involve a warranty that the servant shall not turn thief, and so cease to exhibit reasonable care, where the master has devolved the duty of custody on the servant, is clear from the fact that no class of bailee except common carriers and innkeepers are now at common law deemed responsible for the theft of their servants unless such theft was attributable to the negligence of the master."

The case of Houlder v. Soulby, 8 C. B. N. S. 254, decided that the law imposes no obligation upon a lodging-house keeper to take care of the goods of his lodger, and therefore the lodging-house keeper was not responsible for the loss where the property of a lodger who was about to quit had been stolen by a stranger who in the lodger's absence was permitted by the occupier of the house to enter the rooms for the purpose of viewing them.

Defendants herein are not brought within the cases applicable to innkeepers, nor are they bailees for hire, as plaintiff paid nothing for the services rendered to him, nor was he charged anything. In the Am. & Eng. Encyc. of Law, 2nd ed., it is stated that a public hospital or asylum is liable for the tort or negligence of an officer or servant only when such corporation has been guilty of negligence in selecting such officer or servant. When the corporation have exercised due and reasonable care in the original selection of the offending officer or servant, they are not liable for his subsequent act, unless, prior to the occurrence of such act, knowledge of the unfitness and incapacity of such officer or servant was communicated to and fully brought home to the corporation. The evidence herein shewed that defendants in hiring the ward-tender were not negligent, and that no complaint was made against him until the present case.

Not only upon the evidence but also upon the law I am of opinion that plaintiff fails to prove his claim against defendants.

The action will be dismissed with costs.

JANUARY 13TH, 1905.

DIVISIONAL COURT.

COLEMAN v. ECONOMICAL MUTUAL FIRE INS. CO.

Fire Insurance—Interim Receipt—Immaterial Variation in Policy—Prior Insurance not Assented to—Insurance in Plaintiff's Name—Mortgagee—Agent—Ratification.

Appeal by plaintiff from judgment of IDINGTON, J., 4 O. W. R. 466.