

Boyd, C., Meredith, J., Idington, J.]

[June 30.]

McINTOSH v. FIRSTBROOK BOX CO.

Master and servant—Injury to servant—Employment of child in factory—Factories Act—Misrepresentation as to age—Dangerous machine—Warning—Negligence—Jury.

The plaintiff, a boy of ten, represented his age as fourteen, and was employed by the defendants in their factory. He was not put at dangerous work, but, in going to his work through a room in which there was dangerous machines, he was injured by one of them.

Held, MEREDITH, J., dissenting, that the provision of the Factories Act, R. S. O. 1897, c. 256, s. 3, that no child (as defined by s. 2, sub-s. 5) shall be employed in a factory, is to protect young children from dangerous employment. It is not enough to take the statement of a child as to his age; the employer must satisfy himself by reasonable means that the applicant for work is of the requisite age, and it is for the jury to say whether reasonable precautions have been taken. The illegal employment may be evidence of negligence.

Upon the facts of this case it was for the jury to say whether sufficient warning had been given by the defendants to protect the plaintiff—having regard to his age and the danger of the place.

Bicknell, K.C., and *Bain*, for plaintiff. *Shepley*, K.C., and *Greer*, for defendants.

Anglin, J.]

IN RE DEWAR AND DUMAS.

[July 7.]

Overholding tenant—Notice of hearing affidavit—Prohibition—Waiver—R.S.O. 1897, c. 171, s. 4.

On an application under the Overholding Tenant Act by a landlord for possession a copy of the affidavit filed on the application was not served on the tenant as directed by s. 4 of the Act. Counsel appeared for the tenant on the return of the application and took this objection and the application was adjourned to enable a copy of the affidavit to be served. After such service the application was proceeded with and counsel for the tenant examined and cross-examined witnesses and argued the case, when an order for possession was made:—

Held, that the failure to serve a copy of the affidavit was an irregularity, which could be and had been waived, and prohibition against the enforcement of the order for possession was refused.

D. C. Cameron, for the tenant. *Roche*, for the landlord.