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THE LAW RELATING TO TELEPHONES.

I.

THE term telephony was first used in a lecture given by Philip Reis, in Frankfort, Germany, in 1861; and is defined as the art of reproducing sounds at distances from their source. 23 Ency. Brit. 127.

"In a general sense, the name 'telephone' applies to any instrument or apparatus which transmits sound beyond the limits of ordinary audibility. The speaking tubes used in conveying the sound of the voice from one room to another in large buildings, or stretched cords or wires attached to vibrating membranes or disks by which the voice is carried to distant points, are, strictly speaking, telephones. But since the recent discoveries in telephony, the name is technically and primarily restricted to an instrument or device which transmits sound by means of electricity and wires, similar to telegraphic wires. In a secondary sense, however, and being the sense in which it is most commonly understood, the word 'telephone' constitutes a generic term, having reference generally to the art of telephony as an institution, but more particularly to the apparatus, as an entirety, ordinarily used in the transmission as well as reception of telephonic messages:" NIBLACK, C. J. *Hockett* v. *State* (1885), 105 Ind. 250; s. c. 24 AMERICAN LAW REGISTER, 325.

It has been expressly held that telephones are within the meaning of the word "telegraph" as used in a statute, and

within the scope of laws enacted for the regulation of telegraphic communication, even though such laws were passed before the telephone was invented: *Wis. Tel. Co.* v. *Oshkosh* (1884), 62 Wis. 32; *Attorney-General* v. *Edison Tel. Co.* (1880), L. R. 6 Q. B. D. 244.

II.

Telephones could not become of much value until the wires transmitting the sound from instrument to instrument were of some considerable length, passing over or through the property of others, not interested in the use of the instrument. These wires will need supports, hence the erection of poles or other structures becomes necessary. Being identical in this respect to telegraph lines and poles, the same rules have been applied to telephone lines and poles. The transmission of intelligence by electricity is a business of public character, to be exercised under public control, in the same manner as transportation of goods or passengers by railroad. In *Hockett* v. *State*, *supra*, it was said, "The telephone is one of the remarkable productions of the present century, and, although its discovery is of recent date, it has been in use long enough to have attained well defined relations to the general public. It has become as much a matter of public convenience and of public necessity as were the stage-coach and sailing vessel a hundred years ago, or as the steamboat and the railroad have become in later years. It has already become an important instrument of commerce. No other device can supply the extraordinary facilities which it affords. It may therefore be regarded, when relatively considered, as an indispensable instrument of commerce."

As the construction of telegraph poles and lines, so the construction of telephone lines and poles is a public use, for which the right of eminent domain may be exercised: *N. O. M. & T. R. R. Co.* v. *Southern & Atl. Tel. Co.* (1875), 53 Ala. 211; *Pierce* v. *Drew* (1883), 136 Mass. 75; *State et al.* v. *Am. & Europ. C. News Co.* (1881), 43 N. J. L. 381. And there is no doubt that the telephone, including all appendages incident to its use, is of such a public character, that the right exists to appropriate private property for its use, upon compensation

being granted the owner, whenever necessary for the convenience of the public.

III.

Whether the erection of the poles on the highway is such an additional burden upon the fee that the owner is entitled to additional compensation for such use, is a question upon which the courts are not united in their conclusions.

The weight of authority is that it is an additional burden, and that compensation must be made to the owner of the fee. There seems to be but one Court of eminence holding the opposite; that being the Supreme Court of Massachusetts. *Pierce* v. *Drew*, *supra*. See to same effect, note to *Hockett* v. *State*, in 25 AMERICAN LAW REGISTER, 327–8. In *Gay* v. *Mutual Union Tel. Co.* (1882), 12 Mo. App. 485, 494, the right of the Legislature to authorize the use of public highways for the erection of telegraph poles was conceded, and the case turned on the question of special damages from obstruction by a particular pole.

