Chancery Division.

Div'l Court.] [June 30.

CHURCH *v.* THE CORPORATION OF THE CITY OF OTTAWA.

Damages—Inadequacy of amount found by jury—Right of court to interfere—New trial.

Notwithstanding that it is unusual for a court to interfere with a verdict of a jury on the ground of the inadequacy of the amount of the damages found, still such verdicts are subject to the supervision of a court of first instance, and, if necessary, to a Court of Appeal; and, if the amount awarded be so small or so excessive that it is evident that the jury must have been influenced by improper motives or led into error, then a new trial must be granted.

Held, on the evidence in this case, where a practising physician had been badly, and perhaps permanently, injured in the *tendo-achillis* by stepping into a hole in one of the streets of the defendant corporation, and his professional business also injured, that $700 was not enough, and a new trial was ordered.

Riddell, Q.C., and *Charles Macdonald* for the plaintiff.

Aylesworth, Q.C., *contra.*

Common Pleas Division

STREET, J.] [Sept. 22.

HEROD *v.* FERGUSON.

Contract—Remuneration for services—Subsequent promise to pay by third person—Judgment on—Collateral contract—Novation—Release.

In an action for the value of surgical and medical services rendered by the plaintiff to the defendant, it appeared that, after all the services had been rendered and charged to the defendant only in the books of the plaintiff, the defendant's son had asked the plaintiff to send the account to him; that the plaintiff had done so, making out the account in his son's name, which the son had promised to pay; that the plaintiff had recovered judgment by default against the son for the amount, but, finding him to be worthless, had not issued execution; and had then brought this action. It was found as a fact that the contract for the services had been made with the father and not with the son. There was no evidence of any agreement by the plaintiff to accept the son as his debtor and to release the father.

Held, that the son became liable to the plaintiff, if at all, upon a subsequent promise, which was not a satisfaction of the original cause of action, but collateral to it; that the original cause of action still existed, because there had been no novation of it, no payment or release of it, and no judgment recovered upon it; and the plaintiff was entitled to recover.

Moss, Q.C., and *Guthrie*, Q.C., for the plaintiff.

F. Fitzgerald for the defendant.