

MAGEE, J.A., concurred, for reasons stated in writing.

MOSS, C.J.O., and GARROW, J.A., also concurred.

MEREDITH, J.A., dissented, for reasons stated in writing. He was of opinion that the by-law was not passed for the purpose of regulating victualling houses, a subject within the power of the municipal council, but for the purpose of compelling the better observance of the Lord's day, a subject quite beyond the power of the council.

JULY 8TH, 1910.

*NETTLETON v. TOWN OF PRESCOTT.

Municipal Corporations — Negligence — "Lock-up" — Lack of Proper Heating—Injury to Prisoner—Duties of Constable — Caretaker—Responsibility of Municipal Corporation Acting as Deputy of the Crown—Respondeat Superior.

Appeal by the plaintiff from the judgment of a Divisional Court, 16 O. L. R. 538, dismissing the action.

The plaintiff was confined in the lock-up owned and established by the defendants, the municipal corporation of the town, and in his statement of claim alleged that while he was there the defendants negligently omitted to keep the place reasonably warm, and that this negligence caused him to be seriously ill, and he brought the action for damages for the injury thus sustained.

At the trial before MULLOCK, C.J.Ex.D., and a jury, the jury answered certain questions in such a way that the trial Judge deemed the answers to be irreconcilable, and he declined to enter judgment for either party.

BOYD, C., and MAGEE, J., being a majority of the Divisional Court which heard motions by the plaintiff and defendants for judgment, held that the defendants were not responsible for the injury to the plaintiff. MABEE, J., dissenting, was of opinion that the defendants were liable.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, J.J.A., and SUTHERLAND, J.

J. A. Hutcheson, K.C., for the plaintiff.

J. B. Clarke, K.C., for the defendants.

* This case will be reported in the Ontario Law Reports.