## HOUSE OF LORDS.

*Monday, July* 26, 1909.

(Before the Lord Chancellor (Loreburn), Lords James of Hereford, Atkinson, Collins, Gorell, and Shaw.)

### ADDIS *v.* GRAMOPHONE COMPANY, LIMITED.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

*Contract—Breach—Measure of Damages—Exemplary Damages — Wrongful Dismissal of Servant.*

In an action by a manager of a company against his employers for breach of contract by wrongful dismissal, *held* (*diss.* Lord Collins) that it was incompetent to include in the damages awarded in that action a sum in respect of the manner of the dismissal and the injury to the plaintiff's feelings.

*Per* Lord Atkinson — An aggrieved party to a contract "is to be paid adequate compensation in money for the loss of that which he would have received had his contract been kept, and nothing more."

*Per* Lord Shaw — "Suppose that slander or libel accompanied the dismissal, nothing, as I understand, is here decided to the effect that the slander or libel, which is cognisable by law as a good and separate ground of action, suffers either merger or extinction by reason of proceedings in respect of the breach of contract which such slander or libel accompanied."

The appellant had been in the respondents' employment as their company manager. He had been wrongfully dismissed in breach of his contract of service. In an action of damages at his instance the jury awarded an amount admittedly in excess of his direct financial loss. The verdict for the whole amount was set aside by the Court of Appeal (COZENS-HARDY, M.R., BUCKLEY and MOULTON, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN) — The plaintiff was employed by the defendants as manager of their business at Calcutta at £15 per week as salary and a commission on the trade done. He could be dismissed by six months' notice. In October 1905 the defendants gave him six months' notice, but at the same time they appointed Mr Gilpin to act as his successor, and took steps to prevent the plaintiff from acting any longer as manager. In December 1905 the plaintiff came back to England. The plaintiff brought this action in 1906 claiming an account and damages for breach of contract. That there was a breach of contract is quite clear. If what happened in October 1905 did not amount to a wrongful dismissal, it was, at all events, a breach of the plaintiff's right to act as manager during the six months and to earn the best commission he could make. When the action came to trial it was agreed to refer the matters of account to arbitration. The causes of action for detinue and for breach of contract were tried by Darling, J., and a jury. The jury found for the plaintiff in respect of wrongful dismissal £600, and £340 in respect of excess commission over and above what was earned by plaintiff's successor during the six months from October 1905 to April 1906. As to the damages of £600 for wrongful dismissal a controversy ensued whether the £600 was intended to include salary for the six months, or merely damages because of the abrupt and oppressive way in which the plaintiff's services were discontinued and the loss he sustained from the discredit thus thrown upon him. And, finally, a question of law was argued whether or not such damages could be recovered in law. To my mind it signifies nothing in the present case whether the claim is to be treated as for wrongful dismissal or not. In any case there was a breach of contract in not allowing the plaintiff to discharge his duties as manager, and the damages are exactly the same in either view. They are, in my opinion, the salary to which the plaintiff was entitled for the six months between October 1905 and April 1906, together with the commission which the jury think he would have earned had he been allowed to manage the business himself. I cannot agree that the manner of dismissal affects these damages. Such considerations have never been allowed to influence damages in this kind of case. An expression of Lord Coleridge, C.J., has been quoted as authority to the contrary. I doubt if the learned Lord Chief-Justice so intended it. If he did I cannot agree with him. If there be a dismissal without notice the employer must pay an indemnity, but that indemnity cannot include compensation either for the injured feelings of the servant or for the loss he may sustain from the fact that his having been dismissed of itself makes it more difficult for him to obtain fresh employment. The cases relating to a refusal by a banker to honour cheques when he has funds in hand have, in my opinion, no bearing. That class of case has always been regarded as exceptional. And the rule as to damages in wrongful dismissal, or in breach of contract to allow a man to continue in a stipulated service, has always been, I believe, what I have stated. It is too inveterate to be altered now even if it were desirable to alter it. Accordingly I think that so much of the verdict of £600 as relates to that head of damages cannot be allowed to stand. As there is an additional dispute how much of it does relate to that head of damages the best course will be to disallow the £600 altogether, and to state in the order that plaintiff is entitled to be credited in the account which is to be taken with salary from October 1905 to April 1906. As to the £340, I think there was evidence on which the jury were entitled to find that the plaintiff could

