In the absence of proof that adjusting agents employed by the insurer had authority to dispose of the matter, the offer of settlement of the claim by the adjuster does not constitute waiver on the part of the insurer of objections which might be urged against the claim.

Appeal dismissed with costs.

G. G. Stuart, K.C., and *Crépeau*, K.C., for appellant. *A. Geoffrion*, K.C., and *Perrault*, K.C., for respondents.

Man.]   MALLORY v. WINNIPEG JOINT TERMINALS.   [May 25.

Railways—System of construction—Exposed switch-rods—Negligence —Verdict—Findings against evidence.

In accordance with what was shewn to be good railway practice, the tracks in the company's yards were provided with switch-rods which were left uncovered and elevated a slight distance above the ties.   While in performance of his work, during the day-time, an employee sustained injuries which, it was alleged, happened in consequence of tripping on switch-rods while a car was being moved over the switch.   In an action by him for damages, the jury based their verdict in his favour on a finding that the railway company had been negligent in permitting the switch-rods to remain in an exposed condition.

Held, per curiam, affirming the judgment appealed from (8 West W.R. 853), that the finding of negligence by the jury in regard to the switch-rods in question was against the evidence as to proper method of construction and could not be upheld.   Idington and Brodeur, JJ., dissented on the view that evidence respecting the unsafe condition of the switch-rods had been properly submitted to the jury and their findings thereon ought not to be questioned.

Appeal dismissed with costs.

Wallace Nesbitt, K.C., and *McMurray*, for appellant.   O. H. *Clark*, K.C., for respondents.

Ont.]   CANADA CEMENT CO. v. FITZGERALD.   [May 2.

Deed of land—Reservation—Right of passage—Changed conditions— Object of conveyance.

F. sold land to the Cement Company reserving by the deed "the right to pass over for cattle, etc., for water going to and from Dry Lake."   The company, in using the land for excavating marl