

The Court pronounced this interlocutor:—

“Sustain the appeal and recal the said interlocutor appealed against: Find in fact in terms of the first, second, third, and fourth findings in the said interlocutor appealed against: Find further in fact (5) that it is not proved that the defenders failed to maintain the roadway at the level-crossing where the accident in question occurred in a proper and safe condition, and (6) that the accident in question was not occasioned by any fault or neglect of duty on the part of the defenders: Find in law that the defenders are not liable to the pursuer for the claim now made: Therefore assoliszie the defenders from the conclusions of the action, and decern,” &c.

Counsel for the Pursuer and Respondent—  
A. S. D. Thomson—Scott Brown. Agents  
—Pairman, Easson, & Millar, S.S.C.

Counsel for the Defenders and Appellants  
—Guthrie, K.C.—King. Agents—Hope,  
Todd, & Kirk, W.S.

Saturday, January 18.

#### FIRST DIVISION.

REID v. MORTON.

Process—Jury Trial—Motion for New Trial—Insufficiency of Damages—Reparation.

In an action of damages for personal injuries a dock labourer obtained a verdict for £20. Before the accident by which he was injured he was regularly employed, and was earning £2 a-week, and in the fourteen weeks succeeding the accident he only earned £2 altogether. The pursuer moved for a new trial on the ground of the insufficiency of the damages, and maintained that he had lost £26 in wages, and was entitled in addition to damages for the pain he had suffered, the expense he had been put to, and the injury to his future prospects through impaired health.

Held that insufficiency of damages was a competent ground for granting a new trial, but that the insufficiency must be such as to be unreasonable or perverse, and to amount to a miscarriage of justice; and that in this case although the Court sitting as a jury might have assessed the damages at a larger sum, there was not sufficient cause for setting aside the verdict, the jury being entitled to take into consideration the uncertainty attending the chances of regular employment in the pursuer's trade.

James Reid, Rutland House, Mair Street, Govan, raised an action of damages for personal injuries against Robert Morton, builder and contractor, Weir Street, Paisley. The damages were laid at £100.

The case was tried before a jury.

From the evidence led for the pursuer it appeared that he was a dock labourer, and that prior to the accident whereby he sustained injuries he was regularly employed and was earning £2 a-week; that during the fourteen weeks immediately succeeding the accident, for the first eight of which he was completely disabled, he only earned £2 altogether; that to some extent he was not fit for work after that period of fourteen weeks, and that at the time of the trial, eight months after the accident, symptoms resulting from his injuries were still present.

The defender led no evidence.

The jury returned a verdict for the pursuer and assessed the damages at £20.

The pursuer obtained a rule on the ground of insufficiency of damages.

Argued for the defender—There were only two cases in which a new trial had been granted on the ground of insufficiency of damages—*Leven v. Young & Co.*, May 14, 1818, 1 Murray, at p. 373; *Black v. Croall*, January 31, 1854, 16 D. 431. In both these cases it was clear that the jury had proceeded on a wrong basis. Here the jury were justified in their estimate. Looking to the whole circumstances of the case the sum awarded was one at which the jury were entitled to arrive—*M'Laurin v. North British Railway Co.*, January 5, 1892, 19 R. 346, 29 S.L.R. 291. Though the Court should be of opinion that a larger sum might have been awarded, that was no reason for setting aside the verdict—*Young v. Glasgow Tramway and Omnibus Co.*, November 29, 1882, 10 R. 242, 20 S.L.R. 169. The defender was entitled to call upon the pursuer to show that the verdict was unreasonable. Insufficiency of damages was not one of the statutory grounds for granting a new trial—55 Geo. III. c. 42, sec. 6.

Argued for the pursuer—It was sufficient cause for setting aside the verdict that the damages were unreasonable, whether unreasonably large or unreasonably small—*Black v. Croall, cit. sup.* There was no evidence to contradict the evidence for the pursuer, according to which he had lost £26 in wages during the fourteen weeks succeeding the accident, during which he only earned £2, and continued to be unfit for his ordinary work beyond that period. Therefore, however small a figure was put upon his loss in wages, £20 was inadequate. Besides loss in wages the pursuer was entitled to damages for the pain he had suffered and the expense he had been put to, and for the damage to his future prospects through impaired health. No reasonable view could reconcile the verdict with the evidence; accordingly the verdict could not stand.