have earned more commission if he had been allowed to remain as manager. In the result I respectfully advise your Lordships to order judgment for the plaintiff for £340, with a declaration that the plaintiff is entitled to be credited in the account now under investigation with salary from October 1905 to April 1906, and with all commission on business actually done during that period which he would have been entitled to receive if he had been acting as manager. In regard to costs, both sides have raised points which ought not to have been raised, but I think the defendants acted oppressively in detaining the plaintiff's securities. The plaintiff has succeeded in recovering a substantial sum, and the judgment in his favour should be with costs here and below.

LORD JAMES OF HEREFORD—I concur in entirety with the judgment delivered by my noble and learned friend on the Woolsack, but I wish to add a few words as to the claim for damages on the ground that there has been an aggravation of the injury in consequence of the manner of dismissal. The reason I wish to add a few words is because I know that my noble and learned friend Lord Collins entertains the view that in an action of contract there can be such damages as those to which I have referred. I regret I cannot join with him in that view. I have read the judgment of my noble and learned friend and endeavoured to give the fullest consideration to it, and yet I do not see, either from authority or from the reasoning which is to be found in that judgment, that such damages can be recovered in an action of contract. I may say that if I had arrived at a different conclusion I should have been subjected to some feeling of remorse, because during many years when I was a junior at the Bar, when I was drawing pleadings, I often strove to convert a breach of contract into tort in order to recover a higher scale of damages, it having been then, as it is now, I believe, the general impression of the profession that such damages cannot be recovered in an action of contract as distinguished from tort, and therefore it was useless to attempt to recover them in such a case. That view, which I was taught early to understand was the law in olden days, remains true to this day. Therefore I feel bound to say, for the reason I have given, that I concur in that portion of the Lord Chancellor's judgment as well as the rest.

LORD ATKINSON—I entirely concur in the judgment of the Lord Chancellor. The rights of the plaintiff are in my opinion clear. He had been illegally dismissed from his employment. He could have been legally dismissed by the six months' notice which he in fact received, but the defendants did not wait for the expiration of that period. The damages which he sustained by this illegal dismissal were (1) the wages for the six months during which his former notice would have been current; (2) the profits or commission which would in all reasonable probability have been earned by him during the six months had he continued in the employment; and possibly (3) damages in respect of the time which might reasonably elapse before he could obtain other employment. He has been awarded a sum of some hundreds of pounds, not in respect of any of these heads of damage, but in respect of the harsh and humiliating way in which he was dismissed, including, presumably, the pain which he experienced, as is alleged by reason of the imputation upon him conveyed by the manner of his dismissal. This is the only circumstance which makes the case of general importance, and this is the only point with which I think it necessary to deal. I have been unable to find any case decided in this country in which any countenance is given to the notion that a dismissed employee can recover, in the shape of exemplary damages for illegal dismissal, in effect damages for defamation —for it amounts to that—except in the case of *Maw* v. *Jones*, 25 Q. B. Div. 107. In that case Mathew, J., during the argument, while counsel was urging, on the authority of *Hartley* v. *Harman*, 11 A. & E. 798, that the measure of damages for the improper dismissal of an ordinary domestic servant was a month's wages and nothing more, interjected, no doubt in the shape of a question, the remark, "Have you ever heard the principle applied to a case where a false charge of misconduct has been made?" But the decision was that the direction of the Judge at the trial was right. Now, what was the character of that direction? The defendant had power to dismiss his apprentice, the plaintiff, on a week's notice, and had also power to dismiss him summarily if he should show a want of interest in his work. He dismissed the apprentice summarily without notice, assigning as a reason that he had been guilty of frequent acts of insubordination, and that he had gone out at night without leave. The Judge at the trial told the jury that they were not bound to limit the damages to the week's notice which he had lost, but that they might take into consideration the time which the plaintiff would require to get new employment, and the difficulty which he would have, as a discharged apprentice, in getting employment elsewhere, and it was on this precise ground that the direction was upheld. I do not think that this case is any authority whatever for the general proposition that exemplary damages may be recovered for wrongful dismissal, still less, of course, for breach of contract generally; but such as it is, it is the only authority in the shape of a decided case which can be found upon the first-mentioned point. I have always understood that damages for breach of contract were in the nature of compensation, not punishment, and that the general rule of law applicable to such cases was in effect that stated by Cockburn, C.J., in *Engel* v. *Fitch*, L. Rep. 3 Q. B. 114, in these words—"By the law, as a general rule, a vendor who from whatever cause fails to perform his contract is bound, as was said by Lord Wensleydale in a case which has been re-

