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Note and Comment

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NOTE AND COMMENT

EFFECT AT THE SITUS REI, OF A DECREE ORDERING CONVEYANCE OF FOREIGN LAND.—In a recent article in this Review, Prof. Willard Barbour discussed the question indicated by the above title. His conclusions may be briefly stated as follows: that such a decree of a competent court having jurisdiction of the person of the defendant creates a personal obligation upon the defendant which a court of equity at the situs should enforce just as it would a contract or trust concerning this land made in the foreign jurisdiction: and that, as between the States of this Union, the "full faith and credit" clause of the Constitution makes such enforcement of the foreign decree obligatory. He conceded that, upon the authorities, these points are still open to debate, but he showed that the tendency of the law, through the course of several centuries, has been obviously in the direction of these conclusions, that the negative authorities are in the nature of a survival in part of doctrines long since abandoned, and that the distinctions upon which the survival rests are without logic or good sense. "Extra-territorial Effect of the Equitable Decree," 17 MICH. L. REV. 527.

A recent decision of the Supreme Court of Iowa gives aid and comfort to Mr. Barbour's thesis. In a suit for divorce in the state of Washington, the court, upon granting divorce, ordered the husband to convey to the wife his land in Iowa. The defendant evaded the process of the court and, in Iowa, conveyed the land to one who had notice of the Washington decree. Upon suit brought in Iowa against the husband and his grantee, the court

set aside the conveyance and ordered the husband to convey to the wife. In both suits, personal jurisdiction of the husband was obtained, and, in the Iowa court, of the grantee also. In both states, the statutes provided for the allocation of the property of parties to a divorce suit. *Matson* v. *Matson*, 173 N. W. 127.

This case clearly proceeds in the main, upon the principles urged by Mr. Barbour, and is inconsistent with what has usually been regarded as the doctrine of *Bullock* v. *Bullock*, 52 N. J. Eq. 561, *Fall* v. *Fall*, 75 Neb. 104, and *Fall v. Eastin*, 215 U. S. 1. But, with what may be considered commendable conservatism, the court avoids criticism of those cases by distinguishing them, upon points which were given more or less emphasis by those courts, but with which Mr. Barbour did not concern himself. It thus pronounces a doctrine somewhat more limited than that advanced by the article in this review, and it seems well worth while to consider the validity of these distinctions and limitations.

Fall v. *Fall* and *Fall* v. *Eastin* are distinguished in that the husband was not served with process in the second suit. But, if the decree in the first suit fixed upon the husband an obligation to convey the land and his grantee took with notice of this obligation, a court of equity acquiring jurisdiction of the grantee should compel him to convey in fulfillment of that obligation, even though it fails to acquire jurisdiction of the husband. Any other position violates the well settled and highly politic principles of equity concerning notice. Probably no one would question this position so far as concerns the obligations of contract or trust. The obligation of the decree falls squarely under the same equitable principles and is not to be distinguished save in a wholly artificial way. It is true that in *Fall* v. *Eastin*, where the court had only to consider the constitutional question, Justice Holmes says that the "full faith and credit" clause does not require any state to apply the doctrines of notice but only to recognize the effect of judgments upon the immediate parties. But, without inquiring whether a merely colorable departure from the rules of notice should be held an effective evasion of the Constitution, it is clear that a violation of sound and settled rules of equity is not condoned by showing that it is not also a violation of the Constitution.

