

covered until some six weeks after the accident—after he had gone to the baths at Mount Clements, although before that he had been examined more than once by local physicians and was himself one of long experience. Dr. Primrose in his statement says that the prolapsed condition may or may not have been caused by the accident. And I am not able to find in the evidence of the other medical witnesses any more positive evidence or evidence which displaces this statement. And if the matter rests as put by Dr. Primrose, as in my opinion it does, the fact is not established for, of course, the burden of proof is upon the plaintiff, who must incline the balance in his direction, not by a mere scintilla, but by a reasonable amount of legal evidence. In this connection—that is, the condition of the plaintiff's kidneys before the accident—the evidence of Mr. Robertson, a wholly disinterested witness, also is of some importance, who said that several months before the accident the plaintiff told him that he was being troubled by his kidneys, and that his hard work and hard driving were using him up. The plaintiff denies this, and says there was never even a conversation, and that he was never troubled with his kidneys, but as between the two there is no reason why the usual rule as to crediting the disinterested witness should not be followed. But while for these reasons I incline to think that the evidence, as it stands, does not warrant the conclusion that it is established that the prolapsed condition of the kidney was caused by the accident, I think it highly probable that as the blow which the plaintiff received was in its vicinity, the kidney was injured to some extent in the accident, since there is evidence of blood and pus in the urine, which could not otherwise be reasonably accounted for.

The plaintiff was not able to point to any decided diminution in income as the result of the accident, although it would be natural to expect a falling off to some extent. And it is quite probable that although the plaintiff will resume practice, he may have to decline the more arduous work to which he has been accustomed, elements which, of course, very properly enter into a consideration of the amount of damages, and which I have I hope duly considered.

Upon the whole, after in the language of Field, J., applying to the circumstances such reasonable common sense as I possess, I have, with deference, come to the conclusion that the amount awarded at the trial is substantially too large, and should be reduced. And the amount I would