THE
AMERICAN LAW REGISTER
FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA
DEPARTMENT OF LAW

SUBSCRIPTION PRICE, $3.00 PER ANNUM. SINGLE COPIES, 35 CENTS.

Edited by members of the Department of Law of the University of Pennsylvania under the supervision of the Faculty, and published monthly for the Department by ROBERT E. ANDERSON, Business Manager, at S. W. Cor. Thirty-fourth and Chestnut Streets, Philadelphia, Pa. Address all literary communications to the EDITOR-IN-CHIEF; all business communications to the BUSINESS MANAGER.

THE LIABILITY OF CORPORATIONS TO PUNITIVE DAMAGES IN PENNSYLVANIA.

Uncertainty in some phases of life may perhaps be an advantage, but uncertainty as to questions of law is little to be desired. Troublesome as it is at all times, it is never more unfortunate than when it exists in respect to matters of every-day importance and arises under conditions which are likely to grow more and more prominent. All questions concerning corporations are of this character. And when one considers the strong tendency in modern times toward this form of business enterprise, the great increase in numbers and powers of these corporate bodies, and the varied fields of industry which they are entering, it would seem almost imperative that all points of law in respect to their duties and liabilities should be fixed with the greatest

possible certainty. The question of the liability of a corporation to punitive damages is one which has given rise to much diversity of opinion at different times and in different jurisdictions. The exact point which has caused difficulty is this: Can a corporation be liable to punitive damages for a wilful or grossly negligent tort of its agent acting within the scope of his authority, although the corporation has never expressly authorized or ratified the agent's acts? That there has been hesitation and doubt upon this question is illustrated by the Pennsylvania cases in which it has been involved. For, while twenty years ago it seemed settled beyond doubt in this state that a corporation could be held liable for punitive damages under the circumstances stated, nevertheless the tendency of the later cases, although not definitely departing from the rule laid down, indicates a reluctancy to apply it and casts doubt upon its propriety. A brief review of a few cases will show this.

The case referred to as settling the point in this jurisdiction was that of *Lake Shore and Michigan Southern Railway Company* v. *Rosenzweig,* 113 Pa. 519 (1886). In that case the plaintiff was ejected by a conductor from one of the defendant's trains at a dangerous spot in the midst of many tracks, where trains were constantly running. This was contrary to a rule of the company, which required that persons should be put off trains at regular stations or at dwelling-houses. The jury were instructed that under these facts they might give a verdict for punitive damages. The judgment was affirmed by the Supreme Court, and the rule as regards corporations was laid down in the following emphatic manner: "The liability of railway and other corporations to exemplary damages for gross negligence is well settled. The general rule in cases for negligence is that only compensatory damages can be given. Juries are not at liberty to go farther than compensation, unless the injury was done wilfully, or was the result of that reckless indifference to the rights of others which is equivalent to a violation of them. There must be wilful

misconduct or that entire want of care which would raise a presumption of conscious indifference to consequences (*Milwaukee & St. Paul Railway Company* v. *Armes,* 91 U. S. R. 489). The corporation is liable for exemplary damages for the act of its servant done within the scope of his authority under circumstances which would give such right to the plaintiffs as against the servant were the suit against him instead of the corporation." No case since has expressly gone against the rule as thus stated, but there has been a tendency shown in several opinions to regard it with disapprobation. Thus, only two years later, in *The Philadelphia Traction Company* v. *Orbann,* 119 Pa. 37 (1888), the court, citing *R. R. Co.* v. *Rosenzweig* and quoting the rule as above, continues:

"There may be grave doubts expressed as to the propriety of the rule, but if the doctrine of this case is adhered to, the responsibility of a corporation in exemplary damages for the wanton and wilful acts of its servants is clearly established in Pennsylvania."

Keil v. *Chartiers Valley Gas Company,* 131 Pa. 466 (1889) was an action against a gas company for cutting a ditch and laying pipe in an unauthorized manner upon the plaintiff's land. The lower court instructed the jury that they might impose exemplary damages if they thought "from the testimony there was aggravation, outrage, wilfulness, grossness, wilful disregard of a man's rights." The Supreme Court reversed the judgment on the ground that the question of exemplary damages should not have been submitted to the jury. The concluding remarks of the opinion by Williams, J., clearly show disapprobation of the rule. He says: "Was the gas company to be punished for the trespass of its employees, committed without its knowledge and against its instructions by imposing smart money on it? Unless there was evidence showing the purpose of this company to oppress or injure the plaintiff unnecessarily, or at the least showing culpable inattention and neglect in the conduct of its affairs resulting in an unnecessary injury to the plaintiff, there was no reason for

imposing exemplary damages. The ends of justice are fully met under ordinary circumstances when the employer makes full compensation for the trespass of his employee, without subjecting him to punishment for his employee's malice or cruelty." Finally, in the very recent case of *Artherholt* v. *Erie Elec. Motor Company*, 27 Pa. Superior Court 141 (1905) where exemplary damages were recovered against the corporation for assault and battery committed by a conductor against a passenger, the Superior Court expressed the opinion that the rule of *R. R. Co.* v. *Rosenzweig* had met with much disfavor, but said "it is our plain duty to adhere to it until it is distinctly overruled."

