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COMMENTS

PUBLICATION OF LIBEL—The recent North Carolina case of *Hedgpeth v. Coleman*¹ was an action for libel. It appeared that the defendant had sent a letter to the plaintiff, a boy about fourteen years of age, unjustly accusing him of theft and threatening to have him sent to the penitentiary if the goods and funds alleged to have been taken were not returned. Frightened by the letter, the plaintiff showed it to his brother and to one Parrott. The brother showed the letter to the plaintiff's father. *Held*, there was sufficient publication.

Unless a statute provides to the contrary,² the contents of a written defamatory statement, to be civilly actionable, must be communicated to the intelligence of some person other than the one defamed.³ Otherwise there is no injury to the esteem in which one is held by members of the community. For the action of libel is a remedy for a wrong to one's reputation, rather than to one's own feelings. Thus, merely to write out or compose a defamatory statement does not invoke liability.⁴ Nor, generally, is it libel to send insulting statements directly to the person accused.⁵ On the other hand, it is not necessary that the defamatory matter be published to the public generally. It is enough if it reaches the consciousness of any member of the community other than the sender and the person defamed.⁶

The more frequently recurring case, in which publication presents little difficulty, is that in which the defendant himself sends or shows the defamatory statement directly to the third person.⁷ Equally clear is the case at the other extreme, where the recipient of matter defaming himself voluntarily and without justification shows it to another. Here the defendant escapes liability because of the plaintiff's responsible contribution to his own injury.⁸

The more troublesome cases are those lying between these two extremes. Here liability seems to depend upon whether the sender, as a reasonable person, should have foreseen that the matter was likely to reach the consciousness of a third person, though sent or shown to the person defamed. In other words, in these cases as in the two situations first referred to, the fundamental test is one of responsible causation of plaintiff's injury. So, where the defendant is actually ignorant of the plaintiff's illiteracy,⁹ or of the fact that a clerk or a member of the family usually opens the plaintiff's mail,¹⁰ the defendant is not liable. But

¹ 183 N. C. 309, 111 S. E. 517 (1922). See 32 Yale L. J. 90.

² See *Rolland v. Batchelder*, 84 Va. 664, 5 S. E. 695 (1888).

³ *Watts v. Greenlee*, 13 N. C. 115 (1829); *Pullman v. Hill*, 1 Q. B. 524, 60 L. J. Q. B. 299, 64 L. T. Rep. 691 (1891). For publication in criminal libel, see 17 R. C. L. 462; *State v. Avery*, 7 Conn. 266, 18 Am. Dec. 105 (1828); *Kramer v. Perkins*, 10 Minn. 455, 113 N. W. 1062, 15 L. R. A. (n. s.) 1141 (1907).

⁴ *Weir v. Hoss*, 6 Ala. 881 (1844); *Youmans v. Smith*, 153 N. Y. 214, 47 N. E. 265 (1897).

⁵ *Wilcox v. Moon*, 64 Vt. 450, 24 Atl. 244, 33 Am. St. Rep. 936, 15 L. R. A. 760 (1892).

⁶ *Adams v. Lawson*, 17 Gratt. (Va.) 250, 94 Am. Dec. 455 (1867). And see *State v. McIntire*, 115 N. C. 769, 20 S. E. 721 (1894).

⁷ *Bacon v. Mich. Cent. R. Co.*, 55 Mich. 224, 21 N. W. 324, 54 Am. Rep. 372 (1884); *McCarlie v. Atkinson*, 77 Miss. 594, 27 So. 641, 78 Am. St. Rep. 540 (1900).

⁸ *Gough v. Goldsmith*, 44 Wis. 262, 28 Am. Rep. 579 (1878); *Wilcox v. Moon*, *supra*, note 5.

⁹ *State v. Syphrett*, 27 S. C. 29, 2 S. E. 624, 13 Am. St. Rep. 616, and note (1887); *Jackson v. Staley*, 9 Ont. Rep. 334.

¹⁰ *Roberts v. English Mfg. Co.*, 155 Ala. 414, 46 So. 752 (1908).

where the defendant writes the defamatory statement on a postal card,¹¹ or sends it in an unsealed envelope by a messenger who reads it,¹² or where he knows or has reason to know that the plaintiff customarily has a clerk open his letters,¹³ or is illiterate,¹⁴ liability attaches.¹⁵

The principal case is an example of the latter situation. The defendant, as a reasonable person, should have known that a young boy, unjustly accused of a theft of goods and moneys belonging in part to the United States postoffice and to an express company, and threatened with serious punishment in case he did not return that which he did not have, would show the letter to those upon whom he naturally felt dependent for protection and advice.

