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must now choose between fully disclosing information or being cited for contempt.

There are some who say that immunity statutes are morally questionable since they result in the Government making "deals" with "stooges" and "turncoats."¹⁰⁹ If this be true, we should legislate against this "immorality" by placing information gained from "informers" in the same category as that derived from wiretapping or illegal searches and seizures. Such an attitude, however, would thwart legislatures and law enforcement agencies from effectively carrying out their duties of investigation.

Immunity statutes have been construed so as to give protection to the witness coextensive to that afforded by the privilege. As further construction problems arise it may be well for the courts to weigh the advice of Chief Justice John Marshall:

When two principles come in conflict with each other, the court must give them both a reasonable construction, so as to preserve them both to a reasonable extent. The principle which entitles the United States to the testimony of every citizen, and the principle by which every witness is privileged not to accuse himself, can neither of them be entirely disregarded.¹¹⁰



EMERGENCY CALLS GIVEN PRECEDENCE ON PARTY LINES BY NEW YORK STATUTE

Due to the enterprise of American capital, the telephone has become so commonplace in the United States that most people regard it as a necessity. Although it has been in use for three-quarters of a century, changing social conditions and improved methods of transmission have prevented the law of telephones from ossification and rigidity. Since the telephone is essentially an improvement upon the

answer would disgrace him. 12 STAT. 333 (1862), as amended, 2 U.S.C. § 193 (1952). See *Brown v. Walker*, 161 U.S. 591, 598 (1896). Moreover, the privilege is personal and cannot be raised to protect others. *Hale v. Henkel*, 201 U.S. 43 (1906).

¹⁰⁹ See, e.g., King, *Immunity for Witnesses: An Inventory of Caveats*, 40 A.B.A.J. 377, 378-379 (1954). But Dr. Bella Dodd, a former Communist, told a congressional committee: "I think probably more than anything else the reason why you are not getting many citizens coming forward to testify in this country on the Communist conspiracy is the fear that they have of the smear and the retaliation which the Communists will have upon them.

"One of the things they do, of course, is to use . . . underworld concepts of informer, stool pigeon, a person who sings, and so forth. . . ." *The Tablet*, Sept. 28, 1954, p. 18, col. 6.

¹¹⁰ *United States v. Burr*, 25 Fed. Cas. No. 14,692e, 38, at 39-40 (C.C.D. Va. 1807).

telegraph, an appreciation of the present legal position of the telephone company is dependent upon a familiarity with the law applicable to the telegraph.

Originally, a telegraph company was widely regarded as a bailee of the message, and therefore immune from strict liability,¹ while later opinions have more often adopted the view that it is closely akin to a common carrier.² Although a telegraph company is not liable when it is an act of God which prevents the delivery of a message,³ it may be liable where a third party's negligence makes delivery impossible.⁴ In England, telegraph companies were liable only in breach of contract,⁵ but in the United States they are subject to tort liability as well.⁶

¹ See *Birney v. New York & Washington Printing Telegraph Co.*, 18 Md. 341 (1862); *Pinckney Bros. v. Western Union Telegraph Co.*, 19 S.C. 71 (1883); see *Schwartz v. The Atlantic & Pacific Telegraph Co.*, 18 Hun 157, 158 (N.Y. Gen. T. 3d Dep't 1879); *Smithson & Owenes v. U.S. Telegraph Co.*, 29 Md. 162, 167 (1868); *Dickson v. Reuter's Telegram Co., Ltd.*, L.R. 3 C.P.D. 1, 7 (1877). *Contra*: *Parks v. Alta California Telegraph Co.*, 13 Cal. 423 (1859).

