

## THE LAW OF TELEGRAPHS.

tion, and asserting opinions totally incompatible with each other.

The principle derived from the first class of decisions, is that telegraph companies are to be considered as common carriers, and bound to their extraordinary responsibilities: *Parks v. Alta Telegraph Company*, 13 California, 432; *Brown & McNamee v. Lake Erie Telegraph Co.*, 1 Am. Law Reg. 685; *McAndrew v. Elec. Tel. Co.*, 33 Eng. Law and Eq. 180. In the last case above it was decided that their duties were in the nature of those of common carriers, which would not seem to imply quite so much as the other cases, but as the reasoning upon which it is based is the same, I have classed them together.

The rule laid down in the second class of cases, is that they are not common carriers in the strict sense of that term, but owe duties to the public and hold relations to the public that are very similar. The cases that thus hold are numerous. I cite a few of them: *Birney v. N. Y. & Washington Pr. Tel. Co.*, 13 Allen, 226; *DeRutte v. N. Y. and Albany Elec. and Magnetic Tel. Co.*, 1 Daly, 547; 30 How. Pr. 403; 1 Allen Tel. Cas. 273, S.C.; *Breese and Munford v. United States Telegraph Co.*, Allen Tel. Cases, 663.

The third principle, derived from adjudications on the subject, is that they are bound to the public in no other manner or sense than an individual is bound. The first case in support of this doctrine was the celebrated case of *Leonard v. New York Telegraph Co.*, 41 N. Y. Rep. 552. It has been recently followed and approved by Appleton, J., in his learned opinion in the case of *True v. International Telegraph Company*, reported in "Chicago Legal News," Vol. V. p. 170.

I think the doctrine of these last cases the most reasonable. I think the conclusions at which they arrive are more in accordance with the liberal views of modern jurisprudence, and follow more logically from all the arguments advanced *pro* and *con*. The principal argument advanced by those who seek to hold telegraph companies to the responsibilities of common carriers, is their public character. But this argument is not sufficient. It is only one of the premises of a logical syllogism. They have assumed that all persons, or companies, who hold them-

selves out to the public to do a certain business, are insurers by implication of everything of any value that comes into their possession, or under their control; and therefore, in the absence of contract, are liable for any default or accident that may happen to their charge, not occasioned by the act of God or the public enemy. But such is not the case. In the case of *The Bank of the United States v. The Planters' Bank of Ga.*, it was held, that whether organized under general laws or under special acts of incorporation, telegraph companies are private corporations, and that this would be so whether the state were the principal or the sole owner of the stock.

Newspapers hold themselves out to the public as advertising mediums, publishing their terms, and are certainly bound to advertise for any body who will pay them the published rates, provided the advertisement is not in itself objectionable; but no one would attempt to hold them bound in damages, in case of breach, beyond the amount paid for their services. They are liable to this extent, because they have made a public offer, and whoever brings them advertising will be deemed to have accepted their terms. In such a case no one would be so fanatical as to claim the damages which might result from a failure to advertise, beyond the amount paid or due, with interest, however proximate the damage.

So with persons who hold themselves out to the public as partners; whoever trusts them in that character binds them, though no partnership does actually exist. The same is true where one allows another to conduct himself as his agent without dissent; he is bound to all who trust such person in that capacity. In these cases they are bound *ex contractu*, and not because of that much abused term "public policy," but because *qui tacet consentire videtur*. The same obligation precisely exists by reason of the public nature of telegraph companies. They have publicly offered themselves to send messages for such as choose to employ them, and any person who offers them employment has accepted this public proposition, and has bound them accordingly. They are indeed bound by public policy in one sense; but it is simply that public policy which binds every man to discharge his obligations, whether such obligations