

There must be a new trial, and in that view it is proper to refrain from further discussion of the evidence bearing on any branch of the case. But, in view of the fact of two trials by jury, with most unsatisfactory results in each instance, and of the accumulation of testimony occasioned thereby, it may be well worthy of the consideration of the next trial Judge whether a jury should not be dispensed with. It would certainly be satisfactory if the case could be finally disposed of without more than another trial.

There will be no costs of the last trial. The costs of the appeal will be costs to defendants in any event of the action.

MACMAHON, J.

APRIL 5TH, 1905.

TRIAL.

GUMMERSON v. TORONTO POLICE BENEFIT FUND.

*Pension — Police Benefit Fund — Police Officer Permanently Incapacitated—Retirement from Service—Injuries Received in Execution of Duty—Evidence.*

Action for a declaration that plaintiff was entitled to a pension from defendants, and for payment of arrears thereof.

Plaintiff was for nearly 15 years a member of the Toronto police force, and during that period a percentage was deducted from his pay, as provided by the rules and regulations, forming a benefit fund to provide allowances and pensions for sick and disabled members of the police force. Plaintiff alleged that he was entitled to be paid by defendants a pension for life at the rate of 75 cents per day from 1st September, 1903.

Section 32 of the rules of the Toronto police benefit fund provides that "where, in the execution of duty, such injuries have been received as, in the opinion of the police commissioners, permanently incapacitate the member from further service on the police force, the following regulations shall govern: . . . (b) after 10 years' service, or not more than 20 years' service, the member shall be entitled to receive a pension of three-eighths pay for life, such pay being computed at the rate, or the average rate, of pay received by the member during the last year of service."

Section 36 provides that "any member claiming an allowance or pension who is dismissed or compelled to resign shall have his case considered by the committee, and his right to any allowance or pension determined by a majority