G. C. H., Jr.

WIFE'S CONFINEMENT IN INSANE ASYLUM AS CAUSE FOR DIVORCE—In *Lee v. Lee*¹ the facts were these: H and W were married in 1896. In 1910, W was committed to the state hospital for the insane, where she has since remained. In 1921, H brought suit for divorce, under C. S. sec. 1659, authorizing divorces "on application of the party injured, . . . in the following cases . . . (4) If there has been a separation of husband and wife, and they have lived separate, and apart for five² successive years, . . ." *Held*, judgment for defendant affirmed.

This cause for divorce was added by an act of 1907,³ amendatory of sec. 1561 of the Revisal of 1905. That section, like the present section of the Consolidated Statutes just quoted, authorized divorces to be given on the application of the injured party. Nevertheless, because the amendment itself did not contain such a stipulation, the court held, in *Cooke v. Cooke*,⁴ decided in 1913, that the new provision required a divorce to be given upon proof of mere severance of marital associations for the statutory period, regardless of the fault of either party, and in spite of the fact that the plaintiff had brought about the separation by abandonment of the wife. The incorporation of the amendment of 1907 into sec. 1659 of the Consolidated Statutes, in 1919, however, thus making the provision subject to the requirement that the action be brought by the injured party, relieved the court from following the *Cooke* case in *Sanderson v. Sanderson*,⁵ decided in 1919, and enabled it to hold that a divorce cannot be granted when the separation

¹¹ *Logan v. Hodges*, 146 N. C. 38, 59 S. E. 349 (1907). Note that cases on this question are decided, in part at least, by the federal statute (2 U. S. Compiled Statutes, sec. 3894, sub-sec. 5, p. 2661) prohibiting under severe penalties the mailing of post cards containing defamatory matter.

¹² *Rolland v. Batchelder*, note 2 *supra*.

¹³ *Rumney v. Wortham*, 186 Mass. 144, 71 N. E. 316 (1904); *Delacroix v. Thevenot*, 2 Stark. 63, 3 Eng. C. L. Rep. 317 (1817); *Pullman v. Hill*, note 3 *supra*.

¹⁴ *Allen v. Wortham*, 89 Ky. 485, 13 S. W. 73 (1890).

¹⁵ 15 L. R. A. 1141, note.

¹ 182 N. C. 61, 108 S. E. 352 (1921).

² The necessary period of separation was reduced from 10 to 5 years by P. L., 1921, ch. 63. The complaint in the principal case alleged a 10 years' separation. The court's charge to the jury, however, was predicated upon the amended statute.

³ P. L., 1907, ch. 89. This was amended in a particular irrelevant to the present discussion in P. L., 1913, ch. 165. For the prior statutory policy, see P. L., 1895, ch. 277; P. L., 1899, ch. 211; P. L., 1903, ch. 490. By P. L., 1905, ch. 499, all laws passed since the code of 1883 creating any cause for divorce were repealed. The Revisal of 1905 did not provide for separation or abandonment as a cause for divorce.

⁴ 164 N. C. 275, 80 S. E. 178 (1913).

⁵ 178 N. C. 339, 100 S. E. 590 (1919).

has been caused by the wrongful act of the plaintiff. Conversely, the implication of the *Sanderson* case is that the separation must be one in which the plaintiff's injury is caused by the conduct of the defendant.

Must this conduct be voluntary or wrongful? No difficulty arises where the defendant wilfully and without cause wholly abandons the plaintiff.⁶ Similarly, when, after the termination of the prescribed duration of a voluntary desertion, the defendant is imprisoned for a crime or is incarcerated in an insane asylum, the same result should obtain.⁷ Another situation is that in which the original taking of leave has been voluntary enough, but where during the statutory period, the defendant is confined in prison⁸ or in an insane asylum.⁹ There is a distinction here, based upon the defendant's responsibility for his confinement. And, in the absence of controlling statutes, the cases seem to proceed on the basis of that distinction. Conceivably, the likelihood of a return to the plaintiff had the defendant been free to do so, should also be taken into account.

