RECENT CASES.

BANKRUPTCY—LEASE—LESSEE'S ADJUDICATION DOES NOT TERMINATE.—IN RE CURTIS, 9 AM. B. R. 286; 33 So. 125 (LA.).—On a rehearing, *held*, that where a lessee, holding under an unexpired lease, is adjudicated a bankrupt, at a time when he owes no rent, such adjudication does not terminate the lease.

Whether an adjudication in bankruptcy terminates the relation of landlord and tenant is a much disputed question. On the former hearing of the present case the court decided that it does, following the decisions of the district courts of Kentucky and North Carolina. *In re Jefferson*, 93 Fed. 951, 2 Am. B. R. 206; *Bray v. Cobb*, 100 Fed. 270; *In re Hays, Foster and Ward Co.*, 117 Fed. 879, 12 *Yale Law Journal* 247. In this last case Evans, J., reaffirms the position taken in *In re Jefferson, supra*, that when the tenant is adjudged to be a bankrupt the relation of landlord and tenant ipso facto comes to an end. This principle, however, seems hardly deducible from the cases cited. *In re Breck*, Fed. Cas. No. 1822; *In re Webb*, Fed. Cas. No. 17315; *Bailey v. Loeb*, Fed. Cas. No. 739, 11 N. B. R. 271. The decision in the present case, though holding as do the cases just cited, that the claim for future rent, being contingent, is not provable against the state of the bankrupt, finds nothing in the Bankrupt Act which would terminate the lease. This decision is in line with the earlier, though not with the later English cases, see *ex parte Houghton*, Fed. Cas. No. 6725, and with the decisions of the District Court of Mass., *In re Ells*, 98 Fed. 967, 3 Am. B. R. 564; *ex-parte Houghton, supra; Savory v. Stocking*, 4 Cush. 607. In *Atkins v. Wilcox*, 105 Fed. 595, 53 L. R. A. 118, the U. S. Circuit Court of Appeals reviewed these opposing views of the district courts, without expressing an opinion as to which of them correctly interprets the law.

BANKRUPTCY—PREFERENCE—KNOWLEDGE OF CREDITORS.—SHERMAN V. LUCKHARDT, 9 AM. B. R. 312, 70 PAC. 702 (KAN.).—*Held*, that a preferential payment by a debtor to one of his creditors is not void, though made with a fraudulent intent on the debtor's part, if it be accepted by the creditor without knowledge of such intent and without knowledge that a preference was intended. Doster, C. J., and Burch and Pollock JJ., *dissenting*.

Under section 60b of the Bankruptcy Act, a preference is voidable, "when the person receiving it shall have had reasonable cause to believe that it was intended thereby to give a preference," while under section 67e, *all* transfers, etc., made with intent on the part of the bankrupt to hinder or defraud creditors are void as against such creditors. The present decision limits the application of the latter section to transfers other than to creditors, on the ground that the former section had fully covered transfers to creditors. This seems to have been the construction of these sections in *Pirie v. Trust Co.*, 182 U. S. 438, and *McNair v. McIntyre*, 113 Fed. 113. But

in neither of these cases was the transfer, as to the preferential character of which the creditor was ignorant, made with intent to defraud. The dissenting opinion in the present case holds that where there is any fraud on the part of the debtor, section 67e should govern, whether the transfer be to a creditor or not, on the ground that only thus can the purpose of the act to protect creditors be preserved. The weight of authority seems to support this view. *In re Steininger Co.*, 107 Fed. 669; *In re Jones*, 9 Am. B. R. 262; *In re McLane*, 3 Am. B. R. 245, and note.

BANKRUPTCY—PROPERTY EXEMPT UNDER SECTION 6 OF BANKRUPTCY ACT.—PAGE V. EDMONDS, 9 AM. B. R. 277, U. S. SUP. CT., JAN., 1903.—The Pennsylvania Insolvent Law (Pa. Laws 72) provides that "every insolvent shall be entitled to retain all such articles as may by law be exempted from levy and sale upon execution," and the Supreme Court of that State had decided that a seat in a stock exchange is not property subject to levy and sale under an execution. *Held*, that where such decisions are mere definitions of property and do not rest upon any interpretation of a State exemption law, such seat and its proceeds are not exempt under section 6 of the Bankruptcy Act.

