

tanks where planks were placed for the workmen to pass along, and which were always in a slippery condition. The plaintiff, a workman employed by the defendants, while returning along one of these planks on the discharge of his duty in disentangling the warp, slipped, and by reason, as was found by the jury, of the defendants' negligence in not guarding the wheels the plaintiff, in trying to save himself, caught his hand therein and was injured. It was also found that the plaintiff knew of the non-guarding, but did not consider it a defect.

*Held*, that the cogwheels constituted part of the machinery, and, being dangerous, should have been guarded under s. 15, s-s. 1, of the Factories Act, R.S.O., c. 208; and that the non-guarding constituted a "defect in the condition of the machinery" under the Workmen's Compensation for Injuries Act, R.S.O., c. 141, so that the defendants were liable for the injuries sustained by the plaintiff.

*McCloherly v. Gale Manufacturing Co.*, 19 A.R. 117, commented on.

*Held*, also, following *Baddeley v. Earl Granville*, 19 Q.B.D. 423, that the maxim *volenti non fit injuria* did not apply where the accident was caused by the breach of a statutory duty; but that any question in the matter is now set at rest by the 53 Vict., c. 23, s. 7 (O.), amending the Workmen's, etc., Act.

Contributory negligence was set up, but was disproved.

*G. Lynch-Staunton* for the plaintiff.

*Crerar, Q.C.*, and *J. B. Crerar* for the defendants.

Div'l Court.]

REGINA *v.* HODGE.

[March 4.

*Liquor License Act—Search warrant for liquors—Obstructing officer executing—Punishment for offence—Indictment—Legality of warrant.*

The defendants were committed for trial for obstructing a peace officer acting under a search warrant issued on an information charging that there was reasonable ground for the belief that spirituous, etc., liquors were being unlawfully kept for sale, contrary to the Liquor License Act, in an unlicensed house.

*Held*, that the search warrant must be deemed to have been issued under s. 131 of the Act, and it containing no provision for punishment in such case it must be by an indictment for a misdemeanour under R.S.O., c. 162, s. 134.

The court refused to determine as to the validity of the warrant on a motion of this kind, as it could be raised on the trial of the indictment if a true bill were found.

Where a justice of the peace is authorized to act for a police magistrate in case of the latter's illness, absence, or at his request, and the justice acts, the maxim *omnia presumuntur rite esse acta* applies, and the justice is presumed to have been properly authorized unless the contrary appear. *Rex v. Simpson*, 1 Str. 46, followed.

*DuVernet* for the motion.

No one showed cause.