Other cases which seem to hold the opposite, upon closer examination will be seen to decide that, where the fee of the street or highway is in the public, the erection of telephone lines and poles is not such a perversion of the public use as to require compensation to be made to abutting land-owners: *Irwin* v. *G. S. Tel. Co.* (1885), 37 La. Ann. 63. The principle to be extracted from the cases was one of the points in *Story* v. *N. Y. Elevated R. R. Co.* (1882), 90 N. Y. 122, 124; that no structure can be authorized upon land owned by a city in fee for a street or highway, which is inconsistent with its continued public use as an open street. This was affirmed, not only as to all questions involved in that case, but also as to such as logically come within the principle therein determined: *Lahr* v. *Met. El. R. R. Co.* (1887), 104 N. Y. 268; where the abutting landowners were also owners of the fee of the street. It was held that compensation must be made for any use of the street not contemplated at the creation of the easement and not considered within the ordinary and usual use of a street or highway.

Smith v. *Central Dist. Print. & Tel. Co.* (1887), 2 Ohio Circ.

Ct. 259, is a case in point. "It is said that this is an improved method for the transmission; that under the old way, intelligence was transmitted by mail and by post-boy over the highways, and that this is but an improved method; that, therefore, it was within the originally contemplated user, and the public have the right to authorize such use of it. * * * Upon the question where lays the weight of authority, we have a divided Court in Massachusetts, five to two" (*Pierce* v. *Drew*, *supra*); "we have a decision of the Supreme Court of Illinois" (*The Board of Trade Tel. Co.* v. *Barnett* (1883), 107 Ill. 507), "holding that it cannot be done without compensation, and we have two decisions in the State of New York, one by the Supreme and the other by the Superior Court of that State, holding that it is an additional burden. * * * In Ohio, while the public may authorize the erection of telegraph or telephone poles along and upon the highways, so as not to interfere with the public use, at the same time, that does not authorize their construction as against the rights of adjoining lot or land-owners; but such erections and constructions are an additional burden upon the fee of the land, which must be first appropriated or acquired by contract before they may be taken." The same conclusion was reached by the Supreme Court of Minnesota, on an affirmance by a divided Court, in *Willis* v. *Erie T. & T. Co.*, October 7, 1887.

IV.

The construction of a telegraph or telephone line along the right of way of a railroad is the taking of the company's railroad property, for which the railroad is entitled to compensation: *Atlantic & Pacific Tel. Co.* v. *Chicago, R. I. & P. R. R.*, U. S. C. Ct. N. Dist. Ill. (1874), 6 Biss. C. C. 158; *Southwestern R. R. Co.* v. *Southern & Atl. Tel. Co.* (1872), 46 Ga. 43.

A railroad company may construct a telegraph or telephone line along its own route for its own use, and may cut standing trees on its right of way, without incurring any additional liability to the original owner of the land for compensation. If, however, the line is erected by another company, that company

is liable to the landowner for the damages to the land caused by such line. The same rule applies even if it is used jointly by the company putting it up and the company owning the route: *Western U. Tel. Co.* v. *Rich* (1878), 19 Kan. 517.

V.

Whether the mere stretching of a telephone wire, through the air, over the premises of another, is an illegal use of the property of the owner of the premises, has never been directly decided by the Courts. In all cases adjudicated, the question of the erection of poles entered into the consideration of the Court. The question, however, requires an answer in the affirmative.

Blackstone says: "Land hath also, in its legal signification, an indefinite extent, upwards as well as downwards. *Cujus est solum, ejus est usque ad cœlum*, is the maxim of the law; upwards, then, no man may erect any building or the like to overhang another's land:" 2 Comm. *18. Lord ELLENBOROUGH remarks that he remembers a case in which he held that the firing a gun, loaded with shot, into a field, was a breaking the close, and then puts the query whether tresspass would lie for passing through the air, in a balloon, over the land of another: *Pickering* v. *Rudd* (1815), 4 Camp. 219.

