

ment of the shares of B. and C., or whether, if it had that effect, what took place between the plaintiff and B. amounted to a binding agreement to give him and C., or either of them, time for the payment of their shares, that it was not shewn that the defendant had been prejudiced by such giving of time. The onus of proving this rested on the defendant and he had to shew that he had suffered pecuniary loss or damage as the reasonably direct and natural result of the plaintiffs having given the extension of time; but his evidence failed to shew this to any extent, as he had paid the money and executed the release on the strength of the statements made to him by B. and C. and not in reliance on anything the plaintiff had done or omitted to do.

Judgment for the plaintiff for the full amount of the \$2,000 and interest and costs of the action.

Wilson and Elliott, for plaintiff. *Howell*, K.C., and *Hough*, K.C., for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.] WATERLAND v. CITY OF GREENWOOD. [Nov. 15, 1901.

Verdict indefinite—May be construed from the circumstances of the case—Jury—Discharge—Recalling and amending verdict—Effect of—New trial—Parties bound by conduct of trial—Non-direction.

In an action for damages caused by water being backed up on to plaintiff's premises, the jury did not answer the questions put, but answered, "We have not answered exactly in the form of the question. We find that the construction and grading of the street across Boundary Creek caused the plaintiff damage in the sum of \$3,000," without stating that the grading was done by defendants. It appeared that the dispute at the trial narrowed down to whether it was the grading of the street by defendant or the grading of an alley by one Fletcher that caused the damage. On the verdict, judgment was entered for plaintiff by *WALKER*, J.

Held, on appeal, that from the circumstances of the case, the verdict would support the judgment.

Where counsel at the trial abstains from asking the judge to submit a point to the jury, a new trial will not be granted on the ground of non-direction as to that point.

After judgment was pronounced and the jury was discharged, at the direction of the Court, the jury was recalled and asked certain questions as to the meaning of the verdict, and the verdict was amended accordingly.

Held, that whatever was done after the discharge of the jury was a nullity. Appeal dismissed and new trial refused.

Bodwell, K.C., for appellant. *Davis*, K.C. (*W. A. Macdonald*, K.C., with him), for respondent.