COMMENT.

A new point in copyright law has recently come before the Supreme Court of the United States in the case of *Holmes* v. *Hunt* (19 Sup. Ct. 606). In 1857-58 Dr. Oliver Wendell Holmes published a series of articles in the *Atlantic Monthly* entitled "The Autocrat of the Breakfast Table." None of these articles were copyrighted, but when the twelve serial numbers were completed, they were bound into one volume and a copyright secured upon that. In 1886, twenty-eight years later, this copyright was renewed. The defendant in 1894 copied exactly the twelve serial numbers from the *Atlantic Monthly*, paged them consecutively and bound them in one volume. An injunction against this as an infringement was thereupon asked by the executor of Dr. Holmes, but all the courts agreed in dismissing the bill. Mr. Justice Brown, in a very clear opinion, indicates that the publication of "The Autocrat" in serial form was a surrender of all the author's rights to the public. The statute of 1831 provided that no one should be entitled to the benefits of copyright unless he deposited a copy of the title before publication and a copy of the book within three months after publication. This law wholly superseded the common law right of an author to a monopoly. Dr. Holmes did not comply with the law. There is no distinction between the publication of a book and the publication of its contents. In case of copyright, the subject of property is the order of the words,—not the words themselves, nor the ideas, nor the combination of the various parts into a book. Such is the law as laid down by Justice Brown, and nowhere is his logic open to attack. He notes the inconvenience that may be caused to authors by compelling them to copyright their serial numbers as they publish them, but suggests that the law may be amended.

The extent of the power of the States to manage by legislation the affairs of railroad companies, has come in a new form before the Supreme Court, in the case of the *Lake Shore and Michigan Southern R. R. Co.* v. *Smith*, decided April 17, 1899. Under previous decisions of that court (*L. S. & M. S. R. R. Co.* v. *Ohio*, 173 U. S. 285), the regulative powers of the legislatures have in the main been upheld on the ground that the State was only exercising its proper authority under the "police power," and that it did not thereby violate the commerce clause of the Constitution by improper interference with interstate commerce. A limit to this power of the legislatures is marked by the case just reported; yet how little it overstepped the line is shown by the fact that the decision of the Supreme Court reversed that of the Supreme Court of Michigan, and was itself dissented to by the Chief Justice, Justice Gray and Justice McKenna.

The question presented was this—"has the legislature of a State, having power to fix maximum rates and charges for the transportation of persons and property by railroad companies * * * and having power to alter, amend, or repeal their charters within certain limitations * * * *also* the right, after having fixed a maximum rate for the transportation of passengers, to still further regulate their affairs and to discriminate and make an exception in favor of certain persons, and to give to them a right of transportation for a less sum than the general rate provided by law?" In this case

the discrimination was made by an amendment to the general railroad law of Michigan, which provided for the sale of mileage tickets at a price *below* that which the railroad, under its charter, had the right to demand. The holders of mileage books thus constitute a privileged class whose formation is an unjustifiable interference with the rights of the railroad company. "If"—says Mr. Justice Peckham—"the maximum rates are too high, in the judgment of the legislature, it may lower them, provided they do not make them unreasonably low, as that term is understood in the law; but it cannot enact a law making maximum rates and then proceed to make exceptions to it in favor of such persons or classes as in the legislative judgment or caprice may seem proper. * * * The power of the legislature to enact general laws regarding a company and its affairs does *not* include the power to compel it to make an exception in favor of some particular class in the community, and to carrry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof." The act of the legislature of Michigan was therefore held to be a violation of the XIVth amendment and therefore unconstitutional.

A somewhat similar case (*Attorney General* v. *Old Colony R. R. Co.*, 130 *Mass.* 62) held invalid a statute requiring every railroad corporation to have on sale certain tickets which should be received for fare on all railroad lines in the commonwealth. Here, too, the court refused to narrowly define the limits of legislative control of railroad corporations. The question is undoubtedly one of judicial discretion; but the tendency of the courts seems to be toward more adequate protection for the railroads against arbitrary and unreasonable legislation.