The Legal News.

VOL. VIII. JULY 4, 1885. No. 27.

The decision given by the Supreme Judicial Court of Massachusetts in *Bishop* v. *Weber* (June, 1885), opens up an extensive field of litigation with possibly beneficial results to the stomachs of the public. The Supreme Court holds that a caterer is liable in an action of tort for negligence in furnishing unwholesome food. The plaintiff's action was demurred to, and the Superior Court sustained the demurrer; but this decision has just been reversed by the Supreme Court on appeal. Chief Justice Allen says: "If one who holds himself out to the public as a caterer, skilled in providing and preparing food for entertainments, is employed as such by those who arrange for an entertainment to furnish food and drink for all who may attend it, and, if he undertakes to perform the services accordingly, he stands in such a relation of duty toward a person who lawfully attends the entertainment and partakes of the food furnished by him as to be liable to an action of tort for negligence in furnishing unwholesome food whereby such person is injured. The liability does not rest so much upon an implied contract as upon a violation or neglect of a duty voluntarily assumed. Indeed, where the guests are entertained without pay, it would be hard to establish an implied contract with each individual. The duty, however, arises from the relation of the caterer to the guests." The Chief Justice adds that it is not necessary to aver that the defendant knew of the injurious quality of the food. It is sufficient if it appear that he ought to have known of it and was negligent in furnishing unwholesome food, by reason of which the plaintiff was injured.

We cited lately the provision of the English Evidence Amendment Act, 1869, with reference to the substitution of a declaration in certain cases. This may be supplemented by an extract, sent to a contemporary, from the Public Statutes of Massachusetts. Sec. 17 of chap. 169 of the Public Statutes, provides that "every person not a believer in any religion shall be required to testify truly under the pains and penalties of perjury; and the evidence of such person's disbelief in the existence of God, may be received to affect his credibility as a witness." Sec. 18 of the same chapter provides that "no person of sufficient understanding * * * * shall be excluded from giving evidence as a witness in any proceeding," except husband and wife as to private conversations.

It is not surprising that in a country where more than one-half of the criminals who do not escape altogether are only reached by lynch law, Mrs. Dudley should find sympathy and protection from a jury. This poor woman, who does not seem to have the excuse of insanity, was only doing openly what the members of Vigilance committees usually do secretly under the cover of masks or other disgtuises, and her act is not a whit more reprehensible.

The Coleridge libel case (7 L. N. 401) has come to an end. The *Law Journal* observes: "The settlement is a subject of sincere congratulation to all except those who consider themselves cheated out of a sensation. The only remark to be made about it is that it would have been better done if it had been done more quickly. The unlucky position in which things were left at Nisi Prius, with a jury of one opinion and a judge of the contrary opinion, was perhaps responsible for prolonging the conflict. The case is now interesting purely as raising certain abstract questions of law. The course taken by Mr. Justice Manisty at the trial is justified in point of law. As the Master of the Rolls stated, it is based on a practice 'in use for a couple of centuries before the Judicature Act.' Mr. Justice Manisty would, however, in a case involving character, have done better if he had left either party to move for judgment. The remarks made by the Master of the Rolls during the hearing were sufficient to show that in the opinion of the Court of Appeal there was in the terms of the letter and the subsequent conduct evidence of what in law is called malice."

PATENT OFFICE, CANADA.

Before THE DEPUTY OF THE MINISTER OF AGRICULTURE.

OTTAWA, February 15, 1877.

BARTER v. SMITH.