Still another situation is that in which the separation was begun and continued for the entire period by the defendant's imprisonment¹⁰ or confinement in an insane asylum.¹¹ Again, in the case of the prisoner, most courts seem to hold, even under a statute requiring a voluntary separation, that a divorce may be granted. This, because the imprisonment was not without the defendant's fault. But in the insanity case, most courts refuse a divorce. Not only is the separation involuntary; it is free from fault. And it has been thought that a contrary result would be a violation of the marital obligation to remain loyal in the event of misfortune. The principal case is one of this latter type.

R. P. D.

LIABILITY OF TERMINAL CARRIER UNDER INTERSTATE COMMERCE ACT—

The recent North Carolina case of *Moore and Co. v. Southern Ry. Co.*, involved the following facts: Plaintiffs were consignees of a box of clothing which had been shipped to them in North Carolina from New York, over the Pennsylvania and Southern railroads. A through bill of lading had been issued by the Pennsylvania, the initial carrier, exempting it and each of the connecting carriers from liability for loss or injury not occurring on its own road, unless that liability should be imposed by law. The Southern, the terminal carrier, delivered the box in Asheville and collected the freight. When opened, the box was found to be empty. In an action against the terminal carrier, the jury found that the loss occurred, not because of any fault upon the part of the defendant, but

⁶ See *Setzer v. Setzer*, 128 N. C. 170, 38 S. E. 731 (1901).

⁷ *Harrigan v. Harrigan*, 135 Cal. 397, 67 Pac. 506 (1902); *Gordon v. Gordon*, 89 N. J. Eq. 535, 105 Atl. 242, 244 (1918).

⁸ *Hews v. Hews*, 7 Gray (Mass.) 279 (1856); compare *Hyland v. Hyland*, 55 N. J. Eq. 35, 36 Atl. 270 (1896). In general, in connection with this note and those following, see L. R. A. 1918 A, 1184, note, and Schouler, *Marriage, Divorce, Separation, and Domestic Relations*, 6th ed., sec. 1621, and cases cited.

⁹ *Gordon v. Gordon*, note 7, *supra*.

¹⁰ *Davis v. Davis*, 102 Ky. 440, 43 S. W. 168 (1897).

¹¹ *Messick v. Messick*, 177 Ky. 337, 197 S. W. 792, L. R. A. 1918 A, 1184 (1917); *Daugherty v. Daugherty*, (Tex. Civ. App.) 198 S. W. 985 (1917).

through the negligence of the initial carrier. *Held*, judgment for defendant affirmed.¹

In the absence of statute or of a special contract, a common carrier of goods is liable at common law as an insurer for loss or damage caused on its own line.² This rule, of course, is subject to the usual exceptions relating to an act of God or of the public enemy and the like. Conversely, under this rule, a carrier is not liable for loss occurring on the route of a connecting carrier. The clause in the bill of lading in the principal case seems to be merely declaratory of this principle and an attempt to exempt the carrier from the opposite principle which obtains in a minority of the states.³ But the carrier may by contract reduce its liability, for losses caused on its own road, from that of an insurer to that of liability for negligence only.⁴ Such contracts now constitute standard clauses in nearly all bills of lading. Similarly, by special contract either with the shipper or with the associated lines, the carrier may extend its responsibility over the entire route so as to make it liable for loss or damage occasioned anywhere along the line.⁵

This last result is obtained as to the initial carrier at common law by the courts of England and of a few of the American states which hold the connecting carriers under a through bill of lading to be agents of the initial carrier.⁶ To the same effect are the amendments to the Interstate Commerce Act.⁷ Under this statute, as amended, the initial carrier in an interstate shipment is today compelled to issue a through bill of lading,⁸ is made liable for all loss or damage occurring en route,⁹ and is given an action over against the connecting carrier on whose line the injury took place.¹⁰ It is further provided that no contract shall operate to exempt the initial carrier from this responsibility, and that nothing in the act shall deprive the holder of the through bill of lading of any remedy accruing under existing law. This last clause, however, has reference only to the existing federal law.¹¹ While it is suggested in the dissenting opinion in the principal case that this enactment makes the connecting railroads partners and therefore equally liable, the view taken by the majority of the North Carolina court and by the Supreme Court of the United States in a similar case,¹² is that

¹ 183 N. C. 213, 111 S. E. 166 (1922).

² *Myrick v. Mich. Cent. Ry. Co.*, 107 U. S. 102, 27 L. Ed. 325 (1883); *Backhouse v. Sneed*, 5 N. C. 173 (1808).