A second distinction raises a more serious question. All three of the cases cited are distinguished in that the statutes of the state where the land lay did not provide for the division of the property of the parties to a divorce suit. To this line of distinction two objections lie. In the first place, it violates the principle that the merits of a foreign judgment or decree, assuming that the court had jurisdiction, cannot be inquired into. See 17 MICH. L. REV. 545, 546. In the second place, even if the merits of the former decree are to be examined, its merits are not impugned by showing that the courts at the situs have no power to make a similar decree. It would seem self evident that the power of a court to impose a personal obligation upon a party depended solely upon the law of its own state—upon the same principle which makes the effect to be given to such obligation in another state depend upon the law of that other state and the United States Constitution. The question here seems to be entirely free from the difficulties which surround the ques-

tion as to what law governs the formation of contracts and trusts of foreign land. Thus, as to the fundamental doctrine of the principal case, that the foreign decree created a personal obligation upon the husband, it seems not to matter at all whether the local court could have made a similar decree. Then the question remains whether the propriety (or duty, under the Constitution) of recognizing and enforcing the obligation of the foreign decree is affected by the existence or non-existence of power in the local court to make a similar decree. The answer, unless we are willing to accept merely arbitrary distinctions, is negative. There is no safer generalization in the field of conflict of laws than this: that all obligations created abroad should be enforced, regardless of whether similar obligations might have been similarly created under the law of the forum, unless in particular cases where their enforcement is contrary to the policy of the forum. That there is no policy opposed to the acceptance of such foreign decrees as we are considering, is demonstrated by Mr. Barbour, who calls attention to the fact that any such policy would be equally violated by acceptance of a deed executed under compulsion of the foreign court—which latter form of indirect acceptance of the foreign decree has never been refused. 17 MICH. L. REV. 549.

It is submitted that the distinctions attempted in the principal case are untenable, and must go the way of the other "diversities," parcel of the conservative doctrine, which are rejected by the court in reaching its decision.

E. N. D.

DETERMINABLE FEE—POSSIBILITY OF REVERTER.—Professor Gray, in the first edition of his great work, "The Rule Against Perpetuities," Section 31 and following, contended that the Statute Quia Emptores by putting an end to tenure between feoffor and feoffee of an estate in fee simple, incidentally put an end to possibility of reverter to the feoffer on failure of the condition in a determinable fee. Specifically he says that upon dissolution of an eleemosynary corporation a terminable gift to such corporation does not revert to the donor, as is said by Lord Coke, Co. LITT. 13b, but escheats. For reversion depends on tenure, and the Statute by destroying tenure ends possibility of reverter. In his third edition, Section 40a, he notes that since the second edition of his book three cases have held *contra,—North* v. *Graham,* 235 Ill. 178, *Pond* v. *Douglass,* 106 Me. 85, and *Board of Chosen Freeholders* v. *Buck,* 779 N. J. Eq. 472. These follow a *dictum* in *First Universalist Society* v. *Boland,* 155 Mass. 171, which he considers as opposed to a case not to be distinguished from it, the leading case of *Brattle Square Church* v. *Grant,* 3 Gray 142. The learned author regards Lord Coke's statement that land of a corporation upon its dissolution reverted to the donor or grantor, while upon the death of a natural person without heirs his land escheated, as based on cases which do not uphold him, and the rule as not surviving his retirement, for *Johnsan* v. *Norway* Winch 37, 1622, shows a great doubt on the part of the judges, and though the report does not give the final decision on the point, Lord Hale's MSS. cited Co. LITT. 13b, Harg. note, say they held the land escheated. Lord Coke seems to have but a *dictum* in one case to support him, and only one case that has ever followed it, GRAY Section 51.

In section 51a, of the third edition Professor Gray remarks that the only case that has ever been decided in accordance with Lord Coke's remark is *Mott* v. *Danville Seminary,* 129 Ill. 403, 136 Ill. 289. "This case, as a decision, stands alone." This was true when the second edition of the RULE AGAINST PERPETUITIES appeared, but not in 1915 when the third edition came out. By this time, in addition to the cases cited by Professor Gray, approving the doctrine that there was possibility of reverter to the donor in case of a terminable gift to a charity, *Presbyterian Church* v. *Venable,* 159 Ill. 215 (1896), *Miller* v. *Riddle, 227* Ill. 53, cases which he regarded as not actually decided on that point though it certainly seems to be involved in the latter, there was the further Illinois case cited by Professor Gray at Section 40 a, but not at 51a, of *North* v. *Graham,* 235 Ill. 178 (1908), which notices and rejects as against the great weight of authority the view of Professor Gray. It was therefore not "the only case" when the third edition appeared. The misstatement is due to the fact that Section 51a was taken over without change from the second edition while 40a appeared for the first time in the third edition.