Patent Act of 1872—*Onus probandi—Importation after twelve months—Non-manufacturing within two years — Interpretation of provisions of Patent Act.*

1. *In case of a dispute under the Patent Act of* 1872, *the onus probandi lies on the disputant who seeks to defeat the patent, and not on the respondent,—the patent held by the latter being a public title which must be taken as good so long as nothing to the contrary is established, even if the evidence involved the the proof of a negative.*
2. *An invention being recognized as property, and the granting of letters patent being a contract between the State and the discoverer, the patentee's rights are not to be interfered with, except for serious reasons deduced from the liberal interpretation of the terms of the contract.*
3. *The words "carry on in Canada the construction or manufacture" mean that any citizen of Canada residing on federal soil has a right to exact from the patentee a licence of using the invention patented, or to obtain the article patented for its use at the expiration of the two years' delay, on condition of applying to the owner for it, and on payment of a fair royalty; and the words "imports or causes to be imported into Canada" imply that injury is done to home labor.*
4. *Where a patentee refused no one the use of his invention, and the importation made with his consent after the expiration of the year was inconsiderable and inflicted no injury on Canadian manufactures, but was made as a means to create a demand for the invention which the patentee intended to manufacture and did in fact offer to manufacture in Canada, it was held that he had not forfeited his patent, though the manufacture or construction of the patented article had not been commenced in Canada within the statutory delay.*

[Continued from page 208.]

J. C. TACHÉ, DEPUTY MINISTER:

The importance of this case, serious in itself, is enhanced by the circumstance that it is the first of its kind in Canada, and that the legal interpretation and the appreciation of facts which it involves apply to very many Patents granted, and, eventually, to all Patents to be in future granted. For these reasons ample time has been devoted to the study of the question, and it has been thought not only desirable, but almost necessary to enter at some length into the explanation of the principles and construction of facts upon which the present decision is based.

It seems proper to take up first the preliminary points raised in the case, which were at once decided, as stated in the report of the proceedings hereinbefore given.

It was asked that it be ruled that the *onus probandi* lies with the respondent, inasmuch as this tribunal, being an exceptional one, not restrained by any form of proceedings or subjected to any special kind of evidence, and having no power to compel witnesses to appear, is bound to exact from the respondent proof that he has complied with the requirements of the law; and furthermore, inasmuch as to rule otherwise would be imposing upon the disputant the duty of proving a negative.

The constitution of this tribunal is not of an unknown character; such jurisdiction is given to the administration in many countries; and in some, in the Austro-Hungarian Empire, for instance, that jurisdiction extends so far as to vest in the Executive officer the exclusive power of deciding all cases concerning invalidity or lapsing of patents. The tribunal is not devoid of all means of getting at the truth, the fact of not being restrained by fixed rules of procedure and stringent modes of evidence, being a compensation for the want of power to compel witnesses. It is self-evident that it was the intention of the law maker to exact only one condition in the judge's mind in delivering his decision, that he be convinced of the substantial justice of such decision on sufficient information, no matter how obtained.

Notwithstanding that this tribunal is not restricted by fixed rules of practice, it is nevertheless bound to abide by the rules of common justice, by the dictation of common reason, and to be enlightened by such decisions as may be held to embody the common consent of mankind.

It is apparent that this case, being one in which the disputant urges the forfeiture of an acquired right which the respondent is presumed not to have lost nor alienated, the burden of proof cannot be admitted to lie on him who holds a public title which must be taken as good so long as nothing to the contrary is established, even if the evidence involved the proof of a negative. In this case the evidence does not rest on establishing a negative but on ascertaining the existence of positive facts.

It would not be right, however, to say—and this ought not to be taken as meaning—that in no case should the respondent be forced to make discovery; there might be cases in which, from the position of the parties and the aspect of affairs, this tribunal might be compelled to make use of all the latitude left to it by the statute, in order to attain the ends of justice. The nature of the 28th Section of the Patent Act, both in providing against certain mischiefs with certain remedy and in establishing a special tribunal to mete out the remedy, involves a policy which goes, on public grounds, beyond the limits of any particular case to be adjudicated upon. This is evidently the reason why the Legislature has selected the Minister of Agriculture to constitute the tribunal to decide such questions in which it will avail of the practical knowledge of and acquaintance with the nature and bearings of such matters acquired in the daily working and dealings of the Patent Office.

