COMMENT.

In no other branch, is the law so dependent upon scientific theories and discoveries, as it is in that of electricity. The judicial decisions of to-day may be modified or reversed by a better understanding of the laws which regulate this mysterious power, and inventions of the future may altogether obviate many of the very difficulties which now seem inseparable from its use. The case of the *Hudson River Telephone Co.* v. *Watervliet Turnpike & R. R. Co.*, 32 N. E. Rep. 148 (N. Y.), well illustrates the delicate questions which may arise on this subject.

Here, both plaintiff and defendant occupied the streets with their wires. The former to connect their telephones; the latter to transmit power to their cars operated by the single trolley-system. The plaintiff complained that the light and pulsating current which they used, and which is necessary for the best results in telephone service, was destroyed by the stronger, unsteady one, employed by the defendant, both through induction and conduction, and desired an injunction to prevent the railroad company from thus injuring their business.

The charter of the plaintiff gave them the privilege of occupying the highway with their wires, provided they did not interfere with the public travel thereby. Maynard J. held, that the appeal must be denied on the strength of this provision, which made the plaintiff's charter of a subordinate character; but he goes on to say, "the plaintiff is not using the streets for one of the purposes to which they have been dedicated as public highways, while the defendant is occupying them in such a manner as to expedite public travel and promote the public use, to which they were originally devoted. The condition contained in the plaintiff's grant would have been implied if it had not been expressed." The defendant therefore has the primary right to the street from the nature of its business of providing means for public transit, and even though injury may result to the plaintiff's business from the strong current of electricity necessary for the operation of the system which has been adopted (and which has been found by a referee to be not only safe but the best now known), this is in itself no ground for action, for "the inconveniences or loss which others may suffer from the adoption

of a mode of locomotion authorized by law, which is carefully and skillfully employed and which does not destroy or impair the usefulness of the street as a public way, is not sufficient cause for a recovery." This, necessarily, disposed of the plaintiff's ground for complaint on account of damage due to induction from the defendant's wires in the street. In discussing the injury from conduction, however, a more difficult question was developed.

In the use of every electric current a complete circuit is necessary. One half of this is made by the wires, the return being effected through the earth. The plaintiff made its ground connections on the land of its subscribers by attaching the wire to the gas or water pipe. The defendant attained the same object by discharging their current into the earth by means of the rails, from which it flowed through the ground to plaintiff's wires (which were now on private property, on which they were licensees), and caused even more serious disturbance than had the induction between the wires in the streets. As to defendant's liability on this point the court does not commit itself, however, though it draws an analogy between this case and that of a person collecting water on his own premises in large quantities and allowing it to escape on the land of another. "We are not prepared to hold that a person, even in the prosecution of a lawful trade or business upon his own land, can gather there by artificial means a natural element like electricity and discharge it in such a volume that, owing to the conductive properties of the earth, it will be conveyed upon the grounds of his neighbor with such force and to such an extent as to break up his business or impair the value of his property, and not be held responsible for the resulting injury. * * * But the record before us does not require a determination of the question in this form," for since this use of the earth is a necessary consequent of the use of the plaintiff's indivisible charter and, as before stated, their franchise is subservient to that of the defendant, where a conflict of rights arises the plaintiff must give way. The plaintiff uses its franchise by the grant, subject to the rights of public passage, "and it cannot question the form in which such right shall be enjoyed so long as it is of lawful origin and is utilized with proper care and skill. The defendant's mode of conveyance of passengers is of this character, and the plaintiff can no more justly complain of its loss from this source than it could if by the jarring of loaded vehicles passing up and down Broadway its delicate and sensitive instruments were displaced and their beneficial use impaired or destroyed."

Two cases have been decided recently which are interesting as showing how litigation based on a similar state of facts may lead to directly opposite results in different States. *Yordy* v. *Marshall County*, 53 N. W. Rep. 298 (Iowa), and *Clulow* v. *McClelland*, 25 Atl. Rep. 147 (Penna.) In each instance an action was brought to recover damages for injuries to a steam threshing machine, caused by the breaking of a bridge on the highway. Each court referred with approval to the doctrine laid down in *McCormick* v. *Township of Washington*, 112 Pa. St. 185, that a "township is not required to assume that its bridges will be used in an unusual manner, either by crossing at great speed or by the passing of a very large and unusual weight." The point, therefore, on which the decisions turned was whether it was an unusual use of bridges to transport steam threshing machines over them. In Iowa it was held that whether such use was unusual and extraordinary was for the jury to decide, and a verdict in favor of the plaintiff was sustained. But in the Pennsylvania case, the court decided that the use was unusual as a matter of law, and that the judgment of the lower court against the plaintiff should be affirmed. Chief Justice Paxson remarked, however, that when the transportation of such machines over bridges should become so frequent in that State as to amount to an ordinary use, "it may be necessary to strengthen the bridges so as to withstand the increased strain."