Since, then, a clear tendency to regard the rule with disfavor has been brought to our attention by so recent a case, it is natural to inquire, What is the meaning of this tendency? It would seem that it must mean one of two things—First, that the courts, while recognizing that ordinarily a principal may be liable to punitive damages for the torts of his agent, make a distinction between the cases where a corporation is the principal and those in which a natural person is the master; or second, that there is doubt in regard to the propriety of ever holding a principal liable to punitive damages for an act of his agent which he has neither directly authorized nor ratified, even though the act be done in the scope of the agent's employment.

As to the first suggestion, that there may be such a distinction between individual principals and corporate principals that an individual may be liable to punitive damages for the acts of his agent when a corporation would not be, it is submitted that no such distinction can be sound. It is hard to see any theory upon which it can be based. The early legal conception of corporations and their liabilities has undergone complete change. The old doctrine that a corporation could not commit torts, or be held liable for the torts of its agents, was based upon the theory that the charter of a corporation gave it no power to do wrongful acts and hence the torts of its agents were committed by them as individuals. This was soon abandoned and it

was held that a corporation was liable in trespass, trover and case just as an ordinary individual would be.[1] Then it was doubted whether a corporation could be liable for offences against the rights of persons, such as assault and battery. But this doubt also was early dispelled,[2] and the liability of a corporation for the acts of its agents has repeatedly been recognized to be the same as that of a natural person. In Pennsylvania this was held to be the law as early as 1818 in the case of *Turnpike Co.* v. *Rutter,* 4 S. & R. 17, where Tilghman, C. J., declared: "But it is objected that the present action is not on contract but on tort, and a very refined argument is brought forward to prove that a corporation cannot be guilty of a tort. A corporation, say the defendant's counsel, is a mere creature of law and can act only as authorized by its charter. But the charter does not authorize it to do wrong, and therefore it can do no wrong. The argument is fallacious in its principles and mischievous in its consequences, as it tends to introduce actual wrongs and ideal remedies. It is much more reasonable to say that when a corporation is authorized by law to make a road, if any injury is done in the course of making that road by the persons employed under its authority, it shall be responsible in the same manner that an individual is responsible for the actions of its servants touching his business."

It has been urged, however, that although a corporation may be liable in the same way as an individual for acts of an agent, in which the wrongful intent plays no part, a difference arises where motive or intent is the gist of the wrong. And it is argued that it is more difficult to impute wrongful motive or malice to a corporate principal than to a natural person.[3] Since exemplary damages are given to punish malice and evil motive, they should be restricted to those cases where natural persons are principals. There are two objections which show the unsoundness of this

[1] *Yarborough* v. *The Bank of England,* 16 East 6.
[2] *Eastern Counties R. C.* v. *Broom,* 6 Exch. 314.
[3] Cf Field J. in *Lothcop* v. *Adams,* 133 Mass. 481.

reasoning. In the first place, it was long ago declared that "the doctrine that a corporation having no soul cannot be actuated by a malicious motive, is more quaint than substantial."[4]

A corporation is controlled by human intelligence, and to say that "a corporation cannot have motives and act from motives is to deny the evidence of our senses, when we see them transacting and effecting thereby results of the greatest importance every day. And if they can have any motives they can have a bad one. They can intend to do evil as well as to do good. The interests of the community and the policy of the law demand that corporations should be divested of every feature of a fictitious character which shall exempt them from the ordinary liability of natural persons for acts and injuries committed by them and for them.[5]" In accordance with this view, that a corporation may be liable for the tort of an agent where actual malice or evil intent is an essential ingredient of the wrong, it has been held in Pennsylvania that a corporation is liable for fraud,[6] and for malicious prosecution[7] committed by its agents.

In the second place, the argument that it is more difficult to impute the malice of an agent to a corporate principal than to an individual principal seems founded upon an erroneous conception of the basis of the principal's responsibility. This responsibility is imposed, not on the ground that the act of the agent is the act of the principal in any literal sense of those words, but on the ground that since the law allows a principal to enjoy the privilege of representation through agents, the principal must in fairness be held to the burden of liability for the agent's acts. Upon this theory, provided the agent's acts are in the scope of his business, so that the principal is really getting the benefit of

[4] Erle J. in *Green* v. *London Omnibus Co.*, 7, C. B. N. S. 290.

[5] Church C. J. in *Goodspeed* v. *Bank*, 22 Conn. 530.