In his work on FUTURE INTERESTS, Professor Kales thinks it a matter of surprise that the Illinois Supreme Court in the *Danville Seminary Case* should have overlooked the masterly presentation of the matter by Professor Gray, and ruled *contra,* but accounts for it by the suggestion that the rule adopted by the court seemed a just one. The land having been originally donated for a purpose, and that purpose having failed, it seems more just that the land revert to the heirs of the donor than escheat to the state. That this may be the correct explanation is borne out by more recent cases. In *Hart* v. *Lake,* 273 Ill. 60, (1916), *Mott* v. *Danville Seminary, supra,* is again cited with approval, though the claimant is denied the aid of equity to enable him to recover the reverted property. But in *County of Franklin* v. *Blake,* 283 Ill. 292 (1918), the court refuses to recognize possibility of reverter in the case of land purchased, not donated, for a charitable purpose, and on the distinct ground that "where the owner donates land to aid a corporation organized for a charitable or public purpose to carry out its objects, when the corporation ceases to carry out the purposes of the organization and has no further use for the land it is reasonable and just that it should revert to the donor, but when land is bought by such corporation and its value paid the owner, we can see no more reason why it shoud revert to the grantor than land purchased by a trading corporation", which all agree does not revert, but on dissolution of the corporation is to be divided among the stockholders. However, this seems to prove too much, for the law knows no such distinction between land granted and land donated to a trading corporation, and in logic the same follows in case of benevolent corporations. At all events the Illinois court holds that on the equities of the case, on the justice, but hardly the reason of the case, the donated lands of a dissolved eleemosynary corporation revert to the donor, while the granted lands do not revert to the grantor, but go to the members or their representatives who put their money into the buildings and work of the corporation, or, those failing, escheat to the state. The court relies on *McAlhany* v. *Murray,* 89 S. C. 440, annotated

in Ann. Cas. 1913 A 1012, and in 10 MICH. L. REV. 121, as "an able and logical" discussion of the law. Strangely enough this case, though going on the justice of the case, rejects the Illinois view of reverter to the donor, and makes no distinction between donor and grantor, and this in face of the very clear previous expressions of the South Carolina court *contra*. The case contains an excellent discussion and review of the authorities, and rejects Lord Coke's rule.

Finally it may be noted that none of these cases is decided on the legal reason as distinguished from the equitable justice, of the matter. They do not discuss Professor Gray's thesis that a reversionary right implies tenure, and that the Statute Quia Emptores by ending tenure between foeffer and foeffee of a fee simple incidentally ended all possibility of reverter to donor or grantor, and hence all determinable fees. Thus a late English case, *Hastings Corp.* v. *Letton* (1908), 1 K. B. 378, makes no distinction between lease for years and fee simple. The statute applied only to fee simple estates. If the Statute had that effect then, except in Pennsylvania and South Carolina where tenure exists and the Statute Quia Emptores is not in force, determinable fees with their possibility of reverter are, on reason, extinct, whatever the justice of the case. Their absurdity in the case of trading corporations long ago led the courts to legislate them out of existence without waiting for any statute. See the interesting discussion in *Richards* v. *Coal and Mining Co.* (1909), 221 Mo. 149. And it is precisely in South Carolina where they might in reason be still in force that the latest pronouncement of the highest court is against them on the grounds of justice and equity. A short, but interesting, discussion of the soundness of Professor Gray's position may be read in the review of the first edition of his book on the RULE AGAINST PERPETUITIES in 2 LAW QUART. REV. 394, and in a resulting discussion by Professor Gray and Mr. Challis, two masters in real property law, in 3 LAW QUART. REV. 399, 403. On the whole Professor Gray seems to have the better of the argument and the worst of the decisions; and it is perhaps well that it is so. To base our modern rule as to disposition of the land of a dissolved corporation upon a statute of 1290, and an ancient, though not extinct, concept of tenure, certainly seems undesirable if the result violates our sense of reason and justice. It seems better to distribute such property to those equitably entitled on the facts of each case. Failing any such parties, escheat to the state is just. See 10 MICH. L. REV. 121.

