

in rear may, in the absence of evidence to the contrary, be presumed to have resulted from his want of skill, knowledge or experience, or to some physical incapacity or defect, which the statutory examination or test would have revealed; and the railway company is properly held liable in damages for the death of his assistant on the snow-plow in a collision resulting from the section foreman's neglect in which he also was killed; the company's action in setting an unqualified man to do such work was either the sole effective cause of the accident or a cause materially contributing to it, and the case therefore could not have been properly withdrawn from the jury. *Jones v. Canadian Pacific R. Co.*, 5 D.L.R. 332, 3 O.W.N. 1404, reversed.

4. *New trial—Instructions—Reading charge as a whole—Misdirection.*

The judge's charge to the jury is to be read as a whole, and if in view of its general meaning and effect, the jury were not left under any erroneous impression as to the real nature of the issues to be determined or as to the law applicable, misdirection cannot be predicted upon an isolated portion of the charge when read apart from the other portions, so as to constitute a ground for ordering a new trial. *Jones v. Canadian Pacific R. Co.*, 5 D.L.R. 332, reversed.

Sir Geo. Gibbons, K.C., and *Geo. S. Gibbons*, for appellant.
Sir Robert Finlay, K.C., *Angus MacMurchy, K.C.*, and *Geoffrey Lawrence*, for the Railway Co.

Dominion of Canada.

EXCHEQUER COURT

THE KING v. BRADBURN & WEBB.

Cassels, J.]

[Aug. 29.

Public harbour—Navigable waters—Water lots—Set-off—Increased value of remaining lands by reason of public work.

Proceedings by the Crown for the expropriation of certain lands bordering on the Kaministiquia River at Fort William