and I see nothing in this case to take it out of that general rule. No doubt there have been cases where the court has departed from it; and one is obvious, namely, where the action is to try a right. Another is where serious imputations are made upon the personal character of a party, and if the jury by giving small damages injure a man's character and the verdict is against the weight of evidence, no doubt the court will not adhere to the rule, but the court will not depart from the rule without very strong reasons, and I see none in this case.

LINDLEY, J.—The amount of damages found by the jury is so small that I should be extremely reluctant to grant a new trial on the ground that the verdict is against the weight of evidence.

STEPHEN J.—On the question of fact the jury have found the damage to be so small, and the judge not being dissatisfied with it, I think we ought not to grant a new trial on the ground that the verdict was against the weight of evidence.

SPARROW v. HILL.

Costs—Taxation—Claim exceeding amount recovered—Apportionment of costs—Special order.

[April 30. C. of A—44 L. T. 917.

This case, the hearing of which in the Court below will be found reported in our last number, came, on the above date, before the Court of Appeal, where it was held (reversing the decision of Grove and Lindley, JJ.) that the master's taxation was right.

Counsel for the plaintiff cited *Field* v. *G. N. Ry. Co.*, L. R. 3 Ex. Div. 261; *Mason* v. *Brentini*, L. R. 15 Ch. Div. 287.

Counsel for the defendant cited *Knight* v. *Purssell*, 41 L. T. N. S. 581, *Heighington* v. *Grant*, 1 Beav. 228; *Hardy* v. *Hull*, 17 Beav. 355; Seton on Decrees, p. 117.

BRAMWELL, L. J. said that he interpreted the order made by the Court to mean that the plaintiff was to get the general costs of the cause, but not the costs incurred in attempting to recover that which he failed to recover: and that the defendant was to get such costs as he incurred in consequence of the unfounded claims of the plaintiff; and that if there were costs incurred by the defendant which were applicable to the successful as well as to the unsuccessful claims, the master might say that those would have been incurred if the plaintiff's claim had been limited to the amount for which he was successful and disallow them. And he thought the master had taken that view.

COTTON, L. J., also agreed that this was the effect of the order made, which was all that had to be considered; and that the order in *Knight* v. *Purssell*, ubi sup. was entirely different.

BRETT, L. J. gave judgment as follows:—

It seems to me that the undisclosed foundation of Mr. Graham's argument was that all the Courts have become Courts of Chancery since the Jud. Acts; and he has read us a lot of cases, forms, and text-books, to show us that there were only two forms of dealing with costs in the Court of Chancery. It seems to me that that undisclosed foundation fails. There were different modes of proceeding in the Courts of Chancery and Common Law, and the costs were dealt with in a different way, and they must be dealt with in a different way still. As regards the costs of an action upon the common law side of the High Court, it is the practice to deal with them very much in the same way as in an old common law action. Be that as it may, authorities cannot help us to construe the order in this particular case. The action here is brought in respect of one cause of action, consisting of three items; the defence is one defence. I agree that it is proper according to the common law view to say that there is only one issue. Upon that the plaintiff succeeded; but he failed as to two of the items, the three items being distinct. This order that we are called upon to interpret is a new form, *sui generis*, standing by itself. But it is an order made in an action upon a builder's account, which was and is still a common law action. The order was made for the purpose of obviating the difficulty that there was only one issue, and directs the costs to be taxed as if there were three issues in the action. If it does mean that, the mode of taxing is perfectly well understood. The plaintiff has succeeded in establishing his cause of action, but has failed in certain issues; he is, therefore, entitled to the costs of the cause, but not to the costs that he incurred solely in respect of the issues on which he has failed; and the defendant is entitled to the costs that he incurred solely in respect of the issuss on which the plaintiff has failed. . . . I think that