

similar by-law might be again submitted, this being based upon the theory that such irregularities took place in the election that had the by-law been passed in 1913 it would have been quashed.

This proceeding is attacked—it is contended that there is no legislative sanction for the exception sought to be grafted onto the statutory prohibition. The case seems to me to differ materially from cases in which an injunction has been refused when it has been suggested that a by-law if passed would be quashed by reason of irregularities.

The parties would not consent to turn this motion into a motion for judgment, and as a trial can easily be had before the council is called on to act, I thought the balance of convenience indicated an early trial as the best course, leaving the whole matter to be dealt with at the trial and without in any way determining the questions to be then dealt with, *inter alia*, the right of the plaintiff to an injunction.

To refuse the motion would be to usurp the functions of the trial Judge as the by-law would be passed in the interval and he could then do nothing.

The position of the plaintiff might be prejudiced as the very extraordinary jurisdiction conferred by sec. 143a might be held to attach even though there never was any right to submit the by-law at all. Indeed, it was stated by the plaintiff's counsel that the licenses had already been cancelled, presumably under this section, though no local option by-law has been passed at all, much less quashed on a "technical ground."

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HON. SIR G. FALCONBRIDGE, C.J.K.B.    JANUARY 20TH, 1914.

LIVERMORE v. GERRY.

5 O. W. N 782.

*Negligence—Master and Servant—Injury by Circular Saw—Findings of Jury—Contributory Negligence — Damages — Quantum of—Costs.*

FALCONBRIDGE, C.J.K.B., dismissed an action brought by a workman against his employer for damages sustained by reason of the operation of a circular saw, upon the findings of the jury that the plaintiff was guilty of contributory negligence.

Action by workman for injuries caused by circular saw, tried at London. The jury answered questions as follows:—