cases allowing recovery defendant intentionally inflicted the mental suffering. *Wilson v. Wilkins*, 181 Ark. 137, 25 S.W. (2d) 428 (1930); *Barnett v. Collection Service Co.*, 214 Ia. 1303, 242 N.W. 25 (1932).

The reason given for the general denial of recovery for mental suffering alone is the great risk of fraud in the proof of the mental pain. *Wadsworth v. Western Union Telegraph Co.*, 86 Tenn. 695, 8 S.W. 574 (1888); 1 Street, Foundations of Legal Liability (1906), 475; Pound, Interests of Personality, 28 Harv. L. Rev. 343, 359 (1915). But the risk is greatly lessened if, as in the principal case, proof is required that the acts were intended to inflict mental pain. *Wilson v.Wilkins*, 181 Ark. 137, 25 S.W. (2d) 428 (1930); *Barnett v. Collection Service Co.*, 214 Ia. 1303, 242 N.W. 25 (1932). With this safeguard the courts might well recognize mental injury as a distinct cause of action (see *Maze v. Employer's Loan Society*, 217 Ala. 44, 114 So. 574 (1927)) rather than attempting to bring it within the conventional categories of tort liability. Goodrich, Emotional Disturbances as Legal Damage, 20 Mich. L. Rev. 497 (1921); 18 Iowa L. Rev. 397 (1932).

Trial Practice—Power of Federal Court To Deny New Trial upon Defendant's Consent to Increased Damages—[Federal].—Plaintiff, having obtained a verdict in an action based upon the defendant's negligence, moved for a new trial on the ground of inadequate damages. The trial court ordered that judgment be entered for $1,000 more than the verdict if the defendant consented, otherwise, a new trial would be granted. On appeal by the plaintiff, *held*, that the court had no power to make such an order, since, under the seventh amendment to the Constitution of the United States, no fact determined by a jury can be re-examined otherwise than according to the rules of the common law; and at common law a new trial was the only way to re-examine the question of damages when the verdict was for an inadequate amount. Morton, C. J., dissenting. *Schiedt v. Dimick*, 70 F. (2d) 558 (C.C.A. 1st 1934).

The order made by the court in the present case is the converse of the well established remittitur practice. In using the remittitur, the court may, in certain cases where the defendant moves for a new trial on the ground of excessive damages, order a new trial unless the plaintiff consents to a judgment for the amount which the court thinks a reasonable jury would assess, remitting the excess. *Western Union Telegraph Co. v. North*, 177 Ala. 319, 58 So. 299 (1912); *North Chicago Street R. Co. v. Wrixon*, 150 Ill. 532, 37 N.E. 395 (1894); *Yard v. Gibbons*, 95 Kan. 802, 149 Pac. 422 (1894). See notes in 53 A.L.R. 783 (1928); 39 L.R.A. (N.S.) 1064 (1912); 14 Minn. L. Rev. 675 (1930). The remittitur has been long held not to violate the seventh amendment. *Arkansas Valley Land and Cattle Co. v. Mann*, 130 U.S. 69 (1889); *Clark v. Sidway*, 142 U.S. 682 (1891); *Jacoby v. Johnson*, 120 Fed. 487 (C.C.A. 3d 1903).

There seems to be no distinction between the remittitur and the order made in the present case. In the opinion reference is made to the argument that a jury awarding excessive damages has found plaintiff's damage to be at least equal to the sum fixed by the court because it had been assessed at that figure and more, while in the case of inadequate damages, there can be no implied finding by the jury if the greater amount. In each case, however, the court discards the jury's finding and denies the motion for a new trial if the other party consents to accept an amount which the court believes a reasonable jury would find. Moreover, the argument that defendant should not be allowed to complain in case a remittitur results in a judgment more favorable to him

than the jury's verdict, applies equally to the plaintiff who receives a judgment more favorable than the verdict.

The trial court had large, though perhaps not unlimited, discretion to compel the plaintiff to take judgment for the inadequate amount assessed by the jury as the ruling of a federal court on a motion for a new trial seems ordinarily non-reviewable. *Railroad Co. v. Fraloff*, 100 U.S. 24, 31 (1879); *Fairmount Glass Works v. Cub Fork Coal Co.*, 287 U.S. 474 (1933); see Hinton, Power of Federal Appellate Court To Review Ruling on Motion for New Trial, 1 Univ. Chi. L. Rev. 111 (1933). The plaintiff, therefore, should not be able to complain if he receives more favorable treatment. The court might well have regarded the practice of remittitur and the order made in this case as essentially similar so that the sanction of one practice would be the sanction of the other.

While the power of a federal court is limited by the seventh amendment, this limitation does not necessitate the retention of old forms of practice and procedure nor prohibit the introduction of new devices better adapted to the efficient administration of justice. *Walker v. New Mexico & Southern Pacific R. R. Co.*, 165 U.S. 593 (1897); *Grand Trunk Western Ry. v. Lindsay*, 201 Fed. 836 (C.C.A. 7th 1912). Hence, considering the conceded propriety of the remittitur, the lack of substantial distinction between it and the order in this case, and the saving of expense and time the new practice could entail, while accomplishing substantial justice, it is regretted that the circuit court of appeals did not sanction the order made by the trial court. See *Geoffrey v. Illingsworth*, 90 N.J.L. 490, 101 Atl. 243 (1913), holding that this practice was permissible under the Supreme Court Rules of New Jersey.

Trusts—Charities—Divisibility of Trust Partially Invalid.—[New York].—A testamentary trust provided for the payment of $1,000 annually out of income to the person making the greatest advance toward a cure for cancer, the remainder of the income to go to a hospital for the relief of cancer patients; when a cure had been perfected to the satisfaction of the trustees, the principal was to be divided equally between the hospital and the person or persons who had discovered and perfected the cure. In proceedings for an accounting of the settlor's estate, it was *held*, the entire trust was invalid since it was private in part, providing for gifts to individuals for their own use, and was of indefinite duration. *In re Judd's Estate*, 272 N.Y.S. 674 (1934).

Trusts which are in aid of, and tend to advance, learning are considered valid public or charitable trusts and the charitable purpose may be accomplished by the gifts of scholarships, prizes, and awards even though the recipients are not in financial need and may dispose of the benefits as they wish. *Ashmore v. Newman*, 350 Ill. 64, 183 N.E. 1 (1932); *Coleman v. O'Leary's Executor*, 114 Ky. 388, 70 S.W. 1068 (1902); *In re Bartlett*, 163 Mass. 509, 40 N.E. 899 (1895). See Bogert, Trusts (1921), § 58; Zollman, Charities (1924), § 300. Where the prizes tend to promote patriotism, the trust is charitable. *Thorp v. Lund*, 227 Mass. 474, 116 N.E. 946 (1917). A trust which encourages the fine arts by means of annual awards benefits mankind in general sufficiently to be considered a charity. *Almy v. Jones*, 17 R.I. 265, 21 Atl. 616 (1891). The promotion of an important science or industry through the use of prizes and awards may properly be the object of a charitable trust. *Ashmore v. Newman*, 350 Ill. 64, 183 N.E. 1 (1932); *American Academy of Arts and Sciences v. Harvard College*, 12 Gray (Mass.) 582 (1832); *Palmer v. Union Bank*, 17 R.I. 627, 24 Atl. 109 (1892). Seemingly the court in the principal case should have had no difficulty in considering as charitable a trust de-