In reference to this, a learned author (Pollock on Torts, *281), says: "It does not seem possible on the principles of the common law to assign any reason why an entry at any height above the surface should not also be a trespass. The improbability of actual damage may be an excellent practical reason for not suing a man who sails over one's land in a balloon; but this appears irrelevant to the pure legal theory. * * * Then one can hardly doubt that it might be a nuisance, apart from any definite damage, to keep a balloon hovering over another man's land; but if it is not a trespass in law to have the balloon there at all, one does not see how a continuing trespass is to be committed by keeping it there. Again, it would be strange if we could object to shots being fired across our land only in the event of actual injury being caused, and the passage of the foreign body in the air above our soil being thus a mere incident in a distinct trespass to person or property."

In the case of *Board of Works* v. *United Telephone Co., Limited* (1884), L. R. 13 Q. B. 904: the question was whether the Board of Works for a particular district of London were entitled to an injunction to prevent a telephone company from carrying their wires diagonally across the street, at the level of the chimneys, the owners of the houses not objecting and there being neither a nuisance nor appreciable danger. The injunction was allowed by the lower Court, but the upper Court held, that, as the Board did not own the fee, and no nuisance or appreciable injury threatened, the decree was erroneous and the injunction was dissolved.

VI.

It has been generally held that the telephone, like the telegraph, is a common carrier, and is bound to treat all alike. Perhaps the earliest case upon this particular question is that of *American Union Tel. Co.* v. *Bell Tel. Co.* (1880), 24 AMERICAN LAW REGISTER, 578; where the telegraph company applied to the telephone company for an instrument to be placed in its office. The telephone company refused, and a mandamus was asked for and granted, compelling them to do so. In a similar case, the Court said: "The defendants are a quasi-public servant, and as such bound to serve the general public on reasonable terms and with impartiality. They are governed by the principle of the law of common carriers:" *Louisville Transfer Co.* v. *Am. District Tel. Co.* (1881); 24 AMERICAN LAW REGISTER, 579. In *Chesapeake & P. Tel. Co.* v. *B. & O. Tel. Co.* (1886), 66 Md. 399, holding a similar view, the Court said: "The telegraph and telephone are important instruments of commerce, and their service as such has become indispensable to the commercial public. They are public vehicles of intelligence, and they who own or control them can no more refuse to perform impartially the functions that they have assumed to discharge, than a railway company, as a common carrier, can rightfully refuse to perform its duty to the public. They may make and establish all reasonable rules and regulations for the government of their offices and those who deal with them; but they have no power to discriminate, and while offering readily to serve some, refuse to

serve others. The law requires them to be impartial and to serve all alike, upon compliance with their reasonable rules and regulations."

In all of these cases, one reason why telephone companies ought not to be bound to furnish rival companies, such as a telegraph company, the use of their instruments, was, that to compel them to do so, would be to injure their rights, lessen their income, and that their instruments were protected by patents and they had full privileges to use them as they chose. Upon this point BREWER, J. said: "A telephonic system is simply a system for the transmission of intelligence and news. It is, in a limited sense, and yet in a strict sense, a common carrier. It must be equal in its dealings with all. * * * The moment it establishes a telephonic system here, it is bound to deal equally with all citizens in every department of business; and the moment it opened its telephonic system to one telegraph company, that moment it put itself in a position where it was bound to open its system to any other telegraph company tendering equal pay for equal service." *State ex rel.* v. *Bell Tel. Co.* (1885), U. S. C. Ct. E. Dist. Mo., 24 AMERICAN LAW REGISTER, 573. TREAT, J., dissented on the ground that the license from the patentee forbade the company to deal with any other than the Western Union Telegraph Company, citing *American R. Tel. Co.* v. *Conn. Tel. Co.* (1881), 49 Conn. 352; where it was so held, and a mandamus was refused.