ferred to, to place the purchaser, so far as money will do it, in the position in which he would have been if the contract had been performed. If a man sells a cargo of goods not yet come to hand, which he believes to have been consigned to him from abroad, and the goods fail to arrive, it will be no answer to the intending purchaser to say that a third party, who had engaged to consign the goods to the seller, had deceived or disappointed him. The purchaser will be entitled to the difference between the contract price and the market price." In *Sikes* v. *Wild*, 1 B. & S. 594, Blackburn, J., said—"I do not know how misconduct can alter the rule of law by which damages for breach of contract are to be assessed. It may render the contract voidable on the ground of fraud, or give a cause of action for deceit, but surely it cannot alter the effect of the contract itself." There are three well-known exceptions to the general rule applicable to the measure of damages for breach of contract, namely, actions against a banker for refusing to pay a customer's cheque when he has in his hands funds of the customer's to meet it; actions for breaches of promises to marry; and actions like that in *Flureau* v. *Thornhill*, 2 Wm. Bl. 1078, where the vendor of real estate, without any fault on his part, fails to make a title. I know of none other. The peculiar nature of the first two of these exceptions justifies their existence. Ancient practice upholds the last, though it has often been adversely criticised, as in *Bain* v. *Fothergill*, 7 H.L. 158. If there be a tendency to create a fourth exception, it ought, in my view, to be checked rather than stimulated, inasmuch as to apply in their entirety the principles on which damages are measured in tort to cases of damages for breaches of contract would lead to uncertainty and confusion in commercial affairs, while to apply them only in part, and in particular cases, would create anomalies, lead occasionally to injustice, and make the law a still more lawless science than it is said to be. For instance, in actions of tort, motive, if it may be taken into account to aggravate damages, as undoubtedly it may be, may also be taken into account to mitigate them, as may also the conduct of the plaintiff himself who seeks redress. Is this rule to be applied to actions for breach of contract? There are few breaches of contract more frequent than those which arise where men omit or refuse to repay what they have borrowed, or to pay for what they have bought. Is the creditor or vendor who sues for one of such breaches to have the sum which he recovers lessened if he should be shown to be harsh, grasping, or pitiless, or even insulting in enforcing his demand or lessened because the debtor has struggled to pay, has failed because of misfortune, and has been suave, gracious, and apologetic in his refusal? On the other hand, is that sum to be increased if it should be shown that the debtor could have paid readily without any embarrassment, but refused with expressions of contempt and contumely from a malicious desire to injure his creditor? Few parties to contracts have more often to complain of ingratitude and baseness than sureties. Are they because of this to be entitled to recover from the principal, often a trusted friend who has deceived and betrayed them, more than they paid on that principal's behalf? If circumstances of aggravation are rightly to be taken into account in actions of contract at all, why should they not be taken into account in the case of the surety, and the rules and principles applicable to cases of tort applied to the full extent? In many other cases of breach of contract there may be circumstances of malice, fraud, defamation, or violence, which would sustain an action of tort as an alternative remedy to an action for breach of contract. If one should select the former mode of redress, he may, no doubt, recover exemplary damages, or what are sometimes styled "vindictive" damages, but if he should choose to seek redress in the form of an action for breach of contract he lets in all the consequences of that form of action (*Thorpe* v. *Thorpe*, 3 B. & A. 580). One of the consequences is, I think, this, that he is to be paid adequate compensation in money for the loss of that which he would have received had his contract been kept and no more. I can conceive nothing more objectionable and embarrassing in litigation than trying in effect an action of libel or slander as a matter of aggravation in an action for illegal dismissal, the defendant being permitted, as he must in justice be permitted, to traverse the defamatory sense, rely on privilege, and raise every point which he could raise in an independent action brought for the alleged libel or slander itself. In my opinion exemplary damages ought not to be, and are not according to any true principle of law, recoverable in such an action as the present, and the sums awarded to the plaintiff should therefore be decreased by the amount at which they have been estimated, and credit for that item should be allowed on his account.

