

6. Was the plaintiff guilty of negligence which caused the accident or so contributed to it that but for his negligence the accident would not have happened? A. No.

7. At what sum should the compensation be estimated in case the plaintiff should be found entitled to recover? A. \$1,500.

And upon these answers the plaintiff contends that he is entitled to succeed.

The answer to question 4 is entirely unsupported by the testimony. The defendant company had every reason to consider Fedoreczuk to be an efficient and competent man, and further I do not think that the answers of the jury constitute a sufficient finding that Fedoreczuk was not competent. Question 2 certainly points in that direction, but the answer to question 3 shews that what the jury had in mind was that he was careless upon this particular occasion. This is obviously not one of the cases in which a single act of negligence is sufficient to establish incompetency of a fellow-servant. See *Alexander v. Miles* (1904), 3 O.W.R. 109; *Beven on Negligence*, Canadian ed., pp. 646 to 649, and cases cited there.

The action must be dismissed with costs.

TORONTO ELECTRIC LIGHT CO. LIMITED v. INTERURBAN ELECTRIC CO. LIMITED—LENNOX, J.—APRIL 6.

Contract—Construction—Supply of Electric Power — Rate of Payment.—Action to recover the excess beyond 2,000 h.p. of electric power supplied by the plaintiffs to the defendants at the rate specified in the contracts between the parties. The action was tried without a jury at Toronto. The learned Judge reserved judgment, and now briefly stated his conclusions. He said that there were no contracts between the parties referring to the matters in issue in this action other than those referred to in the statement of claim; that Parker Kimble had no actual or ostensible authority to make an agreement to furnish power beyond that provided for by the agreement of the 30th September, 1911, or to vary the scheduled rates or other terms or conditions of this agreement; nor did he in fact agree to furnish additional power or purport to make a final agreement of any kind; nor did the defendants understand that they had obtained a new, or an extension of the old, agreement. The defendants had no right to withdraw power from the plaintiffs'