

Mr. Turner, a young man employed as bookkeeper, then said to the plaintiff: "It is very cold; please get some firewood." The plaintiff thereupon went to the lumber yard, and, not seeing any small pieces of waste wood convenient, procured some ends of boards and took them to the saw in question for the purpose of cutting them up into pieces that could be used in the office stove. The saw was not intended for use as a cross-cut saw, but was designed and equipped for ripping boards. It had an efficient guard, placed so that lumber to be sawn would be guided and held both before reaching the saw and after passing it.

Instead of standing in front of the saw and passing the board through in the ordinary way, the plaintiff went to the side of the machine, and, after setting it in motion by turning the electric switch controlling the motor, cut short lengths off the ends of the pieces of board, using the saw as a cross-cut saw. These pieces of board accumulated behind the saw, something caught, and the guard was thrown up at an angle of 45 degrees. Instead of then stopping the saw, the plaintiff used a short piece of board, some sixteen inches in length, remaining in his hands, and endeavoured to poke away from behind the saw the accumulated pieces of wood that held up the guard. While he was doing so, the guard fell, and brought his hand down upon the unprotected saw, severing the fingers.

The guard used on this machine had in front of the saw a toothed wheel, driven by power, to feed to the saw the board being ripped; and two rollers were behind the saw to take care of the severed strips passing from it. Between these was a cover, supposed to come down and protect the revolving saw-blade. This cover was adjustable, so that it might be made to afford protection when either a large or a small saw was used, and when the saw projected a considerable distance or only a short distance from the table.

There was some evidence that the nuts for adjusting this were not tight. This would permit the guard to fall down by its own weight, over the saw-blade. I cannot conceive that this, if a defect at all, had anything to do with the accident. In the picture of the machine, exhibit 1, this cover is shewn lifted higher than it would be when the machine was in actual operation, and the picture is to that extent misleading.

On the matter being submitted to the jury, in addition to finding that the machine was out of repair by reason of these nuts being loose, the jury found that the defendants were negli-