This decision of the Supreme Court is important in defining the scope of section 6 of the Bankruptcy Act, which retains the exemptions prescribed by the various State insolvency laws. It decides in effect that under this section only such property is included as exempt, as shall be exempted either expressly by such State insolvency laws or in the interpretation of such laws. Where, as in the present case, the exemption is merely incidental, as a result of a declaration of general law as to the character of property, the conclusion is not binding upon the Federal court.

CARRIERS—EJECTION OF PASSENGER—DUTY TO PAY FARE TO PREVENT WRONGFUL EJECTION.—PENNSYLVANIA CO. V. LENHART, 120 FED. 61.—The holder of a mileage book, requiring presentation at the ticket office for a mileage exchange ticket, presented his book to the agent. The agent was not supplied with such tickets but promised to explain to the conductor. The conductor refused to give the passenger an exchange ticket and ejected him from the train. *Held*, that he was not required to pay his fare and sue for its recovery.

Many authorities hold that the ticket presented by the passenger is conclusive evidence of the extent of his rights, as between him and the conductor, and when by its terms it does not entitle him to passage, although the fault may be that of the railroad company, it is his duty to pay fare and seek his remedy for the breach of contract. *Hall v. Ry. Co.*, 15 Fed. 57; *Mosher v. St. Leonis, etc., Co.*, 17 Fed. 880; *Ry. Co. v. Stocksdale*, 83 Md. 245, *Woods v. Ry. Co.*, 48 Mo. App. 125. Others hold that if the purchaser of a ticket performs all the stipulations of the contract on his part, or offers to do so, the company is bound to honor the ticket when duly presented, notwithstanding any mistake or omission by its agents. *Trice v. Ry. Co.*, 40 W. Va. 271; *Head v. Georgia, etc., Co.*, 79 Ga. 358; *Ry. Co. v. Pamson*, 70 Fed. 585; *Ry. Co. v. Winter*, 143 U. S. 60. The modern tendency is toward the latter view.

CARRIERS—INJURY TO PASSENGER—LEAVING MOVING TRAIN—CONTRIBUTORY NEGLIGENCE.—C. B. & Q. RY. CO. v. WINFREY, 93 N. W. 526 (NEB.).—While plaintiff was leaving the car, and before she reached the door, the train began to move. She continued the act of alighting and was injured. *Held*, that such action did not necessarily bar a recovery, but the question of contributory negligence was properly submitted to the jury.

While this opinion is supported by the previous decisions of the same court, the weight of authority seems to be that a passenger who attempts to step from a car in motion cannot recover, even though he had reached his destination and the train had not stopped for a reasonable length of time to allow him to alight. *Jewell v. Ry. Co.*, 54 Wis. 610; *Burrows v. Erie Ry. Co.*, 63 N. Y. 556; *Hoehn v. Ry. Co.*, 152 Ill. 223. The right of recovery is denied more strictly in case of steam railways than of street railroads. 12 *Yale Law Journal* 177. Generally where recovery has been allowed, it was difficult for the passenger to know whether the train were moving; *Cousins v. Ry. Co.*, 96 Mich. 386; or where it was dark. *Brooks v. B. & M. Ry. Co.*, 135 Mass. 21.

CONSTITUTIONAL LAW—DUE PROCESS—RESTRICTION ON HEIGHT OF BUILDING—COMPENSATION.—WILLIAMS V. PARKER, ATT'Y-GEN., 23 SUP. CT. REP. 440—A writ of error to review judgment of Supreme Judicial Court of Massachusetts, which affirmed the constitutionality of a statute, enacting that all buildings thereafter erected on Copley Square, in the city of Boston, should not exceed 90 feet in height. The owners of property taken under this statute were further protected by a clause making the city of Boston liable in damages. Defendants contended that this clause violated Art. 1, clause 2. 14th Amendment to U. S. Constitution. *Held*, that as the liability of the municipality was such as could be imposed by the State, the enforcement of statute was not a taking of property without due process of law.

By the above decision, the Copley Square case, which has attracted considerable attention in the past few years, has reached its final adjudication. The right of the legislature to secure the permanent beauty of public parks and squares by the exercise of eminent domain—the basis of the prior Massachusetts decisions in the case—was not commented upon by the Supreme Court and the case may be taken as a well considered precedent in future actions. *Att'y-Gen. v. Williams*, 174 Mass. 476; *Williams v. Parker*, 178 Mass. 330. The court in accordance with its expressed rule did not examine into the constitutionality of the statute as governed by the constitution of Massachusetts. *Rasmussen v. Idaho*, 181 U. S. 198. While the city, not being a party to the suit, might not be technically estopped from denying its liability, the court was of opinion that the legislature had authority to cast the duty of compensation, as a public burden, upon it.

