

RECENT ONTARIO DECISIONS.

Important Judgments in the Superior Courts.

Court of Appeal.

SORNBERGER v. CANADIAN PACIFIC RAILWAY COMPANY.

[BOYD, C., FERGUSON, J., ROBERTSON, J., APRIL 13.]

Negligence of railway company—Amount of damages not obviously excessive—Exposing broken limb to jury—Refusal of trial Judge to allow limb of another person similarly broken to be exposed—Objection should be taken at the trial to counsel improperly inflaming the minds of the jury.

Judgment on appeal by defendants from judgment of Armour, C.J., in favour of plaintiffs, in action for negligence, tried with a jury at Whithy, and motion to have the verdict of the jury set aside and a new trial ordered, upon the ground of excessive damages, and upon the following three grounds, namely, (1) that counsel for plaintiff at the trial, in his address to the jury, improperly inflamed the minds of the jurors by allusions to the wealth of the defendants and the magnificence and luxury in which its principal officers live and travel about; (2) that plaintiff Charles Sornberger was improperly allowed to expose his broken leg (on account of which he sued), bare to the view of the jury; and (3) that the trial Judge improperly rejected evidence tendered on behalf of defendants of a person who had a leg broken in a similar way. The jury gave plaintiff Charles Sornberger \$6,500 damages, and plaintiff Lelah Sornberger, his daughter, \$500. The plaintiffs were crossing defend-

ants' railway in a sleigh, when the sleigh was struck by a snow plough, and they were thrown out and received the injuries for which they sued. Held, that it was within the discretion of the Court to allow the plaintiff to exhibit to the jury his injured limb, for the purpose of being examined thereon by a physician, and that the ruling of the trial Judge on this head was unexceptionable. Review of American authorities on this subject. Held, also, that the trial Judge was right in rejecting evidence offered in regard to a man who had had some injury to his leg. It was asked that this might be exhibited on the part of the defendants as a sort of offset to the other, but the trial Judge refused to let this be done unless competent evidence was forthcoming to explain the nature of the injury which that man's leg had sustained; and in this he was right, if the evidence was admissible even with such explanation. Held, as to the remarks of the plaintiff's counsel in addressing the jury, that objection should have been lodged at the time by the defendants; that an appeal should have been made to the presiding Judge, who was there for the very purpose of seeing that the trial was duly and properly conducted, and whose intervention should have been claimed while the alleged transgression was being committed; and the Court could not now interfere. Held, as to the amount of the damages, that the Court could not interfere; they were substantial, but the man was badly injured, and suffered much, so that the jury was not so obviously wrong that their verdict should