goods."[11] But since a patient or client has ample opportunity to ascertain the qualifications of professional men and to make an intelligent choice, it would seem that an extension of liability is not justifiable. If the liability is to be extended, however, it should be made definable by an increase in the care required or a shift in the burden of proof,[12] rather than be made unpredictable by an occasional contractual recovery.

Torts—Liability for Mental Distress—Punitive Damages against a Principal— [Oklahoma].—The plaintiff on application for a life insurance policy with the defendant failed to disclose that he had been treated for syphilis. After making disability payments for fourteen months for a physical and mental breakdown from which the plaintiff was suffering, the defendant sent two agents to the plaintiff's house to seek rescission for the non-disclosure. As a result of the accusations of fraud and the threats of reprisals, the plaintiff suffered a relapse and his mental breakdown became permanent. In an action against the defendant, *held*, (four justices dissenting), the plaintiff is entitled to both compensatory and punitive damages. *Pacific Mutual Life Insurance Co. v. Tetirick.*[1]

It is now generally held that when one does an intentional act that is reasonably likely to cause emotional distress to another, and physical injury ensues from such distress, the actor is liable therefor.[2] However, courts disagree as to whether a negligent act of the same character should create liability.[3] Although opinion is not uniform as to whether an act intentionally directed toward a third person and only incidentally injuring the plaintiff is toward the latter an intentional[4] or negligent[5] aggression, in the instant case, since the defendant's act was directed at the plaintiff, the conduct would clearly seem to have been intentional.[6]

It seems questionable to impose too strict a rule of liability for harm caused by

[11] Steffen, Independent Contractor and the Good Life, 2 Univ. Chi. L. Rev. 501, 519 (1935).

[12] *Cf.* Bollenbach v. Bloomenthal, 341 Ill. 539, 173 N.E. 670 (1930) (holding that *res ipsa loquitur* cannot be applied to render a dentist liable for lodging of a piece of tooth filling in patient's throat even though patient was under general anesthetic at the time); Vale v. Noe, 172 Wis. 421, 179 N.W. 572 (1920) (refusing to apply *res ipsa loquitur* in action against dentist to recover for cuts in mouth).

[1] U.S. Law Week Aug. 3, 1937, p. 15 (rehearing pending).

[2] Wilkinson v. Downton, [1897] 2 Q.B. 57; Janvier v. Sweeney, [1919] 2 K.B. 316; Great A. & P. Tea Co. v. Roch, 160 Md. 189, 153 Atl. 22 (1931); Atlanta Hub Co. v. Jones, 47 Ga. App. 778, 171 S.E. 470 (1933); *cf.* Price v. Yellow Pine Paper Mill, 240 S. W. 588 (Tex. Civ. App. 1922).

[3] *Denying recovery:* Mitchell v. Rochester R.R., 151 N.Y. 107, 45 N.E. 354 (1896); Alexander v. Pacholek, 222 Mich. 157, 192 N.W. 652 (1923); Howarth v. Adams Express Co. 269 Pa. 280, 112 Atl. 536 (1921). *Granting recovery:* Purcell v. St. Paul City R. R., 48 Minn. 134, 50 N.W. 1034 (1892); Kenny v. Wong Len, 81 N. H. 427, 128 Atl. 343 (1925); Clem v. Atchison, Topeka & Santa Fe R. R., 126 Kan. 181, 268 Pac. 103 (1928).

[4] Jeppsen v. Jensen, 47 Utah 536, 155 Pac. 429 (1916); Rogers v. Willard, 144 Ark. 587, 223 S.W. 15 (1920); Lambert v. Brewster, 97 W.Va. 124, 125 S.E. 244 (1924).

[5] Gaskins v. Runkle, 25 Ind. App. 584, 58 N.E. 740 (1900) (recovery denied); Hill v. Kimball, 76 Tex. 210, 13 S.W. 59 (1890); Reed v. Ford, 129 Ky. 471, 112 S.W. 600 (1908) (recovery denied).

[6] *Op. cit. supra* note 2.

mental distress arising from friction in business transactions where feelings frequently run high, since such a view does not take proper account of the give and take necessary in business. But in the collection cases, even though there was no showing that the defendants were aware of the plaintiff's peculiar susceptibility to fright, courts have permitted redress where abusive methods caused emotional and the resulting physical disturbances.[7] *A fortiori*, it would seem that in the instant case liability was properly imposed since the defendant's agents were aware of the plaintiff's susceptibility.

Whether the usual notions of *respondeat superior* should include the assessment of punitive damages without fault on the part of the principal is a problem upon which the courts are not in accord.[8] If the basis of punitive damages is as the court stated, to punish the offender, there is slight reason for assessing the principal for willful conduct when the servant alone is the transgressor, since the ultimate loss, here, falls on the innocent stockholder, and if the foundation is to prevent a repetition of like conduct, it would seem that the imposition of compensatory damages alone would suffice to assure extra-legal punishment of the servant.

The instant case is, however, squarely in line with Oklahoma authority, which arbitrarily inflicts punitory liability on the corporate principal without proof of fault.[9] As to the individual principal, proof of fault is essential.[10] The distinction[11] seems to have no foundation and merely gives the plaintiff an unmerited windfall if the defendant is a corporation.

Torts—Libel—Affirmative Duty to Prevent Publication—[English].—The defendants were directors of a proprietory club of which the plaintiff was a member. On complaint to police, slot machines popular with the members were removed from the premises. A doggerel verse implying that the plaintiff, Byrne, disloyally made the complaint was posted on bulletin board over which the defendants had supervision:

> For many years upon this spot
> You heard the sound of a merry bell;
> Those who were rash and those who were not
> Lost and made a spot of cash;
> But he who gave the game away
> May he Byrne in hell and rue the day.

[7] Barnett v. Collection Service, 214 Iowa 1303, 242 N.W. 25 (1932); La Salle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934). See also, Janvier v. Sweeny, [1919] 2 K. B. 316.

[8] *Fault necessary:* Lake Shore & Michigan So. Ry. v. Prentice, 147 U.S. 101 (1893); Columbus Light Co. v. Harrison, 109 Ohio St. 526, 143 N.E. 32 (1924); Craven v. Bloomingdale, 171 N.Y. 439, 64 N.E. 169 (1902).

Fault unnecessary: Goddard v. Grand Trunk Ry., 57 Me. 202 (1869); Perkins v. Mo. R.R., 55 Mo. 201 (1874); Forrester v. S. Pac. R.R., 36 Nev. 247, 134 Pac. 753 (1913); Johnson v. Atlantic Coast Line R. R., 142 S.C. 125, 140 S.E. 443 (1927).

[9] Fort Smith & Western R.R. v. Ford, 34 Okla. 575, 126 Pac. 745 (1912); Federal Nat. Bank v. McDonald, 129 Okla. 75, 263 Pac. 105 (1927).

[10] Aaronson v. Peyton, 110 Okla. 114, 236 Pac. 586 (1925); Colby v. Daniels, 151 Okla. 89, 1 P. (2d) 693 (1931).

[11] See Sedgwick, Damages § 380 (9th ed. 1912) for decisions of other states making the same distinction.