² See, e.g., *Freschen v. Western Union Telegraph Co.*, 115 Misc. 289, 189 N.Y. Supp. 649 (N.Y. City Ct. 1921); *Western Union Telegraph Co. v. State*, 86 Neb. 17, 124 N.W. 937 (1910); *Gillis v. Western Union Telegraph Co.*, 61 Vt. 461, 17 Atl. 736 (1889); see *Providence-Washington Ins. Co. v. Western Union Telegraph Co.*, 247 Ill. 84, 93 N.E. 134, 136 (1895) ("... [T]hey exercise a quasi public employment, with duties analogous to those of common carriers. . ."); *Western Union Telegraph Co. v. Call Pub. Co.*, 44 Neb. 326, 62 N.W. 506, 510 (1895). According to one text, telegraph companies today actually are common carriers, or "... common transmitters, if they prefer a distinction without a difference. . . ." 3 SHEARMAN & REDFIELD, NEGLIGENCE 1411, 1414 (Rev. ed. 1941).

³ *Hoaglin v. Western Union Telegraph Co.*, 161 N.C. 390, 77 S.E. 417, 420 (1913). The telegraph company is not exonerated from liability, however, if it was negligent as in *Fail v. Western Union Telegraph Co.*, 80 S.C. 207, 60 S.E. 697 (1908); or if it had alternate means of transmission available and failed to use them. *Beggs v. Postal Telegraph-Cable Co.*, 258 Ill. 238, 101 N.E. 612 (1913).

⁴ *Barnes v. Western Union Telegraph Co.*, 27 Nev. 438, 76 Pac. 931 (1904). Where the company which receives a message transmits it to another telegraph company, which negligently fails to send it properly over *its* wires, the first company is liable. *De Rutte v. N.Y., Albany & Buffalo Electro Magnetic Telegraph Co.*, 1 Daly 547, 30 How. Pr. 403 (N.Y. Gen. T. 1866). Where the military intervenes to prevent delivery of a message, however, the telegraph company is not liable. *Rose Mfg. Co. v. Western Union Telegraph Co.*, 251 S.W. 337 (Tex. Civ. App. 1923).

⁵ *Playford v. United Kingdom Electric Telegraph Co., Ltd.*, L.R. 4 Q.B. 706 (1869). Today, of course, there are no domestic telegraph companies in England, as they were socialized by the Telegraph Act, 1869, 32 & 33 Vict., c. 73 (§ 4) which made the industry a royal monopoly.

⁶ *De Rutte v. N.Y., Albany & Buffalo Electro Magnetic Telegraph Co.*, *supra* note 4 (alternative holding); *New York & Washington Printing Telegraph Co. v. Dryburg*, 35 Pa. 298 (1860).

Since, for the purposes of law, the telephone was considered *ejusdem generis* with the telegraph,⁷ many of the same legal principles were applied to the more recent of the two inventions. Telephone companies have always been regarded as common carriers by the courts.⁸ By this is meant that they are required to serve all who seek to employ them, without discrimination.⁹ A telephone company which negligently fails to make a connection is only liable if it can be shown that the damages were proximately caused by its negligence.¹⁰

Because of the quasi-public nature of their operations, telegraph companies have been subjected to anti-discrimination statutes,¹¹ which have been applied to telephone companies as well.¹² These statutes have been strictly construed; for liability to attach for their violation, the violation must be wilful.¹³ Even in the absence of such statutes, it appears that there is a common-law duty to treat all customers on equal terms.¹⁴ Notwithstanding this general principle of non-preference among customers, however, many states have by statute required telegraph companies to give precedence to various classes of message, chiefly of an emergency nature.¹⁵ Others have extended

⁷ Attorney-General v. The Edison Telephone Co., L.R. 6 Q.B.D. 244 (1880). See JOYCE, *ELECTRIC LAW* 8, *et seq.* (1900).

