RECENT CASES

CARRIERS—CONTRIBUTORY NEGLIGENCE—QUESTION OF FACT—ALIGHTING FROM STREET CAR.—BURKES V. NORTHERN TEXAS TRACTION CO., 185 S. W. (TEX.) 428. The plaintiff while standing on the step of a street car waiting for it to stop was thrown therefrom by a sudden jolt. He sued to recover for the resulting personal injuries. *Held,* that the plaintiff's standing on the step did not constitute contributory negligence as a matter of law and the refusal of the trial court to submit to the jury the question whether the operatives of the car were negligent in causing it to jolt was error.

Contributory negligence has been defined as such negligence on the part of the plaintiff as helped to produce the injury complained of. *Akin v. Bradley Eng. & Co.,* 51 Wash. 658. A right of recovery for personal injuries is not defeated by the fact that the plaintiff's own act or conduct contributed to the injury unless such act or conduct was negligent. *City of Wyandotte v. White,* 13 Kan. 191. Contributory negligence is generally a question of fact for the jury, unless no recovery could be had upon any ivew, which could be properly taken of the facts. *Gentzkow v. Portland R. Co.,* 54 Or. 114; *Illingsworth v. Boston Electric Light Co.,* 161 Mass. 583. Experience would seem to justify the court, in arriving at the conclusion that standing on the step of a street car awaiting to alight is negligence only under particular circumstances which should be determined by a jury.

S. F. D.

CARRIERS—DELIVERY—NECESSITY OF NOTICE.—MATTHEWS ET AL. V. ST. LOUIS, I. N. & S. RY., 185 S. W. (ARK.) 461.—The owner of a cotton gin, located on a spur track, was accustomed to notify the conductor of a freight train when the car, placed there by him, was loaded, and to receive from him a receipt for contents of car. After loading, but before notice was given to the conductor, the car was burned. *Held,* company was not liable as a common carrier, until notice was given. McCullough and Kirby, J.J., *dissenting.*

In order for the liability of a common carrier to attach, there must be delivery for immediate transportation. *Gulf, Colorado & Santa Fe R. R. Co. v. S. T. Trawick,* 80 Tex. 270. It is not for immediate transportation if anything remains to be done by consignor before goods can be shipped, and in such case the liability of the company is that only of a warehouseman. *Dixon v. Central of Georgia Ry. Co.,* 110 Ga. 173. Where goods are delivered to a common carrier to await further orders from the shipper before shipment, the former is only liable as warehouseman, while they are so in his custody. *Edward J. O'Neill v. N. Y. Central & Hudson River R. R. Co.,* 60 N. Y. 138. The parties may agree as to what will constitute delivery for immediate transportation. *Ga. Southern & Florida Ry. Co. v. Marchman,* 121 Ga. 235. Express notice is not necessary, where

carrier has made it a custom to accept goods at a particular place without special notice of such deposit. *Merriam v. Hartford & New Haven R. R.*, 20 Conn. 354. In loading cars on side-track, delivery, which will attach the carrier's liability, takes place when car is loaded and notice given of such loading. *Kansas City, M. & O. Ry. Co. v. Cox*, 25 Okla. 774. The carrier is liable only as warehouseman, where car has been loaded, but notice has not been given. *Tate & Co. v. Yazoo & Miss. Valley R. R. Co.*, 78 Miss. 842. Notice does not seem to be the turning point in the case. *Ill. Central R. R. Co. v. J. L. Smyser & Co.*, 38 Ill. 354. The courts base their reasoning on the fact that the car belongs to the company and is under its control and in its possession, at least to the extent, that the company can move it anywhere on its tracks after it is loaded; whereas shipper has no such right. But wherever notice of any nature has been customary, no delivery sufficient to attach the liability of a common carrier, has been made until notice has been given.

J. N. M., JR.

CONTRACTS—ILLEGALITY—SHARING OFFICIAL SALARY.—SHINN V. SHINN, 88 S. E. (W. VA.) 610.—Two partners contracted that the salary of one elected sheriff of his county should be paid into the partnership funds and be divided equally—the sheriff to carry on the duties of his office, and the other partner to continue the firm business. *Held*, that such a contract was not illegal and was enforceable.

