

form of, from the paper on which it was written, transmitted by electricity over the wires of the company, and reduced to writing at its destination by an agent of the company; and that it only represents what was written by the sender, in the event that there has been no imperfection in the mechanism of the company nor negligence in the servants of the company. Knowing the scope of the employment and the methods of transmission, the receiver should be held to know that the sender is bound by the contents of the telegram as received only so far as it is a faithful reproduction of what is sent. He knows furthermore that if he acts on the telegram, and it should turn out to have been altered by the negligence or wrongful act of the company, the latter is liable to him for such injury as he may sustain thereby. Ordinarily there is no relation of master and servant between the sender of the telegram and the company. Where this relation does not exist the principal is not responsible for the torts of the agent, and the negligent delivery of an altered message, when acted on by the receiver to his detriment, is a tort for which the telegraph company alone is responsible. The company retaining exclusive control of the manner of performance, and of its own employees and instrumentalities, the sender of the message being absolutely without voice in the matter, it seems to us that the position of the company to its employer is that of "independent contractor" as defined and understood in the well-settled class of cases where the employer is held to be not responsible for the negligence of the contractor in the performance of his work or undertaking. The many and marked differences between the employment of such companies to transmit a dispatch and the employment of a private person to deliver a verbal message, are so manifest that we cannot assume the liability of the sender in the first instance, from his conceded liability in the last for the negligence of the instrumentality employed. Such a holding not only does violence to well-settled principles of the law of agency, but may lead to the absolute ruin of the party employing this useful and now necessary public medium of

rapid transmission of intelligence; so that every consideration of public policy would seem to point to a different result, unless the courts find themselves constrained by the great weight of authority to uphold the contention here made.

How are the authorities? In England and in Scotland the idea of agency in the company, so as to bind the sender upon a telegram negligently changed in the transmission, is repudiated. *Henkel v. Pape*, L. R., 6 Exch. 7; *Verdin v. Robertson*, 10 Ct. Sess. Cas. (3d series) 35.

Mr. Gray in his work on Communication by Telegraphy, while stating the law to be in England and Scotland as above, says that in this country the rule is in general otherwise, citing a number of cases in note 3, section 104. It is to be noticed however that this author, after making the statement above given, throws the weight of his learning and research against what he says is the tendency of the American courts, and in an instructive discussion of the question seems to demonstrate that the English rule is the correct one. It is also worthy of remark that in the note already referred to he follows the citation of the cases which are said to make the American rule, with the statement that "as a matter of fact it has been decided in a single instance only (*Telegraph Co. v. Shotton*, 71 Ga. 760) that the receiver of an altered message is entitled to hold the sender responsible upon its terms;" adding "that the principle which would allow him to do so however has been considered in the other cases."

Let us see what may be briefly said of the other cases. In *Wilson v. Railroad Co.*, 31 Minn. 481, it is apparent from pages 482, 483, of the opinion that the question of agency was really not involved. With *Rose v. Telegraph Co.*, 3 Abb. Pr. (N.S.) 408, we content ourselves with what Mr. Gray says of this case: "It seems to affirm that the employer of a telegraph company is responsible upon a negligently altered message, but it does not necessarily determine the question. The case decided that the plaintiff, who was the agent of the sender of a message altered through the negligence of the defendant, could not maintain an action