

statute of Manitoba, in view of the provisions of Chapter 109, Revised Statutes of Canada, particularly section 121 thereof, and in view of the Railway Act of 1888, particularly sections 306 and 307, valid and effectual so as to confer authority on the Railway Commissioner in the said statute of Manitoba mentioned, to construct such a railway as the said Portage extension of the Red River Valley railway, crossing the Canadian Pacific railway, the Railway committee first approving of the mode and place of crossing, and first giving their directions as to the matters mentioned in sections 174, 175 and 176 of the said Railway Act.

The decision of the Court was as follows:—

This Court, having heard counsel for the province of Manitoba and also for the Canadian Pacific Railway, is unanimously of the opinion that the said statute of Manitoba is valid and effectual, so as to confer authority on the railway commissioner in the said statute of Manitoba mentioned, to construct such a railway as the Portage extension of the Red River valley, crossing the Canadian Pacific Railway, the Railway committee first approving of the mode and place of crossing and first giving their directions as to the matters mentioned in sections 174, 175 and 176 of the said Railway Act. Given this 22nd day of December, 1888.

#### DELAY OF TELEGRAM—MENTAL SUFFERING.

In *Western Union Tel. Co. v. Cooper*, Texas Supreme Court, October 23, 1888, an action by a husband to recover damages for failure to deliver a message from him to Dr. Keating, calling him to attend plaintiff's wife in her confinement, it appeared that the messenger went twice to the doctor's office, and not finding him, made no further effort to deliver the message. In the mean-time plaintiff's wife gave birth to a still-born child. The Court said: "Appellant claims that its demurrers to plaintiff's petition should have been sustained because injury to feelings disconnected from an actual personal injury is exemplary damages, and the facts alleged are not sufficient to recover exemplary damages. The very question raised here was before the

Supreme Court in the case of *Stuart v. Telegraph Co.*, 66 Tex. 580; and the Court after discussing the *So Relle Case*, 55 id. 310, and the two *Levy Cases*, 59 id. 543, 563, the case of *Hays v. Railroad Co.*, 46 id. 272, and other authorities, use the following language: 'But it is claimed that the mental is an incident to the bodily pain, and that without the latter the former cannot be considered as actual damages. In cases of bodily injury the mental suffering is not more directly and naturally the result of the wrongful act than in this case; not more obviously the consequences of the wrong done than in this case. What difference exists to make the claimed distinction? That is caused by and contemplated in doing the wrongful act is the principle of liability. The wrong-doer knows that he is doing this damage when he afflicts the mind by withholding the message of mortal illness as well as by a wound to the person.' The conclusion derived from the opinion in the case, from which the foregoing extract is taken, is that injury to feelings caused by a failure to deliver a message relating to domestic affairs, where the failure is the result of negligence on the part of the company or its servants, is an element of actual damages. The same principle was decided by the Commission of Appeals in the case of *Railway Co. v. Miller*, erroneously styled in the reports *Railway Co. v. Wilson*, 69 Tex. 739, and it was held that the right to recover would not depend upon the degree of negligence causing the injury. If the inexcusable negligence of the defendant's servants is found to be the proximate cause of the injury, damages may be recovered commensurate with the injury. . . . We do not think the death of the child before birth, and the grief or sorrow occasioned thereby, can be an element of damages in this character of suit. If it is made to appear from the testimony that Mrs. Cooper suffered more physical pain, mental anxiety and alarm, on account of her own condition, than she would have done if Dr. Keating had been in attendance upon her, and the failure to secure his service is shown to be due to the want of proper care on the part of defendant's servants, whose duty it was to deliver the message, a fair and