

*Held*, that the plaintiff, by his acts and conduct, had precluded himself from asserting such right.

*Brown v. McLean*, 18 O.L. 533, and *Abell v. Morrison*, 19 O.R. 669, distinguished.

*Aylesworth*, Q.C., for the plaintiff.

*Kapelle* for the defendant.

Div'l Court.]

[March 3.

O'CONNOR v. HAMILTON BRIDGE COMPANY.

*Workman's Compensation for Injuries Act—Dangerous machinery—Absence of guard—Negligence—Factory Act.*

A drilling machine, manufactured by a well-known manufacturing company, and the same as those used for many years, was put up by the company for the defendant in his factory. The plaintiff, acting under the orders of the defendant's foreman, was oiling the shaft on which the drill worked, when his clothes caught in a projecting screw, and he was injured. The machine was not in motion when the plaintiff received his orders, but at the time of the accident was working with great rapidity, having been put in motion, without the foreman's knowledge, by a fellow-workman. The machine had only been in use a few days, and the defendant was not aware of its being in any way dangerous.

In an action for the damages received by the plaintiff, the jury found that the accident was caused by the defendant's negligence, and without any negligence on the part of the plaintiff.

On appeal to the Divisional Court, the court was equally divided.

*Per GALT, C.J.* : There was no evidence of negligence to submit to the jury, either at common law or under the Workman's Compensation for Injuries Act, nor any liability under the Factory Act.

*Per ROSE, J.* : There was evidence of negligence both at common law and under the Workman's Compensation for Injuries Act ; the want of a guard, as required by the Factory Act, constituted such negligence at common law, and the absence of such guard being also a defect in the condition or arrangement of the machinery within the Workman's Compensation for Injuries Act.

*G. Lynch-Staunton* for the plaintiff.

*Oster*, Q.C., and *Walker*, Q.C., for the defendant.

Boyd, C.]

[Oct. 21, 1893.

SIMMONS v. SIMMONS.

*Benevolent societies—Endowment certificate—Change of beneficiary—Evidence of.*

An endowment certificate for \$1,000, issued in 1889 by the Canadian Order of Foresters to a member, and payable on his death, half to each his father and mother, contained a provision that, should there be any change in the name of the payee, the secretary should be notified, and an endorsement thereof made