That the unearned salary of a public officer is not assignable on the ground that such an assignment is against public policy is law in England and the United States. *Arbuckle v. Cowan*, 3 B. & P. 321; *Field v. Chipley*, 79 Ky. 260; *Bliss v. Lawrence*, 58 N. Y. 442. But an agreement between two partners to share the salary of one, a public officer, has been held not to be an assignment of unearned salary, but to be an agreement as to the manner in which the salary should be disposed of when earned and paid. *McGregor v. McGregor*, 130 Mich. 505; *Thurston v. Fairman*, 9 Hun (N. Y.) 584. In *Anderson v. Branstrom*, 139 N. W. (Mich.) 40, a contrary decision is given on the ground that such an agreement is in substance and effect an assignment of unearned salary. This case could have been decided on the broad ground of public policy alone. The facts show an agreement by one candidate not to run for the office of prosecuting attorney and to withdraw in favor of his rival, in consideration of which they should divide equally the salary of the office. Such an agreement is plainly void. *Hunter v. Wolf*, 71 Pa. St. 282. The cases of *Gaston v. Drake*, 14 Nev. 175, and *Wisher v. Hammond*, 10 N. D. 72, which might seem opposed to the principal case, can be distinguished in that here the agreement came before the election to office of the one partner and so there was an incentive to the other to work for his election. *Santleben v. Froboese*, 43 S. W. (Tex.) 571, is, however, squarely against the principal case. The court says: "the idea that an officer elected by the people can put his office in as part of the assets of a partnership is utterly repugnant to public policy."

F. W. D.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE—SUPERVENING STATUTE.—LEISTON GAS CO. v. LEISTONCUM-SOZIWELL URBAN COUNCIL.—(1916) 1 K. B. 912.—Plaintiffs had contracted to furnish defendants with gas light for street lamps at so much per lamp for a period of five years. During the period, the Defense of the Realm Act was passed prohibiting, until further notice, the lighting of street lamps. Plaintiffs, though not furnishing light, sued the city for the price of gas as agreed. *Held,* recovery of full contract price will be allowed on the ground that plaintiff had been ready at all times to furnish said light service.

Impossibility of performance of a contract will not release either party unless occasioned by some act of the government. 9 *Cyc.* 630; *Bailey v. DeCrespigny,* L. R. 4 Q. B. 180; *Sanner v. Phoenix Ins. Co.,* 41 Mo. App. 480. An exception is laid down, where the act of government is temporary, and holds discharge will not take place where ultimate performance is possible. *Baylies v. Fettyplace,* 7 Mass. 325; *Hadley v. Clark,* 8 T. R. 259. Both these cases deal with embargo laws preventing immediate delivery of cargoes. A distinction can be made between such cases and those calling for a continued performance, such as a contract for light. *Whitfield v. Zellnor,* 24 Miss. 663; *Jones v. Judd,* 4 Comst. (N. Y.) 411; *Williams v. Butler,* 105 N. E. (Ind.) 387. In such cases, recovery is allowed on a *quantum meruit* and not on the original contract. *McClay v. Hedges,* 18 Ia. 66; *Green v. Gilbert,* 21 Wis. 395. To compel payment according to the original contract is to compel the city to pay for something it never received, through no fault of its own. *Stewart v. Loring,* 5 Allen (Mass.) 306; *Woodward v. Town of Rutland,* 61 Vt. 316.

H. N. B.

CORPORATIONS—CORPORATE POWERS—LOANING MONEY.—CALUMET AND CHICAGO CANAL AND DOCK CO. v. CONKLING, 112 N. E. (ILL.) 982.—A company was incorporated to construct a canal, docks, etc., and empowered to purchase real and personal estate and to sell, lease and "employ" it as it should determine. *Held,* the corporation was not thereby authorized to loan money. Carter, Craig and Duncan, JJ., *dissenting.*

