

at the end of the line. The fact that the defendant took the initiative in sending the telegrams, thus employing the telegraph company as its agent, is clearly shown by its letters to the plaintiff read in evidence. Having thus employed such agent to convey communications to the plaintiff, it must be held to be bound by the acts of its agent, to the extent at least of making the messages delivered originals, thereby constituting them primary evidence of the contents of the messages sent. It should be observed that there is no suggestion that any of these messages were erroneously transmitted, and the case, therefore, does not present the question upon which there is some conflict in the authorities, whether the sender of a telegram makes the telegraph company its general agent, so as to become responsible for the acts of such agent, where there is a departure from the authority actually given, by transmitting the message incorrectly."

FIXTURES.—Where a railroad company dug a well, and put in a pump and a boiler for the purpose of filling its tank on the line of its railroad, and used the same for several years, believing the well and attachments were on its own land, when it is discovered that they are on another's land the company can remove the pump and boiler without paying the owner of the land therefor. There is scarcely any kind of machinery, however complex in its character, or no matter how firmly held in its place, which may not with care, be taken from its fastenings, and moved without any serious injury to the structure where it may have been operated, and to which it may have been attached. That the simple fact of annexation to the realty is not the sole and controlling test of whether a certain article is a fixture or not, is very well illustrated by the fact that trees growing in a nursery, and kept there for sale, are personal property, while trees no larger, if transplanted to an orchard, become real estate. On the other hand, there are very many things, although not attached to the realty, which become real property by their use—keys to a house, blinds and shutters to the windows, fences and fence-rails, etc. It can readily be seen that one of the tests of whether a chattel retains its character or becomes a fixture is the uses to which it is put. If it be placed on the land for the purpose of improving it, and to make it more valuable, that is evidence that it is a fixture. Applying this criterion to the boiler, we are led to inquire whether this benefited the land of plaintiff. The real estate upon which this boiler was placed was a narrow strip in the city of Burlingame, and it cannot be contended that this well, boiler, and the attachments could have greatly benefited this small tract of land. They were not placed there for the purpose of enhancing its value. Ordinarily it would not enhance the value of such property in a city as this small piece of ground, by digging a well thereon like the one in question; and the only value added thereto by placing a pump, boiler, and boiler-house like those in controversy would be what they were worth as chattels. The test of whether real state is benefited by the act of annexation has been repeatedly applied by the courts to determine whether the chattel annexed became a fixture or not. 11 Alb. L.J. 151; *Woolien*