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LIABILITY OF TELEGRAPH COMPANIES FOR FRAUD,
ACCIDENT, DELAY AND MISTAKES IN THE TRANS-
MISSION AND DELIVERY OF MESSAGES.

PART I.—NATURE AND DUTIES OF TELEGRAPH COMPANIES.—
PRACTICE.

§ 1. *Relation of Telegraph Companies to the Public.*—Seldom, if ever, in the history of the world, has an industry grown in so short a time, to such vast proportions as has the business of transmitting messages from place to place by means of the electric telegraph.

Forty years ago there was not a telegraph line in the world, to-day there are nearly three hundred thousand miles of wire in this country alone, and our telegraph companies have an aggregate capital of about \$100,000,000. In 1880 they transmitted 31,700,181 messages. They have become a gigantic power, and have taken their place alongside of steamship and railroad companies as great public agencies necessary to the life of commerce. About eighty per cent. of all telegrams are commercial. Some of them are so important, that a mistake or fraudulent change in transmission, is liable to cause the loss of thousands, and in extreme cases, even of hundreds of thousands of dollars.

It is, therefore, important for every lawyer to understand exactly what the legal relation of these companies is to the public, and what their liabilities and duties are.

In two early cases, *Parks v. Alta Cal. Tel. Co.*, 13 Cal. 422 (1859), and *Mac Andrew v. The Electric Co.*, 17 C. B. (Eng.) 3 (1855), they were held to be common carriers; but in other early cases the courts, when they considered the nature and power of electricity, thought it so strange, wonderful and incomprehensible, that no ordinary human care or skill could possibly suffice to control it perfectly, and, deeming it therefore unjust to hold telegraph companies bound by the strict rules which govern common carriers, sought out reasons for making a distinction between these new carriers of thought and the old carriers of merchandise. Able attorneys supplied them with apparent reasons, and they declared that telegraph companies were not insurers and should not be regarded as carriers. In that opinion, all the American courts which have expressed any decided opinion on this subject, have, with the exception above mentioned, concurred: *Ellis v. Am. Tel. Co.*, 13 Allen 226; *De Rutte v. The New York, &c., Tel. Co.*, 1 Daly 547; *W. U. Tel. Co. v. Carew*, 15 Mich. 525; *Grinnell v. W. U. Tel. Co.*, 113 Mass. 299; *W. U. Tel. Co. v. Bertram*, 1 Tex. App. (Cir. Cas.), sect. 1152; *Birney v. N. Y., &c., Tel. Co.*, 18 Md. 358; *Pinckney v. Tel. Co.* (Sup. Ct. S. C.), 16 Reporter 635.

In the last three of the cases above cited, telegraph companies are said to be "bailees," but the courts have generally been satisfied to either leave their position undefined, or call them public or quasi public agents, without stating whether they consider them bailees or not.

In the case of *W. U. Tel. Co. v. Fontaine*, 58 Geo. 433, the majority of the judges, including the chief justice, were of the opinion that the appellant was not a common carrier; but JACKSON, J., who concurred in the result reached by the other judges, but not in their reasoning, stated, that in his opinion, the appellant was a common carrier of messages, and that its liabilities were the same as those of other carriers. And it is believed by the writer, after an examination of all the cases, that the doctrine enunciated in Judge JACKSON'S opinion, and in the two cases first cited, is the correct one.

It has, indeed, been argued, that the duties of telegraph companies are wholly different from those of carriers of goods, because, it is said, a carrier has exclusive control of goods he undertakes to transport, with peculiar opportunities for embezzlement or collu-

