

for personal injuries sustained by plaintiff Flora Gignac by reason of a fall upon a sidewalk on the south side of Queen street, immediately west of Yonge street, in the city of Toronto, owing, as alleged, to defendants' negligence in permitting the sidewalk to be out of repair, and expenses incurred by the other plaintiff, her husband, by reason of the injury.

J. S. Fullerton, K.C., and F. R. MacKelcan, for defendants.

H. E. Rose, for Kelly, a third party.

J. M. Godfrey, for plaintiffs.

The judgment of the Court (BOYD, C., MAGEE, J., MABEE, J.), was delivered by

BOYD, C.:—The defendants are charged with the statutory duty of keeping streets and walks in repair, and have power to appoint overseers or inspectors to see that due care is taken in preventing or removing obstructions to traffic, etc.: sec. 537 of Municipal Act, 1903. The duty is a somewhat exacting one in places where there is continuous thronged and often congested travel by pedestrians, such as the site of the present accident at Knox church, near the corner of Queen and Yonge streets. For the removal of debris from the building being demolished, defendant Kelly (who had the contract) did his teaming over the granolithic pavement or sidewalk, and to protect the walk he laid down loose planks parallel with the street, which were kept in position and flush with the walk by a strap of hoop iron across each end, 18 inches from the end and fastened by nails to the planks. The strap had worked loose, making a space between the plank and the band, in which plaintiff's foot or toe caught, and she was flung to the ground. This was between 8 and 9 in the morning of 26th August. The place is within a short distance of the street commissioner's office; from 10 to 20 city officials passed over the place every day, and policemen were passing over it every 7 minutes—says Kelly. It was so planked and fastened with a strip of hoop iron 1-8 of an inch thick, kept in place by round nails, and by teaming over the planks they would be moved back and forth so as to raise the strip now and again at intervals, particularly at the outside of the planks. It was there from about the first week in August, 3 weeks before the accident, and it was seen by