

movement of the same car proceeding, as he supposed, on its southward journey; and his attention was distracted by the vehicles driving down towards him, of which he had to keep out of the way.

The findings of the jury in these two aspects of negligence are, I consider, well supported by the evidence.

I do not see that there was any misdirection of which the defendants are in a position to complain. Some remarks are found in the charge which the learned Judge would probably have desired to correct, had his attention been called to them; but, under the circumstances, we cannot say that they now call for notice.

The Judge, I think properly, explained to the jury the respective rights of the public and of the company on the highway. He was not bound to tell them that if the car was moving only at the rate of 3 or 4 miles an hour, there was no higher duty upon the company to give notice than would be cast upon a person driving a waggon or other vehicle. And I do not think that any observation as to its being the duty of "the car" going north to have remained at the south switch until the other had passed it there, was at all likely to have misled the jury, in dealing with the other plain facts of the case.

There remains the question of damages. The jury gave \$1,800. The plaintiff's expenditure has been perhaps \$100. His sufferings were severe, and he was confined to the house for several weeks. No bone was broken, and his permanent injury seems likely to be a certain flattening of the foot, some degree of lameness, and a possible tendency to rheumatism.

I cannot but think that the sum awarded by the jury is largely in excess of what has been given in the case of much more serious injuries, although, no doubt, we cannot say that there is a standard of damages in such cases.

I favour granting a new trial, unless the plaintiff consents to the judgment being reduced to \$900. In that event the appeal should be dismissed with costs.

If the plaintiff does not agree to this course, then there should be a new trial. Costs of appeal to defendants, and other costs in the cause.

T. H. Lennox, Aurora, solicitor for plaintiff.

Barwick, Aylesworth, Wright, & Moss, Toronto, solicitors for defendants.