sustained by the plaintiff were not a necessary or legal consequence of the default of the Telegraph Company.

"It being agreed that judgment should be entered for the defendants if the court in banc were of opinion with them on either point."

The first point grows out of the terms and conditions prescribed by the company for the receipt and transmission of all messages. These were, *inter alia*.

"In order to guard against and correct as much as possible some of the errors arising from atmospheric and other causes appertaining to telegraphy, every important message should be REPEATED, by being sent back from the station from which it is originally sent. Half the usual price will be charged for repeating the message, and while this company in good faith, will endeavor to send messages correctly and promptly, it will not be responsible for errors or delay, in the transmission of delivery, nor for the non-delivery of REPEATED MESSAGES beyond TWO HUNDRED times the sum paid for sending the message, unless a special agreement for insurance be made in writing, and the amount of risk specified on this agreement and paid for at the time of sending the message. Nor will the company be responsible for any error or delay in the transmission of delivery, or for the non-delivery of an UNREPEATED message, beyond the amount paid for sending the same, unless in like manner specially insured, and amount of risks stated thereon, and paid for at the time."

If this regulation is valid, there is obviously an end of the plaintiff's case. It is conceded that he knew of the rule, and did not require the message repeated. He cannot, therefore, make the defendants answerable in damages consistently with the terms to which he tacitly agreed. It is a general principle that a man who seeks to enforce a contract, shall not recover more than the contract gives. It is for him to consider, in entering into the obligation, what shall be the limit of the liability on the other side. If he assents to a provision that the opposite party shall not be answerable in a given case, or unless certain conditions are fulfilled, he cannot rely on the disadvantageous result of the bargain as a reason for relief.

This consideration might be conclusive, if the action were *ex contractu*, or founded solely on the agreement between the plaintiff and defendants. Such, however, is not the case. It is an action *ex delicto* for the breach of a duty which the defendants owe to every man, to receive the messages which he may wish to send, and transmit them to their destination. This obligation was anterior to the contract, and is not necessarily susceptible of being modified by it. Having its foundation in a rule of law, it cannot be varied or restricted, except in subordination to the principles on which the rule depends. The maxim *quilibet postest renunciare juri pro se introducto*, does not apply when the right in question is conferred on the individual with a view to his protection and for the common good.

The plaintiff calls for the application of this doctrine to the case in hand. The condition against liability for unrepeated messages, is in his eyes, one which the defendants could not legally impose. It is, as he contends, virtually a stipulation for immunity against the consequences of their own negligence, and therefore invalid.

If such be the nature of the regulation, it cannot operate as a defence. The defendants are public agents, and as such bound to the exact diligence which is the condition precedent of all faithful service. Their charter was not conferred upon them merely as a means whereby gain might accrue without the risk incident to individual responsibility. It is a great and beneficial franchise confined to their hands for the better attainment of an object in which the community at large are interested. They are, therefore, not less than a railway company or a corporation organized to supply gas or water, under an obligation to exercise their peculiar function in a way to attain the end proposed, and must respond in damages to every one who is injured by a want of due care on their part or on that of the agents whom they employ. This, as the case of the *Telegraph Co.* v. *Dryburg* 35 Penna. 298, indicates, is true not only as it regards those who contract with them but of third persons who having entered into no relation of contract, are yet injured by their negligence.

The fundamental truth of the plaintiff's contention, is, therefore, undeniable; but, like most truths, it is limited by other and collateral principles. A railway, telegraph or any other company charged with a duty which concerns the public interest, cannot screen themselves from liability for negligence, but they may prescribe rules calculated to insure safety, and diminish the loss in the event of accident, and declare if they are not observed, the injured party shall be considered as in default, and precluded by the doctrine of contributory negligence. The rule must, however, be such, as that reason, which is said to be the life of the law, can approve; or at the least, such as it need not condemn. By no device can a body corporate avoid liability by fraud, for wilful