

NISI PRIUS COURT.

WEDNESDAY, March 14.

(Before Mr. Justice Hill.)

JOLL AND OTHERS (EXORS.) v. The MIDLAND RAILWAY COMPANY.

(SPECIAL JURY.)

Mr. Temple, Q.C., and Mr. Blanshard were for the plaintiffs; Mr. Overend, Q.C., Mr. Manisty, Q.C., and Mr. Kemplay, were for the defendants.

The plaintiffs, Mr. Samuel Joll, Mr. John Maw Barker, and Mr. William Read, are the executors under the will of the late Mr. John Maw, who was an alderman of the corporation of Doncaster, and who was a farmer, wine merchant, and draper. They sought to recover damages against the Midland Railway Company (the defendants), in consequence of Mr. Maw having received such injuries whilst travelling on their line as to cause his death. On the 11th October last, Mr. John Maw was a third class passenger by the 1.10 p.m. train from Doncaster to Sheffield, due at the latter town at 1.55. At a distance of between 500 and 600 yards from the Sheffield Station there is a branch line or siding leading to the Cyclops Works, and the points at this siding are managed by a man named Wilcockson, whose duty it is to prevent trains from leaving the main line, and proceeding along the siding. The train in which the late Mr. Maw travelled on the day in question, in consequence of some negligence on the part of the pointsman Wilcockson, went upon the siding, and came in collision with some waggons standing there. The result was that Mr. Maw was so severely injured that he died in a few days afterwards. He was then taken to the house of a relative in Sheffield, and was there attended by some medical gentleman sent by the railway company. Mr. Maw went on favourably at first, and consequently Mr. Lister, of Doncaster, his medical adviser, did not visit him; but unfavourable symptoms set in, and on the 14th of October, 1859, three days after the accident, Mr. Maw died of the injuries he had sustained. His executors therefore brought this action to recover damages for gross negligence and carelessness on the part of the company, resulting in Mr. Maw's death. The income of the deceased was stated to be between £900 and £1,000, which was realised by the three occupations he had followed, the rent of his farm being £380 per annum. The deceased was 58 years of age, a man in good health, and it was alleged would, in the ordinary course of things, have lived for some years longer, and added to his property to be divisible amongst his family, which property at the time of his death amounted to £12,000 and upwards. Mr. Maw left behind

him a widow, who was now living upon an annuity of £110, under her husband's will, and two sons and a daughter, who had attained mature age, and two of them were married. It was contended that the widow was in a far worse position in life by the death of her husband, for instead of having the enjoyment of a share of the £1,000 per year, she has now been reduced to £110 annually, had to reside in a smaller house than previously, and was deprived of comforts which she before possessed, in consequence of her contracted pecuniary means. It was also submitted that the sons and daughter had also suffered pecuniary loss by the decease of their father, and that they and their mother were entitled to reasonable compensation for the great loss they had sustained.

Mr. Overend, in defence, submitted that only the widow was entitled to compensation, the sons and daughters not being pecuniarily injured by the death of their father. The widow, it seemed, was to have an annuity of £110; that sum was fixed by the will, she could have no more at her husband's death. In the ordinary course of nature Mr. Maw would not have lived more than a few years; he was 58 years of age, and was labouring under disease of the heart and liver, and inflammation of the bowels, and was a man not at all likely for life. The pecuniary loss of the widow was not great, for she was now in the full possession of the income allowed to her, and her loss, therefore, was only the difference in the amount of the annuity, and her share of the £900 or £1,000 per year, her husband's income in his lifetime. Mr. Maw lived nearly to the full extent of his income, and therefore his property would not have much accumulated if he had lived for years. Such being the fact, the sons and the daughter had sustained no pecuniary loss, but in fact were gainers, as they would come to their fortunes earlier by the premature death of their parent. The learned counsel admitted that the company were liable to pay compensation to the widow, and he called upon the jury not to award extravagant damages, but reasonable—even liberal damages if they liked.

Some medical testimony was adduced on the part of the defence, to show that the late Mr. Maw was labouring under disease of the heart, lungs, and liver, at the time of the accident.

The jury retired, and were absent for nearly an hour, and then found for the plaintiffs—damages £1,000 for the widow, and £20 each for the two sons and daughter.