

the ground that plaintiff had no reasonable expectation of pecuniary benefit from the continuance of his son's life.

W. E. Middleton, for plaintiff.

I. F. Hellmuth, K.C., and C. H. Ivey, London, for defendants.

The judgment of the Court (BOYD, C., MAGEE, J., MABEE, J.), was delivered by

BOYD, C.:—Under Rule 110 the Judge at the trial may proceed to assess damages when that is the only matter to be disposed of (as in a case like the present, where defendants admitted liability for the death of the son), and his decision upon the evidence and credibility of witnesses should not be disturbed unless there has been clearly a miscarriage of justice. The expectations of the family from the son must have been slight at the highest, and it cannot be said that the Judge (as a jury) might not reasonably find that, in the circumstances of this case, there was no sufficient evidence to justify more than nominal damages. I think there was some evidence which could not have been withdrawn from a jury: *Hetherington v. North Eastern R. W. Co.*, 9 Q. B. D. 160. But with a Judge alone, sitting as a jury, it was competent for him to disbelieve the witnesses or to consider that there was no reasonable expectation of any pecuniary benefit. A verdict for nominal damages is not to be given in these cases under the Act: *Boulter v. Webster*, 11 L. T. N. S. 598: and if no damage is proved to the satisfaction of the Judge, dismissal of the action is the proper course.

Appeal dismissed. No costs.

MABEE, J.

APRIL 12TH, 1906.

CHAMBERS.

RE McDERMOTT v. GRAND TRUNK R. W. CO.

*Division Courts—Trial of Plaintiff by Jury—Motion for Non-suit — Reservation till after Verdict — Jurisdiction of Judge—Indorsement of Verdict and Costs on Record—Inadvertence — Judgment—Execution — Stay — Prohibition.*

Motion by plaintiff to prohibit proceedings under an order made by the Judge of the County Court of Simcoe on