty to protect them. He has been held liable for injuries to his guests caused by third persons, which he might have prevented: *Rommell* v. *Schambacher*, 120 Pa. St. 579. And the principal case is not without support in imposing upon him an absolute liability for injuries to guests caused by his servants. See *Overstreet* v. *Moser*, 88 Mo. App. 72.—*Harvard Law Review.*

NEW TRIAL—EXCESSIVE DAMAGES.—The plaintiff obtained a verdict for twelve thousand dollars in an action against the defendant for negligence. At that time the plaintiff had not yet recovered from the accident, and the extent of her injuries depended largely on the result of an operation which could not be determined until a few weeks after the trial. The defendant asked for a new trial on the ground of excessive damages.

Held, that the new trial should be granted: *Searles* v. *Elizabeth, etc., Ry. Co.*, 57 Atl. Rep. 134 (N.J., Sup. Ct.).

The power of granting new trials, first exercised to prevent injustice, was originally limited by judicial discretion only. Although rules have been developed in practice which, whether embodied in statutes or not, compel the granting of new trials in certain defined cases, the original discretionary power of the courts as to all other cases has not been affected: See *Fine* v. *Rogers*, 15 Mo. 315. The present decision, in view of its peculiar facts, seems fairly to fall within the latter class. The damages given were not excessive if the plaintiff's injuries were permanent, but to conclude that they were permanent required the assumption of the failure of an operation the result of which was at the time of the trial undetermined. In granting a new trial the court could rely upon no established rule, but it thought that injustice might be done in depriving the defendant of the possible benefit which the ascertainment of the result of the operation might give him, thus resting the case upon the primary reason for granting new trials.—*Harvard Law Review.*

ACCIDENT.—A workman employed in a wool-combing factory, who contracts the disease of anthrax by contact with anthrax bacillus which is present in the wool, is held in *Higgins* v. *Campbell* [1904] 1 K.B. 328, to