

HON. SIR G. FALCONBRIDGE, C.J.K.B. DEC. 12TH. 1913.

ARKLES v. GRAND TRUNK R.W. CO.

5 O. W. N. 462.

Release—Action for Negligence—Personal Injuries—Release Executed in Hospital—Alleged Fraud or Undue Influence—Mental Condition of Plaintiff—Evidence—Dismissal of Action.

FALCONBRIDGE, C.J.K.B., dismissed an action brought against defendant railway company for damages for alleged negligence upon the ground that plaintiff had released defendants from liability by instrument in writing, and there was no evidence to justify a finding that such release had been procured by fraud or undue influence.

Gissing v. Eaton, 25 O. L. R. 50, referred to.

Action tried at Owen Sound, to recover damages for injuries said to have been sustained by the plaintiff owing to the negligence of the defendants. The defendants filed the usual pleadings denying negligence and alleging contributory negligence, and further setting up a release under seal. The plaintiff replied that the release had been obtained by fraud and undue influence on the part of the defendants and their agents, and therefore was not binding upon him.

W. M. Wright, and J. A. MacDonald, for plaintiff.

D. L. McCarthy, K.C., for defendants.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—I proceeded to try the issue on the release first and reserved judgment thereon meaning to go on and try the remaining issues with the aid of the jury, so that the case would be finally disposed of as far as the trial was concerned. Then counsel for defendants made an application to put off the trial 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. Plaintiff is not a marksman but signs his own name and