are evidenced by a written bond or are implied from the acts or situation of the parties. This is very fully expressed by Appleton, J., in *True* v. *International Telegraph Company*, reported in the "Chicago Legal News," Vol. V. p. 170, where he says: "Indeed, the general liberty to contract is the highest public policy." This was a case in which True had employed the telegraph company to send a despatch to parties in Baltimore. The blank on which the telegram was written, bore on its margin a notice stating that the amount of damages to be recovered in case the message was not properly sent should be forty-eight cents, the price paid for the transmission of the message. Upon the question raised on this point, the Court said: "Here is a contract. The consideration is sufficient. It is entered into by parties competent to contract. There is no statute prohibiting. It is a contract for the liquidation of damages, and if there is anything parties can do without let or hindrance, it is to agree in advance upon the measure of damages to be paid in case of a violated contract. Whether the damages agreed upon be large or small, it is a matter for the contracting parties, and for them alone. If they are satisfied with large or small damages, it matters not to any one else. If telegraph companies can thus insert any condition they see fit into a contract, why call them common carriers, or seek to apply to them the rules of common carriers? If they can make their liabilities differ from those of common carriers in one instance, they can make them so differ in all instances, and a liability from which a party can relieve himself at pleasure is no liability at all."

Another question upon which the main question is dependent, is whether there exists between the contracting parties the relation of bailor and bailee. Chancellor Kent defines a bailment to be "a delivery of goods in trust upon a contract expressed or implied, that the trust shall be duly executed, and the goods returned to the bailee as soon as the purpose of the bailment shall be answered." There must be something of which the bailee can take possession — something tangible and of value. What is a telegraphic despatch? Is it matter? No; for it may be sent a thousand miles in an instant, which is impossible of any material substance. The piece of paper upon which the message is written is certainly not the thing bailed; for it never goes, and is merely a passive instrument in the hands of the operator to execute his delicate undertaking. The thing to be done, that is, the sending of the message, is the subject of the contract and not the piece of paper. In the case of *Leonard* v. *The New York, etc., Telegraph Co.*, Hunt, J., said: "He (the telegraph operator) has no property intrusted to his care; he has nothing which he can steal or which can be taken from him. There is no subject of concealment or of conspiracy. He has in his possession nothing which, in its nature and of itself, is valuable. It is an idea—a thought—a sentiment, invisible, impalpable, not the subject of sale or theft, and, as property, quite destitute of value. He cannot himself see, hear or feel the subject of his charge."

That they are liable in damages for any misfeasance or failure in the absence of any conditions exonerating them, has never been denied; but this liability does not grow out of the public nature of their employment, but because they have undertaken something implying and requiring a high degree of care and skill, and because such care and skill may be reasonably expected. The measure of damages in these cases is laid down by Earle, J., in the case just mentioned: "The difficulty is not so much in laying down general rules as in applying them. The cardinal rule undoubtedly is, that the one party shall recover all the damages which have been occasioned by the breach of the contract by the other party. . . . It is not required that the parties *must* have contemplated the actual damages which are to be allowed. But the damages must be such as the parties may fairly be *supposed* to have contemplated when they made the contract." The same rule was observed with respect to damages in the following cases: *Stevenson* v. *Montreal Telegraph Company*, 16 Upper Canada Rep. 530; *Kingham* v. *Montreal Telegraph Company*: *Lansberger* v. *Magnetic Telegraph Company*, 32 Barb. 530; *Gildersleeve* v. *United States Telegraph Company*, Md. Court of Appeals.

It will be observed that these are merely old principles applied to new cases. This digression is made for the