In *State ex rel.* v. *Bell Tel. Co.* (1880), 36 Ohio St. 296, a contract between a telephone company and the owner of telephone instruments, providing for discrimination in service rendered to different telegraph companies, was held to be void as against public policy, as declared by chapter four of the revised statutes of that State. The same decision was rendered in *Chesapeake & P. Tel. Co.* v. *B. & O. Tel. Co.*, by the Court of Appeals of Maryland (1887), 66 Md. 399; and *Bell Tel. Co.* v. *Comm. ex rel. Tel. B. & O. Tel. Co.*, by the Supreme Court of Pennsylvania, April, 1888.

VII.

What has been said above, in reference to discrimination against rivals, will apply equally to individuals. A case in point is *State* v. *Nebraska Tel. Co.* (1885), 17 Neb. 126; s. c. 24 AMERICAN LAW REGISTER, 263, in which it appeared that in the year 1883 the respondent placed an instrument in the office of the relator, but for some reason failed to furnish him with a directory of its subscribers in Lincoln and other various cities and villages within its circuit, which the relator claimed was essential to the profitable use of the telephone, and which it was the custom of respondent to furnish its subscribers. Finally, the directory was furnished, but the relator refused to pay for the use of the telephone during the time the respondent was in default with the directory. Neither party being willing to yield, the instrument was removed, and soon afterwards the relator applied to the agent of the respondent, and requested to become a subscriber, and have an instrument placed in his place of business, which request respondent refused. It was insisted that the conduct of the relator relieved the respondent from such liability. The Court compelled them to put the instrument in again, remarking: "We cannot see that the relation of the parties to each other can have any influence upon their rights and obligations in this action. If relator is indebted to respondent for the use of its telephone, the law gives it an adequate remedy by an action for the amount due." It was here held that mandamus was the proper action.

VIII.

In 1885, the Legislature of Indiana passed a law limiting the price to be charged to three dollars per month where one telephone only is rented by one person, and two dollars and fifty cents where two or more are rented to same individual. (See *infra.*) The telephone company, on several different grounds, claimed that the law was unconstitutional.

In a very able opinion, the Supreme Court of that State said: "It is first and most earnestly contended that as the articles used by the company as above are under the Con-

stitution and laws of the United States, the Legislature of a State has no power to limit the price, use, sale, or rental value of such articles, and that as a consequence, all Acts of a State Legislature of the class to which the one before us belongs, are inoperative and ineffectual for any practical purpose. Conceding the force as well as plausibility of many of the arguments and illustrations used by counsel, the ready and indeed inevitable answer is that the question thus presented ought no longer to be regarded as an open question. There is a reserved and at the same time well-recognized power, affecting their domestic concerns, remaining in all the States, which the government of the United States cannot and seldom has attempted to invade. This power, so varied and comprehensive that an exact definition, as applicable in all its phases, has so far been found to be impracticable, but the instances in which the existence of such a power has been judicially recognized in particular cases are quite numerous, as well as various in their application to our complex system of government. This reserved power is usually, though perhaps not always accurately, denominated the police power of the State, and embraces the entire system of internal State regulation, having in view not only the preservation of public order by the prevention of offences against the State, but also the promotion of such intercourse between the inhabitants of the State as is calculated to prevent a conflict of rights and promote the interests of all:" *Hocket* v. *State* (1886), 105 Ind. 250; S. C. 25 AMERICAN LAW REGISTER, 319. A month later a second case came before the same court and was decided in the same manner: *Hocket* v. *State* (1886), Id. 599. And on March 23, 1886, the same court decided (*Central Union Tel. Co.* v. *State ex rel.*) that the right to the use of a telephone and service, at rates fixed by the Legislature, might in a proper case be enforced by a writ of *mandamus*.

IX.

