been protected by independent advice, could be believed in stating that, no matter what was explained, he believed from what was said that what he was releasing, and all he intended to release, was a claim to wages during his compulsory idleness—all parties, headed by the doctor, apparently being under the impression that at the end of the period for which he was being paid he would be well and back at work. . . .

The evidence of negligence is . . . meagre . . . but it sufficiently appears, I think, that the coal was . . . unnecessarily piled in the tender, above the sides, in such quantity and manner that the rapid motion of the train could and did shake "down" the "chunk" which, falling upon the corner, flew off with dangerous force and struck the plaintiff. Counsel for the defendants contended that the maxim res ipsa loquitur has no application in cases of negligence alleged by the servant against the master, and relied upon the remarks to be found in Beven on Negligence, 3rd ed., pp. 129, 130. But what is there said, taking it altogether, only amounts to this, that liability does not arise from mere proof of the accident. . . . As I understand it, the application of the maxim, which after all is a mere phrase and not a rule of law, never dispenses with any necessary proof, but is only intended as a guide to the point in the evidence at which the burden of proof is shifted. Negligence consists of two elements, the burden of proving both of which originally rests upon the plaintiff, namely, the duty to take care and its breach. The maxim has nothing to do with the former; and in the case of the latter only determines that when the plaintiff has proved the duty and also a certain condition of things causing or conducing to the injury complained of, he has proved enough to call for explanation by the defendant—in other words, the burden of proof is shifted. So understanding the matter, I see no good reason why the maxim is not as applicable in such cases as this as it is in any other case of negligence. . . .

[Reference to Smith v. Baker, [1891] A. C. at p. 335; Scott v. London Dock Co., 3 H. & C. 596, 601.]

The unexplained fall of the coal, under the circumstances stated, is in itself, in my opinion, evidence from which an inference might well be drawn that those in charge or control of the locomotive (see sub-sec. 5 of sec. 3 of the Workmen's Compensation Act) were negligent in their mode of using it by piling or permitting it to be piled upon the tender so high and unprotected that chunks of it could be hurled by the necessary motion of the train with such force as to break a man's leg 15 or 20 feet away. The plaintiff's evidence . . . was uncontradicted. . . . Nor was any evidence whatever given by the defendants in explanation or excuse for such a