LORD COLLINS — The question which at the close of the argument I desired time to consider was whether in an action for wrongful dismissal the jury in assessing the damages are debarred from taking into their consideration circumstances of harshness and oppression accompanying the dismissal and any loss sustained by the plaintiff from the discredit thus thrown upon him. The jury in this case obviously did take these circumstances into consideration, for they assessed the damages at £600. The contention of the defendants is that the damages must be limited to the salary to which the plaintiff was entitled for the six months between October 1905 and April 1906, together with the commission which the jury should think that he would have earned had he been allowed to manage the business himself; that the manner of dismissal has never been allowed, and ought not to be allowed, to influence damages in a case of this kind. This contention goes the length of affirming that in cases of

wrongful dismissal it is beyond the competence of a jury to give what are called "exemplary" or "vindictive" damages, and it was this point that I desired to consider further. No English case was cited which decides this point against the plaintiff, and I have been unable to find one myself, though I am aware that Mr Sedgwick in his treatise on damages contends for that view. I think, however, that it is quite clear, and Mr Sedgwick apparently does not dispute it, that at one time it was competent for juries to give such damages. "In one case, as late as the reign of James I," he says, in section 10, "it is said the jury are chancellors, and they can give such damages as the case requires in equity, as if they had the absolute control of the subject." In sections 348-9 he goes on "until comparatively recent times juries were as arbitrary judges of the amount of the damages as of the facts. This principle applies as much to actions of contract as of tort." "Even as late as the time of Lord Mansfield it was possible for counsel to state the law to be that the court cannot measure the ground on which the jury found damages." He says in sec. 351, in breach of promise of marriage cases, the jury were told that they could give damages "for example's sake to prevent such offences in future." He says in sec. 352 that vindictive damages or smart money could be given whether the form of action were trespass or case. In sec. 354, on the right to give such damages, he says—"The doctrine is to be supported mainly on the ground of authority and convenience. The historical facts show that it has its root in that jealousy of the exercise of arbitrary and malicious power to which the jury in our system of law has always been so keenly alive, and if it is a survival of a part of the old rule that the jury were judges of the damages, it must be inferred that it has survived because of its inherent usefulness." Having thus explained and vindicated the right of juries to give exemplary damages "for example's sake, and to prevent such offences in future," he, nevertheless, in other parts of his work, seeks to put upon it an arbitrary and illogical limitation by confining it to actions in forms of torts, as though a breach of contract, which of course is in itself an actionable wrong, might not be committed with accompanying circumstances just as deserving of the reprobation of a jury as those which might accompany the commission of a trespass. The rule with regard to remoteness of damage is precisely the same in actions of contract or of tort—(see Sir F. Pollock on Torts, 2nd ed. pp. 491-2, citing Brett, L.J., in the "*Notting Hill*," 9 P. Div. 104). But it is from the standpoint of a difference of principle in the measure of damages in cases of contract and of tort that he ventures to impugn the position taken up by the late Mr Chitty in the early editions of his well-known work on Contracts, a position which has been adopted by all subsequent editors, and is again asserted in the last, the 14th, edition of 1894. In the 1834 edition Mr Chitty says—"There are instances in which the defendant may be regarded in the light of a wrongdoer in breaking his contract, and in such case a greater latitude is allowed to the jury in assessing the damages;" and he cites *Lord Sondes* v. *Fletcher* (5 B. & Ald. 835), decided in 1822. There the plaintiff had presented the defendant to the living of Kettering, taking from him a bond to resign it when either of two named persons should be capable of taking the same. The defendant, although requested, refused to resign. The defendant's life interest was worth ten years' purchase. The life interest of one of the two persons named, whom the plaintiff intended to appoint, was worth fourteen years' purchase. At the trial before Abbott, C.J., the jury found a verdict for the latter amount. On motion for a new trial, on the ground that the measure of damages was the amount by which the plaintiff was prejudiced in the value of the advowson, *i.e.