sion with thieves; that the identity of the goods received with those delivered cannot be mistaken; that their value is of easy estimation and may be ascertained by inquiry, and the carrier's compensation fixed accordingly; and that on the other hand a telegraph company is entrusted with nothing but an order or message, which is not to be carried in the form in which it is received, but copied and a copy delivered; that in the transmission there is a peculiar liability of making mistakes; that a telegram cannot be embezzled; that it has no intrinsic value; that it may be of very great or of no importance; that only one rate of compensation can be fixed for telegrams, whether important or not; and that the measure of damages has no relation to any value which can be placed upon the message itself: *Grinnell v. W. U. Tel. Co.*, 113 Mass. 299. But it is respectfully submitted, that the alleged differences are apparent rather than real. Telegraph companies are given possession of telegrams and their agents may embezzle them, as they sometimes have, and may enter into collusion with thieves; moreover, a message certainly can be stolen. In *Strause v. W. U. Tel. Co.*, 8 Biss. C. Ct. 104, an important message had been safely transmitted and given to a messenger to deliver. The messenger negligently permitted a stranger to gain possession of it and substitute a forged one of a different import in its place. The forgery was delivered and the receiver damaged, and the company was held liable.

As to the difficulty in establishing the identity of the message delivered with the one received, the difference is only one of degree, and the fact that the mode of establishing such identity differs in the two cases is immaterial.

It is denied that it is always easy for a carrier to estimate the value of merchandise entrusted to it. Merchandise is usually delivered to carriers in boxes, or otherwise hidden from view, and both its value and nature have to be, and habitually are, learned from the shipper. The nature and importance of a telegram can be learned with equal ease from the sender, and there seems to be no good reason why different rates should not be charged for messages of different grades of importance, as well as for different kinds of merchandise; neither is it true that a telegraph company does not undertake to carry anything, but merely to make a copy of a writing and deliver the copy. The thing its undertaking relates to, is the message sent, which is placed by the sender on one piece

of paper furnished by the company, and delivered on another piece furnished by the company, just as merchandise is received by express companies on one of their vehicles which they use for collecting freight and delivered on another. The paper on which the message is delivered is simply one of the means of transportation which the nature of the business necessitates.

The fact that the mode of transportation is novel, is of no consequence; pipe companies, which transport petroleum for hire through pipes, have been held to be common carriers: *Jones v. Tanner*, 27 Pitts. L. J. 79.

Telegraph companies are undoubtedly liable to make mistakes, just as other carriers are liable to fail in their undertakings, and like other carriers, have to contend against uncontrollable forces, and against accidents which no care or skill can avert; but, in spite of all that has been said to the contrary, they do not appear to be peculiarly liable to error. That they are not, is proven by the small number of suits that have been brought against them. In many states, no case against a telegraph company has ever reached the Supreme Court. Only one case is to be found in the Missouri reports; only three cases in all the Federal reports. All the reported and some unreported American cases are cited in this article. The courts have been deceived as to the difficulties which these companies have to contend against.

Again it is said, telegrams have no intrinsic value; but what of that, they certainly very often have a great pecuniary importance, capable of being ascertained by the parties interested. The fact that they are frequently worthless, if not transmitted and delivered promptly, is of no consequence. The same thing is true of certain very perishable articles of merchandise.

In concluding the discussion of this point, it may be said, that notwithstanding the uniformity of the language of the decisions, there are few cases in which the result reached might not have been reached just as well if the defendant had been considered a carrier, and these few are of doubtful authority, and relate to questions as to the burden of proof and the ability of telegraph companies to limit their liability for negligence. They will be referred to hereafter.

§ 2. *Statutory Provisions—Common Law—Impartiality—Negligence.*—In most of our states statutes have been enacted providing in substance, that companies engaged in telegraphing for the public

shall, during the usual office hours, receive dispatches, whether from other telegraph lines or from individuals, and on payment or tender of the usual charges according to the regulations of such companies, shall transmit the same with impartiality and good faith, and in the order of time in which they are received, and shall be liable in damages for any breach of duty.