It has been hinted in the arguments, that should a decision intervene declaring a patent null and void, it ought to specify that the patent was voided at the date of the expiration of the delay mentioned in the law, and has stood null since to all intents and purposes. As this incidental question touches rights which do not come within this jurisdiction, it appears clear that, in duty and through respect for the higher Courts, this tribunal is forbidden from entering such domain, even by expressing an opinion, being bound to restrict its investigations and decisions within the narrowest possible limits. The law orders that the Minister of Agriculture should say "*whether a patent has or has not become null and void*," consequently the judgment is simply to decide *it has* or *it has not*, as the case may be: all the consequences that may follow are to be adjudicated upon by the ordinary judges of such disputes between citizens.

There is a view of the subject matter of patents for inventions invoked in this case, which it is of great importance to examine, as bearing in a marked manner on the interpretation and construction to put upon both law and facts connected with the working of patents; the question comes to whether a patent should be held as an embarrassing privilege, a kind of onerous monopoly which constitutes the patentee as a sort of adversary to the liberty of the subject, and as opposed to public interest, by the very fact of his holding a position which then, it is argued, should be jealously watched and which ought to be made to terminate at the first opportunity.

It is universally admitted in practice, and it is certainly undeniable in principle, that the granting of Letters Patent to inventors is not the creation of an unjust or undesirable monopoly, nor the concession of a privilege by mere gratuitous favour; but a contract between the State and the discoverer.

In England, where Letters Patent for inventions are still in a way treated as the granting of a privilege, more in words, howevet, than in fact, they, from their beginning, have been clearly distinguished from the gratuitous concession of exclusive favours, and therefore, were specially exempted from the operation of the statute of monopolies.

Invention being recognized as property, and a contract having intervened between society and the proprietor for a settlement of rights between them, it follows that unless very serious reasons, deduced from the liberal interpretation of the terms of the contract, have happened, the patentee's rights ought to be held as things which are not to be trifled with, as things sacred, in fact, confided to the guardianship and to the honor of the State and of the Courts.

As it is the duty of society not to destroy, on insufficient grounds, a contract thus entered upon, so it is the interest of the public to encourage and protect inventors in the enjoyment of rights legitimately and sometimes painfully and dearly acquired. The patentee is not to be looked upon as having interests in direct opposition to the public interest., an enemy of all in fact:

"The gain made by the inventor when his "invention is known will be," says Agnew, "proportionate to the amount of benefit which "the public derive from the use of it."*

"It is almost self-evident," says an able American author, "or at any rate readily "susceptible of proof, that the magnificent "material prosperity of the United States of "America is directly traceable to wise Pa-"tent Laws and their kindly construction by "the courts."†

"The increasing development," says Armengaux, "which inventive genius under-"goes is principally due to the protection, "very insufficient as yet, which is granted "by most governments to those who are the "real promoters of arts and industry."§

These short quotations, which might be easily multiplied almost *ad infinitum*, are to show what view is taken of the matter by writers who have devoted a great deal of their life to the study and practice of the laws relating to the very important subject of inventions, and in the consideration of the influence on public prosperity of patents granted to inventors as the price paid for their discoveries.

The manner in which this tribunal should construe the law was argued in the sense of a strict literal interpretation of words, and quotations were made in support of this view. The soundness of the doctrine propounded in those quotations is undeniable and undenied.

In order that no doubt should exist on the rules of interpretation adopted in the present decision, it is well to express them in terms of its own. It is held that the words of the law constitute the body of the law, in which dwells the spirit of the law, and that to separate one from the other would be the death of the law.

The Legislature cannot adequately provide for the administration of the statutes—it cannot see into the details necessary to attain the object in view—it cannot foresee the combination of circumstances appertaining to each case; it does not go into the technicality of specific subjects, and it cannot prophesy what uses might be made of the language of the law; hence the necessity of legislation being followed, step by step, by jurisprudence. The very words which may be invoked, in a certain sense, as applicable to certain points in one case, might serve to defeat the object of the Legislature in another case.

This tribunal, like all others, has to make sure of the intention of the Legislature. A certain public advantage is sought for and a mischief provided against by the Patent Act, as applied to this case; the duty of the tribunal is, therefore, to see whether the advantage has been virtually and effectually denied, and whether the mischief has been actually committed, and to apply the remedy, if need be, to attain the object in view without undue and inadequate detriment to acquired and vested rights.

