PROGRESS OF THE LAW.

As Marked by Decisions selected from the Advance Reports for March.

A sleeping-car company is liable as a common carrier for the preservation of a passenger's baggage while entrusted to its porter to be taken from the car to the waiting-room of the depot, in accordance with a rule of the company: *Voss* v. *Cleveland, C., C. & St. L. Ry. Co.*, (Appellate Court of Indiana,) 43 N. E. Rep. 20.

Bailment, Sleeping-car Company, Liability for Baggage

The Young Men's Christian Association is not a public charitable corporation, within the rule exempting such corporations from liability for negligence, since its purposes are social as well as charitable, including the giving of lectures and other entertainments for the benefit of its members, the providing of a gymnasium to promote their health, and the sale of food at a lunch counter; and it is, therefore, not exempt from liability for negligence in the construction of a floor in its building by which one on the premises at its invitation is injured: *Chapin* v. *Holyoke Young Men's Christian Assn.*, (Supreme Judicial Court of Massachusetts,) 42 N. E. Rep. 1130.

Charitable Associations, Liability for Negligence, Young Men's Christian Association

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The Circuit Court for the Northern District of Ohio, Western District, recently, in *Shaver* v. *Penna. Co.*, 71 Fed. Rep. 931, after deciding, in accordance with the weight of authority, that the contract of membership in a railway relief department is valid, went on to hold that the statute of Ohio, (87 Ohio Laws, p. 149,) which provides that no railroad company, insurance company, or association of other persons, shall require any agreement or stipulation with any other person, in or about to enter the employment of a railroad company, whereby such person agrees to waive any right to damages from such

Constitutional Law, Liberty of Contract, Railway Relief Fund

railroad company for personal injuries, or any other right whatever, and all such agreements and stipulations shall be void, is in violation of the Fourteenth Amendment, by depriving the persons affected by it of their liberty of contract, without due process of law; and also of the Constitution of Ohio, Art. 2, § 26, which provides that all laws of a general nature shall have uniform operation throughout the State, since the statute is class legislation, affecting only railroad employes.

The latter objection may, perhaps, be valid: the former certainly is not. Theoretically, the railroad employe may in some cases be free to join the relief department or not, as he chooses; but practically in all cases, and expressly in many, he is coerced to join it, his dues being frequently deducted by the company from his wages, and paid over to the department by it, so that it would be hard to find a greater self-contradiction than the claim that an act which is designed to free the employe from this coercion deprives him of his liberty of contract.

Obligation of Contract, Claims against State

The Supreme Court of the United States, following its former decisions, has lately held, that if a State exercises its power to repeal a grant of authority to its courts to audit claims against itself, it does not thereby violate the obligation of a contract entered into by it at a time when the power existed; and that no impairment of the obligation of a contract arises from the fact that the State court erroneously decided that an amendment to the State Constitution repealed the court's authority to examine and recommend a claim against the State presented to it: *Baltzer* v. *North Carolina*, 16 Sup. Ct. Rep. 500.

Contracts, Invalidity, Public Policy, Lottery

A contract for the sale of several lots of land, of unequal value, to several subscribers, which provides that the subscribers shall meet, and determine "by lot" the particular lot to be deeded to each subscriber, and stipulates that a certain lot, which had been reserved as a "prize" lot, is to be "given away" and "awarded" to some one of the subscribers in like manner, is

void, as against public policy: *Lynch* v. *Rosenthal*, (Supreme Court of Indiana,) 42 N. E. Rep. 1103.

Copyright, Injunction, Unpublished Information

In *Exchange Telegraph Company, Ltd.*, v. *Gregory & Co.* [1896] 1 Q. B. 147, the Court of Appeal of England has lately held that where, under a contract between a news agency and the committee of a stock exchange, valuable information as to the prices of stocks and shares from time to time during the day was collected on the stock exchange, and supplied to the agency, and printed on tapes and sheets of letter-press in their office; and the defendant, having surreptitiously obtained that information, published it in the same form before its publication by the agency; that the agency had a right of property at Common Law in the information, and were entitled to an injunction to restrain the defendant from infringing that right by continuing to publish it.

