

debts exceeding three-fourths the amount of its capital paid in; and that, if such indebtedness should exceed the amount aforesaid, the directors and stockholders should be personally holden to the creditors of said company. An action was brought to enforce this liability against stockholders, and the nature of the obligation came up for consideration. *Windham Provident Inst. v. Sprague*, 43 Vt. 502. In speaking of the stockholders, Ross, J., in delivering the opinion of the court, said: "They can keep the indebtedness of the company within the limits fixed by the legislature, or they can extend that indebtedness beyond that limit, and voluntarily take upon themselves the relation of joint debtors to the creditors of the company." This construction, by the highest court of the state, of statutes of the state so similar, is controlling, (*Flash v. Conn*, 109 U. S. 371; S. C. 3 Sup. Ct. Rep. 263;) and this construction does not appear to be in conflict with decisions in other states.

Where a liability is declared for some act or neglect in no way connected with the contracting of the debt, as for neglecting to file reports, it is undoubtedly penal, (*Wiles v. Suydam*, 64 N. Y. 173; *Bank v. Bliss*, 35 N. Y. 412; *Garriston v. Howe*, 17 N. Y. 458; *Halsey v. McLean*, 94 Mass. 438;) but where, as here, the liability for the debt arises out of the assent to the contract creating the debt, it would seem to be that of a contracting debtor, and no case to the contrary has been noticed. Motions denied.

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LEMONT and others *v.* NEW YORK, L. E. & W. R. Co.<sup>1</sup>

(Circuit Court, E. D. Pennsylvania. October 23, 1886.)

**CARRIERS—OF GOODS—PENNSYLVANIA STATUTE OF JUNE 13, 1874—GOODS TAKEN UNDER PROCESS.**

Under the Pennsylvania statute of June 13, 1874, (Purd. Dig. [Ed. 1885] 146, pl. 8.) common carriers and other bailees are not responsible to the owner of goods, wares, and merchandise intrusted to them, nor to the holder of the bill of lading or other receipt for the same, when the goods, etc., are taken from them by legal process.

**Opinion in Case Stated.**

Plaintiffs were commission merchants, doing business in Philadelphia. They made advances on six bills of lading, issued by the defendant at Mansfield, Tioga county, Pennsylvania, for hay, oats, etc., shipped over their road. The consignor obtained the goods fraudulently. When the owners discovered the frauds, they issued attachments under the Pennsylvania statute of July 12, 1842, (Purd. Dig. 989,) and seized two car-loads of hay which had not left Mansfield. The car-load of oats was seized at Elmira, New York, under two at-

<sup>1</sup> Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

tachments, and a writ of replevin issued there. The plaintiffs were not parties to any of the suits, but were notified by the defendant as soon as the cars were seized. They did not ask leave to intervene, but notified the defendant that they held the bills of lading, that they had bought the goods in good faith, and that the title was in them. The plaintiffs in the attachment and replevin suits obtained judgments, under which the goods were sold. The plaintiffs then brought this action against the railroad company to recover the value of the goods.

*L. W. Barringer*, for plaintiff.

*J. Reedman Paul and George W. Beddle*, for defendant.

BUTLER, J. It is quite plain, on the facts stated, that the defendant is not responsible for the plaintiff's loss. The Pennsylvania statute of June 13, 1874, (Purd. Dig. 44,) governs the case. The object of this legislation was to relieve railroad companies, and other carriers and bailees from the duty (supposed or actual) of defending suits against the property intrusted to their care. The plaintiff received notice of the attachment, and it was his duty to appear and defend, if he supposed any good could be accomplished by doing so.

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NATIONAL WATER-WORKS CO. OF NEW YORK v. CITY OF KANSAS.

(Circuit Court, W. D. Missouri. October 22, 1886.)

MUNICIPAL CORPORATION—CONTROL OF STREETS—WATER COMPANY—SEWER.

A water company laying its pipes in the streets of a city, under a contract with the city, does so subject to the right of the city to construct sewers in said streets whenever and wherever the public interest demands; and if, in consequence of the exercise of this right, the company is compelled to relay its pipes, it can maintain no claim therefor against the city, unless the action of the city is unreasonable or malicious. An allegation that the sewer might have occupied other space in the street is not equivalent to an allegation that the city acted unreasonably or maliciously.

Action for Damages. Demurrer to petition.

*T. A. F. Jones*, for plaintiff.

*Scarritt & Alderson*, for defendant.

BREWER, J. This is an action for damages. The plaintiff is the owner of the Kansas City Water-works, and the facts upon which the claim is founded are these: In 1883 plaintiff laid a water-pipe on East Eighth street. This was a street whose grade had been established, and the plaintiff was directed by the city to lay a water-pipe therein, and the same was laid, in the place and manner directed by the city. In the year 1884 the city dug a sewer on said