INJUNCTION—RIGHT TO RELIEF—UNLAWFUL INTERFERENCE WITH PERFORMANCE OF CONTRACT.—CHESAPEAKE & O. COAL AGENCY CO. V. FIRE CREEK COAL AND COKE CO. ET AL., 119 FED. 942.—The bill of plaintiff corporation alleged that it had contracts with defendant coal companies to take the product of their mines and sell the same; that by the terms of such contracts defendants were not liable for damages for failure to furnish coal, where such failure was caused by strikes; that defendant companies were prevented

from furnishing coal, by the wrongful acts of individual defendants, who were conducting a strike, and by intimidation and threats prevented others from working in the mines. *Held*, that plaintiff's contract rights entitle it to maintain the suit in its own right, and that it has stated a cause of action for an injunction against the individual defendants to prevent their further interference with the performance of the contracts by the coal companies.

It is well settled that an injunction will issue to prevent persons from attempting by intimidation or other unlawful means to force employees into a strike. *Mining Co. v. Miners' Union*, 51 Fed. 260; *Shoe Co. v. Saxey*, 131 Mo. 212; *Reynolds v. Everett*, 144 N. Y. 189; *China Co. v. Brown*, 164 Pa. 449. It has been decided in England that an action will lie by one party to a contract against a third party, who induces the other party to the contract to break it. *Lumley v. Gye*, 2 El. & Bl. 216; *Bowen v. Hall*, 6 Q. B. D. 346; but in the absence of contract there is no right to relief. *Allen v. Flood*, 1898 A. C. 1. The tendency in this country, however, is to give a remedy even in the absence of a contract. *Walker v. Cronin*, 107 Mass. 555; *Rice v. Manley*, 66 N. Y. 82. In this case the court extends the above doctrine, on the ground that there is no distinction between wrongfully and maliciously inducing one to break a contract and unlawfully and maliciously rendering a contract impossible of performance. Whether this decision will be sustained in the higher court may be doubtful.

INSURANCE—BENEFIT—AMENDMENT OF RULES—REASONABLENESS—NOTICE TO MEMBERS.—TEBO V. ROYAL ARCANUM, 93 N. W. 513 (MINN.).—The insured agreed by his application to be bound by the rules then existing and those thereafter enacted. Later he took employment as a freight brakeman, an occupation which was afterwards prohibited by an amendment declaring a forfeiture in case a member should engage in that occupation. He received no notice of the new by-law, and a year later was killed. *Held*, that the amendment was unreasonable and void as to the insured.

This imposes an important restriction on the right of benefit associations to amend provisions in the contracts with their members. Provisions for forfeiture clearly and unequivocally expressed and made a part of the contract should be as binding as any other provision, and, if lawful, cannot be avoided because harsh or burdensome. *Yoe v. Benefit Ass'n*, 63 Md. 86; 3 *Am. & Eng. Enc. Law* 1088. A subsequent legal amendment is binding upon the insured where he has bound himself irrevocably by the stipulations in his application. *Knights of Pythias v. Lea Malta*, 95 Tenn. 157; *Hobbs v. Benefit Ass'n*, 82 Iowa 107. Where the right to amend is expressly reserved, the member is bound to take notice of the effect of that reserved power. *Knights of Pythias v. Knight*, 117 Ind. 489. The rules should be even more rigidly applied than in ordinary life policies. *Madeira v. Benefit Society*, 16 Fed. 749.

MASTER AND SERVANT—FELLOW SERVANT RULE—ABROGATION BY CANADIAN STATUTE—RECOGNITION OF STATUTE.—RICK V. SAGINAW BAY TOWING CO., 93 N. W. 632 (MICH.).—A Canadian statute makes the employer liable for injuries caused by the negligence of a fellow servant who is exercising any superintendence over the one injured. In an action for such an injury occurring in Canada, *held*, that the statute will be recognized, though conferring a right on plaintiff not recognized by Michigan law.