While it is true, as a general proposition, that a corporation engaged in an industrial or construction business has no authority to engage in a business of loaning money, it does not follow that it has not the power in the management of its funds to loan them temporarily at interest, when not needed in the prosecution of its business. *Canning Co. v. Stanley,* 133 Ia. 57. As incident to a successful business, a corporation has the implied power to invest its surplus funds to prevent them from being unproductive. *Bank of Berwick v. Vinson Shingle and Mfg. Co.,* 132 La. 861; *Frese v. Mutual Life Ins. Co.,* 11 Cal. App. 387; *North Carolina R. R. Co. v. Moore,* 70 N. C. 6. It may be considered a proper incident to the business of a corporation to dispose of its surplus property by extending financial aid to another in order to attain its object. *Holmes, Booth and Haydens v. Willard,* 125 N. Y. 75; *Union Water Co. v. Murphy's Fluming Co.,* 22 Cal. 620. The weight of authority, though the Illinois courts hold to the contrary, is with the dissenting judges in

the single question in point. But see *Western Telephone Mfg. Co. v. Foley,* 150 Ill. App. 343. The principal case as a whole cannot be reconciled with the court's decision in *Leigh v. American Brake Beam Co.,* 205 Ill. 147.

A. S. B.

EVIDENCE—ADMISSIBILITY OF ORAL AGREEMENT AGAINST WRITTEN CONTRACT.—STEVENS V. INCH, 158 PAC. (KAN.) 43.—In an action by payee on a promissory note which maker had made only after payee had agreed that the note was to be paid by a third party; that the note was a mere form; and that in no event would the maker be liable on it, *held,* that parol evidence of agreement is not admissible in defence to an action on the note.

Extrinsic evidence is not admissible to vary terms of written instrument, *Torpey v. Tebo,* 184 Mass. 307; however, it may be used to show fraud in inception or execution of instrument. *Phoenix Insurance Co. v. Owens,* 81 Mo. App. 201. Parol evidence is admissible to explain a contract or to show that none exists, though instrument on face purports to indicate a binding promise. *Colonial Park Estates v. Massart,* 112 Md. 648. If maker would not have signed without such an agreement being made, a breach of the agreement is a fraud upon him, and parol evidence of agreement is admissible. *Gandy v. Weckerly,* 220 Pa. St. 285. Also where part of the consideration for the giving of the note is the parol agreement, it can be shown by oral evidence. *De Rue v. McIntosh,* 26 S. D. 42; *Dicken v. Morgan,* 54 Ia. 684. The decision in the principal case is distinctly open to question.

F. L. McC.

EVIDENCE—JUDICIAL NOTICE—FEDERAL LEGISLATION PARAMOUNT.—TABER V. MISSOURI PAC. RY. CO., 186 S. W. (Mo.) 688.—Deceased, a railroad switchman, while making up a train in the yards at Kansas City, Mo., was negligently run over and killed. Evidence showed that deceased was "making up train No. 53, west-bound train." In a suit under Missouri Employer's Liability Act by a guardian for the minor children of the deceased, *held,* guardian could recover. Graves, J., *dissenting.*

Courts sitting in a particular state or territory have judicial knowledge of the geographical position of its political divisions, such as counties, cities, towns and townships, Wharton, *Evidence,* Sec. 339; *Linck v. City of Litchfield,* 141 Ill. 469; and of their boundaries as prescribed by statute. *Smitha v. Flournoy's Admr.,* 47 Ala. 345; *DeBaker v. So. Cal. R. Co.,* 106 Cal. 257. Judicial notice, therefore, should have been taken of the fact that Kansas City, Mo., is on the Kansas-Missouri state line. *Kansas City, etc., R. Co. v. Burge,* 40 Kan. 736; *Bishop v. Life Ins. Co.,* 85 Mo. App. 302. From the evidence, train No. 53 was a west-bound train, and a train being made up for a point west of Kansas City, Mo., for this reason would necessarily be interstate and not intrastate. Deceased, at the time of the accident, was engaged in interstate commerce. *Zikos v. Or. R. & N. Co.,* 179 Fed. 893; *Colasurdo v. C. R. of N. J.,* 180 Fed. 832. The power of

Congress to regulate interstate commerce is plenary. U. S. Const., Art. I. Sec. 8. Congress may legislate as to the rights, duties, and liabilities of employers and employes engaged in that commerce; and such legislation will supersede any state action on the subject. *Dewberry v. Southern R. Co.,* 175 Fed. 307; *Fulgham v. Midland Valley R. Co.,* 167 Fed. 660. Action should have been brought under the federal Employer's Liability Act of April 22, 1908, as amended by Act, April 5, 1910. Under this act the right to sue is in the personal representative of the deceased. U. S. Comp. Statutes, 1913, Sec. 8657. This petition, by minor children, through their guardian, stated no cause of action, and should have been dismissed.

