

place." . . . On cross-examination he said that he thought the company were "practically" making a present to plaintiff of \$30.

If Wickens, instead of having to report to defendants and having a cheque sent to them, had actually, and under the circumstances as stated by himself, handed over the \$30 and taken such a receipt as was taken by McIntosh, could that be held as a binding release upon plaintiff? I think not.

Wickens was simply interested for the insurance company, and he offered to pay for 3 weeks' wages, because he thought plaintiff would be back to work at the end of that time. When the alleged settlement actually took place, defendants knew that plaintiff had been laid up for a much longer time than 3 weeks, and that plaintiff was not then well, but only "getting better." There seems to have been no negotiation by defendants for a settlement. They notified Wickens, and put him upon the case. There was the correspondence and the letter of 29th March, 1905, before referred to. This letter is the only thing that offers reasonable argument in favour of upholding the alleged settlement. Plaintiff is comparatively illiterate. He could not write, and I am inclined to think could not dictate such a letter—although he would, as against defendants, if the letter had been acted upon and if held to mean a settlement of his entire claim against defendants, be bound by it. McIntosh admits that plaintiff did not read the receipt or read the indorsement on the cheque—plaintiff says because he could not read writing—McIntosh says because plaintiff had not his glasses.

With all the evidence before me, I have carefully read and considered the cases to which we were referred by counsel for defendants. . . .

[Reference to North British R. W. Co. v. Wood, 18 Ct. Sess. Cas. (Rettie) H. L. 27; Begg v. Toronto R. W. Co., 6 O. W. R. 239.]

I am of opinion that all the cases cited are distinguishable upon the facts. Plaintiff, in my opinion, did not understand the situation, or that a complete release was being asked of him. He did not intend to release defendants from all liability, if there was such liability. He intended to accept the \$30 as offered by the insurance company as in-