

purpose of hauling it out on defendant's marine railway and making repairs. While the work of hauling out was proceeding the vessel fell over and was injured. In an action claiming damages defendants relied upon a written contract containing the following provision: "The company give distinct notice to all parties intending to use or using the railway and it shall be held to be part of their contract with such parties that the company will not be liable for any injury or damage by accident—which vessels or their cargo or machinery may sustain on the railway or whilst being moved there or being launched therefrom."

*Held*, 1. Such provision did not in any way limit the responsibility of the company for acts of well established negligence.

2. It was not necessary to plaintiffs' right to recover that some specific act of negligence on their part should be established but that such negligence might be inferred from the facts proved.

*W. B. A. Ritchie, K.C., and Robertson, for appeal. Mellish, K.C., contra.*

Full Court.]

[Nov. 26, 1910.]

MCCALLUM v. WILLIAMS.

*Principal and agent—Sale of land—Commission—Consideration—Written agreement—Construction—Oral evidence offered to shew intent.*

Defendant placed his farm in the hands of plaintiff, a real estate agent, for sale at a fixed price, under an agreement in writing whereby in consideration of plaintiff registering the farm in his real estate register (a publication issued by plaintiff), defendant agreed to pay a commission of three per cent. of the price obtained for a sale of the property or any part thereof takes place." "Such commission to be paid whether the said real estate is sold either at the price mentioned above or at such other price that I may hereafter accept." There was no evidence that plaintiff, apart from including the property in the publication mentioned, did anything towards effecting a sale, and, as a matter of fact, the property was sold by defendant about a year after without the interposition of plaintiff.

*Held*, nevertheless, reversing the judgment of the County Court judge for District No. 4, that plaintiff was entitled