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CURRENT TOPICS AND CASES.

The Supreme Court of Alabama, in the case of *Arp* v. *The State*, Jan. 26, 1893, maintained a ruling of the court below which refused to charge that homicide, under threats of immediate peril to the prisoner's own life, was justifiable. Arp's defence was that two persons threatened to kill him unless he killed the deceased, and that it was through fear and to save his own life he struck deceased with an axe. The Alabama Supreme Court followed the principle laid down by the English Court of Queen's Bench in *Reg.* v. *Dudley*, L.R., 14 Q.B. Div. 273, 560. An abridged report of the United States decision will appear in a future issue.

A third edition of Mr. Justice Taschereau's work on the criminal statute law of Canada is now in press, and will appear shortly. This edition has been necessitated by the enactment of the Criminal Code, which is in force from July 1st, 1893, and the work will appear under the title of "The Criminal Code of the Dominion of Canada." The volume will contain, besides the text of the Code, under each section to which they severally apply: (1) The report of the Imperial commissioners on the draft code of 1879, submitted to the Imperial House of Commons in the form of a bill in 1880; (2) English and Canadian decisions to date; (3) References to the corresponding

Imperial statutes in force in England; (4) References to unrepealed English statutes applying to Canada; (5) Citations from English text-books; (6) Forms of indictments; (7) Changes, extensions and additions to the law made by the new criminal code.

A recent decision by the English Queen's Bench Division (June 7), in *Bowyer* v. *The Percy Supper Club*, will oblige proprietary clubs in England to apply for licenses to sell liquors. The company in this case was incorporated under the Companies Acts, and carried on the business of a proprietary club for its own profit. There was the usual book of rules, and on the first page was a memorandum to the effect that, the club being proprietary, neither members nor committee incurred any liability whatever beyond their annual subscription. The company did not hold any license authorizing them to sell any kind of alcoholic liquor. On a prosecution for selling spirits, etc., by retail without a license, the magistrate found that the club was a *bonâ fide* club, and carried on for the profit of the company, and that the profit from the sale went to the company. The magistrate refused to convict on the ground that the supplying of alcoholic liquor to a member of a genuine proprietary club was not a sale within the meaning of the Excise Acts. The Court (Mathew and Wright, JJ.) held on the facts proved that the supplying the alcoholic drink clearly amounted to a sale within the meaning of the Licensing Acts. The liquor belonged to the company, and the members of the club had no interest in it. It might be that a proprietary club could be so carried on as to give the members a proprietary interest in the alcoholic liquor of the club; and in such a case the supplying them with liquor might not amount to a sale within the meaning of the Licensing Acts. That was not so here. The case was sent back to the magistrate with an intimation that in the opinion of the Court the facts proved constituted a sale within the meaning of the Licensing Acts.

SUPREME COURT OF CANADA.

OTTAWA, May 1, 1893.

WILLIAMS v. IRVINE.

Quebec.]

Right of appeal—54 and 55 Vic., ch. 25—Construction of.

By sec. 3, ch. 25 of 54-55 Vict., an appeal is given to the Supreme Court of Canada from the judgment of the Superior Court in review (P. Q.), "where, and so long as no appeal lies from the "judgment of that court, when it confirms the judgment rendered "in the court appealed from, which by the law of the province "of Quebec is appealable to the judicial committee of the privy "council."

The judgment in this case was delivered by the superior court on the 17th November, 1891, and was affirmed unanimously by the superior court in review on the 29th July, 1892, which latter judgment was, by the law of the province of Quebec, appealable to the judicial committee. The statute 54 and 55 Vic., ch. 25, was passed on the 30th September, 1891, but the plaintiff's action had been instituted on the 22nd November, 1890, and was standing for judgment before the superior court in the month of June, 1891, prior to the passing of 54 and 55 Vict., ch. 25. On an appeal from the judgment of the superior court in review to the supreme court of Canada, the respondent moved to quash the appeal for want of jurisdiction.

Held, per Strong, C.J., and Fournier and Sedgewick, JJ., that the right of appeal given by 54 and 55 Vict., ch. 25, does not extend to cases standing for judgment in the superior court prior to the passing of the said act. *Couture* v. *Bouchard* followed; [21 S.C.R. 281.] Taschereau & Gwynne, JJ., dissenting.

Fournier, J.—That the statute is not applicable to cases already instituted or pending before the courts, no special words to that effect being used.

