

At the close of the argument, the judgment of the majority of the Court, (Boyd, C., and Latchford, J.), was delivered orally by BOYD, C.:—Two of the members of the Court agree that the appeal should be dismissed. My brother Middleton dissents. There has been a double trial, first on the question of the release, by the learned trial Judge, and then by the jury on the question of injuries to the plaintiff and damages. The learned trial Judge decided that the alleged settlement did not furnish an answer to the plaintiff's claim. The verdict for \$750 shows the estimate which the twelve men composing the jury placed upon the plaintiff's injuries. It is true that in the beginning, Mrs. Gissing was willing to release the Eaton Company from all liability on payment to her of \$200, and if that demand had been acceded to, it might have been a fair settlement and this case would never have been here. But \$50 was grossly inadequate, and was not commensurate with the injuries sustained by the plaintiff. The woman suffered a serious injury and is entitled to substantial damages. It cannot be said that the parties were dealing on equal terms. The woman was in bed; her leg was benumbed; she had that day suffered from a fainting spell caused by the pain from her injury; she was worried about the health of her husband, who was suffering from heart failure, and who was in a state of trepidation.

Black, the claims agent of the defendants, who negotiated with her, was an astute, alert man, who thoroughly understood the business in hand and its consequences. The learned trial Judge credits what the woman says of the matter. He also says in his judgment: "Black had alleged that they were prepared to prove by witnesses that she had not got hurt in the way she claimed at all, which, together with the fact that she had lost or forgotten the address of the only witness whom she had in mind to prove her case, would be circumstances which, in her then condition, would probably unduly influence her in accepting any proposed compromise."

Looking at all the circumstances, I am not able to say that the judgment should be disturbed. The appeal should be dismissed with costs.

LATCHFORD, J.:—I agree.

MIDDLETON, J.:—I cannot agree with the majority of the Court, and I think the appeal should be allowed. I need not recapitulate what my Lord, the Chancellor, has said about the facts. I think the case comes clearly within North British Railway