

The Divisional Court were evidently not shocked by the amount and I do not think it is a case in which we can properly interfere.

In my opinion the appeal should be dismissed.

HON. MR. JUSTICE MEREDITH:—This appeal really involves but the two questions; whether there ought to be a new trial on the ground of excessive damages, or upon the ground of the birth and death of a child since the trial.

No objection was made at the trial or here, that the damages were in any respect too much; the charge at the trial was not at all objected to in respect of anything said in it on the question of damages.

And having regard to all the circumstances of the case I am unable to perceive how this Court can interfere on the ground of excessive damages: the case is in no sense one in which, as to the amount of the damages, there is some standard by which the jury ought to have measured them, and which they failed to observe. According to the finding of the jury, the defendant was guilty of an assault, of a very violent, indecent and hurtful character, upon the plaintiff; and so it is a case in which the jury might give exemplary damages, as well as compensatory damages. The amount awarded may seem large, but, whether less or even more, it was right and duty of the jury to assess them; a right and duty which the Courts cannot interfere with unless, generally speaking, it has been misused or exercised under some material mistake.

Nor can I see how this Court can well interfere on the other ground. What has happened is one of the things, the possibility of the happening of which, the jury might, and doubtless did take, into their consideration; and, beside that, the thing which has happened is not one which necessarily would lessen the amount; indeed it may very well be that it would have no such effect.

I would, therefore, dismiss the appeal.