

the application for insurance is made. The contention of the plaintiff in error is that the enactment of the act of 1887, regulating the mode of doing business on the assessment plan, and particularly the last clause of section 10 of the act, to wit, "that nothing herein contained shall subject any corporation doing business under this act to any other provisions or requirements of the general insurance laws of this state, except as distinctly herein set forth," takes the defendant company out from under the binding effect of section 5982. It is, however, not made to appear in any way that the defendant company has ever complied with the provisions of the act of 1887, or that it is doing business in Missouri under the liabilities imposed by that act, and therefore it does not appear that it is entitled to the benefits of the last clause of section 10, which are expressly limited to "corporations doing business under this act,"—that is, the act of 1887. The purpose of the act is made still more clear in this regard by section 13 of the act, which declares that "nothing in this act shall be so construed as to impair or in any manner interfere with any of the rights or privileges of any corporation, association, or organization doing life or casualty insurance business in this state under the laws as they now exist." In our judgment, therefore, the provisions of the act of 1887 cannot be made applicable to this case. The contract of insurance upon the life of John B. Berry was made long before the enactment of that statute. It does not appear that the company has ever complied with the requirements of that act, or has ever transacted business under its provisions, and it cannot be made the criterion for determining the rights of the parties to this action. In our judgment, the court below ruled correctly in holding that the policy sued on was a contract made in Missouri, and, as such, that the provisions of section 5982 are applicable thereto; and therefore the judgment is affirmed, at costs of plaintiff in error.

RUSSELL v. BRADLEY.

(Circuit Court, S. D. New York. May 28, 1892.)

MALICIOUS PROSECUTION—PUNITORY DAMAGES—PROVINCE OF JURY.

In an action for malicious prosecution, the amount of punitive damages is peculiarly a matter for the jury; and a verdict for the sum of \$12,500 will not be set aside or remitted in part, in the absence of prejudice, perverseness, or corruption, merely because the judge thinks it was larger than it should have been.

At Law. Action by Mary E. Russell against James A. Bradley for malicious prosecution. There was a verdict for plaintiff, and defendant moved for a new trial on the ground of excessive damages. Motion denied.

Thaddeus B. Wakeman, for plaintiff.

Chauncey Shaffer, for defendant.

SHIPMAN, District Judge. This is a motion by the defendant for a new trial in the above-entitled action, for malicious prosecution, upon the grounds that the verdict of \$12,500 for the plaintiff was contrary to the evidence and contrary to law; that the damages were excessive; and that sundry exceptions to the rulings of the court upon objection to the testimony were well taken. A new trial cannot be granted upon the ground that a verdict for the plaintiff was contrary to the evidence. The state of the testimony upon the question whether the defendant instigated the prosecution, and upon the facts which were in dispute upon the question of probable cause, was such as required that the case should be submitted to the jury. They were justified by the testimony in finding for the plaintiff, although there was no positive and affirmative testimony that he personally caused the second prosecution to be instituted, or directed that it should be commenced. I do not understand what is meant by the averment that the verdict was contrary to the law, for no exception was taken to the instructions in regard to the law which were given by the court. Nothing need be said upon the defendant's exceptions to the admission of testimony. So far as my attention has been called by the defendant's brief to these exceptions, they are of slender character, and not important upon a motion for a new trial. The serious and substantial and troublesome point is that the damages are unduly excessive. They were mainly punitive, and were based upon the alleged actual malice of the defendant; and it is true that the defendant had, by his conduct, particularly in the newspaper of which he was the owner, furnished evidence from which the jury were justified in finding the existence of malice. I have recently had occasion to consider the subject of punitive damages in actions for injuries to character, and to say that in actions for libel the amount of damages is peculiarly a matter for the jury, and is almost entirely within their discretion, because there can be no fixed or mathematical rule upon the subject, as in actions upon contract; so that it is laid down that courts will not interfere with verdicts in libel suits upon the ground of excessive damages, unless they are satisfied that the verdict was the result of gross error, prejudice, perverseness, or corruption. The rule in regard to excessive punitive damages in actions for malicious prosecution is substantially the same; for, in each class of actions, the punitive character of the verdict is based upon the malice of the defendant, and the aggravated circumstances which surround or characterize the case. If the magnitude of the verdict clearly shows that the jury acted under undue motives, it will be set aside; but this should not be done merely because the court thinks that it was larger than it ought to have been. There was, in this case, no error upon a matter of principle, and neither perverseness nor corruption. The verdict is so large as to cause me to fear or to think that, during the trial, the jury may have conceived an undue prejudice against the defendant. Notwithstanding this fear, I should not be justified in granting a new trial on account of excessive damages. The court should be satisfied that the verdict was the result of prejudice, and I am not satisfied with that conclusion. I

have queried whether I ought not to grant a new trial unless the plaintiff would remit a specified sum, and thus give her an opportunity, rather than risk another trial, to bring the verdict down to an amount which is more satisfactory to my own mind. But such a result requires the conclusion that there ought to be a new trial, and I am not prepared to say that the amount of the verdict, though larger than it ought to have been, shows to my mind that prejudice had caused the minds of the jury to depart from a true equipoise. The motion is denied.

In re HERMAN.

(District Court, D. Washington, E. D. April 30, 1892.)

1. ATTORNEY—DISMISSAL BY RECEIVER.

The receiver of an insolvent bank may at any time dismiss an attorney employed by him, regularly or otherwise, to prosecute claims of the bank, and employ another in his place, whom the court will, by order, substitute in the place of the dismissed attorney, except as to such cases as the latter may have commenced and finished.

2. SAME—SECURITY FOR SERVICES RENDERED.

A contract having been entered into between the receiver and the attorney that the latter should receive the attorney's fees provided for in the notes he was employed to collect, the court will not direct the substitution of another attorney in unfinished cases, until the receiver deposits the amount of the attorney's fees reserved in the notes as a security to the dismissed attorney for such services as he may have rendered.

At Law. Petition by Herman L. Chase, receiver of the Spokane National Bank, to change attorneys. The application was resisted by Henry M. Herman, the original attorney. Granted in part and denied in part.

F. T. Post, for petitioner.

H. M. Herman, *in pro. per.*

HANFORD, District Judge. The petitioner, Herman L. Chase, as receiver of the Spokane National Bank, is the plaintiff in a number of actions commenced in this court for the collection of moneys due to said bank, in all of which cases Henry M. Herman appears as the attorney of record for said plaintiff. The court is now asked to exclude him from further appearing in said cases, and to substitute *F. T. Post* as the attorney for the plaintiff, and also to require said Herman to surrender to the petitioner all the notes and securities and money which he has obtained possession of by means of his position as an attorney of this court assuming to represent the plaintiff in said cases. In his petition the receiver alleges that Herman has not been employed by him, and that he does not desire said attorney to represent him, and sets forth a telegram from Hon. E. S. Lacey, comptroller of the currency of the United States, saying that he (the comptroller) is not willing to recognize Herman as an attorney for the receiver, and that he has not been em-