E. J. M.

INSURANCE—FOREIGN CORPORATIONS—TAX ON RIGHT TO DO BUSINESS WITHIN STATE.—CITIZENS INSURANCE CO. V. HERBERT, 71 So. (LA.) 955.—La. Const. Arts. 224-227, provides that the legislature can itself directly exercise the taxing power only for state purposes. An act of the legislature required foreign fire insurance companies under penalty of $500 or forfeiture of their license to do business, to pay to the state treasurer one per cent of the premiums received, which was to be turned over to the fire departments of the cities, towns, and villages. *Held,* that said act did not violate the above clauses of the state constitution, since this duty was not a tax, as it lacked the feature of a tax of becoming obligatory. O'Neill, J., *dissenting.*

It is well settled that a state may tax foreign insurance companies doing business in it. *Ducat v. Chicago,* 10 Wall (U. S.) 410. But the levying of an obligatory impost upon the business of insurance is not an exercise of the police power, but an arbitrary exercise of the power of taxation. *State v. Merchants' Ins. Co.,* 12 La. Ann. 802; *San Francisco v. Liverpool & L. & G. Ins. Co.,* 74 Cal. 113; *State of Nebraska v. Wheeler,* 33 Neb. 563; *Union Bank v. Hill,* 3 Cold. (Tenn.) 325; Cooley, *Const. Lim.* (2d. Ed.) p. 283; Dillon, *Mun. Corp.* §§ 93, 609. The reasoning of the majority in the principal case is that this impost is not a tax, since it lacks the essential feature of a tax of becoming obligatory, and that its sole sanction is the withholding of permission to do business. Since the obligation cannot be incurred until a premium is earned, it is hard to conceive how the sanction to do business is withheld, since the business must have already been done and the premium earned, before the tax has become due. For this first act at least, there is no withholding of the right to do business. The weight of authority is apparently in conflict with the principal case.

L. J. N.

INSURANCE—LIABILITY OF INSURANCE COMPANY IN EXCESS OF POLICY ON GROUND OF BAD FAITH.—BROWN & MCCABE, STEVEDORES V. LONDON GUARANTEE & ACCIDENT CO., 232 FED. 298.—An employer's liability insurer having ascertained that an injured employe would settle for less than the amount of the policy, refused to pay the claim unless the policy holder

would bear half the loss, stating that in case it would not do so the pending action would be permitted to proceed to trial and would necessarily result in a judgment in excess of the face of the policy. The plaintiff refused to accede to this demand, the case was tried, and the employee recovered a judgment for $12,000. The insurance company thereupon paid $5,000, the face of the policy and refused to pay more. The plaintiff sued the insurance company for the balance. *Held,* plaintiff could recover.

The liability of the guaranty insurer determined in accordance with the provisions of the policy, is, within the limit of the sum written in the policy, measured by the actual loss suffered by the insured. Vance, *Insurance,* p. 599. In *London Guaranty & Accident Co. v. Mississippi Central R. Co.,* 97 Miss. 165, it was laid down that the liability of an employer's liability insurance company on a policy is fixed by the term of the policy. In *Schmidt's Sons Brewing Co. v. Travelers Ins. Co.,* 244 Pa. 286, it was held that an indemnity company, refusing to agree to a settlement which the insured could have procured and a judgment thereafter being obtained for a larger amount against the insured, was not liable for that part of the judgment above the amount of the policy and in excess of the settlement which it refused to accept. This differs from the principal case, in which the insurance company manifested bad faith and sought to coerce the insured into paying the very liability from which they had contracted to exonerate him. In the principal case the insurer specifically bound itself to defend an action at its own cost or expense, should such action be commenced against the insured. Previous to such a time when the company would be bound under the specific terms of the contracts there was an implied or tacit obligation upon the insurer to act in good faith. The holding was probably based upon the breach of this implied obligation, thus allowing full damages for the resulting loss, although $7,000 in excess of the policy.

