been attended with such serious results to the plaintiff, there is but one conclusion to be come to, namely, that the negligence found by the jury is not negligence of the defendants, or such as to entitle the plaintiff to succeed.

The action will, therefore, be dismissed with costs.

MIDDLETON, J. JUNE 24TH, 1914.

PERRY v. BRANDON.

Contract—Rent of Plant at Sum per Diem—Computation of Days—Construction of Written Agreement—Inclusion of Sundays—Deductions from Contract-price.

Action for money due under an agreement for the rent of an excavating plant.

R. H. Greer, for the plaintiff.
W. Laidlaw, K.C., and W. I. Dick, for the defendants.

MIDDLETON, J.:—The action is brought upon a written contract by which the plaintiff rented to the defendants a certain plant owned by him, for the purpose of excavating a siding and a site for a building upon the defendants' land. The plant consisted of a locomotive, shovel, and some cars; and the rental stipulated was $62 per day, "to start immediately on outfit leaving main line and to run each and every day."

The contention put forward by the defendants is, that this means excluding Sundays, and they contend that, if this is not the meaning of the contract, the contract ought to be reformed.

I am against the defendants on both contentions. The contract was deliberately and carefully prepared, and embodies the agreement arrived at. The intention was that Sunday should be paid for, and that is, I think, the true construction of the agreement.

Gibbon v. Michael's Bay Lumber Co., 7 O.R. 746, is, I think, conclusive. The argument that this would involve work upon Sunday is met by what is said by Wilson, C.J., at p. 751: "When Sunday is not computed . . . it is not because in England or in this country work is prohibited to be done on that day, but because by the contract it has been expressly excluded