about a month before the occurrence in question the other door to the baggage room had fallen in the same manner,—the fall being due in part to the wearing of the iron rail, but mainly to the shrinkage of the wood of the door and to the settling of the building,—and that a repetition of the fall was guarded against by means of a wooden cleat fastened upon the grooved strip, and extending below the end of the door on the inside. Concerning the door in question, the answer alleges that, "owing to the shrinkage of the wood and settling of the building, the door, when partly opened, could be pulled out of the groove," but that the shrinkage and settling were "only just sufficient to permit the door when pulled sidewise, and not endwise, to slide from the groove." It is not alleged that the liability of the door to be pulled over was unknown to the plaintiff in error.

B. J. Stevens (James Fentress, of counsel), for plaintiff in error.

John M. Olin and Harry L. Butler (J. C. Mabry, of counsel), for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge, after making the foregoing statement, delivered the opinion of the court.

The primary question, upon which all other questions of importance in this case turn, is whether the railroad company was under any duty to the defendant in error to make the baggage room a safe place. The contention of the plaintiff in error is that while railway waiting rooms, platforms, and the approaches thereto, are places to which the public having business with the railway company are invited, a baggage room is necessarily a private place, where the one who goes without invitation, express or implied, is a trespasser, or at best a mere licensee, to whom no duty is owing, and that in this case, there being no pretense of an express invitation to the plaintiff to enter the room, there was no implied invitation, because she entered solely for her own convenience; the proper place for receiving her baggage being at the door or on the platform outside, and her presence inside being in no sense to the advantage of the company. We do not agree that a baggage room at a railway station, when open for the reception and delivery of baggage, is a private room, as against owners of baggage who are permitted to enter. In its relation to the public, the company is represented by the baggage master or other employé whom it puts in charge of the room; and, if an owner of baggage enters upon the invitation or by permission of the baggage master, it is the invitation or permission of the company; and whether, in a given instance, one who goes in by permission does it only for his own benefit, or for the advantage of both parties, must ordinarily be a question for the jury. If thereby the baggage master is aided in the performance of his duties or labors, the company which he represents is benefited. In this case the baggage master was told before he opened the door that a part of three pieces of baggage was wanted, and it was certainly to his convenience that the part or piece desired should be pointed out without his being required to bring the three pieces to the door or platform; and when he passed in, leaving the door open and giving no admonition to Miss Griffin to stay out, it was, to say the very least, a question for the jury whether she was not invited to

go in. In Bennett v. Railroad Co., 102 U. S. 577, 584, the court quotes with approval the following proposition from Campbell on Negligence:

"The principle appears to be that invitation is inferred where there is a common interest or mutual advantage, while a license is inferred where the object is the mere pleasure or benefit of the person using it."

The evidence in that respect being sufficient to support the verdict, it must be assumed, for the present purpose, that the entrance of the defendant in error into the baggage room was at the invitation and for the benefit of the railroad company, as well as for her own convenience; and, that conceded, the evidence which tended to establish negligence on the part of the defendant, and freedom from fault on the part of the plaintiff, was such as to forbid the withdrawal of the case from the jury.

Other questions merit only a brief statement. The record shows no exception to the remarks of the court in the presence of the jury upon the presentation and consideration of the motion for a peremptory instruction in favor of the defendant; but we are of opinion that, if excepted to, the remarks were not such as to justify a reversal of the judgment. The better practice would be to send the jury out of the room when such motions are to be made, argued, or decided. It does not appear that the plaintiff in error moved or requested that the jury be directed to retire.

It was in the discretion of the court to permit the plaintiff to be further interrogated as a witness after the motion for a verdict had been decided, and it does not appear that there was an abuse of discretion for which the judgment should be reversed.

The testimony which the plaintiff was allowed to give of the manner in which different parts of her body were affected was not outside of the issue, nor otherwise improper. The declaration charges nervous prostration, and sensations of numbness and pain in the back of the neck, in the left side, and in the arm "and other parts of her body"; and even if the averment were less broad it would not follow that her statements touching the condition of her uterus and the nerves of her leg would not have been competent. The sympathy of one part of the body with another is involved in a scientific determination of the effects of injuries; and, on such an inquiry, whatever in the light of science is significant, in the eye of the law is competent.

There was no error in permitting a physician to answer the question:

"Have you seen sufficient of the plaintiff here, since the trial commenced, to be able to state, as a physician, whether there is or is not an abnormal nervous condition present in her case."

If, as suggested, the question contains phrases of doubtful meaning, it was the part of a cross-examination to clear the doubts away.

It is objected to certain hypothetical questions that they were based in part upon asserted physical conditions claimed to have been discovered at an examination of the plaintiff made pending, and late in the progress of, the trial, which conditions were not

charged in the complaint, and therefore were not pertinent to the issue, and in part upon the fact that, two months before the injury in the baggage room, the plaintiff "took part" in a railroad collision, as a result of which she suffered insomnia, headache, nervousness, and other hard-worded disorders and irregularities, like those charged in the complaint; and it is contended that if these were other and different from the conditions which the witness discovered at the physical examination, so, also, the conditions described in the complaint were different, and the allegations and proofs do not correspond. These objections are not tenable. When the proof shows causes, outside of those alleged, for the symptoms of suffering, it is proper and necessary that the jury shall be informed, if possible, to what cause the suffering is justly attributable, and to that end it is necessary that the hypothetical questions cover the entire field of inquiry.

