

proven or not as against another fact sought to be proven, is not a ground for a new trial, if the jury had been clearly given to understand that they are not bound to follow the opinion of trial judge, but are bound to decide the facts independent of the expression of any opinion from him.

I am of opinion that the charge of the learned trial judge, taken as a whole, is a fair charge, and is not one in which such error could be found as to give rise to the right of a new trial, and I rule against the defendant upon this ground.

Now as to the last ground, viz: that the damages are excessive. [*Facts.*]

The question is really, whether this award is so excessive as to induce the belief that the jurors were actuated by improper motives, or were over sympathetic to the widow and orphans. If I were convinced that such were the case, I would not hesitate to interfere.

To use the words of a leading jurist, who was commenting upon the award found by a jury of \$3000., he said—“This is an exceptionally large sum, I do not think that I should have myself given so much by \$1000., but I cannot say that it is so extravagant that no reasonable jury would repeat it, or that the court cannot find any reasonable proportion between the amount awarded and the loss sustained. I think that the jury had a very difficult task to perform. There is then in the case so much of contingency in the question which the jury had to face, that a substantial sum being justified, I do not think it would be in accordance with the practice of the court to disturb the award of the jury in a matter which is peculiarly their function, except on a very clear manifestation of extravagance leading to the conclusion that they were guided, not