Corporations, Stock Certificates, Neglect to Register Transfer, Rights of Purchaser Against Creditor

Judge Toney, of the Jefferson Circuit Court of Kentucky, has laid down in a recent case before him (*Kentucky Natl. Bk.* v. *Avery*,) some useful general principles of law with regard to the rights of a purchaser of stock in open market, who neglects to have the transfer to him properly registered against prior and subsequent attaching creditors of the vendor. He holds:

(1) That a purchaser in open market of certificates of stock in a private corporation, who omits or neglects to have the transfer of said stock duly registered on the corporate books, acquires the legal title and a better equity to said stock than an attachment creditor of the vendor has or acquires by a subsequent levy of attachment on said stock;

(2) That an innocent purchaser in open market of certificates of stock for value and without notice is not protected in his ownership in such stock against an antecedent attachment or execution against his vendor, which, previous to said purchase of said stock, had been levied by service of the process of attachment or *fi. fa.* on the proper officers or agents of the

corporation in the manner prescribed by the statute for effecting a levy on stock.

Criminal Law, Larceny in Foreign Country

The Supreme Court of Vermont has lately ruled, in accordance with the weight of authority, that one who steals property in a foreign country, and brings it into this, is guilty of larceny here, on the ground that as the legal possession remains in the owner when the first taking is felonious, every asportation of the property is a fresh taking; and that on a prosecution for such an offence the courts will presume the laws of the foreign country to be the same as our own, and that the original taking there was criminal, upon proof of acts which would make it criminal here: *State* v. *Morrill*, (Supreme Court of Vermont,) 33 Atl. Rep. 1070.

Cruelty to Animals, "Domestic Animals"

The Queen's Bench Division of England has recently held that a seagull, kept by a photographer for the purposes of her business, and so tame that it would go to its owner when called and feed from her hand, was not a "domestic animal," within the Cruelty to Animals Act of 1849, (12 & 13 Vict. c. 92): *Yates* v. *Higgins*, [1896] 1 Q. B. 166.

Death, Presumption from Absence, Infants

It has been lately decided by the Supreme Court of Mississippi that the statutory presumption of death from absence or concealment for seven years, without having been heard from, does not apply to children of tender age, incapable of absenting or concealing themselves of their own volition, and whose movements are governed by others: *Manley* v. *Patterson*, 19 So. Rep. 236.

Death by Wrongful Act, Husband's Right of Recovery for Loss of Wife's Society

In the opinion of the Court of Appeals of Kentucky, a recovery by the personal representative of a wife whose death resulted from injuries caused by the negligence of a railroad company or its employes, bars an action by the husband to recover damages for loss of the wife's society from the time the injuries were inflicted until her death: *Louisville & N. R. R. Co.* v. *McElwain*, 34 S. W. Rep. 236.

The Court of Appeal of Ireland has recently held, that when the owner of a deposit receipt, in good bodily health, gives it to another under circumstances such that the jury find it to have been given in contemplation of death by suicide, and that the gift was to take effect only in the event of the donor's death, it is not a good *donatio mortis causa: Agnew* v. *Belfast Bkg. Co.*, [1896] 2 I. R. 204.

Donatio Mortis Causa, Deposit Receipt, Suicide

According to a recent decision of the Court of Chancery of New Jersey, when two tenants in common, by quitclaim deeds simultaneously interchanged, sever a lot held by them, on which a store is situated, into two tracts, the owner of the bare lot cannot close a window of the store through which light and air are received from his lot, if the influx thereof is reasonably necessary to the beneficial enjoyment of the store; for, because of the apparent and continuous quality of this enjoyment of light and air, the right to them will become an easement appurtenant to the store, on severance of the title to that from the title to the adjoining property; *Greer* v. *Van Meter*, 33 Atl. Rep. 794.

Easement, Appurtenant, Light and Air

The Supreme Court of Michigan has lately held, that under the provisions of the Ballot Law of that State, (Sess. L. 1891, Art. 190, §§ 21, 31,) that no person shall be allowed within the railing of an election room except to vote, or to assist an elector, as thereinafter provided, but that in case of necessity an interpreter may be employed, when, at a county election, an interpreter hostile to one of the candidates was allowed within the railing of the polling place, and was permitted to converse freely with foreigners who only understood their own language, after they had been admitted to vote, although they had not applied for an interpreter, the vote of the entire township should be excluded, if its exclusion would change the result of the election: *Maynard* v. *Stillson*, 66 N. W. Rep. 388.

