

Possibly some may claim, that upon a nice construction, there was no error in law, and all agree that courts cannot be expected always to control the waywardness or the prejudices of juries. But this is generally urged, where courts desire to throw their own responsibility upon the irresponsibility of the jury. And it seems to us the charge to the jury, in this case, afforded the jury an excellent opportunity to punish the plaintiff, and at the same time to compliment the defendants for taking the plaintiff in hand, and applying the rules of Lynch law to him, in the summary mode they did. This was all very well, provided it were the business of courts to administer Lynch law, or to moderate the strictness of the existing law. But as that is not the fact, but the contrary, it seems a peculiarly unfortunate distinction which the court have attempted to make in this case, between compensatory and exemplary damages, and to allow of the mitigation of one and not of the other.

If there be, in fact, any such distinction in the law, it should certainly be differently stated from what it seems to have been in the trial of this case, or it would be very likely to be misapplied by the jury, as it certainly was here.

The error in the charge seems to be in treating "the injury to the plaintiff's feelings, the indignity and the public exposure," as forming no part of the *actual damages* in the action. Nothing could be further from the truth; since these things not only constitute a portion of the actual damages, but the principal portion. It is scarcely possible to conceive any proposition more unjust or unreasonable—not to say absurd—than to suppose that in a transaction like that, through which the plaintiff was dragged by the defendants, that the actual "injury to his person and his detention" embraced all for which he was entitled to compensation under the head of actual damages.

It is not probable, indeed, that the plaintiff was of that delicate organization, that he would be likely to suffer any irreparable damage merely from the insult and indignity, for if so, he could not have said what he did. But there are many persons who, from similar treatment, might have been ruined for life; and the rule of law is the same in all such cases. And there is no case, except the present, so far as we have noticed, which attempts to discriminate between corporeal and external injuries, and those which affect the sensibilities. These latter, are those which form the chief ingredient of damages in this class of actions. If these latter are to be excluded from consideration, or justified by *public sentiment*, there might better come an end of all pretence of the administration of justice. It is the direct and sure mode of encouraging a resort to force for remedy and redress.

We know that some very able writers, and among them the late Professor Greenleaf (2 Evidence, s. 253 and n. *et seq.*), contend for the rule, that in no case are exemplary or punitive damages to be given, but that in all cases they should be confined to making *compensation* to the plaintiff. But no writer, or judge, to our knowledge, has ever before attempted to limit the actual damages to which the plaintiff was in all cases entitled *by way of compensation*, to loss of time and injury to the person, in cases of trespass and false imprisonment. Mr. Sedgwick (Dam. 665, n. 1), says, that "all *rules*, or rather definite

principles of damages in civil actions, must be referred either to compensation or punishment." No one, we suppose, would for a moment deny that the plaintiff, in an action of this character, is entitled to recover damages for "the injury to his feelings, the indignity, and the public exposure;" and it would seem to be equally improbable, that any one should hold, that such damages were in the nature of punishment to the defendant, and only recoverable under that head.

The truth unquestionably is, in the present case, that the court have mistaken the application of their own rule, and thus, as it seems to us, have presented the whole case in a most unfortunate aspect—very much in that of an excuse and an apology, if not a full justification of Lynch law, than which nothing could have been further from its intention.

We hope no one will be simple enough to suppose that we feel any other than the most unqualified disgust and contempt for such sentiments as were expressed by the plaintiff, on the occurrence of the most disgraceful, as well as the most unfortunate event, which has ever occurred in our past history. The only possible mode of accounting for such folly, in speech, is that folly on one side naturally leads to counter folly upon the other, and despotic public opinion naturally provokes foolish words. But we trust it is not needful to inform the profession, and especially the courts, in this country, that the high privilege of free speech is not created, or maintained, for the exclusive, or the chief benefit of wise and discreet men. They will do very well without any such protection. But it is intended for the protection of every class of the most ranting fools, and the vilest blackguards, and the most infamous blasphemers, except as they are liable to some restraint by the firm and wise administrators of the criminal and civil law of the land. These are the only men who require protection at the hands of the administrators of the law; and when we allow ourselves to be cheated with the delusion that the simple and degraded, or the offensive and coarse-grained, do not deserve the highest protection of the law, we approach a point of timeserving, which is but one degree removed from actual corruption, of which we already begin to hear charges, in some quarters, but we trust wholly without foundation.

We regret, in this case, the affirmation of the principles of the charge in the court below by a court of such high character, although done in a mode, and for reasons, which show the high dignity and purity of the tribunal, and do also show, as it appears to us, that an unfortunate misapplication of the very principle upon which the case is decided, must have occurred in the court below. We know the learning and ability of the court from which the decision comes; and we are always proud to welcome its members among our most esteemed friends; but we cannot shut our eyes to the fact, that the substantial damages in this action were blinked out of sight, and disregarded by the jury, upon grounds which are flagrantly in violation of the leading doctrine of the decision, viz., that actual and compensatory damages cannot be denied upon any ground of provocation short of an actual justification of the assault, battery, and false imprisonment, which was not attempted in this action.

The testimony offered and received in mitiga-