⁸ See Central Union Telephone Co. v. State *ex rel.* Falley, 118 Ind. 194, 19 N.E. 604 (1889); State *ex rel.* Gwynn v. Citizens' Telephone Co., 61 S.C. 83, 39 S.E. 257 (1901); see State *ex rel.* Goodwine v. Cadwallader, 172 Ind. 619, 87 N.E. 644, 648 (1909); Miller v. Central Carolina Telephone Co., 194 S.C. 327, 8 S.E.2d 355, 358 (1940); State v. Cumberland Telephone & Telegraph Co., 114 Tenn. 194, 86 S.W. 390, 391 (1905).

⁹ Missouri *ex rel.* Baltimore & Ohio Telegraph Co. v. Bell Telephone Co., 23 Fed. 539 (C.C.E.D. Mo. 1885), *appeal dismissed*, 127 U.S. 780 (1887); State *ex rel.* Webster v. Nebraska Telephone Co., 17 Neb. 126, 22 N.W. 237 (1885); see Central Union Telephone Co. v. State *ex rel.* Bradbury, 106 Ind. 1, 5 N.E. 721, 724-725 (1886).

¹⁰ Volquardsen v. Iowa Telephone Co., 148 Iowa 77, 126 N.W. 928 (1910); Forgey v. Macon Telephone Co., 291 Mo. 539, 237 S.W. 792 (1922); Foss v. Pacific Telephone & Telegraph Co., 26 Wash.2d 92, 173 P.2d 144 (1946) (alternative holding); cf. Emery v. The Rochester Telephone Corp., 271 N.Y. 306, 3 N.E.2d 434 (1936) (defendant held not liable in wrongful death action for failure to transmit call to physician).

¹¹ *E.g.*, N.Y. TRANSP. CORP. LAW § 28; LA. REV. STAT. art. 45, § 45:782 (1950) (telegraphs and telephones); MINN. STAT. ANN. § 237.43 (1947); OHIO REV. CODE tit. 49, § 4931.17 (1954); see also VT. STAT. § 9734 (1947) (applies to telephones only).

¹² See Chesapeake & Potomac Telephone Co. v. Baltimore & Ohio Telegraph Co., 66 Md. 399, 7 Atl. 809 (1886); State *ex rel.* American Union Telegraph Co. v. Bell Telephone Co., 36 Ohio St. 296 (1880).

¹³ See Meyers v. Western Union Telegraph Co., 82 Misc. 266, 143 N.Y. Supp. 574 (County Ct. 1913).

¹⁴ See Western Union Telegraph Co. v. Graham, 1 Colo. 230, 233 (1871); Western Union Telegraph Co. v. Call Pub. Co., 44 Neb. 326, 62 N.W. 506, 510 (1895).

¹⁵ *E.g.*, ARK. STAT. ANN. § 73-1806 (1947); MINN. STAT. ANN. § 237.43 (1945); MONT. REV. CODE ANN. § 8-820 (1947); N.D. REV. CODE § 8-1002 (1943); OKLA. STAT. ANN. tit. 13, § 173 (1937); The Telegraph Act, 1863,

the requirement to telephone companies as well.¹⁶ Still others allow the company to contract to send news items out of the regular order of messages.¹⁷ It has been indicated that telegraph messages of an emergency nature may properly be granted preference in the absence of statute.¹⁸ Undoubtedly the same attitude would prevail in the case of a telephone call.

As has been mentioned, telephone companies are liable for damages proximately caused by their negligent failure to make a connection.¹⁹ A less common situation occurs where the connection between the two telephone stations is prevented through the wrongdoing of a third party. In *Hodges v. Virginia-Carolina Railway Co.*²⁰ a railroad, in violation of a statute, wilfully cut the line of a public telephone company. Complainant could have reached a physician whom he had employed to attend his wife, had the wire been intact. Since it was severed, the wife died from lack of medical care. It was held that, if the facts alleged could be shown, the railroad would be liable for the damages which ensued from its act.

The New York Legislature has recently attempted to cope with an analogous situation by the enactment of a statute making it a misdemeanor to remain on a party line when another person needs it for an emergency call.²¹ Like that involved in the *Hodges* case, the

26 & 27 Vict., c. 112, § 48 (gives precedence to Queen's messages).

