

tion in the verdict was made with the assent of the plaintiff, that the verdict was thereby "purged of its taint."¹¹ But if passion or prejudice actuated the jury in the formation of its verdict the Court has no right to attempt such calculation as to the part played by those elements, and frame a verdict accordingly. As was said in a Missouri case,¹² the Court has "no scales by which it can determine what portion is just, and the result of reason, based upon the evidence and what part is poisoned by prejudice and passion."

The real reason for this tendency on the part of our Appellate Courts to reduce verdicts, is expressed by Justice Marshal, of Wisconsin, that it should be taken as indicating that "our jurisprudence is still developing towards the ideal of perfection where the administration of the law is truly the administration of justice," and not as "a tendency to narrow or invade the functions of the jury."¹³ The objections of law and logic are, however, only overridden by such a justification. A disclaimer of any intention to invade the province of the jury does not do away with the facts in the case.

The proper action to take would be to adhere to the law¹⁴ as it exists until a formal change should be made. This change has been made in several states upon the refusal of the Supreme Court to reduce verdicts without authority for so doing." The matter may not seem of much importance in this particular matter, but it is only by adherence to the law as it actually exists that rights can be secure. A deviation in one respect may serve as a precedent for a deviation in another. The value of a written Code of laws is largely impaired if it can be varied at the whim of the Courts.

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¹¹ *Telegraph Co. v. Frith*, 105 Tenn. 167, 58 S. W. Rep. 644.

¹² *Gurley v. Mo. Pac. R. Co.*, 104 Mo. 211. Subsequently overruled by *Burdick v. Mo. Pac. R. Co.*

¹³ *Baxter v. C. & N. W. R. Co.*, 104 Wis. 307, 80 N. W. Rep.

¹⁴ e.g. Ill. Tex. La.