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The Measure of Damages in Tort Actions

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THE MEASURE OF DAMAGES IN TORT ACTIONS.

T H E S I S

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T A B L E O F C O N T E N T S.

GENERAL PRINCIPLES.

The term"tort" indicates "merely a wrong or injury". In the law it is pactically impossible to formulate a definition,so as to draw a sharp line between tort actions on the one hand and actions growing out of contract on the other.

The best that can be done,is to say that "a tort is a wrong independent of contract",but as wrongs are not always actionable,it is necessarythat other elements should unite;i.e.,there must be a wrongful act committed by the defendant,which has resulted in legal damages to the plaintiff.

In this article we are dealing with the damages arising from the wrongful act and purpose as far as is practiceableto examine and lay down the general rules,which are to control the measuring and assessing such damages. All torts fall naturally under three heads;first,injuries to property;second,injuries to person;and third, injuries to rep-

utation.

Mayne defines damages "as the pecuniary satisfaction which a plaintiff may obtain by success in an action". This definition is very concise,technically correct,and probably the best that can be formulated,covering every sort and class of damages that may be awarded.

The fundamental idea of damages is indemnity,but the doctrine of exemplary,punitive,or vindictive damages has become too well established in the law to be ignored,and, in treating this subject must be considered from time to time.

The rule of damages should in no way depend upon the form of the action. In all civil actions,the law awards to the party injured just indemnity for the wrong which has been done him and no more,whether the action be in contract or in tort;except in those special cases where punitary damages are allowed.(1).

Injuries to property may be so combined with other ingredients as to enhance the damages to any amount. Yet it is,nevertheless, the general rule that injuries to property,when not attended by aggravating circumstances,and,especially where the wrong is committed under a mistaken idea of right,the measure of damages will be the actual

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1. Baker vs. Drake et,al., 53 N. Y. 211.

pecuniary loss sustained. On the other hand,where the person, character,or reputation suffers injury,it is quite impossible to fix a certain limit and the verdict of the jury,largely shaped by the arguments of the opposing attorneys,and tempered by the moderating remarks of the judge,must indicate the amount of damages to be recovered. But,we do not wish it to be understood that these cases are entirely without a rule, for,if this was true,there could never be an action for excessive damages. The differenceis,that in cases of contract and some cases of tort for injury to property,the rules can be so closely applied to the facts, as to make the amount a mere matter of computation;while,in the other class of cases, rules do not apply to the facts,but simply points out the evidence which is admissible,and indicates the grounds of complaint for which allowance is to be made. With these guideposts,the jury must determine the amount of damages to which the plaintiff is entitled.

In order that the verdict of the jury may be set aside and a new trial granted,that verdict must be so large as to satisfy the court that it is perverse,and the result of gross error,or proofs advanced to show that the jury has acted under the influence of undue motive or misconception. It is the aim of the courts-and very properly- to make the

damages in all cases as certain as is possible. The Superior Court of New York says that"it is wisely and properly settled that the quantum of damages ,with the exception in those cases where exemplary or vindictive damages may be properly given,is stictly a question of law";so that the jury are bound by the rule which the judge directs them to follow (1).

The New Jersey courts have laid down the rule that in actions of tresspass,where the plaintiff does not allege injury to his person or feelings;where no malice is shown; where no right is invaded , beyond a mere question of property; where there is a clear standard for the measure of damages;and no difficulty in applying them,the measure of damages is a question of law and,necessarily,under the control of the court. (2). In a similar case,the Supreme Court of the United States held that the action not being one which called for vindictive or exemplary damages,the plaitiff was entitled to recover for his actual injury only (3).

Authorities are well agreed ,that in a proper case exemplary,punitive,or vindictive damages may be properly allowed. The Statutes of nearly every state in the Union pro-

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1. Suydam vs. Jenkins, 3 Sandford, 614.

2. Berry vs. Vreeland, 21 N. J. L.,183.

3. Conard vs. Ins. Co.,6 Peters,262.

vide for an increase of damages, when the injury arises from the defendant's neglect of duty, which is imposed for the more perfect security of life and property. In many cases ,the damages are made double;in some,thribble;and in others, even quadruple the loss actually sustained. Mr. Justice Field says that experience favors this legislation as the most efficient mode of preventing,with the least inconvenience,the commission of injuries (1).

In cases where the amount of compensation,is to any extent,left to the discretion of the jury,all the circumstances attending the wrongful act,may be shown by either party for the purpose of enhancing or mitigating the damages.Yet, if the damages are to be entirly measured by the value of the property.or the actual pecuniary injuries sustained,for obvious feasons,the showing of such circum stances would be improper and not allowable.

