All the circumstances as they existed must be taken into consideration in determining negligence. The same may be said of putting the piece of plank in front of the wheel of the car. What the plaintiff did is what a reasonably prudent man might under the circumstances have done.

It follows that the accident was a mere accident not necessarily attributable to negligence, and so the plaintiff cannot recover.

If the case should go further with the result that an assessment of damages would be necessary, I would allow the plaintiff $1,000 with costs.

As I have said the plaintiff was very badly hurt. The plaintiff has been for over six months unable to work, is still unable, and will be so for a considerable time yet. The medical gentleman's account is $88, and allowing for pain and suffering the sum of $1,000, would be moderate.

Before action the plaintiff told defendants that his doctor's bill was $88, and that he the plaintiff had paid $53.20 for 10 weeks and 6 days in the hospital. In reply to this the defendants sent to plaintiff a check for $88, but the plaintiff did not use this check, as it had upon its face "for final settlement of claim and in full of all demands in connection with injuries received in October, 1911." The defendants did not ask to withdraw that check—and I trust that in the event of the case going no further the defendants will not stop payment, but will allow the plaintiff to receive at least the $88, amount of check.

The action will be dismissed without costs. Thirty days' stay.

MASTER IN CHAMBERS. MAY 29TH, 1912.

SHAPTER v. GRAND TRUNK RW. CO.

3 O. W. N. 1334.

Discovery — Affidavit on Production — Railway Accident — Reports for Information of Solicitor — No Special Direction — Reports Made to Railway Board of Commissioners—Claim of Privilege—Sufficiency—Examination of Servant of Company.

In this case an affidavit on production was filed by defendants which admittedly was not adequate. Another affidavit