In the case of *Ellis v. Am. Tel. Co.*, 13 Allen 226, it was said, that the effect of a Massachusetts statute of that description, was to take the business of conducting and managing a line of electric telegraph within that Commonwealth out of the class of ordinary private occupations, and make it a *quasi* public employment, to be carried on with a view to the general benefit and for the accommodation of the community. But in reality, such statutes are only declaratory of the common law. Telegraph companies are bound to serve the public faithfully, skilfully and impartially, whether any statute commands it or not. Their duty to do so arises from the very nature of their employment: *W. U. Tel. Co. v. Graham*, 1 Col. (Tr.) 230; *Bartlett v. W. U. Tel. Co.*, 62 Me. 209; *Turnpike Co. v. News Co.*, 14 Vroom 383; *Davis v. W. U. Tel. Co.*, 1 Cin. Sup. Ct. 100; *W. U. Tel. Co. v. Neill*, 57 Tex. 283; *State v. Am. & E. C. News Co.*, 14 Vroom 381; *N. Y. & W. Printing Tel. Co. v. Dryburg*, 35 Penn. St. 298; *Parks v. Alta Cal. Tel. Co.*, 13 Cal. 422; *Sweatland v. Ill. & Miss. Tel. Co.*, 27 Ia. 433; *Baldwin et al. v. U. S. Tel. Co.*, 45 N. Y. 744; *Aiken v. Tel. Co.*, 5 S. C. 358.

The statutes of New York, Indiana and some other states, provide that telegraph companies shall be liable in a penal sum for any breach of their statutory duties, and in a suit for the statutory penalty under the New York statute, it was held, in the case of *Marvin et al. v. W. U. Tel. Co.*, 15 Chic. L. N. 416, that a refusal to receive a telegram unless it was sent "subject to delay," was a breach of the company's duty to receive; and in a suit to recover the statutory penalty for a failure to transmit, under the Indiana statute, it has been held, that though a telegraph company is not bound to transmit a message couched in indecent, obscene or filthy language, the fact that the company's agent believed the object of the message immoral, is no excuse for failing to transmit.

§ 3. *Who may Sue—Form of Action.*—Where a telegraph company fails to comply with a contract to transmit and deliver a

message sent at the expense, and for the sole benefit of the sender, the sender, and he only, can maintain an action on the contract: *Gulf, &c., Railway Co. v. Levy*, 28 Alb. L. J. (Tex.) 192; or he may, at his option, sue on the case; *Koons v. W. U. Tel. Co.* (Sup. Ct. Pa.), 16 Reporter 472; *Squire v. W. U. Tel. Co.*, 98 Mass. 232. Where, however, the contract with the company is made for the benefit of the person to whom the telegram is sent, either by his agent (*W. U. Tel. Co. v. Weiting*, 1 Tex. App. (Cir. Cas.), sect. 801; *Davis v. W. U. Tel. Co.*, 1 Cin. Sup. Ct. 100; *De Rutte v. N. Y., &c., Tel. Co.*, 1 Daly 547), or a stranger (*Gulf, &c., Railway Co. v. Levy, supra*), he is regarded as the real party to the contract, and can maintain an action upon it.

And where the price of transmission has been charged to him (*De Rutte v. N. Y., &c., Tel. Co., supra*), or the message has been sent C. O. D. (*La Grange v. Southwestern Tel. Co.*, 25 La. Ann. 383; *National Bank v. Tel. Co.*, 30 Ohio St. 555), the sender will be presumed to have acted as his agent in contracting with the company.

Where the contract for transmission is for the sole benefit of the sender, and the person to whom the message is sent is damaged by a mistake in transmission made through the company's negligence (*Telegraph Co. v. Dryburg*, 35 Penn. St. 298; *Rose v. U. S. Tel. Co.*, 6 Rob. (N. Y.) 307; *Harris v. W. U. Tel. Co.*, 9 Phila. 88; *contra, Playford v. U. K. Tel. Co.* (Eng.), Allen's Tel. Cas. 437), or through the company's negligently permitting a forgery to be substituted for the genuine message, and delivering the forgery (*Strause v. W. U. Tel. Co.*, 8 Biss. Cir. Ct. 104), his only remedy is an action on the case; but the right of the person to whom a message is sent, to maintain an action on the case for non-delivery or delay in delivering, where the contract with the company is not for his benefit, seems very doubtful on principle, though it has been recognised in Texas in the case of *Gulf, &c., Railway Co. v. Levy, supra*, and is held in Indiana to be conferred by a statute providing that any telegraph company, which fails to transmit and deliver a telegram which it has undertaken to transmit, "shall be liable for special damages:" *W. U. Tel. Co. v. Fenton*, 52 Ind. 1.

