

is reported to have said: "If upon the materials before the learned Judge he has in giving judgment come to an erroneous conclusion upon certain questions of fact and we see that the conclusions are erroneous, we must come to a different conclusion, and act upon the conclusion that we come to, and not accept his finding. I have not the slightest doubt such is our power and duty. A great difference exists between a finding by the Judge and a finding by the jury. Where the jury finds the facts the Court cannot be substituted for them, because the parties have agreed that the facts shall be decided by a jury, but where the Judge finds the facts there the Court of Appeal has the same jurisdiction that he has, and can find the facts whichever way they like. I have no doubt, therefore, that is our jurisdiction, our power and our duty."

This language has been quoted more than once with approval in Canadian Courts: see *North British, &c. v. Tourville*, 25 S. C. R. 177, at p. 193; *Prentice v. Consolidated Bank*, 13 A. R. 69, at p. 74; see also the remarks of James, L.J., in *Bigsley v. Dickinson*, 4 Ch. D. 24, at p. 29. And a finding as to damages can stand upon no other footing than any other finding made by a Judge trying the case without a jury.

What is a reasonable sum is always to me a difficult question, from answering which I would gladly escape if consistent with my duty. The principles deducible from the cases of authority upon the measure of damages do not in my experience go very far in helping one except along general lines. The real difficulty is that within these lines there is almost always so much reason for honest difference of opinion.

The question of the proper measure of damages in such cases as this was much discussed in the well-known case of *Phillips v. London & S. W. R. Co.*, 4 Q. B. D. 406, affirmed in 5 Q. B. D. 78. That was the case of a surgeon of middle age, with a very large professional income, said to have been about £5,000 net per annum. The injury of which he complained had rendered his condition absolutely helpless, with no hope that he would ever be able to resume practice. The charge of Field, J., to the jury at the first trial, was after much discussion, in the end upheld as a correct guide upon the law of the case. In it he said: "Perfect compensation is hardly possible and would be unjust. You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and