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in using the saw, demanded by the increased peril, the jury must find for defendant," is properly modified by substituting, for the clause quoted, "failed to exercise such reasonable care as a prudent man would exercise under the same circumstances."

8. A requested instruction not warranted by the evidence is properly refused.

9. An instruction that if plaintiff complained of the defective condition of machinery, and defendant promised to repair, but failed to do so in a reasonable time, in consequence of which plaintiff was injured, the jury should find for plaintiff, unless he failed to exercise reasonable care, considering his experience, or unless the danger was so palpable that no one but a reckless person would expose himself to it, is not improper on the ground that it does not make the presence of danger a necessary element to a recovery, and does not state that plaintiff relied on the promise to repair.

10. In an action for injuries by a saw, an instruction that if defendant refused to repair the saw, or by its conduct gave plaintiff to understand that it did not intend to repair, plaintiff assumed the risk, is properly refused, as the presumption is that when a servant complains of defective machinery, which the master refuses to repair and directs him to proceed, unless the defect is so palpable that only a reckless man would use it, the servant may presume that the master considers it reasonably safe.

11. An instruction that if plaintiff knew the machinery was out of order, and reported it to the foreman, and it was repaired in plaintiff's presence, and he made no further complaint, to find for defendant, is properly refused, as ignoring the principle that the master's duty to use ordinary care to furnish reasonably safe machinery is personal and non-assignable.

VIRGINIA PASSENGER & POWER CO. ET AL. v. COMMONWEALTH.

March 9, 1905.

[49 S. E. 995.]

STREET RAILROADS—FRANCHISE—TRANSFERS—INTERSECTING LINES—LINE PARTIALLY OWNED BY DIFFERENT COMPANY.

1. Where the ordinance granting a franchise to a street railroad company imposed certain conditions as to rates of fare and giving of transfers, and the company operated its lines in accordance with these regulations, it thereby assumed contractual obligations with respect to such regulations.

2. The ordinance granting a franchise to a street railroad company provided that it should sell half fare tickets between certain hours, and give transfers at points where one line intersected with another. The company owned a line which extended from its point of intersection with another line to the city limits, beyond which it was owned by a different corporation, which, however, ran its cars with the same operatives into the city and to the point of intersection. *Held*, That this line was an intersecting line, to which the provisions as to half fare tickets and transfers applied.