mitted message which plaintiffs received. The error of the Canadian Pacific Railway Company would, in that aspect of the case, be the error of plaintiffs' own agents, the delivery of the order to plaintiffs being at Vancouver, when it was handed to their agents for transmission. But if there were no such request by plaintiffs sufficient to constitute the Canadian Pacific Railway Company their agents in the transmission of defendants' order, although some American Courts —see Durkee v. Vermont Central R. R. Co., 29 Vt. 129; Morgan v. The People, 59 Ill. 58; and Scott & Jarnagin's Law of Telegraphs, secs. 351, 360; but see also Smith v. Easton, 54 Md. 139, and Pepper v. Western Union, 87 Tenn. 554—hold that, because the telegraph company is the agent of the sender, defendants would be bound by the erroneous copy of their despatch delivered to plaintiffs, and that the copy so delivered should be deemed the original order of defendants. English and Canadian decisions binding upon me do not countenance this view. . . .

[Reference to Henkel v. Pape, L. R. 6 Ex. 71.]

Assuming the mistake, which defendants in the present case allege, to be proved by proper evidence, I can see no ground upon which this case can be distinguished from Henkel v. Pape. That the telegram was in that case transmitted by the post office cannot make any difference in principle. The authority for the transmission and delivery of the message is in each case the same, and that authority the Court, in Henkel v. Pape, held to be limited to the transmission of messages in the terms in which senders deliver them. It follows that not the copy delivered to the recipient of the message, but the document handed to the telegraph company for transmission, is the original order which must be proven to establish the contract.

In Kinghorn v. Montreal Telegraph Co., 18 U. C. R. 60, the Court held that when a contract is attempted to be made out through the telegraph, the messages signed by the parties must be produced and not the transcripts taken from the wire. See also Verdin v. Robertson, 10 Ct. of Sess. Cas., 3rd series, 35.

But it is argued by Mr. Brennan that because the transcript handed to plaintiffs was put in evidence at the trial without objection, and because defendants have failed to prove by any admissible evidence the contents of the message