

SECOND DIVISIONAL COURT.

JANUARY 28TH, 1921.

**SANDLOS v. TOWNSHIP OF BRANT.*

Highway—Nonrepair—Accident—Injury to Motor Vehicle and Driver—Liability of Township Corporation—Municipal Act, sec. 460—Evidence—Presumption—Onus—Defect in Culvert—Want of Inspection—Notice—Negligence.

An appeal by the defendants, the Municipal Corporation of the Township of Brant, from the judgment of ROSE, J., at the trial, in favour of the plaintiff with \$500 damages and with costs, in an action for personal injury sustained by the plaintiff and injury to his motor vehicle by reason, as he alleged, of the negligence of the defendants in the nonrepair of a road in the township.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, MIDDLETON, and LENNOX, JJ.

G. H. Kilmer, K.C., for the appellants.

O. E. Klein, for the plaintiff, respondent.

RIDDELL, J., in a written judgment, said that the plaintiff, travelling in his automobile from Hanover to Chesley, driving it himself, passed along the 12th side-road of the township of Brant, a fairly well travelled road. At one of the culverts, made of cement-tile, on the road, he met with an accident—his wheel ran into a hole in the culvert, with disastrous results. The culvert consisted of 6 cement tiles, each 2 ft. 6 in. length and 2½ in. thick. The tile at the extreme west (the plaintiff's left) was cracked through and had a piece broken out at its eastern end; the second was apparently a new tile, the eastern end of which came to the left wheel track; it was not close to the third tile, the western end of which was under the left wheel track, and which ran to the middle of the via trita; this was broken in 8 or 10 pieces; the fourth tile was also cracked. It was quite clear that the highway was out of repair; and the learned trial Judge had negatived contributory negligence. He also found that "the manifestation on the surface of the road that there was a break in the pipe came only a very few hours before the accident;" but that it had not been shewn that the break in the tile came at the same time as the appearance upon the surface.

The findings of fact were wholly warranted by the evidence; and the result was that it was established that the accident was due to want of repair not manifest until a few hours before the accident—the want of repair was caused by a break in a hidden tile which may or may not have occurred at the time of the outward