

RECENT CASES

ADVERSE POSSESSION—ACTS CONSTITUTING—PAYMENT OF TAXES.—FITZSIMONS v. ATHERTON, 124 PAC. (CAL.), 250.—*Held*, that one who has been in the continued adverse possession of a tract, but who has never paid any taxes, does not acquire title by adverse possession.

The object of the State is to collect taxes from everyone who claims title to land, and if claimants of hostile titles would protect the titles they claim, they must pay taxes. *State v. Law*, 46 W. Va., 451. And title by adverse possession cannot be maintained by one who has failed to pay the taxes on the property so claimed. *Tuffree v. Polhemus*, 108 Cal., 670; *Rodriguez v. Priest*, 59 Tex. Cr. Rep., 248. But the mere paying of the taxes is not enough to constitute adverse possession. *Dickinson v. Balcs*, 59 Kan., 224. The above cases hold that the payment of taxes is an element of adverse possession in the absence of statutes. This is the majority view. The minority line of cases holds that payment of taxes is not an element of adverse possession unless made so by express statutory requirement. Even where it is the fault of the claimant that the land was not assessed. *Coonradt v. Hill*, 79 Cal., 587. In a suit to recover lands the defendant could avail himself of the statute of limitations although he had not paid the taxes on the land during the running thereof. *Anderson v. Canter*, 10 Kan. App., 167. For possession ripens into title whether claimant pays taxes or not. *Silverstone v. Hanley*, 55 Wash., 458. For a complete list of statutes covering this point, see *Washburn on Real Property*, 6th Ed., Vol. 3, pp. 148-163. It would seem to be the better rule that in the absence of statute, non-payment of taxes should not defeat the claim of title by adverse possession. The State is amply protected by its power to sell the land for taxes, and the claim may well be adverse to the owner, though the disseisor fails to pay the taxes. Under the rule established in the principal case, the State might be enabled to collect taxes on the same land from several different claimants.

DAMAGES—MENTAL ANGUISH.—HENRY v. SOUTHERN RY. CO., 75 S. E. (IND.), 1018.—*Held*, that in the absence of statute, damages for mental anguish cannot be recovered in an action for injuries to personal property.

Pain of mind is not the subject of damages in the absence of bodily injury; *Morse v. Duncan*, 14 Fed., 396; *Summerfield v. W. U. Tel. Co.*, 87 Wis., 1; but if connected with bodily injury such damages are recoverable; *Buth v. Nat'l Bank*, 79 Mo. App., 168; even by an insane person. *Gulf, W. T. & P. Ry. Co. v. Holzheuser*, 45 S. W., 188. And so if the damages are caused by the unlawful act of another; *Lake Erie & W. R. Co. v. Christison*, 39 Ill. App., 495; *Louisville & N. R. Co. v. Hunter*, 10 Ky. Law Rep., 871; even in an action for breach of contract. *Enders v. Skamal*, 35 La. Ann., 1000. If the damage caused by the mental anguish is the proximate result of a legal wrong against plaintiff by defendant, a recov-

ery is allowed on this ground. *Hill v. Kimball*, 76 Tex., 210. With the exception of some telegraph cases, the courts seem nearly unanimous in holding that for mental anguish alone, damages cannot be recovered. There are two notable exceptions where the contrary is held almost as consistently, *i.e.*, in actions for the wrongful removal from the grave of the body of a child, or relative in the first degree, and for the mutilation of the body of such a relative. (Medical dissection cases.) See *Cooley on Torts*, 3d Ed., Vol. 1, p. 90; *Greenleaf on Evidence*, Sec. 267. See also *Bessamer Imp. Co. v. Jenkins*, 111 Ala., 135. The decision in the present case states the better rule, although there are older cases to the contrary. For other cases in point, see *YALE LAW JOURNAL*, Vol. XXII, No. 1, p. 60. See also *YALE LAW JOURNAL*, Vol. XXI, No. 8, p. 685.

RAILROADS—CROSSING ACCIDENT—DUTY OF TRAVELER—STOP, LOOK AND LISTEN.—*DANKIN v. PENNSYLVANIA R. Co.*, 83 ATL. (N. J.), 1006.—*Held*, that a traveler crossing a railroad, though required to look and listen, is not negligent, as a matter of law, in failing to stop before driving on the track.

A traveler approaching a railroad crossing must exercise care and prudence in looking and listening for approaching trains. *Cunningham v. R. R. Co.*, 142 N. Y. App. Div., 303; *Crabtree v. R. R. Co.*, 86 Neb., 33; *Row v. R. R. Co.*, 144 Iowa, 378. If he fails to exercise care and is consequently injured he is guilty of contributory negligence and cannot recover, even though the railroad company was also negligent. *R. R. Co. v. Hall*, 109 Va., 296; *Weatherly v. R. R. Co.*, 166 Ala., 575. Where the facts, or the inference to be drawn from the facts, with respect to contributory negligence, are doubtful, the case is one for the jury. *Northern Pac. R. R. Co. v. Jones*, 144 Fed., 47; *Louisville R. R. Co. v. Miller*, 134 Ky., 716. But where from any proper view the facts are not in dispute the question is one for the Court. *Garick v. Northern Pac. R. R. Co.*, 131 Fed., 837; *Horan v. Boston R. R. Co.*, 183 Fed., 559; *Keller v. Erie R. R. Co.*, 183 N. Y., 67. Some Courts even hold that the law will presume that one about to cross a railroad saw what he could have seen if he had looked, and heard what he could have heard if he had listened. *Malott v. Hawkins*, 159 Ind., 127; *Tiffin v. R. R. Co.*, 78 Ark., 55. An important case dealing with this subject is *Wallenburg v. Mo. R. R. Co.*, 86 Neb., 642. This case holds that when the facts are undisputed, if from those facts different minds may honestly conclude that the plaintiff was guilty of contributory negligence, or free therefrom, the jury, and not the Court, should draw the inference and find the secondary fact. This case has some valuable annotations in 37 L. R. A. (N. S.), 135.