E. C. G.

EVIDENCE—PRESUMPTION OF LEGITIMACY.—The present-day status of the old common law rule aimed at preventing impeachment of the legitimacy of children born in wedlock, is presented by the opinion in *Re McNamara's Estate*, and *McNamara* v. *McNamara et al*, 183 Pac. 552.

The case involved the question of whether the son of Mrs. B. was legitimate, and therefore entitled to inherit from her husband. The son was born to Mrs. B. on the 24th of October, 1914. Mrs. B. had left her husband on the 24th of December, 1913, and had not seen him in the interim under circumstances permitting intimacy between them.

The court, after finding under the rule of judicial notice, that it was possible for a child to have been conceived on a particular date and not be born until ten calendar months later, (the period involved in this case), then decided that whether the child was that of the husband, or of another with whom Mrs. B. cohabited from the time of leaving her husband on the 23rd of December, 1913, until after the child was born, was a question of fact to be determined upon evidence submitted, with the presumption obtaining that because the child was born in wedlock, he was legitimate; a presumption not conclusive, but disputable.

A dissenting opinion was filed by Melvin, J., stating the rule to be, "if it appears, that by the laws of nature, it is possible that the husband is the father, that is, if it appears that the husband had intercourse with the mother during the period of possible conception, legitimacy is conclusively presumed". The judges were in accord upon the proposition that such intercourse would be presumed up to the time of the separation.

There is little doubt that the rule as first formulated in English law, was one which conclusively presumed that a child born in wedlock was legitimate, and permitted no evidence to the contrary, except it were offered to prove either impotency of the husband or, that during the period of possible conception the husband was "beyond the four seas." *Reg.* v. *Murrey*, 1 Salk. 122.

A line of more recent important decisions, however, has established in England a doctrine less restricted and to the effect that "the presumption of legitimacy arising from the birth of a child during wedlock, the husband not being found to be impotent, and having opportunities of access to his wife during the period in which a child could be begotten and born in the course of nature, may be rebutted by circumstances indicating a contrary presumption." *Banbury Peerage Case*, 1 Sim. & Stu., 153. The doctrine of this case was followed in *Head* v. *Head*, 1 Sim. & Stu., 150 and *Burnaby* v. *Ballie*, L. R. 42, Ch. Div. 297.

A reasonable construction and weighing of authorities in this country would seem to justify the following conclusions as to the state of the law upon this subject here.

(a) The presumption of legitimacy obtains in all cases where the child is born in wedlock, but this presumption is regarded, not as conclusive, but as rebuttable by evidence which, though it may not show absolute impossibility of parentage by the husband, yet clearly and satisfactorily shows parentage by another.

(b) This rule is not to be construed as giving opportunity for conclusion against legitimacy where the potent husband and his wife were living together, or where reasonable opportunity of access was afforded, during the period when conception probably occurred, though the wife may have been living continuously in adulterous relations with another during the same period.

A reasonable conflict in the evidence upon a question of negligence will carry the case to the jury. Not so with the issue of parentage. The status of legitimacy or illegitimacy is regarded as too important to be overcome by a mere preponderance of evidence. *Scott* v. *Hillenburg*, 85 Va. 245;

Canaan v. *Avery*, 72 N. H. 591; *Grant* v. *Mitchell*, 83 Me. 23; *Metheny* v. *Bohn*, 160 Ill. 267; *State* v. *McDowell*, 110 N. C. 734.