Appeal quashed with costs.

H. Abbott, Q.C., for appellant.

St. Jean for respondent.

BROWN v. LECLERC.

Quebec.]

Loading of steamer—Accident—Neglect of usual precaution—Liability of employer.

Where two stevedores are independently engaged in loading the same steamer, and, owing to the negligence of the employees of the one, an employee of the other is injured, the former stevedore is liable in damages for such injury. The failure to observe a precaution usually taken in and about such work is evidence of negligence. Gwynne, J., dissenting.

Appeal from judgment of Q. B., Montreal (1 B. R. 234) dismissed with costs.

Geoffrion, Q.C., for appellant.

Bonin, Q.C., for respondent.

MARTINDALE v. POWERS.

Quebec.]

Quality of plaintiff—General denegation—Art. 144, C. C. P.—Don mutuel—Property excluded, but acquired after marriage.

Held, 1. Affirming the judgment of the court of Q. B., Montreal (1 B. R. 144), the quality assumed by the plaintiff in the writ and declaration is considered admitted, unless it be specially denied by the defendant. A *défense au fond en fait* is not a special denial within the meaning of art. 144, C. C. P.

2. Where by the terms of a *don mutuel* by marriage contract, a farm in the possession of one of the sons of the husband under a deed of donation was excluded from the *don mutuel*, and subsequently the farm in question became the absolute property of the father, the deed of donation having been resiliated for value, it was held that by reason of the resiliation the husband had acquired an independent title to the farm, and it thereby became charged for the amount due under the *don mutuel* by marriage contract, viz: $5,000, and that after the husband's death the wife (the respondent in this case) was entitled, until a proper inventory had been made of the deceased's estate, to retain possession of the farm. Taschereau & Gwynne, JJ., dissenting.

Appeal dismissed with costs.

Racicot, Q.C., and *Amyrauld* for appellant.

Baker, Q.C., for respondent.

STEPHENS v. GORDON.

Ontario.]

Agreement, Construction of—Way—Timber—Removal of.

The plaintiff was the owner of a farm of about a mile in breadth and five-sixths of a mile in length. About two-thirds of the farm was heavily wooded, and the rest of it was cleared and cultivated. The defendant became the purchaser of the trees and timber upon the land, under an agreement, which provided among other things, that the purchaser should have "full liberty to enter into and upon the said lands for the purpose of removing the trees and timber at such times and in such manner as he may think proper," but reserved to the plaintiff the full enjoyment of the land, "save and in so far as may be necessary for the cutting and removing of the trees and timber." To have removed the timber through the wooded land at the time it was removed would have involved an expenditure which would have probably amounted to a sacrifice of the greater portion of the timber.

Held, affirming the judgment of the court below, that the defendants had a right to remove the timber by the most direct and available route, provided they acted in good faith and not unreasonably, and the reservation in favour of the plaintiff did not minimize or modify the defendant's right under the general grant of the trees, to remove the trees across the cleared land. Gwynne, J., dissenting.

Appeal dismissed with costs.

M. Wilson, Q.C., for appellant.

D. McCarthy, Q.C., for respondent.

CORBETT v. SMITH.

Nova Scotia.]

Deed—Action to set aside—Undue influence—Evidence.

C., executrix under a will, brought an action to have a deed executed by testator some two months before the date of the will, set aside and cancelled for undue influence by the grantees, and incompetence of the grantor to execute it. C. alleged in her statement of claim that testator was eighty years old and a man of childlike simplicity; that defendants, grantees under the deed, had kept him under their control and several times assaulted him when he wished to leave their house; and that he

had requested C. to live with him and take care of him until he died, which defendants would not permit her to do. The deed in question purported to be in consideration of grantees paying testator's debts and maintaining him for the rest of his life.

Held, affirming the decision of the supreme court of Nova Scotia, that the evidence showed that the deed was given for valuable consideration, and that undue influence was not established. C., therefore, could not maintain her action.

Appeal dismissed with costs.

King, Q.C., for appellant.
Russell, Q.C., for respondents.

CITY OF TORONTO v. GILLESPIE.

Ontario.]

Municipal corporation—Local improvement—Notice to rate-payers—By-law—Variance from notice.

