

judge to the jury to govern them in the assessment of damages were correct.

The plaintiff claimed damages for several distinct matters, and asked that the jury should find their verdict on these principles, viz. :—

1. The actual injury to his person and the detention and imprisonment.
2. The injury to his feelings, the indignity and public exposure and contumely.
3. Punitive or exemplary damages in the nature of punishment, and as a warning to others not to offend in like manner.

The judge very unequivocally instructed the jury that the defendants had shown no legal justification for their acts, and must be found guilty, and that the only question for them was the amount of damages,—that they were bound to give damages at all events for the injuries to the plaintiff's person, and for detention to the full extent of said damages; that they could not consider the testimony put in by defendants in mitigation of such actual damages, but must give a verdict for matters named under the 1st head to the full amount proved without diminution, on account of any matters of provocation, or in extenuation.

The judge further instructed the jury that they might consider the testimony put in by defendants under the 2nd and 3rd heads, above stated, in mitigation of any damages they might find the plaintiff had sustained under either or both of said grounds. These rulings present the question whether the evidence objected to was admissible for the special purpose to which it was confined. It was not in the case generally, but its consideration and application was restricted to the special grounds of damages set up beyond what may properly be termed the actual damages. It was entirely excluded as a justification, or as mitigating in any degree the actual damages.

The distinctive points of the rulings which perhaps distinguish them from some cases in the reports, and some doctrines in the text-books, are, first, that they exclude entirely this species of evidence in mitigation of actual damages,—and, secondly, that they admit it in mitigation of damages, claimed on the other grounds of injury to the feelings, indignity, and punitive damages, although the evidence related to matters which did not transpire at the instant of the assault, but on the same day, and manifestly connected directly with the infliction of the injury complained of.

It is unquestionable that many authorities can be found which seem to negative the proposition that acts or words of provocation, except those done or uttered at the moment, or immediately connected in time with the infliction of the injury, can be given in evidence in mitigation of damages. But most of these cases seem to be predicated upon the idea of mitigation of the positive, visible damages,—those damages to which the party would be entitled on account of the actual injury to his person or his property.

It is important to settle, as well as we can, the general principle which lies at the foundation of the law applicable to damages, occasioned by the illegal acts of the defendant. We understand that rule to be this—a party shall recover,

as a pecuniary recompense, the amount of money which shall be a remuneration, as near as may be, for the actual, tangible, and immediate result, injury, or consequence of the trespass to his person or property. But, in the application of this general principle, there has been great diversity in the decisions, and in the doctrines to be found in the text-books touching the point of mitigation or extenuation.

In reference to injuries to the person, it was soon seen that this literal and limited rule, if applied inexorably, would fail to do justice. The case is at once suggested, where an assault and battery is shown to have been wanton, unprovoked, and grossly insulting; inflicted clearly for the purpose of disgracing the recipient, and at such a time or place as would give publicity to the act, and yet the actual injury to the person very slight, or hardly appreciable. Shall the law, in such a case of wanton insult and injury, give only the damages to the face of the person, as testified to by a surgeon?

On the other hand, a case is suggested, where the injury to the person was severe, a broken limb or grievous wounds, or permanent or partial disability, and yet the party suffering had been guilty of gross abuse, provoking the assault by insulting language or false accusations, or most offensive libels upon the defendant or his family, or had outraged the community in which he lived, by a series of acts or declarations which justly aroused and kept alive the indignation, which at last found vent in the infliction of some personal indignity, accompanied by force and violence, which resulted in the serious manner above stated. What is the rule as to such damages, applied to the aggravations in the one case, and the mitigations in the other?

If we take the case of such an assault, which has been provoked by words or acts at the time of the trespass, and so immediately connected therewith that all authorities would agree in admitting the evidence in mitigation, the precise question then is, for what purpose can it be used, and what damages can it mitigate?

(To be continued.)

REVIEWS.

THE INSOLVENT ACT OF 1869, WITH TARIFF, NOTES, FORMS &c. By James D. Edgar, Barrister-at-law. Toronto: Copp, Clark & Co., 1869.

This is in effect a second edition of Mr. Edgar's annotated edition of the Insolvent Act of 1864. Since then a number of cases have been decided both here and in England, which, the former particularly, are of special importance in construing the Act now in force, and will be found collected in their appropriate places throughout the work.

As this Act is applicable to the Provinces of Quebec, New Brunswick and Nova Scotia, as well as Ontario, we hope that a collection,