Comment on Recent Decisions

BURGLARY—ENTRY WITHOUT BREAKING.—Defendant was charged with the crime of burglary in the first degree for alleged aid as a lookout in the burglarizing of a pool room which the principal entered during business hours and through the front door. *Held,* this entry constituted burglary under C. S. Idaho (1919) sec. 8400, providing that "every person who enters any house, . . . with intent to commit grand or petit larceny, or any other felony is guilty of burglary," if the intent was to commit larceny within. *State v. Bull* (Idaho 1929), 276 Pac. 528.

The crime of burglary without the common law essential of breaking exists in a number of jurisdictions where the crime has been materially broadened through statutory enactments which define it as the entering of any house with intent to commit a felony. At common law an entry through an open door, window, or other aperture was not enough, unless the entry was effected under such circumstances that there was a constructive breaking. 9 C. J. 1010.

In California under a statute similar to that of Idaho, where defendants entered a store with intent to commit larceny it was immaterial that the act of entering was not of itself trespass, but was during business hours. *People v. Brittain* (1904), 142 Cal. 8, 75 Pac. 314; *People v. Deschenean* (1921), 27 Colo. App. 285, 149 Pac. 802. An invitation to enter for lawful purposes is not an invitation to enter for an unlawful purpose and burglary may be predicated upon such an entry. *McCreary v. State* (1923), 25 Ariz. 1, 212 Pac. 336; *People v. Barry* (1892), 94 Cal. 481, 29 Pac. 1026.

It has been held that where a statute reads "break" or "enter" rather than "break" and "enter," that entering alone is sufficient to constitute the crime. *State v. Vierk* (1909), 23 S. D. 166, 120 N. W. 1098. See *contra, State v. Stephens* (1922), 150 La. 943, 91 So. 349. And in Arkansas under statutes defining burglary as an unlawful entry in the nighttime with intent to commit a felony, it has been held that one who enters with intent to commit a felony is guilty of burglary, although there was no breaking, either actual or constructive. *Pinson v. State* (1909), 91 Ark. 434, 121 S. W. 751. See also, *State v. Hall* (1914), 168 Iowa 221, 150 N. W. 97. According to the statutes of Oregon and Wisconsin every unlawful entry of a dwelling house in the nighttime with intent to commit a felony therein will be deemed a breaking and entering of said dwelling house within the meaning of the statute defining burglary, but an inferior degree of the offense. *State v. Huntley* (1894), 25 Ore. 349, 35 Pac. 1065; *Nichols v. State* (1887), 68 Wis. 416, 32 N. W. 543.

In support of a view opposed to the Idaho ruling a Montana court, under a statute identical with those of Idaho and California, held that in order to constitute a burglarious entry, the act of entering must of itself be a

trespass—an intrusion into the premises without the consent of the owner. *State v. Mesh* (1907), 36 Mont. 168, 92 Pac. 459; see also *People v. Kelly* (1916), 274 Ill. 556, 113 N. E. 926; *State v. Moore* (1841), 12 N. H. 42; *State v. Newbegin* (1846), 25 Me. 502, has been cited in support of the contrary view. It should be noted, however, that the Maine statute requires both a breaking and entry to constitute burglary.

The intention of the legislatures in defining the offense of burglary was to abolish the technical distinctions between acts that do not differ essentially in point of criminality. It seems that the decision in *State v. Bull* is in line with this development. E. S., '31.

CARRIERS—LIABILITY ON FORGED BILL OF LADING ISSUED BY AGENT.—An employee of a railway company went to a bank in a different state from that in which he worked and under an assumed name forged a draft on plaintiff cotton company and a bill of lading calling for 110 bales of cotton. No cotton was ever delivered for shipment. The employee, in his capacity as such, informed plaintiff that the cotton had arrived. Relying on this assurance the plaintiff paid the draft. *Held,* defendant railway company is liable for the amount so paid on the ground that the employee had authority to notify persons in the position of plaintiff of the arrival or nonarrival of merchandise. *Gleason v. Seaboard Air Line Railway Co.* (1929), 49 S. Ct. 160.

By the early English rule the carrier was not liable on bills of lading issued by a servant when the goods had not been received, on the theory that the servant had not acted within the scope of his authority. *Berkley v. Watling* (1832), 7 A. & E. 29; *Grant v. Norway* (1852), 10 C. B. 665; *Hubbersty v. Ward* (1853), 8 Ex. 330. However, shortly after the leading case of *Grant v. Norway, supra,* was decided the English Bills of Lading Act (1855) made every bill of lading in the hands of a consignee or indorsee for valuable consideration conclusive evidence of the shipment of such goods as it represented, against the person signing it.

The Federal courts also held early that the taker assumes the risk of the apparent authority of the servant to issue the bill of lading. *Schooner Freeman v. Buckinham et al.* (1855), 18 How. 182. A line of cases held that if no goods were actually delivered, the carrier could not be held liable. *Pollard v. Vinton* (1881), 105 U. S. 7; *Iron Mountain R. R. Co. v. Knight* (1887), 122 U. S. 79; *Friedlander v. Texas and Pacific Railway Co.* (1888), 130 U. S. 416; *Missouri Pacific Railway v. McFadden* (1894), 154 U. S. 155. Many of the state courts followed the same rule. *Louisville & Nashville Ry. Co. v. Nat. Park Bank* (1914), 188 Ala. 109, 65 So. 1003; *St. Louis I. M. & S. Ry. Co. v. Citizens' Bank* (1908), 87 Ark. 26, 112 S. W. 154. Other state courts, however, held the carrier liable on the ground of estoppel. *Bank of Batavia v. N. Y. L. E. & W. Ry. Co.* (1887), 106 N. Y. 195, 12 N. E. 433; *Brooke v. N. Y. L. E. & W. Ry. Co.* (1885), 108 Pa. 529, 1 Atl. 206; *M. K & T. Ry. Co. v. Sealy et al.* (1908), 78 Kan. 758, 99 Pac. 230. As a result of the desire to emerge from the hopeless conflict on this