

(independently of any consideration moving from some one else) binding the surgeon to show reasonable care and skill. That consideration is the patient's consenting to allow the surgeon to operate on him.] But here there is a duty created by statute to send messages with reasonable care. [COCKBURN, C. J.—A duty towards the sender only.] [MELLOR, J.—Suppose you send a letter by the mail-train, and it misses its destination, can the person to whom it is sent maintain an action against the railway company?] There a public department intervenes, which complicates the case. As to the condition, it is inconsistent with the statutable obligation and the duty arising out of it. It is, moreover, unreasonable. He cited the following cases:—*Peak, v. The North Staffordshire Railway Company*, 10 H of L. cas. 473; 11 W. R. 1023, 32 L. J. Q. B. 24; *Williams v. The Lancashire and Yorkshire Railway Company*, 28 L. J., Ex. 353; *MacAndrew v. The Electric Telegraph Company*, 17 C. B. 93; *Butt v. The Great Western Railway Company*, 1 C. B. 132; *Alton v. The Midland Railway Company*, 13 W. R. 918, 34 L. J. C. P. 299; *Allday v. The Great Western Railway Company*, 5 B. & S.; *Godwell v. Steggall*, 5 B. N. C. 735; *Langridge v. Levy*, 2 M. & W. 519; *Longmaid v. Halliday*, 6 Ex. 761.

C. Pollock, Q. C. (Hannen with him), was told that he need only address himself to the second point, viz., the reasonableness of the condition. He contended that it was not unreasonable.

Cur. adv. vult.

Nov. 19. COCKBURN, C. J.—We think that we have not the facts of the case sufficiently before us to enable us to give judgment on it, and that it had better be stated in the shape of a special case. At present, we are with the defendants on the first point, and think that the demurrer to those pleas which state the message to have been sent by third parties is supported, because there is no privity of contract between the plaintiff and the company. It was said that, as the Act imposed the duty of sending messages for all persons, subject to certain conditions, any one injured by a breach of this duty sustains an actionable injury. But, though it is true, that this duty is imposed by the Act, yet that is only towards those entitled to have messages sent, and does not create any obligation towards a person who is not entitled to have a message sent. Therefore, on these counts, the defendants are entitled to our judgment. But, with regard to the pleas which set up the condition as an answer to the action, a twofold question arises:—1st, whether the condition does not cover gross negligence, and is not, therefore, unreasonable; 2nd, whether, apart from the question of its covering gross negligence, it is unreasonable? As to this it occurs to us that the company is not in the position of companies which exercise powers arising out of ordinary rights of property. They exercise powers granted by statute. The defendants are empowered to erect structures *in solo alieno* without the consent of the owners; and then, apparently in consideration of this, the statute obliges them to keep their stations open for all persons desirous of sending messages, for certain charges, and subject to reasonable regulations. The statute having imposed this duty, which seems to involve that of using reasonable care, and having, in consideration

thereof, empowered them to make a maximum charge, they annex a condition, to the effect that they shall not be answerable for negligence; in other words, that they will not observe due care in the performance of a statutable duty. Is that consistent with the statute, as being a reasonable regulation? If there was nothing more than an ordinary contract for the transmission of messages, there would be the ordinary obligation of using reasonable diligence. The statute says they shall transmit messages, and it surely must be understood that the obligation thus imposed carries with it also that of using reasonable care. The defendants say they will transmit messages for the maximum charge, but they will not use reasonable care. I am of opinion that, if the plaintiff were otherwise entitled to maintain this action, this condition would be no impediment to him. But we should prefer to have the facts stated fully, for then we should be better able to determine whether, on these facts, the plaintiff is entitled to recover, having reference chiefly to the condition; and also whether, supposing the company make the maximum charge, the obligation of reasonable care does not necessarily attach to them so that it cannot be evaded by the imposition of any condition? The facts had better be stated in the form of a special case, in order to enable us to decide these questions.

APPOINTMENTS TO OFFICE.

NOTARIES.

JAMES HARSHAW FRASER, of the City of London, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

RICHARD H. R. MUNRO, of the City of Hamilton, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

JOHN EDWARD ROSE, of the City of Toronto, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

ELIJAH WESTMAN SECORD, of the Village of Madoc, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

LOUIS BERNARD DOYLE, of the Town of Goderich, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

JOHN BURNHAM, of the Town of Peterborough, to be a Notary Public in and for the Province of Ontario. (Gazetted 11th January, 1868.)

CORONERS.

WILLIAM JOHNSTON, of the Town of Brampton, Esquire, M.D., to be Associate Coroner in and for the County of Peel. (Gazetted 18th January, 1868.)

JOHN GRANT, of the Town of Brampton, Esquire, M.D., to be Associate Coroner in and for the County of Peel. (Gazetted 18th January, 1868.)

THOMAS GRAHAM PHILLIPS, of the Village of Greshamsville, Esquire, M.D., to be Associate Coroner in and for the County of Peel. (Gazetted 18th January, 1868.)

CHARLES E. BONNELL, of the Village of Bubbygoon, to be Associate Coroner in and for the County of Ontario. (Gazetted 18th January, 1868.)

TO CORRESPONDENTS.

"SCARBORO" will appear in next issue.