The corporation of Toronto, wishing to construct, as a local improvement, a stone roadway on one of the streets of the city, gave notice to the owners of the properties thereby, as required by s. 622 (2) of the Municipal Act, of such intended improvement, in which notice the proposed work was the construction of a "macadam roadway" on Bloor street, etc., and the payment of the cost was to be made by special assessment on the properties benefited, payable "in five and twenty" equal payments. By the by-law passed for its construction the work was described as "a macadam and granite set roadway and stone curbing," and the cost was to be paid in five years. On an application to quash the by-law it was not shown that the work as described in the by-law was identical with that mentioned in the notice.

Held, affirming the decision of the court of appeal (19 Ont. App. R. 713), that the by-law was invalid on account of the said variances from the notice, and it was properly quashed.

Appeal dismissed with costs.

Biggar, Q.C., for appellants.
Aylesworth, Q.C., for respondent.

DAVIES v. MCMILLAN.

British Columbia.]

Sheriff—Action against—Trespass—Sale of goods by insolvent—Intent—Bona fides—Judgment on interpleader issue—Estoppel.

K., a trader in insolvent circumstances, sold all his stock in

trade to D. who knew that two of K.'s creditors had recovered judgment against him. The goods so sold were afterwards seized by the sheriff under executions issued on judgments recovered after the sale. On a trial of an interpleader issue in the county court the jury found that K. had sold the goods with intent to prefer the creditors who then had judgments, but that D. did not know of such intent. The county court judge gave judgment against D., holding that the goods seized were not his goods, and that judgment was affirmed by the court in banc. D. afterwards brought an action against the sheriff for trespass in seizing the goods, and obtained a verdict which was set aside by the court in banc, the majority of the judges holding that the county court judgment was a complete bar to the action. On appeal to the supreme court of Canada:

Held, reversing the decision of the supreme court of British Columbia, that the evidence showed that D. purchased the goods from K. in good faith for his own benefit, and the statute against fraudulent preferences did not make the sale void.

Held, also, that the county court judgment, being a decision of an inferior court of limited jurisdiction, could not operate as a bar in respect of a cause of action in the supreme court, and beyond the jurisdiction of the county court to entertain.

Held, further, that if such judgment could be set up as a bar it should have been specially pleaded by way of estoppel, in which plea all the facts necessary to constitute the estoppel must have been set out in detail, and from the evidence in the case no such estoppel could have been established.

Appeal allowed with costs.

Moss, Q.C., for appellant.
Robinson, Q.C., for respondent.

COURT OF APPEAL ABSTRACT.

Corporation municipale—Chemin public—Expropriation—Action possessoire—Injonction.

Jugé:—1. Une corporation municipale ne peut pas prendre possession, en vertu de ses règlements ou procès-verbaux, du terrain nécessaire à l'ouverture d'un chemin, lors même que ce serait le premier chemin de front sur un lot dont la concession contient une réserve de terrain à cette fin, sans, au préalable, accomplir les

formalités exigées pour l'expropriation pour les fins municipales. (C. M. art. 902 *et seq.*)

2. Le propriétaire du terrain peut, en pareil cas, recourir à l'action en complainte et à l'injonction, pour faire cesser le trouble dans sa possession, et discontinuer les travaux.—*King et al. & La Corporation de la partie nord du township d'Irlande*, Québec, Lacoste, J.C., Baby, Bossé, Hall et Wurtele, JJ., 10 janvier 1893.

Possession—Action en complainte—Estacades—Art. 5551, *S. R. Q.*

Jugé:—Celui qui relie une estacade (*boom*), sur une rivière flottable, à un arbre et à un poteau par lui planté sur la rive, dans le terrain d'autrui, et sans nécessité de le faire pour sauver son bois flotté, mais seulement pour l'y retenir, apporte un trouble à la possession du propriétaire riverain et est passible d'une action en complainte de la part de ce dernier, à l'encontre de laquelle il ne saurait tirer une défense des dispositions de l'art. 5551, S. R. Q.—*La Compagnie de Pulpe des Laurentides & Clément*, Québec, Lacoste, J.C., Baby, Bossé, Hall et Wurtele, JJ., 10 janvier 1893.

Powers of court—Questions not submitted in appeal.

Held:—The court will not consider a law issue raised by demurrer in the court below, and disposed of there by interlocutory judgment, when no reference is made to it in appeal on the merits, and when it does not show absence of jurisdiction or of right of action.—*Larue & Kinghorn*, Quebec, Lacoste, C.J., Blanchet, Hall and Wurtele, JJ., April 4, 1893.