[6] *Erie City Iron Works* v. *Barber*, 106 Pa. 125.

representation, it can make no difference whether the principal is a corporation or a natural person; whether the act be malicious or not. If the principal is responsible for the wrong it must be for the whole wrong, including the malice.

It seems, therefore, impossible to find any good grounds for exempting a corporation from exemplary damages where a natural person would be liable, and this brings us to the consideration of the second suggestion in regard to the tendency of the Pennsylvania cases, namely, that it may mean that there is doubt in regard to the propriety of ever holding a principal liable to punitive damages for an act of his agent which he has neither directly authorized nor ratified. It is not within the scope of this article to attempt a discussion of the benefits or evils arising from the application of the doctrine of punitive damages to cases of principal and agent. But it is submitted that if the tendency really is one toward the overthrow of the theory of punitive damages in cases of agency, it is extremely unfortunate that the beginning was made in cases of corporations, for it seems that, if there is any value whatsoever in the doctrine, it works to greatest advantage and can be least excepted to in those cases where the corporation is the principal. There are two strong reasons for holding this view. The first is that, since a corporation can act only by and through its agents, the act of an agent is far more truly the act of the corporation than in any case of individual master and servant. Indeed, although the courts have applied the principles of law governing master and servant to corporations, it seems possible that the corporation, as a whole, might be held liable upon a somewhat different ground for the acts of a so-called agent. So-called agent, I say, because in strict truth he is not an agent at all but a member, a part of the corporation itself. It is impossible to conceive of that invisible intangible being, created by law and called a corporation, as existing outside of and apart from the directors, officers and agents through which it acts. They are the corporation, and when they act within the scope of the business of the corporation, the corporation

itself is present and acting in a way that no individual principal can ever be said to act in the person of his agent.

If this fundamental conception that a corporation is not an entity real or fictional with an existence separate or distinct from the individuals who compose it be accepted I submit that it furnishes a strong reason for subjecting corporations to exemplary damages.

But even if the view just presented be not accepted there is an additional reason for holding that the doctrine of exemplary damages is especially applicable to corporations. It exists in the fact that there is no way of reaching them save through money damages. For whether we conceive of a corporation as a group of persons so organized as to be able to act only through duly appointed representatives or as ideal beings existing only through operation of law they are not vulnerable in the many ways that a natural person is. The pinch of the purse alone causes them to wince, and this one method therefore of holding them accountable should not be relaxed. These ideas and the reasoning here given are not original. They have been recognized and acted upon by authorities. An extract from an opinion in a Maine case presents the idea well: "We confess that it seems to us that there is no class of cases where the doctrine of exemplary damages can be more beneficially applied than to railroad corporations in their capacity of common carriers of passengers; and it might as well not be applied to them at all as to limit its application to cases where the servant is directly or impliedly commanded by the corporation to maltreat and insult a passenger, or to cases where such an act is directly or impliedly ratified; for no such cases will ever occur. A corporation is an imaginary being. It has no mind but the mind of its servants; it has no voice but the voice of its servants; and it has no hands with which to act but the hands of its servants. All its schemes of mischief, as well as its schemes of public enterprise, are conceived by human minds and executed by human hands; and these minds and hands are its servant's minds and hands. All attempts, therefore, to

distinguish between the guilt of the servant and the guilt of the corporation; or the malice of the servant and the malice of the corporation; or the punishment of the servant and the punishment of the corporation, is sheer nonsense, and only tends to confuse the mind and confound the judgment. Neither guilt, malice nor suffering is predicable of this ideal existence called a corporation. And yet, under cover of its name and authority, there is, in fact, as much wickedness and as much that is deserving of punishment as can be found anywhere else. And since these ideal existences can neither be hanged, imprisoned, whipped nor put in the stocks,—since, in fact, no corrective influence can be brought to bear upon them except that of pecuniary loss, it does seem to us that the doctrine of exemplary damages is more beneficial in its application to them, than in its application to natural persons."[8] In a Pennsylvania case, already cited, Turnkey, J., gave similar reasons for holding a corporation liable in a stricter manner than a natural person,[9] and the principle has been approved by text writers.[10]

It would seem, therefore, that on principle, and in conformity to doctrines already laid down in previous cases within the jurisdiction, there should be no hesitancy or reluctance in applying the rule of punitive damages as stated in *R. R. Co.* v. *Rosenzweig* strictly in corporation cases. If a movement toward repudiating the doctrine of punitive damages in case of agency is contemplated it should have its origin, not in corporation cases, but in cases where the principal is a natural person.

Edward W. Evans.

[8] *Goddard* v. *Grand Trunk Ry.*, 57 Me. 202 (1869).

[9] *Erie City Iron Works* v. *Barber*, 106 Pa. 137.

[10] Sutherland on Damages, 3rd Ed. S. 950. Harris, Damages by Corporations, S. 249.