

the reasons upon which Falconbridge, C.J., proceeded; but it may be assumed that, in the absence of the new evidence, he accepted the plaintiff's evidence as to the \$1,355.27 cheque. That having now been explained, and the whole matter carefully considered, I have reached the conclusion that a fair sum to award the plaintiff would be \$7,000, to which sum the present judgment should, I think, be reduced, and the appeal to that extent allowed.

Under the circumstances, there should be no costs of the appeal.

MEREDITH, J.A.:—This is not an application for a new trial, upon the ground that the damages assessed are excessive, or that they are inadequate: the damages were not assessed by a jury, but by a trial Judge; and so may be increased or reduced here without a new trial or new assessment: and, in another very material matter, the case is not the ordinary one of a motion to reduce or to increase the damages, because additional evidence, of a very material character, has been adduced upon the subject in this Court; evidence which, if it had been adduced before the trial Judge, might have very materially affected his conclusions upon the subject; so that one is really obliged to make a new assessment of the damages in the light of the new evidence: and, in view of the way in which this appeal was argued, it seems to me needful again to state the now well-settled principles on which damages are to be assessed in such a case as this.

The plaintiff's injuries arose out of an unfortunate accident—none the less unfortunate because caused by the negligence of the defendants' servants—in which the defendants and others, as well as the plaintiff, sustained very considerable loss; so that it is nothing like a case in which exemplary damages could be, properly, awarded: but is one in which the rule that, in estimating damages, recoverable for personal injury by negligence, the jury must not attempt to award the full amount of a perfect compensation, for the pecuniary injury, but must take a reasonable view of the case and give what they consider, under all the circumstances, a fair compensation, very plainly applies: and, it need hardly be added, that the same rule applies to Judges as well as to jurors. . . .

I would reduce the damages to \$7,000: which, I feel quite sure, is, to say the least of it, "a fair compensation."

MOSS, C.J.O., MACLAREN and MAGEE, JJ.A., concurred.

Order varying judgment by reducing damages to \$7,000; no costs of appeal.