

REPORTS AND NOTES OF CASES.

**Dominion of Canada.**

SUPREME COURT.

B.C.]                      LOWENBERG v. DUNSMUIR.                      [Nov. 30, 1903  
*Finding of jury—New trial—Principal and agent—Qualification of juror—Waiver of objection—Written contract—Collateral agreement by parol.*

An agent employed to sell a mine for a commission failed to effect a sale but brought action based on a verbal collateral agreement by the owner to pay "expenses" or "expenses and compensation" in case of failure. The jury found in answer to a question by the judge that "we believe there was a promise of fair treatment in case of no sale."

*Held*, reversing the judgment in appeal (9 B.C.R. 303), TASCHEREAU, C.J., and KILLAM, J., dissenting, that this finding did not establish the collateral agreement but was, if anything, opposed to it and the real issue not having been passed upon there must be a new trial.

If a juror on the trial of a cause is allowed without challenge to act as such on a subsequent trial, that is not per se a ground for setting aside the verdict on the latter.

Appeal allowed with costs.

*Sir C. H. Tupper*, K.C., for appellant. *Bodwell*, K.C., for respondents.

Man.]                      DAVIDSON v. STUART.                      [Nov. 30, 1903.  
*Negligence—Electric plant—Defective appliances—Master and servant—Electric shock—Engagement of skilled manager—Contributory negligence.*

An electrician engaged with defendants as manager of their electric lighting plant and undertook to put it in proper working order, the defendants placing him in a position to obtain all necessary materials for that purpose. About three months after he had been placed in charge of the works he was killed by coming in contact with an incandescent lamp socket in the power house which had been there the whole of the time he was in charge, but, at the time of the accident, was apparently insufficiently insulated.