was demanded on the ground that excessive damages had been given. It was refused, one of the judges remarking, "Suppose the jury had given a scandalous verdict for the plaintiff as a penny damages, he could not have obtained a new trial in hopes to increase them; neither shall the defendant in hopes to reduce them." In a New York case decided in 1812,[3] the Court stated that, "Unless the damages are so outrageous as to strike every one with the enormity and injustice of them, and so as to induce the Court to believe that the jury must have acted from prejudice, partiality or corruption, we cannot consistently with the precedents, interfere with the verdict." The rule here laid down was followed unquestioningly until the last few years. The modern tendency is illustrated in a recent Washington case[4] where the Court cut down the verdict, remarking that, "a duty devolves upon the Court to restrain juries from awarding verdicts unnecessarily large." No claim was made that the jury had been actuated by passion or prejudice. The old rule was likewise pared down by the California Courts until, according to one case, it is sufficient to justify a remission of part of the damages given by a jury if the evidence is "very clear" that an excess has been given. The Supreme Court thus sets up its opinion as to what is a proper verdict against the opinion of the jury, and declares its intention of overruling the opinion of the jury whenever there is a substantial disagreement. The Court considers, not what verdict "might" be given by reasonable men, but what verdict "ought" to be given. The fallacy of this was pointed out by Lord Halsbury in an English case some years ago.[5] If the objection is made that passion or prejudice must be shewn the Court will reason thus: "We have examined the evidence and conclude that the verdict given is excessive. Therefore, the jury must have been influenced by passion or prejudice to render

[3] *Coleman* v. *Southwick*, 9 Johns. 45, 6 Am. Dec. 45; *Acc. Coffin* v. *Coffin*, 4 Mass. 1; *Collins* v. *Council Bluffs*, 32 Iowa 324.

[4] *Hart* v. *Cascade Lumber Co.*, 39 Wash. 279.

[5] *Trabing* v. *Cal. Nav. & Imp. Co.*, 65 Pac. 478. (Not reprinted in full in Cal. Reports).

[6] *Metropolitan R. Co.* v. *Wright*, 11 App. Cases 152.