³ See the cases cited in note 6, *post*.

⁴ *Hart v. Penna. Ry. Co.*, 112 U. S. 331, 28 L. Ed. 717 (1884); *Capehart v. R. R. Co.*, 81 N. C. 438 (1879).

⁵ *Myrick v. Mich. Cent. Ry. Co.*, *supra*, note 2; *Phiffer v. R. R. Co.*, 89 N. C. 311 (1883).

⁶ *Watson v. Ambergate, N. and B. Ry.*, (1852 Q. B.) 15 Jur. 448; *Ill. Match Co. v. Chicago, R. I. & P. Ry.*, 250 Ill. 396, 95 N. E. 492 (1911); *Allen v. Canadian Pac. Ry. Co.*, 42 Wash. 64, 84 Pac. 620 (1906); 32 Yale L. J. 84.

⁷ U. S. Comp. Stat., sec. 8604a, 8604aa.

⁸ See *Parker Bell Lumber Co. v. Great Northern Ry. Co.*, 69 Wash. 123, 124 Pac. 389, 41 L. R. A. (n. s.) 1064 (1912); *A. C. L. Ry. Co. v. Riverside Mills*, note 9, *post*.

⁹ See *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A. (n. s.) 251 (1913); *A. C. L. Ry. v. Riverside Mills*, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. Ed. 167, 31 L. R. A. (n. s.) 7 (1911).

¹⁰ *Galveston, H. & S. Ry. Co. v. Wallace*, 223 U. S. 481, 32 Sup. Ct. 205, 56 L. Ed. 516 (1912).

¹¹ *Express Co. v. Croniger*, *supra*, note 9.

¹² *Oregon-Washington Ry. Co. v. McGinn*, 42 Sup. Ct. 332 (1922); commented upon in 32 Yale L. J. 84, and 36 Harv. Law Rev. 109.

the Interstate Commerce Act merely operates to make succeeding carriers agents of the initial carrier.

Clearly, therefore, the holder of the bill of lading still has his common law remedy against the carrier on whose line the loss or damage took place,¹³ and, in addition, the new statutory remedy against the initial carrier. The court in the principal case applied the common law rule and held the Interstate Commerce Act inapplicable. The existence of a special contract not being either alleged or proved, the clause in the bill of lading not amounting to such a contract, and the jury having found that the loss was caused by the initial carrier,¹⁴ the terminal carrier was not liable at common law. It has been suggested¹⁵ that since the consignee is usually the one to sue, and since the initial carrier is often amenable to service only in the state where the shipment originated, the statute should be further amended to make "the terminal carrier liable for damage caused anywhere en route with remedy over against the negligent road."

A. E. C.

STATE LOANS TO COUNTIES FOR SCHOOLS IN NORTH CAROLINA—In the recent case of *Lacy, State Treasurer, v. Fidelity Bank of Durham*,¹ the facts were as follows: An act of 1921² authorized a state bond issue of \$5,000,000, the proceeds of which were to be loaned through the state educational authorities to county boards of education for expenditure in connection with the purchase of school sites, and the erection, repair, or equipment of public school houses, dormitories, and teacherages. These county loans were to be evidenced by the notes of the county boards of education, and were to constitute liens upon the county school funds. The moneys borrowed by the counties were to be returned to the state treasurer, with interest, in twenty annual installments, and were to be raised by a special building fund tax in each county making use of the loan. In compliance with this statute, the plaintiff treasurer issued the bonds and contracted to sell them to the defendant bank. Thereafter, the purchaser refused to proceed with the deal on the ground that the act authorizing the bond issue was unconstitutional. In a controversy without action, *held*, the act is valid.

The Constitution of North Carolina, in the article on Education, contains the following provisions: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."³ "The general assembly, at its first session under this constitution, shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all

¹³ *Elliott v. Chicago, etc., Ry. Co.*, 35 S. D. 57, 150 N. W. 777 (1915); *Eastern Mule, etc., Co. v. A. C. L. Ry. Co.*, 99 S. C. 470, 83 S. E. 597 (1914).

¹⁴ In *Chicago N. W. Ry. Co. v. Whitnack Produce Co.*, 42 Sup. Ct. 328 (1922), plaintiff recovered against the terminal carrier upon an un rebutted presumption that loss occurred on defendant's line. It was not shown where loss did in fact take place. See 36 Harv. L. Rev. 109.