In order that the plaintiff may recover,the damages,in question,must be the proximate and not the remote result of the defendant's wrongful act. The firstand,in fact, the only inquiry is,whether the damages complained-of are the natural and reasonable results of the defendant's act, This character will be assumed,if it can be shown to be such a consequence as,in the ordinary course of things,would flow from

1. Pacific R.R. Co.vs. Hume,115 U.S.,528.

the act (1).

It is a maxim of the law, that there is no contribution between joint tort feesors". In an action of tort, all the defendants are considered as principals. There can be but one verdict; and each defendant is liable for the damages awarded, without regard to their equality of guilt (2). It makes no difference that the proceeds were not evenly divided among the defendants (3). Damages can be collected but once: payment by one releases all the parties. If the wrong be made up of several different acts, each defendant is liable only for damages arising from those in which he participated.

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1. Hadley vs. Baxendale, 9 Exchequer, 341.
   Richardson vs. Northrup, 66 Barbour, 85.
2. Beal vs. Finch, 11 N.Y., 128.
3. Crumb vs. Oaks, 38 Vt., 566.

II. WRONGS TO PROPERTY.

The Constitution secures to all the enjoyment of life,liberty,and property. The law assumes to give a full and adequate remedy for any imprpper interference with these rights. In this section,we shall examine some of the remedies provided and attempt to lay down the rules for measuring the damages,which a party has sustained by reason of an improper invasion of his property rights. When a person's property right has been disturbed,the court will attempt to place him in as good a position as he would have occupied,had not the interference taken place.

The general rule as to the measure of damages arising from an injury to personal property is not only the actual amount of pecuniary loss to the property,but also such other damages as may be said to flow naturally from the wrongful act(1) In the normal case,where there is no aggravat-

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1. The Henry Buck,39 Federal,211. Gardner vs. Field,1 Gray, 151 : Brown vs. Allen,35 Iowa,306: Brannin vs. Johnson, 19 Maine, 361.

ing or mitigating circumstances,the damages will be measured by the actual market value of the property at the time of destruction,together with interest on the estimated value from the time the injury is inflicted to the time of assessing the damages. It is well established that value is to be estimated as of the time of the loss,by the actual market value of the property and not by some fanciful or superstitious value which the owner might impute,nor by any value which it might,subsequently,acquire (1).

Having determined what we believe to be the proper and well established rule of damages in case of total loss, let us now examine that more difficult line of cases in which the injury is less than destruction. It can be safely stated as a general rule that the measure of damages in these cases is the difference in value before and after the accident,together with interest on that difference,from the time the injury is inflicted until the damages are assessed.(2)

However this rule is not universally applied. We find it laid down that the proper measure of damages for an

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1. Brizsee vs. Maybee,21 Wendall, 144.
2. Davidson vs. Central R.R. Co., 49 Mich.,428.
   St.Louis,I,M & So. R.R. vs. Biggs, 50 Ark.,169.
   McLaughlin vs. City of Bangor, 58 Maine,398.

injury to a horse is the value of his services while being cured,the expense of curing him,and the difference of the horse before the injury and after the cure (1).

The proper measure of damages for an injury to a steamboat caused by a collision is the charter value of the boat during the time lost by reason of the collision and the necessary cost of repairs (2).

Where property is wrongfully detained under an attachment ,the measure of damages is the value of the use of the property,during the detention (3).

Where the plaintiff's animals are killed by the defendant,since the carcasses still remain the property of the plaintiff,his recovery will be limited to the difference in value between the carcasses and the live animals (4).

In an action for tresspass for seizing and detaining the plaintiff's vessel,for a pretended breach of the United States' laws,the vessel having been restored,it was held

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1. Street vs. Laumier,34 Miss.,469.
2. Atlantic & Westport R.R. Co. vs. Hudson,62 Ga.,679.
2. Packet Co. vs. R.R. Co.,79 Miss.,474.
3. Turner vs. Young,76 Iowa,258.
4. Sedwick on damages,Vol. II.,Section 435,and cases there cited.

that the difference between the price for which the vessel would have sold at the time of seizure,and the price for which she actually sold at public auction immediately after her restoration,together with the actual expenses incurred and the interest on the amount,constituted a just and proper measure of damages (1).

A person whose property had been wrongfully taken from him,replevined it,but being non-suited in the replevin suit,defendant had judgement against him for the value of the property. He thereupon sued in tresspass for the taking of the property and it was held that he was entitled to recover in this suit not only damages for the detention of the property, while in the hands of the defendant,but also its value as assessed in the replevin suit (2).

