

**RECOVERY FOR DAMAGES FOR MENTAL SUFFERING
IN TORT AND IN CONTRACT.**

The right to recover for damages for mental suffering, in actions arising *ex delicto* and *ex contractu*, is a question in the law concerning which there is a diversity of judicial opinion. There is an apparent reluctance to grant recovery in such cases, due chiefly, perhaps, to the difficulty of definitely ascertaining the true measure of damage from a pecuniary point of view.

In actions arising *ex delicto* the weight of authority is in favour of a recovery for anguish of mind, but the right is limited to three well-defined classes of cases, viz., first, where some physical injury has been inflicted; second, where the plaintiff has been subjected to personal indignity, as in defamation, malicious prosecution, or seduction; and third, where a clear legal right of the plaintiff has been invaded in such a wilful or malicious manner as would naturally cause mental distress, regardless of the preceding elements of physical injury or personal indignity. It does not follow, however, that this is a proper element of damage in all tort actions, and it has been held that there could be no recovery for mental suffering which resulted to a mother from the death of a child by a wrongful act; nor for libeling the dead; nor for mere fright resulting in a nervous disorder; nor for anxiety for safety of one's self or family during a blasting operation; nor from threats or duress by means of which property was unlawfully procured. The better rule would seem to be that recovery for mental pain in this class of cases is restricted to those in which there is an accompanying invasion of a legal right, physical bodily injury, malice, insult or inhumanity.

As a general rule, pain of mind is not a subject of damages in actions arising *ex contractu*, except where the breach of a contract amounts in substance to an independent, wilful tort. Exceptions to the general rule are actions for breach of promise to marry, and actions against carriers for wilful or malicious injuries to passengers, in violation of their contract to carry safely. The great weight of authority is against a recovery