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RECENT CASES

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ATTORNEY AND CLIENT—DISBARMENT—MISCONDUCT.—IN RE ROBERTSON ET AL., 132 N. W. REP., 684, (S. D.)—*Held,* that an attorney who fails to properly report collections and to keep adequate books relating thereto and his other business, and who is guilty of gross carelessness in not knowing the facts when writing a letter concerning collections, will not be disbarred for misconduct.

An attorney is an officer of the court. *Penobscot Bar v. Kimball,* 64 Me., 140; *Ex-parte Garland,* 4 Wall (U. S.), 333; *State v. Hanaford,* 43 W. Va., 773. Therefore the court has power to disbar him from practice. *Ex-parte Thompson,* 32 Ore., 499; *in re Duncan,* 64 S. C., 461; *Jackson v. State,* 21 Tex., 668. And in general attorneys may be disbarred at the discretion of the court for malpractice and unprofessional conduct. *In re Boone,* 83 Fed., 944; *in re Smith,* 73 Kan., 243; *State v. Stitles,* 48 W. Va., 425. Misconduct as to client is conduct justifying disbarment. *People v. Mead,* 29 Colo., 344; *People v. Payson,* 215 Ill., 476; *Tudor v. Commonwealth,* 27 Ky. Law Rep., 87. Misappropriation of client's funds and failure to account is such misconduct. *People v. Betts,* 26 Colo., 521; *in re Burris,* 101 Cal., 624; *Jeffries v. Lawrie,* 27 Fed., 195; *in re Temple,* 33 Minn., 343. But *Kane v. Haywood,* 66 N. C., 1, holds that where an attorney, losing the money while drunk and being now insolvent, does not pay over, he will not be disbarred. And mere carelessness and negligence in general is not sufficient ground for disbarment. *In re Lenz,* 65 N. J. L., 134; *in re Veeder,* 11 N. Mex., 43. Likewise misstatements to clients which do not defraud will not cause disbarment. *In re Collins,* 147 Cal., 8; *People v. Robinson,* 32 Colo., 241; *in re Duncan,* 64 S. C., 461. And *in re Thresher,* 29 Mont., 11, holds that retention of funds by an attorney to satisfy his personal claims does not merit disbarment.

DAMAGES—MENTAL SUFFERING—WILLFUL INJURY.—DAVIDSON V. LEE, 139 S. W., 904. (TEX.)—*Held,* that the rule that damages are not recoverable for mental suffering, unaccompanied by physical injury, is inapplicable where the wrong complained of is a willful one, intended by the wrongdoer to produce mental anguish, or from which such result should be reasonably anticipated.

The rule stated in the leading case has been approved by several other courts. *Williams v. Underhill,* 71 N. Y. Supp., 291; *Davis v. Railway Co.,* 35 Wash., 203. And it has been said that such damages are recoverable whether the wrongful act was willful or merely negligent. *R. R. Co. v. Christison,* 39 Ill. App., 495. They may be recovered in an action for disturbing a grave. *Bessemer Co. v. Jenkins,* 111 Ala., 135; *Meagher v. Driscoll,* 99 Mass., 281. In a similar case the rule is stated that wherever an act is a violation of a legal right, damages for mental suffering can be recovered, if they were the proximate and natural consequence of the

wrongful act. *Larson v. Chase,* 47 Minn., 307. Such damages were allowed in an action against a common carrier by a passenger who was kissed by the conductor against her will. *Craker v. R. R. Co.,* 36 Wis., 657. They have often been allowed in actions for the non-delivery or delay in delivering a telegram, where the company had notice that such failure or delay would probably cause mental suffering. *Young v. Telegraph Co.,* 107 N. C., 370; *Reese v. Telegraph Co.,* 123 Ind., 294; *Telegraph Co. v. Cooper,* 71 Tex., 507. But other courts held the contrary. *Chase v. Telegraph Co.,* 44 Fed., 554; *Summerfield v. Telegraph Co.,* 87 Wis., 1. In any case, such damages are recoverable for intense suffering only, and not for more disappointment or regret. *Hancock v. Telegraph Co.,* 137 N. C., 497.