The only reported case in which the plaintiff has asked for damages occasioned by the negligent delivery of a telegram to him, appearing on its face to have been sent to him, but meant by the

sender for another person, is the case of *Dickson et al. v. Reuter's Tel. Co.*, 17 Am. L. Reg. (N. S.) 222, decided by the English Court of Appeal. The court held, in that case, that there could be no recovery; but if a similar case ever comes before an American court the ruling will probably be different.

PART II.—MEASURE OF DAMAGES.

§ 4. *Rule in Hadley v. Baxendale.*—In an action for the breach of a contract to transmit and deliver a telegram, the measure of damages is the same as for the breach of any other contract. The rule laid down by ALDERSON, B., in the famous case of *Hadley v. Baxendale*, 9 Exch. 341, and which has been referred to with approval in nearly every telegraph case in which any question as to the measure of damages has arisen, is as follows:

“Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract, should be such as may fairly and reasonably be considered either arising naturally, *i. e.*, according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of this breach of it. Now, if the special circumstances under which the contract was actually made, were communicated by the plaintiff to the defendant, and thus known to both parties, the damages resulting from this breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances, so known and communicated. But, on the other hand, if those special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases, not affected by any special circumstances, for such a breach of contract.”

In the case of *Leonard v. N. Y., &c., Tel. Co.*, 41 N. Y. 544, EARL, C. J., laid down the rule, as follows:

“A party is liable for all the direct damages which both parties to the contract would have contemplated as flowing from its breach, if, at the time they entered into it, they had bestowed proper attention upon the subject, and had been fully informed of the

facts." And his language has been quoted with approval in *W. U. Tel. Co. v. Bertram et al.*, 1 Tex. App. (Cir. Cas.), sect. 1152; *W. U. Tel. Co. v. Weiting*, Id. 801, and *National Bank v. W. U. Tel. Co.*, 30 Ohio St. 555.

The manner in which the general rule has been applied to particular cases, will appear from the following sections:

§ 5. *Mistakes leading to the Shipment of Merchandise not ordered.*—In the case of *Leonard v. N. Y. & C. Tel. Co.*, *supra*, the message sent was an order to the plaintiff's agent to ship five thousand sacks of salt from Oswego to Chicago. The word "sacks" was changed, through the negligence of the company's agent, to "casks," and five thousand casks were in consequence shipped instead of that number of sacks. When the salt reached Chicago it was worth much less than its market value in Oswego at the time it was shipped, and the measure of damages was held to be the difference between the market value of the surplus, over what was ordered at Oswego, when it was shipped, and its market value at Chicago, when it arrived there, together with the cost of transportation and interest from the date of the arrival of the salt at its destination.

§ 6. *Rule where Mistakes cause the Purchase of Merchandise.*—In the case of *Washington & New Orleans Tel. Co. v. Hobson et al.*, 15 Gratt. 122, it appeared that the appellees had sent a message by the appellant, to their factor at Mobile, ordering him to purchase five hundred bales of cotton on their account. The message, as delivered to the factor, read "twenty-five hundred bales," and, in pursuance of the order delivered to him, he purchased two thousand and seventy-eight bales before the mistake was discovered. The price of cotton fell, and the appellees sued the company for damages, after first requesting it to take the surplus over what they had ordered off their hands, and pay the factor's commissions. The court held that the measure of damages was the difference between the price paid for the surplus cotton, and the price at which it could have been sold at Mobile after the mistake was discovered, together with the commissions of the factor. It was also held in that case, that where merchandise is bought in consequence of a mistake in a telegram, the person for whom it is bought should, if he intends to hold the company responsible, notify it of his intention, and tender the merchandise to it on the condition of its paying the price and all the charges incident to the purchase; and

should also notify the company that, in case of a refusal to accept on those terms, the merchandise will be sold on its account.

