

ent of physical injury or nominal damages, be the proximate result of the wrong complained of, then a fortiori, the measure of damage must be compensatory instead of exemplary or punitive in such case. In all actions for physical injury, and in actions where exemplary or punitive damages were allowed, mental suffering has been admitted in aggravation of damages. It could only be put in evidence in cases where punitive damages were allowed. It has never been made a substantive cause of action. But like the case of seduction, the gravamen of which is loss of services, mental suffering has been tacked on to physical injury or nominal damage of a pecuniary nature, and it is in this respect that the subject matter now before us is *sui generis*. And many of the courts that have admitted mental suffering alone as an element of damage, have felt constrained to admit it as punitive damages, or as in aggravation of damages. Thus making the gravamen of the complaint nominal damages growing out of the breach of the contract, in order that the pecuniary standard of admeasurement might be first applied, thinking thus to avoid the difficulty of applying another rule of admeasurement. And although the proper results have been reached in these cases, we think they have beclouded the consideration of this question by putting the right of discovery on false grounds. The common law in keeping pace with these new conditions and facts arising out of telegraphy should apply these settled principles by making mental suffering the gravamen of the action. Then when the same act which commits the wrong, also inflicts the injury to the mentality, the true rule of the measure of damages is compensation. And when you apply the rule of compensation, then this law of tort and the law of damage is systematically developed on well settled principles to meet new conditions and new facts.

"Justice Mabry, in a dissenting opinion in *Int. Tel. Co. v. Saunders*, second column, says "that there can be no question that the failure to deliver a telegram can directly cause substantive injury and damage to the mind." And Judge Cooper in the *Rodgers Case* in order to maintain his position, was forced to criticize those courts which held that damages for mental suffering in breach of promise cases were compensatory. He claimed they should be punitive. Judge Lumpkin is confronted with the case of *Coleman v. Allen*, in which his own court says that in "an action for false imprisonment or malicious prosecution, mental suffering was a