Whenever a person has suffered from the wrongful act of another,the law,nevertheless,requires him to exercise due diligence in avoiding the consequences flowing from the injury. Any expenses incurred or money expended,will come properly within the damages recoverable,but a person will always be estopped from recovering any consequential damages, which ,by the exercise of proper care and diligence,might have been avoided. Sedwick,in his work on damages, says that when

1. Woodham vs. Gelston,I.Johnson,134.

2. Wolcott vs. Haviland,11 Mich.,103.

an injury has been done,and the party has made a reasonable though unsuccessful attempt to repair;if the attempt was a reasonable one,the expenses of it may be recovered although in spite of it the property was a total loss. In such a case, the expenses of the attempted repair or cure are recoverable, in addition to the value of the property (1).

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1. Sedwick on damages, VOL. II., Sec. 438.

III. FALSE REPRESENTATION.

A person,who by false or fraudulent representations,has been induced to become the purchaser of property,upon the discovery of fraud has three remedies,either of which he may elect;1st,he may rescind the contract absolutely,and bring an action at law to recover the consideration,parted with upon the fraudulent contract. In order to maintaim this action he must first restore or offer to restore whatever he may have received under the agreement:2nd,he may bring the suit in equity to rescind the contract and in such suit have full relief: 3rd,he may retain whatever he has received and bring an action at law to recover the damages sustained. Such a an action proceeds upon the affirmation of the contract and the measure of the plaintiff's recovery,is the difference between the value of the article sold and what its value should be according to the representations (1).

When a party has rescinded the contract,and brought an action for damages,he should recover such an a-

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1. Vail vs. Reynolds, 118 N. Y.,297.

mount as will place him in as good a position as he would have occupied if the fraud had not been practiced upon him. In a case where the plaintiff had rescinded a fraudulent contract of insurance,the measure of damages was said to be the amount of premiums he had paid (1).

Where a person made false and fraudulent representations as to the amount of coal required to heat a certain house,and a party relying upon such representations,rented the house and asked for damages without rescinding the contract, the court held that the recovery should be measured by the difference in the rental value of the premises as they were and as they would have been if as represented(2).

In actions for fraud and deceit,the defendant is bound to make good the loss sustained,such as monies that the plaintiff has paid out with legal interest thereon,and any other outlay legitimately attributable to the defendant's fraudulent conduct. But this liability never includes the expected fruits of an unrealized speculation (3). A person whose vessel has been damaged in a collision cannot recover the probable profits of intended trips of the vessel (4).

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1. Hedden vs. Griffin,136 Mass.,229.

2. Pryor vs.FOster,130 N.Y.,171 : Bradley v. Carter,13 N.Y. Sup P. 945. 3. Robinowitz et al v.Cohen,17 N.Y.Sup.,502.

4. Williams vs. Nichols, 13 Wendall,601.

A party who has been fraudulently induced to purchase diseased animals cannot recover for damages sustained by reason of a third person refusing in consequence of a rumor of said sale to fulfill an agreement to purchase meat,nor for damages in consequence of a loss of custom,springing from such report. In order that a person may maintain an action for special damages,they must be the legal and natural consequences arising from the tort,and not from the wrongful act of some third person,remotely induced thereby(1).

Fraud is not of itself a ground for punitive damages . unless perpetrated under such circumstances as to imply malice,in which case a jury may assess such damages. But in a case where a party adulterated milk,furnished a cheese-factory and made fraudulent representations as to property,credit,&c, there being nothing from which to imply malice,it was held that the rule of damages was,simple compensation for the injury(2).

One who has been fraudulently induced to loan money upon inadequate security,may recover in damages from the person making the representation,the difference between the amount loaned and the value of the security received,together with interest upon said difference from the time the loan was

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1. Crain vs.Petrie,6 Hill,522.

2. Zane vs. Wilcox,55 Barbour,615.

made (1).

A person who fraudulently conspires with an insolvent,to conceal his personal property and keep it from creditors,is liable for the value of the property at the time of its concealment ,also for the expense and inconvenience sustained by the creditors in reaching said property (2).

Any person who,by presenting a fraudulent power of attorney,induces a copporation to cancel certificates of stock,is liable to the corporation for the cost and expense of a suit brought against the corporation by the person whose name was forged,for the amount paid for stock to replace that which was cancelled,also for the amount of dividehds which the corporation paid to the party whose name was forged (3).

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1. Briggs vs. Brushabee,43 Mich., 330.
2. Burpie vs. Sparhawk, 97 Mass.,342.
   Quinby vs. Cavanaugh, 90 N.Y.,664.
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IV. SLANDER AND LIBEL.

We are now to consider a line of cases ,in which the injury in the eye of the law is always malicious. In cases of libel and slander,the degree of the injury and,consequently,the measure of damages,are to a large extent dependent upon and controlled by the nature and amount of malice displayed by the defendant. Therefore matters of mitigation and aggravation become important. Malice,being deemed a necessary ingredient of slander amd libel,the courts will upon a cause of action being shown,presume its existence and until this presumption is rebutted,the plaintiff cannot prove malice,except as a means of aggravating the damages. Malice as presumed in the law, does not probably mean more than the absence of a sound legal excuse.

