

dealt with a verdict based on the answers to twenty-five questions involving various charges of negligence, the answers to which were in some cases inconsistent, and in others unsatisfactory. These judgments were necessarily lengthy, and as the plaintiff on this trial was still relying on the same charges of negligence, or at least had abandoned none of them, it is quite possible that the extracts which were read had no reference to the one particular act of negligence to which this case has now been narrowed down, and upon which the verdict has been entered, as having been the proximate cause of the accident. In that case the comments of the judges would be immaterial. But, assuming otherwise, what have we to enable us to form an opinion? In the first place Landry, J., who was presiding and saw and heard all that took place, expresses his opinion that the jury could not have been biased or prejudiced in any way, and the same question as to this particular act of negligence had on the same evidence been answered in the same way by previous juries. We have also the fact that the evidence itself largely preponderates in favour of the finding of the jury as to the fact of negligence, and there is no dispute as to the accident being caused by the falling of the plank. We have also to remember that it is with reluctance this Court sends down a cause even to a third trial, and then it is usually on payment of costs: *Hartley v. Fisher*, 6 N. B. R. 694. There is, I think, no sufficient reason for concluding that these specially selected jurors, even with the latitude given them by the Judge, subordinated their own opinions to those of the two dissenting Judges, or that the unanimous verdict which they have given was not their own deliberate view of the evidence, but merely an echo of the views of these two gentlemen.

Apart from what I have already said, I should be prepared in this particular case to refuse a new trial even if the reading of these judgments were to be considered as equivalent to misdirection or improper reception of evidence. Section 376 of chap. 111, Con. Stat. 1903, provides that a new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence unless in the opinion of the Court some substantial wrong or miscarriage has been thereby occasioned in the trial of the action. A similar section came under review in *Bray v. Ford* (1896), A. C. 44. That was an action of libel in which the Judge at