DISCRETION OF COURT—NEW TRIAL—MISCONDUCT OF COUNSEL.—DOWNEY V. FINUCANE ET AL., 130 N. Y. SUPP., 988.—After the jury had retired for deliberation and in the absence of the presiding justice, counsel sent a newspaper statement which had been ruled out appended to an exhibit which the jury had called for. *Held,* in view of the trial court's positive instructions to disregard the statement, that the conduct of counsel was not such misconduct as to require a reversal of the order denying a new trial therefor. McLennan, P. J., *dissenting.*

The granting or refusing of a new trial on grounds of misconduct is a matter for the sound discretion of the trial court and the decision of the court will not be disturbed on appeal unless it is made affirmatively to appear that, that discretion has been abused prejudicially. *Sunberg v. Babcock,* 66 Iowa, 515; *Loucks v. C. M. & St. P. R. R. Co.,* 31 Minn., 526; *Tucker v. Salem Flouring Mills Co.,* 13 Ore., 28; *Olsen v. Gjersten,* 42 Minn., 407. Whether misconduct is prejudicial is to be determined by the trial court, *Watson v. St. Paul City Ry. Co.,* 42 Minn., 46, but in their decision the court uses a legal discretion which must be exercised in accordance with the rules of law under penalty of reversal, *Stockwell v. C. C. & D. R. Co.,* 43 Iowa, 470. On appeal the prejudicial effect respectively of—Misconduct of jury or party, *Hamm v. Romine,* 98 Ind., 77. Improper influence of jury by counsel, *Knowles v. Van Gorder,* 23 Minn., 197. Comments to jury in absence of judge on facts not in evidence, *Halls v. Wolff,* 61 Iowa, 559. Improper remarks to jury, *Conn. v. White,* 148 Mass., 430. Comments to third parties in jury's presence, *Shea v. Lawrence,* 83 Mass., 167. Disclosure by counsel to jury of the contents of a paper sought to be introduced in evidence, *Met. Str. Ry. Co. v. Powell,* 89 Ga., 601,—has been held to lie within the discretion of the trial court.

INFANTS—DISAFFIRMANCE OF DEEDS—LIMITATION.—PUTNAL V. WALKER, 55 So., 844 (FLA.).—*Held,* that where no estoppel arises against an infant at the time he makes a deed during infancy, and when there are no circumstances and no affirmative acts of his making it inequitable for him to remain inactive after attaining his majority, his mere silence or inertness for a period less than seven years, as fixed by the statute of limitations, after he reaches his majority, does not bar his right to disaffirm his deed made during infancy.

The rule stated in the leading case is supported by the decisions of the Federal courts, and of those of many of the States. *Irvine v. Irvine,* 9 Wall., 617; *Wilson v. Branch,* 77 Va., 65; *Cressinger v. Lessee of Welch,* 15 Ohio, 156; *Voorhees v. Voorhees,* 24 Barb., 150 (N. Y.); *Prout v. Wiley,* 28 Mich., 164. On the other hand, almost an equal number of courts hold that the deed must be disaffirmed by the infant within a reasonable time after reaching majority, and the reasonableness is to be determined in view of all the circumstances. *Kline v. Beebe,* 6 Conn., 494; *Hastings v. Dollarhide,* 24 Cal., 195; *Goodnow v. Lumber Co.,* 31 Minn., 468; *Searcy v. Hunter,* 81 Tex., 644. This seems to be the English rule. *Holmes v. Blogg,* 8 Taunt., 35; *Dublin Railway v. Black,* 8 Exch., 181. In some states this is a statutory provision. *Wright v. Germain,* 21 Ia., 585; *Bentley v. Greer,* 100 Ga., 35; *Johnston v. Gerry,* 34 Wash., 524. Where the facts are not disputed, the question of reasonableness is for the court. *Goodnow v. Lumber Co.,* 31 Minn., 468. Some courts hold that, while the deed must be disaffirmed within a reasonable time, as a matter of law the time fixed by the statute of limitations within which an action to recover land must be brought is a reasonable time. *Blankenship v. Stoat,* 25 Ill., 132.

INJUNCTION—DAMAGES—ATTORNEY'S FEES.—ALBERS COMMISSION CO. ET AL. V. SPENCER ET AL., 139 S. W., 321 (Mo.)—*Held,* that attorney's fees for services incurred by defendant in procuring the dissolution of a temporary injunction wrongfully sued out are a part of the damages, but where the injunction was dissolved below, the services of attorneys to resist its re-establishment on appeal, there being no *supersedeas,* cannot be recovered on the bond.