In some of the books,considerable stress is laid upon the matter of intent ~~in cases of intent~~ in cases of slander and libel. As a matter of fact,the intent should have little force,except perhaps,as a means of aggravating the damages in the minds of the jurymen. Intentions will not affect the act which has been done,i.e.no amount of proper intent

will make a forbidden act right. On the other hand no amount of bad intent will make a permitted act wrongful.

Any publication relating to a person or his affairs, which as a natural and proximate result, causes him pecuniaryloss, is "prima facie" actionable. The damages resulting are either general or special. General damages are such as the result of defamatory words. They arise by inference of the law and no evidence is required to prove them. It is not necessary that these damages should be merely nominal. The jury in its sound discretion may award such an amount as will compensate the plaintiff. Special damages do not arise of necessity.but flow as a natural and proximate consequence from the pnblication of slanderous words (1).

The same set of words may cause both general and special damages. The jury, after hearing the whole case, are to award such an amount as will fully indemnify the injured party. They may compensate the plaintiff for injured feelings. In actions of slander and libel, the jury have a wide discretion, being judges both of fact and the law, and are not bound by the judge's charge.(2).The only control over their verdict, is in the power of the court to set aside a pas-

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1. McNaughton vs. Quay, 60 N.W., 476.

2. Arnold vs. Jewett, 28 S.W., 614.

sionate,perverse,partial,or corrupt verdict.(1).

Whenever it appears that a party has published a libel in good faith,doing what,under the circumstances,he deemed right and honest,the jury,determining the amount of compensation to which the plaintiff is entitled,may take this good faith into consideration as a matter in mitigation of damages,-but,as has been stated,the utmost good faith will not be a valid answer. Although no harm was actually intended,yet the libel will remain and at least actual damages must be allowed. Mere belief in the truth of a statement is not sufficient to constitute good faith on the part of the publisher. He must be free from negligence as well as improper motive (2).

An answer to a libel,if wantonly pleaded and not proved,may be properly considered by the jury as a matter of aggravation (3). Disproof of express malice does not preclude the jury from awarding damages for injured feelings or for physical or mental sufferings (3).

The plaintiff's failure to prove allegations of

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1. Shuli vs. Barrett, 7 Pickering, 84.
   Coleman vs. Southwick, 9 Johnson, 52.
2. Warren vs. Press Publishing Co., 132 N.Y.,181.
3. Marx vs. Press Publishing Co., N.Y. S. R.,775.

special damages does not necessarily preclude himfrom recovering general damages,provided the words complained of are actionable "per se".

Where libelous language is inserted in a newspaper publication by a reporter without the proprietor's consent, or knowledge,the latter is liable only to the amount of damages actually sustained;but if he approve of his employee's conduct.he may be mulcted in punative damages. To accuse an innocent person of arson is actionable and damages may be awarded for injury to character,aggravated by repetition.(1).

Since the principal element of damages in cases of slander and libel,is injury to the plaintiff's character,it is proper to show in mitigation that said character had as a matter of fact suffered little or no injury. This may be accomplished by showing that the words were never relied upon or by showing that the plaintiff's character was so bad that it could not suffer further injury. There is also in the books,a doctrine that the high character of the plaintiff may be shown as a matter of mitigation. This is apparently,a sound and logical doctrine,since a strong and solid character is not easily injured. If this doctrine was to be fully accepted,it would follow that in no case, could the introduc-

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1. Taylor vs. Ellington, 15 S.R., 499.

tion of evidence as to the plaintiff's character be resisted. A retraction of the slander or libel may be shown in mitigation . But the retraction to be effectual must be made publicly and in due season,so that it may in fact lessen the damages (1). Proof of the defendant's insanity seems to be an absolutedefence to an action in slander and libel (2).

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1. Sedgwick on Damages, Section 453.

2. Bogart vs. Jackson, 6 Humphrey, 199.

V. ACTIONS SPRINGING OUT OF LOSS OF SERVICE.

Where a master seeks to recover for an injury to a servant,or a parent for an injury to a minor child,the action is always grounded upon the loss of service and the damages are usually measured by the actual pecuniary loss, which the plaintiff has sustained.

The amount recovered must depend upon the circumstances of each particular case,and the nature of the services which the injured party habitually rendered. A parent may recover for the expense of healing his minor child,although it may appear that by reason of infancy,the child was unable to render service to the parent. In such a case, it is competent for the parent to testify to the amount paid by him for support of his child,while endeavoring to accomplish its cure (1).

