nating elsewhere or publishes it as a communication or advertisement. *Age Herald Pub. Co. v. Waterman*, 188 Ala. 272, 66 So. 16, 1916E Ann. Cas. 900 (1914); *Spolek Den Hlasatel v. Hoffman*, 204 Ill. 532, 68 N.E. 400 (1903); *Nicholson v. Merrit*, 109 Ky. 369 59 S.W. 25 (1900); *Finnegan v. Eagle Printing Co.*, 173 Wis. 5, 179 N.W. 788 (1920); 18 Am. & Eng. Encyc. of Law, Libel and Slander (2d ed. Garland & McGehee, 1901), 1073; Law of Libel as Applied to Newspapers, 45 Chicago Leg. N. 199. The principal case agrees thus far and also restates the historical view of malice, that while it is the essence of libel, the law will imply malice of the character necessary to support a judgment. *Ray v. Shemwell*, 186 Ky. 442, 217 S.W. 351 (1919); *Stanley v. Prince*, 118 Me. 360, 108 Atl. 328 (1919); *Lewis v. Daily News*, 81 Md. 466, 32 Atl. 246, 29 L.R.A. 59 (1895); *Zanley v. Hyde*, 208 Mich. 96, 175 N.W. 261 (1919); *Baker v. Winslow*, 184 N.C. 1, 113 S.E. 570 (1922). But implied malice taken over from the ecclesiastical courts is merely a useless fiction retained from the form of the declaration and the failure of the judges to admit that the law has been changed by decision. *Coleman v. Mac Lennan*, 78 Kan. 711, 98 Pac. 281 (1908); *Hanson v. Globe Newspaper Co.*, 159 Mass. 293, 34 N.E. 462, 20 L.R.A. 856 (1893); *Jones v. Hulton*, L.R. (1910) A.C. 20; Bower, Code of Law of Actionable Defamation (1908), appendix 2, 271; N. St. John Green, 6 Am. Law. R. 609–610; Odgers, Libel and Slander (6th ed. 1929), 4–5, 281–282; Jeremiah Smith, Jones v. Hulton, 60 Univ. Pa. L. Rev. 365, 461, 463, note 10 for citations; 1 Street, Foundations of Legal Liability (1906), 317. The principal case turns on the misstated point that, following the ancient rule that one who heard a slander was not liable for repeating it in the same words, naming his authority, the newspaper is not liable for publication of news of reputable agencies. The old law was that the publication coupled with the yielding up of the original publisher's name in such a way as to give the plaintiff a complete cause of action against him was a good plea, but the mere statement of the source was insufficient. *Davis v. Lewis*, 7 Term Rep. 17 (1796); *Maitland v. Goldney*, 2 East. 426 (1802); repudiated in *McPherson v. Daniels*, 10 B. & C. 263 (1829); Bower, Code of Law of Actionable Defamation (1908), 302. The principal case takes a stand even beyond the English publishers' cases allowing the defendant to escape liability by showing (1) innocence of knowledge of libel, (2) absence of anything in the work or circumstances which should have led him to the belief that it contained a libel, and (3) lack of negligence on his part. *Emmens v. Pottle*, 16 Q.B.D. 354, 2 T.L.R. 115 (1885); *Vizetelly v. Mudie Select Library*, (1900) 2 Q.B.D. 170; *Bottomley v. Woolworth Co. L'td.*, 48 T.L.R. 521 (1932), since it casts the entire burden on the plaintiff; contra, *Sweet v. Post Pub. Co.*, 215 Mass. 450, 102 N.E. 660, 47 L.R.A. (N.S.) 240, 1914D Ann. Cas. 532 (1913); *Corrigan v. Bobbs Merrill Co.*, 228 N.Y. 58, 126 N.E. 260, 10 A.L.R. 662 (1920). The theory of the court seems to be a conglobation of Holmes' objective theory of culpability (*Hanson v. Globe Newspaper Co.*, 159 Mass. 293, 34 N.E. 462, 20 L.R.A. 856 (1893) and Note, 38 Harv. L. Rev. 1100), the theory of *per quod libel* to be applied only where the newspaper receives news service from a reputable service. The importance to the state and to society of prompt news of daily happenings and the slight chance of injury to a private character seems to justify the decision.

GERALDINE W. LUTES

Treaties—Extradition—Receiving Money Knowing It To Have Been Fraudulently Obtained—[Federal].—The appeal is from an order of the Federal District Court dis-

charging the appellee on habeas corpus from custody under commitment by the United States Commissioner for rendition to England from Illinois where he was found. The complaint of the British government is that the appellee received certain sums of money knowing the same to have been fraudulently obtained, a crime made extraditable by the Hay-Pauncefote Treaty concluded between Great Britain and the United States in 1889. The motion to dismiss the appeal was denied by the Circuit Court of Appeals and the order of the Federal District Court was reversed, the cause being remanded to the lower court with directions to discharge the writ of habeas corpus. (Evans, J., dissenting). *Laubenheimer v. Factor*, 61 F. (2d) 626 (1932).

An offense in order to be extraditable must be (1) enumerated in the treaty, (2) made criminal by the laws of the demanding state, and (3) one for which the accused could be held for trial in the state of asylum. Treaty of 1842, Art. 10, 8 Stat. 572; Treaty of 1889, Art. 1, 26 Stat. 1508; *United States v. Rauscher*, 119 U.S. 407, 7 Sup. Ct. 234, 30 L. Ed. 425 (1886); *Wright v. Henkel*, 190 U.S. 40, 23 Sup. Ct. 781, 47 L. Ed. 198 (1903); *Collins v. Loisel*, 259 U.S. 309, 42 Sup. Ct. 469, 66 L. Ed. 956 (1922).