The weight of authority, as pointed out in *High on Injunctions,* Sec. 1685, sustains the right to recover attorney's fees paid in procuring the dissolution of an injunction. *Keith v. Henkleman,* 173 Ill., 137; *Wisconsin M. & F. Ins. Co. Bank v. Durner,* 114 Wis., 369; *Porter v. Hopkins,* 63 Cal., 53. And yet in the Federal courts the rule is well established that counsel fees are not a proper element of damage in a suit upon an injunction bond. *Missouri K. & T. Ry. Co. v. Elliott,* 184 U. S., 530; *in re Hines,* 144 Fed., 147. And such is the rule in a number of States. *Wisecarver v. Wisecarver,* 97 Va., 452; *Sensening v. Parry,* 113 Pa., 115. The majority of States refuse to extend the damages recoverable to counsel fees sustained after the injunction has been dissolved and an appeal taken. *Cors v. Tompkins,* 51 Ill., App. 315; *Elmwood Mfg. Co. v. Rankin,* 70 Ia., 403. And thus in *Neiser v. Thomas,* even though the dissolution was accompanied by a *supersedeas* bond. *French Piano Co. v. Porter,* 134 Ala., 302.

INSURANCE—FRATERNAL INSURANCE—PARTIES ENTITLED TO FUNDS.—ROYAL LEAGUE V. SHIELDS, 96 N. E., 45 (ILL.).—*Held,* that where a fraternal benefit association is organized to issue certificates for the benefit of the families, heirs, relatives of, or persons dependent on, the member, the designation of a person not within the classes enumerated is void and the funds go to the beneficiary designated by law. Vickers, Cartwright, and Farmer, JJ., *dissenting.*

In general, the certificate of membership and the law under which the association was incorporated govern who may be entitled to the funds. *Kirkpatrick v. Modern Woodmen,* 103 Ill. App., 468; *Gillam v. Dale,* 69 Kan., 362; *Mutual Benefit Asso. v. Rolfe,* 76 Mich., 146. And the weight of authority seems to hold, that where the statute designates certain classes of relatives or dependents, a dependent is one who relies upon the member in some material degree for support resting on some moral, legal, or equitable ground, and not where the assistance is trivial, casual, or wholly charitable. *Joyce on Insurance,* Sec. 773; *Caldwell v. Grand Lodge,* 148 Cal., 195; *Sup. Lodge, Knights of Honor v. Nairn,* 60 Mich., 44; *West v. A. O. U. W. of Texas,* 14 Tex. Civ. App., 471. Some cases hold under such a statute that the members of the family must also be dependent *Smith v. Boston &c. R. R. Relief Asso.,* 168 Mass., 213; *Lister v. Lister,* 73 Mo. App., 99. *Contra, Klotz v. Klotz, Jr.,* 15 Ky., Law Rep., 183; *Donithorn v. I. O. O. F.,* 209 Pa., 170; *Klee v. Klee,* 93 N. Y. Supp., 588. So where the designation of beneficiary is invalid, ineffectual, or fails, the funds go to the heirs or other persons designated by the law. *Caudell v. Woodward,* 96 Ky., 646; *Dale v. Brumbly,* 96 Md., 674; *Wolf v. District Grand Lodge,* 102 Mich., 23. But *Grand Lodge, A. O. U. W. v. Cleghorn,* 42 S. W. (Tex.), 1043, holds that the fund reverts to the society in accordance with the by-laws. And the society alone, and not third persons, may waive the right to take advantage of defective designations. *Taylor v. Hair,* 112 Fed., 913; *Tepper v. Royal Arcanum,* 61 N. J. Eq., 638; *Maguire v. Supreme Council,* 69 N. Y. Supp., 61, and *Beard v. Sharp,* 100 Ky., 606, hold that the person illegally designated who has paid the member's dues may only retain the amount of such dues; but *Gruber v. Grand Lodge, A. O. U. W.,* 79 Minn., 59, holds the society estopped from refusing payment after receiving dues.

LIFE ESTATES—CORPORATE STOCK—NEW STOCK.—BALLANTINE v. YOUNG, 81 ATL., 119 (N. J.).—*Held,* that where corporate stock was bequeathed to one for life, remainder to another, and the corporation, in the form of dividend, issued new stock to the stockholders, the stock so issued is an extraordinary dividend, and must be apportioned between the life-tenant and the remainderman.