*, the value of the defendant's life interest, and that in estimating the annual value of the living the curate's stipend ought to have been deducted, the Court held that the defendant having entered into a bond to do a particular thing which he had refused to do, was a wrongdoer, and that he was not to be permitted to estimate the value of the living as if he were the purchaser of it, and that they were not prepared to say that the jury had formed a wrong estimate of the damages. The Judges who usually sat in Banc at that time were Abbott, C.J., and Bayley, Holroyd, and Best, JJ. Thus we have the opinion of four eminent Judges as late as 1822, notwithstanding the fact that in form the action was for breach of contract only, sanctioning the award of exemplary damages. It is true that Mr Sedgwick impugns Mr Chitty's position, but he has to admit that the Court of Carolina, whose high authority he acknowledges, has laid down the law in a sense contrary to his (Mr Sedgwick's) contention. Again as late as 1847, on a question whether the damages given by a jury in a case of wrongful dismissal were excessive, no less distinguished a Judge than Maule, J., with whose judgment Cresswell and Vaughan Williams, JJ., expressly concurred, said—"I also think that there is no ground for saying that the damages were miscomputed. It must be borne in mind that embezzlement was imputed to the plaintiff." Doubtless there are other dicta to the same effect scattered through the reports, some of which were cited in the argument; indeed it could hardly fail to be so in view of the authorities which I have cited, and the absence of any decided case to the contrary. At the same time it is quite possible that the strong opinion of so distinguished a text-writer as Mr Sedgwick might lead casual readers to forget that the law of England was once clearly established to the contrary. But it does so happen that the only authority in recent times on the point is the case of *Mayo* v. *Jones* (*ubi sup.*), decided in 1893, which in

terms decides that a false charge may aggravate the damages in a case of wrongful dismissal. That case has the authority of Manisty, J., as well as of Lord Coleridge, C.J., and Mathew, J., by whom his ruling to that effect was upheld. Lord Coleridge, C.J., pointed out that dismissal with an imputation might well be thought by a jury to hurt the plaintiff's prospects of finding another situation, and that ground alone might give a legal claim to consequential damages within the ordinary rule. It was argued for the defendant that this case stood alone, and was quite an exception in our law, and ought to be overruled; and the like observation was made as to the exceptional character of actions for breach of promise of marriage, where it is admitted that such damages may properly be given. Dealing with this incident of breach of promise cases, Sir F. Pollock, in his Treatise on the Law of Torts, 2nd edit., 1890, says, at p. 498—"Like results might conceivably follow in the case of other breaches of contract accompanied by circumstances of wanton injury or contumely"; and see the observations of Willes, J., in *Bell* v. *Midland Railway Company* (11 C. B. N. S. 307). But when the law of damages is traced backwards it will be found that the so-called exceptions, including that of dishonoured cheques, are merely recurrences to the old rule which, it may be through the deference paid by our own text writers to Mr Sedgwick's opinion, has been sometimes forgotten or ignored. But for the reasons which I have given I think that we are not bound to disallow such damages in this case, and I am not disposed, unless compelled by authority to do so, to curtail the power of the jury to exercise what, as Mr Sedgwick points out, is a salutary power, which has justified itself in practical experience of redressing wrongs for which there may be, as in this case, no other remedy. Such discretion, when exercised by a jury, would be subject to the now unquestioned right of the courts to supervise, just as is done every day where the form of the action is tort. That a trespass carrying with it an imputation may be the subject of exemplary damages swelled by the fact of the imputation, was decided by Lord Ellenborough—*Bracegirdle* v. *Orford* (2 M. & S. 77)—overruling the contention that the imputation could only be brought into consideration as the subject for a separate count for slander. In all other respects I agree with the judgment of the Lord Chancellor.