Parties can only compel permission to use an instrument so long as they use it in a proper manner, obeying all reasonable rules. In a case where one of the rules was that no improper language should be used, and the user becoming exasperated at a reply of the operator, when attempting to call

up some one, said to the operator: "If you don't get the party I want, you can shut up your damned old telephone,"—this was held to be improper language, and the company were justified in refusing the complainant longer use of the instrument. The Court say: "If indecent or rude or improper language was permitted, evil and ill-disposed persons would have it in their power to use it as a medium of insult to others, and perchance by some accident, such as the crossing of wires, or by a species of induction, the same communication might be launched into the midst of some family circle under very mortifying circumstances. The management of the telephone requires the observation of common propriety in the use of language, because in many cases the operators at the exchange are refined and well disposed females. In fact, all operators, whether male or female, have a right to be respected, and be protected from insult and annoyance. Society demands the conduct of all business with decency and propriety. Field on Corp., 669–70." There was a dissenting opinion in this case in which the judge held the language not *improper* under the circumstances: *Pugh* v. *City and Suburban Tel. Co.*, 9 Bull. 104 (Cin. Dist. Court, Ohio).

X.

Some new, intricate, and very interesting questions are certain to arise by the use of the telephone. But one has yet received the attention of a Supreme Court and that was decided by a divided Court: *Sullivan* v. *Kuykendall* (1885), 82 Ky. 483; s. c. 24 AMERICAN LAW REGISTER, 442. In this case, Sullivan, desiring to talk over the telephone with Kuykendall, asked the operator to call him, and the operator thereupon had a conversation with K., reporting to S., who was standing by, what K. said as it came over the wire. In a subsequent action between S. and K., it was held that the former might prove by himself and others what the operator reported to him as coming from K., the operator being called and not remembering the conversation.

This doctrine was violently disputed in a dissenting opinion by PRYOR, J., and in a note by M. D. EWELL.

WILLIAM M. ROCKEL.

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XI.

The statutes of the various States and territories relating directly to telephone companies are subjoined. The statutes relating to the telegraph extend also to the telephone (*supra*), but are too numerous for citation here.

The State of Alabama has enacted (Code of 1887)—

§ 454. There shall also be assessed by the assessor in each county, for taxation, the following subjects at the following rates:—

6. On the gross amount of the receipts by any and every telegraph, telephone, and express company, derived from the business done by it in this State, at the rate of two dollars on the hundred dollars.

§ 508. The president, secretary, or manager of every telephone company, owning or operating lines, must annually, on or before the first day of May, make under oath to the assessor of the county in which such instruments are located, or such lines are operated, a return of the property, and receipts required by this article to be made by the officers or agents of telegraph companies to the auditor; and in case such return is not made by any company within the required time the assessor must ascertain, from the best information he can obtain, the amount and value of such property, and the amounts of such receipts; and on the property and receipts so returned or ascertained, the assessor shall assess the taxes against such company; and when there has been a failure on the part of any company to make a return of such property and receipts within the required time, the assessor shall add to the assessment against such company a penalty of fifty per cent. on the amount thereof. Such assessment, as well as the assessment of other taxable property of such company in the county, must be entered by the assessor in the book of assessments.

§ 504. The president, secretary, auditor, or managing agent in this State of every telegraph company whose line, or any part thereof, is within the State, must annually, on or before the first day of April of each year, make, under oath, to the auditor, a return of the number of miles of telegraph wire in the State belonging to such company, and the value thereof, and the number of poles, batteries, instruments, and articles of all kinds in the State connected with its business, and the value thereof, specifying the several counties in which such property is situated, and the value of the property situated in each of such counties, and also the gross receipts of such company from its business done in the State during the preceding year; and if any of such companies, its officers, or agents fail to make such return within the time specified, the auditor must ascertain such items of property, values, and receipts from the best information he can obtain.

§ 3219. A telegraph or telephone company, incorporated under the laws of another State, proposing to extend connecting lines into this State, may acquire an easement for the uses and purposes of such connecting lines, and may pursue the mode of proceeding prescribed in this article.

[That is, for the condemnation of lands for public uses.]

