

the maxim "volenti non fit injuria" applied in this case and the plaintiff could not recover.

*Haney and A. C. Campbell, for plaintiff. Hoskin and Beveridge, for defendants.*

Full Court.] GARBUTT v. CITY OF WINNIPEG. [Dec. 21, 1908.

*Negligence—Liability of municipal corporation for unsafe condition of polling booth—Agency of corporation officer.*

The plaintiff, an elector of the city, entered a polling booth for the purpose of voting at a municipal election and upon certain money by-laws submitted under s. 486 of the Winnipeg charter. While there he was injured owing to defects in the apartment provided for marking ballots. The polling booth had been selected by the council and appointed by the by-laws in accordance with the statute.

*Held*, that the defendant city was liable to the plaintiff in damages for the injuries sustained by him, as the returning officer should be deemed to have acted as the agent of the city in submitting the by-laws. *Mercy Docks Trustees v. Gibbs*, L.R. 1 H.L. at p. 110, followed.

*Burbidge, for plaintiff. Hunt, for defendants.*

Full Court.]

[Dec. 21, 1908.

STREET v. CANADIAN PACIFIC RY. CO.

*Negligence—Contributory negligence—New trial for misdirection to jury—Railway Act, R.S.C. 1906, c. 37, s. 288—Duty of company to pack frogs.*

According to the findings of the jury, the plaintiff received the injuries complained of in consequence of putting his foot in an unpacked frog while in the discharge of his duty as a brakeman in uncoupling cars of the defendants. The train was in slow motion when he stepped in between two of the cars to uncouple them. In doing so his foot was caught between two rails and he was run over, losing an arm and part of his foot. The trial judge charged the jury that, if the frog was unpacked, the company would be liable under s. 288 of the Railway Act, R.S.C. 1906, c. 37, whether the plaintiff was guilty of contributory negligence or not.