When a wife has acted as manager of her husband's business,he may recober the value of her services in such capacity (2). If an infant is negligently killed,the father

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1. Sawyer vs. Sauer, 10 Kansas, 519.

2. R.R. Co., vs. Twimane, 121 Indiana, 375.

may recover for loss of service,during the minoroty of the child and for expense caused by the sickness of the plaintiff's wife,due to the shock to her motherly feelings (1). But the father can not recover for his own injured feelings or disappointed hopes. If an infant is permanently injured, the jury may take into consideration the increased cost of caring for and bringing up a crippled child (2).

A husband may recover for the value of his own services in attending upon his wife when such services are rendered necessary by the injury (3).

The recovery in an action founded upon loss of service,is no bar to an action brought by the injured party in which he seeks to recover for his own personal loss and suffering (4).

A person who entices away an indentured servant is liable to the master for the value of the servant,during the time that he was in the defendant's employ,and in a proper case he may become liable for injury to the plaintiff's business,occasioned by the defendant's wrongful act in en-

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1. Ford vs. Monroe, 20 Wendall, 210: 31 Pa. St., 372.

2. Lang vs. R.R. Co. 51 Hun, 603.

4. Evansich vs. G.Cen. & S.F. R.R. Co.,57 Texas, 123.
3 Keyes,497.

3.Lindsey vs. Danville, 46 Vermont,144.

ticing away said servant (1).

A father may recover reasonable espenses incurred in pursuing and recovering his minor child from a party who has enticed him away.

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1. Sanders vs. West, 47 Georgia, 311.

Smith vs. Goodman,Howell & Co.,75 Georgia.198.

VI. MALICIOUS PERSECUTION.

A person who wrongfully causes the arrest and imprisonment of another or in any way maliciously puts in operation the machinery of the law,is liable to the party proceeded against for any damages to person,property,or reputation,flowing as a natural and probable consequence from the wrongful act. If the defendant was personally concerned in the arrest an action for false imprisonment will lie. If otherwise, the action must be one of those actions"on the case,"the gist of which is malice,as malicious attachment, malicious prosecution,and the like. In order that the action for malicious prosecution may be maintained ,it must appear that the defendant failed in the original suit,and also,the lack of reasonable cause in bringing said action. Probable cause does not depend upon the innocence or guilt of the accused,nor upon whether or not a crime has been committed(1).

It is in accordance with sound public policy,that a person should be saved from liability who in good faith and under circumstances which would arouse the suspicion of an ordinary prudent man, causes an arrest upon a criminal charge,although it is afterward developed that the party was

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1. Baldwin vs. Weed,17 Wendall,224.
   Carl vs. Ayres, 53 N.Y. 14.

innocent.

In malicious prosecution,the wrong complained of is substantially of the same nature as slander and libel, involving among the elements of damage the defamation of the plaintiff. The right of action accrues as soon as the prosecution terminates in the acquittal of the accused (1).

Malice whish is the gist of the action will be presumed upon the showing of a lack of reasonable cause,but express malice may be shown as a means of aggravating the damages (2). Upon the other hand,a person may justify in this action by showing that a reasonable cause existed. Probable cause has been defined as a reasonable ground of suspicion supported by circumstances,sufficiently strong in themselves to warrant a cautious man in his belief that the person accused is guilty of the offence with he is charged (3).

If the facts are undisputed and but one inference can be drawn from them,the question of probable cause becomes one of law,but the question as to whether the circum-

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1. Sutherland on Damages,Page 699.

2.School vs. Schebel, 8 N.Y. Sup.,855.

3. Foshay vs. Ferguson,2 Denio, 617.

Bacon vs. Towne, 4 Cushing, 218.

Neevins vs. DuPont, 3 Wash. C.C., 37.

stances alleged ,as showing probable cause,are true and existent,is a question of fact for the jury to decide (1). The advice of counsel may be shown to disprove malice and want of probable cause,but such proof is not conclusive (2).

A person who proves that he has been maliciously prosecuted without probable cause may recover indemnity for the peril occasioned him in regard to his life and liberty, for the injury to his reputation,his feelings and his person, and for all the expenses to which he has been necessarily subjected (3).He may recover for any damages sustained in his business,as a direct and natural result of the prosecution. So also may he recover for expenses necessarily incurred in defending the suit (4).

