

negligence in the operation of the plant; and the plaintiffs were not precluded from recovering full compensation in the action.

The defence under the statute failed because: (1) the requirements of the statute in regard to a by-law and sanction by the Board of Health were not complied with; (2) the damages suffered by the plaintiffs were caused by the defendants' negligence; (3) while the evidence established conclusively that the plaintiffs suffered damages, it was impossible to say that any portion thereof necessarily resulted from the exercise of statutory powers.

The appeal should be dismissed.

MAGEE, J.A., agreed with CLUTE, J.

MACLAREN and HODGINS, JJ.A., agreed in the result, for reasons stated by each in writing.

*Appeal dismissed with costs.*

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#### HIGH COURT DIVISION.

LATCHFORD, J.

OCTOBER 8TH, 1918.

\*SEAGRAM v. PNEUMA TUBES LIMITED.

*Fines and Penalties—Action for Penalties against Company and Secretary—Ontario Companies Act, 2 Geo. V. ch. 31, sec. 134—Default in Making out and Transmitting Summaries to Provincial Secretary—Secretary Wilfully Permitting Default—Finding of Fact of Trial Judge—Penalties—Leave to Apply for Remission.*

An action, brought with the written consent of the Attorney-General for Ontario, against Pneuma Tubes Limited, a company duly incorporated under the Ontario Companies Act, 2 Geo. V. ch. 31, by letters patent dated the 2nd December, 1913, and against James Joseph Gray, as secretary of the company, for penalties alleged to have been incurred under sec. 134(6) of the Act, owing to the default of the company and Gray in making out and transmitting to the Provincial Secretary, on or before the 8th February, 1915 and 1916, the summary or statement prescribed by sub-secs. (1) to (5) of sec. 134 of the Act. See *Seagram v. Pneuma Tubes Limited* (1917), 40 O.L.R. 301.