

trial—16th September—examined the plaintiff and certified that he was fit to go into some suitable employment. This was for the purpose of getting the plaintiff off the funds of the Grand Trunk Railway Benevolent Association.

Each side has thus examined their expert witnesses, and, while we may think that on the whole it would have been more satisfactory if the jury had given more weight than they seem to have done to the evidence given on behalf of the defence as to the possibility of a substantial recovery of the injured limb at a comparatively early period, it is impossible to say that the jury were wrong, in the face of the evidence given for the plaintiff, in adopting the adverse view, that the injury, which was undoubtedly an extremely severe and painful one, would leave the leg in a permanently weakened condition, which would incapacitate the plaintiff from engaging in the work he had been accustomed to, and in which he had been for a long time in receipt of substantial monthly wages, which, on the most favorable assumption, he would be deprived of for a period of 18 or 19 months. For that period at least he would be a disabled man; and, if the jury came to the conclusion that the disability was likely to continue for an indefinite period in the future, then, taking into consideration the plaintiff's prolonged and severe suffering and his present loss of wages, I am unable to say that the damages awarded are excessive, large as they undoubtedly are.

The defendants also complain of the conduct of the plaintiff's counsel at the trial in referring to the amount of damages claimed and the introduction of irrelevant matter in his address to the jury. This, however, was stopped and corrected by the trial Judge at the time, and in his charge to the jury, and so far as it went, I do not see that a case has been made for interfering with the verdict on this ground. For myself, I must say that as regards stating the damages claimed, I see no harm in it, and everyone who can remember the former practice on a trial at nisi prius must be familiar with the remark so frequently made by the Judge to the jury that within the amount claimed in the declaration the damages recoverable were in their discretion, or to that effect. The practice is, however, now supposed to be discontinued and disapproved of by high authority. But when counsel travel out of the record of the evidence, and make statements which can serve no purpose but to inflame the passions of the jurors, I should be glad to see the trial Judge firmly take the case away from them and dispose of it himself. A few examples of that kind would teach a salutary lesson to counsel who disregard their duty in this particular.

An objection taken on the ground of the rejection of evidence—