But in the case of *Rittenhouse v. The Independent Line of Telegraph*, 1 Daly 474, which was decided six years later, such notice and tender were held unnecessary. That was a case in which the plaintiffs had telegraphed to their brokers, "If we have any old Southern on hand, sell same before board. Buy five Hudson at board." By a mistake in transmission, "hundred" was substituted for Hudson, and the broker accordingly bought five hundred shares Michigan Southern Railway stock. Before the mistake was discovered the stock bought fell in value, and the stock ordered rose, and the plaintiffs were held to be entitled to recover both the loss on the stock purchased, and the gain that would have been made on the shares ordered bought, if they had been purchased.

The same principles were applied in *W. U. Tel. Co. v. Bertram et al.*, *supra*, which was an action for damages for failure to deliver to Thompson & Co., of New Orleans, the following dispatch, viz.: "Cancel order given Maillet yesterday." The order referred to was one for ninety-five barrels of sugar, which the appellees had ordered. They had ascertained, after giving the order, that they could do better, and desired it cancelled for that reason. The telegram was not delivered and the appellees had to take the sugar. The court held that they were entitled to recover the difference between the price they paid for it and the price at which they could have bought, if their dispatch had been delivered.

§ 7. *Delay causing Loss of Debt.*—In the case of *Parks v. Alta Cal. Tel. Co.*, 13 Cal. 422, the message sent was "Due 1800. Attach if you can find property; will send note by tomorrow's stage." The opportunity to attach and the debt were both lost through the company's delay in transmitting the message, and the company was held liable for the amount of the debt.

In the case of *Bryant v. The Am. Tel. Co.*, 1 Daly 575, the facts were similar and the same measure was applied.

§ 8. *Failure to Deliver causing Sender to go to Useless Expense.*—In the case of *Sprague v. W. U. Tel. Co.*, 6 Daly 200, the plaintiff, who at that time had a case pending in Buffalo, but lived at another place, telegraphed to the clerk of the court before which his case was pending, "Hold my case till Tuesday or Thursday. Please reply." The message was not delivered, and the plaintiff, after waiting until the next day for an answer, con-

cluded that his case had not been held over, and went with counsel to Buffalo to try it. Upon arriving at Buffalo, however, he found his case had been laid over till the next week, and went back home again. Under the facts as above stated, the court held, that the measure of damages included the expense of going to Buffalo and returning with counsel, and the counsel's fee for the trip.

Expenses were also allowed in the case of *W. U. Tel. Co. v. Weiting*, 1 Tex. App. (Cir. Cas.), sect. 801. In that case they were caused by an unreasonable delay.

§ 9. *Loss of Profits*.—In the case of *Graham v. W. U. Tel. Co.*, 1 Col. , the plaintiff, who desired to have coal oil belonging to him, and then at Nebraska City, shipped to Denver, telegraphed to his agent at the former place, "Ship oil soon as possible at very best rates you can." In consequence of a failure to transmit the message there was a delay in shipping the oil, and higher rates of freight had to be paid than would have been charged if the oil had been shipped when the message should have been delivered, and profits which would have been realized in a sale of the oil if the telegram had been delivered, were lost in consequence of the market price of the oil falling. The measure of damages was held to include the increase in the price of freight, and all expenses to which the plaintiff was put by the company's failure to transmit, but not the profits which might have been realized. Inasmuch as the message did not indicate that a sale was contemplated, the decision was undoubtedly correct; but where the message is an order to buy or sell, or an acceptance of an offer to sell, and profits are lost through the company's negligence, they may be recovered. Thus, in the case of *True v. International Tel. Co.*, 60 Me. 9, the message sent was, "Ship cargo named at ninety, if you can secure freight at ten—wire us result." The message was not delivered, and the plaintiffs failed to secure the cargo of corn at the terms offered, and the price of corn and the rate of freight advanced immediately. The plaintiffs consequently lost the profits which they might have made on the purchase, and were obliged to buy other corn at higher prices; and the court held that they were entitled to recover both the increase in the amount which had to be paid for freight, and the difference between the price named and that which they would have been obliged to pay at the same place, in order, by due diligence, after

notice of the failure of the telegram, to purchase the like quantity and quality of corn.

