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## Torts—Recovery Where Mental Distress is Sole Injury—Effect of Willfulness

Bonn Brown  
*West Virginia University College of Law*

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a taxpayer or a competitive bidder may interfere in these cases; the taxpayer by enjoining the letting of the contract<sup>10</sup> or by refusal to pay taxes assessed for payment of such work,<sup>11</sup> the bidder by mandamus to compel the contract to be let to him or by injunction to restrain the letting to a higher bidder.<sup>12</sup>

This strict rule of enforcement seems to be the better view. If the contractor is allowed to recover on quantum meruit the purpose of the requirement is defeated. The measure of recovery where defendant repudiates and the plaintiff has performed is the value of the work done, of which the contract may be evidence.<sup>13</sup> If the contractor can recover possibly as much as the contract price in quasi-contract in case the contract is held void, why should he worry about the city's compliance with statutory requirements in letting the contract? The answer is obvious. The penalty for failure to comply is removed and the door is opened to indifference and fraud in the letting of public contracts.

—PAUL S. HUDGINS.

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TORTS—RECOVERY WHERE MENTAL DISTRESS IS SOLE INJURY—EFFECT OF WILLFULNESS.—The plaintiff, a widow, owed a small claim on which her wages were exempt. Defendant, collecting agency, wrote her several letters, threatened to sue her on the claim, to appeal to her employer, and intimated that her action was as bad as a criminal's. No threat had reference to physical violence. The letters caused her much worry and mental anguish. In a suit for damages, she neither alleged nor proved any resultant physical injury. From verdict and judgment for the plaintiff the defendant appealed. The decision of the lower court was upheld on the grounds that the defendant had willfully and intentionally caused the plaintiff anguish and suffering. *Barnett v. Collection Service Co.*<sup>1</sup>

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<sup>10</sup> *Murphy v. City of Greensboro*, 190 N. C. 268, 129 S. E. 614 (1925); *Kratz v. City of Allentown*, 304 Pa. 51, 155 Atl. 116 (1931).

<sup>11</sup> *Twiss v. City of Huron*, 63 Mich. 528, 30 N. W. 177 (1886). See also *Moundsville v. Yost*, 75 W. Va. 224, 83 S. E. 910 (1914).

<sup>12</sup> *Federal Construction Co. v. Ryan*, 47 Cal. App. 637, 191 Pac. 69 (1920). And see note (1895) 50 Am. St. Rep. 489. But the lowest bidder cannot maintain an action at law for failure to award the contract to him. *People ex rel. Haecker Sterling Co. v. City of Buffalo*, 176 N. Y. Supp. 642 (1919).

<sup>13</sup> WOODWARD ON QUASI-CONTRACTS (1913) § 268.

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<sup>1</sup> 242 N. W. 26 (Iowa 1932).

The decision is contrary to the usual rule denying recovery for mental anguish and suffering alone even though intentionally inflicted.<sup>2</sup> Where an actionable tort such as false imprisonment is otherwise made out<sup>3</sup> or the plaintiff is able to show physical injury consequent upon the mental distress,<sup>4</sup> it will be considered in fixing the measure of damages. This inadequate protection of interests of personality is due to the nature of the interest.<sup>5</sup> Injuries to feelings are hardly measurable in pecuniary terms and risk of fraud and imposition in the proof of such claims is clearly substantial.<sup>6</sup> This latter difficulty, a problem of administration which is especially evident in jury litigation, is the more serious one. The law should not be gravely concerned if a jury were to penalize an intentional wrongdoer, absent a better remedy. But where there is no concrete manifestation of the injury the chance of imposition is really serious. The extent of the application here, moreover, of the *de minimis* maxim is quite vague. Certainly the law cannot safely attempt to protect the special personal interests of the over-sensitive and eccentric unless deliberately invaded.<sup>7</sup> The administrative obstacle is overcome where the nervous illness

<sup>2</sup> *Maze v. Employer's Loan Soc.*, 217 Ala. 44, 114 So. 574 (1927); *Brooker v. Silverthorne*, 111 S. C. 553, 99 S. E. 350 (1919); *Kramer v. Rickameir*, 159 Ia. 48, 139 N. W. 1091 (1913). See Restatement of Torts, Tentative Draft (Am. L. Inst. 1929, § 188 (b)).

The Iowa cases cited by the court in the principal case in support of its decision are consistent with this rule since the right to recovery in these cases was based on additional circumstances. See notes 3 and 4, *infra*.

<sup>3</sup> *Lowergan v. Small*, 81 Kan. 48, 105 Pac. 27 (1909) (assault); *Larson v. Chase*, 47 Minn. 307, 50 N. W. 238 (1891) (invasion of right to custody of corpse of deceased relative); *Garrison v. Sun Pub. Co.*, 207 N. Y. 1, 100 N. E. 430 (1912) (slander); *Nordren v. Lawrence*, 74 Wash. 305, 133 Pac. 436 (1913) (trespass); *Beckwith v. Bean*, 98 U. S. 266 (1878) (false imprisonment); *Black v. Canadian Pac. R. Co.*, 218 Fed. 239 (1914); *Vinal v. Core and Compton*, 18 W. Va. 1 (1881) (malicious prosecution).