* * *

If we can accept the authority of Chaucer, the dominating power in woman is the desire to rule supreme in all her domestic relations. This is well illustrated in the recent New Jersey case of *Shinn* v. *Shinn*, 24 Atl. Rep. 1022. Here the husband immediately after marriage led his wife home to a house of which he himself was the owner, but which was occupied by a large number of his relatives. The wife had one room set apart for her use; she had comforts and conveniences suitable to her husband's situation in life, but she had no part in running and managing the household. Repining under this regime she left her home and took up her abode with a relative, alleging that all the household had united in ill-treating and abusing her. A correspondence between her husband and herself ensued, in which he formally offered to receive her back; but she refused to return, and brought an action against him for her support. An agreement between them was patched up, by the terms of which the husband took a separate house for their joint use. But here was another disappointment, for he furnished it in a very humble and meagre

way, and basely refused to allow her friends admission. So the truce was broken, and the suspended action was resumed. The court held, in passing on the case, that the husband's action in demanding her return, and later in taking a separate house, was merely a screen to escape the legal liability, which his real attitude towards his wife exposed him to; that every wife is entitled to a home suited to her husband's position in life, over which she can preside as mistress; and that a house in which the husband and wife are mere boarders, while the control thereof is in others, does not furnish such a home as the wife is entitled to, even if the ownership of the property does vest, as here, in the hard-hearted husband.

* * *

Two recent decisions—*Peel Splint Coal Co.* v. *State*, 15 S. E. Rep. 1000 (W. Va.) and *State* v. *Loomis*, 20 S. W. Rep. 332 (Mo.)—handed down within a week of each other, in different States, illustrate to what extent the power of police regulation will be applied when necessary to uphold a beneficent statute. The practice known in England as the "Truck system" of issuing in payment of wages what is called "scrip," became very prevalent in this country along with the development of mining and manufacturing industries. This was more especially true of mining. Each well-regulated mining establishment had its "company store" to which its employes must go with their store orders or "scrip" and be required to take "store pay" in return for their labor. The evils of such a system are apparent. Oftentimes the profits made by the store exceeded those of the business to which it was contingent. In consequence of these abuses a number of States have passed laws for the purpose of abolishing such a system, and both the cases above mentioned arose from prosecutions for the violation of such statutes.

The West Virginia Court had a precedent in *State* v. *Goodwill*, 33 W. Va. 179, and *State* v. *Coal & Coke Co.*, 33 W. Va. 188, in both of which the Court held that a statute prohibiting persons, firms and corporations engaged in mining and manufacturing from issuing any order or other paper in payment of wages unless it purports to be redeemable for its face value in lawful money, is unconstitutional on the ground that it is class legislation, and unreasonably infringes the right of contract. But in *Peel Splint Coal Co.* v. *State* a statute containing prohibitions of the same general nature is declared valid and distinguished from that passed upon in the two earlier cases by the fact that while the earlier statute was directed only against persons engaged in mining and

manufacturing industries, the present applies to all persons, firms and corporations whatsoever, and is therefore clearly within the police power of the State.

The Missouri court criticizes the decision in the two earlier West Virginia cases and declares valid a statute very similar to the one declared unconstitutional in those cases, basing its decision upon the general police power, and citing the statutes of several American States, and the famous "Truck Act" of 1 & 2 William IV. c. 37, that finally abolished the "Truck system" in England. Whatever may be the grounds upon which these statutes and decisions are based, the purpose is the same in every instance, and they all point to the same end, the suppression of a system of dealing with the laboring classes that is very susceptible of abuse, and which, in point of fact, has been very extensively abused.

* * *

In the case of *Stone* v. *Mississippi*, 101 U. S. 814, the Supreme Court lays down the doctrine that the legislature of a State cannot barter away either the public health or the public morals. The power of government being a trust committed by the people to the State no part of it can be granted away and the revocation of an attempt by a legislature to make such a grant, does not impair the obligation of a contract within the meaning of the Constitution. The recent decision in the Chicago Lake Front cases, (*Illinois Central R. R. Co.* v. *Illinois*, 13 Supreme Court Reporter 110), may very properly be considered an application of the principle governing *Stone* v. *Mississippi*, *supra*. In the Lake Front cases the question was as to the power of the State of Illinois to revoke a grant of certain submerged lands constituting the bed of Lake Michigan. By a divided court it was decided that the grant was revocable, and thus the power of a State to regulate its navigable waters, harbors, etc., was classed among those governmental powers which are held in trust for the public and by a grant of which no legislature can irrevocably bind the State. This proceeds upon the theory that an ownership of land in fee by any other than the State, though under certain restrictions is nevertheless inconsistent with the administration of the trust held by the State for the public and over which functions of government are to be exercised. In the language of Mr. Justice Field, the State can no more abdicate such a trust "than it can abdicate its police powers in the administration of government and the preservation of peace."