LORD PRESIDENT—This is a somewhat singular case, the pursuer's allegation being that the amount of damages awarded is insufficient. It is certainly not common for juries to give too small an amount of damages, and where it is alleged that this has been done it would require strong reasons to induce us to interfere. Unless we were

clearly of opinion that the jury had erred we would not be justified in disturbing their verdict. Mr Munro endeavoured to demonstrate that the pursuer had incurred not a random but a proved loss of £26 in wages alone during the first fourteen weeks after the accident, eight weeks during which he earned nothing and six weeks during which he earned only £2, making together a loss of £26 in wages during these weeks, allowing nothing either for future loss through diminished earning capacity or for the expense to which he had been put or the pain which he had suffered. That is *prima facie* a strong case, and I have no doubt that it was put strongly before the jury, as it has been submitted to us. The calculation of loss depends entirely on whether the pursuer would have earned £2 a week for the period during which the loss of wages is said to have been sustained. If he had been under a contract of employment at a fixed wage during all that time the loss would have become a matter of demonstration. But that is not the case, because the pursuer is a dock labourer, and it is a matter of common knowledge that dock labourers are employed and paid by the hour, sometimes getting a full day's work and sometimes getting none at all. There is therefore no definite standard in this case which could be applied to the whole period for which the loss has to be computed, and it was for the jury to judge, as men of practical knowledge, whether the pursuer would or would not have got full wages during all that period in respect of which the claim is made. Without disbelieving the pursuer, they may have thought he took too sanguine a view of his chances of constant employment. It therefore appears to me that we cannot say that the jury erred in the conclusion at which they arrived.

LORD ADAM concurred.

LORD M'LAREN—Our attention was very properly directed by Mr Watt to the point that in the statutory enumeration of the grounds on which a verdict may be set aside there is no special mention of insufficiency of damages. From this it may perhaps be inferred that it was not intended that relief should be so readily given on the ground that the damages awarded are insufficient as on the ground that they are excessive. But under the general head of "other cause essential to the justice of the case" it has been held that it is open to the Court to consider a case of this kind and to allow a new trial where, for example, under an issue of damages for breach of contract the jury has awarded a less sum than the special damage calculated or proved.

Another example in point would be a claim for damages for injury to person or property where the amount of damages was capable of exact calculation, and where the damage awarded is less than is shown by exact methods to have been actually incurred.

But the present case is not of that kind. I agree with your Lordship in the chair

that where the damage consists in deprivation of wages it is for the jury to determine whether the pursuer would have earned the maximum wage payable in his particular trade. When all the evidence is taken into account in this case which could legitimately influence the minds of the jury, I am unable to say that their award was so much below what we should be disposed to give that no reasonable jury could have arrived at such a sum on the evidence adduced. I do not think that the error, if it be error, is of such magnitude that we ought to exercise our statutory power of submitting the questions for retrial by another jury.

LORD KINNEAR—I have no doubt that the ground upon which we are asked to set aside this verdict is competent in law, and the only question is whether it is made out in fact. I am unable to see any difference in reason between the right to get rid of a perverse verdict because it gives too much and the right to get rid of it because it gives too little.

The question depends in either case upon the same principles, and there is nothing in the Act which seems to me to indicate that the two cases should be treated differently. What is required to establish a right to a new trial is that the party who challenges the verdict should satisfy the Court that the verdict is perverse. If it is, it is immaterial whether the ground of challenge is that the amount awarded is excessive or insufficient.

I must say that in this case, agreeing with Lord M'Laren, I think I should have given more than the jury have awarded. But assuming that your Lordships agree with me that the award was insufficient, the question remains whether the jury have gone so far wrong as to enable the Court to overturn the verdict.

I do not think there are in this case sufficient grounds for interference, because the pursuer has not shown by definite evidence that the actual loss of wages by which he was out of pocket exceeded the sum awarded. If that had been made out I should have been disposed to hold that there was sufficient reason for a new trial, but I am of opinion that it has not been made out, and that we would not be justified in setting aside the verdict in this case.

The Court discharged the rule and applied the verdict.

Counsel for the Pursuer—Munro. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defender—Watt, K.C.—A. S. D. Thomson. Agent—A. C. D. Vert, S.S.C.