This doctrine that so much of the stock dividends as represent the surplus profits accumulated during the lifetime of the testator will be considered as part of the *corpus* of the estate and go to the remainderman, while so much as represent earnings made after his death are income, and therefore payable to the life-tenant, has been followed in but a small number of States. In *Smith's Estate,* 140 Pa., 344; *Holbrook v. Holbrook,* 74 N. H., 201. According to the English rule the intention of the corporation is made determinative.. *In re Bouch,* L. R. 29 Ch. Div., 635. In *Gibbons v. Mahon,* 136 U. S., 549, stock dividends were regarded as an accretion to the capital. A number of American courts regard cash dividends, however large, as income, and stock dividends, however made, as capital. *Minot v. Paine,* 99 Mass., 101; *Boardman v. Mansfield,* 79 Conn.,

634. At the other extreme stand the decisions that dividends of stock are non-apportionable, the whole belonging to the life-tenant, although a portion of it may have been earned before the death of the testator. *Hite v. Hite,* 93 Ky., 257; *Millen v. Guerrard,* 67 Ga., 284. A still different test is used in *Kalbach v. Clark,* 133 Ia., 215, in which case the decision is made to depend upon whether these stock dividends represent profits on the original stock, or merely the natural increase in its value.

PARENT AND CHILD—EMANCIPATION—MARRIAGE.—AUSTIN V. AUSTIN, 132 N. W. REP., 495 (MICH.).—*Held,* that marriage alone does not emancipate a male minor.

A parent has the right to the services of a minor child. *Dufield v. Cross,* 12 Ill., 397; *Benson v. Remington,* 2 Mass., 113; *Halliday v. Miller,* 29 W. Va., 424. But this right is lost by emancipation of the minor. *Bristor v. Railway Co.,* 128 Iowa, 479; *Carthage v. Canton,* 97 Me, 473; *Whiting v. Earle & Tr.,* 3 Pick. (Mass.), 201. Outside of his relations to his parents, a minor's marriage is of practically no effect on his status. *Taunton v. Plymouth,* 15 Mass., 203; *Porch v. Fries,* 18 N. J. Eq., 204; *Bool v. Mix,* 17 Wend. (N. Y.), 119. Marriage emancipates a female minor. *State ex rel. Scott v. Lowell,* 78 Minn, 166; *Aldrich v. Bennett,* 63 N. H., 415; *Grayson v. Lofland,* 21 Tex. Civ. App., 503. But *Guillebart v. Grenier,* 107 La., 614, holds *contra,* when the consent of the parents is not obtained. And the better rule apparently is, contrary to the principal case, that marriage emancipates a male minor. *Dick v. Grissom,* 1 Freem. Ch. (Miss.), 434; *Sherburne v. Hartland,* 37 Vt., 528. *Commonwealth v. Graham,* 157 Mass., 73, holds that a male minor is at least emancipated to the extent of his earnings necessary for the support of his family. But there is authority for the view that marriage without consent of the parents does not emancipate a male minor. *Maillefer v. Saillot,* 4 La. Ann., 375; *White v. Henry,* 24 Me., 531.

PAYMENT—MEDIUM.—STROUT V. JOY, 80 ATLANTIC, 830 (ME.).—*Held,* that an agreement to do work "for the sum of $200 to be paid for in loam" at a fixed rate per yard gives the debtor an option to pay in cash though the loam is worth more.

In accordance with the principal case, there is a presumption in favor of the debtor when an agreement is made to pay in something else than money, and a note payable in property may be discharged by tendering the amount of cash instead of the specific chattel. *Pinney v. Gleason,* 5 Wend., 393. Or, where the right is payable either in property or in money at the election of the debtor he may compel the creditor to accept property instead of money. *Nipp et al. v. Diskey,* 81 Ind., 214. In the case where an option is given by contract, the debtor has the right of election until the debt is due—then the obligee can have the option. *Ireland v. Montgomery,* 34 Ind., 74; *Patchin v. Swift,* 22 Vt., 292. Still other cases while denying an election will arbitrarily grant a recovery in money—and while payment must be made in money unless a different medium is expressed, if the

agreement be one to pay in something other than money, the law will award a money compensation for a breach. *Duerson et al. v. Bellows,* 1 Blackf. 217; *New York News Pub. Co. v. National S. S. Co.,* 148 N. Y., 39; *Perry v. Smith,* 22 Vt., 301; *Van de Vanter v. Redelsheimer,* 107 Wash., 847. The amount of money specified—not the value of the property—is the determining element. *Brooks v. Hubbard,* 3 Conn., 58. Furthermore it has been held that the intention of the parties is important in determining whether the defendant is to have the privilege of paying in money or a specified article. *Corey v. Phila. etc., Petroleum Co.,* 33 Cal., 694; *Sowers v. Earnhart,* 60 N. C., 96.