¹⁵ 32 Yale L. J. 84, and see the dissenting opinion of Chief Justice Clark in the principal case.

¹ 183 N. C. 373, 111 S. E. 612 (1922).

² P. L., 1921, ch. 147.

³ Art. 9, sec. 1.

the children of the state between the ages of six and twenty-one years"⁴ "Each county of the state shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment."⁵

These provisions have had the effect of placing the responsibility for public education directly upon the state government, and of making the counties and school districts the local administrative agencies of the state for educational purposes.⁶ A secondary effect has been that of making the cost of the maintenance of public schools for the prescribed period paramount to substantially all constitutional limitations upon the taxing power.⁷

The statute in question was enacted to discharge the duty of the state to provide for the urgently needed enlargement and rehabilitation of the physical plant of the state school system, and to extend to the local units of the system the use of the state's larger facilities for obtaining funds for such purposes.⁸

The only constitutional limitations that seriously endangered the validity of the statute were these: "And the general assembly shall have no power to give or lend the credit of the state in aid of any person, association or corporation, . . . unless the subject be submitted to a direct vote of the people of the state, and be approved by a majority of those who shall vote thereon."⁹ "No county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein."¹⁰

The statute did not require a vote either of the people of the state or of the people of the counties that were to make use of the loans. Thus the problem before the court was whether the extensions of credit and the incurring of the debts contemplated by the statute were subject to either of these two requirements of a popular vote. Fundamentally, the question for judicial determination was whether the particular financial scheme provided by this statute for the enlargement and rehabilitation of the physical school plant was one so sanctioned by the provisions of the educational article of the constitution as to be free from these two limitations upon the borrowing and taxing powers of the state and county governments.¹¹

The purpose of the constitutional provision first quoted was that of restrict-

⁴ Art. 9, sec. 2.

⁵ Art. 9, sec. 3.

⁶ C. S. ch. 95. See also the excellent brief of the Attorney General in the principal case, pp. 3-15; N. C. Const., Art. 9, sec. 10; and *Bd. of Ed. of Duplin County v. State Bd. of Ed.*, 114 N. C. 317, 19 S. E. 277 (1894).

⁷ *Collie v. Comms.*, 145 N. C. 170, 59 S. E. 44 (1907), overruling *Barksdale v. Comms.*, 93 N. C. 172 (1885). See also the present provisions of N. C. Const., Art. 5, sec. 6: "Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution." Compare 1 N. C. L. Rev. 56, and McIntosh, *Special Tax School Districts in North Carolina*, 1 N. C. L. Rev. 88, *supra*.

⁸ P. L., 1921, ch. 147, preamble.

⁹ Art. 5, sec. 4.

¹⁰ Art. 7, sec. 7.

¹¹ See authorities cited in note 7, *supra*.

ing the former practice of loaning the proceeds of state bond issues to private internal development projects, such as railroads, canals, toll roads, and turn pikes. Many of these ventures had turned out disastrously with the result that the state had become heavily burdened with debts for which little benefit had been received. In short, the requirement of a popular vote was designed as a check upon the state going into debt for the primary benefit of persons, associations and corporations other than itself.¹² Clearly, the restriction was never intended to be applicable to a case where the state was borrowing money to finance through its own agencies so mandatory a state function as that of developing its school system. And the court in the principal case so held. Conceivably, the state might have done this directly, by distributing the proceeds of the bonds where needed and by raising money to pay off the debt by statewide taxation. The fact that it chose to put the responsibility for repaying the loan upon the local administrative units of the school system in direct ratio to the benefits received did not operate to change the plan from one whereby the state was discharging its constitutional duty in connection with schools to a scheme by which the state was lending its credit primarily for the benefit of persons, associations, and corporations distinct from itself.

The second constitutional provision quoted presents a more intricate problem of constitutional construction. Its purpose was that of adding to the necessity of legislative authority, a second check upon the incurring of unwise municipal debts, namely, the popular approval of other than necessary local expenditures.¹³ The question, however, whether the erection, enlargement or repair of a school house is a necessary expense for a county or a school district, does not rest upon the interpretation of this provision alone. One must take into account the relationship between this provision and the urgent requirement of the educational article of the constitution, that the counties, as the local educational agencies of the state, maintain public schools in each school district for the prescribed period, now six months.

