

message in writing to the addressee within as reasonable time as practicable. What would be negligence or willful indifference in the delivery, must depend upon the facts of each case. It will not be denied that the telegraph company violates this duty which it owes to the sendee and the public by a failure to deliver, within a reasonable time, messages announcing death, etc. But the contention is, "that where only mental suffering is the result of the wrong then there can be no recovery in damages for mental suffering unaccompanied by physical injury."

"When this salutary rule of the common law was established, telegraphy was unknown to the world, and the conditions under which it is being exploited, by common carriers under charters with large franchises, constantly extending a business that earns fabulous profits until its use has become as universal and common as the postal service makes the question here under consideration "*sui generis*." It is a boast of the common law that it affords a remedy for every wrong, and that its principles are so universal and elastic as to be readily applied to new conditions and new facts. Let us look at the question now from a contractual viewpoint. For while I have little patience with the refinement of those courts which would rest the decision of so important a question upon the character of an action brought, yet there are certain settled principles which distinguish rights arising *ex contractu* from those *ex delicto*, and which, if observed, will throw light on this much vexed question. One of these principles is, that inasmuch as contracts generally deal alone with pecuniary benefits, only a pecuniary standard of damages could be applied for the breach of contracts. And this rule is seized upon to exclude damages for mental suffering when it arises from breach of contract and the contract is appealed to, because there is no pecuniary standard by which mental suffering can be measured. This, of course, is misleading, for the contract need only be appealed to for purpose of shewing the relationship and status of the parties. And the misconception is still greater when you seek to apply this rule to a contract which never sought to deal with pecuniary benefits, but with feelings alone. What earthly analogy has the subject matter of a contract, which deals only with feeling, to that of a contract which deals exclusively with pecuniary benefits. This difference between the subject matter of the two classes of contracts is of the utmost importance, and must be remembered and observed if we are to