

## CONCERNING REGULATIONS REQUIRING TELEGRAMS TO BE REPEATED.

a message is bound by the regulations of the company, whether brought home to his knowledge or not. This part of the decision is clearly *obiter*.

In the *United States Telegraph Co. v. Gildersleve*, 29 Maryland, 232 (1868), the above dictum is re-asserted, although quite unnecessarily. There Gildersleve left a message at defendants' office, in Baltimore, to be sent to New York. It was written upon the blank of another company having upon its face this:—"The following message, without repeating, subject to the conditions indorsed on the back." What these conditions were does not appear in the report, except that they were intended to relieve the company from liability in case of non-repeated messages; but whether for delay or mistakes in transmission, or for non-delivery, also, is not apparent. The party to whom the message was directed failed to get it; but from what cause the case does not clearly inform us; but we gather from the argument of plaintiff's counsel that it was from a failure to deliver it after it had reached the New York office. It appeared that the defendant had regulations as to repeating similar to those on the message sent. The court held that neither the conditions on the message nor their own regulations would relieve the company from their own wilful misconduct or negligence; that such negligence must be established before there could be a recovery, and that, as the court below had refused defendants' prayers for instructions based upon this assumption, a new trial should be had. There was nothing calling for a decision as to whether the plaintiff would have been bound by the defendants' regulations without being made aware of them, since the plaintiff, in having written his message upon the blank of another company, very clearly made the conditions thereon his own, and proffered them with his message—and, as must be presumed, with a knowledge of them.

In the case of *Ellis v. The American Telegraph Co.*, 13 Allen, 226 (1866), the sole question was, as stated by Chief Justice Bigelow, "whether that portion of the terms and conditions prescribed by the defendants is reasonable and valid which provides that the defendants will not hold themselves responsible for errors and delays in the transmission and de-

livery of messages, unless they are repeated." The mistake in this case consisted in making the message read \$175, instead of \$125, as it was written. There was "no evidence of carelessness or negligence except the error in the sum, which was made by some agent of the company in transmission." The court held the regulation as to repeating the message reasonable; and that one injured by a mistake in an unrepeatable message could not recover, beyond the amount paid for sending the same, without some further proof of carelessness or negligence on the part of the company than that resulting simply from error; that is, that there must be proof of negligence distinct from the "natural infirmities of telegraphing;" and the judgment, which was for the plaintiff, was reversed, on the ground that, under the circumstances, the plaintiff ought to have shown carelessness on the part of the company, and that, as the message was not repeated, negligence could not be inferred (as the court below had instructed) from the mere fact that a mistake in the sum had been made.

In *Wann v. Western Union Telegraph Company*, 37 Mo. 472 (1866), the plaintiff delivered to defendants a message directing salt to be sent by "sail;" the message when delivered, read "rail." The blank on which the message was written provided that the company would not be responsible "for mistakes or delays in the transmission of unrepeatable messages from whatever cause they may arise." Of this condition the plaintiff had actual knowledge when he delivered his message, and the court held the condition reasonable and the plaintiff bound by it. The report informs us that the only evidence introduced on the trial to sustain the charge of carelessness was the mistake above stated. So that the case is "on all fours" with the *Ellis* case, but, as in that case, the court stated that the company would not be protected by their regulations from the consequences of their own gross negligence.

In *Bryant v. The American Telegraph Co.*, 1 Daly, 575 (1866), the loss occurred through a delay in delivering the message after it was received at the office of destination. The company was fully informed of the importance of the message and of its prompt transmission. There were the usual regulations as to repeating, to guard