

The action was tried before RIDDELL, J., without a jury, at Barrie, on the 14th and 15th November, 1910.

Wallace Nesbitt, K.C., and F. R. MacKelcan, for the plaintiff.
N. F. Davidson, K.C., for the defendants.

RIDDELL, J.:—In 1903 the Town of Gravenhurst acquired the electric light plant of the town and vicinity, which, having been initiated by one Fletcher, had become the property of one Fielding. The town corporation had made an offer under the provisions of what is now the Consolidated Municipal Act, 1903, 3 Edw. VII. ch. 19, sec. 566, which offer was declined. Arbitrators were appointed and made their award, whereupon Fielding conveyed the plant to the town corporation, including two lots, machinery, transformers, dynamos, etc. He also transferred the contracts he had for the supply of light or electricity. In 1904 the town council passed a by-law constituting a Board of Commissioners under the Municipal Light and Heat Act and the Municipal Waterworks Act, R. S. O. 1897 chs. 234 and 235; and the Board in and after 1905 took charge of the electrical plant, etc., of the town.

On the 8th March, 1910, the plaintiff John Young, a lad of eleven years of age, lying in bed about seven o'clock in the morning, was terribly burned by a current of electricity from the town supply—his left hand was so injured that it had to be amputated, and his skull was literally burned through to the brain in two places. . . .

Every point was most strenuously and ably contested by counsel for the defendants; and the only doubt which I have entertained since the close of the evidence is due to his ingenious and learned argument. . . .

I take up the legal objections which go to the very root of the action. Mr. Davidson contends that this action does not lie against the town corporation at all, but that, if any one be liable, it can only be the Commissioners.

By reference, secs. 40 to 47 of R. S. O. 1897 ch. 235 are made part of R. S. O. 1897 ch. 234 (R. S. O. 1897 ch. 234, sec. 14). . . . The whole effect of sec. 40 of R. S. O. 1897 ch. 235 is to permit the council, instead of acting for the "corporation," i.e., the "body corporate" themselves, to delegate this agency to officers appointed by the council or to Commissioners. The Commissioners then become the body which acts for the corporation—and so "statutory agents." . . .