N.S.] DAY *v.* DOMINION IRON AND STEEL CO. [Feb. 16.

Negligence — Employers' Liability Act — Injury to servant — Proximate cause — R.S.N.S. (1900) c. 79.

Day was engaged in moving cars at a quarry of the company. The cars were loaded at a chute under a crusher and had to be taken past an unused chute about 200 feet away supported by a post placed seven and a half inches from the track. D. having loaded a car found that it failed to move as usual after unbraking, and he had to come down to the foot-board and shove back the foot-rod connected with the brake. The car then started and he climbed up the steps at the side to get to the brake on top, but was crushed between the car and the said post. He could have got on rear of the car instead of using the steps or jumped down and walked along after the car until it had passed the post. The manager at the quarry had been warned of the danger from the post, but had done nothing to obviate it.

Held, reversing the judgment appealed from, (36 N.S.R. 113,) DAVIES and KILLAM, JJ., dissenting, that D.'s own negligence was the cause of his injury and the company were not liable.

Held, per DAVIES and KILLAM, JJ., that the position of the post was a defect in the company's works under the Employee's Liability Act which was evidence of negligence.

Appeal allowed with costs.

Lovett, for appellants. *Harris*, K.C., for respondent.

N.S.] MARKS *v.* DARTMOUTH FERRY CO. [Feb. 16.

Master and servant — Contract of service — Termination by notice — Incapacity of servant — Permanent disability — Findings of jury — Weight of evidence.

Where a contract for service provided that it could be terminated by either party giving the other a month's notice therefor or by the employer paying or the employee forfeiting a month's wages :

Held, reversing the judgment appealed from, (36 N.S.R. 158.) that illness of the employee by which he is permanently incapacitated from performing his service would itself terminate the contract.

Held, also, KILLAM, J., dissenting, that an illness terminating in the employee's death and during the whole period of which he is incapacitated for service is a permanent illness though both the employee and his physician believed that it was only temporary.

By a rule of the employer an employee was only to be paid for the time he was actually on duty. One of the employees had accepted and signed a receipt for a month's wages from which the pay for two days on which he was absent from duty was deducted, and his conversations with