In the Louisville (Ky.) Chancery Court, March, 1858.

CAMP VS. THE WESTERN UNION TELEGRAPH COMPANY.

1. Where a telegraphic communication was sent subject to the express condition that the telegraph company would not be liable for mistakes arising from any cause unless the message was repeated by being sent back; it was *held*, that the plaintiff was bound by his contract, and could not recover unless he brought himself within the terms of the company's undertaking.

2. Telegraphic companies are not, in any just sense, common carriers, and cannot be made liable upon the principles applied to carriers.

The opinion of the court in which the facts sufficiently appear was delivered by

LOGAN, J.—If the plaintiff was not legally liable to pay Gibson & Co. sixteen cents for the whiskey which was sent him, he would have had no pretext, in any view of this case, for recovering the damages alleged to have been incurred in consequence of his proposition being incorrectly and erroneously transmitted through the agency of defendant.

I shall not inquire whether the plaintiff was liable for the consequence of the unauthorized proposition communicated through defendant's mistake to Gibson & Co.

For, admitting that defendant, though a special agent to convey a particular proposition, could and did, by erroneously conveying a different proposition, impose upon plaintiff a liability proportioned to the difference between the authorized and the unauthorized proposition, which liability would not have been incurred but for the mistake committed by defendant, it does not follow that plaintiff can recover the amount of said liability in this action.

The plaintiff avers that defendant agreed to transmit to Gibson & Co. a certain message, and failed to transmit it correctly; in this, that the message agreed to be sent was to pay *fifteen* cents per gallon for certain whiskey; whereas, the message actually delivered was to pay *sixteen* cents per gallon.

There is no allegation that the failure to deliver the message correctly was the result of negligence.

It appears that the failure to deliver the message was the result of a mistake to which, from the very nature of telegraphic operations, communications are liable; and that the message in this case was sent subject to the express condition that defendant would not be liable for mistakes arising from any cause, unless the message was repeated by being sent back.

I see no ground for saying that this condition was void. Without this precaution of repeating messages, mistakes by telegraph are unavoidable. And there is no principle of public policy that does or should prohibit a telegraph company from being prudent enough to protect themselves from ruin, by requiring such a condition in the transmission of messages.

Had the message been repeated in this instance, the mistake would probably not have occurred, and it is idle to say that the defendant was bound, for a compensation of *fifty cents*, to insure the message, unconditionally and absolutely, against all mistakes.

The points of difference between the nature of telegraph companies and the nature of common carriers are so numerous and so obvious as to render the unqualified application of the law of common carries to telegraph companies delusive and dangerous.

But even in the case of common carriers, special agreements limiting liability, may be made.

If, however, special limitations of common law liability were always void in the case of common carriers, this would be no reason to hold a limitation void in respect to telegraph companies.

The rule and mode of compensation charged by telegraphic offices, the secret nature of messages, and the impossibility of determining the value of them, or the pecuniary consequences of mistakes and miscarriages, and the peculiar liability of telegraphic communications to mistakes, would furnish ample reason for exempting them from the strict operation of the old law of common carriers.

Telegraphic messages are paid for by the line or the word,

and cannot be paid for according to their value or importance. Indeed, it would be impossible to measure their value or importance. No standard of measurement could be established, and if a standard could, by some ingenuity, be erected, it would require so much time and trouble to apply this standard, that much of the benefit of the telegraph (which consists in the speed of its own agent—lightning) would be lost to the community. It is better, therefore, to relax the old law of common carriers in reference to telegraph companies. Or rather, it is better to mould a new law, suitable to their nature, and the exigencies of modern society. Perhaps they should be held responsible, in the absence of positive contract, only for the use of ordinary prudence and diligence.

Certainly, when they have a contract that they are not to be liable for mistakes, unless the communications through them are sent back, a court should not pronounce the contract void, and impose upon them all the strict rigor and extraordinary liability of the supposed ancient law of common carriers.

To impose upon the defendant in this case, in spite of the special condition inserted to avoid mistakes, all the extraordinary liability of common carriers, would be to make defendant an insurer, for the price of fifty cents, against all the undefined and undefinable consequences of a mistake likely to happen at any time to a word or a sentence; when, too, to avoid mistakes, it was *expressly* agreed that they were not to be liable for any such mistakes, unless the message was repeated by being sent back.

Petition dismissed, with costs.

NOTICES OF NEW BOOKS.

A Treatise on the Law of Highways. By Joseph R. Angell and Thomas Durfee. Boston: Little, Brown & Company, 1857. pp. 452.

This is a work greatly needed. The editor's preface tells us how far the late Mr. Angell had proceeded in his labors when the hand of death staid them forever, and Mr. Durfee was called upon to complete the volume, in the entire preparation of which he had actively assisted Mr. Angell.