There is a distinction between a right of action for an injury in another State as given by statute, and one given by common law. The latter is transitory and where the variance is not fundamental will be enforced. *Walsh v. Ry. Co.*, 160 Mass. 571. Where the right of action is given by statute its operation in another State can be enforced only by comity. Generally this will be done if the statutes in the two States are substantially similar. *Debervoise v. Railroad Co.*, 98 N. Y. 377. This is also the rule in the United States courts. *Dennick v. Ry. Co.*, 103 U. S. 11. The fact that the statute is that of a foreign country is immaterial. *Fisher, Brown & Co. v. Fielding*, 67 Conn. 91. The right of recovery, however, was denied in *Davis v. Ry. Co.*, 143 Mass. 301, the court declining to follow the rule in *Dennick v. Ry. Co., supra*, and adhering to its own former decisions. A still stronger sentiment against such right of recovery has been shown in several other States. *Ash v. B. & O. Ry. Co.*, 72 Md. 144; *Anderson v. Ry. Co.*, 37 Wis. 321; *Dale v. Ry. Co.*, 57 Kan. 601.

MASTER AND SERVANT—INJURY TO EMPLOYE—MASTER'S LIABILITY.—W. R. TRIGG CO. v. LINDSAY, 43 S. E. 349 (VA.).—*Held*, that the master is not liable for unsafe conditions existing while machinery is in process of erection.

The opinion intimates that had the same accident occurred after the machinery had been put in operation, the defendant company would have been held liable distinguishing accidents during construction or while repairs are being made from those during operation. Although a master is bound to furnish safe machinery for the use of the servant. *Fuller v. Jewett*, 80 N. Y. 46, liability for an injury will not attach with the same certainty while the machinery is being repaired *Murphy v. Railroad Co.*, 88 N. Y. 146. In *Darthmouth Spinning Co. v. Achord*, 84 Ga. 16, it was held that the risk of concealed dangers incident to the work of making repairs is upon the workman.

NUISANCE—BEER GARDEN—INJUNCTION.—TRON ET AL. v. LEWIS, 66 N. E. 490 (IND.).—A, under a license to conduct a saloon, established an extensive beer garden in a thickly settled residence portion of the city of Indianapolis. Large and noisy crowds gathered there; and the place was conducted in such a disorderly way that a bad reputation was given to the neighborhood and a prejudice created against it as a residence district. *Held*, that the maintenance of such a resort is a nuisance, and will be enjoined at the suit of neighboring property owners whose property is depreciated in value thereby.

This decision is based on *Haggart v. Stehlin*, 137 Ind. 43, where it was held that a saloon constitutes an actionable nuisance to neighboring property owners whose property is depreciated in value by reason of its proximity, when it is established in a residence neighborhood which has been previously free from such business, and in which the people are largely opposed to saloons; and the fact that the saloon-keeper has a license is no defense against civil liability. Following which, in *Kissel v. Lewis*, 156 Ind. 233, an injunction was granted to restrain the maintenance of a disorderly beer garden in a residence district. The doctrine of *Haggart v. Stehlin, supra*, that a licensed saloon may constitute an actionable nuisance is characterized

as "a new departure," and "of extraordinary importance," in note in 22 *L. R. A.* 577. It appears not to have been considered in any other court.

NUISANCES—STORING POWDER—LIABILITY FOR EXPLOSION.—KLEEBAUER ET UX. V. WESTERN FUSE & EXPLOSIVES CO., 71 PAC. 617 (CAL.).—A manufacturing company kept in store, powder necessary for its business, and it was exploded by the willful act of another. *Held,* that the keeping of the powder was not necessarily a nuisance, so as to render the company liable in any case to third parties injured by the explosion.

The keeping of explosives near a city has been held a nuisance *per se. Cheatham v. Shearon,* 1 Swan 213; *Coal Co. v. Glass,* 34 Ill. App. 364. The contrary has been held in *People v. Sands,* 1 Johns. 78, and with regard to a sparsely settled spot in *Dumesnil v. Dupont,* 18 B. Mon. 800. Whether it is a nuisance *per se* has been held to be a question of fact. *Heeg v. Licht,* 80 N. Y. 579; *Lounsbury v. Foss,* 80 Hun 296. In Pennsylvania a magazine may be a nuisance in a place not thickly settled if it is so situated as to be liable to injure even a few persons. *Appeal of Wier,* 74 Pa. 230; and in South Carolina if an explosion might injure the plaintiff and him alone. *Emory v. Powder Co.,* 22 S. C. 476. In Alabama, to constitute a nuisance, a magazine, wherever situated, must be negligently maintained. *Kinney v. Koopman,* 116 Ala. 310.

