

costs as a punishment for erroneously putting the jurisdiction of the Court in motion.

The conviction will therefore be quashed without costs, and there will be no order for the protection of the magistrate.

McFadden & McFadden, Sault Ste. Marie, solicitors for magistrate.

Denton, Dunn, & Boulton, Toronto, solicitors for prosecutor.

Hearst & McKay, Sault Ste. Marie, solicitors for defendant.

MAY 13TH, 1902.

DIVISIONAL COURT.

MINNS v. VILLAGE OF OMEMEE.

Municipal Corporation—Way—Non-repair—Opening in Street—Accident to Foot Passenger—Liability of Municipal Corporation—Nonfeasance—Trap-door—Want of Guard—Limitation of Actions.

Appeal by plaintiffs from judgment of BOYD, C., 2 O. L. R. 579.

The plaintiffs are husband and wife. The defendant Graham is a hotelkeeper in the village of Omemee. The plaintiffs allege that the corporation permitted and allowed defendant Graham to make, keep, and maintain an opening or hole in the sidewalk, on George street, adjoining his hotel, for the purpose of an outside opening into its cellar, and that defendants did keep and maintain the opening, and left a loose plank beside it, and did not guard the opening in any way or place a light at it. On the 14th September, 1900, at 8 p.m., the plaintiff Margaret Ellen Minns struck her foot against the plank, and fell forward into the opening, and was injured.

G. H. Watson, K.C., for plaintiffs.

F. D. Moore, Lindsay, for defendants.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., LOUNT, J.) was delivered by

MEREDITH, C.J.—The question for decision is, whether the limitation provision of sec. 606 of the Municipal Act, requiring that actions for damages for which a municipality is responsible, for its default in keeping its roads, streets, bridges, and highways in repair, to be brought within three months after the damages have been sustained, is applicable to the appellants' claim, and therefore a bar to their action, assuming the respondents' liability for the damages sustained to have been made out. The Chancellor was of opinion that