

twenty years prior to the building of the power plant. The nuisance complained of is due to the combustion of bituminous coal by the defendant, the consequent emission of ashes, cinders, smoke, soot and sulphur dioxide, all of which are deposited on the plants and shrubs of the plaintiff, to its great injury.

The injunction was denied. The reasons ascribed are, that to grant the relief asked would in effect demand the closing of defendants power house and eliminate the services of light and power to the entire community, and would be fatal in this case to a public service corporation supplying the greater part of two counties.

The chancellor will consider whether greater injury would follow from injunction than to leave the complaining party to his legal remedy.

In the present case the refusal of the injunction, compelling resort to law was deemed the better course.

INTER AND INTRA STATE COMMERCE—MENTAL ANGUISH ALONE AS A CAUSE OF ACTION.

Western Union Telegraph Co. v. Wood. (Court of Civil Appeals of Texas, June, 1924.) 264 S. W. 118.

The plaintiff Wood sued for damages for failure of the company to deliver a telegram sent from Minneola, Texas, to Hedley, Texas, addressed to the plaintiff, in care of another. The message announced the serious illness of plaintiff's sister, who later died. The plaintiff's failure to reach his sister before death was shown to be directly traceable to his failure to receive the message. The issue turns on whether or not the message was interstate or intrastate. If the former, no recovery is permitted for mental anguish alone. If the latter, there may be a recovery. In fact the message was relayed through Oklahoma City to its destination. The character of the contract, says the court, is determined more by the facts existing and in contemplation of the parties, than by what the company may have later done with reference to it. The essential character of the commerce is controlling. The facts here are held to create a presumption that a message between points in the same state was intrastate commerce.

The original judgment for the plaintiff was reversed and new trial ordered because of erroneous admission of evidence, which was held not to have been waived by cross examination of the witness.