A quite persuasive analogy to the holding in the instant case is the rule requiring railroads to maintain order and guard passengers against violence from whatever source if it might reasonably have been anticipated in view of all the circumstances. *Mullan v. Wisconsin Cent. R. Co.* (1891) 46 Minn. 475, 49 N. W. 249. This rule applies to innkeepers, and has been extended to other occupations of a semi-public nature. See *Rommel v. Schambacher* (1888) 120 Pa. 579, 11 Atl. 779, in which a proprietor of a saloon was held liable for an assault on a customer by a drunkard. S. M. R., '33.

TROVER AND CONVERSION—NEGLIGENCE AS CONVERSION.—In *Lund v. Keller* (Wis. 1931) 233 N. W. 769, plaintiff ordered the defendant broker to purchase certain stocks for her on margin but later decided to buy them outright and paid the whole purchase price to the defendant. The defendant negligently failed to have the stock transferred to the plaintiff's name and permitted it to remain as security for his open account with a broker in Chicago through whom he transacted business. The account was in good shape and the transfer would have been promptly executed at any time. Since defendant, having failed to release the stock, was unable to deliver it immediately on demand, plaintiff rescinded the purchase and sued for conversion. *Held,* there must be intent to convert property to one's own use or some other wrongful intent indicative of assumption of ownership to constitute conversion; neither negligence nor breach of contract, even where loss of property results, is sufficient.

It is perhaps difficult to reconcile what is said in different decisions as to the effect to be given to the intention of the defendant in determining whether or not he is guilty of conversion. There are cases asserting that the innocence of his intent is immaterial. *Regas v. Helios* (1922) 176 Wis. 56, 186 N. W. 165; *Laverty v. Snethen* (1877) 68 N. Y. 522; *U. S. Zinc Co. v. Colburn* (1927) 124 Okla. 249, 255 Pac. 688; *Pine & Cypress Co. v. American Engineering Co.* (1925) 97 W. Va. 471, 125 S. E. 375. Others absolve him from liability because of such innocence. *Salt Spring Natl. Bank v. Wheeler* (1872) 48 N. Y. 492; *Mattice v. Brinkman* (1889) 74 Mich. 705; *Sparks v. Purdy* (1847) 11 Mo. 219. However the true rule seems to be that where some positive wrongful act of the defendant has interfered with the ownership of the plaintiff he will be held guilty of conversion regardless of his intentions in the matter, but where the act is merely equivocal and is not in itself a sufficient violation of the rights of the plaintiff in the property then a wrongful intention superadded to the act will constitute conversion, whereas an innocent intent will not. *Durgaine v. Maine Central R. R.* (1916) 15 Me. 551, 18 Atl. 811; *State University v. State Natl. Bank* (1887) 96 N. C. 280, 3 S. E. 359; *Pitcock v. Higgins* (Mo. App. 1922) 239 S. W. 870; *Penny v. State* (1890) 88 Ala. 105, 7 So. 50. Some cases frankly state that it is the "substantial injury to the plaintiff" or the "effect of the act" that is the essential factor. *Gibbons v. Farwell* (1886) 63 Mich. 344, 29 N. W. 855; *State v. Omaha Natl. Bank* (1900) 59 Neb. 483, 81 N. W. 319.

Upon the question of negligence the principal case quotes 38 Cyc. 2008 and 26 R. C. L. 1112. There seems to be a general acceptance of this rule throughout the jurisdictions. *Bolling v. Kirby* (1890) 90 Ala. 215, 7 So. 914; *Aylesbury Merc. Co. v. Fitch* (1909) 22 Okla. 75, 99 Pac. 1089; *Magmin v. Dinsmore* (1877) 70 N. Y. 410. However there are many situations in which defendants have been held liable for conversion actually predicated upon negligence: a bank for stolen bonds, *Fidelity Trust Co. v. First Natl. Bank of Spring Mills* (1923) 277 Pa. 401; a trespasser for lumber negligently cut on another's land, *Trustees of Dartmouth College v. International Paper Co.* (1904) 132 F. 92; a warehouse for loss of food supplies in cold storage, *Allen v. Jacob Dold Packing Co.* (1920) 204 Ala. 652, 86 So. 525; a manufactory for misdelivery of iron ingots, *Marlow v. Conway Iron Wks.* (1925) 130 S. C. 256, 125 S. E. 569. But again in each of these cases there was some positive act which impaired the property of the plaintiff. It would seem then that these decisions are tacitly founded upon the doctrine that whereas mere nonfeasance will not constitute conversion malfeasance even if only negligent will be so deemed. *Savage v. Smythe* (1904) 48 Ga. 452; *Spokane Grain Co. v. Great Northern Express Co.* (1909) 55 Wash. 545, 104 Pac. 794.

In the principal case the broker mislaid a letter which he had written directing the transfer of the stock to his customer's name. Meanwhile the stock remained pledged. Was this nonfeasance or malfeasance? The Wisconsin court has no doubt sensed the equities involved and has effected a proper adjustment of them, but it would be interesting to observe what the court would do were a like situation to arise during a widespread market crash in which the broker's own margin account was wiped out and he was left insolvent. A. W. P., '33.