The dispositions of the 28th section (hereinbefore quoted at length) of "the Patent "Act of 1872" were introduced into Canadian legislation *pari passu*, with the extension of the privilege of obtaining patents for inventions, [first] to all residents and [second] to all comers. Such provisions as to manufacture and importation do not exist in the Patent Laws of England or in the present Patent Laws of the United States, but they do exist in the Patent Laws of other nations.

The Patent Act of 1869, removing other disabilities, extended the right of obtaining patents to every resident of one year in Canada, and subjected all patented inventions to the condition of manufacturing within three years and of not importing after eighteen months; the decision of the question, as to whether or not a patent had lapsed for reason of non-compliance, was left to be pleaded and to the ordinary courts to adju-

* Agnew—the Law and Practice relating to Letters Patent for Inventions. London: 1874. Page 4.

† Simonds—Manual of Patent Law. Hartford and New York: 1874. Page 10.

§ Armengaux—Guide Manuel de l'Inventeur et du Fabricant. Paris: 1858. (Preface.)

dicate. The law of 1872 extended the right of obtaining patents to all comers, and appointed a special tribunal to apply the law in the manner mentioned in the 28th section hereinbefore quoted.

So far, the intention of the Legislature, as shown by the history of the legislation, is evidently to guard against the danger of Canadian patents, granted to aliens, being made instrumental to secure the Canadian market in favour of foreign patents to the detriment of Canadian industry; for, in the measure that the right of taking patents was extended, the remedy against the dreaded danger was made more ample, but at the same time the jurisdiction over such cases of dispute as might arise was transferred from the judicial tribunals to the administrative tribunals, evidently for the purpose of avoiding an overstrict application of the provision made against the possible evil of a patent being taken for the sole purpose of depriving Canada of the use of a useful invention. The 28th section is also intended as a sort of protective policy in favour of Canadian labour. The Legislature has, certainly not without intention, provided for a kind of paternal tribunal, formed by the Commissioner of Patents, the natural protector of patentees, which intention can be no other than that every case should be adjudicated upon in a liberal manner.

The duty of this tribunal is, therefore, on one hand, after having satisfied itself of the facts, to apply the remedy if the mischiefs provided against by the statute have been really committed in intent or effect; and, on the other hand, to guard against the cruel injustice of inflicting such a punishment as the total destruction of an acquired and vested right, when no real damage was either intended or done. The common principle of justice which says that when there is no injury inflicted no damages are to be granted, and that when no offence has been committed no penalty is to be imposed, must govern this matter as well as the principle that no offender should be sheltered from the punishment for offence or injury perpetrated by him.

In order to arrive at a correct interpretation of the words *construction or manufacture of the invention*, it is necessary to well understand and carefully consider the nature of the obligation thereby imposed.

As to Patents, it applies to *every Patent granted;* as to subjects, it applies to every conceivable object which may be invented or improved; as to persons who have the right to exact it, it applies to all inhabitants of the Canadian Confederacy; as to extent of territory, it applies to the whole Dominion from Ocean to Ocean, and to every Province and locality therein; as to time, it applies to 13 out of 15 years of the longest Patent and to 3 out of 5 years of the shortest.

This simple enunciation of the nature of things to which the law refers, is sufficient to demonstrate that the law maker could not have had in contemplation to force, on penalty of forfeiture, the Patentee to actually fabricate his invention with his own capital, within specific establishments, with his own tools, and to keep stock for every moment of the existence of his privilege; and where? All over the Dominion, and whether he has purchasers or not.

The Patent might be for a process, for an object to be used in conjunction with something else or for an improvement on another Patent still in existence; it might be for a railway bridge, switch, or spike; it might be for a mail bag, and in all these cases it does lie within the power of others than the Patentee to say whether the invention shall or shall not be used at a given time or at any time.