G. S., Jr.

Intoxicating Liquors—Sale on Unlicensed Premises—Executory Agreement for Sale.—Titmus v. Littlewood, 114 L. T. 614 (K. B. D.).—By Sec. 65 of the Licensing (Consolidation) Act, 1910, "a person shall not sell or expose for sale by retail any intoxicating liquor, unless he holds a justice's license for the sale of that intoxicating liquor, nor at any place except that for which the justice's license authorizes him to hold an excise license for the sale of that liquor," and any violation of this section is made an offense. Where an agent of the defendant procured an order from a customer at the latter's residence, receiving payment at the same time; and the defendant, in execution of the order, appropriated the liquor on his licensed premises, and had the liquor delivered to the customer, it was held in the trial court that a sale had been made at the customer's residence. On appeal, judgment was reversed. *Held,* the sale was not consummated at the customer's residence, but on the licensed premises of the defendant.

A sale, which is a present transfer of the entire title for a consideration, is to be distinguished from an executory contract, since in the latter

case no title passes immediately. Benjamin, *Sales,* p. 4. The decision of the English case is in accordance with numerous American cases. To constitute a sale of personal property, especially under a penal statute, there must be a transfer of title for a certain consideration. Orders for goods do not constitute a sale in and of themselves; but the place of sale is the place where goods ordered are set apart to be delivered to th purchaser. *Coffeen v. Huber,* 78 Ill. App. 455; *Ferbracht v. Commonwealth,* 96 Pa. 449. But there are cases which are in direct conflict with the preceding cases. *Swift v. State,* 69 S. W. (Tenn.) 326 held that there was a sale of liquor without license where the agent of parties licensed to sell liquor obtained orders in a county where his principals were not empowered to sell, although the liquor was shipped from the licensed premises. There is still a third possible theory to support in a consideration of this case, and under which a prosecution for violation of liquor statutes may be obtained. Where the defendant on receiving one dollar from a friend in a town where the sale of liquor was prohibited, purchased whiskey in a license town and delivered the whiskey to his friend in the first town, the court convicted the defendant for illegally selling liquor, on the ground that the sale was made in the town where the liquor was delivered. Thus, the place of sale was held to be the place where delivery of goods was made. *State v. Johnson,* 52 S. E. (N. C.) 273.

J. I. S.

MASTER AND SERVANT—WORKMEN'S COMPENSATION—ACCIDENT OR DISEASE—DEATH BY HEATSTROKE.—PYPER V. MANCHESTER LINERS LIM- (1916) Ct. of App., Eng.—A stoker employed on a steamer navigating the Red Sea died of a heartstroke consequent upon a collapse while in the course of his employment. *Held,* that death was due to the voluntary submission to certain normal causes likely to affect the deceased, and not to an accident within the meaning of the Workmen's Compensation Act.

English cases are irreconcilably divided on this subject. *Fenton v. Thorley* (1903) A. C. 443, holding that where a workman ruptured himself by over-exertion it was an accident in the course of his employment, has had a profound influence on subsequent English decisions. *Brinton's Limited v. Turvey* (1905) A. C. 230, held that decision binding upon the Court, applying the definition of that case, that an "Accident in the Workmen's Compensation Act means any unexpected or unintended result which causes personal injury." Thus it was held that a workman who was sorting wool and was infected with anthrax by a bacillus from the wool entering his eye, was injured by an accident. *Ismay, Imrie & Co. v. Williamson* (1908) A. C. 437, on the very question of death caused by a heatstroke in the stoke-room of a steamer, held death due to an accident. See *Bryant v. Continental Casualty Co.,* 182 S. W. (Tex.) 672, holding the same as to sunstroke. *Maskery v. Lancashire Shipping Co.,* 7 B. W. C. C. accords. A very recent American decision, N. Y. Workmen's Compensation Com. *in re Patrick Fennelly,* File 14876, held that where a puddler in an iron factory fell and was injured, as a result of a fainting spell brought about by overheating, his injury was accidental.

Sinclair v. Assurance Co., 3 El. & El. 478, in accord with the principal case has adopted the prevailing doctrine of the law of accident in insurance that heatstroke is to be classed as a disease and not an accident. While in the popular mind there is a belief that sunstroke is to be considered an accident, the courts have followed medical authority and recognized it as a disease. An architect who in the ordinary course of his labor contracted sunstroke was held not to come within the provision of the policy against injury sustained by accidental means. *Dozier v. Fidelity Ins. Co. of N. Y.*, 47 Fed. 446. Courts of New York regard sunstroke as a disease. *Appel v. Ætna Life Ins. Co.*, 180 N. Y. 514, *Elsey v. Fidelity & Casualty Co.*, 109 N. E. (Ind.) 413; also May, *Insurance*, § 519; *Coos v. Insurance Co.*, 6 Thorp. & C. (N. Y.), 364. Medical authority recognizes the similarity of heatstroke to sunstroke, in nature and inducing causes, which *per se* should be a reason for establishing the same rule as regards both. Wm. Osler, *Principles and Practice of Medicine*, p. 390.

