

reducing the danger of the jury being unconsciously swayed by consideration foreign to the issue.

In view of the conclusion which I have reached, it is inadvisable that the merits of the case be further gone into beyond what is necessary in order to make apparent why, in my opinion, there should be a new trial.

The defendant company's counsel complains that undue prominence was given and unfair reference made throughout the trial, to certain circumstances which may have prejudiced the jury against the defendant company, and that in consequence, it did not have a fair trial. I shall now deal with these objections. They are founded upon the following amongst other portions of the evidence and proceedings at the trial:

Extract from the cross-examination of the defendant company's witness, Lawson:

“Q. You had hired the taxicab? A. Yes.

His Lordship:—Who had?

Mr. Phelan:—I say he had hired the taxicab. Yourself and the other gentleman? A. The other gentleman hired it.

Q. Who were the other members of the party?

Mr. MacGregor:—Is that material, my Lord?

His Lordship:—I do not know whether it is or not. Perhaps not who they were, but what they were, may be material.

Mr. Phelan:—Yes, what were they? A. One was a friend of mine who is out of town, and the others were his two friends. That is all I know of them.

Q. What? A. A friend of mine who was out of town, just come to town to spend a few days.

Q. How long had you known this friend? A. Known him a couple of years.

Q. But the lady—

His Lordship:—Was there a lady in the party? A. There was a lady in the party.

Mr. Phelan:—Is that a true answer, ‘There was a lady in the party’? A. There was two.

Q. How long had you known those two ladies? A. Well, I don't remember how long.

Q. Did your friend know them for any length of time?

A. I don't know.

Q. You had picked up those two ladies at the Arlington Hotel? A. No sir.