

until the next jury sittings for the purpose of having an X-ray examination of the plaintiff. This application I granted, on certain terms as to costs to be paid by the defendants.

As I have stated above, I was extremely anxious to dispose of the case once for all, but now, inasmuch as I have a strong view regarding the portion of the case which I tried myself, I conceive it to be my duty to decide that issue before the parties incur any more expense.

The defendants filed a release under seal, the consideration being \$40 and payment of hospital fees and of the physician's services in connection with the plaintiff's injuries. The plaintiff is not a marksman, but signs his own name, and he also endorsed two cheques for \$20 each, and his wife got them cashed. The cheques themselves say, on their face, "this amount being in final settlement of claim known as number 2731 on the records of the claims agent of this company."

The evidence may be summarised as follows. The plaintiff swears: "I don't mind putting my signature there; I don't remember seeing Heyd" (the Grand Trunk agent at Owen Sound) "at the hospital. I had not consulted a lawyer or made any claim on the Grand Trunk in the hospital. I don't remember getting the money on the cheque." His wife swears that "his memory is not of much account. He would talk with me one day and argue with me the next day that I had not been there the day before." Oscar Arkles, son of the plaintiff, says that "when he was in the hospital sometimes he would know me and sometimes not; he does not remember things. I did know what was in them when I took the cheques to mother. Father told me to take them home to mother." Arthur Little said that he knew the plaintiff and saw him three or four times in the hospital, and that the plaintiff did not recognise him. Samuel Graham knew him a week or two and saw him about two weeks after the accident, and thinks that the plaintiff knew him.

For the defence was called Brown, foreman for Wright & Company. The plaintiff told Brown that he had made a settlement. Brown had warned him not to make any settlement until he went out. Dr. Dow was sent for by Wright & Company. "I never knew there was anything the matter with the man mentally. He recognised me from day to day." (He was 50 days in the hospital). J. G. Heyd, Grand Trunk agent at Owen Sound, says that the plaintiff was certainly sensible enough when he and Shepherd, the claims agent, were there.