B. L.

MUNICIPAL CORPORATIONS—GOVERNMENTAL FUNCTIONS—ZOOLOGICAL GARDENS.—HIBBARD V. CITY OF WICHITA, 159 PAC. (KAN.) 399.—The plaintiff, a child of 4, was playing in a zoological garden maintained by the city of Wichita, and in placing her hand and arms upon a wire cage containing coyotes, was severely bitten. *Held*, the city is not liable, though its agents were negligent in not properly confining the animals, the maintenance of such a garden being a governmental function. West, J., *dissenting*.

Governmental functions have been defined as such powers of a municipality as are to be exercised by the corporation for the public weal, in, or for the exercise of, which the municipality receives no compensation or particular benefit. These functions are legal duties imposed by the state upon its creature, which it may not omit with impunity, but must perform at its peril. 28 *Cyc.* 267; *Hill v. Boston*, 122 Mass. 344. Such functions are served by the police power, *Woodhull v. N. Y.*, 150 N. Y. 450, by the maintenance of a fire department, *Wilcox v. Chicago*, 107 Ill. 334, and by those promoting public education. The dissenting opinion of the principal case appears ready to agree with the majority in holding a public park as a governmental function, yet it contends that the creation and maintenance of a nuisance, "excuseless and most malignant," is certainly not a governmental function. This argument appears to be sustained by the precedents in Kansas, and it is submitted that the dissenting opinion is in greater consonance with the Kansas authorities. See *Murphy v. Fairmount Township*, 89 Kan. 760; *Kansas City v. Siese*, 71 Kan. 283. But there are cases in other jurisdictions which do not adopt the idea that maintaining parks is a governmental function. See especially *Gartland v. N. Y. Zoo. Soc'y*, 135 App. Div. 163; *Silverman v. N. Y.*, 114 N. Y. S. 59. This seems the more logical position, in view of the definition of a governmental function as a "legal duty." Assuming, however, that it is such a function, the dissenting opinion of the principal case seems the true doctrine, and in accord with the authority of its own state.

A. N. H.

TELEGRAPH AND TELEPHONE COMPANIES—NEGLIGENCE—LIABILITY FOR FAILURE OF SERVICE.—SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY V. THOMAS, 185 S. W. (TEX.) 396.—Plaintiff was unable to cope with a fire which had started in his residence. As a result of the central telephone operator being asleep while on duty. he was unable to call the fire department until fifteen minutes had passed. Due to this delay, the fire had reached the upper part of the house at the arrival of the fire department, and was beyond its control, as the water pressure was insufficient to throw the water to that height. *Held,* plaintiff could not recover on the ground that the negligence of the defendant was not shown to have been the proximate cause of the loss.

In case of failure to provide prompt and efficient service, telephone and telegraph companies are responsible for losses which are the proximate result. *Vinsone v. So. Beil Tel. & Tel. Co.,* 188 Ala. 292; *Veitch v. W. U. Tel. Co.,* 59 So. (Ala.) 352. The loss must be such as persons of ordinary care and forethought could have contemplated as a consequence of the breach. *Chicago v. Starr,* 42 Ill. 174. Thus, the delay was not the proximate cause of the death of a horse, where a telephone company negligently failed to deliver a message for a veterinary. *Centr. U. Tel. Co. v. Swoveland,* 42 N. E. (Ind.) 1035. Similarly, where a company failed to deliver a message to a witness, who, plaintiff claimed, would have turned a suit in his favor. *Martin v. Tel. & Tel. Co.,* 18 Wash. 260; and where a torn up street prevented a fire engine reaching a fire, it was held such negligence was not a proximate cause. *Hazel v. Owensboro,* 30 Ky. L. R. 627. The decision in the principal case, holding that the spreading of a fire can hardly be called a proximate result of a delay in making telephone connections, is in accord with the present weight of authority, but it offers a practical opportunity for the extension of this doctrine.

S. J. T.