Elections, Fraud

The Court of Appeals of Kentucky has taken a common

sense view of the Australian Ballot Laws, and given them a remedial and liberal interpretation. Under its ballot law, which is perhaps even more peremptory in its terms than some of those that have been held mandatory, it holds that the provisions for marking ballots are directory; and that, therefore, in the first instance, a lead pencil mark, instead of one made with the stencil, as required by law, will not invalidate the ballot, in the absence of fraud. It further holds that a solid, irregular figure, evidently caused by mismanagement of the stencil, is a sufficient mark; that a mark consisting of two down strokes and one horizontal stroke is sufficient; that the use of three cross marks in a square will not vitiate the ballot; that a cross just outside the square containing the party device, is a vote for all the candidates of that party, but that a cross mark after the name of the first candidate of the party, is a vote for that candidate only, not for the whole party; that, since the act provides that when a cross mark is made in the square containing the party device, and a cross mark in the square after the name of a candidate of a different party, the vote shall be counted for the latter, a ballot which has a cross mark in the square containing a party device, and also a mark immediately across the top of the square after the name of a candidate of the opposite party, should be counted a vote for that candidate; and that ordinary ink blots and pencil check marks, which appear to have been accidentally placed on a ballot, will not invalidate it, on the ground that they are distinguishing marks: *Houston* v. *Steele*, 34 S. W. Rep. 6.

Ballots, Marking

An officer of a corporation, who converts to his own use a note of the corporation, made payable to his order, before it is issued by the corporation, is not guilty of embezzling "any evidence of debt, negotiable by delivery only," since such a note is negotiable by indorsement; or of embezzling "any money, goods, rights in action, or valuable security or effects whatsoever," since this note, "so long as it remained in the hands of the defendant, its lawful custodian, not delivered or

Embezzlement by Officer of Corporation, Note of Corporation

issued, represented no value whatever": *State* v. *Stebbins*, (Supreme Court of Missouri, Division No. 2,) 33 S.W. Rep. 1147.

Extradition, Surrender of Own Subjects, Power of Committing Magistrate

The Queen's Bench Division of England has recently held, that even when an extradition treaty expressly provides that neither nation "shall be bound to surrender their own subjects, whether by birth or naturalization," yet, if the committing magistrate sees proper, he may grant the extradition of a natural-born citizen for an extraditable offence committed in the other country; and that it is not necessary that in such case the surrender should be the result of negotiations between the respective governments and an express consent to the extradition by the home government: *In re Galway*, [1896] 1 Q. B. 230.

Gambling Contracts, Stock-broking

In *Dillaway* v. *Alden*, 33 Atl. Rep. 981, the Supreme Judicial Court of Maine has rendered a very peculiar decision in regard to the gambling aspect of transactions in the stock-market. The general rule, as hitherto laid down, has been, that if the parties settle their accounts on the basis of difference in price, the transaction is a gambling one. This rule is qualified in the present case by holding that it prevails only when neither party expects any delivery at any time; and that no matter how intermediate balances are settled, if the final balance is settled by a delivery of stock, the transaction is valid *in toto*. Accordingly, although in the case in hand there were numerous dealings with reference to fluctuation in price, yet, as the broker always kept command of sufficient actual stock to make delivery when demanded, and, at the end of the last deal, did transfer the remaining stock to his customer's order, the transaction was valid.

Goodwill, Sale, Soliciting old Customers

The House of Lords has lately ruled, (1) That when the goodwill of a business is sold without any qualification, the vendor may set up a rival business, but has no right to expressly solicit the customers of the old firm; and he may be restrained by injunction from soliciting any person who was a customer of the old firm, prior to the sale, to continue to deal with himself, or

not to deal with the purchaser; and (2) That the same principles apply to a case where a person has been taken into partnership on the terms that on the expiration of the partnership the goodwill of the business shall belong solely to the other partner: *Trego* v. *Hunt*, [1896] A. C. 7; reversing [1895] 1 Ch. 462, overruling the reasoning in *Pearson* v. *Pearson*, 27 Ch. D. 145 (1884), and approving *Labouchere* v. *Dawson*, 13 L. R. Eq. 322 (1872).

There is an annotation on this subject in 33 AM. L. REG. & REV. N. S. 216.

