

it was possible and practicable to have a counter-sunk set screw, or to have the set screw further guarded.

The case is certainly very close to the line upon the two questions: first, as to there being any evidence of negligence or breach of the Factories Act which should properly be submitted to the jury; second, as to there being conclusive evidence of contributory negligence on the part of the plaintiff; but, in the view I take, the case could not have been withdrawn from the jury.

There will be judgment for the plaintiff for \$1,000 with costs.

CANADIAN CONTRACTING AND DEVELOPMENT CO. v. JAMIESON—
BRITTON, J.—DEC. 22.

Contract—Carriage of Goods—Payment by Weight—Breach of Contract—Delay—Action by Carriers for Damages.]—Action for damages for breach by the defendants of a contract made in December, 1910, whereby the plaintiffs agreed to freight and carry for the defendants from 1,000 to 1,200 tons of supplies from warehouse No. 1 on Ombabika Bay, on the north shore of Lake Nepigon, to that portion of the located line of the National Transcontinental Railway between mileage 90 and mileage 160, district E., on the terms and conditions set forth in the contract. The freight payable was 2½ cents per 100 lbs. per mile. The defendants, in addition to having the goods ready for transport, were to furnish hay for the horses at \$31.50 per ton, and oats at \$2.10 per sack of 3 bushels; and the defendants further agreed to "cut all roads to the different points of delivery." The breach of contract alleged was, that the defendants did not cut roads to the different points of delivery and did not maintain and keep in repair for freighting whatever was necessary and convenient for the use of the plaintiffs. The plaintiffs claimed damages for delay at warehouse No. 1, at the rate of \$10 per day per team and man, estimated at \$4,480, giving credit for \$1,023.70 earned in other work during the alleged delay, leaving \$3,456.30 as the amount claimed. For a distance of about eight miles from warehouse No. 1 and on towards the points where the plaintiffs were to deliver the goods, a road had been cut by the Nepigon Construction Company. On the 9th January, 1911, when the plaintiffs were ready to receive their loads from warehouse No. 1, they were notified in writing, by one McQuigge, purporting to act on behalf of the Nepigon Construction Company, that, if they (the