

Montreal exchange and proved that they sold at about fifty per cent. premium. The judge in charging the jury directed them to assess the damages "upon the extent of the injury plaintiff received independent of what these people may be or whether they are rich or poor." The plaintiff obtained a verdict with heavy damages.

*Held*, that on the cross-examination of the witness by defendant's counsel the door was not opened for re-examination as to the selling price of the stock; that in view of the amount of the verdict it was quite likely that the general observation of the judge in his charge did not remove its effect on the jury as to the financial ability of the Company to respond well in damages.

The injury for which plaintiff sued was his foot being crushed, and on the day of the accident the medical staff of the hospital where he had been taken held a consultation and were divided as to the necessity for amputation. Dr. W., who thought the limb might be saved, was, four days later, appointed by the Company at the suggestion of plaintiff's attorney, to co-operate with plaintiff's physician. Eventually the foot was amputated and plaintiff made a good recovery. On the trial plaintiff's physician swore to a conversation with Dr. W., four days after the first consultation and three days before the amputation, when Dr. W. stated that if he could induce plaintiff's attorney to view it from a surgeon's standpoint and not use it to work on the sympathies of the jury he might consider more fully the question of amputation. The judge in his charge referred to this conversation and told the jury that it seemed to him very important if Dr. W. was using his position as one of the hospital staff to keep the limb on when it should have been taken off, and that he thought it very reprehensible.

*Held*, STRONG, C.J., and GWYNNE, J., dissenting, that as Dr. W. did not represent the Company at the first consultation when he opposed amputation; as others of the staff took the same view and there was no proof that amputation was delayed through his instrumentality; and as the jury would certainly consider the judge's remarks as bearing on the contention made on plaintiff's behalf that amputation should have taken place on the very day of the accident, it must have affected the amount of the verdict.

To tell a jury to ask themselves, "If I were plaintiff how much ought I to be paid if the Company did me an injury?" is not a proper direction.

A party to an action who procures a commission for taking evidence abroad has no right to prevent its return. Appeal allowed without costs, and new trial ordered limited to amount of damages. (The case was settled without a second trial.)

*Quigley*, Q.C., and *Stockton*, Q.C., for appellant. *Pugsley*, Q.C., and *McLean*, Q.C., for respondent.