Per BOYD, C.—The onus was on the defendants to prove the unfitness, and the jury, as is manifest by their recommendation, did not intend to pronounce against the plaintiff's competency. The findings were left in too uncertain a state to enter a verdict for either party against the will of the other. No material part of what the jury returns to the judge should be disregarded.

Per PROUDFOOT, J.—The duty of the jury was completed when they answered the questions. It was for the judge to determine what the legal result of the answers was. The jury's recommendation would rather seem to have been done more for sympathy for the plaintiff than with the desire of affirming his competency, which they had previously found was not proved.

Aylesworth, for the plaintiff.

Cassels, Q.C., for the defendants.

Divisional Court.] [January 8.

BUDD v. BELL.

Negligence of master in instructing a servant respecting machinery.

The plaintiff having had years of experience in running iron work machines, and having been previously employed by the defendants in their wood working manufactory, hired a second time, and was injured in working a jointer, which he was told other men had been injured at. In an action against his employers,

Held, that plaintiff knew from his own inspection and experience that the machine was dangerous, that it needed caution and firmness in operating, that the risks were open to his observation, and that his opportunities and means of judging of the danger were, at least, as good as those of his employers, and a motion to set aside a nonsuit entered at the trial was dismissed.

Negligence on the part of a manager or foreman is not constructive negligence on the part of the master. Actual personal negligence of the master must be established, as a foreman is but a fellow-servant, though it may be of a higher grade.

J. L. Murphy, for the plaintiff.

A. H. MacDonald, for the defendant.

Divisional Court.] [January 8.

MEYER ET AL v. BELL.

Seduction—Right of mother and stepfather to maintain action when daughter not living with plaintiffs.

In an action for seduction brought by the mother and stepfather of the daughter, it appeared that at the time of the seduction the daughter was not living at home with the plaintiffs, but was out at service.

Held (affirming Galt, J.), that the plaintiff had the right to maintain the action.

German, for the plaintiff.

Osler, Q.C., for the defendant.

PRACTICE.

Ferguson, J.] [January 17.

SNOWDEN v. HUNTINGTON.

Chambers appeal—Time—Christmas vacation—Extending time.

The time of Christmas vacation is not to be excluded in reckoning the eight days within which an appeal from the Master in chambers, or local Judge, or Master sitting in chambers, is to be brought on as required by Rule 427.

As such appeals are not heard in vacation, the time for appealing will be extended as a matter of course upon an *ex parte* application.

Hoyles, for the plaintiff.

W. M. Douglas, for the defendants.

Ferguson, J.] [January 17.

RE S., INFANTS.

Habeas corpus—Evidence—R. S. O. ch. 70, sec. 1—Foreign commission—Discovery.

Held, that the provision in R. S. O. ch. 70, sec 6, that the court or Judge before whom any writ of habeas corpus is returnable may proceed to examine into the truth of the facts set forth in such return by affidavit or by affirmation is permissive only, and that a Judge has power in such a case to direct that the evidence shall be taken *viva voce* before him.