As a general proposition,the jury may take into

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1. Hazzard vs. Flary,120 N.Y.,223.
   McCormick vs. Sission,7 Cowen, N.Y., 715.
   Besson vs. Southard, 10 N.Y,236.
2. Lytton vs. Baird, 95 Indiana,349.
3. II.Greenleaf on Evidence,Sec. 456.
   Lavender vs. Hudgens, 32 Ark.,763.
4. II.Greenleaf as above.
   Hamilton vs. Smith,39 Mich.,222.
   III. Southerland on Damages, P. 701 and cases in Note 1.

consideration all the circumstances surrounding the particular case and award such an amount of damages as will compensate the plaintiff for the wrong and indignity he has sustained,as a direct consequence of the wrongful act,and in addition may,if they deem it expedient,award exemplary or punative damages as a punishment to the defendant (1).

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1. MacWilliams vs. Habin,42 Maryland, 56.

VII. MALICIOUS ATTACHMENT.

A person who maliciously and without probable cause,procures a writ of attachment and causes the same to be levied upon the property of another ,is liable for all the damages,resulting as a direct and probable consequence of the wrongful interference. The plaintiff in an action for malicious attachment may show the nature ,character and amou mount of business which he was transacting at and beforexthe wrongful levy,its complete destruction thereby,and the extent to which his credit and financial reputation have been impaired,as well as the actual loss upon the stock which was attached. The expenses necessarily incurred in defending the attachment suit,is an element which may be properly considered in estimating the damages (1).The defendant is liable for waste occurring to the property while in the hands of the attaching officer and for all damages resulting from the seizure (2). The plaintiff may recover for the interruption of his business,for reasonable cost incurred

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1. Lawrence vs. Hagerman, 56 Ill. ,68.

2. Beulwright vs. Stewart,37 Ark., 614.

in procuring the discharge of the attachment and restoration of the goods,but he cannot recover for injury to the reputation ofthe goods (1).

A person who wrongfully attaches the property of one member of a partnership,is liable for any injury to the partnership business ,proximately resulting from the wrongful act (2). In Louisiana,a person who attaches property in good faith and no special damages are shown,is liable only for nominal damages (3).The advice and inexperience of an attorney may be invoked in mitigation of damages (4).

A person who is wrongfully restrained by injunction from taking possession of a farm may recover for loss of the crops and is not restricted to the mere rental value of the farm (5).

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1. Alexander vs. Jacoby, 23 Ohio St., 358.
2. Haynes vs. Knowles, 6 Mich.,407.
3. Hunter vs. Bennet,15 La. Annual, 715.
4. Mortimer vs. Thomas, 23 La. Annual, 165.
5. Fleming vs. Bailey, 44 Miss., 132.

VIII. FALSE IMPRISONMENT.

In an action for false imprisonment,it is not necessary that the plaintiff should show malice in order to recover the damages he has actually sustained (1).Actual damages are said to be those which the injured party is entitled to recover for wrongs received and injuries done when none were intended. But punitive or exemplary damages may be allowed when it appears that the injury was intended or was so carelessly or negligently inflicted as to be without palliation or excuse (2). In this action,the plaintiff is entitled to recover for loss of time and the indignity he has suffered (3).

The jury may consider any injury to the plaintiff's

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1. Connor vs. Knowles, 17 Kansas, 463.
   Craddock vs. Gordon, 54 Texas, 578.
   Livingstone vs. Burroughs, 33 Mich., 511.
2. Ross vs. Leggett, 61 Mich., 445.
3. Morgan vs. Carley, 142 Mass.,107.
   Smith vs. Holcomb,99 Mass.,552.

health or mind,resulting from the wrongful confinement(1). So also the plaintiff may recover for time spent and expenses incurred by him in procuring his discharge upon a writ of "Habeas Corpus"(2). He may show the condition of the jail used for imprisonment and the circumstances of his family as bearing upon his mental and physical suffering(3).

Compensation may be awarded for suffering while in prison,arising from lack of food and clothing(4). Acts done after the wrongful arrest such as transporting him to a foreign county,confining him in a filthy cell and the like may be considered in estimating the damages (5).It seems that a person should recover counsel fees paid for procuring his discharge,but upon this proposition there is a conflict of authority (6).Where a person is arrested under an honest mistake as to his identity,the measure of damages is the value of time lost,the interruption of business,and the physical suffering caused by the arrest (7).

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1. Plath vs. Braunsdorff,40 Wis.,107.

2. Blyltee vs. Tompkins,II. Abbott's Prac.,468.
3. Fenelor vs. Butts, 53 Wis.,344.
4. Abrahams vs. Cooper, 81 Penn.,232.
5. vs. , 51 Ill., 401.
6. Bonested vs. Bonested, 30 Wis., 511.
   Strong vs. Whitehead,12 Wendall, 641.

7. Hays vs. Creary,60 Texas, 445.

IX. SEDUCTION.

Thus far the measure of damages has proceeded mainly upon the idea of compensation,but in theline of cases about to be considered,the courts have fairly deserted this fundamental principle,and punitive or exemplary damages may properly be named as the general rule,while strict compensation is the rare exception.