Insurance, Accident, Inhaling Gas

In *Meneilley* v. *Employer's Liability Assurance Corp.*, 43 N. E. Rep. 54, the Court of Appeals of New York has lately decided, (1) That a provision of an accident policy that it does not insure against death or disablement "arising from anything accidentally taken, administered, or inhaled, contact of poisonous substances, inhaling gas, or any surgical operation," does not relieve the insurer from liability for death caused by inhaling illuminating gas which accidentally escaped into a hotel room where the insured was sleeping, since that provision clearly refers to a voluntary and intelligent act of the insured, not to an involuntary and unconscious act; and (2) That death from such a cause is not within the clause of an insurance policy which provides that it does not insure against death or disablement "from accidents that shall bear no external and visible marks," if it appears that, though there were no visible marks of accident on the body of the deceased, illuminating gas emanated therefrom when artificial respiration was produced.

The first ruling follows the precedent set in *Paul* v. *Travelers' Ins. Co.*, 112 N. Y. 472 (1889), and *Pickett* v. *Pacific Mut. Life Ins. Co.*, 144 Pa. 79 (1891), the latter of which was a case of death from inhaling poisonous gas at the bottom of a well.

Fidelity Insurance, Liability on Bond

A surety on a bond of fidelity insurance, to indemnify a corporation against loss of money entrusted to its treasurer through the "embezzlement or larceny" thereof by the latter, is not liable for money entrusted to him, for which he failed to account, and on which

the corporation charged him interest, while it was in his hands. The surety does not contract to pay the debts of the employe insured, but only "to reimburse the employer for pecuniary loss resulting from embezzlement or larceny:" *Milwaukee Theatre Co.* v. *Fidelity & Casualty Co.*, (Supreme Court of Wisconsin,) 66 N. W. Rep. 360.

Mutual Benefit Society, Transfer of Membership

When a lodge of an order which is social as well as beneficial, is disbanded, and the transfer card of a member is refused by the other local lodge, that member is not obliged to transfer his membership to a foreign lodge, but may send his assessments to the supreme council; and will not forfeit his rights as a member of the order by so doing: *Starling* v. *Supreme Council Royal Templars of Temperance*, (Supreme Court of Michigan,) 66 N. W. Rep. 340.

Jurors, Competency

The members of an association formed to aid in the prosecution of a particular class of offences, and those who are in sympathy with the association, and contribute money for the purposes of its organization, are not competent to sit as jurors on the trial of an indictment for an offence of the class for the prosecution of which the association is formed and the money contributed: *State* v. *Moore*, (Supreme Court of Louisiana,) 19 So. Rep. 285.

The Court of Appeal of Ireland has recently decided a very curious case: *Earl of Pembroke* v. *Warren*, [1896] 1 I. R. 76.

Lease, Covenant not to carry on "Offensive Business," Private Hospital

The lease of a plot of ground on one side of Fitzwilliam Square, in the city of Dublin, made in 1822, when the square was only partly built, contained covenants by the lessee to build dwelling-houses of a superior class according to the descriptions in the lease, and that the ground called Fitzwilliam Square should be preserved as a square and laid out as a pleasure ground only. It also contained a covenant not to use any part of the front of the house as a shop, or carry on therein or on any part of the demised premises the business of a tavern, ale-house, soap-boiler, chandler, baker, butcher, distiller, sugar-baker, brewer, druggist, apothecary, tanner,

skinner, lime-burner, hatter, silversmith, coppersmith, pewterer, blacksmith, or any other offensive or noisy trade, business, or profession whatsoever. A sub-lessee thereafter opened what the plaintiff called a private or home hospital, but what she described as a residence for herself and persons coming to town for medical advice or to undergo treatment. On a motion for an interlocutory injunction to restrain this as a breach of the covenant, evidence was given that such a business would cause great annoyance and would be a source of danger to the other inhabitants of the square, and would greatly depreciate the value of the property. The evidence for the defendant went to show that the only persons admitted were patients requiring surgical operations or medical treatment, and who were sent by their own medical or surgical advisers; that persons suffering from infectious diseases were not received, and that there was no danger from infection.

Upon this evidence, it was held by the Vice-Chancellor and affirmed by the Court of Appeal, (FitzGibbon, L. J., dissenting,) that the rule of *ejusdem generis* did not apply to the covenant mentioned above, and therefore its concluding general words were not to be confined to businesses of a nature similar to those enumerated; that in construing the covenant the nature and purpose of the letting and the nature of the locality should be taken into account; that the word "offensive" had no definite legal meaning, that it was not to be restricted to what was unpleasant to the eye, ear or nose, that it should be interpreted according to the subject-matter, and that it meant in this case causing well-founded and reasonable annoyance; and therefore, as the evidence showed that the great body of the tenants of houses in the square were offended by the opening of the hospital, there had been a breach of the covenant which should be restrained by an interlocutory injunction.

