

The question was not given to the jury in this form. But the question actually put must be read in connection with the charge. The learned Judge explained to the jury that if the defendants did not stop the train for a sufficient time to enable the plaintiff to alight, or did not afford him proper facilities for alighting before the train was started, they were guilty of negligence. He then adverted to the starting of the train, the plaintiff's position in the car at that time, his carrying a bundle in one hand, and the speed of the train when he reached the platform, and told them that it was for them to say whether he acted reasonably under the circumstances appearing in evidence. Substantially he left to the jury to say whether the plaintiff was in fault at all. The question he gave was: "If Keith was guilty of any negligence which contributed to the accident, what was such negligence?" The answer of the jury was that the plaintiff was guilty of no negligence which contributed to the accident. Having regard to the terms of the charge, this is a finding that the plaintiff acted reasonably and was not in fault. There is evidence upon which the jury might properly come to this conclusion, and judgment was, therefore, properly entered for the plaintiff. In view of the finding that the train was not stopped a sufficient time to enable the plaintiff to alight, the question as to the exact time was immaterial. If they had found it, they would still have been obliged to say whether it was sufficient.

Complaint was also made that the damages were excessive. The plaintiff's injury was of a very painful kind. The question of the period within which he might have fully recovered was complicated to some extent by another accident he met with between five and six weeks afterwards, resulting in a fracture of the leg previously injured or affected.

But the jury were carefully cautioned not to take that into consideration, and to confine their award of damages to the injury sustained at Finch, and it must be assumed that they have done so. There was evidence that at the time of the trial, rather more than a year after the accident, he was still suffering from its effects.

The amount awarded is not so large as to suggest any mistake, misapprehension, or prejudice on the part of the jury.

The appeal should be dismissed.

OSLER, J.A., gave reasons in writing for coming to the same conclusions, and referred to the following authorities: Beach on Contributory Negligence, 3rd ed., sec. 147; American Negligence Cases, vol. 4; Clayards v. Dethick, 12 Q. B.