

shadowy and uncertain of admeasurement that we will not undertake it. And that too when the books are full of cases in which mental suffering has been the true gravamen of the action, although the courts rest the action on a fiction, and when it has been satisfactorily measured by the juries, without applying the pecuniary standard. Or to say, that as courts we will not meet this responsibility of seeing a wrong righted, because it will result in importuning us too often with intolerable litigation.

With this kind of case before us let us see now, on principles as hoary as the rule invoked here, what is the law of tort, and what is the law of damages applicable to this wrong? The act complained of is negligence in the failure to deliver, say a telegram, within a reasonable time, as required by a general duty owed the plaintiff. The telegraph company is engaged in a business sanctioned by law to promptly transmit and deliver messages relating to deaths, etc. It undertakes this duty and negligently fails to discharge it. Here is the wrong; here is the breach of the plaintiff's legal right; and the negligence complained of is the proximate, efficient cause of the violation of plaintiff's legal right. The subject matter dealt with is feeling; the injury inflicted is mental suffering. If the act complained of be the proximate cause of the injury of the mental suffering, and violates some legal right of the plaintiff, then the damages for the mental injury inflicted are compensatory. That the act complained of violates a legal right of plaintiff, I quote from Judge Lumpkins in *Chapman v. Western Union Telegraph Co.*, most relied on as the leading case against our contention here: 'That the argument that the telegraph company undertakes to serve the feelings of their customers is unanswerable, so far as it proves a right of action arising out of a breach of duty.'

"The wrongful act must not only give the cause of action, but it must also be the efficient and proximate cause of the mental suffering. The same negligent act here that caused the wrong, that violated plaintiff's legal right, was also the proximate, efficient cause of the injury. The mental suffering inflicted was the proximate result of the wrong complained of, and the injury was within the contemplation of the parties at the time service was undertaken. The mental suffering thus caused by simple negligence, falls directly within the principles of the old English case of *Hadley v. Baxendale*, and alone constitutes an independent cause of action. Now, if on principle, mental suffering alone, independ-