disobeyed the monition, or sanctioned any practice contrary to its provisions. I confess I think, as I have already intimated, that Mr. Mackonochie takes an extremely narrow view of that which the word "obedience" ordinarily implies, when he says that he has endeavoured to obey this order; but he does say that which, in a sense, for the purpose of clearing his contempt, he may have a right to claim the benefit of, that he never intentionally or advisedly, in any respect disobeyed the monition.

He now, we hope, will learn that mere literal compliance in a merely evasive manner will not suffice. Literal compliance with regard to the actual limits of the order is, of course, all that he is held to in law; for an obedience to the spirit of the order we can only trust to his own feelings and his own conscience. And when he thus tells us that it has not been, and is not his desire wilfully to disobey the law, or to disregard its monition, their Lordships think that they are bound, upon this first occasion of the matter being brought before them of any non-compliance with the order, to allow Mr. Mackonochie the benefit of that affidavit; and they do not think it necessary, on the present occasion, to do more, after expressing their opinion judicially than the monition has been disobeyed with reference to kneeling during the prayer of consecration, that to mark their disapprobation of such a course of proceeding by directing that he should pay the costs of the present application.

UNITED STATES REPORTS.

SUPREME JUDICIAL COURT OF MAINE.

Geo. W. Prentiss v. Elisha W. Shaw et al.

(*Continued from page 44.*)

Kent, J.—The case, as presented to the jury under the rulings, was, in substance and effect, one where a default had been entered and an inquisition of damages had been allowed before a jury. The jury had no discretion allowed to them, except as to the amount of damages to be inserted in a verdict for the plaintiff. The main question is whether the directions given by the 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 found 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 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 or the person, as testified to by a surgeon?