

*Held*, as to the contention that the counsel for the plaintiffs at the trial had improperly inflamed the minds of the jurors by addressing remarks to them as to the great wealth of the defendants, etc., that objection should have been lodged by the defendants at the time the remarks were made, and the intervention of the trial Judge claimed while the alleged transgression was being committed; and this not having been done, that the Court could not interfere upon appeal.

*Held*, lastly, as to the amount of the damages, that the Court could not interfere; they were substantial, but the injuries were severe and caused much suffering, so that the jury were not so obviously wrong that the verdict should be disturbed.

Judgment of ARMOUR, C.J., affirmed.

W. Nesbitt, for the appellants.

C. J. Holman, for the plaintiffs.

# HIGH COURT OF JUSTICE.

GALT, C.J., ROSE, J.,  
MACMAHON, J. }

[June 27, 1891.]

HALLENDAL v. HILLMAN.

*Life insurance—Assignment of policies to creditor—Absolute sale—Rights under assignment—Conditions imposed by company.*

Two policies of life insurance were assigned by the assured to the defendant. The contract was one of absolute sale of the assured's interest and rights under the policies, the assignment was absolute in form, and the defendant had made actual money advances to the assured upon the security of the assignment. A condition was imposed by the insurance company that a legal insurable interest must be shown by all claimants at the time of claim thereunder, and that claims by any creditor or assignee should not exceed the amount of the actual bona fide indebtedness of the assured to the claimant. This condition was attached to the assignment of one of the policies. When the defendant agreed to buy the other, a new policy was issued to him as a creditor, and the condition, in addition to the words above set out, contained the provision "that this certificate or policy of insurance as to all amounts in excess thereof shall be void."

Upon this action being brought by the administrator of the estate of the assured against the company and the defendant to recover the balance of the insurance moneys after payment of the amounts advanced by the defendant, the company paid into Court the amount of the insurance and declined to raise any question as to their liability, and an order was thereupon made striking their name out of the proceedings and discharging them from liability to the plaintiff or defendant.

*Held*, that the conditions were available only at the instance of the company, and did not limit the contract or the effect thereof as between the assured and the defendant; and the latter was entitled to the whole of the insurance moneys.