RAILROADS—FIRES—NEGLIGENCE—BURDEN OF PROOF.—*HARDY ET AL. v. HINES BROS. LUMBER COMPANY*, 75 S. E. (N. C.), 855.—*Held*, that the setting of fire by sparks from defendant's locomotive, damaging plaintiff,

being shown, makes a *prima facie* showing of negligence, requiring defendant to overcome it.

The commonly accepted doctrine is that the mere communication of fire by a railroad engine is sufficient of itself to raise a *prima facie* presumption against the company. *Louisville & N. R. Co. v. Marbury Lumber Co.*, 125 Ala., 237. And the burden of proof is on the railroad company to show that it was not negligent in causing the fire. *Kornegay v. Railroad Co.*, 154 N. C., 389. But the burden is only of proving that the company used the best and most improved appliances. *White v. Chicago, M. & St. P. R. Co.*, 1 S. D., 326. In Colorado, Maine, Missouri, Oklahoma and South Carolina there are statutes making the railroad company absolutely liable irrespective of negligence. The above cases hold the modern and better rule. The older and now obsolescent rule is that the burden of proof is on the plaintiff to show not only that the fire was caused by the sparks, but also that the emission of such sparks was caused by the negligence of the company. *Garrett v. Southern Ry.*, 101 Fed., 102. For there exists no presumption of negligence on the part of the company in such a case. *B. & O. S. W. R. v. O'Brien*, 38 Ind. App., 143; *Babbitt v. Erie R. Co.*, 95 N. Y. Supp., 429. And the plaintiff must also show absence of contributory negligence on his part. *Wabash R. Co. v. Miller*, 18 Ind. App., 549; *Louisville, N. A. & C. Ry. Co. v. Carmon*, 20 Ind. App., 471. But if the railroad company pleads that its engine was furnished with a proper spark arrester, the burden of going forward with evidence is thereby shifted. *Ill. Cent. R. Co. v. Barrett*, 23 Ky. Law Rep., 1755; *contra, Toledo, St. L. & W. R. Co. v. Fenstermaker*, 163 Ind., 534. Here the title case is clearly on the side of the better and more modern authorities.

TORTS—INTERFERENCE WITH CONTRACT.—*MEALEY v. BEMIDJI LUMBER Co.*, 136 N. W., (MINN.), 1090.—*Held*, that one who wrongfully interferes or intermeddles with the contract relation between two others, and thereby prevents one of them from carrying out the contract, which results in loss to the other, is liable for such loss.

That a contract existing between two parties may give rise to rights *in rem*, as well as rights *in personam*, is well established in England. *Lumley v. Gye*, 2 E. & B., 216; *Temperton v. Russell*, 1 Q. B., 715. It is also established in this country. *Walker v. Cronin*, 107 Mass., 555; *Angle v. Chicago Ry. Co.*, 151 U. S., 1; *Landon v. Horn*, 206 Ill., 493. This is denied in a few jurisdictions. *Chambers v. Baldwin*, 91 Ky., 121; *Glencoe v. Hudson*, 138 Mo., 439. If the contract is one of employment the great weight of authority is that one who induces another to break such a contract is liable to the party injured thereby. *Bowen v. Hall*, 6 Q. B., 333; *Bixby v. Dunlap*, 56 N. H., 456; *May v. Wood*, 172 Mass., 11. *Contra, Bourlier v. Macauley*, 91 Ky., 135. In contracts other than employment the authorities are more divided. Many Courts hold that liability in tort for causing a breach in a contract between others does not exist outside of

contracts of employment. *Boyson v. Thorn*, 98 Cal., 578; *Raycroft v. TAYNOR*, 68 Vt., 219. But the modern tendency is strongly toward the view that contract rights are property and are entitled to protection. *Garst v. Charles*, 187 Mass., 144; *Tubular Rivet Co. v. Exeter Root Co.*, 159 Fed., 824; *Mahoney v. Roberts*, 86 Ark., 130. The gist of the action, applying both to contracts of employment or other contracts, is the existence or non-existence of the malicious motive. *Joyce v. Great Northern Ry. Co.*, 100 Minn., 225; *Hushie v. Triffin*, 75 N. H., 345. Malice in its legal sense means a wrongful act, done intentionally, without just cause or excuse. *Com. v. Goodwin*, 122 Mass., 19. Applying the law, as thus found, to the principal case, it is in accord with the better opinion both in this country and in England.