In view of this mandate, it would be difficult to construe the requirement of a vote in the municipality as a condition precedent to the raising of funds with which to provide for the housing of a school for the six month period. What the constitution requires to be done cannot be made to depend upon the discretion of the people. Thus the costs of school houses to be used for the six months period are not necessary expenses of municipal corporations as such,¹⁴ for the reason that they are indispensable expenditures of counties and school districts in their capacities as administrative agencies of a state school system. Expenditures incident to the maintenance of schools for a period longer than that prescribed by the educational article of the constitution, however, do not thereby become necessary expenses of the local government units, even of school

¹² 183 N. C. at pp. 379-380; *Galloway v. Jenkins*, 63 N. C. 147 (1869); *University R. R. v. Holden*, 63 N. C. 410 (1869).

¹³ *Hill v. Lenoir County*, 176 N. C. 572, 97 S. E. 498 (1918); *Connor and Cheshire, N. C. Const., Ann.*, 1910, pp. 313-315.

¹⁴ *Stephens v. Charlotte*, 172 N. C. 564, 90 S. E. 588 (1916).

districts. This is because of the constitutional conception of public education as the peculiar function of the state, rather than of local government. Thus, even that which is not made compulsory by the constitution, but which is undertaken voluntarily by the local units, is still a state matter and not one incident to municipal functions as such, as are the maintenance of public buildings and roads in counties.¹⁵ But, since the extra provision for schools is not required by the constitution, the popular vote must be had.¹⁶ That is, the moment an expenditure escapes the sanction of the requirements of the educational article, all limitations on local indebtedness becomes operative.¹⁷

The court had no difficulty in the principal case in holding¹⁸ that the financial scheme provided for by the statute in question was sufficiently sanctioned by the educational article of the constitution to be free from the requirement of a popular vote in the local units that were to incur the indebtedness to the state. Such a statewide program of rehabilitation of school properties, carried out with funds originally procured by the state, under the immediate supervision of the state educational authorities, and so urgently needed for furnishing the educational advantages required for the youth of the state, was simply a plan for enabling the local units, as the educational agencies of the state, to carry out the constitutional mandate. As has been suggested, the fact that the responsibility for repaying the loans was placed upon the local units of the school system in direct ratio to the benefits received did not operate to make the undertaking a purely local measure, entirely distinct from state significance.

E. B. H.

PRIORITY OF AUTOMOBILE MECHANIC'S LIEN—*Johnson v. Yates*,¹ decided by the Supreme Court of North Carolina in 1922, involved the following facts: Plaintiff sold an automobile to A, and took a note secured by a mortgage on the car for the balance of the purchase price. The mortgagor was given possession, and the mortgage was duly registered. Thereafter, the mortgagor, without either the actual knowledge or the express consent of plaintiff, sent the car to defendants' shop for necessary repairs. The repairs were made without defendants' actual knowledge of the existence of plaintiff's mortgage. The charges not being paid, the defendants held the car and claimed a mechanic's lien under C. S. sec. 2435. Plaintiff insisted that his mortgage lien was superior. *Held*, the mechanic's lien takes priority.

At common law, the artisan has a lien on personal property for work done or repairs made thereon. This lien, however, merely gives the artisan the right to retain possession of the property until the debt due has been satisfied. He has no right at common law to sell the property. Under given circumstances, this mechanic's lien may be superior to prior liens on the same property. Thus,

¹⁵ *McLin v. Newbern*, 70 N. C. 12 (1874); *Guire v. Commsrs.*, 177 N. C. 516, 99 S. E. 430 (1919); *Woodall v. Commsrs.*, 176 N. C. 377, 97 S. E. 226 (1918).

¹⁶ *Bd. of Ed. v. Bd. of Commsrs.*, 178 N. C. 305, 100 S. E. 698 (1919).

¹⁷ Note 7, *supra*.

¹⁸ 183 N. C. at p. 382.

