

10. That the learned presiding judge unfairly and prejudicially commented upon the facts in his charge to the jury, to which prompt exception was taken by the defendant's counsel.

20. That the verdict is contrary to the proof;

30. The amount awarded is excessive;

40. After the jury had rendered their verdict, or answered the questions, the learned trial judge sent them back for further consideration, and upon such further consideration, the verdict by the jury was modified;

50. That the jury while finding contributory negligence on the part of Couvrette, and fixing that contributory proportion at the sum of \$900.00 deducted the whole amount from the widow's share, and nothing from the children's shares.

60. That no right of trial by jury exists in the present case.

I proceed first to dispose of the last ground of complaint, and in disposing of it, I express no opinion as to whether it is well founded or not. The Court of King's Bench, Appeal Side, in the case of *Steele vs C. P. R.* (1) has decided, that damages in a case such as the present could be assessed by a jury, and for the time being I follow that jurisprudence.

I now proceed to dispose of the *fifth* objection, viz: that no deduction was made from the amount awarded to each of the children on account of the contributory proportion of the deceased, Couvrette. I can find no possible reason or interest in the defendant raising such an objection. If the assessment of \$900.00 as total damages be correct or justified, and the assessment of \$900.00 as Couvrette's share, be justified, the defendant has not, and

(1) 2 B. R., 36.