

The council did not direct where the by-law was to be posted up (Municipal Act, sec. 338). The by-law was posted, and the council has ratified what was done by its agents.

I have dealt with the case as presented by the plaintiff, but desire to say that, in doing so, I do not indicate any approval of his procedure. The Court has very limited right of interference in municipal matters, and, unless the contemplated by-law is clearly ultra vires, ought not to attempt to exercise its power.

To continue this action is idle; so the motion may be turned into a motion for judgment, and the action as well as the motion is dismissed with costs.

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BRITTON, J.

DECEMBER 27TH, 1911.

McCLEMENT v. KILGOUR MANUFACTURING CO.

*Master and Servant—Injury to Servant—Dangerous Machinery in Factory—Proper Guarding—Negligence—Contributory Negligence—Evidence for Jury—Findings—Factories Act—Voluntary Assumption of Risk.*

Action for damages for injuries sustained by the plaintiff while working for the defendants in their factory, owing to the negligence of the defendants, as the plaintiff alleged.

The action was tried with a jury at Hamilton.

W. M. McClement, for the plaintiff.

T. N. Phelan, for the defendants.

BRITTON, J.:—The defendants are owners of a factory in the city of Hamilton, and are engaged in the manufacture of boxes. The plaintiff was in the employ of the defendants; and, while at work in their factory on the 17th February, 1911, was accidentally injured. The cause of the accident was, that the plaintiff's clothing was caught by the head of a set screw which projected about one inch from the outer face of a collar or disc upon and near the end of a revolving shaft—a part of the defendants' machinery. The plaintiff charges negligence in that the defendants did not have this head of the set screw counter-sunk, or in some way guarded against contact with any workman or his clothing when such workman was near the revolving shaft.

The undisputed facts are briefly these. A couple of years ago—more or less—an accident happened to a boy working for