¹ 183 N. C. 24, 110 S. E. 603 (1922).

where a mortgagee of personal property has given express or implied authority to the mortgagor to have work done or repairs made on the property, the artisan's common law lien takes priority over the mortgage.² Similarly, when the buyer of personal property gives purchase money notes to the vendor, and takes possession, the vendor reserving legal title until the notes are paid, the granting of express or implied authority to the vendee to have repairs made gives the mechanic's common law lien priority over the rights of the vendor.³ Conversely, without this authority of the one in possession to procure repairs, a mortgage of which the artisan has actual or constructive notice prevails over his common law lien.⁴

A new mechanic's lien, entirely created by statute, however, may entail different consequences. Unless the statute, either expressly or by necessary implication, otherwise provides, the duly recorded mortgage will take precedence over the subsequently attaching statutory lien.⁵ But the lien provided by C. S. sec. 2435 is not a purely statutory creation. Rather, it seems to be a statutory recognition of the common law lien and an attempt to confer a new remedy,⁶ namely, the right of the mechanic, instead of merely retaining possession until the debt is paid, to sell the property and realize his charges.

Thus the principal question involved in the case under discussion was whether the mortgagee had in fact given the mortgagor authority to procure the repairs. There had been no express mention of the matter. The court worked out an implied authority from the fact that the mortgagor was allowed to retain possession of the automobile and to use it, a circumstance giving rise to the likelihood that repairs to the car would inevitably become necessary.⁷

While it is of course true that repairs to automobiles are usually made in emergencies, so that it might be inequitable to charge the mechanic with constructive notice of a recorded mortgage,⁸ the basic reason for the suspension of the effect of a recorded mortgage⁹ in such a case as that of *Johnson v. Yates*, seems to be this: the mortgagee, who actually gives express or implied authority to have repairs made, waives, in favor of the mechanic, any rights that accrued under the registration laws. These rights were created for his benefit, and he agrees to their suspension by his conduct in empowering the one in possession of the car to incur charges for such repairs as are necessary to its full use. Nor is he injured thereby, for presumably the value of the security of the car with repairs made is not less than its value in bad condition.

L. T. H.

² *Hammond v. Danielson*, 126 Mass. 294 (1879); *Drummond Carriage Co. v. Mills*, 54 Neb. 417, 74 N. W. 966 (1898); *Ruppert v. Zang*, 73 N. J. Law, 216, 62 Atl. 998 (1906); *Watts v. Sweeney*, 127 Ind. 116, 26 N. E. 680 (1891).

³ *Broom v. Dale*, 109 Miss. 52, 67 So. 659 (1915).

⁴ *Globe Works v. Wright*, 106 Mass. 207 (1870); *Denison v. Shalcr*, 11 N. W. 402, 47 Mich. 598 (1882); *Bissell v. Pearce*, 28 N. Y. 252 (1863); *Shaw v. Webb*, 131 Tenn. 173, 174 S. W. 273 (1915).

⁵ See *Williams v. Davis*, 183 N. C. 90, 110 S. E. 577 (1922); *Baker v. Robbins*, 119 N. C. 289, 25 S. E. 876 (1896).

⁶ *McDougall v. Crapon*, 95 N. C. 292 (1886).

⁷ *House v. Parker*, 181 N. C. 40, 106 S. E. 137 (1921); *Jones, Liens*, sec. 744; *Broom v. Dale*, *supra*; *Ruppert v. Zang*, *supra*. 6 C. J. p. 1138, and cases cited. *Contra*, see 9 Va. L. Rev. 136; *Adden v. Godfrey*, 153 Wis. 186, 145 N. W. 1115; *Shaw v. Webb*, *supra*.

⁸ *Smith Auto Co. v. Kaestner*, 164 Wis. 205, 159 N. W. 738 (1916).

⁹ *Harper v. Edwards*, 115 N. C. 246, 20 S. E. 392 (1894).

NORTH CAROLINA CORPORATION CODE, ANNOTATED. By Pou, Bailey, and Pou, and J. L. Emanuel, of the Bar of Raleigh, N. C. Atlanta, The Harrison Company, 1922. pp. 1021.

The title of this volume does not indicate the comprehensive range of its contents. The North Carolina Corporation Code proper occupies less than one-tenth of the book. The volume consists of three parts. Part 1, containing 502 pages, embraces a large number of statutes relating to corporation organization and activity, together with notes of the more important cases which have construed the provisions. Part 2, covering 384 pages, offers detailed forms and suggestions for their use in connection with corporate transactions. The third part includes various appendices setting forth federal and state court rules, cotton and tobacco pool documents, a table of cases, and a table of comparative section numbers.

