

ages, it was shown that O. had no experience in the mode of moving the buggy; that the screw should have guarded, and that the mode adopted by O. was a proper one.

Held, affirming the decision of the Court of Appeal (21 A. R. 596), and of the Divisional Court (25 O.R. 12), GWYNNE, J., dissenting, that the jury were warranted in finding that there was negligence in not having the screw guarded; that as the foreman knew that O. had no experience as to the ordinary mode of doing what he was told, he was justified in using any reasonable mode; that he acted within his instructions in using the only efficient means that he could; and that under the evidence he used ordinary care.

Appeal dismissed with costs.

Bruce, Q.C., for the appellants.

Staunton for the respondents.

Ontario.]

[May 6.

VICTORIA HARBOUR LUMBER COMPANY v. IRWIN.

Contract—Sale of timber—Delivery—Time for payment—Premature action.

By agreement in writing, I. agreed to sell, and the V.H.L. Co. to purchase timber to be delivered "free of charge where they now lie within ten days from the time the ice is advised as clear out of the harbour, so that the timber may be counted. . . . Settlement to be finally made inside of thirty days, in cash, less 2 per cent. for the dimension timber which is at John's Island."

Held, affirming the decision of the Court of Appeal, that the last clause did not give the purchasers thirty days after delivery for payment; that it provided for delivery by vendors and payment by purchasers within thirty days from the date of the contract; and that if purchasers accepted the timber after the expiration of thirty days from such date, an event not provided for in the contract, an action for the price could be brought immediately after the acceptance.

Appeal dismissed with costs.

Laidlaw, Q.C., and *Bicknell* for the appellants.

McCarthy, Q.C., and *Edwards* for the respondent.

Ontario.]

[June 24.

ROBERTSON v. GRAND TRUNK R.W. CO.

Construction of statute—Railway Act, 1888, s. 246 (3)—Railway company—Carriage of goods—Special contract—Negligence—Limitation of liability for.

By s. 246 (3) of the Railway Act, 1888 (51 Vict., c. 29 (D.)), "every person aggrieved by any neglect or refusal in the premises shall have an action therefor against the company, from which action the company shall not be relieved by any notice, condition, or declaration, if the damage arises from any negligence or omission of the company or of its servants."

Held, affirming the decision of the Court of Appeal (21 A.R. 204) and of the Divisional Court (24 O.R. 75), that this provision does not disable a railway company from entering into a special contract for the carriage of goods and