

suffered much pain; and, even after he was able to be about, he must have suffered much physical discomfort from his nervous condition and the displacement of his heart, as described by the physician. For this pain and discomfort he is clearly entitled to compensation; and, in my opinion, the amount should not be less than \$400.

The plaintiff was guilty of no wrong, but suffered a wrong at the hands of the defendant; and he is not only entitled to be fairly compensated for his pecuniary loss, but he is also entitled to a reasonable allowance for the months of pain, inconvenience, and loss of enjoyment sustained by him.

With great deference to the learned trial Judge, I am driven to the conclusion that he did not give due effect to the undisputed evidence as to the plaintiff's physical injuries and suffering. As the sum awarded will not more than compensate the plaintiff for his pecuniary losses, I think it unreasonably inadequate, and that, in accordance with the principles laid down in *Rowley v. London and North Western R.W. Co.* (1873), L.R. 8 Ex. 221, and *Phillips v. South Western R.W. Co.* (1879), 4 Q.B.D. 406, 5 Q.B.D. 78, the judgment should be varied by fixing the damages at \$700, with costs, including the costs of the appeal, to be paid by the defendant.

---

BRITTON, J.

JULY 2ND, 1912.

RE SNETSINGER.

*Will—Construction—Devise of "Real Estate"—Land Subject to Contract of Sale not Included.*

Motion by Allan M. Snetsinger, upon an originating notice under Con. Rule 938, for an order determining a question arising in the administration of the estate of John Goodall Snetsinger, deceased, as to the construction of a clause in his will dealing with real estate in the township of Cornwall which belonged to the testator.

The motion was heard at Cornwall.

G. A. Stiles, for the applicant.

C. H. Cline, for the executors.

BRITTON, J.:—The testator made his will on the 19th November, 1906. On that day he owned several farms in the town-