LORD GORELL—[*After stating the facts*]—The legal point is thus raised, whether in the plaintiff's action for breach of contract to employ him the defendants can be made liable, in addition to damages for the loss to the plaintiff of the benefit of the contract, for damages for the manner in which the contract has been put an end to. The general rule is clear that damages in contract must be such as flow naturally from the breach, or such as may be supposed to have been in the contemplation of the parties as the result of the breach. The latter branch of the rule is inapplicable to the facts of this case, for it was not suggested that there were any consequential damages within the contemplation of the parties. Under the first branch of the rule the plaintiff recovers the net benefit of having the contract performed. He is therefore to be put in the same position as if the contract had been performed. If it had been performed, he would have had certain salary and commission. He loses that and must be compensated for it. But I am unable to find either authority or principle for the contention that he is entitled to have damages for the manner in which his discharge took place. According to my view none of the cases which have been referred to establish the proposition contended for. The case of *Maw* v. *Jones* (*cit.*), which was relied on, does not when examined support the contention. The plaintiff has attempted to suggest that the manner of his dismissal has cast a slur upon his character, and he has really endeavoured to claim damages for defamation, and to turn the action for the loss of the benefit of the contract into an action of tort, with the result of attempting to give the jury a discretion uncontrolled by the true consideration, namely, what is the money loss to the plaintiff of losing the benefit of the contract? I consider further that there was nothing in the manner of the plaintiff's dismissal which was different in any legal sense from what would have been the case if his employment had been terminated at the end of six months. At the same time his authority as agent and at the bank would have come to an end and been notified, and his successor would take his place. This was done six months sooner than the defendants had a right to act. In my opinion the verdict for £600 cannot in the circumstances stand. With regard to the £340 for extra commission, the plaintiff's right to this depends upon whether there was evidence which the jury were entitled to consider to show that had he remained agent for the six months he would have been able to earn more profits for the agency than were actually earned. Having studied the evidence with care, I have come to the conclusion that there was some evidence upon the point, and I think that the jury were entitled to act upon it if they thought fit to do so. As to the remaining points, I do not think it necessary to add anything to the observations of the Lord Chancellor, and I concur in the judgment which he has proposed.

LORD SHAW — As to the question of wrongful dismissal, I should be sorry that verdicts of this kind should be upset on any question of terminology, and I cannot conceal from your Lordships my opinion that much of the discussion was based upon grounds which are rather terminological than real. It was much pressed upon us, for instance, in argument, that the plaintiff in the measurement of his rights or of his loss (to use a neutral term) must be either off or on with the contract,

