

the refusal to allow a question to be put in cross-examination of Dr. Starr—is sufficiently answered by the provision of Rule 785. No substantial wrong or miscarriage can be said to have been caused by it. And the objections taken to the Judge's charge are, I consider, covered by what was said to the jury when they were recalled. The plaintiff certainly had no reason to complain of the charge, taken as a whole, but this, I think, is the strength of the defendants' objection to it.

Lastly, it was contended that the trial Judge was wrong in not telling the jury that the sums received by the plaintiff for benefit insurance from the Grand Trunk Railway Benevolent Association and for accident insurance from the Sons of England Benefit Society should be allowed or taken into consideration against the damages. These allowances were payable to and were received by him under his contracts with these bodies and in consideration of payments and contributions he made to their funds.

In my opinion, the charge of the learned Judge in this respect was right. The rule laid down in *Hicks v. Newport R. W. Co.*, 4 B. & S. 403 n., and *Grand Trunk R. W. Co. v. Jennings*, 13 App. Cas. 800, affirming *Jennings v. Grand Trunk R. W. Co.*, 15 A. R. 477, in cases under the Fatal Accidents Act, has no application where the action is brought by the injured person himself. In the latter case the ground of the action is the wrong done to the individual. "The fact that he has guarded by anticipation against such an event neither diminishes the wrong itself nor the liability of the wrongdoer to pay for it": *Mayne on Damages*, 6th ed. (1899), p. 538. In the former case it is the pecuniary loss caused by the death "which is at once the basis of the action and the measure of the damages"; and, therefore, within defined limits indicated by the above cases, the receipt of insurance money is a circumstance to be taken into consideration by the jury in estimating the pecuniary loss of the survivors: *Mayne, ubi supra*.

On the whole, I think the appeal must be dismissed, with the usual result as to costs.—*The Ontario Weekly Reporter*.