Interprétation de contrat.

La compagnie "The Quebec Central Railway Co.," intimée, se trouvant en difficultés financières, il fut convenu, par acte daté du 2 avril 1887, entre les directeurs provisoires de cette compagnie, désignés par un acte de la législature qui remettait le contrôle de la compagnie entre les mains des porteurs de débentures d'une part, et l'appelant, de l'autre, que l'appelant, qui contrôlait le fonds capital de cette compagnie, dont il était le président, en considération du transport devant lui être fait de débentures représentant la somme de $250,000, paierait toutes les dettes énumérées dans une cédule annexée à l'acte, sauf certaines dettes expressément exceptées, de manière à ce que la nouvelle administration put obtenir le contrôle de cette compagnie, libérée de

toutes dettes, sauf celles exceptées; que les dites débentures seraient déposées entre les mains d'un fidéi-commissaire, lequel les transférerait à l'appelant à mesure que ce dernier justifierait de ses paiements. La cédule susdite énumérait, dans une première partie, les dettes de la compagnie, et dans une seconde partie, les dettes des constructeurs du chemin.

Jugé :—(Infirmant la décision de la cour supérieure, Brooks, J., 14 L. N., p. 354): Que l'appelant avait le droit en vertu du contrat susdit, d'employer les revenus de la compagnie accrus avant la date de ce contrat, à acquitter les anciennes dettes de la compagnie, et que la somme ainsi employée ne devait pas être déduite de sa réclamation pour la remise des débentures en question.—*Robertson & The Quebec Central Railway Co.*, Montreal, Lacoste, J.C., Bossé, Blanchet, Wurtele, JJ., 26 avril 1893.

SUPERIOR COURT ABSTRACT.

Sale à terme—Unpaid Vendor—Saisie-conservatoire—C.C., 1998, 2000.

Defendant purchased from plaintiff a cargo of coals, to be settled for by his promissory note at three months, deliverable to plaintiff on the unloading of the cargo on the wharf, but failed to give or offer such note, and in spite of diligent search it could not be found, whereupon plaintiff took a *saisie-conservatoire*, and seized the coals, without, however, alleging secretion, absconding or insolvency on the part of defendant, or asking the resiliation of the sale.

Held:—Dismissing petition to quash, that defendant's default to give such note entitled plaintiff to demand immediate payment in cash, and at the moment of resorting to his seizure he was in the position of an unpaid vendor for cash, having the right to protect his privilege by *saisie-conservatoire.—Maguire* v. *Baile*, C. R., Quebec, Routhier, Caron, Andrews, JJ., March 30, 1893.

Joint Stock Company—Companies' Act, 1862-83 (*Imperial*)—*Winding-up Act—Liquidator, status of, before Canadian Courts—Intervention—Deposit—Saisie-arrêt.*

Held:—Where Canadian creditors of a joint stock company incorporated under the (Imperial) Companies' Act, 1862-83, are proceeding to execute a judgment obtained in the courts of this province upon assets of the company situated within the pro-

vince, a liquidator named in Great Britain to the voluntary winding up of such company cannot intervene and demand that the company's assets be removed to Great Britain, to be there by him distributed in accordance with the provisions of the said Companies' Act. *Quære*, has such liquidator any standing before the Courts of this province?—*Quebec Bank* v. *Bryant et al., & Hall et al.*, T.S., S.C., Quebec, Andrews, J., April 15, 1893.

Election—Note given for money lent candidate not recoverable—R. S. Q., 425.

Held:—A promissory note given by a candidate, for money loaned him during an election of a member of the legislature, the lender knowing that the money was obtained and destined for use by the borrower in such election, is not recoverable at law, in virtue of the provisions of Art. 425, R. S. Q., as being a promise and contract arising out of an election.—*Ritchie* v. *Vallée*, C.R., Quebec, Casault, Caron, Andrews, JJ., March 30, 1893.

Salvage—Action by owner alone—Dilatory exception.

Held:—The action accruing to the owner, master, and crew of a salving vessel is indivisible, and a suit brought by the owner alone will be stayed on dilatory exception until the master and crew have been made parties to the suit.—*Chabot* v. *Quebec Steamship Co.*, S. C., Quebec, Routhier, J., April 4, 1893.

Procédure—Plaidoyer—C. P. C. 138.