The Supreme Court of New York has well said that "seduction is peculiar and would seem to form an exception to the rule that actual damages only can be recovered when the action is for loss of service consequential upon a direct injury,but there",in actions for seduction,"the party directly injured cannot sustain an action and the rule of damages has always been considered as founded upon special reasons only applicable to it (1)."

By a pure fiction of the law,the demand is placed upon the mere loss of service,but the offence once proven the amount of damages is always left to the sound discretion of the jury,and as a matter of fact,the verdict is nev-

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1. Whitney vs. Hitchcock, 4 Denio,461.

er measured by the value of the services which have been lost. Sedgwick on"Damages" at section 473,states the general rule of damages in the following terms "In an action for the seduction of his daughter,the father or one standing in his place recovers not only for the actual loss of the daughter's services and the medical expenses of her illness, but also for his wounded feelings and affections,for the wrong done him in his social and family relations,and for the stain and dishonor brought on the family".

As the ground on which this action rests is loss of service,it naturally follows that the plaintiff must be in a position to control the services of the party seduced. There must also be a loss of service,although a"scintilla" of evidence as to this loss is sufficient to sustain a verdict for the heaviest amount of damages (1).

When a minor is seduced ,after the death of her father,and while in the service of one standing "in loco parentis" such person may bring the action. But a stepfather cannot maintain the action,where at the time of the seduction,the party was in the employ of another,although she may be in his employ at the time of lying-in.

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1. Bartley vs. Richtmyer,4 N.Y., 38.

   Lawyer vs. Fritcher, 130 N.Y., 239.

The action may be maintained by a guardian,an uncle or an aunt who has brought up a neice,or by one who has adopted and reared the daughter of a deceased friend (1). Where the daughter is of full age,the father is not entitled to bring this action unless he can show that hte relation of master and servant existed at the time of the seduction. But thexrelation once shown,the rule of damages is the same as in the case of a minor (2).

When the daughter is over twenty-one,the very smallest sefvices are sufficient to constitute the relation of master and servant for the purpose of this action. It is not necessary for the plaintiff to show any particular agreement in order that the law may find that the relation existed (3),and a "scintilla" of evidence as to the injured party's inability to render her usual service will suffice(4)

Proof of the parents' careless indifference in allowing opportunities for the consummation of the act,may be shown in mitigation of damages (5).

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1. Bartley vs. Richtmyer, 4 N.Y.,38.
2. Lipe vs. Eisenlord,32 N.Y.,229.
3. Bayley vs. Decker,44 Barbour,577.
4. Lawyer vs. Fritcher, 130 N.Y., 239.
5. White vs. Mortland, 71 Illinois,250.

In jurisdictions where by statute,the party seduced is allowed to bring an action for her own injury,a recovery in such an action by the female seduced cannot be shown in mitigation of damages in an action brought by the parent (1).

The fact that the defendant and the female seduced have intermarried may be shown in mitigation (2). But a mere offer to marry,which has been rejected by the female can not go in mitigation (3). Nor as a general proposition, can the bad character of the party seduced be shown.

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1. Pruitt vs. Cox,21 Ind., 15.
2. Eicher vs.Kistler,14 Penn.,282.
3. Ingersoll vs. Jones,5 Barbour, 661.

X. CRIMINAL CONVERSATION.

Sedgwick says that the general rule of damages in this actionis"the value of the wife of whom the husband has been deprived.""(1)

Although this action is based upon the husband's loss of service,yet the true rule of damages includes not only loss of service but also any injury to the character of the family,the degradation which ensues,and the distress and mental anguish which naturally flows from the wrongful act (2).

In this line of cases thejury may in its sound discretion allow exemplary damages beyond actual compensation as a punishment for the wrongful act and therefore it becomes important to inquire as to what evidence may be considered.

In order that the husband may recover,he must be free from all connivance at the wrongful act and it may be shown as a matter of mitigation that the plaintiff has of-

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1. Sedgwick on Damages, Sec.478.

2. Yancott vs. Hartnuff, 71 ILL., 9.

fered the parties unusual opportunities to commit the offence (1).

The wife's abuse at the hands of her husband,prior to the alleged offence,may be shown in mitigation of damages (2).

It may be showm as a matter,bearing upon the amount of damages that the marriage was not one of affection (3). So also may evidence be introduced showing the plaintiff tiff's evil habits (4).

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1. Colcroft vs. Harborough,4 C.&P.,499.
2. Coleman vs. White,43 Indiana,429.
3. Dance vs. McBride,43 Iowa, 624.
4. Slum vs. Hummell,39 Iowa, 478.