(c) The circumstance that the conception must have been ante-nuptial, does not alter the rule. *Wallace* v. *Wallace*, 137 Ia. 37; *Dennison* v. *Page*, 29 Pa. 420; *Zachman* v. *Zachman*, 201 Ill. 380.

BOYCOTT—MEDICAL ASSOCIATION.—The opinion of McCardie, J., (without a jury), in *Pratt* v. *British Medical Association* (1919), 1 K. B. 244, (noted in the MICHIGAN LAW REVIEW, June, 1919, p. 704), brilliantly reviewing the English cases, merits a fuller statement of the facts and principles involved than was possible in a short note.

The action was by Doctors Burke, Pratt, and Holmes, against the British Medical Association and four of its officers, for damages for conspiracy, *slander* and *libel*.

The Medical Association was incorporated in 1874, "to promote the medical and allied sciences, and to maintain the honour and interests of the medical profession," with the incidental power to carry out these objects. Any registered medical practitioner was eligible to membership, and large numbers of the physicians (more than 50 per cent in the Midland Counties) of England were members; and through its rules and regulations administered by its Council and Ethical Committee, it exerted a powerful influence throughout and beyond the United Kingdom. The members were formed in geographical divisions, composed of those in a particular district, free to govern themselves and make such rules as they deemed expedient, subject to the approval of the Council of the Association. Coventry constituted one division, and a majority of the doctors in this district were members.

In Coventry there had existed for more than eighty years the Coventry Provident Dispensary for securing medical attendance for its 20,000 members and their families, each member paying four shillings, annually, making an income of £4,000, half of which was expended for drugs, druggists and management, the other half going to the doctors constituting the medical staff.

In 1906 a controversy arose between the then medical staff of the Dispensary and the managing committee, and all of the staff resigned. The Committee then invited Doctor Burke, who resided in the Birmingham district, to become a member of the medical staff. He was registered in 1895, and became a member of the Medical Association in 1903. He accepted the call and in June, 1907, moved into Coventry with his family and took up his duties as medical officer of the Dispensary.

In 1904 the Medical Association published "model rules" for divisions (which were adopted by the Coventry division) providing that "no member shall, except in circumstances of great urgency, meet in consultation, or hold any professional relations, with a medical practitioner who shall have been declared by a resolution of the division, if a member, to have broken the rules, or if not a member, to have acted, (after due notice) in contravention of the rules, or who, whether a member or not shall have been declared by the division to have been deemed guilty of conduct detrimental to the honour and interests of the profession." In April, 1906, the Coventry division re-

solved that no member should associate himself with the Coventry Dispensary. In the same year the Medical Association promulgated another model rule (adopted by Coventry division in January, 1907), to the effect that whenever any division passes a resolution declaring the conduct of any medical practitioner detrimental to the honour and interests of the division, the matter shall be reported to the Central Ethical Committee, and if approved by it, or if not, if passed by a three-fourths vote of those present at a special meeting of the division called to consider the matter, formal notice may be sent to every member of the division that "in the opinion of the division the conduct of Doctor ——— is detrimental to the honour and interests of the medical profession;" and likewise, if thought necessary, like notices may be sent to the members of other divisions.