Jugé:—1. Un plaidoyer alléguant que le demandeur a été membre d'une administration qui a commis des actes de corruption et de mauvaise administration, est suffisamment libellé, même s'il ne donne aucun détail de ces actes, et se contente de référer à une volumineuse enquête produite avec ce plaidoyer;

2. Une motion qui demande de faire rayer d'un plaidoyer certaines allégations, parce qu'elles ne sont pas suffisamment libellées, doit être faite dans les quatre jours de la production de tel plaidoyer, conformément à l'art. 138 C. P. C.;

3. La cour peut d'office, et même lorsque ce moyen n'a pas été invoqué par la partie adverse, se prévaloir de ce que telle motion n'a pas été faite ainsi dans les quatre jours après la production du plaidoyer.—*Langelier* v. *Casgrain*, C. S., Québec, Casault, J., 15 avril 1893.

LIABILITY OF A SLEEPING CAR COMPANY FOR LOSS OF BAGGAGE.

An examination of the cases relating to the obligations and liabilities of sleeping car companies for loss of goods and baggage of passengers will show a great diversity of opinion and that no uniform rule has yet been agreed upon. This is not surprising when we consider that the service is of so recent growth, that some of the patents have not expired by which certain companies claim peculiar rights in the business.

The business dates back but little more than a third of a century, and the cars of that time were of every conceivable form, many of them in which the berths were open as in a canal packet. The accommodations were of the simplest character and the charges correspondingly light. As the various short lines of railroads became consolidated and operated under one management, the demand for better accommodations for night travel called into being the Wagner, Pullman and other sleeping cars. These offered superior accommodations and the charges were proportionately increased. These companies proposed to a traveller in effect to give him a safe and commodious car with a double berth to sleep in, and provide the necessary porters to wait on him, for a fixed price paid in advance above the charge for his transportation. These companies claim that they are not common carriers and therefore are not liable as such for a failure to carry those who have paid for the accommodation, and that they are not liable like innkeepers, and therefore not responsible for the safekeeping of the passenger's goods and baggage, and it must be said that a number of cases sustain their contention.

The law upon this subject has not yet become crystallized, and must ultimately in the absence of statutory regulations be determined by the application of common law rules in analogous cases. It may be well to examine the character of the cases decided. In *Pullman etc., Co.* v. *Gaylord* (23 Am. Law Reg. 788) the action was brought to recover the sum of $300, the value of a diamond scarf pin stolen from the defendant while asleep.

In *Scaling* v. *Pullman etc., Co.*, (24 Mo. App. 29) the action was brought to recover $245, the value of a gold watch and pair of pantaloons stolen while the passenger was asleep. In *Bevis* v. *B. & O. Ry. Co*, (26 *Id.* 19) the action was brought to recover $500, the value of a scarf pin, and $5, in money alleged to have been stolen while the passenger was asleep. In *Woodruff etc. Co.*,

v. *Dahl* (84 Ind. 474) the loss alleged was a gold watch of the value of $172, and money amounting to $111.50. In *Blum* v. *Southern etc., Co.*, (Flippins' R. 500) the action was to recover $3,135, lost by the plaintiff while riding in a sleeping car. In *Pullman, etc., Co.* v. *Smith*, (73 Ill. 360) the action was brought to recover the sum of $1,180, alleged to have been lost on one of the plaintiff's cars. In the case of *Illinois, etc., Ry. Co.*, v. *Handy* (63 Miss. 609) the defendant was riding in a chair car and claimed to have lost his pocket-book in the car. It was found by the officers of the company and returned to him apparently unopened. On being delivered to the owner it appeared that it contained $57 in money. He took the book and its contents and stated "it was all right," but afterwards returned and claimed that $308 had been abstracted from the book, and the action was brought to recover that amount.

In *Lewis* v. *N.Y. Sleeping Car Co.*, (143 Mass. 267) the action was brought to recover $200 claimed to have been stolen from the plaintiff while he was asleep in the car. In *Root* v. *Sleeping Car Co.*, (28 Mo. App. 193) the action was brought to recover the sum of $464, which the plaintiff alleged was stolen from him by the fraud or negligence of the defendant while the plaintiff was a passenger on his car.

In *Pullman etc., Co.* v. *Matthews* (74 Tex. 654) the defendant early in the morning, left his pocket-book, which contained, as he alleged, $165, lying on the bedding of his berth and went to the wash room and afterwards went forward sixty or seventy yards to a wrecking train, and the action was brought to recover the loss of the money.