The same principles have been applied, as to profits, in *Bartlett v. W. U. Tel. Co.*, 62 Me. 209; *W. U. Tel. Co. v. Weiting*, 1 Tex. App. (Cir. Cas.), sect. 801; *W. U. Tel. Co. v. Pettis*, (S. C. Tex.), 18 Cent. L. J. 39; *U. S. Tel. Co. v. Wenger*, 55 Penn. St. 262; *Manville v. W. U. Tel. Co.*, 37 Ia. 214, and *Rittenhouse v. Independent Line Tel. Co.*, 44 N. Y. 263, which were cases in contract; and in *Squire et al. v. N. Y. Cent. Railway Co.*, 98 Mass. 239, and *Bowen et al. v. Lake Erie Tel. Co.*, Allen's Tel. Cas. 7, which were actions on the case. But see, *Hibbard et al. v. W. U. Tel. Co.*, 33 Wis. 558.

§ 10. *Obscure Messages.*—In applying the rule in *Hadley v. Baxendale*, to obscure messages, the courts have held that where a dispatch is so worded that neither its nature nor its object can be understood by the telegraph company which undertakes to transmit it, and no explanation of its meaning is furnished to the company by the sender, the measure of damages in case of a breach of the company's contract, is the amount paid for transmission: *Shields v. Washington Tel. Co.*, Allen's Tel. Cas. 5; *Stevenson v. The Montreal Tel. Co.*, 16 Up. Can. Q. B. 530; *Baldwin v. U. S. Tel. Co.*, 45 N. Y. 744. But a message is not obscure within the meaning of the rule or of regulations as to obscure messages, if it appears on its face to be an order to a broker or agent to buy: *U. S. Tel. Co. v. Wenger*, 55 Penn. St. 262; *Rittenhouse v. Independent Line of Tel.*, 44 N. Y. 263; or sell, *Rittenhouse v. Independent Line of Tel.*, 44 N. Y. 263; *Tyler et al. v. W. U. Tel. Co.*, 60 Ill. 421; or an offer to buy: *Telegraph Co. v. Griswold*, 37 Ohio St. 301; or an acceptance of an offer to sell, as for instance, "Ship your hogs at once," *Manville v. W. U. Tel. Co.* 37 Ia. 314; or "Will take your hogs at your offer, our man will be there Tuesday morning," *Squire v. W. U. Tel. Co.*, 98 Mass. 232 (*Contra, Beaupre et al. v. P. & A. Tel. Co.* 21 Minn. 155, in which message was "Dispatch received. Will take two hundred extra mess, price named.") It has even been held sufficient to take a message out of the rule if it shows on its face that it relates to a business transaction, as in *W. U. Tel. Co. v. Blanchard et al.*, 68 Ga. 299; where message was "Cover two hundred September and one hundred August:" *Pope v. W. U. Tel. Co.*, 9 Brad. 285, where message was, "Money will be with Perine Brown by twelve; don't

sell;" *W. U. Tel. Co. v. Bertram*, 1 Tex. App. (Cir. Cas.), where message was "Cancel order given Maillet yesterday;" but this last point is not entirely settled: *Shields v. Washington Tel. Co.*, *supra*; *McCull v. W. U. Tel. Co.*, 7 Abb. N. Cas. 151; *Stevenson v. The Montreal Tel. Co.*, Up. Can. Q. B. 530; *U. S. Tel. Co. v. Gildersleeve*, 29 Md. 232.

§ 11. *Cipher Dispatches*.—Cipher dispatches come within the rule as to obscure messages, and the only damages which can be received in an action for a breach of contract to transmit such a message is the price paid for transmission.

The leading case on this point is *Sanders et al. v. Stuart*, 1 Com. Pl. Div. (Eng.) 326. The defendant in that case was a person who made his living by collecting messages and transmitting them by telegraph to America and other countries. This suit was brought to recover damages suffered in consequence of his negligence in failing to transmit a cipher dispatch which he had received from the plaintiff for transmission, Lord COLERIDGE, C. J., in delivering the opinion of the court said: "We think the rule in *Hadley v. Bazendale* applies, and that the damages recoverable are nominal only."

