by its fall, for the reason that it was the duty of the city to remove it after notice of its erection. In the opinion of the Court, no point was made of the circumstances that a part of the structure was supported by a post standing in the street. The court referred to several Massachusetts cases, with approval, where hanging objects were supported by fastenings in the face of the buildings which were standing on the line of the street, which were held to be unlawful obstructions. The cases to which I refer are, *Pedrick* v. *Bailey*, 12 Gray, 161; *Day* v. *Inhabitants of Milford*, 5 Allen, 98. The Court, in commenting on these cases, said they are precisely in point upon the question whether such a structure, if in a dangerous position or condition, is a defect in the street, which a municipal corporation, in pursuance of its general duty, is bound to remove or repair. It has been repeatedly held that it is the duty of a municipal corporation to remove objects deposited upon the streets, the natural effect of which is to occasion accidents, frightening horses of ordinary gentleness, although the objects were placed wholly outside of the travelled part of the road-bed. In *Eggleston* v. *Columbia Turnpike Co.*, 18 Hun, 146, the Court remarked: The more common causes of injury and liability are structural defects or neglect to repair the road-bed; but a road may be also rendered unsafe, with consequent liabilities therefor, by unsightly objects placed or permitted to remain upon it, which are calculated to frighten animals employed thereon. See also Sherm. and Redf. Neg., s. 338; *Morse* v. *Richmond*, 41 Vt. 435; *Winship* v. *Enfield*, 42 N. H. 199; *Dimock* v. *Suffield*, 30 Conn. 129; *Bennett* v. *Lovell*, 18 *Alb. Law Jour.* 303; *Harris* v. *Mobbs*, id. 382. We are unable to discover any sensible reason for holding that an object permanently suspended directly over the travelled part of a highway, although fastened to supports outside of the limits of the same, is not an obstruction to travel, if it naturally tends to frighten horses of ordinary gentleness. Such an object drives travel from the street over which it is suspended, because discreet persons will avoid the risk and danger incident to an attempt to pass under the same. It endangers travel and makes it perilous to all travellers riding in conveyances drawn by horses. Such an object placed in a place so conspicuous as this banner was, within the plain sight of horses, is to be distinguished from objects which are suspended over sidewalks and fastened to the face of a building, like a sign or a bracket fastened in the face of a building, on which traders display their goods, or a show-case standing in front of a store. In many of the cases cited the argument is rejected that a road-bed can only be rendered defective by something in or upon the road itself, as being narrow and unreasonable. See *Norristown* v. *Moyer*, 67 Penn. St. 365; *Grove* v. *City of Fort Wayne*, 45 Ind. 429; S. C., 15 Am. Rep. 262."—*Ex.*

## REPORTS.

### *ONTARIO.*

(Reported for the CANADA LAW JOURNAL.)

### CHANCERY DIVISION.

DIVISIONAL COURT.

Before the CHANCELLOR, and PROUDFOOT, J.

### WILSON V. IRWIN.

*New trial—Judgment at trial for default of attendance of plaintiff—Rule S. C. 270—Refusal of judge at trial to entertain application to reinstate the cause—Divisional Court, Jurisdiction of.*

Where judgment was awarded at a trial in favour of a defendant, in consequence of the absence of the plaintiff, and an application was afterwards made to the judge at the sittings to reinstate the case which he refused to entertain.

*Held*, the plaintiff might, nevertheless, apply, under Rule S. C. 270, to the Divisional Court at its next sitting to set aside the judgment, and for a new trial.

[February 24.

This action was set down for trial at the special sittings before FERGUSON, J., at Toronto, which commenced in November, 1884. The action was placed on the peremptory list for trial on the 2nd December, 1884. The defendant appeared, but the plaintiff did not, and the action was dismissed An application was afterwards made to FERGUSON, J., at the sittings, to reinstate the case, but he refused to entertain the application.

*G. H. Watson*, for plaintiff, now moved on notice to set aside the judgment and for a new trial.