

defendants, to recover damages for his death. The action was brought under the Workmen's Compensation for Injuries Act.

The trial was at St. Catharines before CLUTE, J., and a jury. E. A. Lancaster, K.C., and E. H. Campbell, for the plaintiff. McGregor Young, K.C., and G. F. Peterson, for the defendants.

CLUTE, J.:—The jury found that the defendants were guilty of negligence that caused the accident; that the death was caused by a defect in the construction of the ways and plant, and also by reason of the negligence of the superintendent, whose order the deceased was bound to obey and did obey, while acting in obedience to such order; and that the plaintiff was not guilty of contributory negligence.

In addressing the jury, counsel for the plaintiff—under what I think was a misapprehension of the law and of the rights of his client, told the jury that they should find what was equal to the wages for three years of a person in the same grade as the plaintiff, which would amount to between \$2,200 and \$2,400, and that from that they should deduct \$1,000 for insurance which the plaintiff had received.

I endeavoured to correct this in my charge to the jury, and, on their returning a verdict of \$1,200, it was quite obvious that they had deducted the \$1,000 for insurance, but did not say so in their verdict. Thereupon I asked them if they meant to find that \$2,200 was the amount of the damages, and from that had deducted \$1,000, leaving \$1,200 as the verdict, and to that they all answered that that is what they meant.

There is no doubt, upon the evidence, that the damages would amount to at least \$2,200

The question is, whether the verdict should be entered for \$1,200 or \$2,200. . . .

[Reference to *Beckett v. Grand Trunk R. W. Co.*, 8 O. R. 601. 13 A. R. 174; and *Grand Trunk R. W. Co. v. Jennings*, 13 App. Cas. 800.]

That action (the Jennings case), it will be observed, was under Lord Campbell's Act; and, had the damages in the present case been assessed under Lord Campbell's Act, without the limitation imposed by the Workmen's Compensation for Injuries Act, it could scarcely be doubted that, having regard to the earning power of the deceased, his age, and that of the plaintiff, a very much larger verdict would have been given.

It may be noted that the law is now changed in England. By 8 Edw. VII. ch. 7 it is provided that in assessing damages under