The rule in *Hadley v. Bazendale* was also applied in *Candee v. W. U. Tel. Co.*, 34 Wis. 473; *Mackay v. W. U. Tel. Co.*, 16 Nev. 223; and *W. U. Tel. Co. v. Martin*, 9 Brad. (Ill.) 587; and appears to have been followed in a case recently decided by Chancellor SIMBALL, of Kentucky, 15 Chic. L. N. 220.

Pinckney v. Tel. Co. (Sup. Ct. S. C.), 16 Reporter 635, was a case in which a mistake was made in transmitting a message written in cipher, but the rule as to cipher dispatches was not referred to by the court in deciding it.

The only cipher dispatch case in which compensatory damages have been allowed is the case of *W. U. Tel. Co. v. Weiting*, 1 Tex. App. (Cir. Cas.) 801; but the dispatch in that case appeared on its face to relate to the purchase of merchandise, and consequently does not come within the rule. The first part of the message sent was in cipher, but the concluding sentence was: "Get good selection, for party is large buyer," was written in plain English.

§ 12. *Measure of Damages in Actions in Tort*.—In actions in tort, all damages which are the natural and proximate consequence of the wrongful act whether in the contemplation of the wrongdoer at the time he committed the wrong or not, may be recovered, and

where the wrong is flagrant vindictive damages may be awarded: *W. U. Tel. Co. v. Fenton*, 52 Ind. 1; *N. Y. & W. P. Tel. Co. v. Dryburg*, 35 Penn. St. 298; *Bowen et al. v. Lake Erie Tel. Co.*, Allen's Tel. Cas. 7; *W. U. Tel. Co. v. Brown*, 58 Tex. 170; *Strause et al. v. W. U. Tel. Co.*, 8 Biss. C. Ct. 104; *Lane v. The Montreal Tel. Co.*, 7 U. C. P. R. 23; *Davis v. W. U. Tel. Co.*, 1 Cin. Sup. Ct. 100; *Behm v. W. U. Tel. Co.*, 8 Biss. 131; *Spencer v. W. U. Tel. Co.*, 6 Daly 200.

Davis v. W. U. Tel. Co., *supra*, is the only reported telegraph case in which vindictive damages have been allowed. The plaintiff was a commercial news agent who was engaged in furnishing reports as to the markets, to business men. The defendant had, by a general order given an unlawful precedence to a rival agency, and in that way ruined the plaintiff's business. In pursuance of its general policy it delayed forwarding a dispatch from one of the plaintiff's agents at New York, concerning the market, and gave precedence to a dispatch of the rival agency, which was forwarded to Cincinnati where the plaintiff did business and there published before the plaintiff's dispatch was delivered. The plaintiff thereupon brought his action on the case for damages occasioned by the delay in that instance and also for the damage to his business caused by the defendant's habitual misconduct, and he was held to be entitled to exemplary, as well as compensatory damages.

§ 13. *Injury to the Feelings.*—In the case of *Gulf, &c., Railway Co. v. Levy*, (Tex.) 28 Alb. L. J. 192, the action was on the case for failing to deliver to the appellee, a telegram from his son, informing him of the death of the latter's wife and child and asking him to come to the sender's help. The appellee alleged that he had suffered the keenest disappointment and the sorest grief at being deprived of the privilege of being present at the burial of his daughter-in-law and grandchild, of relieving his son of his wants, of sympathising with him in his sad bereavement and trial, and had been damaged in his feelings and otherwise to the sum of \$5000. There was no evidence of any pecuniary injury and the court held, overruling *Rille v. W. U. Tel. Co.*, 55 Tex. 310, that damages for mental sufferings can only be allowed where some pecuniary injury from the act causing such sufferings, is shown.

The only other telegraph case, except *Rille's case*, *supra*, in which damages for mental sufferings have been asked, is the case of *Logan v. W. U. Tel. Co.*, 84 Ill. 468, which was brought by the