QUIETING TITLE—NATURE OF REMEDY—GROUNDS FOR RELIEF.—MAYNOR V. TYLER LAND CO., 139 S. W., 393 (Mo.)—*Held,* that in a suit to quiet title, the plaintiff is entitled to a decree, if his title be good against the defendant.

The rule stated in the leading case is supported by some other decisions. *DeNola v. Alison,* 143 Cal., 106; *Brewing Co. v. Taylor,* 204 Ill., 132. But many cases hold that in a suit to quiet title, the plaintiff must recover on the strength of his own title, and not on the weakness of his adversary's. *Land Co. v. Bigelow,* 77 Ark., 338; *Guarantee Co. v. Delta Co.,* 104 Fed., 5; *Krotz v. Lumber Co.,* 34 Ind. App., 577. An equitable title is enough as against one having neither title nor possession. *Lumber Co. v. Bailey,* 22 Ky. Law Rep., 1264. But the plaintiff can not base his suit on a mere right to specific performance *Hennefer v. Hays,* 14 Utah, 324. At least as against his vendor. *Chase v. Cameron,* 133 Cal., 231. A title based on adverse possession, good against the defendant, is sufficient. *Clemmons v. Cox,* 114 Ala., 350; *Vier v. Detroit,* 111 Mich., 646. So is a title obtained through fraud, where the grantors have not disaffirmed the transaction, and the defendant does not claim through them. *Ponce v. Long,* 38 Ind. App., 63. Most courts hold that the plaintiff must show that he is in possession. *Orton v. Smith,* 18 How., 263; *Hardin v. Jones,* 86 Ill., 313; *Haythorn v. Margerem,* 7 N. J. Eq., 324. Or that the land is unoccupied. *O'Brien v. Creitz,* 10 Kan., 202; *Lamb v. Farrell,* 21 Fed., 5. But a few decisions hold that this is unnecessary. *Lees v. Wetmore,* 58 Ia., 170; *Bausman v. Kelley,* 38 Minn., 197.

RAILROADS—TRESPASSERS ON TRACK—DUTIES OF RAILROAD.—SOUTHERN RAILROAD CO. V. CAMPBELL, 71 S. E., 934 (GA.)—*Held,* that a railroad company in the operation of its trains owes to a trespasser upon its tracks no duty, save that of not injuring him wilfully or wantonly.

A railroad track, except at public crossings or upon public highways, is the exclusive property of the railroad company; and all persons who go upon the tracks, except at such places, without the company's express or implied permission, are trespassers, and, subject to certain qualifications, do so at their own peril. *L. C. Ry. Co. v. Godfrey,* 71 Ill., 500; *Clark v. N. Y. C.,* 93 N. Y. Supp., 525. To avoid liability the company must have been simply in the exercise of ordinary care. *Remer v. Long Island Ry.,* 1 N. Y. Supp. 124. It would seem that the company's negligence must have

been such as to warrant a *presumption* of wilfullness. *W. & A. Ry. v. Meigs,* 74 Ga., 857. There is authority for the statement that mere carelessness of its employees does not render the company liable. *Union S. & T. Co. v. Goodman,* 91 Ill. App., 426; *Lando v. C. St. P. M. & O. Ry.,* 81 Minn., 279. But when employees have cause to anticipate the presence of persons on tracks the degree of care required is greatly advanced. *Southern Ry. v. Chatman,* 124 Ga., 1026. No duty has ever been held to be incumbent upon a railroad to maintain flag-men or alarm bells, where only trespassers would be expected to pass. *I. C. Ry. v. Oberhofer,* 76 Ill. App. 672.

TAXATION—PROPERTY SUBJECT—PUBLIC PROPERTY.—PEOPLE V. PURDY, 130 N. Y. SUPP., 1077.—*Held,* that property condemned by a municipality for public use was found to be unnecessary for the object for which it was condemned does not render it subject to taxation on the theory of municipal private ownership.

