

In answer to other questions, the jury stated their opinion that the switch-stand was dangerously close or too close and out of proper repair. But the controlling finding is that in answer to question 3, which is most in accord with the main body of evidence. Both upon the evidence and that finding, the case is one of negligence under the Workmen's Compensation Act, and the damages should be assessed upon the basis of its provisions.

In his charge to the jury the learned Chancellor referred briefly to the question of the damages recoverable under the Act, but the jury were not asked to find, and they did not find, the amount.

There is, however, evidence upon which a reasonable conclusion can be arrived at. The plaintiff was employed as a spare brakesman, and was paid according to the runs he made. For the months of March, April, May, and June he estimated that he made from \$45 to \$50 a month. But in July he made \$80.75, and during August, the month in which he was injured, he appeared to be constantly employed, but what he would have made is, of course, only a matter of conjecture. Taking everything into consideration, it is reasonable to say that as a spare brakesman his prospects of continuous employment would not bring his average payments to more than \$70 a month, or, say, for three years \$2,600. This would be all that the jury could reasonably or properly have found, and it would be no advantage or benefit to him to direct a new trial or further inquiry upon the question of the quantum of damages.

The appeal should be allowed to the extent of reducing the damages to \$2,600, and there should be no costs of the appeal.

MEREDITH, J.A., gave reasons in writing for the same conclusion.

GARROW, MACLAREN, and MAGEE, JJ.A., also concurred.

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JANUARY 26TH, 1911.

GEE v. EAGLE KNITTING CO.

*Contract—Writing under Seal—Servant of Company—Transfer of Shares for Benefit of—Gift—Condition—Construction of Contract—Rectification—Evidence.*