Torts—Wills—Liability to Disappointed Beneficiary for Interference with Testamentary Disposition—[North Carolina].—Upon the death of his grandfather the plaintiff was disappointed in his share of the estate. Believing that the testator had definitely planned to leave him a substantial amount but was dissuaded by false or malicious representations of the defendants, the plaintiff filed a bill to examine the defendants under oath, preparatory to suing them in tort. The defendants moved to dismiss, contending that even if the facts were as the plaintiff supposed, there would be no cause of action. *Held*, motion denied. *Bohannon v. Wachovia Bank & Trust Co.*, 188 S.E. 390 (N.Car. 1936).

Never has an appellate court in the United States granted recovery for loss of inheritance resulting from interference with the testator. In the three cases squarely in point, in spite of extreme fraud and duress on the part of the defendants, the courts could find no right invaded because only an expectancy was lost. *Hutchins v. Hutchins*, 7 Hill (N.Y.) 104 (1845) (fraud); *Hall v. Hall*, 91 Conn. 514, 100 Atl. 441 (1917) (fraud); *Cunningham v. Edward*, 52 Ohio App. 61, 3 N.E. (2d) 58 (1936) (duress). It is clear that neither the mere intention nor the executed will of a living testator confers a legal interest in the property to the intended beneficiary. But it does not follow that the beneficiary has no legal right to freedom from an intentional interference with his expectancy. This particular type of right has been recognized in analogous situations: An action is maintainable for wrongful interference with the formation of a contract, although no legal rights between the parties had as yet been created. *Lewis v. Bloede*, 202 Fed. 7 (C.C.A. 4th 1912) (bribery); *Carnes v. St. Paul Union Stockyards Co.*, 164 Minn. 457, 205 N.W. 630 (1925) (mere malice); 6 U. of Cin. L. Rev. 322, 329 ff. (1932). Even though a contract is unenforceable, a fraudulent or malicious interference by a third person which prevents its fulfilment has made him liable to the party injured. *Rice v. Manley*, 66 N.Y. 82 (1876) (fraud); *Aalfo v. Kinney*, 105 N.J.L. 345, 144 Atl. 715 (1929) (mere intent to benefit self). Fraudulently inducing the holder of a life insurance policy to exercise his power to change the beneficiary has been held actionable at the suit of the original beneficiary. *Mitchell v. Langley*, 143 Ga. 827, 85 S.E. 1050 (1915). Where an employment at will is terminated by either the employee or employer, an action is granted the injured party against one who has maliciously but without fraud induced the termination. *Walker v. Cronin*, 107 Mass. 555 (1871); *Warschauser v. Brooklyn Furn. Co.*, 159 App. Div. 81, 144 N.Y.S. 257 (1913). See *Truax v. Raich*, 239 U.S. 33, 38 (1915). Several courts, using the rationale of these analogous cases, have indicated, by *dicta*, that on the same allegations they would reach the same result as did the court in the principal case. *Lewis v. Corbin*, 195 Mass. 520, 526, 81 N.E. 248, 250 (1907); *Rice v. Manley*, 66 N.Y. 82, 85 (1876); *Mitchell v. Langley*, 143 Ga. 827, 835, 85 S.E. 1050, 1053 (1915).

In spite of the extremely undesirable conduct of the defendants in the *Hutchins*, *Hall*, and *Cunningham* cases and the wealth of analogy contrary to those decisions, there are significant reasons of policy in their favor. Since nearly every will involves a close relationship between the testator and favored beneficiaries, the possibility of dispute is great and the danger of increase of litigation cannot be ignored. Actions remain exceedingly rare, however, in spite of numerous *dicta* in their favor. Since this expectancy is always subject to the whim of the testator, the proof can never be conclusive; there is danger, therefore, that juries will be too easily convinced. There is some ground for fear that the word "malice" will be too greatly extended and, conse-

quently, that more or less every-day activity will result in the enormous penalties possible in cases like this. Furthermore, the courts have never been particularly solicitous of donees, and the difficulties of trial in these cases are great.

These reasons do not seem persuasive. All courts advocating this type of recovery place great emphasis upon the necessity of proof (1) that the loss of the expectancy was caused by the defendant's interference, and (2) that the interference was in itself "wrongful." In one case the action was allowed by the intermediate appellate court, but the court of last resort reversed for insufficient proof. *Union Car Adv. Co. v. Collier*, 263 N.Y. 386, 189 N.E. 463 (1934). As for the definition of "wrongful," there would be little hesitation in including fraud or duress by the defendant. Difficulty arises when the acts constituting the interference would otherwise be unobjectionable and are made wrongful merely by the "malice" of the defendant toward the plaintiff. There is no lack of precedent for calling an act illegal merely because malicious. Ames, How Far an Act May Be a Tort because of the Wrongful Motive of the Actor, 18 Harv. L. Rev. 411 (1905). But definition of malice is thus far inadequate. 12 St. Louis L. Rev. 286 (1927). The general consensus seems to be that it is safest to define malice merely as "without lawful justification or excuse." See *Berry v. Donovan*, 188 Mass. 353, 356, 74 N.E. 603, 604 (1905); *Carnes v. St. Paul Union Stockyards Co.*, 164 Minn. 457, 462, 205 N.W. 630, 631 (1925). The breadth of this definition, although allowing for proper disposition of future cases, renders it useless as a tool for decision. In wills cases this requirement should be satisfied only by a motive to injure the plaintiff, not merely by a motive to benefit the defendant. Policy reasons which should impel the courts to adopt the rule thus qualified are also considerable. The plaintiff has been injured to a measurable degree by the defendant's intentional act. Even truthful representations may convey a false picture if artfully manipulated. Unquestionably socially undesirable, malicious or false gossip should be disciplined at law in order to discourage its recurrence in the future.