Doctor Burke received his call to the Dispensary Staff in May, 1907; May 26, he was notified he would be boycotted under the above rules, if he accepted. He accepted and took up his duties in June; June 20 the division passed a resolution condemning his conduct; July 16 it resolved he had violated the rules, and the resolution of April, 1906, in accepting the call; July 20, it notified him and asked an explanation; he replied July 29, that he was satisfied with his new position; he was then warned that he would be expelled; August 28, the Executive Committee of the division resolved to ostracise Doctor Burke, "and make the ostracism as complete as possible"; September 3, the division recommended to the Council of the Association that he be expelled; this was communicated to the Birmingham division, September 4; December 18, he was cited to appear before the Ethical Committee, and was expelled February 13, 1908. Notices of this action furnished by the Association, were then sent by the Coventry division to each of its members, and to those of the eight surrounding divisions, each of which had similar rules, making it a breach of duty for any doctor to meet Doctor Burke in consultation or give him any professional recognition, except at the risk of expulsion or censure and for more than ten years, Doctor Burke was, with a single exception, unable to secure any consultation among the doctors in these districts; his private practice was greatly injured, and he and his family were treated as social and professional outcasts. Doctor Pratt, a member of the Medical Association, and Doctor Holmes, who was not, joined the Coventry Dispensary Staff in 1913, and were thereafter treated as Doctor Burke had been. The boycott was further emphasized by the "black list" published each week in the British Medical Journal by the defendants. The only charges against either of the plaintiffs was that they accepted and held appointments on the Dispensary Staff, a highly respectable and well managed institution, which gave them ample remuneration, adequate leisure, full opportunity for private practice, and a right to claim and exert all the honourable requirements of professional men. The only interest affected was the pecuniary interest of the Coventry doctors.

The court concluded that the notices sent were intended to and did operate coercively; were, and were meant to be, threats; were intended to disturb and intimidate each doctor who received them; back of them was the whole power of the British Medical Association; they were emphasized by the pub-

lished "black list;" the threat of ruin was the very point and object of the scheme; whether the offending doctor was a member or not, the doom was the same for all who met or recognized a Coventry Dispensary doctor; it was a prolonged, deliberate and pitiless boycott; the intimidation was a general, effective, and continuous fear of expulsion, or ostracism, or both, involving the destruction of professional repute.

The plaintiffs claimed this was an actionable conspiracy; and the defendants contended that the acts and threats were within the limits of their legal rights.

As to conspiracy. This is not important, except as an aid in the proof, or to enhance damage, in any agreement to commit any of the well-known species of tort, including knowingly procuring a breach of contract. In such cases one can commit the tort as well as many. *Lumley* v. *Gye* [1853], 2 E. & B. 216; *Quinn* v. *Leathem* [1901], A. C. 495, 510; *South Wales M. F.* v. *Glamorgan Co.* [1905], A. C. 239; but it seems to have been considered of importance in the cases where courts undertake to protect a man in the lawful exercise of his calling. These usually arise from molestation by a combination of persons, since molestation by one person only is usually very slight; and some cases use conspiracy as if it made that which is lawful, if done by one, actionable if done by several in combination. It is necessary therefore to ascertain the principles involved in *Quinn* v. *Leathem* [1901], A. C. 495. These are: A has a right to deal with B, if he is willing to deal with A; but this right of A is nugatory, unless B is at liberty to deal with A, if he choose. There is therefore a correlative duty on everyone, as C, not to interfere with this liberty of B, except so far as C's own liberty of action justifies. So C's interference with B's liberty to deal with A affects A. If this is justifiable, A has no redress; if wrongful, ordinarily, B only can sue, since his liberty is immediately affected and A's damage is too remote; but if C's interference is wrongful, and intended to, and does, damage A, that is, if A is wrongfully and intentionally struck at and damaged through B, such damage is not too remote, or unforseen, but is the direct and intended result; this may be done by one; it requires no combination of persons. If C inflicts damage on A, by a threat of personal violence to B, who wishes to deal with A, and he abstains because of C's threat, and A is thereby damaged, C's act is actionable by A. *Garret* v. *Taylor* (1620), Cro. Jac. 567; *Tarleton* v. *M'Gawley* (1794), Peake N. P. C. 270; *Giblan* v. *Natl. Amal. Lab. U.* [1903], 2 K. B. 600, 619, 620. *Allen* v. *Flood* [1898], A. C. 1, does not conflict with this, for there was no intimidation, coercion, or threats there.

