

reach a correct conclusion. The subject matter of the contract in this class of cases then, is feeling, sentiment. The telegraph company is a public carrier of intelligence, and a large class of intelligence they daily transmit consists in messages of sickness, death, etc. They know when such a message is accepted for transmission and delivery, that there is no pecuniary standard by which its value can be ascertained; then there is no escape from the conclusion that it is within the contemplation of the parties that for a breach, the damage will be ascertained by means other than the pecuniary standard. Otherwise, what power could require them to observe such contracts? The citizen would be entirely at their mercy; and that too in matters of greatest importance touching such service. While on the other hand, if required to compensate the injured party for his mental suffering, it would speedily put a stop to the intolerable litigation which so concerns some of the courts. For the telegraph company would see that such messages were transmitted and delivered within a reasonable time, etc.

"There is another misconception as to the character of such damages for mental suffering alone, which has led to much of the confusion that surrounds the discussion of this question by the courts. They want to make it depend upon the right to recover actual or nominal damages, and then include the mental suffering as matter of aggravation; or, in other words, they want to assign to it the character of vindictive or exemplary damages, while it should be treated as compensation. We call especial attention here to the recent article of Mr. G. C. Hamilton in vol. 52, pp. 126-9 of *The Central Law Journal* in which he ably discusses this question of mental-suffering-damages from the view of point of compensation. When treated as compensatory damages, the same general rule announced in the case of *Hadley v. Baxendale*, 9 Exc. 341, will apply, viz.: 'Only such damages as are the proximate consequence of the injury and within the contemplation of the parties,' can be recovered. But it is only necessary that the negligence be the efficient cause of the injury. The fact that some other cause operates with the negligence of the telegraph company in producing the injury, does not relieve the defendant from liability. Both the North Carolina and Mississippi cases (*supra*), were cases of combined and concurrent causes. In the North Carolina case, the court said: 'It was a question for the jury to decide, under charges from the court, whether the suffering and danger from