Therefore the real meaning of the law is that the Patentee must be ready either to furnish the article himself or to licence the right of using, on reasonable terms, to *any person desiring to use it.* But again that desire on the part of such a person, is not intended by the law to mean a mere operation or motion of the mind, or of the tongue; but in effect a *bonâ fide* serious and substantial proposal, the offer of a fair bargain accompanied with payment. As long as the Patentee has been in a position to hear and acquiesce to such demand and has not refused such a fair bargain proposed to him, he has not forfeited his rights.

If it were necessary to furnish a collateral proof of this intention of the Legislature,

within the law itself, of requiring on the part of the customers an actual substantial demand or request accompanied with a settlement of royalty, it would be found in Section 21,* in which an exception to that obligation of demanding is made in favour of the Government, which is, by way of derogation to the general rule, allowed to make use of all inventions without going to the patentee, even during the two years delay, free of any blame for infringement, by resorting to a special and an exceptional mode of settling upon the price to be paid to the Patentee.

The same rules of interpretation apply to the provision of the Act as regards importation. The law says that the Patent shall be void if after twelve months of its being granted, "the Patentee, or his assignee or "assignees, for the whole or a part, imports "or causes to be imported into Canada, the "invention."

The evil aimed at by the Legislature, in ordering the penalty of forfeiture, is the importation of patented inventions being made to the detriment of their being manufactured in Canada. If that was done, even by other persons than the Patentee or his assignees but with his consent, that would call for the application of the remedy, although the mere wording of the law might be pleaded as exonerating the Patentee from the responsibility of having actually imported or *caused* to be imported. On the other hand the actual importation of a few machines, as models, or for the purpose of bringing the usefulness of the invention before the eyes of the Canadian public and thereby hastening the working of the Patent in Canada, could not be reasonably taken as being the commission of the evil of injuring the manufacturing interests of the country. It may be, on the contrary, in some given cases, the best and promptest way of benefiting Canada with a new and yet unappreciated invention; and the importation of few models then would be fostering the object of the law which is—that Canadian industry and Canadian labour should, in the shortest possible time, be made to profit by new inventions.

The words *carry on in Canada the construction or manufacture* with their context cannot therefore mean any thing else than that any citizen of the Dominion, whether residing in Prince Edward Island, in British Columbia, in Ontario, Quebec or elsewhere on federal soil, has a right to exact from the Patentee a licence of using the invention patented, or obtain the article patented for its use at the expiration of the two years delay, on condition of applying to the owner for it, and on payment of a fair royalty. The words *imports or causes to be imported into Canada* cannot mean any thing else than injury to home labour, which injury if actually done by or with the connivance of the patentee, most decidedly entails forfeiture of his Patent.

It has been argued in view of meeting the above mentioned interpretation of the words *construction* or *manufacture*, that the statute has foreseen the difficulties of special cases and has provided for them by subsection 2 of section 28, in giving to the Commissioner the power to extend indefinitely the delay in such cases as, for instance, would be illustrated by a Patent granted for a graving dock.

The purport and effect of subsection 2 is totally different from and even at variance with the meaning given to it in this argument. A delay does not at all remedy the condition of impossibility in which a Patentee is to establish at any time manufactories accessible to a population scattered over a territory which extends from ocean to ocean, with an area amounting to millions of miles; it does not do away with the impossibility at any time, of keeping articles in stock without purchasers, and so forth.

But this is not all;—subsection 2, construed as is proposed by the said argument, would lead to a positive defeat of the intention of the Legislature, which clearly is, that the Patentee must supply Canadian citizens with the invention when requested to do so by any one, on payment of a reasonable price or royalty.

The effect of the delay of two years and the effect of any further extension thereof means, that during that time the Patentee is permitted to withdraw entirely (the Government excepted) the use of his invention from the Canadian public, that he can refuse the use

* SECTION 21.—The Government of Canada may always use any Patented invention, paying to the Patentee such sum as the Commissioner may report to be a reasonable compensation for the use thereof.—"*The Patent Act of 1872.*"

of it to all and every one, under any and every circumstance. It follows that the granting of a long delay would amount to depriving, during such time, Canadian industry of the use of such invention, which could not be imported and which the inventor would not be bound to furnish on any condition. As it is logically necessary to carry the argument to the extent that there are many cases in which the difficulty being of all times, the delay, of necessity, should be carried to the whole duration of the Patent, it amounts to saying that the Commissioner of Patents is empowered to grant, and in fact forced to grant, that Canada should remain for a long period of time, or the whole period of the duration of patents, *quoad* the utility of certain inventions, in a state of industrial inferiority as compared with all other countries.