"In my opinion," says the judge, "the rule of law is reasonably clear that a single person or a body of persons will commit an actionable wrong if he or they inflict actual pecuniary damage upon another by the intentional employment of unlawful means to injure that person's business, even though the unlawful means may not comprise any specific act which is per se actionable."

But what is "unlawful means"? This perhaps is not susceptible of exhaustive definition. Personal violence (*Tarleton* v. *M'Gawley*); threats of personal violence (*Garret* v. *Taylor; Keeble* v. *Hickeringill* (1706), 11 East

576 n); nuisance, (*Lyons* v. *Wilkins* [1899], 1 Ch. 255); fraud, (*National Phonograph Co.* v. *Edison Bell &c. Co.* [1908], 1 Ch. 335), are unlawful means. In *Quinn* v. *Leathem* [1901], A. C. 495, the only threat was, not of personal violence, to a customer that his servants would be directed to cease working for him, if he continued to deal with the plaintiff. See also *Giblan's Case* [1903], 2 K. B. 600, and *Conway* v. *Wade* [1909], A. C. 506. "I can draw no distinction between a threat to *cause* a strike and a threat to inflict upon a man the slur of professional dishonour," says the court.

There is a difference between a *warning* and a *threat*, which is one of fact; the threat involves intimidation and coercion, of some kind. It is in respect to the coercion involved in threats that combination and conspiracy are important. A wrongful act of one may be easily resisted, but not that of many; a combination not to work is lawful, but a combination to prevent others from working is not; not to work oneself is lawful, but to order others who wish to work not to do so is different; a threat by a union to an employer to call his union employees out, who are willing to work, is a form of coercion, intimidation, molestation, and annoyance which is difficult to resist, and requires justification.

Justification has been discussed in the cases for wrongfully inducing a breach of contract with the following result: "No one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong understanding of his rights, or without malice, or bona fide, or in the best interest of himself, nor even that he acted as an altruist seeking only the good of another and careless of his own advantage,"—*Read* v. *Friendly Soc. &c.* [1902], 2 K. B. 88, 96, 97, 732, 737; *Glamorgan Coal Case* [1905], A. C. 239; *Smithies Case* [1909], 1 K. B. 310.

No different rule can exist where an injury to another's trade has been caused by such unlawful means as threats, intimidation, or violence, although no breach of contract has been caused thereby, and self interest is not a justification. To hold otherwise would negative the decisions from *Garret* v. *Taylor* in 1620, to *Quinn* v. *Leathem* in 1901.

Malice. It is sometimes said malice is essential to the action. This is a word of uncertain meaning. It is frequently used merely in a formal sense, as in libel where no question of privilege can arise. Here it is only an epithet or legal expression without real significance. This can be put aside. *Reg.* v. *Munslow* [1895], 1 Q. B. 758; *Abrath* v. *N. E. Ry.* [1886], 11 App. Cas. 247, 253.

It is however used to indicate an actual state of mind, which appears to be of two kinds: *spite* and *ill will;* and also an *indirect, wrong, corrupt,* or *unlawful motive,* or an *unjustifiable intention to inflict injury. Dickson* v. *Earl of Wilton* (1859), 1 F. & F. 419, 427; *Turnbull* v. *Bird* (1861), 2 F. & F. 508, 524; *Browne* v. *Dunn* (1893), 6 R. 67, 72; *Royal Aquarium Case* [1892], 1 Q. B. 431; *Stuart* v. *Bell* [1891], 2 Q. B. 341, 351; *Clark* v. *Molyneux* (1877), 3 Q. B. D. 237, 247; *Mitchell* v. *Jenkins* (1833), 5 B. & Ad. 588. Actual malice, in the sense indicated in these decisions is not an essential element in the present case. If the plaintiff proves damage caused by such illegal means as violence or threats he has established all the law requires.

