

JUNE 7TH, 1913.

## \*EGAN v. TOWNSHIP OF SALT FLEET.

*Highway—Nonrepair—Injury to Traveller—Notice of Accident—Consolidated Municipal Act, 1903, sec. 606—Insufficient Excuse for not Giving Notice—Absence of Prejudice.*

Appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Wentworth, dated the 10th March, 1913, dismissing the action, which was tried before him without a jury.

The action was brought to recover damages for personal injuries sustained by the appellant owing to the neglect of the respondent corporation to keep in repair a highway under the jurisdiction of its council.

The notice required by sub-sec. 3 of sec. 606 of the Consolidated Municipal Act, 1903, was not given, and the Judge was of opinion that, although the respondent corporation had not been prejudiced by the failure to give the notice, it was not shewn that there was a reasonable excuse for "the want" of it.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. A. Logie, for the plaintiff.

F. F. Treleaven, for the defendant corporation.

The judgment of the Court was delivered by MEREDITH, C. J.O.:—It appears from the evidence that there was a hole in the road, and that on the 26th November, 1912, the wheel of a loaded vehicle which the appellant was driving dropped into the hole up to the axle and threw him off "forward and straddle the tongue;" that Bates, the employer of the appellant, had driven into the same hole on the previous 26th October, and had promptly notified the respondent corporation of the condition of the road; that, before Christmas, Bates met the Reeve and told him that the respondent corporation was "liable to get in trouble," for "his man" (i.e., the appellant) had been thrown out in the same place; and that, after the accident, the appellant was confined to bed for two weeks and suffered so much that he could not sleep night or day.

These circumstances, according to decisions binding on this Court, do not afford reasonable excuse for the failure to give the prescribed notice. . . .

\*To be reported in the Ontario Law Reports.