The general rule that property held by a municipality for public use is exempt from taxation is well established. *Wayland v. Middlesex Co.,* 4 Gray, Mass., 500; *Newark v. Verona,* 59 N. J. L., 94; *Dist. No.* 551 *v. Sacramento Co.,* 134 Cal., 477. But municipal property used in commercial capacity as a private corporation for its own profit is taxable. *Essex Co. v. Salem,* 153 Mass., 141; *Robb v. Philadelphia,* 12 Pa. Dist., 423. Furthermore, if a city purchases land partly for public uses and partly for private purposes, to derive gain therefrom, only that portion used for the public object is not taxable. *Newark v. Clinton,* 49 N. J. L., 370. But if property so used cannot be separated, the whole is subject to taxation. *Swanton v. Highgate,* 81 Vt., 152. Or if more land than necessary is bought, without any intention of using it for public purposes, it will not be exempt. *Town of Hartford v. Water Com'sr of City of Hartford,* 44 Conn., 360. However, land obtained for public use, even if not immediately necessary and not appropriated to such use, is held not subject to taxation. *Jersey City Water Com'rs v. Gaffney,* 34 N. J. L., 131. Under a general taxation law, there is an implied exemption in favor of property for public use. *Worcester County v. Worcester,* 116 Mass., 193. But this is not true in Illinois. *Sanitary Dist. v. Martin,* 173 Ill., 243. If there is an express exemption, then all the property of a municipality is exempt regardless of its use. *Newark v. Belleville,* 61 N. J. L., 455. The property must be owned by the city; a mere reversionary interest for instance, is not sufficient to support exemption from taxation. *Fall. v. Marysville,* 19 Cal., 391. Nor is it enough that the state may be ultimately entitled to share in the proceeds of the property. *Ryan v. Callatin Co.,* 14 Ill., 78. Where the property of the municipality is outside the city limits, some courts hold that it is not exempt. *Newport v. Unity,* 68 N. H., 587. Nevertheless, the better rule sustains the exemption. *Rochester v. Rush,* 80 N. Y., 302. Of course, a municipality having general powers of taxation may tax its own property. *Norfolk v. Perry Co.,* 108 Va., 28. So the State, in the absence of constitutional prohibition, may tax the property of its municipal corporations. *Public School Trustees v. Trenton,* 30 N. J. Eq., 667.

TORTS—INTERFERENCE WITH BUSINESS—MOTIVE AFFECTING LIABILITY.—DUNSHEE V. STANDARD OIL CO. ET AL., 132 N. W., (IA.).—*Held,* it is not the law that, if one does a thing which otherwise would not transgress the bounds of legitimate competition, his motive in doing it can not affect the question of his liability to one injured by his act; so, where plaintiff, being engaged in retailing oil, and having commenced to buy part of his supply from another defendant, a wholesaler, defendant, with no real purpose or desire to establish a competing retail business, went into the retail business under the guise or pretense of competition, with malicious purpose of ruining the plaintiff, or driving him out of business, intending itself to retire from the retail business when its end was secured, it can claim no immunity under the rules protecting competition, but is liable for injury to plaintiff.

The general trend of authority in this country as expressed in trade cases, is to declare actionable acts which are done solely out of bad motive, without justifiable cause and which naturally tend to do injury. *Moran v. Dumphy,* 177 Mass., 435; *Chipley v. Atkinson,* 23 Fla., 206; *International Co. v. Greenwood,* 2 Tex. Civ. App. 76. But, other courts hold that an act legal in itself is not rendered actionable by the motive which induced it. *Phelps v. Nowlen,* 72 N. Y., 39; *Bohn Mfg. Co. v. Hollis,* 54 Minn., 223. Although the motive be malicious, yet if the main purpose of of the defendant is to defend and protect his own business and not merely to injure the plaintiff, he is not liable. *Clendon Iron Co. v. Uhler,* 75 Pa. St. 467. *Trans. Co. v. Standard Oil Co.,* 50 W. Va., 611. On the other hand good motive does not of itself constitute a justification for the violation of a right. *Cooley on Torts* (Students' Ed.), p. 46. Competition constitutes a *prima facie* justification. *Mogul S. S. Co. v. McGregor,* L. R. App. Cases 25. What may be a legal act, though done with bad motive by an individual, becomes actionable when done by a combination of persons. *Hawarden v. Youghiogheny L. & C. Co.,* 111 Wis., 545. In determining questions of defendant's liability in trade cases, courts disergard any event or antecedent act which may be cause of the motive. *Casey v. Cincinnati Typ. Union,* 45 Fed., 135; *Brace Brothers v. Evans,* 18 Pitts. L. J., 399. So courts regard the immediate motive as affecting or not affecting the liability of the defendant and not the ultimate motive. *National Ass'n. v. Cumming,* 170 N. Y., 315. This motive or malice, if not manifestly inherent in act, compels plaintiff to give some proof from which it may legally be inferred. *Haines v. Schultz,* 50 N. J., 481. When question of punitive damages arise motive becomes very important. *Louisville, etc., R. R. Co. v. Smith,* 141 Ala., 335.