signee. There is no principle by which it could be thrown on the other party.

The result of the views which have been expressed, is, that the demurrer must be sustained as to the 1st, 3d, 4th and 7th grounds of defence, and overruled as to the others.

Ferguson & Long, for plaintiff.

Worthington & Matthews, for defendant.

In the Kentucky Court of Appeals—July 14, 1858.

AMBROSE E. CAMP *vs.* WESTERN UNION TELEGRAPH COMPANY.[1]

Where a telegraph company, among the terms of the transmission of messages, announced that they would not be responsible for the mistakes of "unrepeated messages," and repeated messages were charged half in addition to the usual price for transmission, of which terms the plaintiff had notice, but did not require the message to be repeated or pay the additional charge, and a mistake happened in the transmission of the message which caused the plaintiff pecuniary loss, it was held, that he could not recover, it not appearing that the mistake was occasioned by negligence or incompetency on the part of the company.

The court being sufficiently advised of the facts, the following opinion, in which the facts appear, was delivered by

SIMPSON, J.—This action was brought against the Western Union Telegraph Company for failing to transmit correctly a communication from the appellant, at Louisville, to D. Gibson & Co., at Cincinnati. The plaintiff alleged, in his petition, that the defendant undertook, for compensation then paid, to transmit from Louisville, Kentucky, to D. Gibson & Co., of Cincinnati, Ohio, a proposition to purchase two hundred barrels of whiskey at fifteen cents per gallon, and that instead of transmitting the proposition correctly, the communication as made, represents him as offering sixteen cents per gallon for whiskey.

He also alleged that Gibson & Co. advised him that they accepted his proposition, and immediately forwarded to him two hundred barrels of whiskey, under the belief that he had offered them sixteen

[1] For the opinion of the court below, see *ante*, p. 443.

cents per gallon for it, which was received by him under the belief that it had been sold to him at fifteen cents per gallon. He further alleged, that in consequence of the failure of defendant to transmit the message entrusted to it, and the transmission by it of a message of a different import, he was compelled to pay sixteen cents per gallon for the whiskey, and had thereby sustained a loss to the amount of $100. The Telegraph Company by way of defence relied upon a notice of the terms and conditions on which messages by it for transmission, which, so far as they are applicable to the present case, are as follows:

"The public are notified that in order to guard against mistakes in the transmission of messages, every message of importance ought to be repeated by being sent back from the station at which it is to be received to the station from which it is originally sent; half the usual price for transmission will be charged for repeating the message.

"The Company will not be responsible for mistakes or delays of unrepeated messages from whatever cause they may arise."

It is alleged in answer, that the plaintiff had notice of the original terms and conditions, and sent the message subject to them, but did not require the message to be repeated, nor agree to pay for its repetition.

There is no allegation in plaintiff's petition that the mistake was occasioned by negligence, or was the result of incompetency, or want of proper skill on the part of the agents who were employed by the Company to act as operators in the sending and receiving of dispatches, but the failure of the Company to comply with its contracts to transmit the message correctly, is alone relied upon as the foundation of the plaintiff's right to a recovery in this action.

The proof shows that it is impracticable to transmit telegraphic communications with absolute accuracy at all times, and that such communications, from the very nature of the medium through which they are made, are subject not only to occasional interruptions and delays, but also inaccuracies in words and expressions. It may be therefore reasonably presumed that the failure to deliver this message correctly, was the result of a mistake to which such communi-

cations are liable, and which will sometimes occur even where the utmost care and skill are exercised.

The question then is, was the Company bound at all events to transmit the dispatch accurately, or had it the legal right to modify its liability by giving a public notice and bringing it home to the plaintiff, of the terms and conditions on which it alone would be bound for mistakes in the transmission of messages?

It is contended that the responsibility of the Company is fixed and defined by law, and cannot be changed or modified by any terms and conditions that the Company may think proper to prescribe.

It can hardly be doubted that the Company and the person sending a message might by express contract regulate the extent of the liability of the former for any mistake that might occur; here, however, there was no express contract between the parties, but the Company gave notice of the terms and conditions upon which it was willing to be responsible, and the plaintiff acted under that notice in sending the message.

We do not deem it necessary to decide in this case to what extent a telegraph company has a right to limit its liability by a notice to those for whom it undertakes to transmit messages. All that we are now required to decide is, whether the condition which the Company relied on in this case is reasonable, and such a one as it had a right to prescribe.

The public are admonished, by the notice, that in order to guard against mistakes in the transmission of messages, every message of importance ought to be repeated; a person desiring to send a message is thus apprised that there may be a mistake in its transmission, to guard against which it is necessary that it should be repeated. He is also notified that if a mistake occur the Company will not be responsible for it unless the message be repeated. There is nothing unreasonable in this condition. It gives the party sending the message the option to send it in such a manner as to hold the Company responsible, or to send it for a less price at his own risk. If the message be unimportant he may be willing to risk it without paying the additional charge; but if it be important, and if he wishes to have it sent correctly, he ought to be willing to pay the cost of repeating the message.

This regulation, considering the incidents to which the business is liable, is obviously just and reasonable. It does not exempt the Company from responsibility, but only fixes the price of that responsibility; and allows the person who sends the message either to transmit it at business risk at the usual price, or by paying in addition one-half the usual price to have it repeated, and thus render the Company liable for any mistake that may occur.

The plaintiff must, therefore, be regarded as having sent the message in this case at his own risk, inasmuch as he failed to have it repeated, and consequently the Company was not liable for the mistake. It is unnecessary, therefore, to decide whether the plaintiff was legally responsible for the sixteen cents per gallon for the whiskey, or only for the price which he actually offered.

It is therefore considered that the judgment of the Chancellor, dismissing the plaintiff's petition, be affirmed.

In the Supreme Court of Wisconsin, June, 1858.

DUTY MOWRY, ASSIGNEE OF DAVID MOWRY, APPELLANT, VS. HANS CROCKER, RESPONDENT.

1. Personal property follows the law of the domicile of the owner as to transfer; and the execution of an assignment of personalty passes the personalty wherever situate, *ipso facto*, to the assignee, provided the assignment be valid in the State where it is executed.
2. It is sufficient, if any notice of the assignment comes to the debtor; the assignment works an equitable transfer of the debt; and the notice will charge the debtor with the duty of payment to the assignee.
3. An attachment subsequently laid, although before the actual reduction of the money into the assignee's possession, cannot prevail against him.

Nelson Cross, of counsel, and *N. C. Gridley*, attorney for appellant, and

J. E. Arnold, attorney for respondent.

The opinion of the court was delivered by

COLE, J.—This was a voluntary assignment of property, in trust for creditors, made and executed in the State of Rhode Island. It