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CONVERSATIONS BY TELEPHONE.

The question of the admissibility in evidence of conversations over the telephone is one upon which there are already several decisions, and, owing to the rapid increase of telephonic communication, is of some importance.

Conversations by telephone are like no other communications. For instance, they have been compared to communications made through an interpreter, but, of course, this is grossly inaccurate, for, in the case of a conversation carried on through an interpreter, whatever doubt there may be as to the meaning of the exact words used, there is none as to the identity of the speakers. Again, they have been compared to conversations between blind persons or persons in neighboring rooms, not in sight of each other. This comes nearer to telephonic conversation, with the difference, however, that the voices of the speakers are not altered, as may be the case over the telephone.

While, however, there are obvious limitations to the reception in evidence of telephonic communications, their admission is in many cases necessary, and the law upon the subject may be considered as reasonably well settled.

The first case on the question, so far as we know, was *People v. Ward* (N. Y. Oyer and Terminer, 1885, 3 N. Y. Crim. Rep. 483), where it was held that it was competent for a witness to testify to a conversation over the telephone, and to statements made by the other party thereto, where the witness called said party to the instrument and recognized his voice in response.

It is to be noted in this case that the instrument was a private telephone. The witness Fish testified: "I went to the telephone and rung up Mr. Ward. It was a direct telephone between Grant & Ward's office and the bank. I had conversed with defendant, Ward, hundreds of times over the telephone,

and could recognize his voice very distinctly. I recognized it on this occasion." This was held sufficient to admit testimony of what the defendant Ward said.

In the case of *Wolfe v. Missouri Pacific Ry. Co.* (97 Mo. 473; 10 Am. St. Rep. 331), the court went farther, it being held that when a person places himself in connection with a telephone system through an instrument in his office, he thereby invites communications in relation to his business through that channel. Conversations so held are as admissible in evidence as personal interviews by a customer with an unknown clerk, in charge of an ordinary shop, would be in relation to the business then carried on, and the fact that the voice at the telephone was not identified does not render the conversation inadmissible.

But the court properly added: The ruling here announced is intended to determine really the admissibility of such conversations in such circumstances, but not the effect of such evidence after its admission. It may be entitled in each instance to much or little weight in the estimation of the triers of fact, according to their views of its credibility and of the other testimony in support or contradiction of it.

We have always felt doubtful as to whether the court did not go a little too far in this case. It is evident that a clerk in an ordinary shop, in apparent charge thereof, has a somewhat different authority to speak for his employer than an unknown person speaking over a telephone. In each case it is a question of presumptive evidence, but the presumption is very much stronger in the case of the clerk in the store than of the speaker over the telephone. The question as to where is the clerk is absolutely determined; as to where is the speaker over the telephone is only a matter of very great probability.

On the second point, that an identification of the voice of the speaker through the telephone is not necessary to make his declarations admissible, we think the court went to a very great extreme, and we doubt whether this ruling should be followed.

A rather curious case, decided some years before the last one cited (*Sullivan v. Kuykendall*, 82 Ky. 483; 56 Am. Rep. 901), was that