<sup>4</sup> *Rogers v. Williard*, 144 Ark. 587, 223 S. W. 15 (1920); *Wilkinson v. Downton*, 2 Q. B. 57 (1897).

<sup>5</sup> It is difficult, if not impossible, to measure subjective interests in objective pecuniary terms. Thus only specific relief would be satisfactory. See Pound, *Equitable Relief Against Defamation and Injuries of Personality* (1916) 29 HARV. L. REV. 640; Long, *Equitable Jurisdiction to Protect Personal Rights* (1923) 33 YALE L. J. 115. That equity is beginning to afford some measure of specific redress, see *Bazemore v. Savannah Hospital*, 171 Ga. 257, 155 S. E. 194 (1930); *Stark v. Hamilton*, 149 Ga. 227, 99 S. E. 861 (1919).

<sup>6</sup> See Pound, *Interests of Personality* (1915) 28 HARV. L. REV. 343, 359; *Huston v. Freemansburg*, 212 Pa. St. 548, 61 Atl. 1022 (1905); *Smith v. Postal Tel. Co.*, 174 Mass. 576, 55 N. E. 380 (1889); *Davis v. Western Union Tel. Co.*, 46 W. Va. 48, 32 S. E. 1026 (1899). But see *Green v. Shoemaker*, 111 Md. 69, 73 Atl. 698 (1909) (these practical considerations deemed insufficient to defeat a recovery).

<sup>7</sup> *Nickerson v. Hodges*, 146 La. 735, 84 So. 37 (1920).

has been so intense and extended as to be definitely provable<sup>8</sup> or where there has been an intentional public humiliation falling short of actionable defamation.<sup>9</sup> This is to a less extent true of the telegraph cases, which otherwise are somewhat anomalous.<sup>10</sup>

By dictum in the principal case had the injury been the consequence merely of negligence there would have been no liability. The negligence situation is affected by additional considerations,—the peculiar requisites of tortious negligence such as foreseeability, and the absence of the element of intent. At best this makes a weaker case.

—BONN BROWN.

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VENUE — ACTIONS OR SUITS AGAINST PUBLIC CORPORATIONS. —

The West Virginia venue statute provides that an action or suit may be brought in the county where the cause of action arose, if the defendant or, if there be more than one defendant, one or more defendants is a corporation.<sup>1</sup> The plaintiff was injured in Monongalia county by an automobile owned by the defendant county court and operated by the sheriff and a deputy of the defendant county. Suit was brought in Monongalia county in reliance upon the statute. The court sustained a plea in abatement, on behalf of the county court. *Edmonson v. County Court of Hancock County*.<sup>2</sup>

It is the majority rule that a county court must be sued in its home county,<sup>3</sup> unless by express statutory provision it may be

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<sup>8</sup> *Great Atl. and Pac. Tea Co. v. Roch*, 160 Md. 189, 153 Atl. 22 (1930); *May v. Western Union*, 157 N. C. 416, 72 S. E. 1059 (1911).

<sup>9</sup> *Nickerson v. Hodges*, *supra* n. 7; *Davis v. Tacoma Ry. Co.*, 35 Wash. 203, 77 Pac. 209 (1904). *Contra*: *Terwilliger v. Wands*, 17 N. Y. 54 (1858).

<sup>10</sup> In five states recovery has been allowed on common law principles for such injury. *Mentzer v. Western Union Tel. Co.*, 93 Ia. 752, 62 N. W. 1 (1895); *Chapman v. Western Union Tel. Co.*, 90 Ky. 265, 13 S. W. 880 (1890); *Barnes v. Western Union Tel. Co.*, 27 Nev. 438, 76 Pac. 93 (1904); *Young v. Western Union Tel. Co.*, 107 N. C. 261, 11 S. E. 1044 (1889); *Hale v. Bonner and Eddy*, 82 Tex. 33, 17 S. W. 615 (1891). *Contra*: *Davis v. Western Union Tel. Co.*, 46 W. Va. 48, 32 S. E. 1026 (1899).

Mental distress is a normal reaction to non-delivery, for example, of a death message. Two courts, however, have seen fit to allow recovery where the message was not one pertaining either to death or serious illness. *Barnes v. Western Union Tel. Co.*, *supra*; *Green v. Western Union Tel. Co.*, 136 N. C. 489, 49 S. E. 165 (1904).

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<sup>1</sup> W. VA. REV. CODE (1931) c. 56, art. 1, § 2.

<sup>2</sup> 166 S. E. 117 (1932).

<sup>3</sup> *Fleming v. Floyd County*, 131 Ga. 545, 62 S. E. 814 (1908); *Cullman County v. Blount County*, 160 Ala. 319, 49 So. 315 (1909).