Arkansas has enacted (Digest, 1883)—

§ 5645. Gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction, and all other companies, corporations, or associations, incorporated under the laws of this State, or under the laws of any other State, and doing business in this State, other than insurance companies and the companies and corporations whose taxation is in this Act specifically provided for, in addition to their property required by this Act to be listed, shall, through their president, secretary, principal accounting officer, or agent annually, during the month of March, make out and deliver to the assessor of the county where said company or corporation is located or doing business, a sworn statement of the capital stock, setting forth particularly:—

First. The name and the location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up, its market value, and if no market value, then the actual value of the shares of stock.

Fourth. The total amount of all indebtedness, except indebtedness for current expenses, excluding from such indebtedness the amount paid for the purchase or improvement of the property.

Fifth. True valuation of all the tangible property belonging to such company or corporation; such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts.

§ 5646. The assessor shall annually, at least ten days before the twenty-eighth day of February, deliver to the president, secretary, accounting officer, or agent of any such company, corporation, or association located in or doing business in such county, a notice in writing to return such schedule by the twenty-first day of March next ensuing. Any president, secretary, principal accounting officer, or agent of any such companies or corporations, upon whom such notice shall have been served, wilfully neglecting or refusing to make such return by the twenty-first day of March next ensuing, after delivery of said notice, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both, and the assessor shall, from the best information he can obtain, make out and enter upon the proper assessment-roll a list with the valuation of all tangible and intangible property belonging to such defaulting company or corporation subject to taxation by the provisions of this Act, with fifty per cent. penalty.

Connecticut has enacted (Gen. Stat., Revision of 1887)—

§ 3943. No person or corporation building and maintaining telegraph, telephone, or electric light or power wires or fixtures, or electrical wires, conductors, or fixtures of any kind in this State, shall, by reason of any occupation or use of any buildings or lands for the support of the wires of said person or company, or by reason of said wires passing over or through any buildings or lands, acquire by the continuance of such use or occupation, any prescriptive right to so occupy or use the same.

§ 3944. Every telegraph or telephone company may maintain and construct lines of telegraph or telephone upon any highway, or across any waters in this

State, by the maintenance and erection of the necessary fixtures, including posts, piers, or abutments for sustaining wires; but the same shall not be so constructed as to incommode the public travel or navigation, nor to injure any tree without the consent of the owner; nor shall such company construct any bridge across any waters; and said lines shall be personal property.

§ 3945. No telegraph, telephone, or electric light company or association, nor any company or association engaged in distributing electricity by wires or similar conductors, or in using an electric wire or conductor for any purpose, may hereafter exercise any powers which may have been conferred upon it to erect or place wires, conductors, fixtures, structures, or apparatus of any kind over, on, or under any highway or public ground, or to change the location of the same, without the consent of the adjoining proprietors, or in case such consent cannot be obtained, without the consent in writing of two of the County Commissioners of the county in which it is desired to exercise such powers, which shall be given only after a hearing upon due notice to such proprietors; and the fees of such commissioners shall be paid by such company.

§ 3946. The selectmen of any town, the common council of any city, and the warden and burgess of any borough shall, subject to the provisions of the preceding section, within their respective jurisdictions, have full direction and control over the placing, erection, and maintenance of any such wires, conductors, fixtures, structures, or apparatus, including the re-locating or removal of the same, and including the power of designating the kind, quality, and finish thereof, and may make all orders necessary to the exercise of such power of direction and control, which orders shall be in writing and recorded in the records of their respective communities, but shall be subject, nevertheless, to the right of appeal by said company to a judge of the Superior Court, who, after a hearing, upon due notice to all parties in interest, shall, as speedily as possible, determine the matter in question, and affirm, modify, or revoke said order.

§ 3947. Any judge of the Superior Court may at any time make any proper order with reference to the erection, placing, or maintaining of any such wires, conductors, fixtures, structures, or apparatus, including the relocating and removal thereof, and may review any decision of the County Commissioners rendered under the provisions of section 3945, upon the application of the State's Attorney of that jurisdiction, or of any party interested, upon a hearing, after due notice to all parties concerned.