Another proof of the total error of the argument is, that the whole of the 28th Section applies to "*Every Patent granted*," precluding, in the very terms of the law, the idea that it intended to deal with cases; nay, expressly enacting that the same provisions are to apply equally to all Patents, as a matter of course, in the legitimate sense which is naturally and equitably suggested by the nature of things in matters of inventions and patents of inventions.

[Concluded in next issue.]

COUR DE CIRCUIT.

MONTRÉAL, 11 avril 1885.

Coram MOUSSEAU, J.

BERNARD v. LALONDE.

Hôtelier—Voyageur—Dépôt volontaire—Responsabilité.

JUGÉ:—1o. *Que l'hôtelier n'est pas responsable de la perte d'une valise laissée dans son hôtel par un voyageur, lorsque celui-ci n'est pas son hôte, ne loge pas chez lui et ne fait qu'entrer dans son hôtel pour y déposer sa valise pour quelques instants.*

2o. *Qu'un tel dépôt n'est pas un dépôt nécessaire, mais volontaire.*

Le demandeur réclamait du défendeur la somme de $39, prix et valeur d'une valise et des effets contenus dans cette valise, laquelle il avait déposée dans l'hôtel du défendeur.

Et le demandeur alléguait spécialement que le dépôt de ladite valise chez le défendeur, qui est hôtelier licencié, était un dépôt nécessaire dont ce dernier était responsable et qu'il était, en loi, tenu de lui rendre ce dépôt.

Il alléguait de plus, avoir confié d'une manière toute spéciale, au défendeur, la valise en question et que celui-ci s'en était chargé et avait promis en prendre un soin particulier; mais qu'en dépit de cet engagement formel il refusait et avait toujours refusé de lui rendre le dépôt ainsi confié à sa garde. Et le demandeur concluait à ce que le défendeur fût condamné à lui rendre la dite valise et son contenu ou à lui en payer la valeur, savoir, la dite somme de $39.

Le défendeur a répondu à cette action d'abord par une défense au fond en fait, et en second lieu, par une exception péremptoire en droit par laquelle il allègue:

Qu'il est vrai que le défendeur est hôtelier licencié et que comme tel, il est responsable des effets de ses hôtes; mais que le demandeur ne s'est jamais retiré chez lui et n'y a jamais pensionné.

Que le défendeur ne connaît pas le demandeur et qu'il ignore si ce dernier a laissé chez lui les objets mentionnés en sa déclaration; mais que s'il les y a laissés, il l'a fait à ses risques et périls, sans que le défendeur ou ses employés se soient chargés d'en prendre soin.

Que le demandeur n'étant pas l'hôte du défendeur, le dépôt qu'il a pu faire n'était pas un dépôt nécessaire et qu'en conséquence le défendeur n'est pas responsable de sa perte. Et pour ces raisons le défendeur concluait au renvoi de l'action.

L'enquête démontra que le demandeur n'avait jamais été l'hôte du défendeur, qu'il n'avait pas logé chez lui et n'y avait fait aucune dépense dans l'occasion en question; mais que l'un des employés du défendeur avait permis au demandeur de mettre sa valise dans une chambre où l'on plaçait d'ordinaire les malles et valises des voyageurs. Et lorsque le demandeur réclama sa valise, il fut impossible au défendeur de la trouver et de la lui rendre.

Il fut également prouvé que dans cette occasion, le défendeur n'avait rien exigé du demandeur pour lui permettre de laisser chez lui ladite valise et que ce service était

de pure obligeance et tout à fait désintéressé de la part du défendeur.