In the case of *Pullman etc., Co.* v. *Gardiner*, (16 Am. and Eng. Ry. cases) the defendant on retiring placed his gold watch, of the value of $250, and $55 in money, in an inside pocket of his vest, and put the vest under the outside corner of the mattress of his berth and went to sleep, and they were stolen during the night, and the action was to recover their value.

In *Wilson* v. *B. & O. R. Co.*, (32 Mo. App. 199) it was held that a passenger who had put $670 in his coat pocket and placed the coat under his pillow was guilty of gross negligence in leaving it there while he went to the water closet.

In *Hampton* v. *Pullman etc., Co.*, (42 Mo. App. 134) the company was held liable for a failure to use reasonable diligence to protect its patron's baggage delivered to the company. In *Car-*

penter v. *N. Y., etc., Ry. Co.*, (124 N. Y. 53) money was stolen from a passenger while asleep in a sleeping car, and there was only one employee on the car who acted as conductor, porter and bootblack, and it was held that the company had not exercised due care.

In a number of the cases cited, in addition to the proof of loss some act of negligence of the company was also required to be proved. One of the earliest cases decided was *Plumm* v. *Pullman etc., Co*, (3 Cent. Law J., 592) by Judge Brown of the United States District Court of Tennessee, in which he held that the company was not liable either as an innkeeper or bailee for money stolen from a passenger's pocket. In all these cases it was held that the company was not liable as an innkeeper. The goods which were lost, so far as appears, were retained by the owners and were not delivered to the employees of the several sleeping car companies. In most cases the money carried on the person exceeded the amount necessary for travelling expenses, while in all cases the jewellery was retained by the owner. Those cases, therefore, and others of a similar character, do not form a fair criterion to determine the liability of sleeping car companies. Judge Brown seems to have discusssed several questions not before the court, viz.: That while the company was not liable it was to take reasonable care of its guests and property, especially while said guests were asleep. He also attempts to draw a supposed distinction between an innkeeper and sleeping car company. Some of the distinctions referred to will be noticed presently.

Other nisi prius cases of about the same date may be found, among which are *Palmeter* v. *Wagner*, (11 Alb. Law J., 149) in which the Marine Court of New York held that the company was neither an insurer, innkeeper, or transporter, but must nevertheless keep a reasonable watch to protect a passenger and the property about his person during sleep.

That the two cases last cited have been taken as precedents and substantially followed without question is apparent to any person who will consider the reported cases. It may be well, therefore, to examine the grounds upon which these decisions are predicated. An innkeeper at common law is "a person who makes it his business to entertain travellers and passengers and provide lodgings and necessaries for them and their horses and attendants." (Bacon's Abr. Inns and Innkeepers *B. Kistem* v.

Hildebrand, 9 B. Mon. 72.) In the case last cited it is said "that a man may be an innkeeper and liable as such though he have no provision for horses. It is not necessary that he should have a sign indicating that he is an innkeeper, but it must be his business to entertain travellers and passengers."

To constitute an inn at the present time it is not necessary that the guests be provided with food. Thus, where a public house is kept upon the European plan—meals being furnished to those who desire, paying only for what they receive, or taking their food at some other place, it is nevertheless an inn. *Krohn* v. *Sweeney* (2 Daly, 200); *Burnstein* v. *Woodward*, (33 N. Y. Sup. Ct., 271.) So where a general in the army of the United States with his family were guests at the restaurant of a hotel where they paid only for what they received, and had lodgings at the hotel, they were held to be guests and not boarders. (*Hancock* v. *Rand*, 94 N. Y. 1.) In the case cited the judge says that hotels are conducted differently now from what they were formerly. "Furnishing rooms at a fixed price and meals at prices depending upon the orders given at the usual hotel rates constitutes a material difference in the system of keeping hotels from that which formerly existed." To constitute an inn, therefore, it is not necessary that it should furnish meals to the guests nor that it should have accommodation for horses and other animals of travellers. But it is said that an innkeeper has a lien upon the traveller's baggage for the amount of his bill, and that no such lien exists in favor of the sleeping car company. I am not aware that this question has ever been presented to any court for the reason that the sleeping car companies in all cases, so far as I am aware, transact all their business by selling tickets for berths or sections and demand payment in advance. Hotelkeepers do the same in many cases where a doubt exists as to the responsibility of the guest, and no doubt by rule might require prepayment in every case. There is no occasion, therefore, for a lien in the case of the sleeping car, and for that reason, none so far as we know has been attempted. It is insisted, however, that there is no contract with the hotelkeeper as to the length of time the guest will stay, and in this regard the contract differs from that of the sleeping car company, which is for definite service. This distinction is more technical than real. Suppose a traveller should go to a hotel, and on registering should say to the landlord: "I will stay with you two, three or four days, as the case

