

KEESHAN *v.* HAYS.

4-5393

126 S. W. 2d. 105

Opinion delivered March 13, 1939.

## APPEAL AND ERROR—EXCESSIVENESS OF JUDGMENT—HOW DETERMINED.—

Unless, in a given case, the judgment is so large as to attest that considerations other than appropriate evidence induced the verdict—such, for instance, as excess sympathy, prejudice, a response to passionate appeal, inflammatory argument, and the like—and unless this court can say that no jury, free from improper inducement, would have reached the conclusion that is challenged, a remittitur will not be directed.

Appeal from Phillips Circuit Court; *W. D. Davenport*, Judge; affirmed.

*Brewer & Cracraft*, for appellant.

*John C. Sheffield*, for appellee.

GRIFFIN SMITH, C. J. Appellant, who are partners, question two of several judgments rendered in consequence of personal injuries and property damage sustained when an ambulance owned by appellants, and an automobile owned by Ed Blair, collided.

Blair, with others, was in his car when the accident occurred. Mrs. Blair was driving. Jury verdicts resulted in judgments for \$2,000 in favor of Ed Blair, and \$2,500 for his wife. Damage to the automobile was \$350. Medical and hospital bills, and services of physicians incident to treatment of the Blairs, amounted to \$275, leaving \$1,375, and \$2,500, to compensate injuries sustained by husband and wife, respectively. It is not contended that the injuries were permanent.

Appellants urge a failure of appellees to establish by proper proof—that is, by substantial evidence—that the injuries were sufficient to justify the amounts awarded.

Unless, in a given case, the judgment is so large as to attest that considerations other than appropriate evidence induced the verdict—such, for instance, as excess sympathy, prejudice, a response to passionate appeal, inflammatory argument, and the like—and unless we can say that no jury, free from improper inducement, would reach the conclusion that is challenged, this court does

not direct a remittitur; or, in the alternative, reverse for retrial.

Applying this rule to the appeal before us, the judgments must be affirmed. It is so ordered.

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