PARTNERSHIP NAME—USE BY SURVIVING PARTNER—GOOD WILL.—SLATER V. SLATER, 80 N. Y. SUPP. 303.—*Held,* that no right to use the firm name, except for the purpose of advertising as its successor, passes to the purchaser of the good-will of a partnership dissolved by death; and that the right to continue the business in the firm name does not remain in the surviving partner.

When the firm name is used as a trade-mark simply or the purchaser continues the business as a successor, there is no conflict as to the purchaser's right; in each case the firm name is an asset. *Levy v. Walker,* 10 Ch. Div. 436; *Honie v. Chaney,* 143 Mass. 592; *Caswell v. Hazard,* 121 N. Y. 484; *Lindl., Partn.* 447. But the English courts seem inclined to consider the continued use of a firm name a part of the good will when there is no danger of loss to the original partners; *Levy v. Walker,* 10 Ch. Div. 436; *Webster v. Webster,* 3 Swanst. 490; *Robertson v. Quiddington,* 28 Beav. 536; *Lindl., Partn.* 446; and have even gone so far as to hold that the right to do business in the firm name passed to the surviving partner as a property right. *Lewis v. Langdon,* 7 Simons 421. The decisions on the question in this country are few; but see *Fenn v. Bolles,* 7 Abb. Pr. 202, where the right did not go to surviving partner; and *Blake v. Barnes,* 26 Abb. N. C. 208, and *Mason v. Dawson,* 15 Misc. (N. Y.) 595, where it did.

PERCOLATING WATERS—DIVERSION.—STILLWATER WATER CO. V. FARMER, 93 N. W. 907 (MINN.).—Defendant diverted percolating waters from plaintiff's spring, and conducted them to the city sewer. *Held,* that a landowner may be restrained from thus wantonly wasting percolating waters which would otherwise be appropriated by the adjoining owner for a useful purpose.

A landowner may appropriate all the percolating waters in his soil providing it is done for a useful purpose. But the absolute right to use

his own property is denied him, on the ground of the maxim, *sic utere tuo ut alienum non laedas*. But generally this maxim is held to be applicable only to such injuries as the law will redress. *Ellis v. Duncan*, 21 Barb. (N. Y.) 230. The question as to the effect of the motive prompting the diversion of underground waters has seldom been before the courts. Some authorities consider the motive an important, though not a controlling element. *Walker v. Cronin*, 107 Mass. 555; *Haldeman v. Bruckhart*, 45 Pa. St. 514. Contra, *Bradford v. Pickles*, L. R. (1895) A. C. 587; *Phelps v. Nowlen*, 72 N. Y. 39. The tendency of the decisions is to consider the reasonableness of the use to which one's property is put. 12 *Yale Law Journal* 253.

PUBLIC POLICY—CONTRACT TO PROCURE LEGISLATIVE INVESTIGATION.—VEAZEY V. ALLEN ET AL., 66 N. E. 103 (N. Y.).—A contracted with B to procure a congressional investigation into the affairs of the so-called Whiskey Trust for the purpose of depreciating the market value of its securities, upon B's agreement to divide with A any profits obtained by speculating in such securities. *Held*, void as against public policy.

Contracts for the use of personal influence to procure legislative action, where the one using such influence is himself pecuniarily interested in the result, are against public policy because of the tendency of such a person to further his own ends by means which are immoral, corrupt and destructive of the public welfare. *Mills v. Mills*, 40 N. Y. 546. Contracts for "lobby services" are void. *Trist v. Child*, 21 Wall. 441; *Chippewa Valley Ry. v. Chicago, etc., Ry.*, 75 Wis. 224. The fact that the proposed action is undoubtedly for the public benefit is immaterial. "The law looks to the general tendency of such agreements and closes the door to temptation by refusing them recognition. *Tool Co. v. Norris*, 2 Wall. 54. But the right to hire a proper party to draft a bill or claim and openly and fairly to explain it to the legislature, is unquestioned. *Chesebrough v. Conover*, 140 N. Y. 382.

PUBLICATION—LITERARY PROPERTY—COLLECTING INFORMATION—DISTRIBUTION.—F. W. DODGE CO. V. CONSTRUCTION INFORMATION CO., 66 N. E. 204 (MASS.).—Where a company is engaged in collecting information as to public improvements as soon as possible after they are contemplated, and in distributing such information in printed, written, or oral form to its customers to enable them to take steps to obtain contracts, *held*, that the company has a property right in such information; and that such distribution is not such a publication as dedicates the information to the public and deprives the company of its right of control.

