

the course of the plaintiff's employment as a baggageman upon the defendants' railway. The plaintiff made an alternative claim for damages for breach of contract in not giving him employment after he recovered from his injuries.

The defendants set up a release executed by the plaintiff. At the trial at St. Catharines, the issue as to the release was found in favour of the defendants, and judgment was reserved as to the alternative claim.

M. J. McCarron, for the plaintiff.

W. E. Foster, K.C., for the defendants.

FALCONBRIDGE, C.J.K.B., in a written judgment, said, dealing with the alternative claim, that the plaintiff was by no means illiterate (although he might not have had sufficient education to fill one of the positions which he desired to get), and he executed the release. His daughter said that he told McCraw, the claims-agent, when he was writing it, not to forget to put in that the doctor's and hospital bills should be paid by the defendants. It was a pity that he did not insist on having the agreement to employ him also written in. He now asserted that promise as the condition of his signing the release. McCraw denied it. The plaintiff's daughter corroborated her father's statement, but on cross-examination stated that McCraw said he would do his best to get a position for the plaintiff. To the plaintiff's knowledge, McCraw was not the officer who could make the appointment to any of the positions in question.

The correspondence shewed that the defendants did make bona fide efforts to give the plaintiff employment—even after the expiry of six months from the accident.

The learned Chief Justice said that he had re-perused and re-considered all the cases cited by him in *Arkles v. Grand Trunk R.W. Co.* (1913), 14 D.L.R. 789, 5 O.W.N. 462. They were equally applicable to this claim as to the other part of the case. He thought that no Court could dispose of this issue in favour of the plaintiff, and on this branch also he failed.

The action should be dismissed, in all the circumstances without costs.