XI. INJURIES TO THE PERSON.

The action to recover damages for an injury to the parson does not proceed upon the idea of punishing the offender as we find is largely the case in actions for seduction. Neither does the action depehd particularly upon the motive of the party,committing the injury. Nor is malice necessary to support the action as in slander and libel.But as the measure of damages is left largely to the good judgment and sound discretion of the jury,matters of aggravation and mitigation are of prime importance(1).

The award of the jury in order to remain undisturbed must be reasonable and warranted by the law and circumstances,surrounding the particular case. The jury must not attempt to enrich one party at theexpense of the other. (2).

The principal elements which go to make up the sum total of damages in cases for personal injuries,are loss of

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1. R.R. Co. vs, Barran,5 Wallace,90.

2. Davis vs. R.R. Co., 60 Ga., 329.

   Aldrich vs. Palmer,24 Cal.,513.

time,medical expenses in effecting a recovery,mental and physical suffering,and the loss of capacity to labor.

A person who has been wrongfully injured may recover for all expenses necessarily incurred as a direct result of the injuries. He may recover a sum paid for labor which he himself would have performed had it not been for the injury (1). But he cannot recover a sum paid for board during his disability (2).

He may recover for a diminishment of profits if said loss be caused by his inability to attend to his business,as a direct result of the injury (3).

A peddlar may show the amount of his sales,the profits therefrom as tending to show the amount he would have made had he been able to pursue his regular vocation. (4).

The United States Supreme Court says that in an action for personal injury the plaintiff is entitled to recover compensation so far as it is susceptible of an estimate in money for the loss and damages caused to him by the

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1. Ashcroft vs. Chapman,38 Conn.,230.

3. Grueber vs.Derwin,43 Cal.,495.

3. Kinney vs. Crocker, 18 Wis.,74.

4. Railroad Co. vs. Coyle,55 Penn.,396.

defendant's negligence,including not only expenses incurred for medical attendance and a reasonable sum for his pain and suffering,but also a fair recompense for the loss of what he would otherwise have earned in his trade or profession and has been deprived of the capacity of earning by the wrongful act of the defendant (1).

The price for which one would agree to undergo the pain and suffering is not a proper measure of damages (2). A person who has been wantonly assaulted may recover for mental anxiety,public degradation,and for any wounded sensibility which he may have suffered (3).

The law infers bodily pain and suffering from a personal injury. Also loss of time from its disabling effects. But a person alleging inability to attend to his ordinary business cannot for the purpose of enhancing damages show loss of earnings in a special employment,requiring skill and training (4). A jury may take into account pain and suffering that may reasonably be expected in the future and also expense for medical attendance when it is reasonably certain that such attendance will be required as a direct result of the injury inflicted by the defendant(5).

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1. R.R. Co. vs. Putman,118 U.S., 545.
2. Wadsworth vs. Trent,43 Maine,163.
3. Dow vs. R.R. Co., 8 Kan.,642.
4.Taylor vs. Town of Monroe,43 Conn.,36 &id562.
5. Fleming vs Long Island R.R. Co.,116 N.Y.,375.

One who recovers damages for money paid another to attend to his business cannot recover for injuries to said business consequent upon his absence therefrom (1).

Under the present Statutes in New York, a married woman in an action for a personal injury may recover for loss of earnings outside of her household duties, even though such services have been rendered to and paid for by her husband(2).

In making the above statement, we do not overlook the decision of the court of appeals to the contrary (3), but consider that decision annulled by act of the Legislature(Chap. 594, Laws of 1892). The laws of 1892 are broad enough to allow a married woman to recover for loss of earnings in her domestic capacity, where the husband has expressly agreed to pay her a certain sum for such services.

In allowing damages for a continuing injury, it is improper to allow such an amount as placed at legal interest would produce the plaintiff's earnings (4).

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1. Grumb vs. Street R.R. Co., 9 N.Y. Sup., 316.

2. Such instruvs. The Home 56 Hun, 322.

Chap. 594 of Laws of 1892

Chap 574 of Laws of 1890

3. Blacksmith vs. The Hamil 30 N.Y., 497

4. Gregory vs. The Ry. 55 Hun, 303.

This in effect would be compelling the defendant to pay the amonut of the plaintiff's earnings and in addition thereto a gross amount which placed at legal interest would produce the amount of said earnings.

In this line of cases,mitigating circumstances may be shown and among these,one of the most important is provocation. It is always proper to show that the plaintiff brought the injury upon himself,but proof of his bad character or of a criminal conviction will not be allowed as a matter of mitigation.

The injured party must use ordinary care to avoid the consequences of the injury and make the damages in all cases as small as possible,having due regard for all surrounding circumstances. Any failure in this particular may be shown and the plaintiff will be precluded from recovering any consequential damages,which by the exercise of ordinary care and prudence, could have been avoided.