

to sell clear rib meat in car-load lots at \$6.60 per 100 pounds was made, and the company could reasonably have anticipated that if the proposition was accepted the writer of the message would forward the goods in expectation of such price, and that his loss, if there was an error in delivering the message by the negligence of the company, would be the difference between the real value of the goods and the price at which the sender, in the exercise of reasonable prudence, might be able to dispose of them when rejected by the proposed purchaser in consequence of the error. In other words, the company knew that carelessness or mistake in the delivery of the message might expose the sender to pecuniary loss, the amount or extent of which it was not necessary for it to know. "It is only necessary that the damages be such as may fairly be supposed to have entered into the contemplation of the parties when they made the contract—that is, such as might naturally be expected to follow its violation;" and it was only necessary for the company to know that the telegram related to a matter of business, which, if improperly transmitted, might lead to pecuniary loss upon the basis above suggested, to be increased or diminished according to the particular circumstances of the case, and to be determined upon the rule of compensation to the party injured.

The second matter of defence set up in the answer, predicated upon the terms of the special contract contained in the printed blanks of the company need not be noticed, since the case of *Marr v. Telegraph Co.*, 1 Pickle, 529, which settles in this State, in accord with the overwhelming weight of authority, that such stipulations will not avail the company where the damage has resulted from the negligence of its agents or officers. The mistake or error here is clearly shown to have been occasioned by such negligence. Indeed learned counsel for the company have not made any contention to the contrary in this court. This brings us to the consideration of the third and serious ground of defence—the measure of damages in this particular case. The contention of the counsel for complainants is—and such was the view of the learned

chancellor—that the company was the agent of the complainants as the sender of the telegram, and that the complainants were therefore bound to let Bugg & Co. have the goods at \$6.30, the price erroneously named in the dispatch as delivered; and that the loss must be measured by the difference between the price at which they were willing and expected to sell and the price at which, in consequence of the error of such agent, they were compelled to sell.

In our opinion this contention cannot be maintained either upon principle or authority. The minds of the party who sends a message in certain words and the party who receives the message in entirely different words have never met. Neither can therefore be bound the one to the other, unless the mere fact of employment of the telegraph company as the instrument of communication makes the latter the agent of the sender. Upon what principle can it be said such an agency arises? The telegraph company is in no sense a private agent. It is clothed by the State with certain privileges; it is allowed to exercise the right of eminent domain. In exchange for such franchises it is onerated with certain duties, one of which is the obligation to accept and transmit over its wires all messages delivered to it for that purpose. The parties who resort to this instrumentality have no other means of obtaining the benefit of rapid communication, which is the price of its existence. They have no opportunity and no power to supervise or direct the manner or means which the company use in the discharge of their duties to the public in the transmission of messages for particular individuals. They can only deliver to the company a legible copy of what they wish communicated, with no expectation that such paper is to be carried to the party addressed; and their connection with the company there and then ceases. They have contracted with the company to transmit the words of the message to the party addressed, through its own agents and with its own means. The party receiving the message knows that he is not obtaining any communication direct from the sender, but that he is receiving what the company has taken, and changed the