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Torts--Personal Injury--Punitive Damages

R. J. R.

West Virginia University College of Law

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Co. v. Great Scott Coal & Coke Co., supra, unless a further distinction is to be made between land taken for a railroad right-of-way and that taken for a right-of-way for an electric line.

In a case of this kind the owner is entitled to the fair value of his land. In determining that value, evidence of the sales of other land *similar in character* in the same vicinity is undoubtedly relevant, but may be misleading if the circumstances under which such sales were consummated were such that the sales were actually made at a greater or less sum than the fair value of the property. See 1 WIGMORE, EVIDENCE, § 463. For instance, if either the vendor or the vendee attached any sentimental value to the land, or if the sale was made when either party was under any necessity or compulsion to buy or sell, the price actually paid might not be a fair representation of the true value of the land sold. See *Matter of Thompson*, 127 N. Y. 468, 28 N. E. 389; *Seaboard Air Line v. Chamblin*, 108 Va. 42, 60 S. E. 727. Thus, it will be understood that evidence of this kind tends to introduce collateral issues, and for this reason it is objectionable. See *Amoskeag Mfg. Co. v. Head*, 59 N. H. 332. The court, in each case, should decide whether the evidential value of such evidence outweighs its objectionable qualities, and if so the evidence should be admitted. Of course, this should be left largely to the discretion of the trial court, and no case should be reversed unless it is manifest that injustice has been done by admitting the objectionable evidence. See *Forest Preserve Dist. v. Caraher*, 299 Ill. 11, 132 N. E. 211. See also 15 HARV. L. REV. 74. It is submitted that the court was right in the principal case in refusing to reverse on this ground.

—W. F. K.

TORTS—PERSONAL INJURY—PUNITIVE DAMAGES.—Action in case by the plaintiff for damages resulting from an automobile collision. Exception was taken by the defendant to an instruction of the trial court regarding the assessment of punitive damages. The instruction objected to was as follows: "If you further find that the defendant did the injuries complained of in a wanton or wilful manner or from a reckless indifference to the rights and safety of the plaintiff or his property, you may find such further damages as you may believe the plaintiff is entitled to." *Held*, the instruction is faulty and the exception is sustained. *Swiger v. Runnion*, 111 S. E. 318 (W. Va. 1922).

Punitive damages are not recoverable as a matter of right, but their allowance rests in the discretion of the jury. *Hoagland v. Forest Park etc. Amusement Co.*, 170 Mo. 335, 70 S. W. 878; *Fink v. Thomas*, 66 W. Va. 487, 66 S. E. 650; *Wilhelm v. Parkersburg etc. Ry. Co.*, 74 W. Va. 678, 82 S. E. 1089. In all cases the element of wantonness is necessary in the act complained of. *Giddings v. Feedley*, 125 Fed. 355; *Kujek v. Goldman*, 150 N. Y. 176, 44 N. E. 773; *Pendleton v. Norfolk & Western Ry. Co.*, 82 W. Va. 270, 95 S. E. 941. As to the purpose for which punitive damages have been awarded, two principal theories have been supported by the courts. In some jurisdictions it is held that such damages are allowed as compensation for the wrong suffered by the plaintiff. *Wardrobe v. California Stage Co.*, 7 Cal. 118, 68 Am. Dec. 231; *Lucas v. Michigan Central Ry. Co.*, 98 Mich. 1, 56 N. W. 1039. A majority of the courts favor the view that punitive damages are given to deter the defendant and others from committing like offenses. *Lake Shore etc. Co. v. Prentice*, 147 U. S. 101; *Barnett v. Reed*, 51 Pa. 190, 88 Am. Dec. 574; *Borland v. Barrett*, 76 Va. 128, 44 Am. Rep. 152. West Virginia is in accord with this view. *Pendleton v. Norfolk & Western Ry. Co.*, *supra*; *Allen v. Lopinsky*, 81 W. Va. 13, 94 S. E. 369; *Goodman v. Klein*, 87 W. Va. 292, 104 S. E. 726. The exception to the instruction in the principal case was properly sustained, as it was open to improper inference. The words "as the plaintiff is entitled to" might lead the jury to believe that such damages were merely compensatory in nature. A proper instruction under the rule laid down by the West Virginia court would be: the jury may allow punitive damages for such an amount as taken together with the actual damages will be sufficient to punish the defendant and deter him and others from committing like offences. *Swiger v. Runnion*, *supra*; *Fisher v. Fisher*, 89 W. Va. 199, 108 S. E. 872.

—R. J. R.