¹⁶ *E.g.*, ARK. STAT. ANN. § 73-1806 (1947); MICH. COMP. LAWS §§ 28.6, 750.507 (1948); TENN. CODE ANN. § 4057 (Williams, 1934); TEX. STAT. ANN. art. 4413(21) (Vernon, 1948); UTAH CODE ANN. § 76-48-9 (1953).

¹⁷ *E.g.*, N.Y. TRANSP. CORP. LAW § 28; CONN. GEN. STAT. § 5651 (1949); VA. CODE ANN. tit. 56, § 56-469 (1950). In some states such statutes apply only to telegraph companies. *E.g.*, MICH. COMP. LAWS § 484.165 (1948).

¹⁸ See *Reese v. Western Union Telegraph Co.*, 123 Ind. 294, 24 N.E. 163, 165 (1890).

¹⁹ *Southwestern Telegraph & Telephone Co. v. Harris*, 214 S.W. 845 (Tex. Civ. App. 1919); see *Central Union Telephone Co. v. Swoveland*, 14 Ind. App. 341, 42 N.E. 1035, 1041 (1896).

²⁰ 179 N.C. 566, 103 S.E. 145 (1920).

²¹ Laws of N.Y. 1954, c. 572. The statute is substantially identical with that enacted by the Michigan Legislature in Pub. Acts, 1952, No. 56; MICH. COMP. LAWS §§ 750.540a, 750.540b (Mason, Supp. 1952). The New York enactment adds a new section (§ 1424-a) to the Penal Law, to read as follows:

"1. Any person who shall wilfully refuse to immediately relinquish a party line when informed that such line is needed for an emergency call to a fire department or police department or for medical aid or ambulance service, or any person who shall secure the use of a party line by falsely stating that such line is needed for an emergency call, shall be guilty of a misdemeanor.

"2. 'Party line' as used in this section means a subscribers line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number. 'Emergency' as used in this section means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential."

The new statute also requires all telephone companies in the State to pub-

statute is penal in nature. Moreover, it establishes a standard of care which might well determine the nature of the duty owed to the plaintiff in any tort action which might arise. While the violation of a statutory standard will not support a tort action unless the injury is proximately caused thereby,²² such enactments are, in effect, a declaration by the Legislature that injury will probably be a consequence of their violation,²³ and it is more than likely that their violation would weigh heavily with a jury in ascertaining tort liability.

The new statute is designed to cope with a situation which may be temporary in nature, since party lines are gradually being eliminated in this state.²⁴ In addition, it may present enforcement difficulties.²⁵ Nonetheless, it represents a salutary effort to safeguard life and property by the Legislature, and, as the accompanying gubernatorial message states “. . . if it should save the life of one sick person or prevent a home from being burned to the ground, its enactment would be justified.”²⁶

lish a notice in their directories, advising subscribers of the offense provided for in the enactment.

²² *People's Service Drug Stores, Inc. v. Somerville*, 161 Md. 662, 158 Atl. 12 (1932); *Larsen v. Webb*, 332 Mo. 370, 58 S.W.2d 967 (1932); see *Earl W. Baker & Co. v. Lagaly*, 144 F.2d 344, 346-347 (10th Cir. 1944); *Milbury v. Turner Center System*, 274 Mass. 358, 174 N.E. 471, 473 (1931).

²³ See *Butts v. Ward*, 227 Wis. 387, 279 N.W. 6, 13 (1938).

²⁴ The New York Telephone Co., largest of the State's 105 telephone companies, is presently engaged in eliminating the 8-party lines which it still maintains upstate. In New York City, the only party lines now remaining are 2-party wires, while on Long Island some 4-party lines are still in use. There are 1,406,000 telephones in New York on party lines.

²⁵ See McKinney's Session Laws of N.Y., May 10, 1954, p. A-190.

²⁶ *Ibid.*