may be," would he thereby become a mere boarder and not a guest? No one will so contend. He would be there temporarily until his business was completed, and the innkeeper would be liable to him for any dereliction of duty of himself or employees. Now, suppose a t raveller purchases a first class ticket and sleeping car ticket from St. Louis to Chicago, and enters the sleeping-car for the use of which he has paid in advance, will the fact that the contract is to continue until the car arrives at Chicago, some ten or twelve hours thereafter, change the contract from that of the innkeeper? If so, some good reason should be given for the exemption.

Considerable stress is laid upon the fact that the several berths are not separate rooms, and therefore the occupants cannot lock the door and exclude all intruders. To some extent this is true, but has it ever been held that a hotel-keeper was excused because he was compelled to put two or more guests, strangers to each other, it may be, into the same room? Scarcely a year passes in any city or town, but by reason of some convention or other meeting, the hotels are filled and cots placed in the aisles, which are occupied by guests during the night, yet no landlord would claim exemption for loss upon the ground alone that his house was crowded, or that he did not have a separate room for each guest. Suppose a sleeping car to remain stationary at one point for months or years as a place for the entertainment of travellers, and patronized as such, would the fact that it was a car instead of a house, exempt it from the liabilities of an inn? If so, then a car stationed beside an inn and doing the same business would, without reason, be freed from liability, while the innkeeper would be held; but the law does not thus discriminate in favor of any one. Suppose the car was stationed at some point and in fact an inn, and its proprietor therefore responsible to his guests, would this liability cease because the car was daily moved from place to place? If so, why?

We are told that the car differs from an inn in the character of its guests. That an inn must receive all who apply while the car can receive none but those who hold first class tickets or other means of transportation entitling them to ride in first class coaches.

But this is not a valid objection.

Every person by paying the price of a first class ticket may become entitled to purchase a ticket and travel in a sleeping car.

It is merely a matter of expense. The same rule applies to inns. Thus the rates at a first class inn rate from three to five dollars a day, at a second class about one half as much, and third class from one third to one half of the amount. As well complain that a traveller could not stop at a first class inn for the price charged at a second or third class inn. The truth is, the accommodations on a sleeping car are similar in kind to those supplied at an inn. In *Pullman. Co.* v. *Lowe*, (28 Neb. 248, 249) the defendant placed a valuable overcoat in the care of the porter, and it was stolen from the car, probably by an employee. The defendant recovered the value of the coat. It is said: "The liability of innkeepers is imposed from considerations of public policy as a means of protecting travellers against the negligence or dishonest practices of the innkeeper and his servants. Occasionally, no doubt, the innkeeper is subjected to losses without any fault on his part. This, however, is one of the burdens pertaining to the business, and the courts have deemed it necessary to enforce this wholesome rigor to insure the security of travellers. Besides, where loss is sustained, neither party being in fault it must be be borne by one of them, and it is no more unjust to place it on the innkeeper than on the guest. The liabilities incident to the business are to be considered in fixing the charges for the service." (*Mason* v. *Thompson*, 9 Pick., 280.)

[Concluded in next issue.]

ONTARIO DECISION.

Bailment—Storage of wheat—Loss by fire—"Owner's risk."

A quantity of wheat was delivered by the plaintiff to the defendant, a miller, under a receipt stating that the same was received in store at owner's risk, and that the plaintiff was entitled to receive the current market price when he called for his money. The wheat, to the plaintiff's knowledge, was mixed with wheat of the same grade and ground into flour. The mill, with all its contents, was subsequently destroyed by fire, but there had always been in store a sufficient quantity of wheat to answer the plaintiff's receipt.

Held, that the receipt and evidence in connection therewith, showed there was a bailment of the wheat and not a sale.

Negligence on the part of defendant was attempted to be set up, but the evidence failed to establish it.—*Clarke* v. *McClellan*, Common Pleas Division, March 4, 1893.