§ 3948. Any judge of the Superior Court may, upon the application of any party interested, and after due notice, unless the application has been unreasonably delayed, appoint three disinterested persons to make a written appraisal of all damages which may be due to any person by reason of anything which may have been done under any or all of the four preceding sections; and said appraisal, when approved by such judge, shall be returned to and recorded by the clerk of the Superior Court in the county where the cause of action arose, and thereupon the sum specified therein shall be paid immediately by the company to the party entitled to the same; or the judge may order the same to be paid immediately into the hands of said clerk, to be delivered by him on demand to said party; and the costs of such proceeding shall be taxed by said judge

and paid by said company, and he may issue execution therefor and for such damages.

§ 3949. When it shall be necessary to cut or otherwise disconnect the wires of telegraph, telephone, electric light, or other company or association hereinbefore referred to, or to remove them from the poles or fixtures to which they may be attached for the transportation of any objects on the highways or upon any waterways, any person may do so, exercising reasonable care therein; *provided*, that before doing so he shall leave a statement, in writing, particularly describing the time when and the place where he wishes to disconnect such wires, at the office of such company, if any there be in the town where such place is situated, twenty-four hours before the time so stated; and if such company has no office in the same town, he shall send such statement to its office nearest to the place named therein by putting it into the post office, properly directed and stamped, three days before the time stated therein.

§ 3951. The stockholders of every telegraph, telephone or electric light or power company, organized under the laws of this State, shall be jointly and severally liable for the payment of all its debts contracted during the time of their holding stock therein, to the extent of twenty-five per cent. of the amount of stock held by them respectively, if a judgment thereon shall have been obtained by the claimant against the company, and an execution thereon shall have been returned unsatisfied, or if such company shall be dissolved.

§ 3952. Telegraph or telephone companies shall receive dispatches from any person, and for other telegraph or telephone lines, and shall transmit them in the order of time in which they are received, on payment of their usual charges, under the penalty of one hundred dollars for every neglect so to do, to be recovered with costs by the party aggrieved; but arrangements may be made with publishers of newspapers for the transmission of news out of its general order, and all communications for officers of justice shall take precedence of all other dispatches.

§ 3954. The mortgage by any telegraph or telephone company to secure its bonds, or other evidences of indebtedness of all or any part of its lines, appliances, machines or machinery, whether owned by it at the date of said mortgage, or those thereafter to be acquired by it. or both, shall be valid and effectual as respects all the property therein included as aforesaid, and may be foreclosed in the same manner as mortgages of real estate, and the record thereof, in the office of the secretary of the State, shall be a sufficient record and notice to protect the title under the mortgage, notwithstanding such company may remain in possession of all or any part of the mortgaged property.

Dakota has enacted (Compiled Laws, 1887)—

§ 3025. There is hereby granted to the owners of any telegraph or telephone lines operated in this Territory, the right of way over lands and real property in this Territory, and the right to use public grounds, streets, alleys, and highways in this Territory, subject to the control of the proper municipal authorities as to what grounds, streets, alleys, or highways said lines shall run over or across, and the place the poles to support the wires are located; the right of way over real property granted in this Act may be acquired in the same manner and by like proceedings, as provided for railroad corporations.

Illinois has enacted by a law in force from July 1, 1883 (Laws, p. 173; Rev. Stat. 6th ed. p. 1471)—

§ 1. It shall be lawful for any person or persons living on the line of any public highway, street, or alley, outside of any incorporated city, village, or town in this State, or on any private road leading to such highway, street, or alley, to construct, operate and maintain a line, or lines, of telegraph or telephone extending from house to house, as the parties interested in the construction of such lines may desire.

§ 2. For the purpose of constructing and maintaining such lines of telegraph or telephone, the parties in interest may set the necessary poles or posts on which to place the wires and insulators of such lines, in any of the public streets, highways, or alleys, or in any private road leading to such highways, streets, or alleys outside of the incorporated cities, villages, or towns in this State, along which such lines may pass; *provided*, such poles or posts shall be placed along the boundaries of such highways, streets, or alleys, at such distances therefrom as the authorities having control thereof may direct; *and provided further*, that the wires necessary for such lines shall not be less than fifteen feet above the ground along such boundaries, and not less than twenty feet at any public or private crossing, and shall be so placed as not in any manner to interfere with such crossing.

