

The defendants appealed upon the ground that no pecuniary damages were proved, and, in any event, that the amount allowed was excessive and unwarranted by the evidence.

The appeal was heard by Moss, C.J.O., GARROW and MACLAREN, J.J.A.

D. L. McCarthy, K.C., for the defendants.

G. C. Gibbons, K.C., for the plaintiffs.

GARROW, J.A.:—The learned counsel for the plaintiffs, with great earnestness, contended that the question was entirely one for the jury, and that the Courts of the province had in recent years frequently unduly interfered with verdicts upon the ground that the damages awarded were excessive.

No one disputes that, when there is reasonable evidence of damages, it is for the jury to say how much, upon the evidence, such damages should be. But a jury must certainly regard the evidence, just as the Judge must regard the law. And, if either goes wrong, it is the duty of the appellate Court, in the administration of justice according to law, to see that, as far as possible, the wrong is corrected. That, as I understand it, is what appellate Courts are for. And we assert no new jurisdiction, as the books abundantly shew, when we say that we decline to regard the verdict of a jury not reasonably and properly based upon the evidence as any more sacred than the erroneous ruling of a Judge made in the hurry of a trial.

In actions of this kind, the limits of what may and what may not be allowed as damages have been pretty well defined, although we are constantly being reminded that there is still unexplored territory, as, for instance, in the recent case of *McKeown v. Toronto R. W. Co.*, 19 O. L. R. 361, where many of the cases are referred to.

It is not by reason of the death alone, but because the death has disappointed the dependents' reasonable expectations of financial assistance, that damages are recoverable—a circumstance apt to be overlooked.

The cases shew that such expectations need not necessarily be based upon present conditions, but may, upon proper evidence, be founded in the future; as, for instance, in *Franklin v. South Eastern R. W. Co.*, 3 H. & N. 211 . . . ; *Rombough v. Balch*, 27 A. R. 32, 45.

The recovery must, from the nature of the case, be for substantial and not merely nominal damages. *Duckworth v. John-*