

MAINTENANCE—CIVIL ACTION—SUCCESS OF MAINTAINED ACTION—
ABSENCE OF SPECIAL DAMAGE.

Neville v. London Express (1919) A.C. 368. This was an appeal and cross-appeal by the plaintiff and defendants respectively from the judgment of the Court of Appeal (1917) 2 K.B. 564 (noted *ante* vol. 53, p. 425). The trial of the action before Lord Reading, C.J. (1917), 1 K.B. 402 is noted *ante* vol. 53, p. 425. The action was for libel and maintenance, but it is only in regard to the maintenance branch of the action that the appeals were concerned. The libel consisted of certain criticisms published by the defendants of a scheme for the sale of a tract of land by the plaintiff with the view of establishing a summer resort. The maintenance consisted in the defendants helping pecuniarily certain purchasers of lots to bring actions against the plaintiff to recover their purchase money. These actions had been successful, but the learned Chief Justice had held at the trial that the plaintiff was entitled to recover the costs he had been put to in defending the actions. The Court of Appeal held that an action for maintenance would lie notwithstanding the maintained action proved to be successful, but they ordered a new trial on the ground that the verdict was contrary to evidence and perverse. Both the plaintiff and defendants appealed from this decision to the House of Lords (Lords Finlay, L.C., and Lords Haldane, Atkinson, Shaw and Phillimore). The majority of their Lordships agreed with the Court of Appeal that the success of a maintained action is no bar to an action for maintenance, but Lords Shaw and Phillimore were of a contrary opinion. Lord Shaw is of opinion that the essential element of unlawful maintenance is the stirring up of strife, but aid in prosecuting a lawful claim cannot be unlawful maintenance. The subject of the law of maintenance is very learnedly and elaborately discussed, and very weighty reasons are adduced by their Lordships who dissent. But the majority of their Lordships held that the plaintiff, in order to succeed in an action of maintenance, must prove special damage and that the costs he had been put to in defending the maintained actions were due to his improperly defending those actions and could not be claimed as damages for which defendant was liable. The House of Lords therefore dismissed the action as regards the claim for maintenance and affirmed the order granting a new trial so far as it related to the claim for libel.