§ 3. Any person who shall unlawfully and intentionally injure, molest, or destroy any of said lines, or the material or property belonging thereto, or shall in any manner interfere with the proper working of such lines, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars; said fine to be recoverable in any Court having jurisdiction of the same; *provided*, that prosecution under the foregoing provision of this section shall not, in any manner, prevent a recovery by the person or persons entitled thereto, of the amount of damages done to such lines.

Illinois has also enacted, by a statute in force from July 1, 1887 (Laws, p. 298; Rev. Stat. 6th ed. p. 1472), that—

§ 1. Whenever any wire, pole, or cable used for any telegraph, telephone, electric light, or other electric purpose, or for the purpose of communication, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescriptive right to, such attachment or extension.

Indiana has enacted, by a statute in force from April 7, 1881 (Rev. Stat. ed. 1888, chap. 43, §§ 4181, 4192)—

§ 1. Any number of persons may form themselves into a corporation for the purpose of establishing, maintaining, and operating telephones, telephone lines, and telephone exchanges within the State of Indiana, by complying with the requirements of this Act.

§ 2. They shall join in the execution of articles of association, setting forth the name assumed, the counties or places within which such company proposes to establish, maintain, and operate telephones and telephone exchanges, the

amount of capital stock, and the number of shares into which it is divided. The stockholders who incorporate such association shall each sign such articles, giving his place of residence and the amount of stock subscribed for by him, five of whom (if there be so many signers) shall acknowledge the execution of such articles before some officer authorized to take acknowledgments of deeds, and the articles shall thereupon be recorded in the office of the Secretary of State.

§ 3. As soon as such articles are filed for record in the office of the Secretary of State, such company shall be deemed and held to be a corporation, by the name specified in the articles of association, and in its corporate name shall be capable of suing and being sued, pleading and being impleaded, defending and being defended, in any Court of competent jurisdiction.

§ 4. The stockholders shall elect, from among their number, not less than three nor more than nine directors, a majority of whom shall be residents of this State, who shall hold office for one year and until their successors are elected. Notice of the election of directors shall be given by publication, for two weeks successively, in some newspaper published in the county in which the principal office is located.

§ 5. The principal office of said company shall be maintained in this State. The board of directors shall organize within ten days after said election, by choosing one of its members president (who may also be superintendent), and a secretary and a treasurer (which two offices may be filled by the same person), and such other officers as may be necessary.

§ 6. The board of directors shall adopt by-laws for the government of the corporation and management of its business; and shall cause to be kept a full and complete record of its proceedings, in a book provided for that purpose; and such record, or copies duly proved, may be read in evidence when the interests of the corporation are concerned.

§ 7. Such company may have a common seal, which may be altered at pleasure, and shall have power to acquire, by purchase or otherwise, and hold and convey, such real and personal estate as may be proper for the purpose of erecting and maintaining its lines of telephone and the appliances and buildings requisite for its business; and shall have the right to acquire such real estate and rights of way as may be necessary for its business, under the writ of assessment of damages, as fully as if the Act in relation to said writ were incorporated in this Act and made part of the same. The life of a corporation organized under this Act shall be limited to fifty years.

§ 8. Any telephone company organized under this Act shall have power to lease, or attach to other telephone lines or exchanges by lease or purchase.

§ 9. A railroad company may become a stockholder in any telephone or telephone exchange company.

§ 10. A telephone company shall not be liable for errors in messages or communications, except when such messages or communications are transmitted under contract directly by the agents or employés of the company; nor shall it be liable for any special damage sustained by a failure of its instruments to work, beyond a rebate of the rent charged for the time such instruments failed to work.

§ 11. The board of directors shall have power to make assessments, from time to time, on the stock to the extent, in the aggregate, of its face value,