Libel, Book Review, Criticism

In *Dowling* v. *Livingstone*, 66 N. W. Rep. 225, the Supreme Court of Michigan has pretty thoroughly treated the subject of libel in a book review. The general propositions maintained are as follows: (1) That when there is no misstatement of facts or of the propositions set

forth in a book under review by a newspaper critic, it is not libelous for him to ridicule and discuss with sarcasm the theories of the author; and (2) That in an action for an alleged libelous review of a book, it is error to charge that the defendant had the right to ridicule the book if, in the candid judgment of any fair man, the book deserved ridicule, since the critic himself is the judge of the language of his criticism.

The particular matters of libel urged are even more comic than the theories criticized; and it was hardly worth the court's while to mention them *seriatim*. But it decided specifically (1) That when an author quotes from another a paragraph enclosed in quotation marks, but not credited by name, a statement by a reviewer that the author has quoted another without giving him credit does not charge him with plagiarism; (2) That when a reviewer writes, "of course, like all quack remedies, it would intensify the trouble," he does not characterize the author of the book under review as a quack; (3) That it is not libelous for a reviewer to write of one of the author's views that Horace Greeley advocated the same doctrine, though it should appear that such was not the case, (a claim which is particularly absurd;) and (4) That when an author, in discussing Mr. Henry George's proposition to take the land from its present owners without compensation, denounces it as "a gigantic piece of robbery," it is not libelous for a reviewer to write that the author "denounces the single-tax scheme as robbery." (Here again one wonders why, in the name of common-sense, such a statement was claimed to be libelous. It would be far more so if the critic had charged him with approving it.)

Mails, Improper Use, Scheme to Defraud

The Supreme Court of the United States, in *Durland* v. *United States*, 16 Sup. Ct. Rep. 508, has lately decided, that under the Act of 1889, March 2, amending Rev. Stat. U. S. § 5480, which provides that if any person, having devised or intending to devise any scheme or artifice to defraud by correspondence through the mails, shall, in executing such scheme, place any letter or circular in the post-office, he shall be liable to pro-

secution, it is not necessary, in order to constitute the offence denounced, that the letters deposited in the post-office by the defendant should be such as would be effective in carrying out his fraudulent scheme; and accordingly, the fact that a communication placed in the mails by the promoter of a fraudulent investment company contained merely statements as to the future profits which would accrue to investors, and not misrepresentations as to existing facts, did not affect his liability.

Master and Servant, Negligence, Statutory Liability for Acts of Fellow-servant

The House of Lords has recently construed the clause of the Employers' Liability Act of 1880, (43 & 44 Vict. c. 42, p. 1, subs. 5,) which provides that when personal injury is caused to a workman by reason of the negligence of any person in the service of the employer "who has the charge or control of any . . . locomotive engine or train upon a railway," there shall be the same right of compensation against the employer as if the workman had not been in his service. In the case in question, an engineer, employed with his fireman in the discharge of loaded cars on a railroad, took an engine and several cars to a point on an incline where the grade was steep, and then went on with the engine and one of the cars to the place of discharge, intending to return for the other cars in due course of time. The fireman uncoupled the cars left behind, and blocked the wheels with slag, as was usually done, to prevent them from running down the incline; but one of them broke away, ran down the incline, and killed a workman in the service of the same employer. There was evidence that the mode of blocking the wheels adopted was unsafe, and that it was known to and approved by the engineer. Upon this state of facts the court held,

(1) That a "person who has charge or control of a train" does not necessarily cease to have charge of it, within the meaning of the Act, because some of the cars are uncoupled from one another, and from the engine, in order to shift them separately; and that those words do not necessarily point to one person who is in charge of the whole train, but may

include persons who have duties to perform in respect of parts of the train ; and

(2) That in the case in hand, there was evidence for the jury that the death of the deceased was caused by reason of the negligence of a person who had the charge or control of a train within the meaning of the Act, since either the engineer had the charge or control, or else the fireman had, and there was evidence of negligence on the part of both: *McCord* v. *Cammell & Co., Ltd.*, [1896] A. C. 57.

