sened, and a different and distinct offence, of a less degree, is found by reason of proof of sudden and provoked anger; as where a homicide is reduced from murder to manslaughter. But, in such trials, these matters of provocation and sudden anger are introduced, not to mitigate a crime found or admitted, but are strictly matters in defence, and modify or give character to the act, in determining what crime has been in fact committed, and are used for that purpose. In such case it becomes important to know whether the act was the result of sudden passion, or whether there had been time for the passions to cool. But in a civil action for trespass the liability of the party for actual damages does not depend upon the intent or state of mind of the trespasser. He may be liable, if his act was unlawful, although he did not intend to injure any one, and had no anger or ill-will towards the party whose person or property was affected by his illegal act. It is not the motive, or the feelings under which the legal wrong is committed, which determines the character of the act, or the amount of the actual damages resulting from it. It cannot be excused, if legally unjustified, by proof of sudden passion, or the absence of malice or wrong intent.

The analogy, if any, between civil actions and criminal prosecutions, is to be found in the determination of the extent of punishment in the one, and the amount of exemplary or cumulative damages in the other. Although in the trial of criminal cases the evidence may be limited to the time of the occurrence, yet every judge is aware that, in fixing upon the sentence to be awarded, he does not hesitate to hear evidence or statements as to facts and acts and declarations made or done anterior to such time—in order to ascertain, as well as he can, the mitigating or aggravating circumstances connected with the offence. So, in determining the amount of damages in a civil suit, beyond the tangible, as before explained—when there is no question as to the fact that a trespass has been committed, a limitation of the examination into what transpired at the moment would seem to fall far short of what reason and common sense would prescribe. It seems hardly just to require any tribunal to act and determine such questions, and to award damages in the nature of punishment, and withhold from it all knowledge of the facts which may fairly be said to give the moral character of the act, and the actual guilt of the respondent.

We are aware that great care must be taken to confine the examination to such matters as are clearly and directly connected with the acts, or give color or character to it. Mere evidence of general bad character,—or unpopularity, or of acts or declarations of ancient date, or not clearly and really part and parcel of the matter in question, must be excluded. But time is not of the essence of the principle, but fairly established direct connection, as cause or effect. It is impossible to accurately define the limits, so as to reach every case. But there can be no greater difficulty in the application of this than of many other rules of law.

In the case at bar, the evidence was limited to the transactions of the day on which the assault was committed, and very evidently was of matters connected directly with the acts done. If it had been excluded, after the evidence on the part of the plaintiff had been heard, how could the jury have properly or understandingly determined what punitive damages should be given in vindication of outraged law, or for the indignity and injury to the feelings? They had a right to know, and the defendants had a right to place before them the true relations of the parties, and to show how far the act was wanton, malicious, vindictive, or unprovoked, or how far extenuated by the conduct, declarations, or provocations of the complaining party.

On the whole, after a full consideration of the case, and the cases, we think that the rulings of the judge were not erroneous, but give the rules on this subject which are practical, and in accordance with common sense and the general principles of the law. *Exceptions overruled.*

CUTTING, DICKERSON, BARROWS, and TAPLEY, JJ., concurred.

(*Note by Editors American Law Register.*)

This is one of that class of cases, where there existed at the time it occurred, and even at the present time, to some extent, there exists, a degree of unfairness, in judgment and opinion, which renders it extremely difficult to say anything which will be kindly received, or candidly weighed. But we feel compelled to say, that the facts of this case, placed beside the verdict of $6.46, certainly do indicate a substantial failure of the suit, if not of justice. The jury must have treated the evidence given in mitigation of damages, as a substantial justification of the assault, battery, and false imprisonment, with all its incidents of humiliation and outrage. The verdict very clearly manifests an opinion in the mind of the court and jury, that the plaintiff was more in fault than the defendants—in short, that the conduct of the plaintiff was reprehensible, and that of the defendants excusable—and that, therefore, it was proper for the court to place its stigma upon the action. This is not said, indeed, in so many words, but it is fairly implied.

This is a result to which courts of justice should never come, except in the most unquestionable cases, where there is no pretence of anything more than a nominal breach of the law, and where the action is therefore clearly vexatious. And it is especially unbecoming for courts to fall into this view, out of respect for, or sympathy with, or dread of, an intensified partisan public opinion. It is the duty and the business of courts, to hold the scales of justice evenly and firmly between the most embittered partisans of contending factions in the state, when such become suitors before them.

We might better have no courts, than to have them echo the varying surges of an ever-changing and baseless public sentiment. In a case like the present, it would be far better to have the court instruct the jury, in so many words, that the plaintiff's disregard of the common courtesies and decencies of life, justified the defendants in inflicting such punishment upon him, as would teach him not to repeat the offence, and to conduct with more circumspection in the future, than to have left the case to the jury, in such a slipshod way, as to bring about the same result exactly, but without any technical violation of the rules of law. And we must say, it seems to us that the charge of the court below, and the opinion of the full court, although clearly not so intended, must have operated in that direction.