

of the city, he was instructed by the Chairman of the Board of Health to inspect the city schools as to ventilation and sanitation, and he had made an appointment with the Medical Health Officer to visit the school in question on the forenoon of the 22nd February, 1910. Having arrived before the Health Officer, he sought the janitor to shew them over the premises, but did not find him, as he was outside shovelling snow from the sidewalk. He did not seek the Principal, who, he knew, was engaged with a class on the main floor, but went down to the basement, into the lavatory. Not finding the janitor there, but hearing a noise in another room, he pushed open the door, which was slightly ajar, and found that it led into a dark room, where there was only a faint streak of light. When about two steps inside, a man whom he could not see saluted him. He returned the salutation and changed his direction towards the speaker, thinking it was the janitor, but stepped into a depression in the floor, which he calls a pit, and fell and received the injuries complained of. It turned out that the room was the furnace-room; that the pit was the not unusual depression to allow of the opening of the furnace-doors; and that the person who had spoken to him was a friend of the janitor, who was using the room as a warm shelter from the snow-storm outside.

The plaintiff alleged that he was lawfully on the premises in the performance of his duties under the statute and the city by-law, and the express orders of the Chairman of the Board of Health; that the pit in question was unguarded and in the nature of a trap; that the defendants were aware of its dangerous condition, and had promised to protect and guard it, but neglected to do so; and that the plaintiff had reasonable grounds for looking there for the janitor, as no other place had been assigned to him.

The trial Judge held that the plaintiff was properly in the building in pursuit of his duty, and that it was right for him to enter the furnace-room in search of the janitor; also that it was negligence for the defendants to leave the place unguarded and unlit; and that the plaintiff was not guilty of contributory negligence.

With great respect, I find myself unable to adopt the view of the trial Judge. So far as disclosed, it was not necessary for any of the persons mentioned in the evidence to enter or visit the furnace-room; and I cannot find that the defendants owed any duty to them in the premises. The present janitor and his predecessor wanted a light, not for the purpose of greater safety, but for the purpose of reading the gauge, etc. The depression in