Under the Treaty of 1889, which controls in this case, the offense in order to be extraditable must be a crime against the law of the state in which the fugitive is found and not merely a crime under the statutes of the United States. *Pettit v. Walshe*, 194 U.S. 205, 24 Sup. Ct. 657, 47 L. Ed. 938 (1904).

Receiving money knowing it to have been fraudulently obtained is an extraditable offense within the Treaty of 1889, Art. 2, Classification 14. Such act, too, was made criminal by the laws of Great Britain. Larceny Act of 1916, 6 & 7 Geo. V, c. 50, § 33.

The crucial question of the case is whether or not receiving money knowing it to have been fraudulently obtained is a crime in Illinois. This, the lower court held, is a question of fact. To this end, jurists were called as expert witnesses. Each testified that as a matter of fact the receiving of money knowing it to have been fraudulently obtained is not a crime in Illinois—that it is no crime at common law and that there is no Illinois statute changing the common law. The admission of this testimony was held to be erroneous by the Circuit Court of Appeals because the federal courts are deemed to take judicial notice of the laws of the several states. *Owings v. Hull*, 9 Pet. 607 (1835).

An Illinois statute makes it an offense to receive stolen property. Cahill's Ill. Rev. Stat. 1931, c. 38, par. 507. But it is not applicable here since the state Supreme Court has expressly held that obtaining title to property by fraud is not larceny. *Murphy v. People*, 104 Ill. 528 (1882); *People v. Barnard*, 327 Ill. 305, 158 N.E. 729 (1927).

The only possible means by which the act charged could be deemed criminal in Illinois is its being interpreted as a violation of the Fraudulent Conveyance Act. Cahill's Ill. Rev. Stat. 1931, c. 38, par. 294. The act is designed to penalize fraudulent conveyances made with the intention on the part of both participants to defraud creditors of the transferor. *Behrens v. Steidley*, 198 Ill. 303, 64 N.E. 1113 (1902). This element is lacking in the instant case.

The real basis for the reversal, however, is a prior decision in this matter reached by the United States Supreme Court. In passing on a writ of *habeas corpus* for the defendant's release from commitment for extradition from Illinois to Canada, it was held, "the receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois." *Kelly v. Griffin*, 241 U.S. 6, 36 Sup. Ct. 487,

60 L. Ed., 861 (1916). This decision, the court in the present case holds, is binding on every inferior court in the United States on matters of international extradition. The holding of the court rather than the course of reasoning whereby the holding was reached is regarded. This is a rather dubious attitude in light of the fact that the circumstantial situations of the two cases differ essentially.

In the Kelly case, the crime charged was not the receiving of money knowing it to have been fraudulently obtained, but the receiving by Kelly of government money from government officials knowing that they had obtained it from the government by fraud. The decision merely held that it was a crime in Illinois to receive public money known to have been fraudulently obtained by public officers. Reliance was placed upon 20 Stat. 280 of the United States. That statute relates only to the obtaining of public funds from governmental agents and does not cover the broader offense of receiving private money knowing it to have been fraudulently obtained. It would seem that this statute does not apply to the present case, and it is doubtful whether the *Kelly v. Griffin* decision should be controlling here.

The matter has been brought before the United States Supreme Court on a writ of certiorari and it is probable that, due to the extra-legal aspects of the case, the decision of the Circuit Court of Appeals will be affirmed. This indication is strengthened by the fact that the trend of the Court is to interpret treaties broadly, thus facilitating the rendition of alleged offenders against the laws of friendly nations. See *Grin v. Shine*, 187 U.S. 181, 184, 23 Sup. Ct. 98, 100 (1902).

LOUIS TERKEL

Workmen's Compensation—Basis of the Action—[Illinois, Missouri].—Two recent cases present the problem of whether proceedings under workmen's compensation acts are *ex contractu* or *ex delicto*. In *Keller v. Industrial Commission et al.*, 350 Ill. 390, 183 N.E. 237 (1932), the claimant instituted proceedings under Ill. Smith-Hurd Rev. Stat. 1931, c. 48, §§ 138 *et seq.*, for the deaths of her two sons from injuries arising out of and in the course of their employment by their step-father. The defense was the common-law disability of a wife to sue her husband in tort. In *Hope v. Barnes Hospital*, 55 S.W. (2d) 319 (Mo. App. 1932), proceedings were instituted under Mo. Rev. Stat. 1929, §§ 3299 *et seq.*, for the death of the claimant's husband from injuries sustained in the course of his employment by a charitable institution. The defense was the exemption of an eleemosynary institution from tort liability, on the theory of a trust whose fund may not be depleted by the payment of damages for the negligent acts of the trustees. *Held*, in each case, that the action was *ex contractu* and the defense invalid.

The decision in the Hope case, indeed, was based on the statute, *supra*, § 3299, making the remedy contractual and elective on the part of the employer (whose acceptance, however, is presumed, § 3300, and was not negatived in the principal case). But even in the absence of a statutory declaration, as in the Keller case, the same result should be reached, on principle and according to authority. As said by the Illinois court, a tort action arises from the wrongful conduct, intentional or negligent, of the defendant; while under the above statutes, the employer's fault is not in issue, and even the employee's contributory negligence may not bar recovery. 350 Ill. 390, 397, 183 N.E. 237, 240. The statutory provisions are read into the labor contract by law; an ac-