

## FLOTSAM AND JETSAM.

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TRIAL BY JURY.—The time-honoured institution, Trial by Jury, is occasionally playful, often stupid, but its antics are never so funny as when it gives way to rage and a frantic desire to "do justice (not only) between the parties" to the action, but between all other persons interested. Probably the jurors in the case that we report below had heard something of the fusion of law and equity, and thought they would act upon the equity theory of settling the rights of all the parties, and so avoid circuitry of action. The result was not happy, though the effort to help the widow at the expense of the railway company was praiseworthy. The case was tried at Gloucester, before Mr. Justice Grove, and will be found in *The Times* of Aug. 13th.

MALLAM V. ATTREE.

*Mr. Matthews, Q.C.*, and *Mr. Bosanquet* were for the plaintiff; *Mr. A. S. Hill, Q.C.*, and *Mr. Jelf* for the defendant.

This was a claim arising out of the terrible accident that occurred on the Great Western Railway at Shipton on the 24th of December last.

It appeared that the defendant, a widow lady, and sister-in-law of Mr. Whalley, was a passenger in the train that night, and that she was one of those who received considerable injury. She was taken in the first instance to the house of Dr. Hitchings, at Oxford, and afterwards, at his suggestion, was removed to the King's Arms Hotel. She remained there seven weeks with her daughter, who was also a sufferer by the accident; and the present action was brought by the landlord of the hotel to recover £117 for the use of the hotel and for necessaries prescribed for the defendant during her stay in the hotel.

It was not disputed for the defendant that this charge was extravagant, except as to £4, which was paid into court, that everything that was furnished was not necessary as well as reasonable; but it was contended that if anybody was liable for the hotel bill it was the Great Western Railway Company, and not Mrs. Attree. It appeared that a Dr. Cooper had come to the hotel while the defendant was there on the part of the railway company, and had directed that everything should be done for her which the circumstances of the case required; and it also appeared that the company had been applied to for the payment of the bill, but had refused on the ground that they were not liable.

The learned judge summed up the case at considerable length. He directed the jury that

if a person be in an absolutely helpless state, and anybody else chooses from charity to take the person, being unconscious, into his house, and then to assist him from kind motives with food and shelter, there is no implied contract on the part of the person so befriended to pay for the benefits received, because he was unconscious, and could not therefore have a contracting mind. But though this was the law, it would only have a partial application in the present case, as there was no pretence that the defendant had been unconscious all the time. The question then would remain, whether, after the defendant had regained consciousness, there was any ratification on her part, expressed or implied, of her liability with regard to the plaintiff. As to this the jury would have to look at her conduct, and if they found that she received the hotel bills from time to time without complaint, that would be evidence from which they might imply ratification. Coming, then, to the main question, his Lordship said the jury would have to say whether there was the ordinary implied contract between the plaintiff and the defendant, or whether the plaintiff expressly did not treat the defendant as liable, but intended exclusively to give credit to the Great Western. If the application to the defendant was a mere afterthought, the defendant would not be liable, but if, on the other hand, the plaintiff never gave up looking to the defendant as ultimately liable, and only applied to the company as an experiment or test, then the defendant would be liable.

The jury retired to consider their verdict. After an absence of nearly an hour, they returned into court, and said that the verdict was against the Great Western Railway for £100.

The learned judge reminded them that the Great Western had nothing to do with the action, and that they must find either for the plaintiff or the defendant.

The jury considered a few minutes, and then announced that the verdict they meant was one for the defendant for £100.

This second and reconsidered finding was received with loud laughter in the court, and the jury were again sent back.

The foreman then said that the jury were agreed upon a verdict for the plaintiff for £75, or as much less as his Lordship pleased.

His Lordship said that what he pleased was not what they had to consider, and the jury then repeated the verdict without that qualification.

His Lordship said he could only enter a verdict for £17, but he should be obliged to tell the Court that it was an unsatisfactory verdict.

The jury were then asked whether their verdict was to include the £4 paid into court, and upon their answering in the affirmative, a verdict accordingly was entered for the plaintiff for the amount.

His Lordship stayed execution, and said he would consider till to-morrow morning whether he certified the costs.