

the fault and negligence of the defendant; that the plaintiff personally, and his capacity of tutor of the said Clarence Herbert Steel, is entitled to claim and have from the defendant the sum of \$25,000, as and for damages occasioned by said collision, and resulting to the plaintiff and to the said Clarence Herbert Steel and as and for money paid out in connection therewith and for obligations necessarily incurred in connection therewith and for expenses that will be rendered necessary in the future in connection with the said accident and injuries, and for the pain and suffering of said Clarence Herbert Steel.

The defendant pleads ignorance of some of the allegations, and denies and admits others, and specially admits its liability in law to the plaintiff for all damages caused to him, if any, by the said collision, the said collision being due to the negligence of the defendant's servants and employes; but denies the quantum of damages.

Option was made for a trial by jury. The facts were fixed and a day assigned for the trial. Before the trial the plaintiff moved that the jury to be selected herein shall consist of persons speaking the English language, and that a day be fixed for striking the panel and another day for the trial.

The trial was fixed for the 18th of February. On the 15th of February the defendant made a motion by which the defendant prayed "that it be declared that a trial by jury cannot be had in the present case on the issues raised by the plaintiff's declaration, and that option for trial by jury herein be declared null and void, and the jury summoned to try the present case be discharged the whole with costs:

"1. Because the action of the plaintiff is not founded on a debt, promise or agreement of a commercial nature;

"2. Because part of the action of the plaintiff, as appears