

and the rail for the wheel flange. As to the actual width of the space the jury may very well have discounted the evidence of the section foreman, practically the only witness, as to its measurement, and they may well have preferred the plaintiff's statement that his heel, $21\frac{1}{2}$ inches wide, had gone into it, as the best proof of the width, since the planks had been taken up and a new rail put down in the interval. The defendants' own witnesses, including the two physicians, say that the plaintiff was sober.

The answers of the jury, as ultimately brought in by them, find the defendant company negligent in not having the crossing in proper order, or the accident would not have happened, because there was space enough for the plaintiff's foot to get caught between the rail and the plank, and that the plaintiff could not, by the exercise of reasonable care, have avoided the accident.

These answers are not inconsistent with answers previously made or the jurors' statements in Court. They were fully instructed; and I do not think the judgment for the plaintiff upon their answers should be disturbed.

MACLAREN and HODGINS, J.J.A., concurred.

Appeal dismissed.

APPELLATE DIVISION.

JANUARY 27TH, 1913.

CHAPMAN v. McWHINNEY.

Principal and Agent—Agent's Commission on Sale of Land—Quantum—Evidence.

Appeal by the defendant from the judgment of LENNOX, J., ante 417.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.
Gordon Waldron, for the defendant.
A. F. Lobb, K.C., for the plaintiff.

THE COURT varied the judgment below by reducing the amount to be recovered by the plaintiff for commission from \$6,675 to \$5,675. In other respects judgment below affirmed.
No costs of appeal.