A l'audience, le demandeur soutint que le dépôt en question était un dépôt nécessaire dont le défendeur ne pouvait éviter la responsabilité; et au soutien de ses prétentions il invoqua les arts. 1804 et 1814 du C. C. Il cita de plus 15 Dalloz, Jurisprudence Générale, vo. Dépôt-Séquestre, p. 493, No. 182. Et le même auteur, vo. Dépôt-Séquestre, p. 486, No. 160, qui s'exprime comme suit: "Il a été jugé à cet égard, "1o. que l'aubergiste est responsable " des effets placés dans la cour de son auberge " par un voyageur *qui ne loge pas chez lui*, " même quand cette cour est assujettie à un " droit de passage au profit d'un tiers. 2o. " Que si l'aubergiste prétendait avoir reçu du " voyageur ses effets à un autre titre que " celui de dépôt, ce serait à lui à prouver son " allégation...."

De son côté, le défendeur cita 27 Laurent, Nos. 98 et 99. 15 Dalloz, Jurisprudence Générale, vo. Dépôt-Séquestre, p. 487, Nos. 163 et 180, et l'art. 1200 du C. C.

Et la Cour, après avoir délibéré, déclara que le dépôt en question était un dépôt volontaire, fait aux risques et périls du demandeur, et, en conséquence, renvoya son action avec dépens.

Action renvoyée.

Préfontaine & Lafontaine, procs. du demandeur.

Duhamel, Rainville & Marceau, procs. du défendeur.

(J. G. D.)

RECENT U. S. DECISIONS.

Hotel-keeper — Guest—Small-pox—Negligence —Liability.—A hotel-keeper who, with knowledge of the prevalence of small-pox in his hotel, keeps it open for business, and permits a person to become a guest without informing him of the presence of the disease, will be liable for any damages caused by the guest's contracting the disease without any contributory negligence on his part. Supreme Court of Iowa—*Gilbert* v. *Hoffman*.—23 N. W. Rep. 632.

Railroad—Negligence.—The duty of a railroad to transport passengers and its liability for a breach thereof, arising from the negligence of its servants, does not arise alone from the consideration paid for the service, but is imposed by law, even where the service is gratuitous. A gratuitous bailee must answer for goods left in his charge if lost through gross negligence. It is enough to fix the liability of a railroad for injuries occasioned by the negligence of its servants, that the passenger be lawfully on the train, whether by reason of having paid his passage money or by permission or invitation of officers or agents of the company. Question of liability does not depend upon the uses to which the train is usually devoted; and, where there are no rules of the company prohibiting it, or even if there be such rules, and the officers making such rules relax or dispense with them in a particular instance, and passengers are taken on trains or cars not generally used for their transportation, or with the expectation of paying fare when demanded, they are lawfully upon the train, and the company owes them the duty of safe transportation. The petition alleging that hand-cars were sometimes used by the company to transport employees, and that plaintiff, with others, took passage on one, at the invitation of the company's agent, to go to a place where the corpse of a man had been found on the railroad track, plaintiff being one of the jury of inquest, and that, by the negligence of the company's servants in the management of said car, he was injured, stated a good cause of action, not subject to demurrer.—*Prince* v. *I. & G. N. R. R.*, Sup. Ct., Texas; Chi. Leg. News, June 6.

GENERAL NOTES.

The Supreme Judicial Court of Massachusetts holds, in *Cowan* v. *Cowan*, that a libel for divorce may be maintained by the guardian of an insane person, provided sufficient cause be shown. The action was by the guardian of the wife, and the cause alleged and proved was desertion by the husband. This was held sufficient, and a divorce was decreed.

A correspondent points out that the Statute 47 Vict. c. 8, s. 3, merely states that "the courts cannot sit between the 30th June and 1st September," and that delays run as usual for procedure. This is quite true. Art. 463 of the Code of Procedure has not been repealed, and so, intentionally or otherwise, there is one vacation for judges and another for lawyers. We may add that in Montreal all pleadings, &c., presented are being received at the prothonotary's office up to the 9th inclusive.