

the plaintiffs alone, it would be impossible to argue reasonably that there was no reasonable proof of these things, and equally so upon the evidence adduced for the defence upon these questions if the testimony of the trainmen be excluded, it comes to this, that the charge of unreasonableness rests upon the evidence of men more or less interested, whom the jury, after seeing and hearing them, have discarded—with these things added, as I have said, I find it quite impossible to say that there was no case to go to the jury in these respects; or that the verdict is anything like a perverse one; or that it ought to be set aside, and another trial directed, because against the weight of the evidence. The case was, in my opinion, one for the jury in these respects, and they, as the Judges of fact chosen by the parties, having taken the responsibility of finding as they have found, in the plaintiffs' favour, for a second time, there would be, in my opinion, no legal justification for disturbing such findings now.

But upon the question of damages I am in favour of allowing this appeal. There was no reasonable evidence of any pecuniary loss to the plaintiffs by reason of the death of either son or daughter killed in this lamentable accident. Two things are indisputable: (1) that recovery can be had, in such an action as this, for pecuniary loss only; and (2) that such loss must be proved so that reasonable men can, upon their oaths, say that the sum awarded is a fair measure of such loss. There was no such proof in this case. According to the evidence, the plaintiffs and their sons and daughters were living as one household upon a farm which was owned by two of the sons, one who was killed and one who yet lives. The death of the two children has not altered that state of affairs, hitherto, in any manner, and there is no evidence whatever that it is likely to. It is said that the young man died intestate and unmarried; and, that being so, not only has the plaintiffs' position in the household not been prejudicially affected, but it has, in a legal sense, been very much strengthened, giving all of the family a legal interest in the farm, where, before, all but the two sons, nominally at all events, had no interest whatever except in the bounty of such sons. And there is no evidence to indicate any less ability in the family to manage and work the farm than there was before.

On this ground, the appeal should, I think, be allowed and the action dismissed; but there should be no order as to any costs. If this point had been raised and relied upon on the former appeal, this action should then have been dismissed, and