and that in interpreting the language of the issue put to the jury, whether there was wrongful dismissal, the wrong in the word "wrongful" is something which must be treated as separated from a claim grounded on breach of contract. A contract of hiring or service may be broken or come to an end justifiably, as for instance by misconduct of the servant warranting instant dismissal, or it may be innocent, as for instance by the death of the master, when the personal contract thus comes to an end. But if neither of these things occurs, that is to say, if the dismissal represents the putting an end to or breach of the contract in circumstances which are neither justifiable nor innocent, the word "wrongful" appears to me, whether it is used in a legal or a commercial connection, to express quite aptly what has occurred. When a wrongful dismissal of this kind does take place, to my mind, no dilemma of election, such as the learned Lords Justices have figured, necessarily arises, and the present case appears to me a good instance of the manner in which the rights of the subject may be impeded or denied if it is allowed to enter into the discussion. In this case the contract of service stood for the purpose of reference. It contained within itself elements which would go to show what was the measure of those rights which the plaintiff would have enjoyed under it but for the breach of contract, and although the contract itself had been, as I hold it was, deliberately put an end to by the action of the respondents, it still remained for reference and measure as stated although the contract itself had wrongfully come to an end. I can see for myself no impropriety or repugnance in putting to the jury the question as Darling, J., did, "Did the defendants wrongfully dismiss the plaintiff?" And that question, in my opinion, would stand good whether the contract be treated as ended or treated, upon some ground which I do not appreciate, as only partially repudiated. The truth is that the real question, not the terminological one, is not whether the plaintiff was wrongfully dismissed, but what is the measure of damages in consequence of the dismissal. *Quoad* dismissal itself, I do not doubt that the affirmative verdict should stand. As to the measure of damages, it is agreed that £390 of the £600 (being the full balance of the stipulated salary which could have been earned up to the expiration of a due notice of dismissal) appears upon the accounts, and I gather that your Lordships' pronouncement upon that, in which I entirely agree, is that that sum must be credited in those accounts. It will be wrong, accordingly, to allow a verdict for a repetition of it in this action, and this was, of course, admitted. A far more difficult question remains, whether the balance of the £600—viz., a further sum of £210—can be awarded to the plaintiff? It is impossible to deny the impressiveness and value of the citation of authority made by Lord Collins, and I am much moved by his definite opinion that the verdict is consistent with the practice of the law of England. But as the rest of your Lordships do not agree that the matter is concluded by authority or practice, I am willing and free to state my reckoning of the question as one of principle. So considered, the matter appears to me to stand in the following position. There can be no doubt that wrongful dismissal may be effected in circumstances, and accompanied by words and acts, importing an obloquy and causing an injury, any reasonable estimate of which in money would far outreach the balance of emolument due under the contract. This is within the range of ordinary as well as professional experience, and I admit the highest regard for that judicial opinion which leans forward towards such a perfecting of the legal instrument as to enable it to provide a remedy in complete equation with the wrong suffered. There, however, my concurrence with that opinion stops, and I cannot carry it forward to what, in my view, would be a disregard of the limitations of the instrument itself. The present type of case—wrongful dismissal—provides a convenient illustration of both aspects of the position. Suppose that slander or libel accompanies the dismissal, nothing, as I understand, is here decided to the effect that the slander or libel, which is cognisable by law as a good and separate ground of action, suffers either merger or extinction by reason of proceedings in respect of the breach of contract which such slander or libel accompanied. The law still provides a remedy. This seems perfectly just and very elementary, and I only state it because judges and text writers appear not infrequently to have forgotten it. In the very decisions cited by Lord Collins in England, the award of damages in respect of breach of the contract of service seems to have been improperly inflated by allowances made for "false charges," even a charge of embezzlement. I looked for possible assistance on this subject to the law of Scotland, but the same fallacy has taken some root in that country, a most eminent text writer remarking—"In aggravated circumstances, *e.g.*, where the master has calumniated the servant's character or injured his reputation, and so prevented his getting a new situation, damages to a much greater amount (than the whole emoluments, &c., due under the contract) might be given"—(Fraser, Master and Servant, 3rd ed., p. 163). It is sufficient for me in answer to such dicta to repeat that slanders, and the like, which are in themselves cognisable by law as grounds of action, do not undergo the merger indicated—a merger which might produce prejudice and confusion—nor do they suffer extinction; the remedies therefore remain unaffected, and also separately available at law. I may add that I do not think that the citation from Pothier made by the last-named author strengthens his position, for when that great jurist says that in addition to payment to the servant of the "whole year" of his services, the master "peut être condamné aux dommages et intérêts du domestique," he may only be referring