Municipal Corporations, Ordinance, Prohibition of Lawful Trade

According to a recent decision of the Judicial Committee of the Privy Council of England, the statutory grant to a municipal corporation of the power to make ordinances for regulating and governing a trade does not, in the absence of an express power of prohibition, authorize the corporation to make it unlawful to carry on a lawful trade in a lawful manner; and therefore an ordinance prohibiting peddlers from plying their trade in an important part of the municipality is invalid, when no question of an apprehended nuisance has been raised: *Municipal Corporation of City of Toronto* v. *Virgo*, [1896] A. C. 88, affirming 22 Can. Sup. Ct. Rep. 447.

Negligence, Railroad Crossing, Safety Gates

The Court of Appeal of England, in *Smith* v. *South Eastern Ry. Co.*, [1896] 1 Q. B. 178, has lately rendered a decision which shows how far the administration of justice in that country is superior to that in most of the United States. The facts were as follows: There was a gatekeeper's lodge near the crossing where the plaintiff's husband was killed, at which a servant of the company was stationed, whose duty it was, under the regulations of the company, to attend to the carriage gates at the crossing, and, whenever a train was approaching, to stand by the rails, and, if the line was clear, show a white flag by day or a white light at night. There were lamps on the carriage gates which showed a white light when closed across the highway, and a red light when closed across the line. The deceased, who lived near the crossing on the other side of the

line, called at the gatekeeper's lodge between eight and nine o'clock one night in December to inquire whether his wife was there, and found the gatekeeper sitting in his lodge reading. On being told that his wife was not there, he left the lodge. The approach of a train had been signalled by the bell on the lodge, before the deceased entered, but the gatekeeper gave him no warning, and did not go out to signal the train. The deceased attempted to cross the tracks, but was caught by the train and killed. The train carried lights which were visible by any one about to cross at that crossing for a distance of more than six hundred yards; and the engineer whistled ten seconds before the train passed over the crossing, which it did at a speed of from thirty-five to forty miles an hour. The engineer stated that when approaching the crossing, he saw the white light on the carriage gate, which showed that they were closed across the highway, but that he did not receive any hand signal from the gatekeeper. Upon this state of facts the court ruled that there was evidence for the jury that the accident was due to the negligence of the company, and not to the fault of the deceased, and that the trial judge was therefore right in not withdrawing the case from the jury; Kay, L. J., saying: "The default of the gatekeeper could not be denied. It was said that his duty had no relation to persons passing on foot, It seems to me that, when placed as he was, with the duty of signalling that the line is clear, this precaution is taken as much for the safety of foot-passengers as for that of carriages or of the train. At any rate, I think the jury would have a right to draw the inference that this was so." If this case had come before most American courts, the zeal with which they would have insisted on the doctrine of contributory negligence would have been interesting.

Officers, Appointment, Removal

The grant of power to appoint to a public office, when no term of office is fixed by law, carries with it as an incident the absolute power of removal at any time, without notice or charges or hearing, and without the cause for removal being inquired into by any court. Such power, when vested in a board, cannot be limited by any

action taken by the board, whether by appointing the officer for a fixed term, or by by-laws restricting the power of removal to cases where cause for removal exists: *State* v. *Archibald*, (Supreme Court of North Dakota,) 66 N. W. Rep. 234.

Telephone Companies, Public Stations, Notifying Patrons

The Appellate Court of Indiana has laid down several very interesting rules of law in regard to the liability of a telephone company for damages caused by its failure to notify a person called that he was wanted, holding,

(1) That it is the duty of a telephone company which maintains a line between different cities and towns, with stations in such towns for the use of the public on payment of tolls, to furnish a suitable messenger service for the purpose of notifying persons, within a reasonable distance, when its patrons at other stations desire to communicate with them; and that it is responsible, within proper limits, for the neglect or omission of these messengers;

(2) That though a telephone company has the right to adopt reasonable rules, a regulation that it will not be responsible for the negligence of messengers sent from its stations, who are necessarily selected by it and under its control, but that they shall be deemed the agents of the patron at whose instance they are sent, is void; and

(3) That when, by reason of the delay of a telephone company in calling a veterinary surgeon to its station, as it undertook to do, he lost several hours in reaching a horse which he was called to attend, and the animal died in the meantime, the value of the horse cannot be considered as an element of damages in an action by its owner against the telephone company for negligence in failing to sooner place him in communication with the surgeon; the question as to whether the horse would have been saved had the messenger taken the call at once being entirely a matter of speculation: *Central Union Tel. Co.* v. *Swoveland*, 42 N. E. Rep. 1035.

Ardemus Stewart.