The court did not err in refusing to authorize and compel a physical examination of the plaintiff by physicians to be designated by the court. Railway Co. v. Botsford, 141 U. S. 250, 11 Sup. Ct. 1000. The reasoning of that case forbids a compulsory examination during the trial equally with one in advance of the trial.

Error cannot be assigned upon questions put to a witness, when it does not appear what answers were elicited. Unless the answer is objectionable, it does not matter, ordinarily, what was the question. The exception should therefore go to the answer, and not to the question alone.

The alleged inconsistencies between instructions given at the request of the plaintiff in error and the charge of the court to the jury do not go to material questions, and if they did there would be no available error, if the court's charge was right. If the court, of its own motion, gives inconsistent charges, there may be an assignment of error upon the one which is wrong, or perhaps on the fact of inconsistency; but, where the inconsistency is between a proper charge and an erroneous instruction given upon request, the requesting party may not complain. The charge here complained of is in harmony with the views which we have expressed upon the motion for a verdict, while the special instructions refused are inconsistent with those views. A further statement of them is therefore unnecessary. The judgment below is affirmed.

In re BRYANT.

(Circuit Court, S. D. New York. March 29, 1897.)

1. EXTRADITION—HABEAS CORPUS—REVIEW OF COMMISSIONER'S DECISION.
   One committed by a commissioner to await the action of the secretary of state cannot be released on habeas corpus if the commissioner had before him legal evidence on which to base his judgment, and it appears that he decided that defendant had committed one of the offenses charged, and that such offense was covered by the extradition treaty.
2. SAME—EVIDENCE.
   Circumstantial evidence as to the manner of drawing checks and posting books by an employé *held* sufficient to justify the commissioner in com-

mitting him on a charge of forgery to await the action of the secretary of state.

The accused, who was held for extradition for the offenses of forgery, larceny, and embezzlement by United States Commissioner Shields, sued out a habeas corpus and certiorari.

Counsel for the relator contended:

First. That as to the three checks of Morison & Marshall, for 500 pounds, 500 pounds, and 720 pounds, respectively, which relator was charged with forging, there was no testimony before the commissioner tending to show his criminality. Second. That, as to the false entries which it is charged relator made in the books of Morison & Marshall, such conduct on his part, even if proven, would not constitute an offense for which he could be extradited, for the reason that, when the treaty of 1842 was executed, the making of false entries was not forgery. Third. That, as to the additional sum of 280 pounds which the relator was charged with embezzling, there was no proof of criminality presented to the commissioner. Fourth. That as to the facts relating to the three checks, if it be held that they were sufficient to warrant commitment on the charge of forgery of the name of Morison & Marshall, and obtaining money upon such forgery from the bank, then they cannot be held as warranting a commitment for larceny or embezzlement from Morison & Marshall. If, on the contrary, it be held that such facts were sufficient to warrant a commitment for embezzlement from Morison & Marshall, then they certainly could not warrant a finding that the accused obtained the same money from the bank upon forged checks. Fifth. That, inasmuch as the treaty provides that a surrendered prisoner shall be tried only for the particular offense for which he may be surrendered, the demanding government and the commissioner should have elected, and, if the latter officer deemed the evidence sufficient to commit upon the one charge, he should not have committed upon the other.

Charles Fox, for the British government.
Lorenzo Semple, for Bryant.

LACOMBE, Circuit Judge (after stating the facts). The questions properly coming up for decision on this hearing are not as comprehensive as was supposed when the case was argued. If, upon examination of the record, it should appear that there was legal evidence of facts before the commissioner on which to exercise his judgment as to the criminality of the accused; that the commissioner reached the conclusion that the accused had committed any one of the several offenses with which he was charged; and that offense be one covered by the extradition treaty,—sufficient warrant for his detention is shown, and he should not be discharged from custody, but should be held in jail until the secretary of state shall act upon the question of his surrender to the demanding government, or until the expiration of the time provided for in section 5273, Rev. St. U. S. In re Stupp, 11 Blatchf. 124, Fed. Cas. No. 13,562. Without unnecessarily burdening this memorandum with citation, it will be sufficient to refer to Ornelas v. Ruiz, 161 U. S. 502, 16 Sup. Ct. 689, for an exhaustive statement of the procedure in extradition cases, and the extremely limited functions to be discharged by the court upon habeas corpus and certiorari to review commitment.

That forgery at common law, viz. the falsely making or altering a document to the prejudice of another, is one of the offenses covered by the treaty of extradition, is not disputed. The evidence before the commissioner disclosed the following facts: Bryant was employed