It has been held that where one has been at trouble and expense to obtain and compile information for a special use, he has a property right therein. *Exchange Tel. Co. v. Central News Co.*, [1897] 2 Ch. 48. But to what extent and in what manner the compiler may distribute the information without losing his right of control, has not been definitely decided. It has been held, on the one hand, that a property right in stock quotations and in news items is not lost by their distribution by telegraph among a limited number of persons. *Chicago v. Christie Co.*, 116 Fed. 944; *Nat. Tel. News Co. v. Western Union Tel. Co.*, 119 Fed. 297. On the other hand, the distribution in book form among subscribers of information in regard to

the business and commercial standing of parties engaged in a certain trade, has been held a publication. *Ladd v. Oxnard*, 75 Fed. 703; *Jewelers' Mercantile Agency v. Jewelers' Weekly Pub. Co.*, 155 N. Y. 241. The difference in the form in which the information is sent out seems to be the ground of distinction in the decisions.

TAXATION—EXEMPTIONS—EDUCATIONAL INSTITUTION.—COLORADO SEMINARY V. BOARD OF COMMISSIONERS OF ARAPAHOE COUNTY ET AL., 71 PAC. 410 (COLO.).—The charter of a seminary provided that property held by its trustees and "necessary for carrying out the design of the seminary in the best manner," should be free from taxation "while used exclusively for such purpose." *Held*, that property of the seminary merely income-bearing and not used in the school itself was exempt.

Ordinarily, unless the statutes explicitly declare the contrary, exemption will be confined to property used exclusively for the legitimate purposes of the institution. *Cincinnati College v. State*, 19 Ohio 110; *State v. Ross*, 24 N. J. L. 497; *Wyman v. St. Louis*, 17 Mo. 335. See *Northwestern University v. People*, 99 U. S. 309. Use and not ownership is the test. *Washburn College v. Shawnee County*, 8 Kan. 344; *Phillips Academy v. Exeter*, 58 N. H. 306. But this is not true in Vermont. *Willard v. Pike*, 59 Vt. 202. Farms, the products of which are used for the support of the school have been held not exempt. *St. Edward's College v. Morris*, 82 Tex. 1; *Thiel College v. Mercer County*, 101 Pa. St. 530; *College v. Crowl*, 10 Kan. 442. *Contra, Academy v. Wilbraham*, 99 Mass. 599; *State v. University*, 87 Tenn. 233. If property is used for purposes other than the legitimate purposes of the institution, the fact that the proceeds of such use are devoted to carrying out the objects of the institution is immaterial. *Cincinnati College v. State, supra; Wagner's Free Inst., etc., Appeal*, 116 Pa. St. 555. See also *County Comm. v. Colo. Sem.*, 12 Colo. 497, expressly overruled by the present decision. Where the charter of a school provided that it might hold real estate, which should be free from taxation while used for the promotion of science, property was held exempt, the income only of which was used by the school. *New Haven v. Sheffield Scientific School*, 59 Conn. 163.

TELEGRAPHS—NEGLIGENCE—DISCLOSURE OF CALLS—TAPPING OF WIRE—WESTERN UNION TEL. CO. V. UVALDE NAT. BANK, 72 S. W. 232 (TEX.).—An operator of appellant telegraph company disclosed the "call" of a certain town to a stranger, who tapped the main wire and sent messages through said town to the appellee, whereby it was induced to cash a worthless draft. *Held*, that such disclosure by the operator was negligence and that such negligence was the proximate cause of the loss, and rendered the telegraph company liable for the amount of the draft.

Though telegraph companies may not be insurers, yet they are held to a very high degree of care and caution to prevent their being made instruments of fraud. The nature of their business requires this. *Elmwood v. W. U. Tel. Co.*, 45 N. Y. 549. Such a company is liable for loss by fraud, rendered possible by the negligence of its agent, provided such negligence was the proximate cause of the loss. *Bank of Col. v. W. U. Tel. Co.*, 52 Cal. 280; *Lowery v. W. U. Tel. Co.*, 60 N. Y. 198. The court indicates that this is a case of first impression in applying the rules and principles governing telegrams sent in the usual manner to those only apparently sent in that manner.