But if an appellate court should hold otherwise, then the court felt compelled to say the evidence shows in this case that the defendant doctors were angrily hostile to plaintiffs, unceasingly bitter toward them, sought every opportunity to humiliate them, and admittedly wished to render their lives unbearable and not only to punish, but to ruin them. This constituted actual malice on their part if any is necessary.

But it was contended that the defendant Medical Association could not have such malice. It was admitted that the acts of its agents in this case fell within the scope of their authority. It is now settled that a master, corporate or not, may be liable for the actual malice of his servant, since such a state of mind rests on the same juristic footing as any other state of mind, and in appropriate cases the servant's state of mind is imputed to his principal. This is true in libel: *Citizens' Life Ins. Co.* v. *Brown* [1904], A. C. 423; CLERK AND LINDSELL, Torts, p. 64, (6th Ed.); *Phil. W. & B. R. Co.* v. *Quigley* (1858), 21 How. (U. S.) 202; and in malicious prosecution: *Barwick* v. *English J. S. Bk.* (1867), L. R. 2 Ex. 259; *Cornford* v. *Carlton Bank* [1900], 1 Q. B. 22; *Lloyd* v. *Grace & Co.* [1912] A. C. 716; *Goodspeed* v. *East Haddam Bank* (1853), 22 Conn. 439.

The court also held that rules and regulations were in unlawful restraint of trade, injurious to the public, and void. *Nordenfeldt Case* [1894], A. C. 535; *Russell* v. *Amal. Soc.* [1912], A. C. 421; *Neville* v. *Dominion &c. Co.* [1915], 3 K. B. 556.

The defendants, although given full opportunity, made no effort to justify the slander and libel charges. Judgment was rendered for £1,000 in favor of Doctor Burke, and £700 to each of the others.

There are numerous American cases, some in conflict, on all the above propositions. In the main, however, the recent American cases, especially those in the Supreme Court of the United States, and in the Supreme Judicial Court of Massachusetts, support the rules above given upon conspiracy, coercion, threats, intimidation, malice, etc. Some of these are: *Angle* v. *Chicago &c. R. R. Co.* (1893), 151 U. S. 13, 14 S. Ct. 244; *Bitterman* v. *Louisville &c. R. R. Co.* (1907), 207 U. S. 205, 31 S. Ct. 91, *Gompers v. Bucks Stove Co.* (1910), 221 U. S. 418, 31 S. Ct. 492; *Lawler* v. *Loewe* (1915), 235 U. S. 522, 35 S. Ct. 170; *Truax* v. *Raich* (1915), 239 U. S. 33, 36 S. Ct. 7; *Hitchman Coal &c. Co.* v. *Mitchell* (1917), 245 U. S. 228, 38 S. Ct. 65; *Vegelahn* v. *Guntner* (1896), 167 Mass. 92; *Martell* v. *White* (1904), 185 Mass. 255; *Berry* v. *Donovan* (1905), 188 Mass. 353; *Steinert & Co.* v. *Tagen* (1911), 207 Mass. 394; *Burnham* v. *Dowd* (1914), 217 Mass. 351; *Cornellier* v. *Haverhill Shoe Assn.* (1915), 221 Mass. 554; *Harvey* v. *Chapman* (1917), 226 Mass. 191; *Martineau* v. *Foley* (1918), 231 Mass. 220; *Smith* v. *Bowen* (1919), 232 Mass. 106; *Auburn Draying Co.* v. *Wardell* (1919), 227 N. Y. 1. Compare *contra, Macauley Brós.* v. *Tierney* (1895), 19 R. I. 255; *National Protective Assn.* v. *Cumming* (1902), 170 N. Y. 315; *Lindsay* v. *Montana F. of L.* (1908), 37 Mont. 265; *Bossert* v. *Dhuy* (1917), 221 N. Y. 342. H. L. W.