In addition to the Corporation Code, Part 1 includes selected sections of the statutes relating to civil procedure, conveyances, liens, and attachments, and the complete statutes relating to criminal liability of corporate officers and employes, child welfare, a corporation's duty to its employes, hours of service of employes of carriers, earnings of employes of corporations engaged in interstate commerce, monopolies and trusts, banks, negotiable instruments, coöperative organizations, drainage corporations, warehouses, railroads, insurance, rural communities, municipal corporations, and taxation.

In general, the organization of the statutory material follows the order of the chapters and sections of the Consolidated Statutes. The editors have, however, given new and consecutive numbers to the sections, citing the official section numbering at the end of each section. A table of comparative sections, in the appendix at page 917, is of help in this connection. The statutes are complete up to and including the acts of the extra session of 1921.

The annotations are not meant to be exhaustive. Only a few of the cases decided under the corporation law as it stood prior to the adoption of the Corporation Code in 1901 are given. The annotations appear to include, however, all of the important cases in which the later statutes have been construed by the federal and state courts up to January 1, 1922. A table of cases is printed in the appendix at page 905. The cases given are not merely cited by title, but a brief note, taken frequently from the West Publishing Company's digests and headnotes, indicates the significance of each case. In addition, the citation of each North Carolina case includes the West Publishing Company's key number, by use of which similar cases can be located in the Southeastern and American Digests.

The corporate forms and suggestions for their use in Part 2 will be found to be of great value. The scope of the transactions dealt with in this section of the book may be indicated by reference to the fact that a form is given for the creation of a business trust as a substitute for a corporation. It is unfortunate, however, that this part of the volume is not more clearly set off from the first

part, either by a distinctive running head or by a heavy colored paper marker. With the thin paper pages, it is difficult to locate.

The volume is well indexed, and is readably printed in large type on thin paper. The binding is of limp red leather. The North Carolina Corporation Code, Annotated, should find a place on the desk of every attorney, banker, and corporation executive in North Carolina.

It is to be hoped that the editors will publish a supplement at the end of each legislative session, similar to the Amendments to the Consolidated Statutes, issued by the Legislative Reference Library, at Raleigh. Otherwise the book will soon become out of date.

M. T. V. H.

OFFICIAL REPORTS OF THE UNITED STATES SUPREME COURT—Mr. Ernest Knaebel, Reporter of the United States Supreme Court, has made the following announcement:

The official United States Supreme Court Reports, heretofore published by the Banks Law Publishing Co., New York City, are now to be issued by the Government Printing Office, Washington, D. C. The last volume handled by the Banks Co. was numbered 256. Volumes 257, 258, and 259, covering the last term, will be available shortly. Advance sheets, contained in four pamphlets for each volume, will be issued for twenty-five cents each. The bound volumes will cost about \$2.10 each, and will correspond with the advance sheets in page numbering. Separate orders need not be sent in for each pamphlet or volume, but standing orders with advance deposits must be maintained with the Superintendent of Documents, Government Printing Office, Washington, D. C.

The publishers' supply of the June NORTH CAROLINA LAW REVIEW is exhausted. Orders are still coming in, many of them from libraries, for copies of this number with which to begin complete files. Those who do not desire to retain their copies of the June number permanently will enable the REVIEW to fill these orders if they will return their copies at once to P. O. Box 810, Chapel Hill, North Carolina. Postage will be refunded promptly.

THE UNIVERSITY OF NORTH CAROLINA PRESS, a corporation not for profit, has taken over the publication of THE NORTH CAROLINA LAW REVIEW, *The Journal of the Elisha Mitchell Scientific Society*, *Studies in Philology*, *The High School Journal*, *The Journal of Social Forces*, *The James Sprunt Historical Publications*, *The University of North Carolina Extension Bulletin*, and *The University News Letter*, heretofore issued by separate units of the University of North Carolina. The PRESS is managed by a board of governors, consisting of nine members of the faculty, of the president of the University, and of three members of the board of trustees, as follows: L. R. Wilson, Louis Graves, Edwin Greenlaw, W. C. Coker, L. P. McGehee, N. W. Walker, H. W. Odum, J. G. DeR. Hamilton, C. D. Snell, H. W. Chase, Leslie Weil, A. M. Scales, and Zeb. V. Walser. The officers of the PRESS are L. R. Wilson, director, and Louis Graves, secretary. Offices are maintained on the campus, in Chapel Hill.

This involves no change, however, in the editorial management of the REVIEW. As heretofore, the editorial staff will consist of the members of the faculty and of a number of the students of The School of Law.

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